

LAND USE COMMISSION
MEETING MINUTES

September 23, 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
Wednesday September 23, 2020 Meeting

https://us02web.zoom.us/webinar/register/WN_qSSEfTy4QgOMdFw6x09-EA

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. 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
Dan Giovanni

COMMISSIONERS EXCUSED: Lee Ohigashi

(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 9:00 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

APPROVAL OF MINUTES

Chair Scheuer stated that the first agenda item was the approval of the September 9-10, 2020 minutes and asked if there had been any public testimony submitted and if there were any corrections to be made. There was no public testimony and no corrections to be made. Commissioner Wong moved to approve the minutes. Commissioner Giovanni seconded the motion. There was no discussion. By a roll call vote, the September 9-10, 2020 minutes were approved unanimously (7-0)

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

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from September to December 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 moved on to the next agenda item.

CONTINUED HEARING AND 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”)

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 public testimony would be allowed for the closing arguments and that any other written testimony submitted on this matter had been filed and made part of the record. Chair Scheuer announced the names of the public written testifiers for the record and then moved on to call for public witnesses.

PUBLIC WITNESSES

1. Deborah Stephenson (no video)

Ms. Stephenson summarized her written testimony and requested that the Commission deny the petition.

Commissioner Cabral requested clarification on Ms. Stephenson's attempts to sell unwanted plots.

There were no further questions for Ms. Stephenson.

2. Mahealani Cypher- Koolau Foundation Representative

Ms. Cypher described why her organization supported the Petition.

Commissioners Okuda and Chang requested clarification on their concerns raised by Ms. Cypher's testimony.

There were no further questions for Ms. Cypher.

3. Robert O'Conner Marine Biologist

Mr. O'Conner shared his concerns about how the proposed project might threaten the environment and harm Kaneohe Bay; and urged the Commission to deny the project.

Chair Scheuer asked if Mr. O'Conner had commented on the Environment Impact Statement for the proposed project. Mr. O'Conner replied that he had and that his comments were part of the record.

There were no further questions for Mr. O'Conner.

4. State representative Scott Matayoshi

Representative Matayoshi stated that he had submitted written testimony and described how the concerns that had been brought to his attention by his constituents had motivated him to attend the hearing and consider changing his testimony.

Commissioners Okuda, Aczon, and Chair Scheuer requested clarification on how Representative Matayoshi was investigating what the "will of the Community" was, the specifics on the large amount of soil movement that would

be involved during construction, the community protection concerns about water flooding, drainage and retention, future demand for the plans and services offered by Hawaiian Memorial Park and the construction infrastructure standards that were being proposed.

There were no further questions for Representative Matayoshi.

5. Dr. Judy Lemus- Marine Biologist Professor

Ms. Lemus shared her concerns for the marine environment and the well-being of Kaneohe Bay if the proposed project were approved.

Commissioners Okuda, Chang and Chair Scheuer requested clarification on the extent of harm that Dr. Lemus anticipated might occur if the proposed project were allowed, how the Koolaupoko Sustainable Community Plan (“KSCP”) factored into her assessment, and how conservation easements might mitigate any anticipated environmental problems.

There were no further questions for Dr. Lemus.

6. Wilfred Ching – ILWU International Representative

Mr. Ching shared why his organization supported the Petition.

There were no questions for Mr. Ching.

There were no other Public Witnesses. Chair Scheuer stated that the Public Testimony portion of the proceedings was officially closed and declared a recess.

The Commission went into recess at 10:13 a.m. and reconvened at 10:24 a.m.

Chair Scheuer sought and received the time needed by the Parties for their presentations and called for Petitioner’s presentation.

Petitioner Presentation

Mr. Tabata argued why the Commission should grant his Petition and summarized how his evidence strongly supported the thoroughness of how EIS concerns had been addressed and mitigated, how community outreach had been performed to engage the public and protect traditional and cultural concerns, how extreme measures had been taken to protect the endangered damselfly habitat in the Petition Area, how extraordinary engineering design and standards had been applied to address flooding and water runoff issues and other problem areas that had been brought during the proceedings.

Commissioner Giovanni requested more detailed information on the engineering criteria that Petitioner proposed to use. After discussion, Chair Scheuer declared a recess to allow for the gathering of the desired information.

The Commission went into recess at 10:42 a.m. and reconvened at 10:51 a.m.

Chair Scheuer presided over the discussion regarding Commissioner Giovanni's inquiry.

