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**FINAL
STATE OF HAWAII**

LAND USE COMMISSION

Hearing held on January 6, 2022

Commencing at 9:01 a.m.

Held via Zoom by Interactive Conference Technology

I. CALL TO ORDER

**II. ACTION - CONFORMANCE OF C&C OF HONOLULU
IMPORTANT AGRICULTURAL LANDS (IAL)
RECOMMENDATION TO APPLICABLE STATUTORY AND
PROCEDURAL REQUIREMENTS**

To consider whether the City and County of Honolulu recommendations for the designation of Important Agricultural Lands on the Island of Oahu complies with the requirements of Sections 205-47, 205-48 and 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 H 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 olandowners or issues relating to particular properties.

III. RECESS/ADJOURNMENT

IV. ADJOURNMENT

BEFORE :

1 **COMMISSIONERS PRESENT:**

2 Jonathan Scheuer, Chair

3 Dawn N.S. Chang

4 Dan Giovanni

5 Lee Ohigashi

6 Edmund Aczon

7 Nancy Cabral

8 Arnold Wong

9 Gary Okuda (Recused)

10

11 **LAND USE COMMISSION STAFF PRESENT:**

12 Daniel Orodener, Executive Officer

13 Scott Derrickson, Chief Planner

14 Natasha Quinones, Program Specialist/Chief Clerk

15 Dan Morris, Deputy Attorney General

16

17 **CITY AND COUNTY OF HONOLULU STAFF PRESENT:**

18 Dawn T. Apuna, DPP, Deputy Director

19 Franz Krintz, DPP

20 Dina Wong

21 Brandon Sue

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1 **OFFICE OF PLANNING AND SUSTAINABILITY**

2 **STAFF PRESENT:**

3 Alison Kato, Deputy Attorney General

4 Mary Alice Evans

5 Rodney Funakoshi

6 Earl Yamamoto (Department of Agriculture)

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1 **CHAIRMAN SCHEUER:** Aloha mai kakou. Good
2 morning. This is the January 6th, 2022 Land Use
3 Commission meeting, which is being held using
4 interactive technology linking videoconference
5 participants and other individuals from the public
6 who are interested in these matters via the Zoom
7 internet conferencing program. We're doing this, of
8 course, to comply with ongoing state and county
9 official operational directives during the still
10 ongoing Covid-19 pandemic.

11 Members of the public are able to view the
12 meeting via the Zoom webinar platform. For all
13 meeting participants, I want to urge that you speak
14 slowly, clearly, and directly in your -- into your
15 microphone. Because we generate the transcripts
16 from the recording of this Zoom meeting, it's
17 important that you identify yourself prior to
18 speaking for the record.

19 In addition, please know that we, again,
20 are recording this meeting. So if you do not wish
21 to be recorded as part of this meeting, you should
22 leave the meeting now.

23 This technology allows each meeting
24 participant individual access to the meeting via our
25 own personal digital devices. Due to that and due

1 to matters entirely outside of our control, or
2 usually outside of our control, occasional
3 disruptions to connectivity may occur from time to
4 time.

5 If that happens, please let us know and
6 please be patient as we try to restore audio/visual
7 signals so we can continue to conduct business
8 effectively during the pandemic.

9 Any members of the public who wish to
10 testify during this meeting and who are accessing
11 this meeting via Zoom software, there is a raise
12 your hand function that you can use to indicate your
13 desire to give testimony. If, however, you are
14 accessing this meeting by telephone, use the star 9
15 key sequence to indicate a desire to give testimony.

16 You don't need to raise your hand now. I
17 saw a hand go up. I will announce when we're ready
18 for public testimony on this matter. In addition,
19 if you're accessing this meeting via phone, you
20 press star 6 to request to be unmuted.

21 My name is Jonathan Likeke Scheuer. I
22 have the very distinct honor and pleasure of serving
23 as the Land Use Commission Chair. We currently have
24 eight seated Commissioners of a possible nine.

25 Along with me, Commissioner Dawn Chang,

1 Commissioner Arnold Wong, Commissioner Edmund Aczon,
2 and our Chief Executive Officer Daniel Orodener,
3 our Planner -- Chief Planner, Scott Derrickson, our
4 Staff Planner, Riley Hakoda, our Chief Clerk,
5 Natasha Quinones, and our Deputy Attorney General --
6 Deputy Attorney General? Deputy Attorney General?

7 Are they here yet, Mr. Orodener?

8 **MR. ORODENER:** Is there a trick to
9 raising -- I just noticed he was not in the
10 audience. I'm trying to get a hold of him.

11 **CHAIRMAN SCHEUER:** We anticipate the short
12 arrival of our Deputy Attorney General, Mr. Dan
13 Morris, and we are all on the island of Oahu.

14 Nancy Cabral is on Hawaii Island by phone
15 for this portion of the meeting. Good morning,
16 Nancy.

17 **COMMISSIONER CABRAL:** Yes, I'm here.
18 Hello, Aloha, I'm here.

19 **COMMISSIONER SCHEUER:** Commissioner Lee
20 Ohigashi is on the island of Maui, and Commissioner
21 Dan Giovanni is on the island of Kauai.

22 I note, and I will repeat this a few
23 times, Commissioner Gary Okuda has recused himself
24 from the matters being discussed in today's meeting.

25 With all of that said, our next agenda

1 item and our only agenda item for today is an action
2 item regarding conformance of the city and county of
3 Honolulu's important agricultural lands
4 recommendations to applicable statutory and
5 procedural requirements where we will consider
6 whether or not the city and county of Honolulu's
7 recommendations for the designation of important
8 agricultural lands on the island of Oahu complies
9 with the requirements of Sections 205-47, 205-48,
10 and 205-49, Hawaii Revised Statutes, and whether the
11 proper procedural, legal, statutory public notice
12 requirements were met in developing the
13 recommendations.

14 The lands that have been recommended for
15 designation are listed in Appendix H of the city and
16 county of Honolulu's IAL petition, which, along with
17 meeting materials, are available for public review,
18 have been available for public review in advance of
19 this meeting at the LUC website.

20 The Commission will not be considering or
21 determining at this meeting any legal rights,
22 duties, or privileges of specific landowners or
23 issues related to particular properties.

24 I'll just restate for the record
25 Commissioner Okuda has recused himself from this

1 matter.

2 The last time the Commission heard this
3 matter was on October 21st, via Zoom -- of 2021 via
4 the Zoom internet conferencing technology.

5 With all of that said, will the parties
6 please identify yourselves for the record?

7 **MS. APUNA:** Good morning, Chair and
8 Commissioners. Dawn Apuna, Deputy Director of DPP.
9 Also with me is Franz Krintz and then I think in
10 the waiting area is Dina Wong and Brandon Sue, but
11 they will probably join Franz when it's -- probably
12 after public testimony.

13 **CHAIRMAN SCHEUER:** Thank you, Ms. Apuna.
14 Office of Planning?

15 **MS. KATO:** Alison Kato, Deputy Attorney
16 General for the Office of Planning and Sustainable
17 Development. Also here are Rodney Funakoshi and
18 Maryalice Evans from the Office of Planning and
19 Sustainable Development.

20 **CHAIRMAN SCHEUER:** Thank you --

21 **MS. KATO:** Thank you.

22 **CHAIRMAN SCHEUER:** -- Ms. Kato.
23 And Department of Agriculture.

24 **MR. YAMAMOTO:** Good morning, everyone.
25 Earl Yamamoto here for the Department of

1 Agriculture. Just myself.

2 **CHAIRMAN SCHEUER:** Thank you very much,
3 Earl.

4 Since it's been some time since this
5 matter was heard by the Commission, I'm going to
6 review where the Commission was in our proceedings
7 at the end of our last hearing.

8 We have already had a county give their
9 presentation on how they conducted their IAL
10 recommendation process and the Office of Planning --
11 then called the Office of Planning. Now called the
12 Office of Planning and Sustainable Development -- as
13 well as Department of Agriculture provided their
14 positions on the process and their recommendations.

15 The public has had multiple opportunities
16 to provide testimony on the submitted -- to the city
17 and county of Honolulu about the proposed IAL
18 recommendations. Since then, the Land Use
19 Commission went into executive session to discuss
20 the matter with our Deputy Attorney Generals with
21 regard to some key legal issues, and that resulted
22 in a request for a publishable opinion and a stay of
23 the proceedings.

24 The last hearing we held on this matter
25 was limited to the acceptance of the Attorney

1 General's opinion and the decision to make the
2 decision public. We're now, therefore, ready to
3 proceed with the completion of our initial
4 evaluation and decision-making process on whether or
5 not the county recommendations meet the requirements
6 of Chapter 205.

7 I'll give a further little detailed
8 history. On December 14th, 2021, the LUC mailed out
9 notice letters and agenda to property owners about
10 today's hearing. On December 23rd, we mailed and
11 emailed today's meeting agenda to the parties and to
12 the statewide county and IAL agenda mailing lists.

13 On December 29th, the Department of
14 Planning and Permitting filed a supplemental brief
15 to its recommendation regarding important
16 agricultural lands. Also on that day, the
17 Commission received testimony from a charitable
18 foundation corporation.

19 Since our last hearing on October 21st,
20 the Commission has received extensive additional
21 testimonies, almost all of which have been posted to
22 our website. The ones that have not been posted to
23 our website are the ones that started to arrive at
24 the very end of yesterday and through the end of
25 business yesterday. They will be posted to the

1 website, and they have been emailed to the
2 Commissioners.

3 So let me now go over how we're going to
4 go forward with our work today. First, I'm going to
5 recognize the written testimony that has been
6 submitted in this matter. Hold on one second.

7 Commissioner Giovanni?

8 **COMMISSIONER GIOVANNI:** I'd just like the
9 record to note that Mr. Morris showed up at 9:07 and
10 has been party to the record.

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

12 So first, I'll recognize the testimony
13 that's been submitted since the last time a reviewed
14 testimony that's been submitted in this matter.

15 Then I'm going to call for people who wish
16 to give oral testimony on this matter. Now is the
17 time, if you want to start to raise your hands, use
18 the raise your hand function or star 9 sequence.
19 And I will call on people in order.

20 When you get called in, you will become a
21 panelist. You will then be able to -- and you'll
22 need to enable your audio and video. I will swear
23 you in. I will ask you to identify your name and
24 address for the record. And then given the volume
25 of today's business, I will ask people to limit

1 their testimony to two minutes.

2 We will then go through all the testimony,
3 and then finally, at the completion of any oral
4 testimony on this matter, I will call on the county
5 of Honolulu -- city and county of Honolulu to make
6 their final comments.

7 After that, we will allow the
8 Commissioners to ask questions of the county. I may
9 provide the opportunity for OPSD and DOA to provide
10 any final comments as well and offer the opportunity
11 for the Commissioners to ask questions to them.

12 And based on all of that, the Commission
13 will determine if and how, if we do proceed,
14 regarding the city and county's submittal.

15 To the parties in this matter and to the
16 Commissioners, are there any questions on our
17 procedures today? Starting with the city and
18 county.

19 **MS. APUNA:** No questions.

20 **MS. KATO:** No questions.

21 **CHAIRMAN SCHEUER:** Mr. Yamamoto?

22 **MR. YAMAMOTO:** No questions.

23 **CHAIRMAN SCHEUER:** Thank you.

24 Commissioners, are we clear? Okay.

25 So I'm going to say a couple more things

1 before I start in on testimony. One is just to
2 really re-emphasize to people who are offering
3 testimony, we are still in the first phase of
4 deliberations, which is just to determine whether or
5 not the requirements of Chapter 205 have been met by
6 the city and county in preparing their
7 recommendations. We're not today addressing whether
8 or not individual lands are appropriate for IAL
9 designation or not.

10 So testimony that is limited to whether or
11 not the city has met the requirements of Chapter 205
12 and comments related to 205 are the best comments to
13 make and are most germane to this matter.

14 If the Commission decides that the county
15 has met the requirements of Chapter 205, then
16 individual property owners will be given the
17 opportunity to present their case as to whether or
18 not their property should or should not be
19 designated as IAL at a later date or set of
20 hearings.

21 Now, if you give me one moment, I'm going
22 to start to read the list of testimony that we've
23 received since our last meeting on this matter.

24 Since our October meeting, in November --
25 well, I'll start in October. The 127th written

1 testimony we received on this matter was from Kalani
2 Morse, Esquire, from the Durett Law Firm, Leilani
3 Clayton for Mililani Tech Park, and Mike Ford.

4 In November, we've received testimony from
5 the Honolulu Youth Commission, Bronson Azama. In
6 December of 2021, we received three pieces of
7 testimony from Glory-Ann Ahuna-Hoapili, Valentino
8 De, and a charitable foundation corporation.

9 In January of this year, in preparation
10 for this hearing, we've received testimony from
11 Alicia Maluafiti, Lore Aiwohi, Steven Mau, Robinson
12 Kunia Land LLC, Thomas and Janet Witten, two pieces
13 of testimony from Jennifer Lim, Jesi Onaga, Sophie
14 Manansala, April Kalt, Bradley Dixon, Waihonu North
15 LLC, Steve Hoag, Triple G Stables, Zachary McNish,
16 Clarence Nakata, Eassie Soares-Haae, Jeff Bloom,
17 Blade and Chamaine Mossman -- might be Charmaine --
18 Chris Hong, Peter Savio, Harris Ranch LLC, Waianae
19 Solar LLC, Jodi Yamamoto, Linda Baptiste, Kalani
20 Morse, Yvonne Watari, Dorene Cooper, Ronald and Mary
21 Tubbs, John McCauslin, Laura Johnson, Crystal
22 Posiulai, Diana Young, Harrison Goo, Nodie Namba-
23 Hada, Peter Opdahl, Rochelle Ito, Lulik Hadar, Wes
24 and Karen Wong, Armani De Ocampo, Valentino De
25 Ocampo, Mordecai and the Ruth Hudson Trust,

1 Christopher and Jacqueline Laird, Diana Puulei, Fred
2 Redell. I believe there's a misspelling here in my
3 list. I apologize.

4 Arnold and Jerri Lum, Tim Irons, Philip
5 Rodgers, Elizabeth Piazzzi, Holly Kim, Jason Leue,
6 Barry Bright, Phyllis Dudoit, Raynald and Dorene
7 Cooper, Frances Kama-Silva, Andrew Cook, Laurence
8 Greene, and Michael Kam.

9 And as I noted over the last evening,
10 we've received some additional pieces of testimony
11 that have been shared with the Commissioners and
12 provided to us.

13 With that said, I'm now going to call for
14 oral testimony on this matter. If you wish to
15 provide oral testimony, use the raise your hand
16 function, and I will call on you in order. I will
17 start with Alicia Maluafiti followed by Alexander
18 Garber.

19 As I let in Ms. Maluafiti, the last thing
20 I want to note, since there are many people who have
21 perhaps never been to a Land Use Commission meeting
22 before, that nine possible members of the LUC, or
23 eight of us currently, are all volunteers. We all
24 have other lives, but we choose to do this work, to
25 make our financial disclosures and to be nominated

1 by the governor and confirmed by the senate in order
2 to serve Hawaii, so that's our background.

3 And I have promoted Ms. Maluafiti to be a
4 panelist. If you would enable your audio and video.

5 **ALICIA MALUAFITI:** Hi, good morning.

6 **CHAIRMAN SCHEUER:** Aloha.

7 **ALICIA MALUAFITI:** Aloha.

8 **CHAIRMAN SCHEUER:** I'm going to swear you
9 in and ask you to identify your name and address for
10 the record and then give you two minutes to testify.

11 So do you swear or affirm the testimony
12 you're about to give is the truth?

13 **ALICIA MALUAFITI:** I do.

14 **CHAIRMAN SCHEUER:** Mahalo. Please,
15 proceed.

16 **ALICIA MALUAFITI:** Thank you. My name's
17 Alicia Maluafiti. I live at 91302 Ewa Beach Road,
18 Ewa Beach, 96706.

19 I own AG-2 land in Nanakuli, and I'm -- I
20 know you guys are all volunteers, and I know that
21 you should not be receiving the wrath of testifiers.
22 But I'm sure you know that this is a very
23 frustrating process.

24 Let me tell you, you know when the city
25 comes and appraises your property, you get an

1 opportunity to appeal that appraisal. I -- if we
2 don't have a process right now in place for
3 appealing the designation of IAL by the city, then
4 we need it. If we don't have it, I will tell you
5 right now I got three weeks to introduce a bill to
6 the legislature to give landowners that option.

7 I know you're not here to tell me that my
8 -- whether my -- for me to tell you my property
9 should or should not be designated as IAL, but I'm
10 just looking at the process that the city followed.
11 And that is that they never once came out and looked
12 at my property to determine whether or not the
13 recommendations should stick.

14 My property is half under water, not
15 because of the recent floods, but because of a
16 stream that the city has failed to maintain and
17 which is now flooding part of my property.

18 I bought the property to do what you guys
19 are all doing just as a volunteer animal lover, and
20 it came with 300 cats. Guess what you can't do with
21 cats on your property? You can't grow produce. And
22 no one's coming in to take away or kill 300 cats,
23 least of all me, because I love them.

24 So there's a lot issues. Kiawe from one
25 end to the other. Would the city like to come in

1 and take a look at my property and tell me who's
2 going to pay the 30,000 to grub my land of all the
3 kiawe and everything else, six-foot-high California
4 grass.

5 I'm pretty sure the city and the state is
6 not ready to come up and help us landowners get our
7 lands ready as designated important ag lands so we
8 can grow produce to feed the state. It's just not
9 going to happen.

10 Thank you, Jonathan. Am I out of time?

11 **CHAIRMAN SCHEUER:** Yeah. Thank you. If
12 you could summarize.

13 **ALICIA MALUAFITI:** I would just like to
14 know specifically for the property owners, if you
15 could tell us, if there is an appeals process in
16 place, and if not, that's something we should be
17 working on as the Commission takes this into
18 advisement as far as accepting the city's process
19 for designation. Thank you.

20 **CHAIRMAN SCHEUER:** Thank you so much. And
21 if nobody else addresses it, I will address it at
22 the end of questions.

23 I'm going to offer -- and this is for all
24 people who wish to testify to stay on, and the
25 parties and then the Commissioners have a chance to

1 ask you questions. Starting with the city and
2 county, questions for the witness?

3 **MS. APUNA:** No questions. Thank you.

4 **CHAIRMAN SCHEUER:** OPSD?

5 **MS. KATO:** No questions.

6 **CHAIRMAN SCHEUER:** Mr. Yamamoto?

7 **MR. YAMAMOTO:** No questions.

8 **CHAIRMAN SCHEUER:** Commissioners,
9 beginning with Commissioner Wong.

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

11 Ms. Maluafiti, I have a question. You
12 know your property in Nanakuli, how many acres was
13 it again?

14 **ALICIA MALUAFITI:** I have two TMKs, 2.3
15 acres each.

16 **COMMISSIONER WONG:** 2.3. Okay. That's
17 all I need to know. Thank you.

18 **CHAIRMAN SCHEUER:** Further questions,
19 Commissioners?

20 Commissioner Giovanni.

21 **COMMISSIONER GIOVANNI:** Thank you.

22 Are you -- this is for the testifier. Are
23 you familiar with the county's process to the extent
24 that there was an option to apply for an exemption
25 from an IAL designation?

1 **ALICIA MALUAFITI:** Not aware of really
2 anything that has happened. By the way, I lobby for
3 agriculture, so I've been part of the IAL discussion
4 and process, but I'm not aware of any exemption.

5 The last letter that I got was from a
6 bunch of attorneys. And they were the ones that
7 kind of prompted many of us. I'll be honest, I --
8 if you saw my property, you'd be questioning it,
9 too.

10 **COMMISSIONER GIOVANNI:** Yeah. No, I'm not
11 asking about your specific property but more about -
12 -

13 **ALICIA MALUAFITI:** Whether they --

14 **COMMISSIONER GIOVANNI:** -- about the
15 county process by which you could or could not apply
16 for an exemption and whether or not you did. But
17 whether or not you were informed about it and were,
18 you know, apprised of that option, if it did exist,
19 you're saying you did not, is that correct?

20 **ALICIA MALUAFITI:** I'm not aware of
21 receiving anything. I don't live at the property,
22 so -- but I have to admit, you know, I work in this
23 area, and I don't remember receiving anything.

24 **COMMISSIONER GIOVANNI:** Okay. Thank you
25 very much.

1 **ALICIA MALUAFITI:** Yes.

2 **CHAIRMAN SCHEUER:** Commissioners, further
3 questions?

4 **FEMALE SPEAKER:** (Indiscernible.)

5 **CHAIRMAN SCHEUER:** (Spoke Hawaiian.)
6 Somebody's audio is -- okay.

7 So just to repeat, should the Commission
8 today decide that -- determine that the city and
9 county has met the requirements of 205, then the
10 Commission will provide an opportunity for every
11 affected landowner the opportunity to essentially,
12 in your words, appeal or contest the designation of
13 their individual property. We're just not to that
14 point yet.

15 **ALICIA MALUAFITI:** Thank you.

16 **CHAIRMAN SCHEUER:** I do have a question
17 for you, however, given your extensive experience,
18 including in the drafting of 205 or at least the
19 involvement while the legislature was drafting 205
20 and this portion of 205.

21 Do you believe that the distinctions made
22 in the law between the allowable uses on IAL small
23 properties versus regularly agriculturally-
24 designated small properties, particularly as regards
25 to their use for housing and how housing is allowed,

1 do you think that the differences in those two
2 portions of the statute, housing is allowed in non-
3 IAL ag lands and how housing is allowed in IAL ag
4 lands -- do you think that the distinctions that
5 exist in the law were fully appreciated by the
6 legislature when the law was passed?

7 **ALICIA MALUAFITI:** Well, I wasn't part of
8 the crafting, drafting process. I came in after the
9 law had passed. But I will tell you this, the -- I
10 guess what you're talking specifically about is the
11 spirit and intent of the law when they drafted it
12 and submitted it for passage.

13 And this is from the Farm Bureau, by the
14 way. I can't speak for the Farm Bureau, but the
15 intention was to preserve large tracts of really
16 high-level soil quality lands, not this patchwork
17 quilt of tiny two-acre, two-and-a-half-acre
18 properties. And unfortunately, for a lot of the
19 farmers, I can't even lease my property without
20 housing on it. God forbid you could get even
21 electrical or a septic tank or anything else on your
22 property.

23 So I think the problem has been not just
24 the IAL designation and all the things that we're no
25 longer allowed to do, but if you really are looking

1 at food security and agricultural sustainability,
2 then the IAL, how the city and state -- sorry -- has
3 implemented this is weak beyond words.

4 Everybody has lost the spirit and intent
5 of that process to preserve those lands --

6 **CHAIRMAN SCHEUER:** I guess if -- my
7 question is, do you believe that's an issue with the
8 city, say, for instance, how they've implemented it
9 or structural problems with the statute itself?

10 **ALICIA MALUAFITI:** I can't speak to the
11 structural problems. I would say that the city has
12 been less than effective in allowing agriculture to
13 flourish. It's been their processes in general.

14 Even the last question about what I may or
15 may not have received for the exemption, I think
16 that the city is, sadly, a little bit deep in
17 bureaucracy and does not really understand the
18 perspective of farmers and property owners who are
19 trying to make these lands viable for some kind of
20 use.

21 Does that answer your question better?

22 **CHAIRMAN SCHEUER:** Yes. Thank you very
23 much.

24 **ALICIA MALUAFITI:** Thank you.

25 **CHAIRMAN SCHEUER:** Commissioners, are

1 there any further questions for the witness?

2 If not, thank you very much for your
3 testimony as well as for your written testimony on
4 this matter. I'm going to move you back to be a
5 panelist. I will admit Alexander Garber followed by
6 Michael Kam.

7 And again, if you wish to testify, offer
8 oral testimony on this matter, you use the raise
9 your hand function if you are accessing this via
10 Zoom software or star 9 if you are calling in.

11 Mr. Garber, if you would raise -- if you
12 would enable your audio and video.

13 **ALEXANDER GARBER:** Hello? Can you hear
14 me?

15 **CHAIRMAN SCHEUER:** Yes, I can.

16 **ALEXANDER GARBER:** Good morning.

17 **CHAIRMAN SCHEUER:** Do you swear or affirm
18 the testimony you're about to give is the truth?

19 **ALEXANDER GARBER:** I do.

20 **CHAIRMAN SCHEUER:** Thank you. So if you'd
21 state your name and address for the record, and then
22 proceed.

23 **ALEXANDER GARBER:** Alexander Garber, and I
24 live at 66603 Koupai Road in Waialua 96791.

25 **CHAIRMAN SCHEUER:** Thank you. Please

1 proceed.

2 **ALEXANDER GARBER:** So I think you
3 transitioned into my testimony quite well. I want
4 to thank you for allowing me to again address the
5 committee.

6 I think there's multiple concerns with the
7 IAL statute and the way the DPP has attempted to
8 implement it. Today in my testimony I'll focus on
9 the additional requirements IAL statute places on
10 the occupants of farm dwellings.

11 This is important to me because it
12 directly affects --

13 **CHAIRMAN SCHEUER:** Mr. Garber, you're
14 slightly fading in and out on your audio. I'm not
15 sure why.

16 **ALEXANDER GARBER:** Can you hear me better
17 now?

18 **CHAIRMAN SCHEUER:** That's better. Thank
19 you.

20 **ALEXANDER GARBER:** Okay. So the issue of
21 the use of farm dwellings is very important to me
22 because it affects how my family and I currently use
23 our land and our farm and how we intend to use it in
24 the future.

25 If you just read the relevant statutes, I

1 think any reasonable person would conclude that the
2 IAL statute is significantly more restrictive than
3 the agricultural designation statute.

4 In fact, during her April 29th testimony
5 to the Commission, when Commissioner Wong asked
6 Deputy Director Dawn Apuna if the IAL statute would
7 prohibit my three-year-old from living in our home,
8 the Deputy Director read the statute and answered,
9 "I believe it could be interpreted that way."

10 That's a big concern. I was as concerned
11 for me and my daughter, but it's also concerning for
12 DPP because during the little outreach that they did
13 do in the community, it was repeatedly documented
14 that they told owners the IAL would not affect their
15 farm dwellings or their ability to live in them.

16 Deliberately or inadvertently, the DPP
17 repeatedly spread this false information. No
18 reasonable person can possibly conclude that that
19 satisfies the law's requirement for outreach and
20 engagement.

21 I think DPP realized that this was a
22 problem, so since that testimony, the DPP Director
23 Dean Uchida and Mary Evans from the Office of
24 Planning have submitted documents which they attempt
25 to convince you the two statutes are essentially the

1 same.

2 When you read these documents, I would
3 like you to ask yourself, "are these honest,
4 impartial assessments of the statutes, or are they
5 deliberate contortions of the language which these
6 very intelligent and creative people use to drive
7 you to a conclusion that serves the author's
8 purpose?" I think you know the answer to that
9 question.

10 **CHAIRMAN SCHEUER:** If I can ask you to
11 summarize.

12 **ALEXANDER GARBER:** Okay. I think you know
13 the answer to that question. And if you have any
14 doubt, I ask you to please go read the statutes 205,
15 4.5A-4 and 2.545.5 again, and then I think it will
16 be obvious that those are not the same. If they're
17 not the same, I think you need to vote to reject the
18 DPP's recommendation in regard to any parcel that
19 contains a permitted farm dwelling.

20 If you don't, I'd ask you to please give
21 me specific steps I can take to appeal this. Thank
22 you.

23 **CHAIRMAN SCHEUER:** Thank you very much for
24 your testimony.

25 Questions for the witness, Ms. Apuna?

1 **MS. APUNA:** No questions.

2 **CHAIRMAN SCHEUER:** OPSD, Ms. Kato? Ms.
3 Kato or anybody else from OPSD?

4 **MR. FUNAKOSHI:** Hi, this is Rodney. No
5 questions.

6 **CHAIRMAN SCHEUER:** Thank you, Rodney.
7 Mr. Yamamoto?

8 **MR. YAMAMOTO:** No questions.

9 **CHAIRMAN SCHEUER:** Commissioners?
10 Commissioner Chang?

11 **COMMISSIONER CHANG:** Yes, thank you.

12 Good morning, Mr. Garber. Thank you again
13 for being here and providing your testimony. I
14 appreciate it.

15 How long have you owned the property?

16 **ALEXANDER GARBER:** We purchased it in
17 2013.

18 **COMMISSIONER CHANG:** Okay. And how big is
19 your property?

20 **ALEXANDER GARBER:** It's six-and-a-half
21 acres.

22 **COMMISSIONER CHANG:** Okay. And can you
23 tell me currently what's the agricultural activity
24 that you're doing on the property?

25 **ALEXANDER GARBER:** So we farm multiple

1 fruit crops, so we have star fruit, lychee, longan,
2 mango, avocado, and we use it ourselves. We barter
3 with the neighbors, and we sell to multiple
4 different retailers.

5 **COMMISSIONER CHANG:** Okay. All right.
6 Thank you very much. I appreciate that. Thank you.

7 **CHAIRMAN SCHEUER:** Thank you, Commissioner
8 Chang.

9 Commissioners, further questions for the
10 witness?

11 If I may, Mr. Garber. I think you laid
12 out a couple of possibilities on the way different
13 parties are interpreting the differences between
14 those two sections of the statute. Do you think
15 there's a third possibility that given the way the
16 statutes are worded, that reasonable people can come
17 to opposite conclusions --

18 **ALEXANDER GARBER:** Well, I mean --

19 **CHAIRMAN SCHEUER:** If I may -- which would
20 point to not a flaw so much in the interpreters as
21 with the authors of the statute?

22 **ALEXANDER GARBER:** Well, I mean, I think,
23 yeah. I mean, I do agree with Ms. Apuna who did
24 say, you know, after she stated that it could be
25 interpreted to mean that you couldn't have anyone

1 disabled or young or old living in your farm
2 dwelling, she did say she didn't think that was the
3 intent.

4 And I'm not sure what the intent is, but
5 I'm very concerned that I would be placed into this
6 group when -- regardless of intent, the statute
7 could be interpreted to mean that we can't live in
8 our home if we become disabled or elderly or the
9 very young. And I think that because of that, I
10 think the city and county has went about this
11 backwards, right? They should --

12 **CHAIRMAN SCHEUER:** So thank -- I'm just
13 going to ask you to just focus on the question that
14 I asked, so you've answered it. Thank you very
15 much. I appreciate it.

16 Any further questions for Mr. Garber?
17 If not, thank you very much for your
18 testimony.

19 I'm going to read off the next few
20 testifiers. I'm going to be admitting Michael Kam
21 followed by Donald Kilmer followed by Caridad Leiva
22 followed by Jeff Blum and Sunny Hsu. I am promoting
23 Mr. Kam.

24 Again, if you want to testify in this
25 matter, use the raise your hand function or the star

1 sequence -- the key sequence star 9.

2 Now that you're admitted, Mr. Kam, if you
3 would enable your audio and video. Okay. I can
4 hear you. There we go. Aloha. Good morning.

5 **MICHAEL KAM:** Hi.

6 **CHAIRMAN SCHEUER:** Do you swear or affirm
7 the testimony that you're about to give is the
8 truth?

9 **MICHAEL KAM:** Yes.

10 **CHAIRMAN SCHEUER:** Okay. So if you'd
11 state your name and address for the record and then
12 proceed.

13 **MICHAEL KAM:** Michael Kam, 2372 Pualani
14 Way, Honolulu, Hawaii, but I have a farm out on the
15 North Shore in Waialua.

16 **CHAIRMAN SCHEUER:** Mahalo. Please
17 continue.

18 **MICHAEL KAM:** Before I start, I would like
19 to note that I did receive notice of this meeting,
20 but it was received in my New York address. I
21 recently came back after retirement to Hawaii. And
22 it was texted to me by my wife yesterday, so I've
23 had very little time to organize and prepare for
24 this.

25 I will say that, to my knowledge -- and I

1 could have received things in the past, but to my
2 knowledge, this was the first thing that we've ever
3 received from the city regarding IAL. I'm very
4 supportive of IAL, but it is -- I just want to note
5 the factual. It could have been that I missed it.
6 I'm not saying it's the DPP's fault. Could be the
7 postal, whatever.

8 But let me get started. My notes concern
9 the AG opinion. I believe it's embarrassingly
10 flawed, cannot be reasonably relied upon, and should
11 not be relied upon by the LUC.

