

LAND USE COMMISSION
MEETING MINUTES

June 24, 2020 – 9:00 a.m.

Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting registration-use link
below

https://us02web.zoom.us/webinar/register/WN_jnw8jODkRsa_ZVICOHIULA

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform or listen to the meeting via an audio/visual YOUTUBE stream internet link listed above. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Edmund Aczon
(Attending via ZOOM conference media) Nancy Cabral
Gary Okuda
Jonathan Scheuer
Arnold Wong
Dawn N. S. Chang
Lee Ohigashi

COMMISSIONERS EXCUSED: Dan Giovanni
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Linda Chow, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus
(Attending via ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:03 a.m.

Chair Scheuer had Mr. Orodener verbally do a roll call to confirm Commissioner attendance for the record. Six present Commissioners acknowledged that they were present and able to communicate via the ZOOM program. (The seventh attending Commissioner, Commissioner Cabral experienced technical problems with her computer and joined the meeting at approximately 9:12 a.m. after Mr. Orodener had briefed the Commission on the tentative meeting schedule). 7 Commissioners in attendance before start of proceeding on Docket No. A17-804.

APPROVAL OF MINUTES

Chair Scheuer stated that the first agenda item was the approval of the June 9-10, 2020 minutes however they were not ready and deferred approval of those minutes to the next meeting.

Chair Scheuer called for Mr. Orodener to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from June to September for the Commissioners and cautioned that it was subject to change based on the pandemic impacts. Commissioners were advised to contact LUC staff if there were any questions or conflicts.

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

Chair Scheuer declared a recess at 9:11 a.m. and reconvened the meeting at 9:12 a.m. and confirmed the attendance of all Commissioners.

ACTION

A17-804 Hawaiian Memorial Life Plan, Ltd.

To consider Docket No. A17-804 Petition To Amend The Conservation Land Use District Boundary Into The Urban Land Use District for Approximately 53.449 acres of Land at Kāneʻohe, Island of Oʻahu, State of Hawaiʻi TMK (1) 4-5-033: por . 001

APPEARANCES (Attending via ZOOM conference media)
Curtis Tabata, Esq. and Benjamin Matsubara, Esq., represented Hawaii Memorial Life Plan, Ltd., (“HMP”)
Duane Pang, Deputy Corporation Counsel, DPP
Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)
Grant Yoshimori- Spokesperson for Intervenor Hui O Pikoiloa (“HOP”)
Rich McCreedy, HOP

Chair Scheuer updated the record and reviewed the procedures for the meeting.

There were no objections to or questions on the procedures.

Chair Scheuer noted that the public testimony portion of the Meeting had been closed and that any other written testimony submitted on this matter had been filed and made part of the record. Chair Scheuer stated the names of the public written testifiers for the record.

Public Testimony received between June 22-23, 2020 – Pane Meatoga III (HI Operating Engineers), Kera Wong-Miyasato, Alec Wong-Miyasato, Kalma Wong, Teresa Chao, Kathleen O`Malley, Paulette Tam

Public Testimony received June 19, 2020 -Senator Jarrett Keohokalole survey

Public Testimony received June 16, 2020 – Vanita Rae Smith

Public Testimony received June 9, 2020 – Richard & Donna Perkins, Lokahi Cuban, Mililani Group, Inc. (Eadean M. Buffington), Sarah Houghtailing

Public Testimony received June 8, 2020 – Joy Kimura, Cheryl Tyler

NEW EXHIBITS OFFERED FOR THE RECORD

Chair Scheuer called for the Parties to offer their new Exhibits for the record.

Petitioner offered its Exhibits 60-69 for the record. There were no objections to Petitioner’s Exhibits, and they were admitted.

County, OP and HOP stated that they had no further Exhibits to enter.

Chair Scheuer concluded the admission of new exhibits portion of the meeting and called for the resumption of Petitioner's presentation.

PRESENTATIONS

HMP (Continued)

Mr. Matsubara described his remaining presentation for the Commission and stated the order of his remaining witnesses' appearances and offered his next witness, Rosanna Thurman.

PETITIONER'S WITNESSES (continued)

13. Rosanna Thurman- was qualified as an Expert Witness in Hawaiian archaeology
Ms. Thurman summarized her fieldwork and written testimony for the Commission.

City and OP had no questions.

Mr. Yoshimori requested clarification on the 9 archaeological sites that were going to be graded over, and on how the cultural preserve and the proposed preservation plan would protect the archaeological features within and around the Petition Area.

