

LAND USE COMMISSION
MEETING MINUTES
June 23, 2022 – 9:00 a.m.

Pursuant to Hawai'i 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.

IN PERSON : State Office Tower, Leiopapa A Kamehameha Building 235 South Beretania Street, Conference Room 405, Honolulu, Hawai'i 96813 noted by (at room # 405, SOT)

VIRTUAL: Zoom Webinar Virtual Meeting. Meeting Link for June 23, 2022 below:
(https://us02web.zoom.us/webinar/register/WN_24rPLi3HTGqKFbM3i_FwLA)

COMMISSIONERS PRESENT: Nancy Cabral
(Attending in person in room 405, SOT) Lee Ohigashi
Gary Okuda
Jonathan Scheuer
Arnold Wong
Dawn N. S. Chang
Dan Giovanni
Kū'ike Kamakea-Ōhelo

COMMISSIONERS EXCUSED: Edmund Aczon
(9 seated Commissioners as of 05/01/22)

STAFF PRESENT: Daniel Orodener, Executive Officer
(Attending in person Daniel Morris, Esq. Deputy Attorney General
unless indicated otherwise) David Day, Esq. Deputy Solicitor General
(Appellate Division)
Scott Derrickson, Staff Planner (via Zoom)
Riley Hakoda, Staff Planner
Martina Segura, Staff Planner
Ariana Kwan

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

CALL TO ORDER

Chair Scheuer called the meeting to order at 9:08 a.m.

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

Chair Scheuer announced that Commissioner Edmund Aczon was excused from this meeting.

APPROVAL OF MINUTES

The first agenda item was the approval of the Minutes for May 19, 2022 and June 8th, 2022. Chair Scheuer asked if any public testimony had been submitted and whether any additions or corrections needed to be made. There were no testifiers and no additions or corrections.

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

Chair Scheuer asked the Executive Officer to poll the Commission. The Minutes for May 19, 2022 were unanimously approved 8-0-1 excused (Commissioner Aczon).

Chair Scheuer called for the Executive Officer to provide the Tentative Meeting Schedule.

TENTATIVE MEETING SCHEDULE

The Executive Officer described the tentative meeting schedule from June 2022 to September 2022 and cautioned the commissioners to keep the scheduled days clear for now, and to contact LUC staff if there were any questions or conflicts.

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

AGENDA ITEM IV: ADOPTION OF ORDER -A87-610 KS WAIAWA (O'ahu)

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.

PARTIES PRESENT (ATTENDED VIA ZOOM UNLESS OTHERWISE NOTED)

Jennifer Lim (Petitioners' Counsel)

Onaona Thoene (Petitioners' Counsel)

Derek Simon (Petitioners' Counsel)

Brianna Weaver (Deputy Corporation Counsel, Department of Planning and Permitting)

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

PUBLIC TESTIMONY

Chair Scheuer asked if any written public testimony was received on the adoption of the order. LUC Staff responded that no public testimony had been received.

Chair Scheuer then sought public testimony, and there was none.

ACTION

Chair Scheuer confirmed that all Commissioners, including himself, were prepared to participate in the proceedings. The eight Commissioners (including the Chair) in attendance confirmed they were prepared.

Chair Scheuer opened the floor to discussion. There being none, Chair Scheuer entertained a motion.

Commissioner Wong moved to adopt the Order as drafted and presented by the Staff. Commissioner Giovanni seconded the motion.

Commissioner Wong spoke to his motion and described his support for affordable housing and sustainable energy sources.

Commissioner Giovanni spoke in support of the motion and acknowledged how the proposed project's interim solar farm would benefit the community and later give way to the development of affordable housing.

Commissioner Chang spoke in favor of motion, echoing Commissioner Giovanni's remarks regarding the interim use for a solar farm, and stressed the importance of affordable housing for Native Hawaiians.

Commissioner Cabral voiced her support for photovoltaic energy; however and shared her reasons for opposing the motion.

Commissioner Okuda spoke in favor of the motion but disagreed with Commissioner Wong's statement regarding the project providing housing for the people of Hawai'i. Commissioner Okuda referenced Finding of Fact ("FOF") 111 "Everything KS [Kamehameha Schools Bishop Estates] does must ultimately come back to achieving its goals of providing education," and clarified that Kamehameha Schools Bishop Estates was not bound to providing affordable housing for people in the State of Hawai'i.

