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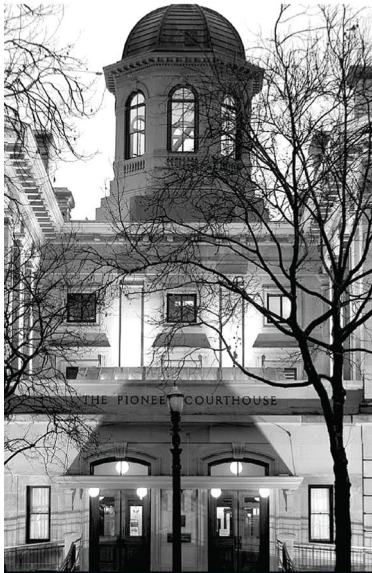
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**STATE OF HAWAII  
LAND USE COMMISSION**

Meeting held on March 7, 2024

Commencing at 10:00 a.m.

Held at

Leiopapa A Kamehameha  
State Office Tower, Room 405  
235 South Beretania Street  
Honolulu, HI 96813

**I. CALL TO ORDER**

**II. APPROVAL OF MINUTES**

February 7, 2024

**III. TENTATIVE MEETING SCHEDULE**

**IV. POSTPONEMENT OF PROPOSED ADMINISTRATIVE RULES**

Update from Staff regarding the proposed rule amendments and recommendation to postpone. The first draft of the rules and amendments were posted on November 7, 2023 and can be viewed online at: <https://luc.hawaii.gov/2023-admin-rules> or in person, by appointment only, at the Land Use Commission (LUC) office. To schedule an appointment to review the proposed rule amendments in person, please email [dbedt.luc.web@hawaii.gov](mailto:dbedt.luc.web@hawaii.gov) or call 808-587-3822.

**V. EXECUTIVE SESSION**

The Commission anticipates going into executive session pursuant to HRS Section 92-5 to consult with the Commission's Attorneys regarding issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pertaining to Civil No. 1:17-cv-00113-SOM-WRP (LUC Docket No. A87-617 DW 'Aina Le'a Development, LLC.)

**VI. ADJOURNMENT**

**BEFORE :**

**PARTICIPANTS**

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**LUC COMMISSIONERS:**

- Lee Ohigashi, Acting Chair (Via Zoom)
- Gary Okuda (Via Zoom)
- Goerge Atta
- Mel Kahele
- Brian Lee (Via Zoom)
- Michael Yamane (Via Zoom)
- Kuike Kamakea-Ohelo (Via Zoom)
- Nancy Carr Smith (Via Zoom)

**LUC STAFF:**

- Daniel Orodener, Executive Officer
- Scott Derrickson, LUC Chief Planner
- Martina Segura, LUC Planner
- Ariana Kwan, LUC Chief Clerk
- Daniel Morris, LUC Deputy Attorney General

**DEPARTMENT OF THE ATTORNEY GENERAL:**

- David Day, Deputy Attorney General
- Clara W.K. Kahahane, Deputy Attorney General

**OUTSIDE COUNSEL:**

- Sharon Lovejoy, Attorney, O'Toole Marcus & Fisher

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**PARTICIPANTS CONTINUED**

**PUBLIC TESTIMONY:**

Travis Hishinuma

1           **CHAIR OHIGASHI:** All right. Aloha mai  
2 kakou. Good morning. Ohayou-gozaimasu. Everybody  
3 looks like they're here. This is the meeting of the  
4 March 7th, 2024 Land Use Commission meeting. This  
5 is a hybrid meeting which is physically being held  
6 at the Leiopapa A Kamehameha, State Office Tower,  
7 Room 405, 235 South Beretania Street, Honolulu, and  
8 it's open to the public.

9           Court reporting transcripts are being done  
10 from this Zoom recording. For all meeting  
11 participants, I would like to stress the importance  
12 of speaking slowly, clearly, and directly into your  
13 microphone. Before speaking, please state your name  
14 and identify yourself for the record. This is a  
15 hybrid meeting. Please be aware that all meeting  
16 participants are being recorded on the digital  
17 record of the Zoom meeting, which will be posted to  
18 YouTube and used for court reporting purposes.

