

**Written Statement of Dr. Jonathan Likeke Scheuer in Response to
Questionnaire**

Senate Committee on Water and Land

RE: Governor's Message No. 868, Land Use Commission, At Large

Term to expire June 30, 2016

April 14, 2015

(1) Why do you wish to be a member of the Land Use Commission?

It has been my honor to serve as an interim member of the Land Use Commission (LUC) from July 2014. I sought this service and seek to continue this service because of my commitment to contributing towards good public policy making regarding land and natural resources protection and development. Specifically, I seek to contribute towards decision making by the LUC that:

- Is engaged with the public and stakeholders in a manner that increases the level of trust in, and comfort with, decisions made by the LUC;
- Carefully complies with rulings from the appellate courts that guide how state agencies, including the LUC, are to consider and protect important public trust natural resources and related rights in the context of decision-making; and
- Allows the protection of important public trust natural resources and uses, while allowing us to also enjoy a robust economy.

I would additionally note that I had the opportunity to serve as a representative of the Hawaiian community on the O`ahu Island Burial Council (OIBC) for three years, for over two years serving as Vice Chair. During my term on the Council we dealt with many projects that raised difficult issues, including Rail, multiple projects in Kaka`ako, and the redevelopment of Ala Moana Center and the International Market Place. Despite many challenges the Council was able to provide a forum for the concerns of recognized cultural descendants, developers, and the state agency charged with historic preservation. Projects were able to proceed and iwi kūpuna (burials) protected. After my term with the Council ended, I wished to continue to be able to contribute in this manner, and have a broader impact from my volunteer work if possible.

(2) What do you think the role is of a member of the Land Use Commission?

The LUC plays multiple roles according to the directives of HRS Chapter 205, so as a result the role of a Commissioner is multi-faceted. Among other duties, the LUC decides on proposed district boundary amendments, designation of Important Agricultural Lands, and on the approval of special permits for use of land in the agricultural and rural districts. The LUC is also supposed to play a role in the five-year boundary review process.

As a result, the role of a Commissioner is to help these decisions be made in accordance with the statutes, in particular with the provisions of HRS 205-17 (Land use commission decision-making criteria) and important case law (such as the Kapa`akai and PASH decisions). It is the role and the duty of Commissioners to ask questions – sometimes difficult questions – to ensure that these criteria and laws are considered.

(3) Given your understanding of the roles and responsibilities of a member of the Land Use Commission, why do you believe that you are qualified or the position? Please include a brief statement of your skills, expertise or knowledge that would aid in your decision-making ability as a member of the Land Use Commission?

I was born and raised on O`ahu and my educational and professional career have been focused on public and private policy making regarding the proper management and use of our natural and cultural resources in Hawai`i.

I believe my extensive experience with decision making and administrative procedures before other state boards and commissions (such as OIBC and the Commission on Water Resource Management (CWRM), and my service to date on the LUC) prepare me well for the decision making process of the LUC. I have particular knowledge around burial and water issues that would help integrate the work of the LUC with those areas that are affected by LUC actions.

I also happen to enjoy – to the surprise of some of my friends – these kinds of administrative policy making procedures.

Finally, because my work has taken me around the islands, I have established relationships with community members in many different areas, particularly people who depend on and help manage natural resources. I believe those relationships bring an important perspective to my work on the LUC.

(4) Four years from today – if you are confirmed and looking back on your term as a Board member – is there anything in particular you'd like to see done or accomplished during your time?

My appointment as submitted to the Senate is for slightly over one year, rather than a four-year term. Within the next year, I would like to see applications processed efficiently, and more effective communication about the role and importance of the LUC made to the general public.

While this would take well over the time I have been nominated for, I would like to also very much see the five year boundary review process begun anew. The last five-year boundary review was completed in 1990 – twenty-five years ago. Since that time, our knowledge of cultural and natural resources and the threats to them has increased exponentially, particularly regarding the impacts from climate change.

New case law has carefully guided the LUC on how boundary amendments should be made. We are long overdue for a five-year boundary review, and it would serve the counties and state well to undertake this process. I would like to see this process begun over the next year.

(5) Are there any situations you can foresee recusing yourself from a decision by the Land Use Commission on the grounds that you have, or there is appearance of, bias or favoritism?

