

LAND USE COMMISSION
MEETING MINUTES
April 3, 2024 – 9:30 a.m.

Pursuant to Hawai'i Revised Statutes, HRS §92 as amended, the Commission conducted its meeting in person. Interested persons submitting written testimony were recommended to submit their written Statements 24 hours in advance of the meeting to allow for distribution to the Commission prior to the meeting.

IN PERSON: Homer A. Maxey Center Conference Room (Foreign-Trade Zone No. 9)
521 Ala Moana Boulevard, Honolulu, HI 96813

YOUTUBE RECORDING: (<https://www.youtube.com/watch?v=fEHR27KpwA>)

COMMISSIONERS PRESENT:

Dan Giovanni
Lee Ohigashi
Gary Okuda
George Atta
Michael Yamane
Brian Lee
Nancy Carr Smith

STAFF PRESENT:

Daniel Orodenker, Executive Officer
Scott Derrickson, Chief Planner
Martina Segura, Staff Planner
Ariana Kwan, Chief Clerk
Dan Morris, Esq. Deputy Attorney General

COURT REPORTER:

Naegeli Deposition and Trial
(Via Zoom Recording)

CALL TO ORDER (YouTube: 00:00:06)

Chair Giovanni, called the meeting to order at 9:30 a.m.

APPROVAL OF THE MINUTES (YouTube: 00:03:22)

The first agenda item was the approval of the March 7th, 2024, Minutes. There was no written testimony, or members of the public who wished to testify on the approval of the Minutes.

Commissioner Ohigashi moved to adopt the March 7th, 2024, Minutes, and Commissioner Yamane seconded the motion.

March 7th, 2024, Minutes were approved with 7 ayes, 0 nays, 1 excused, and 1 abstain.

TENTATIVE MEETING SCHEDULE (YouTube: 00:04:29)

Chair Giovanni called for Land Use Commission Staff to provide the Tentative Meeting Schedule. Executive Officer, Daniel Orodenker provided the following tentative meeting dates, and cautioned the Commissioners not to plan to release the remaining days due to upcoming items:

May 8, 2024: A92-686 AMFAC/HHFDC (Maui)
June 5, 2024: OPSD Soil Study (Virtual Meeting/ O'ahu)
June 6, 2024: Proposed Rule Amendments (Virtual Meeting/ O'ahu)
June 19-20, 2024: SP97-390 Central Maui Land Fill and A11-792 DHHC (Maui)
July 10-11, 2024: Commissioner Training (O'ahu)
July 24, 2024: A07-773(a) ELC (Maui)
September 11-13, 2024: HCPO (Hawai'i)



A92-683 HALEKUA DEVELOPMENT CORPORATION (YouTube: 00:07:11)

Status and progress report and action (if necessary) in response to the recently submitted annual report. Approximately 503.886 Acres at Waikele and Hō‘ae‘ae, ‘Ewa, O‘ahu, City and County of Honolulu, State of Hawai‘i, Tax Map Key No. 9-4-02: 01, portion of 52, 70 and 71.

Appearances

Petitioners

Haseko

Peter Kwan, Vice President
Curtis Tabata, Esq.

Ho‘ohana Solar

Larry Greene, Senior Vice President
Jennifer Lim, Esq.

RK II

Terry Lee, Esq.
Derrick Kobayashi, Esq.
David Tanoa, R.M. Towill
Mike Wright
Rick Elkind, Esq.
Ernie Martin, Esq.

Robinson Kunia Land

Steven Mau, Esq.

Public

Franky Rife
Chris Delaunay

City and County of Honolulu

Dina Wong, Planner DPP
Pono Arias, Esq. Deputy Corporation Counsel
Patricia Sendao, Esq. Deputy Corporation Counsel

State Department of Agriculture (“DOA”)

Janice Fujimoto, Engineer
Brian Kau, Engineering Program Administrator
Kelcie Nagata, Deputy Attorney General

Office of Planning and Sustainable Development (“OPSD”)

Brandon Soo, Planner
Katia Balassiano, Land Use Development
Program Administrator
Allison Kato, Deputy Attorney General

Disclosures(YouTube: 00:13:27)

Commissioners did not have any disclosures.

Public Testimony Round One (YouTube: 00:14:33 -00:22:06)

The Land Use Commission received no written testimony prior to the start of the meeting from the public on this matter.

Chair Giovanni opened the meeting up for testimony on the matter, and there were two members of the public who provided testimony in support of the continuation of development.

