

LAND USE COMMISSION
MEETING MINUTES
March 23, 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, March 23, 2022

(https://us02web.zoom.us/webinar/register/WN_AjK1RPUNQzeNVRed5IK6JQ)

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) Dan Giovanni
Arnold Wong
Nancy Cabral
Edmund Aczon
Lee Ohigashi
Dawn Chang

COMMISSIONERS EXCUSED: Gary Okuda

(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
Natasha Quinones, Chief Clerk

COURT REPORTER: via Naegeli Deposition and Trial
(from recorded 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. (7 Commissioners present)

Chair Scheuer announced that Commissioner Okuda was excused for this meeting.

APPROVAL OF MINUTES

The first agenda item was the approval of the Minutes for January 19-20, 2022 and February 16-17, 2022. The Chair asked if any public testimony had been submitted and if any corrections needed to be made. There was none.

Commissioner Ohigashi moved to adopt the Minutes. Commissioner Wong seconded the motion.

Chair Scheuer asked Mr. Orodenker to poll the Commission. Commissioner Cabral stated that she was recused from the meetings on January 19-20 and February 17, 2022 and abstained from voting on those meeting minutes. She voted yes for February 16, 2022. The Minutes for January 19-20 and February 17, 2022 passed with 6 ayes-0 nays- 1 abstain-1 excused). The Minutes for February 16, 2022 passed unanimously (7-0-1 excused).

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

TENTATIVE MEETING SCHEDULE

Executive Officer Mr. Orodenker provided the tentative meeting schedule from April 2022 to June 2022 and cautioned that the Governor's Emergency Proclamation was expiring on March 25, 2022. The Commissioners were advised that the methodology for the LUC meetings after March 25th would be by Zoom and in person (hybrid). The location of in person meetings will be available to allow the public to attend. The Commissioners were advised to contact LUC staff if there were any questions or conflicts.

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

Chair Scheuer moved to the next agenda item.

ACTION- DOCKET No. A87-610 Kamehameha Schools Waiawa

To Consider Petitioner's Motion for Modification, Time Extension, and Release and Modification of Conditions of Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order issued by the Commission on February 11, 2020 to

allow for modification of the Phase 1 and Phase 2 of the solar farm and to modify and release various conditions under the Commission's 2014 and 2020 Decisions and Orders concerning requirements of the submission of a Master Plan, archaeological sites and plans, burial plans, historic resources, aircraft hazards, traffic, development plans and schedules, and decommissioning of the solar farm phases.

APPEARANCES:

Jennifer Lim, Esq., Counsel for Petitioner Kamehameha Schools (Petitioner)

Onaona Thoene, Esq. Co-Counsel for Petitioner

Derrick Simon, Esq., Co-Counsel for Petitioner

Brianna Weaver, Esq., Corporation Counsel, Department of Planning and Permitting (County)

Franz Krintz, DPP Planner, County

Dina Wong, DPP Acting Planning Division Chief, County

Bryan Yee, Esq., Deputy Attorney General, Office of Planning and Sustainable Development (OPSD)

Lorene Maki, Planner, OPSD

Rodney Funakoshi, Land Use Administrator, OPSD

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures. There were none.

Chair Scheuer asked if there were any disclosures to be made.

Chair re-disclosed his prior working relationships with Kamehameha Schools and affirmed that he could be impartial in this matter. There were no concerns or objections from the parties to Chair's continued participation.

Chair Scheuer asked Ms. Lim if she had reviewed HAR §15-15-45.1 with regards to reimbursement of LUC hearing expenses and if his client agreed. Ms. Lim acknowledged that his client had reviewed and would comply with the reimbursement policy.

Chair Scheuer moved on to public testimony.

PUBLIC TESTIMONY

Chair Scheuer read the list of public testimony and asked Ms. Quiñones if there was any additional testimony received. No additional public testimony was reported by Ms. Quinones,

Chair Scheuer asked if there were any members of the public who wished to testify.

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 Motion to Modify. "Opposes" notation indicates that testimony was against it. "Other" notation indicates that the testimony was neutral or unclear. (Parentheses indicate organizational representation)

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

- 1) Nathaniel Kinney, Hawaii Regional Council of Carpenters, Supports

Commissioners Aczon and Wong made disclosures of having prior working relationships with Mr. Kinney but assured that they could be fair and impartial in this matter. There were no objections to both Commissioners continued participation.

- 2) Pane Meatoga III- Hawaii Operating Engineers Industry Stabilization Fund (HOEISF), Supports

Commissioner Chang requested clarification on whether HOEISF membership had been briefed about the original proposed masterplan of 7900 homes.

- 3) Christopher Delauney- Pacific Resource Partnership (PRP) Supports

Commissioners Chang and Cabral requested clarification on whether PRP's membership had knowledge of the original proposed masterplan of 7,900 homes and how many potential jobs would be generated.

Chair Scheuer commented on the appearance of a trade-off between solar and housing projects.

- 4) Cameron Black- State Department of Energy, Supports

Chair Scheuer closed public testimony on this matter and moved to Admission of Exhibits.

Ms. Lim offered Petitioner's Exhibits 1- 41 to be admitted. There were no objections.

County and OPSD did not have any Exhibits to admit into the record.

PETITIONER'S PRESENTATION

Ms. Lim provided a brief history of the Petition with additional details about the motion and described the witnesses that she would provide. She covered the following points:

- the Decision and Order from 2014, Exhibit A (map of the project area)
- the 2020 Order covering Phase II of Exhibit A
- current Motion for Modification, Time Extension, Release and Modification of Conditions for Phase I solar site of Exhibit A
- new developer's (Waiawa Phase 2 Solar, LLC) intent to develop Phase I solar site of Exhibit A
- Phase I area split in Parcel A and Parcel B
- conditions to be removed
- OPSD's review and Stipulated Proposed Conditions of Approval "Exhibit 40"

There were no questions for Ms. Lim.

