

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

Pursuant to Hawai'i Revised Statutes, HRS §92 as amended, the Commission conducted its meeting in person format. 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.

LOCATION: Airport Conference Center (in Hawaiian Airlines Terminal Building)  
400 Rodgers Blvd., 7th Floor, IIT Suite 700, Room #3, Honolulu, HI 96819  
YOUTUBE RECORDING: (<https://www.youtube.com/watch?v=Rr0az7Lxik0>)

COMMISSIONERS PRESENT:

Dan Giovanni  
Michael Yamane  
Kū'ike Kamakea-Ōhelo  
Mel Kahele  
Brian Lee  
Nancy Carr Smith  
Bruce U'u

STAFF PRESENT:

Daniel Orodener, Executive Officer  
Scott Derrickson, Chief Planner  
Martina Segura, Staff Planner  
Ariana Kwan, Chief Clerk  
Melissa Goldman, Esq. Deputy Attorney  
General

COURT REPORTER:

Naegeli Deposition and Trial  
(Via Zoom Recording)

**CALL TO ORDER** (YouTube: 00:00:08)

Chair Giovanni, called the meeting to order at 9:02 a.m.

**APPROVAL OF MINUTES FOR SEPTEMBER 5, 2024** (YouTube: 00:02:54)

The first agenda item was the approval of the September 5, 2024, Minutes. There was no written testimony, or members of the public who wished to testify on the approval of the Minutes.

Commissioner Carr Smith made a motion to amend the minutes to reflect the suggestion she provided at the September 5, 2024, hearing to add an "staff updates" regular and standing agenda item to Land Use Commission agendas. The motion to amend the minutes was seconded by Commissioner U'u, and accepted by the Commission with 7 ayes, 0 nays, and 2 excused.

Commissioner U'u moved to adopt the September 5, 2024, with the amendment to reflect the suggestion from Commissioner Carr Smith and Commissioner Lee seconded the motion. The September 5, 2024, Minutes were approved with 7 ayes, 0 nays, and 2 excused.

**TENTATIVE MEETING SCHEDULE** (YouTube: 00:09:45)

Chair Giovanni called for LUC Staff to provide the Tentative Meeting Schedule. Executive Officer, Daniel Orodener provided the following tentative meeting dates:

October 10, 2024: SP21-412 Mahi Solar (O'ahu)  
~~October 24, 2024: DR22-77 RK II Partners (O'ahu)~~ cancelled at hearing on 10/10/24  
November 7, 2024: SP21-412 Mahi Solar and OPSD Presentation (O'ahu/Hybrid)  
January 23, 2024: Quarterly Update and 2025 Legislative Update (Hybrid)  
February 19-20, 2024: SP97-390 COM, A07-772 A&B, and A07-773 ELC (Maui)



## **DR24-77 RK II PARTNERS LLC, PETITION FOR DECLARATORY ORDER (O'AHU)**

*(YouTube: 00:12:42 -01:02:39)*

To consider a petition for declaratory ruling requesting the Commission's opinion on whether the land classification for TMK No. (1) 9-4-002-001, approximately 123.712 acres located in the City and County of Honolulu, State of Hawai'i, can remain within the State Land Use Urban District in perpetuity)

### **Appearances**

#### ***Petitioner***

***RKII PARTNERS LLC,***

Terrence Lee, Esq.

Ernest Martin, Esq.

Mike Matsuura, Esq.

#### ***Public***

Katia Balassiano, State of Hawai'i Office of Planning and Sustainable Development, Land Use Division Program Administrator

Alison Kato, Es. Deputy Attorney General

### **Disclosures** *(YouTube: 00:14:16)*

There were no disclosures by Commissioners at this time regarding the agenda item.

### **Executive Session** *(YouTube: 00:17:29- 00:21:53)*

Commissioner Yamane moved in enter executive session to consult with its legal counsel regarding issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Kamakea-'Ōhelo, seconded the motion, the motion passed with 7 ayes, 0 nays, and 2 excused. The Commission entered executive session at 9:20 a.m.

During Executive Session, the Commission's Attorney presented issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pertaining to DR24-77 RK II Partners, and the petition for declaratory ruling requesting the Commission's opinion on whether the land classification for TMK No. (1) 9-4-002-001 can remain within the State Land Use Urban District in perpetuity and substantial commencement. The Commission exited executive session at 9:30 a.m.

Following executive session, the Commissions Attorney summarized that the Commission does not have the legal authority, or prior practice/ precedent of affirming State Land Use district boundaries in perpetuity, nor does staff believe Petitioner showed good cause for the relief requested.

### **Public Testimony Round One** *(YouTube: 00:21:58 - 00:22:24)*

The Land Use Commission received 7 written testimonies prior to the meeting, the public testimony was posted and made publicly available on the Land Use Commission website. There were no members of the public that wished to provide public testimony at this time.

### **Presentations** *(YouTube: 00:22:24 -00:33:48)*

Petitioner RK II Partners presented their arguments on the petition for Declaratory Order to consider whether the land classification for TMK No. (1) 9-4-002-001, approximately 123.712 acres located in the City and County of Honolulu, State of Hawai'i, can remain within the State Land Use Urban District in perpetuity and other sub issues related to the historical basis of the related docket.

Commissioners asked questions regarding the stipulation, MOU, Condition 19, the reasoning behind the filing, description of the offsite infrastructure.

