

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on February 5, 2020
Commencing at 9:00 a.m.

Kalanimoku Building,
1151 Punchbowl Street
Honolulu, Hawaii 96813

Wailuku State Office Building
54 South High Street, Wailuku, Maui 96793

Hilo State Office Building
75 Aupuni Street, Hilo, Hawaii 96720

VIDEOCONFERENCE

AGENDA:

- I. Call to Order
- II. Adoption of Minutes
January 8-9, 2020 minutes and January 22, 2020
Minutes
- III. Tentative Meeting Schedule
- IV. ACTION
A03-739 A&B Properties
Consider Petitioner's Motion to Designate the
Land Use Commission as Approving Agency for
Environmental Impact Statement Under HRS
Chapter 343 and for Authority to Prepare
Environmental Impact Statement Preparation
Notice
- V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
3 EDMUND ACZON, Vice Chair (Oahu)
4 NANCY CABRAL, Vice Chair (Hilo)
5 DAWN N.S. CHANG (Oahu)
6 GARY OKUDA (Oahu)
7 LEE OHIGASHI (Maui)
8 ARNOLD WONG (Oahu)
9 DAN GIOVANNI (Oahu)

10 STAFF:

11 CINDY YOUNG, ESQ. (Oahu)
12 Deputy Attorney General

13 DANIEL ORODENKER, Executive Officer (Maui)
14 RILEY K. HAKODA, Planner/Chief Clerk (Oahu)
15 SCOTT A.K. DERRICKSON, AICP-Planner (Oahu)
16 RASMI AGRAHARI, Planner (Oahu)

17 DAWN APUNA, ESQ. (Oahu)
18 Deputy Attorney General
19 AARON SETOGAWA, Planner (Oahu)
20 For State Office of Planning

21 MICHELE McLEAN, Director (Maui)
22 TARA FURUKAWA, Planner (Maui)
23 Maui Planning Department
24 County of Maui

25 CURTIS TABATA, ESQ. (Maui)
26 ANTHONY WRZOSEK, Vice President R.D. Olson
27 Attorney for Petitioner

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1 CHAIRPERSON SCHEUER: Aloha, good morning.

2 This is the February 5th, 2020 Land Use
3 Commission Meeting being held by interactive
4 videoconferencing centers on Maui, Oahu and the
5 Island of Hawai'i. A participating Commissioner is
6 in each designated site, with the Chair, Chief Clerk
7 and Court Reporter on Oahu and the LUC Executive
8 Officer on Maui.

9 Our first order of business is the adoption
10 of two sets of minutes. The first is the January 8th
11 and 9th, 2020 minutes.

12 Are there any members of the public who
13 wish to testify in the approval of the minutes?
14 Seeing none, is there a motion to adopt January 8th
15 and 9th, 2020 minutes?

16 COMMISSIONER WONG: Move.

17 CHAIRPERSON SCHEUER: Moved by Commissioner
18 Wong.

19 VICE CHAIR CABRAL: Second.

20 CHAIRPERSON SCHEUER: Seconded by
21 Commissioner Cabral.

22 Is there any discussion? If not, all in
23 favor say "aye". Is anybody opposed? The motion
24 carries unanimously.

25 Next is the adoption of the January 22nd,

1 2020 minutes.

2 Is there any member of the public wishing
3 to testify regarding adoption of those minutes?

4 Seeing none.

5 Are there any comments or corrections on
6 them; and if not, I'll accept a motion.

7 COMMISSIONER WONG: Move.

8 CHAIRPERSON SCHEUER: Moved by Commissioner
9 Wong.

10 VICE CHAIR CABRAL: Seconded

11 CHAIRPERSON SCHEUER: Seconded by
12 Commissioner Cabral.

13 Is there any discussion? Seeing none, all
14 in favor say "aye". Anybody opposed? The minutes
15 are adopted unanimously.

16 Our next agenda item is the tentative
17 meeting schedule. Mr. Orodenker.

18 EXECUTIVE OFFICER: Thank you, Mr. Chair.

19 For budgetary reasons, we don't have any
20 hearings until April.

21 April 8th we will be on Big Island for U of
22 N Bancorp matter, the Barry Trust matter, and the
23 Church matter.

24 On April 9th we will be on Maui for the
25 Maui landfill matter.

1 On April 22nd, we will be in Honolulu for
2 Hale Kua and HMP, and on the 23rd of April, we will
3 also be on Oahu for HMP.

