

LAND USE COMMISSION
MEETING MINUTES

**Maui Arts and Cultural Center- Haynes Meeting Room
One Cameron Way
Kahului, Maui, Hawai'i
April 29, 2015 9:30 a.m.**

COMMISSIONERS PRESENT: Chad McDonald
Arnold Wong
Edmund Aczon
Kent Hiranaga
Jonathan Scheuer
Aaron Mahi

COMMISSIONERS EXCUSED: Sandra Song
Brandon Ahakuelo
Linda Estes

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Haunani Nagel, Staff Secretary

COURT REPORTER: Holly Hackett

CALL TO ORDER

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

APPROVAL OF MINUTES

Chair McDonald asked if there were any corrections or additions to the March 25, 2015 minutes. There were none. Commissioner Aczon moved to approve the minutes. Commissioner Mahi seconded the motion. By a voice vote the minutes were unanimously approved (6-0-3 excused).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- May 6, 2015 is still open.
- May 29, 2015 is planned for A89-643 McClean Honokōhau Properties- (Kona)
- June 9, 2015 is tentatively planned for Kawailoa Solar LLC Special Permit and June 10, 2015 is tentatively planned for the anticipated Kaua`i Island School Docket.
- Above dates represent the tentative calendar of meetings and are subject to change.
- Any questions or conflicts, please contact LUC staff.

There were no questions and comments regarding the tentative meeting schedule.

Chair McDonald stated that the State Office of Planning had advised the Commission that it would be arriving late to the meeting due to a delay at the airport and that the scheduled Executive Session (Agenda Item VI) would be taken out of order to better utilize the meeting time.

EXECUTIVE SESSION

Chair McDonald stated that the next item on the agenda was an Executive Session to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect to various administrative appeals and other appellate proceedings affecting the Commission and entertained a motion.

Commissioner Wong moved for an Executive Session. Commissioner Aczon seconded the motion. By unanimous verbal vote, the Commission entered Executive Session at 9:33 a.m. and reconvened at 10 a.m. (Commissioner Hiranaga returned to the meeting at 10:02 a.m.)

ACTION

A15-798 Waikapū Properties LLC, et al, (Maui) ("WP")

Chair McDonald stated that this was an action meeting on Docket No. A15-798 to consider Petitioner's Motion to Designate the Land Use Commission as Approving Agency for Environmental Statement Under HRS Chapter 343 and For Authority to Prepare Environmental Impact Statement

APPEARANCES

James Geiger, Esq., WP's Representative

Michael Atherton, WP

Kurt Wollenhaupt, Planner, Maui County Planning Department (County)

Michael Hopper, Esq., Deputy Corporation Counsel (County)

Bryan Yee, Esq., Deputy Attorney General, State Office of Planning (OP)

Rodney Funakoshi, Land Use Administrator (OP)

Chair McDonald updated the record, described the procedures for the hearing and asked if there were any Public Witnesses who wished to testify. There were no questions or comments on the procedures.

Chair McDonald asked if Petitioner had been made aware of and was agreeable to the LUC's hearing expenses reimbursement policy. Mr. Geiger acknowledged that Petitioner was aware of the expenses and would comply with the reimbursement policy.

Commissioner Scheuer stated that he wished to disclose his past employment with the Office of Hawaiian Affairs as a policy analyst on water related issues. Commissioner Scheuer stated that he believed that his past employment would not interfere with his ability to be fair and impartial in this docket. The Chair asked the Parties if there were any objections to Commissioner Scheuer's continued participation in the proceedings. There were no objections.

PUBLIC WITNESSES

1. Lucienne De Naie –

Ms. De Naie expressed her support and appreciation of the community outreach performed by the representatives of the proposed project.

There were no questions for Ms. De Naie.

There were no further witnesses.

PRESENTATION

Petitioner

Mr. Geiger made his presentation to the Commission and argued why the LUC should be the accepting authority for the Environmental Impact Statement (EIS) and why an EIS was warranted; and described the reasons why his motion should be granted. Mr. Geiger offered Mr. Atherton to provide further details of the proposed project to the Commission.

