

LAND USE COMMISSION  
MEETING MINUTES

**October 7, 2020 – 9:00 a.m.**

**Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.**

PLACE: Zoom Webinar Virtual Meeting

Wednesday October 7, 2020

[https://us02web.zoom.us/webinar/register/WN\\_-sw1yGWQQ1ib8uFO1c663w](https://us02web.zoom.us/webinar/register/WN_-sw1yGWQQ1ib8uFO1c663w)

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: Edmund Aczon  
(Attending via ZOOM conference media) Nancy Cabral  
Gary Okuda  
Jonathan Scheuer  
Arnold Wong  
Dawn N. S. Chang  
Dan Giovanni  
Lee Ohigashi

COMMISSIONERS EXCUSED: None

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

STAFF PRESENT: Daniel Orodener, Executive Officer  
(Attending via ZOOM conference media) Colin Lau, Deputy Attorney General (DAG)  
Scott Derrickson, Staff Planner  
Bert Saruwatari, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus  
(Attending via 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 September 23-24, 2020 minutes and asked if there had been any public testimony submitted and if there were any corrections to be made. There was no public testimony and no corrections to be made. Commissioner Ohigashi moved to approve the minutes. Commissioner Cabral seconded the motion. There was no discussion. By a roll call vote, the September 23-24, 2020 minutes were approved unanimously (8-0)

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

## TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from September to December 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.

Commissioner Giovanni questioned whether the future meetings would be via the ZOOM platform. Mr. Orodener responded that LUC staff was still unsure of how the future schedule would be impacted by the pandemic emergency proclamation but was prepared to make the necessary adjustments.

Commissioner Cabral expressed her appreciation of ZOOM meetings and Chair Scheuer opined that future "hybrid" ZOOM meetings should be considered.

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

Chair Scheuer moved on to the next agenda item.

The next agenda item was an action meeting **on Docket No. A03-745 HANO HANO LLC (MAUI)** to Consider HANO HANO LLC'S MOTION TO RELEASE AND MODIFY CONDITIONS FILED 8-10-2020 associated with its Petition To Amend

the Agricultural Land Use District Boundary to the Urban Land Use District for approximately 28.695 Acres in Keahua, Kula, Maui, Hawaii, Tax Map Key: 2-3-11: 1 and 2-3-11: 2.

APPEARANCES (Attending via ZOOM conference media)

Jennifer Lim, Esq. and Derek Simon, Esq., represented Hanohano LLC, (“HLLC”)

Leilani Pulmano, HLLC

Michael Hopper, Deputy Corporation Counsel, County of Maui (“County”)

Michel McLean, Director- Planning Department, County

Tara Furukawa, Planner, County

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Chair Scheuer updated the record and reviewed the procedures for the meeting.

There were no objections to or questions on the procedures.

Chair Scheuer asked if Petitioner would comply with the LUC’s reimbursement policy and then moved on to call for public witnesses. Ms. Lim responded that Petitioner was aware of the reimbursement policy and would comply.

Due to technical audio problems, the Commission went into recess at 9:15 a.m. and reconvened at 9:18 a.m.

#### **PUBLIC WITNESSES**

None

Chair Scheuer sought and received the estimated time needed by the Parties for their presentations and called for Petitioner’s presentation.

#### **Petitioner Presentation**

Ms. Lim argued why the Commission should grant her Petition and summarized how Petitioner has satisfied the conditions that they were seeking to be released from and was asking to modify other conditions.

Commissioners Okuda, Ohigashi, and Chang requested clarification on the release of Conditions 6e and the establishment of a curator selection committee for Condition 4. Ms. Lim offered her witness, project manager Leilani Pulmano, to respond to the Commissioners’ questions.

(At the start of Ms. Pulmano’s testimony there was a ZOOM system outage and Chair Scheuer declared a recess. The Commission went into recess at 9:55 a.m. and reconvened at 10:13 a.m. Chair Scheuer noted that the ZOOM system had still not been restored and stated that the Commission would recess till 12:30 p.m. to allow ZOOM repairs to occur.)

The Commission went into recess at 10:13 a.m. and reconvened at 12:30 p.m.

Chair Scheuer assessed the state of the proceedings and called for Petitioner’s witness.

Petitioner’s Witness

1. Leilani Pulmano- Project Manager

Ms. Pulmano described her efforts in trying to satisfy D&O Condition 4 and how the organization described within the D&O to be a member of the cultural selection committee no longer existed making satisfying this Condition impossible. Ms. Pulmano shared her perspective on how members from alternative Native Hawaiian groups might fill the void and how the homeowners’ association would continue if the requested conditions were removed or modified.

Commissioners Chang, Ohigashi and Cabral requested additional clarification on removal of conditions and other details which arose during the proceedings.

There were no further questions for Ms. Pulmano or Petitioner.

Chair Scheuer called for County’s presentation.

COUNTY

Mr. Hopper argued why the Commission should consider County’s position statement and follow its recommendations.

Commissioners Okuda, Aczon and Ohigashi requested clarification on County’s position and recommendations.

There were no further questions for County.

Chair Scheuer called for OP to make its presentation.

