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 landowners or issues relating to particular properties.

III. RECESS/ADJOURNMENT

IV. ADJOURNMENT

BEFORE:
COMMISSIONERS PRESENT:

Jonathan Scheuer, Chair
Dawn N.S. Chang
Dan Giovanni
Lee Ohigashi
Edmund Aczon
Nancy Cabral
Arnold Wong
Gary Okuda (Recused)

LAND USE COMMISSION STAFF PRESENT:

Daniel Orodenker, Executive Officer
Scott Derrickson, Chief Planner
Natasha Quinones, Program Specialist/Chief Clerk
Dan Morris, Deputy Attorney General

CITY AND COUNTY OF HONOLULU STAFF PRESENT:

Dawn T. Apuna, DPP, Deputy Director
Franz Kraintz, DPP
Dina Wong
Brandon Sue
OFFICE OF PLANNING AND SUSTAINABILITY

STAFF PRESENT:

Alison Kato, Deputy Attorney General
Mary Alice Evans
Rodney Funakoshi
Earl Yamamoto (Department of Agriculture)
CHAIRMAN SCHEUER: Aloha mai kakou. Good morning. This is the January 6th, 2022 Land Use Commission meeting, which is being held using interactive technology linking videoconference participants and other individuals from the public who are interested in these matters via the Zoom internet conferencing program. We're doing this, of course, to comply with ongoing state and county official operational directives during the still ongoing Covid-19 pandemic.

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

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

This technology allows each meeting participant individual access to the meeting via our own personal digital devices. Due to that and due
to matters entirely outside of our control, or
usually outside of our control, occasional
disruptions to connectivity may occur from time to
time.

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

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

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

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

Along with me, Commissioner Dawn Chang,
Commissioner Arnold Wong, Commissioner Edmund Aczon, and our Chief Executive Officer Daniel Orodenker, our Planner -- Chief Planner, Scott Derrickson, our Staff Planner, Riley Hakoda, our Chief Clerk, Natasha Quinones, and our Deputy Attorney General -- Deputy Attorney General? Deputy Attorney General?

Are they here yet, Mr. Orodenker?

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

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

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

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

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

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

With all of that said, our next agenda
item and our only agenda item for today is an action item regarding conformance of the city and county of Honolulu's important agricultural lands recommendations to applicable statutory and procedural requirements where we will consider whether or not the city and county of Honolulu's 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 public notice requirements were met in developing the recommendations.

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

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

I'll just restate for the record Commissioner Okuda has recused himself from this
matter.

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

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

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

**CHAIRMAN SCHEUER:** Thank you, Ms. Apuna.

Office of Planning?

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

**CHAIRMAN SCHEUER:** Thank you --

**MS. KATO:** Thank you.

**CHAIRMAN SCHEUER:** -- Ms. Kato.

And Department of Agriculture.

**MR. YAMAMOTO:** Good morning, everyone.

Earl Yamamoto here for the Department of
Agriculture. Just myself.

CHAIRMAN SCHEUER: Thank you very much, Earl.

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

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

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

The last hearing we held on this matter was limited to the acceptance of the Attorney
General's opinion and the decision to make the decision public. We're now, therefore, ready to proceed with the completion of our initial evaluation and decision-making process on whether or not the county recommendations meet the requirements of Chapter 205.

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

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

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

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

Commissioner Giovanni?

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

CHAIRMAN SCHEUER: Thank you very much.

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

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

When you get called in, you will become a panelist. You will then be able to -- and you'll need to enable your audio and video. I will swear you in. I will ask you to identify your name and address for the record. And then given the volume of today's business, I will ask people to limit
1 their testimony to two minutes.
2 
3    We will then go through all the testimony,
4 and then finally, at the completion of any oral
5 testimony on this matter, I will call on the county
6 of Honolulu -- city and county of Honolulu to make
7 their final comments.
8 
9    After that, we will allow the
10 Commissioners to ask questions of the county. I may
11 provide the opportunity for OPSD and DOA to provide
12 any final comments as well and offer the opportunity
13 for the Commissioners to ask questions to them.
14 
15    And based on all of that, the Commission
16 will determine if and how, if we do proceed,
17 regarding the city and county's submittal.
18 
19    To the parties in this matter and to the
20 Commissioners, are there any questions on our
21 procedures today? Starting with the city and
22 county.
23 
24    MS. APUNA: No questions.
25 
26    MS. KATO: No questions.
27 
28    CHAIRMAN SCHEUER: Mr. Yamamoto?
29 
30    MR. YAMAMOTO: No questions.
31 
32    CHAIRMAN SCHEUER: Thank you.
33 
34    Commissioners, are we clear? Okay.
35 
36    So I'm going to say a couple more things
before I start in on testimony. One is just to really re-emphasize to people who are offering testimony, we are still in the first phase of deliberations, which is just to determine whether or not the requirements of Chapter 205 have been met by the city and county in preparing their recommendations. We're not today addressing whether or not individual lands are appropriate for IAL designation or not.

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

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

Now, if you give me one moment, I'm going to start to read the list of testimony that we've received since our last meeting on this matter. Since our October meeting, in November -- well, I'll start in October. The 127th written
testimony we received on this matter was from Kalani Morse, Esquire, from the Durett Law Firm, Leilani Clayton for Mililani Tech Park, and Mike Ford.

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

In January of this year, in preparation for this hearing, we've received testimony from Alicia Maluafiti, Lore Aiwohi, Steven Mau, Robinson Kunia Land LLC, Thomas and Janet Witten, two pieces of testimony from Jennifer Lim, Jesi Onaga, Sophie Manansala, April Kalt, Bradley Dixon, Waihonu North LLC, Steve Hoag, Triple G Stables, Zachary McNish, Clarence Nakata, Eassie Soares-Haae, Jeff Bloom, Blade and Chamaine Mossman -- might be Charmaine -- Chris Hong, Peter Savio, Harris Ranch LLC, Waianae Solar LLC, Jodi Yamamoto, Linda Baptiste, Kalani Morse, Yvonne Watari, Dorene Cooper, Ronald and Mary Tubbs, John McCauslin, Laura Johnson, Crystal Posiulai, Diana Young, Harrison Goo, Nodie Namba-Hada, Peter Opdahl, Rochelle Ito, Lulik Hadar, Wes and Karen Wong, Armani De Ocampo, Valentino De Ocampo, Mordecai and the Ruth Hudson Trust,
Christopher and Jacqueline Laird, Diana Puulei, Fred Redell. I believe there's a misspelling here in my list. I apologize.

