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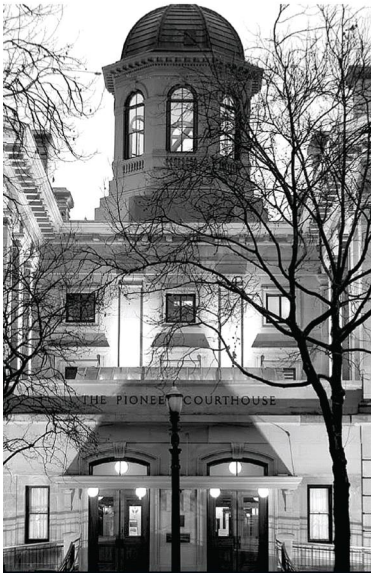
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STATE OF HAWAII

LAND USE COMMISSION

Hearing held on August 25, 2021
Commenscin at 9:00 a.m.

Held via Zoom by Interactive Conference Technology

- I. Call to Order
- II. Adoption of Minutes
- III. Tentative Meeting Schedule
- IV. ACTION
Modification of the number of copies required for filing under HAR Section 15-15-40
- V. ACTION
All-794 STATE OF HAWAII, DEPT. OF EDUCATION - (Kihei High School) (Maui)
To Consider Petitioner's Motion to Amend the LUC's Findings of Fact, Conclusions of Law and Decision and Order, Filed July 29, 2013
To Consider Petitioner's Request for the Issuance of Written Findings as to its August 20, 2020 Motion to Amend the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order, Filed July 29, 2013
- VI. EXECUTIVE SESSION
Pursuant to HRS Section 92-5(a)(2) to consider personnel matters where considerations of matters affecting privacy will be involved.
- VII. ADJOURNMENT

BEFORE:

1 APPEARANCES BY VIDEOCONFERENCE:

2

3 Jonathan Scheuer, Chair (Oahu)

4 Nancy Cabral, Vice Chair (Big Island)

5 Edmund Aczon (Oahu)

6 Gary Okuda (Oahu)

7 Lee Ohigashi (Maui)

8 Arnold Wong (Oahu)

9 Dawn N.S. Chang (Oahu)

10 Daniel Giovanni (excused) (Kauai)

11

12 STAFF PRESENT BY VIDEOCONFERENCE:

13 Julie China, Esq.

14 Deputy Attorney General

15

16 Daniel Orodener, Executive Officer

17 Riley Hakoda, Chief Clerk/Staff Planner

18 Natasha Quinones, Program Specialist

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1 **STATE OF HAWAII**
2 **LAND USE COMMISSION MEETING**
3 **HELD ON: WEDNESDAY, AUGUST 25, 2021**
4 **(VIA VIDEOCONFERENCING)**

5
6 **CHAIR SCHEUER:** (Inaudible) conference
7 technology linking video conference participants and
8 other interested individuals of the public via the
9 Zoom webinar platform, and we're doing this to
10 comply with the State and County official
11 operational directives during the ongoing COVID-19
12 pandemic.

13 Members of the public are able to view the
14 meeting via the Zoom webinar platform. Well,
15 meeting participants, I urge and stress that it is
16 important to speak slowly, clearly and directly into
17 a microphone before speaking. It is helpful if you
18 state your name for the record.

19 Also, please be aware for all meeting
20 participants, this meeting is being recorded on the
21 digital record of the Zoom meeting. Your continued
22 participation is your implied consent to be part of
23 the public record of the event. If you do not wish
24 to be part of the public record, you should exit the
25 meeting now.

1 This technology allows the parties and
2 each participating commissioner individual remote
3 access to the meetings via our own personal digital
4 devices. Please note that because of that and due
5 to matters entirely outside of our control,
6 occasional disruptions to connectivity may occur for
7 one or members of the meeting at any given time. If
8 this happens, please let us know and we ask for your
9 patience and grace as we try to restore audio/visual
10 signals so we can continue to do work during the
11 pandemic.

