

LAND USE COMMISSION
MEETING MINUTES
May 11, 2022 – 9:00 a.m.

In Person Meeting at Hilton Garden Inn Wailua Bay Kauai- Conservatory Room
3-5920 Kuhio Highway, Kapaa, HI 96746

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.

COMMISSIONERS PRESENT:
(Attending in person)

Jonathan Scheuer
Dan Giovanni
Gary Okuda
Lee Ohigashi
Edmund Aczon
Gary Okuda
Nancy Cabral

COMMISSIONERS EXCUSED

Dawn Chang
Kū‘ike Kamakea-‘Ōhelo

(9 seated Commissioners as of 05/01/22)

STAFF PRESENT:
(Attending in person)

Daniel Orodener, Executive Officer
Linda Chow, Deputy Attorney General (DAG)
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner
Martina Segura, Staff Planner
Ariana Kwan, Secretary
Natasha Quiñones, Chief Clerk

COURT REPORTER:
(from recorded ZOOM conference media)

via Naegeli Deposition and Trial

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:17 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present.
(7Commissioners present)

Chair Scheuer announced that Commissioners Dawn Chang and Kū‘ike Kamakea-‘Ōhelo were excused for this meeting.

APPROVAL OF MINUTES

The first agenda item was the approval of the Minutes for April 14, 2022. Chair Scheuer asked if any public testimony had been submitted and if any corrections needed to be made. There were none.

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

Chair Scheuer polled the Commission. The Minutes for April 14, 2022 passed unanimously (7-0-2 excused).

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

TENTATIVE MEETING SCHEDULE

Executive Officer Orodener provided the tentative meeting schedule from May 2022 to July 2022. The Commissioners were asked to hold the tentative meeting dates until Staff released them.

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

Chair Scheuer acknowledged future LUC Commissioner Michael Yamane and moved to the next agenda item.

DISCUSSION ON ELECTION OF OFFICERS

Chair Scheuer asked if there was any public testimony received on this agenda item. There was none.

Mr. Orodener was directed by Chair to brief the Commission on the upcoming need to assemble a nominating committee to nominate officers for the next fiscal year starting on July 1, 2022 for the reconstituted Commission.

Commissioner Ohigashi suggested that the three outgoing Commissioners (Aczon, Wong, Scheuer) serve as the nominating committee.

Following a brief discussion, Commissioner Okuda made a motion to have the three outgoing members serve on the nominating committee for officers. Commissioner Cabral seconded the motion.

Commissioner Okuda spoke to motion and suggested that the nominating committee consider Commissioner Giovanni as the next Chair due to his extensive experience.

Chair Scheuer polled the Commission by voice vote. The motion passed unanimously (7-0-2 excused).

Chair Scheuer stated that the next agenda item was an Executive Session but suggested to move it to after the main agenda item. There were no objections.

ACTION- DOCKET No. DR21-76 Kekaha Agricultural Association (Kauai)

- 1) To Consider Petitioner's Motion to Amend Petition for Declaratory Order to Designate Important Agricultural Lands for approximately 12,123 acres at Kekaha, Kaua'i; TMK 4-1-2-002:001 por.
- 2) To Continue Action on Petition for Declaratory Order to Designate Important Agricultural Lands at Kekaha Kaua'i; TMK 4-1-2-002:001 Por.

APPEARANCES:

Douglas Codiga, Esq., Counsel for Petitioners Kekaha Agricultural Association (KAA)

Joshua Uyehara, President of Board of Directors of KAA

Mike Faye, Manager of KAA

Thomas Schnell – Consultant-PBR Hawaii

Laura K. Barzilai, Esq., Deputy County Attorney of County of Kauai Department of Planning (County)

Jodi Higuchi Sayegusa, Deputy Planning Director (County)

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

Lorene Maki, Planner, OPSD

Earl Yamamoto, Planner, Department of Agriculture (DOA)

Delanie D. Prescott-Tate, Esq., Deputy Attorney General for Agribusiness Development Corporation (ADC)

Colin J. Lau, Esq., Deputy Attorney General for Board of Land and Natural Resources (BLNR)

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

PUBLIC TESTIMONY

Chair Scheuer read the list of written testimony submitted to the Land Use Commission and asked if there was anyone in the audience who wished to provide testimony on the Motion to Withdraw.

Mr. Colin Lau was sworn in and presented his testimony on behalf of BLNR in opposition to the Motion to Withdraw.

Mr. Codiga questioned Mr. Lau in reference to ADC's and BLNR's disagreement and requested clarification on why BLNR opposed KAA's Motion to Withdraw since it would provide additional time for the parties to consider the IAL issue.

County had no questions for the witness.

