

1 LAND USE COMMISSION
2 STATE OF HAWAI'I

3 Hearing held on May 6, 2020
4 Commencing at 9:00 a.m.

5 Held via ZOOM by Interactive Conference Technology
6 and
7 YouTube Streaming Video link

8 I. Call to Order

9 II. Adoption of Minutes

10 III. Tentative Meeting Schedule

11 IV. ACTION

12 A17-804 HAWAIIAN MEMORIAL LIFE PLAN

13 Consideration of a Time Extension for

14 Decision-Making To An Additional Ninety-Days for
15 Docket No. A17-804

16 V. DISCUSSION AND ACTION (If Necessary)

17 LUC operations during the COVID-19 Health Crisis

18 VI. Adjournment

19
20
21
22
23 BEFORE: Jean Marie McManus, CSR #156
24 McManus Court Reporters
25 (808) 239-6148 or (808) 228-3399

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

JONATHAN SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
EDMUND ACZON (Oahu)
GARY OKUDA (Oahu)
LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)

STAFF:

LINDA CHOW, ESQ.
Deputy Attorney General

DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Planner/Chief Clerk
SCOTT DERRICKSON, AICP/Planner

DAWN APUNA, ESQ.
Deputy Attorney General
State Office of Planning

RAYMOND YOUNG, Planner
Department of Planning and Permitting
City and County of Honolulu

CURTIS TABATA, ESQ.
For Petitioner

GRANT YOSHIMORI, Pro Se
For Hui O Pikoiloa

1 CHAIRPERSON SCHEUER: This is the May 6, 2020
2 Land Use Commission meeting being held using interactive
3 conference technology linking video conference
4 participants and other interested individuals of the
5 public via a "ZOOM" internet conferencing program to
6 comply with State and County official operational
7 directives during the current worldwide pandemic health
8 crisis. The public is viewing the meeting via YouTube
9 streaming video.

10 I'm going to ask participants to moot
11 yourselves while you are not talking.

12 The LUC is recording electronically and will
13 post a copy or link of this recording on its website as
14 soon after the hearing as-is practicable.

15 In addition, LUC is streaming the hearing
16 during YouTube, and will be accessible to the public
17 during and after the hearing. Those interested can
18 locate it by searching for the State Land Use channel on
19 YouTube.

20 This "ZOOM" conferencing technology allows the
21 Parties and each participating Commissioner individual
22 remote access to the meeting proceedings via their
23 personal digital devices.

24 I'm the Chair, Jonathan Likeke Scheuer. I'm
25 now going to actually ask for the record the following

1 people to acknowledge that they are participating in
2 this, so unmoot yourself when I call your name and say
3 "here" or "aye".

4 VICE CHAIR ACZON?

5 VICE CHAIR ACZON: Here.

6 CHAIRPERSON SCHEUER: Chang?

7 COMMISSIONER CHANG: Good morning, I'm here.

8 CHAIRPERSON SCHEUER: Okuda?

9 COMMISSIONER OKUDA: This is Gary Okuda. I am
10 here.

11 CHAIRPERSON SCHEUER: And Commissioner Wong?

12 COMMISSIONER WONG: Present.

13 CHAIRPERSON SCHEUER: Those are our
14 Commissioners on Oahu. Additionally on Oahu are the LUC
15 Executive Officer Daniel Orodener.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair, I am
17 present.

18 CHAIRPERSON SCHEUER: Chief Clerk Riley
19 Hakoda.

20 CHIEF CLERK: Present.

21 CHAIRPERSON SCHEUER: And Scott Derrickson of
22 our staff.

23 MR. DERRICKSON: Present.

24 And the Court Reporter, Jean McManus, are on
25 Oahu.

1 Commissioner Cabral is on the Big Island.

2 VICE CHAIR CABRAL: I'm present.

3 CHAIRPERSON SCHEUER: Commissioner Ohigashi is
4 on Maui.

5 COMMISSIONER OHIGASHI: Present.

6 CHAIRPERSON SCHEUER: And I believe we are
7 missing our Kauai Commissioner Dan Giovanni. Is that
8 correct?

9 MR. DERRICKSON: That's correct.

10 CHAIRPERSON SCHEUER: There are currently
11 eight seated Commissioners and we have seven present, a
12 quorum.

13 Also with us is our Deputy Attorney General
14 Linda Chow.

15 MS. CHOW: Here.

16 CHAIRPERSON SCHEUER: I'll call for the
17 presence of the parties later in the call.

18 Our first order of business is adoption of
19 February 5th, 2020 minutes. Are there any corrections
20 or comments on the minutes?

21 VICE CHAIR CABRAL: This is Nancy, and I'll
22 move to accept the minutes as written.

23 CHAIRPERSON SCHEUER: One moment, Commissioner
24 Cabral. I just want to confirm for the record the
25 Commission staff has received no testimony related to

1 this meeting -- (indecipherable).