4 In May we will be in Kona for HILT matter,
5 and that brings us to the end of the calendar.

6 CHAIRPERSON SCHEUER: Thank you, Mr.
7 Orodenker. I'm going to ask if there are any
8 questions going east to west. Hawai'i Island? No
9 questions?

10 VICE CHAIR CABRAL: No questions.

11 CHAIRPERSON SCHEUER: Maui? No. Oahu?
12 Okay.

13 COMMISSIONER OKUDA: What was the date on
14 May?

15 EXECUTIVE OFFICER: May 6th.

16 CHAIRPERSON SCHEUER: Anything further?
17 Thank you.

18 The next meeting item is to assign
19 Commissioner Lee Ohigashi to serve as the Presiding
20 Officer.

21 Presiding Officer Ohigashi, do you agree to
22 preside side over this morning's proceedings?

23 PRESIDING OFFICER OHIGASHI: Doesn't work,
24 I think. (Laughter) yes.

25 CHAIRPERSON SCHEUER: Please take over,

1 Commissioner.

2 PRESIDING OFFICER OHIGASHI: This is an
3 action meeting on Docket No. A03-739 A&B Properties
4 (R.D. Olson Development) to Consider Petitioner's
5 Motion to Designate the Land Use Commission as
6 Approving Agency for Environmental Impact Statement
7 under HRS 343 and for Authority to Prepare
8 Environmental Impact Statement Preparation Notice;
9 and the main meeting locale for this meeting will be
10 at the Maui videoconference site.

11 Before I begin, I will disclose that in
12 2011 I represented a client attempting to intervene
13 into -- I think it's Maui Business Park
14 Development -- and was denied intervention by the
15 Maui Planning Commission, and subsequently went
16 through the appeal process and was remanded to the
17 circuit court here, and I have lost track of that.
18 That was in 2011.

19 Being that this is the site for this
20 matter, I'm disclosing this. I do not have a
21 financial interest in the outcome of this proceeding
22 nor have I been actively involved in that case.

23 I would like to ask if there is any
24 objection to me proceeding. First with Petitioner.

25 MR. TABATA: For R.D. Olson, no objection.

1 MS. McCLEAN: County of Maui has no
2 objection.

3 MR. SETOGAWA: Office of Planning, Aaron
4 Setogawa, has no objection.

5 PRESIDING OFFICER OHIGASHI: Members of the
6 Commission?

7 CHAIRPERSON SCHEUER: No objection.

8 VICE CHAIR CABRAL: No objection.

9 PRESIDING OFFICER OHIGASHI: I guess I have
10 to continue on.

11 Let me update the record. On
12 September 20th, 2018, County of Maui requested Draft
13 Environmental Assessment comments for the Windward
14 Hotel.

15 On December 23rd, 2019, the Commission
16 received a copy of Office of Planning's comments on
17 the Draft Environmental Impact Statement that was
18 sent to the County.

19 On January 16, 2020, the Commission
20 received Petitioner's Motion to Designate the LUC as
21 Approving Agency for Environmental Statement under
22 HRS Chapter 343 and for Authority to Prepare
23 Environmental Impact Statement Preparation Notice and
24 Exhibit 1.

25 On January 27, 2020, the Commissioner

1 mailed an agenda notice to the Parties, the Statewide
2 email, Maui and Hawai'i mailing lists.

3 On January 30, 2020, the Commission mailed
4 Petitioner a letter acknowledging receipt of
5 materials.

6 On February 3rd, 2020, the Commission
7 received OP's response to Petitioner's Motion to
8 Designate the LUC as the Approving Agency for the
9 Environmental Impact Statement under HRS 343, and for
10 the Authority to prepare the EISPN.

11 On February 4th, 2020, the Commission
12 received Department of Planning, County of Maui's
13 Position Statement on A&B Properties, Inc.'s Motion
14 to Designate Land Use Commission as the Approving
15 Agency for the Environmental Impact Statement under
16 HRS Chapter 343 and for Authority to prepare the
17 EISPN.

18 We'll start with all parties identifying
19 themselves for the record, please.

20 MR. TABATA: Good morning, Chair, Vice
21 Chair, members of the Commission, Curtis Tabata
22 appearing for R.D. Olson Development, Anthony
23 Wrzosek, Vice President, R.D. Olson Development.

