

LAND USE COMMISSION
MEETING MINUTES
June 21, 2023 – 10:00 a.m.

Pursuant to Hawai‘i Revised Statutes, HRS § 92 as amended, the Commission conducted its meeting in person. 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 meeting.

IN PERSON: Hilo Hawaiian Hotel, Mala Ikena Room 71 Banyan Dr, Hilo, HI 96720

YOUTUBE RECORDING:

(<https://www.youtube.com/watch?v=wzDY2FClsGI>)

COMMISSIONERS PRESENT:

Dan Giovanni
Nancy Cabral
Gary Okuda
George Atta
Kū‘ike Kamakea-‘Ōhelo
Melvin Kahele
Michael Yamane
Brian Lee

(9 seated Commissioners as of 04/17/23)

STAFF PRESENT:

Daniel Orodener, Executive Officer
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner
Martina Segura, Staff Planner
Ariana Kwan, Chief Clerk
Julie China, Esq. Deputy Attorney General

COURT REPORTER:

(via Zoom video recording)

Naegeli Deposition and Trial

CALL TO ORDER (*YouTube: 00:00:10*)

Chair Giovanni, called the meeting to order at 10:00 a.m.

APPROVAL OF THE MINUTES (*YouTube: 00:03:03*)

The first agenda item was the approval of the June 7th, 2023, Minutes. There was no written testimony, or members of the public who wished to testify on the approval of the Minutes. However, there was one spelling correction on page three, paragraph two.

Commissioner Atta moved to adopt the June 7th, 2023, Minutes with the correction, and Commissioner Kahele seconded the motion.

The June 7th, 2023, Minutes with the noted change was approved with 8 ayes, 0 nays, and 1 excused.

TENTATIVE MEETING SCHEDULE (*YouTube: 00:05:14*)

Chair Giovanni called for Land Use Commission Staff to provide the Tentative Meeting Schedule.

Executive Officer, Dan Orodener provided the following tentative meeting dates, and cautioned the Commissioners not to plan to release the remaining days due to upcoming items:

- June 22nd, 2023: A02-737 U of N Bencorp (Hawai'i)
- September 6-8, 2023: Hawai'i Congress of Planning Officials (O'ahu)
- September 20, 2023: A92-683 Halekua Development (O'ahu)
- September 21, 2023: SP9-403 Waimānalo Gulch (O'ahu)
- October 4-5, 2023: A07-773 ELC and WDV (Maui)
- October 30-November 2, 2023: ULI Fall Conference (Los Angeles, CA)
- December 6-7 or 20-22, 2023: SP9-403 Waimānalo Gulch (O'ahu)

A19-807 KS SANFORD QUARRY (*YouTube: 00:08:43*)

To consider Special Permit Application for an after-the-fact State Special Use Permit (SUP) [No. 2022/SUP-3, filed by the State of Hawai'i, Department of Accounting and General Services (Petitioner)], for the Waiawa Correctional Facility to bring the facility into compliance with the State Land Use Law, Chapter 205, Hawai'i Revised Statutes (Petition). The Petition includes approximately 23.7 acres of land in the State Agricultural District identified by Tax Map Key (TMK) No. (1) 9-6-005: 011 in the Ewa District of O'ahu, Hawai'i

Appearances

<i>Office of Planning and Sustainable Development ("OPSD")</i>	<i>County of Hawai'i</i>
Alison Kato, Esq. (Deputy Attorney General)	Zendo Kern (Director) Jeffrey Darrow (Deputy Director) Suzanna Tiapula, Esq. (Deputy Corporation Counsel)
<i>Petitioner and Petitioner Witnesses</i>	
Calvert Chipchase, Esq. (Counsel for Petitioner)	<i>Public</i>
Katherine Garson Esq. (Counsel for Sanford Service Center)	None

Disclosures (*YouTube: 00:12:32*)

Commissioner Okuda disclosed that he represented the plaintiff in a case where the defendants counsel was from Cades Schutte. Commissioner Okuda stated that his representation in the case would not impact his viewpoints or decision making, and that he does not have any financial gain in the outcome of the case. There were no objections to his continued participation.

Commissioner Cabral disclosed that she has worked with Zendo Kern and Jeffrey Darrow over many years.

Public Testimony (*YouTube: 00:14:20*)

The Land Use Commission received no written testimony from the public on this matter. Chair Giovanni opened the meeting up for testimony on the matter, and there were no members of the public who wished to testify on this matter.

Presentations (*YouTube: 00:15:40*)

Mr. Chipchase commented and elaborated on the Status of the Draft Environmental Impact Assessment (“DEIS”). It was represented that there were slowdowns due Covid-19 Pandemic, Petitioner is in the process of hiring a new environmental consultant, and the DEIS should be available in a year.

Commissioners questioned the Petitioner on the cultural impact analysis regarding the Ka Pa’akai O Ka ‘Aina Supreme Court Case, cultural importance of pu’u/cinder cone, plans and responsible party for mitigation, information on the environmental consultant, and expected timeline of completion (*YouTube: 00:19:10-00:36:00 and 00:39:08-00:48:25*).

In response to questioning, Petitioner represented the following timeline: the DEIS is expected to be available in one year, the Final Environmental Impact Assessment (“FEIS”) should be available 9 months after the DEIS comment period, and about 9 months after the FEIS is made available, the Petitioner will file a Motion for District Boundary Amendment. (*YouTube: 00:19:10-00:20:30*).

After the questions from the Commission, Suzanna Tiapula Deputy Corporation for Counsel for Hawai’i Planning stated that revised comments were filed, and Mr. Darrow provided a summary of the comments (*YouTube: 00:36:08-00:38:30*).