2 Confirming with Scott Derrickson and Dan
3 Orodenker.

4 We have received no public testimony today on
5 this agenda, including relating to minutes; is that
6 correct?

7 EXECUTIVE OFFICER: That's correct, Mr. Chair.

8 CHAIRPERSON SCHEUER: I heard no corrections
9 or comments on the minutes.

10 We have a motion to approve from Commissioner
11 Cabral. Is there a second?

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

14 CHAIRPERSON SCHEUER: Thank you, Commissioner
15 Okuda.

16 A motion has been made by Commissioner Cabral
17 and seconded by Commissioner Okuda to adopt the
18 February 5th, 2020 minutes.

19 In the interest of real transparency, I'm
20 going to do a roll call vote on this just to make sure
21 that the record is incredibly clear.

22 I can do it or, Dan, if you want to do it.

23 EXECUTIVE OFFICER: I can do it, Mr. Chair.
24 Commissioner Cabral?

25 VICE CHAIR CABRAL: Yes.

1 EXECUTIVE OFFICER: Commissioner Okuda.

2 COMMISSIONER OKUDA: Yes.

3 EXECUTIVE OFFICER: Commissioner Giovanni is
4 absent.

5 Commissioner Chang?

6 COMMISSIONER CHANG: Yes.

7 EXECUTIVE OFFICER: Commissioner Aczon?

8 VICE CHAIR AZON: Yes.

9 EXECUTIVE OFFICER: Commissioner Ohigashi?

10 COMMISSIONER OHIGASHI: Yes.

11 EXECUTIVE OFFICER: Commissioner Wong?

12 COMMISSIONER WONG: Yes.

13 CHAIRPERSON SCHEUER: Chair Scheuer?

14 CHAIRPERSON SCHEUER: Aye.

15 EXECUTIVE OFFICER: Thank you, Mr. Chair, the
16 minutes are adopted unanimously.

17 CHAIRPERSON SCHEUER: Thank you.

18 The next item is a tentative meeting schedule,
19 so will you continue, Mr. Orodanker?

20 EXECUTIVE OFFICER: Yes, thank you, Mr. Chair.

21 We do not have any other meetings scheduled
22 for May at the moment.

23 We are anticipating a June restart and I'm
24 looking at the executive order and travel band and that
25 may not be correct. We may have to adjust some of these

1 to videoconferencing. We will surely let the public and
2 the Commissioners know if that occurs, however, on
3 June 10th, we are scheduled to begin the hearings on
4 Hawaii Memorial Park on Oahu.

5 On June 24th continuation of Hawaii Memorial
6 Park.

7 On June 25th we will be on the Big Island for
8 the Church matter, the Barry matter, Hawaii Island Land
9 Trust, and a territory ruling with regard to short-term
10 vacation rentals filed by County of Hawaii.

11 On July 8th we will be continuing the Hawaii
12 Memorial Park matter, if necessary.

13 On July 9th we will be on Maui for the Central
14 Maui Landfill matter, Ka'ono'ulu Ranch, acceptance of
15 the Environmental Assessment for the Lanai matter, and
16 the acceptance of the Pu'uuleihua order.

17 On July 22nd we will be in Hilo for the
18 University of Nations Bencorp matter, a matter that will
19 also be on July 23rd.

20 On August 12th we will be in Hilo for the
21 Hawaii Island Land Trust matter. That's also scheduled
22 for August 13th, if necessary.

23 On August 26th we will be on Maui for the
24 Hanahau matter to amend conditions. That's also
25 tentatively scheduled for 27th.

1 This September we will be on Maui for the
2 Pohaku extension of time matter on the 9th, and on the
3 10th we will be also be on Maui for the C. Brewer
4 bifurcation matter.

5 That matter will be continued to
6 September 23rd.

7 And on September 24th we will be on Maui for
8 the A & B Windward Hotel matter.

9 October 7th we will be Hilo for U of N,
10 Bencorp matter. And on the 8th we will be taking up any
11 final matters for the Barry and Church Petitions.

12 And that's it as -- I'm sorry.

13 On November 4th we will be hearing the PVT
14 application, that's a special permit application on
15 Oahu.

16 And also on Oahu on the 5th for the Gentry DOA
17 extension of time.

18 And that takes us through the end of the year.

19 CHAIRPERSON SCHEUER: Thank you very much,
20 Dan.

21 EXECUTIVE OFFICER: I'm sorry, we do have
22 matters scheduled for December tentatively right now for
23 Kealia on Maui on December 2nd and 3rd, and December 16
24 and 17 -- 16th is in Hilo and December 17th on Oahu.

25 Mr. Chair, we usually don't go out that far,

1 but we've got a lot of things backed up.

2 CHAIRPERSON SCHEUER: Thank you.

3 Commissioners, are there questions for Dan?

4 Commissioner Cabral.

5 VICE CHAIR CABRAL: I would just ask that the
6 staff send us that entire calendar. I think the last
7 printed record I had that might still be active took us
8 through maybe July. I would love to mark my calendar
9 soon.