12 The opinion is correct in stating that all
13 eight of the statutory factors to designate IAL land
14 must be weighed. That means that each of the eight
15 factors needs to be considered and a weight attached
16 to it.

17 In order for each of those factors to be
18 considered, a factual record of some sort be
19 practical and needs to be created and be a -- and
20 thought of. It is inconsistent and incorrect to
21 state that the city could base its decision on IAL
22 designation on a single factor or fewer than eight
23 factors. That just doesn't make any sense at all.

24 I would note that the AG opinion also
25 states and concludes that the city is allowed to

1 consider things on a countrywide -- countywide
2 basis. I'm sorry, countywide basis. If you look at
3 the factors, I think it's fair to say that it
4 depends on a variety of county, state, and local
5 factors and individual parcel factors.

6 To give a good example, availability of
7 water is --

8 **CHAIRMAN SCHEUER:** If I can ask you to
9 start to summarize your testimony.

10 **MICHAEL KAM:** Sure. Basically, the AG
11 opinion is fatally flawed. And to rely on it would
12 only set back and further delay the IAL designation.

13 I would like an opportunity to further
14 supplement my remarks since -- with further written
15 testimony, if that's possible, but I'll make that
16 request and you can decide later to allow that.

17 **CHAIRMAN SCHEUER:** Okay. We always accept
18 written testimony until the end of our proceedings.

19 **MICHAEL KAM:** Okay. Terrific.

20 **CHAIRMAN SCHEUER:** Thank you so much.
21 Questions for the witness, Ms. Apuna?

22 **MS. APUNA:** Just one question, Mr. Kam.
23 What is the TMK or the address for your Waialua
24 farm?

25 **MICHAEL KAM:** I think it's 67214.

1 **MS. APUNA:** Okay. Thank you.

2 **CHAIRMAN SCHEUER:** OPSD?

3 **MS. KATO:** No questions.

4 **CHAIRMAN SCHEUER:** Mr. Yamamoto?

5 **MR. YAMAMOTO:** No questions.

6 **CHAIRMAN SCHEUER:** Commissioners?

7 Commissioner Chang?

8 **COMMISSIONER CHANG:** Thank you.

9 Mr. Kam, thank you for your testimony this
10 morning. You seem to be a very learned person. Let
11 me ask you some other questions. How long have you
12 owned the property?

13 **MICHAEL KAM:** I don't remember exactly.
14 But perhaps at least seven years. But I've only
15 come back to Honolulu. I had a tenant on the
16 property that was -- I bought it from Dole, and the
17 tenant was on there for 20 years. I gave them an
18 opportunity to stay for three years at the same rent
19 of a dollar per acre per year to allow them time to
20 find other farmland.

21 **COMMISSIONER CHANG:** And how many acres do
22 you have?

23 **MICHAEL KAM:** I have 26 acres, and we're
24 not to talk about individual characteristics, but my
25 land is bisected by the Kanoa access road that leads

1 to the overpass on Farrington Highway. So you
2 physically can't -- it's impractical to drive a
3 tractor from one side of my property to the other
4 side.

5 **COMMISSIONER CHANG:** Okay.

6 **MICHAEL KAM:** But it's a good-sized
7 property, yeah.

8 **COMMISSIONER CHANG:** This is the final
9 question. Part of the intent of Chapter 205 was to
10 provide incentives to farmers, and you seem to be
11 familiar with the chapter. I understand, one, you
12 said you support IAL, but you have concerns
13 regarding the AG opinion.

14 In your view, would you be more inclined
15 to support the designation of your property into IAL
16 if the city had adopted incentives to farmers to
17 support sustainable ag?

18 **MICHAEL KAM:** Yeah. I mean, that's one of
19 my gripes, right? I actually was considering
20 voluntarily -- and I intend to voluntarily pursue an
21 IAL designation as to a portion of my land.
22 However, the quid pro quo is that if, you know, you
23 want to support sustainable agriculture, which --
24 and the provision of the statute that allows up to
25 15 percent of the land to be redesignated as another

1 use, non-agriculture use, is an important incentive
2 when you consider that land is being dedicated,
3 arguably, in perpetuity for agriculture.

4 You know, no one knows whether agriculture
5 will be sustainable in perpetuity, right? So that
6 incentive in particular is one that I'm very
7 interested in. There's been very little
8 information. The city and county have done
9 extraordinarily little to publicize and work on
10 creating viable incentives to encourage landowners
11 such as myself to voluntarily dedicate land and
12 avoid all this, you know, noise regarding
13 designation.

14 **COMMISSIONER CHANG:** Thank you. You've
15 more than answered my question. I appreciate that,
16 Mr. Kam. Thank you very much.

17 **CHAIRMAN SCHEUER:** Thank you, Commissioner
18 Chang.

19 Commissioners, any further questions for
20 the witness?

21 Seeing none, welcome home.

22 **MICHAEL KAM:** Thank you.

23 **CHAIRMAN SCHEUER:** Thank you very much for
24 your testimony today. I'm going to move you to be
25 an attendee.

1 I will admit Donald Kilmer followed by
2 Jeff Bloom, Sunny Hsu, and Brian Miyamoto.

3 As Mr. Kilmer is coming in, I neglected to
4 note in my review of proceedings, which I usually
5 do, that we tend to take about a ten-minute break
6 every hour or so, so that everybody can give their
7 full attention to the proceedings at hand. So we'll
8 go until about 9:50 and take a break.

9 Mr. Kilmer, could you enable your audio
10 and video, please?

11 **DONALD KILMER:** I think I did. Can you
12 hear me now?

13 **CHAIRMAN SCHEUER:** I can hear you. Can --
14 now we can see you as well. Welcome. Do you swear
15 or affirm the testimony you're about to give is the
16 truth?

17 **DONALD KILMER:** I do.

18 **CHAIRMAN SCHEUER:** Okay. State your name
19 and address for the record and then proceed.

20 **DONALD KILMER:** Donald Kilmer. My address
21 is 94-507 Lanikuhana Avenue in Mililani, and my farm
22 is in Waialua at 65-670 Kalkkuna Road.

23 **CHAIRMAN SCHEUER:** Thank you. Please
24 proceed.

25 **DONALD KILMER:** My point is that -- is

1 that all of the add-ons, the ODS add-ons, as I look
2 at them -- and most small farmers look at them for
3 the IAL designator -- seem to be unnecessary. So my
4 question is, why not just say that the IAL lands
5 cannot be changed from the -- from ag lands to
6 commercial or residential and leave it at that? Or
7 make the change -- such a change extremely difficult
8 or have to -- much more difficult than other
9 agricultural lands and leave it at that.

10 As things are, all of the ODS add-ons seem
11 like disincentives for farmers, especially for
12 farmers to live on their own land and especially for
13 small farmers. And it's quite possible that people
14 like Dole or the Kamehameha lands might not object
15 to it, but it's very -- makes anything -- like these
16 add-ons make the -- make it very difficult for small
17 farmers.

18 That's all I have to say. I would very
19 much appreciate an explanation why these add-ons,
20 the ODS add-ons are necessary?

21 **CHAIRMAN SCHEUER:** Thank you very much for
22 your testimony.

23 Questions for the witness, Ms. Apuna?

24 **MS. APUNA:** Thank you, Mr. Kilmer. Can I
25 ask you how large is your property or farm?

1 DONALD KILMER: It's five acres.

2 MS. APUNA: Five acres. And would you be
3 willing to participate in, you know, surveys or
4 other ways of informing the county of how we can
5 assist farmers such as yourself?

6 DONALD KILMER: Sure, I would appreciate
7 that.

8 MS. APUNA: Okay. Thank you, Mr. Kilmer.

9 CHAIRMAN SCHEUER: Thank you, Ms. Apuna.
10 Nothing from OPSD.

11 Department of Agriculture?

12 MR. YAMAMATO: No questions.

13 CHAIRMAN SCHEUER: Commissioners?

14 If there's no questions from
15 Commissioners, I will respond to your inquiry, Mr.
16 Kilmer. Sorry if this comes across wrong, but we
17 didn't write the statute, right? We have the task
18 of implementing the statute. I was not in the room
19 when the legislature negotiated the statute and why
20 it chose to structure the various requirements,
21 incentives, and disincentives around IAL.

22 We certainly are seeing -- at least, I'm
23 personally seeing issues with how the statute was
24 drafted in terms of its ability to be implemented
25 rationally. I think your questions are very good

1 ones, but we're probably not the best body to be
2 answering those questions because we did not put
3 those requirements into place.

4 Does that make sense as a response, sir?

5 **DONALD KILMER:** Yes. Yes, sir, it does.
6 That's -- I understand your position.

7 **CHAIRMAN SCHEUER:** That is very much
8 appreciated, and we understand yours as well. We
9 really appreciate your ability and your taking the
10 time to testify in front of us today. Thank you
11 very much.

12 **DONALD KILMER:** Thank you.

13 **CHAIRMAN SCHEUER:** Okay. Anything further
14 for the witness? Seeing none, I'm going to move you
15 back to being an attendee, and I'm going to admit
16 Jeff Bloom followed by Sunny Hsu, Brian Miyamoto,
17 and Caridad Leiva. We seem to be having some
18 technical difficulty admitting Mr. -- oh, there --
19 no. We're having some technical difficulties
20 promoting Mr. -- there we go. Oh, he declined to be
21 promoted to be a panelist.

22 Mr. Bloom, you have your hand raised to be
23 -- to provide testimony. I'm going to move on to
24 the next witness, and we'll try again.

25 Sunny Hsu followed by Brian Miyamoto

1 followed by Caridad Leiva, followed by Bobby Correia
2 and then Jeff Bloom.

3 Ms. Hsu, good morning. Could you enable
4 your audio and video?

5 **SUNNY HSU:** Hello.

6 **CHAIRMAN SCHEUER:** Hi. Good morning.

7 **SUNNY HSU:** Hi, can you hear me and see
8 me?

9 **CHAIRMAN SCHEUER:** Yes, both. So I'm
10 going to swear you in and then ask you to state your
11 name and address for the record and then give your
12 testimony. Do you swear or affirm that the
13 testimony you're about to give is the truth?

14 **SUNNY HSU:** Yes.

15 **CHAIRMAN SCHEUER:** Okay. Please proceed.

16 **SUNNY HSU:** Thank you. First of all, I
17 really thank you for these opportunities. And you
18 can tell that English is my second language, and so
19 I will try my best to, you know, to testimony our
20 position for this IAL.

21 Actually, I got this -- your notice from
22 my husband, actually, couple days ago. And I
23 actually want my son to attend this meeting.
24 Somehow, he's very busy and he already have a
25 preassign appointment already and that he's in LA.

1 He's not in Honolulu. And so I will try to explain
2 it how we think about this IAL.

3 We as a family that's starting the farm --
4 farming life since 1980 -- 1978. We started from
5 Waimanalo and after like about 15 years -- actually,
6 in 1985, we need to make the decision to move to
7 somewhere else because our lease land being taken
8 away by OHA. They build a bunch of the housing on
9 the -- on those lands, on those farmland, so we need
10 to move on because we actually doing our lifestyle
11 as a farmer in actually Oahu, basically, in some --
12 we have delivery of vegetables and to the -- to the
13 wholesalers, and then they give to neighbor islands.

14 Anyway, so this is our main income source.
15 So we got a chance and then we work on leasing the
16 lands with Campbell Estate, and then we move to
17 Kahuku. So up until now we are still farmers. You
18 know, my father-in-law is 92 years old, and he just
19 been forced to retire because he be working all the
20 way until like three years ago. He fell down in the
21 farm, and so he has to stop now.

22 And what I want to see is as our, you
23 know, long-term farmers -- and we work so hard and
24 we work like only five days a year that -- I mean,
25 our day off is like only New Year, Christmas, and --

1 or thunderstorm, bad weathers time. Otherwise, we
2 been working every day to raise our kinds and then
3 provide good families --

4 And I think farmers, okay, is tough life,
5 okay, as a farming. And so if the government or the
6 city and county, they have this IAL and then force
7 us that eventually afterward we were worry about our
8 lease land going to be take away from the landlord
9 so we -- finally, we bought the land about in 1996.

10 What I want to say is the lands that we
11 own seems from 1996. And while we get that time is
12 we can only afford that land --

13 **CHAIRMAN SCHEUER:** Ms. Hsu, can I ask you
14 to --

15 **SUNNY HSU:** Uh-huh.

16 **CHAIRMAN SCHEUER:** Can I ask you to
17 summarize your testimony. I have no doubt there
18 will be questions for you. And also, can you state
19 your address for the record as well?

20 **SUNNY HSU:** Oh, okay. We -- I be living
21 1996. Let me get it out here. Okay. Is Kaluanui
22 of the cultures of division and the address was --
23 because I think we have a new address, but -- or we
24 didn't have yet. We don't have it yet. 53772
25 Kamehameha Highway, Hauula.

1 **CHAIRMAN SCHEUER:** Thank you.

2 **SUNNY HSU:** Okay. And this is --
3 actually, we've got -- what we want to see is
4 finally we actually straight this land's ownership
5 by about couple month ago, because we been fighting
6 this -- not really fighting.

7 We want to know why we cannot get a
8 (indiscernible) city and county, but we been paying
9 the tax, the house lot tax and the farm lot tax and
10 the state is (indiscernible) from the beginning by
11 the city and county collecting our tax, you know,
12 property tax, but they don't (indiscernible), so we
13 cannot really get a permit, you know, for building a
14 farmhouse on the lot.

15 And then now we finally get the thing
16 straight and after 40 years farming and this IAL
17 going to stop us building the farmhouse on the land
18 if we become IAL category? That's not fair. You
19 know what I'm saying?

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

21 **SUNNY HSU:** And then we actually want our
22 son to testimony because he's a local boy in Hawaii
23 and grow up here, and then to New York, working very
24 hard, and then planning to come back. And we have a
25 granddaughter one year old now in --

1 **CHAIRMAN SCHEUER:** So Ms. Hsu, I'm going
2 to need you to end your testimony so that we can ask
3 you questions.

4 **SUNNY HSU:** Okay. What I want to say is
5 you guys stop our children's futures option, the
6 lifestyles options after their ancestor in Hawaii
7 working so hard for farming and want a better life
8 for our grandchildren. And you just have an IAL
9 coming on, and then this is not a freedom, you know.
10 This is like -- like punish to us. We are working
11 very hard.

12 **CHAIRMAN SCHEUER:** Thank you so much for
13 your testimony. I'm going to see now if people have
14 questions for you.

15 **SUNNY HSU:** Okay. Thank you.

16 **CHAIRMAN SCHEUER:** Questions for the
17 witness, starting with the city and county. Ms.
18 Apuna?

19 **MS. APUNA:** Thank you, Ms. Hsu, for your
20 testimony. So is the issue that you understand that
21 IAL designation to not allow you to develop farm
22 dwelling -- a house on your farm?

23 **SUNNY HSU:** Right. And in fact, it's
24 going to affect our (indiscernible).

25 **MS. APUNA:** And were you somehow advised

1 of this by an attorney or other person?

2 **SUNNY HSU:** Oh, no, no. It just that we
3 were just thinking -- because we never thinking that
4 to like some -- like, I think city and county or
5 government worry that we are developer or change our
6 zoning. No, that area is not going to able to.

7 **MS. APUNA:** Okay. All right. Thank you,
8 Ms. Hsu.

9 **SUNNY HSU:** Maybe I just didn't really
10 gain but with this and until my husband give me the
11 notification, the letter that you guys sending to
12 us, and then my husband and I were thinking, wow.
13 And if you guys pass this, you know, that's the IAL,
14 is that going to restrict us to do what we want to
15 do on the land or we just want to build -- you know,
16 because it's agriculture, too.

17 If we want to build one house or two
18 houses on the land, are we able to? That's my
19 question.

20 **CHAIRMAN SCHEUER:** Thank you.

21 OPSD? Ms. Kato?

22 **MS. KATO:** No questions. Thank you.

23 **CHAIRMAN SCHEUER:** Department of
24 Agriculture.

25 **MR. YAMAMOTO:** No questions.

1 **CHAIRMAN SCHEUER:** Commissioners?

2 Commissioner Chang?

3 **COMMISSIONER CHANG:** Thank you, Ms. Hsu.

4 So what gave you the idea that you couldn't build a
5 farm dwelling on your land if it's IAL?

6 **SUNNY HSU:** I guess, you know, our
7 experiences, you know, as immigrant and working so
8 hard every day, and we -- we bought this land to --
9 you know, I think it was a -- in 1996 through Mr.
10 Ige or the what you call that, USD -- you know,
11 Department of -- Federal Department -- some agents,
12 you know.

13 And later on, when we want to build a home
14 -- farmhouse, we don't allow to because the city and
15 county don't consent but they collecting our house
16 lot property tax and our farm lot property tax. It
17 up to now over 1996 to now and then so that's why I
18 think --

19 **COMMISSIONER CHANG:** I just want to --

20 **SUNNY HSU:** That's why -- you know -- let
21 me finish. That's why we didn't get any help from
22 lawyer but we just assumed that. You guys what --
23 otherwise you -- why you want to do IAL? You know,
24 what is the really purpose for, you know, for
25 restricted to farmers? They all farmlands or

1 whoever or even the -- if you worry about investors.

2 Even if investors, after ten years of --
3 15 years pay, they hold the land, they deserve to
4 own something -- you know, to make decision on their
5 land. Just like right now, you know, the kids from
6 mainland due to the pandemic and they coming back
7 home and because they want to enjoy the airs, the
8 good airs, good water for their next generation,
9 they pay 300,000 more than last year or two years
10 ago to buy the single family home and --

11 **COMMISSIONER CHANG:** Okay. Ms. Hsu, thank
12 you so much. We're getting a little off the
13 subject, and I know there are others.

14 **SUNNY HSU:** I'm sorry.

15 **COMMISSIONER CHANG:** No, no, no, no. I
16 know you feel very strongly about this but thank you
17 very much. No other questions.

18 **CHAIRMAN SCHEUER:** Thank you. Are there
19 any further questions for the witness?

20 I would just -- this is just for the
21 witness, but I'm not asking a question. I'm just --
22 just so it's really clear, today all we're doing
23 today, Ms. Hsu, is not making any determination
24 about your property or any other individual
25 property.

1 All we're deciding today is whether or not
2 we believe the city has taken all the right steps so
3 that we could then actually consider their specific
4 recommendations going forward. If we say no, then
5 it will go back to the city to start again. If we
6 say we think there is, there will be a chance for
7 you and any other individual property owner to say,
8 no, we don't believe that our land should be
9 designated.

10 So this is only one part of the process.
11 And there's no decision that will affect your
12 properties' property rights today.

13 **SUNNY HSU:** Thank you. I -- I'm sorry.
14 I'm kind of emotion -- emotional about his because I
15 --

16 **CHAIRMAN SCHEUER:** Absolutely.

17 **SUNNY HSU:** -- feel real estate is real
18 estate. You know, property is property. Whoever
19 own what kind of properties, that supposed to be
20 protected for their future value.

21 **CHAIRMAN SCHEUER:** Okay. I appreciate
22 that. Thank you very much for your testimony and
23 for your work as a farmer in feeding Hawaii.

24 **SUNNY HSU:** Thank you.

25 **CHAIRMAN SCHEUER:** It's 9:58 a.m. I'm

1 going to move you to be an attendee again.

2 We're now a little past the time I wanted
3 to take a break. We're going to come back -- now
4 it's 9:59. We're going to come back at 10:09.

5 At 10:09, I'm going to try and allow --
6 figure out whether or not we can get Mr. Bloom's
7 technical issues to testify followed by Mr. Brian
8 Miyamoto, Caridad Leiva and Bobby Correia. Recess
9 for ten minutes until 10:09.

10 **(Recess taken from 9:59 to 10:09 a.m.)**

11 **CHAIRMAN SCHEUER:** It's 10:09 a.m. We are
12 back in session, continuing with oral testimony from
13 the public on the city and county of Honolulu's
14 important agricultural lands proposal. We'll now
15 accept testimony from Mr. Jeff Bloom, who is here by
16 audio.

17 Mr. Bloom, do you swear or affirm the
18 testimony you're about to give is the truth?

19 **JEFF BLOOM:** Yes.

20 **CHAIRMAN SCHEUER:** If you would state your
21 name and address for the record and then proceed
22 with your testimony.

23 **JEFF BLOOM:** Yes. Jeff Bloom. Address is
24 41-755 Kaulukānu Street, Waimānalo, Hawaii, 96795.

25 **CHAIRMAN SCHEUER:** Thank you. So please

1 proceed.

2 **JEFF BLOOM:** Okay. And I've submitted
3 written testimony. I testified in May, submitted
4 written testimony in May, and obviously a number of
5 us in Waimanalo -- I belong to the Waimanalo
6 Agricultural Association, but I'm not speaking on
7 their behalf. I'm only speaking on my behalf. But
8 I've spoken to a number of other landowner farmers
9 out here that also belong to WAA, so we all talk and
10 we have monthly meetings.

11 This has really only came up in May when
12 we got a letter, as everyone else, I think,
13 mentioned, or previously from Durrett and Lang and
14 Morse notifying us, and then we got a letter
15 afterwards from the city, but we never got anything
16 before that.

17 I went back through WAA because we had a
18 meeting about it, and someone brought up that there
19 was meetings. Somebody from WAA went somewhere to -
20 - DPP would come out and speak to us and other
21 Department of Ag and other organizations. I don't
22 go to every meeting, obviously, like anybody can't
23 take time to go do that monthly when they have them,
24 but I've belonged since the eighties.

25 I've owned this property since the

1 eighties, and I really believe that the process was
2 flawed. We were never notified. Lots of things
3 have been said. When I took my testimony I just
4 sent that back up to people in WAA, so that they
5 were aware, and someone else posted the DPP letter
6 that went to the Land Use Commission, and I read
7 through that.

8 And it's all well and good that the
9 recommendation has minimal to no effect on property
10 rights, that the recommendation needs procedural due
11 process, the city property applied all eight
12 standards. I disagree with everything that DPP is
13 saying. That is not true whatsoever.

14 I do not -- you know, I was raised -- I'm
15 71 years old. I was raised to trust but verify. I
16 do not trust the state. I do not trust the city
17 because lots of things are said, and then everybody
18 takes the laws and makes their own rules,
19 recommendations of how they do them.

20 So this administration is great. Next
21 administration has a different approach. I don't
22 trust any of that. I have a 22-year-old grandson
23 graduated UH. He's part Hawaiian. He basically
24 loves the land, wants to own this property, maintain
25 it. He's here daily. He works. Now he graduated

1 in Hawaiian studies with dual major in Hawaiian
2 studies and plants. He now works at the Bishop
3 Estate. But this is where he wants to spend his
4 life later on.

5 So I --

6 **CHAIRMAN SCHEUER:** If I can ask you to
7 summarize.

8 **JEFF BLOOM:** -- think you're not talking
9 about the next generation. You're talking about
10 people right now, and only the big landowners have
11 something to say. So bottom line, I'll cut it
12 there. This has been flawed. We've never been
13 notified.

14 I went back through -- someone from DPE --
15 DPP in 2017 came and said, "oh, landowners are going
16 to have the ability to opt out." That's what was
17 said.

18 I was not there, but somebody brought that
19 up when we had the meeting in May. And DPP, they
20 brought it. I have a copy of -- that was sent back
21 out as meeting minutes. DPP said, "You have the
22 ability to opt out. Don't worry about IAL."

23 Well, I am worried about IAL, and nobody
24 ever gave me the ability to opt out. So you tell me
25 what's right? Was 2017 DPP recommendation right or

1 is 2022 DPP recommendation right, or what's going to
2 happen in 2027 or 2030, when my grandson's 30 years
3 old? Thank you.

4 **CHAIRMAN SCHEUER:** Yeah. Thank you very
5 much for this testimony and your other testimony
6 that you've given to date on this matter, as well as
7 your persistence this morning with the technological
8 challenges.

9 Let me see if there are questions for you.
10 City and county?

11 **MS. APUNA:** No questions.

12 **CHAIRMAN SCHEUER:** OPSD?

13 **MS. KATO:** No questions.

14 **CHAIRMAN SCHEUER:** Department of
15 Agriculture?

16 **MR. YAMAMOTO:** No questions.

17 **CHAIRMAN SCHEUER:** Commissioners, any
18 questions for Mr. Bloom? We've heard from you
19 before about your operations, and it's good to hear
20 of your children's intent to work this land. We
21 hear your testimony loud and clear. Thank you so
22 much, Mr. Bloom.

23 **JEFF BLOOM:** All right. Mahalo.

24 **CHAIRMAN SCHEUER:** Mahalo. I'm going to
25 move you to be an attendee.

1 We will now move on with Brian Miyamoto
2 followed by Caridad Leiva, Bobby Correia -- Brian
3 Miyamoto, Caridad Leiva, and Bobby Correia.

4 Mr. Miyamoto, if you're able to enable
5 your audio and video. Aloha.

6 **BRIAN MIYAMOTO:** Aloha Chair, Members of
7 the Land Use Commission. Happy New Year.

8 **CHAIRMAN SCHEUER:** Happy New Year.

9 Do you swear or affirm the testimony
10 you're about to give is the truth?

11 **BRIAN MIYAMOTO:** I do.

12 **CHAIRMAN SCHEUER:** Thank you. Please,
13 address and proceed.

14 **MR. MIYAMOTO:** Okay. Before I start,
15 Chair, I just want to inform you that I am not a
16 farmer or a property owner. I am the Executive
17 Director of the Hawaii Farm Bureau, representing
18 nearly 1,800 members statewide on Oahu and city and
19 county of Honolulu nearly 700 members. Is it okay
20 for me to continue to give oral testimony?

21 **CHAIRMAN SCHEUER:** Absolutely.

22 **BRIAN MIYAMOTO:** Thank you, Chair. So
23 Hawaii Farm Bureau, Brian Miyamoto. Address 92-1770
24 Kunea, Hawaii 96759.

25 The Farm Bureau along with (indiscernible)

1 name proponents of the IAL back in 2005, and the
2 purpose was to promote and preserve ag lands based
3 on ag viability, not as a land use tool.

4 Also, Chair, I did submit, on behalf of
5 the Farm Bureau, testimony of the May 26th meeting,
6 and we stand by that written testimony, so we'll try
7 to summarize that testimony again.

8 Again, ag viability, not land use. To
9 ensure the viability of IAL lands, eight criteria
10 were to be weighed against each other, and state and
11 county incentives were required So that farmers and
12 ag landowners could decide which parcels to
13 voluntarily designate as IAL.

14 And in fact, the last time I was before
15 this body was testifying in support of a landowner
16 that wanted to designate their land into IAL.

17 We believe that under IAL law, counties
18 are required to implement IAL ag incentives prior to
19 this recommendation to designate IAL lands. We do
20 not believe the city has done that yet, which
21 resulted in farm and landowners -- or denying them
22 the opportunity of considerable state -- which we do
23 have state incentives and county incentives in order
24 to make a decision to voluntarily designate their
25 lands.

1 And this was actually articulated by a
2 previous testifier. Farm owners and long-time farm
3 families could be impacted by specific requirements
4 and restrictions of city's IAL designation; however,
5 they may not be aware that their parcels are being
6 considered for IAL designation, may not understand
7 the impacts of these LUC proceedings, and may have
8 not received notice of these proceedings or are
9 unable to attend because they are busy farming their
10 lands.

11 Farmers and ranchers are out farming, and
12 a lot of them probably want to be here, but they
13 need to farm. And they're recovering from the
14 terrible weather we just had. So I think you've
15 heard that from previous testifiers.

16 That's not to say these haven't been sent
17 out. We went through the entire time, and we saw on
18 your website what has been done, but again, they may
19 not have seen it, may not know how to approach these
20 meetings.

21 We believe that the city's use of just one
22 IAL criteria to make its recommendations is contrary
23 to the purpose and intent of the IAL law. We
24 believe that some of the city's recommendations may
25 include parcels that do not have water, lack good

1 soil, and may not have been farmed before or
2 recently, all factors that, weighed together, would
3 make farming not viable.

4 Again, IAL is an ag viability law --

5 **CHAIRMAN SCHEUER:** If I can ask you to
6 summarize.

7 **BRIAN MIYAMOTO:** Absolutely. I just have
8 a couple more. It's been brought up, so I'll say it
9 real quick. Ag landowners are concerned about the
10 occupancy limits on farm dwellings, especially those
11 who plan to retire on their farm, as the law may
12 restrict occupations of those or restrict occupation
13 to those who are actively farming. And again, this
14 is my written testimony, so I won't go through that.

15 I will just summarize by saying we
16 respectfully request that the LUC return the city's
17 recommendation back to the city with a request to
18 have the city implement ag incentives for farmers
19 and landowners as required by IAL law; also allow
20 the farmers and landowners three years after the
21 implementation of those incentives to voluntarily
22 designate their lands prior to submitting IAL
23 recommendations to the LUC; contact and work with ag
24 landowners to gather the facts to determine whether
25 their parcels meet the criteria and can be

1 agriculturally viable; and whether the dwelling
2 arrangements and the ag use of the property are
3 consistent with the law. And then we request to
4 analyze each parcel recommended based on weighing of
5 the IAL criteria.

6 And you do have our commitment, Chair and
7 Members, that the Farm Bureau will assist. We
8 understand there's -- our members and farmers and
9 landowners are very concerned about IAL. We are
10 supportive of IAL, and we will do what we can to
11 assist in the IAL process with the city. We do
12 commit to the city and county of Honolulu.

13 That is all we have. Thank you for the
14 opportunity to testify.

15 **CHAIRMAN SCHEUER:** Mahalo for your
16 testimony. Let me see if there's questions.

17 City and county, Ms. Apuna?

18 **MS. APUNA:** No questions.

19 **CHAIRMAN SCHEUER:** Ms. Kato, OPSD?

20 **MS. KATO:** No questions.

21 **CHAIRMAN SCHEUER:** Mr. Yamamoto, DOA?

22 **MR. YAMAMOTO:** No questions.

23 **CHAIRMAN SCHEUER:** Commissioners, starting
24 with Commissioner Wong.

25 Commissioner Wong, we cannot hear you.

1 You are not on mute, but you -- it must be your
2 microphone is not connected.

3 **COMMISSIONER WONG:** How's that? Can you
4 hear me?

5 **CHAIRMAN SCHEUER:** Now we can hear you.

6 **COMMISSIONER WONG:** Okay. Let me get off
7 my headset, then.

8 **CHAIRMAN SCHEUER:** Thank you.

9 **COMMISSIONER WONG:** Thank you, Chair.
10 Brian, I've got a question for you. When
11 the city first started the IAL process, they had a
12 working group. And I think your organization was
13 part of the original group to assist the city, is
14 that correct?

15 **BRIAN MYAMOTO:** I believe there were Farm
16 Bureau members that were part of that. I don't
17 believe. I know as a fact, yes. You are correct,
18 Commissioner.

19 **COMMISSIONER WONG:** Okay. So the question
20 I have is during that process, did the city -- if
21 you know or if you don't, just say, "I don't know."
22 Did they ever say, "This is our game plan" or "this
23 is our -- how we're going to do the whole thing"?
24 Did they ever say that?

25 **BRIAN MIYAMOTO:** I don't know,

1 Commissioner. I wasn't part of the -- that working
2 group, or the TAC, but I did participate and I do
3 applaud the city. We did convene meetings to try to
4 come up with incentives, company incentives, so you
5 know, appreciate the work that the city has done.
6 But just, again, we are concerned with the process
7 at this point. But I don't know, to answer your
8 original question.

9 **COMMISSIONER WONG:** Thank you, sir. The
10 next thing I have is, you know, you talked about
11 incentives and that they started a process, but that
12 sounds like they never executed on -- you know, to
13 say, "We're going to do this now. We're going to
14 say, 'hey, farmers, you can get these incentives if
15 you designate IAL.'" So they never did that last
16 bit, did they?

17 **BRIAN MIYAMOTO:** Yes. I don't think any
18 formal IAL-specific incentives were developed.

19 **COMMISSIONER WONG:** Okay. Thank you. So
20 I have another question for you, and this is just
21 regarding if we return it back to the city. Do you
22 have any recommendations in terms of either size
23 that they should look at or -- you know, because I
24 assume they looked at the criterias, but they only
25 used one. So what did -- do you have any

1 recommendations?

