

LAND USE COMMISSION  
MEETING MINUTES

**April 19, 2013 – 8:30 a.m.**  
**Conference Room #3, Airport Meeting Room**  
**400 Rodgers Boulevard, Honolulu, HI**

COMMISSIONERS PRESENT: Kyle Chock  
Napua Makua  
Lance Inouye  
Sheldon Biga  
Ernest Matsumura  
Nicholas Teves, Jr.  
Chad McDonald

COMMISSIONERS EXCUSED: Ronald Heller  
Thomas Contrades

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

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Airport Conference Room Staff

**CALL TO ORDER**

Chair Chock called the meeting to order at 8:30 a.m. and declared a recess to allow Airport Conference Room personnel to install an audio system to accommodate the LUC meeting. The Commission reconvened at 8:47 a.m.

Chair Chock apologized for the delay and announced that the Commission would be hearing a status report on DR08-36 Ko Olina Development, LLC in regards to Petitioner's boat launch ramp construction efforts.

**STATUS REPORT**

DR08-36 KO OLINA DEVELOPMENT, LLC

Chair Chock announced that this was a meeting on Docket No. DR08-36 Ko Olina Development Company to receive a status report from Petitioner and take appropriate action, if any.

APPEARANCES

Wyeth Matsubara, Esq., represented Petitioner  
Curtis Tabata, Esq., represented Petitioner  
Ken Williams, Petitioner's Project Manager  
Bryan Yee, Deputy Attorney General, represented State Office of Planning  
Scott Forsythe, State Office of Planning

Chair Chock updated the record and explained the procedures to be followed for the proceedings. There were no questions on the proposed procedures.

PUBLIC WITNESSES:

None  
There were no Public Witnesses.

PRESENTATIONS:

Petitioner

Mr. Wyeth Matsubara presented a brief update and summary of the Petitioner's efforts to construct the boat ramp and referenced information contained in Petitioner's Fourteenth Quarterly Report and its supplement; and offered Mr. Williams to present further project history and details and to answer any specific questions that the Commission had regarding progress on the boat ramp.

Mr. Williams described the progress made by Petitioner to secure permits and approvals to proceed on the boat ramp construction project; and what future benchmarks would be reached as the planned boat ramp was completed.

Mr. Matsubara summarized the remaining details that needed to be monitored as the proposed project moved closer to its start date.

OP

Mr. Yee stated that OP had been in contact with the State Historic Preservation Department (SHPD) about the proposed boat ramp, but had not received an assessment or official response in regards to it. Mr. Yee noted that Petitioner was actively involved in assisting OP's efforts with SHPD.

Commissioner Inouye requested clarification on when the SHPD report could be expected and whether the expected delivery date for the report was reliable. Mr. Matsubara provided his best guess on when the SHPD report would be delivered and offered how he could submit a formal letter to SHPD to initiate proceedings to begin construction if the approval/permitting agencies were cooperative with his efforts.

Commissioner Inouye also expressed his concerns on whether sufficient public input and notification had been done. Mr. Yee described the earlier public involvement associated with the proposed boat ramp in 2008/2009; and how the plans that were currently being approved had been developed and submitted.

Commissioner McDonald requested clarification on the reason why only an archaeological assessment report had been performed instead of an archaeological inventory survey (AIS). Discussion ensued regarding how the Petition Area had been initially assessed; and how it had been determined that an AIS was not necessary, and why only the archaeological assessment had been necessary.

There were no further questions for Mr. Matsubara.

OP

Mr. Yee provided OP's historical perspective of the boat ramp issue and acknowledged how the proposed plans required review by agencies outside of Petitioner's control.

There were no questions for Mr. Yee.

Deliberation

Commissioner McDonald requested clarification on when the next quarterly report was due. Mr. Matsubara replied that it would be in a couple of months.

There was no further discussion.

Chair Chock stated that since there was no motion, no action would be taken other than to continue to receive Petitioner's Status Reports for the time being, and the Commission would continue to monitor the boat ramp's project.

The Commission went into recess at 9:10 a.m. and reconvened at 9:15 a.m.

**APPROVAL OF REVISED DRAFT OF ADMINISTRATIVE RULES, CHAPTER 15-15, HAR**

Chair Chock stated that the Commission would now address Approving the Revised Draft Administrative Rules, Chapter 15-15, HAR, for the purpose of obtaining necessary approval from other entities and moving forward toward publishing and holding public hearings on these proposed rules and called for Executive Officer Orodener to update the Commission on the status of the Revised Draft Administrative Rules and to explain why the Commission's approval was necessary.

Mr. Orodener summarized and clarified the key changes that were being suggested in the revised draft administrative rules and explained how the LUC staff would proceed after the Commission granted approval of them.

Chair Chock asked if there had been any public comments and whether Mr. Benjamin Matsubara had any remarks for the Commission. Mr. Matsubara replied that he planned to respond during the public hearings portion of the process and Mr. Orodener replied that there were no recent public comments.

Chair Chock asked whether HAR 15-15-13(a ) had been addressed to clarify the necessary votes that the Commission needed when adopting the form of the order. Mr. Orodener replied that the language had been updated to more clearly define the number of votes required.

Commissioner Inouye requested clarification on when public comments and input would be accepted during the approval process for the revised draft of administrative rules; and whether it was necessary for Commissioners to attend the public hearings on the rules and seek public comments. Mr. Orodener provided his perspective of how the public hearing process for the administrative rules would be conducted and responded that Commissioner attendance at the public hearings was not necessary.

Mr. Benjamin Matsubara shared his past experiences of acting as a hearing officer for the administrative rules and described how past public hearings were conducted.

There was no further discussion and questions or comments.

Commissioner Biga moved and Commissioner Teves seconded the motion to approve the revised draft of the administrative rules to allow the LUC staff to move forward for purposes of obtaining necessary approval from other entities and publishing and holding public hearings on these proposed rules.

The Commission voted unanimously (7-0) to grant the motion.

Chair Chock stated that the Commission would now have a discussion on whether a policy should be adopted to manage videotaping of LUC proceedings and

asked Deputy Attorney General Sarah Hirakami to share her concerns over allowing unmanaged videotaping of LUC proceedings to occur.

Discussion ensued and several Commissioners shared their concerns and reservations over prohibiting videotaping; LUC staff shared their perspective over the difficulties involved in monitoring and enforcing a videotaping policy; and general comments were made over the pros and cons of attempting to control public videotaping of proceedings.

Ms. Hirakami shared her concerns about public witnesses being intimidated by abuse of videotaping using the internet. Chair Chock acknowledged the existence of the problem and Commissioners Inouye and Makua supported the need for transparency in the proceedings and further discussion ensued on whether it was necessary for the Commission to take any action immediately.

Ms. Hirakami replied that immediate action was not necessary, but the issue had been raised in response to how public witnesses appeared to be intimidated by being videotaped as they testified. Mr. Orodener commented on how advances in technology made it easy for intimidation to occur and further discussion ensued on what preventative types of action the Commission could take to limit the amount of personal information that could be extracted from videotaping the proceedings.

Chair Chock summarized the points of the discussion and deferred taking any immediate action on establishing a policy on videotaping.

There being no further action, the Commission adjourned at 9:49 a.m.