Commissioners Cabral, Okuda, Chang, Ohigashi and Chair Scheuer requested clarification on the durability of the protection plan over time and how the current landowner's "stewardship" over the Petition Area actively maintained the known archaeological sites, how the "data recovery" of the 9 sites that were going to be destroyed would be conducted and what methodology was used to conduct the archaeological inventory survey (AIS); what kind of trespassing/vandalism was observed occurring in the Petition Area; and whether Ms. Thurman was a cultural practitioner.

Ms. Thurman described how her archaeological work was related to the cultural aspects of how a practitioner might assess matters and deferred questions which she felt were more in line with the cultural aspects of the Petition Area to the next witness, Dr. Watson.

Mr. Matsubara had no redirect.

Chair Scheuer declared a recess at 10:09 a.m. and reconvened the meeting at 10:20 a.m.

14. Dr. Trisha Watson – qualified as an Expert Witness in Environmental Law and Cultural Assessments.

Dr. Watson summarized her written testimony and described her efforts in performing the Cultural Impact Analysis (CIA) and determining the cultural and tangible resources of the Petition Area and developing the planned management for the conservation easement proposed by Petitioner.

Mr. Pang requested clarification on the “next steps” needed to finalize the establishment of the conservation easement and the negotiations that had occurred with the Koolaupoko Hawaiian Civic Club regarding management plans for the area.

OP had no questions.

Mr. Yoshimori requested clarification on how long it would take to establish the conservation easement, the legal authorities associated with managing the area and ensuring that preservation efforts were sustained, and how/where the assigned burial sites within the conservation easements would be determined. Dr. Watson estimated that it would take approximately a year to establish the conservation easement and described what legal entitlements would be associated with the conservation easement status.

Commissioners Wong, Ohigashi, and Aczon requested clarification on what activities would be associated with establishing a conservation easement, how restoration and preservation efforts would occur to establish a native conservation landscape if the proposed project were approved, how access would be controlled to prevent trespassing and vandalism, whether the conservation easement would be subject to subdivision by the County, and what measures would be adopted to ensure continued management in the future.

Chair Scheuer assessed progress of the proceedings and declared a recess at 11:15 a.m. and reconvened the meeting at 11:29 a.m.

Commissioners Okuda requested detailed clarification on the future preservation and management plans for the conservation easement and the associated cultural impacts involved; and the rockfall hazards and liabilities that needed to be considered and addressed. Discussion ensued on why Dr. Watson could not be more specific on the plans since the plans needed to be further negotiated and developed between the entities involved and it was still too premature to provide the level of detail sought by Commissioner Okuda.

Mr. Matsubara argued that many of the specifics requested by Commissioner Okuda such as invasive species removal would not be addressed till later on in the development process. Commissioner Aczon commented that the landowner might be better able to respond to questions on some of the topics that Commissioner Okuda was concerned about. Chair Scheuer clarified the lines of questioning that were being heard .

Commissioners Okuda, Wong, Chang and Chair Scheuer requested additional clarification on the mitigation issues involved to protect cultural and conservation concerns, who would control and protect the conservation easement; how the 100 burial sites designated for the conservation easement area would be overseen, possible conditions to include in the Decision and Order if the Petition was approved, how the 9 sites that were located within the conservation easement would be handled during and after construction of the proposed project; the possible positive and/or negative effects of granting/denying the Petition, what provisions currently exist for traditional Hawaiian burials and how the government might protect and enhance traditional native and cultural practices.

Mr. Matsubara had no re-direct.

Chair Scheuer assessed progress of the proceedings and declared a recess at 12:33 p.m. and reconvened the meeting at 1:20 p.m.

15. Lance Wilhelm— witness for construction and real estate development.

Commissioners Aczon and Wong disclosed that they know Mr. Wilhelm through their respective roles in the construction industry and stated that they

could remain fair and impartial during the proceedings. There were no objections to the disclosures and Chair Scheuer noted that Mr. Wilhelm was a witness and not a party to the proceedings.

County and OP had no questions.

Mr. Yoshimori requested clarification on what pre-construction steps needed to be done. Mr. Wilhelm described the detailed grading and excavation plan that needed to be submitted to obtain the necessary permits and estimated the amount of time that it would take to obtain approvals and initiate site preparation.

