

1 LAND USE COMMISSION
2 STATE OF HAWAII
3 Hearing held on May 26, 2021
4 Commencing at 9:00 a.m.
5 Held via ZOOM by Interactive Conference Technology

6 I. Call to Order

7 II. Adoption of Minutes

8 III. Tentative Meeting Schedule

9 IV. EXECUTIVE SESSION (To begin at 09:15 a.m. and
10 end at 10:15 a.m.)

11 To consult with the board's attorney on
12 questions and issues pertaining to the board's
13 powers, duties, privileges, immunities and
14 liabilities related to the consideration of the
15 CONFORMANCE OF C&C OF HONOLULU IMPORTANT
16 AGRICULTURAL LANDS (IAL) RECOMMENDATION TO
17 APPLICABLE STATUTORY AND PROCEDURAL
18 REQUIREMENTS

19 V. CONTINUED ACTION

20 CONFORMANCE OF C&C OF HONOLULU IMPORTANT
21 AGRICULTURAL LANDS (IAL) RECOMMENDATION TO
22 APPLICABLE STATUTORY AND PROCEDURAL
23 REQUIREMENTS

24 To consider whether the City and County of
25 Honolulu recommendations for the designation of
Important Agricultural Lands on the Island of
Oahu complies with the requirements of Sections
205-47, 205-48, 205-49 Hawaii Revised Statutes,
and whether the proper procedural, legal,
statutory and public notice requirements were
met in developing the recommendations. The
lands recommended for designation are listed in
Appendix B to Council Resolution 18-233, CD1,
FD1 of the C&C's IAL Petition which,
along with meeting materials, are available for
public review in advance of the meeting at
<https://luc.hawaii.gov/city-county-ial>.

**The Commission will not be considering or
determining at this meeting the legal rights,
duties, or privileges of specific landowners or
issues relating to particular properties.**

VI. ADJOURNMENT

Before: Jean Marie McManus, Hawaii CSR #156

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APPEARANCES:

JONATHAN LIKEKE SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
EDMUND ACZON, Vice Chair (Oahu)
LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)
DAWN CHANG (Oahu)
DAN GIOVANNI (Kauai)

STAFF:

JULIE CHINA, ESQ.
Deputy Attorneys General

DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk
SCOTT DERRICKSON, Chief Planner
NATASHA A. QUINONES, Program Specialist

BRYAN YEE, ESQ.
ALISON KATO, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI, Planning Program Administrator
State Office of Planning
State of Hawaii

DAWN TAKEUCHI-APUNA, ESQ.
Deputy Director
RAYMOND YOUNG, Planner
DINA WONG, Planner
Department of Permitting and Planning
For IAL, C&C of Honolulu

1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning. This is the May 26, 2021 Land Use
3 Commission meeting, and it's being held using
4 interactive conference technology linking
5 videoconference participants and other interested
6 individuals of the public via the ZOOM internet
7 conferencing program to comply with State and County
8 official operational directives during the COVID-19
9 pandemic.

10 Members of the public are able to view the
11 meeting via the ZOOM webinar platform.

12 For all meeting participants, I would like
13 too stress to everyone the importance of speaking
14 slowly, clearly, and directly into your microphone.
15 It's important for our court reporter if you state
16 your name before speaking. Also, please be aware
17 that this meeting is being recorded on the digital
18 record of this ZOOM meeting. Your continued
19 participation is your implied consent to be part of
20 the public record of this event. If you do not wish
21 to be part of the public record, you should exit this
22 meeting now.

23 This ZOOM conferencing technology allows
24 the Parties and each participating Commissioner
25 individual remote access to the meeting proceedings

1 via their personal digital devices.

2 Also, please note that due to matters
3 entirely outside of our control, occasional
4 disruptions to connectivity may occur for one or more
5 members of the meeting at any given time. If such
6 disruptions occur, please let us know and be patient
7 as we try to restore the audiovisual signals to
8 effectively conduct business during the pandemic.

9 I will share with the public that we will
10 take breaks from time to time as well, approximately
11 ten minutes every hour.

12 My name is Jonathan Likeke Scheuer, and I
13 currently have the pleasure and honor of serving as
14 Land Use Commission Chair. Along with me,
15 Commissioners Ed Aczon, Dawn Chang, Arnold Wong, our
16 LUC Executive Officer Dan Orodener, our Chief
17 Planner Scott Derrickson, our Chief Clerk Riley
18 Hakoda, our Deputy Attorney General for this matter
19 Julie China, our program specialist Natasha Quinones,
20 and the Court Reporter Jean McManus are on Oahu.
21 Commissioner Gary Okuda has recused himself from
22 today's docket. Commissioner Nancy Cabral is on
23 Hawaii Island, Commissioner Lee Ohigashi is on Maui,
24 and Commissioner Dan Giovanni is on Kaua'i. We
25 currently have eight seated Commissioners of a

1 possible nine.