Commissioners Okuda, Chang, Cabral, Giovanni, Wong, Aczon and Chair Scheuer requested additional clarification on Petitioner's future legal representation, the additional basin capacities and infrastructure adaptations that Petitioner would be agreeable to, how construction materials would be handled and disposed of, what protections and mitigations were planned to reduce negative environmental impacts, suitable language to address the recent and formerly proposed conditions related to the Petition before the Commission, and other details which arose during the proceedings.

Chair Scheuer declared a recess at 11:45 a.m. and reconvened the meeting at 12:38 p.m.

Chair Scheuer allowed continued discussion regarding the newly offered conditions that had been presented during Petitioner's closing arguments and other additional changes to the written proposed conditions of the Petition that the Petitioner had tendered related to the damselfly community outreach, construction related community outreach, detention basin analysis, "clean fill" definition, cultural preserve funding, and Conditions 2 and 15 regarding the conservation easement and the prohibition of disposing "clean fill" at the PVT landfill or any other construction and demolition landfill.

Mr. Yoshimori noted that he had a procedural point to make later in the proceedings and Chair Scheuer called on the County to make its closing arguments.

Mr. Pang stated that County supported the proposed Petition and argued how it conformed to the KSCP and why any new or altered proposed conditions needed to be very specific and detailed to allow the County to properly enforce them.

Commissioner Okuda requested a status update on the PVT landfill hearings that were being heard by the Honolulu Planning Commission. Mr. Takahashi, Deputy Director DPP stated that PVT had withdrawn its application.

Commissioners Okuda and Aczon requested further clarification on County's argument in support of the Petition.

Chair Scheuer noted that Mr. Tabata had not completed summarizing the proposed language changes that Petitioner was offering to make for the Commission to consider and permitted Mr. Tabata the opportunity to complete his argument.

Mr. Tabata described the changes to additionally be considered for Petitioner's proposed conditions to:

- Prepare a detailed "Detention Basin Analysis" using the appropriate computer modeling software to determine the size of the detention basin required for the proposed project and the associated design standards that should be applied.
- Better define the term "fill materials" as it applied to the construction phase of the proposed project.
- Better identify who would be responsible to provide funding for handling the various costs related to the proposed Cultural Preserve.
- Establish a community outreach program during construction to provide notifications and to address concerns and complaint handling.
- Establish an education and outreach program to raise awareness and inform the public of the need to protect the endangered damselfly habitat in the Petition Area.
- Ensure that the proposed Conservation Easement with accompanying restrictive covenants is to be recorded and established with a Land Trust that is accredited and in good standing with the Land Trust Accreditation Commission for long-term management of the area.
- Define how "clean fill" disposal resulting from the grading work in the Petition Area would be handled.

Commissioners Okuda, Giovanni and Chair Scheuer requested additional clarification on how "fill materials" would be defined, what community group would be involved in the Cultural Preserve discussions, and how communications between the project development construction companies and the community would be handled. Ms. Chow shared her perspective on the wording for the endangered species outreach.

There was no further discussion. Chair Scheuer noted that the Petitioner and County had completed their arguments and called for OP's closing argument.

OP

Ms. Apuna argued why OP supported the Petition and recommended its approval subject to OP's proposed condition.

Commissioners Okuda, and Aczon requested clarification on what OP thought might happen if the Petition was denied or approved, on how effective the proposed excavation and associated flooding/water damage mitigation plans were, on associated risks from flooding and rockfalls if the proposed project were approved, and safety controls or public restrictions for the Petition Area.

Chair Scheuer asked the Parties whether they had any objections to the revised Conditions that had been proposed and discussion on the matter ensued. Commissioner Wong commented that he would especially like to hear County's position.

Mr. Pang responded that County had no objections and noted that the drainage engineering condition for calculating capacities for drainage retention/detention etc. had to be detailed to facilitate proper review by the County's engineering and plan approval professionals.

Additional discussion occurred and Ms. Chow noted that Intervenor still needed to be heard. Chair Scheuer called for Mr. Yoshimori to make his presentation.

Intervenor

Mr. Yoshimori argued why the Petition should be denied and shared his group's concerns for the preservation of Conservation designated land, the threat to the damselfly habitat in the Petition Area, the potential destruction of historic sites, the violation of traditional/cultural concerns, the anticipated rockfall and flooding hazards that the public would be exposed to if the Petition were approved, the negative impact to the landscape and watershed, the boundary encroachments posed by the proposed development, and how the State plan and the environment would be compromised.

Commissioners Chang and Giovanni recognized the effort that Mr. Yoshimori and his group had expended to challenge the Petitioner and requested clarification on Intervenor's proposed engineering condition recommendations. Mr. Yoshimori responded that he had emailed his proposed language to the Commission.

Discussion ensued to determine how the information could be circulated to the Parties for their review.

