

LAND USE COMMISSION
MEETING MINUTES

May 12-13, 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, May 12, 2021

(https://us02web.zoom.us/webinar/register/WN_KQotXsnLQR-xpRif1PknCg)

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 (excused from 10:00-10:56 a.m.)
Dan Giovanni
Lee Ohigashi (did not leave meeting as anticipated)
Edmund Aczon

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

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

COURT REPORTER: Rita King
(Attending via ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:02 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 April 14-15, 2021 and April 28-29, 2021 minutes. LUC staff stated that the minutes for April 28-29 were not ready for approval at this meeting. Chair Scheuer asked if there had been any public testimony submitted and if there were any corrections needed to be made on the April 14-15, 2021 Minutes. There was no public testimony or corrections to be made. Commissioner Cabral moved to adopt the minutes. Commissioner Ohigashi seconded the motion.

Commissioner Okuda asked to recuse himself from voting on the minutes.

Discussion ensued to clarify which minutes Commissioner Okuda was asking to be recused from voting on. It was resolved that Commissioner Okuda would participate on voting on the April 14-15, 2021 minutes.

By roll call, the April 14-15, 2021 minutes were approved unanimously (8-0).

Chair Scheuer moved to the next agenda item and called for Mr. Orodenker to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the tentative LUC meeting schedule from May 2021 to July 2021 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.

CONTINUED ACTION

Chair Scheuer stated that this was a continued action meeting 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)
Chris Donahoe, Deputy County Attorney representing Kaua`i Planning Dept. (County)

Lee Steinmetz (Kaua'i County)
Jodi Higuchi Sayegusa, Deputy Director, County
Brian Yee, Esq., Deputy Attorney General, Office of Planning (OP)
Alison Kato, Esq., Deputy Attorney General, Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator, OP
Bianca Isaki, Esq., representing Liko-o-Kalani Martin (Intervenor)
Lance Collins, Esq., representing Liko-o-Kalani Martin (Intervenor)
Liko-o-Kalani Martin, Intervenor

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

Chair Scheuer called for Mr. Yuen to share his order of witnesses.

Chair stated that additional Public Testimony had been received on this matter.

PETITIONER'S PRESENTATION Continued

Cross-examination of Petitioner's Witness followed.

(1) Ricky Cassidy- Real Estate Market Consultant.

County

Mr. Donahoe requested clarification on the statistics and trends for housing needs on Kaua'i and estimated affordability of the project.

OP

Ms. Kato requested clarification on the market rate used relative to the percent of AMI (120%-140%) and housing market trends.

Chair declared a recess at 9:48 a.m. and resumed meeting at 10:00 a.m.

Commissioners Chang excused herself from the meeting with the permission of the Chair. (7 Commissioners present).

Intervenor

Ms. Isaki requested clarification on Kauai Housing Market Trends, the Economic Benefits to Kaua'i estimated to be generated by the proposed project, the local market studies that had been performed and who the Development Team members were.

Questions from the Commissioners

Commissioner Wong and Okuda questioned whether approved housing units versus units not built and rentals were considered as part of the market study, and if trends of housing placement to reduce traffic were used.

Commissioner Chang rejoined the meeting at 10:56 a.m. (8 Commissioners now present).

Chair Scheuer declared recess at 11:01 a.m. and resumed the meeting at 11:11 a.m.

Commissioners Giovanni and Chang requested clarification on the Market's study period of relevance, the slow-down of the economy due to the pandemic, financial qualification of buyers, the HUD program for this development, anti-flipping regulations, the market demand of units, consideration for high priced Ag lots with a farm activity requirement and recovering the high cost of the infrastructure.

Chair Scheuer declared recess at 12:08 p.m. and resumed meeting at 1:00 p.m.

Mr. Steinmetz from the County joined the meeting after the recess.

Commissioner Cabral, Okuda and Chang further questioned the witness on farmhouse dwellings, Ag lots, the absence of rental units in the project, the mix of affordable and market units in the multi-family units and the "bluff" section of the Petition Area.

Chair Scheuer sought Mr. Cassidy's perspective on how the pandemic affected the developer's ability to meet the deadlines of the project, the desirability of the multiple family units, non-local base developers' success in delivering large projects in Hawaii.

