

LAND USE COMMISSION
MEETING MINUTES

March 10-11, 2021 – 9:00 a.m.

Pursuant to Exhibit F of the Governor’s Seventeenth Proclamation Related to the COVID-19 Emergency, the Commission conducted its meeting using interactive conference technology.

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

https://us02web.zoom.us/webinar/register/WN_ch2t6gjaRAeY_zBBXkedYw

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

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

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Bill Wynhoff, Deputy Attorney General (DAG)
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha Quinones, Program Specialist

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 February 24, 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 Wong moved to adopt the minutes. Commissioner Cabral seconded the motion. There was no discussion.

By a show of hands, the February 24, 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 March 2021 to July 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

Chair Scheuer stated that this was an action regarding docket: **A11-791 HG Kauai Joint Venture LLC– HoKua Place (Kaua`i); Petition To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kaua`i, State of Hawai`i, Consisting of 97 Acres from the Agriculture and Rural District, to the Urban District, Tax Map Key No. (4) 4-3-03:POR 01 –**

APPEARANCES:

William Yuen, Esq., representing Petitioner HG Kauai Joint Venture, LLC's (HG)
Janna Ahu, Esq., representing Petitioner HG Kauai Joint Venture, LLC's (HG)

Jake Bracken- Petitioner Representative
Chris Donahoe, Deputy County Attorney representing Kaua`i Planning Dept. (County)
Jodi Higuchi Sayegusa, Deputy Director, County
Brian Yee, Esq., Deputy Attorney General, Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator, OP
Bianca Isaki, Esq. and Lance Collins, Esq., representing Liko Martin (Intervenor)
Liko Martin, Intervenor

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

Chair Scheuer asked if the Commissioners had any disclosures to make.

Commissioner Chang and Chair Scheuer made disclosures related to previous and future work relationships and stated that they could remain fair and impartial in this matter. There were no objections from the parties to their continued participation.

Chair Scheuer summarized the names of all the written testimonies received on this docket, a total of 158, and called for public witnesses.

PUBLIC WITNESSES

For brevity, the minutes will provide a list of the witnesses in the order they testified. ("Supports" notation indicates that testimony was in favor of the LUC granting the Petition. "Opposes" notation indicates that testimony was against the LUC granting the Petition. "Other" notation indicates that the testimony was unclear on accepting or denying the Petition. (Parentheses indicate organizational representation)

1. Les Drent- resident, agricultural business owner. Opposes
2. Fern Holland- resident, environmental scientist. Opposes

Commissioners Giovanni, Cabral and Chair Scheuer made additional disclosures that they knew Mrs. Hammerquist (public witness) socially. There were no objections to the disclosures by the Parties.

Bridget Hammerquist stated that she was sharing her computer access and hosting 5 witnesses (witnesses #3-7):

3. Joseph Kamai- gatherer and practitioner. Opposes
4. Puanani Rogers- resident and community leader. Opposes
5. Noelani Josselin- resident and cultural gatherer. Opposes

Chair Scheuer declared recess at 11:00 a.m., reconvened the meeting at 11:12 a.m. and called for the next witness.

6. Rhoda Libre- resident and representative for Kauai Westside Watershed Council.
Opposes

Petitioner, County, OP and Intervenor questioned the witness about the “*heiau*” that she disclosed during her testimony and whether it was in the petition area.

Commissioners Chang and Chair Scheuer asked the witness to describe the religious practices and cultural significance associated with the Petition Area.

7. Kamal Hasan- resident and civil engineer. Opposes
8. Alan Hoffman- resident. Opposes
9. Hope Kallai- resident. Opposes

Chair Scheuer declared recess at 12:09 p.m., reconvened the meeting at 1:01 p.m. and called for the next witness.

10. Gabriela Taylor- resident. Opposes
11. Judy Dalton- resident and Sierra Club Kauai Group representative. Opposes

Commissioners Chang, Okuda, Giovanni and Chair Scheuer requested clarification on gathering and cultural practices, nearby wetlands, endangered species, traffic, sewage spills, location of the *heiau* and whether community outreach was performed by the developer.

Chair asked if there were any other attendees who wished to testify. There were none. Chair Scheuer declared the public witness portion of the proceedings closed.

Chair Scheuer moved on to admitting the Parties’ exhibits to the record.

EXHIBITS

Petitioner

Mr. Yuen moved to enter into evidence Petitioner’s Exhibits “1” - “38”. No objections.

County of Kauai

Mr. Donohoe moved to enter into evidence County’s Exhibits “A” - “E”. No objections.

Office of Planning

Mr. Yee moved to enter into the record OP's Exhibits "1", "2A", "2B" and "3"- "16". No objections.

Intervenor

Chair Scheuer stated that Intervenor's Position Statement had not been submitted with the proposed Exhibit list and allowed the Intervenor to make an offer proof for the relevance of each exhibit.

Mr. Collins clarified that Intervenor's Exhibits were referenced in witness statements and requested to move Exhibits "I-1" through "I-124" into evidence.

Chair asked if there were any objections.

Petitioner

Mr. Yuen objected to Intervenor's Exhibits 53-56, 58, 59, 99.