Chair Scheuer declared a recess at 1:29 p.m. to allow retrieval and circulation of the Intervenor's emailed information and reconvened the meeting at 1:41 p.m.

Commissioners Okuda and Giovanni requested clarification on the Intervenor's argument on the Ka Pa`akai Analysis and engineering calculation methods applied by Petitioner.

There were no further questions for Mr. Yoshimori.

Final Commissioner Questions for the Parties

Commissioner Okuda requested clarification on Petitioner's Ka Pa`akai analysis. Mr. Tabata described how Petitioner had applied the 3-point test and made its conclusion that the analysis had been satisfactorily performed.

Commissioner Okuda also requested clarification on Mr. Pang and Ms. Apuna's perspective on the Ka Pa`akai analysis question. Mr. Pang responded that County was satisfied with Petitioner's response. Ms. Apuna described how OP deferred to the Petitioner's cultural expert witness, Dr. Watson, and shared her perspective on what appeals might arise in different decision outcome scenarios.

Commissioner Chang requested further clarification on the responses to Commissioner Okuda's questions.

Commissioner Wong sought clarification on whether Intervenor's proposed language regarding engineering calculations was acceptable to the Petitioner, County and OP. Petitioner had no objection to the language. County had no issue and stated that the language was acceptable. OP deferred to the Petitioner.

Chair Scheuer sought confirmation from Commissioner Giovanni that the proposed engineering language was in line with his expectations. Commissioner Giovanni acknowledged that it was acceptable and that it would better define matters for the County's project analysis team.

Chair Scheuer summarized the state of the proceedings and confirmed that Intervenor's email containing the language regarding the drainage basins had been received by the Commissioners. All attending Commissioners responded that they had received the email.

Chair Scheuer declared that the Commission would enter Formal Deliberations and confirmed that all Commissioners were prepared to deliberate and had reviewed all the associated documents of the case. The Commissioners all responded that they were prepared to deliberate.

Commissioner Okuda requested a procedural clarification on when discussion could occur. Chair Scheuer described that the Commission would be able to enter

discussions during the deliberation period. Commissioner Okuda withdrew his request and shared his perspective of the challenges to decision-making that he felt facing him.

Commissioners Cabral, Chang, and Chair Scheuer also expressed their decision-making challenges.

Commissioner Aczon moved to approve the proposed amendment with the new and revised conditions that Petitioner had offered (see transcript for specifics).

Commissioner Cabral seconded the Motion.

Chair Scheuer led a short discussion to clarify the number of votes required to grant the Petition and how an automatic approval would apply to the Petition if the Commission failed to grant it. Commissioner Giovanni sought clarification on what conditions would automatically apply to the Petition. Mr. Orodener described the standardized conditions that would apply if the Petition was automatically approved.

Commissioners Aczon and Cabral spoke in favor of the Motion.

Commissioner Okuda requested procedural clarification on the votes required to reject the Petition. Mr. Orodener deferred to Ms. Chow to respond. Ms. Chow provided her perspective on the number of votes required for approval and described how the statute was silent on denial.

Commissioner Aczon sought clarification on how the 7 members at the meeting's quorum needed to vote to achieve granting the Petition.

Commissioner Okuda described his quandary and stated that he would be voting against the Petition.

Commissioners Wong, Giovanni, Chang, Aczon, and Chair Scheuer shared their reasons for voting in support of the Motion.

