

1  
2  
3 LAND USE COMMISSION

## 4 STATE OF HAWAI'I

5 HEARING AND ACTION PAGE

6 A92-683 Halekua Development Corporation)

7 )

8 )  

---

9  
10  
11 TRANSCRIPT OF PROCEEDINGS12  
13 The above-entitled matter came on for a Public Hearing  
14 at Airport Conference Room Center, 400 Rodgers Blvd.  
15 Suite 700, Room #3 Honolulu, Hawai'i, Hawai'i,  
16 commencing at 9:00 a.m. on November 12, 2014, pursuant  
17 to Notice.18  
19  
20  
21  
22 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
23 Certified Shorthand Reporter  
24  
25

## A P P E A R A N C E S

## COMMISSIONERS:

EDMUND ACZON  
BRANDON AHAKUELO  
KENT HIRANAGA  
AARON MAHI  
CHAD McDONALD  
JONATHAN SCHEUER  
ARNOLD WONG

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA  
STAFF PLANNER: SCOTT DERRICKSON  
DEPUTY ATTORNEY GENERAL: RUSSELL SUZUKI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A92-683 Halekua Development Corp.

For the Petitioner: ONAONA THOENE, ESQ.  
Carlsmith Firm

For the County: RICHARD LEWALLEN, ESQ.  
Deputy Corp. Counsel  
MICHAEL WATKINS

For the State: LORENE MAKI  
Office of Planning

1 CHAIR McDONALD: (gavel) I'd like to call  
2 the State of Hawai'i Land Use Commission meeting to  
3 order. First order of business, adoption of minutes  
4 from the October 29/30 meeting. Commissioners, any  
5 revisions, edits?

6 COMMISSIONER AHAKUELO: I have one.

7 CHAIR McDONALD: Go ahead, Commissioner.

8 COMMISSIONER AHAKUELO: On Page 9,  
9 Paragraph 4, I believe I posed those questions. It's  
10 showing as Commissioner Aczon.

11 CHAIR McDONALD: Member, Page 9 what  
12 paragraph?

13 COMMISSIONER AHAKUELO: Page 9 paragraph 4  
14 under 'Commissioner Aczon.' I believe I posed those  
15 questions, just for the record.

16 CHAIR McDONALD: Okay. Commissioners,  
17 anything else? With the revisions proposed by  
18 Commissioner Ahakuelo do we have a motion to approve?

19 COMMISSIONER WONG: Moved. Have a second?

20 COMMISSIONER MAHI: Second.

21 CHAIR McDONALD: Motion by Commissioner  
22 Wong, seconded by Commissioner Mahi. All those in  
23 favor say aye. "Aye." Any opposed? Minutes are  
24 adopted. Mr. Orodener, can you please review with  
25 the Commission the tentative meeting schedule.

1 MR. ORODENKER: Thank you, Mr. Chair.  
2 Tomorrow, November 13th, we're once again here to take  
3 up the Gentry-Pacific, Ltd. motion. And to continue  
4 on the Halekua Development Corporation motion. On  
5 November 20th we're at the Maui Arts & Cultural Center  
6 for the Jason Glover Permit Application, Hawaiian  
7 Cement Special Use Permit and the Maui Lani Neighbors,  
8 Inc. Petition for declaratory order.

9 November 21st, which is a Friday, we are  
10 once again here for Halekua Development -- oh, we're  
11 at the State Office Tower, I'm sorry, for Halekua  
12 Development Corporation continued hearing and action  
13 if necessary.

14 December 10th and 11th tentative meeting  
15 scheduled at the State Office Tower. We're scheduled  
16 for Kahili Adventist Knudsen Trust status report and  
17 potential Kauai Community College Island Charter  
18 School and Kapa'a Highlands. That takes us through  
19 the end of the year, Mr. Chair.

20 CHAIR McDONALD: Thank you, Mr. Orodenker.

21 COMMISSIONER ACZON: Chair, you said the  
22 State Office Tower. Isn't it the State Office  
23 Building on Kaua'i?

24 MR. ORODENKER: Yes, thank you. Thank you  
25 for the correction. It is the State Office Building

1 on Kaua'i. Subject to change. It's tentative,  
2 (laughter)

3 CHAIR McDONALD: Mr. Orodenger, is there  
4 anyone signed up for public testimony?

5 MR. ORODENER: Mr. Chair, we don't have  
6 anyone signed up at the moment.

7 CHAIR McDONALD: Is there anyone in the  
8 audience wishing to provide public testimony today?  
9 Seeing none, okay. This is a hearing and action  
10 meeting to consider successor Petitioner's Ho 'Ohana  
11 solar 1, LLC's motion for Order to Bifurcate the  
12 Amended Findings of Fact, Conclusion of Law, Decision  
13 and Order dated October 1st, 1996. Will the parties  
14 please identify themselves for record.