Presentations (YouTube: 00:24:26-03:04:41)

Haseko (YouTube: 00:24:26-01:13:17) provided their presentation on the status and plans for development. Haseko provided a brief description of the Memorandum of Understanding (“MOU”) and required infrastructure to support the DOA Agriculture Park, and Haseko provided location and development status of the temporary infrastructure.

Commissioners asked Haseko questions regarding the undergrounding of infrastructure, timeline of the temporary and permanent infrastructure development, substantial commencement, bifurcation, how best to proceed and offer support, and government funded infrastructure.

Ho'ohana (*YouTube: 01:13:33-01:33:03*) provided their presentation on the status and future plans for development of the solar project, specifically Ho'ohana presented on their compliance with "B" Conditions, set on the solar project development and the status of the temporary waterline.

Commissioners asked Ho'ohana questions regarding the compacity of the solar project.

RK II (*YouTube: 01:33:14-01:59:44*) provided their presentation on the status, obligations, permits, and plans for the development. During presentation RK II asked the Commission a question regarding a December 23, 2004, letter, Petitioner was informed the proper process of addressing the question is through filing for a Declaratory Ruling.

Commissioners asked RK II questions regarding conditions of development and encumbrances, the status of the master plan, compliance with conditions, and an estimate on when the masterplan will be filed (60 days).

Robinson Kunia Land (*YouTube: 01:59:57-02:08:40*) provided their presentation on the status and future plans for development. Commissioners asked Robinson Kunia Land questions regarding the ownership of parcel 52, and the obligations for completion of conditions.

RKES, the landowner of the school parcel was not in attendance at the hearing despite being sent an agenda (*YouTube: 02:02:14-02:05:12*).

DOA (*YouTube: 02:08:42-02:41:35*) presented on the status, permits, importance, updated MOU, infrastructure, and plans for the agricultural park.

Commissioners asked questions regarding funding and legislative budget process, total cost of the project, plans being shovel ready, source of water, status of plot leases, meetings and communications with OSPD and developer, and potable vs. non-potable water.

County (*YouTube: 02:42:22-02:43:33*), had no comments or presentation regarding the agenda item. Commissioners asked how developers and landowners could help the Department of Planning and Permitting, and the County it is based on a case-by-case basis.

OPSD (*YouTube: 02:43:34-03:05:55*) provided their presentation in support of the Haseko housing park and their contributions to the infrastructure for the agricultural park. OPSD presented that they reached out to Department of Transportation, Department of Education, Hawai'i Emergency Management Agency, and Department of Health agencies had no outstanding concerns regarding the project.

Commissioners asked OPSD questions regarding bonding, food security and prioritization, involvement with the MOU, funding and legislative budget process, and the roll and support of DOA.

Ho'ohana provided concluding comments stating that the development is substantially complete, and they will send the Commission written notice of the status of power purchase agreement term, and RKII informed the Commission that they will submit their master plan in 60 days (*YouTube: 03:01:06-03:03:36*).

Public Testimony Round Two (*YouTube: 03:04:41- 03:05:07*)

Once again, Chair Giovanni opened the meeting up for public testimony on this matter, and there were no members of the public that wished to testify during the second round of public testimony.

Deliberations (YouTube: 03:05:09- 03:18:07)

The Commission determined that they were satisfied with the information presented by the Parties, and that no further action is required at this time.

DISCUSSION ON ELECTION OF COMMISSION OFFICERS (YouTube: 03:19:41- 03:35:47)

Public Testimony Round One (YouTube: 03:19:55 -03:20:07)

The Land Use Commission did not receive any written testimony on the matter, and there were no members of the public that wished to provide testimony on the matter.

Discussion/Deliberation (YouTube: 03:20:11-03:35:47)

Commissioner Ohigashi nominated/moved Commissioner Giovanni to continue as Chair, Commissioner Yamane as First Vice Chair, and Commissioner Kamakea-Ōhelo as the Second Vice Chair starting July 1, 2024. Commissioner Kahele seconded the motion.

Commissioner Ohigashi stated the Commissioners he nominated have the most tenure on the Commission as the reasoning behind his motion. Commissioners commented on the motion, and the motion passed with 8 ayes, 0 nays, and 1 excused.

EXECUTIVE SESSION (YouTube: 03:35:50- 03:48:47)

Pursuant to HRS section 92-5(a)(2) the Commission may go into executive session regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

Discussion (YouTube: 03:36:34-03:48:18)

Deputy Attorney General Mr. Morris presented the relative Supreme Court Case: Civil Beat Law Center for the Public Interest, Inc. v. City & County of Honolulu. The case determined that entering executive sessions for evaluations is not an automatic executive session matter, rather, certain statutory criteria must be met prior and discretionary action may be taken. Action may be taken to enter executive session as a discretionary action, and if it is anticipated that personal or private information may be brought up in discussion.

