

LAND USE COMMISSION  
MEETING MINUTES

November 10, 2021 – 9:00 a.m.

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

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

([https://us02web.zoom.us/webinar/register/WN\\_DOLsavfmR4yGhQVfyMcbw](https://us02web.zoom.us/webinar/register/WN_DOLsavfmR4yGhQVfyMcbw))

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  
Dan Giovanni  
Dawn N. S. Chang  
Lee Ohigashi

COMMISSIONERS EXCUSED: Edmund Aczon

(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, Senior Staff Planner  
Riley Hakoda, Staff Planner  
Natasha Quiñones, Program Specialist/ Chief Clerk

COURT REPORTER: via Naegeli Deposition and Trial  
(from recorded 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 October 27, 2021 minutes and asked if any public testimony had been submitted and if any corrections needed to be made. There was no public testimony and no corrections to be made. Commissioner Cabral moved to adopt both sets of Minutes. Commissioner Ohigashi seconded the motion. There was no discussion.

By a show of hands, the Oct. 27, 2021 minutes were approved unanimously (7-0-1 excused).

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

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Mr. Orodenker provided the tentative meeting schedule from Nov. 2021 to March 2022 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 asked for the reason for the change from LUC's regular meeting schedule for the beginning of the year.

Mr. Orodenker explained that the change was to accommodate attorney's requests and staffing concerns.

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

## **A21-810 PŪLAMA LĀNA'I - Hōkūao 201H Project (Maui)**

To Amend the Agriculture Land Use District Boundaries into the Urban Land Use District for approximately 76 acres of land, consisting of a portion of Tax Map Key No. (2) 4-9-002:061 (por.); (2) 4-9-014:001 (por.) at Lāna'i City, Island of Lāna'i, County of Maui, State of Hawai'i.

**APPEARANCES:**

Cal Chipchase, Esq. Petitioner’s Counsel  
Chris Goodin, Esq. Petitioner’s Counsel  
Michael Hopper Esq., Deputy Corporation Counsel, County of Maui (County)  
Jordan E. Hart, Deputy Director, Planning Dept, County  
Alison Kato, Esq., Deputy Attorney General, Office of Planning and Sustainable Development (OPSD)  
Rodney Funakoshi, Land Use Administrator, OPSD  
Aaron Setogawa, Planner, OPSD

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

Commissioner Okuda disclosed his involvement with the Hawaii State Teacher’s Association (HSTA) and Mr. Wilbert Holck Jr. Executive Director of HSTA while advocating for teacher’s housing by hosting a few Zoom meetings. During the meetings someone made mention of speaking with Mr. Kurt Matsumoto, head of Pūlama Lāna’i . Commissioner Okuda stated there were no financial interest involved, that he was not engaged as legal counsel and that he felt he could remain fair and impartial in this matter. There were no objections to Commissioner Okuda’s continued participation.

Chair Scheuer disclosed about his relationship with the Department of Hawaiian Homelands (DHHL) as his long-term client. Since DHHL withdrew their Petition to Intervene, Chair Scheuer felt that there was no conflict of interest and that he could impartially participate in this matter. There were no objections to Chair Scheuer’s continued participation.

Commissioner Chang disclosed that over 5 years ago, she had a small contract with Pūlama Lāna’i to assist them on a burial issue but felt that she could remain fair and objective in this matter. There were no objections to Commissioner Chang’s continued participation.

Chair Scheuer asked if there was any written public testimony.

Ms. Quiñones described the testimony received on this matter.

There were multiple public members who wished to testify. Chair Scheuer sworn in each testifier.

*The minutes will provide a list of the witnesses in the order they testified. (“Supports” notation indicates that testimony was in favor of the Petition. “Opposes” notation indicates that testimony was against the Petition. “Other” notation indicates that the testimony was unclear .) Please refer to the transcripts for further details of public testimony. Only comments and/or*

*questions asked of testifiers are noted. No notation indicates that no questions were posed to the testifier.*

- 1) Ben Sheets- Pastor at Lanai Union Church. Supports.
- 2) Linda Okamoto- Resident and Realtor. Supports.
- 3) Elton Kinoshita- Resident and former Principal of Lanai High and Elementary School. Supports.

There were no questions from the Parties.

Commissioner Okuda commented about how teachers and Union members hold Mr. Kinoshita in high esteem.

- 4) Roger Alconsel- Native of Lanai. Supports.
- 5) Kathy Carroll- Small business owner. Supports.
- 6) Noemi Barbadillo, Director of Commercial and Residential Properties (Pūlama Lāna'i ) Supports.