OP

Ms. Apuna summarized OP's position and argued why its recommendations to the Commission should be accepted.

There were no questions for Ms. Apuna. Chair Scheuer asked if there were any final questions for the Parties.

#### FINAL COMMISSIONER QUESTIONS

Commissioner Ohigashi asked if Ms. Lim had any recommended language for Condition 26. Discussion ensued and it was established that language for Condition 26 had been received by the Commission.

Commissioner Ohigashi requested and was granted a recess.

The Commission went into recess at 1:17 p.m. and reconvened at 1:20 p.m.

Commissioner Ohigashi moved to grant in part and deny in part the Petition and noted the conditions to be released, modified and retained and that the LUC Executive Officer was authorized to order the release of Condition 6e once evidence was submitted to the LUC that the dedication of the right of way and setback had been completed to the DOTs satisfaction.

Commissioner Wong seconded the Motion for discussion purposes and requested additional information on what Commissioner Ohigashi wanted to retain in Condition 4.

Discussion ensued with Commissioner Ohigashi reviewing the specifics of his Motion. Commissioners Okuda, Wong and Chair Scheuer requested additional clarification on how Commissioner Ohigashi's Motion compared to Petitioner's suggested changes. Chair Scheuer provided a "screen share" reference list of the conditions under discussion to identify what specific conditions were affected by the discussion.

Commissioner Ohigashi reaffirmed his motion. Commissioner Giovanni and Chair Scheuer shared why they were in favor of the Motion. Additional discussion included how Condition 4c was being addressed, how the current Commission used a conservation easement in another docket to handle preservation efforts, how "ohana housing" was to be addressed, and how the Commission would be kept abreast of the status of the project and the satisfaction of the conditions.

Commissioner Ohigashi noted that he wished to make a friendly amendment to specify that the Chair be authorized to order the release of Condition 6e once evidence

was submitted to the LUC that the obligations to the DOT were satisfied instead of the Executive Officer. Discussion ensued to consider the friendly amendment. DAG-Mr. Lau was unable to comment due to technical issues. Commissioner Wong stated that he agreed to the authorization change of naming the Chair as the LUC releasing authority.

Commissioners Chang, Okuda, and Wong opined on the usefulness of annual reports for keeping the Commission informed on the project status. Commissioner Okuda commented that he was in favor of the Motion.

Commissioner Chang requested clarification on Petitioner's suggested changes to Condition 4e. Ms. Lim provided additional information on the requested Condition 4e changes. Commissioner Chang stated that she accepted Petitioner's explanation and that she would be voting in favor of the Motion.

Commissioner Wong offered a friendly amendment to continue the requirement of annual reports (condition 23) instead deleting it. Commissioner Ohigashi accepted the friendly amendment.

Discussion ensued and Commissioners Cabral, Aczon and Giovanni opined on the need for annual reports. Commissioner Ohigashi expressed his appreciation to the Commission for its support.

Chair Scheuer directed Mr. Orodener to poll the Commission. Mr. Orodener summarized the order as follows:

- To grant in part and deny in part the following:
- Conditions to be released: 1, 3, 4f, 4h, 6a – 6d, 7, 9 – 13, 16, 17, 21, 22 and 25;
  - Conditions to be modified: 4a, 4b, 4c, 4e, 4g, (4d and 4i deleted by modification) and 26 as by petitioner;
  - Conditions to be retained: 2, 5, 6e, 8, 14, 15, 18, 19, 20, 23, 24;
  - Chair authorized to order the release of 6e once evidence is submitted to the LUC that the dedication of the right of way and setback has been completed to the DOTs satisfaction;
  - Chair authorized to signed order.

The Commission voted unanimously in favor of the Motion (8-0).

Chair Scheuer called for the next agenda item.

## **ACTION**

A92-683 HALEKUA DEVELOPMENT CORPORATION (O`ahu)

Consider Successor Petitioner (as to Parcel 52) Ho`ohana Solar I, LLC's Motion for Modification and Time Extension and Haseko Royal Kunia LLC et al's Motion in Opposition to Successor Petitioner (as to Parcel 52) Ho`ohana Solar I, LLC's Motion for Modification and Time Extension in Docket No. A92-683 Petition To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 503.886 Acres of Land at Waikele and Ho`ae`ae, `Ewa, O`ahu, City and County of Honolulu, Hawai`i, Tax Map Key No. 9-4-02: 1, portion of 52, 70, and 71

APPEARANCES (Attending via ZOOM conference media)

Jennifer Lim, Esq., John Manaut, Esq., and Derek Simon, Esq., represented Ho`ohana Solar 1, LLC, ("HS1")

Michael Lau, Esq., and Steven Chung, Esq., represented Haseko Royal Kunia ("HRK")  
Sharene Tam, Representative, HRK

Molly Stebbins, Deputy Corporation Counsel, Department of Planning and Permitting ("DPP")

Eugene Takahashi, Deputy Director- DPP

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Chair Scheuer updated the record and reviewed the procedures for the meeting.

There were no objections to or questions on the procedures.

Ms. Apuna noted that OP had a late submittal that needed to be included in the record. Chair Scheuer acknowledged OP's comments.