19           Your continued participation is your  
20 implied consent to be part of the public record of  
21 this event. If you do not wish to be part of the  
22 public record, you should exit the meeting now.  
23 Also, please note that due to matters entirely out  
24 of our control, occasional disruptions to  
25 connectivity may occur for one or more members of

1 the meeting at any given time. If such disruptions  
2 occur, please let us know and we'll be patient and  
3 try to restore audiovisual signals to effectively  
4 conduct business.

5 Please note that the Q and A feature, or  
6 question and answer feature, on Zoom will only be  
7 monitored for signing up for public testimony. All  
8 other communications will not be addressed or part  
9 of the meeting record. Communications can be  
10 emailed to our email address. It's  
11 [dbedt.luc.web@Hawaii.gov](mailto:dbedt.luc.web@Hawaii.gov). I will also share with  
12 you that we will be taking breaks from time to time  
13 and perhaps, if we go to lunch, a longer break for  
14 lunch.

15 My name is Lee Ohigashi, and it says here  
16 on my script that I have the pleasure, but I have  
17 the duty to serve as the LUC First Vice-Chair. We  
18 currently have nine seated commissioners. Along  
19 with me are Commissioners Gary Okuda, Mel Kahele,  
20 Kuikeokalani Kamakea-Ohelo, who we'll be calling  
21 Kuike from now on, is broadcast, and George Atta,  
22 Michael Yamane, Brian Lee, Nancy Carr Smith. And  
23 the guy who made me do this today is excused. Dan  
24 Giovanni is excused from this meeting.

25 Also in attendance are LUC Executive

1 Officer Daniel Orodener, LUC Chief Planner Scott  
2 Derrickson, LUC Staff Planner Martina Segura, LUC  
3 Chief Clerk Ariana Kwan, and LUC Attorney General  
4 Dan Morris.

5           Again, court reporting transcripts are  
6 being done from this Zoom recording. Are there any  
7 questions? Seeing none, we'll move to the next item  
8 on the agenda, which is the adoption of minutes.  
9 Our first order of business is to adopt the February  
10 7th, 2024 minutes. Do we have a motion?

11           **COMMISSIONER YAMANE:** Mr. Chair, I'd like  
12 to move that we approve the minutes of February 7th,  
13 2024.

14           **CHAIR OHIGASHI:** Okay. It's been moved.  
15 However, before we receive a second, I forgot to ask  
16 Ms. Kwan, has there been any written testimony  
17 submitted on the February 7th, 2024 minutes?

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

19           **CHAIR OHIGASHI:** Are there any members of  
20 the public who signed up to testify on the adoption  
21 of the February 7, 2024 minutes?

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

23           **CHAIR OHIGASHI:** Okay. Seeing none, we  
24 have a motion made by Commissioner Yamane. Is there  
25 a second?

1                   **COMMISSIONER KAMAKEA-OHELO:** Chair, it's  
2 Kuike. Second.

3                   **CHAIR OHIGASHI:** Second by Kuike,  
4 Commissioner Kuike that we adopt the minutes of  
5 February 7, 2024. All in favor of adoption of the  
6 minutes, say, "aye."

7                   **(All said, "aye" except Commissioner Lee.)**

8                   **COMMISSIONER LEE:** Chair Ohigashi, this is  
9 Commissioner Lee. I'm going to abstain since I was  
10 not present at the last meeting.

11                  **CHAIR OHIGASHI:** All right. I'll grant  
12 you that.

13                  Anybody opposed? The minutes are adopted.  
14 Thank you.

15                  Mr. Orodenker, what's next?

16                  **MR. ORODENKER:** Thank you, Mr. Chair. I  
17 will go through the proposed meeting schedule in  
18 just a moment, but before I do I'd like to ask the  
19 Attorneys General what --

20                  **COMMISSIONER CARR SMITH:** I don't think we  
21 can hear him very well.

