

LAND USE COMMISSION  
MEETING MINUTES  
**January 24, 2018 – 9:30 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: Arnold Wong  
Nancy Cabral  
Aaron Mahi  
Jonathan Scheuer  
Gary Okuda  
Lee Ohigashi  
Dawn Chang

COMMISSIONERS EXCUSED: Edmund Aczon  
Linda Estes

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 9:30 a.m.

**APPROVAL OF MINUTES**

Chair Wong asked if there were any corrections or additions to the December 6-7, 2017 meeting minutes. There were none. Commissioner Cabral moved to approve the minutes and Commissioner Mahi seconded the motion.

The minutes were unanimously approved by voice vote (7 ayes-0 nays- 2 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 for the following dates and docket numbers.
  - JAN 25- Video conference- A15-798 Waikapū Properties LLC- Closing arguments
  - FEB 21- Video conference- Adoption of Order for A15-798 Waikapū Town (Maui)
  - MAY 9- on Maui for A07-773 Emmanuel Lutheran Church of Maui -201H Project and A04-751 Pulelehua- Motion to Amend Conditions
  - MAY 23 – Kona business- Waikoloa Heights etc.
  - MAY 24 – Oahu IAL

Any questions or conflicts, please contact LUC staff.  
There were no questions or comments on the schedule.

Chair Wong stated that the next agenda item was a hearing and action on A06-770 Shopoff Group, L.P. (Hawai`i).

### **HEARING AND ACTION**

#### **A06-770 THE SHOPOFF GROUP, L. P. (HAWAI`I)**

Consideration of whether to issue Order to Show Cause based on correspondence from Petitioner's successor in interest and related matters, if any.

#### **APPEARANCES**

Petitioner not present

Daryn Arai, Deputy Director, County of Hawaii Planning Department (County)  
Amy Self Esq., Deputy Corporation Counsel, represented County

LUC Meeting Minutes (*Please refer to LUC transcript for more details on this matter*)

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Dawn Takeuchi-Apuna, Esq., represented State Office of Planning  
Rodney Funakoshi, State Office of Planning  
Lorene Maki, State Office of Planning

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

DISCLOSURES

None

Chair Wong stated that the Petitioner had submitted a request for a continuance on the Commission's considering whether to issue an Order to Show Cause based on correspondence from Petitioner's successor in interest and related matters.

Chair Wong stated that he would grant the continuance and that the Commission would hear this matter at its May 23, 2018 meeting.

There were no questions or comments.

Chair Wong declared a recess at 09:37 a.m. and reconvened the meeting at 09:40 a.m. and moved on to the next agenda item.

**STATUS REPORT AND ACTION (IF NECESSARY)**

**A00-730 LANIHAU PROPERTIES LLC (HAWAII)**

Chair Wong stated that the this was a meeting to receive a status report and take any appropriate action on Docket No. **A00-730 LANIHAU PROPERTIES LLC (HAWAII)**- A Petition To Amend the Conservation Land Use District Boundary into the Urban Land Use District for Approximately 336.984 Acres at Honokohau, North Kona, Hawaii, Tax Map Key Nos.: 7-4-08: portion of 13 and 7-4-08: 30

**APPEARANCES**

Dr. Jefferey Zimpfer, Ph.D., Environmental Protection Specialist, National Park Service (NPS)

Rhonda Loh, Acting Superintendent, NPS  
Riley Smith, represented Petitioner Lanihau Properties, LLC (LP)  
Benjamin Kudo, Esq., represented Kaiser Hospital (KH)  
Terry Muldoon, Executive Director, KH  
Daryn Arai, Deputy Director, County of Hawaii Planning Department (County)  
Amy Self Esq., Deputy Corporation Counsel, represented County  
Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)  
Rodney Funakoshi, OP  
Lorene Maki, OP

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

DISCLOSURES

Commissioner Scheuer disclosed that he was a consultant for NPS and stated that he would recuse himself from the proceedings for agenda items V and VI to avoid any conflict of interest and exited the meeting at 9:43 a.m. (6 Commissioners remain)

There were no objections to Commissioner Scheuer's recusal

Chair Wong called for Intervenor NPS to described the nature of its complaint against KH.