15 MR. LEWALLEN: Richard Lewallen deputy  
16 corporation counsel for the City and County of  
17 Honolulu on behalf of the Department of Planning and  
18 Permitting and Mike Watkins with the Department of  
19 Planning and Permitting as well.

20 MS. THOENE: Good morning, Commissioners,  
21 Chair, LUC, parties. My name is Onaona Thoene. I'm  
22 here on behalf o successor Petitioner Parcel 52  
23 Ho'Ohana Solar 1, LLC.

24 MS. MAKI: Good morning, Commissioners.  
25 I'm Lorene Maki from the Office of Planning.

1 CHAIR McDONALD: Thank you. Let me update  
2 the record. On October 22nd, 2014 the Commission  
3 received Successor Petitioner's Motion for Order  
4 Bifurcating the Amended Findings of Fact, Conclusions  
5 of Law and Decision and Order dated October 1st, 1996.

6 On November 3rd, 2014 the Commission  
7 mailed the agenda for the November 12 and 13, 2014  
8 meeting to parties and statewide and O'ahu mailing  
9 lists. Between August and November 2014 the parties  
10 timely filed their respective comments, exhibits,  
11 responses, joinders, stipulations, objections and  
12 replies with the Commission for the motion.

13 Petitioner, has our staff informed you of  
14 the Commission's policy regarding reimbursement the of  
15 hearing expenses? If so could you please state your  
16 client's position with respect to the policy.

17 MS. THOENE: Yes, we've been informed and  
18 our client accepts the policy and will comply.

19 CHAIR McDONALD: Thank you. Okay.  
20 Petitioner, I understand there have been some  
21 discussions that have been ongoing, recent  
22 discussions, with our LUC staff.

23 MS. THOENE: Yes.

24 CHAIR McDONALD: For the benefit of the  
25 entire Commission could you please elaborate.

1 MS. THOENE: Hmm-mmm. So today we're here  
2 actually to ask that the Commission defer the hearing  
3 on today's motion to bifurcate the Motion to Amend  
4 until tomorrow. There have been some opposition to  
5 the motion by the Department of Agriculture based on a  
6 previous condition that was imposed in the 1996 Order.

7 Our client is actually meeting with the  
8 Department of Agriculture right now. It started at  
9 9:00 o'clock to resolve these issues. So deferral of  
10 today's hearing on the motion to bifurcate and the  
11 Motion to Amend will give us time to resolve those  
12 issues with the Department of Agriculture. Does that  
13 answer your question?

14 CHAIR McDONALD: It answers my question.  
15 I understand that this came before the Commission over  
16 a year ago. What kind of assurances does the  
17 Commission have that by deferring it another day will  
18 resolve your issues with the Department of  
19 Agriculture?

20 MS. THOENE: Are you referring to the 2013  
21 Motion to Amend over a year ago?

22 CHAIR McDONALD: That's correct.

23 MS. THOENE: That's correct, okay. Our  
24 particular -- our client actually wasn't a party to  
25 that. That was the Kam Partners. So that amendment

1 was actually to Condition No. 2 with the Tropic  
2 Improvements. As we understand that has been resolved  
3 and the Commission ruled on that.

4 For this particular condition, it's  
5 Condition 19, it's the State Agricultural Park  
6 condition. The assurance is that we can provide you  
7 with that, since we filed our Motion to Amend and our  
8 Motion to Bifurcate, the other landowners to the  
9 Petition Area have come to the table. And they are  
10 involved in the discussions which is what we  
11 understand the Department of Agriculture wanted to  
12 happen.

13 So they have been involved with our recent  
14 discussions and we're confident that because they're  
15 now involved they will be able to come to some sort of  
16 resolution.

17 CHAIR McDONALD: Parties, any objection to  
18 the deferral?

19 MR. LEWALLEN: No objection from the  
20 Department of Planning and Permitting.

21 MS. MAKI: No objection from the Office of  
22 Planning.

23 CHAIR McDONALD: Commissioners, any  
24 discussion? Commissioner Wong.

25 COMMISSIONER WONG: I have a question. In



1 terms of Condition 19 how long did you know about it?

2 MS. THOENE: Well, I think our client just  
3 found out. I'll go back a little bit. So our client  
4 is not actually the landowner there, the solar  
5 developers. The landowner -- we do have a  
6 representative here Mr. Sataki. (phonetic) He's one  
7 of the trustees, a member of the ROBINSON KUNIA LAND,  
8 LLC.

9 THE REPORTER: Could you slow just down a  
10 little bit.

11 MS. THOENE: He's one of the trustees of  
12 that is a member of ROBINSON KUNIA LAND, LLC who's a  
13 fee owner of parcel 52. We have somewhat known about  
14 this condition for a while, but the problem with this  
15 particular condition is that the original Petitioner  
16 to the docket was Halekua Development Corporation who  
17 was developer of the entire Petition Area.

