

LAND USE COMMISSION  
MEETING MINUTES  
**February 18, 2015 - 9:30 a.m.**  
Airport Conference Center  
400 Rodgers Blvd. Suite 700, Room #3  
(In Hawaiian Airlines Terminal Building)  
Honolulu, HI 96819

COMMISSIONERS PRESENT: Chad McDonald  
Arnold Wong  
Edmund Aczon  
Kent Hiranaga  
Brandon Ahakuelo  
Jonathan Scheuer  
Neil Clendeninn

COMMISSIONERS EXCUSED: Sandra Song  
Aaron Mahi

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

**CALL TO ORDER**

Chair McDonald called the meeting to order at 9:34 a.m.

**APPROVAL OF MINUTES**

Chair McDonald asked if there were any corrections or additions to the January 23, 2015 minutes. There were no corrections or comments. Commissioner Wong moved to approve the minutes. Commissioner Aczon seconded the motion. The minutes were unanimously approved by voice vote (7-0- 2 excused).

**TENTATIVE MEETING SCHEDULE**

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The March 4-5, 2015 meetings is tentatively scheduled as follows- March 4, 2015 is planned to be on the Big Island, in Kona at the West Hawaii Civic Center for A89-643 McClean Honokohau Motion to remove, discharge and/or delete conditions. March 5, 2015 is scheduled for the airport to consider SP15-405 Waiawa PV, LLC's Special Permit Application
- Above dates represent the tentative calendar of meetings and are subject to change.
- Any questions or conflicts, please contact LUC staff.

There were no further questions and comments regarding the tentative meeting schedule.

## **HEARING & ACTION**

### **DR14-52 TRUSTEES OF BERNICE PAUAHI BISHOP dba KAMEHAMEHA SCHOOLS**

Chair McDonald stated that this was a hearing and action meeting on Docket No. DR14-52 Trustees of Bernice Pauahi Bishop dba Kamehameha Schools' Petition For Declaratory Order to Designate Important Agricultural Lands ("IAL") for approximately 9,171.161 acres at Kawailoa, O'ahu identified by TMK Nos. (1) 6-1-005: 001 (por.); 6-1-006: 001 (por.); 6-1-007: 001; 6-2-009: 001 (por.); 6-2-010: 001 (por.); 6-2-011: 001 (por.); 6-2-011: 021 and approximately 420.887 acres at Punalu'u, O'ahu identified by TMK Nos. (1) 5-3-001: 041 (por.); 5-3-003: 001 (por.); 5-3-004: 005; 5-3-004:007; 5-3-004: 013; 5-3-004: 018 (por.); 5-3-004: 019; 5-3-007: 023 (por.). Chair McDonald updated the record, and described the procedures for the hearing. There were no questions or comments on the procedures.

### **APPEARANCES**

Calvert Chipchase, Esq., and Lisa Ayabe, Esq., for Trustees of Bernice Pauahi Bishop dba Kamehameha Schools' ("KS")

Richard Lewallen, Esq., Deputy Corporation Counsel, for City and County of Honolulu Department of Planning and Permitting ("DPP")

Tim Hata, DPP

Bryan Yee, Esq., Deputy Attorney General, for State Office of Planning ("OP")

Rodney Funakoshi, Land Use Administrator, OP

Chair McDonald asked if Petitioner was willing to abide by the Commission's policy on reimbursement of hearing expenses. Mr. Chipchase replied that he had not been advised about reimbursement of expenses and Mr. Orodenker described the Commission's policy. Mr. Chipchase responded that Petitioner would comply

Chair McDonald stated that he intended to declare that the documents submitted by the Department of Agriculture (“DOA”), OP, DPP and Petitioner would become part of the record. Mr. Chipchase stated that he did not have any objection.

Mr. Yee stated that OP had a correction to the contour line representations for Figures 1 and 2 of its submittals and stated that the contour line should have been described as the 100 foot contour line instead of the 200 foot contour line. Chair McDonald acknowledged the correction.

Chair McDonald called for Public Witnesses who wished to testify and, since there were none, asked Mr. Chipchase to begin his presentation.

#### PUBLIC WITNESSES

None

#### PRESENTATIONS

Petitioner

Mr. Chipchase provided a summary of the Petition and why the Petitioner was seeking an IAL designation. He argued that the Petition Area qualified for and met IAL designation criteria and that the Commission should grant the Petition. Mr. Chipchase recalled the features that had been highlighted at the various site visit stops and described how they factored into the IAL Petition.

Mr. Chipchase also described how Petitioner could benefit from the various IAL incentives provided for by State of Hawaii rules and statutes and had three witnesses appear before the Commission to provide additional information.