Chair Scheuer asked if Petitioner would comply with the LUC's reimbursement policy and then moved on to call for public witnesses. Ms. Lim responded that Petitioner was aware of the reimbursement policy and would comply.

Chair Scheuer recognized the submitted written testimony of:

- Kimo Spector/ Rebecca Dayhuff-Matsushima for Hawaiian Electric
- Tyler Dos Santos-Tam/Melvin Silva- Business Mgr- International Union of Bricklayers and Allied Craftworkers Local#1 of Hawaii
- Jill Baptist- Hawaii Carpenters Union
- Nathaniel Kinney- Executive Director, Hawaii Construction Alliance
- Ryan Kobayahi- Government Affairs- Hawaii Laborers' Union Local 368

- Joy Kimura – Government Affairs and Compliance- Hawaii Laborers & Employee Cooperation and Education Trust Fund
- Dean Okimoto
- Richard Ha
- Scot Fuji/ State Senator Michelle Kidani
- Denise Yamaguchi- Executive Director, Hawaii Agricultural Foundation
- Chris Delaunay- Pacific Resource Partnership (PRP)
- Dan Kouchi- Chamber of Commerce Hawaii
- Samantha Ruiz – Ulupono Initiative- Murray Clay
- State Representative Ty Cullen – District 39
- State Representative Nicole Lowen – District 6
- Keith Hayashi- Waipahu High School Principal
- State Senator Glenn Wakai
- Albi Mateo/Wayne Nakamoto – Royal Kunia Community Association
- Maui Economic Development Board- Leslie Wilkins President & CEO

Chair Scheuer called for members of the audience wishing to provide public testimony.

#### PUBLIC TESTIMONY

1. David Tanoue – R M Towill/RP2 Representative

Mr. Tanoue described his involvement with the Petition Area development planning and stated that he was available to provide additional information on the docket to the Commission if needed.

Ms. Lim requested clarification on the Memorandum of Understanding (“MOU”) that RP2 had signed with the Department of Agriculture (“DOA”).

Commissioners Okuda and Chang requested clarification on RP2’s actions and binding agreements that remained in place after the property had been sold to HRK; and what respective entities were involved during the ownership changes since the original Petitioner’s possession.

There were no further questions for Mr. Tanoue.

2. Chris Delaunay- PRP

Mr. Delaunay stated his organization’s support for the proposed project.

Chair Scheuer requested clarification on Mr. Delaunay's perspective on the beneficial economic impacts that might result from different alternative uses of the Petition Area.

There were no further questions for Mr. Delaunay.

3. Jeff Overton- Group 70 Planning Group

Mr. Overton was inadvertently called as a public witness and identified himself as a witness for the Petitioner.

There were no further public witnesses. Chair Scheuer announced that the public testimony portion of the hearing was officially closed. Chair Scheuer asked if any Commissioners had disclosures to make.

#### DISCLOSURES

Commissioner Aczon stated that his professional work involved interacting with many of the organizations that had provided written testimony on the proposed project but that he felt that he could remain fair and impartial during the proceedings.

There were no objections to Commissioner Aczon's continued participation.

Chair Scheuer disclosed that his wife worked for Group 70 but not in a capacity that was involved with docket before the Commission and that he felt that he could remain fair and impartial during the proceedings.

There were no objections to Chair Scheuer's continued participation.

There were no further disclosures.

Ms. Apuna commented that OP had 2 witnesses to offer and had a procedural question on whether DPP and OP were going to be allowed to put on their cases. Chair Scheuer acknowledged that they would.

Chair Scheuer assessed the state of the proceedings and declared a recess.

The Commission went into recess at 3:00 p.m. and reconvened at 3:05 p.m.

Chair Scheuer asked if the Parties had any further documents to add to the record. There were no additional documents added but the Parties reserved the right to submit additional documents to respond to any issues that might arise during the proceedings.

Chair Scheuer called for Petitioner's presentation.

#### PETITIONER

Ms. Lim provided historical background information on why Petitioner was seeking a Time Extension and to Modify Conditions and argued why the Commission should grant her Petition.

There was discussion on whether the exhibits filed with the Petition needed to be admitted to the record and the use of witness by the Parties. It was determined that it was not necessary to formally admit the submitted exhibits and Chair Scheuer allowed the Parties latitude to offer witnesses.

Ms. Lim described the changes that had occurred in the power capacity and construction requirements for the new solar facility and offered her first witness.

#### Petitioner Witnesses

1. Jeff Overton- Expert Witness in Land Use Planning/Permitting and Chapter 343 analysis

Mr. Overton described the work that his organization performed for the proposed project and summarized his written testimony.

Mr. Chung requested clarification on various conditions and the "due diligence" efforts that had been performed in the Petition Area and on details related to the 1996 Drainage Master Plan. Mr. Overton stated that he did not have the expertise to respond to the more detailed line of questioning and deferred to the civil engineers and attorneys associated with the acquisition of the property to provide more specific information.

Due to time constraints, Chair Scheuer halted proceedings and addressed how the Commission would receive the balance of Mr. Overton's testimony.