18 Sometime in the mid 2000 Halekua lost  
19 control of the Petition Area at which point the  
20 parcels were -- the owners were split into 6. So  
21 they're now 6 parcels in the Petition Area with 6  
22 different owners. So the way that the conditions read  
23 in the original docket applied to Halekua as the  
24 Petitioner for the entire Petition Area. Halekua was  
25 also the signatory to the Memorandum of Understanding

1 between the Department of Agriculture -- with the  
2 Department of Agriculture that had to do with  
3 Condition 19. Our -- the landowners' parcel 52,  
4 ROBINSON KUNIA LAND, LLC was never actually a  
5 signatory to that condition. So that's where this, I  
6 guess, controversy is coming through.

7 COMMISSIONER WONG: Well, I have a concern  
8 just because we are over here, the Commissioners are  
9 all volunteers. We do have a regular job. And the  
10 timing of this where there was some time you knew  
11 about this condition. And the changes you could have  
12 said: Let's defer this, talk to the staff. Let's  
13 hold off and try work this before we schedule this  
14 hearing.

15 It's just that the timing involved of  
16 setting all this up and then you're asking for a  
17 deferral to tomorrow. I mean we have one Commissioner  
18 up from the neighborhood island who had to fly here.  
19 I'm just very concerned that let's say we can't get  
20 this through tomorrow. Then it's going to be deferred  
21 again. I mean what is the guaranty?

22 MS. THOENE: I understand your  
23 frustration, Commissioner Wong. Thank you all for  
24 being here's. I understand that this is somewhat of  
25 an inconvenience to have you folks all fly in and then

1 to ask for it to be deferred. Part of the problem  
2 asking for the deferral today is that the director of  
3 the Department of Agriculture, Scott Henry (sp) was in  
4 China for the last 10 days. And we have been  
5 communicating with him by email to try to come to a  
6 resolution so that we didn't have to defer.

7           Unfortunately, he came back to town on  
8 Monday and Tuesday was a holiday. So today was the  
9 soonest time that we could get a meeting with him and  
10 get all the parties together. We have been working  
11 for awhile to try to kinda of -- since it has been  
12 brought to our attention this particular issue, in our  
13 earlier discussions with the Department of Agriculture  
14 our client had approached them about possibly doing  
15 pollinators on our property or other agricultural  
16 uses. And the issue with the off-state infrastructure  
17 was not brought to our client's attention during those  
18 particular discussions.

19           We actually found out about the Department  
20 of Ag's objection to our motion based on the offsite  
21 infrastructure portion of Condition 19 when OIP filed  
22 its response to our Motion to Amend. So now since we  
23 didn't have too much time, but since that time we have  
24 been working with the Department of Agriculture to try  
25 to come to some kind of agreement to allow the solar

1 project to move forward but also to allow the  
2 Department of Agriculture to get offsite  
3 infrastructure that was promised to them.

4 COMMISSIONER WONG: So I guess what  
5 happens is -- or let me step back a little bit. When  
6 the partnership, that sixth partnership, did assume  
7 control of the land or had control of the land, they  
8 understood that there was some D&O's already in place.  
9 Isn't that correct?

10 MS. THOENE: That's my understanding that  
11 they understand that. The particular division of  
12 who's in charge of what, you know, what conditions and  
13 what obligations has never been decided. And that's  
14 something that the landowners are now realizing.  
15 They're coming together to figure that out.

16 COMMISSIONER WONG: So the question again  
17 now is: Does all the landowners agree upon this  
18 Project?

19 MS. THOENE: We have had no objections  
20 from any of the landowners. They're aware of it. But  
21 the Project that nobody has filed any opposition to  
22 it.

23 COMMISSIONER WONG: Thank you.

24 CHAIR McDONALD: Commissioners, any  
25 further questions?

1 COMMISSIONER SCHEUER: Can I follow up?

2 CHAIR McDONALD: Absolutely, Commissioner  
3 Scheuer.

4 COMMISSIONER SCHEUER: Thank you. When  
5 you say none of the landowners -- the other 5  
6 landowners are aware, or the 6 landowners are aware,  
7 they have been no objections. How many have you  
8 received responses from?

9 MS. THOENE: We've spoken personally to  
10 the attorneys for Kam Partners and also to the  
11 attorneys fork HRT. Patrick Kobayashi is the agent  
12 for 3 of the landowners and related entities which are  
13 Three Hundred Corporation, Honolulu, Ltd. and RKS.  
14 We've sent him numerous emails and placed calls to his  
15 office and I've received no response whatsoever from  
16 him.