10 EXECUTIVE OFFICER: We will forward that on to
11 you.

12 VICE CHAIR CABRAL: Thank you.

13 CHAIRPERSON SCHEUER: Thank you, Mr.
14 Orodener.

15 I'm going to pause for a technical check. Is
16 there somebody monitoring the YouTube?

17 MR. DERRICKSON: Yes, I am.

18 CHAIRPERSON SCHEUER: Can you confirm its
19 availability? I've received an indication that outside
20 parties are not able to find it.

21 MR. DERRICKSON: Okay.

22 CHAIRPERSON SCHEUER: I apologize for the
23 inconvenience, Commissioners and members of the public.

24 MR. DERRICKSON: Give me a moment to check on
25 that. Go ahead and continue.

1 CHAIRPERSON SCHEUER: Deputy Attorney General,
2 do we have to suspend the meeting until we correct this?

3 MS. CHOW: I don't think so, but if it's only
4 going to be a few minutes, we might as well wait.

5 MR. DERRICKSON: I can confirm. I see the
6 stream; I see it up now. It is live streaming with a 20
7 second delay.

8 CHAIRPERSON SCHEUER: Okay. At the same
9 address that was provided?

10 MR. DERRICKSON: Correct.

11 CHAIRPERSON SCHEUER: Okay. I'm not able to
12 pull it up either using the link on that, and apparently
13 OP staff are not able to.

14 MR. DERRICKSON: Ask them to try to refresh
15 their screens.

16 CHAIRPERSON SCHEUER: Are we fine with going
17 ahead, Ms. Chow?

18 MS. CHOW: Yes.

19 CHAIRPERSON SCHEUER: Our next agenda item is
20 an action meeting on Docket A17-804 Hawaiian Memorial
21 Life Plan, Ltd., to consider an Extension of Time for
22 Decision Making to hear the Petition to Amend the
23 Conservation Land Use District Boundary Into The Urban
24 Land Use District for Approximately 53.449 acres of Land
25 at Kane'ohe, Island of O'ahu, State of Hawai'i TMK (1)

1 4-5-033: a portion thereof, due to the current worldwide
2 health crisis and the accompanying State and County
3 directives in place for public health concerns.

4 Will the parties for Docket A17-804 please
5 identify themselves for the record?

6 MR. TABATA: Thank you. Good morning, Chair,
7 Members of the Commission, Curtis Tabata on behalf of
8 the Petitioner Hawaiian Memorial Life Plan.

9 CHAIRPERSON SCHEUER: Good morning, Mr.
10 Tabata.

11 MS. APUNA: Good morning, Chair, Members of
12 the Commission, Deputy Attorney General Dawn Apuna for
13 the State Office of Planning.

14 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.

15 MR. YOUNG: Good morning, Chair, this is
16 Raymond Young representing the City and County of
17 Honolulu.

18 CHAIRPERSON SCHEUER: Intervenors.

19 MR. YOSHIMORI: Good morning everyone, this is
20 Grant Yoshimori, Intervenor Pro Se.

21 CHAIRPERSON SCHEUER: Thank you very much.

22 Now, let me update the record.

23 On January 22nd, 2020, the Commission met at
24 Koolau Ballroom and Conference Center in Kaneohe,
25 Hawaii, for an Action Meeting on Docket No A17-804

1 Hawaiian Memorial Life Plan, Ltd (O'ahu) to Consider the
2 Petition to Amend the Conservation Land Use District and
3 began proceedings on that matter.

4 On April 20, 2020, the Parties (except DPP)
5 submitted a Stipulated Agreement to extend time for
6 decision-making an additional ninety days on this
7 matter. DPP submitted their signed stipulation on April
8 28, 2020 via email.

9 On April 30, 2020, the Commission conducted a
10 Pre-Hearing Meeting experiment with the Parties and
11 Intervenor and LUC staff to familiarize everyone with
12 the ZOOM meeting usage and also mailed the May 6, 2020
13 Notice of Agenda to the Parties and the Statewide email
14 and Oahu mailing lists.

15 Let me briefly run over our hearing procedure
16 for the day.

17 First, I will recognize if any written public
18 testimony has been received. If it has been received, I
19 will summarize it.

20 After completion of the public testimony
21 portion of the proceedings, we will take up
22 consideration of whether or not a 90-day time extension
23 to complete the District Boundary Amendment proceedings
24 is warranted in this case. The Petitioner, City and
25 County of Honolulu, the State Office of Planning and the

1 Intervenor Hui o Pikoiloa will be given the opportunity
2 to comment on a time extension.

3 Are there any questions from the Parties on
4 our procedures for today? Petitioner?

5 MR. TABATA: No questions.

6 CHAIRPERSON SCHEUER: OP?

7 MS. APUNA: No questions.

8 CHAIRPERSON SCHEUER: City?

9 MR. YOUNG: No questions.

10 CHAIRPERSON SCHEUER: Intervenor?

11 MR. YOSHIMORI: No questions.

12 COMMISSIONER CHANG: I would like to make a
13 disclosure.

14 CHAIRPERSON SCHEUER: Please proceed.

15 COMMISSIONER CHANG: My father recently passed
16 away, so Hawaiian Memorial Park assisted on the funeral
17 services for him, so I wanted to disclose that.