Commissioners Okuda, Chang, Cabral, Aczon, Wong, and Chair Scheuer requested clarification on the waste disposal choices available for the grading and excavation work, how HMP would effort to reduce landfill use, what type of topography would be involved for the surface area (hilly or flat terrain), the planned construction methods to be used to mitigate noise, dust, traffic etc. problems, on what applicable regulations would be enforced for DOH noise permits, what initial cost estimates might be, how the need for fill material drives excavation plans and disposal soil debris alternatives, under what circumstances PVT facilities would be used, and other details regarding excavated materials handling, relocation, and alternate disposal plans.

Mr. Matsubara had no redirect.

Discussion ensued to determine how long the proceedings would extend for the day. Mr. Matsubara stated that his first rebuttal witness would be Robin Lim.

PETITIONER REBUTTAL WITNESSES

1. Robin Lim- (was previously qualified as a Soils Engineer expert witness)

Mr. Lim described the rockfall and slope stability hazards that were anticipated for the construction site based on his geotechnical studies of the Petition Area.

County and OP had no questions.

Mr. Yoshimori requested clarification on the risk of rockfalls in the Proposed Preservation Area and the anticipated mitigation measures that would be implemented.

Commissioners Okuda, Chang and Wong requested clarification on Mr. Lim's previous testimony in January as compared to his most recent testimony, what the stability of soils were in the proposed Cultural Preserve, what considerations were applied to determine which mitigation and warnings/access restrictions would be applied to different areas of the proposed project, and how the proposed grading factored into the mitigation plans.

Chair Scheuer declared a recess at 2:49 p.m. and reconvened the meeting at 2:59 p.m. and called for Mr. Matsubara's redirect.

Mr. Matsubara clarified how Mr. Lim's testimony assessed the Petition Area and estimated the potential hazards that would be involved with the proposed project.

Commissioner Chang requested and was permitted by Chair Scheuer to request further clarification on the risks involved with the proposed Cultural Preserve and how the study had focused on the physical features of the Petition Area and not on estimated public traffic/use.

There were no further questions for Mr. Lim.

Mr. Matsubara recalled rebuttal witness Todd Beiler.

2. Todd Beiler- (was previously qualified as a Noise Assessment expert witness)

Mr. Beiler described in further detail how the noise concerns for the proposed project would mitigate to meet the DOH standards set for noise limits and what the operational hours restricting the times when certain noise levels would be permitted.

Mr. Beiler described anticipated vibration effects and how HMP might comply with a proposed condition on noise/vibrations.

There were no further questions for Mr. Beiler.

Chair Scheuer assessed the progress of the proceedings, noted that Petitioner had completed its presentation and called for the County to make its presentation.

COUNTY

Mr. Pang stated that County had submitted written testimony and the Koolaupoko Sustainable Communities Plan as its Exhibit, and called his witness, Kathy Sokugawa.

COUNTY WITNESS

1. Kathy Sokugawa, Acting Director- DPP

Ms. Sokugawa described how DPP had studied the proposed project and determined its position on the matter.

Petitioner and OP had no questions for Ms. Sokugawa.

