

LAND USE COMMISSION  
MEETING MINUTES

**September 9, 2011 – 9:30 a.m.**

**Leiopapa A Kamehameha,  
Second Floor, Room 204,  
235 South Beretania Street, Honolulu, HI 96813**

COMMISSIONERS PRESENT: Normand Lezy  
Ronald Heller  
Ernest Matsumura  
Chad McDonald  
Thomas Contrades  
Lisa Judge  
Kyle Chock

COMMISSIONERS EXCUSED: Napua Makua  
Nicholas Teves, Jr

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

**CALL TO ORDER**

Chair Lezy called the continued meeting to order at 9:42 a.m.

**ACTION**

**A06-771 D.R. HORTON – SCHULER HOMES,LLC (O`ahu)**

Chair Lezy announced that this was an action meeting on A06-771 D.R. HORTON – SCHULER HOMES, LLC, a Delaware limited liability company, d.b.a. D.R. Horton-Schuler Division, to consider Petitions to Intervene from The Sierra Club and Senator Clayton Hee.

### APPEARANCES

Benjamin Kudo, Esq., Naomi Kuwaye, Esq., and Yuko Funaki, Esq., represented Petitioner D.R. Horton-Schuler Homes LLC

Cameron Nekota, D.R. Horton-Schuler Homes LLC

Dawn Takeuchi-Apana, Esq., Deputy Corporate Counsel, represented City and County of Honolulu, Department of Planning and Permitting

Tim Hata, City and County of Honolulu, Department of Planning and Permitting

Bryan Yee, Esq., represented State Office of Planning

Mary Lou Kobayashi, State Office of Planning

Tatyana Cerullo, Esq., represented The Sierra Club

Elizabeth Dunne, Esq., represented The Sierra Club

Sherrie Seki, Esq., represented State Senator Clayton Hee

Clayton Hee

### PUBLIC WITNESSES

Chair Lezy asked if there were any Public Witnesses who wished to give testimony.

1. State Senator Will Espero

Senator Espero referred to his written correspondence to the Commission and described why the State Senate had no position in Senator Hee's Petition to Intervene in this docket; and stated that Senator Hee did not represent the State Senate in this matter.

There were no questions for Senator Espero.

2. Lance Yoshimura-Hawaii Carpenter's Union

Mr. Yoshimura described the reasons why his organization opposed Senator Hee's Petition to Intervene.

There were no questions for Mr. Yoshimura.

3. Donovan Lewis- President, Plumbers and Fitters Local 675

Mr. Lewis submitted written testimony and stated that he was testifying on behalf of Business Manager, Reginald Castanares and the members and retirees of his union and expressed why his union opposed the admission of The Sierra Club and Senator Hee as Intervenors in Docket No. A06-771.

There were no questions for Mr. Lewis.

4. Peter Lee

Mr. Lee referred to his submitted written testimony and described why he opposed both The Sierra Club and Senator Hee's petitions to intervene.

There were no questions for Mr. Lee.

5. Maurice Morita-

Mr. Morita submitted written testimony and stated that he was the Associate Director for the Hawaii Laborers-Employers Cooperation & Education Trust and expressed why his organization opposed both petitions to intervene in Docket A06-771.

There were no questions for Mr. Morita.

6. Pane Meatoga- District Representative, Operating Engineers 443

Mr. Meatoga described why his organization strongly opposed both petitions to intervene.

There were no questions for Mr. Meatoga.

7. Georgette Stevens

Ms. Stevens expressed her reasons for opposing both petitions to intervene and what areas she would like the petitions limited to if they were granted.

There were no questions for Ms. Stevens.

8. Al Lardizabal

Mr. Lardizabal stated that he was with the Hawaii Laborers Union and described why his organization opposed both petitions to intervene.

There were no questions for Mr. Lardizabal.

9. Alicia Maluafiti

Ms. Maluafiti submitted written testimony and expressed her reasons for opposing both petitions to intervene.

Mr. Yee requested clarification on what organizations Ms. Maluafiti represented in the Legislature and whether she was appearing on their

behalf today. Ms. Maluafiti responded that she was testifying as an individual and representing the interest of her family and herself.

There were no further questions for Ms. Maluafiti.

10. Maeda Timson

Ms. Timson submitted written testimony and voiced her reasons for opposing both petitions to intervene.

There were no questions for Ms. Timson.

11. Alfonso Oliver

Mr. Oliver read the submitted written testimony of Peter Ganaban, Business Manager Secretary-Treasurer, Hawaii Laborers Union, Local 368 opposing both petitions to intervene

There were no questions for Mr. Oliver.

12. Kika Bukoski- Building Trades Council

Mr. Kika Bukoski stated that his organization would stand on its submitted written testimony to the Commission and expressed why his organization opposed both petitions to intervene.

There were no questions for Mr. Bukoski.