There were no further questions for this witness. There was no redirect.

(2) Nancy McMahon- Archeologist.

Ms. McMahon described her professional experience and summarized her Archaeological Assessment Findings and stated that no burials were found.

Chair Scheuer declared recess at 2:06 p.m. and reconvened the meeting at 2:17 p.m.

Questions for Ms. McMahon

County

Mr. Donahoe requested clarification on burials discovered during development or construction, methods for community outreach regarding traditional cultural practices and field inspections performed in 2012.

OP

Mr. Yee sought additional information on the physical inspection of the petitions area, visits to the area after the claims of the *heiau*, possible burial areas, the geology of the area, contact made with the people in the community, hunting and gathering of native Hawaiian plants for cultural practices.

Chair Scheuer declared recess at 3:06 p.m. and reconvened the meeting at 3:16 p.m.

Intervenor

Ms. Isaki requested clarification on land commission awards as opposed to crown lands in the area, the Archeological survey of the area, and the lack of evidence of cultural and traditional fishing cultural practices.

Commissioner Wong left the meeting at 3:51 p.m. (7Commissioners present).

Ms. Isaki requested to share her screen. Discussion ensued to determine if the Intervenor could share a document that was not put into evidence and if the line of questioning from the Intervenor was appropriate.

Chair Scheuer directed the Intervenor to cease the previous line of questioning. There were no further questions from Intervenor.

Chair Scheuer expressed his concerns about the length of the proceedings and sought when Ms. McMahon would be available to continue to take questions from the Commissioners.

Mr. Yuen described the difficulties involved with Ms. McMahon's continued questioning on a different day.

Chair Scheuer extended time of the proceeding to end cross examination of the witness and declared a recess at 4:09 p.m. and reconvened at 4:15 p.m.

Questions from the Commissioners

Commissioner Chang sought clarification about the use of 3 trenches for the archeological assessment, on the land use prior to sugar plantations, the conclusions about the absence of burials, the possibility of area of being habited by royalty, the location of the marshlands in relationship to the parcel area and Native Hawaiian rights and practices.

Chair Scheuer requested clarification on the reference to the 1778 Hawai'i Constitution, types of *heiaus*, runoffs from the development area, the cultural impact assessment, burials in non-sandy soil and whether there was any significance to the name HoKua.

