

LAND USE COMMISSION
MEETING MINUTES

February 16-17, 2022 – 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, February 16, 2022

(https://us02web.zoom.us/webinar/register/WN__GZ2nBqvQsOsiiRlqEjm5w)

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) Dan Giovanni
Arnold Wong
Nancy Cabral
Gary Okuda
Edmund Aczon

COMMISSIONERS EXCUSED: Lee Ohigashi
Dawn Chang

(8 seated Commissioners as of 10/1/19)

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

COURT REPORTER: via Naegeli Deposition and Trial
(from recorded ZOOM conference media)

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:07 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program. (6 Commissioners present)

Chair Scheuer announced that Commissioners Chang and Ohigashi were excused for this meeting.

APPROVAL OF MINUTES

The first agenda item was the approval of the Minutes for January 19-20, 2022. The Chair 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 Okuda asked to abstain from voting on the 2nd portion of the Minutes due to his recusal from that meeting.

Commissioner Wong moved to adopt the Minutes. Commissioner Giovanni seconded the motion.

Chair Scheuer asked Mr. Orodenker to do a roll call of the Commission. Commissioner Cabral abstained from voting since she was not present for those meetings. There were not enough votes to adopt the Minutes for January 19-20, 2022. January 16th (5-0=2) and January 17th (4-0-2). The adoption of the January 19-20, 2021 Minutes were deferred to the next meeting.

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 February 2022 to June 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.

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

Chair Scheuer moved to the next agenda item.

APPEARANCES:

Cal Chipchase, Esq., Counsel for Petitioner Pūlama Lāna'i (Petitioner)

Michael Hopper, Esq., Deputy Corporation Counsel, Maui County Planning Dept. (County)

Jordan Hart, Deputy Planning Director, County
Kurt Wollenhaupt, Planner, County
Bryan Yee, Esq., Deputy Attorney General, Office of Planning and Sustainable Development (OPSD)
Rodney Funakoshi, Land Use Administrator, OPSD
Lorene Maki, Planner, OPSD

ACTION- DOCKET No. A19-809

To Consider the Acceptance of Petitioner’s Final Environmental Assessment (FEA) and Motion to Issue a Finding of No Significant Impact relating to the Petition to Amend the Land Use District Boundaries of certain land situated at Lāna`i City, Island of Lāna`i, consisting of approximately 200 acres from the Agricultural District to the Urban District. Tax Map Key No. (2) 4-9-02:01 (por.).

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 asked if there were any disclosures to be made. There were none.

Chair Scheuer asked Mr. Chipchase if he had reviewed HAR §15-15-45.1 with regards to reimbursement of LUC hearing expenses and if his client agreed. Mr. Chipchase acknowledged that his client had reviewed and accepted.

PUBLIC TESTIMONY

Chair Scheuer moved on to public testimony asked if there any written testimony was received.

Ms. Quinones read the list of written testimony.

Chair Scheuer asked if there were any members of the public who wished to testify.

For brevity, the minutes will provide a list of the witnesses in the order they testified. "Supports" notation indicates that testimony was in support of the acceptance of the Final Environmental Assessment from Petitioner. "Opposes" notation indicates that testimony was against the FEA acceptance. "Other" notation indicates that the testimony was neutral or unclear. (Parentheses indicate organizational representation)

Chair Scheuer called for public witnesses from the audience and swore in each testifier.

- 1) Sally Kaye, resident. Other

Commissioner Okuda asked Ms. Kaye about her awareness of any community outreach done by the Petitioner and knowledge of a future master plan for the entire island of Lāna`i.

- 2) Diane Preza, resident. Supports
- 3) Roger Alconcel, resident. Supports
- 4) Tamara Akiko Paltin, council member. Other

Chair Scheuer closed public testimony on this matter and asked Mr. Chipchase to provide an outline of his presentation.

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

PETITIONER'S PRESENTATION

Mr. Chipchase began his presentation with background information about the Miki Basin Industrial Project as part of the Lāna`i's Community Plan, a timeline of the Final Environmental Assessment process and a list of his Witnesses. He then called Ms. Dancil as his first witness.

1. Keiki-Pua Dancil, PH.D. Senior Vice President, Government Affairs and Strategic Planning for Pūlama Lāna`i.

Commissioner Giovanni disclosed that Ms. Dancil was a former colleague from when he was employed by Hawaiian Electric but felt that he could be objective and fair in this matter. There were no objections to the Commissioner's participation.

Mr. Chipchase shared the slide for the List of Witnesses.

Chair Scheuer disclosed having a past professional working relationships with several of the witnesses on the Petitioner's Witness list but felt he could be fair and impartial in the proceedings. There were no objections to the Chair's continued participation.

There were no other disclosures. Mr. Chipchase continued with his presentation.

Ms. Dancil described her responsibilities with Pūlama Lāna`i and provided her educational history and experience in Planning and Development. She then described her work with the Miki Basin Industrial Park project. Ms. Dancil also covered the topics of:

- Project's consistency with Lāna`i's Community Plan
- Purpose and Need of the Project
- Potential Development Plans and Timeline
- 1st and 2nd Draft Environmental Assessments (EA) differences

Mr. Chipchase suggested to hold questions until his presentation had concluded. Chair acknowledged and agreed.

