

LAND USE COMMISSION
MEETING MINUTES

February 10-11, 2021 – 9:00 a.m.

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

PLACE: Zoom Webinar Virtual Meeting
Meeting Link for Wednesday, February 10, 2021

<https://us02web.zoom.us/j/86314943980?pwd=MTR5TWRoMmZNT2dJQ0lILzhsS2VsUT09>

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

COMMISSIONERS EXCUSED:

(8 seated Commissioners as of 10/1/19) None

STAFF PRESENT:

(Attending via ZOOM conference media) Daniel Orodener, Executive Officer
Linda Chow, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha A. Quiñones, Program Specialist

COURT REPORTER:

(Attending via ZOOM conference media) Jean McManus

CALL TO ORDER

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

APPROVAL OF MINUTES

Chair Scheuer stated that the first agenda item was the approval of the January 28, 2021 minutes and asked if there had been any public testimony submitted and if there were any corrections needed to be made. There was no public testimony and no corrections to be made. Commissioner Cabral moved to adopt the minutes. Commissioner Ohigashi seconded the motion. There was no discussion.

By a show of hands, the January 28, 2021 minutes were approved unanimously (8-0).

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

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from February to June 2021 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.

ACTION - A02-737 University of Nations BENCORP (HAWAII)

Chair Scheuer stated that this was an action meeting on Docket No. A02-737 University of Nations Kona, Inc.'s to consider University of the Nations Kona, Inc.'s, (UNK) Motion Requesting the Land Use Commission to:

- A. Be the Accepting Authority for an Environmental Impact Statement (EIS)
- B. Determine whether the proposed Action warrants the preparation of an Environment Impact Statement Preparation Notice

Chair Scheuer updated the record and described the procedures for the hearing and asked if there were any questions on the procedures. There were no questions on the procedure.

APPEARANCES by:

Derek Simon, Esq., representing the Petitioner (UNK)
Jeff Overton, G70 Planning Consultant Group representative, (UNK)
Zendo Kern, Planning Director, County of Hawai'i (COH)
Diana Mellon-Lacey, Deputy Corporate Council COH
Maija Jackson- Division Managers; Jeff Darrow, Deputy Director; County of Hawai'i (COH)
Brian Yee, Esq., Deputy Attorney General representing the Office of Planning (OP)
Rodney Fenekushi, (OP) Land Use Administrator

Chair asked Mr. Simon if he had reviewed HAR 15-15-45.1 with regard to the reimbursement of hearing expenses. Mr. Simon stated the Petitioner was aware of the policy on reimbursements and agreed to abide by it.

PUBLIC TESTIMONY

Chair asked if any written public testimony had been submitted for this matter. LUC staff reported that no testimony had been received.

Chair Scheuer asked if there were any attendee who wished to testify on the matter. There were none.

Chair Scheuer asked if the Commissioners had any disclosure. There were no disclosures.

Chair Scheuer disclosed that his wife works for the same consultant planning firm as the Mr. Overton but was not part of or involved in the proposed project in any way. Chair Scheuer stated that he felt he could be fair and impartial in this matter and asked the Parties and his fellow Commissioners if there were any objections. There were none.

PETITIONER

Chair Scheuer asked Mr. Simon to proceed with the Petitioner's Presentation.

Mr. Simon argued for the Commission to consider the motion and agree to be the accepting authority to process an EIS for this project and authorize the UNK to go directly to the preparation of an environmental impact statement.

Chair Scheuer asked if the Commissioners had any questions for the Petitioner. There were none.

HAWAII COUNTY

Chair Scheuer had Hawaii County make its presentation.

Ms. Diana Mellon-Lacey stated that the county's position was reflected in their February 3rd filing and argued in support of the Motion.

Chair Scheuer asked if there were any questions from the Commissioners for Hawaii County. There were none.

OFFICE OF PLANNING

Chair Scheuer asked Mr. Yee for his presentation. The Office of Planning had nothing to add and had no objections.

Chair Scheuer asked the Commissioners for any questions for the Office of Planning. There were none.

Chair offered the opportunity to Mr. Simon to do any redirect or final comments.

Mr. Simon thanked the County and the Office of Planning for their support.

DELIBERATION

Chair Scheuer entertained a motion to either grant or deny University of the Nation Kona's motion requesting A) the LUC to be the accepting authority for an environmental impact statement and B) to determine that the proposed action warrants the preparation of an EIS to be initiated by the preparation of an EIS preparation notice.

Commissioner Cabral moved to grant UNK's motion. Commissioner Okuda second the motion.

Commissioner Wong asked to make a friendly amendment to the motion to authorize the Executive Officer to send notice to the Office of Environmental Quality Control (OEQC) regarding this matter. Commissioners Cabral and Okuda accepted the friendly amendment.

VOTE

There was no further discussion. Chair directed Mr. Orodener to poll the Commission. By a roll call vote, the Commission unanimously voted to pass the Petitioner's Motion (8-0).

