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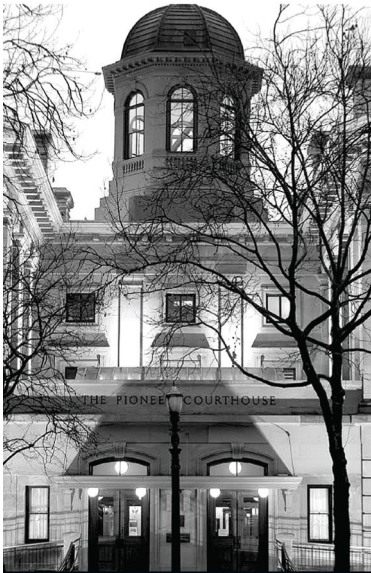
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STATE OF HAWAII
LAND USE COMMISSION

Meeting held on October 4, 2023

Commencing at 9:00 a.m.

Held at

Airport Conference Center

Ohia Room

Hawaiian Airlines Terminal 1 Building
400 Rodgers Boulevard, 7th Floor, Room 1
Honolulu, Hawaii 96819

I. CALL TO ORDER

II. ADOPTION OF MINUTES

June 21-22, 2023

III. TENTATIVE MEETING SCHEDULE

IV. EXECUTIVE SESSION

The Commission anticipates going into executive session pursuant to HRS Section 92-5 to consult with the Commission's Attorney regarding issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pertaining to (1) The Status of Outstanding Litigations Involving the Land Use Commission and (2) Implications of Governor's Emergency Proclamation Relating to Housing.

V. DISCUSSION AND APPROVAL TO PROCEED WITH PROPOSED AMENDMENTS TO THE LAND USE COMMISSION ADMINISTRATIVE RULES

VI. ADJOURNMENT

BEFORE :

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PARTICIPANTS

LUC COMMISSIONERS :

Dan Giovanni, Chair

Lee Ohigashi, Vice-Chair

Brian Lee

Gary Okuda

George Atta

Melvin Kahele

Nancy Carr Smith

Kuike Kamakea-Ohelo

LUC STAFF :

Daniel Orodener, Executive Officer

Scott Derrickson, Chief Planner

Martina Segura, Staff Planner

Ariana Kwan, Chief Clerk

Daniel Morris, Esquire, Deputy Attorney General

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HAWAII LAND USE COMMISSION MEETING

WEDNESDAY, OCTOBER 4, 2023

9:00 A.M.

CHAIR GIOVANNI: Aloha mai kakou. Good morning, everyone. It's so nice to see our commission back in action, and everybody's here today, so I welcome you all.

This is the October 4th, 2023 Land Use Commission meeting. This is an in-person meeting which is being held at the Airport Conference Center, Ohia Room, Hawaiian Airlines Terminal 1 Building, and this meeting is open to the general public.

Court reporting transcriptions are being done from this Zoom recording of this meeting, but the Zoom recording is not being broadcast, just for your information, outside of this room. It's only for recording purposes so we can prepare minutes from the Zoom recording.

We also have a brand-new microphone system, so thank you to the staff for bringing that forward and making it work. And I think everybody's got instructions on how it operates. But in general, if you're called upon to speak or if you'd

1 like to speak, before you -- there's a talk button,
2 and you need to hit that talk button.

3 Also, just FYI, the Chair does have the
4 option to turn off your microphone or any of the
5 microphones at any time if we want -- if we so
6 choose.

7 And Ariana, you also have the capability
8 from your station, is that correct?

9 **MS. KWAN:** Yes.

10 **CHAIR GIOVANNI:** Okay. For all
11 participants, I'd like to stress the importance of
12 speaking slowly, clearly, and directly into your
13 microphone, and, before speaking, please state your
14 name and identify yourself for the record.

