

LAND USE COMMISSION
MEETING MINUTES
January 8, 2025 – 10:00 a.m.

Pursuant to Hawai'i Revised Statutes, HRS §92 as amended, the Commission conducted its meeting in hybrid 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: Leiopapa A Kamehameha, State Office Tower, Room 405
235 S Beretania Street, Room 405, Honolulu, HI 96813

VIRTUAL: <https://us02web.zoom.us/j/89865909740?pwd=VZrl74HuqGkOOXADVmpRGYmJlIFe8E.1>

YOUTUBE RECORDING: <https://www.youtube.com/watch?v=2cHSRCD3UWs&t=1304s>

COMMISSIONERS PRESENT:

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

STAFF PRESENT:

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

COURT REPORTER:

Naegeli Deposition and Trial
(Via Zoom Recording)

COMMISSIONERS ABSENT:

Ken Hayashida

CALL TO ORDER

Chair Giovanni, called the meeting to order at 10:00 a.m.

DR24-78 RK II PARTNERS LLC, PETITION FOR DECLARATORY ORDER (O'AHU)

To consider a petition for declaratory ruling ("Petition") requesting the Commission's opinion on whether there has been substantial use of the Petition Area and any reclassification by the LUC must be done in accordance with Section 205-4, Hawai'i Revised Statutes ("HRS"). The Petition also seeks the Commission's opinion confirming that the Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park. Parcel is identified as TMK No. (1) 9-4-002-001, approximately 123.712 acres located in the City and County of Honolulu, State of Hawai'i.

Appearances

Petitioner: RKII Partners LLC

Terrence Lee, Esq.
Ernest Martin, Esq.
Mike Matsuura, Esq.

Public

**City & County of Honolulu, Department of
Planning and Permitting ("DPP")**
Pono Arias Esq. Deputy Corporation Counsel
Patricia Sendao, Esq.
Dina Wong
Franz Kraitz

Public Continued

Department of Agriculture ("HDOA")
Kelcie Nagata, Esq. Deputy Attorney General
Brian Kau
**Office of Planning and Sustainable
Development ("OPSD")**
Alison Kato, Esq. Deputy Attorney General
Ruby Edwards
Aaron Setogawa
Representative for Haseko, Inc.
Curtis Tabata, Esq.
Representative for Ho'ohana Solar
Jennifer Lim, Esq.



Disclosures and Conflicts of Interest (YouTube: 00:03:00-00:04:00)

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

Public Testimony Round One (YouTube: 00:06:17 - 00:07:49)

The Land Use Commission received five written testimonies on the matter, and they were posted to the Land Use Commission website prior to the start of the hearing. There were no members of the public that provided testimony on the matter at this time.

Presentations (YouTube: 00:07:53-00:23:15)

Petitioner presented their arguments on the Petition for declaratory ruling from the Commission to affirm that there has been substantial use of the Petition 3 Area, including the Parcel, and thus, any reclassification by the LUC must be done in accordance with HRS §205-4.

Petitioner then presented their arguments on the petition for declaratory ruling from the Commission to affirm that the Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park

Commissioners asked questions regarding completed work as it pertains to Petitioner and Petitioners parcel, substantial commencement, procedure, consequences, bifurcation and responsibility of conditions.

Public Testimony Round Two (YouTube: 00:23:16 - 01:26:56)

City and County Department of Planning and Permitting presented no further comment, and that they stand on their written testimony.

OPSD presented that it stands on their written testimony. Commissioners asked OPSD questions regarding clarification of position and what Petitioner needs to do to begin development.

Representative for Ho'ohana Solar, Jennifer Lim, provided testimony. Following Ms. Lim's testimony, the Commissioners continued questioning the Petitioner.

Commissioners continued questioning the Petitioner and asked questions regarding completed work as it pertains to Petitioner and Petitioners parcel, substantial commencement, procedure, consequences, bifurcation and responsibility of conditions.

Representative for Haseko, Curtis Tabata, presented no further comment, and stood on their written testimony provided to the Commission prior to the hearing. Commissioners asked representative questions regarding responsibility of infrastructure, bifurcation, and bonding of infrastructure.

The Department of Agriculture ("DOA") provided public testimony and comments on the arguments made by RK II. DOA shared their concern regarding applicability of conditions, the release of Condition 19 and the obligation for completion, and the unexecuted bonding on Haseko's behalf. Commissioners asked DOA questions regarding the responsibility of providing off-site infrastructure to the agriculture park, and the duration of time the DOA would wait for infrastructure, and what would happen if Haseko failed to provide infrastructure.

Deliberations (YouTube: 01:30:06 - 01:43:42)

Chair Giovanni introduced deliberations by presenting the Commission with the three options for decision making, pursuant to Hawai'i Administrative Rules §15-15-100, following the introduction

of options Commissioners Miyasato and Yamane shared comments regarding the evidence in front of the Commission and the current procedure.