For the last five years I have been working as a sole proprietor consultant helping clients manage environmental conflict, particularly around water issues. For over three years I have been working in this regard with the National Park Service (NPS), specifically for Kaloko-Honokōhau National Historical Park, seeking the CWRM to designate the Keauhou Aquifer as a Ground Water Management Area. On occasion in the past, the NPS has intervened in LUC hearings regarding developments in that same area. My work with them does not include any services for any potential proceedings before the LUC.

My work with the NPS may lead some parties before the LUC or members of the public to believe I have favoritism or bias regarding certain issues or projects in the area of concern to that Park. Many – perhaps all – previous Land Use Commissioners have faced the same issue of a perception of bias. Usually this has occurred because of past or current relationships of a Commissioner to a person, firm or company that would financially benefit from a proposed action, or an employment role generally related to development, or as an attorney who had engaged in some litigation for or against a party in an LUC proceeding.

The process for dealing with this before the LUC is established and clear, and is particularly described in Hawai'i Administrative Rules section 15-15-61, Disqualification. Any Commissioner who has a personal pecuniary or business interest or one in which the commissioner is related by blood or marriage (consanguinity) to a party in the proceeding should not participate in the proceeding. However, if, after declaring the nature of the circumstances of the pecuniary interest or consanguinity to the parties, and the parties do not oppose the commissioner or hearings officer sitting in the proceeding, the commissioner or hearings officer may participate in the proceeding. The Commissioner should ask the advice of the assigned Deputy Attorney General to assist in determining if there is a basis for recusal.

Even if there is no basis for recusal, in all cases where there is an existing or previous relationship – even a previous relationship that is long past – with an organization or issue before the LUC, the Commissioner should declare any relationship, and also declare whether or not they believe that would hinder them in making a fair decision on the matter before them. Any party on that matter then has the opportunity to object on the record to the participation of that Commissioner. If

there is no objection from a party, the Commissioner can participate in the proceeding.

During my tenure as an interim Commissioner I have followed this procedure and intend to continue to do so if confirmed.

(6) Is there any other information on your experience and background that you believe should be considered by the committee?

My previous and current work has often involved very significant, high profile conflicts involving many stakeholders. The overall context for many significant LUC actions is similar. I believe my experience in dealing with contentious situations – and demonstrated success in resolving many of these conflicts – will be of use to the LUC and the public.

JONATHAN LIKEKE SCHEUER, PH.D.

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EMPLOYMENT HISTORY

Consultant, Sole Proprietor, Honolulu, Hawai`i

July 1990 – present (full time since February 2010)

I help clients manage conflicts over natural resources and environmental issues. I do so by engaging with environmental, Native Hawaiian, scientific and other communities and their concerns; assisting in building more robust communication among stakeholders; and identifying and implementing tasks and tactics that can identify key areas of dispute.

- Led development of the first water policy plan in the history of the Department of Hawaiian Home Lands; also led strategies to secure water for developments statewide while respecting the needs of other stakeholders / users
- Outreach and strategy efforts to protect the water resources Kaloko Honokōhau National Historical Park from the impact of surrounding future planned development
- Strategic planning for various non-profit organizations
- Facilitated consensus determinations among experts of 30, 60, and 100 year projections on climate change driven water and ecosystem trends in Hawai`i and the US affiliated Pacific Islands for the 2012 National Climate Assessment
- Assisted in outreach / strategy development in the environmental assessment context for high profile controversial proposals including the Conservation use of Rodenticides, Hawai`i Interisland Renewable Energy Program, Turtle Bay Resort redevelopment
- Developed a team to assess the scientific bases for evaluating fishing regulations for the Northwest Hawaiian Islands Coral Reef Ecosystem Reserve; all commercial fishing banned in the Papahānaumokuākea Monument based in part on this work
- Assisted in development of the first plan for restoration of the Waipā Ahupua`a (Kaua`i)

Director, Land Management, Office of Hawaiian Affairs (OHA), Honolulu, Hawai`i

November 2006- February 2010

I led development, adoption and implementation of the organizations' first comprehensive land policy, and development of the Land Management group including budgets, hiring, supervision of twelve positions, contracts, planning, and communication strategies.