2 I will say a couple more words just because
3 I know that there are some people tuning in who maybe
4 until recently didn't know our Land Use Commission
5 existed.

6 We are all volunteers. We are appointed by
7 the Governor and confirmed by the State Senate to
8 serve up to eight years, and up to two four year
9 terms, or more terms if they are shorter in length.
10 And we do this because we think it's a way to serve
11 the people of Hawaii.

12 For those of us who are up for
13 reappointment and reconfirmation you are welcome and
14 encouraged to testify at the legislature on whether
15 or not you think, at the Senate, whether you think we
16 deserve confirmation. You're also allowed to
17 volunteer. I would encourage you to go to the
18 Governor's Boards and Commission's website to look at
19 all the various boards and memberships that are
20 available for members of the public to serve on.

21 With that, I would also note in addition to
22 Gary Okuda, that Commissioner Edmund Aczon needs to
23 leave the meeting at 3:00. We are taking up the Oahu
24 IAL matters for two days. I do not anticipate
25 getting through all the matters regarding IAL today.

1 With all that said, our first order of
2 business is the adoption of our May 12th and
3 13th minutes.

4 Mr. Hakoda, Mr. Derrickson, has there been
5 any written testimony related to adoption of the
6 minutes?

7 CHIEF CLERK: Mr. Chair, this is Riley.
8 There's been no public testimony regarding minutes.

9 CHAIRPERSON SCHEUER: I'm going to offer
10 the opportunity for any members of the public
11 attending to comment on the adoption of the minutes.
12 Only thing we are taking testimony on is the adoption
13 of the minutes of May 12th and 13th.

14 If you wish to testify, you can use the
15 raise-your-hand function, or if you are calling in by
16 phone, press *9 to raise your hand. Seeing none.

17 Commissioners, are there comments or
18 questions on the minutes?

19 Commissioner Cabral.

20 VICE CHAIR CABRAL: Make a motion to
21 approve the minutes.

22 CHAIRPERSON SCHEUER: Commissioner Cabral
23 has made a motion to approve. Is there a second?

24 COMMISSIONER WONG: Second.

25 CHAIRPERSON SCHEUER: Any discussion? If

1 not, Mr. Orodenker, please do roll call.

2 EXECUTIVE OFFICER: Thank you, Mr. Chair.
3 Commissioner Cabral?

4 VICE CHAIR CABRAL: Yes.

5 EXECUTIVE OFFICER: Commissioner Wong?

6 COMMISSIONER WONG: Aye.

7 EXECUTIVE OFFICER: Commissioner Chang?

8 COMMISSIONER CHANG: Aye.

9 EXECUTIVE OFFICER: Commissioner Giovanni?

10 COMMISSIONER GIOVANNI: Aye.

11 EXECUTIVE OFFICER: Commissioner Aczon?

12 VICE CHAIR ACZON: Yes.

13 EXECUTIVE OFFICER: Commissioner

14 Giovanni -- I did Commissioner Giovanni, sorry.

15 Commissioner Ohigashi?

16 COMMISSIONER OHIGASHI: Oh, yeah.

17 EXECUTIVE OFFICER: Chair Scheuer?

18 CHAIRPERSON SCHEUER: Aye.

19 EXECUTIVE OFFICER: My apologies,

20 Commissioner Wong confused me.

21 CHAIRPERSON SCHEUER: The motion passes.

22 With that, Mr. Orodenker, I'm going to trust you to
23 walk us through our tentative meeting schedule as our
24 agenda item.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair,

1 that will be no problem at all as long as I don't
2 have any help from Commissioner Wong.

3 Tomorrow we will once again be meeting by
4 ZOOM to handle any leftover issues with regard to the
5 Oahu IAL.

6 On June 9th we will be taking up two
7 special permit applications, once again by ZOOM. The
8 Pohakea Maui matter and the AES West Oahu solar
9 matter.

10 June 10th has been set aside for HoKua
11 Place oral arguments.

12 June 22nd is set aside for adoption of
13 orders on the two special permits that we're hearing
14 on June 9th.

15 July 14th we will taking up the Kula Ridge
16 Order to Show Cause matter, and the HoKua Place
17 matter as necessary.

18 July 15th is also set aside for the HoKua
19 Place matter.

20 I do not have anything solid scheduled for
21 the remainder of August, although I do know that we
22 do have matters in September that we will be hearing,
23 including various 201H matters in September and
24 October.