Commissioner Kahele moved to grant the Petition for Declaratory Order as requested by Petitioner. Commissioner U'u Seconded the motion. Chair Giovanni suggested a friendly amendment to separate the motion to reflect the two questions being asked by Petitioner; 1(a) and 1(b).

Commissioner Kahele moved to affirm that there has been substantial use of the Petition Area, including the Parcel, and thus, any reclassification by the LUC must be done in accordance with HRS § 205-4, and Commissioner U'u Seconded the motion.

Commissioner Kahele moved to affirm that the [Petitioners] Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park, and Commissioner U'u Seconded the motion.

Commissioner Carr Smith moved to enter executive session pursuant to HRS §92-4 & §92-5 to consult with its legal counsel on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities. Commissioner Lee seconded the motion.

EXECUTIVE SESSION (YouTube: 01:43:42 - 01:45:47)

The Commission entered executive session at 12:02 p.m.. During the executive session Commissioners consulted with its legal counsel on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding agenda item 2, DR24-78 RK II Partners LLC, Petition for Declaratory Order.

At 12:29 p.m. Commissioner Carr Smith moved to exit executive session, and Commissioner U'u seconded the motion. The motion passed with 8 ayes, 0 nays, and 1 absent. The Commission returned to the open session at 12:36 p.m, after a short break.

Deliberations continued (YouTube: 01:45:48 - 02:01:45)

When the Commission returned to open session, the motions previously made by Commissioner Kahele and Seconded by Commissioner U'u were still active. The motion to affirm that there has been substantial use of the Petition Area, including the Parcel, and thus, any reclassification by the LUC must be done in accordance with HRS § 205-4, passed with 8 ayes, 0 nays, and 1 absent.

The motion made by Commissioner Kahele to affirm that the [Petitioners] Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park, and Commissioner U'u Seconded the motion. The initial vote on the motion was 4 ayes, 4 nays, and 1 absent, the motion does not pass. Executive Officer Orodener provided the Commissioners with options to proceed. Commissioner Carr Smith stated she would be willing to change her vote to yes. Chair Giovanni asked the Deputy Attorney General, for confirmation if an additional call vote was appropriate, and with affirmation an additional vote was taken. The motion passed with 5 ayes, 3 nays, and 1 absent.

Commissioner Kahele moved to authorize the Chairperson to execute the declaratory order necessary to effectuate the Commission's decision, subject to review and approval by the Department of the Attorney General, Commissioner Miyasato seconded the motion. The motion passed with 8 ayes, 0 nays, and 1 absent.

APPROVAL OF MINUTES FOR NOVEMBER 7, 2024 (YouTube: 02:03:16-02:03:58)

The next agenda item was the approval of November 7, 2024, Minutes. There was no written testimony, or members of the public who wished to testify to the approval of the Minutes.

Commissioner Yamane moved to adopt the November 7, 2024, and Commissioner Kahele seconded the motion. The November 7, 2024, Minutes were approved with 8 ayes, 0 nays, and 1 absent.

TENTATIVE MEETING SCHEDULE (YouTube: 02:04:00-02:07:22)

Chair Giovanni called for LUC Staff to provide the Tentative Meeting Schedule.

Executive Officer, Daniel Orodener provided the following tentative meeting dates:

January 9, 2025: Continuation of the meeting (O'ahu)

January 22, 2025: Legislative Updates and Administrative Updates (O'ahu)

February 5, 2025: A89-651 Haseko (O'ahu)

February 19, 2025: A07-773(a) ELC Status Report (Maui)

Commissioner Miyasato requested an agenda item be added to the January 22, 2025 meeting for an election of officers for the year 2025.

RECESS (YouTube: 02:07:23 - 02:07:53)

With no further business to attend to on the January 8th, 2025, portion of the agenda, Chair Giovanni recessed the meeting at 12:57 p.m, until January 9, 2025, at 9:00 am at the Leiopapa A Kamehameha, State Office Tower, Room 405, 235 S Beretania Street, Room 405, Honolulu, HI 96813, open to the public.

LAND USE COMMISSION
MEETING MINUTES
January 9, 2025 – 9:00 a.m.

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

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YOUTUBE RECORDING: https://www.youtube.com/watch?v=Gjx_yHeMiBY&t=1s

COMMISSIONERS PRESENT:

Dan Giovanni
Michael Yamane
Kū'ike Kamakea-Ōhelo (Zoom)
Mel Kahele
Brian Lee
Nancy Carr Smith
Bruce U'u
Myles Miyasato
Ken Hayashida

STAFF PRESENT:

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

STATE OFFICIALS:

Anne Lopez, Esq. State Attorney General
James "Jimmy" Tokioka, Director of the
Department of Business, Economic Development
and Tourism ("DBEDT")

COURT REPORTER:

Naegeli Deposition and Trial
(Via Zoom Recording)

Public:

Ken Church

CALL TO RECONVENE (YouTube: 00:00:05-00:06:53)

Chair Giovanni, called the meeting to order at 9:03 a.m. At this time Chair Giovanni removed agenda items 8b, 8d, and 8e from the order of business pursuant to Office of Information Practices complaint received by Land Use Commission office on January 6, 2025.