2 **BRIAN MIYAMOTO:** I do understand some
3 discussion has been on parcel size. We currently
4 don't have any recommendation, and that's why we do
5 recommend working with the farmers and organizations
6 such as ours to come up with, I think, viable
7 suggestions.

8 You know, IAL, again, was -- wasn't just a
9 large trifle with retaining large contiguous tracts
10 of agriculture for ag viability.

11 The impact of the small farmers, we don't
12 want them to be negatively impacted, so I think
13 that's where the concern is coming. You know, we
14 did hear anywhere from two to possibly four acres,
15 but again, I'm not in a position right now to give
16 you a definite number as far as a parcel size,
17 Commissioner Wong.

18 **COMMISSIONER WONG:** Okay. That's all.
19 Thank you, Brian.

20 Thank you, Chair.

21 **CHAIRMAN SCHEUER:** Thank you very much,
22 Commissioner Wong.

23 Commissioner Chang?

24 **COMMISSIONER CHANG:** Thank you.

25 Thank you, Mr. Miyamoto. I find your

1 testimony to be extremely compelling because you
2 actually represent farmers that are out there doing
3 the farming.

4 And your recommendation is to essentially
5 remand it back to the city to have them redo the
6 process, and that the Farm Bureau would assist the
7 city in that process, but that before they go back
8 out, they would comply and adopt these incentives.
9 Is that what you're recommending?

10 **BRIAN MIYAMOTO:** Thank you, Commissioner
11 Chang. Yes, we'd like you to go back to the city,
12 and we'll work with the city, again, to reach out to
13 the farmers to dialogue and engage the farmers.

14 But we do want to see incentives again.
15 One of the previous testifiers today talked about
16 wanting to voluntarily designate. And that's what
17 we'd prefer to see, the voluntary designation, and
18 incentives will help with that -- again, incentives
19 to help with the ag viability.

20 We don't want this just to -- IAL to have
21 land in -- agricultural land. We want it to have
22 land in important agricultural land, and that's
23 where the incentive component comes in.

24 So the original bill passed in 2005.
25 There was a subsequent 2008 incentive requirement

1 that we needed to get these lands into IAL. So we'd
2 like to see county incentives, not just any county
3 but all the counties, again, to help the viability
4 of our ag producers.

5 **COMMISSIONER CHANG:** Because I, too -- I
6 mean, that has been an issue that has troubled me is
7 the large, you know -- so many of the large
8 landowners that came before us, one of the major
9 incentives is if they voluntarily do it, the rest of
10 their land won't be subject to IAL.

11 But these small farmers don't have those
12 options. And if we're really looking at
13 sustainability -- and we had a great presentation by
14 OSPD yesterday about ag sustainability. But it does
15 depend upon these incentives and these
16 infrastructures.

17 I'm not sure if you had an opportunity to
18 review -- the city submitted a supplemental brief,
19 but in their -- in their pleading or their response
20 they said, "If we remanded it back, the city lacks
21 the resources and staff to redo the IAL process."

22 And I guess that has been a real concern.
23 I mean, given just the economic conditions, the city
24 has got a lot of stuff on its plate right now, far
25 beyond IAL. And it took them, I guess, you know,

1 almost ten years to do this process, and I'm sure it
2 costs them money.

3 Do you fear that if it is remanded back
4 that the city won't proceed to redo the IAL
5 designation?

6 **BRIAN MIYAMOTO:** That's always a
7 possibility, Commissioner. And in the past, Hawaii
8 Farm Bureau supported, and in fact, I believe it
9 even introduced, legislation to provide the counties
10 with funding for IAL -- for the process.

11 We understand that it does take resources,
12 so I mean, that's again something that we can look
13 at. We know that money is tight all over within our
14 state and our county governments, but you know, we
15 are supportive of IAL. We want to see land
16 preserved for active, productive agriculture and
17 farming, but we do understand the limitations also.
18 We are practical.

19 **COMMISSIONER CHANG:** Did this -- were you
20 part -- was the Farm Bureau -- are you aware of
21 whether the city did reach out to the Farm Bureau to
22 help, you know, in communicating with the farmers?
23 Has there been coordination between the city and the
24 Farm Bureau over the last several years regarding
25 IAL?

1 **BRIAN MIYAMOTO:** I'm not aware of many, if
2 any. A lot of information we've gotten has been
3 from our landowners. I believe they are -- they
4 have been sent in again, went through the timeline,
5 and we did see things that -- or hear from our
6 landowners and our farmers.

7 Specifically, on specific issues of
8 assistance, I don't recall. I don't want to say
9 with certainty no, but I -- as Executive Director, I
10 don't recall, and that's why I made the statement,
11 Commissioner, that we will assist the city, if they
12 so desire, with the continuation with the IAL
13 process. And we've been a little bit more active.

14 We do have three Oahu County chapters, so
15 we actually rely on Oahu County chapters. We have
16 11 across the state, but three here on Oahu to
17 basically advocate for the Oahu farmers with issues
18 that deal with city and county of Honolulu. But the
19 state has now gotten involved, the state Farm
20 Bureau. We commit to supporting this process.

21 **COMMISSIONER CHANG:** I would suspect that
22 the farmers, they are probably more inclined to
23 trust the Farm Bureau than they are to trust a
24 government agency, so that farmers would cooperate -
25 - I mean, if you -- if the Farm Bureau reached out

1 to the farmers, are you confident that -- and you
2 know, you could better explain to them the process,
3 the content, are you confident that the Farm Bureau
4 could effectively do that with your membership?

5 **BRIAN MIYAMOTO:** I think the Farm Bureau
6 would work with other partners such as Waimanalo Ag
7 Association, who were members before, who do have
8 regularly scheduled meetings and do have the network
9 and outreach along with the State Department of
10 Agriculture in this city. I think, collectively,
11 it's much better. You'd have more voices and more
12 opportunities to reach more of those that are going
13 to be impacted by IAL here in the city and county of
14 Honolulu. So that would be our approach.

15 Yes, we do have our membership, so we do
16 communicate with them. I believe we are trustworthy
17 with our members and with farmers that aren't
18 members. They do know who the Farm Bureau -- or who
19 we are.

20 So I think that would just improve the
21 ability to communicate and to reach out with many of
22 the farmers who, as we said, are busy farming.
23 They're busy ranching all the time and may not
24 understand. They may not think the impact -- or as
25 you heard, a previous testifier believed that they

1 heard from the city and county that they're not
2 going to be impacted by IAL, and they'll be able to
3 opt out. But even understanding what that process
4 is, they may not.

5 So we can assist with that, and we are
6 committed to assist with our farmers and ranchers
7 here on Oahu through this IAL process.

8 **COMMISSIONER CHANG:** And that's very
9 encouraging because I think there's a lot of
10 misinformation. And if you receive something in the
11 mail from the city, that's probably -- I'm not too
12 sure what -- how effective that is versus being able
13 to talk to someone at the Farm Bureau.

14 I really appreciate your testimony this
15 morning, Mr. Miyamoto, as that has really helped me
16 to get a much better -- to be much more optimistic
17 about sort of this collaborative path forward with
18 the Farm Bureau, you know, assisting the city. So
19 again, I greatly appreciate your testimony and, on
20 behalf of the Farm Bureau, your willingness to work
21 with the city on IAL.

22 So I have no other questions, but thank
23 you very much, Mr. Miyamoto.

24 **CHAIRMAN SCHEUER:** Thank you, Commissioner
25 Chang.

1 Commissioner Giovanni?

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

3 Thank you for your testimony, Mr.

4 Miyamoto. I just got some pretty specific

5 questions. You've used the phrase "small farmer"

6 and "large farmer." Can you explain to me, from the

7 Farm Bureau's perspective, what is a small farmer?

8 How big is it?

9 **BRIAN MIYAMOTO:** Thank you, Commissioner.

10 We don't necessarily have a specific definition. I

11 know, you know, bonified farmer has always come up

12 as a challenge and how to define it by parcel size.

13 Is it by income? A lot of times we will use income

14 and parcel size together. Majority of Hawaii

15 farmers are small farmers.

16 In fact, you know, we really don't have,

17 if you look at nationally, any true large farmers

18 other than a few. Here on Oahu, maybe Larry Jefts

19 could be considered a large farm, Honolulu farms.

20 So we do use it quite a bit. Majority of our

21 farmers are small farmers.

22 I'm not sure if I'm answering your

23 question, Commissioner, so large farms are maybe

24 those from more of an income along with acreage.

25 You know, certain income threshold.

1 **COMMISSIONER GIOVANNI:** Yeah, you've
2 pretty much explained my dilemma, because I can't
3 figure it out on my own. But for example, is there
4 any criteria that the Farm Bureau has to distinguish
5 small versus large? Is a hundred-acre farm a small
6 farm or a large farm? I mean, what insight can you
7 provide to somebody that is not well versed in this
8 area?

9 **BRIAN MIYAMOTO:** I think from an IAL
10 standpoint, a land use standpoint, yes, they would
11 be considered a large farm from an acreage
12 standpoint. Because you can have a smaller
13 operation that has higher -- that -- crops that
14 produce higher profits per acre, so it would more be
15 an acre -- again, within our policies, we do not
16 break down. We tend to use, say, USDA statistis,
17 and we can share what we would believe would be
18 small or large farm as far as designations.

19 You know, like five acres we would
20 consider a small farm, but 50 acres, 100 acres,
21 medium to large farms, several hundred acres, at
22 that point, large farms, in Hawaii, for Hawaii
23 standards.

24 **COMMISIONER GIOVANNI:** I appreciate your
25 perspective. Thank you very much.

1 Nothing further, Chair.

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

4 Commissioner Ohigashi?

5 **COMMISSIONER OHIGASHI:** Mr. Miyamoto, I
6 was looking at the petition that the city had filed,
7 and according to it, it has Exhibit -- according to
8 Exhibit B, which is a petition, they have the
9 Technical Advisory Committee. And one of the ag
10 interest groups that were on the Technical Advisory
11 Committee was HFBF. Is that the Hawaii Farm Bureau?

12 **BRIAN MIYAMOTO:** Thank you for the
13 question, Commissioner Ohigashi. Yes, it is. And
14 as I stated, I know that we do have -- we did have
15 Farm Bureau members that were part of that. I
16 personally was not part of that.

17 **COMMISSIONER OHIGASHI:** I understand that
18 you were not part of it. But were the concerns that
19 the Farm Bureau have now addressed or brought up in
20 the Technical Advisory Committee by the Farm Bureau?

21 **BRIAN MIYAMOTO:** From my understanding
22 talking to a few of those that did serve on the
23 committee, yes. I believe those concerns -- I think
24 one of the concerns was utilizing one criteria.

25 **COMMISSIONER OHIGASHI:** And was there a

1 report issued by the TAC saying that these are the
2 criterias we should use separately from the city's
3 determination to use a certain criteria? Was that
4 an agreed upon criteria used by the TAC?

5 **BRIAN MIYAMOTO:** I'm sorry, Commissioner.
6 I can't answer that. I'm not aware what the 17 do.
7 I will -- I will speak to some of the members,
8 again, to see if there was, but I don't believe
9 there was.

10 **COMMISSIONER OHIGASHI:** The only reason
11 why I'm asking this is that the Hawaii Farm Bureau
12 was included in this determination, and they were
13 supposed to have represented all the same farmers
14 that you presently represent or meant to represent
15 now.

16 And being a part of this group, Hawaii
17 Farm Bureau, I believe, should take some ownership
18 of what the recommendations were in that matter and
19 recognize that if we don't do it now, it probably
20 won't be done by the city. If it's not done by the
21 city, is the Hawaii Farm Bureau going to try and
22 implement or try obtain the methodology or change
23 legislation, trying to get these IAL that's
24 submitted -- this IAL that's submitted? From what I
25 understand, if we follow your recommendation, it is

1 dead.

2 **BRIAN MIYAMOTO:** Thank you, Commissioner.
3 I don't feel that it's dead. Again, we did state,
4 and I'll continue to state, we do support IAL. We
5 are one of the proponents earlier. We just believe
6 that with the concern of the farmers, and we
7 understand this is just a process meeting, so we do
8 take ownership. I'll sit and say, "Yes. Members on
9 the TAC were Farm Bureau members." And I do know
10 that they voiced concern.

11 That being said, we are where we are
12 today, so we are addressing the issue at hand today
13 on behalf of some of our farmers and our landowner
14 farmers about the process and their concerns. So
15 we're before the Commission here on behalf of our
16 members, and we're also committed, knowing that we
17 have a huge role in IAL, huge role in the TAC, that
18 we want to do what we can to move the IAL process
19 forward and not stymie it and not stop it. That's
20 not what we're here for.

21 We want to see IAL. We are supporters of
22 IAL. But we also listen to our members on their
23 concerns and want to be able to address those
24 concerns and to assist our farmers to allow them to
25 continue to do what they're doing.

1 **COMMISSIONER OHIGASHI:** I'm just reacting
2 to the city's supplemental brief, and I'm taking
3 that as your official position, being that they're
4 the city, and so those are my concerns. Thank you.

5 **CHAIRMAN SCHEUER:** Thank you, Commissioner
6 Ohigashi.

7 Commissioner Cabral followed by
8 Commissioner Aczon.

9 **COMMISSIONER CABRAL:** Okay. Thank you,
10 Chair and Commissioners. I was in transit, but I
11 never missed a word. I love it, technology.

12 Thank you, Mr. Miyamoto for coming forward
13 and volunteering -- or not volunteering. I hope you
14 get paid for this job, but for recognizing that
15 there's some issues that need to be taken care of
16 and being willing to get involved with it.

17 Going a little deeper into this hole, IAL
18 language and that, looking at the actual statute as
19 it's been passed, do you think that there's enough
20 clarity in that language for you and the Farm Bureau
21 and the farmers and everyone to be able to rely on
22 what the legislature actually passed that gives you
23 enough clarity that we can all go to move forward,
24 and we won't constantly be going back to some of the
25 references that have been -- even the public has

1 testified as to the contradictory interpretations of
2 the law.

3 So do you think there's enough clarity, or
4 do you think we should maybe send it back to the
5 lawmakers for them to -- I think the spirit of the
6 law is great, but I --everybody seems to agree with
7 that, but I think that -- I'm wondering if the
8 language needs better -- more appropriate or more
9 proper details. What is your feeling on that?

10 **BRIAN MIYAMOTO:** Thank you, Commissioner
11 Cabral. Thank you for the question. Difficult
12 question. Yes, I believe the spirit is there, but
13 you know, hearing Mr. Ohigashi's concerns also,
14 taking it back to the legislature, we don't know if
15 that will delay the process or possibly stop the
16 process, which we would hate to see.

17 But based on testimony, including ours,
18 there is some uncertainty within the language. I
19 don't think that is the intent to have the
20 uncertainty. I think when the legislature passed
21 the law in 2005 and 2008, I think they tried to make
22 it as clear as possible, but it appears at this
23 point there is some, at least, interpretation
24 dispute based on that language or a little
25 uncertainty and needing a little bit more clarity,

1 so that might be an approach that needs to be
2 considered.

3 I hate to use "might" and "may" and all
4 that, but something that, quite honestly, the Farm
5 Bureau hasn't discussed at this point. Whether or
6 not the statute needs to be revisited, you know,
7 this is kind of the first county that's kind of
8 gone. I applaud the city and county for their work
9 that they've done to come up with the mapping.

10 It's something that, you know, the law --
11 the incentive law passed in 2008. 2005, we get a
12 law that was almost 30 years in the making, so it
13 might be something to consider.

14 **COMMISSIONER CABRAL:** Okay. Thank you
15 very much for your explanation and your information.
16 I really appreciate you being here. Thank you.

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

19 Commissioner Aczon?

20 **COMMISSIONER ACZON:** Thank you, Chair.

21 Just a quick follow-up on Commissioner
22 Ohigashi's question. Were the members of the Farm
23 Bureau at the TAC authorized to speak with our
24 organization?

25 And secondly, are they small farmers or

1 large farmers?

2 **BRIAN MIYAMOTO:** Could you repeat the
3 question, Commissioner Aczon?

4 **COMMISSIONER ACZON:** Yeah. Just a follow-
5 up question from Commissioner Ohigashi's question.
6 The members that attended the TAC, are they
7 authorized to speak for the Farm Bureau?

8 Second, are they large farmers or small
9 farmers?

10 **BRIAN MIYAMOTO:** Thank you, Commissioner.
11 So there was a kind of a mix you have. As I said,
12 we have nearly 700 members here on Oahu, so you had
13 members of the Commission that were there probably
14 representing themselves or their small farm
15 operations. But if I recall, our president at that
16 time, Dean Okimoto, our former president, is a small
17 farmer. Allen Takimoto is not a farmer. He was the
18 Executive Director at the time.

19 I believe they were there on behalf -- and
20 we were able, I believe -- I know that they were
21 able to speak or at least Allen Takimoto on behalf
22 of the Hawaii Farm Bureau.

23 **COMMISSIONER ACZON:** Thank you.

24 **CHAIRMAN SCHEUER:** Thank you, Commissioner
25 Aczon.

1 Mr. Miyamoto, clearly, the Commission has
2 been very interested in and appreciative of your
3 testimony as have I. And I'm going to make a
4 statement and ask you to react to it. And if you
5 think you've already responded to it in the
6 questions from the other Commissioners, please say
7 so.

8 But to me, a lot of what we are dealing
9 with, particularly the emotional aspects of this
10 where, frankly, I think that -- and I'm not going to
11 cast blame on anybody, but I think IAL has turned
12 into a bad word among farmers and landowners on
13 Oahu, at least right now.

14 And redeeming it, as you say, the Farm
15 Bureau believes, might take a bit of work because of
16 what has happened to the day. And the core of that
17 for me has to do with the language on the differing
18 potential use of lands designated as IAL for
19 residential purposes with IAL versus non-IAL ag
20 lands.

21 My -- where I'm at so far is that when you
22 have really brilliant people like Ms. Apuna from the
23 city planning one thing but then the consultants to
24 the city prior to things -- opining other things and
25 other people saying, yeah, it does restrict it, no,

1 it doesn't restrict it, the language is bad. It
2 needs clarification.

3 So really what I'm wondering is if we send
4 it back to the city without asking for the
5 legislature to further clarify things, don't you
6 think we end up in the exact same place?

7 **BRIAN MIYAMOTO:** Thank you, Chair. Thank
8 you for the comments. Quite possibly. And I think
9 you are articulated very well what's going on, the
10 uncertainty. There is a lot of uncertainty, you
11 know.

12 The Farm Bureau's been spending some time
13 on IAL and submitting information to our members
14 working with WAA also to clarify things that maybe
15 are misunderstood, but also discuss the things that
16 need some clarity also that we cannot clarify, that
17 we cannot clear based on what we understand the law
18 to be.

19 Again, I can't say right now that's what
20 we will do, what we will propose. A session will be
21 starting two weeks. There is a possibility -- I
22 think our first testifier, Ms. Maluafiti, talked
23 about quite possibly introducing legislation, but I
24 think it is something that we need to consider and
25 will take back to our organization and discuss it

1 and see if there is (indiscernible) to get the
2 clarity so that we're not in the same place.

3 And the other counties don't have the same
4 challenges through their IAL process also. That's
5 not what we want to see. We want to see land
6 preserved for ag viability, important agricultural
7 lands, because we do want to see production and more
8 productive ag, and grow this industry, and we
9 believe IAL is one of the opportunities to assist
10 our farmers through some incentives, through
11 infrastructure.

12 So we have, again, committed, and we'll
13 continue to commit to work with the city and county
14 of Honolulu, all the counties, all the stakeholders,
15 the Department of Agriculture and our farmers to
16 hopefully make IAL, as you said, not negative
17 anymore and be the positive that we believe it is.

18 **CHAIRMAN SCHEUER:** Thank you very much for
19 those comments. I'll just add, though, it's not
20 really related specifically to this docket before
21 us, this is not the only issue I have with IAL.
22 We've learned over the course of a special permit
23 hearing on Maui that it is technically, under the
24 law, possible to put a solid waste dump on IAL lands
25 under the special permit provisions.

1 We have designated, as the Commission -- I
2 voted against it -- designating cliff sides as part
3 of an IAL position. We've granted landowner
4 petitions where all their C and D and B lands got
5 protected, and all their A lands were not. So I
6 think a visit at the legislature of this critical
7 statute could address more than just that housing
8 issue, if we really want to succeed in what we're
9 trying to do.

10 Are there any further questions for Mr.
11 Miyamoto? Seeing none, thank you so much again.
12 Obviously, your testimony was of great value to this
13 Commission. We really appreciate it as well as your
14 written testimony before. Mahalo nui.

15 **BRIAN MIYAMOTO:** Thank you, Chair. Thank
16 you, Commissioners.

17 **CHAIRMAN SCHEUER:** Okay. It is 10:48 a.m.
18 I have -- well, there are four hands raised in the
19 attendee room. Just for folks' information, we have
20 110 attendees. Four people have raised their hands.

21 There are two hands from Bobby Correia.
22 There's two Bobby Correias registered. I'm just
23 going to assume, for the sake of erring on the side
24 of caution, that these are two different people,
25 both named Bobby Correia. I'm going to admit the

1 first one. And then Caridad Leiva has their hand
2 raised.

3 Ms. Hsu has her hand raised again, but I'm
4 not going to allow additional testimony from
5 individuals in order to ensure that we can have our
6 proceedings move efficiently.

7 So Bobby Correia, if you could enable your
8 audio and video. You've been promoted to be a
9 panelist. When you get promoted to be a panelist,
10 you have access to enable your audio and video.
11 Trying again. Bobby Correia, if you could enable
12 your audio and video.

13 I'm going to admit the other Bobby
14 Correia, who could be the same Bobby Correia. Could
15 Bobby Correia please enable your audio and video if
16 you wish to testify before this Commission.

17 **BOBBY CORREIA:** Hello, can you hear me?

18 **CHAIRMAN SCHEUER:** I can hear you now,
19 yes. Sorry, have you registered twice? Is that --

20 **BOBBY CORREIA:** Yeah, because the other
21 one was on my regular --

22 **CHAIRMAN SCHEUER:** Got you. Okay. I'm
23 going to move that one off. And now I can hear and
24 see you, so welcome.

25 Do you swear or affirm the testimony

1 you're about to give is the truth?

2 **BOBBY CORREIA:** Yes.

3 **CHAIRMAN SCHEUER:** Okay. So if you'd
4 state your name and address for the record and then
5 proceed.

6 **BOBBY CORREIA:** Bobby Correia, and I have
7 two properties. One -- the first one is 87-110
8 Kuloupuni in Wainai, and then the other one is right
9 next door, and it's 87-110 Kuloupuni.

10 **CHAIRMAN SCHEUER:** Awesome. Please
11 continue, Mr. Correia.

12 **BOBBY CORREIA:** Yeah. My question -- I
13 wrote a letter back in May of last year to the Chief
14 Clerk, Riley Hakoda.

15 **CHAIRMAN SCHEUER:** Hakoda.

16 **BOBBY CORREIA:** Yeah. And I never got a
17 response back. But my main question is, the
18 properties that I bought, they're not farmable,
19 yeah? The first one was a -- used to be a junkyard,
20 and I've been digging up piles. I've dugged up over
21 300 piles, I don't know how many cars, parts, and
22 everything else before I bought the property, yeah,
23 that somebody else had buried.

24 We planted, like, trees here and there,
25 you know, couple avocado trees or whatever. In some

1 places, they just die. So the property is just not
2 farmable. So in designating -- sorry, my laptop
3 fall down.

4 **CHAIRMAN SCHEUER:** No worries.

5 **BOBBY CORREIA:** So designating my property
6 as IAL, to me, is kind of pointless, and I have
7 rentals on the property, and that's really why I
8 bought the property for.

9 And the one next door on 87-110, almost
10 the same situation. It's mostly (spoke Hawaiian)
11 and houses that have multiple dwellings over there,
12 so it's -- to me, it's not really feasible. I'm not
13 a farmer. I'm never going to farm it. My kids are
14 not farmers. They're never going to farm it.

15 And I kind of feel like you guys did a
16 blanket designation of this, just took random any
17 property that was zoned ag is put into this
18 category, and I think it's almost pointless you guys
19 putting this in.

20 I'd like for mine to be opted out. I
21 don't understand why it's in. I asked if I could
22 opt out. I think I spoke to Dawn Apuna before, and
23 she says, "Yeah, you'll be able to opt out." Then I
24 sent the letter and never got a response, so I don't
25 really understand.

1 I know you guys aren't making decisions
2 now, but I just want to voice my opinion. My lands
3 are not -- there's no way unless they dig up all the
4 dirt, take them all, and some of the piles I dug
5 down, and they were like ten feet deep.

6 So whoever had the property before me,
7 like I said, most of the land is probably
8 contaminated, I'm assuming, because trees died, like
9 I said. Some of them grow. Some don't. I think
10 it's here and there.

11 I'm never going to farm it. My kids are
12 never going to farm it. They're going to inherit it
13 after me. And I just would like to opt out. I
14 don't like this -- I feel like it's forced by the
15 government, and like I said, I cannot own -- my
16 heirs cannot do anything that they want to do with
17 the property.

18 I'm not saying that we're going to develop
19 it or none of that. I have rentals, and that's -- I
20 think it's important also to do -- to provide
21 housing, yeah?

22 **CHAIRMAN SCHEUER:** Yeah. Thank you, Mr.
23 Correia, for your testimony. Let me see if there's
24 questions or comments in response to your testimony.

25 Ms. Apuna?

1 **MS. APUNA:** No questions. Thank you.

2 **CHAIRMAN SCHEUER:** Okay. Ms. Kato, OPSD?

3 **MS. KATO:** No questions.

4 **CHAIRMAN SCHEUER:** Mr. Yamamoto,
5 Department of Agriculture?

6 **MR. YAMAMOTO:** No questions.

7 **CHAIRMAN SCHEUER:** Commissioners,
8 questions for Mr. Correia?

9 Mr. Correia, can you -- just so it's clear
10 on the record, can you state again the question that
11 you posed in a letter to the LUC?

12 **BOBBY CORREIA:** Well, in the letter I
13 explained why my property's not farmable. And I
14 think it's a complete waste. I think it's forced
15 upon me. But my question really is, can I opt out?

16 **CHAIRMAN SCHEUER:** Yes. Okay. So the
17 short answer is, if we decide today that we believe
18 the city complied with the IAL statute correctly and
19 we decide to go forward with their recommendations,
20 then there will be a process by which any individual
21 landowner can say -- contest the inclusion of their
22 lands. So there will be that possibility.

23 But we might not even get there. The
24 Commission could say at the end of today, for
25 various reasons, which I think you maybe have heard

1 in the discussion, we don't believe that it's right
2 to move forward with the city and county's
3 recommendations, in which case there's nothing
4 happening to a property at all at this time.

5 Does that respond to your question?

6 **BOBBY CORREIA:** Yeah, yeah, pretty much.

7 Now, am I going to be notified of this? Because it
8 took over -- you guys were doing this for a few
9 years before I even got notified, so I just want to
10 make sure that --

11 **CHAIRMAN SCHEUER:** So I cannot speak to
12 the process used by the city and their consultants
13 and others and a private law firm that they've used.
14 The Land Use Commission has, going off the records
15 that we're able to obtain, done our best to send out
16 notices to every registered owner of record, and we
17 would continue that process if we move forward.

18 **BOBBY CORREIA:** Okay. Yeah, because
19 within the last almost one year, I guess, the last
20 maybe eight months, I have been receiving the
21 letters for you guys -- from you guys.

22 **CHAIRMAN SCHEUER:** Yeah. I believe we --
23 the letter that the Land Use Commission initially
24 sent out when we started this process and the letter
25 from the direct firm came right around the same

1 time, which might have also caused confusion to
2 people as to who exactly was contacting them.

3 Mahalo for your testimony and for your
4 written testimony and your efforts to understand and
5 participate in this process, Mr. Correia. We very
6 much appreciate it.

7 **BOBBY CORREIA:** Okay. Mahalo.

8 **CHAIRMAN SCHEUER:** Mahalo nui.

9 I'm going to move Mr. Correia back to
10 being attendee. We have now signed up Caridad
11 Leiva, Phil Rodgers, and Racquel Achiu. It is
12 10:56. If we can get through them by 11:10, it
13 would be good to be able to conclude oral testimony
14 in this matter and move on.

15 So I'm going to admit Caridad Leiva. If
16 you can enable your audio and video, please.

17 **CARIDAD LEIVA:** Hello.

18 **CHAIRMAN SCHEUER:** Aloha. Do you swear or
19 affirm the testimony you're about to give is the
20 truth?

21 **CARIDAD LEIVA:** Yes.

22 **CHAIRMAN SCHEUER:** Okay. So if you'd
23 state your name and address for the record and then
24 proceed.

25 **CARIDAD LEIVA:** My name is Caridad Leiva.

1 My address is 87-1029 Iliili Road, Waianaie, Hawaii
2 96792.

3 **CHAIRMAN SCHEUER:** Mahalo. Please
4 proceed.

5 **CARIDAD LEIVA:** I just wanted to give you
6 a quick view of the pond that we have here, our two
7 acres of water from this recent flooding that we've
8 had here on our property, so we've got two acres of
9 swampland now.

10 We had to purchase a \$5,000 pump in order
11 to -- sorry -- keep my mom's house from flooding.
12 This land, we would love to be able to grow things
13 and plant on it, but the condition it is in now is
14 not possible.

15 And I know this is not you guys deciding,
16 you know, whether or not to go through, but as far
17 as us being notified, I bought this property in
18 2017. And when I purchased it, I was absolutely not
19 notified by the seller or by city and county of any
20 potential IAL designation.

21 And to me, it kind of just -- it's scaring
22 people off to want to, you know, sell their property
23 to maybe investors who right now are buying up
24 everything and not using the land to develop -- I
25 mean, using the land to develop and not using it to

1 farm, because it's like you're putting more
2 restrictions on us when we're struggling to make it
3 as it is.

4 I just wanted to go on record and say
5 that, you know, everybody's struggling. We're
6 trying to work through it. And the city and county,
7 I understand they're understaffed. I work for the
8 State Department of Agriculture. We're
9 understaffed, but we still have jobs to do.

10 You guys returning it, you know, and them
11 saying that it will probably never happen shouldn't
12 be something, you know, that they don't have the
13 staffing to do. It shouldn't be something that the
14 landowners are punished because of their lack of
15 staffing, you know.

16 **CHAIRMAN SCHEUER:** Yeah.

17 **CARIDAD LEIVA:** We get through our jobs
18 every day. So I appreciate it if you send it back
19 to them to do better, do a better job.

20 And I got friends and family in this
21 neighborhood who still don't know nothing about
22 what's going on. And I try and inform them. They
23 don't have the technical skills to go on these
24 meetings or, you know, know what to do with a letter
25 that they received. And most of the letters they

1 received is just recent from you folks, not from
2 city and county. And that's all. Thank you very
3 much.

4 **CHAIRMAN SCHEUER:** Mahalo, Ms. Leiva. Let
5 me see if there's questions for you.

6 City and county?

7 **MS. APUNA:** No questions.

8 **CHAIRMAN SCHEUER:** Ms. Kato, OPSD?

9 **MS. KATO:** No questions.

10 **CHAIRMAN SCHEUER:** Mr. Yamamoto, the
11 Department of Agriculture?

12 **MR. YAMAMOTO:** No questions.

13 **CHAIRMAN SCHEUER:** Commissioners, starting
14 with Commissioner Chang?

15 **COMMISSIONER CHANG:** Actually, Ms. Leiva,
16 I have no questions other than to tell you thank you
17 so much for your testimony. I really appreciate you
18 coming forward today, so thank you very much.

19 **CARIDAD LEIVA:** Thank you.

20 **CHAIRMAN SCHEUER:** Commissioner Giovanni?

21 **COMMISSIONER GIOVANNI:** I'd like to echo
22 Commissioner Chang in thanking you, Ms. Leiva, for
23 coming forward and clearly expressing your
24 frustrations and your feelings and your passions.
25 Thank you for that.

1 **CARIDAD LEIVA:** Thank you.

2 **COMMISSIONER GIOVANNI:** In your testimony,
3 I think you said you went through a process by which
4 you purchased a land recently that was in -- could
5 you confirm what year it was?

