

LAND USE COMMISSION MEETING MINUTES

November 21, 2014

9:00 a.m.

Leiopapa A Kamehameha Bldg., Rm# 204
235 S. Beretania St., Honolulu, HI 96813

A G E N D A

COMMISSIONERS PRESENT: Chad McDonald
Arnold Wong
Edmund Aczon
Kent Hiranaga
Brandon Ahakuelo
Jonathan Scheuer
Aaron Mahi

COMMISSIONERS EXCUSED: Sandra Song
(There are currently 8 seated Commissioners)

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: Hotai Zerba

CALL TO ORDER

Chair McDonald called the meeting to order at 9:10 a.m.

ACTION

A 87-610 Tom Gentry and Gentry Pacific Ltd. (Oahu)

Chair McDonald stated that this was an action meeting to approve the form of the order in this matter.

Chair McDonald updated the record, described the procedures for the hearing and asked if there were any Public Witnesses who wished to testify. There were no questions or comments on the procedures.

PUBLIC WITNESSES

1. Daniel Purcell

Mr. Purcell provided his perception of how Chapter 92- "The Sunshine Law" should be observed.

There were no questions for Mr. Purcell.

There were no other Public Witnesses.

APPEARANCES

Jennifer (Benck) Lim, Esq., Kamehameha School's Representative

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

Mike Watkins, Planner, DPP

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

Rodney Funakoshi, Land Use Administrator, OP

DECISION MAKING

Chair McDonald asked if there were any questions or comments or discussion on the form of the order before the Commission. There were none.

Commissioner Wong moved and Commissioner Mahi seconded the motion to approve the form of the order.

Discussion

Commissioner Wong stated that he thought the Petition would help the State of Hawaii Renewable Energy Initiative and contribute to its solar energy resources.

Commissioner Scheuer stated that he appreciated the further clarifications in the Findings of Fact provided by the Petitioner.

There was no further discussion.

The Commission voted unanimously (7-0- with 1 excused) in favor of the motion.

A92-683 HALEKUA DEVELOPMENT CORPORATION (O`ahu)

Chair McDonald announced that this was a continued hearing and action meeting on A92-683 Halekua Development Corporation (O`ahu).

APPEARANCES

Steve Lim, Esq., Successor Petitioner (Petitioner) Ho`Ohana Solar LLC's Representative

Onaona Thoene, Esq., Ho`Ohana Solar LLC's (Ho`Ohana) Representative
Richard Lewallen, Esq., Deputy Corporation Counsel, DPP
Mike Watkins, Planner, DPP
Delwyn Wong, Esq., HRT Realty, 300 Corporation and Honolulu Ltd. Representative (HRT)-till
11:30 a.m.
Irwyn Wong, Esq., HRT (replaced Delwyn Wong from 11:30 a.m. till proceedings concluded)
Bryan Yee, Esq., represented State Office of Planning (OP)
Rodney Funakoshi, Land Use Administrator, OP
Katie Mineo, Planner, OP (Replaced Mr. Funakoshi after he completed his testimony)

Chair McDonald asked Mr. Lim to provide the Commission with the latest update on the progress that the Parties had been made on this docket. Mr. Lim described the efforts that the Parties had expended to prepare for the day's hearing and deferred to Mr. Yee to provide additional details later on how the Parties had met to resolve their issues. Mr. Lim noted that all the landowners, with the exception of RKES, had participated in the meetings.

Chair McDonald explained the procedures for the day and asked if there were any Public Witnesses who wished to testify. There were no questions on the procedures.

PUBLIC WITNESSES

None

PROCEEDINGS

Opening Statements

Petitioner

Mr. Lim further described how the Parties had cooperatively met to resolve their respective issues and stated that all Parties were prepared to proceed on this matter.

DPP

Mr. Lewallen stated that he had no opening statement to make and reserved the right to address various issues as they arose.

HRT

Mr. Wong deferred making a statement till Mr. Yee concluded his.