15 So I'm speaking. This is Dan Giovanni.
16 I'm the Chair of the commission.

17 Even though this is an in-person meeting,
18 please be aware that all meeting participants are
19 being recorded on the digital record of this Zoom
20 meeting for court reporting purposes. Your
21 continued participation is your implied consent to
22 be part of the public record of this event. If you
23 do not wish to be part of the public record, you
24 should exit the meeting now.

25 So this is currently 9 o'clock. We're

1 scheduled here for the day, and I -- but I will
2 advise that we will be taking breaks from time to
3 time, typically five to ten minutes every hour.

4 I am Dan Giovanni. I have the pleasure to
5 serve as the LUC Chair. We currently have nine
6 seated commissioners. It's 100 percent of our
7 allocation. Along with me are Commissioners Lee
8 Ohigashi, who's the First Vice-Chair; Michael
9 Yamane, Second Vice-Chair; Gary Okuda; Mel Kahele;
10 Kuike Kamakea-Ohelo; Mr. George Atta; Mr. Brian Lee;
11 and I'd like to welcome our newest commissioner from
12 the Big Island, Nancy Carr Smith. Welcome.

13 Also in attendance are our Land Use
14 Commission Executive Officer, Daniel Orodener; LUC
15 Chief Planner, Scott Derrickson; LUC Staff Planner,
16 Martina Segura; LUC Chief Clerk, Ariana Kwan.
17 Incoming but not here present as of yet is LUC
18 Attorney General Dan Morris. So Mr. Morris is
19 expected to arrive within the next 15 minutes or so.

20 We will continue with the business of the
21 commission. And if there's any particular part that
22 would require Attorney General presence, I will
23 defer that portion of the meeting and ask for a
24 motion to amend the agenda accordingly.

25 I'd like to note that Commissioner

1 Ohigashi will be excused from the meeting at
2 approximately 11:30 a.m., whether we're finished
3 with our business or not. I understand that Mr.
4 Ohigashi will be taking an international trip later
5 today, so he needs --

6 What's that?

7 **COMMISSIONER OHIGASHI:** For all of you.
8 I'll represent you.

9 **CHAIR GIOVANNI:** He will represent us at
10 the whiskey bars in Japan.

11 Our first order of business is the
12 adoption of minutes from our meeting of June 21 and
13 22 of 2023.

14 Ms. Kwan, has there been any written
15 testimony submitted regarding the minutes?

16 **MS. KWAN:** No, Mr. Chair.

17 **CHAIR GIOVANNI:** Are there any members of
18 the public who have signed up to testify in the
19 adoption of these minutes?

20 **MS. KWAN:** No, Mr. Chair.

21 **CHAIR GIOVANNI:** Thank you.

22 Commissioners, are there any corrections
23 or comments on the - on the minutes? If not, is
24 there a motion to adopt the minutes for the June 21,
25 22, 2023 meeting?

1 **COMMISSIONER OHIGASHI:** Mr. Chair, I move
2 to adopt the minutes.

3 **CHAIR GIOVANNI:** So moved by Commissioner
4 Ohigashi.

5 Is there a second?

6 **COMMISSIONER ATTA:** I second.

7 **CHAIR GIOVANNI:** Commissioner Atta has
8 seconded. All in favor of adoption of the minutes,
9 please say, "aye."

10 **(All said, "aye.")**

11 **CHAIR GIOVANNI:** Any opposed?

12 The minutes are adopted. Thank you.

13 The next agenda item is our forthcoming
14 and tentative meeting schedule, which will be
15 presented by our - Mr. Orodenger.

16 **MR. ORODENKER:** Thank you, Chair.

17 On October 18th and 19th, we will be on
18 Maui for the ELC and WDV status reports and for the
19 WDV motion for extension of time. November 1st and
20 2nd are currently open. November 15th, we're having
21 - we're planning on having a virtual meeting with
22 regard to the proposed rule amendments. On November
23 16th, we're having a hearing in Kona on the WHCCYO
24 limited partnership matters.

25 December 6th and 7th are tentatively

1 scheduled for Oahu, but we're not sure whether those
2 are actually going to happen yet. We will
3 communicate with the commissioners on that.