Arnold and Jerri Lum, Tim Irons, Philip Rodgers, Elizabeth Piazza, Holly Kim, Jason Leue, Barry Bright, Phyllis Dudoit, Raynal and Dorene Cooper, Frances Kama-Silva, Andrew Cook, Laurence Greene, and Michael Kam.

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

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

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

to serve Hawaii, so that's our background.

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

ALICIA MALUAFITI: Hi, good morning.

CHAIRMAN SCHEUER: Aloha.

ALICIA MALUAFITI: Aloha.

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

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

ALICIA MALUAFITI: I do.

CHAIRMAN SCHEUER: Mahalo. Please,

proceed.

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

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

Let me tell you, you know when the city
comes and appraises your property, you get an
opportunity to appeal that appraisal. I -- if we
don't have a process right now in place for
appealing the designation of IAL by the city, then
we need it. If we don't have it, I will tell you
right now I got three weeks to introduce a bill to
the legislature to give landowners that option.

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

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

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

So there's a lot issues. Kiawe from one
down to the other. Would the city like to come in
and take a look at my property and tell me who's
-going to pay the 30,000 to grub my land of all the
-kiawe and everything else, six-foot-high California
-grass.

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

Thank you, Jonathan. Am I out of time?

CHAIRMAN SCHEUER: Yeah. Thank you. If
-you could summarize.

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

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

I'm going to offer -- and this is for all
-people who wish to testify to stay on, and the
-parties and then the Commissioners have a chance to
ask you questions. Starting with the city and county, questions for the witness?

MS. APUNA: No questions. Thank you.

CHAIRMAN SCHEUER: OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners, beginning with Commissioner Wong.

COMMISSIONER WONG: Thank you, Chair.

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

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

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

CHAIRMAN SCHEUER: Further questions, Commissioners?

Commissioner Giovanni.

COMMISSIONER GIOVANNI: Thank you.

Are you -- this is for the testifier. Are you familiar with the county's process to the extent that there was an option to apply for an exemption from an IAL designation?
ALICIA MALUAFITI: Not aware of really anything that has happened. By the way, I lobby for agriculture, so I've been part of the IAL discussion and process, but I'm not aware of any exemption.

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

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

ALICIA MALUAFITI: Whether they --

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

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

COMMISSIONER GIOVANNI: Okay. Thank you very much.
ALICIA MALUAFITI: Yes.

CHAIRMAN SCHEUER: Commissioners, further questions?

FEMALE SPEAKER: (Indiscernible.)

CHAIRMAN SCHEUER: (Spoke Hawaiian.)

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

ALICIA MALUAFITI: Thank you.

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

Do you believe that the distinctions made in the law between the allowable uses on IAL small properties versus regularly agriculturally-designated small properties, particularly as regards to their use for housing and how housing is allowed,
do you think that the differences in those two portions of the statute, housing is allowed in non-IAL ag lands and how housing is allowed in IAL ag lands -- do you think that the distinctions that exist in the law were fully appreciated by the legislature when the law was passed?

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

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

So I think the problem has been not just the IAL designation and all the things that we're no longer allowed to do, but if you really are looking
at food security and agricultural sustainability,
then the IAL, how the city and state -- sorry -- has
implemented this is weak beyond words.

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

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

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

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

   Does that answer your question better?

   CHAIRMAN SCHEUER: Yes. Thank you very
much.

   ALICIA MALUAFITI: Thank you.

   CHAIRMAN SCHEUER: Commissioners, are
there any further questions for the witness?

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

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

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

ALEXANDER GARBER: Hello? Can you hear me?

CHAIRMAN SCHEUER: Yes, I can.

ALEXANDER GARBER: Good morning.

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

ALEXANDER GARBER: I do.

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

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

CHAIRMAN SCHEUER: Thank you. Please
ALEXANDER GARBER: So I think you
transitioned into my testimony quite well. I want
to thank you for allowing me to again address the
committee.

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

This is important to me because it
directly affects --

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

ALEXANDER GARBER: Can you hear me better
now?

CHAIRMAN SCHEUER: That's better. Thank
you.

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

If you just read the relevant statutes, I
think any reasonable person would conclude that the IAL statute is significantly more restrictive than the agricultural designation statute.

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

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

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

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

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

CHAIRMAN SCHEUER: If I can ask you to summarize.

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

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

CHAIRMAN SCHEUER: Thank you very much for your testimony.

Questions for the witness, Ms. Apuna?
MS. APUNA: No questions.

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

MR. FUNAKOSHI: Hi, this is Rodney. No questions.

CHAIRMAN SCHEUER: Thank you, Rodney.

Mr. Yamamoto?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners?

Commissioner Chang?

COMMISSIONER CHANG: Yes, thank you. Good morning, Mr. Garber. Thank you again for being here and providing your testimony. I appreciate it.

How long have you owned the property?

ALEXANDER GARBER: We purchased it in 2013.

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

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

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

ALEXANDER GARBER: So we farm multiple
fruit crops, so we have star fruit, lychee, longan, mango, avocado, and we use it ourselves. We barter with the neighbors, and we sell to multiple different retailers.

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

CHAIRMAN SCHEUER: Thank you, Commissioner Chang.

Commissioners, further questions for the witness?

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

ALEXANDER GARBER: Well, I mean --

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

ALEXANDER GARBER: Well, I mean, I think, yeah. I mean, I do agree with Ms. Apuna who did say, you know, after she stated that it could be interpreted to mean that you couldn't have anyone
disabled or young or old living in your farm dwelling, she did say she didn't think that was the intent.

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

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

Any further questions for Mr. Garber?

If not, thank you very much for your testimony.

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

Again, if you want to testify in this matter, use the raise your hand function or the star
sequence -- the key sequence star 9.

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

MICHAEL KAM: Hi.

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

MICHAEL KAM: Yes.

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

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

CHAIRMAN SCHEUER: Mahalo. Please continue.

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

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

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

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

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

I would note that the AG opinion also states and concludes that the city is allowed to
consider things on a countrywide -- countywide basis. I'm sorry, countywide basis. If you look at the factors, I think it's fair to say that it depends on a variety of county, state, and local factors and individual parcel factors.

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

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

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

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

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

MICHAEL KAM: Okay. Terrific.

CHAIRMAN SCHEUER: Thank you so much.

Questions for the witness, Ms. Apuna?

MS. APUNA: Just one question, Mr. Kam.

What is the TMK or the address for your Waialua farm?