After a discussion, Chair Scheuer determined that Mr. Overton would be allowed to appear at the beginning of the October 8, 2020 meeting for forty five minutes to complete his testimony and the scheduled agenda would proceed immediately thereafter.

Chair Scheuer stated that the Commission would reconvene via the ZOOM virtual platform at 9:00 a.m. October 8, 2020 and declared a recess of the proceedings at 3:57 p.m.

LAND USE COMMISSION  
MEETING MINUTES

**October 8, 2020 – 9:00 a.m.**

**Pursuant to HRS § 92-3.5, the Commission conducted its meeting using interactive conference technology.**

PLACE: Zoom Webinar Virtual Meeting registration-use link below  
Thursday October 8, 2020

[https://us02web.zoom.us/webinar/register/WN\\_gKHDHlrfT6CfwUz0fkhTew](https://us02web.zoom.us/webinar/register/WN_gKHDHlrfT6CfwUz0fkhTew)

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: Edmund Aczon  
(Attending via ZOOM conference media) Nancy Cabral  
Gary Okuda  
Jonathan Scheuer  
Arnold Wong  
Dawn N. S. Chang  
Lee Ohigashi (excused at start and arrived at 9:43 a.m. )  
Dan Giovanni (excused at 10 a.m. and returned to the meeting at 12:00 p.m.)

COMMISSIONERS EXCUSED: Commissioner Ohigashi and Giovanni  
(8 seated Commissioners as of 10/1/19) excused as noted above.

STAFF PRESENT: Daniel Orodener, Executive Officer  
(Attending via ZOOM conference media) Colin Lau, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Bert Saruwatari, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus  
(Attending via ZOOM conference media)

**CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:00 a.m. All Commissioners present acknowledged that they were able to communicate via the ZOOM program.

Chair Scheuer announced the continuation of questioning of Petitioner’s Expert Witness Jeff Overton from October 7, 2020 Docket No. A92-683 for a half hour.

**CONTINUING ACTION**

A92-683 HALEKUA DEVELOPMENT CORPORATION (O`ahu)

Consider Successor Petitioner (as to Parcel 52) Ho`ohana Solar I, LLC’s Motion for Modification and Time Extension and Haseko Royal Kunia LLC et al’s Motion in Opposition to Successor Petitioner (as to Parcel 52) Ho`ohana Solar I, LLC’s Motion for Modification and Time Extension in Docket No. A92-683 Petition To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 503.886 Acres of Land at Waikele and Ho`ae`ae, `Ewa, O`ahu, City and County of Honolulu, Hawai`i, Tax Map Key No. 9-4-02: 1, portion of 52, 70, and 71

APPEARANCES (Attending via ZOOM conference media)

Jennifer Lim, Esq. John Manaut, Esq., and Derek Simon, Esq., represented Ho`ohana Solar 1, LLC, (“HS1”)

Michael Lau, Esq., and Steven Chung, Esq., represented Haseko Royal Kunia (“HRK”) Sharene Tam, Representative, HRK

Molly Stebbins, Deputy Corporation Counsel, Department of Planning and Permitting (“DPP”)

Eugene Takahashi, Deputy Director- DPP

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Chair Scheuer reviewed the procedures for the meeting and called for the resumption of questioning of Mr. Overton.

There were no objections to or questions on the procedures.

Petitioner Witness

1 Jeff Overton (continued)

Mr. Chung continued his questioning on the 1996 Drainage Master Plan. Discussion ensued on the relevance of the drainage plan to the Motion before the Commission. Mr. Chung concluded his questioning.

DPP and OP had no questions.

Commissioners Cabral and Aczon requested clarification on the planned vegetation barriers and nuisance factors associated with the proposed project and thanked Mr. Overton for his testimony.

There was no redirect.

Chair Scheuer excused the witness and called for the first agenda item listed for October 8, 2020.

**ADOPTION OF ORDER**

**A17-804 Hawaiian Memorial Life Plan, Ltd.**

To consider Docket No. A17-804 Petition To Amend The Conservation Land Use District Boundary Into The Urban Land Use District for Approximately 53.449 acres of Land at Kāneʻohe, Island of Oʻahu, State of Hawaiʻi TMK (1) 4-5-033: por. 001

APPEARANCES (Attending via ZOOM conference media)

Curtis Tabata, Esq. and Benjamin Matsubara, Esq., represented Hawaii Memorial Life Plan, Ltd., (“HMP”)

Molly Stebbins, Deputy Corporation Counsel, DPP

Eugene Takahashi, Deputy Director DPP

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Chair Scheuer inquired on the status of the Intervenor. Mr. Orodener responded that Intervenor Grant Yoshimori had advised the Commission that he would not be appearing.

Chair Scheuer updated the record and reviewed the procedures for the meeting.

There were no objections to or questions on the procedures.

Chair Scheuer called for members of the audience wishing to provide public testimony.

**PUBLIC TESTIMONY**

None

Chair Scheuer verified that all attending Commissioners were ready to deliberate and sought the pleasure of the Commission.

Commissioner Aczon moved the approve and adopt the form of the order. Commissioner Wong seconded the Motion.