Chair Scheuer acknowledged the differing viewpoints of Commissioner Wong and Okuda and shared his perspectives on the need for affordable housing, and why he agreed with Commissioner Okuda that the primary mission for Kamehameha Schools Bishop Estates was to provide education to Native Hawaiian children. Chair Scheuer then stated he would be voting in favor of the motion.

Chair Scheuer asked, Executive Officer Orodener to poll the Commission.

The motion to adopt the A87-610 Kamehameha Schools 2021 Motion to Amend passed with 7 affirmative votes and 1 nay.

The Commission took a brief recess at 9:26a.m. and reconvened at 9:28 a.m.

AGENDA ITEM V: BRIEFING BY THE DEPARTMENT OF THE ATTORNEY GENERAL

On Litigation and Appellate Proceedings DW Aina Le'a Development, LLC v. State of Hawai'i, Land Use Commission, Civil No. 17-00113 SOM-WRP.

APPEARANCES: (ATTENDED VIA ZOOM UNLESS OTHERWISE NOTED)

Daniel Morris, Esq. Deputy Attorney General, Land Use Commission (LUC)

David Day, Esq. Deputy Solicitor General, Appellate Division

Lauren Chun, Esq. Deputy Attorney General

Chair Scheuer confirmed that no written public testimony had been received for this matter and sought public testimony. Seeing none, Chair Scheuer closed public testimony on this matter.

Chair Scheuer introduced David Day and invited him to begin his briefing.

Mr. Day shared his experiences of working on the Bridge Aina Le'a case, and provided a brief overview on the recent proceedings of DW Aina Le'a Development, LLC v. State of Hawai'i case.

Chair Scheuer asked the Commissioners if they had any questions for Mr. Day or alternately if there was a motion to move into Executive Session.

Commissioner Cabral moved to enter into executive session to consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities in regards to the litigation and appellate proceedings concerning DW Aina Le'a Development, LLC. v. State of Hawai'i, Land Use Commission, Civil No. 17-00113 SOM-WRP.

Mr. Day interjected to introduce and ask if Deputy Attorney General Lauren Chun, could participate in the Executive Session. Chair Scheuer acknowledged and granted Mr. Day's request.

Commissioner Chang seconded the motion to go into Executive Session.

The motion to go into Executive Session passed unanimously 8-0.

The Commission entered Executive Session at 9:36 a.m. While in Executive Session, the Commission took a brief break at 10:31 a.m. and resumed Executive Session at 10:40 a.m. The Commission exited Executive Session and reconvened into public session at 11:03 a.m.

Chair Scheuer moved on to the next agenda item.

AGENDA ITEM VI: DISCUSSION AND ACTION ON ELECTION OF LUC OFFICERS

Chair Scheuer confirmed that no written public testimony had been received for this matter and sought public testimony. Seeing none, Chair Scheuer closed public testimony on this matter.

Commissioner Wong stated that Chair Scheuer, Commission Aczon, and himself were appointed to serve on the LUC election committee to designate the Commission's next Chair, Vice Chair, and Second Vice Chair. Commissioner Wong then made a motion that the Commission approve the election committee's proposed slate of Officers: Commissioner Giovanni as Chair, Commissioner Cabral as First Vice Chair and Commissioner Ohigashi as Second Vice Chair.

Commissioner Chang seconded the motion.

Chair Scheuer confirmed that the three Commissioners were willing to accept their nominations and serve in their proposed capacities. Commissioners Giovanni, Cabral, and Ohigashi acknowledged that they would.

The motion to approve the proposed slate of officers passed unanimously 8-0.

Chair Scheuer moved to the next agenda item.

AGENDA ITEM VII: EXECUTIVE SESSION

Pursuant to HRS section 92-5(a)(2) to consult with the Commissioners' Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

Chair Scheuer confirmed that no written public testimony had been received for this matter and sought public testimony. Seeing none, Chair Scheuer closed public testimony on this matter.

Chair Scheuer allowed Bryan Yee (Deputy Attorney General, Office of Planning and Sustainable Development) to address the outgoing Commissioners.

Mr. Yee thanked Chair Scheuer for the opportunity and as a farewell and thank you, presented a limerick for each outgoing Commissioner.

Commissioner Ohigashi made a motion to go into Executive session to consult with the Commission's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities related to LUC personnel matters where considerations of matters affecting privacy would be involved. Commissioner Cabral seconded the motion.

The motion to go into Executive Session passed unanimously 8-0.

The Commission entered Executive Session at 11:10 a.m. and reconvened into public session at 11:47 a.m.

There being no further business after reconvening, Chair Scheuer adjourned the meeting at 11:47 a.m.