

LAND USE COMMISSION  
MEETING MINUTES  
**December 6, 2017 – 9:30 a.m.**  
**Maui Arts and Cultural Center**  
**1 Cameron Way,**  
**Kahului, HI 96732**

COMMISSIONERS PRESENT: Arnold Wong  
Nancy Cabral (arrived at 10:59 a.m.)  
Aaron Mahi  
Jonathan Scheuer  
Gary Okuda  
Edmund Aczon  
Lee Ohigashi

COMMISSIONERS EXCUSED: Dawn Chang  
Linda Estes

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner (departed  
at 10:29 a.m.)  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

**CALL TO ORDER**

Chair Wong called the meeting to order at 9:32 a.m.

**APPROVAL OF MINUTES**

Chair Wong asked if there were any corrections or additions to the November 21<sup>st</sup>, 2017 meeting minutes. There were none. Commissioner Mahi moved to approve the minutes and Commissioner Scheuer seconded the motion.

The minutes were unanimously approved by voice vote (6 ayes-0 nays- 3 excused- Commissioner Cabral had not yet arrived.).

## 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.
  - JAN 24- status reports A10-788 HHFDC/Forest City and A00-730 Lanihau (NPS complaint), A06-767 Waikoloa Heights
  - FEB 21-22-on Maui-A04-751 Pulelehua- Maui Land and Pineapple Company, Inc.-Motion to Amend; and residual business (if any) A15-798 Waikapū Town (Maui)
  - FEB 28- Adoption of Order A04-751

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

## ADOPTION OF ORDER

**SP17-409 HONO‘ULI‘ULI WASTEWATER TREATMENT PLANT- Secondary Treatment and Support Facility – State Special Use Permit No. 2017/SUP-2**

## APPEARANCES

None

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

Chair Wong called for Public Witnesses

## PUBLIC WITNESSES:

None

There were no closing arguments.

Commissioners Ohigashi and Aczon stated that although they had missed the meeting on this docket, they had reviewed the pleadings, exhibits and the transcripts and were prepared to vote on this matter. Commissioner Okuda stated that he had voted in favor of granting the permit and was prepared to vote in favor of adopting the form of the order. Chair Wong acknowledged the Commissioners' comments.

There were no questions, comments or objections to the statements made by Commissioners Ohigashi, Aczon, and Okuda.

Chair Wong entertained a motion.

Commissioner Okuda moved to adopt the order. Commissioner Mahi seconded the motion.

Commissioner Scheuer stated his frustration with how the City and County of Honolulu had settled on a Special Permit instead of seeking a more appropriate District Boundary Amendment as a course of action.

Chair Wong had Mr. Orodener poll the Commission.

The Commission unanimously voted in favor of adopting the form of the order. (6-0-3 excused).

Chair Wong moved on to the next agenda item.

## HEARING AND ACTION

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

Chair Wong stated that this was a hearing and action meeting on Docket No. A15-798 to consider a Petition To Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai`i, consisting of 92.394 acres and 57.454 acres, and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai`i, consisting of 236.326 acres, 53.775 acres, and 45.054 acres

## APPEARANCES

James Geiger, Esq. and Paul Mancini, Esq., WP's Representatives

Michael Atherton, WP

Will Spence, Director, Maui County Planning Department (County)

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

Tara Furukawa, Planner (County)

Dawn Takeuchi-Apuna, Esq., Deputy Attorney General, representing State Office of Planning (OP)

Leo Asuncion, Director (OP)

Chair Wong updated the record, described the procedures for the hearing and 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. There were no questions or comments on the procedures

### DISCLOSURES

Commissioner Scheuer described his role with the Hawai`ian Island Land Trust and his awareness of some preliminary discussions regarding conservation easements occurring between and the Hawai`ian Island Land Trust; but believed that he could remain fair and impartial during the proceedings.

There were no objections to Commissioner Scheuer's continued participation.

Commissioner Okuda disclosed that he had communicated with Mr. Pellegrino, Petitioner's Cultural Consultant prior to his appointment as a Land Use Commissioner; and was familiar with Mr. Geiger, Petitioner's legal representative, through his law firm's practice; but believed that he could remain fair and impartial during the proceedings on this matter.

There were no objections to Commissioner Okuda's continued participation.

Commissioner Ohigashi disclosed that he was acquainted with Mr. Mancini and Mr. Geiger, Petitioner's legal representatives; and Senator Joe Tanaka and Albert Perez (Maui Tomorrow Foundation) through his Maui legal practice, but believed that he could remain fair and impartial during the proceedings.