18 CHAIRPERSON SCHEUER: Commissioners?

19 I'm very sorry to hear about the passing of
20 your father. Do you believe that this will in any way
21 affect your ability to be fair or impartial in this
22 matter?

23 COMMISSIONER CHANG: No, I don't believe it
24 will impact my ability. I'm sorry I didn't say that
25 initially, but no, I believe I can be fair and

1 impartial.

2 CHAIRPERSON SCHEUER: Any objections from any
3 of the Parties to Commissioner Chang's --

4 MR. TABATA: Petitioner has no objection, and
5 send our deepest condolences.

6 MS. APUNA: No objections.

7 MR. YOUNG: The city has no objections.

8 MR. GRANT: Intervenor has no objection.

9 COMMISSIONER CHANG: Thank you very much
10 everyone.

11 CHAIRPERSON SCHEUER: Thank you, Commissioner.
12 Again, we're sorry for your loss.

13 Are there any further disclosures from the
14 Commissioners? We have all disclosed I think at our
15 first meeting on this docket a number of relationships
16 we have to this project, and those objection disclosures
17 were noted. No objections were filed.

18 Any further new disclosures? Hearing none.
19 Confirming, again, as I did regards to the minutes that
20 no written testimony has been received from the public
21 on this matter.

22 Mr. Derrickson, Mr. Hakoda and Mr. Orodener?

23 EXECUTIVE OFFICER: That is correct, Mr.
24 Chair.

25 MR. DERRICKSON: Yes, that is correct.

1 CHAIRPERSON SCHEUER: Thank you very much.

2 With that, I will give each of the Parties an
3 opportunity to speak to the proposed time extension
4 beginning with the Petitioner representative, Mr.
5 Tabata.

6 MR. TABATA: Thank you, Chair.

7 Petitioner has agreed to sign off on the
8 stipulation to extend the 365-day deadline up to
9 90 days. We recognize we are in an unprecedented crisis
10 that we are currently going through, and we are prepared
11 for the extension of time.

12 CHAIRPERSON SCHEUER: Thank you very much, Mr.
13 Tabata. Any questions for the Petitioner from the
14 Commissioners? Seeing none.

15 Office of Planning.

16 MS. APUNA: Office of Planning has no
17 objections to the extension. We believe it is
18 reasonable and fair under the circumstances. Thank you.

19 CHAIRPERSON SCHEUER: Any questions for OP
20 from the Commissioners?

21 City and County.

22 MR. YOUNG: No questions.

23 CHAIRPERSON SCHEUER: Any questions for City
24 and County of Honolulu from the Commissioners?

25 Commissioner Okuda.

1 COMMISSIONER OKUDA: This is Gary Okuda.
2 Chair, can we ask the City if they also agree with the
3 stipulation or the extension?

4 CHAIRPERSON SCHEUER: Please, City.

5 MR. YOUNG: Mr. Chair, the City does agree
6 with the stipulation and we have no issues with it.

7 CHAIRPERSON SCHEUER: Thank you. Any
8 followup? Commissioner Okuda.

9 COMMISSIONER OKUDA: This is Gary Okuda. No
10 followup.

11 CHAIRPERSON SCHEUER: Anything else for the
12 City? If not, Mr. Yoshimori.

13 MR. YOSHIMORI: The Intervenors agree with the
14 Petitioner.

15 CHAIRPERSON SCHEUER: Commissioners, any
16 questions for the Intervenors?

17 Seeing none, Commissioners, any final
18 questions for any of the Parties on this matter? If
19 not, Commissioners, what is your pleasure?

20 Commissioner Okuda.

21 COMMISSIONER OKUDA: Mr. Chair, this is Gary
22 Okuda.

23 Mr. Chair, I would make a motion that the
24 stipulation to extend the deadline be accepted by the
25 Land Use Commission, and any deadline required by HRS

1 section 205-4 or any deadline provided or required by
2 statute be so extended by 90 days.

3 COMMISSIONER OHIGASHI: Second.

4 CHAIRPERSON SCHEUER: Thank you very much.

5 Commissioner Okuda has made a motion and
6 Commissioner Ohigashi has seconded the motion.

7 Is there any discussion on the motion,
8 Commissioners? Commissioner Okuda.

9 COMMISSIONER OKUDA: Mr. Chair, this is Gary
10 Okuda. I believe the Parties, number one, have come to
11 an agreement, based upon their statements on the record,
12 that this COVID pandemic does create not only good
13 cause, but an unprecedented requirement for the need for
14 the stipulation to allow us to properly consider all the
15 facts in this case.

