

LAND USE COMMISSION  
MEETING MINUTES  
January 5-6, 2022 – 9:00 a.m.

**Pursuant to Exhibit C of the Governor’s Emergency Proclamation Related to the COVID-19 Response, the Commission conducted its meeting using interactive conference technology.**

PLACE: Zoom Webinar Virtual Meeting  
Meeting Link for Wednesday, January 5th, 2022

[https://us02web.zoom.us/webinar/register/WN\\_B1B9cqu9RECwIU91R7oUw](https://us02web.zoom.us/webinar/register/WN_B1B9cqu9RECwIU91R7oUw)

Due to the COVID-19 pandemic, the meeting was held remotely with Commission members, Staff and Applicants participating via an online meeting venue. The public could participate in the meeting via the “ZOOM” platform. Interested persons were also advised to submit written testimony no later than 24 hours in advance of the meeting to allow for distribution to Commission members prior to the meeting and to register to testify during the ZOOM meeting using instructions circulated on the meeting agenda.

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

COMMISSIONERS EXCUSED: Arnold Wong

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

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

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

## **CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:01 a.m.

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

## **APPROVAL OF MINUTES**

The first agenda item was the approval of the December 22-23, 2021 Minutes. The Chair asked if any public testimony had been submitted and if any corrections needed to be made. There was no public testimony and no corrections to be made.

Commissioner Okuda abstained from voting for the portion of December 22 and Aczon abstained from both days.

Commissioner Cabral moved to adopt the Minutes. Commissioner Ohigashi seconded the motion. There was no discussion.

By a roll call, the December 22-23, 2021 Minutes were approved unanimously. The votes for the portion of December 22 (5-0-2 abstained) and December 23 (6-0-1 abstained).

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

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the tentative meeting schedule from January 2022 to April 2022 for the Commissioners and cautioned that it was subject to change based on the pandemic impacts. Commissioners were advised to contact LUC staff if there were any questions or conflicts.

Mr. Orodener also announced Martina Segura as a new LUC staff member.

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

Chair Scheuer moved to the next agenda item.

## **OPSD's PRESENTATION**

OPSD's HAWAII 2050 SUSTAINABILITY PLAN

Chair Scheuer asked if there were any member of the public who wished to testify. There was none.

### **APPEARANCES:**

Mary Alice Evans, Director, Office of Planning and Sustainable Development (OPSD)  
Danielle M.M. Bass, Program Coordinator, OPSD

Ms. Evans presented Ms. Bass as OPSD's Sustainability Coordinator.

Ms. Bass provided an overview and comprehensive presentation about Hawai'i's Sustainability Plan 2050 that included

- roles and responsibilities of OPSD
- Sustainability Branch establishment
- update to the Hawai'i 2050 Sustainability Plan
- public outreach
- summary of the Hawai'i's legal and statutory sustainability and climate targets
- summary of the plan's recommendations
- plan's specific land use recommended actions

Ms. Bass further explained the update to the 2050 plan including planning for 2020-2030 and recognized the assistance of ICF climate planning firm. She discussed process of reviewing Hawai'i's laws and plans, conducting public outreach, coordinating with stakeholders and determining future actions.

Ms. Bass further commented that the sustainability plan for 2020-2030 was aligned with the United Nations' Sustainable Development Goals framework.

Commissioners and meeting participants were encouraged to visit the website at [Hawaii2050.hawaii.gov](http://Hawaii2050.hawaii.gov) to obtain more information.

Chair Scheuer declared recess at 10:02 a.m. and reconvened the meeting at 10:12 a.m.

### **Questions from Commissioners**

Commissioners Chang, Ohigashi, Cabral, Giovanni and Okuda complimented Ms. Bass for her comprehensive presentation and remarked the urgent need for additional staff to attain sustainability goals. The Commissioners had initial questions in the areas of:

- strategies order of priority
- balancing competing sustainable goals for the uses of land

- sustainability requirement on Special permits amendments
- tax incentive to developers, property managers and property owners.
- incentivize legislators to prioritize the Sustainability Plan efforts with a budget
- Commission support efforts for the briefing before the Legislature
- direct measurable goals
- OPSD's relation to Public Utilities Commission
- early childhood education and childhood care in relation to sustainability.

Chair Scheuer declared recess at 11:18 a.m. and reconvened the meeting at 11:28 a.m.

Commissioner Giovanni requested clarification on the funding to hire consultants and the need for OPSD's position statements to address sustainability.

Discussion ensued to address that issue and Ms. Evans confirmed that OPSD would begin to provide comments on sustainability on dockets presented to LUC.

Chair Scheuer commented on the representation that OPSD has given in front of LUC on recent dockets and strongly supported a more meaningful engagement from OPSD on the sustainability perspective.