There were no objections to Commissioner Ohigashi's continued participation.

There were no other disclosures.

Chair Wong called for Public Witnesses

### PUBLIC WITNESSES:

1. Albert Perez, Director, Maui Tomorrow Foundation

Mr. Perez provided written testimony and described why his organization was in support of the proposed project.

Commissioner Okuda requested clarification on Mr. Perez's testimony.

There were no further questions for Mr. Perez.

2. Robert Pahia

Mr. Pahia stated that he was in support of the proposed project and described why he took that position.

Commissioners Aczon and Scheuer requested clarification on Mr. Pahia's testimony. There were no further questions for Mr. Pahia.

3. Mike Foley

Mr. Foley stated that he was in support of the proposed project and shared his reasons why.

Commissioner Okuda requested clarification on Mr. Foley's testimony. There were no further questions for Mr. Foley.

4. Kent Hiranaga

Mr. Hiranaga stated that he was in support of the proposed project and read a prepared statement providing his reasons.

Commissioner Scheuer asked if Mr. Hiranaga was employed by the Petitioner. Mr. Hiranaga responded that he was not.

There were no further questions for Mr. Hiranaga.

5. Dick Meyer

Mr. Meyer voiced his concerns about Ohana housing, traffic and land values and stated that despite his concerns, he was still in favor of the proposed project.

There were no questions for Mr. Meyer.

6. Michael Takahara

Mr. Takahara described his reasons for supporting the [proposed] Petition.

There were no questions for Mr. Takahara.

7. Stan Franco

Mr. Franco provided his reasons for supporting the proposed project.

Commissioner Okuda asked why Mr. Franco referred to Mr. Atherton as "Coach". Mr. Franco responded that "Coach" was Mr. Atherton's nickname.

There were no further questions for Mr. Franco.

8. Mercer Vicens

Mr. Vicens shared his reasons for supporting the proposed project.

There were no questions for Mr. Vicens.

There were no other public witnesses. Chair Wong declared the Public Testimony portion of the hearing closed.

### ADMISSION OF EXHIBITS

Chair Wong asked if the Parties had any Exhibits to be entered into evidence.  
Petitioner

Mr. Geiger offered Petitioner's Exhibits #1-35 for the record (including revised Exhibits 12 and 13). There were no objections to accepting Petitioner's exhibits. Chair Wong admitted Petitioner's exhibits.

County

Mr. Hopper offered County Exhibits 1-4. There were no objections to accepting County's exhibits. Chair Wong admitted County's exhibits.

OP

Ms., Apuna offered OP's Exhibits #1-11 which were attached to its response for the record. There were no objections to accepting OP's exhibits. Chair Wong admitted OP's exhibits.

The Commission went into recess at 10:29 a.m. and reconvened at 10:35 a.m. (LUC planner Bert Saruwatari left the meeting.)

Chair Wong asked for Mr. Geiger to begin his presentation.

## PRESENTATION

Petitioner

Mr. Geiger offered his witnesses to provide the Commission with information about the Petition and the proposed project.

(Commissioner Cabral arrived at 10:59 a.m.- 7 Commissioners present- 2 excused)

Petitioner Witnesses (Mr. Geiger had submitted [each] individual witness' direct testimony as a separate exhibit (additional Exhibits No. 36-49 with Expert Witnesses' subject area so noted) and verified with each witness that their testimony was accurate and up to date prior to questioning them. Any corrections that needed to be made to the testimony were stated for the record. There were no objections to the admission of the exhibits into evidence by County, OP or the Commission.)

1. Michael Atherton- Petitioner (Exhibit #36)

Mr. Atherton provided a general overview and historical summary of how the proposed project had evolved from its inception to the current day.

Mr. Hopper, Ms. Apuna and Commissioners Ohigashi, Scheuer, Okuda, and Cabral requested clarifications on his testimony.

2. Bill Mitchell- Expert Project Planner (Exhibit #37)

Mr. Mitchell described his role and contributions to the proposed Project.

Commissioner Cabral requested clarification on his testimony.

3. Netai Basu- Expert Traffic Engineer (Exhibit #38)

Mr. Basu described the work he had performed for the Petitioner and shared the results, conclusions and recommendations of his traffic studies with the Commission.

Commissioner Scheuer, Mr. Geiger and Mr. Hopper requested clarification of his testimony.

The Commission went into recess at 11:42 a.m.; and reconvened at 12:55 p.m.  
Mr. Geiger called his next witness.

Petitioner Witnesses (continued)

4. Michael Summers- Expert Planner (Exhibit #39)

Mr. Summers described his role in the proposed Project and how he had contributed to determining the project's compliance with State and County plans.