Chair Scheuer asked the witness if there is a plan to make units available for priority groups such as victims of domestic violence.

- 7) Diane Preza- Native of Lanai and ex-employee of Pūlama Lāna'i . Supports.
- 8) Anela Sanches-Resident. Supports.

There were no questions for the Witnesses.

Chair Scheuer closed Public Testimony and declared a recess at 9:52 a.m. until 10:02 a.m.

Due to technical difficulties Chair Scheuer extended the recess and reconvened the meeting at 10:20 a.m. when connectivity was restored.

Chair Scheuer moved to the next portion of the proceeding.

#### **ADMISSION OF EXHIBITS FROM THE PARTIES**

Mr. Cal Chipchase listed Petitioner's Exhibits 1-15 to be admitted to the record.

There were no objections to admitting Petitioner's Exhibits.

Mr. Hopper stated that the County had no Exhibit's List but had Documents attached to their Position Statement and requested that Documents 1-5 along with the Position Statement would be admitted into the record.

There were no objections to admitting County's Documents and Position Statement.

Ms. Kato stated that OPSD had Exhibits 1-12, 2B and 7B to be admitted into the record.

There were no objections to admitting OPSD's Exhibits.

Chair Scheuer moved on to the Presentations from the Parties.

### **PETITIONER'S PRESENTATION**

Mr. Chipchase offered Dr. Keiki-Pua Dancil and Mr. Kurt Matsumoto as his Witnesses.

Commissioner Giovanni disclosed that he and Dr. Dancil were former colleagues at Hawaiian Electric and stated that he could remain fair and impartial during the proceedings.

There were no objections from the Parties to Commissioner Giovanni's continued participation.

#### **Petitioner Witnesses**

1. Dr. Keiki-Pua Dancil, Senior Vice President, Pūlama Lāna'i  
Dr. Dancil described her responsibilities and involvement with the project, along with her education and work experience.

Mr. Chipchase and Dr. Dancil offered a power point presentation and discussed the details of the project and the County's approval process for the Pūlama Lāna'i project. The presentation included:

- Need for housing and lack of inventory
- Name of the project
- Project Amenities
- Infrastructure (Water, Electric, Wastewater, Roads, Trash)
- Conceptual Site Plan
- Price of the units
- Procedural History (FEA) and FONSI, County Approval, Filing DBA Petition
- Timeline of 201H Process.

#### **Questions from the Parties**

County had no questions.

Ms. Kato, OPSD, sought confirmation that Dr. Dancil was the authorized representative for Pūlama Lānaʻi and that the Petitioner had agreed to the final language and form of OPSD's conditions.

Commissioner Giovanni requested the parties to provide reference to the specific Conditions they were discussing.

Ms. Kato read the specific language of the Conditions in question. Ms. Kato then questioned the witness about the reason for larger lot sizes and the maximum density of the lots. Dr. Dancil confirmed that there would be 1 dwelling unit per lot.

### **Questions from the Commissioners**

Commissioner Chang requested additional information about possible electric charging stations, federal incentives and the total cost housing units and infrastructure.

Dr. Dancil responded that the information regarding costs was confidential.

Commissioner Ohigashi requested clarification on the details of the different phases of the construction, affordable housing units, market rates, management company and lease terms.

Commissioner Giovanni had questions about the decision to offer rental units in perpetuity; concerns of the result of federal financing; and Petitioner's willingness to modify the condition about endangered animals if the Hoary Bat was delisted in order to expedite construction.

Commissioner Cabral sought explanation on the use of HUD guidelines, the restrictions on who was able to live in the project, if a Homeowner's Association was considered, the back up on electricity beyond solar and integrating the affordable housing with market rate units.

Commissioner Okuda commented on the efficiency of the proceeding.

Chair Scheuer observed the need for considerations for victims of domestic violence and expressed his concerns about how the definition of "residents" might not favor those who were born and raised on the island returning to the island. He also sought clarification on County's Condition 2 relating to protecting Pūlama Lānaʻi employees from retaliation from the company.

Chair Scheuer declared a recess and 11:31a.m. and reconvened the meeting at 11:41 a.m.

Mr. Chipchase had no redirect for the Dr. Dancil and called Mr. Matsumoto to testify.