22                  **MR. ORODENKER:** Okay. I would like to ask  
23 the Attorneys General ---

24                  **CHAIR OHIGASHI:** Mr. Orodenker. Mr.  
25 Orodenker, you forgot my instructions. You have to

1 speak directly into the mic and louder.

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

3 Before I begin my presentation on the tentative  
4 meeting schedule, I would like to ask the Attorneys  
5 General who are representing the Land Use Commission  
6 on agenda item number 5 to identify themselves for  
7 the record.

8 **MR. DAY:** Okay. Good morning, everybody.  
9 Dave Day. I'm the Special Assistant to the Attorney  
10 General.

11 **MS. KAHAHANE:** Good morning. Ciara  
12 Kahahane, Deputy Attorney General.

13 **MS. LOVEJOY:** Good morning. Sharon  
14 Lovejoy. I'm outside counsel retained by the AG's  
15 Office for a particular case. I'm with Starn,  
16 O'Toole, Marcus and Fisher.

17 **MR. ORODENKER:** Thank you.

18 The tentative meeting schedule is as  
19 follows: March 20th and 21st, we do not have  
20 anything currently scheduled. April 3rd and 4th, we  
21 will be on Oahu for the Halekua Development status  
22 report on April 3rd. On April 4th, we will also be  
23 on Oahu for the Halekua Development motion to amend.  
24 April 17th and 18th is currently open; however, that  
25 may change.



1 On May 20th -- in May 2024, on the 8th of  
2 May, we will be having a status report on Maui from  
3 AMFAC HHFDC. On May 21st and 22nd, we will be on  
4 Oahu for the Waimanalo Gulch matter. On June 5th  
5 and 6th, we will hold hearings on June 5th on  
6 Waimanalo Gulch, if necessary. And on June 6th, an  
7 update on the proposed rule amendments. On June  
8 19th, we will be on Maui for the Central Maui  
9 Landfill status report, and on the 20th we will be  
10 getting a status report from COM DHHC.

11 We are tentatively scheduling commissioner  
12 training for July 10th and 11th. I point out again  
13 that that's tentative, but we are intending to do  
14 some kind of training in July or August.

15 On July 24th, we have tentatively  
16 scheduled a status report from Emmanuel Lutheran.  
17 August currently is open, although our understanding  
18 is that we will be having a couple of SPs submitted  
19 that may take up those meeting dates. On September  
20 11th and 12th and 13th is HCPO, and that takes us  
21 through to October.

22 **CHAIR OHIGASHI:** Finished? Thank you, Mr.  
23 Executive Director.

24 Commissioners, do you have any questions?  
25 All right. Hearing none, our next order of business

1 is the postponement of proposed administrative  
2 rules.

3 Ariana, are there any members of the  
4 public who wish to provide testimony in this matter?

5 **MS. KWAN:** We received one written  
6 testimony, and it's been posted to the website, and  
7 we do have one person in the room who would like to  
8 give testimony on the matter.

9 **CHAIR OHIGASHI:** Okay. And I guess --

10 **MS. KWAN:** He's taking the chair now.

11 **CHAIR OHIGASHI:** Can you please state your  
12 name?

13 **MR. HISHINUMA:** Thank you, Land Use  
14 Commission. My name is Travis Hishinuma. I'm a  
15 Honolulu resident and current student at the  
16 Richardson School of Law.

17 **CHAIR OHIGASHI:** Okay. And is it okay if  
18 I swear you in?

19 **MR. HISHINUMA:** Yes.

20 **CHAIR OHIGASHI:** Okay. Can you raise your  
21 hand? Do you swear or affirm that the testimony  
22 you're about to give is the truth?

23 **MR. HISHINUMA:** I swear.