#### PERSONS REQUESTED BY PETITIONER TO PROVIDE INFORMATION TO THE COMMISSION DURING THE HEARING:

1. Sydney Keliipuleole- Operations Director, Land Assets Division KS

Mr. Keliipuleole described what KS’s organizational objectives were and how restoring its agricultural land holdings and receiving the IAL designation for the Kawailoa and Punalu`u areas factored into its Strategic Agricultural Plan in the near and long term future.

Commissioner Wong requested clarification on the lease terms for the two portions of the Petition Area and what type of ALISH ratings the lands designated for solar farming had. Mr. Keliipuleole described the lease terms for the Kawailoa and Punalu`u areas and explained why they were different; and deferred to Tom Witten to address the ALISH land ratings question.

Commissioner Scheuer requested clarification on the water source delivery and retention systems for the Petition Area and how DOA’s concerns in its comment letter were

being addressed. Mr. Keliipuleole described the current and future water infrastructure systems and sources for the Petition Area; and how DOA's concerns were being addressed.

There were no further questions for Mr. Keliipuleole.

2. Giorgio Calderone, Director of Real Estate Planning, KS

Mr. Calderone described the community outreach and infrastructure improvements that had been done and were planned for the future for the KS agricultural properties, and how the improvements would support the lands proposed for IAL designation.

The Commission went into recess at 10:34 a.m. and reconvened at 10:50 a.m.

Mr. Calderone summarized his testimony and described why he thought the areas proposed to be excluded from IAL designation by OP should be included by the Commission.

Commissioner Clendeninn requested clarification on the Punalu`u Stream restoration project and what features the restored stream design would have. Mr. Calderone described the factors and considerations that were involved in the project and how flooding, runoff and other problems would be mitigated by the design elements that were to be used.

Commissioner Aczon requested clarification on why the acreage that OP proposed to have excluded should be included; and what the downside of excluding them would be. Mr. Calderone described how different crops and farming methods could be used on the lands that were proposed to be excluded to justify retaining them in the Petition Area and how excluding acreage might affect KS. Mr. Calderone also described how the map contours and management of demarcated land would be difficult to apply.

Commissioner Aczon requested clarification on whether the 15% tax credit waiver could be confirmed. Discussion ensued and Mr. Chipchase stated that the proposed Findings of Fact, Conclusions of Law and Decision and Order included that waiver.

Commissioner Scheuer requested clarification on his concerns regarding water sources and cultural site protection and preservation for the Petition Area. Mr. Calderone described how the Petitioner had attempted to balance the need for water and making land available for farming in its planning process and how provisions for protecting and preserving cultural sites would be involved.

Chair McDonald asked if an agricultural tourism business was a consideration. Mr. Calderone described how initial plans were only for a "farmer's market" type of operation

and perhaps that type of business might develop later; though it had not been an essential part of the plans.

Commissioner Hiranaga excused himself at 11:07 a.m. and returned at 11:09 a.m.

There were no further questions for Mr. Calderone.

3. Tom Witten, PBR Hawaii- Planner for Petitioner KS

Mr. Witten was offered and accepted as an expert witness in the area of land and environmental planning. Mr. Witten described his professional role in assisting the Petitioner and provided details of the various aspects of the Petition Area as it related to State/County boundaries, topographic features, land use and appropriateness for IAL designation.

Commissioner Wong requested clarification on the dual use of land for solar farming and pasturing sheep. Mr. Witten stated that it was a land management issue and could not respond to the particulars of the question without capacity information about the sheep.

There were no further questions for Mr. Witten.

Mr. Chipchase stated that he had concluded his presentation. There were no questions for Mr. Chipchase.

Chair McDonald asked if DPP had any comments. Mr. Lewallen replied that he had none and stated that DPP would stand on the letter that had been submitted to the LUC earlier. There were no questions for Mr. Lewallen

Chair McDonald asked if OP had any comments. Mr. Yee stated that Earl Yamamoto, DOA, was available to answer any questions and that OP would rest on its comments; and that Mr. Funakoshi would provide a summary. There were no questions for Mr. Yamamoto.

The Commission went into recess at 11:40 a.m. and reconvened at 11:45 a.m.

Chair McDonald stated that some Commissioners had disclosures that needed to be made before continuing proceedings. Commissioners Scheuer, and Ahakuelo disclosed that they or their family members had current or past business relationships with KS. There were no comments or objections to Commissioners Scheuer, and Ahakuelo's continued participation in the proceedings.

Mr. Yee stated that Mr. Funakoshi would provide OP's position on this matter.

PERSONS REQUESTED BY OP TO PROVIDE INFORMATION TO THE COMMISSION DURING THE HEARING:

1. Rodney Funakoshi, Land Use Administrator, OP

Mr. Funakoshi, OP Land Use Division, presented OP's position on the Petition and described how OP generally supported the Petition except for excluding approximately 131 acres. Mr. Funakoshi shared how OP agreed that all the criteria for designating IAL lands had been met for most of the Petition Area; and why the Petition should not be granted in its entirety.