Mr. Yee noted the benefits of KAA's request to withdraw and sought clarification on BLNR position. Questioning ensued to determine what BLNR's opposition more definitely to the Motion to Withdraw entailed.

Commissioners Okuda, Wong, Cabral and Chair Scheuer requested clarification on Mr. Lau's testimony.

Chair Scheuer asked petitioner to formally present his request.

PETITIONER'S MOTION

Mr. Codiga provided a brief background on the Motion to Withdraw and Petitioner's desire to have more time to obtain a resolution of the issues with the landowner.

Chair Scheuer asked the Commissioners if they had any questions. There were none.

Ms. Barzilai commented that the County was in favor of the Motion to Withdraw and believed that the record was sufficient for the Commission to grant or deny the Motion to Withdraw.

Mr. Yee stated that OPSD supported the Motion to Withdraw and praised Petitioner for making the correct decision in filing the motion in light of DLNR's objection. He also offered OPSD to be part of the future discussions between KAA, ADC and DLNR on IAL.

Mr. Yamamoto stated that DOA took no position regarding the Motion to Withdraw.

DELIBERATIONS

Chair Scheuer moved on to Deliberations.

Commissioner Wong moved to accept the Motion to Withdraw. Commissioner Cabral seconded and spoke to the motion.

Commissioners Ohigashi, Giovanni and Chair Scheuer commented in support of the motion and noted how important it was that Petitioner KAA consult with all the other necessary government agencies involved in the IAL process prior to coming to the Commission.

Chair Scheuer had Mr. Orodener poll the Commission. The motion to accept the Motion to Withdraw passed unanimously (7-0-2).

Chair Scheuer stated that the Commission's approval of Petitioner's request to withdraw had rendered Petitioner's Motion to Amend Petition and the Petition for Declaratory Order moot and declared a recess at 10:34 a.m.. The Commission reconvened at 10:50 a.m. to address the deferred agenda item of the Executive Session.

The Commission entered Executive Session at 10:51 a.m. and reconvened into public session at 11:05 a.m. The Commission attended to housekeeping matters and recessed at 11:18 a.m. until next day Thursday May 12, 2022 at 9:00 a.m.

LAND USE COMMISSION
MEETING MINUTES
May 12, 2022 – 9:00 a.m.

In Person Meeting Hilton Garden Inn Wailua Bay Kauai- Conservatory Room
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COMMISSIONERS PRESENT: Jonathan Scheuer
Dan Giovanni
Gary Okuda
Lee Ohigashi
Edmund Aczon
Nancy Cabral
Kū‘ike Kamakea-‘Ōhelo

COMMISSIONERS EXCUSED
Dawn Chang
Arnold Wong

(9 seated Commissioners as of 05/01/22)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending in person) Linda Chow, Deputy Attorney General (DAG)
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner
Martina Segura, Staff Planner
Ariana Kwan, Secretary
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 9:03 a.m.

Chair Scheuer and the attending Commissioners acknowledged that they were present.
(7 Commissioners present)

Chair Scheuer announced that Commissioner Chang and Wong were excused for this meeting and acknowledged new Commissioner Kamakea-‘Ōhelo and incoming Commissioner Mike Yamane who was in the audience.

Chair Scheuer moved on to his presentation.

PUBLIC TRUST PRESENTATION

Chair Scheuer began his Public Trust presentation with a brief introduction about himself and his service on Boards and Commissions of Hawai‘i. He then provided an overview of his presentation.

Chair Scheuer’s presentation was recorded and will be made available for public viewing via the internet.

Chair Scheuer fielded questions from the Commission and LUC staff during his presentation and declared a recess at 9:53 a.m.. The meeting was reconvened at 10:03 a.m.

PUBLIC TESTIMONY

Chair Scheuer called for public testimony.

Council Member Felicia Cowden was sworn in to testify. Ms. Cowden thanked Chair Scheuer for sharing the Public Trust doctrine and the Commission in general for its extraordinary job and robust review on the projects that are brought on.

Discussion on Public Trust Presentation

Chair Scheuer provided his concluding remarks on his presentation and opened the floor to a general discussion on the Public Trust doctrine matter.

Commissioner Okuda shared his knowledge on the legal and historical basis of the Public Trust doctrine.

Chair Scheuer fielded questions from the Commissioners and Staff in the areas of:

- Public Trust doctrine with respect to climate change
- relationships with counties and effective enforcement on conditions
- addressing traffic issues and Traffic Impact Analysis Reports (TIAR)

- Public Trust impacts on development and sustainability

Chair Scheuer added his final insights on the Public Trust doctrine and described the need for a broader application and appreciation of it and called it the most meaningful lever the people had.

Commissioners and Staff expressed their heartfelt appreciation to Chair Scheuer for his presentation.

Chair Scheuer declared the meeting adjourned at 11:01 a.m.