MICHAEL KAM: I think it's 67214.
MS. APUNA: Okay. Thank you.

CHAIRMAN SCHEUER: OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners?

Commissioner Chang?

COMMISSIONER CHANG: Thank you.

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

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

COMMISSIONER CHANG: And how many acres do you have?

MICHAEL KAM: I have 26 acres, and we're not to talk about individual characteristics, but my land is bisected by the Kanoa access road that leads
to the overpass on Farrington Highway. So you physically can't -- it's impractical to drive a tractor from one side of my property to the other side.

COMMISSIONER CHANG: Okay.

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

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

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

MICHAEL KAM: Yeah. I mean, that's one of my gripes, right? I actually was considering voluntarily -- and I intend to voluntarily pursue an IAL designation as to a portion of my land.

However, the quid pro quo is that if, you know, you want to support sustainable agriculture, which -- and the provision of the statute that allows up to 15 percent of the land to be redesignated as another
use, non-agriculture use, is an important incentive when you consider that land is being dedicated, arguably, in perpetuity for agriculture.

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

COMMISIONER CHANG: Thank you. You've more than answered my question. I appreciate that, Mr. Kam. Thank you very much.

CHAIRMAN SCHEUER: Thank you, Commissioner Chang.

Commissioners, any further questions for the witness?

Seeing none, welcome home.

MICHAEL KAM: Thank you.

CHAIRMAN SCHEUER: Thank you very much for your testimony today. I'm going to move you to be an attendee.
I will admit Donald Kilmer followed by Jeff Bloom, Sunny Hsu, and Brian Miyamoto.

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

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

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

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

DONALD KILMER: I do.

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

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

CHAIRMAN SCHEUER: Thank you. Please proceed.

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

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

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

CHAIRMAN SCHEUER: Thank you very much for
your testimony.

Questions for the witness, Ms. Apuna?

MS. APUNA: Thank you, Mr. Kilmer. Can I
ask you how large is your property or farm?
DONALD KILMER: It's five acres.

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

DONALD KILMER: Sure, I would appreciate that.

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

CHAIRMAN SCHEUER: Thank you, Ms. Apuna.

Nothing from OPSD.

Department of Agriculture?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners?

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

We certainly are seeing -- at least, I'm personally seeing issues with how the statute was drafted in terms of its ability to be implemented rationally. I think your questions are very good
ones, but we're probably not the best body to be answering those questions because we did not put those requirements into place.

Does that make sense as a response, sir?

DONALD KILMER: Yes. Yes, sir, it does.

That's -- I understand your position.

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

DONALD KILMER: Thank you.

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

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

Sunny Hsu followed by Brian Miyamoto
followed by Caridad Leiva, followed by Bobby Correia and then Jeff Bloom.

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

SUNNY HSU: Hello.

CHAIRMAN SCHEUER: Hi. Good morning.

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

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

SUNNY HSU: Yes.

CHAIRMAN SCHEUER: Okay. Please proceed.

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

Actually, I got this -- your notice from my husband, actually, couple days ago. And I actually want my son to attend this meeting. Somehow, he's very busy and he already have a preassign appointment already and that he's in LA.
He’s not in Honolulu. And so I will try to explain it how we think about this IAL.

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

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

And what I want to see is as our, you know, long-term farmers -- and we work so hard and we work like only five days a year that -- I mean, our day off is like only New Year, Christmas, and --
or thunderstorm, bad weathers time. Otherwise, we
been working every day to raise our kinds and then
provide good families --

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

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

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

    SUNNY HSU: Uh-huh.

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

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

SUNNY HSU: Okay. And this is --

actually, we've got -- what we want to see is finally we actually straight this land's ownership by about couple month ago, because we been fighting this -- not really fighting.

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

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

CHAIRMAN SCHEUER: Thank you very much.

SUNNY HSU: And then we actually want our son to testimony because he's a local boy in Hawaii and grow up here, and then to New York, working very hard, and then planning to come back. And we have a 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  
5  SUNNY HSU: Okay. What I want to say is
6  you guys stop our children's futures option, the
7  lifestyles options after their ancestor in Hawaii
8  working so hard for farming and want a better life
9  for our grandchildren. And you just have an IAL
10  coming on, and then this is not a freedom, you know.
11  This is like -- like punish to us. We are working
12  very hard.
13  
14  CHAIRMAN SCHEUER: Thank you so much for
15  your testimony. I'm going to see now if people have
16  questions for you.
17  
18  SUNNY HSU: Okay. Thank you.
19  
20  CHAIRMAN SCHEUER: Questions for the
21  witness, starting with the city and county. Ms.
22  Apuna?
23  
24  MS. APUNA: Thank you, Ms. Hsu, for your
25  testimony. So is the issue that you understand that
26  IAL designation to not allow you to develop farm
27  dwelling -- a house on your farm?
28  
29  SUNNY HSU: Right. And in fact, it's
30  going to affect our (indiscernible).
31  
32  MS. APUNA: And were you somehow advised
of this by an attorney or other person?

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

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

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

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

   CHAIRMAN SCHEUER:  Thank you.

   OPSD?  Ms. Kato?

   MS. KATO:  No questions.  Thank you.

   CHAIRMAN SCHEUER:  Department of
Agriculture.

   MR. YAMAMOTO:  No questions.
CHAIRMAN SCHEUER: Commissioners?

Commissioner Chang?

COMMISSIONER CHANG: Thank you, Ms. Hsu.

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

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

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

COMMISSIONER CHANG: I just want to --

SUNNY HSU: That's why -- you know -- let me finish. That's why we didn't get any help from lawyer but we just assumed that. You guys what -- otherwise you -- why you want to do IAL? You know, what is the really purpose for, you know, for restricted to farmers? They all farmlands or
whoever or even the -- if you worry about investors.

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

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

SUNNY HSU: I'm sorry.

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

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

I would just -- this is just for the witness, but I'm not asking a question. I'm just just so it's really clear, today all we're doing today, Ms. Hsu, is not making any determination about your property or any other individual property.
All we're deciding today is whether or not we believe the city has taken all the right steps so that we could then actually consider their specific recommendations going forward. If we say no, then it will go back to the city to start again. If we say we think there is, there will be a chance for you and any other individual property owner to say, no, we don't believe that our land should be designated.