16 I also believe the stipulation is consistent
17 with the Governor's Proclamation that was announced and
18 issued yesterday night, specifically at pages 16 of the
19 proclamation which specifically suspends the application
20 of HRS Chapter 91, and it states that to the extent
21 necessary deadlines -- and I quote: Deadlines may be
22 waived or suspended.

23 And on page 17 of the Proclamation, the
24 Proclamation also states that to the extent that
25 hearings or proceedings are not covered by Chapter 91,

1 and I quote: Administrative hearings not subject to
2 Chapter 91, to the extent necessary such that, at the
3 sole discretion of the Department -- it says O-F, but it
4 should be or, O-R, agency, any such hearing may be
5 conducted by telephone or videoconference.

6 It continues on to also say: Any deadlines
7 may be waived or suspended. And it also continues on
8 with further words.

9 So in other words, the Proclamation that was
10 issued by the Governor is also consistent with the
11 stipulation. And for those and other good reasons and
12 good cause in the record, I would ask that the motion be
13 granted.

14 CHAIRPERSON SCHEUER: Thank you very much,
15 Commissioner Okuda.

16 Anybody else wish to discuss the motion before
17 us? If there's no further discussion, I'll note that
18 I'm thankful for the Parties, for your working on this
19 under these extraordinary circumstances that we're in so
20 that we can continue to do our jobs as we move forward.

21 If there is no further discussion beyond that,
22 Mr. Orodener, can you poll the Commission?

23 EXECUTIVE OFFICER: Thank you, Mr. Chair. The
24 motion by Commissioner Okuda was to accept the
25 stipulation by the Parties, and extend any deadlines

1 required by statute by 90 days.

2 Commissioner Okuda?

3 COMMISSIONER OKUDA: Yes.

4 EXECUTIVE OFFICER: Commissioner Ohigashi?

5 COMMISSIONER OHIGASHI: Yes.

6 EXECUTIVE OFFICER: Commissioner Cabral?

7 VICE CHAIR CABRAL: Yes.

8 EXECUTIVE OFFICER: Commissioner Chang?

9 COMMISSIONER CHANG: Yes.

10 EXECUTIVE OFFICER: Commission Aczon?

11 VICE CHAIR ACZON: Aye.

12 EXECUTIVE OFFICER: Commissioner Wong?

13 COMMISSIONER WONG: Aye.

14 EXECUTIVE OFFICER: Chair Scheuer?

15 CHAIRPERSON SCHEUER: Aye.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair, the
17 motion passes with seven votes. It's unanimous.

18 CHAIRPERSON SCHEUER: Thank you very much.

19 Our next agenda item for discussion and
20 action, if necessary, about how the LUC will be dealing
21 with COVID 19 pandemic.

22 COMMISSIONER WONG: Chair?

23 CHAIRPERSON SCHEUER: Commissioner Wong.

24 COMMISSIONER WONG: Just have a question.

25 Do we -- if the City doesn't want to stay, or

1 even the Intervenor or even the Petitioner doesn't want
2 to stay, they could log off, right?

3 CHAIRPERSON SCHEUER: They can certainly log
4 off, and if they wanted to follow on YouTube. OP will
5 continue to have a role.

6 COMMISSIONER WONG: So just giving them an out
7 if they need to, courtesy.

8 MR. TABATA: Thank you, Commissioner Wong.
9 Actually I have no place else to go right now, so if
10 it's okay with everybody else, I'd love to stick around
11 and observe.

12 CHAIRPERSON SCHEUER: We're happy to have you.
13 Commissioner Wong, are you satisfied? Can we
14 move on?

15 COMMISSIONER WONG: Yes. I just wanted to
16 give them an out if they wanted to.

17 CHAIRPERSON SCHEUER: Thank you.

18 Mr. Orodener.

19 EXECUTIVE OFFICER: Thank you, Mr. Chair.

20 In looking at the COVID crisis situation, and
21 staff's experience with economic crisis that we've had
22 in the past, it is not uncommon, and is actually
23 expected, that subsequent to restart, for lack of a
24 better word, while the economy is still down, it's
25 highly likely that a lot of projects will have trouble

1 with continued funding, have trouble moving forward, or
2 have trouble meeting various deadlines that are
3 contained in the decision and orders that we have
4 proposed, mainly due to the crisis and the economic
5 downturn.

6 And in an effort to expedite those matters,
7 staff is considering a proposal, or is putting forward a
8 proposal for the Commission's consideration -- phrase
9 that better -- to create a sub committee of three
10 Commissioners that would be empowered to handle motions
11 for time extensions that come in in the next three to
12 five years depending on how the Commission feels about
13 it, rather than having us go through a hearing and go
14 through an entire proceedings.

15 The proposal would require that a petitioner
16 submit a request for time extension in writing along
17 with a good cause and various other requirements under
18 Chapter 205 for the extension, and that interested
19 parties be noticed and that there be an opportunity to
20 respond before the sub committee would make any
21 decisions and there's also, in our thoughts, a procedure
22 for reconsideration or dispute of those decisions by the
23 committee.