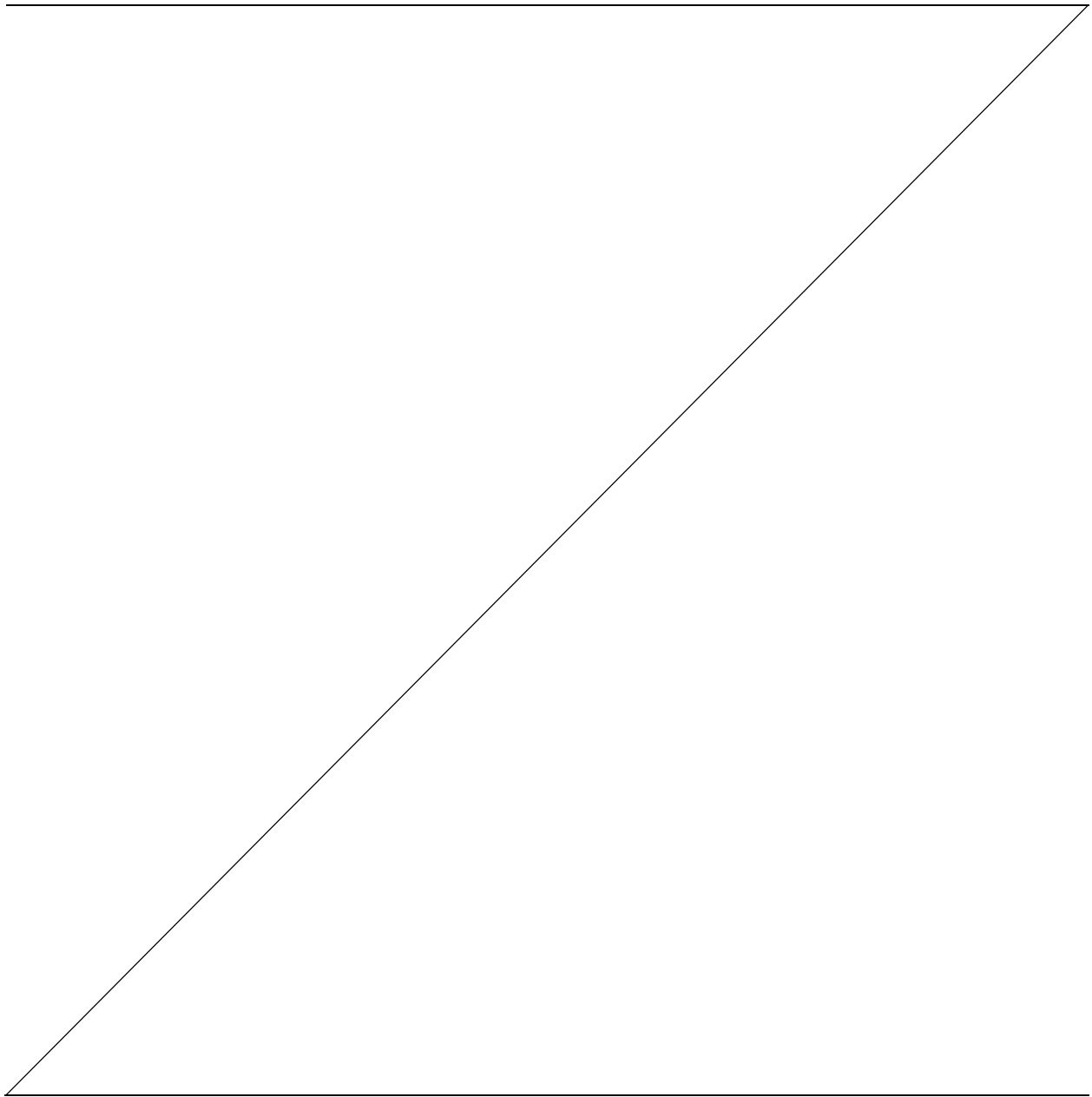
Redirect

Mr. Yuen sought clarification on whether any human remains were at Ms. McMahon's residence and if any of the community testimonies had influenced a change to the conclusions to the Cultural Assessment.

Ms. Isaki requested clarification on a federal report which stated human remains were at Ms. McMahon's home office.

There were no further questions for this witness.

Chair Scheuer called recess at 4:57 p.m. until 9: a.m. on May 13, 2021.



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PLACE: Zoom Webinar Virtual Meeting
Meeting Link for Thursday 13, 2021

https://us02web.zoom.us/webinar/register/WN_ued1AyZgTe6LzBIFWsRCyQ

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 (excused from 12:00-2:00pm)
Lee Ohigashi (excused from 9:30-10:30 a.m.)
Edmund Aczon

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

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

COURT REPORTER: Rita King
(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. Commissioners Ohigashi was excused from 9:30 a.m. to 10:15 a.m. Giovanni 12:00 p.m. to 2:00 p.m.

Chair Scheuer proposed changes to the Agenda to schedule Item VIII to 9:30 a.m. to accommodate Commissioner's Ohigashi attendance.

Commissioner Giovanni moved to adopt the change to the Agenda. Commissioner Wong second the motion. There was no further discussion.

Chair Scheuer asked Mr. Orodener to poll the Commission. By a roll call vote, the motion was approved unanimously (8-0).

Commissioners Ohigashi, Wong and Chang disclosed that they had reviewed the record for the portion of the hearing missed on May 12th, 2021.

CONTINUED ACTION

Chair Scheuer stated that this was a continued action meeting 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
Alison Kato, Esq., Deputy Attorney General, Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator, OP
Bianca Isaki, Esq., representing Liko-o-Kalani Martin (Intervenor)
Lance Collins, Esq., representing Liko-o-Kalani Martin (Intervenor)
Liko-o-Kalani Martin, Intervenor

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures.

Discussion ensued to assess the procedures and timeline of the day and the possibility of recalling Petitioner's Witness, Mr. Bracken.