12 For members of the public who may wish to
13 testify during the public witness portion of any
14 agenda item and who are accessing this meeting by
15 telephone rather than by software on a smart phone,
16 laptop or desktop, to raise your hand, you press
17 star nine and to lower your hand you press star
18 nine. You should also use star six to request to be
19 un-muted.

20 From time to time depending on how long
21 our meeting is today, which I anticipate being
22 fairly brief, I will call for breaks.

23 My name is Jonathan Likeke Scheuer and I
24 currently have the honor and pleasure of serving as
25 the LUC Chair. Along with me is Commissioner Edmund

1 Aczon, Commissioner Gary Okuda, Commissioner Dawn
2 Chang, and Commissioner Arnold Wong.

3 Our LUC executive officer is Daniel
4 Orodenker. Our chief clerk, Riley Hakoda; our
5 deputy attorney general, Julie China, for the day;
6 our programs specialist, Natasha Quinones, are all
7 on the island of Oahu. Commissioner Nancy Cabral is
8 on Hawaii Island. Commissioner Lee Ohigashi is
9 holding things down on Maui which is where we
10 intended to be on this meeting briefly before
11 pandemic conditions raised again and made us decide
12 not to travel. And Commissioner Dan Giovanni is
13 absent and excused and sits as the Kauai Island
14 commissioner.

15 We currently have eight seated
16 commissioners of a possible nine. Commissioner
17 Giovanni will be unable to join our meeting until
18 after 12:30 should we go so long.

19 With all of that said, our first order of
20 business is the adoption of the July 14th, 2021,
21 minutes.

22 Mr. Hakoda, Ms. Quinones, has any written
23 testimony been submitted on the minutes?

24 **MR. HAKODA:** This is Riley. There's been
25 no testimony on the minutes.

1 **CHAIR SCHEUER:** Okay. Is there anybody
2 who wishes to testify on adoption of the minutes?
3 If so, raise your hand.

4 Do you have a comment or question,
5 Commissioner Cabral? Okay. Let me just check. If
6 there's anyone who wishes to testify, please use
7 your raise-your-hand function.

8 Seeing none, is there a motion to adopt,
9 Commissioner Cabral?

10 **COMMISSIONER CABRAL:** I make a motion to
11 adopt the July 14th, 2021, minutes.

12 **CHAIR SCHEUER:** Is there a second?

13 **COMMISSIONER OHIGASHI:** Second.

14 **CHAIR SCHEUER:** Seconded by Commissioner
15 Ohigashi.

16 Is there any discussion on the motion?

17 Seeing none, Mr. Orodenger, would you do a
18 roll call vote.

19 **MR. ORODENKER:** Thank you, Mr. Chair. The
20 motion is to adopt the order -- I mean the minutes.
21 Commissioner Cabral.

22 **COMMISSIONER CABRAL:** Yes.

23 **MR. ORODENKER:** Commissioner Aczon.
24 Commissioner Aczon, I believe you're muted.

25 **COMMISSIONER ACZON:** Aye.

1 **MR. ORODENKER:** Commissioner Giovanni is
2 absent.

3 Commissioner Okuda.

4 **COMMISSIONER OKUDA:** Yes.

5 **MR. ORODENKER:** Commissioner Ohigashi.

6 **COMMISSIONER OHIGASHI:** Yes.

7 **MR. ORODENKER:** Commissioner Chang.

8 **COMMISSIONER CHANG:** Aye.

9 **MR. ORODENKER:** Commissioner Wong.

10 **COMMISSIONER WONG:** Aye.

11 **MR. ORODENKER:** Chair Scheuer.

12 **CHAIR SCHEUER:** Aye.

13 **MR. ORODENKER:** Thank you, Mr. Chair. The
14 motion passes unanimously.

15 **CHAIR SCHEUER:** Okay. Thank you. With
16 that, our next agenda item is our tentative meeting
17 schedule. Sorry to put pressure on your voice again
18 but if you would walk us through that.

19 **MR. ORODENKER:** No problem, Mr. Chair. It
20 sounds worse than it feels.

