

LAND USE COMMISSION  
MEETING MINUTES  
April 23, 2025 – 9:30 a.m.

Pursuant to Hawai'i Revised Statutes, HRS §92 as amended, the Commission conducted its meeting in hybrid format. Interested persons submitting written testimony were recommended to submit their written Statements 24 hours in advance of the meeting to allow for distribution to the Commission prior to the meeting.

LOCATION: The Arc of Hilo, 1099 Waianuenue Ave, Hilo, HI 96720  
VIRTUAL: <https://us02web.zoom.us/j/81327298875?pwd=rtosafqDKr8IEUyAEjDVqQmbzjFY4N.1>  
YOUTUBE RECORDING: <https://www.youtube.com/watch?v=XuRNLphb-HU>

COMMISSIONERS PRESENT:

Dan Giovanni (Zoom)  
Michael Yamane (Zoom)  
Mel Kahele  
Brian Lee  
Nancy Carr Smith  
Bruce U'u  
Myles Miyasato

STAFF PRESENT:

Daniel Orodener, Executive Officer  
Martina Segura, Staff Planner  
Ariana Kwan, Chief Clerk  
Miranda Steed, Esq. Deputy Attorney General

COURT REPORTER:

Naegeli Deposition and Trial  
(Via Zoom Recording)

COMMISSIONERS ABSENT:

Ken Hayashida  
Kū'ike Kamakea-Ōhelo

**CALL TO ORDER** (YouTube: 00:00:06-00:02:58)

First Vice Chair Yamane, called the meeting to order at 9:40 a.m.

**STATUS UPDATE AND POSSIBLE ACTION ON DOCKET NO. SP73-159 TOYAMA GARDENS DBA NANI MAU GARDENS (HAWAI'I)** (YouTube: 00:03:00-01:17:13)

Discussion and action (if necessary) on the status and progress report concerning compliance with the 10th Amendment to the Land Use Commission Special Use Permit Decision and Order issued on December 4, 2009. Files pertaining to this docket are available at:

<https://luc.hawaii.gov/sp73-159> Parcel information: TMK No. 2-2-048:013, approximately 23.793 acres located in Waiākea, South Hilo, Hawai'i.

**Appearances**

**Petitioner: Nani Mau Gardens**

Sidney Fuke  
Thomas Yeh, Esq.  
Susan Osborne  
Cindy Cui

**Office of Planning and Sustainable Development  
("OPSD")**

Alison Kato, Esq. Deputy Attorney General  
Mary Alice Evans  
Aaron Setogawa

**County of Hawai'i Planning Department**

Jean Campbell, Corporation Counsel  
Jeff Darrow, Planning Director  
Michelle Ahn  
Christian Kay

**Public Testimony**

Tierney McClary  
Esther Cazimero



### **Disclosures and Conflicts of Interest**

Commissioners Carr Smith and Miyasato acknowledged that they know multiple meeting participants but have no associated financial interests. Both Commissioners Carr Smith and Miyasato stated they believed they could remain impartial and fair. There were no objections to their continued participation.

### **Public Testimony Round One**

The Land Use Commission received four testimony submittals on the matter, and they were posted to the Land Use Commission website prior to the start of the hearing. There were two members of the public; Tierney McClary and Esther Cazimero that provided testimony in support of the matter at this time.

### **Presentations**

Petitioner presented their status report, which included information on the current use and permitting within the Petition area of SP73-159. Petitioner apologized for not filing the annual reports with the LUC, and affirmed future filings of annual reports with the LUC.

Commissioners asked questions regarding duration and termination dates of special permit, burden of conditions, status of complaints and violations, and the owner's vision for the property.

The County of Hawai'i Planning Department Director Jeff Darrow, provided some background on the annual report Condition from the County perspective, and shared continued support for working with Petitioner.

Commissioners asked the County of Hawai'i Planning Department questions regarding upcoming events being held on the property within the permitted area, application and status on rezoning, and the transaction of the school area and property, and the special permit processes with uses in perpetuity vs. district boundary amendments.