6 **CARIDAD LEIVA:** 2017. August, I believe.

7 **COMMISSIONER GIOVANNI:** Okay. So in that
8 process, can you elaborate just a little bit about
9 what you think you should have been told or were not
10 told or just the absence of information or --

11 **CARIDAD LEIVA:** Yeah. I did not receive
12 any notification from -- what is that, I'm sorry,
13 the title guaranty company that we pay or, you know,
14 they're supposed to research anything about the
15 land. They didn't get any information from the
16 previous landowner.

17 You know, if they received any
18 notifications, I think we should have been notified
19 by them that this is a potential IAL-designated land
20 that I would be purchasing, but never heard anything
21 until receiving the paperwork from you folks, LUC.

22 **COMMISSIONER GIOVANNI:** So it was the
23 paperwork from LUC that first informed you of the
24 potential for IAL designation?

25 **CARIDAD LEIVA:** Yes. When I received it

1 in the mail at the residence, that was the first
2 time I ever heard of anything.

3 **COMMISSIONER GIOVANNI:** So you never
4 received anything from the city and county?

5 **CARIDAD LEIVA:** No, nothing from city and
6 county.

7 **COMMISSIONER GIOVANNI:** Thank you very
8 much.

9 **CARIDAD LEIVA:** Thank you.

10 **COMMISSIONER GIOVANNI:** Nothing further.

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

13 Commissioners, anything further?

14 Ms. Leiva, I just echo the comments from
15 my fellow Commissioners. Mahalo nui.

16 **CARIDAD LEIVA:** Thank you. And I
17 appreciate everything that you guys are doing. I
18 understand. I just hope it works out. Bye, thank
19 you.

20 **CHAIRMAN SCHEUER:** Aloha.

21 I'm moving Ms. Leiva to being an attendee.
22 Okay. Folks, it is 11:03 a.m. I'm going to do this
23 in order that we actually are able to try and make
24 it through our business today. I'd like everybody
25 who potentially wants to testify to raise your hand

1 now. I want to get a count of who's going to
2 possibly testify. I'm going to list those out, and
3 then I'm going to stop there. We're going to go
4 take a ten-minute break. We're then going to try
5 and go through as many of those testifiers as we
6 can.

7 I see quite a few hands going up. So I'm
8 going to work with the Commission staff to list
9 those out and then I'm going to -- I'm trying to
10 balance here. On the one hand, I recognize that we
11 want to be as full and open as possible to public
12 testimony. We did, when we initially considered
13 this, take -- ask for a confirmation from our
14 Executive Officer -- at least one full day of only
15 oral testimony on this matter previously, Mr.
16 Orodener, is that correct?

17 **MR. ORODENKER:** That is correct, Chair.

18 **CHAIRMAN SCHEUER:** Yeah. So what I don't
19 want to do -- and the reason why I'm going to err on
20 the side of cutting off testimony, oral testimony,
21 is that we have received a huge amount of testimony.
22 And if we spend all of our day on testimony today,
23 we will not be able to actually take up the
24 substance of the matter before us and potentially
25 further extend the unease and uncertainty that

1 people are experiencing.

2 So right now I'm going to read off the
3 names of people who I'm going to be calling in order
4 when we come back from break. Phil Rodgers, Racquel
5 Achiu, Crystal -- sorry for my bad eyesight --
6 Posiolai, Dorene Cooper, Susan Smith, Sandra Van,
7 Frances Kama-Silva, Leon Lapina, and Harrison Goo.
8 I will close testimony after Harrison Goo. I'm
9 going to make one last announcement.

10 This is for the two people who are calling
11 in. If you wish -- if you're calling in by phone
12 and you wish to testify, press star 9 now to raise
13 your hand virtually. Seeing none, those names that
14 I called are going to be the ones that I will call
15 for testimony after our break, after which I will
16 close public testimony on this matter, and then we
17 will move on to the remainder of our proceedings,
18 comments from the city and county, questions for the
19 city and county, comments from OPSD and DOA, and
20 then deliberation by the Commission.

21 So we are going to -- it's 11:05. We're
22 going to break until 11:15 and then take up those
23 names that I consider -- that I listed. Mahalo.

24 **(Recess taken from 11:05 to 11:16 a.m.)**

25 **CHAIRMAN SCHEUER:** It's 11:16. We are

1 back on the record. I'm going to read again the
2 list of people who raised their hands prior to my
3 cutting off having people additional -- opportunity
4 for additional testimony.

5 Phil Rodgers, Racquel Achiu, Crystal
6 Posiulai, Dorene Cooper, Susan Smith, Sandra Van,
7 Frances Kama-Silva, Leon Lapina, and Harrison Goo.
8 Keep your hands raised if I said your name and you
9 still intend to testify.

10 Phil Rodgers, can you enable your audio
11 and video? I have admitted you to be a panelist.
12 Phil Rodgers? There you are. I can see you. Now,
13 if you could unmute yourself. There you are.
14 Awesome.

15 Do you swear or affirm the testimony
16 you're about to give is the truth?

17 **PHILIP RODGERS:** I do.

18 **CHAIRMAN SCHEUER:** Thank you. Please
19 state your name and address for the record and then
20 proceed.

21 **PHILIP RODGERS:** My name is Philip
22 Rodgers. My address is 68-346 Olohio Street,
23 Waialua, Hawaii 96791.

24 **CHAIRMAN SCHEUER:** Mahalo. Please
25 proceed.

1 **PHILIP RODGERS:** Okay. I just wanted to
2 reiterate that, yeah, my first notice of this
3 potential designation was a letter from an attorney,
4 dated April 12th, and subsequently I received the
5 letter from LUC, from you guys, about this
6 designation.

7 I have never received anything from the
8 city and county of Honolulu, nothing about the
9 ability to refuse or to apply for exclusion of this
10 designation, no information regarding anything about
11 this, so I don't believe that they've met their duty
12 in this situation.

13 I also want to take this moment to clarify
14 that I have provided written testimony to LUC on May
15 24th, 2021 via email, once again on June 11th, 2021
16 via mail, and then the most recent of January 5th,
17 2022. I notice you had mentioned previously that I
18 had just been on that latest one.

19 I also had some concerns. I understand
20 that many of the land -- larger landowners were able
21 to designate some of their lands as an IAL while
22 protecting other parts of their property and their
23 parcels from this designation. To my knowledge,
24 this was never provided to the smaller landowners
25 such as myself, and we're therefore stuck with the

1 burden of trying to fight this designation.

2 I believe that this should be voluntary
3 and that all the restrictions, benefits, tax
4 implications should be known prior to the
5 designation of my property being designated AIL, so
6 that I can understand whether or not -- what this
7 really means to me, okay?

8 **CHAIRMAN SCHEUER:** I'll ask you to
9 summarize your testimony, please.

10 **PHILIP RODGERS:** Excuse me?

11 **CHAIRMAN SCHEUER:** Could I ask you to
12 summarize your testimony, please?

13 **PHILIP RODGERS:** Sure, sure. Basically, I
14 just think that the city and county has failed in
15 every aspect of providing us -- providing
16 information regarding this, allowing landowners to
17 dispute their designation, failure to just explain
18 even what it is and how it's going to benefit or
19 restrict my property.

20 I'm retired, recently retired. I do have
21 my land. I have a two-acre lot and 1.885 I have
22 dedicated to agriculture. Now --

23 **CHAIRMAN SCHEUER:** So I need you to -- I
24 apologize, but please summarize.

25 **PHILIP RODGERS:** Okay. Yeah. So I don't

1 know -- I don't understand, you know, what the
2 implications are of this designation.

3 **CHAIRMAN SCHEUER:** Okay.

4 **PHILIP RODGERS:** And that's why I don't
5 think it should be approved at this time.

6 **CHAIRMAN SCHEUER:** Thank you so much for
7 your testimony. Let me see if there's questions for
8 you.

9 Questions for the witness, Ms. Apuna, city
10 and county?

11 **MS. APUNA:** Nope. No questions.

12 **CHAIRMAN SCHEUER:** Ms. Kato, Office of
13 Planning and Sustainable Development?

14 **MS. KATO:** No questions.

15 **CHAIRMAN SCHEUER:** Mr. Yamamoto,
16 Department of Agriculture?

17 **MR. YAMAMOTO:** No questions.

18 **CHAIRMAN SCHEUER:** Commissioners,
19 questions for the witness?

20 So I want to assure the witness, so I only
21 listed the testimony orally that we've received
22 since the last hearing. Because I've previously
23 listed the testimony orally that we've received, I
24 didn't want to repeat all 200 names.

25 **PHILIP RODGERS:** Okay.

1 **CHAIRMAN SCHEUER:** So we did receive your
2 testimony earlier as well, so rest assured of that.
3 Thank you very much for your testimony today. We
4 appreciate it very much.

5 **PHILIP RODGERS:** Absolutely. Thank you.

6 **CHAIRMAN SCHEUER:** Okay. I'm going to
7 move you back to being an attendee. I'm next going
8 to admit -- sorry, one second. So many things open
9 on my computer -- Racquel Achiu followed by Crystal
10 Posiulai.

11 Ms. Achiu, if you can enable your audio
12 and video. Aloha.

13 **RACQUEL ACHIU:** Aloha. Thank you so much.
14 I'm sorry. I'm just running in from the ranch, so
15 I'm kind of a mess.

16 **CHAIRMAN SCHEUER:** Got you. (Spoke
17 Hawaiian.) I've got to swear you in first. Do you
18 swear or affirm the testimony you're about to give
19 is the truth?

20 **RACQUEL ACHIU:** Yes.

21 **CHAIRMAN SCHEUER:** Thank you. So name and
22 address for the record and then testify.

23 **RACQUEL ACHIU:** Yes. Racquel Achiu. My
24 address is 66952 Kuewa Drive, and that's in Waialua
25 96791.

1 **CHAIRMAN SCHEUER:** Mahalo. Please
2 proceed.

3 **RACQUEL ACHIU:** Thank you so much for this
4 opportunity, and I realize you guys have been at
5 this for quite some time. I apologize if I seem
6 repetitive. I did chime in a little late. The
7 storm has given me extra jobs this morning.

8 So I struggle with the IAL, basically.
9 Going back to Mr. Correia, yes, I would -- I have
10 tried to opt out many times, but it would help if,
11 in that process, some type of confirmation is given
12 to the landowner so they are comfortable in relying
13 on their being able to opt out.

14 The reason I opt out is I feel the
15 language is too broad. It doesn't offer a specific
16 detail. And I mean that because farming, as
17 critical as it is, is not the only means of
18 agriculture. We are ranchers, and livestock is also
19 very critical to the agricultural industry.

20 And I believe that there are so many
21 different uses for the agricultural land that I
22 believe that this IAL can impact people in so many
23 different ways. Regardless of their land size, it
24 will impact them in some way or another that may be
25 different from myself. So I think it definitely

1 needs to go back to the drawing board, to be quite
2 honest.

3 There was a meeting several years ago in
4 Haleiwa, introducing this concept. Never heard
5 anything ever again until, bless the Land Use
6 Commission's heart, I started getting letters from
7 you guys. And it really did sire alert, a big alert
8 for us. And in support of Ms. Leiva earlier, it is
9 very true, you don't get notified of information
10 that affects your land when you purchase it.

11 For example, when we purchased ours, I had
12 no idea what a dedication was until it expired and
13 my property tax skyrocketed.

14 **CHAIRMAN SCHEUER:** If you can summarize,
15 please.

16 **RACQUEL ACHIU:** Yes, thank you. So I'm
17 very concerned, obviously. I would like to have a
18 more firm process, if that's possible, to opt out.
19 I feel that it's just too broad, and I think there
20 needs to be a lot of homework, and I absolutely
21 support agricultural use and land a thousand
22 percent, so thank you so, so much. Mahalo.

23 **CHAIRMAN SCHEUER:** Mahalo nui for your
24 testimony. Let me see if there's questions for you.

25 City and county, Ms. Apuna?

1 **MS. APUNA:** No questions.

2 **CHAIRMAN SCHEUER:** Ms. Kato, OPSD?

3 **MS. KATO:** No questions.

4 **CHAIRMAN SCHEUER:** Mr. Yamamoto, DOA?

5 **MR. YAMAMOTO:** No questions.

6 **CHAIRMAN SCHEUER:** Commissioners,
7 questions for Ms. Achiu?

8 Thank you for your clear and just well-
9 articulated testimony. We very much appreciate it.

10 **RACQUEL ACHIU:** Thank you so much.
11 Mahalo.

12 **CHAIRMAN SCHEUER:** Mahalo nui. I'm going
13 to move you back to being an attendee.

14 I'm next going to admit Crystal followed
15 by Dorene Cooper.

16 Aloha.

17 **CRYSTAL POSIULAI:** Hi.

18 **CHAIRMAN SCHEUER:** We're getting some
19 feedback there.

20 **CRYSTAL POSIULAI:** The other way.

21 **CHAIRMAN SCHEUER:** Are you listening to
22 this on a different device?

23 **CRYSTAL POSIULAI:** No. It's just my mom.
24 She wants to talk also, so she's on her own iPad.

25 **CHAIRMAN SCHEUER:** Okay. If she can mute

1 at least.

2 **CRYSTAL POSIULAI:** Yes.

3 **CHAIRMAN SCHEUER:** That will possibly

4 eliminate --

5 **CRYSTAL POSIULAI:** How about now?

6 **CHAIRMAN SCHEUER:** That's better. Mahalo

7 nui.

8 So I'm going to swear you in. And so your

9 mother would like to also testify as well?

10 **CRYSTAL POSIULAI:** She's the next one in

11 line.

12 **CHAIRMAN SCHEUER:** Oh, got it. Dorene

13 Cooper?

14 **CRYSTAL POSIULAI:** Yes.

15 **CHAIRMAN SCHEUER:** Got you. Okay. Do you

16 swear or affirm the testimony you're about to give

17 is the truth?

18 **CRYSTAL POSIULAI:** Yes, I do.

19 **CHAIRMAN SCHEUER:** Okay. So name and

20 address for the record and then proceed.

21 **CRYSTAL POSIULAI:** Okay. My name is

22 Crystal Posiulai, 87630 Kalkama Road, Waianae,

23 Hawaii.

24 **CHAIRMAN SCHEUER:** Mahalo.

25 **CRYSTAL POSIULAI:** So I'm testifying on

1 behalf of myself, who lives here with my mom. We
2 farm -- we farm pigs, so ours is not agriculture,
3 and that's a question that they didn't -- you know,
4 that's one of the things that we don't know about.

5 So for me, my testimony is, you know, IAL
6 has no clear anything (audio disruption) answer any
7 of our questions because there are no clear
8 anything. We don't know what is a small farm, what
9 is a big farm considering. We don't know is it
10 farming? Is it only agriculture? Is it only -- is
11 it not considered farm use if it's animals?

12 And then the emotional stress that's put
13 on my parents. This stuff is -- that's a lot to do
14 it in. So you know, they own this property 26
15 years. They own it, paid it off. And now, you
16 know, they have this in their retirement. They have
17 this added stress, you know.

18 And then my mom is 71 years old. She
19 can't be farming the pigs outside. She relies on
20 us. So basically, we -- it will evict my mom,
21 basically, because that's what they're saying, you
22 know, everybody has to be actively farming. My mom
23 can't actively farm. She -- it's just not possible.

24 So that's our whole -- my whole dilemma
25 about this. The structure, the part where it says,

1 you know, "you cannot live on it unless you're
2 actively farming." So that's our whole concern.

3 And we do not support the IAL -- IAL
4 designation. That's it.

5 **CHAIRMAN SCHEUER:** Got you. Mahalo nui
6 for your testimony. Let me see if there's questions
7 for you. City and county of Honolulu?

8 **MS. APUNA:** No questions. Thank you.

9 **CHAIRMAN SCHEUER:** OPSD?

10 **MS. KATO:** No questions.

11 **CHAIRMAN SCHEUER:** Mr. Yamamoto, DOA?

12 **MR. YAMAMOTO:** No questions.

13 **CHAIRMAN SCHEUER:** Commissioners,
14 questions for Ms. Posiulai?

15 So I just want to assure you we've heard
16 your testimony clearly. I want to highlight there
17 is disagreement over what exactly the language
18 means, right, over -- around housing.

19 **CRYSTAL POSIULAI:** Yeah.

20 **CHAIRMAN SCHEUER:** And I think that's one
21 of the things, when we move into deliberation, we're
22 going to discuss and really discuss whether or not
23 the city and county can implement a law with such
24 unclear interpretations.

25 **CRYSTAL POSIULAI:** Yes.

1 **CHAIRMAN SCHEUER:** We also heard your
2 request to opt out, so mahalo nui for your testimony
3 and for your persistence on this issue as well.

4 **CRYSTAL POSIULAI:** Thank you.

5 **CHAIRMAN SCHEUER:** We really appreciate
6 it. Okay. I'm going to now move on to, I guess,
7 your mother. So I'm going to move you to be an
8 attendee and move Dorene Cooper in followed by
9 Sandra Van.

10 Aloha. Do you swear or affirm the
11 testimony you're about to give is the truth?

12 **DORENE COOPER:** I do.

13 **CHAIRMAN SCHEUER:** Okay. Oh, now, if your
14 daughter could mute her side so we don't get
15 feedback.

16 **DORENE COOPER:** Yeah. Okay.

17 **CHAIRMAN SCHEUER:** Awesome. Please
18 proceed with your testimony, Ms. Cooper.

19 **DORENE COOPER:** Well, my name is Dorene
20 Cooper. I own the property, two and a half acres,
21 87630 Kalkama Road.

22 I recently just lost my husband in
23 October, so it's only me and my kids. So my thing
24 is when we bought this property in 1996, our thing
25 was to take care of my family, my children, my

1 grandchildren, my great great grandchildren, and so
2 forth. And we was going to farm and raise pigs.

3 And the reason for raising the pigs is we
4 need food. We don't know when we're going to get
5 our food in the next couple years. The pigs will
6 always get food on our table. And now, these people
7 come in and tell me what to do with my property when
8 my property's -- I own the property. I paid it off.
9 The bank doesn't own it. I own it.

10 Now, for them to come in and tell me what
11 to do with my property, that's my constitutional
12 right that they're breaking, taking my stuff that I
13 paid for and telling me what I got to do with my
14 property. That's -- that's -- that I don't agree
15 with.

16 And we even tried to opt out. They said
17 we could opt out. No, they didn't even reply back
18 to me. So my thing is that's what it is. For
19 people to come over here, take our property away,
20 that's communism already, taking people's property
21 away when you're already paid for it.

22 And that's the reason I am testifying
23 against it. That's it. Thank you.

24 **CHAIRMAN SCHEUER:** Mahalo nui. It
25 couldn't be clearer what your position is. Mahalo

1 nui. Let me see if there's questions for you?

2 City and county?

3 **MS. APUNA:** No questions.

4 **CHAIRMAN SCHEUER:** OPSD?

5 **MS. KATO:** No questions.

6 **CHAIRMAN SCHEUER:** Department of
7 Agriculture?

8 **MR. YAMAMOTO:** No questions.

9 **CHAIRMAN SCHEUER:** Commissioners, any
10 comments or questions for Ms. Cooper?

11 Commissioner Chang followed by
12 Commissioner Cabral?

13 **COMMISSIONER CHANG:** Ms. Cooper, I don't
14 have a question. All I want to say is thank you for
15 your testimony, you and your daughter. There's
16 obviously a lot of misinformation, but I greatly
17 appreciate all the work that you've done and the
18 courage it took to provide us testimony, so thank
19 you very much. Thank you.

20 **DORENE COOPER:** You're welcome.

21 **CHAIRMAN SCHEUER:** Thank you, Commissioner
22 Chang.

23 Commissioner Cabral?

24 **COMMISSIONER CABRAL:** Dawn just said it,
25 that I thank you to everyone who has testified

1 today. It's really unfortunate because it's so
2 stressful, like you said, and then also, it's so
3 fearful and stressful and that you've had to take
4 time, like run in from work and take all of this
5 time to show up. We already know -- we volunteered
6 to show up, so we're sort of stuck here as
7 Commissioners, even though we don't get paid for
8 this.

9 But for you folks, this is not your normal
10 day to come running in and attend a Zoom meeting and
11 take care of all of this kind of paperwork, so we
12 really recognize that something is wrong in the
13 process and the system, in my opinion, so again,
14 thank you to yourself and to everybody.

15 I can't speak for everybody, but rest
16 assured, we're hearing what you're saying, so thank
17 you.

18 **DORENE COOPER:** Thank you.

19 **CHAIRMAN SCHEUER:** Thank you, Commissioner
20 Cabral.

21 Commissioners, any further comments or
22 questions?

23 I'm just going to acknowledge and thank
24 you for lifting up your late husband with you in
25 this testimony. Thank you very much for your

1 testimony. I'm going to move you back to being an
2 attendee.

3 I'm going to call on -- I no longer see
4 Susan Smith. There's no hand raised. So going from
5 the list before I -- when I asked for all last
6 names, the next name is Sandra Van, who is still
7 here. I'm going to admit Sandra Van to be a
8 panelist followed by Frances Kama-Silva.

9 Nice to see you again, Ms. Van.

10 **SANDRA VAN:** Good morning and thank you.

11 **CHAIRMAN SCHEUER:** Good morning. Do you
12 swear or affirm the testimony you're about to give
13 is the truth?

14 **SANDRA VAN:** Yes, I do.

15 **CHAIRMAN SCHEUER:** Okay. And I am going
16 to ask -- you know this drill now. Name and address
17 for the record and then proceed.

18 **SANDRA VAN:** I do, yes. Sandra Van, 86626
19 Puuhulu Road, Waianae, Hawaii.

20 **CHAIRMAN SCHEUER:** Please proceed.

21 **SANDRA VAN:** I have testified before, and
22 I thank you for hearing me again. I am still
23 opposed to this because I feel like it is sweeping
24 in nature. It does not take into account the fact
25 that there are very different soil properties and

1 capabilities, especially on small parcels of land
2 like I have.

3 It will disproportionately impact elders
4 and small multi-generational farms or properties. I
5 have 1.8 acres. My property is located in a river
6 bottom, an old river bottom, very, very rocky, also
7 prone to flooding when we have floods. It makes it
8 very impractical to farm.

9 You know, we are trying to grow some
10 mangos and coconuts and some of the tree and
11 product, but it's not feasible to think that this
12 property can be commercially viable.

13 I hate to think that -- I have planned to
14 leave this property to my children. My adult
15 children live on the property with me. If this goes
16 through, they wouldn't be allowed to live here, and
17 it looks like probably I wouldn't either now that
18 I'm 65 and probably past the age of being able to go
19 out and work the farm.

20 So I'm hoping that this will be rethought.
21 Thank you very much.

22 **CHAIRMAN SCHEUER:** Thank you for your
23 testimony. Let me see if there's questions.

24 City and county, Ms. Apuna?

25 **MS. APUNA:** No questions.

1 **CHAIRMAN SCHEUER:** OPSD, Ms. Kato?

2 **MS. KATO:** No questions.

3 **CHAIRMAN SCHEUER:** Department of
4 Agriculture, Mr. Yamamoto?

5 **MR. YAMAMOTO:** No questions.

6 **CHAIRMAN SCHEUER:** Commissioners, starting
7 with Commissioner Cabral?

8 **COMMISSIONER CABRAL:** Thank you, Chair.

9 I just wanted to let you know, I don't
10 know if Sandy Van remembers me, but I remember your
11 name and you had a newsletter about rodeos, and so I
12 wanted to just let the board know that I have dealt
13 with her, and it's been many years.

14 And then also, the next testifier, Frances
15 Silva, I have dealt with. Our children attended
16 high school rodeo together now ten plus years ago,
17 and so I dealt with her quite a bit back in those
18 days and even in some little real estate, but have
19 not had, you know, a lot to do with these folks. So
20 just want to let you know. I don't think this will
21 impact my ability to be objective and fair in my
22 proceedings. I wanted to make sure that that's
23 disclosed in case it came up. Thank you.

24 **CHAIRMAN SCHEUER:** Thank you for the
25 disclosure, Commissioner Cabral.

1 Commissioners, any questions or comments
2 for Ms. Van? Seeing none, thank you again for your
3 clear and consistent testimony on this matter, Ms.
4 Van. We appreciate it.

5 **SANDRA VAN:** Mahalo.

6 **CHAIRMAN SCHEUER:** I'm going to move you
7 to be an attendee. We have three final people,
8 Frances Kama-Silva, Leon Lapina, and Harrison Goo to
9 be admitted in order.

10 Frances Kama-Silva will be admitted first.
11 Frances Kama-Silva, if you can enable your audio and
12 video.

13 **FRANCES KAMA-SILVA:** There you go.

14 **CHAIRMAN SCHEUER:** I see you with your
15 (spoke Hawaiian).

16 **FRANCES KAMA-SILVA:** Yes.

17 **CHAIRMAN SCHEUER:** So don't feel like you
18 have to use your hand if you don't have a good hold
19 on the baby, but do you swear or affirm the
20 testimony you're about to give is the truth?

21 **FRANCES KAMA-SILVA:** Yes, I am.

22 **CHAIRMAN SCHEUER:** Okay. So please, name
23 and address for the record and then proceed.

24 **FRANCES KAMA-SILVA:** Frances Kama-Silva.
25 I reside at 86412-C Lualualei Homestead Road in

1 Lualualei Valley. We also own the parcel adjacent
2 to us, so two acres and 2.8 acres.

3 I just wanted to share that we were
4 present at the 2017 Kapali meeting along with some
5 of our neighbors. Basically told that with our
6 current ag zoning, there really wouldn't be anything
7 with the IAL designation that would impact us, so we
8 didn't worry about it.

9 And then we started getting letters from
10 the attorneys. And going into the statutes, now I
11 see it's a problem for us. I think that the 45.5
12 regarding the dwellings, it absolutely needs to be
13 revisited and revised before anything further
14 happens. I think that's a lot of the issues people
15 have.

16 Also, in our Lualualei Valley, the city
17 just took their paintbrush and the entire valley
18 they put under this designation with no other
19 review. And so other than the Hawaiian homes and
20 the housing projects that are here in the valley,
21 everyone is under this designation. And so to go
22 from a criteria of eight down to three and then down
23 to one, which everyone has water here, is
24 problematic.

25 So the way this has been done, I think it

1 has not been done the way that they were told to do.

2 Thank you.

3 **CHAIRMAN SCHEUER:** Mahalo nui for your

4 testimony. Let me see if there's questions.

5 Ms. Apuna, city and county?

6 **MS. APUNA:** No questions.

7 **CHAIRMAN SCHEUER:** Ms. Kato, OPSD?

8 **MS. KATO:** No questions.

9 **CHAIRMAN SCHEUER:** Mr. Yamamoto?

10 **MR. YAMAMATO:** No questions.

11 **CHAIRMAN SCHEUER:** Commissioners?

12 Commissioner Chang?

13 **COMMISSIONER CHANG:** Frances, this is -- I

14 don't have a question -- well, maybe I do have a

15 question. And I'm sorry to be (spoke Hawaiian). Is

16 that rattan in your background?

17 **FRANCES KAMA-SILVA:** It is, but it's from

18 our property in upper Hilo, on the Big Island,

19 Hamakua.

20 **COMMISSIONER CHANG:** Okay. Sorry. I was

21 like -- I was so amazed. It's like where -- I'm

22 sorry to detract. Thank you. Thank you. Thank you.

23 **FRANCES KAMA-SILVA:** You're welcome.

24 **CHAIRMAN SCHEUER:** Okay. Commissioner

25 Cabral?

1 **COMMISSIONER CABRAL:** Yes. Thank you.

2 Hi, Fran. Long time, no see. The land
3 that is being referenced here in Wainae, I've been
4 to your land. It's been, like I said, 10, 15 years
5 ago, but that is the land that is being -- that has
6 been designated or they're trying to designate as
7 IAL land?

8 **FRANCES KAMA-SILVA:** Yes.

9 **COMMISSIONER CABRAL:** Okay. Thank you. I
10 appreciate that because since I've been there, now I
11 have a vision of that terrain in a sense where some
12 of these we don't have a vision of.

13 **FRANCES KAMA-SILVA:** And we do cattle. We
14 do livestock. We do -- but the cattle are not on
15 the property. We use the property as holding pens,
16 et cetera for the cows. We do use it for ag.

17 **COMMISSIONER CABRAL:** Okay. No, no, no.
18 Thank you. It does. I thought, well, that looks
19 pretty agricultural behind you there, but no. Okay.
20 Thank you very much. Good to see you. Take care of
21 that grandbaby.

22 **FRANCES KAMA-SILVA:** Thank you.

23 **COMMISSIONER CABRAL:** Aloha.

24 **CHAIRMAN SCHEUER:** Commissioners, any
25 further comments or questions of the witness?

1 My admiration for your extremely effective
2 multi-tasking. Baby didn't even disturb once, so
3 mahalo nui for your testimony.

4 **FRANCES KAMA-SILVA:** Uh-huh.

5 **CHAIRMAN SCHEUER:** Okay. I'm going to
6 move you to be an attendee.

7 We have Leon Lapina followed by Harrison
8 Goo, and then we will conclude public testimony on
9 this matter.

10 I'm moving Leon Lapina into the meeting to
11 be a panelist. Please enable your audio and video.
12 Oh, aloha. Okay.

13 **LEON LAPINA:** Hello.

14 **CHAIRMAN SCHEUER:** Aloha. I'm going to
15 swear you in and then ask you to introduce both of
16 yourselves, give your address and then your
17 testimony, okay?

18 **LEON LAPINA:** Okay.

19 **CHAIRMAN SCHEUER:** So do you swear or
20 affirm the testimony you're about to give is the
21 truth?

22 **LEON LAPINA:** Yes. Yeah.

23 **CHAIRMAN SCHEUER:** Okay. So name and
24 address of both of you, if you can.

25 **LEON LAPINA:** Leon Lapina. I don't have

1 no address. My address is (indiscernible) 2547.

2 That's all I --

3 **CHAIRMAN SCHEUER:** City?

4 **LEON LAPINA:** Yeah. Oh, that's zip code?

5 96972.

6 **CHAIRMAN SCHEUER:** Mahalo. And your being
7 assisted by your daughter, yeah?

8 **LEON LAPINA:** Yeah.

9 **CHAIRMAN SCHEUER:** Okay. So please share
10 your testimony with us.

11 **JOSEPHINE LAPINA:** Yes. I'm Josephine
12 Lapina, and my dad is correct, we don't have a
13 living address, but we don't actually have an
14 easement and haven't had it for years, over ten
15 years.

16 **CHAIRMAN SCHEUER:** Okay.

17 **JOSEPHINE LAPINA:** So we're with this --
18 with this happening is I -- you know, my parents are
19 -- they've had a pig farm and they've always been
20 with agriculture. They sell their produce to buyers
21 from farmers markets, chickens, eggs, and fruit
22 trees.

23 And part of the property is not airable.
24 We are adjacent to the West Oahu aggregate, of which
25 that, you know, the city and county, Department of

1 Planning took, you know, which was part of the
2 easement, and so that is our driveway, which is all
3 coral.

4 And so what I want to know is, first of
5 all, we are going to opt out on that. They have
6 worked hard to get this property. They have
7 children, grandchildren, and great grandchildren,
8 and to take -- to make a use of this property, we
9 want to know specifically what is being used, and is
10 it really going to be used for agriculture here?

11 It's all coral, and you know, we've tried
12 to get -- we have this meeting facility, which, you
13 know, the director George Atta we had a meeting with
14 up at DPP, and he confirmed that we can have this,
15 but yet, you know, we've been getting notice of
16 violations.

17 My parents are retired and threatened that
18 they're telling the mortgage companies. We've got
19 letters. They told the mortgage company -- their
20 mortgage company that they're going to make them,
21 you know -- just being harassed.

22 Now, as far as the -- in the letter that's
23 being generated just, you know, it's not even being
24 specific on the properties. And there's so many
25 properties on this island, and this island is an

1 agricultural state. Why -- and the pie chart of
2 agriculture, that is not us that made it to where
3 now you have to have important -- you know, make use
4 of taking people's property to -- because of the
5 false and, you know, the -- the city and county have
6 done.

7 It's -- this is a prosperous state. Why -
8 - why are we not all, you know, being so prosperous
9 here? And why are they taking our property when
10 they worked so hard? You know, so we are -- we --
11 like the other person -- property owner that said,
12 we are opting out as we have a choice in the matter.