OP

Mr. Yee apologized for the lack of preparedness of the Parties and stated that OP recommended approving the Motion to Amend subject to stipulated conditions that would be forthcoming; and provided the historical background and other considerations that were made to determine OP's position.

HRT

Mr. Wong described HRT's concerns about Petitioner's Motion and affirmed Mr. Yee's account of HRT's role and obligations which were defined in the decision and order resulting

from the 2003 Order to Show Cause filed on the Petition Area landowners. Mr. Wong called the Commission's attention to the agreement that HRT had made with OP regarding the purchase and conveyance of land to the State to facilitate development of the proposed agricultural park (ag park) in exchange for not having its land declassified to agricultural use. Mr. Wong stated that HRT's participation in the proceedings was to ensure that its rights derived by its agreement with OP were preserved.

PRESENTATION OF EXHIBITS

Mr. Lim stated that he had three procedural matters that he wished to address before presenting his exhibits. He requested that:

1. Petitioner be allowed to withdraw its Motion for Order Bifurcating the Amended Findings of Fact, Conclusions of Law and Decision and Order dated 10/1/1996.
2. The stipulation between Petitioner, OP and DPP regarding the admissibility of Petitioner's third list of exhibits (1-34I) be admitted to the record.

Chair McDonald queried the Parties and the Commissioners and there were no objections or comments regarding the exhibits. The exhibits were admitted.

3. The stipulation between Petitioner, OP and DPP regarding the qualifications of Petitioner's seven expert witnesses be admitted to the record.

Chair McDonald queried the Parties and the Commissioners and there were no objections or comments regarding the qualifications of the expert witnesses. The witnesses were so qualified.

Mr. Lim stated that he was only aware of OP's filings of OP exhibits 1-13; and that he had no objections to OP's exhibits. Chair McDonald queried the Parties and the Commissioners and there were no objections or comments regarding OP's exhibits. OP's exhibits were admitted.

Chair McDonald asked if any of the other Parties had exhibits. There were none.

Chair McDonald acknowledged that the first agenda item regarding Petitioner's Motion to Bifurcate had been withdrawn and announced that presentations on the next agenda item- Successor Petitioner's Motion to Amend would be heard.

Presentations

1. Jeff Overton- Expert –Land Use Planning

Mr. Overton used Petitioner's Exhibits 1 and 32 to describe the Petition Area and its proposed development plans; and what any resulting impacts of the proposed project

might be. Mr. Overton also identified the holdings of the various landowners and provided his perception of how the 25 conditions of the existing Decision and Order for the Petition Area would apply to the portion of the Petition Area that is the subject of the Motion.

Commissioner Ahakuelo excused himself at 9:51 a.m. and returned at 9:55 a.m.

DPP and HRT had no questions for Mr. Overton.

OP

Mr. Yee requested clarification on the conditions that Mr. Overton had identified as “not applicable”. Mr. Overton described how they were not applicable since they applied to land uses that were included in the original proposed project and not to the current proposed uses; and that new conditions may be necessary for any new uses associated with the new proposed project.

Discussion occurred over Mr. Overton’s ability to respond to questions regarding violations of Decision and Order- Condition 19. Chair McDonald directed Mr. Overton to respond to the questions. Mr. Overton provided his perspective of how Condition 19 could be complied with.

Redirect

None

Commissioner Questions

Commissioner Scheuer requested clarification on whether the Petition Area received its water use permit under the Waiahole decision and how its water allocation had been obtained. Mr. Overton responded that he did not know how the water permit and allocation was obtained and shared his knowledge about communications between the Petitioner and the Water Commission regarding public trust resources.

Commissioner Wong requested clarification on who would be responsible for observing the conditions since they run with the land and whether SHPD had been involved in assessing the archaeological resources of the Petition Area. Mr. Overton responded that he thought it would be the landowner- the Robinsons, that would be responsible for ensuring that conditions were observed; and shared his knowledge of what efforts had been made in regards to archaeological studies. He deferred to Expert Witness-Mr. Spear to provide more specific details on that subject.