13. Pearl Johnson

Ms. Johnson stated that she represented the League of Women Voters and described why her organization would like both petitions to intervene granted.

There were no questions for Ms. Johnson.

14. Sidney Higa

Mr. Higa stated that he was a small business owner and described how he thought that the petitions should be aligned and considered together.

There were no questions for Mr. Higa.

There were no more public witnesses.

Commissioner Chock moved to enter into Executive Session.

Commissioner Judge seconded the motion. By voice vote (7-0) the Commission unanimously elected to enter into Executive Session.

The Commission exited to enter into Executive Session at 10:32 a.m. and reconvened at 10:50 a.m.

## PRESENTATIONS FOR SIERRA CLUB'S PETITION TO INTERVENE

### The Sierra Club

Ms. Cerullo argued the reasons why The Sierra Club's Petition to Intervene should be granted.

### Petitioner

Mr. Kudo stated that Petitioner had no position on The Sierra Club's Petition to Intervene and expressed concerns regarding the timing of The Sierra Club's petition filing midway into the case and how adding an additional Intervenor might affect proceedings and duplicate arguments over similar issues. Mr. Kudo argued that if The Sierra Club intervention was granted, the Commission should consider consolidating The Sierra Club and Friends of Makakilo into one party to address their five similar concerns (traffic, environment, open space, agricultural land and sociological issues) and adding two additional issues of drainage and state and county resources for infrastructure. Mr. Kudo added that if the Commission were to grant The Sierra Club's Petition to intervene, that his preference was that The Sierra Club be limited to the issues of drainage and state and county resources for infrastructure and restricted from participating in questioning witnesses or submitting witnesses on the issues presented by FOM.

### City and County of Honolulu

Ms. Takeuchi-Apana stated that the City did not oppose The Sierra Club's petition to intervene.

### State Office of Planning

Mr. Yee stated that OP would rest on its pleadings and questioned how the Petitioner envisioned the merging of The Sierra Club and FOM's intervention efforts would work.

### Friends of Makakilo

*(Please refer to LUC Transcript for more details on this matter)*  
September 9, 2011 meeting minutes

Dr. Dudley stated that he welcomed additional support in his intervention efforts and described the areas where he thought adding The Sierra Club and Senator Hee's perspectives could benefit the case before the Commission.

#### Sierra Club Rebuttal

Ms. Cerullo stated that she had three points in rebuttal- 1) that the Petitioner must start its case over, 2) that The Sierra Club is a separate party with a different perspective than FOM and might provide additional information that FOM alone may not be able to, and 3) that The Sierra Club would cooperatively work with fellow Intervenors to facilitate the hearing process and cohesively present their cases.

#### Commissioner Questions

Commissioner Judge asked Dr. Dudley if he was willing to cooperate with The Sierra Club and work together to efficiently present their respective cases before the Commission. Dr. Dudley replied that he was and would work at making the presentations clear, concise and non-duplicative.

Chair Lezy asked Dr. Dudley if he would consider merging with The Sierra Club. Dr. Dudley responded that he would not and described why FOM would prefer to remain a separate entity, and how he would cooperate with The Sierra Club if they were granted Intervenor status. Ms. Cerullo described how The Sierra Club differed from FOM and why The Sierra Club preferred to remain separate and not be merged with FOM.

Commissioner Judge requested clarification on what The Sierra Club's intentions were in regards to their rebuttal remark about starting the case all over again. Ms. Cerullo described her perception of how she would participate in the proceedings if granted Intervenor status. Chair Lezy clarified that the Petitioner's case was separate and apart from the Petition to Intervene currently before the Commission.

Commissioner Chock asked why The Sierra Club did not intervene when the case began in 2009 and work with FOM then. Ms. Cerullo responded that it was due to limited resources and how this docket ranked in priority with other issues confronting their organization.

#### MOTION

Commissioner Heller moved to grant The Sierra Club's Petition to Intervene subject to two conditions- 1) that by granting the petition, the Commission was not granting The Sierra Club the right to retroactively object to past evidence already in the record and 2) that The Sierra Club be required to work with the FOM to avoid duplicative testimony, arguments and exhibits. Commissioner Matsumura seconded the motion.

Commissioner Judge requested to add a friendly amendment to Condition 2 and alter it to "any and all Intervenors" instead of "the FOM". Commissioners Heller and Matsumura accepted the friendly amendment.

Chair Lezy stated that he would entertain a motion to enter into Executive Session.

Ms. Cerullo requested and was granted an opportunity to clarify her rebuttal comment regarding "starting the case all over". Chair Lezy noted her remarks.

Mr. Kudo requested and was granted an opportunity to express his concerns regarding The Sierra Club's rebuttal remarks, and Commissioner Heller's condition regarding the FOM and The Sierra Club "working together". Chair Lezy acknowledged his remarks.