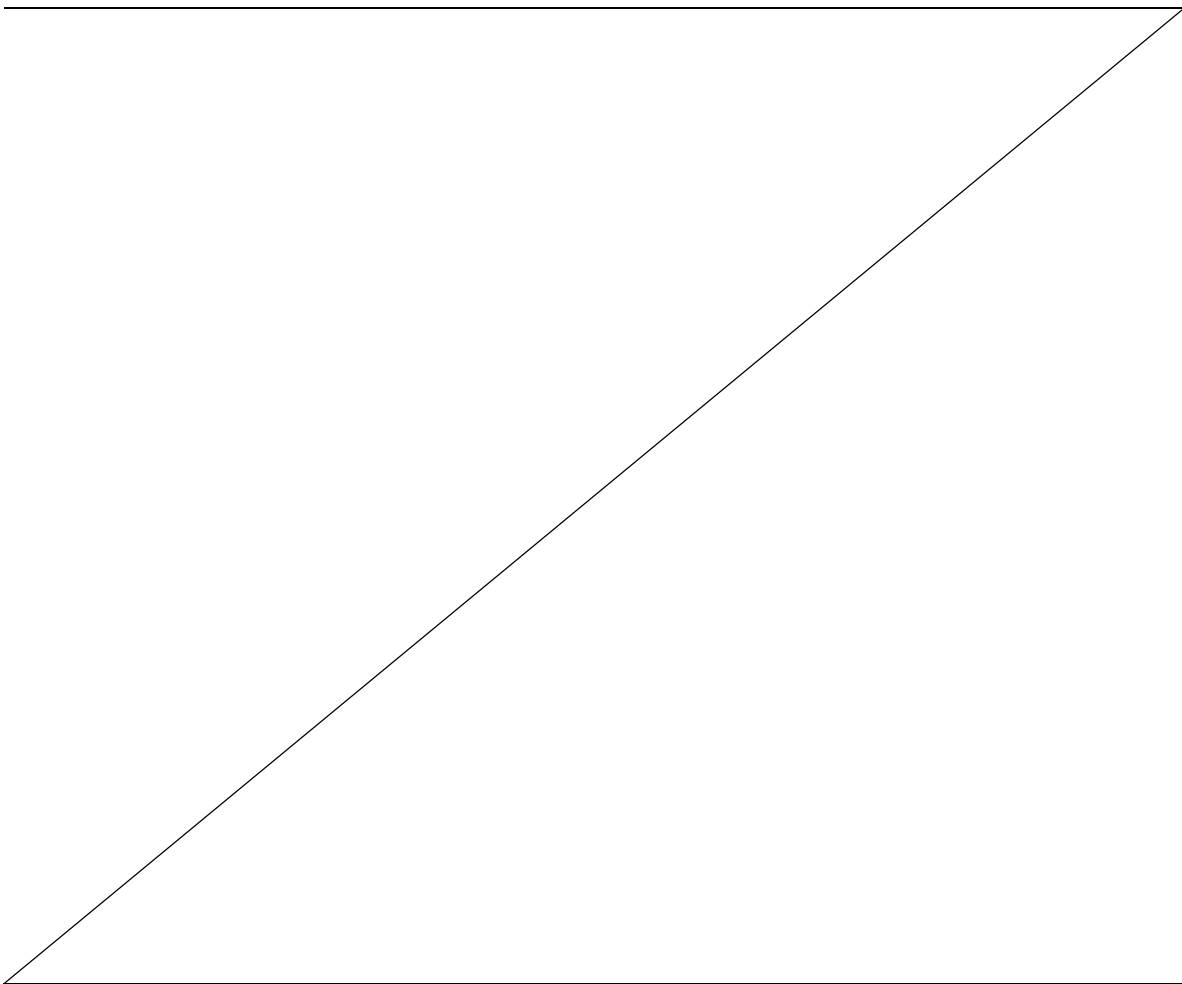
Mr. Yoshimori requested clarification on DPP's proposed tree replacement requirements, how DPP determined the types of structures that would be permitted on HMP grounds, how suitable buffer zones within the Petition Area were determined, and what the impact the correspondence received by Councilperson Kymberly Pine and State Representative might have had on DPP's decision-making.

Commissioners Okuda, and Ohigashi requested clarification on whether DPP was aware of the rockfall hazards associated with the proposed project, the permitting process that would need to be adhered to by Petitioner and how it would be enforced, other locations on Oahu that might be used for cemetery use, what easement requirements might need to be applied to the proposed project, and whether subdivision requirements would be applied.

Mr. Pang had no re-direct.

There were no further questions for Ms. Sokugawa.

Chair Scheuer thanked the meeting participants for their cooperation and attention during the meeting and declared a recess of the June 24, 2020 meeting at 3:52 p.m. and stated that the A17-804 matter would be continued on July 22, 2020.



LAND USE COMMISSION
MEETING MINUTES

June 25, 2020 – 9:00 a.m.

Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.

PLACE: Zoom Webinar Virtual Meeting registration-use link below
https://us02web.zoom.us/webinar/register/WN_jnw8jODkRsa_ZVICOHIULA

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COMMISSIONERS PRESENT: Edmund Aczon
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Lee Ohigashi

COMMISSIONERS EXCUSED: Dan Giovanni
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Linda Chow, Deputy Attorney General
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus
(Attending via ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:02 a.m. and began to experience audio problems.

Chair Scheuer declared recess at 9:03 a.m. and reconvened the meeting at 9:08 a.m. after verifying that audio and visual signals for the digital broadcast of the meeting were operational.