13 We have a choice in the matter because it
14 is not -- it was meant us, private citizens and
15 where, you know -- and I thank you for having this,
16 you know, the Commissioners, you know, to give us
17 this opportunity, because we were never given -- we
18 had permits. We tried to apply at farmers market
19 here and raise the farmers here, and you know, it's
20 hard for us to get our produce and go with, you know
21 -- we wanted to have the farmers market here --

22 **CHAIRMAN SCHEUER:** Can I ask you to
23 summarize your testimony, please?

24 **JOSEPHINE LAPINA:** Yes. We are opting out
25 of this, as I said, voluntarily. This is going to

1 be -- this is being taken arbitrarily, and we want
2 to know what -- what specifically do they want to
3 use this property for and how much and to take away
4 our lives and livelihood and -- it's
5 unconstitutional.

6 **CHAIRMAN SCHEUER:** Okay. Let me see if
7 there's questions for both of you, okay?

8 **JOSEPHINE LAPINA:** Yeah.

9 **CHAIRMAN SCHEUER:** Questions for the
10 witnesses, city and county, Ms. Apuna?

11 **MS. APUNA:** No questions.

12 **CHAIRMAN SCHEUER:** Ms. Kato, OPSD?

13 **MS. KATO:** No questions.

14 **CHAIRMAN SCHEUER:** Mr. Yamamoto, DOA?

15 **MR. YAMAMOTO:** No questions.

16 **CHAIRMAN SCHEUER:** Commissioners?

17 Let me try, to the degree I can, to
18 respond to the questions part of your testimony. So
19 all we're trying to do today is -- so the city and
20 county developed a list of proposed IAL
21 designations. We're not taking up the specifics of
22 whether any particular parcel should be or should
23 not be included today.

24 All we're looking at today is over whether
25 we believe we find their overall process complied

1 with the law. If we say we believe they did, which
2 we'll deliberate afterwards, then you will get a
3 formal opportunity to say, "I object. I don't want
4 to be included in this."

5 However, it is possible that we will also
6 say, "You know what? We do not believe the city did
7 this process properly. We're sending the whole
8 process back to the city." In which case, there's
9 no need to opt out because no properties will be
10 moving forward at this time. They'll start the
11 process again. Does that provide some clarity about
12 where we are?

13 **JOSEPHINE LAPINA:** I think so a little
14 bit, but thank you.

15 **CHAIRMAN SCHEUER:** Okay. Thank you so
16 much for your testimony and for assisting your
17 father and being able to testify in this matter. We
18 very much appreciate it.

19 **JOSEPHINE LAPINA:** Thank you. One
20 question, please. Will you be providing us
21 information to -- as to what we're going to do next?
22 Like, will that be provided?

23 **CHAIRMAN SCHEUER:** So it depends on what
24 happens. If we send it back to the city, then it's
25 up to the city on how they proceed and how they

1 inform, if they go forward.

2 If it is us and we decide to proceed
3 forward, we will continue to do as we have done
4 throughout this process to go with the owner of
5 record and send notices to everybody who has
6 property that may be affected by this.

7 **JOSEPHINE LAPINA:** Okay. Thank you.

8 **CHAIRMAN SCHEUER:** Okay. Mahalo nui for
9 your testimony.

10 **JOSEPHINE LAPINA:** Thank you.

11 **CHAIRMAN SCHEUER:** I'm going to move you
12 back to being an attendee. We have one final
13 testimony from Harrison Goo. Promoting to be a
14 panelist.

15 Aloha (spoke Hawaiian).

16 **HARRISON GOO:** Hi. Good morning.

17 **CHAIRMAN SCHEUER:** Do you swear or affirm
18 the testimony you're about to give is the truth?

19 **HARRISON GOO:** I do, yes.

20 **CHAIRMAN SCHEUER:** Okay. So name and
21 address for the record and then proceed.

22 **HARRISON GOO:** Sure. My name is Harrison
23 Goo. My address is 217 Prospect Street, Apartment
24 F1, Honolulu, Hawaii 96813.

25 I am testifying today actually on behalf

1 of my client, NSR Farms, LLC, and its affiliates. I
2 submitted written testimony in advance of this
3 hearing on January 4, so I will not be reiterating
4 all of the substance of that now. It is fairly
5 lengthy, and you know, I am the last person to go,
6 so I would like everyone to be able to get out of
7 here in some expedited fashion. I'll try to be
8 brief.

9 I have been listening to all of the
10 testimony today, primarily from lay people, the
11 landowners that were affected by the IAL
12 designation. Part of the reason that I even raised
13 my hand was, you know, I think there's quite a large
14 disconnect between the process that the county
15 purportedly implemented and what people's
16 understandings of what their rights and potential
17 remedies were.

18 In the letter that my client got -- my
19 client was initially notified of the IAL designation
20 under the statute HRS 205-47D-5. One of the things
21 that the county was required to do was to include
22 some kind of position statement from the landowners.
23 So my client had anticipated being able to provide
24 some argument or opposition to the designation,
25 which did not happen.

1 In the Attorney General opinion letter
2 that was issued on September 23rd, 2021, the
3 county's compliance or failure with that particular
4 section of the statute was not addressed. From what
5 I'm hearing, almost no one received notice. Or if
6 they did, notice was only received once the LUC
7 became involved. And I think that there is a
8 materially flawed issue because a lot of these
9 people don't have attorneys, can't afford attorneys.
10 They're just individual landowners.

11 **CHAIRMAN SCHEUER:** Mr. Goo, I'm going to
12 ask you to summarize, please.

13 **HARRISON GOO:** No problem. Ultimately, I
14 think the process is very complicated, and even the
15 ultimate outcome of what the Attorney General
16 decided was that this proceeding has to be quasi-
17 judicial versus rule-making I don't really know that
18 anybody who didn't have legal experience would know
19 what the distinction between those two was and what
20 their rights and remedies were, so I think there are
21 some pretty significant due process concerns here,
22 and I would hope that your committee and your
23 Commission takes that into consideration when
24 evaluating the efficacy of what the county did and
25 just unilaterally deciding some lands were IAL-

1 designated and some were not.

2 **CHAIRMAN SCHEUER:** Thank you for
3 testimony. Let me see if there's any questions for
4 you.

5 DPP, Ms. Apuna?

6 **MS. APUNA:** No questions.

7 **CHAIRMAN SCHEUER:** Ms. Kato?

8 **MS. KATO:** No questions.

9 **CHAIRMAN SCHEUER:** Mr. Yamamoto?

10 **MR. YAMAMOTO:** No questions.

11 **CHAIRMAN SCHEUER:** Commissioners? Seeing
12 none, thank you for your written and your oral
13 testimony this morning. We very much appreciate it.

14 Okay. Let me -- I've moved Mr. Goo to be
15 an attendee. Let me sort of assess for us all the
16 status of our proceedings. I have closed public
17 testimony on this matter because we need to move on
18 to actually hearing final arguments from the parties
19 and deliberation.

20 I'm going to suggest -- it's 11:55 --
21 after I'm done talking, we take a 35-minute break,
22 go -- come back at 12:30 for lunch -- after lunch.
23 At 12:30, we will hear from Ms. Apuna from DPP any
24 final arguments, and we will get questions from the
25 Commissioners for her. I will then provide the

1 opportunity for any final comments from OPSD and
2 DOA, and then I will actually provide a further
3 opportunity to Ms. Apuna to rebut anything that
4 might have come up in the last two discussions with
5 OPSD and DOA.

6 After that, we'll move on to deliberation.
7 Does that sound acceptable, Ms. Apuna?

8 **MS. APUNA:** Yes.

9 **CHAIRMAN SCHEUER:** Ms. Kato?

10 **MS. KATO:** Yes.

11 **CHAIRMAN SCHEUER:** Mr. Yamamoto?

12 **MR. YAMAMOTO:** Yes.

13 **CHAIRMAN SCHEUER:** Okay. Commissioners,
14 we're good? Meet back at 12:30.

15 Thank you so much to everybody who's been
16 listening. We will reconvene at 12:30.

17 **(Recess taken from 11:55 a.m. to 12:31**
18 **p.m.)**

19 **CHAIRMAN SCHEUER:** It is 12:31. We're
20 going back on the record. We will now hear final
21 arguments from Dawn Apuna of the Department of
22 Planning and Permitting of the City and County of
23 Honolulu.

24 **MS. APUNA:** Thank you, Chair. Can you
25 hear me okay?

1 **CHAIRMAN SCHEUER:** We can. Just was just
2 suddenly static somehow. It might have been your
3 mic hitting fabric or something.

4 **MS. APUNA:** Okay. Is that better?

5 **CHAIRMAN SCHEUER:** Yeah.

6 **MS. APUNA:** Okay.

7 **CHAIRMAN SCHEUER:** Please proceed.

8 **MS. APUNA:** Thank you, Chair. So I would
9 first like to address some of the issues that were
10 presented in written testimony. And this is with
11 regard to renewable energy. Some are fearful that
12 the IAL policy of HRS 205-43-3, which, quote,
13 "directs non-agricultural uses and activities from
14 IAL to other areas and ensures that uses on IAL are
15 actually agricultural uses," will have a chilling
16 effect on renewable energy projects.

17 The city believes that this policy
18 guideline does not preclude or prohibit non-
19 agricultural uses on IAL but more accurately does
20 not allow the supplanting or displacement of
21 agricultural uses with non-agricultural uses. We
22 believe this policy guideline could allow beneficial
23 non-agricultural uses such as renewable energy
24 projects on IAL so long as bonified agricultural
25 uses are included or incorporated on the same land

1 in substantial proportion.

2 For example, in September of last year,
3 the Commission approved a special permit for the
4 Mahi Solar Project that includes agrivoltaics which
5 currently locates agricultural activities with the
6 PV panels.

7 As an island with limited land resources,
8 the co-location of agriculture and renewable energy
9 is renewable and the renewable energy industry to
10 work with the agriculture industry to create
11 authentic agriculture includes assistance with
12 renewable energy.

13 There could be good synergy between the
14 two where renewable energy projects help to offset
15 agricultural infrastructure costs.

16 Next, the establishment of incentives
17 prior to county IAL designation. Yes, it would have
18 been ideal to have an abundance of incentives in
19 place so landowners would be busting down the city's
20 door to have their lands designated IAL. But
21 without more incentives established, the Commission
22 is not precluded from moving forward with
23 designation for the city-recommended IAL.

24 It would not be legally premature or
25 procedurally improper for the Commission to accept

1 the city's recommendation to designate IAL at this
2 time. While the enactment of incentives is required
3 by the state and the counties, nothing in the
4 statute requires their enactment precede the
5 designation of IAL.

6 Additionally, incentives were enacted,
7 including the refundable qualified agricultural cost
8 tax credit, farm dwelling and employee housing of
9 205-45.5 and agricultural processing facilities
10 permitting prior -- prioritization under HRS 205-
11 46.5. To stop this process to await the development
12 and passage of more incentives will further drag
13 this already exhausting overspent process, which
14 this generation and perhaps the next will never see
15 to completion. The city is currently looking at
16 ways to support agriculture and to develop
17 incentives to support farmers.

18 Next is the city has provided or --
19 someone said the city has provided conflicting
20 information on the effects of IAL. The DPP has done
21 its best to interpret and communicate the IAL
22 statute and its effects on landowners. But if
23 anything is conflicting or unclear and creating
24 fear, it's the actual statute.

25 The purpose behind the farm dwelling and

1 employee housing provision is to incentivize and
2 provide a benefit, not a burden or restriction,
3 greater than the current farm dwelling restrictions.
4 If it is a greater restriction or even a deprivation
5 of a significant property interest, it's likely a
6 result of bad drafting and with unintended
7 consequences.

8 HRS 205-4016 requires review of incentive
9 measures for IAL to determine their effectiveness
10 and allow for modification as needed. If the farm
11 dwelling and employee housing incentive is having
12 the opposite effect of an incentive, as we've seen
13 here, and in fact deterring and dissuading and
14 causing fear to farmers and potential farmers, it
15 should be fixed.

16 Alternatively, the farm dwelling
17 definition could conform to the IAL definition. If
18 the Commission accepts the city's recommendation, it
19 can defer designation while legislation is made
20 during the upcoming legislative session to fix and
21 repeal portions of the statute that can be
22 interpreted as more burdensome than beneficial to
23 farmers and landowners.

24 With regard to the city's requirement to
25 provide notice, under HRS Section 205-47D, the

1 county process for the recommendation of IAL calls
2 for reasonable action to notify each owner of those
3 lands by mail or posted notice on the effective
4 lands, to inform them of the potential designation
5 of their lands.

6 The county notice is to inform landowners
7 of potential designation, not actual designation.
8 Again, the city mailed out notices to the 1,800
9 landowners and a second notice by mail, consistent
10 with the plain language of HRS Section 205-47D. In
11 addition, the city provided public notices to
12 newspaper, advertisements, and other media of the
13 many community meetings and city council meetings on
14 the IAL recommendation.

15 What are the steps for the Commission?
16 Moving forward, there are a lot of issues that may
17 have muddied what your next steps are. But to be
18 clear today, all you should consider and determine
19 is whether, one, the city properly complied with the
20 county process for identification of IAL under HRS
21 Section 205-47 and that the properly -- I'm sorry,
22 the city properly applied the standards and criteria
23 for IAL identification under HRS Section 205-44.

24 The city properly complied with the county
25 process for identification of IAL. The city first

1 identified and mapped potential IAL, accept lands
2 that have been designated through the state and
3 county planning processes for urban use. The city
4 developed maps of potential lands for designation of
5 IAL and consultation of landowners interest groups,
6 et cetera.

7 The city developed an inclusive process
8 for public involvement and identification of
9 potential lands, and the development of maps of
10 lands to be recommended as IAL, including a series
11 of meetings. And the city took notice of those
12 lands that have already been designated IAL by the
13 Commission, and it took reasonable action to notify
14 each owner of those lands by mail on the affected
15 lands, to inform them of the potential designation
16 for their lands.

17 And consistent with the AG's opinion, the
18 city properly applied the standards and criteria of
19 HRS Section 205-44 by evaluating all eight criteria,
20 weighing them against each other to meet the
21 purposes of Article 11 Section 3 of the Hawaii State
22 Constitution and the objective and policies for IAL.

23 If the Commission accepts the city's
24 recommendation today, which is all that you need to
25 do today, it can then, at a later date, either fully

1 designate the map as recommended by the city or
2 designate some but not all of the parcels, even
3 excluding those who have objected.

4 If the Commission chooses to exclude
5 certain parcels, the downside is that it will be
6 counter to the IAL objective to have contiguous
7 agricultural lands, which is important in preventing
8 disruptive spot zoning and providing larger swaths
9 of land to take better economies of scale for
10 agriculture.

11 However, it would be possible for an
12 excluded landowner to come in later for voluntary
13 IAL designation. There's no time limit or deadline
14 for IAL designation.

15 By accepting the city's recommendation of
16 IAL, the Commission will undoubtedly have -- I'm
17 sorry, will undoubtedly take on the second phase of
18 the (indiscernible) task. You'll have to decide
19 whether to include or exclude certain parcels,
20 whether to conduct contested case hearings, and most
21 importantly, it will need to make the ultimate
22 determination of IAL designation.

23 There's a lot more work to be done by the
24 Commission and the counties, including the creation
25 of effective incentives, but this is what is

1 required under the IAL process.

2 In the alternative, the Commission may
3 remand to the city for further review or
4 clarification; however, to be frank, it is unlikely
5 that the city will be back before the Commission on
6 this IAL any time soon.

7 Again, the city's recommendation and the
8 designation of IAL complies -- I'm sorry, the
9 recommendation for the designation of IAL complies
10 with the requirements of Sections 205-47, 48, and 49
11 of Hawaii Revised Statutes, and the proper
12 procedural legal statutory and public notice
13 requirements were met in developing this
14 recommendation.

15 Based on the record before you, the city
16 has crossed the goal line. To ask for anything more
17 would be moving the goal line on the city. We did
18 what we were supposed to do under the IAL statute
19 and rules, and we are done.

20 This proceeding and your decision today is
21 unlike any that this or any other Commission has
22 experienced. It is not comparable to any of the
23 district boundary amendments or voluntary IAL
24 designations which are, for the most part, neatly
25 packaged and limited to a few parcels, a single

1 landowner, and far less acreage.

2 This process is unprecedented. It's far
3 from perfect. It is involuntary. It has already
4 taken 13 years evaluating and balancing of standards
5 and eight criteria, extensive outreach, hundreds of
6 thousands of acres and dollars.

7 As a result, you're understandably
8 discomfited by this whole process, but the payoff,
9 the endgame, to protect and bolster agriculture for
10 an entire island which holds 67 percent of the
11 state's population for future generations is
12 monumental and more crucial than any other decision
13 you have made as a Commissioner -- as a Commission
14 and moves us all closer to a goal set out decades
15 ago.

16 The decision is up to you. Oahu's IAL
17 lives or dies today based on your decision. No
18 pressure. But no matter what your decision, with or
19 without IAL, I assure you the city is dedicated to
20 support, expand, and reinvigorate agriculture
21 throughout the island and to finding ways to help
22 farmers truly succeed. The city will continue to
23 work with farmers to develop incentives.

24 Mahalo for this opportunity.

25 **CHAIRMAN SCHEUER:** Thank you, Ms. Apuna,

1 particularly for the no pressure statement. That
2 just made it all okay.

3 Commissioners, questions for the city?
4 Commissioner Chang followed by Commissioners Wong
5 and Cabral.

6 **COMMISSIONER CHANG:** Where does one begin,
7 Ms. Apuna? Undoubtedly, this is very difficult. I
8 will tell you I came into today's hearing sort of
9 with an inclination; however, after hearing Mr.
10 Miyamoto -- because in my view, I think the city --
11 and maybe it's because I've worked in government --
12 did the best that it could given what it had.

13 But what I also heard from Mr. Yamamoto --
14 Miyamoto today was a willingness and a
15 recommendation to remand this back and to work with
16 DPP. And I know both in your pleadings and your
17 statement right now, it is very unlikely that DPP
18 will take this on again. And I'm sure that is the
19 party line. Quite frankly, I'm glad that you're
20 here, and not Dean Uchida, as I'm sure Dean would --
21 he would describe this in a very different way.

22 But if you have assistance from the Farm
23 Bureau, they help to seek legislation for funding,
24 you fix, you know, some of the uncertainties
25 regarding -- or misunderstandings or

1 misinterpretations regarding farm dwelling. And I
2 am very concerned about the lack of incentives. I
3 think that that really is -- to me, that's the
4 spirit of this law.

5 I think -- and I know this was done before
6 you came onboard, but I think there was a lot of
7 checking off the boxes here and not so much
8 following the spirit of the law. I recognize that
9 the people who came before us over the last several
10 months do not represent a majority of the people
11 that you've designated. And I think those people
12 are out there farming.

13 But I saw the -- I view the Farm Bureau as
14 sort of representing their interests because these
15 guys are out there farming. But -- so my question
16 to you is, being very candid and, you know, we have
17 a long relationship with you, if there is
18 collaboration and assistance from the Farm Bureau,
19 you mentioned going back to the leg. to fix -- what
20 is the likelihood of this -- of DPP taking on this -
21 - this task but with different partners like the
22 Farm Bureau and those that Mr. Miyamoto mentioned?

23 **MS. APUNA:** So if you're talking about a
24 remand and a redo of the process, again, I think
25 we've met -- in a way, yes, we've checked all the

1 boxes, so I don't think there's more we could do.
2 But we are completely welcome to working with the
3 Farm Bureau, the different farmers, to start looking
4 at what incentives are needed to help these farmers.

5 I think we can do that. I think we can
6 move forward and try to really address some of the
7 barriers to farming and figure out how we can help
8 them so that when the designation is made, that they
9 can take advantage of these different opportunities.

10 But we can do that. I don't think we need
11 to stop and look backwards. We should just move
12 forward and try to create those incentives. And
13 with everyone that is affected, whether it's the
14 Farm Bureau or farmers or other agencies, we are --
15 we can definitely do that.

16 **COMMISSIONER CHANG:** So bottom line, it is
17 unlikely that the city will go back and redo this
18 process all over again?

19 **MS. APUNA:** I think, without specifically
20 pointing to where we have failed under the county
21 process or how we used the standards and criteria in
22 an improper way, I don't know how we're supposed to
23 go back and change anything without knowing what
24 that error was.

25 As far as, you know, the farm dwelling

1 issue, I don't know if that's for us to fix, but it
2 -- I think we agree that people shouldn't be scared
3 by it, and there should be clarity. It should be
4 benefit. It should make people want to be part of
5 IAL and not run from it. So if that needs to be
6 fixed, that's a state statute that, you know, needs
7 to probably be looked at, just for the comfort of
8 all these people that are testifying and feel that
9 it's doing things that don't want them to be part of
10 IAL.

11 **COMMISSIONER CHANG:** But there's also an
12 enforcement issue as well, right, that the DPP has
13 jurisdiction over? Clearly, not everybody's farm
14 dwelling is associated with an agricultural use.
15 And DPP -- besides enforcement, DPP is also issuing
16 building permits to people on these ag lots to
17 permit them to do these dwellings, and that may have
18 happened before your term.

19 People relied upon those permits that were
20 given, knowing that that was the zoning. So you
21 know, I think -- and I'm sure this is going to be on
22 a case-by-case. But in your opinion, knowing what
23 you know now, would you do anything different on
24 outreach and consultation?

25 **MS. APUNA:** You know, I -- truthfully, I

1 don't think I can say I would have done anything
2 differently. I think when an agency has this
3 directive, and it is pretty broad and loose, you
4 just try to find what the checkboxes are, and you do
5 everything you can do to check them off.

6 I mean, it doesn't sound -- probably not
7 the answer you want to hear, but I think we're
8 trying to -- we're trying to do the right thing
9 under the statute. That's the guidance that we've
10 been given and it's the administrative goals, so I
11 can't say that I would necessarily do it any
12 differently.

13 It's been a very long process, so many
14 different people involved, so I can't fault anyone
15 before me that didn't do the right thing. I think
16 they tried to do everything possible to follow what
17 was required of them.

18 **COMMISSIONER CHANG:** And you're right. I
19 mean, I'm not faulting anyone. I think due to just
20 time, the length of time that it took. If this
21 would have happened in three years, I think that
22 would have been very different outcome than what we
23 have today.

24 I suspect you would agree with me, and
25 we've sat through numerous hearings together, merely

1 checking off the box on community outreach and
2 engagement -- I mean, obviously, many of these
3 people have no idea what IAL means. They think
4 you're going to evict them or take their land away,
5 so there's a lot of misinformation.

6 I'm not saying that reflects everyone.
7 But merely checking off the box, I don't know if
8 that's the right thing. That is -- I mean, you're
9 complying with the law, so -- okay. I will let
10 other Commissioners address any questions they may
11 have to you. I appreciate the hard place that
12 you're in -- the rock and the hard place, and you
13 guys are trying to do the best you can.

14 But finally, I thought I also heard you
15 say if the lands aren't designated IAL, it really
16 doesn't change the city's commitment to supporting
17 sustainable ag, and that you will continue to
18 support them, try to adopt some incentives. So it
19 doesn't diminish the city's commitment to
20 sustainable ag if there's not an IAL designation.
21 Is that what I heard you say?

22 **MS. APUNA:** Yes. That's correct.

23 **COMMISSIONER CHANG:** Okay. All right.

24 Thank you, Ms. Apuna.

25 Thank you, Mr. Chair.

1 **MS. APUNA:** Thank you, Commissioner.

2 **CHAIRMAN SCHEUER:** Okay, Commissioner
3 Chang.

4 Commissioner Wong followed by Cabral.

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

6 Thank you, Ms. Apuna. As you know, we
7 have laws. And I understand we have laws and
8 statutes and rules, but it was made up from the
9 people -- the people to protect the people. And I
10 mean, no offense, but I've kind of taken some
11 offense to your closing statement, because we are
12 here to help the people and protect the people and
13 to protect the land.

14 Our job, to me, is to assist, not to stop
15 or stifle. And I guess what I'm trying to say is,
16 you know, yes, we're going to check -- as Dawn said
17 -- Commissioner Chang said, we're going to check the
18 boxes. But is that correct? Or is that the only
19 thing we have to do?

20 Or do we have to do more to help to
21 alleviate? You know, we're -- everyone doesn't like
22 government. We heard it from all the testifiers.
23 They don't trust government. And if government
24 says, "We are checking the box and that's it. Too
25 bad," then why do we have -- you know, what is

1 government, then? Government is stifling to me.
2 Government should be there to assist and to help the
3 people.

4 You know, I'm very concerned about, you
5 know, yes, you guys did a TAC. You guys did an
6 outreach, but from what I heard and gathered, people
7 didn't -- said, "so, I didn't get any call back. I
8 didn't do anything," you know, "nothing came back."
9 And so I'm just trying to say if we remanded it
10 back, I hope that the county understands they are
11 for the people, not for the laws also, but yes,
12 they're for the laws, but they have to protect the
13 people and assist the people in protecting our small
14 farmers. So that's what I'm trying to say, Ms.
15 Apuna.

16 I know it's not a question. It's just a
17 statement, but I just hope you understand where I'm
18 coming from, and I wanted to say that. Thank you.

19 **MS. APUNA:** Thank you, Commissioner. I
20 mean, I -- I -- sorry if I offended anyone. It
21 wasn't my intention. I think we're trying to do
22 what the state wants us to do under the law, and so
23 -- and we do want to do what's right for the people.

24 But you know, a lot of this even, I think,
25 that we heard today that the law itself, the IAL

1 law, it wasn't -- maybe didn't provide some of the
2 protections that people are asking for, whether it's
3 an appeal process or specifically to opt out. I
4 think we did take in any information that was given
5 to us, and we tried to respond accordingly.

6 But yeah, I think that there could be more
7 within the IAL process that would have satisfied the
8 general public and the landowners. But it wasn't in
9 there, and I can understand a lot of the issues that
10 we're hearing today, but we do -- I think our
11 intention is to help -- to definitely help farmers
12 to grow agriculture and to do the right thing.

13 **COMMISSIONER WONG:** Yeah. So I got a
14 question for you. You know, Mr. Miyamoto, I think
15 Ms. -- the first testifier, Ms. Maluafiti, said,
16 "We're willing to go to legislature because right
17 now it's unfunded mandate." Unfunded meaning -- for
18 those people out there, meaning you didn't get any
19 money to do this. So it's a mandate -- it's a law
20 that has no money attached to say, "Here, county,
21 here's the money."

22 So if we remand it back, could you --
23 because session is coming up, could you work with
24 Farm Bureau and others to say, "We'll go back, try
25 to fix the law. Let's get some funding." I mean,

1 maybe that's a possibility to work -- to look at,
2 too. So I just wanted to state that for the record.

3 **MS. APUNA:** Yeah. I mean, I think, again,
4 we'd have to know what we would have to fix, because
5 I don't think it's clear what -- how we erred under
6 the law. But we're definitely open to working with
7 the Farm Bureau and others to -- you know, if
8 there's legislation, that would be helpful.

9 **COMMISSIONER WONG:** Thank you, Ms. Apuna.
10 I wish you a Happy New Year, if I didn't say that
11 before. But thank you, Ms. Apuna, again.

12 Thank you, Chair.

13 **MS. APUNA:** Thank you, Commissioner Wong.

14 **CHAIRMAN SCHEUER:** Thank you, Commissioner
15 Wong.

16 Commissioner Cabral?

17 **COMMISSIONER CABRAL:** Thank you, Chair.

18 Yeah. Thank you, Ms. Apuna. And you
19 always write up such a good -- make such good
20 presentation. It's always so pleasant and somewhat
21 convincing, but I don't agree.

22 But it's been touched on now quite a bit,
23 including your last few comments, and I am more and
24 more hearing our feeling like -- well, absolutely,
25 the situation is flawed; however, it came down --

1 whatever happened, there's a whole lot of problems
2 here because a whole lot of people didn't know,
3 don't know, whatever, whatever.

4 And then on top of that, I get -- the more
5 deep we get into it, I feel like what you just said,
6 there are some flaws in the actual legislative laws
7 that was passed, or the details of it, that when put
8 to actual application, do not work out.

9 So do you think that it should go back to
10 the legislature? Is that something you would see us
11 being able to try and do to send it back to the
12 legislature for a better rewrite or clarity before
13 the city and county would want to attach this again?

14 **MS. APUNA:** I think you could accept our
15 recommendation and still move forward with making
16 some changes to the statute. I think that we should
17 all move forward in every, you know, capacity.

18 We definitely have satisfied whatever the
19 Commissions have been set up currently. I think the
20 issues with some of the discrepancies on the farm
21 dwelling, that's not our doing, or we didn't create
22 the discrepancies, and we don't need to address
23 those in order for the Commission to just accept our
24 recommendation.

25 What I'm saying, though, is that once you

1 accept the recommendation and before you actually
2 designate, there can be things done such as
3 legislation that maybe repeals the farm dwelling
4 portion so that people aren't concerned that it's
5 not clear or that it's taking away certain rights.
6 And you can also not include certain parcels.

7 But in the end, if we move forward, if you
8 accept our recommendation and we do these things, we
9 can, you know, designate IAL and work on incentives
10 and just move closer to protecting and preserving
11 agricultural land, which is the main objective,
12 right, to protect it and to help invigorate it.

13 So I don't think we need to stop. We can
14 just go forward and make some little changes, if
15 possible, but keep moving forward and doing certain
16 things in tandem is completely allowed under the
17 statute, and it's a matter of time, and we should
18 keep going.

19 **COMMISSIONER CABRAL:** I appreciate your
20 commitment and your dedication to your new job
21 title. But I got to tell you I'm really a long ways
22 from wanting the way the city and county is moving
23 forward doing this, to have that go forward, because
24 it concerns me that there's potentially hundreds of
25 people out there, if not thousands, who don't even

1 understand what's going on to even know that they
2 could opt out or whatever, whatever into the future.

3 So I would be -- I'm not going to support
4 going forward. I can say that right now, and I'm
5 just looking to see, based on what comment -- even
6 some of your comments, as well as Mr. Miyamoto, and
7 clearly based on all the people, I'm more and more
8 thinking it should go back to the legislature.

9 And I'd like to think that Land Use as
10 well as your office could give it a whole lot of
11 suggestions on how the clarity would need to be
12 worked out, because we certainly don't want to spend
13 this many days, hours, not to mention all of the
14 public people that have spent the hours meeting with
15 us to testify and to write things, as well as the
16 stress in between those hours that these individual
17 farmers and ranchers have had to go through.

18 I don't want to share that with any other
19 county moving into the future. So okay. Thank you
20 very much, though, for your dedication to the job.

21 **MS. APUNA:** Thank you.

22 **CHAIRMAN SCHEUER:** Thank you, Commissioner
23 Cabral.

24 Commissioner Ohigashi?

25 **COMMISSIONER OHIGASHI:** By saying that

1 you're -- we're accepting your recommendation sort
2 of misleads -- sort of misleads what we're actually
3 doing.

4 But what I think we're doing here is
5 you're saying -- you're telling us -- you're asking
6 us to make a finding that the report recommendations
7 that coming from the city and county met all the
8 requirements that we -- that it was meant to do, was
9 -- went out there and doing some adequate fact-
10 finding and determining where the line should be
11 drawn.

12 And it is for Land Use Commission to make
13 the determination utilizing due process rules that
14 the Attorney General has indicated in their opinion,
15 make the final decision as to whether these lands --
16 whether or not these lands should be located within
17 -- should be designated IAL lands. Is that my
18 understanding of what your presentation is all
19 about?

20 **MS. APUNA:** Yes, I think that's correct.
21 Today, you can accept or find that the city met the
22 county process and the standards and criteria, and
23 then it's the Commission's duty to -- or decision to
24 actually designate the lands for IAL.

25 **COMMISSIONER OHIGASHI:** And so that would

1 leave the Land Use Commission with several options,
2 right? One, it could accept your recommendations in
3 total as a finding of the Commission that, yes, this
4 should be redesignated as IAL lands.

5 Or two, it could say, hey, some parts of
6 it we like; some parts we don't like. So these are
7 the areas. Or three, we could just sit on it and do
8 nothing, isn't that right? Because I don't know of
9 any time limit or time extension that -- time
10 requirement.

