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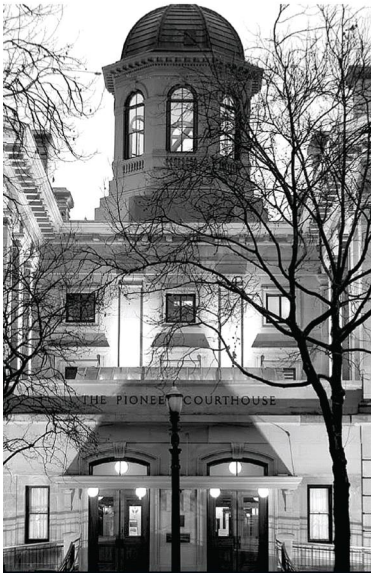
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**STATE OF HAWAII**  
**LAND USE COMMISSION**  
Meeting held on June 23, 2022  
Commencing at 9:00 a.m.

Held at  
Leiopapa A Kamehameha Building, Room 405  
235 South Beretania Street  
Honolulu, HI 96813

**I. CALL TO ORDER**

**II. ADOPTION OF MINUTES**

May 19, 2022; June 8, 2022

**III. TENTATIVE MEETING SCHEDULE**

**IV. ADOPTION OF ORDER - A87-610 KS WAIAWA (Oahu)**

Motion for Modification, Time Extension, and Release and Modification of Conditions of Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order issued by the Commission on February 11, 2020 to allow for modification of the Phase 1 and Phase 2 of the solar farm and to modify and release various conditions under the Commission's 2014 and 2020 Decisions and Orders concerning requirements of the submission of a Master Plan, archaeological sites and plans, burial plans, historic resources, aircraft hazards, traffic, development plans and schedules, and decommissioning of the solar farm phases.

**V. BRIEFING BY THE DEPARTMENT OF THE ATTORNEY GENERAL ON LITIGATION AND APPELLATE PROCEEDINGS CONCERNING DW AINA LE'A DEVELOPMENT, LLC v. STATE OF HAWAII, LAND USE COMMISSION, CIVIL NO. 17-00113 SOM-WRP**

**VI. DISCUSSION AND ACTION ON ELECTION OF LUC OFFICERS**

**VII. EXECUTIVE SESSION**

Pursuant to HRS Section 92-5(a)(2) to consult with the Commissioners' Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

**VIII. ADJOURNMENT**  
**BEFORE:**

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**APPEARANCES :**

**COMMISSIONERS PRESENT:**

- Jonathan Scheuer, Chair (Via Zoom)
- Dan Giovanni, Vice-Chair
- Nancy Cabral
- Gary Okuda
- Dawn Chang
- Kuike Kamakea-Ohelo
- Lee Ohigashi
- Arnold Wong

**COMMISSIONERS EXCUSED:**

- Edmund Aczon

**STAFF PRESENT:**

- Daniel Orodener, Executive Officer (Via Zoom)
- Scott Derrickson, Chief Planner (Via Zoom)
- Riley Hakoda, Staff Planner
- Martina Segura, Staff Planner
- Ariana Kwan, LUC Staff
- Dan Morris, Esq. Deputy Attorney General (Via Zoom)

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**APPEARANCES CONTINUED:**

**PETITIONER (VIA ZOOM) :**

Jennifer Lim, Esq., Counsel for KS Waiawa  
Onaona Thoene, Esq. Counsel for KS Waiawa  
Derrick Simon, Esq. Counsel for KS Waiawa

**CITY AND COUNTY OF HONOLULU (VIA ZOOM) :**

Brianna Weaver, Esq., DPP Corporation Counsel  
Dina Wong, Planner  
Franz Kraintz, Planner

**OFFICE OF PLANNING AND SUSTAINABLE**

**DEVELOPMENT (VIA ZOOM) :**

Bryan Yee, Esq., Deputy Attorney General  
Lorene Maki, Planner

**ATTORNEY GENERAL BRIEFING (VIA ZOOM) :**

David Day  
Lauren Chun

1           **CHAIRMAN SCHEUER:** Aloha mai kakou and  
2 good morning. This is -- it's been so long since  
3 we've been in live meetings, all they could find is  
4 a tiny little hammer for a gavel, so that's what I  
5 will be using and handing off at the end of this.

6           This is the June 23rd, 2022 Land Use  
7 Commission meeting. It is a hybrid meeting, which  
8 is being held at the Leiopapa A Kamehameha Building,  
9 Room 405, open to the public, and also by  
10 interactive conference technology which links  
11 videoconference participants and other interested  
12 members of the public via the Zoom webinar platform.  
13 We're doing this in order to comply with our state  
14 laws.

15           Members of the public are able to view  
16 this meeting in person, and there's no one here from  
17 the public, or via the meeting via the Zoom webinar  
18 platform.