4 December 20th and 21st is currently open.
5 And that takes us through the end of the year.

6 **CHAIR GIOVANNI:** Okay.

7 So Ms. Kwan, I know that you had surveyed
8 the commissioners for their availability through the
9 end of the year. I, for one, have had some changes
10 in my plans, so I'll send you an update on my
11 availability. For example, I don't think I'll be
12 available December 20 and 21.

13 Okay. May I have a motion from a
14 commissioner to change the agenda sequence of items?
15 I'd like to suggest that we go to the - that we skip
16 the part where we may go into executive session and,
17 instead, proceed with a discussion and approval to
18 proceed with the proposed amendments to our Land Use
19 Commission Administrative Rules.

20 May I have a motion to modify the agenda
21 accordingly?

22 **COMMISSIONER OHIGASHI:** Mr. Chair, I so
23 move.

24 **CHAIR GIOVANNI:** Thank you, Commissioner
25 Ohigashi.

1 **COMMISSIONER YAMANE:** Mr. Chair, second.

2 **COMMISSIONER OHIGASHI:** Thank you,
3 Commissioner Yamane.

4 So we'll now proceed with a discussion and
5 approval to proceed with proposed amendments to the
6 Land Use Commission Administrative Rules.

7 **MR. ORODENKER:** Thank you, Mr. Chair. I'm
8 going to move over to the other table so that I can
9 answer questions.

10 **CHAIR GIOVANNI:** Very well. I'd just like
11 the record to show that we did not have any members
12 of the public present at this time, so I have not
13 asked for whether or not we have any public
14 testimony on this agenda item.

15 Ms. Kwan, has anybody submitted any
16 written testimony on this agenda item?

17 **MS. KWAN:** Ken Church submitted testimony
18 on September 29th. It is posted to the website.

19 **CHAIR GIOVANNI:** Thank you very much.

20 **MR. ORODENKER:** Thank you, Mr. Chair.

21 This is a preliminary request to the
22 commission for us to actually draft rule amendments.
23 We have had a number of Supreme Court and Federal
24 Court cases that have come down recently that
25 require modification of our rules. We've also had

1 some statutory amendments. And I'll go through
2 those briefly in a minute.

3 When we do a rule change, we usually also
4 go through and do administrative changes, changing
5 some of the archaic language to more modern
6 language, also changing things that are confusing so
7 that petitioners will know better how to handle
8 certain issues.

9 At this point, we're just asking for
10 permission to draft the changes. And in a future
11 meeting, we will come back to the commission. Prior
12 to that meeting, we will distribute proposed rule
13 amendments for the commission's review and the
14 public's review, and then we'll hold the meeting for
15 the commission's approval to submit those rules to
16 the Department of Business and Economic Development
17 and the Governor's Office for permission to go out
18 to public hearing on the rules. It's a very
19 complicated process.

20 The actual amendments can be modified at
21 that next meeting by the commission if so requested.
22 And we can make those changes then. Once we've
23 gotten approval from the Governor's Office to go out
24 for a public hearing, we will go take -- the
25 commission does not have to do this, by the way, the

1 public hearings on the rules. The staff can do it.
2 We'll ask for comments from the general public.
3 We'll probably hold a couple of meetings on a couple
4 of different islands. And then we will take those
5 comments, and if we feel that they justify further
6 amendment, we will come back to the commission again
7 with another version of the rules and then request
8 permission to submit those for approval by the
9 administration.

10 **CHAIR GIOVANNI:** Can I just ask you -- I'd
11 just like the record to show that Mr. Morris has
12 arrived and is now in attendance.

13 **MR. MORRIS:** And I apologize for my late
14 arrival. Excuse any inconvenience I've caused. I'm
15 sorry.

16 **CHAIR GIOVANNI:** If you want to talk,
17 you've got to hit this button.

18 **MS. KWAN:** Red light. Red light.

19 **MR. ORODENKER:** Red light.