Chair Scheuer had Mr. Orodener verbally do a roll call to confirm that all Commissioners were in attendance for the record. All Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

Chair Scheuer updated the record to reflect additional written public testimony that the LUC had received and reviewed the procedures for the meeting. Chair Scheuer stated that he would recuse himself from the Docket A99-729 proceedings since he served on the board of HILT and surrendered the chairing of the meeting to First Vice Chair Cabral and asked to be readmitted when the Commission finished this agenda item. Vice Chair Cabral acknowledge Chair Scheuer request and accepted the role of Acting Chair. (6 Commissioners remained in attendance at the meeting)

There were no objections to or questions on the procedures.

Vice Chair Cabral called for the Parties to identify themselves and confirm their attendance and discussion occurred to resolve how the meeting could proceed with the technical issues that Vice Chair Cabral was experiencing.

Vice Chair Cabral declared a recess at 9:15 a.m. and reconvened the meeting at 9:17 a.m.

Vice Chair Cabral appointed Commissioner Wong to assume the duties of chairing the meeting from the LUC office on Oahu due to technical issues that she was experiencing. Commissioner Wong accepted the role of Acting Chair and moved on to the next agenda item.

STATUS REPORT

A99-729 Newton Family Limited Partnership (Hawaiian Islands Land Trust)

APPEARANCES (Attending via ZOOM conference media)

Laura Kaakua, CEO- represented Hawaiian Islands Land Trust, (“HILT”)

April Surprenant, Deputy Director, County of Hawaii Planning Department (County)

LUC Meeting Minutes

June 25, 2020

See LUC Meeting Transcripts for further details

Diane Mellon-Lacey, Esq. Deputy Corporation Counsel, represented County
John Mukai, Esq., Deputy Corporation Counsel, represented County
Dawn Apuna, Esq., Deputy Attorney General represented OP

Acting Chair Wong updated the record and asked if there were any registered public witnesses. LUC staff advised him that there were no registered public witnesses.

Acting Chair Wong asked if there were any public witnesses in the audience who wished to testify.

PUBLIC WITNESSES

1. Ken Church

Mr. Church stated that he did not have public testimony to share on this docket item and sought clarification on how he could participate when his agenda item was before the Commission.

There were no other individuals who indicated that they wanted to testify. Acting Chair Wong stated that the Public Testimony portion of the proceedings on Docket no. A99-729 was closed and called for Ms. Kaakua to make her presentation.

Ms. Kaakua shared her background with HIT and described how HILT had assumed ownership of the Petition Area and prepared plans for taking stewardship of the property since last appearing before the Commission. Ms. Kaakua provided insight to how HILT would combat invasive species, achieve its conservation goals and actively manage the Petition Area while retaining the urban land use designation that the Commission had granted in the past. Ms. Kaakua added that HILT would be returning to the LUC in the near future with a motion to amend the initial Decision and Order to allow HILT more latitude to achieve its intended goals.

Acting Chair Wong asked if there were any questions on Ms. Kaakua's presentation.

County of Hawaii stated that it had no questions and introduced themselves. (April Surprenant, Deputy Director- County of Hawaii Planning Department, Diane Mellon-Lacey, Esq. Deputy Corporation Counsel and John Mukai, Esq. Deputy Corporation Counsel)

Ms. Apuna introduced herself as representing OP and stated that she had no questions.

Commissioners Okuda and Chang requested clarification on what other land trust entities existed in Hawaii and shared their appreciation for the work that HILT did.

Acting Chair Wong declared a recess at 9:36 a.m. to readmit Chair Scheuer to the meeting. (7 Commissioners were now in attendance at the meeting).

Chair Scheuer reconvened the meeting at 9:38 a.m. and moved to the next agenda item.

ACTION

A18-806 Barry Trust (Hawai`i)

- Consider Petitioner’s Motion for Issuance of Negative Declaration or Finding of No Significant Impact

APPEARANCES (Attending via ZOOM conference media)

Derek Simon, Esq., represented Barry Trust, (“BT”)

April Surprenant, Deputy Director, County of Hawaii Planning Department (County)

Diane Mellon-Lacey, Esq. Deputy Corporation Counsel, represented County

John Mukai, Esq., Deputy Corporation Counsel, represented County

Dawn Apuna, Esq., Deputy Attorney General represented OP

Chair Scheuer updated the record and asked if there were any registered public witnesses. LUC staff advised him that there were no registered public witnesses.

Chair Scheuer asked if there were any public witnesses in the audience who wished to testify.

PUBLIC WITNESSES

None

PETITIONER PRESENTATION

Mr. Simon expressed his appreciation for the efforts put forth by all to arrange for the virtual meeting and described the effort that had been put into preparing the Final Environmental Assessment (FEA) and how the issuing of a Finding of No

Significant Impact (FONSI) would allow BT to move forward to proceed with the publication of the FEA through the Environmental Bulletin.

