

LAND USE COMMISSION  
MEETING MINUTES

**November 20, 2019 – 9:30 a.m.**  
**Airport Conference Center**  
**400 Rodgers Boulevard, Suite 700, Room #IIT#2**  
**(in Hawaiian Airlines Terminal Building)**  
**Honolulu, HI 96819**

COMMISSIONERS PRESENT: Edmund Aczon  
Nancy Cabral  
Gary Okuda  
Jonathan Scheuer  
Dan Giovanni  
Arnold Wong

COMMISSIONERS EXCUSED: Dawn N. S. Chang  
Lee Ohigashi  
(8 seated Commissioners as of 10/1/19)

STAFF PRESENT: Daniel Orodener, Executive Officer  
Lori Tanigawa, Deputy Attorney General  
William Wynhoff, Deputy Attorney General  
Linda Chow, Deputy Attorney General  
Bert Saruwatari, Staff Planner  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

**CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:30 a.m.

**APPROVAL OF MINUTES**

Chair Scheuer asked if there were any corrections or additions to the November 6-7, 2019 meeting minutes. There were none.

Commissioner Cabral moved to approve the minutes and Commissioner Aczon seconded the motion. There were no comments or discussion on the minutes.

The minutes were unanimously approved by voice vote.  
(6 ayes-0 nays- 2 excused 8 sitting Commissioners).

Chair Scheuer called for Mr. Orodener to provide the Tentative Meeting Schedule.

**TENTATIVE MEETING SCHEDULE**

Executive Officer Orodener provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.

LUC meeting Schedule

- NOV 21-A17-804 Hawaiian Memorial Life Plan on O`ahu at SOT 2<sup>nd</sup> floor  
DEC 4-5- on Maui- A04-751 C. Brewer (continued)  
DEC 18-19 Kauai – A11-791 Hokua Place  
JAN 8- Kona for A02-737 U of N Bencorp & A90-660 HHFDC status reports  
JAN 9- TBD  
JAN 22-23 on Oahu for A17-804 Hawaiian Memorial Life Plan (JAN 22 at Koolau Ballroom/ JAN 23 at HNL airport

Any questions or conflicts, please contact LUC staff.

There were no questions or comments regarding the tentative meeting schedule.

**DR19-67 KU`ULEI HIGASHI KANAHELE and AHIENA KANAHELE (HAWAI`I)**  
**APPEARANCES**

Petitioner(s) or their representative were not present

Chair Scheuer updated the record and described the procedures to be followed for the hearing.

There were no comments or questions regarding the procedures.

Commissioner Okuda moved to adopt the form of the order denying the Petition with the addition two items; 1) a legal reference to the case of Citizens Against Reckless Development vs the Zoning Board of Appeals, City and County of Honolulu and 2) that the closing comments prior to decision-making by Commissioner Scheuer be included in the findings. (The comments can be found in transcripts (pages 198-204) for the Commission’s October 25, 2019 hearing in Hilo, Hawai`i).

Commissioner Giovanni requested clarification on the motion. Commissioner Okuda verified that it was a motion to adopt the form of the order to deny the Petition.

Commissioner Cabral seconded the Motion.

Chair Scheuer opened the floor to discussion.

Commissioner Okuda spoke to the Motion and shared his reasoning for moving to deny the Petition and for adding the legal reference and Chair Scheuer's commentary to the form of the original order. Commissioner Okuda added that he would like Commissioner Giovanni and Chair Scheuer to state their reasons for opposing the initial vote on October 25, 2019. Chair Scheuer acknowledged Commissioner Okuda's request and had Commissioner Giovanni present his comments on why he was a dissenting vote.

Commissioner Giovanni described how the sincere concerns of the Kanahale Petitioners affected his decision-making to vote for granting the Petition despite the arguments over jurisdiction.

Chair Scheuer shared that he had a chance to review the preliminary transcript for the October 24-25, 2019 meeting and that it would suffice to add a Finding of Fact to include his closing remarks from October 25, 2019 meeting in the final Form of the Order to deny the Petition.