19           For the importance of all meeting  
20 participants, I'd like to urge you to speak slowly,  
21 clearly, and directly into your microphone. It is  
22 helpful if you state your name prior to speaking, as  
23 we use the recording of this Zoom meeting to create  
24 our court transcripts.

25           In addition, I would note that any

1 participation in this meeting is your implied  
2 consent to be part of the official record of this  
3 event. If you do not wish to be part of the  
4 official record, you should leave the meeting now.

5 For any members of the parties who are  
6 participating in this meeting via Zoom, all of our  
7 commissioners are here in person except one who is  
8 excused. If you have intermittent trouble with  
9 accessing this meeting, please let us know, and  
10 please be patient with us as we try to restore  
11 audiovisual signals to be able to continue to  
12 conduct business.

13 For any members of the public who wish to  
14 testify during any agenda item for which public  
15 testimony is allowed, please use the raise-your-hand  
16 function on Zoom or, if you're dialing in by phone,  
17 the key sequence star 9.

18 From time to time, depending on how long  
19 this meeting lasts, we will take breaks  
20 approximately ten minutes every hour.

21 My name is Jonathan Likeke Scheuer, and I  
22 have had the pleasure and honor of serving as the  
23 Land Use Commission Chair.

24 We currently have, happily, nine seated  
25 commissioners, Commissioner Nancy Cabral,

1 Commissioner Dawn Chang, Commissioner Ku'ike  
2 Kamakea-Ohelo, Commissioner Dan Giovanni,  
3 Commissioner Lee Ohigashi, Commissioner Gary Okuda,  
4 and Commissioner Arnold Wong are all here in person,  
5 at the Leiopapa A Kamehameha Building.

6 Commissioner Edmund Aczon is excused.

7 Along with us, our small but mighty staff, our  
8 Executive Officer, Daniel Orodener; our Chief  
9 Planner, Scott Derrickson, our Staff Planner, Riley  
10 Hakoda; our Staff Planner, Martina Segura are all  
11 also here on Oahu. Joining us via Zoom is our  
12 Deputy AG of the day, Dan Morris.

13 Our first order of business is adoption of  
14 the May 19th, 2022 and the June 8th, 2022 minutes.  
15 Mr. Hakoda, has there been any written testimony  
16 submitted on either of the sets of minutes?

17 **MR. HAKODA:** No, Chair.

18 **CHAIRMAN SCHEUER:** Okay. Are there any  
19 members of the public who wish to testify on  
20 adoption of the minutes? If so, please use the  
21 raise-your-hand function or the star 9 key sequence  
22 if calling in by phone. I don't see anybody calling  
23 in by phone.

24 Seeing none, is there a motion to adopt  
25 both sets of minutes? Commissioner Cabral?

1           **COMMISSIONER CABRAL:** I move to adopt the  
2 minutes of June 8th and May 19th.

3           **CHAIRMAN SCHEUER:** Is there a second?

4           **COMMISSIONER WONG:** Chair?

5           **CHAIRMAN SCHEUER:** Commissioner Wong?

6           **COMMISSIONER WONG:** I second.

7           **CHAIRMAN SCHEUER:** Is there any  
8 discussion? Seeing none, all in favor vote "aye" and  
9 raise your hands.

10           **(All said "aye.")**

11           **CHAIRMAN SCHEUER:** Is anybody opposed?  
12 Raise your hand and vote "nay." Seeing none, the  
13 motion passes.

14           Our next order of business is the  
15 tentative meeting schedule. Mr. Orodenger.

16           **MR. ORODENKER:** Thank you, Mr. Chair. In  
17 July we do not have any substantive matters on the  
18 schedule. We have commissioners training on July  
19 26th and 27th. In August, we have (audio  
20 disruption). September we have the HCPO on Kauai on  
21 September 14th, 15th, and 16th. And that is  
22 basically our schedule for now.

23           I would caution the commissioners that we  
24 have a couple of special permits and a 201-H project  
25 in the works which will be scheduled and will need

1 to be heard fairly quickly, so please hold those  
2 dates until you hear from us. Thank you.

3 **CHAIRMAN SCHEUER:** Commissioners, are  
4 there any questions? Seeing none.

5 Our next agenda item is the adoption of  
6 the order for A87-610 Kamehameha Schools Waiawa,  
7 Oahu, their motion for modification, time extension,  
8 and release and modification of conditions of the  
9 order granting the motion for order amending the  
10 findings of fact, conclusions of law, and decision  
11 and order issued by the Commission on February 11th,  
12 2020, to allow for a modification of the phase 1 and  
13 phase 2 of the solar farm and to modify and release  
14 various conditions under the Commission's 2014 and  
15 2020 decisions and orders concerning the  
16 requirements of the submission of a master plan,  
17 archaeological sites and plans, burial plans,  
18 historical resources, aircraft hazards, traffic,  
19 development plans and schedules, and decommissioning  
20 of the solar farm phases.