There were no other questions for OPSD. Chair Scheuer moved to deliberations.

Commissioner Giovanni moved to make a motion to go on record with acknowledging the importance of the Statewide Sustainability Branch and encourage and support proposals to the Legislature. Commissioner Cabral seconded the motion.

Mr. Orodener suggested to draft a statement that memorialized the Commission's sentiment for OPSD's use.

Further discussion ensued to determine the specific language to be included in the motion.

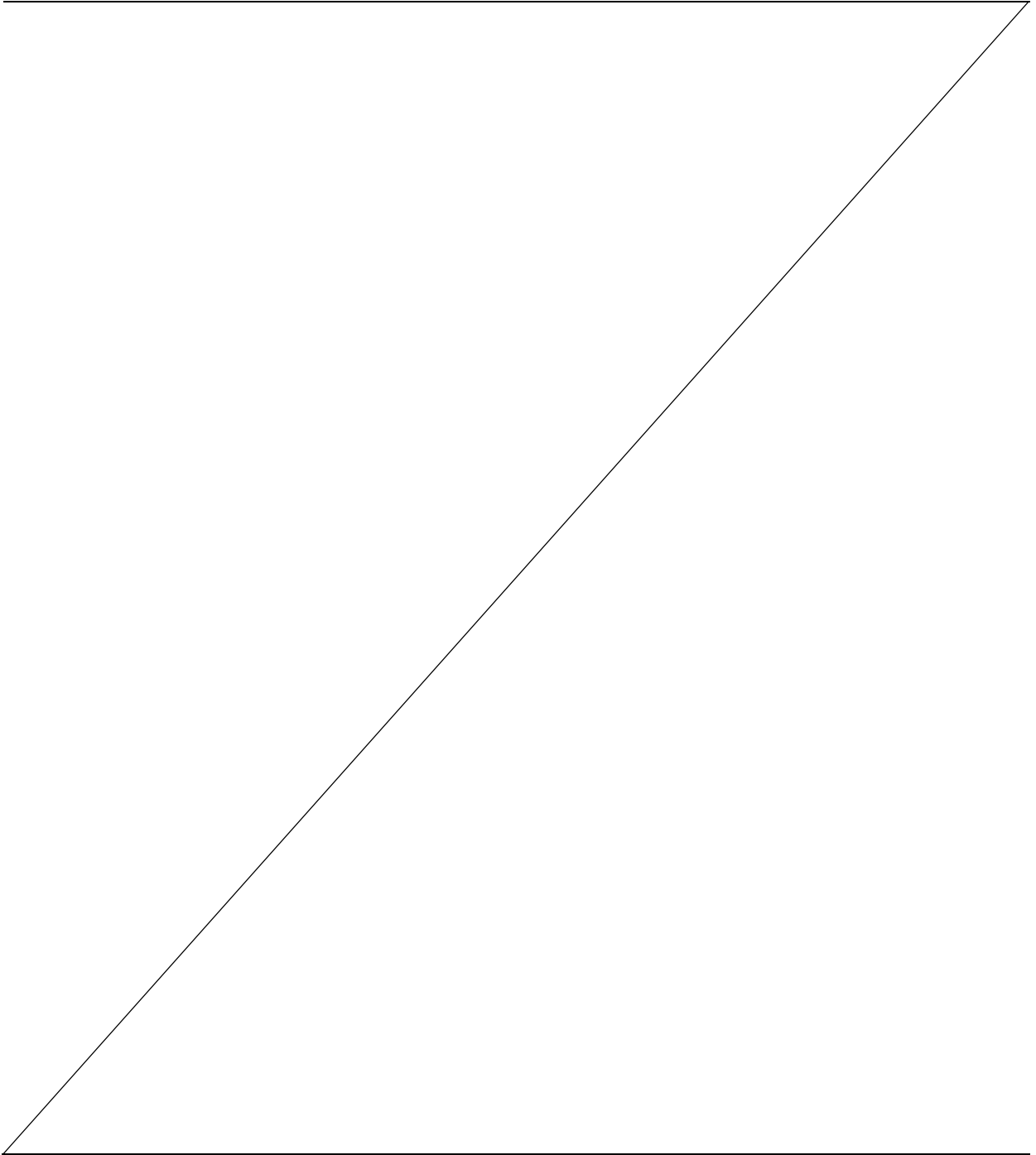
Commissioners Ohigashi, Chang, Okuda, Giovanni and Cabral supported the motion and concurred that it should include multiple ways of support.

Chair Scheuer asked Mr. Orodener to poll the Commission.

By a roll call, the Motion for letter on record with the Commission's support of the Sustainability Branch, passed unanimously (7-0-1 excused).

Ms. Evans and Ms. Bass provided her appreciation to the Commission.