Commissioner Wong also asked if any access encumbrance existed for the project site. Mr. Overton responded that there was none and described how that had been determined.

There were no further questions for Mr. Overton.

The Commission went into recess at 10:10 a.m. and reconvened at 10:27 a.m.

Mr. Lim stated that his traffic expert Sohrab Rashid was available via telephone for questions regarding his traffic impact report and requested permission to release Mr. Rashid and Mr. Overton if the Commission had no further questions for them. Chair McDonald requested that Mr. Lim summarize the traffic mitigation measures recommended by Mr. Rashid. Mr. Lim referred to Petitioner Exhibit 34G and complied with Chair's request.

DPP, HRT and OP had no questions.

Commissioner Questions

Commissioner Wong asked if Petitioner would observe the Dept. of Transportation's (DOT) recommendations. Mr. Lim represented that Petitioner would. Chair McDonald excused both witnesses.

2. Jon Wallenstrom-Expert-Project Development and Financing

Mr. Wallenstrom described the proposed project and what the roles were for the principals, Ho`ohana, Forest City, and Hanwha Q Cells USA Corp. (Hanwha).

DPP and HRT had no questions.

OP-

Mr. Yee requested clarification on whether the Petitioner would comply with the traffic consultant's mitigation recommendations. Mr. Wallenstrom responded that Petitioner would comply with those recommendations and with the stipulated conditions that OP had discussed with him during the meetings prior to the hearing. Mr. Lim and Mr. Yee requested permission to submit a late exhibit containing the stipulated conditions that Mr. Wallenstrom had agreed to for reference by the Parties and the Commission during the proceedings. Chair McDonald asked whose exhibit it would be. Mr. Yee responded that it would be OP Exhibit 14 and described how the filing would be submitted to the Commission.

Mr. Yee reserved the right to recall Mr. Wallenstrom and had no more questions.

Commissioner Scheuer requested procedural clarification on how questions regarding the stipulated conditions would be answered. Chair McDonald responded that Mr. Wallenstrom would be recalled if necessary after the Commission had a chance to review OP Exhibit 14.

There was no redirect.

Commissioner Questions

Commissioner Scheuer requested clarification on the option agreement between Forest City and the Robinsons. Mr. Wallenstrom described the lease arrangement that had been signed by the two entities. Discussion occurred over how LUC conditions would apply. Mr. Lim commented that using OP Exhibit 14 would be helpful to respond to such questions. Chair McDonald agreed that the Commission needed to review the OP exhibit and established how such a review might be done and how Mr. Wallenstrom could be recalled.

Commissioner Scheuer requested clarification on whether the Commission could rely on the representations made by Petitioner's consultants and if those representations were also the representations of the Petitioner. Mr. Wallenstrom acknowledged that they were.

Commissioner Aczon requested clarification on the relationship of the various entities involved in the proposed project and the structure of the agreement between them. Mr. Wallenstrom described how each entity would participate in the proposed project and how their roles would evolve over the course of their partnership; and who would be bound by the conditions of the decision and order. Mr. Lim added that OP Exhibit 14 could help clarify this issue.

Commissioner Wong requested clarification on the lease agreement over the life of the proposed project and its decommissioning process. Mr. Wallenstrom provided his knowledge of the agreement and deferred to Mr. Green to provide further details.

Chair McDonald requested clarification on Forest City's intentions for housing development in the Petition Area. Mr. Wallenstrom responded that Forest City had investigated the possibility in the past, but had no current plans for the area.

There were no further questions for Mr. Wallenstrom.

3. Larry Green-Expert- Solar Energy Development and Project Analysis

Mr. Green described the roles of Hanwha and Hawaiian Electric in the proposed project and provided details of the development timetable that he expected to follow if the LUC granted approval of this Motion.