20 **MS. KWAN:** There.

21 **MR. MORRIS:** So sorry for my late arrival.
22 Excuse me.

23 **CHAIR GIOVANNI:** There you go.
24 Back to you, Mr. Orodenker.

25 **MR. ORODENKER:** Okay. Once we submit the

1 final version to the Governor's Office, it goes to
2 -- well, it actually goes through DBEDT -- the
3 governor -- the B&F and then the Governor's Office,
4 and then we have to file them, assuming we get
5 approval, with the Lieutenant Governor's Office.
6 This process, in our experience, takes eight months
7 to a year. It's just not a quick process, and a lot
8 of that time is spent waiting for DBEDT and the
9 Governor's Office and B&F to revise the rules and
10 sign off on them.

11 So here we are. This is just the
12 beginning, and I will not go through some -- I
13 thought, on some of the areas that need to be
14 changed. We've actually identified about 42 places
15 where housekeeping amendments can be made to fix
16 grammar, spelling, and reflect our need for ADA
17 compliance.

18 There are four proposed areas where we
19 think the rules need to be amended that reflect
20 rulings in court cases. And there are another nine
21 additional definitions or new sections that clarify
22 how the rules are supposed to work and how -- what
23 information the petitioner's supposed to apply.

24 One of the areas that we're talking about
25 when changing the rules of a substantive nature is

1 something that we've dealt with in the past couple
2 of years, and that is if somebody asks for bonding
3 interpretation, we give it to them and they don't
4 agree with us, right now the rules don't say
5 anything about what happens. We've just been
6 treating it as a declaratory ruling. It will
7 continue to be a declaratory ruling, but for the
8 sake of petitioners, we're going to clarify the
9 process in the rules.

10 We're also looking at clarifying some of
11 the sustainability principles that are required in
12 applications as the process of developing
13 sustainability rules has changed and there's been
14 more information as to regard to what certain
15 requirements are for sustainability. We're going to
16 incorporate some of those -- that new thinking into
17 the rules so it's clear for the petitioners what
18 they have to do. Carbon neutrality was always an
19 amorphous term. Now they have better definitions of
20 what carbon neutrality is, for instance.

21 We're also talking about setting out any
22 rules to determine that a petitioner hasn't
23 presented significant evidence or met its burden of
24 proof without hearing from the other parties. In
25 other words, this gives us what in court would be

1 considered an ability to do summary judgment. So we
2 would hear the petitioner. If the petitioner didn't
3 come close to making their case, then no need to go
4 through the rest of the proceedings. We can just
5 render a decision to dismiss or to deny without
6 having to hear from OPSD or from the counties.

7 We also want to insert a provision that
8 allows us to dismiss a proceeding without prejudice
9 if a petitioner doesn't have time to complete the
10 process within the timeframe. And this is something
11 -- by the way, I forgot to mention that the AG will
12 be approving all of our proposed amendments before
13 they come back. This is something we'll be
14 discussing with the AG.

15 We're also proposing to set a specific
16 number and percentage of affordable housing and set
17 a definition at what staff feels is actually
18 affordable or Work First housing at a hundred
19 percent of median.

20 We're also proposing to ensure projects
21 have a commission of water resource management
22 allocation and approval as part of the petition. We
23 don't want to get into a situation where we've
24 overtaxed aquifer and find out afterwards that the
25 Commission of Water Resource Management is not going

1 to grant them permission to tap into the wells.

2 We're also talking about having the
3 sustainability coordinator sign off on things like
4 the drainage plans and things like that to update
5 our requirements or the county's requirements on
6 drainage. We ran into this with the cemetery
7 project that we -- we approved a couple of years
8 ago. And we were lucky that we had Dan Giovanni,
9 who has an engineering background, and some others
10 who recognized that the city and counties'
11 requirements on drainage were antiquated.

12 We'd also like to update special permit
13 decision-making to reflect the latest case law.
14 This came from a federal court decision, implying or
15 stating that our -- that our rules were not specific
16 enough and could be subjected to abuse.