Mr. Hopper, Ms. Apuna, and Commissioners Scheuer and Cabral requested clarification of his testimony.

5. Lisa Rotunno-Hazuka- Expert Archaeologist (Exhibit #40)

Ms. Hazuka described her role in the proposed Project and described how she had prepared and conducted her archaeological study of the Petition Area and what her findings, conclusions and recommendations were.

Ms. Apuna and Commissioner Scheuer requested clarification of her testimony.

6. Hokua Pellegrino- Expert- Cultural and Traditional Practices (Exhibit 41)

Mr. Pellegrino described his role and how he had conducted the Cultural Impact Assessment for the Petition Area; and what his findings, conclusions and recommendations were.

Mr. Geiger, Ms. Apuna and Commissioners Scheuer, Mahi, Cabral, and Ohigashi requested clarification of his testimony.

Commissioner Ohigashi disclosed that he knew Mr. Pellegrino's parents, but that he did not feel his relationship with Mr. Pellegrino's parents would affect his impartiality and objectivity in this matter. There were no objections to Commissioner Ohigashi's continued participation in the hearing.

The Commission went into recess at 2:25 p.m. and reconvened at 2:39 p.m.

Ms. Apuna, and Commissioners Scheuer and Okuda sought additional clarification of Mr. Pellegrino's testimony.

7. Thomas Holliday- Hallstrom Group- Expert Market Study (Exhibit #42)  
Mr. Holliday described how he had performed a market analysis for the proposed Project and described his findings to the Commission.  
Commissioner Okuda requested clarification of his testimony.
8. Stacy Otomo- Expert Civil Engineer  
Mr. Otomo described the infrastructure studies performed for the proposed Project and what types of roadway, wastewater, water source, and other infrastructure components needed to be installed and maintained.  
Mr. Hopper and Commissioners Scheuer and Wong requested clarification of his testimony.
9. Steven Parabolicoli- Expert Water and wastewater systems (Exhibit #47)  
Mr. Parabolicoli described the water supply and wastewater systems that he had designed for the proposed project.  
Mr. Hopper, Ms. Ahuna and Commissioner Scheuer requested clarification of his testimony.

Chair Wong stated that Commissioner Okuda would not be able to attend the December 7, 2017 meeting and would like to allow him to ask OP questions out of order before proceeding to the next Petitioner witness. There were no objections to allowing OP to be questioned out of order.

Ms. Apuna deferred to Leo Asuncion, OP Director, to respond to Commissioner Okuda's questions. Commissioner Okuda disclosed that he had represented Mr. Asuncion in a matter approximately 30 years earlier, but did not feel that his impartiality and objectivity in this matter would be influenced by that relationship. There were no objections to Commissioner Okuda's continued participation in the hearing.

Commissioner Okuda requested clarification on OP's position on reclassifying prime agricultural land and whether any violation of the Hawai'i State Constitution would be committed by the LUC if the Petition were approved. Mr. Asuncion provided the analysis and criteria that OP had used to establish its position on this matter [and that the Commission was abiding by the Hawai'i State Constitution].

Commissioner Okuda concluded his questioning and Chair Wong resumed the remainder of the Petitioner's presentations.



Petitioner's Witness (continued)