21 On September 8th, we will be meeting by
22 Zoom to hear DR21-72, which is the Church matter,
23 and continuation of this matter, A11-794, Kihei High
24 School. On September 9th, we will be hearing the
25 Mahi Solar special permit as well as continuation of

1 this matter, the Kihei High School matter, as
2 required. We will also be hearing A87-610, which is
3 the KSB status report.

4 On September 17th, we will be having a
5 special meeting as a result of time frame associated
6 with special permits to adopt the order for Mahi
7 Solar. On September 22nd, we will be hearing DR21-
8 73, which is the Chipchase matter and A15-7798,
9 which is Waikapu.

10 On October 13th and 14th, we have penciled
11 in continuation of the IAL matter. That is
12 tentative pending receipt of a decision by the
13 attorney general with regards to the issues that
14 were previously raised.

15 On November 10th, we'll be hearing A21-
16 810, which is Hokuao. That's a 201H project. On
17 November 24th, we will be adopting the order in that
18 matter.

19 On December 8th, we will be hearing the
20 Airport Hotel matter district boundary amendment,
21 which is a Maui DBA. And that takes us through the
22 end of the year.

23 **CHAIR SCHEUER:** Thank you, very much.

24 Commissioners, are there any questions for
25 Dan regarding our schedule? Seeing none, I

1 anticipate that we are planning to continue remote
2 meetings for the foreseeable future; is that
3 correct, Mr. Orodenger?

4 **MR. ORODENER:** Yes. We anticipate --
5 given the governor's recent announcement and his
6 urgings, we expect that the executive order will
7 continue to allow us to hold Zoom meetings -- I
8 mean, we're not sure but we're anticipating at least
9 through the end of September if not the end of
10 October.

11 **CHAIR SCHEUER:** Okay. Anything further,
12 Commissioners?

13 Commissioner Cabral, are you raising your
14 hand? Oh, you're pointing at something on another
15 screen. Okay. Got it.

16 With that, our next agenda item is an
17 action item on modification of the number of copies
18 required for filing under Hawaii Administrative Rule
19 Section 15-15-40.

20 Is there any public testimony on this
21 matter, Mr. Hakoda or Ms. Quinones?

22 **MR. HAKODA:** This is Riley. There's been
23 no testimony.

24 **CHAIR SCHEUER:** No testimony. Are there
25 any members of the public who wish to testify on

1 this matter? If so, please raise your hand using
2 your raise-your-hand function. I don't see anybody
3 who is calling in so I don't need to repeat those
4 instructions for those who are calling in by phone.

5 Anybody who wishes to testify on the
6 modification of the number of copies required for
7 filing?

8 With that, Mr. Orodenger, would you walk
9 us through the proposal.

10 **MR. ORODENKER:** Thank you, Mr. Chair. As
11 mentioned, Section 15-15-40 governs the filing
12 requirements and the number of copies that are
13 required for filings. Currently it provides one
14 electronic copy, the original, and one paper copy
15 should be filed with the Commission.

16 As electronic media has become more and
17 more prevalent, we found that we're really just
18 discarding one of the two hard copies, the extra
19 hard copy. So we'd like to request the Commission
20 -- Section 15-15-40 provides that the Commission by
21 order may modify the number of or format of copies
22 required under this section. So we're requesting
23 that the Commission issue an order allowing us to
24 change the filing requirements to one electronic
25 copy and the original.

1 **CHAIR SCHEUER:** Thank you, Mr. Orodenker.

2 Commissioners, are there questions for the
3 staff? Seeing none, Commissioners, what is your
4 pleasure?

5 Commissioner Wong.

6 **COMMISSIONER WONG:** Thank you, Chair. I
7 move for the modification of HAR Section 15-15-40 to
8 make it as just stated by the executive officer, to
9 change the number of copies.

10 **CHAIR SCHEUER:** And to issue an order
11 effectuating the same?

12 **COMMISSIONER WONG:** Yes, sir.

13 **CHAIR SCHEUER:** Okay.

14 **COMMISSIONER CABRAL:** I'll second that
15 motion in the name of efficiency.

16 **CHAIR SCHEUER:** Thank you, Commissioner
17 Cabral.