Mr. Chipchase called his second witness.

2. Tessa Munekiyo NG, Vice President of Munekiyo & Hiraga.

Ms. Munekiyo described her responsibilities with the company, her educational history and experience in Environmental Planning. She then described her work on the project and involvement in the 2nd draft EA.

Mr. Chipchase asked the Commission to recognize Ms. Munekiyo as an expert in Land Use and Environmental Planning. There were no objections and Ms. Munekiyo was qualified as an expert witness.

Ms. Munekiyo provided a review of the drafting process, triggers and purpose of the 1st and 2nd EA and summarized its' key takeaway points.

Mr. Chipchase called his next witness.

3. Ken Kawahara, P.E. President and CEO of Akinaka & Associates, Ltd.

Mr. Kawahara described his job responsibilities, education history and experience in Civil Engineering.

Mr. Chipchase asked the Commission to recognize Mr. Kawahara as a qualified expert in Civil Engineering specifically in Water and Wastewater Management. There were no objections.

Mr. Kawahara described the Manele Bay Water system, the daily water demand and the water wastewater masterplan.

Mr. Chipchase called his next witness.

4. Thomas Nance, P.E., President of Tom Nance Water Resource Engineering.

Mr. Nance described his responsibilities, educational history and experience in Water Resource Engineering.

Mr. Chipchase asked to qualify Mr. Nance as an expert in the areas of Hydrology and Water Resource Engineering. The Commission accepted Mr. Nance as an expert witness in his field.

Mr. Nance described the sources of water supply for the project.

Chair Scheuer interjected to ask if aquifers' boundary lines were on the power point slide map. Mr. Nance replied that they were not.

Commissioner Giovanni requested clarification on the measuring unit used on the slide of GPM (gallons per minute).

Mr. Nance further explained how the Leeward aquifer was an adequate water supply for this project.

Mr. Chipchase called his next witness.

5. Trisha Kehaulani Watson, J.D., PH.D, President and Founder of Honua Consulting.

Dr. Watson described her educational background, experience and involvement with Pūlama Lāna'i and the Miki Basin Industrial Park project.

Mr. Chipchase asked the Commission to qualify Dr. Watson as an expert in Cultural Resource Management including Archeology and Environmental Law. There were no objections.

Dr. Watson explained the process and findings of the Archaeological Inventory Survey and the Cultural Impact Assessment (CIA) included in the EA and concluded that the Miki Basin project would not affect traditional and customary rights of the native Hawaiians.

Mr. Chipchase moved on to his last witness.

6. Kurt Matsumoto, President and Chief Operating Officer of Pūlama Lāna'i.

Mr. Matsumoto described his responsibilities and experience and explained how this project was an essential part of his organization's mission to develop a sustainable and resilient economy on Lāna`i with renewable energy projects and consolidating an area for Light and Heavy industrial uses.

Mr. Chipchase concluded with his presentation.

Chair Scheuer asked the County or OPSD if they had any questions for the witnesses. There were none.

Commissioner Giovanni encouraged Chair Scheuer to ask his questions related to water first.

Chair Scheuer reassessed the proceedings and declared recess at 10:59 a.m. Meeting reconvened at 11:11 a.m.

DAG Julie China disclosed that she was deputy AG for Ken Kawahara when she was with the Water Commission over 10 years ago.

Questions from Commissioners

Commissioner Giovanni noted that the Commission's questions needed to be more inclusive of the overall picture for Lāna`i's future development plans.

Chair Scheuer requested clarification on whether the owner was permanently committing to separating and using certain lands for the proposed industrial uses with very low water needs or if the Petitioner would switch to other different types of industrial uses that may need more water in the future.

Ms. Dancil provided clarification on the solar battery project and the asphalt and concrete facilities that were being considered. She also confirmed that the estimated water use would not exceed the calculations previously provided and expressed that the landowner was willing to bind to not exceeding this amount for the entire area/

Chair Scheuer directed his next questions on water sustainable yield to Mr. Nance.

Mr. Nance described the sustainable yield and how the proposed wells would tap into different well compartments without adversely affecting other water sources.

Commissioners Okuda, Cabral, Giovanni, and Chair Scheuer had questions and comments in the areas of:

- state agencies comments to the 1st and 2nd Draft EA
- recycled water and construction waste
- Ms. Dancil's forecast of renewable energy projects
- Commission's duty to evaluate the larger plan and to not focus in one step of the plan when looking into a project
- time projection to add an Environmental Impact Statement (EIS). 2-3 yrs.
- water impact from this development
- vision for the future of Pūlama Lāna`i
- inclusion of activities from other cultural groups in the Cultural Assessment
- the project's quantifiable positive impact in terms of greenhouse gases
- new uses for the freed-up acreage in Lāna`i City
- reduction on recharge leading to reduction on water sustainable yield
- the need to adjust the State's sustainable yield calculations to reflect the long-term climate change potential impact on recharge

Chair Scheuer confirmed with the County and OPSD that they had no questions for the Petitioner's witnesses.