Alison Kato Deputy Attorney General for The Office of Planning and Sustainable Development (“OPSD”), commented regarding the time frame to comply with the rules change regarding chapter 343 documents (*YouTube: 00:38:31-00:39:08*).

Public Testimony (*YouTube: 00:44:38*)

Once again, Chair Giovanni opened the meeting up for testimony on the matter, and there were no members of the public who wished to testify on this matter.

Deliberations (*YouTube: 00:44:58-00:46:39*)

Commissioner Cabal moved that Petitioner continue filing annual reports and act when the EIS is filed. Commissioner Yamane seconded. The Motion passed with 8 ayes, 0 nays, and 1 excused.

EXECUTIVE SESSION(*YouTube: 00:47:03-00:48:00*)

Commissioner Okuda was excused from executive session. Commissioner Kamakea-‘Ōhelo moved to enter executive session at 11:00a.m, and Commissioner Kahele seconded the Motion. The Motion passed with 7 ayes, 0 nays, and 2 excused.

Pursuant to HRS section 92-5(a)(2) to consult with the Commissioners’ Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved. Commissioners addressed the information from the survey on the executive officer, for the annual performance review.

Commissioner Kamakea-‘Ōhelo moved to exit executive session at 11:40a.m, and Commissioner Kahele seconded the Motion. The Motion passed with 7 ayes, 0 nays, and 2 excused.

RECESS (*YouTube: 00:48:09*)

There being no further business to attended to, Chair Giovanni recessed the meeting at 11:40a.m., and called the meeting to reconvene the next day at 9 a.m.

LAND USE COMMISSION
MEETING MINUTES
June 22, 2023 – 9:00 a.m.

Pursuant to Hawai‘i Revised Statutes, HRS § 92 as amended, the Commission conducted its meeting in person. 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 meeting.

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COMMISSIONERS PRESENT:

Dan Giovanni
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(9 seated Commissioners as of 04/17/23)

STAFF PRESENT:

Daniel Orodener, Executive Officer
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner
Martina Segura, Staff Planner
Ariana Kwan, Chief Clerk
Julie China, Esq. Deputy Attorney General (Via Zoom)

COURT REPORTER:

(via Zoom video recording)

Naegeli Deposition and Trial

CALL TO RECONVENE (YouTube: 00:00:06)

Chair Giovanni, called the meeting to order at 9:00 a.m.

A02-737 U OF N BENCORP (YouTube: 00:06:57)

Approximately 62 Acres of Land situated at Wai‘aha 1st, North Kona, Island of Hawai‘i, State of Hawai‘i. Tax Map Key: (3) 7-5-10:85 and 7-5-17:06. Status and progress report and action (if necessary) in response to the recently submitted annual report.

Appearances

Office of Planning and Sustainable Development (“OPSD”)
Alison Kato, Esq. (Deputy Attorney General)

County of Hawai‘i
Jeffrey Darrow (Deputy Director)
Suzanna Tiapula, Esq. (Deputy Corporation Counsel)

Petitioner and Petitioner Witnesses
Derek Simon, Esq. (Counsel for Petitioner)
Kathrine Garson, Esq. (Counsel for Petitioner)
David Hamilton (President of UNK)
Jeffery Overton (Planner with G70 for DEIS)
Tom Waddle (Construction Management Consultant)

Public
None

Disclosures (*YouTube: 00:24:09*)

Commissioner Atta disclosed that he worked as a planner for the Projects master plan about 20 years ago and stated that it would not impact his decision making. There were no objections to his continued participation.

Commissioner Cabral disclosed that she has worked with Jeffrey Darrow over many years. There were no objections to her continued participation.

Public Testimony (*YouTube: 00:07:08*)

The Land Use Commission received one piece of written testimony from the public on this matter. Which was posted to the LUC website and made publicly available prior to the hearing. Chair Giovanni opened the meeting up for testimony on the matter, and there were no members of the public who wished to testify on this matter.

Presentations (*YouTube: 00:08:07*)

Mr. Simon commented and elaborated on the status and components of the Draft Environmental Impact Assessment (“DEIS”).

After Petitioners comments, Alison Kato Deputy Attorney General for The Office of Planning and Sustainable Development (“OPSD”), commented in support of the Stipulated Agreement for Remand.

Commissioners questioned the Petitioner on the volunteer labor, supervision during construction, the contractor’s license, labor law, and how Petitioner plans to track and compensate volunteers for their labor. Commissioners also asked questions regarding the budget for the execution of the master plan, financial viability of Petitioner, and current use of the Petition Area (*YouTube: 00:26:42-01:33:15*).

The County of Hawai‘i Planning Department continues to support the Project and is waiting for the DEIS. (*YouTube: 01:33:16-01:47:11*).

Alison Kato Deputy Attorney General for The Office of Planning and Sustainable Development (“OPSD”), commented regarding changes in the master plan and asking for more detail in the annual reports (*YouTube: 01:47:11-01:50:13*).

Public Testimony (*YouTube: 01:56:50*)

Once again, Chair Giovanni opened the meeting up for testimony on the matter, and there were no members of the public who wished to testify on this matter.

Deliberations (*YouTube: 01:57:00-02:02:47*)

Commissioner Cabral moved for the matter be scheduled for a follow up within 6-8 months after the filing of the DEIS. Specifically, in February 2024, or sooner. Commissioner Atta seconded. The Motion passed with 7 ayes, 0 nays, and 2 excused.

ADJOURNMENT (*YouTube: 02:03:22*)

There being no further business to attended to, Chair Giovanni adjourned the meeting at 11:14 a.m.