DPP, HRT, and OP had no questions.

Commissioner Questions

Commissioner Scheuer requested clarification on what would happen if the proposed project were not approved and when Mr. Green became aware of the requirements of Condition 19. Mr. Green described the tight schedule that the proposed project was on to secure investment tax credits and what the negative impacts of not receiving LUC approval would have on Successor Petitioner's efforts. Mr. Green described how he became aware of Condition 19 and stated that his role was more technical and that Mr. Wallenstrom's role was to address complying with Condition 19.

Commissioner Ahakuelo requested clarification on future anticipated electricity rates and the power efficiencies of the proposed project. Mr. Green shared his estimates for rate payer energy costs and provided the technical details of how the solar power grid would operate and contribute to HECO's resources.

Commissioner Wong requested clarification on whether storage batteries would be used and if the solar panels would be fixed or moving to track the sun. Mr. Green responded that no batteries would be used and that tracking panels would be installed. Commissioner Wong also asked questions regarding the security and layout of the proposed project. Mr. Green deferred to Mr. Smith to provide more information on the solar panel facility.

Commissioner Aczon requested clarification on the status of PUC approval for the proposed project. Mr. Green described how far advanced in the approval process Ho`Ohana was and shared his confidence level that it could be obtained.

Commissioner Wong asked if an associated project at Kalaeloa had an Environmental Assessment (EA) or Environmental Impact Statement (EIS) done. Mr. Green responded that it was a Federal project that had been constructed under the National Environment Protection Act (NEPA) and deferred to Mr. Smith to respond to the question.

There were no further questions for Mr. Green.

Mr. Lim stated that his next witness was Cliff Smith. Chair McDonald declared a recess.

The Commission went into recess at 11:18 a.m. and reconvened at 11:31 a.m. (Irwyn Wong replaced Delwyn Wong as HRT Representative.)

4. Clifford Smith- Expert- Hanwha Project Manager

Mr. Smith referred to Petitioner's Exhibit 17 to describe the proposed facility for the project area and provided technical details regarding the intended structures and the construction schedule. He clarified previous testimony from Mr. Green regarding whether batteries would be part of the plan. Mr. Smith described how only three small batteries, similar to those installed in a car, would be used for data recording equipment backup; and reaffirmed that no storage batteries would be on the site.

DPP and HRT had no questions (Mr. Irwyn Wong introduced himself to the Commission)

OP

Mr. Yee requested clarification on provisions for fire protection and water for the proposed project. Mr. Smith described how plans for the proposed facility included features that would provide fire protection safeguards and be minimally invasive to the environment to comply with permitting requirements. Mr. Smith was unable to respond to questions on whether solar panels could be mistaken for bodies of water.

Redirect

Mr. Lim requested clarification on whether there had been incidents at other solar facilities involving birds mistaking the solar panels for water. Mr. Smith responded that he was not aware of any.

Commissioner Questions

Commissioner Wong requested clarification on the planned landscaping and features of the solar panel system that would be used. Mr. Smith described how the ground cover would be installed and maintained and how the solar panel system had self-contained sealed mechanisms to move the solar panel system and prevent oil leakage into the environment.

Commissioner Wong also requested clarification on the features to be included for the site's transformer and proposed security building. Mr. Smith described how a fire suppression system and mineral oil would be used for the transformer to be less hazardous and how a septic system and potable water tank would be used to support security personnel.

Commissioner Scheuer requested clarification on the use of landfills for the materials involved in the decommissioning of the facility. Mr. Smith declined to respond and deferred to Petitioner.

Commissioner Wong asked if the military had been contacted about the proposed project. Mr. Smith described how the Federal Aviation Agency (FAA) reviews project proposals and how this review process included the military.

Mr. Yee requested permission to ask a question of the witness related to Commissioner Scheuer's question. Chair McDonald honored his request.