Commissioner Okuda confirmed the number of Commissioners involved in the quorum deciding on the adoption of the order and made a friendly amendment to add a sentence on page 153 following the sentence ending in “ground disturbance” which states that Petitioner would execute an agreement with the Koolaupoko Hawaiian Civic Club(“KHCC”) containing all provisions consistent with Petitioner’s representations made to the Commission prior to any work involving ground disturbance.

Commissioners Aczon and Wong accepted the friendly amendment and added their comments in support of the Motion. Commissioner Chang stated her support for the Motion and added her concern that specifically designating the KHCC might be too restrictive and that language providing alternative parties should be considered.

Discussion ensued with Commissioners Cabral, Aczon, Chang and Okuda sharing their opinions on making a language change to broaden the number of possible groups that could be considered in Commissioner Okuda’s added sentence. Chair Scheuer questioned if language used in the Findings of Fact that mentioned “other local Native Hawaiian organizations” could be useful. Commissioner Okuda opposed any alteration to his sentence. Commissioner Aczon moved to further amend his initial motion by making a change to the first accepted friendly amendment to add “or other local Native Hawaiian organization” in addition to the KHCC. Commissioner Wong accepted the friendly amendment.

Chair Scheuer summarized the actions taken by the Commission during discussion of the Motion and directed Mr. Orodenker to poll the Commission.

The Commission voted as follows:

Ayes: Commissioners Aczon, Wong, Chang, Cabral, Giovanni and Chair Scheuer

Nays: Commissioner Okuda

The Motion passed (6-1-1 excused)

Chair Scheuer thanked the Parties for their efforts and announced the next agenda item.

The Commission went into recess at 9:43 a.m. and reconvened at 9:44 a.m.

Chair Scheuer noted that Commissioner Ohigashi had joined the meeting and that Commissioner Giovanni would be excusing himself at 10 a.m. and called for the proceedings to resume.

#### **ACTION**

##### **SP97-390 COUNTY OF MAUI (CENTRAL MAUI LANDFILL)**

Consider LUC Staff request to issue errata to LUC Order for Fourth Amendment to State Special Permit (SP97-390) for the Proposed Central Maui Landfill Facilities dated August 13, 2020 to correct the number of acres subject to condition 23 and related findings of fact

#### **APPEARANCES**

Richelle Thomson, Esq. represented County of Maui- Department of Environmental Management (“DEM”)

Eric Nakagawa, Director- DEM

Elaine Baker, Planner- DEM

Jordan Hart, Deputy Director, represented County of Maui Planning Department (“County”)

Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Chair Scheuer announced that this was an action meeting on Docket No. SP97-390 Central Maui Landfill, updated the record and explained the procedures to be followed for the proceedings.

Chair Scheuer acknowledged receipt of the written testimonies of DEM and OP.

There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

#### **PUBLIC TESTIMONY**

None

Commissioner Ohigashi inquired if he had missed any of the SP97-390 proceedings that would require his review. Chair Scheuer responded that he had not.

Chair Scheuer called on Mr. Orodener to present why LUC staff was making its request to issue errata for the recent SP97-390 Decision and Order (“D&O”) that had been issued by the Commission;

Mr. Orodener described the circumstances surrounding the mistaken amount of acreage identified in the D&O and why the errata was necessary.

Commissioner Giovanni confirmed that the errata correctly reflected the intent of his motion and supported the Commission approving the LUC staff’s request.

#### DEM and County Comments

Chair Scheuer called for DEM and County’s comments.

Ms. Thomson described how DEM had reviewed and evaluated the issued order for the docket and decided to comment on the LUC errata request. Ms. Thomson argued why the LUC’s action was procedurally incorrect and was inaccurately characterized since it was too significant a change to the issued order and that DEM and the County of Maui were not provided an opportunity to object to the denial of OP’s Motion for Reconsideration.

Mr. Hart commented on why the County needed the Special Permit designation and how other associated County landfills might be impacted by the Commission’s insistence on using District Boundary Amendment criteria for them instead of Special Permits.

Chair Scheuer requested clarification from Ms. Thomson on portions of her comments arguing the procedural aspects of what had occurred at the LUC meeting on September 24, 2020 and then declared a recess.

The Commission went into recess at 10:00 a.m. and reconvened at 10:11 a.m. (Commissioner Giovanni had been excused from the meeting and there were now 7 Commissioners in attendance.)

Commission Chang requested additional clarification on Ms. Thomson’s comments and shared how Commissioner Giovanni’s stated confirmation that the proposed errata captured the intent of his motion and the LUC staff’s explanation

seemed to deem using errata appropriate to correct the typographical error in the issued order. Commissioner Chang also restated her position that the OP Motion for Reconsideration was untimely and mentioned alternative recourses that DEM might consider in the future.

Commissioner Ohigashi requested clarification on how many County landfills had neighboring industrial uses from Mr. Hart. Mr. Hart deferred to Eric Nakagawa to respond to the questions. Commissioner Ohigashi also stated his support for approving the errata and joined Commissioner Chang's position that the OP Motion was untimely.

There were no further questions for DEM or County. Chair Scheuer called for OP's comments.

#### OP Comments

Ms. Apuna described the reasons why OP had filed its Motion for Reconsideration and argued why it should not have been dismissed.