17 But he has been served with everything  
18 that we filed in this motion. I emailed both Patrick  
19 Kobayashi and his assistant.

20 COMMISSIONER SCHEUER: So of the six how  
21 many have responded?

22 MS. THOENE: Two of the landowners have  
23 responded.

24 COMMISSIONER SCHEUER: Thank you.

25 CHAIR McDONALD: Further discussion,

1 Commissioners?

2 MS. THOENE: May I make a correction?

3 Also 3 of the landowners actually we have the  
4 Robinsons who are the landowners of the parcel that we  
5 are trying to develop.

6 CHAIR McDONALD: Commissioner Mahi.

7 COMMISSIONER MAHI: Just for  
8 clarification. So three haven't responded --

9 MS. THOENE: Technically it's one person  
10 for those 3 entities.

11 COMMISSIONER MAHI: Right. Of which I  
12 understand you made contact. Short of knocking on his  
13 door camping out.

14 MS. THOENE: Right.

15 COMMISSIONER HIRANAGA: Mr. Chair?

16 CHAIR McDONALD: Commissioner Hiranaga.

17 COMMISSIONER HIRANAGA: So basically  
18 50 percent of the partnership have not responded to  
19 your communications, but you feel confident you'll be  
20 able to reach a resolution before tomorrow's meeting?

21 MS. THOENE: Yes, that's correct.

22 COMMISSIONER HIRANAGA: I guess I'm glad  
23 that you feel confident that that will happen.

24 (audience chuckles.) I'm hopeful that you will have  
25 something positive for us tomorrow. I just wanted to

1 expresses my -- I understand, you know, that the  
2 director of Ag was out of state. But, you know, this  
3 type of a last minute deferral on an issue that's been  
4 there for many years I understand parties have  
5 changed.

6           Personally it's not received well by  
7 myself. Thank you.

8           MS. THOENE: I appreciate your comment.  
9 And again we apologize for the inconvenience that this  
10 has cause the Commission in your scheduling and to  
11 have you folks fly in.

12           CHAIR McDONALD: I know it's the Chair's  
13 discretion to approve the deferral, but what I'm going  
14 to do is I'm going to put it up for a vote. This is  
15 to approve the Petitioner's request for deferral until  
16 tomorrow. And, Petitioner, just so you're aware we  
17 have one other item on tomorrow's agenda. We're going  
18 to be hearing that prior to you folks if the  
19 Commission so decides to allow the deferral.

20           MS. THOENE: We understand.

21           CHAIR McDONALD: Mr. Orodenger, could you  
22 please poll the Commission. Excuse me. I need a  
23 motion on the deferral.

24           COMMISSIONER WONG: I move.

25           COMMISSIONER AHAKUELO: Second.

1 CHAIR McDONALD: Moved by Commissioner  
2 Wong, second by Commissioner Ahakuelo. Mr. Orodenger,  
3 would you please poll the Commission.

4 MR. ORODENER: Thank you, Mr. Chair.  
5 Commissioner Wong?

6 COMMISSIONER WONG: Aye.

7 MR. ORODENER: Commissioner Ahakuelo?

8 COMMISSIONER AHAKUELO: Aye.

9 MR. ORODENER: Commissioner Mahi?

10 COMMISSIONER MAHI: Aye.

11 MR. ORODENER: Commissioner Scheuer?

12 COMMISSIONER SCHEUER: Aye.

13 MR. ORODENER: Commissioner Aczon?

14 COMMISSIONER ACZON: Aye.

15 MR. ORODENER: Commissioner Hiranaga?

16 COMMISSIONER HIRANAGA: Aye.

17 MR. ORODENER: Commissioner Aczon is  
18 absent. Chair McDonald?

19 CHAIR McDONALD: Yes.

20 MR. ORODENER: Mr. Chair, the motion  
21 passes.

22 CHAIR McDONALD: Okay. Thank you,  
23 Petitioner. We look forward to your presentation and  
24 hopefully stipulated agreements with the Department of  
25 Ag tomorrow.



1 MS. THOENE: As do we. Thank you.

2 CHAIR McDONALD: Thank you, parties as  
3 well. Hold on for 1 minute.

4 COMMISSIONER WONG: Chair, can we have a  
5 recess please?

6 CHAIR McDONALD: 5 minute recess. (9:23  
7 recess) We're back on the record. We're trying to  
8 decide if today was the appropriate time to go into  
9 executive session since we have so much time. But,  
10 anyway, we decided to defer that as well. And we're  
11 hereby adjourned until tomorrow. Thank you, parties.  
12 Tomorrow 9:00 o'clock same place.

13

14 (The proceedings were adjourned at 9:30 a.m.)

15

16 --oo00oo--

17

18

19

20

21

22

23

24

25