24 **CHAIR OHIGASHI:** And we have allotted two  
25 minutes for your testimony. Would you please begin

1 and tell us if you represent anybody or --

2 **MR. HISHINUMA:** I'm here on behalf of  
3 myself. I had submitted a written testimony, and I  
4 stand by what I have submitted. But I would also  
5 like to add that -- I guess, propose a way for the  
6 rules to be amended that would be in compliance with  
7 current Hawaii law.

8 I'm not an expert on this matter, and I've  
9 only done, like, preliminary research, but the trend  
10 seems to be with the Hawaii Supreme Court that for  
11 the automatic approval of any permits under HRS 91-  
12 13.5, it seems that they would allow delay of that  
13 automatic approval if the petitioner for that permit  
14 was given notice and would consent to the delay of  
15 the automatic process. So if you could maybe take  
16 that into consideration while considering the  
17 amendments to the rules. Thank you.

18 **CHAIR OHIGASHI:** Thank you. Thank you for  
19 your testimony.

20 Are there any comments or questions that  
21 the Commissioners may have of this individual?

22 Gary? Commissioner Okuda, is that you?

23 **COMMISSIONER OKUDA:** Yes, it is, Mr.  
24 Acting Chair.

25 **CHAIR OHIGASHI:** Okay.

1           **COMMISSIONER OKUDA:** Thank you very much  
2 for coming to testify. Just so that, you know,  
3 people who might be just tuning in to this Zoom call  
4 but for whatever reason have not read your written  
5 testimony, can you summarize what your main point or  
6 points are in maybe one minute?

7           **MR. HISHINUMA:** Sure. So I'm in support  
8 of postponing the amendment of the rules because  
9 there is concern about the language that's being  
10 used. I think Mr. Chipchase had went to the  
11 previous public meeting -- or the first public  
12 hearing for the amendment rules, and he had brought  
13 up concerns about due process and abuse of admin  
14 powers, which I do agree with. And I just want the  
15 Commission to basically take more time in crafting  
16 better language that would be consistent with  
17 current Hawaii admin rules.

18           **COMMISSIONER OKUDA:** Can you just give a  
19 short example of what type of improvement in  
20 language you would suggest, just as an example?

21           **MR. HISHINUMA:** Yeah. So for example, one  
22 of the provisions says that if a permit is  
23 automatically approved under HRS 91-13.5, that that  
24 permit would have to go to, I believe it was the --  
25 one of the boards for water use, to get approval for

1 that permit in order to be, quote, unquote,  
2 "officially approved." So that is inconsistent with  
3 the Hawaii legislature's intent for the statute,  
4 which was to give permit applicants a way to have, I  
5 guess, a way to get finality on whether their permit  
6 would be approved or not, and then would put the  
7 burden on any agency to timely either approve or  
8 disapprove of their permit, which is why they give  
9 that -- if nothing is done under -- within 45 days,  
10 that the permit would automatically be approved.

11 So the way that the amended rules have  
12 been drafted would put a condition when that permit  
13 is automatically approved, which would probably be  
14 contested in future litigations.

15 **COMMISSIONER OKUDA:** Okay. Do you know of  
16 any legal authority which would render the rule or  
17 the proposed rule which requires, for example,  
18 approval by the Water Commission? Are you aware of  
19 any legal authority which would render the rule  
20 invalid? Specific legal authority like can you cite  
21 to a statute or a case?

22 **MR. HISHINUMA:** So there is a case of  
23 Kauai Springs case versus the City and County of  
24 Kauai, I think. I put in -- I cited it within my  
25 written testimony, so you can look at that. But

1 that case was about one of the -- one of the  
2 businesses, their permits were automatically  
3 approved under that statute.

4 But the City and County of Kauai had kind  
5 of said that, no, it's not automatically approved  
6 because your conduct within this case had implied  
7 that you had accepted a delay of approval under HRS  
8 91-13.5, so it's not really -- it's not really, I  
9 guess, similar to what I had proposed, but it's a  
10 contention that -- or they had said that it would be  
11 okay for an applicant to be notified that there are  
12 certain conditions to where even if your permit is  
13 approved under 91-13.5, that you must, you know,  
14 consent to that delay of that automatic approval.