25 So we request that the Commissioners

1 maintain both dates open in their calendars.

2 CHAIRPERSON SCHEUER: Thank you, Mr.
3 Orodenker.

4 Commissioners, are there any questions on
5 our tentative meeting schedule?

6 Commissioner Giovanni.

7 COMMISSIONER GIOVANNI: Thank you, Chair.
8 Did we have a meeting on 6-22 just in the last couple
9 days?

10 CHAIRPERSON SCHEUER: Commissioner
11 Giovanni -- excuse me. Mr. Orodenker.

12 EXECUTIVE OFFICER: Thank you. Yes, that
13 is correct, 23rd and 24th. There were scheduling
14 problems with those dates.

15 CHAIRPERSON SCHEUER: So the 23rd and 24th
16 were eliminated, but I believe the 22nd is
17 anticipated to be a brief meeting. Mr. Orodenker?

18 EXECUTIVE OFFICER: That is correct.

19 COMMISSIONER GIOVANNI: Meaning like a
20 morning meeting only, because I have conflicts in the
21 afternoon?

22 EXECUTIVE OFFICER: Yes, given that they're
23 just adoption to order, they should be relatively
24 short.

25 COMMISSIONER GIOVANNI: Very good, thank

1 you.

2 CHAIRPERSON SCHEUER: Any other questions,
3 Commissioners?

4 That said, our next agenda item is an
5 executive session to consult with our attorney on
6 questions and issues pertaining to the board's
7 powers, duties, privileges immunities and liabilities
8 related to the consideration of the conformance of
9 the City and County of Honolulu's Important
10 Agricultural Lands, IAL, recommendation to the
11 applicable statutory and procedural requirements.

12 LUC Staff has informed me that no public
13 testimony was received regarding this agenda item
14 moving into executive session.

15 Before I ask for a motion to go into
16 executive session, again, for the benefit of the many
17 public attendees, I asked at our last consideration
18 of the Oahu IAL meeting to put on top of the agenda
19 that we move into executive session.

20 There had been already statements made by
21 the members of the Commission that they wish to
22 consult with our attorney on various matters that
23 have issues.

24 We scheduled that tentatively for an hour
25 on the agenda. I anticipate, on reflection of the

1 complex issues involved, as well as continuing
2 significant volume of written testimony that we have
3 received, including some lengthy testimony from
4 attorneys representing various parties, our time in
5 executive session might exceed more than one hour,
6 and I have no meaningful way to predict it.

7 I'll let you know that while we are in
8 executive session, the Commissioners will be leaving
9 this ZOOM meeting, going into a separate ZOOM room.
10 This ZOOM meeting will continue to operate, and
11 unfortunately, it's the equivalent as if we were all
12 physically together and the Commissioners went into a
13 separate room.

14 You will have to wait to find out when we
15 are coming out of session. We will try and
16 periodically post visible notices on the ZOOM meeting
17 to indicate when the Commission might be coming back
18 into session.

19 Is that correct, Mr. Hakoda?

20 CHIEF CLERK: We will do our best, Chair.

21 CHAIRPERSON SCHEUER: Thank you very much.

22 With that, I will entertain a Motion to
23 move into executive session.

24 Commissioner Wong.

25 COMMISSIONER WONG: I move to go into

1 executive session.

2 CHAIRPERSON SCHEUER: Commissioner
3 Ohigashi.

4 COMMISSIONER OHIGASHI: Second.

5 CHAIRPERSON SCHEUER: And I assume that
6 your motion is in alignment with the agenda item to
7 consult with our attorney on questions relating to
8 our powers, duties, privileges, immunities and
9 liabilities related to the overall main docket item
10 regarding the City and County's IAL Petition.

11 COMMISSIONER WONG: Yes, Chair.

12 CHAIRPERSON SCHEUER: Any discussion on the
13 motion? If not, all in favor please signify by
14 saying "aye" and raising your hands. All in favor?
15 Is any Commissioner opposed? If not, the Commission
16 will enter into executive session.

17 We will tentatively try for an hour, which
18 would bring us back at 10:15, but given the extensive
19 issues we need to consult with our attorney about, I
20 cannot predict how long we will be in executive
21 session.