Mr. Yee requested clarification on Mr. Smith's written testimony regarding reuse of the solar panels. Mr. Smith described how the solar panels would still have a useful life at the end of the lease term and represented that the intent was to re-purpose the solar panels after decommissioning.

Chair McDonald asked if there were any concerns regarding stormwater runoff. Mr. Smith described the proposed site work design to meet permitting requirements to capture, contain or detain runoff water.

There were no further questions for Mr. Smith.

5. Bob Spear- Expert- Archaeology

Mr. Spear described his findings and recommendations for the archaeological and cultural features of the Petition Area. Mr. Spear stated that the proposed project would have no significant impact on any archaeological or cultural features.

DPP and HRT had no questions.

OP

Mr. Yee noted that SHPD had not responded to Mr. Spear and asked if that was still the case. Mr. Spear responded that it was.

There was no redirect.

Commissioner Questions

Commissioner Mahi inquired if Shad Kane was the only person contacted during the review of the Petition Area. Mr. Spear responded that only Mr. Kane had been contacted.

Commissioner Scheuer named some cultural groups and asked if they had been contacted about cultural practices in the Petition Area. Mr. Spear responded that no contact had been made with those groups.

There were no further questions for Mr. Spear.

6. Eric Guinther-Expert- Flora and Fauna

Mr. Guinther stated that he had made no significant finds in the area and described how he had come to that conclusion.

DPP and HRT had no questions

OP

Mr. Yee requested clarification on how solar panels might impact birds. Mr. Guinther shared his knowledge of the subject and commented that he was not aware of any negative impacts to birds in Hawai`i.

There was no redirect and no Commissioner Questions.

Chair McDonald announced that the Commission had received OP Exhibit 14 and asked the Commission to review it during the recess. The Commission went into recess at 12:03 p.m. and reconvened at 1:16 p.m.

Chair McDonald asked Mr. Lim to confirm that he had agreed to take OP's witness out of order. Mr. Lim acknowledged that he had.

OP Witness (Taken out of order as agreed upon by the Parties)

1. Rodney Funakoshi

Mr. Funakoshi stated that OP recommended partial approval of the Motion subject to conditions for the subject project area and described how OP had arrived at that conclusion and what considerations were made to negotiate and stipulate to the proposed conditions before the Commission.

Mr. Yee asked that OP Exhibit 14 be admitted to the record. Chair McDonald asked if there were any objections to the exhibit. There were no objections and the exhibit was admitted.

Mr. Funakoshi also described how OP had sought input from other agencies and how any concerns that were identified by those agencies were addressed; how Condition 19 of the 1996 Decision and Order had still not been met; and how the DOA

was preparing to move forward on its ag park development. Mr. Funakoshi shared OP's concerns about Petitioner's environmental report and made corrections/additions to information that he felt were necessary to Petitioner's presentation; and described the changes to existing conditions that were included in OP's Exhibit 14.

Mr. Yee requested clarification on what two documents Mr. Funakoshi had referred to during his testimony. Mr. Funakoshi stated that he had referred to the stipulated agreement (OP Exhibit 14) and the 1996 LUC order; and described what his intentions were for using the respective documents. Mr. Funakoshi also summarized what other items and actions were needed before permit applications could be completed.

Petitioner Questions

Mr. Lim referred to Petitioner's Exhibit 18 and requested clarification on concerns about the hoary bat. Mr. Funakoshi replied that the U.S. Fish and Wildlife (USFWL) report had mentioned the possibility that the hoary bat may forage in the area and had challenged Mr. Guinther's findings.

Mr. Lim requested clarification on the 1993 Memorandum of Understanding regarding the ag park. Mr. Funakoshi acknowledged that this issue would be addressed by the DOA and stated that he did not know the details of the different versions of the memorandum that had been agreed upon over the years.

Mr. Lim asked if OP still supported the Petitions with conditions. Mr. Funakoshi stated that OP did.

DPP and HRT had no questions.

OP had no redirect.

Commissioner Questions.