Commissioner Heller moved to enter Executive Session. Commissioner Chock seconded the motion. By voice vote (7-0) the Commission unanimously elected to enter into Executive Session.

The Commission exited to enter into Executive Session at 11:22 a.m. and reconvened at 11:39 a.m.

Commissioner Heller stated that he wished to amend and restate his motion to "to grant The Sierra Club's motion to intervene in this docket" and clarified that his motion was not meant to imply any decision either way as to whether or not the Commission would start the docket all over again. Commissioner Matsumura seconded the amended motion.

Chair Lezy stated that he believed the question of intervention was separate from actions or the status of proceedings; and that he felt the only issue before the Commission was to consider whether or not to grant The Sierra Club's petition to intervene.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Heller, Matsumura, Contrades, Judge, McDonald, Chock, and Chair Lezy.

Nays: None

The motion passed 7-0 with two excused.

#### PRESENTATIONS FOR SENATOR HEE'S PETITION TO INTERVENE

##### Senator Hee

Ms. Seki argued the reasons why Senator Hee's Petition to Intervene should be granted.

##### Petitioner

Mr. Kudo voiced the concerns that Petitioner had regarding Senator Hee's Petition to Intervene and questioned whether Senator Hee would be acting as a State Senator or as an individual. Ms. Seki replied that Senator Hee would be acting in both capacities as a Senator and as an individual. Mr. Kudo argued why Senator Hee's Petition to Intervene should not be granted; and how the Commission should treat the Petition if it were inclined to grant it.

There were no questions for Mr. Kudo...

##### City and County of Honolulu

Ms. Takeuchi-Apana argued why the City opposed Senator Hee's petition to intervene.

Chair Lezy requested clarification on whether or not the City and County would oppose Senator Hee's participation in the capacity of a Senator or private individual. Ms. Takeuchi-Apana responded that the City and County opposed Senator Hee's participation as a Senator and could object to the participation as a private individual also due to the interwoven nature of Senator Hee's activities.

##### State Office of Planning

Mr. Yee stated that OP would rest on its pleadings.

##### The Sierra Club

Ms. Cerullo had no comment.

##### Friends of Makakilo



Dr. Dudley described why he thought Senator Hee's petition should be granted and how the combined information of Senator Hee and The Sierra Club could benefit the case and assist the decision-making of the Commission.

#### Senator Hee Rebuttal

Ms. Seki restated her arguments why Senator Hee's petition should be granted and not limited to specific issues.

Chair Lezy requested clarification on how Senator Hee would be participating in the proceedings and what scope of involvement he would be considering. Ms. Seki replied that Senator Hee would be acting as an individual and described how she perceived he would participate and how she would be representing him in LUC proceedings during the legislative session.

Mr. Kudo argued that Senator Hee's participation appeared to extend past the two stated issues of his Petition to Intervene and would impair preparing case arguments and the flow of the case's proceedings. Mr. Kudo also provided his understanding of how another State Senator had participated as an individual in LUC hearings and questioned how and who would represent Senator Hee if he were allowed to intervene as a private individual.

Chair Lezy requested clarification on what the difference would be regarding Senator Hee's participating as a Senator or as an individual in the proceedings and noted that Mr. Kudo had correctly described how another State Senator had participated as an individual in Commission hearings. Chair Lezy also requested further information on the anticipated scope of issues that Senator Hee intended to address.

Ms. Seki responded that Senator Hee would intervene as an individual and described how the complexity of the issues of agricultural land and food security might require more latitude from the Commission during proceedings.

Discussion ensued to determine the parameters of Senator Hee's intervention issues, how witness and exhibits would be circulated to all involved Parties and how the continuity of proceedings was expected to be maintained. Ms. Seki volunteered that if the Petition to Intervene were granted, every effort would be made to work with the other intervenors and stated that she anticipated that Senator Hee would be represented during the legislative session.

Mr. Kudo asked if Ms. Seki would continue to be the counsel of record for Senator Hee if the Petition were granted. Ms. Seki replied that she had a private

practice and it was likely that she would be retained in her private capacity to continue representing Senator Hee.

Ms. Takeuchi-Apana commented that she wished to make a distinction between the admittance of Senator Hanabusa and Senator Hee. She noted that Senator Hanabusa was a resident of the area in which the project took place and was representing the constituents of her district and that Senator Hee is not.

There were no further questions, comments or discussion.

#### MOTION

Commissioner Judge moved to grant intervention status to Clayton Hee as an individual. Commissioner Heller seconded the motion.

There was no further discussion.

The Commission was polled as follows:

Ayes: Commissioners Judge, Heller, Matsumura, McDonald, Chock, and Chair Lezy.

Nays: Commissioner Contrades

The motion passed 6-1 with two excused.

There being no further business to discuss, Chair Lezy adjourned the meeting at 12:30 p.m.