There were no questions for Mr. Simon.

Chair Scheuer called for the County's presentation.

COUNTY PRESENTATION

Ms. Mellon-Lacey stated that County supported the FONSI and that it was warranted given the land use in the surrounding area.

There were no questions for Ms. Mellon-Lacey.

OP PRESENTATION

Ms. Apuna stated that OP did not object to Petitioner's Motion.

There were no questions for Ms. Apuna.

COMMISSIONERS' QUESTIONS

Commissioner Cabral commented that she was familiar with the general area of the property and affirmed County's assessment of the Petition Area.

There were no further questions and comments.

Chair Scheuer sought the pleasure of the Commission.

Commissioner Cabral moved to grant the Petition. Commissioner Wong seconded the Motion and requested that the Motion include allowing LUC staff to provide the necessary documents for the OEQC filing. Commissioner Cabral accepted Commissioner Wong's friendly amendment to the Motion.

Discussion on the Motion

Commissioner Wong recognized that Petitioner's document was very well organized and thorough and worthy of Commission approval.

There was no further discussion.

Chair Scheuer requested that Mr. Orodener poll the Commission.

The Commission unanimously voted to grant the Petition. (7-0-1 excused)

Chair Scheuer recognized Mr. Simon and acknowledged Petitioner's request that Petitioner's Exhibit 1 would be made part of the record.

Chair Scheuer stated that due to the internet audio problems that the meeting was experiencing intermittently, he would continue hearing the next agenda item, A18-805 Church, and then declare a recess to allow him to relocate to the LUC office area for the remainder of the meeting.

There were no objections, questions or comments on the proposed schedule adjustment to the proceedings.

Chair Scheuer moved on to the next agenda item.

ACTION

A18-805 Church (Hawai`i)

- Consider Petitioner's Motion that the Land Use Commission Issue a Finding of No Significant Impact

APPEARANCES (Attending via ZOOM conference media)

Ken Church, Petitioner ("Church")

April Surprenant, Deputy Director, County of Hawaii Planning Department
(County)

Diane Mellon-Lacey, Esq. Deputy Corporation Counsel, represented County

John Mukai, Esq., Deputy Corporation Counsel, represented County

Dawn Apuna, Esq., Deputy Attorney General represented OP

Chair Scheuer updated the record and asked if there were any registered public witnesses. LUC staff advised him that there were no registered public witnesses.

Commissioner Wong requested clarification on Chair Scheuer's update of the record due to internet audio difficulties and portions of the record were unclear.

Discussion ensued to identify what needed to be repeated and the update of the record was completed to the satisfaction of the Commission.

Chair Scheuer asked if there were any public witnesses in the audience who wished to testify.

PUBLIC WITNESSES

None

PETITIONER PRESENTATION

Mr. Church summarized why he was seeking a FONSI and shared his concerns about his request for a boundary determination by the Commission not being on the LUC meeting agenda.

Ms. Mellon-Lacey stated that County had no questions.

Ms. Apuna stated that OP had no questions.

Commissioner Cabral requested clarification that the Commission would only be addressing the items posted on the agenda. Chair Scheuer confirmed that the Commission could only act on items on the agenda.

Commissioner Okuda noted that he had a comment and requested clarification on when it would be appropriate to present it. Chair Scheuer suggested that the comment be made during deliberations.

There were no further questions from the Commission. Chair Scheuer called for the County's presentation.

COUNTY PRESENTATION

Ms. Mellon-Lacey stated that County had no objections to the EA and the FONSI.

There were no questions for Ms. Mellon-Lacey.

OP PRESENTATION

Ms. Apuna stated that OP did not object to Petitioner's Motion.

There were no questions for Ms. Apuna

Mr. Church requested clarification on why his request for a boundary determination would not be heard since he had submitted it together with his Petition for a FONSI.

Discussion ensued to clarify the contents on the LUC meeting agenda on this docket item. Mr. Orodenker explained how the LUC administratively processes boundary determination requests and that Mr. Church needed to comply with that process and work with LUC staff rather than attempting to initiate his own process on such matters.

Commissioner Cabral expressed her concerns about the situation and requested further clarification from Mr. Orodenker to help her determine whether Mr. Church's docket should be acted upon. Mr. Orodenker reported that Mr. Church had received information from LUC staff on how to obtain a boundary determination and though the Commission could defer this matter, it would not alter how the LUC handles these matters .

