

LAND USE COMMISSION
MEETING MINUTES

July 10, 2019- 09:30 a.m.

**Natural Energy Laboratory Hawai`i Authority (NELHA)
73-987 Makako Bay Drive Kailua Kona, Hawai`i 96740-2637
Hale `Iako Training Room #119**

COMMISSIONERS PRESENT: Jonathan Scheuer
Gary Okuda
Nancy Cabral
Aaron Mahi
Arnold Wong
Edmund Aczon
Lee Ohigashi

COMMISSIONERS EXCUSED: Dan Giovanni
(9 Seated Commissioners) Dawn Chang

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Randall Nishiyama, Deputy Attorney
General
Bert Saruwatari, Staff Planner
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief
Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

Chair Scheuer asked if there were any corrections or additions to the June 27, 2019 meeting minutes. There were none.

Commissioner Mahi moved to approve the minutes and Commissioner Ohigashi seconded the motion.

The minutes were unanimously approved by voice vote.
(7 ayes-0 nays-- 2 excused).

Chair Scheuer called for the tentative meeting schedule.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.
 - JUL 11 -HNL A05-758 Charitable Foundation Amend motion
 - JUL 25-Kauai- A17-803 Kealia
 - AUG 14-15- Oahu Commission Training
 - AUG 28-HNL-DR19-66 Pōmaika`i Partners, LLC (Oahu)
 - AUG 29- A11-791 Hokua Place (Kauai)
 - HCPO- will be on Maui SEP 11-13- with LUC meeting on the 13th
 - SEP 25-25- TBD
 - OCT 9- SP09-403 Waimanalo Gulch Sanitary Landfill
 - OCT23-24- A17-804 Hawaiian Memorial Park

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Scheuer stated that the next agenda item was an action item on Docket No. A19-807 Trustees of Bishop Estate dba Kamehameha Schools

ACTION

A19-807 TRUSTEES OF THE ESTATE OF BERNICE PAUHI BISHOP dba KAMEHAMEHA SCHOOLS (HAWAII) (KS)

Consider Petitioner's Motion Requesting the Land Use Commission 1) to be the Accepting Authority for an Environmental Statement; 2) Determine that the Proposed Action Warrants the preparation of an Environmental Impact Statement, to be initiated with the preparation of an Environmental Impact Statement Preparation Notice

APPEARANCES

Andrea Ushijima, Esq. representing Petitioner (KS)
Duane Kanuha, County of Hawaii Planning Department (County)
Ron Kim Esq., Deputy Corporation Counsel, represented County
Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)
Rodney Funakoshi (OP)

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

PUBLIC WITNESSES:

There were no public witnesses.

PETITIONER PRESENTATION

Ms. Ushijima acknowledged that her client was agreeable to the Commission's policy on reimbursements and provided background information and the history of why KS prepared and submitted its Motion.

Commissioner Questions

There were no questions for Ms. Ushijima.

Chair Scheuer called for the County to make its presentation.

COUNTY

Mr. Kim stated that County had no comments or objections to the Motion.

There were no questions for County.

Chair Scheuer called for OP to make its presentation.

OP

Ms. Apuna stated that OP had no comments or objections to the Motion
There were no further questions for OP.

Chair Scheuer declared a recess at 9:39 a.m. and reconvened the meeting at 9:40
a.m.

Disclosures

Commissioner Cabral disclosed that she had prior business dealings with
Sanford Company, the quarry operator that occupied the Petition Area, but felt that she
could be fair and impartial in the proceedings. There were no objections to
Commissioner Cabral's continued participation in the proceedings.

There were no further disclosures.

Chair Scheuer entertained a motion to designate the Land Use Commission to be
the Accepting Authority for an Environmental Statement; and that the Proposed Action
Warranted the preparation of an Environmental Impact Statement, to be initiated with
the preparation of an Environmental Impact Statement Preparation Notice

Commissioner Cabral moved and Commissioner Mahi seconded the motion to
grant the motion requesting the Land Use Commission 1) to be the Accepting Authority
for an Environmental Statement; 2) Determine that the Proposed Action Warrants the
preparation of an Environmental Impact Statement, to be initiated with the preparation
of an Environmental Impact Statement Preparation Notice, and that the Chair be
authorized to sign the order.

Chair Scheuer had Mr. Orodener poll the Commission. The motion was
unanimously approved. (7 ayes-0 nays- 2 excused).

The Commission went into recess at 9:47 a.m. and reconvened at 9:53 a.m.

Chair Scheuer stated that the next agenda item was an action item on A06-767
Waikoloa Makua (Hawai'i).