County

Mr. Donohoe objected to Intervenor's Exhibits 6,10,17 and 53-56, 58, 59, 99

OP

Mr. Yee had no objections.

Discussion ensued to determine which exhibits were to be admitted and whether objections were based on relevance or hearsay.

Mr. Yee shared his perspective on the admission of the Intervenor's Exhibits.

Chair asked if there were any objections or comments on the admittance of exhibits. There were none.

Chair Scheuer declared recess at 1:59 p.m., resumed meeting at 2:10 p.m. and called the next witness.

Chair overruled Petitioner's objection on hearsay and directed Intervenor to produce in writing the relevance of the rest of the exhibits objected to.

Chair Scheuer moved on to Petitioner's presentation.

PETITIONER PRESENTATION

Mr. Yuen called Mr. Jacob Bracken, CFO of Roche Enterprises and CEO of HG Management, LLC. (Exhibit 11 was used via PowerPoint).

Mr. Bracken described his background and professional capacity within HG Management and Gallup Land Partners and with the HoKua Place project's planning, financing and development; and described the commitments and consideration given to consider County and OP's Conditions.

Questions for Mr. Bracken from the Parties

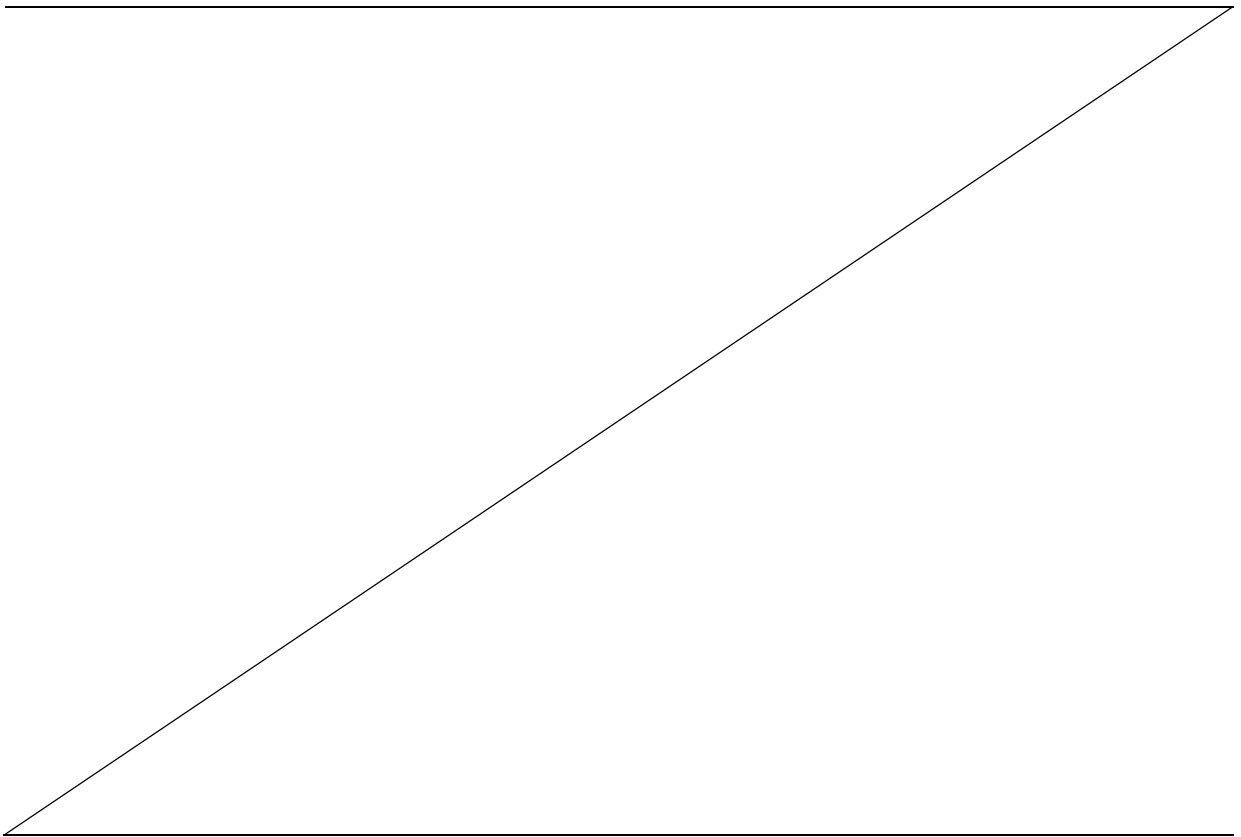
County

Mr. Donohoe requested clarification on Petitioner's commitment for an updated TIAR, plans for the relocation of County Emergency Departments and the incremental redistricting plan.

OP

Mr. Yee requested clarification on the ownership and business structure of HG Kauai and Petitioner's commitments regarding affordable housing units, wastewater treatment plans and other sustainability measures.

Chair Scheuer declared recess at 3:00pm till 9:00 am March 11, 2021 and stated that the proceedings would resume with the cross examination of Mr. Bracken.