Deputy Attorney General Chow described how Commission Administrative Rules dictated how boundary determinations were made.

County and OP had no presentations.

Chair Scheuer assessed the state of the proceedings and sought the pleasure of the Commission.

Discussion on the Motion

Commissioner Wong recognized Petitioner's efforts and moved to accept the FONSI and that the Executive Officer file Notice of the Commission's actions together with the FEA to the Department of Health Office of Environmental Quality Control and that Petitioner work with LUC staff to provide all the necessary documents for filing with OEQC.

Commissioner Ohigashi seconded the Motion.

Commissioner Wong commended Mr. Church for his *pro se* work on his Petition.

There was no further discussion.

Chair Scheuer requested that Mr. Orodenker poll the Commission.

The Commission unanimously voted to grant the Petition. (7-0-1 excused)

Chair Scheuer declared a recess at 10:20 a.m. and reconvened the meeting at 11:15 a.m. (Chair Scheuer had relocated to the LUC videoconference room.)

Chair Scheuer moved on to the next agenda item.

ACTION

DR20- 69 COUNTY OF HAWAII and DR20-70 LINDA ROSEHILL et al

- Consider Petitioners County of Hawaii's and Linda Rosehill et al's Stipulation to Consolidate Order
- Consider Petitioners County of Hawaii's and Linda Rosehill et al's Petitions for Declaratory Orders regarding Short Term Vacation Rentals as Farm Dwellings

APPEARANCES (Attending via ZOOM conference media)

Cal Chipchase, Esq., represented Linda Rosehill et al, ("LR")

Michael Yee, Director, County of Hawaii Planning Department (County)

April Surprenant, Deputy Director, County

Diane Mellon-Lacey, Esq. Deputy Corporation Counsel, represented County

John Mukai, Esq., Deputy Corporation Counsel, represented County

Dawn Apuna, Esq., Deputy Attorney General represented OP

Chair Scheuer updated the record and asked if there were any disclosures to be made.

Commissioner Wong disclosed that he had worked with Ms. Rosehill in the past but that he felt that he could remain fair and impartial during the proceedings. There were no objections to Commissioner Wong's continued participation.

Chair Scheuer asked if there were any registered public witnesses. LUC staff advised him that there were two registered public witnesses.

REGISTERED PUBLIC WITNESSES

1. Peter Eising

Mr. Eising summarized his submitted written testimony and described why he opposed Short Term Vacation Rentals (STVR) in agriculturally designated land.

Commissioner Wong and Chang requested clarification on community covenants in force, penalties for violations of the covenants, types of agriculture

occurring in the surrounding area, and the estimated extent of STVR in the agricultural designated area.

2. Stephen Bell

Mr. Bell summarized his submitted written public testimony.

Commissioners Wong, Chang, Okuda and Chair Scheuer requested clarification on Mr. Bell's perspective on how STVR violated community association rules and local covenants, what farming activities were occurring on various lots in the Petition Area, the degree of proliferation of STVR over the years, what types of agricultural use was occurring in the area, and how the Kohala Ranch supplied water to the Petition Area.

3. OP

Ms. Apuna stated OP's position and described why OP agreed with County's assessment on the STVR matter.

Commissioners Wong, Ohigashi, Cabral, Okuda and Chang requested clarification on what types of taxes STVR paid, what types of farming and ranching uses were permissible, prohibited or required on lands designated agricultural, what State land use and County zoning considerations needed to be made, and what other legal basis might apply to the STVR issue.

There were no other registered public witnesses.

Chair Scheuer asked if there were any public witnesses in the audience who wished to testify.

PUBLIC WITNESSES

None

COUNTY and PETITIONER ROSEHILL et al STIPULATION TO CONSOLIDATE

Chair Scheuer stated that the Commission would next address the County of Hawai'i and Petitioner LR stipulation to consolidate.

Mr. Mukai stated that County agreed with the stipulation and had signed the document.

Mr. Chipchase shared why it was appropriate to consolidate matters and requested that the Commission approve and grant the consolidation.

Discussion ensued on the necessity for a motion by the Commission to consolidate. Mr. Orodener stated that the stipulation was sufficient to consolidate the dockets.

Chair Scheuer called for County to make its presentation.