Chair Scheuer declared recess at 12:00 p.m. until 9:00 a.m. on January 6, 2022.



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Arnold Wong

COMMISSIONERS EXCUSED: Gary Okuda (recused)

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

STAFF PRESENT: Daniel Orodener, Executive Officer  
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Scott Derrickson, Chief Planner  
Riley Hakoda, Staff Planner  
Natasha Quinones, Chief Clerk

COURT REPORTER: via Naegeli Deposition and Trial  
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## **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. (7 Commissioners present).

Chair moved to the agenda item of the day.

## **ACTION- IMPORTANT AGRICULTURAL LANDS (Oahu)**

**CONFORMANCE OF C & C OF HONOLULU IMPORTANT AGRICULTURAL LANDS (IAL) RECOMMENDATION TO APPLICABLE STATUTORY AND PROCEDURAL REQUIREMENTS** To consider whether the City and County of Honolulu recommendations for the designation of Important Agricultural Lands on the Island of Oahu complies with the requirements of Sections 205-47, 205-48 and 205-49 Hawaii Revised Statutes and whether the proper procedural, legal, statutory, and public notice requirements were met in developing the recommendations.

## **APPEARANCES:**

Dawn Apuna, Deputy Director, Department of Planning (DPP)  
Franz Kraitz, Planner, DPP  
Dina Wong, Planner, DPP  
Alison Kato, Esq., Deputy Attorney General, Office of Planning (OPSD)  
Mary Alice Evans, Director, OPSD  
Rodney Funakoshi, Program Administrator, OPSD  
Earl Yamamoto, Planner, Department of Agriculture (DOA)

Chair Scheuer provided an overview of the IAL proceedings up to this point. He then updated the record, described the procedures for the hearing and asked if there were any questions on the procedures. There were no questions.

Commissioner Giovanni noted that Mr. Morris joined the meeting at 9:07a.m.

## **PUBLIC TESTIMONY**

Chair Scheuer read the written testimony list and then allowed the public participants to provide verbal testimony.

*For brevity, the minutes will provide a list of the witnesses in the order they testified. "Supports" notation indicates that testimony was in support of the County's IAL process. "Opposes" notation*

*indicates that testimony was against the County's IAL process. "Other" notation indicates that the testimony was unclear.*

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

1) Alicia Maluafiti, landowner. Opposes

Commissioner Wong and Giovanni had questions for the witness about the size of her property and her knowledge of the County's option to apply for "opting out" from IAL.

Chair Scheuer asked Ms. Maluafiti about her opinion on the intent of the IAL legislation given her experience with the IAL process after the law was drafted.

2) Alexander Garber, landowner. Opposes

Commissioner Chang asked Mr. Garber about the length of time he has owned the land and its current use.

Chair Scheuer asked witness about his opinion on the issues with the interpretation of the statutes.

3) Michael Kam, landowner. Opposes

Commissioner Chang asked Mr. Kam about County's IAL designation incentives.

4) Donald Kilmer, landowner. Opposes

5) Sunny Hsu, farm owner. Opposes

Ms. Apuna and Commissioner Chang verified the witness' understanding of IAL.

Chair Scheuer declared recess at 9:59 a.m. and reconvened the meeting at 10:09 a.m.

Chair Scheuer continued calling testifiers.

6) Jeff Bloom, landowner. Opposes

7) Brian Miyamoto, Executive Director of Hawaii Farm Bureau (HFB). Opposes

Commissioner Wong requested information about the planning process discussed with the Technical Advisory Committee (TAC) group, IAL incentives process, and HFB's recommendation to the City and County of Honolulu.



Commissioner Chang, Giovanni, Ohigashi and Aczon had additional questions for Mr. Miyamoto mainly focused on:

- Farm Bureau's recommendation to redo the IAL process
- HFB's role to facilitate communication and coordination between the city and farmers
- criteria to distinguish between small and large farmers
- HFB's concerns at the time of participating in the TAC group
- HFB's responsibility in the City's recommendations process
- Authorization of HFB's members that attended the TAC group to speak on behalf of the Farm Bureau

Chair Scheuer commented on the need for language clarification on the IAL matter.

- 8) Bobby Correia, landowner. Opposes
- 9) Caridad Leiva, landowner. Opposes

Commissioner Giovanni asked Ms. Leiva about not receiving notification of the potential IAL designation when she purchased the land.

Chair Scheuer reassessed the procedures of the day and read the list of the additional possible testifiers.

Chair Scheuer declared recess at 11:06 a.m. and reconvened to meeting at 11:16 a.m.