21 Will the parties please identify  
22 yourselves for the record?

23 **MS. LIM:** I'll start, Chair, if I may.  
24 Thanks. This is Jennifer Lim, counsel for petitioner  
25 Kamehameha Schools. And because we are all remote,



1 I'll mention that Ms. Michelle Swartman of  
2 Kamehameha Schools is in the Zoom audience, just for  
3 the Commission's information. Thank you.

4 **CHAIRMAN SCHEUER:** Thank you very much.

5 **MS. THOENE:** Good morning, Chair and  
6 Members of the Commission. Onaona Thoene, co-  
7 counsel for petitioner, Kamehameha Schools. And  
8 with me on the Zoom is Derrick Simon. Thank you.

9 **CHAIRMAN SCHEUER:** Thank you, Ms. Thoene.  
10 City and County?

11 **MS. WEAVER:** Brianna Weaver on behalf of  
12 the Department of Planning and Permitting. Also in  
13 attendance from DPP are Dina Wong and Franz Kraintz.

14 **CHAIRMAN SCHEUER:** Office of Planning and  
15 Sustainable Development?

16 **MR. YEE:** Good morning. Deputy Attorney  
17 General Bryan Yee on behalf of the Office of  
18 Planning and Sustainable Development. With me is  
19 Lorene Maki from OPSD.

20 **CHAIRMAN SCHEUER:** Thank you very much.  
21 Mr. Hakoda, has there been any written  
22 testimony submitted on the adoption of the order?

23 **MR. HAKODA:** No, Chair.

24 **CHAIRMAN SCHEUER:** There's no written  
25 testimony. Are there any members of the public who

1 wish to attend -- excuse me -- testify in this  
2 matter? If so, please indicate by raising your hand  
3 using the raise-your-hand function in the Zoom  
4 software. There's nobody physically from the public  
5 in the room with us, though they're welcome to be.  
6 Any testimony? Seeing none.

7 The Commission will now take action to  
8 adopt the order. Before we take up the motion, the  
9 Chair would like to confirm for the record that all  
10 commissioners, including myself, are prepared to  
11 participate in these proceedings.

12 Commissioner Chang, are you prepared?

13 **COMMISSIONER CHANG:** Yes, I am.

14 **CHAIRMAN SCHEUER:** Commissioner Cabral?

15 **COMMISSIONER CABRAL:** Yes.

16 **CHAIRMAN SCHEUER:** Commissioner Okuda?

17 **COMMISSIONER OKUDA:** Yes.

18 **CHAIRMAN SCHEUER:** Commissioner Wong?

19 **COMMISSIONER WONG:** Yes.

20 **CHAIRMAN SCHEUER:** Commissioner Ohigashi?

21 **COMMISSIONER OHIGASHI:** Yes.

22 **CHAIRMAN SCHEUER:** Commissioner Giovanni?

23 **COMMISSIONER GIOVANNI:** Yes.

24 **CHAIRMAN SCHEUER:** Commissioner Kamakea-

25 Ohelo?

1           **COMMISSIONER KAMAKEA-OHELO:** Aye.

2           **CHAIRMAN SCHEUER:** And the Chair is also  
3 prepared to participate.

4           The Commission will now consider adoption  
5 of the order. Commissioners, before you, for your  
6 consideration, deliberation, and adoption of the  
7 proposed findings of fact, conclusions of law, and  
8 decision and order prepared by staff as instructed  
9 at the last meeting on the docket.

10           Is there any discussion?

11           I'm happy to entertain a motion.

12           **COMMISSIONER WONG:** Chair?

13           **CHAIRMAN SCHEUER:** Commissioner Wong?

14           **COMMISSIONER WONG:** I move for the (audio  
15 disruption) --

16           **CHAIRMAN SCHEUER:** Do we -- articulate as  
17 always, Commissioner Wong. Is there a second?

18           **COMMISSIONER GIOVANNI:** I second.

19           **CHAIRMAN SCHEUER:** A motion has been made  
20 to adopt the order as presented to us as drafted by  
21 the staff, made by Commissioner Wong and seconded by  
22 Commissioner Giovanni.

23           We are in discussion. Would you like to  
24 speak to your motion, Commissioner Wong?

25           **COMMISSIONER WONG:** Thank you, Chair.

1 Just that this is my last commission meeting, and I  
2 wanted to go out with a bang, as usual, with my  
3 motions. But I just wanted to say that I do support  
4 this, you know, project; however, I just wanted to  
5 make sure that there is going to be affordable  
6 housing for the people of Hawaii.