Commissioners Wong, Chang, Okuda, Ohigashi and Chair Scheuer provided comments and requested clarification on OP's perspective on deciding whether a Special Permit or District Boundary Amendment should be considered for various land uses and the lifespans involved for issuing special permits, the deadline for appeal dates that were being contested, how the current action before the Commission was to address LUC staff's use of errata to correct an error on an issued Decision and Order, and how clarification of the acreage was necessary. Commissioner Ohigashi affirmed that he was considering the entire Petition Area when he cast his vote in September and commented that the Commission should focus on the issue of errata acceptance before it.

Chair Scheuer called for the pleasure of the Commission and Commissioner Wong requested clarification on the specifics of the agenda item to be voted upon.

Discussion ensued and Commissioner Wong stated that he wanted his Motion to capture Mr. Orodener's earlier statements regarding the need to issue an errata and to add that the Chair be authorized to sign the completed Decision and Order. (Executive Officer Daniel E. Orodener earlier provided the corrected language of Condition No. 23 and Findings of Fact Nos. 12, 135, 138 of the Decision and Order filed August 13, 2020, as follows (deleted language stricken; additional language underscored):

Condition No. 23 (p. 58)

23. That the Applicant shall commence the process to seek a district boundary amendment with the LUC for the approximately ~~22 acres of IAL~~ 95.659 acres of the total permitted area of the CML within five years of the LUC's Decision and Order for the Applicant's Fourth Amendment Request.

Finding of Fact No. 12 (pp. 6-7)

12. After additional discussion, the LUC entered into deliberations on the matter. Thereafter, a motion was made and seconded to approve the Applicant's Fourth Amendment Request, subject to the 18 conditions recommended by the Planning Commission and the two conditions proposed by the Applicant. Amendments to this motion were subsequently made and seconded to include (a) an additional condition to read as follows:

- The Applicant shall commence the process to seek a district boundary amendment with the LUC for the approximately ~~22 acres of IAL~~ 95.659 acres of the total permitted area of the CML within five years of the LUC's Decision and Order for the Applicant's Fourth Amendment Request.

and (b) the two conditions recommended by OP. Following discussion, a vote was taken on this amended motion. There being a vote tally of 5 ayes and 3 nays, the amended motion passed.<sup>1</sup>

Finding of Fact No. 135 (p. 43)

135. The Applicant will commence the process to seek a district boundary amendment with the LUC for the approximately ~~22 acres of IAL~~ 95.659 acres of the total permitted area of the CML within five years of the LUC's Decision and Order for the Applicant's Fourth Amendment Request.

Finding of Fact No. 138 (p. 46, last paragraph)

138. The Applicant will commence the process to seek a district boundary amendment with the LUC for the approximately ~~22 acres of IAL~~ 95.659 acres of the total permitted area of the CML within five years of the

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<sup>1</sup> There are eight sitting commissioners presently on the LUC. The ninth seat is currently vacant.

LUC's Decision and Order for the Applicant's Fourth Amendment Request.)

Chair Scheuer summarized the state of the discussion and noted that Commissioner Wong had moved to grant the LUC staff's request to issue an errata to the Decision and Order filed August 13, 2020, and to authorize the LUC Chair to sign this Order on behalf of the LUC. Commissioner Ohigashi seconded the Motion.

#### Discussion on the Motion

Commissioner Cabral requested confirmation from the LUC staff that the Commission's actions were correct. Mr. Orodener and DAG Mr. Lau confirmed that the LUC staff had properly taken the necessary measures to request the Commission's approval to issue errata.

Commissioners Okuda and Aczon spoke in favor of the Motion and provided their reasoning for supporting the Motion.

Chair Scheuer directed Mr. Orodener to poll the Commission.

There being a vote tally of 7 ayes, 1 excused, and 0 nays, the motion passed. The Commission went into recess at 11:02 a.m. and reconvened at 12:00 p.m.

Chair Scheuer noted that Commissioner Giovanni had rejoined the quorum and confirmed that all 8 LUC Commissioners were in attendance.

#### **CONTINUING ACTION**

A92-683 HALEKUA DEVELOPMENT CORPORATION (O`ahu)

Consider Successor Petitioner (as to Parcel 52) Ho`ohana Solar I, LLC's Motion for Modification and Time Extension and Haseko Royal Kunia LLC et al's Motion in Opposition to Successor Petitioner (as to Parcel 52) Ho`ohana Solar I, LLC's Motion for Modification and Time Extension in Docket No. A92-683 Petition To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 503.886 Acres of Land at Waikele and Ho`ae`ae, `Ewa, O`ahu, City and County of Honolulu, Hawai`i, Tax Map Key No. 9-4-02: 1, portion of 52, 70, and 71

APPEARANCES (Attending via ZOOM conference media)

Jennifer Lim, Esq. John Manaut, Esq., and Derek Simon, Esq., represented Ho`ohana Solar 1, LLC, ("HS1")

Michael Lau, Esq., and Steven Chung, Esq., represented Haseko Royal Kunia ("HRK")  
Sharene Tam, Representative, HRK

Molly Stebbins, Deputy Corporation Counsel, Department of Planning and Permitting (“DPP”)  
Eugene Takahashi, Deputy Director- DPP  
Dawn Takeuchi Apuna, Esq., Deputy Attorney General, for State Office of Planning (“OP”)

Chair Scheuer reviewed the procedures for the meeting and confirmed that Commissioner Ohigashi had been able to review a recording of Mr. Overton’s testimony that had occurred while he was excused. Commissioner Ohigashi acknowledged that he had been able to review Mr. Overton’s testimony and was ready to participate and deliberate on this docket.