17 We generally would like to clarify the
18 intent of the special permit section to make it
19 clear that when the SP process was used -- did you
20 turn me off?

21 **MS. KWAN:** I'm sorry.

22 **MR. ORODENKER:** It's okay. She shuts me
23 up all the time. Nothing new.

24 In other words, clarify when the SP
25 process is appropriate to be used so we don't have

1 this situation where we have petitioners submitting
2 special -- requests for special permits for, say, a
3 school or a hospital that is more appropriate for a
4 DBA. And that's kind of the heart of the rule
5 amendments we're talking about doing.

6 And at this point, what we'd like is the
7 commission's approval to move forward with making
8 amendments to the rules to present to the
9 commission. And if the commissioners have any
10 additional requests for amendments to the rules that
11 we would hear them now as well.

12 **CHAIR GIOVANNI:** Thank you, Mr. Orodenger.
13 So are you asking for immediate feedback on
14 additional things to seek, or no?

15 **MR. ORODENKER:** Not necessarily. I mean,
16 you'll have another opportunity when you see the
17 actual rules. If someone has something right now,
18 we can put it in right now, but I can understand if
19 the commission would prefer to see our proposed rule
20 amendments before they comment.

21 **CHAIR GIOVANNI:** So you talked a little
22 bit about the timing, the overall timing?

23 **MR. ORODENKER:** Yes.

24 **CHAIR GIOVANNI:** But I presume that there
25 will be a first draft that starts to be circulated

1 at some point.

2 **MR. ORODENKER:** Yes. We intend to have a
3 first draft -- what was the main date, Ariana? I
4 forgot.

5 **MS. KWAN:** 15th. November 15th.

6 **MR. ORODENKER:** In the commission's hands
7 by November 15th.

8 **CHAIR GIOVANNI:** November 15th?

9 **MR. ORODENKER:** Yeah.

10 **CHAIR GIOVANNI:** Wow, that's great. So in
11 six weeks you'll have a first draft. Could I ask
12 that -- will the commissioners have an opportunity,
13 upon receipt of that first draft, to give you
14 feedback within a given window of time, or is it --

15 **MR. ORODENKER:** We will submit that first
16 draft to the commissioners, we're hoping, two weeks
17 prior to the meeting. And then you will have up
18 until the day of the meeting and the day of the
19 meeting to comment on the rules.

20 **CHAIR GIOVANNI:** And if there's -- for
21 example, if there's an item that has come of
22 interest to one of our commissioners that we'd like
23 you to add or include, if you had not done so, is
24 that the appropriate window -- that window is still
25 open --

1 **MR. ORODENKER:** Yes. Yes. We can do
2 that. We will actually post the rules for the
3 public -- I think we have to post them --

4 **MS. KWAN:** Like one week.

5 **MR. ORODENKER:** A week before?

6 **MS. KWAN:** Yeah.

7 **MR. ORODENKER:** Well, actually, I think
8 it's less than that, but four or five days. But
9 that -- even if we post the rules, even if you don't
10 get your comments to us, we can still make the
11 amendments at the hearing via a motion and
12 incorporate those into the draft. It will still be
13 a draft that we will then submit to the Department
14 of Business and Economic Development and the
15 Governor for permission to go to public hearing.

16 **CHAIR GIOVANNI:** Okay. And the other
17 comment I was going to make on what you've already
18 said to us is I was very happy that you would
19 include consideration of what -- of -- to provide
20 guidance to the prospective petitioners on when it's
21 appropriate for special use permit versus a DBA and
22 vice versa, because that's been pretty problematic
23 over the last few years.

24 **MR. ORODENKER:** Yeah. That is an area of
25 concern for us, and one of the reasons we want to

1 codify it is that the counties have different
2 interpretations, and so we want to clarify for the
3 counties that when somebody asks them -- comes to
4 them and asks them what they should do, that, you
5 know, they can look at the rules and say, no, this
6 is -- the Land Use Commission is not going to let
7 you do this. You've got to do it as a DBA.