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COMMISSIONERS PRESENT: Jonathan Scheuer
(Attending via ZOOM conference media) Nancy Cabral
Gary Okuda
Arnold Wong
Dawn N. S. Chang
Dan Giovanni
Lee Ohigashi
Edmund Aczon (arrived at 9:11am)

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

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending via ZOOM conference media) Bill Wynhoff, Deputy Attorney General (DAG)
Julie China, Deputy Attorney General
Scott Derrickson, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha Quiñones, Program Specialist

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.

ACTION (Continued)

Chair Scheuer moved on to continued action regarding docket: **A11-791 HG Kauai Joint Venture LLC– HoKua Place (Kaua`i); Petition To Amend the Land Use District Boundary of Certain Lands Situated at Kapa`a, Island of Kaua`i, State of Hawai`i, Consisting of 97 Acres from the Agriculture and Rural District, to the Urban District, Tax Map Key No. (4) 4-3-03:POR 01 –**

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Jodi Higuchi Sayegusa, Deputy Director, County
Brian Yee, Esq., Deputy Attorney General, Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator, OP
Bianca Isaki, Esq. and Lance Collins, Esq., representing Liko Martin (Intervenor)

PETITIONER WITNESS

Questions for Mr. Bracken from the Parties

OP (continued)

Chair Scheuer called for Mr. Yee to complete his cross examination of Mr. Bracken.

Mr. Yee requested clarification on the petition area boundaries, handling of archeological sites, Petitioner's representation regarding OP's Conditions and the plans for backbone infrastructure completion.

OP had no further questions for Mr. Bracken.

Chair called for Intervenor to begin their cross examination of the witness.

Intervenor

Ms. Isaki requested clarification on the planned water quality monitoring program, the title of the property, the project's consistency with the Kapa'a- Wailua Community Development Plan, the Department of Transportation dedication, Petitioner's Exhibit 38, Petitioner's line of credits, the spine road construction, wetland protection plan and proposed homeowner association.

Chair Scheuer declared recess at 9:54 am and resumed meeting at 10:06 pm.

Ms. Isaki resumed questioning the Witness for further details regarding the condominium plan for the project, and Petitioner's commitments to the County, management of historic property, water reservoir, relocation of police departments and improvements to the Kapa'a bypass road.

Intervenor had no further questions.

Questions for Mr. Bracken from the Commissioners:

Commissioner Okuda explained the Commission's duty regarding development projects and requested clarification on Petitioner's representations on traffic improvement costs, sewage, archeological monitoring, protection of wetlands and the total budget of the project detailed in Petitioner's Exhibit 6- Financial Statements HG Kauai.

Chair Scheuer declared recess at 10:57am and reconvened the meeting at 11:07pm.

Commissioner Okuda continued to seek clarification on the ownership and title insurance for the property, its title report and the traffic study that had been conducted.

Commissioner Giovanni asked for clarification on the list of Petitioner's Witnesses and Consultants and when the expert witnesses would be presented. Mr. Yuen verbally provided a detail of the list to the Commission and stated that he plans to add a witness.

Chair provided his expectations for the Parties to provide the Commission with updated timeline for Exhibit, Witnesses and updated procedures. Chair asked if there were any objections.

Mr. Yee requested if the Chair could have Petitioner provide a revised Exhibit list. Chair Scheuer acknowledged his request.

Commissioner Chang referred to Exhibit 11 and asked for clarification on Petitioner's previous experience in Agricultural Development, the origin of the company's name, its community engagement efforts and affordable housing plans.

Chair declared recess at 11:59am and reconvened the meeting at 1:00pm.

Commissioner Chang continued her questioning on the planned handling of native Hawaiian burials, affordable housing plans and whether Petitioner would consider a performance bond commitment.

Commissioner Wong and Aczon requested clarification on Petitioner's financials, and member's equity values and what plans for the land were in place if the petition was not approved.

Commissioner Aczon rejoined the meeting at 2:00pm

Chair Scheuer declared recess at 2:05pm and resumed meeting at 2:20pm

Commissioner Cabral requested clarification on the development of the rest of the lots and what affordable housing and associations plans were involved.

Commissioner Giovanni requested clarification on the property outline, the solar farm lease in property and additional financial details. He encouraged Mr. Bracken to provide a more detailed estimate of the project costs to the Commission and inquired about the Petitioners community outreach commitment and suggested that counsel be consulted and to come back with a plan.

Chair Scheuer shared his concerns about affordability, ownership of HG Kauai JV, LLC and the solar farm, the title report exceptions and how to distinguish what was applicable to the petition area.

Chair Scheuer expanded on the subjects of affordability, retention of ownership and restrictions on ownership for Kauai residents and asked the witness for his understanding of the general roles of the LUC versus County and the issue of Public Trust.

Chair Scheuer asked if there were any more questions for the witness.

Commissioner Giovanni requested clarification on predator proof fencing, protection of watersheds and native birds and the associated costs involved.

REDIRECT

Chair Scheuer asked for Mr. Yuen for his redirect.

Mr. Yuen asked to reserve his right to redirect.

Chair Scheuer declared meeting adjourned at 3:23pm.