Chair Scheuer called for Petitioner to continue its presentation.

#### Petitioner Presentation

Ms. Lim stated that her documents and exhibits were on record and that she would rest on her filings.

Commissioners Okuda, Chang and Giovanni commented and requested clarification on portions of Ms. Lim’s filings.

Ms. Lim deferred to Laurence Greene to respond to Commissioner Giovanni’s questions related to the Power Purchase Agreement (“PPA”) that Petitioner would be participating in. Chair Scheuer inquired whether Mr. Greene had the ability to bind his organization to the representations made to the Commission. Mr. Greene stated that he was not authorized to do so and described his understanding of the general plans that would go into effect under different circumstances.

Mr. Chung requested clarification on drainage issues related to the Petition Area. Mr. Manaut argued that the questions were outside the scope of questions that Mr. Greene was responding to. Mr. Chung had no further questions.

DPP had no questions.

OP requested clarification on the waterline in the Petition Area. Ms. Lim argued that it was not a question for Mr. Greene to answer. Discussion ensued and

Commissioners Chang and Okuda opined on how a complete record could be developed with appropriate procedural questioning of Petitioner's witnesses by the rest of the Parties and the Commission. DAG Mr. Lau shared his perspective of how "hostile witnesses" or direct testimony might factor into the proceedings.

Commissioner Okuda commented that the use of "an offer of proof" might be allowed to obtain testimony. Mr. Manaut and Mr. Chung provided their perspectives on the manner in which procedural matters were being handled and all Parties had no objections to the questioning of witnesses and on procedures.

Commissioner Giovanni sought clarification on whether movant's compliance with drainage requirements would be honored. Mr. Greene described the limits of controlling stormwater that he would do for the Petition Area.

Commissioner Chang requested clarification on HRK's condition B1. Mr. Greene acknowledged that HRK would comply with the condition.

There were no further questions for Mr. Greene or on the LUC procedures for witness questioning. Chair Scheuer called on HRK to make its presentation.

Mr. Chung stated that Mr. Lau would handle HRK's presentation.

#### HRK Presentation

Mr. Lau called Sharene Tam as his witness.

#### Sharene Tam – HRK Representative

Ms. Tam summarized her role with HRK and the testimony that she had submitted to the Commission. Ms. Tam described the drainage issues which were of concern to HRK and why HRK was participating in the proceedings on this docket.

Mr. Manaut requested clarification on the issues raised by Ms. Tam and how much "due diligence" work had been performed during the purchase of HRK's portion of the Petition Area and to what extent HRK accepted associated obligations stated for the property.

The Commission went into recess at 1:00 p.m. and reconvened at 1:10 p.m.

Sharene Tam – HRK Representative (continued questioning)

Mr. Manaut resumed his questioning of Ms. Tam to determine HRK's awareness of obligations and other concerns related to its Petition Area neighbors.

DPP had no questions for Ms. Tam.

Ms. Apuna requested clarification on HRK's commitments to the conditions related to the non-potable waterline and associated Department of Agriculture ("DOA") infrastructure needs.

Commissioners Chang, Okuda, Wong, Giovanni, Ohigashi, Aczon and Chair Scheuer requested clarification on off-site infrastructure developments and timelines for their completion, the drainage master plan associated with the initial Decision and Order and its ability to meet existing current and future needs, what the expected role the LUC had in determining the respective needs of the Petition Area owners, and the future outlook for the conditions associated with the Petition Area.

There were no further questions for Ms. Tam and there was no re-direct.

The Commission went into recess at 2:05 p.m. and reconvened at 2:15 p.m.

Chair Scheuer called for DPP's presentation.

#### DPP Presentation

Mr. Takahashi provided a summary of DPP's position on this matter and expressed how difficult it was for DPP to determine what requirements needed to be imposed on the Petition Area for a variety of reasons.

Commissioners Chang, Aczon, Ohigashi and Wong requested clarification on DPP's role in reviewing plans for the Petition Area and opined on how important cooperation between the different property owners was necessary for the overall master final development plan to develop properly.

There were no further questions for DPP. Chair Scheuer called for OP's Presentation.

OP

Ms. Apuna stated that she had two witnesses, Rodney Funakoshi (OP) and Janice Fujimoto (DOA), available to respond to questions, summarized OP's Position Statement and described how OP shared HRK's concerns about drainage and would like certain conditions reinstated to accommodate DOA concerns. Ms. Apuna also clarified how the two OP proposed categories of conditions ("A" and "B") would apply to the Petition Area.