Commissioner Scheuer requested clarification on why only OP and Ho`ohana had signed OP's Exhibit 14. Mr. Yee responded that the signed agreement reflected that OP and Ho`ohana had agreed to it and the other Parties could speak for themselves. Discussion occurred over why OP was comfortable that the other Parties were in agreement with the conditions stated in OP's Exhibit 14. Mr. Funakoshi responded that the Parties have been in communication with each other and were familiar with the OP/Ho`ohana agreement. Mr. Yee described what OP was intending to accomplish by

submitting the exhibit and how OP expected that the resulting LUC Decision and Order would later bind the Parties.

Commissioner Wong asked if HRT and DPP had read the agreement and whether they had any objections. Mr. Irwyn Wong responded that HRT had read the agreement and did not have any objections to the stipulation. Mr. Wong added that HRT's primary concern was to obtain assurances that the past terms that HRT had negotiated with OP would be honored and preserved. Mr. Lewallen responded that DPP supported the proposed project.

Commissioner Hiranaga requested confirmation that DPP would not be signing the stipulation. Mr. Lewallen confirmed that DPP would not be signing the document.

Chair McDonald expressed his concern that DPP had not taken a more active interest in this matter and in the future development of the region. Mr. Lewallen shared his perspective of why DPP was not more active. Mr. Watkins added his remarks about how the DPP permitting process operated and how growth development plans were applied and assessed during DPP decision making and forecasting; and why he believed that certain LUC conditions were not directly relevant to the DPP's priorities.

Mr. Lewallen requested clarification on Mr. Watkins comments regarding permitting. Mr. Watkins described the types of permits issued by DPP and the criteria involved in determining whether to approve them or not.

Commissioner Aczon requested clarification of whether DPP was objecting to the conditions. Mr. Lewallen responded that DPP was not objecting to the conditions.

Commissioner Hiranaga asked what the dollar amount was for the DOA appropriation and how off-site improvements were defined, why there were certain inconsistencies in the language of the conditions A1-A3; what condition B1 was addressing; and what would be the consequences of all parties not signing the agreement. Mr. Yee deferred to DOA to address the questions on the appropriation amount and noted that the Findings of Fact would better define what the off-site improvements consisted of. Mr. Yee attributed the language inconsistencies between the conditions A1-A3 to the haste in preparing the document; and described how condition B1 applied to the installation of a non-potable water line and explained how he would address the issue of the non-signing landowners being made aware of the Petition and why their failure to object was construed as approval.

Commissioner Wong requested clarification on how all the Petition Area landowners would be affected by approval of the Motion. Mr. Yee shared his perspective of how granting the Motion would affect the landowners. Mr. Irwyn Wong described how HRT would comply if the Motion were granted. Mr. Lim represented that all landowners except RKES had been responsive to his communication attempts.

Commissioner Hiranaga asked if HRT was exempt from condition A1 and whether a master plan would be submitted. Mr. Yee responded that HRT was exempt and described the reasoning for the HRT exemption and how the master plan might be submitted in two parts.

There were no further questions for Mr. Funakoshi.

The Commission went into recess at 2:02 p.m. and reconvened at 2:11 p.m.
Mr. Yee noted that Katie Mineo, OP had replaced Mr. Funakoshi.

Petitioner's Witness

7. Nonie Toledo- Community Outreach

Ms. Toledo described her involvement with the proposed project, her outreach efforts and what results she had achieved with the community.

DPP, HRT, and OP had no questions.

Commissioner Aczon requested clarification on whether the Waipahu Neighborhood Board had been contacted. Ms. Toledo responded that the Waipahu Neighborhood Board had been approached to primarily provide information and no one from that organization went on record to voice objection or endorsement of the proposed project.

Commissioner Scheuer asked if people/groups of Hawaiian descent had been involved. Ms. Toledo responded that the landowners were of Hawaiian descent and that she had not specifically sought out that specific ethnic group and could not speak on cultural matters.