8 **CHAIR GIOVANNI:** Fair enough. Okay. So
9 before I entertain a motion, are there any questions
10 or comments by commissioners on what we've heard so
11 far?

12 Commissioner.

13 **COMMISSIONER LEE:** Mr. Chair, I have a
14 question.

15 **CHAIR GIOVANNI:** Please proceed. State
16 your name and -- first.

17 **COMMISSIONER LEE:** Thank you.
18 Commissioner Lee -- Brian Lee, I should say, so you
19 don't get confused with the other Lee.

20 Is the -- could the changes be presented
21 in a red line format so that we can better
22 distinguish the changes?

23 **MR. ORODENKER:** Yes, they will be. They
24 will be.

25 **COMMISSIONER LEE:** And then one other

1 question. What was the thinking on, if I heard
2 correctly, defining affordable housing is 100
3 percent of the area median income?

4 **MR. ORODENKER:** Well, the -- to be honest
5 with you, there's just been a lot of games played
6 with affordable housing over the past 20, 30 years.
7 And this is an attempt to deal with community input
8 that we've had saying, look, 140 percent of median
9 is not affordable, you know. And what happens -- or
10 what's been happening is that we've been leaving it
11 to the counties, and the counties are very lax about
12 it. And we've had situations where the only
13 affordable housing that's been built has been 120 to
14 140 percent of median. And that was not what the
15 commission intended.

16 I mean, this is just staff's opinion on
17 how to deal with the problems, so we're open to --

18 **COMMISSIONER LEE:** I thank you for -- I'm
19 just trying to understand your reasoning so that it
20 was clear -- I'm guessing so that it's clearer down
21 the line what the commission means when it says,
22 "affordable housing." Because as you're aware,
23 there are different definitions of affordable
24 housing. There's the HUD version. There's the
25 county version. And there's the layman's version,

1 right?

2 **MR. ORODENKER:** Yeah.

3 **COMMISSIONER LEE:** So I appreciate that
4 explanation. Thank you.

5 **MR. ORODENKER:** Thank you.

6 **COMMISSIONER OHIGASHI:** I have a question,
7 Chair.

8 **CHAIR GIOVANNI:** Commissioner Ohigashi.

9 **COMMISSIONER OHIGASHI:** Yes. That's my
10 name. I just wanted to ask --

11 **COMMISSIONER LEE:** We should sit away from
12 each other.

13 **COMMISSIONER OHIGASHI:** Yeah, yeah. I've
14 always wanted to (inaudible).

15 But what I wanted to make sure is that if
16 there are any changes due to any type of court
17 opinion or court -- that were noted in the proposed
18 rules, citation to those court rules so that -- or
19 court rulings, so that we can at least look it up
20 ourselves, too, and maybe get a gist of what was
21 going on and see how to address that.

22 **MR. ORODENKER:** Yeah. We will also submit
23 to the commissioners for their use a matrix that
24 shows where -- what the rule changes are about.

25 **COMMISSIONER OHIGASHI:** Thank you.

1 **CHAIR GIOVANNI:** Thank you.

2 Commissioner Okuda.

3 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

4 I have a short request. If it's possible
5 for you, Mr. Orodener, to consult with Mr. Morris,
6 Deputy Attorney General, to make sure we have
7 compliance to the extent necessary with this case
8 called Flores, F-L-O-R-E-S, dash Case, C-A-S-E,
9 Ohana versus University of Hawaii. That's 153
10 Hawaii 76. It's a 2023 Hawaii Supreme Court case
11 that came down just about, I think, six months ago.