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

**SUNNY HSU:** Thank you. I -- I'm sorry. I'm kind of emotion -- emotional about this because I --

**CHAIRMAN SCHEUER:** Absolutely.

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

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

**SUNNY HSU:** Thank you.

**CHAIRMAN SCHEUER:** It's 9:58 a.m. I'm
going to move you to be an attendee again.

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

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

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

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

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

JEFF BLOOM: Yes.

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

JEFF BLOOM: Yes. Jeff Bloom. Address is
41-755 Kaulukau Street, Waimanalo, Hawaii, 96795.

CHAIRMAN SCHEUER: Thank you. So please
JEFF BLOOM: Okay. And I've submitted written testimony. I testified in May, submitted written testimony in May, and obviously a number of us in Waimanalo -- I belong to the Waimanalo Agricultural Association, but I'm not speaking on their behalf. I'm only speaking on my behalf. But I've spoken to a number of other landowner farmers out here that also belong to WAA, so we all talk and we have monthly meetings.

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

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

I've owned this property since the
eighties, and I really believe that the process was flawed. We were never notified. Lots of things have been said. When I took my testimony I just sent that back up to people in WAA, so that they were aware, and someone else posted the DPP letter that went to the Land Use Commission, and I read through that.

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

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

So this administration is great. Next administration has a different approach. I don't trust any of that. I have a 22-year-old grandson graduated UH. He's part Hawaiian. He basically loves the land, wants to own this property, maintain it. He's here daily. He works. Now he graduated
in Hawaiian studies with dual major in Hawaiian studies and plants. He now works at the Bishop Estate. But this is where he wants to spend his life later on.

So I --

CHAIRMAN SCHEUER: If I can ask you to summarize.

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

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

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

Well, I am worried about IAL, and nobody ever gave me the ability to opt out. So you tell me what's right? Was 2017 DPP recommendation right or
is 2022 DPP recommendation right, or what's going to happen in 2027 or 2030, when my grandson's 30 years old? Thank you.

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

Let me see if there are questions for you.

City and county?

MS. APUNA: No questions.

CHAIRMAN SCHEUER: OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Department of Agriculture?

MR. YAMAMOTO: No questions.

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

JEFF BLOOM: All right. Mahalo.

CHAIRMAN SCHEUER: Mahalo. I'm going to move you to be an attendee.
We will now move on with Brian Miyamoto followed by Caridad Leiva, Bobby Correia -- Brian Miyamoto, Caridad Leiva, and Bobby Correia.

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

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

**CHAIRMAN SCHEUER:** Happy New Year.

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

**BRIAN MIYAMOTO:** I do.

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

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

**CHAIRMAN SCHEUER:** Absolutely.

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

The Farm Bureau along with (indiscernible)
name proponents of the IAL back in 2005, and the purpose was to promote and preserve ag lands based on ag viability, not as a land use tool.

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

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

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

We believe that under IAL law, counties are required to implement IAL ag incentives prior to this recommendation to designate IAL lands. We do not believe the city has done that yet, which resulted in farm and landowners -- or denying them the opportunity of considerable state -- which we do have state incentives and county incentives in order to make a decision to voluntarily designate their lands.
And this was actually articulated by a previous testifier. Farm owners and long-time farm families could be impacted by specific requirements and restrictions of city's IAL designation; however, they may not be aware that their parcels are being considered for IAL designation, may not understand the impacts of these LUC proceedings, and may have not received notice of these proceedings or are unable to attend because they are busy farming their lands.

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

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

We believe that the city's use of just one IAL criteria to make its recommendations is contrary to the purpose and intent of the IAL law. We believe that some of the city's recommendations may include parcels that do not have water, lack good
soil, and may not have been farmed before or recently, all factors that, weighed together, would make farming not viable.

Again, IAL is an ag viability law --

CHAIRMAN SCHEUER: If I can ask you to summarize.

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

I will just summarize by saying we respectfully request that the LUC return the city's recommendation back to the city with a request to have the city implement ag incentives for farmers and landowners as required by IAL law; also allow the farmers and landowners three years after the implementation of those incentives to voluntarily designate their lands prior to submitting IAL recommendations to the LUC; contact and work with ag landowners to gather the facts to determine whether their parcels meet the criteria and can be
agriculturally viable; and whether the dwelling arrangements and the ag use of the property are consistent with the law. And then we request to analyze each parcel recommended based on weighing of the IAL criteria.

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

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

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

City and county, Ms. Apuna?

MS. APUNA: No questions.

CHAIRMAN SCHEUER: Ms. Kato, OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto, DOA?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners, starting with Commissioner Wong.

Commissioner Wong, we cannot hear you.
You are not on mute, but you -- it must be your microphone is not connected.

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

CHAIRMAN SCHEUER: Now we can hear you.

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

CHAIRMAN SCHEUER: Thank you.

COMMISSIONER WONG: Thank you, Chair.

Brian, I've got a question for you. When the city first started the IAL process, they had a working group. And I think your organization was part of the original group to assist the city, is that correct?

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

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

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

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

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

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

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

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

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

Commissioner Wong.

COMMISSIONER WONG: Okay. That's all.

Thank you, Brian.

Thank you, Chair.

CHAIRMAN SCHEUER: Thank you very much,

Commissioner Wong.

Commissioner Chang?

COMMISSIONER CHANG: Thank you.

Thank you, Mr. Miyamoto. I find your
testimony to be extremely compelling because you actually represent farmers that are out there doing the farming.

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

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

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

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

So the original bill passed in 2005. There was a subsequent 2008 incentive requirement
that we needed to get these lands into IAL. So we'd like to see county incentives, not just any county but all the counties, again, to help the viability of our ag producers.

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

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

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

And I guess that has been a real concern. I mean, given just the economic conditions, the city has got a lot of stuff on its plate right now, far beyond IAL. And it took them, I guess, you know,
almost ten years to do this process, and I'm sure it
costs them money.

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

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

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

**COMMISSIONER CHANG:** Did this -- were you
part -- was the Farm Bureau -- are you aware of
whether the city did reach out to the Farm Bureau to
help, you know, in communicating with the farmers?
Has there been coordination between the city and the
Farm Bureau over the last several years regarding
IAL?
BRIAN MIYAMOTO: I'm not aware of many, if any. A lot of information we've gotten has been from our landowners. I believe they are -- they have been sent in again, went through the timeline, and we did see things that -- or hear from our landowners and our farmers.

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

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

COMMISSIONER CHANG: I would suspect that the farmers, they are probably more inclined to trust the Farm Bureau than they are to trust a government agency, so that farmers would cooperate -- I mean, if you -- if the Farm Bureau reached out
to the farmers, are you confident that -- and you know, you could better explain to them the process, the content, are you confident that the Farm Bureau could effectively do that with your membership?