11 **MS. APUNA:** Yeah. I'm not aware of a -- I
12 think that you need to find that the record is
13 complete. And as far -- once it's complete, I think
14 you have 365 days within which to designate. But
15 yeah, I think those are the only deadlines involved.

16 **COMMISSIONER OHIGASHI:** So essentially, we
17 can say the record is not complete because the
18 statute is incomprehensible or unenforceable, is
19 ambiguous, and we -- before we complete the record,
20 we could ask the legislature to do something, is
21 that right?

22 **MS. APUNA:** So I think if you're talking
23 about the rights that -- rights -- the property
24 owners' rights with a designation, I think that's
25 separate from what we're doing today and separate

1 from whatever the county's influence is on what
2 determines the rights of these landowners. The
3 statute --

4 **COMMISSIONER OHIGASHI:** So I --

5 **MS. APUNA:** Uh-huh?

6 **COMMISSIONER OHIGASHI:** I'm just talking
7 about procedure. And I'm just not -- I'm talking
8 about if we accept the report or, using your words,
9 accept the county's report, and we -- we have these
10 options. And so long as the record is incomplete by
11 us, there is no time limit for us to act.

12 We could make a determination that the
13 record cannot be complete because the legislation is
14 flawed. Is that right?

15 **MS. APUNA:** I think you could -- you could
16 sit on it, but, again, I don't think that what the
17 city and county has done, it's not flawed because of
18 the process. I think there might be flaws in, you
19 know, the restriction --

20 **COMMISSIONER OHIGASHI:** I understand your
21 arguments.

22 **MS. APUNA:** Uh-huh.

23 **COMMISSIONER OHIGASHI:** I just wanted to
24 get the options available.

25 The last thing is that what prejudice

1 would there be to landowners who chose number three,
2 my option number three? Does potential designation
3 have an effect of detriment to the landowners
4 themselves?

5 **MS. APUNA:** No. I think their current --
6 the current interest or rights would remain the same
7 until you made the designation of IAL.

8 **COMMISSIONER OHIGASHI:** Your -- the city's
9 position is they don't believe that there will be
10 any detriment to the landowners (indiscernible) the
11 legislature to decide?

12 **MS. APUNA:** No. No -- yeah, no change to
13 their current status as a landowner.

14 **COMMISSIONER OHIGASHI:** And the only
15 reason why I'm asking this is I'm just trying to see
16 what my options are. Thank you.

17 **MS. APUNA:** Thank you, Commissioner.

18 **COMMISSIONER OHIGASHI:** Oh, and Happy New
19 Year, too.

20 **MS. APUNA:** Happy New Year to you.

21 **CHAIRMAN SCHEUER:** Thank you, Commissioner
22 Ohigashi.

23 Commissioners, further questions for Ms.
24 Apuna?

25 Commissioner Giovanni?

1 **COMMISSIONER GIOVANNI:** Thank you, Chair.
2 Greetings, Ms. Apuna. Nice to see you in
3 2022.

4 **MS. APUNA:** Nice to see you, too,
5 Commissioner.

6 **COMMISSIONER GIOVANNI:** Just a quick
7 follow-up on Commissioner Ohigashi's option number
8 three. If we chose that and the Commission did not
9 -- or decided not to act on it, is your
10 interpretation that the landowners would still have
11 an option to voluntarily proceed to designate their
12 own land as IAL?

13 **MS. APUNA:** Yes. Yes, they could
14 voluntarily designate their land.

15 **COMMISSIONER GIOVANNI:** So any landowner
16 that decided they wanted an IAL could seek to do
17 that voluntarily, and any landowner that did not
18 want IAL, by not acting and by the Commission not
19 acting, would have status quo?

20 **MS. APUNA:** Yes, that's correct. I think
21 that the only differences with the county's process,
22 we're doing it for them. If they do it on their
23 own, they're going to have to -- yeah, on their own
24 accord and with their own financial ability to do
25 so, they would -- they would come before you

1 individually.

2 **COMMISSIONER GIOVANNI:** Okay. Thank you
3 for that. I want to move on to some other stuff.

4 Your opening statement -- in the beginning
5 of your statements today, you talked about whether
6 or not IAL precludes renewable energy developments.
7 And you cited a very specific project, which the LUC
8 approved in recent months, which was actually called
9 -- they called themselves Agrivoltaic Project. Is
10 that the one you referred to?

11 **MS. APUNA:** Yes.

12 **COMMISSISONER GIOVANNI:** My perspective is
13 that agricultural lands could be dedicated for
14 agriculture purposes; they could seek -- currently
15 seek a special use permit to put on a renewable
16 energy project, but if designated IAL, they would be
17 forced to do an agrivoltaic option, basically that
18 narrow option.

19 Is that what you're saying when you mean
20 it does not preclude renewable energy?

21 **MS. APUNA:** Yeah. They would definitely
22 have to have an agricultural significant -- you
23 know, substantial agricultural component.

24 **COMMISSIONER GIOVANNI:** I'd just like the
25 record to show that my interpretation of that

1 project that we approved was somewhat experimental,
2 and it also included substantial acreage not
3 dedicated to renewable energy that would be
4 surrounding the solar panels that would be used for
5 grazing.

6 So I'm not convinced in my own mind that
7 it's a classic, typical, prototypical project that
8 could be characterized as something that would be
9 straightforward and can be accommodated on IAL land
10 without problem. I'm not -- that's not a question.
11 It's just my own perspective.

12 So as much as I supported that project, I
13 think it was unique and not prototypical of what we
14 can expect for IAL land going forward.

15 **MS. APUNA:** And I agree, Commissioner.
16 You know, we look at those case by case. And like
17 you said, that was kind of experimental or something
18 new. And we hope that some of these developers of
19 renewable energy, that they continue to look at the
20 most -- really try to come up with creative ways
21 that go beyond and we're -- we don't want to just
22 have a few goats on -- underneath the panels kind of
23 thing. So it's a good opportunity for more
24 development in that area, definitely.

25 **COMMISSIONER GIOVANNI:** Well said. And I

1 agree with your perspective.

2 I want to switch gears a little bit. One
3 of the things that really troubles me about what the
4 county did and how they interpreted their role in
5 this process was when they interpreted the intent of
6 the legislation to do large -- I think these are
7 your words -- large swaths of land that were
8 contiguous and all IAL next to each other.

9 And in doing so, you avoid a patchwork of
10 parcels owned by different entities, some of which
11 would be IAL and some not. Is that a proper
12 characterization of what -- how you interpreted --
13 how you implemented your process?

14 **MS. APUNA:** I think -- so the policies and
15 goals of IAL, it does recommend contiguous parcels,
16 and I think I mentioned that larger tracts, I've
17 heard -- I don't know -- at least five acres, as far
18 as economies of scale. It's -- it makes it easier
19 for farmers to farm.

20 When you have spot zoning or you have
21 (spoke Hawaiian) that aren't IAL or ag, they tend to
22 threaten the surrounding areas with urbanization, so
23 it's more of a protective measure. But I understand
24 there's a lot of issues under that, whether it's
25 small parcels, but it -- all of these policies and

1 standards that we used, which are in the -- you
2 know, it's part of the standards and criteria. I
3 think we try to, as best as we could, interpret that
4 and to apply it accordingly.

5 **COMMISSIONER GIOVANNI:** Well, you may feel
6 that way, and I can understand why you feel that
7 way. But there's been an outpouring of the public
8 that the small farm owners do not feel that way.
9 They feel they're being swept up in the process and
10 just in order to have a contiguous swath of property
11 really dominated by the larger landowners as opposed
12 to the smaller landowners.

13 At the same time, we're hearing that
14 they've not been given a process by which they -- at
15 least one that they understand or that they could
16 follow through on, which would allow them to apply
17 for an appeal or an exemption or to opt out in doing
18 so.

19 So it seems to me to be out of balance.
20 In fact, it seems to be out of balance to the
21 benefit of the large landowner and the large farm.
22 And here I'm talking about small and large farms,
23 and the Executive Director of the Farm Bureau
24 couldn't even tell me what the difference was
25 between a small and a large farm. The criteria is

1 just not there.

2 But I could sense from the community
3 members that have come forth, many of which who have
4 lived on the land they own for decades, that one,
5 two, three acres of land is a small farm. And I'm
6 concerned that the -- what's driving the IAL are the
7 large landowners.

8 And it may work very well for them, but I
9 do not feel that the county has adequately addressed
10 the concerns of what I call the small landowners.
11 I'll just leave that there. You can comment if you
12 wish.

13 **MS. APUNA:** Yeah. I understand what
14 you're saying, Commissioner. I do think that, you
15 know, that these smaller farmers that are part of
16 that, maybe they're not every single small parcel,
17 but this county process is supposed to help them and
18 provide them the opportunity to take advantage of
19 the incentives. So it's a hard balance between the
20 two.

21 **COMMISSIONER GIOVANNI:** It is.

22 My other concerns were adequately
23 questioned by my former -- my other colleagues,
24 other Commissioners, so I will leave it at that.

25 Chair, I'll return it to you.

1 Thank you, Ms. Apuna.

2 **MS. APUNA:** Thank you, Commissioner.

3 **CHAIRMAN SCHEUER:** Thank you, Commissioner
4 Giovanni.

5 Commissioners, further questions?

6 Commissioner Aczon?

7 **COMMISSIONER ACZON:** Thank you, Mr. Chair.

8 I believe doing nothing is not the best
9 option that we have. We need to give these property
10 owners some closure. Doing nothing is just putting
11 some kind of limbo to everybody.

12 So I'm just kind of wondering what is the
13 city's -- how much is city's commitment on this. So
14 besides the -- besides accepting your
15 recommendation, city's recommendations, the other
16 options would have -- will take time and not to
17 mention some money.

18 I'm just trying to kind of -- you know,
19 presentation to me is telling us we made our
20 recommendations, take it or leave it. That's how I
21 feel it -- feel your presentation.

22 So again, besides accepting your
23 recommendations, the other options are -- will take
24 some time and money. If we accept your
25 recommendation, I feel that the Commission is going

1 to be ending up doing the work that city should have
2 done, to take the -- giving the incentives or
3 determining what, you know -- what properties has
4 the option of opting out. So we going to end up
5 doing the work if we go with your recommendation.

6 The question I have is, how much -- out of
7 those options that we have, how much -- where does
8 city can assist us the most?

9 **MS. APUNA:** So I think we are definitely
10 committed to working with farmers and other agencies
11 to figure out the incentives part of this whole
12 process and trying to address that and make it
13 better for farmers who are in the IAL-designated
14 areas.

15 **COMMISSIONER ACZON:** How about in this --
16 if we take it to the legislature, how you can help
17 us -- how the city can help us?

18 **MS. APUNA:** Well, I think that
19 specifically, if the issue about the farm dwellings
20 and employee housing is causing so much angst and
21 fear, I would suggest that that be amended or
22 repealed. Because if that's taken out of the
23 equation, then we're just relying on the current
24 definitions of farm dwelling, and so there's no
25 change in the rights of potential IAL landowner.

1 And then --

2 **COMMISSIONER ACZON:** Well -- go ahead. Go
3 ahead. Sorry.

4 **MS. APUNA:** But I mean, I feel like this
5 county, we've gone through the whole process. I
6 don't know where the other counties are. I'm sure
7 they're listening or watching and learning.

8 But if you want more in that process, if
9 you want to require more from the other counties, as
10 far as appeals processes or other things that came
11 up, I think you could add that. But I feel that the
12 county has gone through the process itself and as it
13 currently stands.

14 **COMMISSIONER ACZON:** Yeah. I -- I hear
15 you loud and clear, and that's the city's position.

16 The other option is probably out of the
17 question, remanding it to the DPP again. I guess,
18 based on your testimony, if you remand it, the
19 city's not going to do anything on it.

20 So my other questions kind of basically
21 the process later, whether we accept your
22 recommendation. I want to kind of see what comes --
23 what process comes next. So I guess, the question
24 is for our second above the Chair or the Chair.

25 Thank you very much, Ms. Apuna.

1 Thank you very much, Mr. Chair.

2 **MS. APUNA:** Thank you, Commissioner.

3 **CHAIRMAN SCHEUER:** Mahalo, Commissioner

4 Aczon.

5 Commissioners, further questions for Ms.

6 Apuna?

7 Commissioner Chang?

8 **COMMISSIONER CHANG:** Oh, sorry.

9 Commissioner Giovanni's discussion raised a point
10 for me.

11 Ms. Apuna, you indicated, one, that if --
12 that the private landowners, they could -- there's
13 nothing to preclude them from filing their own
14 petition, is that right? Is that what you said?

15 **MS. APUNA:** Yes.

16 **COMMISSIONER CHANG:** But my understanding,
17 when I go back and I look at the rules, if a private
18 landowner seeks to petition, don't they have to
19 comply with -- adhere to Chapter 343?

20 **MS. APUNA:** I don't recall. I don't
21 recall.

22 **COMMISSIONER CHANG:** I think so, and I
23 think that's why this -- the county process was
24 deemed to be sort of facilitating, you know, a lot
25 of these smaller farmers. And I think you even said

1 the smaller farmers -- many of those are the ones
2 who came before us -- it's the incentives that were
3 intended to help drive them. But in this case, we
4 don't have those incentives.

5 The large landowners, I think the
6 incentives have been provided for in the statute.
7 As long as they designate more than 51 percent, no
8 other lands get designated. But for these farmers
9 who have, you know, less than five acres, the
10 designation is the entire property.

11 So I think -- and I -- as I understand
12 your position, you know, what you're saying is just
13 accept -- just find that the city has met -- has
14 satisfied all of the criteria. There's been
15 adequate consultation and you have satisfied the
16 criteria to designate because you have the TAC and
17 you've applied, and you balanced all of the criteria
18 in coming up with these amounts.

19 Is that -- that's basically what you're
20 asking us to do today, right?

21 **MS. APUNA:** Yes. I think that's what you
22 guys are tasked with today.

23 **COMMISSIONER CHANG:** Right. But if any
24 one of those are fundamentally flawed, for example,
25 if there is a question about the adequacy of the

1 notification, I mean, again, I think, you know, our
2 exchange was, you guys did the best that you could,
3 but the lapse of time creates these voids, and it
4 doesn't look like the city filled the void with
5 anything.

6 At least for most of these people, they're
7 -- they got their information from LUC, and I
8 appreciate -- I applaud the effort by LUC staff. I
9 mean, they did an extraordinary job notifying, but
10 that's how most of these people got notice, or
11 through the lawyers, but it sounds like the city
12 went on silent.

13 So if we find that you checked off the
14 box, you know, in years three and four, but you did
15 nothing over the last seven years, I don't -- I
16 don't know if I feel comfortable saying that that's
17 -- that that's adequate notice, because, through
18 that lapse of time, the city provided no additional
19 information.

20 I think at the beginning when you had
21 consultants, you did a lot about -- so again, if
22 what I'm hearing you ask us and what we're tasked
23 with today, if we find that there's a fundamental
24 flaw in either one of those, the consultation or the
25 criteria -- because Office of Planning has -- OPSD

1 has also -- and we'll ask Ms. Kato, but they
2 recommended that there be some -- some -- some
3 smaller parcels less than two acres and any state
4 land -- so they've asked for things to be deleted.

5 My concern is that if we start
6 piecemealing and doing these deletions, that, to me
7 -- that -- that does impact the fundamental
8 criterias that the city applied. So it's becoming,
9 for me, much more difficult to even say
10 procedurally, that there's been adequate compliance
11 given some of these additional issues that have been
12 raised.

13 So okay. I just wanted to clarify that
14 with you. Yes. I just wanted to clarify that with
15 you. So okay. Thank you very much. Nothing
16 further.

17 **CHAIRMAN SCHEUER:** Thank you, Commissioner
18 Chang.

19 Commissioners, anything further? I have
20 some questions for Ms. Apuna. I know we've been
21 going an hour. I probably have five to ten minutes'
22 worth. Do we want to break, or do we want to finish
23 my questions and then take a break? Okay.

24 Ms. Apuna, we're going to start with
25 quoting -- I'll say I preferred and appreciated your

1 written supplemental arguments far more than your
2 oral closing today.

3 You made a statement in your written that
4 said, "any dissatisfaction or frustration in the
5 outcome of the county IAL process should be directed
6 at the IAL statute that created the process, not the
7 city that properly implemented the process." I
8 think I've read that correctly.

9 **MS. APUNA:** Yes.

10 **CHAIRMAN SCHEUER:** Okay. So I want to
11 explore that. Touching first on what Commissioner
12 Chang just mentioned. There was -- how many years
13 of a gap was there between the time when the city,
14 through its consultants, held community meetings,
15 and you presented the final maps to the LUC?

16 **MS. APUNA:** Let me make sure I have it
17 correctly. I have staff available, too, who might -
18 - if they have it sooner than I do. Okay. The
19 third community meeting in IAL was in 2017,
20 November.

21 **CHAIRMAN SCHEUER:** And the petition was
22 presented to us?

23 **MS. APUNA:** 20 -- I'm not sure.

24 Dina, do you know?

25 **MS. WONG:** The city finalized our IAL

1 report in 2018. And once we transmit it to counsel

2 --

3 **CHAIRMAN SCHEUER:** Dina, I'm going to
4 swear you in. Sorry. Do you swear or affirm the
5 testimony you're about to give is the truth?

6 **MS. WONG:** Yes.

7 **CHAIRMAN SCHEUER:** Okay. Dina Wong,
8 please continue.

9 **MS. WONG:** Dina Wong, Department of
10 Planning and Permitting, Planning Division.

11 Once we transmitted to city council in
12 2018 -- I don't have the exact date -- it's in city
13 council's hands, and they do the notifications in
14 terms of when it's going to be offered at city
15 council and at the Zoning and Housing Committee
16 meetings --

17 **CHAIRMAN SCHEUER:** Well, when did the LUC
18 -- just focus. When did the LUC receive it from the
19 city?

20 **MS. WONG:** The complete record was
21 transmitted -- no -- you guys have that on you. I
22 think it was last year.

23 **CHAIRMAN SCHEUER:** 2021. I believe you're
24 correct.

25 **MS. WONG:** 2020?

1 **CHAIRMAN SCHEUER:** So either -- from 2017
2 to either 2020 or 2021, correct?

3 **MS. WONG:** Yes.

4 **CHAIRMAN SCHEUER:** Okay. Thanks. So now
5 I want to go back to questioning Ms. Apuna.

6 So do you find that that gap in time still
7 means that you fulfilled the requirements of the
8 statute despite that gap in time?

9 **MS. APUNA:** In what sense are you saying
10 that?

11 **CHAIRMAN SCHEUER:** Does that gap in time
12 between when you held your last community meeting,
13 where you actually engage with the public, giving
14 them reasonable notice, to when it came to us, do
15 you feel that you've complied with the statute in
16 that regard?

17 **MS. APUNA:** I think so, and I think that
18 the additional hearings by the city council and
19 notices continue to --

20 **CHAIRMAN SCHEUER:** Notices to --

21 **MS. APUNA:** -- inform --
22 Public notices. Notices to the public --

23 **CHAIRMAN SCHEUER:** The city council
24 meetings.

25 **MS. APUNA:** Yes.

1 **CHAIRMAN SCHEUER:** Okay. Do you have any
2 idea how many properties changed hands between 2017
3 and it coming to the Land Use Commission, of the
4 1,800 properties involved?

5 **MS. APUNA:** No, I don't know.

6 Dina, do you guys have any? No.

7 **CHAIRMAN SCHEUER:** So would -- whether or
8 not a new property owner who had acquired this
9 between the last public meeting and this coming up,
10 how would that perhaps affect your definition of
11 reasonable notice to the property owner? Are you
12 saying it doesn't matter?

13 **MS. APUNA:** Well --

14 **CHAIRMAN SCHEUER:** It's a simple question,
15 Ms. Apuna.

16 **MS. APUNA:** The reasonable notice as --

17 **CHAIRMAN SCHEUER:** If it's -- if there is
18 some new property owners from the time you went from
19 2017 to when it came to the LUC in 2020 or 2021,
20 three to four years, you still feel that these new
21 property owners have received reasonable notice from
22 the city? And which we don't know how many because
23 you're not reporting to us how many there are.

24 Yes, no, or I don't know in terms of you
25 feel that that complies with the reasonable notice

1 requirements of the statue?

2 **MS. APUNA:** I don't know. I mean, it's --

3 **CHAIRMAN SCHEUER:** Okay. That's fine.

4 Do you feel -- given the various
5 interpretations of the practical impact of the
6 different definitions of what you can do with
7 housing on IAL versus non-IAL ag land, do you feel
8 that the representations made by the city and its
9 consultants have been consistent and accurate
10 throughout the entire process?

11 **MS. APUNA:** I think we've consistently
12 said that we didn't -- we thought it was little to
13 no effect.

14 **CHAIRMAN SCHEUER:** Right. Do you
15 recognize that there are perhaps reasonable people
16 who disagree with that?

17 **MS. APUNA:** Yes.

18 **CHAIRMAN SCHEUER:** I believe you've stated
19 that in your response to other Commissioners.

20 **MS. APUNA:** Yes.

21 **CHAIRMAN SCHEUER:** Okay.

22 **MS. APUNA:** Yes.

23 **CHAIRMAN SCHEUER:** We've heard -- we
24 haven't conducted sort of evidence other than oral
25 testimony from landowners, of people saying, "Hey, I

1 have this land. It's rocky" or "it's under water"
2 or "it's half in a stream bed" or, you know, "it's
3 just coral fill or it's filled -- old landfill, but
4 it's clearly not IAL -- it's clearly not farmable
5 land," or "I have no access to water."

6 How -- explain -- what am I missing that's
7 where your transmission of that to us is a proposed
8 parcel that should be designated as IAL, sort of
9 fulfills the statute's requirements?

10 **MS. APUNA:** Well, I think, you know, we
11 try to apply -- you know, we evaluated and applied
12 all of the eight criteria. Like, these are the
13 eight criteria. None of them say to disallow
14 certain types of property, whether they're too
15 rocky, they're too steep, there's -- you know,
16 they're not farmable. The criteria we have and the
17 basic policies of the IAL statute are pretty
18 general.

19 I think, based on the process that we went
20 through in identifying how the criteria should be
21 applied and their actual application when looking at
22 the maps and comparing them, and also the
23 calculation of what would actually -- that -- the
24 end result would go from hundred -- I'm sorry -- 103
25 to a thousand acres down to, you know, ten, and I

1 think there's a lot lost and --

2 **CHAIRMAN SCHEUER:** Well, I guess, here's
3 what I'm trying to get at. You're proposing to us -
4 - you said we could accept your thing in entirety as
5 one of our options, which would designate as IAL,
6 based on the information of -- the limited
7 information from landowners' testimony, is clearly
8 not farmable agricultural land. How does that
9 fulfill the statute?

10 **MS. APUNA:** Because the statute says it
11 doesn't have to necessarily -- that it has the -- I
12 mean, the -- that the -- one of the objectives of
13 IAL, as it is defined as important ag lands, is that
14 it will contribute to -- I'm sorry. It's needed to
15 promote the expansion of agricultural activities and
16 income for future, even if currently not in
17 production.

18 So I think it's the possibilities that can
19 happen with that land. I mean, you say it's not
20 farmable, but you know, I think one witness said
21 it's not farmable because there's maybe some
22 pollutants, there's some tires on it, there's some
23 (spoke Hawaiian). But is it really not farmable, I
24 mean, if they're able to somehow clean it up?

25 So I don't -- I think that it's trying to

1 be as inclusive as possible and to -- there's
2 nothing in the law that says that we have to take
3 out certain physical -- lands with certain physical
4 features.

5 **CHAIRMAN SCHEUER:** Okay. I hear your
6 response. Thank you.

7 My last, I think, question on this line is
8 so you know, one of the things that happens, and I
9 think has made this so much more difficult is that a
10 letter went out from a private law firm. It made
11 some fairly smited statements about the impact of
12 this action, things saying like -- that you know,
13 this might be their last chance to do anything and
14 this was going to dramatically affect people's
15 property rights.

16 Was there any legal requirement in the
17 statute that the city, which was aware of this
18 letter going out and aware of this petition coming
19 in front of the LUC -- was there any legal
20 requirement the city had to reach out and say, "hey,
21 hey, hey. You know, you might be hearing these
22 things, but that's not actually what we mean.
23 That's not what we think is going on." Is there any
24 legal requirement for you to do it?

25 **MS. APUNA:** No, but I think we're trying

1 to address some of those inaccuracies here --

2 **CHAIRMAN SCHEUER:** Just here.

3 **MS. APUNA:** You know, I think --

4 **CHAIRMAN SCHEUER:** Did the mayor make a
5 statement?

6 **MS. APUNA:** No --

7 **CHAIRMAN SCHEUER:** Was a press release put
8 out from DPP?

9 **MS. APUNA:** No.

10 **CHAIRMAN SCHEUER:** Was a mailing done to
11 any of these people?

12 **MS. APUNA:** No.

13 **CHAIRMAN SCHEUER:** But that's not legally
14 required?

15 **MS. APUNA:** It is not.

16 **CHAIRMAN SCHEUER:** I think the thing that
17 bugs me the most -- well, particularly when, in your
18 closing statement, when it's all up to you or -- I
19 can't remember what your catch phrase -- no
20 pressure, that somehow implied that if we don't move
21 forward with this process, we're setting back
22 Hawaii's agriculture and agricultural land
23 protection today.

24 I do not think that the letter from the
25 law firm that alerted many people to this was

1 completely accurate and fair or balanced in its
2 representation, but it clearly sent people up in
3 arms and has made -- has caused many people to be
4 very concerned, very fretful, very scared.

5 It's not a couple of years where you
6 particularly needed additional human suffering going
7 around. And what I have found lacking in the city's
8 presentation throughout this entire process, and
9 particularly today, is any sort of expression,
10 meaningful expression of sympathy even as the
11 differing interpretations from that other put
12 forward. I find it very distressing.

13 **MS. APUNA:** Sorry. I couldn't hear the
14 last part that --

15 **CHAIRMAN SCHEUER:** I find it very
16 distressing that the city has not responded with, in
17 essence, any emotional content in addition to your
18 legal arguments. That's just the Chair's opinion.

19 I don't think I have anything further, but
20 you may respond.

21 **MS. APUNA:** I mean, this is completely
22 exhausting. I -- I -- it -- we're trying to follow
23 the law. We're trying to do everything that's
24 required under the statute, and we're being told
25 it's not enough.

1 And we have, you're right, outside
2 influences that are creating all of this anxiety.
3 It's all very frustrating, based on everything that
4 has been put into this. You're right, I don't know
5 what to say.

6 The only thing that I can say and -- is
7 that we want to do more for these farmers somehow.
8 I mean, we're trying to do that internally and
9 reaching out to different agencies and interests.
10 And I think that this whole process makes it hard to
11 just do what we're trying to do. And sometimes
12 maybe it's just a matter of us doing it without
13 being under this microscope of how we're doing it.
14 I don't know.

15 I don't know. This has taken a lot out of
16 us, I think. But it's not -- I don't mean for us to
17 not care about what's going on. We certainly care
18 and don't like hearing how landowners feel that
19 their land is going to be taken away or they're
20 going to be kicked out of their houses. It's
21 certainly not the intention or anything that the
22 county would want.

23 We just want to try to do what's right for
24 agriculture on this island and for the people that
25 are trying to do that, which are farmers who are

1 already struggling. I don't know what else to say.

2 **MS. WONG:** Chair Scheuer, this is Dina.

3 Can I just add that, you know, we definitely hear
4 the concerns of the landowners. And you know, in
5 hindsight, perhaps we could have done a better job
6 at educating the general community about what IAL
7 really and truly means for their own property rights
8 and things of that sort.

9 But I think what's before the Commission
10 is really looking at setting broad policy that
11 covers the entire island and not so much looking at
12 every individual landowner, because this isn't
13 about, like, approving a specific project or a
14 certain type of regulation that would change their
15 rights.

16 So from that perspective, you know, we
17 definitely want to hear what the landowners have to
18 say, and it's something we could work on in the
19 future when we do our community outreach. But you
20 know, what's before us now is really setting long-
21 term policy on protecting and preserving ag land for
22 the future.

23 **CHAIRMAN SCHEUER:** Thank you, Ms. Wong.

24 **MS. WONG:** Thank you.

25 **CHAIRMAN SCHEUER:** Thank you, Ms. Apuna.

1 I have nothing further, Commissioners. It
2 is 1:42. I propose a ten-minute break. We will
3 then hear from any final comments from OPSD and
4 Department of Agriculture will have a chance. I'll
5 offer a chance for Ms. Apuna to make any final short
6 statement, and then we'll go into deliberation.
7 Reconvene at 1:52.

8 **(Recess taken from 1:42 to 1:52 p.m.)**

9 **CHAIRMAN SCHEUER:** It's 1:52. We're back
10 on the record.

11 Offering the opportunities for any final
12 comments to OPSD, Ms. Kato, Earl Yamamoto from the
13 Department of Agriculture, any final statement/
14 rebuttal from Ms. Apuna, and then we'll go into
15 deliberation.

16 Ms. Kato.

17 **MS. KATO:** Thank you, Chair, all
18 Commissioners. I just have a few brief comments.
19 As stated in OPSD's written testimony, OPSD believes
20 that the city met the requirements for its
21 development and submission of recommendations of
22 potential lands suitable for designation as IAL
23 under HRS Chapter 205, as the law is currently
24 existing.

25 The IAL law requires the city to develop

1 maps of potential lands for designation of IAL in
2 conformance with the specific statutory requirements
3 set out in HRS 205-47.

4 The city provided a detailed description
5 of the efforts they took to meet the IAL
6 requirements in their supplemental brief, so I'm not
7 going to go over that. OPSD believes that the city
8 has met their base statutory requirements.

9 The city -- the city recommends potential
10 lands for designation as IAL, but it does not itself
11 designate any lands as IAL. So these are
12 recommended maps. The LUC must then conduct its own
13 independent review and choose what lands to
14 designate as IAL.

15 Under HRS 205-49, the city's maps are just
16 one of the things that the LUC needs to consider.
17 The LUC can determine, with the guidance of its
18 legal counsel, how and what process it needs to and
19 will provide in its own review and designation --
20 final designation of lands for IAL and its final
21 adoption of the maps.

22 Regarding the discussion on incentives for
23 IAL, OPSD's understanding is that there isn't a
24 specific timeline for a county to determine the
25 proper incentives that they, you know, would like to

1 pursue.

2 So while providing incentives is, of
3 course, an important part of the IAL law, and it was
4 the intent to provide incentives, I'm not sure that
5 it's necessary to give prerequisite to the county
6 IAL process.

7 As Dawn Apuda mentioned, if this matter is
8 remanded back to the city, I think it should be made
9 clear what requirements that the city failed and
10 what actions that they need to take in order to
11 correct and meet those requirements. So just
12 specific instructions would be good.

13 Also, I -- it was discussed earlier, but
14 deferring the matter to seek statutory changes or
15 adding more incentives is also an option.

16 OPSD also provided written comments with
17 respect to the suitability of the lands recommended
18 by the city, but I understand that that is not
19 before the Commission today, so unless you want to
20 hear from me on that, I'm not commenting on that.
21 Thank you. That's all the comments I have.

22 **CHAIRMAN SCHEUER:** Thank you, Ms. Kato.

23 Commissioners, questions for Office of
24 Planning and Sustainable Development, beginning with
25 Commissioner Wong.

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

2 Ms. Kato, you know, I -- I guess long time
3 ago they used to have something called civics class,
4 and sorry, that's showing my age, okay? But anyway,
5 I remember the statement that my teacher said is
6 "government is by the people for the people, and
7 laws are made for the people by the people."

8 Your statement, as I told Ms. Apuna, is
9 yes, you're checking boxes; yes, you're following
10 the laws; you're following the rules, but what about
11 the people? Where's the heart? Where's the
12 knowledge that I'm helping the people?

13 So what is -- I know you're saying, yes,
14 they followed all the boxes, they checked the boxes.
15 It's almost like EIS. But where is that issue that
16 we just heard all these testimonies from all these
17 testifiers for how many months that's saying, "You
18 may be hurting me" or "I didn't get any information
19 on this" or "you know, I just bought the place. I
20 have no knowledge." What -- how -- where's OP's
21 issues on this or where's their statements to say,
22 "hey, you know, maybe we" -- "the planning wasn't
23 all the way thought through. The steps done as a
24 planner should have been done a little bit longer."

