

LAND USE COMMISSION
MEETING MINUTES
April 14, 2022 – 9:00 a.m.

In Person: Airport Conference Center (in Hawaiian Airlines Terminal Building)
400 Rodgers Blvd. Suite 700, Room #IIT #1, Honolulu, HI 96819

Virtual: Zoom Webinar Virtual Meeting. Meeting Link for April 14, 2022 below:
(https://us02web.zoom.us/webinar/register/WN_LmlJOCxQRk6GKntiUP8iOw)

Pursuant to Hawaii Revised Statutes, HRS § 92 as amended, the Commission conducted its meeting in person and remotely by interactive conference technology, with Commission members, Staff and Applicants participating simultaneously online. 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 hybrid meeting using instructions circulated on the meeting agenda.

COMMISSIONERS PRESENT: Jonathan Scheuer
(Attending in person) Arnold Wong
Nancy Cabral
Lee Ohigashi
Dawn Chang
Gary Okuda (joined in person at 10:58 a.m.)

(Attending via ZOOM conference media): Dan Giovanni
Gary Okuda (9:15 a.m. – 9:55 a.m.)

COMMISSIONERS EXCUSED Edmund Aczon

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

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending in person) Dan Morris, Deputy Attorney General (DAG)
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner
Martina Segura, Staff Planner
Natasha Quiñones, 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 9:15 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present and able to communicate via the ZOOM program. (5 Commissioners present in person and 2 Commissioners joined via ZOOM)

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

APPROVAL OF MINUTES

The first agenda item was the approval of the Minutes for March 23, 2022. Chair Scheuer asked if any public testimony had been submitted and if any corrections needed to be made. There were none.

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

Chair Scheuer asked Mr. Orodener to poll the Commission. The Minutes for March 23, 2022 passed unanimously (7,0,1).

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

TENTATIVE MEETING SCHEDULE

Executive Officer Mr. Orodener provided the tentative meeting schedule from April 2022 to July 2022. The Commissioners guided 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 (DPP)

Franz Kraitz, DPP Planner, DPP

Dina Wong, Acting Planning Division Chief, DPP

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 disclosed that one of the witnesses was the wife of a high school classmate but affirmed that he could be impartial in this matter. There were no concerns or objections from the parties to Chair's continued participation.

PUBLIC TESTIMONY

Chair Scheuer asked Ms. Quiñones if there was any written testimony received.

Ms. Quinones read the list of public testimony received and confirmed that they were posted to the website.

Chair Scheuer closed public testimony on this matter and moved to admission of exhibits.

Ms. Lim presented Petitioner's additional Exhibits 42- 47 to be admitted. There were no objections.

DPP and OPSD did not have any exhibits to admit into the record.

Chair Scheuer asked Ms. Lim to continue with her Presentation.

PETITIONER'S PRESENTATION

Ms. Lim recalled her last witness from the previous hearing to continue with the Commissioners questions.

Chair Scheuer sworn in Petitioner's witness.

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

Chair Scheuer asked DPP and OPSD if they had any questions for the witness. There had none.

Commissioner Chang asked Mr. Jeremiah to provide more information of the prior uses of the property and evidence if any of trails and traditional resources for gathering practices.

There were no other questions for this Witness.

Ms. Lim called her next witness and Chair Scheuer sworn her in.

2. Michelle Swartman, Planning and Development Manager, Commercial Real Estate Division from Kamehameha Schools.

Ms. Swartman provided her educational background and experience. She then shared with the Commissioners her testimony and presented the following on Exhibit 47:

- Synergy Between Solar and Master Plan Development at Waiawa
- KS Vision for the Waiawa Master Plan
- Master Plan Overview

Commissioner Okuda asked to take a recess. Chair declared recess at 9:55 a.m. and reconvened the meeting at 10:58 a.m.

Ms. Swartman continued with her testimony and further discussed

- Waiawa Master Plan Phasing
- History of Waiawa Solar Approvals
- Waiawa Master Plan Entitlements & Timeline
- Exhibit 46- Gantt Chart
- Master Plan Diligence Update

Chair Scheuer asked if there were any questions from the Parties.

Mr. Yee from OPSD obtained information from the Witness in reference to completion of an Environmental Impact Statement (EIS), Community Outreach Plan and revision of the Master Plan after the EIS.