There were no further questions for Ms. Toledo.

Mr. Lim stated that he would like to recall Mr. Wallenstrom on redirect to address certain issues. Chair McDonald honored his request.

Recalled Petitioner Witness- Jon Wallenstrom

Mr. Wallenstrom stated that Petitioner's intent was to comply with the representations of its consultants but added that some of the representations were not formatted in a manner that made them easy to comply with. Mr. Wallenstrom provided examples of how the representations contained several options and explained how Petitioner would need to assess and weigh the recommendations relative to the requirements of the LUC conditions.

Mr. Wallenstrom also clarified how Petitioner intended to address the decommissioning of the proposed facility, and mitigate the impact of the decommissioning on the environment but could not guarantee that landfills would not be used.

DPP and HRT had no questions.

OP

Mr. Yee requested clarification on how Petitioner would follow the recommendations of its consultants. Mr. Wallenstrom stated that it was difficult for him to respond to the question. Mr. Yee requested Mr. Wallenstrom's perspective on Mr. Overton's comments that no hazardous chemicals would be on site. Mr. Wallenstrom agreed with Mr. Overton's statement and described how hazardous substances would be addressed during the development process and within the proposed project.

Mr. Yee again requested how Petitioner would address following the recommendations of its consultants. Mr. Wallenstrom described how compliance might be difficult to achieve.

Mr. Lim asked if Mr. Wallenstrom was willing to comply with all applicable regulations in the development of the proposed project. Mr. Wallenstrom acknowledged that Petitioner would.

Mr. Yee requested time to reconsider Mr. Wallenstrom's redirect testimony. Chair McDonald noted Mr. Yee's request and stated that he would take Commissioner Questions and check back with Mr. Yee.

Commissioner Questions

Commissioner Wong requested clarification on the facility decommissioning efforts. Mr. Wallenstrom provided details of how he anticipated the decommissioning would occur and how various features of the proposed project would be assessed for disposal or retention.

OP

Mr. Yee stated that regarding his review of Mr. Wallenstrom's redirect testimony, OP would identify the representations made by Petitioner's consultants during further review of the documents and settle issues on them with the Petitioner. Mr. Lim commented that Petitioner was reluctant to respond affirmatively due to the formatting of the recommendations put forth by the consultants and had difficulties reducing the scope of the recommendations and determining which recommendation alternative would best apply.

There were no further questions for Mr. Wallenstrom.

Chair McDonald called for OP's witness. Mr. Yee offered Mr. Randy Teruya, DOA Agricultural Asset Manager.

OP Witness- Randy Teruya, DOA

Mr. Teruya stated that DOA supported the Petition and would like to see the 1996 conditions complied with. Mr. Teruya referred to OP Exhibit 12 and described how important the proposed ag park was to the State, what the future plans for the area were; and what current development efforts were underway.

Petitioner Questions

Mr. Lim requested clarification on how long Mr. Teruya had been involved with the memorandum of understanding (MOU) negotiations for the ag park. Mr. Teruya responded that he had been involved since 1996 and affirmed his participation in subsequent discussions of the MOU and associated amendments.

DPP and HRT had no questions.

There was no redirect.

Commissioner Questions

Commissioner Hiranaga requested clarification on how DOA was progressing to meet its internal deadlines before the appropriation for the ag park lapsed. Mr. Teruya described how DOA was working with its contractor to stay on schedule. Commissioner Hiranaga also requested clarification on lot sizes, and allowing farm dwellings in the Petition Area. Mr. Teruya described the lot size options that would be available and how DOA envisioned using cluster housing designs to provide for farm dwellings.

Commissioner Mahi requested clarification on the ag park concept. Mr. Teruya provided the background history of Hawai'i ag parks and described the design elements involved with them and for non-agricultural parks.

Mr. Yee noted that OP Exhibit 13 provided conceptual site plan information on ag parks.

Commissioner Ahakuelo excused himself at 2:55 p.m. and returned at 2:57 p.m.