Commissioner Cabral requested procedural clarification on what action was being taken.

Chair Scheuer clarified that the original form of the order that was before the Commission was under discussion to be modified with Commissioner Okuda's proposed additions and how the Commission could then decide on accepting the altered form of the order or not. Commissioner Cabral acknowledged the clarification and had no further questions.

Commissioner Okuda further clarified how forms of the order could be modified and strengthened to include additional details in case of an appeal of the decision and order, and why he specifically wanted to include the legal reference and the statements of Commissioner Giovanni and Chair Scheuer.

Commissioner Aczon stated that he shared Commissioner Cabral concerns and questioned the necessity to add the additional items to the initial form of the order.

Chair Scheuer summarized the state of the proceedings and announced that the Commission would be voting on the form of the order including the proposed addition of the legal case law and the stated reasons for opposing the order denying the Petition.

Chair Scheuer called for Mr. Orodenker to poll the Commission.

The Commission voted as follows:

Yeas- Commissioners Okuda, Cabral, Giovanni, Wong and Chair Scheuer

Nays- Commissioner Aczon

The Motion passed 5- 1 – 2 excused

Chair Scheuer declared a recess at 9:50 a.m. and reconvened the meeting at 9:56 a.m. and called for the next agenda item.

### **ACTION**

#### **DR19-66 POMA`IKAI PARTNERS LLC (O`AHU)**

Consider Amended Petition for Declaratory Order to Designate Important Agricultural Lands (“IAL”) for approximately 689.69 acres at O`ahu, Hawai`i, and is designated by TMK Nos. (1) 6-4-001:001 (por.), 6-4-001-005, and 6-4-001-012.

### **APPEARANCES**

Calvert Chipchase, Esq. and Chris Goodin, attorneys for Petitioner POMA`IKAI PARTNERS, LLC (“PP”)

Dina Wong, Acting Planning Division Chief- City and County of Honolulu Department of Planning and Permitting (DPP)

Ray Young, Planner, DPP

Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)

Aaron Setogawa, Planner, OP

Earl Yamamoto, Planner, Department of Agriculture (“DOA”)

Chair Scheuer updated the record and described the procedures for the proceedings and asked if Petitioner had been made aware of and was agreeable with the Commission’s policy on reimbursement. Mr. Chipchase replied that Petitioner had no objections to the Commission’s policy and would comply. There were no questions or comments regarding the procedures.

Chair Scheuer declared that the documents submitted by DOA, OP, DPP and Petitioner would become part of the record. There were no objections to this action.

Chair Scheuer requested that Mr. Chipchase describe his presentation plan to the Commission. Mr. Chipchase stated that he had 5-6 witnesses to offer.

### **DISCLOSURES**

Chair Scheuer disclosed that his wife worked for Group 70 but is not involved with the docket before the Commission and that he felt her employment would not impact his decision making and that he could remain impartial during the proceedings.

There were no objections to Chair Scheuer’s continued participation.

Chair Scheuer called for Public Testimony.

## PUBLIC TESTIMONY

None.

## PETITIONER PRESENTATION

Mr. Chipchase described his Amended Petition, provided background information on how the amended petition was prepared for the Commission and called for his first witness.

### Petitioner Witnesses

#### 1. Justin Alexander, Petitioner Representative

Mr. Alexander described the business and background history of Poma'ikai Partners LLC and what its intentions were with filing an IAL Petition with the LUC.

Mr. Young requested clarification on Mr. Alexander's description of the Petition Area. Discussion ensued to determine what Exhibit Mr. Young was referring to and what his questioning was attempting to accomplish. Commissioner Wong questioned whether Mr. Young's questions were relevant to the IAL petition. Chair Scheuer inquired whether Mr. Young was attempting to determine whether 51% of Petitioner's property had been included in the Petition for IAL designation. Mr. Chipchase argued that County's questions were not relevant to the Petition. Mr. Young concluded his questioning.