Questions from Commissioners

Commissioner Cabral asked for further clarification on Phases 1 and 2 and was concerned with the inability to obligate Kamehameha schools to build houses.

Commissioner Ohigashi sought additional information on the backbone infrastructure for Phase A and was troubled with the need for reclassification of lands.

Chair Scheuer declared recess at 12:01 p.m. and reconvened the meeting at 12:31 p.m.

Questions for the Witness resumed. Commissioners Ohigashi, Chang Okuda and Wong had additional questions in the subject areas of:

- current infrastructure development within the solar project
- substantial commencement of the project
- Phase A reclassification
- Master Plan dependence on reclassification.
- Master Plan dependence on revenue produced from the two solar projects.
- property reversion or rezoning.
- danger of land given entitlements
- access points to H2
- traffic impact analysis
- alternative renewable energy

Chair Scheuer had questions for the Ms. Swartman in regard to:

- water provisions and water use permits for the project
- How a Master Plan and an EIS differ in community outreach.
- Gentry EIS
- Kamehameha duties to its beneficiaries
- Housing Market Demand Study
- Absorption rate of 300-400 units per year
- Proposed Stipulated Agreement suggest that the LUC could accept the revised masterplan instead of an EIS- Exhibit 40.

Ms. Swartman asked to confer with her counsel to answer this last question.

Chair Scheuer declared recess at 1:46 p.m. and reconvened the meeting at 1:57 p.m.

Ms. Swartman provided the context for condition on Exhibit 40.

Commissioner Wong was concerned with a stale EIS and proposed a phased EIS.

Commissioner Chang expressed her concerns with the length of time of the project and appealed to Kamehameha schools for an acceleration on the construction of homes and a different “kuleana” from other developers to sustain the Hawaiian people.

Commissioner Okuda articulated that Kamehameha was a trust and trust control the primary obligations of the trustees.

Chair Scheuer gave Ms. Lim the opportunity for a redirect.

Ms. Lim elected to question Ms. Swartman to clarify some final points in the following areas:

- Kamehameha schools return to the Commission for a motion to amend regardless of the need of a district boundary amendment.
- Exhibit 40 condition 1- submission of a revised Master Plan
- Exhibit 40 condition 9 – completion of Phase A infrastructure by 2030

Commissioner Ohigashi asked to go into Executive Session to discuss the issue of substantial commencement for this project.

Chair Scheuer recommended to take on that issue on May 25th, 2022 and allow time for the Commission’s Deputy Attorney General to prepare.

Commissioner Wong requested witness availability for questioning after DPP and OPSD.

There were no further questions.

Chair Scheuer extended an opportunity to hear from DPP.

DPP Testimony

Ms. Weaver wanted to clarify DPP’s position on some areas of the stipulation agreement. She requested that the petition area would be subject to HAR 200 11.9 on condition 10. She also asked for the addition of a landscape plan on condition 11.

Questions from Commissioners

Commissioner Chang asked Ms. Weaver to confirm that the Kamehameha Master Plan was consistent with the county’s general plan.

Commissioner Wong sought DPP’s opinion on the possibility of the Master plan becoming stale and her knowledge of any county ordinances dealing with that.

Ms. Dina Wong from DPP was sworn in to answer Commissioner's Wong question about city ordinances.

Commissioner Okuda had questions for DPP related to the concerns of the length of time for the build out in the Master Plan and suggested expediting building permits and designating a point of contact for such as KSBE.

Chair Scheuer requested DPP's position about the length of time it will take to build housing. DPP did not take a position on the issue.

OPSD Testimony

Mr. Yee expressed that OPSD had no objections to the Motion to Amend and stated that the impact reviews from this solar project were addressed properly. Mr. Yee spoke about the larger question about the housing development.

Mr. Yee provided a quick review on how to valuate competing state interests, the dilemma of housing, limitations to LUC power and a list of issues to be addressed in the future.

Due to the shortness of time, questions for OPSD were reserved for the next meeting.

Ms. Lim asked for the opportunity to provide a simple brief on the substantial commencement issue. Request granted.

Chair Scheuer declared meeting adjourned at 3: 00 p.m.

