

LAND USE COMMISSION  
MEETING MINUTES  
June 9, 2021 – 9:00 a.m.

**Pursuant to Exhibit F of the Governor’s Eighteenth 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, June 9, 2021

[https://us02web.zoom.us/webinar/register/WN\\_Ev1XzqMPSJ6oJKVezQqvTA](https://us02web.zoom.us/webinar/register/WN_Ev1XzqMPSJ6oJKVezQqvTA)

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  
Arnold Wong  
Dawn N. S. Chang  
Dan Giovanni  
Lee Ohigashi  
Edmund Aczon  
Gary Okuda

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

STAFF PRESENT: Daniel Orodener, Executive Officer  
(Attending via ZOOM conference media) Dan Morris, 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. (8 Commissioners present).

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 28-29 and May 26, 2021 Minutes and asked if there had been any public testimony submitted and if any corrections needed to be made. There was no public testimony and no corrections to be made.

Commissioner Okuda abstained from voting on the Minutes since he had recused himself from the LUC hearings on those dates.

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

By a roll call, the April 28-29 and the May 26, 2021 minutes were approved unanimously (7-0- 1 abstain).

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

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodenker provided the tentative meeting schedule from June 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.

Chair Scheuer requested clarification on the Governor's Executive order affecting travel for LUC staff and Commissioners.

Commissioner Cabral asked clarification about the continued use of Zoom meetings.

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

Chair Scheuer called for the next agenda item.

## **TRANSCRIPTS IN LIEU OF THE MINUTES**

There was no written Public Testimony received on this matter.

Mr. Orodenker described how time-consuming the preparation of the minutes were for LUC staff and why the use of court reporter transcripts in lieu of minutes was being suggested.

Commissioner Cabral provided her perspective on the matter.

Commissioner Chang stated her preference to keep doing the Minutes and perhaps compromise by formatting shorter versions of the Minutes.

Commissioner Okuda commented that the official record of the meetings were the

Transcripts and that there might be the potential for a conflict, and why a live court reporter might provide for better clarity and security.

Chair Scheuer assessed that there was no consensus on the matter and no Commissioner disagreed with that assessment. Mr. Orodenker stated that LUC staff would continue to produce Minutes.

### **SP06-400 POHAKEA QUARRY**

Chair Scheuer moved on to the next agenda item was an action meeting regarding Docket No. 06-400 Pōhākea Quarry (Maui) To Consider Hawaiian Cement Pōhākea Quarry Application for 15-year Time Extension Request for Special Use Permit to Continue Operation of Pōhākea Quarry in the State and County Agricultural Districts at Mā 'alaea, Island of Maui, Hawai 'i; TMK: (2) 3-6-004:007 (SUP1 2006/0001) (CUP 2006/0001).

### **APPEARANCES:**

Bryan Esmeralda, planner at Munekiyo & Associates representing Hawaiian Cement  
Karlynn Fukuda, planner at Munekiyo & Associates representing Hawaiian Cement  
Dave Holmes, Hawaiian Cement Representative  
Michael Hopper, Deputy Corporation Counsel, County of Maui Dept. of Planning (County)  
Paul Fasi, Planner (County)  
Jordan Hart, Deputy Director (County)  
Alison Kato, Esq., Deputy Attorney General, Office of Planning (OP)  
Rodney Funakoshi, Land Use Administrator, (OP)  
Aaron Setogawa, Planner, (OP)

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

### **PUBLIC TESTIMONY**

Chair Scheuer read a list of all the public testimony received in this matter.

- 1) Antoinette de Naie- Representative for Sierra Club Maui Group-

Ms. de Naie shared her organization's concerns and described the Quarry's proximity to endangered species in the area (Yellow Faced bees) which had not been listed at the time the Quarry first received its permit.

Parties had no questions.

### **Questions from the Commissioners:**

Commissioner Wong asked if Sierra Club had shared their concerns with the County.

Commissioner Okuda requested clarification on Sierra Club's specific objections to the Special Permit.

Commissioner Chang inquired about the Quarry's community outreach efforts and on the area's possible ceremonial sites and links to cultural descendants in the area.

Commissioner Ohigashi requested clarification on whether previous Maui County planning department's concerns were part of the record.

Chair Scheuer requested additional information about the Yellow Faced bees and the 2016 report on endangered species and noted two additional written testimonies which were received for this docket.

Chair Scheuer declared recess at 9:50 a.m. and resumed the meeting at 10:00 a.m.

### **APPLICANT'S PRESENTATION:**

Mr. Esmeralda provided his presentation about Time Extension and requested that Conditions 10 and 16 to be removed as they had been fulfilled and were no longer applicable.