DOA had no questions.

OP requested clarification on the repair status and scheduling of the Wahiawa Irrigation System and how it would supply the Petition Area water needs. Mr. Alexander described the estimated cost of repairs and scheduling that would be adopted when the plans were finalized; and how different water sources would supply the Petition Area.

Commissioners Giovanni, Cabral, and Chair Scheuer requested clarification on whether future energy facilities were being considered, how the proposed CPR system for the Petition Area would operate, how compliance with the conditions/covenants/restrictions would be overseen and maintained under an IAL designation. Mr. Alexander responded that no energy facility plans were under consideration and provided his perspective of how his organization would control the Petition Area under the IAL designation.

Chair Scheuer declared a recess at 10:48 a.m. and reconvened the meeting at 11:00 a.m. with continued questioning of Mr. Alexander.

Ms. Apuna requested a chance to ask a few more questions of Mr. Alexander. Mr. Chipchase had no objections.

Ms. Apuna asked what type of building structures would be allowed on the property by the PP management group and clarification on the contents of the errata filing. Mr.

Alexander described the limited types of structures that would be allowed, and Mr. Chipchase clarified the contents of his errata filing.

Commissioner Cabral described her real estate experience in trying to maintain compliance with CPRs and inquired how PP intended to oversee its property. Mr. Alexander described how the CPRs would be managed and enforced.

Mr. Chipchase clarified what the cost estimates for the Wahiawa Irrigation System included, how Poma`ikai Partners LLC would retain control over the Petition Area and how all land use would remain designated agricultural.

There were no further questions for Mr. Alexander. Mr. Chipchase called his next witness.

2. Denise Albano- PP Project Consultant

Ms. Albano provided her professional background and described her role within the PP organization and the community outreach efforts on behalf of PP that she had been responsible for.

DOA requested clarification on how the term “agricultural park” applied to the Petition Area. Ms. Albano described how the North Shore Economic Vitality Project was associated with utilizing the park resources to foster agricultural pursuits in the region.

There were no further questions for Ms. Albano. Mr. Chipchase called his next witness.

3. Jeff Overton- Group 70 Project Consultant—Expert Witness -Environmental/Land Use Planner

Mr. Overton described his organization’s role in assisting PP with its efforts to obtain an IAL designation.

Ms. Wong requested clarification on what would be included in the various pieces that the Petition Area was subdivided into. Mr. Overton described the contents of each subdivided lot and Mr. Chipchase commented that the subdivision process had been completed.

DOA had no questions.

OP requested clarification on how the 30% sloped areas were going to be used and how contiguous inclusion of certain areas were justified.

Commissioners Giovanni, Okuda, and Chair Scheuer requested clarification how the amount of acreage to be dedicated to IAL was determined, whether a future district boundary amendment (DBA) was being considered, and how it was determined that certain areas of land would be excluded from the IAL Petition. Mr. Overton and Mr. Chipchase described how the assessment of the overall property was performed to determine what would and would not be included in the IAL Petition, what considerations were made for water resources to support agricultural efforts and that the plans for the Petition Area did not include a proposal for a DBA. Questions regarding more details about water resources were deferred to other witnesses.

Mr. Chipchase summarized how the contiguous land areas had been determined, why areas were included or excluded and how Petitioner had attempted to retain practical boundaries for the IAL Petition Area.

There were no further questions for Mr. Overton. Mr. Chipchase called his next witness.

4. Paul Matsuda- Civil Engineer with Group 70- Water Infrastructure Planning

Mr. Matsuda described his contributions to the PP IAL project and how the supporting water system resources for the Petition Area were obtained and what construction was involved to ensure a sufficient amount of water was available to support the Petition Area.

County had no questions.

DOA requested clarification on the ground water delivery and storage system layout for the Petition Area.

OP requested clarification on Petitioner's Table 6. Mr. Matsuda commented that providing more specific information on water consumption needs would require more detailed knowledge of what crops were going to be propagated.