7 Right now, you know, we have a need here,  
8 and if we don't have it filled, we're going to have  
9 more homeless people out there, and that's what we  
10 don't want. So you know, there's people out there  
11 -- working people that's living on day-to-day  
12 paychecks, so I just wanted to make sure that we do  
13 have affordable housing and that even the  
14 sustainability of our power is there, so everything  
15 is set out. That's all, Chair. Thank you.

16 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
17 Wong.

18 Commissioner Giovanni?

19 **COMMISSIONER GIOVANNI:** Thank you, Chair.  
20 I will be in favor of the motion and largely because  
21 it's about an interim use of a solar farm on some  
22 important property on Oahu, and it's a good project,  
23 with a developer with whom I have confidence will  
24 deliver.

25 I also share Commissioner Wong's concern

1 and interest in promoting follow-through of  
2 development of affordable housing on this property  
3 and will be looking forward to seeing that come to  
4 fruition. Thank you.

5 Commissioners, is there further  
6 deliberation on the matter?

7 Commissioner Chang?

8 **COMMISSIONER CHANG:** Thank you, Mr. Chair.  
9 I, too, will be voting in favor of the motion. I  
10 have appreciated the petitioners. This has been a  
11 long hearing, several -- we've had several hearings  
12 on this. I believe that the petitioners heard the  
13 Commission's concerns beyond just the solar farm.

14 I struggle with the multiple state  
15 interests of supporting renewable energy, affordable  
16 housing, and sustainable ag. But I, like  
17 Commissioner Giovanni, see this as an interim use.  
18 That's the representation that was made, and it is -  
19 - I think it's appropriate given that it will take  
20 the petitioner a while to develop the infrastructure  
21 and to get the other plans going for the housing.

22 I believe that the petitioner has heard  
23 this Land Use Commission very loudly that housing is  
24 really critical, and they have an opportunity to do  
25 this in a right way. They are an institution that is

1 founded on valuable Hawaiian principles.

2           They are serving a constituency to support  
3 education, but beyond that, we have many Native  
4 Hawaiians who also are in need of housing. So I see  
5 that the petitioner has the opportunity to meet many  
6 needs of our community with this project, and I look  
7 forward to them timely implementing, coming back to  
8 us with more details, but I think that this is a  
9 good interim step for this land, at this particular  
10 point in time. So thank you very much.

11           **CHAIRMAN SCHEUER:** Thank you, Commissioner  
12 Chang.

13           Commissioners, we're in discussions.  
14 Commissioner Cabral?

15           **COMMISSIONER CABRAL:** I am not opposed to  
16 having more photovoltaic energy available as I, too,  
17 have many projects I have done on the Big Island,  
18 and I'm in favor of more photovoltaic everywhere.

19           However, I am the housing queen of this  
20 group, and I am concerned and will vote against it  
21 on principle, with the understanding that this body  
22 is going to pass it. So I'm not opposed to it moving  
23 forward, but I just on principle want to make sure  
24 that someone knows that it wasn't just this rubber  
25 stamp and that we really thought about this.

1           And I would also want to caution my fellow  
2 commissioners, affordable housing, as with the  
3 politicians, that is the buzz word of the world. I,  
4 who managed lots of affordable housing projects,  
5 warned against going into affordable housing. Once  
6 it's federally funded, you will then open those  
7 doors to people from all over the United States who  
8 sign up and will get -- move in here.

9           And before you know it, not one person  
10 living, potentially, in that project -- affordable  
11 housing project will have started in Hawaii. They  
12 may have all moved over when their name moved up on  
13 that list.

14           So I really want to get the buzz word to  
15 be workforce housing. We need housing for our  
16 working citizens, so that they can continue to stay  
17 a body, a family at home, with a wonderful place to  
18 live and raise their children and be members of our  
19 community.

20           So I'm not really in favor of bringing in  
21 more people of low income from all over the United  
22 States because Hawaii's more beautiful than the  
23 affordable housing project they're now living in, in  
24 New York City, Harlem, or somewhere. Okay? So I  
25 will not vote for it, but I am not opposed to the

1 project. Thank you.

2 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
3 Cabral.

4 Commissioners? Commissioner Okuda?

5 **COMMISSIONER OKUDA:** Thank you very much,  
6 Mr. Chair. I will be voting in favor of this  
7 motion, but since it's Commissioner Wong's last  
8 meeting, I would like to disagree with him on just  
9 one point which I raised earlier.

10 I do agree with the rationale that  
11 everyone who's spoken to now has given with respect  
12 to this project, and I agree, but I'd like to just  
13 say something, and this also goes to finding of fact  
14 111, my own view of what that all means.