24 This would require a rule change. Our intent
25 would be that this rule change would have a drop-dead

1 date on it as determined by the Commission. This is one
2 of the few ways we think we can help expedite and
3 process these in the proposed COVID 19 era, and help
4 keep cost down for developers who may already be
5 struggling, and we ask for your comment.

6 CHAIRPERSON SCHEUER: So, Mr. Orodanker, the
7 proposal is to draft and -- the specific question you're
8 asking for the Commission?

9 EXECUTIVE OFFICER: The specific question I'm
10 asking is whether or not this type of aid, rule
11 amendment, is something the Commission would like to
12 entertain? I can draft something up and put it in front
13 of the Commission and have it approved at a later
14 hearing, but I didn't want to go through drafting a rule
15 amendment without the Commissioners' input as to whether
16 or not this speaks to that.

17 CHAIRPERSON SCHEUER: Commissioners, beginning
18 with Commissioner Cabral.

19 VICE CHAIR CABRAL: Thank you. Nancy Cabral
20 here.

21 I think it's an excellent idea because often
22 it's amazing the amount of effort, money, time put in
23 together for a really some times very administrative
24 type situation. I would recommend that of the three or
25 possibly four that would be on such a committee, that

1 our Commission would vote to who those three or four
2 would be as opposed to appointment, and we should also
3 always have at least have one if not two alternates in
4 the event one of the three is not able to hear a case in
5 a timely manner needed or something that the alternate
6 would from the beginning of that step into that position
7 so it's not held up by someone's individual calendar of
8 some sort.

9 That's my suggestions. Thank you.

10 CHAIRPERSON SCHEUER: Thank you, Commissioner
11 Cabral. Commissioners? Commissioner Wong followed by
12 Commissioner Okuda.

13 COMMISSIONER WONG: Chair, I agree with this.
14 Including Commissioner Cabral's statement of having an
15 alternate just in case one of the group couldn't make
16 it.

17 The only other thing, was wondering is will
18 the AG sign off on this? I mean is this legal or is
19 it -- you know, what I'm trying to say is it possible in
20 legality-wise?

21 CHAIRPERSON SCHEUER: Deputy AG Chow.

22 MS. CHOW: Well, we have to see what the final
23 rule is that comes out, because I think that's what Mr.
24 Orodener is proposing that he's going to draft
25 something, and once the final rule comes out, we will

1 review it for legality, but I think we can go forward
2 and consider the rule.

3 COMMISSIONER WONG: So the other question I
4 have is, would it be -- do we have to go through the
5 process of the 90 -- you know, public hearing and all
6 that, and go back to us, and then go to the Governor for
7 sign off, or is it like a special case?

8 MS. CHOW: Well, so under the 7th-Day
9 Emergency Proclamation -- and I apologize, I was a
10 little busy yesterday and did not have a chance to read
11 the 7th Proclamation -- but I believe that there was a
12 provision in there as cited earlier for the rule making,
13 standard rule-making procedure to be varied under this
14 Emergency Proclamation. And so because it's in response
15 to that, it may come under the Emergency Proclamation as
16 more flexible in the procedure.

17 EXECUTIVE OFFICER: Commissioner Wong,
18 regardless of whether or not -- I mean, if it does fall
19 under the Emergency Proclamation, we will take advantage
20 of. If it does not, we will work with the Attorney
21 General to do an expedited hearing process, public
22 hearing process and an expedited return to the
23 Commission.

24 The administration is anxious to come up with
25 ways to assist the business community in navigating

1 through this economic crisis, and we believe that we can
2 expedite any signatures that are required if we have to
3 go through the normal process, both at the Director's
4 office and at Governor's office.

5 COMMISSIONER WONG: Thank you.

6 MS. CHOW: The only holdup to the process
7 might be the requirement to go through the Small
8 Business Regulatory Review Board, because I'm not sure
9 if they are meeting during this time. But again, we can
10 look to ways to expedite the process.

11 EXECUTIVE OFFICER: They are in fact meeting
12 during this period, and what I believe that we will get
13 a check-off from the staff of the Small Business
14 Regulatory Board that there's no impacts. This won't
15 affect small businesses.

16 CHAIRPERSON SCHEUER: Thank you, Commissioner
17 Wong, and the comments from Deputy AG Chow and our
18 Executive Officer.

19 Commissioner Okuda.

20 COMMISSIONER OKUDA: This is Gary Okuda.
21 Thank you Mr. Chair.

22 I would ask for two things to be considered by
23 any proposed rule.

24 Number one of which has been discussed which
25 is to make it as a practical matter something that

1 achieves whatever goals we have for time extensions
2 without requiring really unnecessary submission of
3 unnecessary documents or paperwork or anything like
4 that.