### **Questions from the Commissioners:**

Commissioner Ohigashi expressed his concerns about special use permits that spanned extraordinary long periods of time, and requested clarification on the closure plans for the quarry, and on the building structure permits issued for the Petition Area.

Ms. Fukuda clarified how Condition #12 addressed Petitioner's responsibility to prepare and implement closure plans for the quarry.

Commissioner Chang requested clarification on the current status of the SUP (expired in 2019), the status of the archeological inventory survey and the request to remove Condition #10.

Chair Scheuer sworn in Applicant's witness Michael Dega to respond to Commissioner Chang's questions.

- 1) Witness: Michael Dega, SES Archeological – conducted archeological monitoring for 12 years and conducted field investigation reports.

Commissioner Chang requested clarification on whether the letter from SHPD confirming the cessation for archeological monitoring and that Mr. Dega had physically inspected the site. Mr. Dega responded that he had confirmed that there were no historical cultural resources within the project area. Commissioner Cabral asked if Mr. Dega had knowledge of the Quarry's operations affecting the river and of the alleged yellow faced bees in the area. Mr. Dega described his work in the area and responded that he was not aware of the bees.

Ms. Fukuda clarified that the Quarry activity happens in the lower elevation land it's not in the mountainous areas.

Commissioner Okuda requested a summary of the witness' professional experience to complete the record and read a provision from the Hawaii Constitution as it relates to the LUC's responsibilities.

Mr. Esmeralda described how the time extension request conformed to the Hawaii Constitution.

Chair Scheuer inquired about the prior use of the Quarry area, returning the land to be suitable for agriculture at the end of the special use permit period, whether any review for endangered species had been done since the last permit was approved and whether the request for time extension was timely.

Commissioner Ohigashi expressed his concerns that Hawaiian Cement, who was not the owner but was charged with the responsibility to restore the land following the completion of the quarry operations was represented at this LUC meeting but that the actual landowner was not included.

Discussion ensued to clarify who has the legal duty to restore the land.

Commissioner Aczon commented on the Applicant's inability to answer any questions on behalf of the landowner.

Chair called recess at 11:01 a.m. and resumed the meeting at 11:12 a.m.

### **COUNTY COMMENTS**

Mr. Hopper provided the County's comments in reference to repatriation and agriculture purpose.

### **Questions from the Commissioners**

Commissioner Wong requested clarification on whether the Sierra Club had testified before the Planning Commission, whether the County's record addressed the restoration of the Petition Area, whether the Special Permit Application should be a request for District Boundary Amendment instead, and on the details regarding the timing of the request for extension.

Commissioner Ohigashi requested further clarification on the County's building permits processing and on whether amended building permits were required for additional structures.

Mr. Jordan Hart appeared as a witness for the County to answer Commissioner Ohigashi's questions.

Commissioner Ohigashi requested further details on major projects for future developments in the area that might be affected by the extension of this permit and whether the extension was consistent with the Community Plan.

Commissioner Chang requested clarification on whether the LUC had the authority

to extend a permit that had expired and asked about the normal time span for reviewing a permit.

Commissioner Cabral asked about what public testimony had been received during the County's Planning Commission meeting.

Chair Scheuer requested clarification from Mr. Hopper on the County's perspective on special permits, agency consultations regarding dockets and whether contested case hearings were the appropriate approval process.

Chair Scheuer called recess at 12:10 p.m. and reconvened the meeting at 1:02 p.m.

Mr. Hart confirmed the noticing requirements for the extension of special permits.

### **OP COMMENTS**

Ms. Kato provided OP's comments in support of the 15yr time extension request based on the County's review including the recommendation to delete Condition 10 and 16 and noted that due to the late County submittal of documents, that OP had limited time to review them and could not consult with other agencies.

### **Questions from the Commissioner**

Commissioner Chang had concerns with OP agreeing to remove Conditions 10 and 16 without including SHPD's letter that allows for the cessation of archeological monitoring in the record.

Mr. Setogawa described the considerations that OP had made in establishing its position statement for this special permit application.

Commissioners Okuda, Ohigashi and Chair Scheuer opined on the weight of OP's recommendation since it was based solely on the County's Commission review.

Commissioner Giovanni, Aczon and Chang shared their concerns about the Commission reacting to Public Testimony on endangered species without any formal verification.

Mr. Hopper shared his perspective on what the LUC's options might be.

Chair Scheuer recalled how the Commission had reacted in a previous case (SP14-404) where new information was introduced, and the application was remanded back to the County to allow the new information to be reviewed.

### **DELIBERATIONS**

Commissioner Ohigashi made a motion to remand the proceedings. Commissioner Wong seconded the motion for discussion purposes.