15 It is not the job of Kamehameha  
16 Schools/Bishop Estate to provide affordable housing  
17 as long as the Ninth Circuit case of John Doe versus  
18 KSBE remains the controlling precedent. I believe  
19 that its function and goals are, as the trustees  
20 have set out, implementing the will of Bernice  
21 Pauahi Bishop.

22 There is nothing in their duties to  
23 provide affordable housing or any housing to anyone  
24 in the state of Hawaii. It's to provide education,  
25 other types of support as described in that Ninth



1 Circuit case.

2           So even though I'm voting in favor of this  
3 motion, I'd just like to make it clear that I do not  
4 believe that at this point in time, under the  
5 controlling precedents where Kamehameha Schools is  
6 allowed to give preference to Native Hawaiians, that  
7 it's their job to provide housing for everybody else  
8 in the state.

9           Now, if for some reason that precedent is  
10 overturned in the future, well, then, that's a  
11 different story. But right now, anyway, the purpose  
12 of the trust is not to provide affordable housing or  
13 any housing. It's to implement the intent of  
14 Bernice Pauahi Bishop, and so I'll be voting in  
15 favor of this motion with that clarification. Thank  
16 you.

17           **CHAIRMAN SCHEUER:** Thank you very much,  
18 Commissioner Okuda.

19           Commissioners, further deliberation?

20           I have already extensively spoken about my  
21 thoughts about this project at our previous  
22 meetings. I will respectfully respond to the word  
23 that a certain attorney who appears in front of us  
24 taught me, "colloquy" between the -- the colloquy  
25 between Commissioners Okuda and Wong.

1 I agree we need affordable housing. I  
2 actually agree, in a sort of now legal sense, with  
3 Commissioner Okuda that the primary mission of  
4 Kamehameha Schools is to -- for the education of  
5 Native Hawaiian children, but we went, and I lived  
6 through a time -- I think everybody in this --  
7 mostly everybody in this room lives through a time  
8 when there was a time when the Kamehameha Schools,  
9 Bishop Estate Trustees viewed their job as  
10 exclusively making as much money as possible from  
11 their lands in order to take children and educate  
12 them at Kapalama.

13 And only after a community-based strategic  
14 plan did they start to look at the aina that they  
15 held as having multiple values, not just economic,  
16 certainly economic but also educational, cultural,  
17 community, and natural resource values.

18 And so with that said, I have the -- as I  
19 noted, this is the last ridgeline between Kamehame  
20 Ridge and East Honolulu and Waihiawa that is  
21 undeveloped. It is a tremendous possibility, and we  
22 have endeavored as this Commission -- and you'll  
23 hear even in our disagreements now -- endeavored to  
24 bring our best selves to this position, and I have  
25 no doubt that Kamehameha Schools and its partners

1 and allies will endeavor to bring their best selves  
2 to this project to make it succeed.

3 And I look forward to that and will be  
4 voting in favor of the motion.

5 Is there any further discussion? If not,  
6 Mr. Orodenger, would you please poll the Commission.

7 **MR. ORODENKER:** Thank you, Mr. Chair. The  
8 motion is to adopt the order in A87-610 Waiawa.

9 Commissioner Wong?

10 **COMMISSIONER WONG:** Aye.

11 **MR. ORODENKER:** Commissioner Giovanni?

12 **COMMISSIONER GIOVANNI:** Aye.

13 **MR. ORODENKER:** Commissioner Ohigashi?

14 **COMMISSIONER OHIGASHI:** Aye.

15 **MR. ORODENKER:** Commissioner Okuda?

16 **COMMISSIONER OKUDA:** Yes.

17 **MR. ORODENKER:** Commissioner Cabral?

18 **COMMISSIONER CABRAL:** No.

19 **MR. ORODENKER:** Commissioner Chang?

20 **COMMISSIONER CHANG:** Aye.

21 **MR. ORODENKER:** Commissioner Kamakea-

22 Ohelo?

23 **COMMISSIONER KAMAKEA-OHELO:** Aye.

24 **MR. ORODENKER:** Chair Scheuer?

25 **CHAIRMAN SCHEUER:** Aye.

1           **MR. ORODENKER:** Thank you, Mr. Chair. The  
2 motion passes with seven affirmative votes and one  
3 negative.

4           **CHAIRMAN SCHEUER:** Thank you very much to  
5 the petitioner and to the parties, especially for  
6 your endurance, Ms. Lim and Ms. Thoene, with our  
7 extensive hearings on this matter. We really  
8 appreciate it.

9           **MS. LIM:** Thank you for your attention in  
10 this matter.

11           **MS. THOENE:** Thank you very much.

12           **CHAIRMAN SCHEUER:** We will take a brief  
13 recess as the parties move themselves from the room.  
14 It will be probably less than a minute.