DISCUSSION WITH ANNE LOPEZ, ATTORNEY GENERAL OF THE STATE OF HAWAII, INCLUDING A CLARIFICATION OF THE LEGAL ROLES AND RESPONSIBILITIES OF THE LAND USE COMMISSION'S ("LUC") STAFF, ITS COMMISSIONERS, THE LUC CHAIRPERSON, AND THE DEPUTY ATTORNEYS GENERAL WHO ADVISE THE LUC

Public Testimony Round One (YouTube: 00:06:53 - 00:12:14)

The Land Use Commission received no written testimonies on the matter. Member of the public Ken Church wished to provide testimony on agenda item 7, and Mr. Church wished to provide testimony on item 7 during the second opportunity following the presentation from the Attorney General.

EXECUTIVE SESSION (YouTube: 00:12:35 - 00:17:00)

Chair Giovanni moved to go into executive session pursuant to Section 92-5(a)(4), HRS, the Commission may go into Executive Session to consult with its attorney(s) on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. Commissioner Yamane seconded the motion, and the motion passed with 9 ayes- 0 nays. The Commission entered executive session at 12:02 p.m. During the executive session



Commissioners consulted with its legal counsel and Attorney General Anne Lopez, on clarification of the legal roles and responsibilities of the Land Use Commission's ("LUC") Staff, its Commissioners, the LUC Chairperson, and the Deputy Attorneys General who advise the LUC.

At 11:58 p.m. Commissioner Kahele moved to exit executive session, and Commissioner Lee seconded the motion. The motion passed with 9 ayes- 0 nays. The Commission returned to the open session at 12:05 p.m, after a short break.

Public Testimony Round Two (YouTube: 00:17:03 - 00:21:20)

Chair Giovanni invited public testimony on this matter, attendee Ken Church provided public testimony on pending litigation that involves the Commission and the Attorney General.

LAND USE COMMISSION STAFF UPDATES (YouTube: 00:23:41-00:56:23)

A. Status Update on the Department of Business, Economic Development & Tourism's Proposed 2025 Budget Request as it Relates to the LUC

Executive Officer, Daniel Orodenker presented the proposed 2025 budget request as it relates to the relates to the LUC. During the presentation, Mr. Orodenker referred to the budget table included in the Commissions Board Packet, which was made publicly available on the LUC Website.

Commissioners asked questions regarding line items involving travel intrastate and out of state, and personnel salary. Chair Giovanni requested an agenda item for January 22, 2025, hearing to authorize the Executive Officer to advocate for funding for the unbudgeted position (No.125210) at the 2025 Legislature.

There was no written or public testimony on this matter during the first and second opportunity.

~~B. Legislative Measures Proposed by the Administration that Impact the LUC~~

Removed from order of business due to the Office of Information Practices complaint received by Land Use Commission office on January 6, 2025.

C. Update on Yes in My Back Yard ("YIMBY") Working Group Participation

Chief Planner, Scott Derrickson, presented the update on the YIMBY Working Group Participation. The update included a brief review of the establishment of the working group, the report to the legislature, and the role of LUC Staff; which was presented is to share expertise on HRS Chapter 205 and the regulatory system.

Commissioners asked questions regarding legislative measures that were proposed as a result of the YIMBY working group and their findings, a report that was associated with the YIMBY working group, and the usefulness and collaboration that occurred during the YIMBY meetings.

There was no written or public testimony on this matter during the first and second opportunity.

~~D. Update on OPSD Soil Study~~

Removed from order of business due to the Office of Information Practices complaint received by Land Use Commission office on January 6, 2025.

~~E. Proposed 2023 Administrative Rules Amendments~~

Removed from order of business due to the Office of Information Practices complaint received by Land Use Commission office on January 6, 2025.

F. Updates on LUC Staff Vacancies

The Executive Officer presented updates on the process and status on filling the two vacant positions in the LUC Office; Administrative Assistant II and Planner V.

There was no written or public testimony on this matter during the first and second opportunity.

ADJORNMENT (*YouTube: 00:56:25-01:00:13*)

Chair Giovanni requested an agenda item be added to the January 22, 2025, hearing on permitted interaction groups, and for it to be scheduled before the updates on legislative bills that impact the LUC.

Commissioner Miyasato asked to be sent the contact information of the other Commissioners, the Deputy Attorney General advised that it is allowed, so long as sunshine law is adhered to, and warned about serial communications.

With no further business, Chair Giovanni adjourned the meeting at 12:47 p.m.