10. Robert Hobdy- Expert- Flora and Fauna (Exhibit #44)

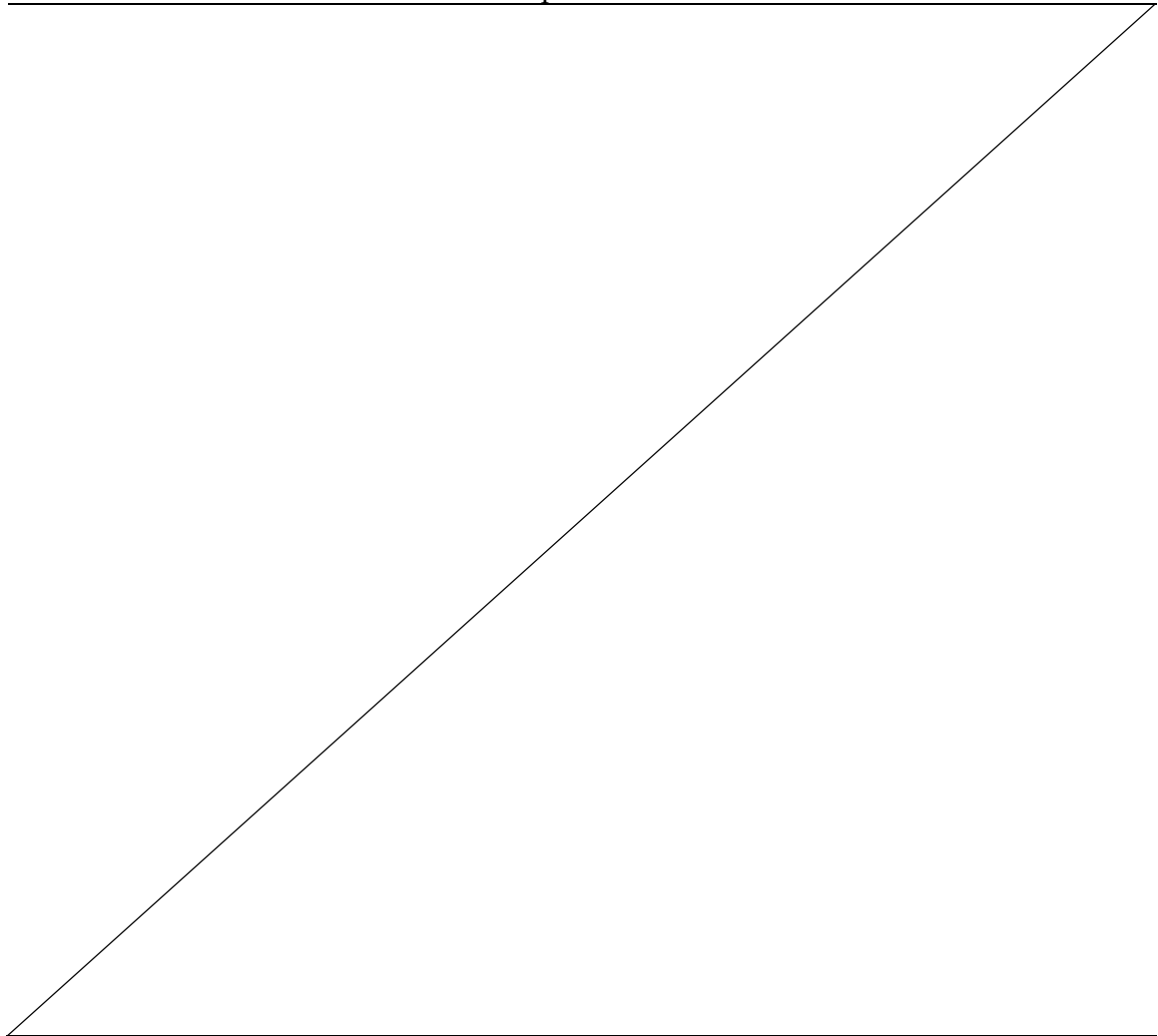
Mr. Hobdy described the study that he had conducted on the Petition Area and shared his findings, conclusions and recommendations with the Commission.

Ms. Apuna asked if Mr. Hobdy considered OP's condition regarding consultation with the U.S. Fish and Wildlife Service reasonable. Mr. Hobdy replied that it was.

There were no further questions for Mr. Hobdy.

Mr. Geiger stated that he had four more witnesses to present on December 7, 2017 and would conclude his portion of the hearing after the witnesses were questioned. Chair Wong acknowledged his comments and declared that the Commission would recess and reconvene at the MACC at 8:30 a.m. December 7, 2017

The Commission went into recess at 3:46 p.m.



LAND USE COMMISSION  
MEETING MINUTES  
**December 7, 2017 – 8:30 a.m.**  
**Maui Arts and Cultural Center**  
**1 Cameron Way,**  
**Kahului, HI 96732**

COMMISSIONERS PRESENT:

Arnold Wong  
Nancy Cabral  
Aaron Mahi  
Jonathan Scheuer  
Edmund Aczon

COMMISSIONERS EXCUSED:

Dawn Chang  
Linda Estes  
Lee Ohigashi  
Gary Okuda

LUC STAFF PRESENT:

Daniel Orodener, Executive Officer  
Diane Erickson, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER:

Jean McManus

**CALL TO ORDER**

Chair Wong called the meeting to order at 8:36 a.m.