12 We can debate whether it makes sense or
13 not, but if you can just indulge me, let me just
14 read two short paragraphs, which indicate possibly
15 that some type of Ka Pa'akai statement has to
16 accompany the rule change. And this is what the
17 supreme court said: Therefore, applying the Ka
18 Pa'akai framework to rulemaking, we hold that before
19 adopting rules, agencies must consider, number one,
20 the identity and scope of Native Hawaiian
21 traditional and customary rights affected by the
22 rule, if any; number two, the extent to which Native
23 Hawaiian traditional and customary rights will be
24 affected or impaired by the rule; and number three,
25 whether the proposed rules reasonably protect Native

1 Hawaiian traditional and customary rights if they
2 are found to exist as balanced with the state's own
3 regulatory right.

4 I'm leaving out the quotation marks and
5 the internal citations. And then this is what the
6 supreme court seems to say as far as what has to
7 accompany the -- you know, the proposed rules, and I
8 quote: "Although formal findings of fact and
9 conclusions of law are not required, agencies must
10 prepare a written statement summarizing the above
11 analysis prior to adopting a proposed rule and make
12 that analysis available to the public. When
13 undertaking this analysis, the agency is not
14 required to, quote, 'negative any and all Native
15 Hawaiian rights claims regardless of how implausible
16 the claimed right may be,' close quote.

17 Where no Native Hawaiian or right or
18 practices identified or implicated, the agency may
19 say so in a short statement and the need for the
20 analysis ends there. And that's the end of this --
21 the paragraph.

22 So my only request is if there can be a
23 review to see to what extent, and even if it's
24 necessary, to comply with this recent Hawaii Supreme
25 Court case. I know the dissent is Justice Eddins

1 saying this doesn't make any sense, but this seems
2 to be the ruling. Okay. Thank you.

3 **MR. ORODENKER:** Thank you, Commissioner.
4 We'll work with the Deputy Attorney General to make
5 sure that we adhere to those requirements.

6 **MS. KWAN:** Can we take (inaudible)? This
7 says the mike's not working. I don't know what
8 happened.

9 **CHAIR GIOVANNI:** Testing. Testing. Do we
10 have these microphones?

11 **MS. KWAN:** For the Zoom recording. Our
12 staff can no longer hear us, he said, and it says
13 the mike is not working, so I don't know.

14 **(Inaudible.)**

15 **CHAIR GIOVANNI:** Okay. We'll take a -- do
16 you want a five-minute -- okay. We'll take a five-
17 minute recess. Thank you.

18 **(Recess taken from 9:31 to 9:39 a.m.)**

19 **CHAIR GIOVANNI:** Hello. Back to you, Mr.
20 Orodenker. What is your request of this commission
21 at this time? Please reiterate.

22 **MR. ORODENKER:** At this point what we
23 would request from the commission is an approval to
24 proceed with drafting amendments to the rules, based
25 on the presentation that I made today by way of

1 motion, so that we can start working on the full
2 draft.

3 **CHAIR GIOVANNI:** Very well. Do I have a
4 motion to authorize staff to draft the proposed
5 amendments to the Land Use Commission Administrative
6 Rules?

7 **COMMISSIONER OHIGASHI:** So moved.

8 **CHAIR GIOVANNI:** So moved by Commissioner
9 Ohigashi. Do I have a second?

10 **COMMISSIONER ATTA:** I second.

11 **CHAIR GIOVANNI:** So moved -- seconded by
12 Commissioner Atta.

13 Would you like to speak to the motion,
14 Commissioner Ohigashi?

15 **COMMISSIONER OHIGASHI:** No.

16 **CHAIR GIOVANNI:** Can I implore you to
17 speak to the commission on your motion, whether
18 you'd like to or not?

19 **COMMISSIONER OHIGASHI:** I think it's self-
20 evident. I think it's time we move forward, so I'm
21 in support of this motion.

22 **CHAIR GIOVANNI:** Very well.

23 Any other comments on the motion before
24 us?

25 Commissioner Carr Smith?

1 **COMMISSIONER CARR SMITH:** Thank you. This
2 is discussion, right? So I was just curious whether
3 the counties will weigh in at all in terms of their
4 overlap with LUC rules?