COUNTY'S PRESENTATION

Mr. Hopper stated that the County had filed a response to the Motion for FONSI and had no objections to the LUC granting the motion with respect to this project. There were no questions for Mr. Hopper.

OPSD PRESENTATION

Mr. Yee stated that OPSD had no objections to the acceptance of the Final Environmental Assessment (FEA) and that some of the issues raised during this meeting would be pursued during the District Boundary Amendment hearing.

There were no questions from the Commissioners.

FINAL COMMENTS

Mr. Chipchase summarized how Pūlama Lāna'i's proposed application complied with HAR 11.200.1-13 and described how all comments to the 1st and 2nd DEA were addressed and incorporated into the FEA. Mr. Chipchase requested that the Commission grant the motion, accept the FEA and issue a FONSI.

There were no questions from the Commissioners.

Chair Scheuer moved on to deliberations.

FORMAL DELIBERATIONS

Commissioner Wong made motion to accept Petitioner's FEA and to authorize the Executive Officer's submittal to the Environmental Review Program . Commissioner Cabral seconded the motion.

Commissioner Wong spoke to the motion and opined that that the information contained in the FEA was sufficient to show No Significant Impact to the environment.

Commissioner Cabral also spoke in support of the motion and commended Pūlama Lāna'i's effort to move forward in the diversification of land uses.

Commissioner Giovanni commented in support of this motion.

Commissioner Okuda shared his legal concerns regarding the FEA and expressed how his trust in Mr. Matsumoto's character offset them.

Commissioner Aczon spoke in support of the motion.

Chair Scheuer also commented in support of the motion and asked Mr. Orodener to poll the Commission.

By a roll call, the motion to accept the EA based upon the record passed unanimously (6-0-2 excused).

Chair Scheuer declared the meeting in recess at 12:37 p.m. until February 17th, 2022 at 9:00 a.m.

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Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner/Chief Clerk
Natasha Quinones, Program Specialist

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. (6 Commissioners present)

Chair moved to the matter of the day.

ADOPTION OF ORDER- SP21-413

SP21-413 Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP 12-000138) (Hawai'i) To Consider the form of the Order, Findings of Facts and Conclusions of Law to deny Special Permit Application for Connections New Century Public Charter School/Community Based Education Support Services (CBESS) (SPP 12-000138)

APPEARANCES:

Kevin Richardson, Esq., Deputy Attorney General, Counsel for Connections New Century Public Charter School, (Connections)

Romeo Garcia, Principal, Connections

Ted Hong, Esq., Counsel for Community Based Education Support Services (CBESS)

John Thatcher, Member, CBESS

Malia Kekai, Esq., Deputy Corporation Counsel, Windward Planning Commission, (WPC)

Diana Mellon-Lacey Esq., Deputy Corporation Counsel, Hawaii County Planning Department (County)

Jeffrey W. Darrow, Deputy Planning Director, Hawaii County Planning Department (County)

Alison Kato, Deputy Attorney General, Office of Planning and Sustainable Development (OPSD)

Lorene Maki, Planner, OPSD
Mike Matsukawa, Esq., Counsel for Intervenor Jeffrey Gomes
Jeffrey Gomes, Intervenor

Public Testimony

Chair Scheuer listed the latest written testimony and asked Ms. Quinones if there was additional testimony received.

Ms. Quinones provided the latest testimony received.

Chair Scheuer called for members of the audience to testify.

Steve Hirakami, Principal of Hawaii Academy of Arts and Sciences Charter School, was sworn in. Mr. Hirakami provided testimony in opposition to the adoption of the order.

There were no questions for the witness.

Chair Scheuer asked the parties to provide their final comments.

FINAL COMMENTS

Mr. Richardson had no final comments.

Mr. Hong acknowledged receiving the proposed order draft and noted that his objections were clearly stated on the record.

Ms. Kekai expressed her concerns with the Commission's finding that this agricultural school was not considered as a reasonable use for this land.

Ms. Mellon Lacey did not have any final comments.

Ms. Kato did not provide any final comments.

Mr. Matsukawa commented that there was no master plan from the owner of the land (DLNR) for proposed long term uses.

Chair Scheuer moved on to deliberations.

FORMAL DELIBERATIONS

Chair Scheuer explained the procedure of deliberation and confirmed that Commissioners were prepared to deliberate on this matter.

Commissioner Aczon moved to adopt the proposed Finding of Facts, Conclusions of Law and Decision and Order as prepared by LUC staff. Commissioner Ohigashi seconded the motion.

Commissioner Aczon spoke to the motion and shared that the Commission's decision was based on the record brought by Hawaii County.

Commissioner Chang commented on the LUC's decision and action and encouraged the Charter School to address the Commission's and community's concerns and prepare a new proposal.

Chair Scheuer commented in support of the motion and asked Mr. Orodenker to poll the Commission.

By a roll call, the Motion to adopt the proposed Findings of Fact, Conclusions of Law and Decision and Order to deny the Special Use Permit Application for Docket No. SP21-413 based upon the record passed unanimously (6-0-2 recused).

There was no further business. Chair Scheuer declared meeting adjourned at 9:24 a.m.