Chair Scheuer requested clarification on how ground and well water resources would be provided to the Petition Area. Mr. Matsuda described the various considerations that had been made and how additional permitting might be required.

Mr. Chipchase described how the current water allocation plans were sufficient to support the estimated needs of the Petition Area.

There were no further questions for Mr. Matsuda. Mr. Chipchase called his next witness.

5. Brittany Ching =Group 70 Architectural Designer/Cultural Practices

Ms. Ching described her role within the project team and provided her perspective of the traditional and cultural practices associated with the Petition Area.

County, DOA and OP had no questions.

Commissioner Cabral requested clarification on the water consumption to support the “Ulu” (breadfruit) plants in the Petition Area. Commissioner Okuda inquired whether there might be any negative impacts from the IAL designation to existing Native Hawaiian culturally significant considerations. Chair Scheuer questioned whether research for a Ka Pa`akai analysis had been performed. Ms. Ching described how the existing “Ulu” population survived on the current water supply to the area and shared her perspective of how her research of the area had not made any significant discoveries to trigger further investigations.

Chair Scheuer declared a recess at 12:09 p.m. and reconvened the meeting at 1:07 p.m. Chair Scheuer called for closing remarks.

## CLOSING REMARKS

### PETITIONER

Mr. Chipchase summarized the reasons that he felt the Commission should grant the IAL Petition and argued how all the criterion for IAL designation had been met and how DOA, County and OP were supportive, and how Petitioner and DOA had agreed to receiving a water plan within 270 days (not 180 days as initially requested by DOA) of the order.

Commissioner Okuda and Chair Scheuer requested clarification on what rule or statute allowed the Commission to attach conditions to its decision and on statements regarding water source standards. Chair Scheuer suggested how the existing water allocations could



be used as a standard and alternative water resource development choices could be modeled based on that standard.

Mr. Chipchase provided responses to Commissioner Okuda and Chair Scheuer and described how the proposed CPR allowed fractionalized ownership and how nothing triggered a need for a Kapa`akai analysis since the IAL designation provided a protective overlay and did not change any of the uses for the land.

#### COUNTY

County had no comments.

#### DOA

DOA remarked that they had agreed to Petitioner's changes to their suggested conditions contained in their July 18, 2019 correspondence by extending the period for a water plan being provided within 270 days, better defining the water source/distribution/storage plans originally described in the Petition, providing for a better definition of the cultivation plans set to match existing and projected water supplies, and for a more detailed management plan to oversee the Petition Area.

Commissioner Okuda asked what legal authority should be used to allow the LUC to place conditions on the IAL designation and how the marketplace might impact the Petition Area. Mr. Yamamoto was unsure of the legal authority that the LUC should use to impose conditions and described how a well-established infrastructure system was needed to support the Petition Area.

#### OP

Ms. Apuna stated that Mr. Setogawa would be providing OP's closing remarks. Mr. Setogawa described how he had evaluated the IAL Petition and summarized his findings to determine that OP supported the Petition. Mr. Setogawa had no objections to the agreed upon changes to DOA's suggested conditions.

Commissioner Okuda asked what legal authority should be used to allow the LUC to place conditions on the IAL designation. Mr. Setogawa referred to HRS 205-45 (e).

Commissioner Wong moved for an Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities related to the placement of conditions on an IAL Petition. Commission Cabral seconded the motion. By voice vote, the Commission unanimously voted (6-0-2 excused) to enter Executive Session at 1:38 p.m.

Chair Scheuer stated that the Commission would enter Executive Session at 1:38 p.m., and reconvened the meeting at 1:52 p.m.

Chair Scheuer asked if there were any final questions from the Commission and reminded the Commission that DOA had consented to an extended period to receive a viable water plan to within 270 days of the Decision and Order.

Commissioners Cabral and Wong questioned whether the adjusted time was going to be included in the Petition or needed to be added separately.

Chair Scheuer summarized his assessment of the proceedings and noted that specifying the conditions to be included in the Motion would be preferable for clarity.