Intervenor NPS's Presentation

Dr. Zimpfer described NPS's initial concerns regarding KH's wastewater treatment process and how it was incompatible with the specifications prescribed by the LUC's decision and order. Dr. Zimpfer also stated that he had been in recent communications with Mr. Kudo, after Mr. Kudo was designated to represent KH in this matter, to determine how better monitoring and reporting protocols could be implemented to address and correct the non-compliant wastewater issue. Dr. Zimpfer commented that he could report on progress to resolve the situation at the LUC meeting in May.

Commissioners Mahi, Cabral and Chang requested clarification on Dr. Zimpfer's testimony. Ms. Loh responded to Commissioner Chang's questions regarding monitoring systems used by NPS and deferred to KH to describe its system.

There were no further questions for Dr. Zimpfer or Ms. Loh.  
Chair Wong called on KH to make its presentation.

KH

Mr. Kudo provided background information and history of the KH facility to the Commission and described how the larger scale of KH's water use and wastewater discharge had posed challenges to meeting the specifications called for in the original decision and order.

Mr. Kudo proposed that between January and May that KH continue to work with NPS to resolve the problems with proper monitoring and testing to achieve the desired results required by the decision and order condition.

Chair Wong acknowledged Mr. Kudo's proposal and sought responses from the Parties.

Ms. Self stated that County supported the proposal.

Ms. Apuna stated that OP had no questions and supported the proposal.

NPS stated that it welcomed working with KH.

Mr. Kudo requested that this matter be granted a continuance till May to allow for a resolution to the complaint.

Commissioners Chang, Ohigashi, and Cabral requested clarification from KH and NPS on specifics of the proposed agreement to work together on resolving the wastewater issues and how testing/monitoring for the Petition Area would be conducted.

Mr. Smith, Lanihau Properties, was recognized by Chair Wong and provided additional information regarding other plans for waste water treatment and facilities that were in place or being developed for the area; and what his company's role in the development was.

Commissioners Chang, Ohigashi, Okuda, and Cabral requested clarification on Mr. Smith's testimony,

There were no further questions, comments or discussion.

Chair Wong stated that he would grant the continuance till the May 23, 2018 LUC meeting.

Chair Wong declared at recess at 10:29 a.m. and reconvened the meeting at 10:42 a.m.

Chair Wong moved on to the next agenda item.

#### **STATUS REPORT AND ACTION (IF NECESSARY)**

##### **A10-788 HHFDC & Forest City- Kamakana Villages at Keahuolū (HAWAI'I)**

Chair Wong stated that the this was a meeting to receive a status report and take any appropriate action on Docket No. **A10-788 HHFDC & Forest City (HAWAI'I)- A** Petition To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for certain lands to situate at Keahuolū, North Kona; consisting of approximately 271.837 acres, Tax Map Key No. (3) 7-4-021: 020(por.), (3) 7-4-021:024, (3) 7-4-021:025, (3) 7-4-021:026, (3) 7-4-021:027

#### **APPEARANCES**

Dr. Jefferey Zimpfer, Ph.D., Environmental Protection Specialist, National Park Service (NPS)

Rhonda Loh, Acting Superintendent, NPS

Stan Fujimoto, Project Manager, Hawaii Housing Finance & Development Corporation ("HHFDC ")

Craig Hirai, Executive Director, HHFDC

Elizabeth Char, Development Officer, represented Michael Development (MD)

Dr. Sheryl Nojima, Ph.D. PE, consultant for MD

Daryn Arai, Deputy Director, County of Hawaii Planning Department (County)

Amy Self Esq., Deputy Corporation Counsel, represented County

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

Rodney Funakoshi, OP

Lorene Maki, OP

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

#### **DISCLOSURES**

Commissioner Cabral disclosed that she had obtained a financial loan from HHFDC about 25-30 years ago.

Commissioner Okuda disclosed that he had legally represented Mr. Hirai's family for approximately 30 years.

Both Commissioners Cabral and Okuda stated that their past disclosed relationships would not impact their ability to remain fair and impartial in the proceedings. There were no objections to their continued participation.

Chair Wong called for NPS to describe the nature of its complaint against HHFDC.

#### Intervenor NPS's Presentation

Dr. Zimpfer stated that though NPS had not intervened in the A10-788 docket, it did have concerns regarding storm water filtration controls and lack of best management practices (BMPs) being in place to control pollutants related to development in the Petition Area.

#### MD Presentation

Ms. Char described her company's role in developing parts of the Petition Area and deferred to her engineering consultant, Dr. Nojima, to respond to questions about pollution controls and environment protection plans being used for the Petition Area.

