

LAND USE COMMISSION
MEETING MINUTES
May 25, 2022 – 9:00 a.m.

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.

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 May 25, 2022 below:
https://us02web.zoom.us/webinar/register/WN_-sw1yGWQQ1ib8uFO1c663w(
https://us02web.zoom.us/webinar/register/WN_ogDQbjrXS5C5VoChzlHmaA)

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: Dan Giovanni
(Attending in person) Nancy Cabral
Dawn Chang
Lee Ohigashi
Gary Okuda
Kamakea-‘Ōhelo
Arnold Wong

(Attending via ZOOM): Jonathan Scheuer

COMMISSIONERS EXCUSED Edmund Aczon

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

STAFF PRESENT: Scott Derrickson, Chief Planner
(Attending in person) Riley Hakoda, Staff Planner
Martina Segura, Staff Planner
Natasha Quiñones, Chief Clerk

(Attending via ZOOM): Daniel Orodener, Executive Officer
Dan Morris, Deputy Attorney General (DAG)

COURT TRANSCRIPTS: 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.

8 Commissioners attended the meeting (7 Commissioners in person and Chair Scheuer joined via ZOOM). Commissioner Aczon was excused.

APPROVAL OF MINUTES

The first agenda item was the approval of the Minutes for May 19, 2022. There was no public testimony on the Minutes. LUC staff advised that the Minutes were not ready for approval.

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 May 2022 to August 2022. The Commissioners were advised to hold the scheduled tentative meeting dates and contact LUC staff if there were any questions or conflicts. There were no questions for Mr. Orodener.

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 Kamehameha Schools (Petitioner)

Onaona Thoene, Esq. Co-Counsel for Petitioner

Derek Simon, Esq., Co-Counsel for Petitioner

Duane Pang, Esq., Corporation Counsel, Department of Planning and Permitting (DPP)

Dina Wong, Acting Planning Division Chief, DPP

Franz Krintz, Planner, DPP

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

Lorene Maki, Planner, OPSD

Commissioner Kamakea-‘Ōhelo disclosed having recent meetings with Kamehameha Schools regarding the leasing of nearby acreage for agricultural purposes near the Petition and stated that he would not financially benefit from this business transaction and felt that he could remain fair and impartial in this matter.

Ms. Lim and Mr. Yee sought clarification from Commissioner Kamakea-‘Ōhelo on the location of the acreage he was referring to. It was determined that the land involved in the lease had no connection to this docket.

There were no objections from the parties

There were no other disclosures.

Chair Scheuer updated the record, described the procedures for the hearing and asked if there were any questions on the procedures.

Ms. Lim reminded the Commission of the availability of Petitioner’s witnesses for questions from the Commissioners.

Commissioner Giovanni asked about the time limit on the proceeding.

Commissioner Wong expressed his preference to end the proceeding by 3 p.m.

There were no other questions about the proceeding.

PUBLIC TESTIMONY

Chair Scheuer asked Ms. Quiñones if any written testimony was received. There was none.

Chair Scheuer directed Mr. Yee to resume OPSD's presentation from the last hearing.

OPSD's PRESENTATION

Mr. Yee stated that he had concluded OPSD's presentation and was ready for questions.

Commissioners Okuda, Giovanni, Chang and Okuda sought clarification on:

- OPSD's position regarding Petitioner's Supplemental Memorandum filed on May 2022
- risk of insufficient notice about reversion
- Condition 9 of the Supplemental Memorandum
- enforcement and reversion
- substantial commencement
- Second Stipulated Proposed Conditions of Approval

Chair Scheuer sought clarification on the credibility of the representations of solar developers.

Mr. Yee offered to add language to the order to address preserving LUC's rights and ability to bring up the issue of substantial commencement at a later date. There was no further discussion.

Chair declared recess at 9:47 a.m. and reconvened the meeting at 10:00 a.m.