There were no further questions for Mr. Teruya.

DPP and HRT had no presentations.

Commissioner Questions

Commissioner Hiranaga requested clarification on the compliance dates cited in Condition A1 of OP Exhibit 14 and why there were missing landowner signatures on the stipulation. Mr. Yee shared his perspective of how the date of agreement and compliance differed, and described why only Ho'ohana and OP had signed the document. Mr. Lim added that only RKES had not participated in the discussions on the Motion; and that all the other parties had participated, but declined to sign the document.

Chair McDonald shared Commissioner Hiranaga's concerns about not having all property owners involved in the decision making process and noted how important the Findings of Fact would be in supporting the Commission's decision.

Mr. Lim suggested that the Commission hear from the two representatives of the landowners that were present, HRT representative Mr. Wong, and RKL LLC- Alan Zataki.

Chair McDonald asked if Mr. Wong had a statement. Mr. Erin Wong stated that HRT had no objection to the conditions and provided the reasons why.

Mr. Lim called Alan Zawtocky as a public witness. Mr. Zawtocky stated that he represented RKL LLC and was one of three trustees of the Mark Robinson Trust managers. Mr. Zawtocky described his role with the Trust and affirmed that he had reviewed the conditions and had no objections.

There were no questions for Mr. Zawtocky.

Mr. Lim stated that CANPARTNERS IV REALTY would not be appearing in the proceedings and read into the record an email from Wyeth Matsubara, Esq., their

representative, stating that CANPARTNERS IV would undertake the obligations of the rules and stipulations set forth in the new conditions applicable to the Petition Area.

Commissioner Hiranaga requested that Mr. Lim re-read the email. Mr. Lim complied. Discussion occurred to determine how to proceed forward on this matter. Commissioner Hiranaga moved for an Executive Session. Commissioner Ahakuelo seconded the motion. By a unanimous voice vote (7-0-1 excused), the Commission elected to enter Executive Session.

The Commission entered Executive Session at 3:14 p.m. and reconvened at 3:23 p.m.

Chair McDonald declared the evidentiary portion of the hearing closed and called for closing arguments.

Final Arguments

Petitioner

Mr. Lim thanked the Commission and argued why the Petition should be granted and reserved a portion of his time for rebuttal.

DPP

Mr. Lewallen stated that DPP supported the proposed project but had difficulties with the conditions.

HRT

Mr. Wong stated that HRT's concerns had been addressed and waived final argument.

OP

Mr. Yee stated that OP waived final argument but would answer any questions that the Commission had regarding the stipulated conditions.

Chair McDonald stated his appreciation for the efforts that the Parties expended to reach agreement and commended the Petitioner for supporting the State's efforts for renewable energy and the agricultural industry.

Commissioner Wong moved to grant the Motion and added that his motion included that- upon decommissioning, if any Chapter 343 triggers existed, that an EA or EIS be performed.

Commissioner Ahakuelo seconded the motion.

Commissioner Wong amended his motion to also include the stipulated conditions of OP Exhibit 14. Commissioner Ahakuelo accepted the friendly amendment.

Discussion

Commissioner Scheuer expressed his concerns about the lone Kama`aina testimony that was balanced by the testimony of a landowner with a long history of ownership in this matter and echoed Chair McDonald's thanks.

Chair McDonald directed Mr. Orodener to poll if the Commissioners were ready to deliberate. The Commissioners unanimously (7-0-1 excused) responded that they were ready to deliberate.

The Commission unanimously voted (7-0-1 excused) to grant the Motion. Discussion ensued to determine the filing schedule for the Proposed Findings of Fact, Conclusions of Law and Decision and Order from the Parties.

Chair McDonald directed the Parties to work with LUC staff to determine an appropriate filing schedule and stated that the final agenda item for an Executive Session would be deferred till the next meeting.

There being no further action or other business, Chair McDonald declared the meeting adjourned at 3:48 p.m.