15 So I was just voicing my concern that the  
16 way that the amended rules was drafted, it seems  
17 that the Commission is not looking for any consent  
18 to the condition. It seems like if your permit is  
19 automatically approved, that this condition attaches  
20 without any input from the applicant.

21 **COMMISSIONER OKUDA:** Okay. I see. You  
22 raise a very good point about due process and an  
23 opportunity to be heard, but real fast last  
24 questions. Would you agree or disagree that Kauai  
25 Springs basically stands for the fact that

1 government agencies have the public trust duty over  
2 certain resources such as water?

3 **MR. HISHINUMA:** I would agree with that  
4 statement, yes.

5 **COMMISSIONER OKUDA:** And would you agree  
6 or disagree that one of the holdings in Kauai  
7 Springs is where a government agency does not  
8 exercise its trust obligations, that can render the  
9 decision invalid?

10 **MR. HISHINUMA:** I would agree with that,  
11 yes.

12 **COMMISSIONER OKUDA:** And would you agree  
13 or disagree that one of the trust obligations that  
14 government agency has or have is to protect water  
15 resources?

16 **MR. HISHINUMA:** I would agree with that.

17 **COMMISSIONER OKUDA:** And in fact, since  
18 all title traces back to Kamehameha III, as part of  
19 the Great Mahele, and the King set up the Hawaiian  
20 legal system based on American law, we in Hawaii,  
21 holders of title, we only get -- or we can't get  
22 more than what the King deeded out originally in the  
23 Mahele. Would you agree with that?

24 **MR. HISHINUMA:** I'm not familiar with  
25 Hawaiian history, so I would defer to your

1 expertise.

2 **COMMISSIONER OKUDA:** Well, would you agree  
3 or disagree, or you have no opinion that Kamehameha  
4 III, as part of the Mahele, never deeded out title  
5 to water?

6 **MR. HISHINUMA:** So like I say, I'm not  
7 familiar with Hawaiian history, so I would just  
8 defer to other expert opinions on that matter.

9 **COMMISSIONER OKUDA:** Yeah. If the  
10 evidence shows that King Kamehameha III and the Land  
11 Commission through the Mahele did not deed out title  
12 to water either at the time of the Mahele or any  
13 time thereafter, would you agree or disagree or have  
14 no opinion that that would be evidence that  
15 indicates that the State of Hawaii's trust  
16 obligation regarding water may in fact be at a  
17 higher level than other resources where private  
18 title was in fact deeded out and vested?

19 **MR. HISHINUMA:** If the evidence does show  
20 that, then I would agree with that.

21 **COMMISSIONER OKUDA:** Okay. And just for  
22 way of background, what year are you at Richardson  
23 Law School?

24 **MR. HISHINUMA:** I'm a 3L, and I'm  
25 graduating this May.



1           **COMMISSIONER OKUDA:** Oh, okay. You know,  
2 thank you, thank you, thank you for coming here to  
3 testify. You know, I think the fact that you're  
4 here to testify shows the foresight of people like  
5 Former Chief Justice William Richardson of setting  
6 up the local law school. So thank you very much for  
7 taking your time to testify.

8           Mr. Chair, I have no further questions.

9           **CHAIR OHIGASHI:** Are there any other  
10 persons -- Commissioners have any questions?

11           I don't have any questions, so thank you  
12 for your testimony.

13           **MR. HISHINUMA:** Thank you very much,  
14 Commissioner.

15           **CHAIR OHIGASHI:** And good luck.

16           All right. Are there any other witnesses  
17 who care to testify?

18           **MS. KWAN:** Nobody else in the room and  
19 nobody signed up using the Q and A on the Zoom.

20           **CHAIR OHIGASHI:** Okay.