18 Mr. Orodenker, is the motion made in a
19 sufficient manner?

20 **MR. ORODENKER:** Yes, Mr. Chair. You know,
21 the only thing I would request would be that the
22 motion -- perhaps, the motion should be modified to
23 allow the Chair to sign it.

24 **CHAIR SCHEUER:** Is the movant and seconder
25 willing to make that change?

1 **COMMISSIONER WONG:** Yes, Chair, to that
2 change.

3 **COMMISSIONER CABRAL:** Yes, I accept that
4 change.

5 **CHAIR SCHEUER:** Okay. Folks, we have a
6 motion before us. It seems fairly straightforward.
7 Is there any discussion?

8 Seeing none, Mr. Orodenger, please poll
9 the Commission.

10 **MR. ORODENKER:** Thank you, Mr. Chair. The
11 motion is to issue an order modifying the filing
12 requirements under Section 15-15-40 to allow filings
13 to consist of one electronic copy and the original.

14 Commissioner Wong.

15 **COMMISSIONER WONG:** Aye.

16 **MR. ORODENKER:** Commissioner Cabral.

17 **COMMISSIONER CABRAL:** Yes.

18 **MR. ORODENKER:** Commissioner Chang.

19 **COMMISSIONER CHANG:** Aye.

20 **MR. ORODENKER:** Commissioner Aczon.

21 **COMMISSIONER ACZON:** Aye.

22 **MR. ORODENKER:** Commissioner Giovanni is
23 absent.

24 Commissioner Okuda.

25 **COMMISSIONER OKUDA:** Yes.

1 **MR. ORODENKER:** Commissioner Ohigashi.

2 **COMMISSIONER OHIGASHI:** Yes.

3 **MR. ORODENKER:** Chair Scheuer.

4 **CHAIR SCHEUER:** Aye.

5 **MR. ORODENKER:** Thank you, Mr. Chair. The
6 motion passes unanimously.

7 **CHAIR SCHEUER:** Okay. Thank you. Our
8 next agenda item is an action item regarding Docket
9 No. A11-794, State of Hawaii, Department of
10 Education, Kihei High School, Maui, to consider the
11 petitioner's motion to amend the LUC's finding of
12 fact, conclusion of law, decision and order, filed
13 on July 29, 2013.

14 So last Thursday, Thursday August 19,
15 2021, the Commission received a motion from the
16 petitioner Department of Education entitled An
17 Emergency Motion for Recusal or Disqualification of
18 the LUC Chair. Because a hearing was requested on
19 the motion and it was a last-minute filing, we were
20 unable to agendize the matter for argument today.

21 Because of the nature of the motion, we
22 believe it's necessary to consider or dispense of
23 the motion prior to starting the proceedings on the
24 petitioner's motion to amend, and so in order to
25 comply with statutory requirements, this matter will

1 be deferred until September 8th and 9th, 2021.

2 With that, we will take a brief recess to
3 prepare for the next agenda item. Recess at the
4 discretion of the Chair.

5 **(Zoom recording remained on continuously.)**

6 **CHAIR SCHEUER:** Commissioner Okuda, we're
7 in recess -- yes?

8 **COMMISSIONER OKUDA:** Chair, I was going to
9 ask on the record about three or four documents. Let
10 me repeat since the recording was stopped.

11 **CHAIR SCHEUER:** Okay. Regarding this
12 matter?

13 **COMMISSIONER OKUDA:** Regarding the DOE
14 matter, yes.

15 **CHAIR SCHEUER:** Is this a matter that you
16 were previously recused on?

17 **COMMISSIONER OKUDA:** No. No, I was
18 recused on the IAL matter.

19 **CHAIR SCHEUER:** Got it. Okay. Yeah,
20 okay.

21 **MR. HAKODA:** Mr. Chair, I believe we're on
22 recess.

23 **CHAIR SCHEUER:** Yeah, we're on recess.
24 We're on recess. So, okay. I guess we'll go out of
25 recess and I'm going to recognize Commissioner Okuda

1 who wanted to speak on this matter. We're out of
2 recess. We're back on the record. We're still on
3 Agenda Item A11-794. Commissioner Okuda, I'll
4 recognize you.