COUNTY PRESENTATION

Mr. Mukai argued why the Commission should agree with County's interpretation on STVR in agricultural designated lands and provided his perspective of why an STVR should not be considered a "farm dwelling". Mr. Mukai stated that he had distributed two County exhibits to the Parties in the late afternoon on Wednesday, June 24, 2020. (1-Farm dwelling notice and 2- Farm dwelling application agreement.)

Chair Scheuer inquired if the Parties and Commission/LUC staff had received the late County filing. All Parties and Commission/LUC staff confirmed receipt of the County's two exhibits.

Commissioners Okuda, Chang, Ohigashi, and Wong requested clarification on whether a residential structure could be constructed and lived in on land that was within the Agricultural District, how those residential structures differed from farm dwellings and were consistent with HRS §205-4.5, what type of property tax was applied to the properties under different circumstances, whether the STVR Petitioners had sought certification to use their properties for short-term vacation rentals, what specific legal authorities were being applied to allow or prohibit STVR activity and how County monitored and enforced oversight of agricultural areas.

Mr. Yee and Ms. Surprenant were called in as witnesses for the County to respond in further detail to the Commissioners' various questions and described how County had been attempting to oversee the agricultural properties to determine what uses dwellings within the area had, and whether STVR conformed to the County definition of farm dwelling/residence.

Commissioner Ohigashi excused himself from the meeting with the permission of the Chair at 12:59 p.m. (6 Commissioners remained present.)

Commissioner questioning of the County continued with Mr. Yee and Ms. Surprenant providing their understandings of how County was applying the zoning code for agriculture farm dwellings/residences and the associated agricultural use requirements involved and why County's position differed from OP's.

Commissioner Cabral disclosed that part of her real estate business had been involved management of vacation rentals in the past but no longer did and felt that she could remain fair and impartial on this matter. There were no objections to Commissioner Cabral's continued participation in the proceedings.

Chair Scheuer declared a recess at 1:18 p.m. and reconvened the meeting at 1:29 p.m.

Commissioner Chang requested clarification on procedural matters for recalling County and OP. Chair Scheuer described how he intended to handle the remainder of the proceedings and provided the decision alternatives available to the Commission on Declaratory Order matters.

Commissioner Cabral shared information from her real estate practice on County real estate assessments for agricultural and residential properties.

Chair Scheuer requested clarification on how the County ordinance regulating STVR had been implemented and applied, how STVR differed from bed and breakfast operations in the agricultural district, and how grandfathered operations were permitted to continue after the County had been enacted.

There were no further questions for County. Chair Scheuer called on Mr. Chipchase for Petitioner Linda Rosehill et al's presentation.

PETITIONER ROSEHILL et al

Mr. Chipchase argued why the Commission should agree with his client's interpretation on STVR in agricultural designated lands and described how the Commission might consider its statute instead of agreeing with the County and OP's perspective.

Chair Scheuer declared a recess at 2:15 p.m. and reconvened the meeting at 2:25 p.m. (Commissioner Ohigashi returned to the meeting. There were now 7 Commissioners in attendance.)

Chair Scheuer assessed the progress of the proceedings and determined how much more time Petitioner would require for its remaining presentation. A brief discussion ensued to consider various hearing dates for this matter to allow for its continuation. Commissioner Wong inquired whether the Commission could request additional information from Petitioners on their Petitions. Deputy Attorney General Chow responded that the Commission could request additional briefs.

Commissioners Okuda, Chang and Cabral requested clarification on legal rights that Mr. Chipchase's arguments were based on, how the retroactive use of the land and other time considerations factored into Petitioner Rosehill's argument, what the potential harm was to his clients, how Mr. Chipchase perceived "farm dwellings" and County's application of timelines on the STVR ordinance, the "statutory construction" involved with Petitioner's argument, and the use/intent of the terminology and the "legislative intent" to be considered in this matter.

Chair Scheuer assessed the state of the proceedings and summarized the progress made. Commissioner Okuda suggested that Docket Nos. DR20-69 and DR20-70 be continued and that the Parties submit their proposed Findings of Fact, Conclusions of Law and Decision and Order. Discussion ensued to determine what additional materials should be provided to the Commission and how it should proceed.

Chair Scheuer determined that the hearing would continue on July 23, 2020 and that there were no specific directions on what the Parties may brief on, but since the matter continued to be open, the briefs should be delivered to the LUC by July 9, 2020.

Chair Scheuer asked if there was any further business to discuss. There was none.

Chair Scheuer adjourned the meeting at 3:22 p.m.