- Led the first major land acquisitions since OHA's founding: 28,000+ acres (Waimea Valley and Wao Kele O Puna), leveraging \$3.9 million in OHA funds to acquire \$26.25 million in assets, ending controversies over these lands, and developing OHA as a significant and respected land owner in Hawai`i
- Co-led creation and management of Hi`ipaka LLC (501(c)3) to own and manage Waimea Valley, O`ahu; oversaw program development, restoration, visitor growth
- Led technical analyses and beneficiary outreach for the proposed \$200 million dollar settlement of past due claims on "ceded" land revenue. Co-led and presented at 40+ community briefings on the proposed settlement over 60 days across Hawai`i

EMPLOYMENT HISTORY, CONTINUED

Policy Analyst IV, Office of Hawaiian Affairs (OHA), Honolulu, Hawai`i

May 2004 – October 2006

I led review of all water related projects statewide for their impacts on Native Hawaiians and environmental resources; coordination with allied groups; supervision of related staff; management of project teams; and management of associated grants, budgets, and plans.

- Successfully resolved two contested cases; led multi-year, high-profile water rights advocacy efforts statewide, including Nā Wai `Ehā, Maui and Waialua, Kaua`i; oversaw negotiation, litigation, research, and outreach
- Regularly reviewed, prepared agency comments for, and delivered testimony on entitlement applications, land use plans, environmental documents, and legislation for their effect on Native Hawaiians; affected changes to projects and bills
- Identified, developed and maintained relationships with key strategic partners including community, business, and scientific organizations; represented OHA to media

Lecturer, Urban and Regional Planning Department and Law School, University of Hawai`i, Mānoa, Hawai`i

Fall 2004 & 2005, Spring 2007, 2008, 2013 & 2015

Responsible for developing and leading a graduate overview of US & Hawai`i environmental policy and training students with hands on policy analysis and advocacy for the Planning Department; co-taught course on Conservation Transactions for the Law School.

Land Evaluation Coordinator, Kamehameha Schools, Honolulu, Hawai`i

June 2002 – June 2003

One year post-doctoral position for developing methodology to assess multiple bottom line returns on 365,000 acres of land, assistance with water related issues.

- Assisted in development of a new water policy as well as an alternative settlement to a \$453,000 fine from the state Water Commission
- Developed an evaluation model for economic, community, educational, environmental, and cultural returns on land managements and investments

Legislative Aide, Hawai`i State House of Representatives, Honolulu, Hawai`i

January – May, 1992 & 1993

Lead for drafting of legislation, committee reports, and work with constituents and lobbyists

- Drafted bills to create a Department of the Environment; maintained an updated database on budget deliberations to share information with concerned parties otherwise excluded; assisted with negotiation over feral animal control on conservation lands

SELECTED COMMUNITY / CIVIC INVOLVEMENT

State Land Use Commission, July 2014 - present. At-Large Commissioner, Interim.

O`ahu Island Burial Council, May 2011 – June 2014, Vice Chair January 2012 – June 2014.

- Hawaiian community representative for the Kona district; review and make recommendations for action regarding Hawaiian burials.

Hawaiian Islands Land Trust, January 2011 – present.

- The Board is the fiduciary for the organization.

Center for Island Climate Change Adaptation and Policy, March – May 2010

- As an advisory group member, assisted in development of a strategic plan.

O`ahu Land Trust, March 2010 – December 2010

- Board member: recruited to assist in the merger to the Hawaiian Islands Land Trust.

Mālama Mānoa, January 2004 – December 2006

- Board is the fiduciary for the organization.

SELECTED PROFESSIONAL DEVELOPMENT & SPEAKING

Center for Whole Communities, Fellowship/Whole Thinking Leaders' Retreat, 2012

Hawai'i Conservation Conference, 1994-7, 2004-9, 2012-14

Land Trust Alliance, Rally (speaker), 2005 – 2007, 2009

Australian Institute of Superannuation Trustees, Conference (keynote speaker), 2008

Ford Foundation, Closing the Racial Wealth Gap Conference, 2007

Indian Land Working Group, Symposium, 2004

Switzer Environmental Leadership Grant, Award/Retreat, 2002-03

Environmental Protection Agency STAR Fellow, Award/Conference, 1999-2001

Switzer Fellow, Award/Retreat, 1998-99

FORMAL EDUCATION

Ph.D., Environmental Studies, UC Santa Cruz, June 2002

Masters in Environmental Studies, Yale University, School of Forestry and Environmental Studies, May 1995

Certificate, Scottish Cultural Studies, University of Edinburgh, July 1991

B. A., Environmental Studies (honors), UC Santa Cruz, June 1991

High School Diploma 'Iolani School, Honolulu, Hawai'i, June 1987