24 MS. McLEAN: Michele McLean with Maui
25 County Planning Department representing County of

1 Maui, and Planner Tara Furukawa.

2 PRESIDING OFFICER OHIGASHI: Honolulu?

3 MR. SETOGAWA: Aaron Setogawa representing
4 Office of Planning.

5 PRESIDING OFFICER OHIGASHI: Anybody else
6 want to make an appearance?

7 VICE CHAIR CABRAL: Not at this time.

8 PRESIDING OFFICER OHIGASHI: Is there
9 anybody in the audience who wishes to provide public
10 testimony on this matter?

11 VICE CHAIR CABRAL: Yes, we have one party
12 here on the Big Island wishing to provide public
13 testimony.

14 PRESIDING OFFICER OHIGASHI: Let me briefly
15 describe our procedure for today on this docket.

16 First, I'll give opportunity to the
17 Petitioner to comment on the Commission's policy
18 governing reimbursement of hearing expenses.

19 (Dawn Apuna present.)

20 I will then call for those individuals
21 desiring to provide public testimony to identify
22 themselves. All such individuals will be called in
23 turn to our witness box, or probably remain in the
24 chair you're sitting in, where they will be sworn in
25 prior to their testimony.

1 The public testimony today should be
2 limited to the Petitioner's Motion and should not go
3 into the merits of the Petition for district boundary
4 amendment.

5 After completion of the public testimony
6 portion of the proceedings, the Petitioner will make
7 its presentation on its Motion.

8 After completion of Petitioner's
9 presentation, we will receive any comments from the
10 County of Maui Planning Department and State Office
11 of Planning on Petitioner's Motion.

12 The Commission will then conduct its
13 deliberations.

14 Presiding Officer will note for the Parties
15 and the Public that from time to time I'll be calling
16 for short breaks.

17 Are there any questions on our procedure
18 for today?

19 MR. TABATA: No questions,

20 MS. McLEAN: No questions.

21 MR. SETOGAWA: No questions.

22 PRESIDING OFFICER OHIGASHI: Hearing none,
23 why don't we have our public witness testify first.

24 Let me -- Mr. Tabata, have you reviewed HAR
25 15-25-45.1 with regard to reimbursement of hearing

1 expenses?

2 MR. TABATA: Yes, and we will comply with
3 the policy.

4 PRESIDING OFFICER OHIGASHI: Let's go onto
5 public testimony. State your name for the record.

6 THE WITNESS: Good morning, my name is
7 Dwight Vicente, Hilo, Hawaiian Kingdom.

8 PRESIDING OFFICER OHIGASHI: Mr. Vicente,
9 may I swear you in?

10 THE WITNESS: I don't think you have
11 authority to swear me in because I'm with a different
12 government from yourselves.

13 PRESIDING OFFICER OHIGASHI: Well, do you
14 swear or affirm that the testimony that you're about
15 to give is the truth?

16 THE WITNESS: I only deal with the law.
17 Thank you.

18 PRESIDING OFFICER OHIGASHI: Be that as it
19 may, we will accept your unsworn testimony today.
20 Why don't you begin? You have three minutes.

21 DWIGHT VICENTE
22 Was called as a witness by and on behalf of the
23 Public, was sworn to tell the truth, was examined and
24 testified as follows:

25 DIRECT EXAMINATION

1 THE WITNESS: Based on the historical
2 events, the State of Hawai'i is limited to the
3 Section 4, Compact of the Admission Act, is limited
4 to the Hawaiian Homes land only.

5 These are the crown and government lands
6 that was illegally ceded to the U.S. by the Banana
7 Represent of Hawai'i in 1898 and incorporated under
8 Article IV, Section 3, Clause 2 of the U.S.
9 Constitution on amendment.

10 And it goes back to the Reciprocity Treaty
11 of 1898 -- I mean, 1875 that brought about the joint
12 resolution of 1898.

13 Most people wonder why a joint resolution,
14 because the Reciprocity Treaty of 1875, it was not
15 signed by King Kalakaua or the U.S. President, but is
16 placed in Hawaiian Kingdom under Article IV, Section
17 3, Clause 2 of the U.S. Constitution, and there is no
18 amendment for that to happen.

19 So I believe the land that you're dealing
20 with this morning is not the ceded land of 1898, and
21 it does not fall under the jurisdiction of the State
22 of Hawai'i or the Land Use Commission, or even the
23 Planning Commission, the Maui County.

24 So it's questionable whether you have
25 jurisdiction to expand beyond the Section IV Compact

1 of the Admission Act, the 1898 Joint Resolution,
2 which limited to 1,750,000 acres of crown and
3 government lands.

4 So my understanding is the Land Use
5 Commission has no authority to use their power over
6 these other lands. Thank you.