22 Commissioners, you received an email
23 invitation to go into a different ZOOM meeting room
24 for executive session with our Executive Officer and
25 our Counsel. So we should exit this meeting now and

1 move into that session. We are leaving into
2 executive session now at 9:13.

3 (Executive session.)

4 CHAIRPERSON SCHEUER: The Land Use
5 Commission is back in regular session. It is 11:35.
6 We are in regular session again, having left
7 executive session.

8 Our next agenda item regarding the
9 conformance of the City and County of Honolulu's
10 Important Agricultural Lands, or IAL, recommendation
11 to applicable statutory and procedural requirements,
12 where we will consider whether the City and County of
13 Honolulu recommendations for the designation of
14 Important Agricultural Lands on the Island of Oahu
15 complies with the requirements of Sections 205-47,
16 205-48 and 205-49 Hawaii Revised Statutes, and
17 whether the proper procedural, legal, statutory and
18 public notice requirements were met in developing
19 recommendations.

20 The lands recommended for designation have
21 been listed in Exhibit B to Council Resolution
22 18-233, CD1, FD1 of the City and County of Honolulu's
23 IAL Petition, which, along with other meeting
24 materials, have been available for public review in
25 advance of this meeting.

1 The Commission will not at this meeting be
2 considering or determining any of the legal rights,
3 duties, or privileges of any specific landowners or
4 issues relating to particular properties.

5 I note the Commission last heard this
6 matter on April 28th and 29th, 2021. We will resume
7 our proceedings for today.

8 Will the parties please identify yourselves
9 for the record?

10 MS. APUNA: Good morning, Deputy Director
11 Dawn Apuna --

12 CHAIRPERSON SCHEUER: Don't forget to
13 shout, Dawn.

14 MS. APUNA: Good morning, Deputy Director
15 Dawn Apuna on behalf of Department of Planning and
16 Permitting. Here with me today is Ray Young and Dina
17 Wong.

18 CHAIRPERSON SCHEUER: Thank you.
19 Office of Planning.

20 MR. YEE: Good morning, Deputy Attorney
21 General Bryan Yee on behalf of Office of Planning.
22 With me is Deputy Attorney General Alison Kato, and
23 Rodney Funakoshi from the Office of Planning.

24 CHAIRPERSON SCHEUER: Thank you.

25 Before we continue, let me update the

1 record.

2 On April 28 and 29, 2021, the Commission
3 met via ZOOM virtual conference technology to hear
4 the County give its presentation on the Process and
5 Procedures Required to Review and Render a Decision
6 on a County IAL Submitted pursuant to Part III of
7 Chapter 205 HRS and Subchapter 17 of Chapter 15-15
8 Hawaii Administrative Rules.

9 Also on April 28th, the Commission allowed
10 oral public testimony on this matter. We, trying to
11 limit the testifiers to two minutes each over eight
12 hours, conducted a full day of public testimony. And
13 after all that oral testimony was heard, I made it
14 clear to all parties and members of the public that
15 oral public testimony was then closed in order to
16 move forward with the City and County's presentation.

17 I stated at that time that the Commission
18 would continue to accept written testimony up to the
19 time a final decision has been reached. And indeed,
20 as I will recount in a moment, we continue to receive
21 extensive written testimony.

22 The Commission may also allow for oral
23 testimony if and when a proposed Decision and Order
24 in this procedural matter is considered.

25 On May 18th the Commission mailed out the

1 meeting Agenda for the May 26 and 27th meeting to the
2 Parties, Statewide and County Lists.

3 On May 20th the Commission received the
4 Office of Planning's, quote, "City IAL, Office of
5 Planning Recommendation to LUC" and "Parcels less
6 than two acres highlighted lists".

7 From April 28 until yesterday the
8 Commission has received over 50 phone calls from the
9 public regarding the proceeding, and a long list of
10 public testimony by mail and email.

11 I'm going to read a list that I have of the
12 written testimony that's been received. However, all
13 of this testimony, please be aware, has been reviewed
14 by all the Commissioners and has been posted to the
15 LUC's website.