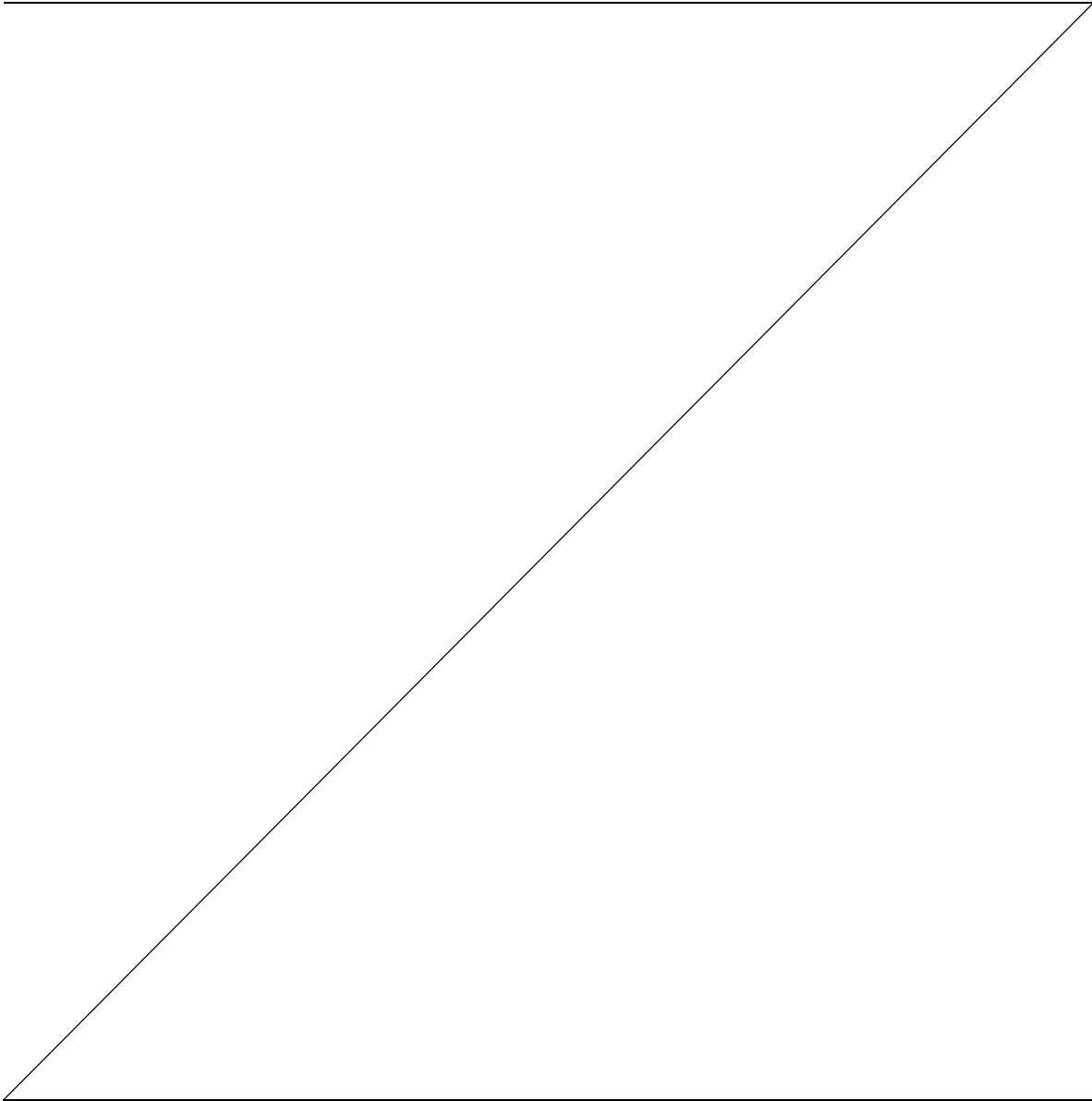
The Commission voted as follows:

Ayes: Commissioners Aczon, Cabral, Chang, Giovanni, Wong and Chair Scheuer.

Nays: Commissioner Okuda.

The Motion passed 6-1 (1 excused with 8 sitting Commissioners)

There was no further business for the day. Chair Scheuer stated that the Commission would reconvene via the ZOOM virtual platform at 9:00 a.m. September 24, 2020 and declared a recess of the proceedings at 3:07 p.m.



LAND USE COMMISSION
MEETING MINUTES

September 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

Thursday September 24, 2020 Meeting

https://us02web.zoom.us/webinar/register/WN_N1zx6dDkS_W7iq0j_ybCvQ

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. 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:

(Attending via ZOOM conference media)

Edmund Aczon
Nancy Cabral
Gary Okuda
Jonathan Scheuer
Arnold Wong
Dawn N. S. Chang
Lee Ohigashi
Dan Giovanni

COMMISSIONERS EXCUSED:

(8 seated Commissioners as of 10/1/19)

STAFF PRESENT:

(Attending via ZOOM conference media)

Daniel Orodener, Executive Officer
Linda Chow, Deputy Attorney General
Scott Derrickson, Staff Planner
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER:

(Attending via ZOOM conference media)

Jean McManus

CALL TO ORDER

LUC Meeting Minutes

September 24, 2020

See LUC Meeting Transcripts for further details

Chair Scheuer called the meeting to order at 9:00 a.m. All Commissioners acknowledged that they were present and able to communicate via the ZOOM program.

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

There were no objections to or questions on the procedures.