Commissioner Giovanni requested clarification on the renewable energy comments made by Ms. Lim and Mr. Black.

Ms. Lim called her first witness.

1. Dana Sato, Director of Leasing and Transactions for Kamehameha Schools.

Ms. Sato described her past responsibilities with Kamehameha Schools, experience in project development and renewable energy, and her current involvement in this project. Ms. Sato provided information in the following areas:

- KS focus on renewable energy
- Educational Spending (Exhibit 39)
- Waiawa Master Plan (Exhibit 38 and 37)
- Master plan infrastructure deadline for Phase B
- Decommissioning of the Solar Farm

Mr. Yee requested clarification on Condition 10 and whether Petitioner was looking to be absolved from preparing a Supplemental EIS.

Questions from Commissioners

Commissioners Wong, Cabral and Giovanni sought clarification on the original plan for housing in the following areas:

- date of completion for the housing project of year 2066.
- adding condition to build the backbone infrastructure to support future housing
- possibility of housing projects to be parallel to solar projects.

Chair Scheuer declared recess at 10:47 a.m. and reconvened the meeting at 12:00 p.m.

Ms. Sato responded to Commissioner Giovanni's earlier question and stated that KS would be amenable to setting a deadline for the completion of infrastructure for Phase B.

Commissioner Ohigashi questioned Exhibit 37's boundary lines and expressed his concerns on how the solar project would affect the housing project timetable.

Commissioner Chang acknowledged Kamehameha's goodwill, and voiced strong concerns on:

- the competing interest of renewable energy and housing.
- the conditioning of the Master Plan upon approval of another DBA
- whether the community outreach was designed to support the solar farms and not the larger question of the choice of housing versus solar project

Commissioner Giovanni had further questions about restoring the property and not extending the lease further to focus on the home build out.

Chair declared recess at 1:06 p.m. and reconvened the meeting at 1:11 p.m.

Commissioner Chang requested clarification on the language for Condition 8 - Timeframe of Interim Use, since it seemed to be an open door to seek an extension, contrary to prior discussion.

Commissioner Wong sought further clarification on the timeline and the phases of the master plan.

Chair Scheuer commented on previous remarks from the witness and other Commissioners on why it's hard to get this approval and shared his concerns on:

- housing importance versus a good solar project
- responsibility of developing the *aina*
- the perception that the LUC is the barrier to housing in Hawaii
- significance of this land on the ridgeline
- Master plan as a road map on how KS could develop and deepen the connection it has between this land, itself, its beneficiaries, and the larger community.

Ms. Sato acknowledged Chair Scheuer's insight of the Commission's duties and expressed the need to going back to the development team with those concerns.

There were no further questions for Ms. Sato.

Ms. Lim called her next witness.

2. Nicolas Molinari, Project Development Manager for The AES Corporation.

Mr. Molinari described his responsibilities with the company and described the AES Corporation's involvement to the Waiawa project and explained the following:

- Relationship between the AES Corporation and the Waiawa Phase 2 Solar LLC
- Terms of the Power Purchase Agreement (PPA)
- Agreement with KS on educational programs
- Adherence to Conditions
- Conditions on Preservation Plan
- Good neighbor to the communities

There were no questions from the parties.

Questions from the Commissioners

Commissioners Chang, Giovanni, Cabral and Wong had questions and comments in the areas:

- Single or multiple PPA for Parcel A and B
- Possible Extensions of the PPA
- Timelines representation of 2054 as the end date for Phase B
- 10 years PPA previously occurring
- agricultural use underneath photo voltaic land
- decommissioning process
- pesticides and water

There were no further questions.

Chair Scheuer declared recess at 2:19 p.m. and reconvened the meeting at 2:25 p.m.

Ms. Lim called her next witness.

3. Lisa Kettley, Project Manager for Tetra Tech.

Ms. Kettley provided her educational history, and experience in Land Use Permits and renewal energy projects. She then described her responsibilities with the company, role in assessing the solar project, and the following exhibits:

- Exhibit 2- Site Plan
- Exhibit 1- State Land Use District Plan
- Exhibit 4- Central Oahu Sustainable Communities Plan Map
- Exhibit 3 County Zoning Map
- Exhibit 6- Visual Simulations Studies
- Exhibit 7- Glare Analysis Report
- Exhibit 10- Biological Resources Survey Report

There were no questions from the Parties or the Commissioners.

4. Jason Jeremiah, Director of Natural and Cultural Ecosystems for Kamehameha Schools.

Mr. Jeremiah described his responsibilities with the organization, and experience in cultural and historic resources; and described his work on the project area including:

- Studies in the project area
- Archeological inventory survey
- Site Preservation Plan
- Cultural studies and traditional and customary practices
- Additional cultural studies for the Environmental Impact Assessment

Chair Scheuer asked the County or OPSD if they had any questions for the witnesses. There were none.

Chair Scheuer suggested that question this witness resume at the next hearing on April 14th, 2022 due to meeting time constraints.

Commissioner Ohigashi requested access to the entire Master Plan.

Mr. Orodener provided information on how to find the link to the Master Plan on the LUC's website.

Commissioner Wong asked for a timeline or a Gantt chart for everything on this Petition.

Ms. Lim explained that the Master Plan submittal in 2019 had a Gantt chart.

Chair Scheuer provided additional details regarding the continuation of this proceedings and declared recess at 3:01 p.m. until Thursday April 14, 2022 at 9:00 a.m.