Chair Scheuer moved to the Admission of Exhibits.

Ms. Lim requested that Petitioner's additional Exhibits 48-57 and the Amended Stipulation that replaced Exhibit 40 with new Exhibit 58 be admitted.

There were no objections from the parties or Commissioners. The exhibits were admitted to the record.

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

Chair Scheuer asked Ms. Lim to provide a summary of the additional Exhibits.

Questions from Commissioners

Commissioner Giovanni sought clarification from petitioner's Witness Mr. Molanari (AES Corporation Representative) on the feasibility of the proposed solar project due to current rising inflation costs and what assurances could be provided that the project would be completed.

Commissioner Giovanni's questions regarding infrastructure deadlines for parcels A and B were addressed by Ms. Lim.

Mr. Yee requested and was granted permission from the Chair to cross-examine Mr. Nick Molanari in reference to:

- Public Utilities Commission approvals
- modification for rate increases that had occurred in another similar project
- whether rate increases were needed to assure the viability of this project

Chair offered Ms. Lim an opportunity for a redirect. Ms. Lim had no redirect.

Chair Scheuer declared recess at 10:50 a.m. and reconvened the meeting at 11:00 a.m. with continued questioning of the Petitioner.

Commissioner Chang requested clarification on Exhibit 54- the aerial of the solar project.

Commissioner Giovanni sought confirmation that the Master Plan phase A and B would not be affected by either of the solar farms.

Ms. Lim explained that the solar project would not impede development of the Master Plan.

Commissioner Chang sought clarification on what the Petitioner's infrastructure constraints were.

Ms. Lim listed two main things, the completion of the Environmental Impact Study and returning to the Commission for a Motion to Amend.

Commissioner Wong moved to go into Executive Session to consult with LUC's attorney general regarding the Board's duty and privileges pertaining to substantial commencement.

Chair Scheuer temporarily deferred hearing Commissioner Wong's motion till after the questioning of Ms. Lim was completed. Commissioner Wong acknowledged the deferral.

Chair Scheuer referred to his earlier concerns regarding the substantial differences between the EIS process and a Master plan and asked if Ms. Lim might consider separating these two processes.

Ms. Lim acknowledged Chair's concerns and explained how the proposed EIS would provide the kind of information that the Commission would be seeking in a Master Plan with a thorough community consultation process.

There were no further questions for Ms. Lim and Chair Scheuer addressed Commissioner's Wong motion to go into Executive Session.

Commissioner Ohigashi seconded the motion.

Commissioner Okuda objected to the motion for Executive Session with the concern that it could involve deliberations.

Commissioner Ohigashi explained how no deliberations would take place and that he would like to know about what Mr. Morris would have to say about substantial commencement.

Commissioner Okuda withdrew his objection after considering Commissioner Ohigashi's statement.

There was no further discussion.

Chair Scheuer described how the Commission would have a "working lunch" during Executive Session and asked Mr. Orodener to poll the Commission.

Mr. Orodener provided instructions on how Chair Scheuer, Mr. Morris and himself would join the Executive Session virtually and then polled the Commission on the motion. The motion passed unanimously (8-0-1 excused).

The Commission entered Executive Session at 11:32 p.m. and exited at 12:20 p.m. to reconvene into regular session.

Chair asked if there were any other questions for Ms. Lim. There were none.

Chair moved to Closing arguments and final rebuttal.

CLOSING ARGUMENTS

Ms. Lim argued to have the Commission to approve this motion and summarized how the current motion and the need to modify the Conditions affected the Petitioner.

Mr. Pang stated that the City and County of Honolulu did not oppose the motion, supported the interim use and requested that the proposed conditions and stipulation be attached to the decision if it was approved.

Mr. Yee reiterated his offer for language to satisfy the issue of substantial commencement and stated that OPSD believed that the proposed project was viable and anticipated that Petitioner would provide a well done, publicly vetted EIS.