- 10) Phil Rodgers, landowner. Opposes
- 11) Racquel Achiu, landowner. Opposes
- 12) Crystal Posiulai, landowner. Opposes
- 13) Dorene Copper, landowner. Opposes
- 14) Sandra Van, landowner. Opposes

Commissioner Cabral made disclosure about knowing Ms. Van and the next testifier Ms. Kama-Silva but believed that this wouldn't impact her ability to be objective in the proceeding. There were no objections to the Commissioner's continued participation.

- 15) Frances Kama-Silva, landowner. Opposes
- 16) Leon and Josephine Lapina, landowner. Opposes
- 17) Harrison Goo, Esq. representing NSR farms LLC and its affiliates. Opposes

There were no other questions from the Parties or Commissioners.

Chair closed Public Testimony and declared recess at 11:56 a.m. and reconvened the meeting at 12:31 p.m.

### **C&C OF HONOLULU- FINAL COMMENTS**

Chair Scheuer called Ms. Apuna to provide the City and County's final arguments.

Ms. Apuna addressed some of the concerns brought up during public testimony and suggested that this could be brought back to the Legislature without stopping the process and moving forward.

Commissioner Chang, Wong, Cabral, Ohigashi, Giovanni and Aczon had questions and comments for Ms. Apuna relating to:

- DPP's likelihood of taking this back with the collaboration of the Farm Bureau
- remanding and funding the redo of the process through legislation
- sending IAL back to the Legislature
- the Commission's options for deliberation
- landowners' option to voluntarily designate their land as IAL
- Renewal energy projects on IAL land
- Providing closure to property owners

Chair Scheuer had concerns with the gap of time passed between the final IAL report and the petition to the LUC; the legal requirement from the City to reach out and clear the misinterpretations from the public; and the City's lack of sympathy to landowner's emotional stress.

Chair Scheuer declared recess at 1:42 p.m. and reconvened the meeting at 1:52 p.m.

Chair moved to Final Comments from OPSD and DOA.

### **OPSD FINAL COMMENTS**

Ms. Kato provided OPSD's final comments and stated that OPSD believed that the City met the requirements for the development and submission of the recommendation for IAL. She also agreed with Ms. Apuna that if this matter is remanded back to the City, then it should be made clear what actions are needed to meet the requirements.

Commissioners Wong and Chang voiced their concerns with the lack of information to address the landowners' worries and the roll of the government to reassure the community and hear the sentiment of the people.

Commissioner Giovanni requested clarification from Ms. Kato on what prompted DOA the recommendation of excluding parcels less than 2 acres.

Chair Scheuer asked Ms. Kato to defend the idea that the 4-year gap met the criteria of reasonable notice to landowners.

### **DOA FINAL COMMENTS**

Mr. Yamamoto stated that DOA supported the County's submittal. He then added that in DOA's recommendation, the 2 acres lot minimum seemed to be a reasonable suggestion due to the current County's zoning.

Commissioner Giovanni asked about the viability of a very easy "opt out" option from the IAL designation for small farmers.

### **FORMAL DELIBERATIONS**

Chair Scheuer described the process of deliberations and confirmed with all the Commissioners by a roll call that they were prepared to deliberate on this matter.

Commissioner Wong, Giovanni, Ohigashi and Aczon had questions and comments about the options that the Commission had for deliberations.

Discussion ensued to determine what actions could be taken after the Commission's decision if they were to accept the City's recommendation.

Commissioner Chang referred to AG's opinion to the LUC.

Mr. Morris provided clarification on that the LUC would be tasked with an independent review of the criteria as well as to determine what level of due process to individual landowners. Mr. Orodener agreed.

Commissioner Wong made motion to remand the IAL recommendation back to the County because of the 4-year gap, due process, community outreach, general misinformation about IAL and the need to take it back to the Legislature to make it a funded mandate.

Commissioner Ohigashi seconded the motion.

Commissioner Chang opined that the City met the reasonable notice initially, but the gap of time created a legal deficiency. She also provided pointers to the City for mail notifications, community outreach, consultation with other organizations and developing City's incentives.

Commissioner Giovanni supported the motion and commented on the importance of having a disclosure document on all real estate transactions about the IAL designation, a simple opt in or opt out process and the preparations of incentives before option of opting in or out.

Commissioner Ohigashi spoke to the motion and emphasized the issue with approving special permits on IAL land.

Commissioner Giovanni requested collaboration from DPP and others to take it back to the Legislature and thanked DPP efforts.

Commissioners Aczon, Cabral, Okuda, Giovanni, Chang and Chair Scheuer provided their comments in support of the motion.

Chair Scheuer asked Mr. Orodener to read the motion and to poll the Commission. By a roll call the motion to remand to the City and County's its recommendation for IAL passed unanimously with 7 affirmative votes.

There was no further business to discuss. Chair Scheuer adjourned meeting at 3:23 p.m.