25 What is your statement on that?

1 **MS. KATO:** My understanding of what the
2 IAL law is and what its intent to be is that it is
3 intended to be for the people -- for the benefit of
4 the people. It's to preserve agricultural land for
5 the future generations. You know, it supports
6 sustainability.

7 And my -- I do understand that it was
8 intended to provide incentives, and it did provide
9 some incentives. At the state level at least, there
10 were tax benefits. There should probably be more
11 incentives, but I think that's a thing that needs to
12 be done through legislature or at the county level.

13 I think that there has been a lot of
14 misunderstanding, as I'm seeing from the public
15 testimony. There's been a lot of comments about how
16 land is being taken by this IAL designation or how
17 their use is going to change, which, from my
18 understanding of what IAL does, is IAL is an
19 overlay. It's a resource overlay. And it's not
20 intended to change the use of the property, because
21 this property is already agricultural land, and it
22 should be used for agricultural purposes, not as a
23 junkyard or -- you know --

24 **COMMISSIONER WONG:** Right.

25 **MS. KATO:** -- or parking lot or something.

1 There is supposed to be intent --
2 agriculture on agricultural lands, and the IAL does
3 not change that. The IAL designation does not
4 change that.

5 **COMMISSIONER WONG:** Yeah. So you know, I
6 agree with everything you're saying. Ms. Apuna's
7 saying that IAL is a planning tool. It's an
8 overlay, as you just stated.

9 But for the common farmer, the guy who's
10 getting their hands dirty, you know, they don't
11 understand what a planning tool is. They don't
12 understand what -- you know, what it means to be an
13 overlay. They only know, you know, I'm planting my
14 seeds. I'm going to water it. I'm hoping for sun.
15 I'm going to fertilize it, and I'm going to take it
16 to market. You know, grow it and take it to market.

17 So what I worry about is the explanation
18 to, you know, Farmer John, just say, "Hey, we are
19 not going to take your land. You're going to keep
20 it, but we want to protect you so you can farm
21 forever." You know, that's what I'm worried about,
22 that discussion hasn't gone to that point yet, to
23 that -- you know, to that level.

24 And let's say I'm a gentleman -- I
25 shouldn't use the word gentleman farmer, but I only

1 have one acre in my backyard, and I'm growing papaya
2 trees and banana trees just for my own family's
3 consumption. Because the IAL is so broad or so --
4 it hasn't been defined enough that -- I worry that
5 one-acre parcel -- maybe I wanted to use it in the
6 future and say, "I'm going to come to the city and
7 say, I'm going to move it to urban or rural and, you
8 know, subdivide it for my son or my daughter or my
9 grandkids," an IAL would not allow me to do that.

10 They're going to say I can't do anything
11 except farm, and I'm going to die, and what they're
12 going to do with it, except have a goat on it, you
13 know what I'm saying. That's what I worry about is
14 just a discussion that -- that it's being limited.

15 So I understand where you're coming from.
16 I hear you, what you just said that, yes, the city
17 did do what -- their due diligence to the point that
18 they could. But when I know that our staff --
19 sorry, the Land Use staff went beyond that, went and
20 said, "let's send out more, you know, letters and
21 notices," like some of our testifiers said. This is
22 the first time.

23 It bothers me as, you know -- you know,
24 Joe Blow here, just thinking about those things, so
25 it's just more of a statement and -- but I do hear

1 what you're saying, too. Thank you.

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

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

5 **CHAIRMAN SCHEUER:** Commissioner Chang?

6 **COMMISSIONER CHANG:** Thank you.

7 Thank you, Ms. Kato. I've got just two --
8 well, one question first, and then another -- two
9 questions.

10 First, I know you said you're not going to
11 comment on specific, you know, some of the other
12 things that you included in your filings, but you
13 did ask for exclusion, is that correct? The two
14 acres?

15 **MS. KATO:** Uh-huh. That's correct. And I
16 can discuss it. I just was responding to Chair's
17 statement that we're not talking about that.

18 **COMMISSIONER CHANG:** But you are
19 advocating, essentially, a new criteria, because
20 there's nothing in the eight criteria that says, "No
21 more" -- you know, "it has to be greater than two
22 acres." So OPSD is -- through your filings, you are
23 -- you are advocating a new criteria. One, the
24 size. Right?

25 **MS. KATO:** That is something that the LUC

1 should consider. We just think it makes practical
2 sense.

3 **COMMISSIONER CHANG:** I -- I understand,
4 and I appreciated that you went and highlighted so
5 it became very clear, but that's probably based
6 upon, I think, your documents. That was probably
7 about almost 800 TMKs. I mean, that's --

8 **MS. KATO:** It was a lot.

9 **COMMISSIONER CHANG:** I mean, that's
10 probably about a third of the 1,800, substantial
11 amount, probably would address a lot of the
12 testimony that we've heard.

13 So I understand why you may not have
14 commented on it. But I think it doesn't go to, you
15 know, designating individual lots. It is more
16 applying the criteria. So I think it would have
17 been helpful, but I guess I do want to just
18 elaborate.

19 I share Commissioner Wong and Commissioner
20 Scheuer's -- I think it's -- it's a sentiment of the
21 role of government, and quite frankly, I look to the
22 Office of OPSD as really, you know, helping us be --
23 sort of vet -- looking at larger policies, not
24 looking at just checking of the box, but looking at
25 what is the right thing to do, what is --

1 And here, we have both -- I feel both you
2 and Ms. Apuna, you are uniquely situated in a
3 position where you can advocate to do what's right,
4 not to do what's just checking off the box. You are
5 both -- you know, government has had its short end
6 of the stick, and it's not because -- I mean, a lot
7 of it has been government's doing. There's a great
8 mistrust of government.

9 I mean, many of -- you know, both Ms.
10 Apuna and yourself, you have sat through many of our
11 hearings where community members hear for the first
12 time about a project at a public hearing. I mean,
13 that's too late. We all know that's too late.

14 But both of you have an opportunity,
15 through your positions, to really advocate to doing
16 -- to -- beyond just the project that's before you,
17 but how do we re-instill trust in government? How
18 do we acknowledge that we could have done better,
19 and that when someone says something like, "oh, I'm
20 going to be evicted," we shouldn't just let that sit
21 there. We should respond to that and reassure that
22 person that that's not what the IAL designation
23 does. I'm not going to evict you.

24 In the absence -- in the absence of good
25 information, people are going to fill that void with

1 misinformation. The longer misinformation continues
2 on -- and you know, I do a lot of community
3 outreach. When perception becomes reality -- and
4 here, we are at that point.

5 The perception that IAL is -- is -- is
6 hurting small farmers, clearly that wasn't the
7 intent of the law. But that is the perception. The
8 media is picking that all up. Everybody who's
9 attending our hearings is picking all of that up.
10 But you both have an opportunity to correct that.

11 And it kind of puts LUC kind of in an
12 awkward position, because we kind of look like if we
13 -- if we shut this down, we're against ag. I don't
14 think that's going to be the point, but you know, I
15 guess it is the role that both of you have an
16 opportunity to play, to reassure the community.

17 And I think this is what Commissioner Wong
18 is talking about, you know, and our Chair, about,
19 you know, is that trust and that emotion that's
20 missing here. And I guess that's -- that's sort of
21 where I am -- I'm leaning towards that, filling
22 that, because I think the community has felt that
23 this has been the only venue for them to voice their
24 concerns.

25 And if we do -- if we just accept, Ms.

1 Apuna, what the city's done, many of these people
2 will lose trust that LUC is -- we're just rubber
3 stamping. So I mean, I think all of us are going to
4 take a very hard look at what you've presented to
5 us. But that's sort of my little editorial comment.
6 I'm sorry, but I do look at both of you as being in
7 positions to do more. So sorry, but I just wanted
8 to say that.

9 So that -- you know, Ms. Kato, you, too.
10 I mean, I think you have a great opportunity before
11 you, you know, to look at those large policies in
12 the context of our LUC dockets, so I would just ask
13 you to look at that as well when you make your
14 comments.

15 Okay. So enough of my little editorial,
16 Mr. Chair. I probably said more than enough. Thank
17 you.

18 **CHAIRMAN SCHEUER:** Thank you, Commissioner
19 Chang. I'm sure we'll have a robust discussion in
20 deliberation.

21 Commissioner Giovanni?

22 **COMMISSIONER GIOVANNI:** Thank you, Chair.

23 Ms. Kato, I -- I'm assuming that you heard
24 my earlier comments and questions regarding the
25 approach that the county -- city and county took in

1 trying to apply criteria in such a way that large
2 swaths of contiguous land were designated IAL, and,
3 in the process, swept up a lot of small parcels. Is
4 that correct? Do you know what I'm talking about?

5 **MS. KATO:** I recall that discussion.
6 There were a lot of questions. Sorry.

7 **COMMISSIONER GIOVANNI:** That's fine. But
8 I sense that that is the same type of concern that
9 OPSD may have had when they've -- when you put forth
10 your recommendation regarding exclusion of the
11 small, less than two-acre parcels, is that correct
12 or not correct?

13 **MS. KATO:** I think that recommendation was
14 based in part on what we -- the comments from the
15 Department of Agriculture and what they said made
16 sense, so we thought it made sense to have two acres
17 just because smaller than that, it's under separate
18 ownership, has diminished resource value for long-
19 term agricultural use.

20 But I do also understand the point of not
21 wanting patchwork. It's like this is IAL, non-IAL,
22 IAL, non-IAL. So there is an interest in trying to
23 keep together parcels, particularly if they're under
24 the same ownership. So you know, say a landowner
25 owns a lot of parcels in one area, I can understand

1 that interest.

2 **COMMISSIONER GIOVANNI:** Sorry for
3 interrupting you. Let me ask my question again in a
4 little bit different way that may be simpler, and
5 it's just better referred to the Department of
6 Agriculture, because you said you took your
7 initiative from them. That's fine. I'll ask them
8 when they testify.

9 My question is, why -- what prompted you
10 to make that recommendation? What did you see in
11 the process? What was the flaw that prompted you to
12 make that recommendation? Why did you do it?

13 **MS. KATO:** I'm not sure that I would call
14 it a flaw so much as recommendation that seemed to
15 us to make sense.

16 **COMMISSIONER GIOVANNI:** To make sense to
17 correct what? To do what? What are you trying to
18 accomplish?

19 **MS. KATO:** I'm not sure if I know how best
20 to answer that.

21 **COMMISSIONER GIOVANNI:** Well, I'm
22 interested in your answer from a process point of
23 view, not the process of this hearing but the
24 process that the county undertook that somehow
25 manifest that you felt prompted or you needed to or

1 it was better or more practical to make that
2 recommendation. Why did you do it? Why did --

3 **MS. KATO:** I think it's --

4 **COMMISSIONER GIOVANNI:** What did you and
5 the Department of Agriculture see that prompted you
6 to do that? Because I think it could point to
7 something that was problematic with the process that
8 the city and county did. If it wasn't, explain it
9 to me.

10 **MS. KATO:** Well, I don't think that that
11 was a specific part of the criteria that was
12 discussed and considered. It's just another
13 consideration that we had that we thought of.

14 **COMMISSIONER GIOVANNI:** So there were
15 eight criteria. You're adding -- you're suggesting
16 that it be a ninth. Why?

17 **MS. KATO:** We're not saying that small
18 properties are completely unuseful as ag. We're
19 saying that small parcels just have less ag
20 usefulness. It's not a statutory criteria for IAL
21 land. It's kind of a -- you know, it's a sliding
22 scale. The smaller it is, the less likely -- if
23 it's a small parcel under two acres in size, it's
24 less likely to be used for IAL, but it doesn't mean
25 that it can't be or that it isn't.

1 In some circumstances, it may make sense
2 to add those properties or at least some of those
3 properties, but this is -- when we're talking about,
4 you know, the county -- city IAL, it's a lot of land
5 to consider. So I think it's very difficult to try
6 and look at each property on a parcel-by-parcel
7 basis. So unfortunately, there are some that may
8 have fallen through the cracks, but --

9 **COMMISSIONER GIOVANNI:** I'll leave it
10 there. Thank you.

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

13 Commissioners, any further questions for
14 OPSD?

15 I will have one brief and hopefully focus
16 question, Ms. Kato. It is one of the same questions
17 asked from Ms. Apuna.

18 Please defend the idea that with the four-
19 year gap, three- to four-year gap between the last
20 public meeting and the presentation of materials, a
21 complete record to the Land Use Commission,
22 considering deaths, change in ownership and other
23 matters, how this constituted reasonable notice.

24 **MS. KATO:** I think that our feeling is
25 that the city -- all of the things that they did in

1 their process, we feel like they have tried their
2 best to do as much as possible and to meet their
3 statutory requirements. If the Commission feels
4 that it's short, then it's within your discretion to
5 determine, and --

6 **CHAIRMAN SCHEUER:** So --

7 **MS. KATO:** -- I just want to clarify when
8 I say that the city's maps are just a
9 recommendation, it's really just a recommendation.
10 I think that the Commission can, if they want to,
11 provide more process at this stage, they can. Or
12 landowners, I think that they can reject and change
13 the recommendations. They can consider other
14 things.

15 **CHAIRMAN SCHEUER:** So you -- just to
16 clarify your answer, you think it is reasonable that
17 for some landowners the only notice that they have
18 received prior to the LUC taking this matter up, was
19 that this matter was being considered at a regular
20 meeting of the city council. That was a reasonable
21 notice to landowners.

22 **MS. KATO:** I have heard the public
23 testimony that some landowners did not receive
24 notice. I have no way of verifying whether that's
25 correct or not --

1 **CHAIRMAN SCHEUER:** I -- I'm going to
2 assume that among the 1,800 people and based on
3 testimony we've received, 1,800 lots, some lots
4 exchanged hands between 2017 and 2020 or 2021. I
5 think that's sort of indisputable.

6 So for at least those categories of
7 people, reasonable notice was met by a notice of the
8 city council? Is that what OPSD's position is?

9 **MS. KATO:** I think OPSD can see that as
10 reasonable notice, but I mean, we're not the decider
11 of that.

12 **CHAIRMAN SCHEUER:** Okay. Thank you very
13 much, Ms. Kato. Appreciate it.

14 Anything further?

15 Mr. Yamamoto, does the Department of
16 Agriculture have anything to add at this time?

17 **MR. YAMAMOTO:** The department did not
18 submit any written -- as you all know, the
19 department didn't submit any additional written
20 comments or any letter of notification other than
21 what we had submitted back in February of 2021, I
22 believe; however, we continue to support what -- the
23 city's submittal to the Land Use Commission.

24 With respect to the matters of being
25 discussed here throughout the entire day before the

1 Land Use Commission on these procedural matters and
2 whether or not the HRS requirements have been met, I
3 have nothing to say about that.

4 I would like to note, if I may, something
5 about the -- the -- with respect to that two-acre
6 thing that -- that -- that was brought up as part of
7 the Office of Planning and Sustainable Development's
8 most recent submittal. We did -- as a result of my
9 quick look-through of all the properties by TMK, I
10 thought that having properties under two acres would
11 -- especially if they're isolated -- and I did go
12 through the TMK maps manually for this. But I was
13 not able to do a comprehensive look.

14 Obviously, I'm not a geographic
15 information system expert, but I chose the two-acre
16 minimum for mapping because of the city's zoning.
17 The zoning ordinance allows a minimum lot size of
18 two acres. And I thought that anything less than
19 that could be problematic.

20 I have no basis to explain that. It's
21 just that it seemed reasonable at the time I was
22 doing this. And then I included that in our -- in
23 our letter of February 2021, I believe.

24 If I may make one more comment. There are
25 some discussion by testifiers as well as the

1 Commissioners that perhaps going -- having these --
2 the Oahu landowners of agricultural lands go through
3 the 205 -- what is that -- 45 process or 47 process,
4 whatever HRS reference -- the proper HRS references
5 to the voluntary identification and designation of
6 their property as important agricultural lands.

7 In having gone through all the existing --
8 since the beginning, the Kauai Coffee A&D petition
9 on Kauai back I don't know how many years ago, but
10 now if the same kind of expectation exists for
11 smaller landowners -- and the farmers there are --
12 to have the same kind of resources, the same detail
13 that is expected of the larger petitioners today,
14 that would -- I don't see how the -- these smaller
15 landowners would -- could come up with the resources
16 necessary to hire the professional staff to
17 accomplish even assembling a petition.

18 That has been a background of the
19 Department of Agriculture. And that concludes my
20 remarks.

21 **CHAIRMAN SCHEUER:** Thank you, Mr.
22 Yamamoto.

23 Commissioners, questions for the
24 Department of Agriculture?

25 Commissioner Giovanni?

1 **COMMISSIONER GIOVANNI:** Thank you, Mr.
2 Yamamoto, for shedding light on the thought process
3 that evolved there. And I'm not going to question
4 you about what you thought was reasonable or not.

5 More specifically, you kind of defined a
6 competitive process. On the one hand, if you're
7 less than two acres, you're not automatically
8 included in the county's recommendations, so you're
9 left as-is. But on the other hand, if you are left
10 out and you want to become IAL, you can't afford to
11 do it.

12 So the small farmers, less than two acres,
13 in this example would be betwixt and between,
14 couldn't become IAL if they wanted to be because
15 they couldn't afford it.

16 My question is, wouldn't it be simpler
17 that -- to have a very simple opt-out process for
18 these small farmers, that they could -- they don't
19 have to hire a bunch of lawyers just to say, "I
20 don't want to be included" and give them that
21 option. Why wouldn't that work?

22 **MR. YAMAMOTO:** Well, on -- as you
23 explained it, again, I'm not -- I'm not the expert
24 in any -- well, we are (indiscernible) with the
25 procedural requirements. But generally speaking,

1 the concept that you just expressed sounds
2 reasonable to opt out.

3 But to -- in order to accomplish that, and
4 if there's any other things that need to be attended
5 to in accomplishing that, everything is --
6 everything we handle nowadays is pretty much a
7 double-edged sword. And as a -- as being here on
8 the Department of Agriculture and not having any
9 regulatory authority whatsoever, we are continually
10 aware of that -- that -- that hazard of just jumping
11 into a concept and seeing it sounds like a great
12 idea without fully going over it. I'd be remiss if
13 I did that without studying it. And I'll leave it
14 there.

15 **COMMISSIONER GIOVANNI:** So notwithstanding
16 all the caveats you expressed at the end there, the
17 concept sounds reasonable to you is what you said.
18 I don't want to put words in your mouth, but I think
19 that's what you said.

20 **MR. YAMAMOTO:** Yes. The concept is
21 attractive.

22 **COMMISSIONER GIOVANNI:** Okay. Thank you.
23 Nothing further.

24 **CHAIRMAN SCHEUER:** Thank you.

25 Commissioner Aczon?

1 **COMMISSIONER ACZON:** This is a good
2 question. If a property owner decided to opt out,
3 would that change their agricultural zone
4 designation?

5 **MR. YAMAMOTO:** As far as I know.

6 **COMMISSIONER ACZON:** Because right now
7 agriculture -- zone agriculture, if they all opt
8 out, then what happen?

9 **MR. YAMAMOTO:** You're -- from what I
10 understand, the discussion is that you're opting out
11 of the opportunity to get access to the important
12 agricultural lands incentives, existing ones, not
13 the ones that are coming from the city but the
14 existing ones.

15 And that's it. As expressed by the other
16 -- by -- by -- by, you know, the city and by Office
17 of Planning, this is resource overlay. The whole
18 idea for important agricultural lands is to give
19 that -- the opportunity to keep -- to -- to remain
20 in agricultural -- ag operation, to remain in
21 operation or to engage in it -- a new farmer, for
22 instance, to engage in new farming.

23 And that's what they -- this incentive
24 layer are -- this resource layer is intended to do.
25 If you opt out, that means that that landowner and

1 farmer on that property that opts -- opts out will
2 not have access to -- do I have an example?

3 Well, that incentive -- the one particular
4 incentive that's most -- that brings them -- that
5 generates the most attraction is that important
6 agricultural lands qualify agriculture costs --
7 basically, a partial cost offset for the expenses
8 incurred -- qualified expenses incurred on the
9 property that is designated as important
10 agricultural lands.

11 It is a percentage of basically what is
12 spent on -- in terms of improvements -- the
13 qualified improvements on the property in support of
14 agricultural production. The person that opts out
15 will not have access to that incentive. I don't --
16 to date, I don't think there are any strings
17 attached.

18 I mean, I'm the guy that signs off on the
19 tax credit when it comes through here, through our
20 office, for our review, and then eventually, pass it
21 off to the Department of Taxation for their final
22 adjudication, whatever you call it.

23 So that incentive is -- I feel is really
24 important to all scale of farmers, every -- all
25 scale of farmers. And I think that alone will --

1 will help reduce the expense of continuing
2 operations as well as establishing new operations,
3 especially here on Oahu where we're land and other
4 resources related to agriculture production are so
5 expensive.

6 I'm sorry I went on so long, but I wanted
7 to make sure that I complete the thought.

8 **COMMISSIONER ACZON:** Okay. In other
9 words, the property remains zoned agriculture. If
10 we change that, we have to come back to whoever --
11 you know, to the city, to use the property for
12 something else than agriculture?

13 **MR. YAMAMOTO:** If you want to use it -- if
14 it's designated as important agricultural lands, the
15 -- the landowner can come in and, you know, seek a -
16 - a -- I don't know how likely it would be, but a
17 change to the sustainable communities plan, a change
18 to the zoning as with respect to what -- or boundary
19 amendment to come before either the Planning
20 Commission or the -- and/or the Land Use
21 Commission.

22 It doesn't prohibit it. It requires a few
23 more considerations kind of poorly explained in HRS,
24 but it doesn't --

25 **COMMISSIONER ACZON:** You have answered my

1 question. Thank you.

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

4 Thank you, Mr. Yamamoto.

5 Further questions for the Department of
6 Agriculture? Seeing none, thank you very much, Mr.
7 Yamamoto.

8 **MR. YAMAMOTO:** You're welcome.

9 **CHAIRMAN SCHEUER:** Ms. Apuna, just going
10 to offer you the opportunity to rebut or address any
11 further things before we move into deliberation.

12 **MS. APUNA:** I would just -- I'm a little
13 bit confused about the questions about not caring
14 about the people or not -- and so I just wanted to
15 say that I think this whole effort is to help this
16 island and the communities within it to achieve
17 agriculture.

18 And if there's for some reason a feeling
19 that we don't care or we completely disagree with
20 any of the misinformation that was put forth -- and
21 we completely believe that this IAL is supposed to
22 be beneficial and not restrictive or land grab or
23 anything of that sort or to evict people. Like,
24 that's ridiculous.

25 It's supposed to help people farm their

1 land or to think about farming and to help -- help -
2 - basically, have the -- this county move forward to
3 be sustainable in agriculture. So I just want to
4 say that.

5 I would like to allow DPP staff, if they
6 have anything else to add or say that -- if they
7 could say anything at this point?

8 **CHAIRMAN SCHEUER:** I would allow that.
9 Would that be Ms. Wong?

10 **MS. APUNA:** Yes, or Franz.

11 **MS. WONG:** Yes. I just wanted to
12 reiterate, you know, what Deputy Director said, that
13 the intent of IAL is to incentivize agriculture.
14 And we've been putting in policies in our long-range
15 plans. Some of them are in process right now which
16 calls for preserving and encouraging and supporting
17 agriculture, and this could be a really helpful tool
18 in helping us move forward and implementing our
19 policies and in developing tools, you know, like
20 incentives and things of that sort, so --

21 Okay. Thank you.

22 **CHAIRMAN SCHEUER:** Thank you very much.
23 Is that it, Ms. Apuna?

24 **MS. APUNA:** Yes, that's it. Thank you.

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

1 So if there are no further questions, I
2 would like now to enter into discussion with regard
3 to this matter.

4 Commissioners, please keep in mind that
5 should the Commission conclude, in the course of our
6 discussion, that the county has met the requirements
7 of Chapter 205 of the HRS in preparing its
8 recommendations, a motion to proceed is not required
9 to move to the next stage in this matter.

10 However, should one or more of the
11 Commissioners believe that the county has not met
12 the requirements of Chapter 205, a motion should be
13 made. That motion should include the specific
14 reasons as to why the Commission should not proceed
15 and directing the county or any other parties to
16 correct the deficiencies and resubmit their
17 recommendations to the Commission once it has done
18 so.

19 We will now conduct formal deliberations
20 on the matter before us. For the parties and the
21 public, I would remind you that during deliberations
22 I will not entertain additional input from the
23 parties or the public unless those individuals or
24 entities are specifically requested to do so by me.
25 If called upon, any questions -- answers will be

1 limited to the question at hand.

2 Commissioners, let me confirm that each
3 one of you have reviewed the record and are prepared
4 to deliberate on the subject docket. After I call
5 your name, please signify with either an "aye" or a
6 "nay" that you're prepared to deliberate on this
7 matter.

8 Commissioner Chang?

9 **COMMISSIONER CHANG:** Aye.

10 **CHAIRMAN SCHEUER:** Commissioner Cabral?

11 **COMMISSIONER CABRAL:** Aye.

12 **CHAIRMAN SCHEUER:** Commissioner Giovanni?

13 **COMMISSIONER GIOVANNI:** Aye.

14 **CHAIRMAN SCHEUER:** Commissioner Ohigashi?

15 **COMMISSIONER OHIGASHI:** Yes.

16 **CHAIRMAN SCHEUER:** Commissioner Aczon?

17 **COMMISSIONER ACZON:** Yes.

18 **CHAIRMAN SCHEUER:** Commissioner Wong?

19 **COMMISSIONER WONG:** Aye.

20 **CHAIRMAN SCHEUER:** The Chair is also
21 prepared to deliberate on this matter.

22 Commissioners, we are in discussion. What
23 is your pleasure?

24 **COMMISSIONER WONG:** Chair, I have a
25 question. This is Commissioner Wong.

1 **CHAIRMAN SCHEUER:** Commissioner Wong?

2 **COMMISSISONER WONG:** Okay. So you know,
3 try -- I need some assistance on this one, Chair.
4 If we remand it back -- if someone makes a motion to
5 remand it back, we have to say, "We are remanding it
6 back to the county because we feel it's insufficient
7 in these areas." Is that correct?

8 **CHAIRMAN SCHEUER:** That is correct. I
9 also believe -- and this is my opinion as the Chair
10 -- that we could conclude that even if the
11 Commission -- or even if we believe the county
12 technically met all of the requirements that, based
13 on other findings, that the process overall is
14 flawed, and we recognize that while the county may
15 have met the legal requirements, that we would seek
16 further action from the legislature to clarify
17 matters or some combination thereof.

18 **COMMISSIONER WONG:** So going to that
19 portion that you just said about the legislature, so
20 if we remand it back saying, "We have these issues,
21 but we also would like you and OSP or Farm Bureau,
22 whoever, to work with the legislature to clarify
23 these points"?

24 **CHAIRMAN SCHEUER:** Yes. Now, we can do
25 that. Let me say, so like, we don't actually have

1 the power to force the city to go to the
2 legislature, right?

3 **COMMISSIONER WONG:** Right.

4 **CHAIRMAN SCHEUER:** But we can make a -- I
5 think it is completely within our powers to make a
6 finding that says, "You know what, they implemented
7 a bad law, and you know, they did so in good faith.
8 They did so with hard work. Maybe we'd have done
9 some things better or worse."

10 Or we could find some combination like "we
11 don't think they did everything well, so we're
12 remanding it back, but we would highly advise them,
13 'Before you start working on it again, let's all go
14 to the legislature because there are certain things
15 that we believe are flawed about this statute.'"

16 **COMMISSIONER WONG:** Okay. So Chair, if no
17 one's going --

18 **CHAIRMAN SCHEUER:** There --

19 **COMMISSIONER WONG:** Oh, go ahead.

20 **CHAIRMAN SCHEUER:** There are a couple of
21 hands, so do you want to keep going or do you want
22 me to --

23 **COMMISSIONER WONG:** I'll hold off. No,
24 I'll hold off. Thank you, Chair.

25 **CHAIRMAN SCHEUER:** Commissioner Giovanni?

1 **COMMISSIONER GIOVANNI:** So Chair, when you
2 gave your initial instructions for deliberations, I
3 was troubled because you put us into a very narrow
4 box that said we had to give the specific reasons
5 why DPP may -- did not check the box properly.
6 Maybe they should have put an X instead of a
7 checkmark or whatever.

8 And I thought that is very narrow for us,
9 so I was really pleased to hear your further
10 explanation as a second option and response to
11 Commissioner Wong, which I think really goes, in my
12 view, to the heart of the matter here, which is did
13 DPP do a reasonable job, however they interpreted
14 that job, checking the boxes in a flawed process, or
15 do we need to dig deeper into this thing and get
16 more fundamental about how to fix the overall thing?

17 I don't think it's -- I don't think it's -
18 - so I'm really pleased that you have elaborated on
19 what our options might be, and thank you for that.

20 **CHAIRMAN SCHEUER:** I apologize if my
21 initial instructions were not broad enough. Thank
22 you, Commissioner Giovanni.

23 Commissioner Ohigashi?

24 **COMMISSIONER OHIGASHI:** Yeah. I'm not
25 making a motion, but what I'm asking is a question.

1 Assuming that -- on the other side, assuming that we
2 accept the recommendations, assuming that. The --
3 who would be the petitioner in this matter? Would
4 it be Land Use Commission? And will our staff be
5 required to do the work?

6 Will it be OSP, OPSD -- I keep calling
7 them PTSD -- because they're the planning arm, or
8 will it be city and county?

9 **CHAIRMAN SCHEUER:** For the purposes of
10 deliberations, I'd like to direct our Executive
11 Officer to respond to that inquiry from Commissioner
12 Ohigashi, specifically, who would -- who would
13 appear, essentially, to justify any recommendations?

14 **MR. ORODENKER:** I -- I'm not sure exactly
15 who, to be honest with you. OPSD is generally
16 responsible for policy. Land Use Commission is
17 generally responsible for effectuating that policy.
18 I believe that in reality, it would be a joint
19 effort by OPSD and the Land Use Commission along
20 with the Department of Agriculture.

21 **CHAIRMAN SCHEUER:** Commissioner Ohigashi,
22 you may follow up.

23 **COMMISSIONER OHIGASHI:** Thank you. I'm
24 just curious.

25 **CHAIRMAN SCHEUER:** Okay.

1 Commissioner Aczon?

2 Thank you, Mr. Orodenker.

3 Commissioner Aczon?

4 **COMMISSIONER ACZON:** Yeah. Just a follow-
5 up on Commissioner Ohigashi's question or inquiry.
6 Ask another question. If somehow we accepted the
7 city's recommendation, what is the next process?
8 What is the next step? Who's going to do what? How
9 long is it going to take? All those kinds of -- you
10 know, is going to come into play after this if we
11 decided to make this, you know -- accept the
12 recommendation.

13 **CHAIRMAN SCHEUER:** The Chair does not
14 know.

15 **COMMISSIONER ACZON:** Well, I guess
16 Executive Officer?

17 **CHAIRMAN SCHEUER:** Mr. Orodenker, again?

18 **MR. ORODENKER:** I have the same response
19 as the Chair. I don't have -- I mean, it -- it's up
20 to the city.

21 **CHAIRMAN SCHEUER:** Commissioner Cabral
22 followed by Chang followed by Wong.

23 **COMMISSIONER ACZON:** Anybody know?

24 **COMMISSIONER CABRAL:** Thank you, Chair and
25 fellow Commissioners. I'm really not comfortable in

1 trying to fix this problem and have send -- and I
2 don't believe that the city and county's, in a
3 sense, capable of doing it better at this point in
4 time. And I say that because I'm not a government
5 bureaucrat or a lawyer or something that's smarter.

6 But I do know that -- and I'm concerned
7 about somewhat of the attitude that we've just
8 expressed already, that we've checked the boxes.
9 And so technically -- and it's been expressed by
10 many of you where they've technically done what
11 they're supposed to do in their opinion. Well,
12 clearly, then, we don't have the right boxes that
13 they're -- we need to reset the boxes that have to
14 be checked.