Commissioner Chang sought additional clarification on what the Commission's options to revert the property area if deadlines were not met.

Mr. Yee offered some of the language he thought would address her concerns.

Commissioner Chang offered proposed language for an additional condition regarding protection and preservation of native Hawaiian traditional and customary practices and for the assessment to be limited to the two parcel areas.

Commissioner Ohigashi asked if the Petitioner would be amenable to a condition for Petitioner to file a Motion to Amend prior to 2030 infrastructure deadline.

Ms. Lim conferred with her client and agreed that petitioner would be amenable to such condition.

There was no rebuttal.

Chair moved on to deliberations.

FORMAL DELIBERATIONS

All attending Commissioners acknowledged that they had reviewed the record and were able to deliberate on this matter.

Commissioner Giovanni moved to grant the Motion to Amend subject to all conditions included on the Second Stipulated Proposed Conditions of Approval subject to an amendment to Condition no. 9 as well as inclusion of additional conditions as follow:

- Condition #9- Waiawa master plan infrastructure deadline
- Cultural Impact Assessment

Commissioner Chang proposed the language for the cultural impact assessment condition that she had suggested.

Commissioner Ohigashi seconded the motion.

Commissioner Giovanni spoke to the motion and noted how this was a very important project conducted by a reputable developer in Hawaii.

Commissioner Ohigashi spoke in support of the motion and offered a friendly amendment to require Petitioner to file a Motion to Amend the boundary amendment prior to 12/31/2030.

Commissioner Giovanni agreed with the friendly amendment and Chair Scheuer opened the floor to discussion on the motion.

Commissioner Chang made another friendly amendment to the Second Stipulated Proposed Conditions of Approval no.7 *Interim Use of the Petition Area* to read *Interim and Temporary Use of the Petition Area*.

Discussion ensued over the content and additional language that was needed to clarify what would be included in the amended motion.

Commissioners Giovanni and Ohigashi accepted the second friendly amendment by Commissioner Chang.

Commissioner Wong asked Chair Scheuer to confirm with the parties if they had any concerns with both of those friendly amendments.

Ms. Lim had concerns with some of this language sounding more like a finding and not a condition and noted that she believed that the proposed language that Mr. Yee provided earlier achieved the same goal.

Mr. Pang had no objections but agreed with Ms. Lim.

Mr. Yee had no objections.

Commissioner Wong had similar concerns and requested to hear LUC DAG opinion.

Mr. Morris stated that this condition was not defective.

Commissioners Okuda, Chang and Kamakea-‘Ōhelo voiced their support of the motion.

Commissioner Cabral voiced her strong advocacy for housing and that she would be symbolically voting against this motion since she would have preferred that housing be given a priority over solar projects.

Commissioner Giovanni articulated how skeptical he felt about Kamehameha schools following through with their proposed housing project and challenged the Petitioner to prove him wrong.

Chair Scheuer shared his opinion on solar power projects and urged Kamehameha schools to give the Hawaiian people what they need and provide a Master Plan that encompasses those needs.

Chair Scheuer asked Mr. Orodener to poll the Commission.

Mr. Orodener restated the motion to approve with the conditions as stated by the Commissioners and polled the Commission. The motion to approve Motion to Amend passed with (7,1,1).

Chair Scheuer called recess at 1:37 p.m. and reconvened the meeting at 1:46 p.m.

Chair moved on to discussion and action on Election of Officers and asked Ms. Quiñones if there was any public testimony received. There was none.

Chair Scheuer stated that he would defer this matter and the Executive Session for Personnel Matters until next meeting. There were no objections.

The Election of Officers and Executive Session for Personnel Matters was deferred to June 23, 2022.

The Commission and Staff discussed what additional future matters needed to be scheduled.

Mr. Orodener cautioned the Commissioners to keep their calendar open for reserved meeting dates in June. Chair Scheuer adjourned meeting at 1:56 p.m.