16 We have received testimony from:

17 William Lum

18 Rasikahekara Leue

19 Raynald Copper

20 Molly Mosher-Cates

21 Thomas Mendes

22 Patrick Moore

23 Marcia Peterson

24 Norman Oshiro

25 Christina Meller

1 Neven Garchalian
2 Raymond R. Correia, Jr.
3 Dennis K.Y. Ting and Arlene H. Ting
4 Ronal and Mary Tubbs, a second testimony
5 Gordon and Jennifer Ah Nee
6 Wendy Hee on behalf of Blue Ivory Hawaii, a
7 second letter
8 Jodi S. Yamamoto of Yamamoto Caliboso
9 Sheryl Turbeville
10 Robinson Kunia Land LLC from their
11 attorneys Rush Moore, LLP
12 Annette Lee
13 Gene Dumaran care of Minoru Kaneshiro
14 Donna Kelly
15 Laurence Greene on behalf of 174 Power
16 Global for Hanwha Energy USA
17 Laurent Nassif of Waihonu North, LLC and
18 Waihonu South, LLC
19 Linda Baptiste
20 Lena McCormack
21 Douglas Kathie Stewart
22 Rodney and Michele Seibel
23 Edith Texeira and an additional plus 15
24 signatures from members of their family and
25 co-property owners

1 Jada London
2 LuAnn Casey and Gary Gunder
3 Norman Yamashita, Jr.
4 John Foti for Luigi, LLC
5 Diana Young, Trustee of the Gerald YH Young
6 Trust
7 Frederick Redell, PE for the Hawaii Clean
8 Power Alliance
9 Phillip Rodgers
10 Jeff Bloom
11 Clarence Nakata
12 Brian Miyamoto of the Hawai'i Farm Bureau
13 Allen Smith
14 Kimberleigh (Peters) Villasenor
15 Kimberly Kalama
16 Mathew Kit M.H. Chun
17 The Clyde and Gloria Chun Trust
18 Martha Stefanowicz
19 Gina and Joseph Texeria
20 Timothy Irons of Dentons
21 Jodi Yamamoto of Caliboso for EDYNI Solar,
22 LLC
23 Raelen K. Combs, Kathleen K. Hardy,
24 Caroldeen K. Sampaga
25 The Waimanalo Agricultural Association

1 Frederick Redell for the Hawaii Clean Power
2 Alliance

3 Simon Phillips and John McCauslin.

4 Again, if I did not read your name, your
5 testimony was still received and should have been
6 posted to the LUC website.

7 I can assure you that I and other
8 Commissioners have read all the testimony that has
9 been submitted to the LUC as part of our proceedings.

10 Our procedure for today, our intended
11 procedure would be to proceed with questions for the
12 Department of Agriculture, then following that,
13 hearing from the Office of Planning, and Office of
14 Planning witnesses.

15 As I stated when we first convened this
16 morning, I do not anticipate completing procedures,
17 necessarily completing procedures on this docket
18 today.

19 With that said, Commissioners, we have now
20 updated the record, and we are in regular session.

21 Commissioner Wong.

22 COMMISSIONER WONG: Chair, this issue
23 itself is very highly watched by a lot of public
24 individuals that deals with a lot of people's
25 livelihood.

1 CHAIRPERSON SCHEUER: May I pause,
2 Commissioner Wong?

3 COMMISSIONER WONG: Yes.

4 CHAIRPERSON SCHEUER: Can we ZOOM in the
5 camera so the public can see Commissioner Wong as
6 he's speaking? That's an improvement. Apologize for
7 interrupting you, Commissioner Wong.

8 COMMISSIONER WONG: No problem, Chair.

9 But anyway, you know, there's a lot of
10 angst out there, and, you know, there's a lot of
11 issues in play, not -- with this IAL. And, you know,
12 we heard from the public. We heard from the County.
13 However, there's a lot of things that are still out
14 there that we need legal opinion on from the Attorney
15 General, and so I wanted to make a motion, Mr. Chair,
16 if I may.

17 CHAIRPERSON SCHEUER: Commissioners may
18 make a motion at any time, Commissioner Wong.

19 COMMISSIONER WONG: Thank you, Chair.

20 I move that the Commission request a formal
21 publishable Attorney General's opinion on whether or
22 not the County, in developing its Important
23 Agricultural Land Recommendation is required to apply
24 all eight of the criteria contained in Section
25 205-44(c) to each individual Parcel, or whether it

1 may make a general determination as to what criteria
2 should or should not be applied to formulate its
3 recommendation.

4 Further, that the Chair, working with the
5 Executive Officer to further refine the specific
6 question or questions to be directed to the Attorney
7 General.