15           **(Recess taken from 9:28 to 9:29 a.m.)**

16           **CHAIRMAN SCHEUER:** Aloha. We are back in  
17 session. Our next agenda item is a briefing by the  
18 Department of the Attorney General on litigation and  
19 appellate proceedings concerning DW Aina Le'a  
20 Development, LLC versus State of Hawaii, Land Use  
21 Commission, Civil Number 17-00113.

22           I understand that the Attorney General,  
23 David Day, who represented the Land Use Commission  
24 in this matter, is here to brief us on recent  
25 events.

1 Before we do, since this is an agenda item,  
2 item, I want to just check if there's anybody who  
3 wishes to provide public testimony in this matter.  
4 Mr. Hakoda, no written testimony?

5 **MR. HAKODA:** No, Chair.

6 **CHAIRMAN SCHEUER:** To anybody in the room  
7 who wishes to provide public testimony in this  
8 matter, the virtual room, there's nobody with us  
9 physically.

10 Seeing that there's nobody who wishes to  
11 provide testimony on this matter, Mr. Day, would you  
12 like to provide us with a basic overview of what you  
13 want to discuss with the Commission?

14 **MR. DAY:** Sure. I'm Deputy Solicitor  
15 General David Day. I was working -- I've worked on  
16 this case for as long as I've been at the Attorney  
17 General's office, either the DW Aina Le'a case or  
18 the Bridge Aina Le'a case, which was resolved in  
19 2021, finally, when the Supreme Court rejected --  
20 U.S. Supreme Court rejected certiorari of a positive  
21 decision in our favor in the Bridge Aina Le'a  
22 decision --

23 Well, let me just back up real quick. So  
24 all of these litigations stem from an April 25th,  
25 2011 decision of the Land Use Commission to revert

1 approximately 1,068 acres of land in Waikalua known  
2 as the Villages of Aina Le'a.

3 That decision was appealed by 391-14 by  
4 two parties. One of them was the landowner, Bridge  
5 Aina Le'a, and one of them was by an entity called  
6 DW Aina Le'a, which had a purchase and sale  
7 agreement with Bridge Aina Le'a for the purchase of  
8 the property that predated the reversion.

9 In 2014, the Hawaii Supreme Court vacated  
10 the decision of the Land Use Commission to revert  
11 the property, saying that the statutory  
12 prerequisites for reversion had not been fulfilled.

13 The Bridge Aina Le'a decision was --  
14 Bridge Aina Le'a filed a regulatory takings lawsuit  
15 against the State of Hawaii and the Land Use  
16 Commission, contending that it was a regulatory  
17 taking for the reversion, and that it was improper.

18 It went to trial in 2017, and a jury found  
19 that there had been a taking, but the court awarded  
20 one dollar in nominal damages. That was then  
21 appealed and cross- appealed to the Ninth Circuit,  
22 in which the state prevailed at the Ninth Circuit  
23 where the court said, as a matter of law, that there  
24 was no regulatory taking.

25 That then went to the United States

1 Supreme Court on a petition for writ of certiorari,  
2 which was rejected in early 2021, I believe, with  
3 one assent by Justice Clarence Thomas.

4 DW Aina Le'a had filed a lawsuit in 2017  
5 alleging regulatory taking. It was a separate  
6 lawsuit saying that basically its development  
7 rights, quote, unquote, "had been taken by the Land  
8 Use Commission's decision to revert."

9 The first thing that happened is that we  
10 filed a motion to dismiss on statute of limitations  
11 grounds, which the federal court granted. That went  
12 to the Ninth Circuit.

13 And then after the Ninth Circuit  
14 eventually vacated that decision, holding that the  
15 statute of limitations for regulatory taking in the  
16 state of Hawaii was two years, not six years, as the  
17 -- based on a certified question from the Hawaii  
18 Supreme Court.

19 So that got reverted. It then went to  
20 full-blown litigation. We moved for summary  
21 judgments in 20 -- early this year, 2022, which was  
22 granted on May 25th, 2022. So, again, we prevailed  
23 this time on the merits, and that decision has been  
24 appealed.

25 That's where we are right now is basically

1 this is -- has just been appealed to the Ninth  
2 Circuit by DW Aina Le'a. We have a mediation  
3 conference coming up that we'd like to discuss all  
4 questions regarding the, I guess, current status of  
5 the case that goes into the mental impressions of  
6 attorneys and our strategy.

7 We would respectfully request that be held  
8 in executive session to preserve the attorney-client  
9 privilege and work product of this Commission.