Commissioner Ohigashi spoke to the motion and shared his concerns about the misuse of the Special Use permit process and the need for an impact analysis of the Community Plan. He also shared why he thought there was justification for seeking a DBA as an alternative, why

there was a need for evidence to be properly introduced and how a remand would allow the Planning Commission investigate the application further and make appropriate recommendations.

Commissioners shared their opinions on the motion and could not achieve a consensus.

Commissioner Ohigashi and Wong withdrew the motion.

Commissioner Wong moved to make a motion to grant extension and deny of deletion of Condition 10 and 16 and add a new condition to return the Petition Area to Agricultural usage when the permit expired. Commissioner Cabral has seconded the motion.

Commissioner Wong spoke to the motion.

Various other Commissioners discussed considerations and action that could better craft the motion.

Chair declared recess at 2:15 p.m. and reconvened the meeting at 2:25 p.m.

Discussion continued to format a more complete motion that addressed all the Commissioners concerns.

Commissioner Wong and Cabral retracted the motion.

Commissioner Chang proposed a new motion to grant the requested time extension, amend Condition 12 to add "to timely implement a closure plan to revegetate the site or other measures to reduce erosion prior to the expiration to the SUP", retain Conditions 10 and 16 and authorize LUC staff to draft a Decision and Order and Chair to sign on behalf of LUC. Commissioner Aczon seconded the motion.

DAG Morris expressed his concerns about the Commission requiring action of the landowner when the landowner is not present .

Commissioner Okuda made a motion to go into Executive Session did not receive a second and was withdrawn.

Chair Scheuer summarized the motion made by Commissioner Chang and requested an amendment to the motion require consultation with the Division of Forestry and Wildlife and the US Fish and Wildlife Service regarding the yellow faced bees.

Commissioner Chang agreed with Chair Scheuer's summary and proposed amendment to the motion.

Chair Scheuer asked Mr. Orodener to poll the Commission.

By a roll call, the motion passes unanimously (8-0).

Chair Scheuer declared recess at 2:50 p.m. until 9:00 a.m. on June 10, 2021.

LAND USE COMMISSION

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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. (8 Commissioners present).

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program. Chair Scheuer called for the next agenda item.

## **SP21-411 AES WEST OAHU SOLAR, LLC (OAHU)- ACTION**

To Consider Special Use Permit Application No. 2020/SUP-6 AES West O 'ahu Solar, LLC for Construction and Operation of a 12.5 -MW Solar Photovoltaic and 50-MWh Battery Energy Storage System on Land Owned by UH. TMK (1) 9-2-002:007; and To Consider Proposed Findings of Fact, Conclusions of Law and Decision and Order

Chair Scheuer asked if there was any written testimony in this matter. There was none.

## **APPEARANCES:**

Curtis Tabata, Esq., representing AES Solar  
Nick Molinary, Project Manager for AES Solar  
Duane Pang, Deputy Corporation Counsel, Department of Planning (DPP)  
Dina Wong, Planner, (DPP)  
Alison Kato, Esq., Deputy Attorney General, Office of Planning (OP)  
Rodney Funakoshi, Land Use Administrator, (OP)  
Lori Maki, Planner, (OP)

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

## **PUBLIC TESTIMONY:**

Chair Scheuer noted the list of written public testimony received by LUC staff and called on members of the public that wished to provide oral public testimony.

1. Pane Meatoga III- Hawaii Operating Engineering Industry Stabilization Fund- testified in Support
2. Michael Pacheco- Int'l Brotherhood of Electrical Workers- testified in Support

Commissioner Okuda questioned the witness about the relationship of the Union and AES Solar.

3. Nathaniel Kinney- Hawaii Regional Council of Carpenters- testified in Support

Commissioner Aczon disclosed that he had a prior working relationship with the witness and stated he could be fair and impartial in this matter. There were no objections from the parties.

Commissioner Giovanni clarified how local loss of wages resulted from the Coal Factory sister company of AES.

4. Cameron Black- Hawaii State Energy Office- testified in Support
5. Jan Gouveia- Vice President Administration for University of Hawaii- testified in Support

Commissioner Okuda disclosed that he had worked with the Ms. Gouveia's father and asked her about the financial beneficiary of this project. There were no objections or comments on Commissioner Okuda's continued participation in the hearing.

Commissioners Ohigashi, Okuda, Chang and Chair requested clarification on the landowner's willingness to comply with the D&O conditions, the integration of this project and the surrounding parcels, the decommission process and setting up an escrow account and performance bond to decommission the project, how benefits to the community such as an internship for the University students could be attained, and how the use of these lands was being considered as integral to the teaching component of the University's mission.

6. Christopher Delaunay- Government Relations Manager for Pacific Resources Partnership- testified in Support.

Commissioner Aczon disclosed that Pacific Resources Partnership had business relations with contractors that were part of the Hawaii Regional Council of Carpenters and stated that he could remain fair and impartial during the proceedings. There were no objections to Commissioner Aczon's continued participation in the hearing.