7 PRESIDING OFFICER OHIGASHI: Thank you.

8 Do you have any questions for the witness,
9 Mr. Petitioner?

10 MR. TABATA: No questions.

11 CHAIRPERSON SCHEUER: How about Maui
12 County?

13 MS. McLEAN: No questions.

14 MR. SETOGAWA: OP has no questions.

15 CHAIRPERSON SCHEUER: Does the
16 Commissioners have any questions for the witness?
17 Hearing none, are there any more public witnesses in
18 any of the sites?

19 Seeing none, Mr. Tabata, will you please
20 make your presentation.

21 MR. TABATA: Thank you, Presiding Officer
22 Ohigashi.

23 On January 16, 2020, R.D. Olson filed
24 Motions to Amend the Findings of Fact, Conclusions of
25 Law and Decision and Order filed March 25th, 2005

1 with the Maui Business Park Phase II project.

2 Our Motion to Amend is to allow a
3 development of a 200-room hotel, approximately
4 5.17 acres of land. One of the requirements for our
5 project is to amend Wailuku-Kahului Community Plan
6 and that Community Plan Amendment is a trigger on the
7 Chapter 343.

8 Therefore, we filed our Motion to Designate
9 LUC as the Approving Agency and Accepting Authority
10 also on January 16th, 2020 under HRS 343-5(e) to
11 request an order from the Commission to establishing:

- 12 1) That the LUC be the Accepting Authority
13 and Approving Agency under Chapter 343.
- 14 2) Through the LUC experience, we expect
15 that an Environmental Impact Statement
16 is likely to be required;
- 17 3) Authorize Petitioner to prepare an
18 Environmental Impact Statement
19 Preparation notice.

20 If there's any questions, I'll be happy to
21 answer them.

22 PRESIDING OFFICER OHIGASHI: Are there any
23 questions for Mr. Tabata?

24 Maui County.

25 MS. McLEAN: Thank you.

1 The County of Maui submitted its Position
2 Statement in support of the Petitioner's Motion in
3 our statement. We don't have anything to add. Thank
4 you.

5 PRESIDING OFFICER OHIGASHI: Office of
6 Planning?

7 MR. SETOGAWA: OP has no questions.

8 PRESIDING OFFICER OHIGASHI: Any questions
9 from the Commissioners?

10 I'm going to have a leap of faith and say
11 that Arnold Wong is not going to ask a question, so
12 I'll move on.

13 COMMISSIONER WONG: No, Chair.

14 PRESIDING OFFICER OHIGASHI: I refuse to be
15 called Chair, Presiding Officer.

16 Maui County, do you have a presentation to
17 add?

18 MS. McLEAN: No, thank you.

19 PRESIDING OFFICER OHIGASHI: State Office
20 of Planning?

21 MR. SETOGAWA: Office of Planning has no
22 objections to the motion.

23 PRESIDING OFFICER OHIGASHI: Are there any
24 questions for either Office of State Planning or Maui
25 County on their submittals by the Commissioners?

1 Seeing none, what is your pleasure,
2 Commissioners? I shouldn't have asked.

3 COMMISSIONER WONG: Chairman Ohigashi, pro
4 tem. Sorry, I had to put that in.

5 PRESIDING OFFICER OHIGASHI: Arnold,
6 there's a light hitting your head.

7 COMMISSIONER WONG: I would like to make a
8 motion. I would like to move that the Land Use
9 Commission be the Accepting Authority for A03-739.

10 PRESIDING OFFICER OHIGASHI: Is there a
11 second?

12 COMMISSIONER OKUDA: This is Gary Okuda. I
13 second the motion.

14 PRESIDING OFFICER OHIGASHI: So moved by
15 Commissioner Wong and seconded by Commissioner Okuda
16 to accept to designate the LUC as the Approving
17 Agency for the Environmental Impact Statement under
18 Chapter 343, and for Authority to prepare an
19 Environmental Impact Statement Preparation Notice --

20 COMMISSIONER OKUDA: Mr. Presiding Officer,
21 this is Gary Okuda. I seconded the Motion based on
22 the Land Use Commission being the Accepting
23 Authority.

24 Now, there might not be any real legal
25 difference in the end by the use of the terms

1 "approving" or "accepting", but in looking at the
2 statute, it might be the term "accepting" is more
3 accurate.

4 I don't believe it changes the substance of
5 the motion, and the intent of my seconding the motion
6 was to basically go forward with the entire relief
7 that the Petitioner was raising in the presentation
8 and motion they were making.