10 We've had a very positive relationship --  
11 working relationship with the entire Land Use  
12 Commission team, including Mr. Orodener, Mr.  
13 Derrickson, Mr. Hakoda, and we'd like to thank them  
14 for their support in this litigation, and we're  
15 proud to represent the Land Use Commission in this  
16 matter.

17 **CHAIRMAN SCHEUER:** Thank you very much,  
18 Mr. Day.

19 Commissioners, are there any questions  
20 that you wish to ask in open session to Mr. Day that  
21 don't violate the concerns that he raised or,  
22 alternately, I will accept a motion to move into  
23 executive session.

24 Commissioner Cabral?

25 **COMMISSIONER CABRAL:** I make a motion we



1 go into executive session.

2 **CHAIRMAN SCHEUER:** To consult with the  
3 Commission's attorney regarding the Commission's  
4 powers, duties, privileges, immunities, and  
5 liabilities on this agenda item?

6 **COMMISSIONER CABRAL:** Correct.

7 **CHAIRMAN SCHEUER:** Is there a second?

8 **MR. DAY:** May I just -- may I make one  
9 clarification. Lauren Chun is the Deputy Attorney  
10 General who also represents the state. I neglected  
11 to introduce her. She's on this call, and I would  
12 ask that she be participating in the executive  
13 session. Sorry.

14 **CHAIRMAN SCHEUER:** Thanks for coming  
15 onscreen, Ms. Chun.

16 Is there a second? Commissioner Chang.

17 Is there any deliberation? So we're all  
18 in person, but just for the benefit for those of you  
19 on the screen, I'm going to ask, all in favor of  
20 going into executive session, say "aye" and raise  
21 your hand.

22 **(All said "aye.")**

23 **CHAIRMAN SCHEUER:** Is there anybody  
24 opposed? Say "nay" and raise your hand. Seeing  
25 none, the Commission will go into executive session.

1 For folks who are on the Zoom meeting, the Zoom  
2 meeting will continue. You will see a screen that  
3 indicates we are going into executive session, and  
4 we will come out of executive session back to this  
5 meeting after that. We are going into executive  
6 session.

7 **(Whereupon, the Commission went into**  
8 **executive session.)**

9 **CHAIRMAN SCHEUER:** It is 11:03. We are  
10 out of executive session. Our next agenda item is  
11 discussion and action on the election of Land Use  
12 Commission officers.

13 **COMMISSIONER WONG:** Mr. Chair?

14 **CHAIRMAN SCHEUER:** Commissioner -- sorry,  
15 first, Commissioner Wong, this.

16 Has there been any written testimony  
17 submitted on this item?

18 **MR. HAKODA:** No, Chair.

19 **CHAIRMAN SCHEUER:** Thank you, Mr. Hakoda.  
20 No written testimony. Is there anybody who wishes  
21 to testify orally on this matter? If so, indicate  
22 by raising your hand using your raise-your-hand  
23 function. Seeing none. Seeing none.

24 Commissioner Wong.

25 **COMMISSIONER WONG:** Yeah, Mr. Chair, as

1 you know, we are appointed -- you, myself, and  
2 Commissioner Aczon was appointed to look into this  
3 issue. After deliberating with us, our group, I  
4 would like to make a motion for a slate of officers.

5 **CHAIRMAN SCHEUER:** Please proceed.

6 **COMMISSIONER WONG:** So for the next  
7 incoming Chair would be Commissioner Giovanni.

8 First Vice-Chair will be Commissioner Cabral, and  
9 Second Vice-Chair will be Commissioner Ohigashi.

10 **CHAIRMAN SCHEUER:** Let me -- is there a  
11 second?

12 **COMMISSIONER CHANG:** I second.

13 **CHAIRMAN SCHEUER:** Commissioner Chang has  
14 seconded.

15 Let me just confirm on the record that all  
16 three of the individuals are willing to accept if  
17 the vote proceeds.

18 Commissioner Giovanni?

19 **COMMISSIONER GIOVANNI:** Aye.

20 **CHAIRMAN SCHEUER:** Commissioner Cabral,  
21 you're willing?

22 **COMMISSIONER CABRAL:** Aye. Yes.

23 **CHAIRMAN SCHEUER:** And Commissioner  
24 Ohigashi, oh, yes. Okay. He says yes.

25 Commissioner Ohigashi, are you willing to serve as

1 Second Vice-Chair?

2 **COMMISSIONER OHIGASHI:** (Inaudible.)

3 **CHAIRMAN SCHEUER:** We do not -- this Chair  
4 does not accept kanalua as a response.

5 Commissioner Ohigashi?

6 **COMMISSIONER OHIGASHI:** I'm here, so I  
7 kind of --

8 **CHAIRMAN SCHEUER:** Are you affirming?

9 **COMMISSIONER OHIGASHI:** It pains me.