Chair Scheuer called for the Commission's pleasure.

Commissioner Cabral moved to grant the Petition with the DOA's condition for the water plan to be extended to 270 days, and that LUC staff work to finalize the order to include the condition. Commissioner Wong seconded the motion.

#### Discussion

Commissioner Aczon requested clarification on the details being added to the Motion to grant the Petition. Commissioner Cabral explained that her Motion intended to have LUC staff work with DOA to have the 270-day period included to amend the initial proposed Petition.

Mr. Chipchase requested and was granted an opportunity to clarify how Petitioner had voluntarily amended its Petition to reflect the newly agreed upon 270-day period change; and confirmed that the amended Petition accurately reflected the 270-day time.

Chair Scheuer acknowledged the revised contents of the amended petition and asked if the amended petition also included the LUC standard conditions for IAL. Mr. Chipchase acknowledged that it did. There were no objections to voting on the amended Petition as clarified by Mr. Chipchase.

Chair Scheuer asked for Mr. Orodenker to poll the Commission.

The Commission voted as follows:

Yeas- Commissioners Cabral, Wong Aczon, Okuda, Giovanni and Chair Scheuer

Nays- none

The Motion passed 6- 0 – 2 excused

Chair Scheuer declared a recess at 1:59 p.m. and reconvened the meeting at 2:06 p.m., and called for the next agenda item

#### **STATUS REPORT AND ACTION (IF NECESSARY)**

#### **A87-610 Tom Gentry and Gentry Pacific, Ltd. (Successor Petitioner- Kamehameha Schools), (O`AHU)**

#### **APPEARANCES**

Jennifer Lim, Esq. and Onaona Thoene, attorneys for Successor Petitioner- Kamehameha Schools (“KS”)

Dina Wong, Acting Planning Division Chief- City and County of Honolulu Department of Planning and Permitting (DPP)

Ray Young, Planner, DPP

Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)

Lorene Maki, Planner, OP

Ms. Lim requested that the Commission take Agenda Item VII – Docket No. A87-610 ‘s Motion for Modification of Decision and Order and Time Extensions first before hearing Agenda Item VI- the Status Report of Petitioner due to time constraints and the availability of her witnesses. Chair Scheuer honored her request and sought the pleasure of the Commission.

Commissioner Giovanni made a motion and Commissioner Cabral seconded it to take the agenda items out of order. There was no discussion. By a voice vote, the Commission unanimously voted to take Agenda Item VII

#### **ACTION**

#### **A87-610 Tom Gentry and Gentry Pacific, Ltd. (Successor Petitioner- Kamehameha Schools), (O`AHU)**

Motion for Modification of Decision and Order and Time Extension

Chair Scheuer updated the record and described the procedures to be followed. There were no questions on the procedures and no public witnesses. Chair Scheuer called for Ms. Lim to make her presentation.

Ms. Lim provided a background history of Petitioner's Motion for Modification of the Decision and Order and Time Extension and described how the initial project developer, Tom Gentry and Gentry Pacific, Ltd. had failed to commence on its proposed plans for the Petition Area and how the landowner, Kamehameha Schools, needed additional time to develop the Petition Area.

Chair Scheuer noted that disclosures for this docket item needed to be made.

### **DISCLOSURES**

Chair Scheuer disclosed that his wife worked for Group 70 but is not involved with the docket before the Commission and that he felt her employment would not impact his decision making and that he could remain impartial during the proceedings.

There were no objections to Chair Scheuer's continued participation.

Commissioner Giovanni disclosed that he had formerly been employed by Hawaiian Electric Industries (HEI) and provided his recollection of how HEI had been involved with the Sun Edison Group's bankruptcy and its aftereffects. Commissioner Giovanni stated that his former employment would not impact his decision making and that he could remain impartial during the proceedings.

There were no objections to Commissioner Giovanni's continued participation.

Ms. Lim resumed her presentation and described how Waiawa Solar Power/Clearway ("WSP") planned to utilize the time extension and provide site improvements to the Petition Area to support its future development. Ms. Lim commented that she had several witnesses to call on to provide project information to the Commission.