Mr. Atherton, after being sworn in as a witness, described his personal background and professional experience to the Commission and used a map of the Petition Area to identify the various features and characteristics of the proposed project and its surrounding areas.

Chair McDonald requested further clarification on what constituted the Petition Area. Mr. Atherton described what the different representations on the map meant and what the future plans were for each area.

Maui County and OP had no questions for Mr. Atherton.

Commissioner Questions

Commissioner Wong requested additional clarification on the map features that had been described. Mr. Geiger and Mr. Atherton provided further details on the scope and size of the proposed project.

Commissioner Scheuer requested clarification on other representations depicted on the map of the Petition Area. Mr. Atherton shared his understanding of what features were being identified on the map and how water sources and diversified agriculture fit into the proposed project.

Commissioner Mahi requested clarification on the plans for future agriculture in the Petition Area. Mr. Atherton described how different sections of the Petition Area would be utilized for diversified agriculture.

Commissioner Scheuer requested clarification on how cultural impacts and archaeological findings would be handled. Mr. Geiger responded that it was still too early in the EIS process to conclusively determine how such matters would ultimately be handled; and shared possible mitigating actions that might be adopted for different situations typical to proposed developments.

There were no further questions for Petitioner.

AGENCY COMMENTS

County

The County stated that it filed a Position Statement of NO OPPOSITION to Petitioner's Motion, together with a supplement to the position statement, and offered County Planner Kurt Wollenhaupt to answer any questions.

There were no questions for County.

OP

Mr. Yee affirmed that Mr. Geiger's presentation of the applicability of chapter 343 HRS to the proposed project was accurate and stated that OP had No Objection to WP's Motion to Designate the Land Use Commission as Approving Agency for an Environmental Impact Statement and described why OP agreed that an EIS was warranted and that the LUC was the appropriate agency to receive it. Mr. Yee shared his understanding of how Chapter 343 triggers for an EIS existed in the Petition and described how amendments to the Petition could be utilized to address any issues that might arise during the EIS review process.

There were no questions for Mr. Yee.

There were no further questions.

DECISION MAKING

Commissioner Wong discussed the Chapter 343 triggers that required development of an EIS for the proposed project.

Commissioner Scheuer specifically identified several criteria that indicated that there might be a significant impact on the environment from the proposed project.

Chair McDonald reiterated Petitioner's own identification of potential impacts that might be significant.

There was no further discussion.

Commissioner Hiranaga moved to:

- 1) Identify the Commission as the "accepting authority," to review and accept the applicant's proposed actions pursuant to Chapter 343, HRS; and,
- 2) Direct the Petitioner to prepare an EISPN because the Commission determined, based on its judgment and experience, that under Chapter 343-5(e), HRS, the proposed action may have significant effects requiring the preparation of a full environmental impact statement.

Commissioner Aczon seconded the motion.

Commissioner Scheuer shared his reasons for voting in favor of the motion. Chair McDonald noted that Petitioner recognized the potential for environmental impact and was taking appropriate measures to identify and mitigate any problems.

There was no further discussion.

The Commission voted unanimously (6-0 with 3 excused) in favor of the motion.

LUC LEGISLATIVE COMMITTEE REPORT

Chair McDonald stated that the next agenda item was a report on Legislative matters pertinent to the Commission.

Executive Officer Orodenker provided a legislative update to the Commission on the status of various bills and other legislative activity of concern to the LUC; and described how LUC staff would continue to monitor active bills and notify the Commission if necessary.

There were no questions or comments regarding Mr. Orodenker's report.

ELECTION OF OFFICERS

Chair McDonald stated that the election of officers would be deferred till the Commission was more firmly constituted after the end of the 2015 Legislative Session and congratulated Commissioners Scheuer, Wong, Hiranaga and Estes on their confirmations.

Discussion regarding how the Commissioners could address the election of officers without violating the "Sunshine Law" ensued. Both Ms. Erickson and Mr. Orodenker fielded and responded to Commissioners' questions about how Commissioners could properly communicate and consider this matter.

With no further action or other business, Chair McDonald declared the meeting adjourned at 10:43 a.m.