## **2. Kurt Matsumoto-President and Chief Operating Officer of Pūlama Lānaʻi .**

Mr. Matsumoto described his job responsibilities with the company and his work experience and utilized a Power Point to describe Pūlama Lānaʻi 's:

- Community meetings
- 14 County Modifications
- Vision of Pūlama Lānaʻi
- Allocation of market rate housing
- Sustainable and smart housing

Mr. Chipchase concluded his presentation by having Mr. Matsumoto describe how the decisions were made for retaining affordable rentals in perpetuity and including the County's Condition #2 relating to protection against the threat of speaking against the company.

There were no questions from the parties.

### **Questions from the Commissioners**

Commissioner Giovanni sought further clarification on the strategic offering of affordable housing in perpetuity instead of for sale units; and Pūlama Lānaʻi 's vision to balance this housing supply and demand issue in Lanai.

Commissioner Ohigashi requested information on the status of the County's plans for additional housing on Lanai and sharing of potential infrastructure with future projects; and market rate rental restrictions to prevent vacation rentals (Condition 11).

Commissioner Cabral asked about financing for the project and having no debt or loan.

Commissioner Okuda commented on Petitioner's credibility and expressed his concerns of continuing the vision forward with a future successor. Mr. Matsumoto described how he perceived his responsibility of managing the island and ensuring its future prosperity.

Discussion ensued regarding Environmental Assessments and how the Commission was not the accepting authority in this docket.

Chair Scheuer and Commissioner Okuda voiced their concerns about retaliatory eviction and recognized the value of including the condition.

There was no redirect. Mr. Chipchase released his witnesses.

Chair Scheuer declared recess at 12:41 and reconvened at 1:15 p.m.

Mr. Chipchase provided his closing arguments and asked for the Commission's approval.

### **COUNTY**

Mr. Hopper stated that Maui County's only witness was Mr. Jordan Hart .

1. Mr. Jordan Hart- Maui Planning Department Deputy Director.

Mr. Hart described how County's comments on the draft EA and to the Maui County Council on the project had contributed to the approval of the 201H project and why the proposed reclassification to the Urban district was consistent with HRS and LUC rules to provide critically needed affordable housing for Lanai's residents.

**Questions for the County**

There were no questions from the parties.

Chair Scheuer confirmed with Mr. Hart that the County was satisfied with the Petitioner's response to OPSD's question on how units would be allotted and prioritized to people on the island.

Commissioner Ohigashi sought confirmation that the infrastructure for the proposed development will also assist the County's future development plans.

Commissioner Giovanni requested clarification that County was amenable to the modification of the Condition about endangered species.

There were no further questions or comments for the County.

Chair Scheuer called OPSD to provide its presentation.

**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT**

Ms. Kato offered Mr. Funakoshi as witness.

OPSD Witness Rodney Funakoshi

Mr. Funakoshi stated that OPSD supported and recommended approval of the reclassification subject to the addition of 9 proposed OPSD conditions. He also expressed that OPSD was pleased that this project would provide affordable units in perpetuity and recognized the project's sustainability practices and renewable energy production.

**Questions for OPSD**

There were no questions from the Parties.



Commissioner Okuda commented on the reservation of 10 housing units for teachers residing in Lanai.

Commissioner Giovanni commented on the need for amending the condition on endangered species if the Hoary Bat was delisted from endangered species list and recognized the project design efforts to incorporate energy efficiency.

Chair Scheuer shared his understanding of the delisting and downlisting of endangered species.

There were no other questions for OPSD.

### **PETITIONER'S FINAL COMMENTS**

Mr. Chipchase expressed Petitioner's willingness to address the endangered species condition and the protection of the Hoary Bat.

Chair closed the evidentiary portion of the proceeding and moved to deliberations.

### **FORMAL DELIBERATIONS**

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

Commissioner Ohigashi moved to approve the Petition subject to the original 23 Conditions identified in the proposed Finding of Facts, Conclusions of Law and Decision and Order and to accept the 9 Conditions proposed by the OPSD. Commissioner Cabral seconded the motion.

Commissioner Ohigashi spoke to the motion and shared why he felt the petition should be approved.

Commissioners Cabral, Okuda, Chang, Giovanni and Wong provided their comments in support of the motion.

Chair Scheuer shared his thoughts on the disconnect between what residents want for their children and how rental properties did not provide equity building for families and added his support to the motion to approve.

Chair Scheuer asked Mr. Orodener to poll the Commission.

By a roll call, the motion passed unanimously (7-0-1 excused).

There was no further discussion. Chair declared meeting adjourned at 2:03 pm