21           Mr. Executive Director, I think you should  
22 begin your presentation.

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

24           My presentation is extremely brief. We've  
25 decided to postpone further work on the rules

1 because there are a number of bills that are  
2 currently moving through the legislature that  
3 specifically require that the LUC draft rules to  
4 conform with those measures.

5           They're HB1542 relating to land use, which  
6 allows the counties to deviate to rural via  
7 declaratory ruling process under certain  
8 circumstances; HB1923, which allows overnight  
9 camping in the agricultural district; HB2146, which  
10 permits agricultural tourism and requires the LUC to  
11 promulgate rules; HB2505, which creates fines for  
12 violating Chapter 205; and HB1599, which concerns  
13 information and how to testify electronically; and  
14 SB3159 relating to contested cases.

15           Given the number of rules and measures  
16 that would require rule changes, we have decided --  
17 or are requesting that the -- we be allowed to  
18 postpone rulemaking until sometime in June. For the  
19 Commission's knowledge, we have met with OPSD, the  
20 counties, and various private sector and interested  
21 parties, including Cal Chipchase, who was mentioned  
22 earlier, and already incorporated those comments  
23 into our current draft of the rules, which is not up  
24 on the website yet because we're still working on  
25 it, but it should be up soon.

1 So if there are any questions, I'd be more  
2 than happy to answer them.

3 **CHAIR OHIGASHI:** Are there any questions  
4 for the Executive Director?

5 Commissioner Lee?

6 **COMMISSIONER LEE:** Thank you, Chair.

7 Yes, I had a question for Mr. Orodener.  
8 You mention some of the bills that were up, and I  
9 noticed that you testified on certain bills, and I  
10 just wanted to see what everyone thought because  
11 it's not clear, when I see the testimony, if you are  
12 speaking for yourself or on behalf of the entire  
13 Commission. And I kind of have some concerns on  
14 that.

15 I think it would be better if you didn't  
16 get any message or consensus from the Board or  
17 discussion, that it should be clear that your  
18 testimony is your testimony and that it doesn't  
19 represent any decisions from the Board, and so I  
20 just wanted to put that out there and see if other  
21 people have any thoughts.

22 I know it's a matter of expediency  
23 sometimes. It's not really possible to bring all  
24 the bills to the Board and have us vote on them or  
25 discuss them, but some other boards, some other

1 state boards do that, or they have a legislative  
2 committee chair, which I don't think that would work  
3 here. But they do have the Executive Director of  
4 the Administrator say that they haven't consulted  
5 with the Board yet or this is how they feel, so I  
6 just wanted to see how you thought would be the best  
7 approach on that.

8 **MR. ORODENKER:** Commissioner, we -- that  
9 hasn't been the practice of the Land Use Commission  
10 with regard to testimony. We have had legislative  
11 committees in the past, but what often happens is  
12 that we don't get a bill that's moving through the  
13 legislature, and we don't get the latest draft of  
14 the bill until a couple of days before the hearing  
15 is set to be scheduled. And all of a sudden, a bill  
16 that we had no interest in has something that  
17 involves the Land Use Commission.

18 Generally, we have not been testifying in  
19 opposition to any bills. We've been offering  
20 suggestions for amendments or testifying in support.  
21 I'm not sure how to handle that particular  
22 situation. I haven't heard of any boards or  
23 commissions that don't authorize staff -- state  
24 boards or commissions that don't authorize staff to  
25 testify on various measures.

1           There's also a committee in the Governor's  
2 Office that sometimes instructs us as to what our  
3 position should be. There are a lot of moving  
4 parts, so maybe this warrants further discussion,  
5 but I'm not sure how to handle that particular  
6 situation.

7           **COMMISSIONER LEE:** Okay. Thanks. I  
8 understand the concern. I bring this up because  
9 there are -- and I understand the Governor's Office,  
10 you know, leading and advising people to --  
11 administrators to support one bill or another, but  
12 there are many other boards that make it clear that  
13 when someone is testifying, they're testifying for  
14 themselves, and that they did not get that support  
15 or opposition as being representative of the entire  
16 Commission, you know, that there was a vote or any  
17 discussion.