Commissioner Okuda recused himself from action and discussion regarding the executive officer evaluations and was not present in the executive session. Commissioner Lee asked staff to agendize items pertaining to evaluations to be worded clearly.

Public Testimony Round One (YouTube: 03:43:42)

The Land Use Commission did not receive any written testimony on the matter, and there were no members of the public that wished to provide testimony on the matter.

Executive Session Minutes (YouTube: 03:48:18-00:38:15)

Commissioner Ohigashi moved to enter executive session and Commissioner Yamane seconded the Motion. The Motion passed to go into executive session with 8 ayes, 0 nays, and 1 excused. The Commission entered executive session at 2:21 p.m. (YouTube: 03:48:43)

During executive session, the Commission addressed personnel matters where considerations of matters affecting privacy were involved. The Commission determined to continue with the evaluation with use of a performance evaluation form, which will be sent to Commissioners independently. The Commission asked to make a copy of the Executive Officers employment contract available for the Commissioners, current entire budget, and fiscal year 25 entire budget, and to schedule the continuation of the evaluation on May 8, 2024.

Commissioner Ohigashi moved to exit executive session, and Commissioner Yamane seconded the Motion. The Motion passed to exit executive session with 8 ayes, 0 nays, and 1 excused. The Commission exited executive session at 2:47 p.m. (YouTube: 03:48:47)

Public Testimony Round Two (YouTube: 00:37:57- 00:38:15)

After Executive Session, Chair Giovanni opened the meeting up for public testimony on this matter, and there were no members of the public that wished to testify during this time.

RECESS (YouTube: 00:38:49)

By motion to recess by Commissioner Ohigashi and seconded by Commissioner Kahele. Chair Giovanni recessed the meeting at 2:51 p.m., for continuation of the agenda on the following day April 4, 2024, at 9 .a.m. held at the Homer A. Maxey Center Conference Room (Foreign-Trade Zone No. 9).

LAND USE COMMISSION
MEETING MINUTES
April 4, 2024 – 9:00 a.m.

Pursuant to Hawai'i Revised Statutes, HRS §92 as amended, the Commission conducted its meeting in person. Interested persons submitting written testimony were recommended to submit their written Statements 24 hours in advance of the meeting to allow for distribution to the Commission prior to the meeting.

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COMMISSIONERS PRESENT:

Dan Giovanni
Lee Ohigashi
Gary Okuda
George Atta
Kū'ike Kamakea-Ōhelo
Michael Yamane
Brian Lee
Nancy Carr Smith

STAFF PRESENT:

Daniel Orodener, Executive Officer
Scott Derrickson, Chief Planner
Martina Segura, Staff Planner
Ariana Kwan, Chief Clerk
Arnold Wong, Development Coordinator
Dan Morris, Esq. Deputy Attorney General

COURT REPORTER:

Naegeli Deposition and Trial
(Via Zoom Recording)

CALL TO ORDER (YouTube: 00:00:06)

Chair Giovanni, called the meeting to order at 9:00 a.m.

A92-683 HALEKUA DEVELOPMENT CORPORATION (YouTube: 00:02:44)

Haseko Royal Kunia, LLC's Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1. Approximately 503.886 Acres at Waikele and Hō'ae'ae, 'Ewa, O'ahu, City and County of Honolulu, State of Hawai'i, Tax Map Key No. 9-4-02: 01, portion of 52, 70 and 71.

Appearances

Petitioners

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Dina Wong, Planner DPP
Pono Arias, Esq. Deputy Corporation Counsel
Patricia Sendao, Esq. Deputy Corporation Counsel

State Department of Agriculture "DOA"

Janice Fujimoto, Engineer
Brian Kau, Engineering Program Administrator
Kelcie Nagata, Deputy Attorney General

Office of Planning and Sustainable Development "OPSD"

Aaron Setogawa, Planner
Katia Balassiano, Land Use Development
Program Administrator
Allison Kato, Deputy Attorney General

Public

None



Public Testimony Round One (YouTube: 00:08:48 -00:09:10)

The Land Use Commission received no written testimony prior to the start of the meeting from the public on this matter. Chair Giovanni opened the meeting up for testimony on the matter, and there were no members of the public who wished to testify on the matter.

Presentations (YouTube: 00:10:18-01:45:58)

Haseko (YouTube: 00:10:11-01:12:22) provided a review of their status report, background information, consistency with the deadlines set in conditions, legal issues associated with the motion, and continued presenting on the specifics of the Fifth Amendment of the MOU, the infrastructure, and the deadlines that were agreed upon.