15 I mean, from the prior hearings, the fact
16 that they didn't track on the ownership of 1,800
17 people. I used to manage Paradise Park, 8,835
18 owners I kept track of all of all the time. If the
19 Bureau of Conveyances doesn't talk to where -- they
20 don't have a good system for city and county to get
21 data from the Bureau of Conveyances. You can get it
22 through the Board of Realtors.

23 They're a commercial operation, and you
24 can just get that data. You can get it, and
25 constant ownership and constant address form, so you

1 can constantly stay in touch with these owners,
2 because we do it to make a living. So we don't get
3 a paycheck unless we do this right.

4 So I'm concerned that the government's
5 perspective on it -- and not to -- I'm not personal.
6 I think Ms. Apuna and Ms. Kato, all these folks are
7 wonderful people, but I'm concerned that it's just
8 that it's -- it's an arm's distance kind of thing.
9 It just doesn't matter. I did what I was supposed
10 to do. That gravely concerns me.

11 I'm a rancher. You know, I have cattle.
12 I have horses, three now, dogs, cats, sheep and goat
13 all at my property. So -- and I'm not sure I make
14 any money. I think I lose money all the time, but I
15 eat well.

16 So I'm concerned, though, that this whole
17 arm's -- this approach has been so badly done. So I
18 think I really want to support that we send it back
19 to the legislature and we, the Land Use, and
20 hopefully city and county as the first county that's
21 tried to tackle this problem and comply with the
22 law.

23 God bless them for trying. That we try
24 and get better guidelines or some kind of better
25 language so when it comes out again, our -- maybe

1 the language has to be that the Department of
2 Agriculture is capable of working with LUC or some
3 entity, because things change over time, too.

4 So I am really not -- don't want to send
5 it back. I want to deny the whole thing that city
6 and county has done in some way, shape, or form, and
7 get it to the legislature to have it improved upon
8 and corrected.

9 **CHAIRMAN SCHEUER:** Thank you, Commissioner
10 Cabral.

11 **COMMISSIONER CABRAL:** Thank you.

12 **CHAIRMAN SCHEUER:** Commissioner Chang?

13 **COMMISSIONER CHANG:** In reading the
14 Attorney General's opinion back to us -- and this is
15 in response to Commissioner Ohigashi's question. As
16 I read page 9, it says, "As discussed above, a
17 quasi-judicial proceeding will require the LUC to,
18 one, conduct an independent review of the extent to
19 which the proposed IAL lands meet the statutory
20 criteria and determination that IAL designation is
21 necessary to make the broader objectives and, B,
22 apply a quasi-judicial proceeding to provide an
23 appropriate degree of due process."

24 As I read that -- and we've also got our
25 Deputy AG here, but as I read their guidance to us,

1 if -- if -- if we decide to accept the county's --
2 that they've complied, then the matter comes to LUC,
3 and we conduct a separate hearing and determine what
4 is -- you know, essentially, what is due process.

5 But it does appear as if LUC will be
6 responsible to providing everybody notice, to
7 applying the criteria, because now the determination
8 of -- and both, I think -- both the county, the
9 city, and OPSD concur that ultimately, it's LUC that
10 makes the determination of IAL.

11 So it would appear as if we would end up
12 doing a whole -- almost like a whole de novo review.
13 We would take what the county's given us, but we
14 would have to do notices, determine what's -- what
15 the due process is, hear the -- those who object. I
16 mean, that's how I read what the AG's opinion has
17 said, is that that would be LUC and then anybody who
18 wants to challenge it, then we would have separate
19 proceedings on that.

20 But Dan is here. He can clarify if I'm
21 misreading that.

22 **MR. ORODENKER:** Commissioner --

23 **CHAIRMAN SCHEUER:** Sorry, which Dan?

24 **COMMISSIONER CHANG:** Oh, Dan Morris, our
25 Deputy AG. If I'm misreading it.

1 **CHAIRMAN SCHEUER:** Mr. Morris followed by
2 Mr. Orodenker followed by Commissioner Aczon.

3 **MR. MORRIS:** No. I think the opinion
4 speaks for itself, and I think that's accurate that
5 LUC would be tasked with an independent review of
6 the criteria. The statute is pretty clear about
7 that as well as the comment that they would have to
8 determine what level of due process in terms of
9 notice, and an opportunity to be heard would be a
10 given to any individual landowners.

11 It doesn't mean it would be a full-blown
12 trial type contested case hearing. But there is a
13 spectrum of due process it can begin in. So I think
14 that's a fair reading of the AG opinion.

15 **CHAIRMAN SCHEUER:** Thank you.

16 Mr. Orodenker?

17 **MR. ORODENKER:** Yeah. I would agree with
18 what Dan said, from a practical standpoint. And
19 this goes back to what I was saying before, what
20 would happen would be that we would have to have the
21 Commission make a determination, which would require
22 OP and DOA and the county to give us argument on
23 that particular issue.

24 We would guide -- staff would guide, help
25 guide the specificity on the issues that needed to

1 have answered before the Commission, but the
2 Commission itself would be making the determination
3 based on the arguments presented by the three
4 parties.

5 **CHAIRMAN SCHEUER:** Commissioner Aczon?

6 **COMMISSIONER ACZON:** I also have the same
7 understanding and interpretation, and this is made
8 in my earlier statement. I said that looks like the
9 Commission is going to -- if we accept the
10 recommendation, looks like the Commission is going
11 to be ending up doing all the work which the city
12 should have done by themselves.

13 My question now is, do we have enough
14 resources to do all those work? And how much going
15 to cost? How much manpower needed to do these? If
16 you don't have all those, then we are -- our hands
17 are kind of pretty much tied.

18 **CHAIRMAN SCHEUER:** Mr. Orodenger, would
19 you like to respond to the staffing resources, even
20 a broadest-brush estimate?

21 **MR. ORODENKER:** I have no way of making a
22 broad-brush estimate. I do -- I will tell you that
23 we're already, you know, at capacity. This is
24 something we would have to handle.

25 The reason I don't have a broad-brush --

1 even a broad-brush estimate is that the initial
2 determination that will have to be made is how much
3 due process do we have to give. Once we know how
4 much due process we have to give, we know how
5 extensive the hearings would be.

6 And second question that we would have
7 from a staffing standpoint is how many people are
8 actually going to come in and object. Is it going
9 to be 50 people? Is it going to be a hundred
10 people? Is it going to be 200 people, or is it
11 going to be ten people? We don't know the answer to
12 that.

13 But my -- my guess, if I had to do a wild
14 guess, would be that it's going to tie up a lot of
15 resources for a significant amount of time.

16 **CHAIRMAN SCHEUER:** Commissioner Wong?

17 **COMMISSIONER WONG:** Thank you, Chair. You
18 know, I'm going to just make a motion -- sorry,
19 Chair -- to remand it back.

20 I understand where Commissioner Aczon was
21 going in terms of his thoughts, Commissioner
22 Ohigashi, but I just got to -- I just want to make a
23 motion already to remand back -- remand it back to
24 the county, just because -- sorry, I kind of -- you
25 know how articulate I am, so I'm going to try to put

1 it in a nutshell and you can clean it up if
2 possible.

3 Remand it back to the county, just
4 because, you know, I think the time issue was just
5 too long from when they finished to give it to us;
6 that, as you said, properties have changed, you
7 know, hands. Plus, there's other things like due
8 process. The community outreach, yes, but like for
9 me, I live in Aiea, and I don't remember any farms
10 in Aiea, but there may be, but I'm just saying that.

11 Representations that were made by
12 different individuals and organizations or even
13 attorney firms was unclear or scared people, that
14 should be cleared up. And also, you know, let's do
15 this stuff over the legislature, try and tell the
16 county, Farm Bureau, and whoever else to work and
17 clear the statute up. You know, try and work it out
18 and make it a mandated fund -- funded mandate, not
19 an unfunded mandate.

20 So all those things, you know, I want to
21 put in somehow, Chair. So if you could -- well,
22 hopefully it will get us to where we can work it
23 out.

24 **CHAIRMAN SCHEUER:** Thank you. Thank you
25 for the motion, Commissioner Wong.

1 Commissioner Ohigashi?

2 **COMMISSIONER WONG:** I'll second.

3 **CHAIRMAN SCHEUER:** Okay. Did you want to
4 add anything to the discussion? The Chair has a few
5 thoughts.

6 **COMMISSIONER WONG:** Yeah. No, Chair, not
7 for me. You guys talk about it. Thank you.

8 **CHAIRMAN SCHEUER:** Commissioner Ohigashi?

9 **COMMISSIONER OHIGASHI:** I don't have any
10 other thoughts. I do have thoughts, but I'm not --
11 I will express them when I decide how I'm going to -
12 - make sure how I'm going to vote.

13 **CHAIRMAN SCHEUER:** So I believe that
14 specifically, under 205-47, Part D, the statute
15 says, "Upon identification of potential lands to be
16 recommended to the county councils as important
17 agricultural lands, the counties shall take
18 reasonable action to notify each owner of those
19 lands by mail or posted notice on the affected lands
20 to inform them of the potential designation of those
21 lands."

22 I believe, at least in that narrow sense,
23 that was not met. And I believe that evidence in
24 our proceedings supports that contention. But I
25 guess my intent, just to expand a little more before

1 recognizing Commissioner Chang, was -- actually,
2 I'll just stop there. I recognize that I have some
3 larger things to say about the process and my
4 general admiration for what DPP has tried to do and
5 the problems, but I will save those for later.

6 Commissioner Chang?

7 **COMMISSIONER CHANG:** Thank you, Mr. Chair.
8 Now, I -- I concur with your assessment. I think
9 from a legal standpoint, reasonable notice is a very
10 objective term. I think I -- in my mind, I think
11 the city met the reasonable notice test prior to --
12 maybe up until 2015. They conducted at least three
13 public meetings. They had a website, focus groups.
14 However, that gap, I think the Chair raised some
15 important issues regarding -- sorry, my Alexa turned
16 on for no reason.

17 So I think -- I think there is a legal
18 deficiency in the reasonable notice that I think
19 that the city could have easily sent out, similar to
20 what -- and that would be my instruction to the city
21 in elaborating on this motion is that the city be
22 instructed to send out -- and given the responses,
23 it would be in their best interest so they don't
24 have to do it over again -- by certified mail to the
25 landowner, with a notice on there that this is --

1 that if you choose to sell this property, that you
2 are on notice to provide the new landowner
3 information regarding the -- a potential IAL
4 designation.

5 I think, at a minimum, there should be a
6 renotification to all of the landowners. Attached
7 to that notification should be a fax sheet or a
8 brochure what IAL designation means, what it is, and
9 what it isn't. Very simple.

10 There should be a website similar to what
11 you had done previously, but it should be updated,
12 and it should be maintained. But in addition to
13 that, I think the community outreach should be in
14 collaboration with the Farm Bureau who has been
15 willing -- who has expressed a commitment to work
16 with the city on this.

17 So I think, undoubtedly, consultation
18 needs to be expanded. I think we've -- you know,
19 I've listed two things. At least, a certified mail
20 to the landowner of record and you get a response
21 where they have to -- they have to sign so you've
22 got a record that they have received it.

23 If you don't receive a response by 30
24 days, I'd post something on the property, and I'd
25 take a picture of it. But I'd include some

1 information. I'd work with the Farm Bureau on doing
2 an educational campaign about IAL. But I'd also,
3 for purposes of the city, begin to start developing
4 those incentives.

5 Throughout today's hearing, I heard the
6 city mention several times that the incentives were
7 supposed to help small farmers, but there are no
8 incentives.

9 And the small farmers are the ones who
10 have come to us. So to me, a timing on those
11 incentives are critical. Perhaps some of these
12 small farm owners would choose to have their lands
13 designated.

14 But I would also ask the city to consider
15 OP and Department of Ag's recommendation about two-
16 acre parcels and explore that more clearly and
17 carefully. So that would be -- because I think -- I
18 think they -- they're TAC. I think they did apply
19 the criteria properly. I think our AG opinion
20 confirmed that, so I don't have a problem with the
21 criteria that was applied by the city.

22 However, in light of Department of Ag and
23 OPSD's recommendation for the two-acre exemption, I
24 think that should be visited as well as an update on
25 state lands. And I think as was mentioned numerous

1 times today, including in that letter, a request for
2 an -- if you want to opt out, send -- sign, send
3 this -- send this letter back to us. Make it easy
4 for them. Don't make it hard.

5 But I do believe that there has not been -
6 - that the statute has not been -- the city has not
7 adequately complied with the reasonable notice
8 requirement and so those are my guidance on
9 instructions on what they could do.

10 I'm sure others have more to add to that.
11 But that's my recommendation.

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

14 Commissioners, we're in deliberation with
15 a motion before us.

16 Commissioner Giovanni?

17 **COMMISSIONER GIOVANNI:** Thank you, Chair.
18 I'm going to support the motion. I first want to
19 share my feelings that I think that the staff at DPP
20 did an incredible amount of work under trying
21 circumstances. It's tough to be a bureaucrat
22 processing these type of things, especially on an
23 unfunded mandate.

24 I think a lot of the problem that we're --
25 we've been discussing just even in the last 15

1 minutes stems from the fact that the staff completed
2 their work four years ago -- three and a half, four
3 year ago, and the city council sat on it for three
4 years or took three years to process it. That's
5 terrible. We need to send that message.

6 Why did that happen? And how many times
7 were those people re-elected? And they're different
8 people and they start over. So that was a real
9 problem for me.

10 I agree that there ought to -- there
11 should have been thought to giving a requirement for
12 a disclosure document in any and all real estate
13 transactions that the subject land was being under
14 consideration for automatic IAL designation. The
15 fact that that disclosure did not occur, and you're
16 not going to -- it's not required, real estate
17 agents aren't going to voluntarily give it because
18 it's a disincentive for the sale. So I think
19 that that's a real missing part.

20 I also feel -- and again, I'm speaking for
21 the small landowners and small farmers that may not
22 want to participate in this, but there might be
23 small ones that do want to participate in that. I
24 think it's a real missed opportunity to provide a
25 provision for a simple opt-in or opt-out. I want to

1 opt into the county's process that potentially will
2 designate me for IAL, or I want to opt out. Leave
3 me out of it.

4 That simple thing alone would have led to
5 a lot of these problems going away and a lot of the
6 concerns we heard from the community.

7 And finally, I also agree that the
8 incentives should be clearly earmarked and specified
9 ahead of time, including ahead of time when you're
10 asking me to opt in or opt out. So like
11 Commissioner Chang said, there should have been
12 prepared a very simple document. What is IAL? What
13 does it mean? What does it mean to you as a
14 landowner?

15 And along with that, if you opt in, what
16 are the -- what happens if you opt out? What are
17 you giving up in terms of incentives? All of that
18 should be upfront, not as DPP is now saying, "we'll
19 work that out later." I don't agree with that.

20 And then, finally, as Commissioner Aczon
21 is so clearly worried about, and I worry as well, if
22 we accept this, which I do not -- I support the
23 motion, so I'm not recommending we accept the
24 recommendation from the county. But if we would,
25 which is the other alternative, I think it turns to

1 the Land Use Commission almost regardless of what
2 level or -- or complexity of due process is afforded
3 each landowner, but it turns our mission into a
4 completely different process. We become a different
5 bureau of the county.

6 And then, finally, I'm worried about the
7 neighbor counties. They're watching this. And they
8 -- they're like, you want me to do what? And you're
9 not going to pay me for it? I know my county hasn't
10 started on it. And then -- and so it ain't
11 happening. And it's not going to happen until this
12 thing's resolved.

13 And I mean, when I mean resolved, it's
14 like Commissioner Wong saying, "send a very strong
15 message to the legislature to revisit this and clean
16 it up, so that it can be implemented more
17 straightforwardly." I will support the motion.
18 Thank you.

19 **CHAIRMAN SCHEUER:** Thank you, Commissioner
20 Giovanni. I'd like to call on our Executive Officer
21 and then hear from Commissioners Ohigashi and Aczon.

22 **MR. ORODENKER:** I'm sorry, Chair. Is
23 there a specific question you'd like me to answer?

24 **CHAIRMAN SCHEUER:** You raised your hand
25 again.

1 **MR. ORODENKER:** I swear I am not touching
2 my keyboard. I swear.

3 **CHAIRMAN SCHEUER:** Okay. Scratch that.
4 Commissioner Ohigashi followed by
5 Commissioner Aczon.

6 **COMMISSIONER OHIGASHI:** I made a second to
7 the motion because I agree with what Commissioner
8 Chang, the Chairman, and then Commissioner Giovanni
9 has indicated on the record. I believe those are
10 all important parts is the reason why I'm voting.

11 But I do want to recognize that by
12 remanding this matter, it may result in the probable
13 non-action by the city and county. If that is the
14 case, it may cause a chilling effect on any other
15 counties dealing with this matter. And if that is -
16 - if that happens, then the incentive for large
17 landowners going to IAL designations may be
18 affected, because they're going to say why worry
19 about it.

20 (Indiscernible) the county to get -- you
21 know, we don't have to go and do our alerting. I
22 did -- but I'm still going to vote for this. And
23 the reason why is what the Chair brought up. And
24 what he indicated is that what is this IAL
25 designation really means. What is it? When we were

1 able to put an industrial use on IAL property prior
2 to being changed on Maui, it came to me is that why
3 are we even designating these lands?

4 What's to stop people from using the
5 special permit process to use this property for
6 industrial purposes without going through the
7 process of changing? And that's why I'm willing to
8 vote for this.

9 And that's why I'm willing to take the
10 risk that this may affect all IAL designations in
11 the future, because after seeing that happen, I come
12 to the conclusion that the legislature needs to fix
13 this. And if this is what it takes, so be it.
14 Thank you, Mr. Chair.

15 **CHAIRMAN SCHEUER:** Thank you very much,
16 Commissioner Ohigashi.

17 Commissioner Aczon?

18 **COMMISSIONER ACZON:** Thank you, Mr. Chair.
19 Given the options that we have in front of us,
20 there's still really an ideal option that we can
21 take without, you know, going into what Commissioner
22 Ohigashi is saying, taking the risk.

23 So I will be reluctantly supporting this
24 motion. But having said that, at least, you know,
25 moving forward with its motion, we make a decision

1 rather than doing nothing.

2 But having said that, I just want to make
3 a comment that, you know, I believe DPP, in support
4 of them did their best in trying to address this
5 matter, and I -- I was kind of struck on what Ms.
6 Apuna said that, you know, we feel that DPP or city
7 doesn't care for the people. I don't -- I don't
8 honestly believe that. I believe that they are --
9 they did their best. They followed, you know --
10 they followed, you know, the law regardless of, you
11 know, financial help or funding that they help, so
12 you know, I just want to thank DPP, Ms. Apuna, for
13 all their efforts that they put in on this one.

14 It took a lot of time, and I just didn't
15 want to diminish those efforts that they put in. So
16 thank you.

17 **CHAIRMAN SCHEUER:** Thank you, Commissioner
18 Aczon.

19 Commissioners, is there further
20 deliberation?

21 Commissioner Cabral?

22 **COMMISSIONER CABRAL:** Yes, thank you, all.
23 This is just really hard. Yeah, I mean, I think
24 I'll support the motion because, obviously, it's
25 going to give us all another bite at the apple

1 unless our terms expire before it comes back around.
2 But yeah, and I'm really hopeful that Land Use
3 staff, even us as individual commissioners, might
4 have ideas that don't have to be on an official
5 basis.

6 Just maybe we start an outline of
7 suggestions that have already been mentioned here,
8 just throwing it back to them. I like the idea of
9 making it simple, check opt in, opt out. Again,
10 it's got to comply with the requirements, which
11 apparently, you know, are the other side of this.

12 But I also -- my preference would be that
13 you have to opt in. You know, that would be my --
14 as a landowner, if I don't pay attention, I don't
15 read the English, I don't understand this stuff. I
16 think if the person doesn't opt in after three
17 attempted notifications or something, then you just
18 -- then you leave them out. Otherwise, everybody's
19 got to opt in, otherwise they don't stay in it.

20 And I know you want the land to be
21 contiguous, but there's a lot of one-acre parcels
22 and two-acres and what-have-you that are never going
23 to be ag, and all you're going to do is restrict
24 these people's ability to, in the future, add houses
25 or do anything else with it that would make the land

1 more useable.

2 And for a lot of land, the most valuable
3 crop that we have is housing. And clearly, we have
4 a need for that, so I really hate the idea that
5 we're just going to find one big swath of land, say
6 that's all -- it's because you are nearby some
7 other good land.

8 So I'd like to have them enforce it or
9 have the county or city and county have people opt
10 in. Otherwise, they're not part of it, you know.
11 They can -- and again, it would be so hard to go
12 into the individual, but that's their opportunity.

13 And I love the idea like Commissioner
14 Chang said, have it all there, have the whole
15 package, have the brochure, have the advantages,
16 disadvantages. Spoon feed me.

17 I deal with people all the time, and it's
18 not what I say, it's what they hear that matters,
19 and we need to make sure that it's written in such a
20 manner that it's really simple, no legalese, no
21 lawyers -- sorry, guys, you know.

22 You can send it to me. I can dummy it
23 down. Trust me, if I can understand it, it will be
24 good. So I'll support it, though, because at least
25 it gives us an effort to continue to have them move

1 forward if they can work with that, and Department
2 of Agriculture. Thank you.

3 **CHAIRMAN SCHEUER:** Commissioner Chang?

4 **COMMISSIONER CHANG:** I'll just make a
5 brief comment.

6 Ms. Apuna, please, I did not -- I know I
7 was a little harsh. I do want to applaud the city.
8 You were the first agency. You inherited a lot of
9 this, I think, and I guess I just -- you know, I
10 know -- how do I say it?

11 We've gotten to know you. We've gotten to
12 know your good intentions. And as I've shared, I
13 think you were in a unique position. I think even
14 if this gets remanded back, I hope the city does,
15 you know, seriously consider having this done in a
16 collaborative way, reach out to the partners.

17 And I think the next time it comes back to
18 us, which I hope it does, that I think at that point
19 in time, there will be less criticism and greater
20 support through education.

21 And if it takes a long time through the
22 Planning Commission, I find what may be helpful is
23 at least to provide the landowners and update -- let
24 them know where you are. You may not have to -- you
25 know, you don't have to do a public meeting, but at

1 least provide them an update.

2 I think that's what people get fearful of
3 is when they don't hear anything, they think
4 something's going to happen without them. So I
5 think throughout this process -- I mean, I'm hoping
6 other counties are paying attention, but I think the
7 city has -- has set forth a good process. I think
8 it's just we're helping to fine-tune it.

9 But I do want to acknowledge the good work
10 of DPP, the courage it took to move forward, the
11 courage it took for you sometimes to take a very
12 hard position that reflect the agency and I'm sure
13 not necessarily your own personal position. But
14 again, I think at the end of the day, this pause may
15 end up making your work in the long run a lot
16 easier. I hope it does, at least.

17 So thank you very much to you and your
18 staff. All right.

19 **CHAIRMAN SCHEUER:** Thank you, Commissioner
20 Chang.

21 Commissioner Giovanni?

22 **COMMISSIONER GIOVANNI:** Thank you, Chair.
23 Pretty much on the same level, but I interpreted a
24 key element of Commissioner Wong's motion was to --
25 we're not only remanding this back or not accepting

1 it, but to send it all the way back to the state
2 legislature to get it fixed.

3 So it's not -- I don't want this action by
4 our Commission -- at least, I don't interpret our
5 action by our Commission, by supporting this motion
6 or passing this motion or adopting this order, to be
7 one that the county failed. I don't think they
8 failed at all. I think they did their job, and they
9 did a pretty good -- pretty good job at it, with the
10 exception of the thing sitting at the city council
11 for three-plus years.

12 I think the real issue is the fundamental
13 writing of the statute. And it can be fixed
14 probably without too much difficulty, and I would
15 imagine that in a collaborative way, the entity that
16 has the most to offer about how to fix it would be
17 DPP, because they've tried to live it.

18 And I would welcome their candid
19 involvement with others to get back to that level,
20 because I think that's where it needs to go. So
21 again, like Commissioner Chang had expressed and
22 others had expressed, I want to thank the DPP for
23 their efforts over the years to make this thing
24 workable and to get to this point.

25 But there's a far more problem going to

1 happen going forward adopting this than sending it
2 back. And I support sending it back. Thank you.

3 **CHAIRMAN SCHEUER:** Thank you, Commissioner
4 Giovanni.

5 Commissioners, anything further? If not,
6 I'll just start my final remarks before calling on
7 the -- our Executive Officer to read the motion and
8 take a roll-call vote.

9 I'm reminded of a period or a time in my
10 life earlier where I acquired a piece of furniture
11 from Ikea, and it both had the wrong directions and
12 the mismatched set of parts, and there was one
13 frustrating day trying to get this fricking thing
14 together. There was no way, with those instructions
15 and those parts and the wrong tools, to make this
16 thing work. And it took a huge amount of time to
17 realize, oh, here's what's going on. I got to send
18 it back. That's where we're at.

19 I want to join and thank DPP and also call
20 out DOA. Like, you've tried to make this work with
21 the tools and things at hand. My criticisms were
22 merely really limited to the -- I think people need
23 to hear from the public that you get that they're
24 frustrated, and it's really important. And I didn't
25 hear that, and then it was said, so that was

1 important. But I acknowledge the many years of work
2 the DPP did.

3 The thing that gives me pause is not the
4 exact same thing as other parties, the one thing
5 about voting in favor of this. Frankly, I have come
6 to the conclusion almost eight years on this
7 Commission, that IAL overall is fundamentally
8 flawed. It does not do much for Hawaii, for
9 agriculture, except for a few large farmers,
10 landowners. I think it's deeply flawed and needs to
11 be really redone.

12 So it doesn't give me pause to send it
13 back for that reason that this might stall the
14 process. What gives me pause is that I think this
15 could be seen as rewarding -- and maybe I've been
16 too polite about it -- what I really perceive is bad
17 behavior from a private law firm who, I think, was
18 trolling for clients.

19 Now, I know some people are like, "Hey,
20 we're super grateful that we heard from that law
21 firm." But the language that was used in that
22 letter was almost, but not entirely, inaccurate.
23 That letter said things like, "the IAL laws will
24 significantly impact and diminish your rights to use
25 your lands."

1 There's a question that they might, in a
2 very, very small way, do so, and it's actually why
3 we need the legislature to clarify whether or not
4 that is the case. Is the housing different, or is
5 it not? If they say it's no different, if they
6 adopt the thing, that argument goes away.

7 There was an argument -- or a statement in
8 the letter that said, "you need to know how to best
9 protect your land use rights." These things were
10 inflammatory. And if the city made a critical
11 error, it was not directly getting out in front of
12 that letter at multiple levels, DPP, mayor, and
13 others, to just say, "listen, we're responding to
14 that. We know -- we heard what you said. Here's
15 what's going on." I don't want our rejection to
16 be seen as a reward of that kind of behavior.

17 But the only way to deal with that -- and
18 this is why I want the city to come back, but I need
19 us to go to the legislature, too -- is to clarify
20 these errors or critical points of dispute in the
21 law, so that they're very clear and that nobody else
22 can take advantage of the ambiguity going forward,
23 because otherwise, we'll find ourselves in the same
24 place.

25 Commissioner Cabral?

1 That concludes my statements. After
2 Commissioner Cabral and if there's any other
3 statements from the Commissioners, I will call for
4 the vote.

5 **COMMISSIONER CABRAL:** Okay. Thank you.
6 I'm appreciating what I hope is the correct
7 clarification from both you and -- you as Chair and
8 Commissioner Giovanni. And so I want to really
9 verify with Commissioner -- I'm trying to find you
10 based on these screens. Commissioner Wong, there
11 you are in front of your golf course or something.

12 Anyway, so as the maker of the motion,
13 you're sending it back, meaning both to the
14 legislature as well as the city and county to re-
15 work it. Is that what we are really voting on? I'm
16 definitely in favor of sending it back to the
17 legislature.

18 **CHAIRMAN SCHEUER:** Mr. Orodenker?

19 **COMMISSIONER WONG:** I just --

20 **CHAIRMAN SCHEUER:** Commissioner Wong and
21 then Mr. Orodenker.

22 **COMMISSIONER WONG:** Commissioner Cabral,
23 it's both. Because of the -- it's a flawed statute,
24 to me, like everyone else said. Plus -- but I think
25 the process took too long, and a lot of the -- as

1 Chair said, there was a lot of misinformation out
2 there that could have been done properly and what
3 Commissioner Chang said.

4 So it's like two -- it's a motion with
5 everything, second mulligans, too, or whatever you
6 want to call it. That's all.

7 **COMMISSIONER CABRAL:** Okay. And then the
8 only other thing I want to say -- and I don't get to
9 see if anybody's -- if the public is still out there
10 -- that I hope that we are -- this going back and
11 forth for three-plus hours since anyone else got to
12 talk was they hope they understand that they can
13 rest, breathe for a little while.

14 Nothing's going to happen to their land.
15 They don't lose it. Nothing's going to -- nothing
16 bad's going to happen to their land at this point in
17 time. They should receive a whole lot more
18 communication and a whole lot more time and effort,
19 and it's going to come back through this body before
20 it -- everything -- anything else happens.

21 So I want the public to realize that their
22 efforts in coming forward and communicating to us,
23 this hearing and the other hearings and in writing,
24 have, in a sense, made a big difference in what's
25 going on. So that would be my last comment aside

1 from a vote. Thank you.

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

4 Commissioner Ohigashi?

5 **COMMISSSIONER OHIGASHI:** I'm sorry. I'm
6 going to say this, and -- I'm going to say this.
7 Arnold, are you using the word "mulligan" because
8 you're on a golf course?

9 But that being said, I just want to -- I
10 don't think that we can command anybody to go to the
11 legislature or remand it to the legislature. It's a
12 state law, so what we can do, I would imagine, is
13 suggest -- Farm Bureau indicated that they -- that
14 this area should be cleared up as well as the city
15 as well as our own Executive Director if we can see
16 whether or not we can submit amendments to seek to
17 clear this matter up.

18 But that may be a separate motion, or that
19 may be part of this motion. But I don't think we
20 can technically remand it to the legislature.

21 **CHAIRMAN SCHEUER:** Thank you.

22 Mr. Orodenker, why don't you read the
23 motion as it appears before us. Then I'll ask you
24 separately to call for a vote.

25 **MR. ORODENKER:** Okay. It's been moved by

1 Commissioner Wong that we remand the matter back to
2 the county because of time issues, due process
3 uncertainties, community outreach defects,
4 representations made by attorneys and others that
5 need to be clarified, and to note that the statute
6 needs to be revised and clarified, and that requests
7 that the legislature make it a funded mandate.

8 **CHAIRMAN SCHEUER:** Are we comfortable
9 taking the vote, Commissioners? Okay.

10 Mr. Orodenger, please call for the vote.

11 **MR. ORODENKER:** Thank you, Mr. Chair. The
12 motion is as stated.

13 Commissioner Wong?

14 **COMMISSIONER WONG:** Aye.

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

16 **COMMISSIONER OHIGASHI:** Yes.

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

18 **COMMISSIONER GIOVANNI:** Aye.

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

20 **COMMISSIONER CHANG:** Aye.

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

22 **COMMISSIONER CABRAL:** Aye.

23 **MR. ORODENKER:** Commissioner Aczon?

24 **COMMISSIONER ACZON:** Yes.

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

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CHAIRMAN SCHEUER: Aye.

MR. ORODENKER: Thank you, Mr. Chair. The motion passes unanimously with seven votes.

CHAIRMAN SCHEUER: Okay.

Thank you, everybody, for a difficult and long process. I believe there's no further business, so we're leaving with, I think, 101 people in attendance, 83 members of the public.

There being no further business, I thank the parties and declare this meeting of Land Use Commission adjourned.

(Meeting adjourned at 3:23 p.m.)

1 CERTIFICATE

2
3 I, Jodi Dean, do hereby certify that the
4 proceeding named herein was professionally transcribed on
5 the date set forth in the certificate herein; that I
6 transcribed all testimony adduced and other oral
7 proceedings had in the foregoing matter; and that the
8 foregoing transcript pages constitute a full, true, and
9 correct record of such testimony adduced and oral
10 proceeding had and of the whole thereof.

11
12 IN WITNESS HEREOF, I have hereunto set my
13 hand this 25th day of January, 2022.

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19 _____
20 Jodi Dean
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