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

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

So I think that would just improve the ability to communicate and to reach out with many of the farmers who, as we said, are busy farming. They're busy ranching all the time and may not understand. They may not think the impact -- or as you heard, a previous testifier believed that they
heard from the city and county that they're not
going to be impacted by IAL, and they'll be able to
opt out. But even understanding what that process
is, they may not.

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

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

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

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

**CHAIRMAN SCHEUER:** Thank you, Commissioner

Chang.
COMMISSIONER GIOVANNI: Thank you, Chair.

Thank you for your testimony, Mr. Miyamoto. I just got some pretty specific questions. You've used the phrase "small farmer" and "large farmer." Can you explain to me, from the Farm Bureau's perspective, what is a small farmer? How big is it?

BRIAN MIYAMOTO: Thank you, Commissioner.

We don't necessarily have a specific definition. I know, you know, bonified farmer has always come up as a challenge and how to define it by parcel size. Is it by income? A lot of times we will use income and parcel size together. Majority of Hawaii farmers are small farmers.

In fact, you know, we really don't have, if you look at nationally, any true large farmers other than a few. Here on Oahu, maybe Larry Jefts could be considered a large farm, Honolulu farms. So we do use it quite a bit. Majority of our farmers are small farmers.

I'm not sure if I'm answering your question, Commissioner, so large farms are maybe those from more of an income along with acreage. You know, certain income threshold.
COMMISSIONER GIOVANNI: Yeah, you've pretty much explained my dilemma, because I can't figure it out on my own. But for example, is there any criteria that the Farm Bureau has to distinguish small versus large? Is a hundred-acre farm a small farm or a large farm? I mean, what insight can you provide to somebody that is not well versed in this area?

BRIAN MIYAMOTO: I think from an IAL standpoint, a land use standpoint, yes, they would be considered a large farm from an acreage standpoint. Because you can have a smaller operation that has higher -- that -- crops that produce higher profits per acre, so it would more be an acre -- again, within our policies, we do not break down. We tend to use, say, USDA statistics, and we can share what we would believe would be small or large farm as far as designations. You know, like five acres we would consider a small farm, but 50 acres, 100 acres, medium to large farms, several hundred acres, at that point, large farms, in Hawaii, for Hawaii standards.

COMMISSIONER GIOVANNI: I appreciate your perspective. Thank you very much.
Nothing further, Chair.

CHAIRMAN SCHEUER: Thank you, Commissioner Giovanni.

Commissioner Ohigashi?

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

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

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

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

COMMISSIONER OHIGASHI: And was there a
report issued by the TAC saying that these are the
criteria we should use separately from the city's
determination to use a certain criteria? Was that
an agreed upon criteria used by the TAC?

BRIAN MIYAMOTO: I'm sorry, Commissioner.

I can't answer that. I'm not aware what the 17 do.
I will -- I will speak to some of the members,
again, to see if there was, but I don't believe
there was.

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

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

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

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

    We want to see IAL. We are supporters of
IAL. But we also listen to our members on their
concerns and want to be able to address those
concerns and to assist our farmers to allow them to
continue to do what they're doing.
COMMISSIONER OHIGASHI: I'm just reacting to the city's supplemental brief, and I'm taking that as your official position, being that they're the city, and so those are my concerns. Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Ohigashi.

Commissioner Cabral followed by Commissioner Aczon.

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

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

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

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

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

But based on testimony, including ours,
there is some uncertainty within the language. I
don't think that is the intent to have the
uncertainty. I think when the legislature passed
the law in 2005 and 2008, I think they tried to make
it as clear as possible, but it appears at this
point there is some, at least, interpretation
dispute based on that language or a little
uncertainty and needing a little bit more clarity,
so that might be an approach that needs to be considered.

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

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

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

CHAIRMAN SCHEUER: Thank you very much, Commissioner Cabral.

Commissioner Aczon?

COMMISSIONER ACZON: Thank you, Chair. Just a quick follow-up on Commissioner Ohigashi's question. Were the members of the Farm Bureau at the TAC authorized to speak with our organization?

And secondly, are they small farmers or
large farmers?

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

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

   Second, are they large farmers or small farmers?

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

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

   COMMISSIONER ACZON: Thank you.

   CHAIRMAN SCHEUER: Thank you, Commissioner Aczon.
Mr. Miyamoto, clearly, the Commission has been very interested in and appreciative of your testimony as have I. And I'm going to make a statement and ask you to react to it. And if you think you've already responded to it in the questions from the other Commissioners, please say so.

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

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

My -- where I'm at so far is that when you have really brilliant people like Ms. Apuna from the city planning one thing but then the consultants to the city prior to things -- opining other things and other people saying, yeah, it does restrict it, no,
it doesn't restrict it, the language is bad. It needs clarification.

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

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

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

Again, I can't say right now that's what we will do, what we will propose. A session will be starting two weeks. There is a possibility -- I think our first testifier, Ms. Maluafiti, talked about quite possibly introducing legislation, but I think it is something that we need to consider and will take back to our organization and discuss it.
and see if there is (indiscernible) to get the
clarity so that we're not in the same place.

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

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

CHAIRMAN SCHEUER: Thank you very much for
those comments. I'll just add, though, it's not
really related specifically to this docket before
us, this is not the only issue I have with IAL.
We've learned over the course of a special permit
hearing on Maui that it is technically, under the
law, possible to put a solid waste dump on IAL lands
under the special permit provisions.
We have designated, as the Commission -- I voted against it -- designating cliff sides as part of an IAL position. We've granted landowner petitions where all their C and D and B lands got protected, and all their A lands were not. So I think a visit at the legislature of this critical statute could address more than just that housing issue, if we really want to succeed in what we're trying to do.

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

BRIAN MIYAMOTO: Thank you, Chair. Thank you, Commissioners.

CHAIRMAN SCHEUER: Okay. It is 10:48 a.m. I have -- well, there are four hands raised in the attendee room. Just for folks' information, we have 110 attendees. Four people have raised their hands. There are two hands from Bobby Correia. There's two Bobby Correias registered. I'm just going to assume, for the sake of erring on the side of caution, that these are two different people, both named Bobby Correia. I'm going to admit the
first one. And then Caridad Leiva has their hand raised.

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

So Bobby Correia, if you could enable your audio and video. You've been promoted to be a panelist. When you get promoted to be a panelist, you have access to enable your audio and video.