5 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
6 This is Gary Okuda. May I ask the parties in the
7 Kihei High School matter to supplement the record
8 with certain documents which were referred to either
9 in public testimony or in the submissions by the
10 Department of Education.

11 And the specific documents that I ask be
12 supplemented is first a document which was referred
13 to in the public testimony of Council Member King,
14 K-i-n-g. That document was entitled Safe Routes to
15 Kihei High School: Pedestrian Route Study, Kihei,
16 Maui, 2014. So that would be the first document:
17 Safe Routes to Kihei High School: Pedestrian Route
18 Study, Kihei, Maui, 2014. And that document was
19 prepared by or prepared for Group 70 and the Hawaii
20 Department of Education by the Walkable and Livable
21 Communities Institute.

22 **CHAIR SCHEUER:** Commissioner Okuda, may I
23 ask you to pause for one second.

24 **COMMISSIONER OKUDA:** Yes.

25 **CHAIR SCHEUER:** So I just want to check

1 with Ms. China and Mr. Orodener. I believe what's
2 going to happen here is Commissioner Okuda simply is
3 asking the parties when they do appear in front of
4 us on the main substantive motion to be prepared to
5 provide certain information. I don't think it
6 requires any discretionary action of me as the chair
7 and so I'm prepared to allow this to ease the
8 party's abilities to be prepared for any discussion
9 of the matter when it comes to that main motion.

10 Is that acceptable or am I somehow
11 biasing it by not having first dispensed with the
12 request to have me recused?

13 **MS. CHINA:** I think it's mostly procedural
14 so I think it's fine.

15 **CHAIR SCHEUER:** Okay. Sorry for the
16 interruption, Commissioner Okuda. Please proceed.

17 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
18 And let me clarify: I'm just making a request. If
19 the parties decide not to supplement the record,
20 then the record will proceed as it stands. I'm just
21 making this request.

22 The second document that I request the
23 parties supplement is a document that was referred
24 to in the Department of Education's submission, and
25 that is a document titled Pedestrian Crossing

1 Guidelines for Texas, and it's a report, dated
2 December 2000, and the report number, which was also
3 referred to in the Department of Education's
4 submission was Report No. FHWA/TX-01/2136-2. So
5 that would be the second document that I request the
6 parties supplement the record with before the
7 hearing.

8 And the final items that I ask the parties
9 supplement are the studies that were referred to in
10 that document which I just mentioned which are
11 referred to or identified at page 47 of the
12 document, and that was described as a quote,
13 Benefit-Cost Analysis, and the documents which the
14 author of the report, and I quote, "encouraged to
15 consult," closed quote, were these two documents and
16 I ask that these two documents also be supplemented
17 in the record.

18 They are first a document identified as
19 NCHRP Report 189 and in quotations that's titled,
20 "Quantifying the Benefits of Separating Pedestrians
21 and Vehicles," closed quote, 1978. And the second
22 document referred at page 47 of the report, the
23 prior report that I -- or the master report that I
24 referenced is NCHRP Report 240 titled quote, "A
25 Manual (inaudible) of Separating Pedestrians and

1 Vehicles," closed quote, 1981.

2 So, Mr. Chair, it's just my request that
3 the parties supplement the record with those
4 documents. If they choose not to do so, then I
5 guess we will proceed with the record as the record
6 is stated. Thank you, very much, Mr. Chair, and
7 nothing further.

8 **CHAIR SCHEUER:** Okay. Thank you. Mr.
9 Orodener.

10 **MR. ORODENKER:** Commissioner Okuda, if you
11 could e-mail me that request, I will make sure that
12 it gets to the parties in writing.

13 **COMMISSIONER OKUDA:** This is Gary Okuda.
14 I will do so, Mr. Orodener. Thank you, very much.

15 **MR. ORODENKER:** Thank you.

16 **CHAIR SCHEUER:** Okay. With that, we are
17 done with any consideration of the Kihei High School
18 matter on today's agenda. It's being deferred to
19 September 8th and 9th, including the motion to have
20 me recuse or disqualify me.