Commissioner Chang requested clarification from Ms. Apuna and Ms. Fujimoto on how OP Conditions would affect HS1 and how current and past MOUs applied to the Petition Area.

Chair Scheuer also offered the Parties an opportunity to question Ms. Fujimoto.

OP Petitioner Witness

Janice Fujimoto- DOA

Ms. Lim requested clarification from Ms. Fujimoto on OP Exhibit 34's contents. Ms. Fujimoto summarized the contents of the email in the exhibit and what the intent of the email was. Ms. Fujimoto shared how the prepared Motion contained in the email would not be filed with the Commission and how DOA had prepared it for discussion purposes.

Mr. Lau requested clarification on details contained in Revised Exhibit 1 and A6. There were no further questions for Ms. Fujimoto or OP.

The Commission went into recess at 2:56 p.m. and reconvened at 3:10 p.m.

Final Comments

Ms. Lim summarized her argument for why the Commission should grant her Petition and described how the recently filed proposed OP Conditions were helpful in defining matters for HS1.

Mr. Lau described how HRK's concerns about the Petition Area and the Motion brought forth by HS1 necessitated participating in the LUC proceedings on this matter

to ensure that the interests and obligations of HRK to the conditions of the Decision and Order were acknowledged and confirmed.

DPP had no comments.

OP expressed how the concerns voiced by HRK had influenced the OP conditions that had been filed with the Commission.

#### Final Commission Questions for Parties

Commissioners Wong, Aczon, and Cabral requested clarification on how HS1 would comply with conditions, how HSK would cooperate and negotiate in "good faith" with HS1, and on what specific conditions and obligations HSK and HS1 were agreeing to. Ms. Lim and Mr. Lau acknowledged their client's commitments to negotiating and observing the terms and conditions that had been discussed.

There were no further questions. Chair Scheuer confirmed that Commissioner Ohigashi had reviewed Petitioner's Witness- Jeff Overton's testimony and that all Commissioners were prepared to deliberate.

#### Deliberation

Commissioner Wong moved to approve HS1's Motion with the Condition B additions proposed by OP. Commissioner Ohigashi seconded the Motion.

Discussion ensued and Commissioner Wong provided his reasoning for his Motion. Commissioner Chang requested clarification on the OP conditions that were to be included during consideration of the Motion and then requested that (as a friendly amendment) Condition A be included in the preliminary Motion. Commissioner Wong and Commissioner Ohigashi accepted Commissioner Chang's friendly amendment.

Commissioner Giovanni expressed his concerns about the need for contingency plans if the proposed solar facility failed to secure a PPA extension and needed to abandon its development plan and offered a friendly amendment to the once amended motion to include a condition to decommission and restore the Petition Area if the proposed project was not completed as represented.

Commissioner Wong declined to accept the friendly amendment. Discussion ensued to clarify how to handle the impending situation with two competing motions. It was determined the Commissioner Giovanni could make a separate Motion which would be identical to Commissioner Wong's but would include his additional condition. Commissioner Giovanni did so.

Commissioner Okuda seconded Commissioner Giovanni's Motion.

Discussion ensued on the once amended motion (aka "the Wong Motion") and the second friendly amendment made by Commissioner Giovanni (aka "the Giovanni Motion"). Commissioners Okuda, Aczon, Cabral, Chang, Wong and Chair Scheuer opined on how they supported the overall intent of both Motions and why they differed on the conditions being included in the Giovanni Motion. Chair Scheuer sought reconfirmation from OP and Ms. Lim on what Conditions were actively being requested for consideration by the Commission. Ms. Apuna and Ms. Lim restated the Conditions that they wished to have the Commission approve.

Commissioner Wong requested clarification from Ms. Lim on whether she had objections to OP Condition B7 being included in the Motion. Ms. Lim responded that she had no objection to the additional condition.

Commissioner Giovanni described how his Motion included Condition B7 and how he had allowed time in his proposed Motion for Petitioner to decommission and restore the Petition Area if it failed to renew its PPA.

Commissioner Wong withdrew his Motion when Ms. Lim confirmed that she did not object to the inclusion of Condition B7. Commissioner Ohigashi agreed to the withdrawal of the Wong Motion.

Chair Scheuer assessed the state of the proceedings and entertained discussion on the Giovanni Motion before the Commission which was to accept the proposed HS1 Conditions, the Conditions proposed by OP in its Exhibit 1 and Commissioner Giovanni's added Condition to decommission and restore the Petition Area if HS1 failed to obtain a PPA extension.

Commissioners Okuda, Cabral, Aczon and Chair Scheuer voiced their positions on the Giovanni Motion.

There was no further discussion. Chair Scheuer called for a roll call vote on the Motion. The Commission voted unanimously (8-0) in favor of the Motion.

Commissioner Wong requested that the Commission consider scheduling a status report for the HRK portion of the Petition Area to update the Commission on all the recent developments associated with the new ownership and its future development plans for their portion of the property.

Chair Scheuer directed that LUC staff to work with HRK and put this item on the next available meeting agenda. Mr. Orodener responded that LUC staff would.

Chair Scheuer asked if there was any further business to discuss. There was none. Chair Scheuer adjourned the meeting at 3:58 p.m.