Commissioner Okuda prompted the Petitioner to present all the evidence for the record before conclusion of the evidentiary portion of the proceeding.

Chair Scheuer sworn in the next Petitioner's witness

(1) Thomas Nance- Hydrologist, Water Resource Engineer.

Mr. Nance described his work experience and described the water supply requirement of HoKua Place and summarized his water study conclusions and recommendations for the proposed well.

Chair Scheuer called for a recess from the HoKua Place matter and moved to the next agenda item, Legislative update.

LEGISLATIVE MATTERS AFFECTING THE LUC

Commissioner Ohigashi left the meeting at 9:34 a.m. (7 Commissioners present).

Chair Scheuer asked if there were any written or public testimony on Agenda Item VIII. There was none.

Mr. Orodener provided an update of the Legislative matters that affect the LUC such as Interactive Technology for meetings, amendment related farm dwellings, LUC's moving into the Office of Planning and Sustainability and Native Hawaiian training for Commissioners.

Questions from the Commissioners

Commissioner Okuda, Cabral, Chang, Giovanni commented on the interactive technology meetings and in person meeting pros and cons.

Commissioner Giovanni and Aczon had additional questions about the Commissioner training course and LUC's budget restoration.

Chair Scheuer declared recess at 10:06 a.m., reconvened the meeting at 10:20 a.m. and called for County's questioning of Mr. Nance.

Commissioner Ohigashi rejoined the meeting at 10:21 a.m. (8 Commissioners present).

HOKUA PLACE CONTINUED ACTION

Questions from the Parties

County

Mr. Donahoe requested clarification on the water supply for the project, the exploratory well, the new proposed well costs and effects, the transmission lines for the proposed development, and potential mitigations if there was an issue.

OP

Ms. Kato requested clarification on the existing well on the property, the need for a new well, the existence of a water plan by the County and the water requirements for the proposed project.

Intervenor

Ms. Isaki sought clarification on the water quality testing, the wells in the Lihue basin, the pumping standards that were applied, Petitioner's Exhibit 23 and the Water Master Plan.

Questions from the Commissioners

Commissioner Giovanni, Okuda, Aczon and Ohigashi had questions related to the Makai well and approval process; neighboring landowners' options to protest; water resources included in the EIS; the water supply; adverse effects to the environment due to drilling and the testing performed prior to drilling the well.

Chair Scheuer declared recess at 11:29 a.m. and reconvened at 11:35 a.m.

Chair Scheuer requested clarification on the UIC line, the proposed drinking water source, the guidelines for drinking water lines, surveys done about potential contamination in the area, and the Water Commission's opinion on the aquiclude.

Redirect

Mr. Yuen asked Mr. Nance to clarify information about his conclusion on the water source sufficiency for the project Report from 2012.

Recross

County and OP had no recross-examination of the witness.

Ms. Isaki requested clarification on Mr. Nance's conclusions on his report.

Chair Scheuer declared a recess at 11:57 a.m. and reconvened the meeting at 1:00 p.m.

Mr. Yuen called his next Witness

(2) Ron Agor- Architect and Land Use Planner.

Mr. Agor described his professional experience and how HoKua Place conformed to the Kauai General Plan and blended with its location and wetlands.

Mr. Collins objected to Mr. Agor's style of presentation. Discussion ensued to investigate the objection and after due consideration, Chair Scheuer overruled the objection.

Mr. Agor continued with his testimony in the areas of noise control, air quality, government and utility service, public school's capacity, State plan compliance, coastal zone management compliance, and Urban District standards.

Mr. Collins raised an objection to the witness reading lengthy slides affecting the efficiency of the process. Chair Scheuer sustained the objection and encouraged Mr. Agor to better summarize his presentation.

Mr. Yuen requested to move Exhibits 44 and 46 into evidence.

Chair Scheuer asked if there were any objections from the parties. County and OP had no objection.

Mr. Collins objected to admitting Exhibit 46 at this time. Objection sustained. Chair Scheuer admitted Exhibit 44 into evidence.

Mr. Agor spoke to the Exhibit 44 - HoKua Place Projected Development Cost. There were no other questions.