There were no questions for Mr. Funakoshi. There were no other witnesses.

Chair McDonald called for closing arguments.

Mr. Chipchase restated his argument on why the Petition should be granted in its entirety, and why the acreage that OP proposed to be excluded from the IAL designation should be included. Mr. Chipchase informed the Commission that approximately 100-200 head of sheep were anticipated to be grazed in the land planned for solar farming and provided details on how the dual farming operation was expected to operate.

Mr. Lewallen stated that DPP agreed with Petitioner's responses to its question and had no objection to the Petition.

Mr. Yee provided his understanding of the IAL designation process' history and how it was planned to be implemented and maintained; and argued why the OP position should be adopted by the Commission.

Chair McDonald asked if there were any further questions.

Commissioner Hiranaga asked if the IAL designation was amendable and how the 50 % threshold applied to IAL designated lands. Mr. Yee responded that it depended on circumstances and provided his understanding of what the statute said and didn't say.

Commissioner Clendeninn requested clarification on how the farmers would be affected by the IAL designation. Mr. Yee deferred to Mr. Yamamoto to respond to the Commission in further detail.

PERSONS REQUESTED BY OP TO PROVIDE INFORMATION TO THE COMMISSION DURING THE HEARING:

2. Earl Yamamoto, Planner, Department of Agriculture (“DOA”)

Mr. Yamamoto stated the position of the DOA in this matter and described the attributes and concerns about the Petition for the farmer and the State in various situations and scenarios..

There were no further questions for Mr. Yamamoto.

Chair McDonald asked if the Commissioners had any questions for the Petitioner.

Commissioner Scheuer requested clarification on Petitioner’s response to DPP’s comment letter (Paragraph 6). Mr. Chipchase provided his perception of how Petitioner would respond.

The Commissioners had no further questions or comments for Mr. Chipchase.

Chair McDonald asked if DPP, OP or DOA wished to make any additional comments. There were no further comments or questions.

#### DECISION-MAKING

Commissioner Wong moved to grant KS’s Petition For Declaratory Order to Designate Important Agricultural Lands in whole subject to the following conditions:

- 1) Petitioner shall comply with representations made to the Commission with respect to not claiming any credits described in §205-46(h), HRS, with respect to the Petition Area and
- 2) Within seven days of the issuance of the Commission’s Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

Commissioner Clendeninn seconded the motion.

#### DISCUSSION

Commissioner Hiranaga described why he was uncomfortable with granting the Petition in its entirety.

Commissioner Wong described his concern about farmers and how the 50% threshold would not be impacted by including or excluding the acreage suggested by OP.

Chair McDonald noted that DPP had no issue with the entire Petition Area and shared why he thought that the common concerns and economics involved suggested that all the proposed land mass be included for IAL designation.

Commissioner Scheuer stated that he understood Commissioner Hiranaga’s concerns but was comfortable that the approach that KS used to decide what lands to include in its Petition was sound.

Commissioner Hiranaga asked a procedural question regarding further action that the Commission might take if the motion failed to pass. Deputy Attorney General Erickson responded that another motion could be heard.

There was no further discussion regarding the motion

The Commission voted as follows:

Ayes: Commissioners Wong, Clendeninn, Scheuer, Aczon, Ahakuelo, and Chair McDonald.

Nays: Commissioner Hiranaga.

The Motion passed 6-1-2 excused.

Chair McDonald asked if there were any questions, comments or concerns regarding action on DR14-52. There were none.

The Commission went into recess at 12:40 a.m. and reconvened at 12:47 p.m.

#### **LUC LEGISLATIVE COMMITTEE REPORT**

Chair McDonald stated that the next agenda item was a report from the LUC Legislative Committee providing an update on matters pertinent to the Commission.

Commissioner Wong moved for an Executive Session. Commissioner Scheuer seconded the motion. By unanimous voice vote the Commission entered into Executive Session at 12:47 p.m. and reconvened at 12:51 p.m.

Commissioner Wong moved to amend the agenda to include additional bills requiring ratification. Commissioner Ahakuelo seconded the motion. By unanimous voice vote (7-0-2 excused), the Commission approved the amendment to the agenda to include the bills identified by Commissioner Wong.

Executive Officer Orodener provided a legislative update to the Commission on the status of various bills and legislative activity of concern to the LUC.

Commissioner Hiranaga excused himself at 12:57 p.m. and returned at 12:59 p.m.

Commissioner Wong moved to ratify the testimony on the bills identified in the amended agenda and to delegate authority to LUC staff to continue to support or oppose and monitor those bills and others similar to them for the 2015 Hawaii Legislative Session. Commissioner Scheuer seconded the motion. By unanimous voice vote (6-0-3 excused-) the Commission approved the motion.

There being no further business, the meeting was adjourned by Chair McDonald at 1:00 p.m.