ACTION

SP97-390 COUNTY OF MAUI (CENTRAL MAUI LANDFILL)

Consider Motion for Reconsideration of Order for Fourth Amendment to State Special Permit (SP97-390) for the Proposed Central Maui Landfill Facilities project at TMK (2) 3-8-003:019 (por) and 020, Pu`unene, Maui, Hawai`i

APPEARANCES

Richelle Thompson, Esq. represented County of Maui- Department of Environmental Management ("DEM")

Eric Nakagawa, Director- DEM

Elaine Baker, Planner- DEM

Michael Hopper, Esq., Deputy Corporation Counsel, represented County of Maui Planning Department ("County")

Jordan Hart, Deputy Director, County

Kurt Wollenhaupt, Planner, County

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

Chair Scheuer announced that this was an action meeting on Docket No. SP97-390 Central Maui Landfill, updated the record and explained the procedures to be followed for the proceedings.

There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

There were no registered testifiers or written public testimony submitted.

Commissioner Ohigashi requested clarification on how County would be representing themselves. Mr. Hopper responded that the Department of Planning and the Department of Environmental Management were involved in the application and

described how each department would be individually participating in the proceedings. Chair Scheuer acknowledged the roles that the separate department entities would have.

PUBLIC TESTIMONY

None

OP Presentation

Chair Scheuer called for Petitioner OP's presentation.

Ms. Apuna described how OP had reviewed and evaluated the issued order for the docket and decided to file a Motion for Reconsideration and argued why Condition 23 should be revised or deleted from the Decision & Order issued for the Fourth Amendment.

Chair Scheuer asked if County and DEM had any public witness testimony to offer.

Mr. Hopper argued why County had filed a joinder to OP's Motion and why the Commission should decide in favor of OP's recommendations.

Commissioners Ohigashi, Chang, Okuda, Giovanni, Wong and Chair Scheuer sought clarification on OP's perspective of how it determined when a District Boundary Amendment ("DBA") was appropriate and when a Special Permit ("SP") was applicable, how "industrial parks" should be categorized and sited, the timeliness of OP's Motion, when D&O deadlines could have flexibility, what specific acreages were being affected and corrected by the OP Motion, how Maui County's Solid Waste Management Plan ("SWMP") factored into the proceedings, how facilities were being established for temporary, semi-permanent or permanent use, the long term benefits of applying the DBA process for landfill operations that seem to have a permanent use, and where the nearest urban designated areas were.

Ms. Apuna responded that she could provide the information for the nearest urban designated area.

Commissioner Wong stated his concerns that were raised by Commissioner Chang's comments regarding the timeliness of OP's Motion and moved for an Executive

Session to confer with the Board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities as they applied to considering the matter. Commissioner Aczon seconded the motion. By roll call vote, the Commission unanimously (8-0) agreed to enter Executive Session.

The Commission entered into Executive Session at 10:03 a.m. and reconvened at 11:04 a.m.

Chair Scheuer assessed the progress of the proceedings and summarized the procedural issues that were in question. Mr. Orodenker recapped the proper filing time criteria involved for a motion for reconsideration to be considered by the Commission and the initial circumstances surrounding OP's bringing its motion forward to correct the amount of acreage stated in the SP Decision and Order.

Commissioner Ohigashi moved that the Commission dismiss OP's Motion due its untimeliness. Commissioner Chang seconded the Motion.

DISCUSSION

Commissioner Okuda stated that he was in favor of the motion provided his reasoning for supporting the Motion.

Commissioner Chang stated her support for the Motion and shared her perspective on how a future agenda might describe the corrective action that the Commission needed to take to correct the acreage amounts in the Decision and Order.

Chair Scheuer allowed County's request for clarification on the Commission's action. Mr. Hopper and Ms. Thomson requested clarification on the time frames that were part of the Motion and the administrative rules involved. Chair Scheuer shared the time criteria and the applicable portions of HAR § 15-15-96.1 that were involved in the discussion and offered alternatives for County to further pursue.

Chair Scheuer also allowed Ms. Apuna to question whether a verbal motion would be allowed. Chair Scheuer denied allowing the verbal motion and referred back to HAR § 15-15-96.1.

Commissioner Chang commented on her concerns regarding the "Sunshine Law" and the need to correctly state the acreage involved in the Decision and Order. Discussion ensued and Commissioner Aczon noted that an active Motion to Dismiss

OP's Motion needed attention. Chair Scheuer acknowledged Commissioner Aczon's comment and explained his intent with allowing the County, DEM and OP to provide input to the Commission.

Chair Scheuer directed that LUC staff review and put this item on the next meeting agenda in a format that would better address the concerns that had been raised at this hearing. Mr. Orodener responded that LUC staff would.

There was no further discussion. Chair Scheuer called for a roll call vote on the Motion. The Commission voted unanimously (8-0) in favor of the Motion.

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

Chair Scheuer adjourned the meeting at 11:21 a.m.