8 It is also moved that these proceedings be
9 stayed until receipt of such opinion.

10 CHAIRPERSON SCHEUER: Is there a second?
11 Commissioner Ohigashi.

12 COMMISSIONER OHIGASHI: Second.

13 CHAIRPERSON SCHEUER: Commissioner
14 Ohigashi, you raised your hand. Do you wish to speak
15 to the motion?

16 COMMISSIONER OHIGASHI: No, I raised my
17 hand to second.

18 CHAIRPERSON SCHEUER: Okay, Commissioner
19 Wong.

20 COMMISSIONER WONG: Chair, I want to speak
21 to the motion. Again, I just wanted to say there is
22 a lot of angst out there as we see in the public
23 testimony, and there's a lot of issues that was
24 brought up by the public testimony and some lawyers
25 out there. So I would rather that I have a

1 publishable AG opinion on this before we go any
2 further. That's why I'm asking for this motion.

3 CHAIRPERSON SCHEUER: Folks, we have a
4 motion in front of us.

5 Commissioner Chang.

6 COMMISSIONER CHANG: Thank you, Mr. Chair.

7 CHAIRPERSON SCHEUER: Sorry just as an
8 aside, can somebody at LUC make me co-host so I can
9 lower people's hands? Sorry, Commissioner.

10 COMMISSIONER CHANG: Thank you, Mr. Chair.

11 I am going to vote in favor of the motion.
12 I know that for many members of the public that are
13 listening, that have been paying attention, to be
14 extremely frustrating and dissatisfying as you would
15 have wanted to see something else.

16 However, I do feel very strongly that
17 before we proceed, that there should be clarification
18 on a very important legal matter of whether, as a
19 matter of law, these criteria, the City has satisfied
20 what the legal requirements are of the criteria.

21 I would also urge the City to consider all
22 of the public testimony and comments, as well as to
23 read -- and I'm sure you have -- but OP's opinion as
24 well as some of the other comments that we have
25 received. I think it provides some opportunity for

1 the City to think about how do you allay some of
2 these concerns that have been raised by some of these
3 community members.

4 You know, in my view, ultimately the Land
5 Use Commission makes a decision on the designation.
6 It's not City. The City comes to us with
7 recommendations. But we do have to rely upon the
8 record that you bring forward to us.

9 So I think you've heard some of the
10 concerns. I think you've also, you know, reading
11 through some of OP's recomm -- their filing, I think
12 provides some additional considerations for the City
13 to think about.

14 So I would hope that this time is being
15 used wisely. I also hope that the Attorney General's
16 office will timely render an opinion as clearly this
17 is a matter of grave concern to the community.

18 So, one, I'm hoping that the AG's office
19 will respond in a timely fashion and provide all of
20 us necessary guidance.

21 But at this point in time I am going to
22 vote in favor of the motion. But I'm very grateful
23 for all of the public participation in our process.

24 Thank you, Mr. Chair.

25 CHAIRPERSON SCHEUER: Commissioners?

1 I'm just going to pause here for a second
2 because we're both conducting this as a regular
3 meeting, and with lot of eyes on us, so in case there
4 is any confusion about what is being proposed in the
5 motion right now.

6 So to the members of the public listening,
7 a motion has been made and seconded that we would
8 stay these proceedings, meaning hold off for awhile.
9 The proceeding wouldn't go away, but we would not
10 continue them again until we receive a formal
11 published opinion from the Attorney General on the
12 particular issues that's been raised by many
13 testifiers regarding the City's compliance with the
14 law in developing a recommendation.

15 With that said, Commissioners, we're in
16 deliberations on a Motion from Commissioner Wong.

17 Commissioner Cabral.

18 VICE CHAIR CABRAL: Thank you, Chairman.
19 And thank you, fellow Commissioners Wong and Chang.

20 I agree with this because I think that
21 there's so much legal and technical considerations in
22 addition to my more personal considerations, our
23 concerns that we make sure that the public is
24 protected by the proper enforcement of the law and
25 the proper benefits of what the procedural, and I

1 believe the IAL, Important Agricultural Lands law is
2 intended to do for the people of the State.

3 So I definitely will support this motion.
4 Thank you.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Cabral.

7 Commissioners, I don't want to preempt
8 anybody, but I do have things to say. Are there any
9 Commissioners who wish to speak to the motion before
10 a vote is taken?

11 Not seeing any, I'm inclined to support the
12 motion.

13 Whether or not the City had to consider and
14 weigh all eight criteria as stated in the Motion is
15 what is sometimes referred to as a threshold issue,
16 sort of like a threshold of a door. You can't enter
17 the house until you cross the threshold.

18 If the City is required to have considered
19 all eight and not just three, that becomes an issue,
20 like if that can't be passed, we can't go forward any
21 more on this unfortunately.