Questions from the Parties

COUNTY

Mr. Donahoe requested clarification on Mr. Agor's educational background and the opinions expressed by him in the FEIS,

Chair Scheuer declared a recess at 2:06 p.m. and reconvened the meeting at 2:17 p.m.

Mr. Donahoe sought further details on the proposed site plan and the integration of affordable and market housing.

OP

Ms. Kato sought clarification from Mr. Agor on his role in the development, his qualifications to comment on the Petition Area wetlands, OP's Exhibit 15 and 16, wetland delineation survey, the mitigation measures with respect to the wetlands, buffer area and fencing.

INTERVENOR

Mr. Collins requested clarification on the proposed Project's compatibility with the County general plan, the Declaration of Covenants and Restrictions being considered, the EIS statements on vacation rentals, traffic, response to comments of the EIS, infrastructure, Response to County Comments, ICU Medical Center capacity, FEIS connector road capacity, homeowner association fees, water master plan inclusion on the EIS and the origin of HoKua Place name.

Commissioner Wong left the meeting at 3:00 p.m.

Questions from the Commissioners

Commissioner Giovanni questioned Mr. Agor about his remarks and involvement of the general plan, 6 planning districts and Community Plan.

Chair Scheuer asked Mr. Yuen if he had any redirect. There was no redirect.

Chair declared brief recess at 3:16 p.m. and reconvened the meeting at 3:27 p.m.

Mr. Yee rejoined the meeting at 3:27 p.m.

Mr. Yuen recalled his witness Mr. Jake Bracken and requested to admit Exhibit 46 into the record. There were no objections.

(4) Mr. Bracken clarified information about the financing of the HoKua Place Project, total project cost and bond for the completion of the project.

COUNTY

Mr. Donahoe wanted clarification on Exhibit 44 and the construction of the primary well.

OP

There were no questions from OP.

Intervenor

Mr. Collins requested clarification on the proposed financing plan, the Petition Area property value, conveyance tax and value of this property in 2013.

Questions from the Commissioners

Commissioner Chang asked Mr. Bracken details about Exhibit 44 and whether a performance bond had been considered.

Chair Scheuer asked Mr. Yuen if there was in any redirect. There was no redirect.

Mr. Collins asked for the opportunity to make a motion. Request was deferred.

Commissioner Okuda confirmed that the petitioner's evidentiary portion was complete.

Commissioner Okuda made motion to deny the petition. Commissioner Giovanni seconded the motion.

Commissioner Okuda spoke to the motion according to HRS 205-8, HAR 15-15-59 and 49 and that Petitioner has the burden of proof, burden of persuasion, burden of producing

evidence. HAR 11-200.1-30 and stated that the Major defect in the EIS was that it did not satisfy the standard of the law, was no longer valid and a supplemental EIS needed to be filed.

Commissioner Giovanni concurred with Commissioner Okuda and commented on the FEIS, the conflict with the will of the community, not meeting the burden of persuasion and how concerns in the areas of traffic, water, wastewater, infrastructure, wetlands, affordable housing still needed to be addressed.

Chair offered Intervenor an opportunity to make their motion.

Mr. Collins responded that Intervenor did not feel it was necessary to make a motion since Commissioner Okuda already did.

Commissioner Chang commented on the project and supported the motion.

Commissioner Aczon and Ohigashi stated that they would prefer hearing from the parties.

Mr. Yuen asked the Commission for an opportunity to respond in writing.

Commissioner Ohigashi asked to move to an Executive Session. Motion seconded by Commissioner Aczon.

Mr. Yee and Ms. Chow provided procedural guidance to the Commission and stated that a full record would be beneficial.

Discussion ensued to determine the correct procedure to have a full record and set the schedule for the rest of the proceedings.

Commissioners Ohigashi and Aczon withdrew their motion to go into Executive Session.

Mr. Orodener provided a schedule to file Briefs due on May 27th, Rebuttals on 2nd of June and Oral arguments on June 10th. All parties agreed with the schedule.

Mr. Yee suggested for Intervenor to also submit his motion.

Intervenor Mr. Collins acknowledged that he would file a motion and his comments separately.

Chair Scheuer declared meeting adjourned at 4:29 p.m.