5 **MR. ORODENKER:** Well, the counties were
6 noticed of this meeting and they knew what was on
7 the agenda. There will be an opportunity for public
8 input, which the counties can be a part of. There
9 will also be an opportunity for the counties to
10 comment at the next hearing that we have on this,
11 which is going to be a virtual meeting so everybody
12 can be present from all of the counties.

13 **CHAIR GIOVANNI:** I have a similar question
14 to that, which is maybe a corollary. Is it -- is it
15 appropriate for you to notify the -- for us to
16 notify the counties that this is going to go forward
17 and to request any suggested items for amendment
18 from the counties themselves?

19 **MR. ORODENKER:** We -- staff can do that if
20 that's -- if the commission would like. We haven't
21 in the past. We've just given them notification of
22 what we're proposing, and then they know they can
23 comment on it.

24 **CHAIR GIOVANNI:** Yeah. I think I'd like
25 to be a little more proactive in that respect. I

1 don't know where you're coming from, Commissioner,
2 but I think that the more that we can do to develop
3 consistency in views and the way we conduct our
4 business, that would be great, I mean, across the
5 state.

6 One of the problems is each county kind of
7 interprets for themselves. So when it comes to
8 rules that we -- that govern our process, it seems
9 if we give them an opportunity to weigh in on what's
10 important to them, it -- we might help read a little
11 more consistency across the state. So let me ask
12 that the staff reach out proactively as you draft
13 within the first six weeks to see if there are any
14 specific items that they would like to be in it --
15 have us address.

16 **MR. ORODENKER:** Okay. We can do that.

17 **CHAIR GIOVANNI:** Okay. Any other comments
18 on the motion? Okay. So Mr. Orodenker, are you --
19 put your Executive Director hat on and call for a
20 vote on the motion.

21 **MR. ORODENKER:** I believe we can do this
22 by voice vote, Chair. I don't think we need to --

23 **CHAIR GIOVANNI:** We don't need a roll
24 call?

25 **MR. ORODENKER:** No.

1 **CHAIR GIOVANNI:** Okay. All in favor of
2 the motion to authorize staff to develop proposed
3 amendments to our rules, signify by saying, "aye."

4 **(All said, "aye.")**

5 **CHAIR GIOVANNI:** Any opposed? Hearing
6 none, the motion is passed.

7 **MR. ORODENKER:** Thank you.

8 **CHAIR GIOVANNI:** Okay. Now let's go back
9 to the agenda item that we skipped over while we
10 were waiting for Mr. Morris to join us. And this is
11 an opportunity for us to go into executive session
12 to consult with our -- the commission's attorney
13 regarding issues pertaining to commission's powers,
14 duties, privileges, immunities, and liabilities
15 pertaining to this -- to status of outstanding
16 litigations involving Land Use Commission and,
17 secondly, the implications of the Governor's
18 Emergency Proclamation relating to housing.

19 Can I get a motion to enter executive
20 session?

21 **COMMISSIONER OHIGASHI:** I so move.

22 **COMMISSIONER KAHELE:** Second.

23 **CHAIR GIOVANNI:** Thank you, Commissioner
24 Ohigashi. Who was the second?

25 **COMMISSIONER KAHELE:** Kahele.

1 **CHAIR GIOVANNI:** Thank you, Commissioner
2 Kahele.

3 All in favor of the motion to go into
4 executive session, signify by saying, "aye."

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

6 **CHAIR GIOVANNI:** Any opposed? Hearing
7 none.

8 **(WHEREUPON, the Hawaii LUC Commission**
9 **entered executive session.)**

10 **CHAIR GIOVANNI:** Having concluded our
11 executive session, this concludes our meeting.

12 There is no further business. I declare this
13 meeting adjourned.

14 **(Meeting adjourned at 11:15 a.m.)**

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CERTIFICATE

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 19th day of October, 2023.

A handwritten signature in black ink, appearing to be 'Jodi Dean', is written over a horizontal line.

Jodi Dean