The Office of Planning and Sustainable Development presented their position in support of the County and Applicant, and noted termination dates on special permit applications should be determined on a case-by-case basis.

### **Public Testimony Round Two**

During the second opportunity for public testimony, there were no members of the public who wished to provide new or additional public testimony.

### **Deliberations**

The Land Use Commission found that the status report was sufficient, and with ongoing annual report submittals. No action was taken on the matter.

### **REPORT ON NINTH CIRCUIT COURT FINAL DECISION ON DW AINA LE'A DEVELOPMENT, LLC V. STATE OF HAWAI'I LAND USE COMMISSION** (YouTube: 01:17:45 - 01:21:30)

The United States Court of Appeals for the Ninth Circuit Court issued a memorandum (<https://files.hawaii.gov/luc/docs/Memorandum.pdf>) on February 19, 2025, affirming the district court's ruling in favor of the State of Hawai'i Land Use Commission in the case brought by DW Aina Le'a Development, LLC.

Pursuant to Section §92-4 & §92-5, HRS, the Commission may go into Executive Session in order to consult with its attorney(s) on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.



## **Public Testimony Round One**

During the first opportunity for public testimony, there were no members of the public who wished to provide public testimony.

Commissioner Carr Smith moved to enter executive session, and Commissioner Lee seconded the Motion. The motion passed with 7 ayes, and 2 absent, the Commission entered executive session at 11:20 a.m.

## **EXECUTIVE SESSION** (YouTube: 01:20:47 - 01:20:53)

During the executive session Commissioners consulted with its legal counsel on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding agenda item 3, the final decision on DW Aina Le'a Development, LLC. v. State of Hawai'i Land Use Commission.

At 11:45 a.m. Commissioner Giovanni moved to exit executive session, and Commissioner Carr Smith seconded the motion. The motion passed with 7 ayes, 0 nays, and 2 absent. The Commission returned to the open session at 11:47 a.m.

## **Public Testimony Round Two**

During the second opportunity for public testimony, there were no members of the public who wished to provide new or additional public testimony.

## **APPROVAL OF MINUTES FOR FEBRUARY 19, 2025** (YouTube: 01:21:32-01:22:28)

The next agenda item was the approval of the February 19, 2025, Minutes. There was no written testimony, or members of the public who wished to testify to the approval of the Minutes.

Commissioner Miyasato moved to adopt the February 19, 2025, and Commissioner Carr Smith seconded the motion. The February 19, 2025, Minutes were approved with 6 ayes, 0 nays, 2 absent, and 1 recusal.

## **TENTATIVE MEETING SCHEDULE** (YouTube: 01:22:29-01:51:47)

First Vice Chair Yamane called for LUC Staff to provide the Tentative Meeting Schedule. Executive Officer, Daniel Orodener provided the following tentative meeting dates:

- May 7, 2025: A87-610 Informational Briefing to the Commission (O'ahu)
- June 4, 2025: A92-686 AMFAC Status Report (Maui)
- June 18, 2025: A17-804 Hawaiian Memorial Park Status Report (O'ahu)
- July 9, 2025: A02-737 U of N Bencorp (Hawai'i)

Commissioner Lee made a motion for an agenda item to be added to the May 7, 2025, meeting for discussion and action on election of Commission officers for fiscal year 2026. Commissioner Giovanni seconded the motion. The motion passed with 7 ayes, 0 nays, and 2 absent.

Commissioner Lee also made a motion for the annual evaluation of the Executive Officer be placed on the May 7, 2025, agenda, Chair Giovanni seconded the motion. Before the vote was taken, Deputy Attorney General Steed informed the Commissioners that no votes should occur during this agenda item pursuant to HRS §92 and LUC Administrative Rules. Chair Giovanni agreed to agendaize the matter.

## **ADJORNMENT** (YouTube: 01:51:25 - 01:51:39)

With no further business to attend to on the agenda, First Vice Chair Yamane adjourned the meeting at 12:17 p.m.