Dr. Nojima described the various controls, features and protocols that were in place or being planned for the Petition Area.

Commissioners Okuda and Chang requested clarification on Dr. Nojima's testimony. Ms. Char described how Michael Development had assumed control of the development project and stated that her company was open to meeting with NPS to address and resolve any problems with pollution controls.

There were no further questions or comments.

Chair Wong called for HHFDC to make its presentation.

#### HHFDC

Mr. Fujimoto described HHFDC's efforts to work with various entities to develop its Petition Area; and provided the background and history involved with replacing the original developer, Forest City.

Commissioner Ohigashi stated how he preferred that Petitioner take a more active role in resolving issues to avoid having to appear before the Commission.

Mr. Hirai stated that his organization was open to working with NPS to develop protocols and practices that would resolve NPS's concerns. Commissioner Cabral stated her concerns that more protection and efforts to upgrade pollution controls needed to be made to meet the growth boom occurring in the area.

County and OP had no comments.

Chair Wong stated that the Commission would seek an update from HHFDC and NPS on how discussions were going in May.

The Commission went into recess at 11:13 a.m. and reconvened at 11:57 a.m.

Commissioner Scheuer rejoined the meeting (7 Commissioners present).

#### **ADMINISTRATIVE RULES AGENDA ITEM VII**

Chair Wong called on Mr. Orodenker to describe the proposed rule amendments and action being considered by the LUC Commission staff. Mr. Orodenker described the administrative process involved in having the rule amendments presented at public hearings throughout the islands; and what the various amendments were. Discussion and questioning ensued to gain clarifications on Mr. Orodenker's presentation.

Commissioner Cabral moved and Commissioner Scheuer seconded that LUC staff be authorized to pursue seeking Administrative Rule changes. Chair Wong had Mr. Orodenker poll the Commission. The Commission unanimously approved the motion. (7 ayes-0 nays- 2 excused).

Chair Wong stated that the Commission would recess and reconvene for a video conference on January 25, 2017. The Commission went into recess at 12:21 p.m.



LAND USE COMMISSION  
MEETING MINUTES  
**January 25, 2018, 10:00 a.m.**

**The Meeting was held at the following Video Conference Centers simultaneously:**

**O`ahu-** Kalanimoku Building, 1151 Punchbowl St., Room #132, Honolulu, Hawai`i, 96813

**Kaua`i** – Lihu`e State Office Bldg., 3060 `Eiwa Street, Basement, Lihu`e, Hawai`i, 96766

**Maui-** State of Hawaii Department of Transportation District Office, 650 Palapala Dr., Kahului, Hawai`i, 96732

**Hawai`i-** Hilo State Office Bldg., 75 Aupuni Street, Hilo, Hawai`i, 96720

COMMISSIONERS PRESENT: Gary Okuda(on Oahu)  
Aaron Mahi (on Oahu)  
Dawn Chang (on Oahu)  
Arnold Wong (on Oahu)  
Jonathan Scheuer (on Oahu)  
Nancy Cabral (on Hawai`i)  
Lee Ohigashi (on Maui)  
Linda Estes (on Kaua`i)

COMMISSIONERS EXCUSED Edmund Aczon

LUC STAFF PRESENT: Daniel Orodener, Executive Officer (on Maui)  
Diane Erickson, Deputy Attorney General (on Maui)  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus (on Maui)

## **CALL TO ORDER**

Chair Wong called the meeting to order at 10:10 a.m. and requested Mr. Orodenker to describe the purpose of the meeting and what procedures would be followed for this docket.

Mr. Orodenker provided his understanding of what procedures the Commission would follow during the meeting to allow the Commission to review and adopt the form of the order in this docket by February 21, 2018.

Commissioners Chang and Scheuer requested clarification on Mr. Orodenker's presentation.

Chair Wong confirmed that Commissioners Ohigashi, Estes, Okuda and Chang had reviewed the materials and transcripts of the December 6-7, 2017 meeting and were prepared to participate in the proceedings.

Chair Wong assigned Commissioner Ohigashi to serve as presiding Chair for the Maui based video-conference. Commissioner Ohigashi accepted the presiding Chair assignment and began the Maui-based videoconference proceedings.