**Public Testimony Round Two** (YouTube: 00:33:20 - 00:56:31)

Chair Giovanni invited public testimony on this matter, The State of Hawai'i Office of Planning and Sustainable Development ("OPSD") provided public testimony and clarification regarding the stipulation between OPSD and HRT, obligation of conditions which run with the land, and the Order to Show Cause Order.

**Deliberations** (YouTube: 00:56:44 - 01:02:39)

Petitioner moved to withdraw, but withdrawal was denied as the proceeding and deliberations commenced. Commissioner Lee recommended the Petitioner refile a separate DR that includes specific information that pertains to topics brought up during the proceeding.

Commissioner Yamane moved to deny the Declaratory Order in its entirety<sup>1</sup>. Commissioner Kamakea-Ōhelo seconded the motion. The motion was approved with 7 ayes, 0 nays, and 2 excused.

**RECESS** (YouTube: 01:02:41)

With no further business to attend to on the agenda, Chair Giovanni recessed the meeting at 10:25 a.m., until October 10<sup>th</sup>, 9 a.m. at the Airport Conference Center (in Hawaiian Airlines Terminal Building) 400 Rodgers Blvd., 7th Floor, IIT Suite 700, Room #3, Honolulu, HI 96819.

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<sup>1</sup> Petitioner asked for point of clarification regarding the denial; to be sure it was denied without prejudice for purposes of subsequent Declaratory Ruling Filing. It was clarified by Chair Giovanni that it was.

LAND USE COMMISSION  
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COMMISSIONERS PRESENT:

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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.

Upon starting the meeting, Chair Giovanni requested that the tentative meeting for the adoption of the order from the previous day's agenda item (DR24-77 RK II) be cancelled, the authority to sign the order, and that the draft order be sent to the Commissioners ahead of time for review and comment. There were no objections from the Commissioners.

**SP21-412 MAHI SOLAR, LLC (O'AHU)** (YouTube: 00:04:45-01:14:43)

Application to Amend SP21-412 (SUP No. 2020/SUP-7). Request to modify Condition No. 4 of the LUC's Findings of Fact, Conclusions of Law, Decision, and Order, certified on September 17, 2021, to extend the Petitioner's timeline for establishing the project by an additional three years. The subject Application is regarding approximately 620 acres in the Agricultural District, identified as TMK Nos. (1) 9-2-001:020 (por.), (1) 9-2-004:003 (por.) and 010 (por.).

**Appearances**

**City and County of Honolulu**

**Department of Planning ("DPP")**

Franz Krainitz

John Dubiel, Esq. Deputy Corporation Counsel

**Office of Planning and Sustainable  
Development ("OPSD")**

Katia Balassiano, Land Use Development  
Program Administrator

Alison Kato, Deputy Attorney General

**Petitioner**

**Mahi Solar, LLC.**

Randall Sakumoto, Esq.

Wren Wescoatt, Mahi Solar

Tracy Camuso, G70

**Public**

None



**Disclosures** (YouTube: 00:07:00 - 00:10:06)

Commissioner Lee disclosed that he participated in the initial special permit proceedings on this matter while he was a commissioner on the City and County of Honolulu Planning Commission. Commissioner Lee stated that there are no ethical issues with continued participation, he has no financial or personal interest in the project and believes he would be able to remain impartial. There were no objections to his continued participation.

Chair Giovanni informally disclosed that he has worked with Mr. Wescoatt, and believes that it would not affect his decision making regarding this matter. There were no objections to his continued participation.

**Public Testimony Round One** (YouTube: 00:12:06 - 00:12:35)

The Land Use Commission received two written testimonies prior to the meeting, and they were posted to the Land Use Commission website for public review. There were no members of the public who wished to provide public testimony at this time.

**Presentations** (YouTube: 00:12:41 - 01:03:40)

Petitioner (YouTube: 00:12:41 - 00:59:32) provided their presentation on their application requesting an amendment of Condition No. 4 to extend the Petitioners timeline for establishing the project for another five years, as recommended by the City and County of Honolulu Planning Commission. Commissioners asked the Petitioner questions regarding the ownership status of the land, clarification on the megawatt hours, the definition of “establishment of the project”, status of the Hawaiian Electric award, power purchase agreement, Investable Market Index studies, development timeline, acreage of land for farming, cost of supplies and equipment, and access to water and planned dispersal.

City and County Department of Planning and Permitting (YouTube: 00:59:59 - 01:01:47) is supportive of the project and the five-year extension as recommended at the county proceedings. Commissioners asked questions regarding the determination of the five-year extension deadline.

OPSD (YouTube: 01:01:49 - 01:03:40) presented their support for the project and the Petitioners request for time extension for five-years. There were no questions from the Commission or Parties.

**Public Testimony Round Two** (YouTube: 01:03:46 - 01:03:57)

Chair Giovanni invited public testimony on this matter, there were no individuals that wished to provide public testimony on the matter at this time.

**Final Arguments** (YouTube: 01:03:57 - 01:11:09)

Petitioner provided final statement in support their presentation on their application requesting an amendment of Condition No. 4 to extend the Petitioners timeline for establishing the project for another five years.

**Deliberations** (YouTube: 01:11:11 - 01:14:43)

Commissioner Lee moved to approve the amendment to Condition No.4 of SP21-412 in accordance with the City and County of Honolulu Planning Commission Decision and Order to extend the timeframe for completion of the project for five years. Commissioner U’u seconded the motion. The motion was approved with 7 ayes, 0 nays, and 2 excused.

**ADJORNMENT** (YouTube: 01:14:46)

With no further business to attend to, Chair Giovanni adjourned the meeting at 10:25 a.m.