22 So I do think it's appropriate to seek a
23 formal published opinion from the Attorney General on
24 that matter.

25 That said, and I think echoing some of the

1 comments from Commissioner Wong as well as from
2 Commissioner Chang, it's impossible to listen to the
3 heartfelt testimony over a day and read all the
4 testimony of the people who have been told that this
5 would substantively harm them if this designation
6 goes forward.

7 I'm not sure that that is actually the
8 case, but that does not diminish that people have not
9 been communicated with well, and have very
10 significant concerns.

11 So I want to say that if this measure, if
12 this motion passes and we stay these proceedings
13 pending a written opinion from the Attorney General,
14 I want to give some, I guess, assurance to those
15 listening on a couple of matters.

16 One is, I have very, very significant
17 concerns that even if the City has indeed followed
18 the process as required under the law, and that
19 particular provision regarding the criteria that's
20 been stated by Commissioner Wong in his Motion, that
21 there is significant merit to the proposal from the
22 Office of Planning to simply exclude all of the vast
23 majority of the two-acre and less smaller parcels.

24 And should we proceed on this docket, I
25 think that would be something that would be very,

1 very thoughtfully and carefully considered by the
2 Commission to try to get at the intent of what the
3 law is doing.

4 The other thing I wanted to say is that
5 this has been a difficult proceeding so far, and
6 we're not even close to done, and really the
7 difficulty comes to me to think about as
8 Commissioners and as volunteers we all take an oath
9 of office. We're required to before serving, and we
10 have to swear to uphold the constitution and law of
11 the State of Hawaii.

12 And the direction to protect Important
13 Agriculture Lands is part of have constitution. We
14 don't get to ignore that one part.

15 So we do have a duty to try and protect
16 Important Agricultural Lands, and we have a duty to
17 work with the City and County in their efforts.

18 But we also have a duty to protect people's
19 property rights to the degree that those rights are
20 possibly questioned by this measure and weigh all of
21 these things carefully.

22 So I think, though if not as satisfying as
23 an immediate rejection as many, many testifiers have
24 sought, I think it is the pathway forward that sort
25 of best honors our kuleana, and both rights and

1 responsibilities as Commissioners to uphold the law.

2 Sorry if that was too long.

3 Anything else, Commissioners, on
4 deliberation?

5 If not, there is a motion before us. Mr.
6 Orodenker, will you please poll the Commission?

7 EXECUTIVE OFFICER: Thank you, Mr. Chair.

8 The Motion is to request an opinion from
9 the Attorney General, as stated, subsequent to
10 providing what the Chair addresses to stay these
11 proceedings pending that.

12 Commissioner Wong?

13 COMMISSIONER WONG: Aye.

14 EXECUTIVE OFFICER: Commissioner Ohigashi?

15 COMMISSIONER OHIGASHI: Aye.

16 EXECUTIVE OFFICER: Commissioner Cabral?

17 VICE CHAIR CABRAL: Yes.

18 EXECUTIVE OFFICER: Commissioner Aczon?

19 VICE CHAIR ACZON: Aye.

20 EXECUTIVE OFFICER: Commissioner Chang?

21 COMMISSIONER CHANG: Aye.

22 EXECUTIVE OFFICER: Commissioner Giovanni?

23 COMMISSIONER GIOVANNI: Aye.

24 EXECUTIVE OFFICER: Chair Scheuer?

25 CHAIRPERSON SCHEUER: Aye.

1 EXECUTIVE OFFICER: Mr. Chair, the motion
2 passes unanimously with seven affirmative votes.

3 CHAIRPERSON SCHEUER: With that said, that
4 was the substantive agenda item. That motion means
5 we are staying our proceedings pending the sending of
6 the formal request to the Attorney General, and
7 response from her on this matter.

8 Commissioner -- excuse me.

9 Ms. Apuna, City and County.

10 MS. APUNA: Thank you, Chair. I just have
11 a procedural question at this point.

12 CHAIRPERSON SCHEUER: Please proceed.

13 MS. APUNA: Will the City be privy to that
14 Attorney General's opinion prior to the commencement,
15 or recommencement, of the hearing on this matter?

16 CHAIRPERSON SCHEUER: I'm going to give a
17 reaction, and ask Mr. Orodener to clarify.

18 But I believe the Motion -- I understand
19 the Motion is requesting a public opinion, and I
20 think we would put it as part of the record in this
21 docket publicly prior to reconvening.

22 Is that correct, Mr. Orodener?

23 EXECUTIVE OFFICER: That is correct, Chair.

24 CHAIRPERSON SCHEUER: Does that address
25 your procedural question, Ms. Apuna?

1 MS. APUNA: Yes. If need be, based on the
2 opinion of the Attorney General, will there be a
3 chance for oral argument on that opinion? No?