Trying again. Bobby Correia, if you could enable your audio and video.

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

BOBBY CORREIA: Hello, can you hear me?

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

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

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

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

BOBBY CORREIA: Yes.

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

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

CHAIRMAN SCHEUER: Awesome. Please continue, Mr. Correia.

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

CHAIRMAN SCHEUER: Hakoda.

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

We planted, like, trees here and there, you know, couple avocado trees or whatever. In some
places, they just die. So the property is just not farmable. So in designating -- sorry, my laptop fall down.

CHAIRMAN SCHEUER: No worries.

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

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

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

I'd like for mine to be opted out. I don't understand why it's in. I asked if I could opt out. I think I spoke to Dawn Apuna before, and she says, "Yeah, you'll be able to opt out." Then I sent the letter and never got a response, so I don't really understand.
I know you guys aren't making decisions now, but I just want to voice my opinion. My lands are not -- there's no way unless they dig up all the dirt, take them all, and some of the piles I dug down, and they were like ten feet deep.

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

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

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

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

Ms. Apuna?
MS. APUNA: No questions. Thank you.

CHAIRMAN SCHEUER: Okay. Ms. Kato, OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto, Department of Agriculture?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners, questions for Mr. Correia?

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

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

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

But we might not even get there. The Commission could say at the end of today, for various reasons, which I think you maybe have heard
in the discussion, we don't believe that it's right
to move forward with the city and county's
recommendations, in which case there's nothing
happening to a property at all at this time.

Does that respond to your question?

BOBBY CORREIA: Yeah, yeah, pretty much.

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

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

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

CHAIRMAN SCHEUER: Yeah. I believe we --
the letter that the Land Use Commission initially
sent out when we started this process and the letter
from the direct firm came right around the same
time, which might have also caused confusion to people as to who exactly was contacting them.

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

BOBBY CORREIA: Okay. Mahalo.

CHAIRMAN SCHEUER: Mahalo nui.

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

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

CARIDAD LEIVA: Hello.

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

CARIDAD LEIVA: Yes.

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

CARIDAD LEIVA: My name is Caridad Leiva.
My address is 87-1029 Iliili Road, Waianae, Hawaii 96792.

CHAIRMAN SCHEUER: Mahalo. Please proceed.

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

We had to purchase a $5,000 pump in order to -- sorry -- keep my mom's house from flooding.

This land, we would love to be able to grow things and plant on it, but the condition it is in now is not possible.

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

And to me, it kind of just -- it's scaring people off to want to, you know, sell their property to maybe investors who right now are buying up everything and not using the land to develop -- I mean, using the land to develop and not using it to
farm, because it's like you're putting more restrictions on us when we're struggling to make it as it is.

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

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

CHAIRMAN SCHEUER: Yeah.

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

And I got friends and family in this neighborhood who still don't know nothing about what's going on. And I try and inform them. They don't have the technical skills to go on these meetings or, you know, know what to do with a letter that they received. And most of the letters they
received is just recent from you folks, not from

city and county. And that's all. Thank you very
much.

CHAIRMAN SCHEUER: Mahalo, Ms. Leiva. Let

me see if there's questions for you.

City and county?

MS. APUNA: No questions.

CHAIRMAN SCHEUER: Ms. Kato, OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto, the

Department of Agriculture?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners, starting

with Commissioner Chang?

COMMISSIONER CHANG: Actually, Ms. Leiva,

I have no questions other than to tell you thank you

so much for your testimony. I really appreciate you

coming forward today, so thank you very much.

CARIDAD LEIVA: Thank you.

CHAIRMAN SCHEUER: Commissioner Giovanni?

COMMISSIONER GIOVANNI: I'd like to echo

Commissioner Chang in thanking you, Ms. Leiva, for

coming forward and clearly expressing your

frustrations and your feelings and your passions.

Thank you for that.
CARIDAD LEIVA: Thank you.

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


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

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

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

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

CARIDAD LEIVA: Yes. When I received it
in the mail at the residence, that was the first
time I ever heard of anything.

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

CARIDAD LEIVA: No, nothing from city and
county.

COMMISSIONER GIOVANNI: Thank you very
much.

CARIDAD LEIVA: Thank you.

COMMISSIONER GIOVANNI: Nothing further.

CHAIRMAN SCHEUER: Thank you, Commissioner
Giovanni.

Commissioners, anything further?

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

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

CHAIRMAN SCHEUER: Aloha.

I'm moving Ms. Leiva to being an attendee.

Okay. Folks, it is 11:03 a.m. I'm going to do this
in order that we actually are able to try and make
it through our business today. I'd like everybody
who potentially wants to testify to raise your hand
now. I want to get a count of who's going to possibly testify. I'm going to list those out, and then I'm going to stop there. We're going to go take a ten-minute break. We're then going to try and go through as many of those testifiers as we can.

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

MR. ORODENKER: That is correct, Chair.

CHAIRMAN SCHEUER: Yeah. So what I don't want to do -- and the reason why I'm going to err on the side of cutting off testimony, oral testimony, is that we have received a huge amount of testimony. And if we spend all of our day on testimony today, we will not be able to actually take up the substance of the matter before us and potentially further extend the unease and uncertainty that
So right now I'm going to read off the names of people who I'm going to be calling in order when we come back from break. Phil Rodgers, Racquel Achiu, Crystal -- sorry for my bad eyesight -- Posiolai, Dorene Cooper, Susan Smith, Sandra Van, Frances Kama-Silva, Leon Lapina, and Harrison Goo.

I will close testimony after Harrison Goo. I'm going to make one last announcement.

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

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

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

CHAIRMAN SCHEUER: It's 11:16. We are
back on the record. I'm going to read again the list of people who raised their hands prior to my cutting off having people additional -- opportunity for additional testimony.

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

Phil Rodgers, can you enable your audio and video? I have admitted you to be a panelist.

Phil Rodgers? There you are. I can see you. Now, if you could unmute yourself. There you are. Awesome.

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

PHILIP RODGERS: I do.

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

PHILIP RODGERS: My name is Philip Rodgers. My address is 68-346 Olohiio Street, Waialua, Hawaii 96791.

CHAIRMAN SCHEUER: Mahalo. Please proceed.
PHILIP RODGERS: Okay. I just wanted to reiterate that, yeah, my first notice of this potential designation was a letter from an attorney, dated April 12th, and subsequently I received the letter from LUC, from you guys, about this designation.