21 We now have our next agenda item which is
22 an executive session pursuant to HRS 925(a)(2) to
23 consider personnel matters where considerations of
24 matters affecting privacy is involved. I've been
25 informed no public testimony was submitted regarding

1 this executive session.

2 Is that still correct, Mr. Hakoda?

3 **MR. HAKODA:** Yes, Chair. No testimony
4 received.

5 **CHAIR SCHEUER:** Okay. I will entertain a
6 motion to go into executive session. If the motion
7 passes where we're considering employment matters,
8 the commissioners will leave the meeting. We'll go
9 into a separate Zoom meeting for deliberations
10 during executive session and we'll return to this
11 meeting, though the return to this meeting, there's
12 nothing further on the agenda and we're simply going
13 to gather long enough to adjourn so there will be no
14 further public meaningful business to conduct
15 (inaudible).

16 Is there a motion to go into an executive
17 session?

18 **COMMISSIONER WONG:** Chair, this is
19 Commissioner Wong.

20 **CHAIR SCHEUER:** Commissioner Wong.

21 **COMMISSIONER WONG:** Before I make the
22 motion, I just wanted to inform if this motion does
23 pass (inaudible) stated that e-mail I sent to all
24 the commissioners on the executive session. Just to
25 remind them, it's from me personally. So if it does

1 pass, then I also will make the motion to move into
2 executive session.

3 **CHAIR SCHEUER:** Okay. A motion has been
4 made to move into executive session by Commissioner
5 Wong. Is there a second? Commissioner Cabral.

6 **COMMISSIONER CABRAL:** Yes, I will second
7 Commissioner Wong's motion for executive session.

8 **CHAIR SCHEUER:** Okay. All in favor,
9 please signify by saying aye and raising your hands.
10 Does anyone oppose? Signify by raising
11 your hand and saying nay. No one opposed.

12 We will go into executive session. And
13 again, for those who are on this call, that is
14 essentially the end of our public business. We will
15 return briefly to this meeting to adjourn but that's
16 it. Thank you, very much.

17 Commissioners, follow the instructions in
18 the e-mail from Commissioner Wong.

19 **(At which time the Commission went into**
20 **executive session at 9:24 a.m.)**

21 **CHAIR SCHEUER:** Okay. It is 10:25. We
22 have left executive session. We are back into
23 regular session. Mr. Orodener, is there any
24 further business? You're muted, Mr. Orodener.

25 **MR. ORODENKER:** Not that I'm aware of, Mr.

1 Chair.

2 **CHAIR SCHEUER:** Okay. Anything further,
3 Commissioners? Seeing none, thank you, very much,
4 to everyone. It is 10:26. I'm adjourning this
5 meeting. Aloha.

6 **(At which time the meeting was concluded**
7 **at 10:26 a.m.)**

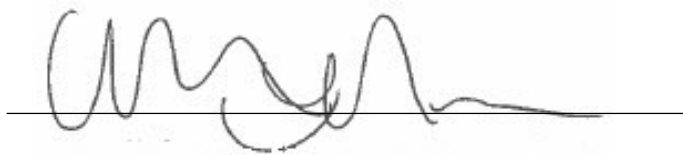
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CERTIFICATE

I, Melissa Noble, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 9th day of September, 2021.

A handwritten signature in black ink, appearing to read 'Melissa Noble', is written over a horizontal line.

Melissa Noble

RPR, CSR 376

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CORRECTION SHEET

Deposition of: Meeting Date: 08/25/21

Regarding: Hawaii State Land Use Commission Meeting

Reporter: Noble

Please make all corrections, changes or clarifications to your testimony on this sheet, showing page and line number. If there are no changes, write "none" across the page. Sign this sheet on the line provided.

Page Line Reason for Change

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Signature _____

Meeting _____

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DECLARATION

Deposition of: Meeting Date: 08/25/21

Regarding: Hawaii State Land Use Commission Meeting

Reporter: Noble

I declare under penalty of perjury the following to
be true:

I have read my deposition and the same is true and
accurate save and except for any corrections as made
by me on the Correction Page herein.

Signed at _____,
on the _____ day of _____, 2021.

Signature _____

Meeting