4 CHAIRPERSON SCHEUER: I don't think the
5 Attorney General's --

6 MS. APUNA: There's opportunity to respond
7 to that opinion by the City and the other parties?

8 CHAIRPERSON SCHEUER: We wouldn't deprive
9 the City of -- as you can at any time -- of
10 submitting a filing in that regard, but obviously the
11 weight of a formal opinion of the Attorney General to
12 this Commission is not something that we necessarily
13 put up to argument.

14 Commissioner Cabral.

15 VICE CHAIR CABRAL: Thank you, Chair.

16 I would also like to know if there's any
17 means by which -- I don't know all of the technical
18 details here -- by which our wonderful Land Use Staff
19 work, but is there a way that we're able to notify
20 those people who have been attending, the public, the
21 public that have been attending these hearings,
22 notifying them when our hearings are going to come up
23 again? Or are they just unfortunately required to
24 keep a log on us every day just to see what is going
25 on?

1 I would like to make sure that the public
2 is not just passed over as this possibly --

3 CHAIRPERSON SCHEUER: Absolutely.

4 So Commissioner Cabral, I think the
5 response to your question is twofold. Some of the
6 people who are already here, already subscribe to our
7 Agenda meeting list. To do so is free and can be
8 done on the LUC website. And you can receive this
9 electronically, so it is at low cost to you and
10 others to the LUC.

11 In addition, I would note that this has
12 media interest, and I would suspect that the addition
13 to formal notice of the Agenda, that the media would,
14 again, note when these proceedings were to continue.

15 I don't have a meaningful way to predict
16 how long it might take for the Attorney General,
17 although I do share the desire that this be done with
18 some swiftness.

19 VICE CHAIR CABRAL: Can I ask if it's
20 possible -- and I know you can't respond -- if the
21 Staff could investigate if they have an email
22 connection to the people that have inquired? I know
23 they have sent out mail to everybody, but
24 particularly the people who have sat in on our
25 hearings last month or today, making sure that they

1 know, at least get the information directed to them
2 how to sign up to get these notifications. I just
3 don't want to have these people get lost.

4 CHAIRPERSON SCHEUER: Mr. Orodenker or Mr.
5 Derrickson.

6 COMMISSIONER CABRAL: Thank you.

7 EXECUTIVE OFFICER: Thank you, Chair.

8 We can maintain a list of everybody who is
9 affected. There are people who have requested to be
10 contacted via email and we will do that. We will
11 make every effort to make sure.

12 VICE CHAIR CABRAL: Thank you. I really
13 appreciate that effort. Thank you.

14 CHAIRPERSON SCHEUER: Are there any further
15 questions or comments? If not, I believe this means
16 that our matters that have been agendized have been
17 addressed until we further convene on this docket,
18 and I would move to dismiss.

19 Is there any further business, Mr.
20 Orodenker?

21 EXECUTIVE OFFICER: No, there is not, Mr.
22 Chair.

23 CHAIRPERSON SCHEUER: So, again, echoing
24 the gratitude to all the parties and to the very many
25 interested members of the public who attended this

1 meeting, I declare there is no further business for
2 us today.

3 Commissioner Cabral.

4 VICE CHAIR CABRAL: Make a motion to
5 adjourn.

6 CHAIRPERSON SCHEUER: Normally I just do
7 it.

8 VICE CHAIR CABRAL: Dictator.

9 CHAIRPERSON SCHEUER: Well, now.

10 Commissioner Aczon, what did you say?

11 VICE CHAIR ACZON: The next meeting, to
12 make sure --

13 CHAIRPERSON SCHEUER: Mr. Orodener, our
14 next meeting?

15 VICE CHAIR ACZON: No meeting tomorrow?

16 CHAIRPERSON SCHEUER: No meeting. So we
17 will be adjourned until our next meeting, which was
18 covered by Mr. Orodener in his review of our
19 schedule.

20 EXECUTIVE OFFICER: June 9th is our next
21 meeting.

22 CHAIRPERSON SCHEUER: This matter is not
23 planned to be on the agenda. With that, this meeting
24 is adjourned. Mahalo.

25 (The proceedings adjourned at 12:03 p.m.)

CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on May 26, 2021, at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

12 I further certify that I am not of counsel for
13 any of the parties hereto, nor in any way interested
14 in the outcome of the cause named in this caption.

15 Dated this 26th day of May, 2021, in Honolulu,
16 Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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