5 I'm not saying that people who are requesting
6 extensions shouldn't have to make out a basis for good
7 cause, but I would ask that the rule take into account
8 that there not be an extensive need to have to recreate
9 a docket submission or anything like that.

10 The second thing I would ask about any
11 proposed rule is that to the greatest extent possible,
12 it take advantage of processes and procedures to have
13 transparency for the public in general.

14 In other words, even if we are trying to give
15 a more -- and I don't want to use the word "expedited"
16 process, but maybe a better process to move things
17 along. At the same time, not only should there be
18 actual notice being given, or actual fairness to the
19 public, but there really should be the rule designed so
20 that people would have the perception that they are
21 being treated fairly, because if there's a belief or
22 conclusion, even if the belief or conclusion is
23 incorrect, that certain segments of the public have not
24 been treated fairly or with transparency, that can
25 undermine faith in government. And I think it's

1 important that when we do things here, we also have it
2 as a goal to have faith in government and trust in
3 government by everyone all to the greatest extent
4 possible.

5 So I would ask that any proposed rule, you
6 know, be designed to encourage the issue of transparency
7 and participation, you know, with the understanding that
8 we don't want things without good cause to drag on
9 unnecessarily.

10 And the final point regarding that is, and I
11 think it was raised at one of the HCPO conferences
12 talking about the disaster on Kauai, and the beneficial
13 things that came from it. Disasters actually are good
14 things in this sense, it makes us think differently and
15 do things which we normally wouldn't try when there
16 isn't a disaster.

17 I think this ZOOM technology, for example, is
18 something that we should look at continuing even after
19 we get back to some type of normal. In other words,
20 even if there is or are Land Use Commission hearings or
21 meetings that take place in the way where everyone gets
22 together in a room, our use of technology can be
23 something that can really be used to encourage
24 participation and transparency and knowledge of
25 government.

1 So that's basically my comments. Thank you,
2 Mr. Chair.

3 CHAIRPERSON SCHEUER: Thank you very much.
4 Commissioner Ohigashi.

5 COMMISSIONER OHIGASHI: Dan, what kind of
6 actions are we speaking of? Is it only to extend time,
7 or are there other types of actions that this panel
8 would have?

9 EXECUTIVE OFFICER: Mostly talking about time
10 extensions. I don't really see this panel handling much
11 else because changes, amendments to DBAs will require a
12 much higher level of good cause than simply time
13 extension.

14 Our past experience was from economic crisis,
15 the economic down-turn a few years back, is that nine
16 times out of ten the excuse was I can't find funding
17 right now because of the economic crisis, so I need an
18 extension on commencement.

19 Those are the types of situations we're
20 looking at. I think that the committee would have the
21 power if somebody tried to file something in an
22 expedited process to say, no, we are not going to handle
23 it this way and make the recommendation that they file
24 with the Commission.

25 So the answer to your question is we're just

1 really just looking at time extensions.

2 COMMISSIONER OHIGASHI: The next question is,
3 is some form of the master appointment Chapter 91
4 available for this type of situation? (Indecipherable.

5 EXECUTIVE OFFICER: I would have to discuss
6 that with the AG. I mean, this is not a process that we
7 felt could be handled by anything that's currently in
8 the statutes or the rules.

9 Our appointment of a special master usually
10 requires that they return to the Commission as a whole
11 for approval. Our rules essentially allow for the
12 appointment of a hearings officer, but doesn't allow for
13 an expedited process.

14 COMMISSIONER OHIGASHI: I was just thinking
15 that in a master or hearings officer situation, certain
16 procedural type of issues can be handled by the hearings
17 officers that do not go to the substance of it.

18 So are there -- do you plan to use this
19 process so that you can, I guess, sort --
20 (indecipherable) -- there may be discussions that are
21 procedural issues before the Commission.

22 It seems to me that we submit a docket to a
23 masters, they can probably handle lot of the procedural
24 matters in that docket as they come up, rather if
25 they're not substantive, rather as a hearings officer,

1 rather than a --

2 EXECUTIVE OFFICER: Our rules aren't set up
3 for an expedited process right now, even if we appoint a
4 hearings officer. So it's not really -- I mean, we've
5 always had that available us, but that just saves the
6 Commission time, it doesn't save the petitioner time,
7 because they still have to go through our regular 15-15
8 process for any amendment.

9 COMMISSIONER OHIGASHI: The last question I
10 had is that would you be able to set standards in the
11 rules that say, well, if it is under a year requested it
12 goes to these people to create the master's or the three
13 committee; and if it's over a year, it automatically has
14 to be asked of the Commission? I'm using just a year,
15 but could be six months or three months.

16 EXECUTIVE OFFICER: We can provide that. This
17 is at the Commission's discretion.

18 My intention with this hearing was simply to
19 float the idea, see if it has any -- if there is a
20 positive reaction by the Commission, then draft a set of
21 rules, have the Commission review them, make comments
22 and adjust them to whatever the Commission feels is
23 appropriate.