## **HEARING AND ACTION**

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

Presiding Chair OHIGASHI 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 (All are on Maui except for OP)

James Geiger, Esq., WP's Representatives

Michael Atherton, WP

Clayton Yoshida, Deputy Director, Maui County Planning Department (County)

Kurt Wollenhaupt, Planner, County

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

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

Lorene Maki, Planner (OP- on Oahu)

Commissioner Ohigashi updated the record; and asked the Parties to identify themselves.

Mr. Geiger thanked the Commission and stated that he had circulated a supplemental proposed Findings of Fact, Conclusions of Law, and Decision and Order via email on January 24, 2018 to the Parties.

Presiding Chair Ohigashi confirmed with OP and County that they had received the supplemental proposed Findings of Fact, Conclusions of Law, and Decision and Order sent by Mr. Geiger via email on January 24, 2018.

Ms. Apuna stated that OP had received the email, but had not had a chance to give it a thorough review; and would not stipulate to it.

Mr. Hopper stated that County had received and reviewed the proposed D & O; and that it did incorporate County's comments; and County would stipulate to it.

Presiding Chair Ohigashi asked if the Commissioners had any questions.

Commissioner Chang asked what the LUC's deadline was for considering the docket. Mr. Derrickson replied that the Commission had till May to make its decision.

Commissioner Cabral stated that the red-line highlights made it relatively easy to review and suggested that the Commission take the time to review the supplemental D&O and then act on it.

Commissioner Chang pondered whether a delay to review the D&O was necessary.

Chair Wong moved for an Executive Session. Commissioner Cabral seconded the motion.

By a voice vote, the Commission unanimously voted to enter Executive Session (8-0-1 excused) at 10:34 a.m. and reconvened at 10:46 a.m.

Commissioner Ohigashi updated the record and called for Public Witnesses.

Public Witnesses

None

Closing Arguments

Presiding Chair Ohigashi called for the Parties to make their closing arguments.

Petitioner

Mr. Geiger argued how Petition had met all the criteria required for a district boundary amendment at the State and County levels; and deserved to be granted approval.

Commissioner Okuda requested clarification on whether Mr. Geiger had any objection to several potential changes that might be included in the final decision and order. Commissioner Okuda reviewed the list of items that he wanted include in the final D&O with Mr. Geiger and confirmed that the changes were acceptable.

Commissioner Okuda commented that automatic termination of conditions without LUC oversight were a concern for him.

There were no further questions of comments from the Commissioners.

#### County

Mr. Hopper stated that County was in support of the Petition with conditions and recommended that the Commission adopt the Petition.

#### OP

Ms. Apuna described the comments that OP had previously made at the December 7, 2017 meeting in support of the Petition with OP's recommended conditions; and what factors prevented OP from stipulating to the decision and order.

#### Formal Deliberations

Presiding Chair Ohigashi confirmed that all Commissioners were ready to deliberate. All Commissioners in attendance confirmed that they were ready to deliberate.

Commissioner Mahi moved to approve the Petition and Commissioner Okuda seconded the motion. Commissioner Okuda provided his perception of what Commissioner Mahi's motion entailed and described how the motion included the clarifications that Mr. Geiger had provided in his responses to Commissioner Okuda's questions; and added that motion also included that LUC staff was authorized to prepare the final decision and order. Commissioner Mahi acknowledged that Commissioner Okuda's summary of his motion was accurate.

Chair Wong stated that he was in favor of the motion but did not appreciate the late submittal by Mr. Geiger since it was untimely.

Commissioner Scheuer stated that he was in favor of the motion and thanked Petitioner for its efforts; and shared his concerns about the testimony of Petitioner's Expert Witness on Water

Commissioner Chang applauded Petitioner's efforts and complimented the work done on the cultural impact analysis submitted for the Commission to review. Commissioner Chang also stated her confidence in LUC staff in determining what type of conditions could automatically be terminated without requiring additional appearances by Petitioner before the Commission.

Commissioner Okuda stated that he agreed with Commissioner Chang's assessment that LUC staff could determine what conditions could automatically be terminated; and that his concerns about automatic termination would be alleviated by LUC staff being able to make those determinations.

Presiding Chair Ohigashi stated that he appreciated being able to vote favorably on a project on his home island; and called for Mr. Orodener to poll the Commission.

The motion was unanimously approved (8 ayes-0 nays- 1 excused).

There being no further business to address, Presiding Chair Ohigashi adjourned the meeting at 11:26 a.m.