HEARING AND ACTION

A06-767 WAIKOLOA MAUKA LLC, (HAWAI'I)

Discussion and/or Action Regarding Decision and Order for Order to Show Cause Why Tax Map Key No. (3) 6-8-002: 016 (portion) Should Not Revert to Its Former Land Use Classification or be Changed to a More Appropriate Classification

APPEARANCES

Steven Lim Esq. represented Petitioner Waikoloa Highlands Inc. (WHI)

Ron Kim Esq., Deputy Corporation Counsel, represented County of Hawaii Planning Department (County)

Duane Kanuha, Deputy Director, County

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, Planning Program Administrator, OP

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

PUBLIC WITNESSES:

None

Chair Scheuer called for Petitioner to make its presentation.

PETITIONER PRESENTATION

Mr. Lim argued why his comments, exceptions and objections to the proposed Findings of Fact, Conclusions of Law and Decision and Order were valid and why they should be considered in the Commission's Decision and Order.

Commissioner Questions

Commissioner Okuda requested that Mr. Lim provide evidence to support how Petitioner's right to due process and arguments were denied during the proceedings; what Findings of Fact and Conclusions of Law lacked evidentiary support, and why the County's statement on the satisfaction of Condition 9 should not be relied upon. Mr. Lim provided his perspective on how Petitioner had not been able to introduce evidence, question OP on matters that it felt pertained to the case, and receive a satisfactory response to its request for administrative notice. Mr. Lim stated that Petitioner would rest on its statement of objection to Findings of Fact 123 and argued how Petitioner had satisfied Condition 9 despite County's position on the matter.

There were no further questions for Mr. Lim

Chair Scheuer called for the County to make its presentation.

COUNTY

Mr. Kim stated that County stood on the record and provided oral comments on why the written order should conform to the decision and how the Findings of Fact should be supported by evidence used during t. Mr. Kim also described how County had relied on more information to make its determination on whether Condition 9 had been satisfied due to the conflicting evidence involved.

Commissioner Okuda requested clarification on County's position and whether the Commission's land use designation was appropriate. Mr. Kim described how the reversion to the original land use designation would affect the landowner at the County level.

Chair Scheuer noted how the allegations had been highlighted by Petitioner had been addressed in detail by Commissioner Okuda and called for OP to make its presentation.

There were no further questions for County.

OP

Ms. Apuna stated that OP had no comments.

Mr. Lim questioned how the Findings of Fact 114, 115 and 116 supported that Condition 6 had not be satisfied. Ms. Apuna referred to OP's Exhibit 1- a letter from the Department of Transportation that acknowledged that Condition 6 had not been fulfilled.

There were no further questions for OP.

Final Comments/Rebuttal

Mr. Lim stated that he disagreed with County's characterization of the County Housing Department's testimony and summarized his arguments on various portions of the proposed Findings of Fact, Conclusions of Law and Decision and Order.

There were no further final comments.

FORMAL DELIBERATIONS

Chair Scheuer confirmed that all Commissioners had reviewed the record and read the transcripts for any meeting that they may have missed and were prepared to

deliberate on the subject docket. All Commissioners present responded that they were prepared to deliberate (Commissioners Chang and Giovanni excused).

Chair Scheuer opened the floor to deliberation. Commissioner Okuda made a motion to adopt the proposed Findings of Fact, Conclusions of Law; and Decision and Order and include various legal notes, citation references and cases that he provided to support and serve as evidence to respond to Petitioner's comments and objections about the proposed Decision and Order. Commissioner Wong seconded the Motion. (please refer to the hearing transcript for Commissioner Okuda's complete motion).

Discussion on the Motion

Commissioner Okuda described why he felt including the additional information he had provided to the proposed Findings of Fact, Conclusions of Law, and Decision and Order helped to more accurately reflect the record and urged that the Motion be granted by the Commission.

Commissioner Cabral expressed her thanks to Commissioner Okuda for his efforts and contribution to the proposed Decision and Order.

Chair Scheuer echoed Commissioner Cabral's thanks and stated that he would be voting in favor of the Motion. Chair Scheuer also recognized the participation and public testimony of Julia Alos to the proceedings; and shared his perspective on why the Order to Show Cause was justified.

There was no further discussion.

Commission Chair Scheuer had Mr. Orodener poll the Commission.

The Commission voted as follows:

Aye: Commissioners Okuda, Wong, Aczon, Mahi, Cabral and Chair Scheuer.

Nay: Commissioner Ohigashi

The Motion passed. (6 ayes-1 nays- 2 excused).

Chair Scheuer declared a recess at 10:56 a.m. and stated the hearing would reconvene in Honolulu on July, 11, 2019 at 09:30 a.m.