DISCUSSION

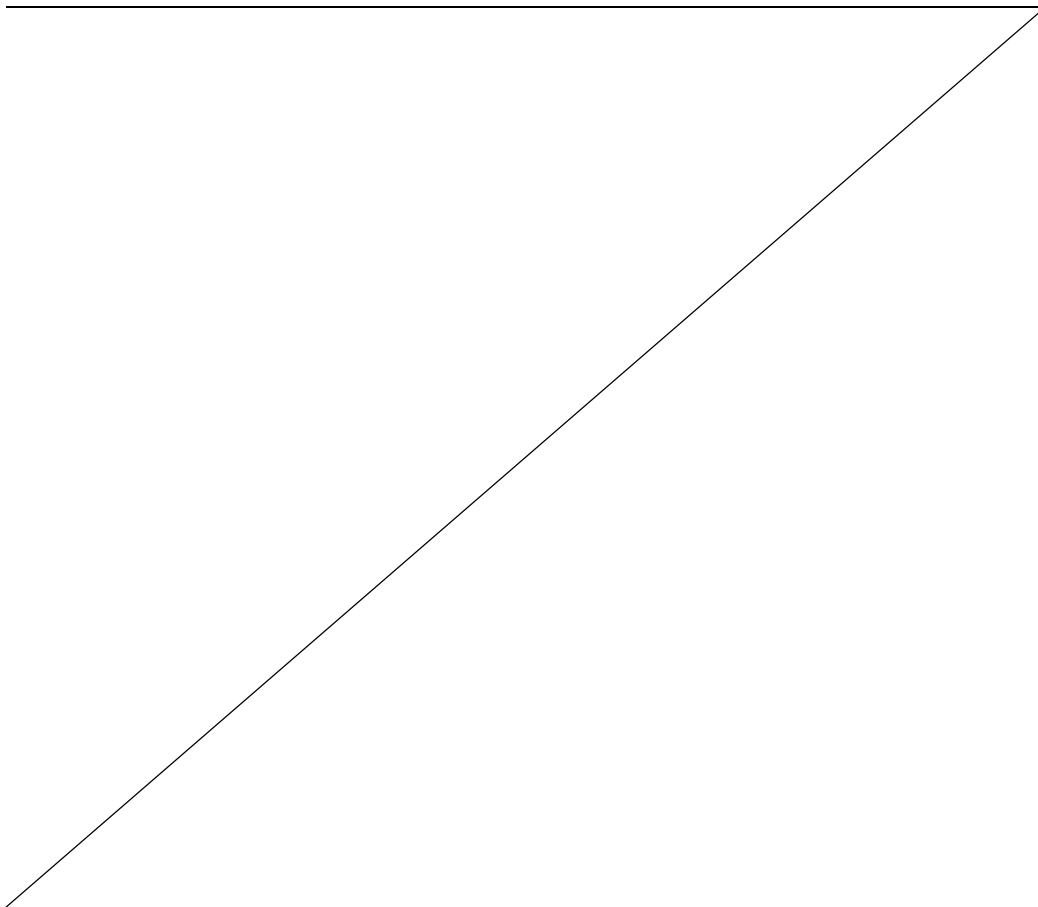
Commissioner Cabral expressed her concern about the efficiency of the process by which the LUC becomes the accepting authority for an EIS.

DAG Linda Chow provided alternatives for the LUC to consider for handling EIS processing/administrative matters.

Commissioner Okuda, Aczon, Chang and Chair Scheuer opined on the importance of continuing the current process to maintain transparency with the public.

Chair Scheuer stated that the next agenda item on Important Agricultural Land would start at the February 11, 2021 meeting. There were no objections.

Chair Scheuer declared a recess at 9:34 a.m. and that the meeting would resume via the ZOOM platform at 9:00 a.m. February 11, 2021.



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(Attending via ZOOM conference media) Jean McManus

CALL TO ORDER

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

Chair Scheuer asked if there was any public testimony on this matter. The LUC stated that it had received written testimony from Department of Agriculture (DOA) and Office of Planning (OP).

Chair Scheuer asked Earl Yamamoto from DOA and Bryan Yee from OP if there were any comments that they wish to make. Comments were deferred to after the Presentation.

Chair asked if there was anyone in the Public who wished to testify. There was no one.

Chair Scheuer asked Mr. Orodener to brief the Commission on Agenda Item V.

AGENDA ITEM V.

ACTION - CITY AND COUNTY OF HONOLULU IMPORTANT AGRICULTURAL LANDS (IAL) DESIGNATION

- To Inform the Commissioners and the Public on the Process and Procedures Required to Review and Render a Decision on a County IAL Submittal pursuant to Part III of Chapter 205 HRS and Subchapter 17 of Chapter 15-15 HAR.

Mr. Orodener shared how the LUC staff planned to view and handle the Oahu IAL submittal and described how it would differ from a private party submittal.

Commissioner Okuda questioned the decision-making process and level of review the LUC would apply.

Commissioner Ohigashi had concerns about the potential for multiple landowners to object to their IAL designation and the process applied to categorize them.

Commissioner Wong questioned how the 365 days' timeline would change if IAL cases had to be individually handled.

Commissioner Chang questioned the procedural steps involved in the County's IAL process and how the IAL matter could properly be addressed by the Commission and whether the Commission would handle the IAL actions by districts, parcels or by each TMK.

Commissioner Ohigashi sought clarification on whether the Commission's actions were rulemaking or contested case processes.

Chair declared a recess at 10:04 a.m. and reconvened the meeting at 10:14 a.m.

Discussion ensued to clarify the Commission's position on handling of the County's IAL submittal. Commissioners Ohigashi and Chang sought Ms. Chow's perspective on how the Commission could best proceed on this matter. Ms. Chow offered various alternatives that the Commission could consider.

Chair Scheuer asked the Commissioners if there was anything further on this agenda item or the briefing by Mr. Orodener. There were none.

Chair moved to the next agenda item.

DISCUSSION ON LUC'S REPRESENTATION BY THE ATTORNEY GENERAL'S OFFICE

Chair Scheuer opened the floor to discussion on this agenda item.

Commissioners Wong, Okuda, Aczon, Ohigashi, Giovanni and Cabral all commented about their preference on working with one dedicated Attorney General instead of rotating Attorney Generals and the importance of maintaining institutional knowledge and memory to better address the needs of the Commission.

Chair Scheuer expressed that he and Mr. Orodener would address the Commission's issues to the Attorney General herself.

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

Chair Scheuer declared the meeting adjourned at 10:51am.