24 COMMISSIONER OHIGASHI: My last comment is I
25 think they should look at time requested as well as the

1 amount of requests that may come in. In other words, if
2 you give them six months, whether or not they're going
3 to need additional six months, six months requires the
4 Commission -- that's what I'm considering.

5 CHAIRPERSON SCHEUER: Thank you very much,
6 Commissioner Ohigashi. Great questions and comments.
7 Commissioner Chang.

8 COMMISSIONER CHANG: Thank you, Chair. I just
9 have three comments for the Executive Director to
10 consider. I think it is worth pursuing this, and let's
11 see what you come up with, but first comment and related
12 to the Sunshine Law because I'm assuming that this three
13 committee is not going to be doing work within the
14 extension, so it is I understand 92-2.5 permitted
15 interaction of members; and if so -- or is this an
16 exception to that? But if it is intended to be that
17 permitted interaction of three board members outside of
18 the Sunshine Law that, one, we do provide a provision
19 for public comment as I think you were describing at the
20 beginning, when a petition is filed or a motion is
21 filed, the parties have an opportunity to comment and we
22 also provide the public opportunity to comment, so that
23 committee considers all of those comments as they are
24 considering the time extension.

25 And that, three, that when the committee takes

1 action, that it is reported back to the full Land Use
2 Commission at the next available date, so that there is
3 a record of that, and full opportunity for the board
4 should come forward or have some kind of disagreement.
5 Because I am anxious about post COVID and cutting short
6 community participation. So those would be my
7 considerations as you draft the proposed rule. Thank
8 you.

9 EXECUTIVE OFFICER: Thank you, Commissioner, I
10 will take those comments into consideration.

11 CHAIRPERSON SCHEUER: Commissioner Aczon, were
12 you gesturing to speak? Commissioners, any further
13 discussion on this?

14 I would like to thank the staff in being
15 proactive in thinking about how we can do our work
16 better from this crisis, resulting from this crisis that
17 we're in.

18 One thing that I find appealing about this
19 beyond doing a slight easing of the burden on projects
20 that will need an extension from this.

21 Beyond that, I found in my years on the
22 Commission, there's this corollary. Warren Buffet is
23 famous for saying "when the tide goes out, you see who's
24 been skinny dipping". You see like who's been over
25 leveraged, who's not wearing any clothes, but the

1 corollary I've seen a lot of projects come in front of
2 us where people have asked for time extension, and when
3 you ask why, oh, well, the economy was bad. And it's
4 clear that for some of them the economy was bad, and
5 that even in the best of times, this project was never
6 going to go forward.

7 So I think it's early, an efficient process if
8 there are great projects that are otherwise ready to go
9 forward that we've already approved, but they need a
10 time extension, I think it's good to hear from them now
11 and get that evidence on the record now, rather than
12 they stalled at the end of the deadline, and then come
13 to us and say, oh, wait, wait, we need more time because
14 what of happened six years ago.

15 Those are my comments on it. Anything
16 further, Commissioners? Commissioner Ohigashi.

17 COMMISSIONER OHIGASHI: This should all be on
18 Oahu.

19 CHAIRPERSON SCHEUER: We are all virtual now,
20 geography has become less and less important.

21 EXECUTIVE OFFICER: I thought Maui wanted too.

22 CHAIRPERSON SCHEUER: Is there anything
23 further, Commissioners?

24 Commissioners and parties, it's a delight to
25 see you. I miss our presence together. I'm thankful

1 for the work and energy that you bring to our collective
2 efforts. Thank you for being here today.

3 Is there any other business?

4 EXECUTIVE OFFICER: I just want, from staff's
5 standpoint, want to thank all the Commissioners. We do
6 miss you. We appreciate your help and your input. I've
7 talked to some of you individual, and I really
8 appreciate the feedback. Thank you.

9 CHAIRPERSON SCHEUER: Commissioner Wong.

10 COMMISSIONER WONG: Chair, so that's the goal
11 for the staff to work on the rules then, correct?

12 CHAIRPERSON SCHEUER: Yes, with the feedback
13 they received today.

14 Commissioner Cabral.

15 VICE CHAIR CABRAL: I might also suggest that
16 maybe with technology, prior to other just wait until we
17 get together to look at it, if there's other things that
18 we think of, we can obviously send it to staff between
19 now and next gather. Also they send us some drafts
20 might be opportunity for us to look at it, because I've
21 already thought of a few more things that I think more
22 seriously are solidly about. So let's all maybe
23 participate in the creation of this excellent concept.
24 Thank you.

25 CHAIRPERSON SCHEUER: Thank you, Commissioner

1 Cabral.

2 Is there anything further from the.

3 Commissioners or the staff? If not, I will

4 bang the virtual gavel and declare this meeting

5 adjourned.

6

7 Thank you very much. Aloha, everyone.

8 MR. TABATA: Goodbye.

9 (The proceedings adjourned at 9:52 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