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

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

I also had some concerns. I understand that many of the land -- larger landowners were able to designate some of their lands as an IAL while protecting other parts of their property and their parcels from this designation. To my knowledge, this was never provided to the smaller landowners such as myself, and we're therefore stuck with the
I believe that this should be voluntary and that all the restrictions, benefits, tax implications should be known prior to the designation of my property being designated AIL, so that I can understand whether or not -- what this really means to me, okay?

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

PHILIP RODGERS: Excuse me?

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

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

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

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

PHILIP RODGERS: Okay. Yeah. So I don't
know -- I don't understand, you know, what the
implications are of this designation.

    CHAIRMAN SCHEUER: Okay.

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

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

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

    MS. APUNA: Nope. No questions.

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

    MS. KATO: No questions.

    CHAIRMAN SCHEUER: Mr. Yamamoto,
Department of Agriculture?

    MR. YAMAMOTO: No questions.

    CHAIRMAN SCHEUER: Commissioners,
questions for the witness?

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

    PHILIP RODGERS: Okay.
CHAIRMAN SCHEUER: So we did receive your testimony earlier as well, so rest assured of that.

Thank you very much for your testimony today. We appreciate it very much.

PHILIP RODGERS: Absolutely. Thank you.

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

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

RACQUEL ACHIU: Aloha. Thank you so much.

I'm sorry. I'm just running in from the ranch, so I'm kind of a mess.

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

RACQUEL ACHIU: Yes.

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

RACQUEL ACHIU: Yes. Racquel Achiu. My address is 66952 Kuewa Drive, and that's in Waialua 96791.
CHAIRMAN SCHEUER: Mahalo. Please proceed.

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

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

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

And I believe that there are so many different uses for the agricultural land that I believe that this IAL can impact people in so many different ways. Regardless of their land size, it will impact them in some way or another that may be different from myself. So I think it definitely
needs to go back to the drawing board, to be quite honest.

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

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

CHAIRMAN SCHEUER: If you can summarize, please.

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

CHAIRMAN SCHEUER: Mahalo nui for your testimony. Let me see if there's questions for you. City and county, Ms. Apuna?
MS. APUNA: No questions.

CHAIRMAN SCHEUER: Ms. Kato, OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto, DOA?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners,

questions for Ms. Achiu?

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

RACQUEL ACHIU: Thank you so much.

Mahalo.

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

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

Aloha.

CRYSTAL POSIULAI: Hi.

CHAIRMAN SCHEUER: We're getting some feedback there.

CRYSTAL POSIULAI: The other way.

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

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

CHAIRMAN SCHEUER: Okay. If she can mute
at least.

CRYSTAL POSIULAI: Yes.

CHAIRMAN SCHEUER: That will possibly eliminate --

CRYSTAL POSIULAI: How about now?

CHAIRMAN SCHEUER: That's better. Mahalo nui.

So I'm going to swear you in. And so your mother would like to also testify as well?

CRYSTAL POSIULAI: She's the next one in line.

CHAIRMAN SCHEUER: Oh, got it. Dorene Cooper?

CRYSTAL POSIULAI: Yes.

CHAIRMAN SCHEUER: Got you. Okay. Do you swear or affirm the testimony you're about to give is the truth?

CRYSTAL POSIULAI: Yes, I do.

CHAIRMAN SCHEUER: Okay. So name and address for the record and then proceed.

CRYSTAL POSIULAI: Okay. My name is Crystal Posiulai, 87630 Kalkama Road, Waianae, Hawaii.

CHAIRMAN SCHEUER: Mahalo.

CRYSTAL POSIULAI: So I'm testifying on
behalf of myself, who lives here with my mom. We farm -- we farm pigs, so ours is not agriculture, and that's a question that they didn't -- you know, that's one of the things that we don't know about.

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

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

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

So that's our whole -- my whole dilemma about this. The structure, the part where it says,
you know, "you cannot live on it unless you're actively farming." So that's our whole concern. And we do not support the IAL -- IAL designation. That's it.

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

MS. APUNA: No questions. Thank you.

CHAIRMAN SCHEUER: OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto, DOA?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners, questions for Ms. P Rectangular

CRYSTAL POSIULAI: Yeah.

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

CRYSTAL POSIULAI: Yes.
CHAIRMAN SCHEUER: We also heard your request to opt out, so mahalo nui for your testimony and for your persistence on this issue as well.

CRYSTAL POSIULAI: Thank you.

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

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

DORENE COOPER: I do.

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

DORENE COOPER: Yeah. Okay.

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

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

I recently just lost my husband in October, so it's only me and my kids. So my thing is when we bought this property in 1996, our thing was to take care of my family, my children, my
grandchildren, my great great grandchildren, and so forth. And we was going to farm and raise pigs.

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

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

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

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

**CHAIRMAN SCHEUER:** Mahalo nui. It couldn't be clearer what your position is. Mahalo
nui. Let me see if there's questions for you?

City and county?

**MS. APUNA:** No questions.

**CHAIRMAN SCHEUER:** OPSD?

**MS. KATO:** No questions.

**CHAIRMAN SCHEUER:** Department of Agriculture?

**MR. YAMAMOTO:** No questions.

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

Commissioner Chang followed by Commissioner Cabral?

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

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

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

Commissioner Cabral?

**COMMISSIONER CABRAL:** Dawn just said it, that I thank you to everyone who has testified
today. It's really unfortunate because it's so stressful, like you said, and then also, it's so fearful and stressful and that you've had to take time, like run in from work and take all of this time to show up. We already know -- we volunteered to show up, so we're sort of stuck here as Commissioners, even though we don't get paid for this.

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

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

DORENE COOPER: Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Cabral.

Commissioners, any further comments or questions?

I'm just going to acknowledge and thank you for lifting up your late husband with you in this testimony. Thank you very much for your
testimony. I'm going to move you back to being an
attendee.

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

Nice to see you again, Ms. Van.

SANDRA VAN: Good morning and thank you.

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

SANDRA VAN: Yes, I do.

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

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

CHAIRMAN SCHEUER: Please proceed.

SANDRA VAN: I have testified before, and
I thank you for hearing me again. I am still
opposed to this because I feel like it is sweeping
in nature. It does not take into account the fact
that there are very different soil properties and
capabilities, especially on small parcels of land
like I have.

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

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

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

So I'm hoping that this will be rethought.

Thank you very much.

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

City and county, Ms. Apuna?

MS. APUNA: No questions.
CHAIRMAN SCHEUER: OPSD, Ms. Kato?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Department of Agriculture, Mr. Yamamoto?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners, starting with Commissioner Cabral?