**HEARING AND ACTION (Continued)**

**A15-798 Waikapū Properties LLC, et al, (Maui) (“WP”)**

Chair Wong stated that this was a continuation of the hearing and action meeting on Docket No. A15-798 to consider a Petition To Amend the Agricultural Land Use District Boundaries into the Rural Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai`i, consisting

of 92.394 acres and 57.454 acres, and to Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands situated at Waikapū, District of Wailuku, Island and County of Maui, State of Hawai`i, consisting of 236.326 acres, 53.775 acres, and 45.054 acres

#### APPEARANCES

James Geiger, Esq. and Paul Mancini, Esq., WP's Representatives

Michael Atherton, WP

Will Spence, Director, Maui County Planning Department (County)

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

David Goode, Public Works Director (County)

Dawn Takeuchi-Apuna, Esq., Deputy Attorney General, representing the State Office of Planning (OP)

Leo Asuncion, Director (OP)

Lorene Maki, Planner (OP)

#### Petitioner Witnesses (continued)

11. Barry Neal- Expert –Meteorology- Air Quality (Exhibit #45)

Mr. Neal described the air quality studies he had conducted on the Petition Area and described his findings, conclusions and recommendations to the Commission.

There were no questions for Mr. Neal.

12. John Garrettson – Expert – Noise Study (Exhibit #46)

Mr. Garrettson described the noise study that he had conducted on the Petition Area and described his findings, conclusions and recommendations to the Commission.

Commissioner Scheuer and Chair Wong requested clarification on his testimony.

13. Daniel Lum – Expert Hydrologist/Geologist- (Exhibit#48)

Mr. Lum described the potential water sources for the proposed project and what sustainable well capacities they could provide.

Mr. Hopper, Ms. Apuna and Commissioners Cabral and Scheuer requested clarification of his testimony.

14. Alfred Boyce – Petitioner partner- Financial Aspects (Exhibit# 49)

Mr. Boyce described his role on the proposed project team and provided details on how the Petitioner would consider entering into agreements with government agencies to address infrastructure costs.

Mr. Hopper, Ms. Apuna and Commissioner Scheuer requested clarification on his testimony.

Mr. Geiger stated that he wished to recall Petitioner Witness Mr. Basu to further clarify portions of his testimony. Chair Wong acknowledged his request.

#### Recalled Petitioner Witness 10

Mr. Basu shared additional details of how the Petitioner would address handling the traffic impacts of the proposed project and provide its pro-rata fair-share contributions to mitigate them.

Mr. Hopper requested clarification of how the proposed contributions would be determined and agreed upon. Mr. Basu responded that a memorandum of understanding would memorialize any contribution arrangement.

Mr. Geiger stated that as a housekeeping item, he was providing Exhibit 50 to support Mr. Pellegrino's testimony.

Chair Wong acknowledged the submittal of Exhibit 50 and there were no objections from the County, OP and the Commissioners.

The Commission went into recess at 9:45 a.m. and reconvened at 9:54 a.m.

Chair Wong requested that County make its presentation.

Mr. Hopper offered Will Spence to provide testimony of behalf of the County of Maui Planning Department.

#### County Witnesses

##### 1. Will Spence- Director- County of Maui Planning Department

Mr. Spence corrected a portion of the County's submitted testimony and described how the County had determined what conditions, entitlements and other considerations or requirements of the Petitioner would be included in the County's position statement.

Mr. Geiger, and Commissioner Cabral requested clarification on Mr. Spence's testimony.

2. David Goode- Director- County of Maui Public Works

Mr. Goode described how the County had reviewed and considered its master roadway agreement and reported on what the status was of current and future plans for traffic infrastructure improvements in the area in and around the Petition Area.

Mr. Geiger requested clarification of Mr. Goode's testimony.

There were no further questions or County witnesses.

Chair Wong called on OP to make its presentation. Ms. Apuna offered Mr. Asuncion to provide testimony on behalf of OP.

OP Witness

1. Leo Asuncion- OP Director

Mr. Asuncion described how OP had evaluated and analyzed the proposed project and determined its position statement for this docket.

Mr. Geiger and Commissioners Scheuer and Cabral requested clarification on his testimony.

There were no further questions of OP's witnesses. Ms. Apuna stated that she had concluded her presentation.

The Commission went into recess at 10:34 a.m. and reconvened at 10:41 a.m.

Chair Wong asked for closing remarks.

Petitioner

Mr. Geiger thanked the Commission and stated that he would reserve [final statements for his] closing argument for the next Commission meeting on this docket.

County

Mr. Hopper also reserved [commenting for] closing argument in support of the Petition.

OP

Ms. Apuna provided comments describing how OP was in support of the Petition with OP's recommended conditions.

Chair Wong declared the evidentiary portion of the hearing closed and requested that Petitioner submit its proposed Findings of Fact, Conclusions of Law and Decision and Order by December 20, 2017 to the Parties for review and that response dates to the proposed Decision and Order would be worked out with the Executive Officer.

There being no further business to address, Chair Wong adjourned the meeting at 10:48 a.m.

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