18           For example, Contractor's License Board or  
19 HCDA, the Administrator and Executive Director will  
20 say, "I'm testifying on my behalf as the Executive  
21 Director, but I haven't consulted or we've not  
22 discussed this at the board level yet. We'll do  
23 that next month or so forth," so --

24           **CHAIR OHIGASHI:** Commissioner Lee, I think  
25 that this is a discussion that goes outside the

1 agenda item in this proper matter, and maybe we  
2 should agendize a matter to discuss this -- on  
3 proper agenda to discuss this matter more fully, and  
4 I don't expect that to be as part of the -- I don't  
5 think that -- I think that there would be a fruitful  
6 discussion; however, at this time, I think that we  
7 should move onto these particular amendments and  
8 discuss your issue.

9           **COMMISSIONER LEE:** Okay. How would we do  
10 that? Because certain boards will even list the  
11 bills. And even their Sunshine Law that applies to  
12 this, you know, the bills that would be discussed at  
13 future agenda meetings, specifically, before it's  
14 properly agendized.

15           And I bring this up because there was  
16 testimony about the multiple lots -- multiple houses  
17 on single lots, and I saw that the Land Use  
18 Commission testified in support of that, but it's  
19 not clear. And it almost -- it represents that we  
20 all agree to this, to many observers, so I  
21 appreciate what you're saying, and I look forward to  
22 that future discussion.

23           **CHAIR OHIGASHI:** And I'm not saying that  
24 that discussion shouldn't take place soon or that  
25 that discussion can't take place between you and the

1 Executive Director in order to try and map out a  
2 policy, and I would hope, Commissioner Lee, that you  
3 speak directly to the Executive Director and deal  
4 with it. I don't think that violates any Sunshine  
5 Law and try and bring this matter to our attention  
6 and discuss the matter, ways we can do that. Is  
7 that okay?

8 **COMMISSIONER LEE:** Yes. Thank you, Chair.  
9 I think it would be clearer if testimony until we do  
10 that -- and I'll have that discussion, but that any  
11 position is that of the Executive Director and not  
12 necessarily that of the entire Board. Thank you.

13 **CHAIR OHIGASHI:** I understand, but I think  
14 that -- I don't want to be the lawyer for the LUC at  
15 this point in time, but I'm just concerned that we  
16 have an agendized matter to postpone a certain  
17 matter. And rather than take that issue up and have  
18 the Board discuss it, it would be outside of that  
19 scope of our agenda. So I don't want to make any  
20 violations with my first attempt to be Acting Chair.

21 So I would suggest that you discuss that  
22 with Mr. Orodener, our Executive Director, and he  
23 can -- he and you can figure out when is the best  
24 time to have the Commission meet and discuss this  
25 matter as soon as, hopefully, before the session or

1 before any more testimony occurs. Thank you.

2 **COMMISSIONER LEE:** Thank you, Chair.

3 **CHAIR OHIGASHI:** All right.

4 Are there any more questions that you --  
5 are there any more questions that the Commissioners  
6 may have of the Executive Director? Hearing none.

7 Does this require an action on the part of  
8 the Commission, a motion to postpone, or is this --  
9 can we just do it?

10 **MR. ORODENKER:** I don't believe it  
11 requires any formal vote, Mr. Chair. I think it's  
12 --

13 **CHAIR OHIGASHI:** Being that --

14 **MR. ORODENKER:** -- more Staff informing  
15 the Commission as to what their position is.

16 **CHAIR OHIGASHI:** So seeing that -- hearing  
17 that, I'd like to move to the next agenda item,  
18 which would be our -- just a minute.

19 Do we have any additional testifiers on  
20 this particular issue?

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

22 **CHAIR OHIGASHI:** I think that -- I think I  
23 have to do a second sweep. So with that, what we  
24 would move to is a fifth action on our order of  
25 business, and it is a request for Executive Session



1 to discuss our next agenda item. And I would like  
2 -- I don't have the agenda item.