Commissioner Giovanni inquired which witnesses could respond to questions regarding the power purchase agreements ("PPAs") and request for proposals ("RFP"). Ms. Lim offered Mr. Sullivan and Ms. Sato to respectively respond to those queries.

### **PETITIONER WITNESSES**

1. Patrick Sullivan- Vice President Project Development- Clearway Energy Group ("CEG")

Mr. Sullivan provided his educational and professional background and described his role within CEG and the general plans for the WSP project.

County requested clarification on the commercial operations that CEG had been involved with locally.

OP had no questions.

Commissioner Giovanni requested clarification on technical specifications for the proposed energy system and what timetable would be involved on how CEG/WSP planned to meet the State's proposed energy goals. Mr. Sullivan described how CEG/WSP would commence once approval was granted to construct its facility to deliver power for the area and how decommissioning of the site would occur as the life of the PPA expired.

There were no further questions for Mr. Sullivan.

Chair Scheuer declared a recess at 3:01 p.m. and reconvened the meeting at 3:11 p.m. Ms. Lim offered her next witness, Jason Jeremiah.

2. Jason Jeremiah- Kamehameha Schools ("KS") -Director of Natural Resources and Cultural Management

Mr. Jeremiah was qualified as an expert witness in Cultural Resources and shared the findings of his research on the Petition Area.

There were no questions for Mr. Jeremiah.

Ms. Lim stated that she would be changing the presentation order of her witnesses and offered her next witness, Dana Sato.

3. Dana Sato, - KS Director Asset Management

Ms. Sato provided her educational and professional background to the Commission and described her duties in overseeing development on KS lands.

County had no questions.

OP requested clarification on what Petitioner's Motion was specifically seeking for the WSP facility. Ms. Sato described the general development plans for the WSP site. Discussion ensued to better define how the area designated for the solar energy facility fit into the larger portions of the land area included in the Petition Area. OP noted that the proposal before the Commission only addressed the eastern portion of the Petition Area and described how the western portion was not included.

Commissioner Giovanni inquired what the KS position was on wind and solar energy. Ms. Sato described how the implementation of solar had less opposition within the community. Chair Scheuer expressed his interest in seeing the master plan.

There were no further questions for Ms. Sato. Ms. Lim called her next witness, Daniel von Allmen.

4. Daniel von Allmen- CEG Manager, Project Development

Mr. von Allmen described various technical aspects of the solar project and provided updated information on the batteries to be used in the proposed solar facility which would mitigate fire threats.

County had no questions.

OP commented that it was open to adjusting its position statement to include the technical upgrades.

Commissioners Aczon and Giovanni requested clarification on how technological advancements would be adopted during the lifespan of the facility, who or what entity would be responsible for remediation if the PPA was extended and not extended, and what terms/conditions would be included in the 10-year extension agreement.

Redirect

Ms. Lim described the Groundwater Resource Protection Plan and how the Department of Health and Navy had approved of the proposed mitigation measures.

County requested an opportunity to question Mr. von Allmen. Ms. Lim consented to allow Mr. Young to question her witness.

Mr. Young requested clarification on how solar panel replacements would be handled over the life of the solar facility. Mr. von Allmen described how the panels would be monitored and replaced during the life of the facility's operation and how they would be recycled or repurposed after being decommissioned.

Chair Scheuer noted that the Commission needed to consider the time available to address this agenda item. Discussion ensued to determine how to complete proceedings on this matter. Commissioner Wong suggested a brief recess to assess the situation.

Chair Scheuer declared a recess at 4:17 p.m. and reconvened the meeting at 4:25 p.m.

Chair Scheuer announced that the Commission would recess and reconvene to continue proceedings before the start of the scheduled November 21, 2019 meeting at 8:30 a.m. at the State Office Tower, Leiopapa A Kamehameha Building in Honolulu.

Chair Scheuer declared a recess at 4:28 p.m.