7. Scott Enright- Agricultural Consultant to AES Solar. Testified in Support

Chair declared recess at 9:54 a.m. and reconvened at 10:05 a.m.

### **APPLICANT'S PRESENTATION**

Chair Scheuer called Mr. Tabata.

Mr. Tabata provided information on AES West Oahu Solar, LLC's request for Special Use permit and described the company's efforts and collaborations with the Food Industry and the community.

### **Questions from the Commissioners**

Commissioner Cabral had concerns with fencing the area if cattle were actively grazing in it.

Commissioner Chang shared her concerns about a Cultural Impact Assessment for the project and questioned whether a cultural orientation for AES employees and a performance bond might be considered by the Petitioner. She further asked for clarification on the estimated cost of decommissioning the project and Condition #2 regarding active agricultural operations.

Commissioner Ohigashi requested clarification on the proof of financial security.

Commissioner Giovanni requested clarification on the proposed escrow fund to be used for remediation of the land, what assurances for restoration of the land had been made and how extensions of the permit might be handled.

Commissioners Aczon, Okuda, Ohigashi, Chang and Wong requested clarification on the timeline for decommissioning the site, the cost of the structure for solar and cost savings from solar energy production, AES Solar's contact with neighborhood board and mitigation of erosion from water runoff.

Chair declared recess at 11:01 a.m. and reconvened the meeting at 11:10 a.m.

### **COUNTY'S COMMENTS**

Mr. Pang provided County's comments in support of the West Oahu Solar proposed FOF, COL along with OP's Conditions.

Commissioner Chang confirmed that OP had no objection to amending Condition #6 to include performance bonds. There were no other questions from the Commissioners.

### **OP'S COMMENTS**

Ms. Kato provided OP's comments of approval for the special use permit for the project with the additional conditions recommended in OP's statement.

Mitigation measures were added and new Conditions of 13-15.

### **Final Statements**

Mr. Tabata's final statement addressed the Commissioners concerns and stated the amendments to the proposed FOF and COL to include the language for performance bond in Condition #6 and adding a new Conditions with respect to cultural orientation and training.

### **Final questions from the Commissioners**

Commissioner Aczon, Okuda, Ohigashi and Giovanni sought clarification from Mr. Tabata for additional changes to the specific language of the FOF and COL.

Parties had no objections to the changes.

### **DELIBERATIONS**

Chair Scheuer moved on to deliberations.

Commissioner Wong moved to make a motion to approve the project with the proposed changes listed. Commissioner Cabral seconded the motion.

Commissioners Ohigashi, Okuda, Giovanni, Aczon and Cabral made their comments in support of the motion with the Conditions as revised by the Commission.

Chair Scheuer asked Mr. Orodener to poll the Commission.

By a roll call, the motion passed unanimously (8-0).

Chair Scheuer declared brief recess at 11:58 a.m. to prepare for the next docket and reconvened the meeting at 12:00 p.m.

**A11-791 HG KAUA'I JOINT VENTURE, LLC– HoKua Place** (Kaua'i)- Continued Action

Chair Scheuer moved on to the last Agenda item. Amended 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 District, to the Urban District, Tax Map Key No. (4) 4-3-003: POR 001. To Consider Petitioner's Motion to Withdraw and to Consider Motions to Dismiss if necessary.

**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)  
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. and Lance Collins, Esq., representing Liko Martin (Intervenor)  
Liko Martin, Intervenor

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

Chair Scheuer confirmed with Mr. Hakoda that no additional written testimony had been received and moved on to the presentation from the Petitioner.

**PETITIONER'S MOTION TO WITHDRAW**

Mr. Yuen spoke to the motion briefly and expressed their desire to withdraw and reevaluate the Petition.

Chair Scheuer asked the parties if they had any objections. There were no objections to Petitioner's Motion to Withdraw.

Commissioners had no questions for the parties.

**FORMAL DELIBERATIONS**

Chair Scheuer explained the procedure of deliberation and confirmed with all the Commissioners by a roll call that they were prepared to deliberate on this matter.

Commissioner Giovanni moved to make a motion to accept Petitioner's Motion to Withdraw. Commissioner Wong seconded the motion.

Commissioner Giovanni spoke to the motion.

Commissioner Chang and Cabral thanked the Petitioner for the withdrawal and encouraged the Petitioner to work with community.

Chair Scheuer asked Mr. Orodener to poll the Commission.

By a roll call, the motion to Withdraw passed unanimously with 8 affirmative votes.

There being no further business to discuss, Chair Scheuer adjourned the meeting at 12:12 p.m.