3 What's the next agenda item, the topic,  
4 Mr. Executive Director?

5 **MR. ORODENKER:** The next agenda item is to  
6 consult with the Commission's Attorney regarding  
7 issues pertaining to the Commission's powers,  
8 duties, privileges, immunities, and liabilities  
9 pertaining to Civil No. 1:17-cv-0013-SOM-WRP (LUC  
10 Docket No. A87-617 DW 'Aina Le'a Development, LLC.)

11 **CHAIR OHIGASHI:** Are there any -- Ariana,  
12 are there any members of the public who wish to  
13 provide testimony or have provided written testimony  
14 in this matter?

15 **MS. KWAN:** None in the room and seeing  
16 none in the Q and A.

17 **CHAIR OHIGASHI:** Has there been any  
18 written testimony on this matter?

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

20 **CHAIR OHIGASHI:** All right. I'd like to  
21 ask to get -- I'd like to get a motion to enter  
22 Executive Session and for all the LUC Staff to  
23 remain in the room for an update presentation.

24 **COMMISSIONER KAMAKEA-OHELO:** Chair, this  
25 is Kuike.

1 COMMISSIONER CARR SMITH: So moved --

2 COMMISSIONER KAMAKEA-OHELO: Oh --

3 COMMISSIONER CARR SMITH: Oh, sorry.

4 COMMISSIONER KAMAKEA-OHELO: Go ahead.

5 Chair, this is Kuike. I move that we go  
6 into Executive Session.

7 CHAIR OHIGASHI: Okay.

8 COMMISSIONER CARR SMITH: I'll second  
9 that.

10 CHAIR OHIGASHI: Okay. It's been moved by  
11 Commissioner Kuike and seconded by Commissioner  
12 Smith. All those in favor, please raise your hand?

13 (All said, "aye.")

14 CHAIR OHIGASHI: We have what? One, two,  
15 three, four, five, six, seven. Eight, is there  
16 eight?

17 COMMISSIONER YAMANE: Eight.

18 CHAIR OHIGASHI: Eight, okay.

19 At this point in time, we'll move into  
20 Executive Session.

21 (WHEREUPON, the LUC went into Executive  
22 Session from 10:36 a.m. to 11:49 a.m.)

23 CHAIR OHIGASHI: Everybody present? We're  
24 back for a regular session from Executive Session.

25 And Executive Session considered was for the

1 purposes and dealt with and where we consulted with  
2 our -- the Commission's Attorneys regarding the  
3 Commission's powers, duties, privileges, immunities,  
4 and liabilities pertaining to Civil No. 1:17-cv-  
5 00113-SOM-WRP (LUC Docket No. A87-617 DW 'Aina Le'a  
6 Development, LLC.)

7 In our Executive Session, we discussed the  
8 status of the litigation, the various opportunities  
9 afforded in that litigation, and the various motions  
10 that had been filed prior to this matter being  
11 appealed.

12 Is that sufficient, Mr. Morris?

13 **MR. MORRIS:** Yes, it is.

14 **CHAIR OHIGASHI:** Okay. Prior to here is  
15 that I'm to ask if there is any additional public  
16 witnesses that have been -- that have been present  
17 or requesting to be heard in this matter? Are there  
18 any, Ariana?

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

20 **CHAIR OHIGASHI:** Seeing that there is no  
21 additional testimony and that we have completed our  
22 agenda items, do I need to ask for a -- this  
23 concludes our meeting.

24 Is there any further business or any  
25 further discussion in this matter?

1 Thank you for making my first meeting that  
2 I chaired so smoothly and wonderful. This meeting  
3 is adjourned.

4 (WHEREUPON, the Hawaii LUC meeting  
5 adjourned at 11:52 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 22nd day of March, 2024.

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

Jodi Dean