9 But again, it's for the Land Use Commission
10 to be the accepting authority.

11 CHAIRPERSON SCHEUER: Mr. Presiding
12 Officer, I think we're just clarifying that when you
13 restated the motion for the record, you used the word
14 "approving", but the motion made on Oahu actually
15 used the word "accepting".

16 PRESIDING OFFICER OHIGASHI: So noted.

17 Are there any more comments?

18 EXECUTIVE OFFICER: Mr. Chair, if I may
19 inquire of the movant. The motion also requested --
20 the Petitioner's motion also requested that the
21 Commission authorize them to move directly into
22 Environmental Impact Statement Preparation Notice,
23 and that's because of the time frame, staff is
24 concerned about submitting a letter or order to the
25 OEQC. We're wondering whether the Commission wants

1 to authorize the Executive Officer to notify and
2 submit the record of the Commission's Decision and
3 for the Chair to sign any order on this matter on
4 behalf of the Commission?

5 COMMISSIONER WONG: Yes, I would like that
6 to be added to the motion.

7 COMMISSIONER OKUDA: This is Gary Okuda. I
8 would second that addition. I think that's
9 consistent with the intent here.

10 EXECUTIVE OFFICER: Thank you.

11 PRESIDING OFFICER OHIGASHI: Any other
12 comments? So with no other comments, with that, Mr.
13 Orodanker, the motion by changing it from "approving"
14 to "accepting", and for language regarding authority
15 to prepare an Environmental Impact Statement
16 Preparation Notice and other documents.

17 Could you please restate the motion and
18 take roll?

19 EXECUTIVE OFFICER: The motion is for the
20 Commission to be the Accepting Authority for
21 Petitioner's HRS 343 compliance. And as the
22 Commission leaves the Petitioner's submittal, show
23 that there may be a significant effect or impact to
24 environment, and direct the Petitioner to prepare an
25 Environmental Impact Statement Preparation Notice.

1 And given the limited timeframe, the
2 Petitioner's Motion to Designate the Executive
3 Officer to notify and submit -- authorize to notify
4 and submit a record of the Commission's decision to
5 the OEQC by February 15, 2020; and further that the
6 Chair is authorized to sign any order on this matter
7 on behalf of the Commission.

8 Commissioner Wong?

9 COMMISSIONER WONG: Aye.

10 EXECUTIVE OFFICER: Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 EXECUTIVE OFFICER: Commissioner Chang?

13 COMMISSIONER CHANG: Yes.

14 EXECUTIVE OFFICER: Commissioner Cabral?

15 VICE CHAIR CABRAL: Yes.

16 EXECUTIVE OFFICER: Commissioner Aczon?

17 VICE CHAIR ACZON: Aye.

18 EXECUTIVE OFFICER: Commissioner Giovanni?

19 COMMISSIONER GIOVANI: Aye.

20 EXECUTIVE OFFICER: Chair Scheuer?

21 CHAIRPERSON SCHEUER: Aye.

22 EXECUTIVE OFFICER: Presiding Officer

23 Ohigashi?

24 PRESIDING OFFICER OHIGASHI: Aye.

25 EXECUTIVE OFFICER: Thank you, Mr.

1 Presiding Officer, the motion passes unanimously.

2 PRESIDING OFFICER OHIGASHI: Is there any
3 other Maui business? Hearing none, I declare the
4 Maui-based meeting adjourned and return control back
5 to Chair Scheuer, to whatever extent he had it in the
6 beginning.

7 CHAIRPERSON SCHEUER: That is an
8 existential question, Mr. Presiding Officer.

9 The next meeting will require that the
10 Commission provide meals for a "working lunch" as an
11 integral part of the meeting due to the remote locale
12 of the meeting facility.

13 Mr. Orodenger, would the LUC staff make the
14 necessary arrangements for the "working lunch"?

15 EXECUTIVE OFFICER: Thank you, Mr. Chair,
16 for numerous things. Yes, we will make the
17 arrangements.

18 CHAIRPERSON SCHEUER: Is there any other
19 LUC business that needs to be attended to? There
20 being no further business, this meeting is adjourned.

21 (The proceedings adjourned at 9:25 a.m.)
22
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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on February 5, 2020 at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

12 I further certify that I am not of counsel for
13 any of the parties hereto, nor in any way interested
14 in the outcome of the cause named in this caption.

15 Dated this 5th day of February, 2020, in
16 Honolulu, Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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