Commissioners asked Haseko questions regarding Chapter 343 compliance, compliance with conditions set in the Decision and Order, Ka Pa‘akai analysis and applicability, specification on permanent and temporary infrastructure, COVID-19 impact on delays in construction and design planning, and the Commission's ability to access all the information on the record.

Ho‘ohana, (YouTube: 01:12:2-01:17:23) provided their position with no opposition to the Motion brought forth by Haseko. Commissioners asked questions regarding clarification on the non-potable water line and easement.

RK II, (YouTube: 01:17:27-01:18:55) provided their position with no opposition to the Motion brought forth by Haseko but does not waive any rights to agreements made with Haseko. Petitioner was reminded that Conditions set forth in the Decision and Order run with the land which indicates they are responsible for fulfilling conditions.

Royal Kunia Land (YouTube: 01:18:58-01:19:37) provided their position in support and with no opposition to the Motion brought forth by Haseko.

DOA (YouTube: 01:19:39-01:21:21) provided their position in support of the Motion brought forth by Haseko, with the goal to increase agricultural self-sufficiency for the State.

County, (YouTube: 01:21:25-01:21:40) provided their position in support with no opposition of the Motion brought forth by Haseko.

OPSD (YouTube: 01:21:44-01:34:08) provided their position in support of the Motion brought forth by Haseko. OPSD provided additional information supporting their support of the Motion, including review of documents on the record. Commissioners asked OPSD questions regarding evidence on the record that support the sufficiency of the Chapter 343 analysis and Ka Pa‘akai analysis.

Public Testimony Round Two (YouTube: 01:45:59- 01:46:11)

Once again, Chair Giovanni opened the meeting up for public testimony on this matter, and there were no members of the public that wished to testify during the second round of public testimony.

Deliberations (YouTube: 01:46:20- 02:01:59)

Commissioner Ohigashi moved to approve the Motion on the grounds that the Motion is a procedural matter, that rights or liabilities of parties have not been impacted (per requirements set in *Flores-Case ‘Ohana v. University of Hawai‘i*), and that there is sufficient information on the record to support the Commission's decision, and Commissioner Yamane seconded the Motion. Commissioner Kamakea-‘Ōhelo, spoke to the influence that cultural impact assessments have on Native Hawaiian people, including how cultural impacts go beyond the physical artifacts on the lands and should include relationships. The Motion passed with 9 ayes.

LAND USE DEVELOPMENT COORDINATOR (YouTube: 02:03:37-02:40:24)

Public Testimony

The Land Use Commission received no written testimony prior to the start of the meeting from the public on this matter, and there were no members of the public in the room.

Presentation (YouTube: 02:03:45-02:40:24)

Executive Officer Orodener introduced and provided a brief presentation on the duties of the Land Use Development Coordinator. The duties include but are not limited to; coordinating developers and agencies to navigate completion of conditions, understanding the backlog of housing development, coordinating with developers to appear before the Commission to amend conditions, and create relationships with State/County agencies to aid in up-to-date condition making.

Commissioners asked questions regarding status of Hawai'i Island research, relationships with the Commission on Water Resource Management and other State and County agencies, water resources, understanding water allocations ahead of LUC approvals, Commissioner involvement, reports back to the Commission, and information for the Commission regarding availability of natural resources.

PROTOCOL ON LEGISLATIVE TESTIMONY AND MONITORING (YouTube: 02:40:58-03:28:00)

Public Testimony

The Land Use Commission did not receive any written testimony on the matter, and there were no members of the public in the room.

Discussion (YouTube: 02:40:58-03:28:00)

Chair Giovanni facilitated the discussion between Commissioners and the Executive Officer on the approach to navigating legislative session and testimony.

Commissioners shared concerns and comments regarding representations made for the Commission, burden on the Executive Officer, and the political influence and recommendations from the Director of DBEDT and Governor's Office.

Chair Giovanni asked that for the next legislative session Staff and the Executive Officer provide the Commission with the list of measures of interest, indication of issues, and intent of providing testify. Additionally, staff were asked to adopt new language that represents that the testimony is from staff and not the Commission, agendaize legislative review, and open communication with Staff and Commissioners on measures.

ADJOURNMENT (YouTube: 03:28:00-03:37:18)

As our May 8th meeting will be held at an offsite location, and the Commission intends to work though lunch, chair Giovanni requested that Staff arrange for lunch to be provided to the Commission.

With no further business the meeting was adjourned at 1:28 p.m.