10 **CHAIRMAN SCHEUER:** However, you are  
11 accepting, Commissioner Ohigashi?

12 **COMMISSIONER OHIGASHI:** (Inaudible.)

13 **CHAIRMAN SCHEUER:** Okay. Is there any  
14 further discussion or deliberation? Seeing none.

15 All in favor, say "aye" and raise your  
16 hand.

17 **(All said "aye.")**

18 **CHAIRMAN SCHEUER:** Anybody opposed, say  
19 "nay." I'm not calling for Konaloa. And I was given  
20 this by the staff, this rubber gavel to hand to our  
21 incoming Chair.

22 With that, last agenda item. And the last  
23 agenda item for both me and Commissioner Wong is an  
24 executive session pursuant to HRS Section 92-5(a)(2)  
25 to consider personnel matters where consideration

1 affecting privacy will be involved.

2 Staff has informed me that there's no  
3 public testimony received regarding this. I will  
4 entertain a motion to go into executive session.

5 Let me be clear for the four people  
6 currently who are still attending the Zoom meeting  
7 -- oh, you know what?

8 Before we go to this, if I may, Mr. Yee,  
9 are you still with us?

10 **MR. YEE:** Yes.

11 **CHAIRMAN SCHEUER:** You wished to address  
12 the Commission, Mr. Yee. I apologize.

13 **MR. YEE:** Oh, thank you for the  
14 opportunity. I know this is the last meeting for  
15 three of the commissioners, and I -- if I may just  
16 take the liberty of displaying for you my little-  
17 known superpower of performing nonsensical  
18 limericks. So as a way of saying farewell and thank  
19 you, if I may?

20 **CHAIRMAN SCHEUER:** Please proceed.

21 **MR. YEE:** There once was a Commissioner  
22 named Aczon whose insights relied to the max on.  
23 Though his words were just few, we valued his view.  
24 Now, get a couch and a drink to relax on.

25 My second, if I may, is there once was a

1 Commissioner named Wong --

2 **CHAIRMAN SCHEUER:** Mr. Yee, you're going  
3 to have to transmit these in writing to the  
4 Commission.

5 **MR. YEE:** I will forward them, yes.

6 There once was a Commissioner named Wong  
7 who was right more often than wrong. I know I'm not  
8 a lawyer, he said, but he knew the law in his head.  
9 We'll miss his laughter for long.

10 And finally, there once was a Commissioner  
11 named Scheuer who knew public trusts like a lawyer.  
12 Trust was more than a word, all these were welcomed  
13 and heard, but I still say he looks like Tom Sawyer.

14 Thank you very much, Commissioners. We  
15 rely upon people like you to provide volunteer  
16 services, so I just wanted to say thank you.

17 **CHAIRMAN SCHEUER:** Mahalo nui, Bryan.  
18 This is quite a superpower you have. We are  
19 honored. Thank you so much.

20 With that, for anybody who's attending the  
21 meeting, the meeting will be kept open, and then we  
22 will have to come out briefly to adjourn publicly.  
23 So we're going to go into executive session if we  
24 have a successful motion. Is there a motion to move  
25 into executive session?

1 Moved by Commissioner Ohigashi.

2 **COMMISSIONER CABRAL:** Second.

3 **CHAIRMAN SCHEUER:** Seconded by

4 Commissioner Cabral. All in favor, say "aye."

5 **(All said "aye.")**

6 **CHAIRMAN SCHEUER:** Is any opposed? Say  
7 "nay."

8 Okay. The Commission will go into  
9 executive session regarding employment matters. At  
10 the conclusion of executive session, we will come  
11 out and just -- just to adjourn the meeting. Mahalo  
12 nui, especially to you, Mr. Yee. That was  
13 excellent. Thank you.

14 **MR. YEE:** Thank you.

15 **COMMISSIONER WONG:** Dan Morris, you've got  
16 to go into executive session with us, please. Same  
17 link.

18 **MR. MORRIS:** Will do.

19 **COMMISSIONER WONG:** Thank you.

20 **(Recess taken from 11:10 to 11:47 a.m.)**

21 **CHAIRMAN SCHEUER:** Okay. It is 11:47 a.m.

22 We are back in open session. To be perfectly  
23 emblematic, Commissioner Cabral is on her phone.

24 I'm handing the gavel -- I'm handing the  
25 gavel over to incoming Chair, Commissioner Giovanni

1 but will do so after I bang it the last time.

2           There being no further business, this  
3 meeting of the Land Use Commission is adjourned.

4           **(Meeting concluded at 11:47 a.m.)**

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I, Jodi Dean, do hereby certify that the proceeding named herein was professionally transcribed on the date set forth in the certificate herein; that I transcribed all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true, and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 11th day of July, 2022.



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Jodi Dean