COMMISSIONER CABRAL: Thank you, Chair.

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

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

CHAIRMAN SCHEUER: Thank you for the disclosure, Commissioner Cabral.
Commissioners, any questions or comments for Ms. Van? Seeing none, thank you again for your clear and consistent testimony on this matter, Ms. Van. We appreciate it.

SANDRA VAN: Mahalo.

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

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

FRANCES KAMA-SILVA: There you go.

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

FRANCES KAMA-SILVA: Yes.

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

FRANCES KAMA-SILVA: Yes, I am.

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

FRANCES KAMA-SILVA: Frances Kama-Silva. I reside at 86412-C Lualualei Homestead Road in
Lualualei Valley. We also own the parcel adjacent to us, so two acres and 2.8 acres.

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

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

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

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.

    CHAIRMAN SCHEUER: Mahalo nui for your
3 testimony. Let me see if there's questions.
4
5 Ms. Apuna, city and county?
6 MS. APUNA: No questions.
7
8 CHAIRMAN SCHEUER: Ms. Kato, OPSD?
9 MS. KATO: No questions.
10
11 CHAIRMAN SCHEUER: Mr. Yamamoto?
12 MR. YAMAMOTO: No questions.
13
14 CHAIRMAN SCHEUER: Commissioners?
15 Commissioner Chang?
16
17 COMMISSIONER CHANG: Frances, this is -- I
18 don't have a question -- well, maybe I do have a
19 question. And I'm sorry to be (spoke Hawaiian). Is
20 that rattan in your background?
21
22 FRANCES KAMA-SILVA: It is, but it's from
23 our property in upper Hilo, on the Big Island,
24 Hamakua.
25
26 COMMISSIONER CHANG: Okay. Sorry. I was
27 like -- I was so amazed. It's like where -- I'm
28 sorry to detract. Thank you. Thank you. Thank you.
29 FRANCES KAMA-SILVA: You're welcome.
30
31 CHAIRMAN SCHEUER: Okay. Commissioner
32 Cabral?
COMMISSIONER CABRAL: Yes. Thank you.

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

FRANCES KAMA-SILVA: Yes.

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

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

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

FRANCES KAMA-SILVA: Thank you.

COMMISSIONER CABRAL: Aloha.

CHAIRMAN SCHEUER: Commissioners, any further comments or questions of the witness?
My admiration for your extremely effective multi-tasking. Baby didn't even disturb once, so mahalo nui for your testimony.

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

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

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

I'm moving Leon Lapina into the meeting to be a panelist. Please enable your audio and video.

Oh, aloha. Okay.

**LEON LAPINA:** Hello.

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

**LEON LAPINA:** Okay.

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

**LEON LAPINA:** Yes. Yeah.

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

**LEON LAPINA:** Leon Lapina. I don't have
no address. My address is (indiscernible) 2547.

That's all I --

CHAIRMAN SCHEUER: City?

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

96972.

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

LEON LAPINA: Yeah.

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

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

CHAIRMAN SCHEUER: Okay.

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

And part of the property is not airable.

We are adjacent to the West Oahu aggregate, of which that, you know, the city and county, Department of
Planning took, you know, which was part of the easement, and so that is our driveway, which is all coral.

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

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

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

Now, as far as the -- in the letter that's being generated just, you know, it's not even being specific on the properties. And there's so many properties on this island, and this island is an
agricultural state. Why -- and the pie chart of agriculture, that is not us that made it to where now you have to have important -- you know, make use of taking people's property to -- because of the false and, you know, the -- the city and county have done.

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

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

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

JOSEPHINE LAPINA: Yes. We are opting out of this, as I said, voluntarily. This is going to
be -- this is being taken arbitrarily, and we want to know what -- what specifically do they want to use this property for and how much and to take away our lives and livelihood and -- it's unconstitutional.

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

JOSEPHINE LAPINA: Yeah.

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

MS. APUNA: No questions.

CHAIRMAN SCHEUER: Ms. Kato, OPSD?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto, DOA?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners?

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

All we're looking at today is over whether we believe we find their overall process complied
with the law. If we say we believe they did, which
we'll deliberate afterwards, then you will get a
formal opportunity to say, "I object. I don't want
to be included in this."

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

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

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

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

CHAIRMAN SCHEUER: So it depends on what
happens. If we send it back to the city, then it's
up to the city on how they proceed and how they
inform, if they go forward.

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

JOSEPHINE LAPINA: Okay. Thank you.

CHAIRMAN SCHEUER: Okay. Mahalo nui for your testimony.

JOSEPHINE LAPINA: Thank you.

CHAIRMAN SCHEUER: I'm going to move you back to being an attendee. We have one final testimony from Harrison Goo. Promoting to be a panelist.

Aloha (spoke Hawaiian).

HARRISON GOO: Hi. Good morning.

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

HARRISON GOO: I do, yes.

CHAIRMAN SCHEUER: Okay. So name and address for the record and then proceed.

HARRISON GOO: Sure. My name is Harrison Goo. My address is 217 Prospect Street, Apartment F1, Honolulu, Hawaii 96813.

I am testifying today actually on behalf
of my client, NSR Farms, LLC, and its affiliates. I submitted written testimony in advance of this hearing on January 4, so I will not be reiterating all of the substance of that now. It is fairly lengthy, and you know, I am the last person to go, so I would like everyone to be able to get out of here in some expedited fashion. I'll try to be brief.

I have been listening to all of the testimony today, primarily from lay people, the landowners that were affected by the IAL designation. Part of the reason that I even raised my hand was, you know, I think there's quite a large disconnect between the process that the county purportedly implemented and what people's understandings of what their rights and potential remedies were.

In the letter that my client got -- my client was initially notified of the IAL designation under the statute HRS 205-47D-5. One of the things that the county was required to do was to include some kind of position statement from the landowners. So my client had anticipated being able to provide some argument or opposition to the designation, which did not happen.
In the Attorney General opinion letter that was issued on September 23rd, 2021, the county's compliance or failure with that particular section of the statute was not addressed. From what I'm hearing, almost no one received notice. Or if they did, notice was only received once the LUC became involved. And I think that there is a materially flawed issue because a lot of these people don't have attorneys, can't afford attorneys. They're just individual landowners.

CHAIRMAN SCHEUER: Mr. Goo, I'm going to ask you to summarize, please.

HARRISON GOO: No problem. Ultimately, I think the process is very complicated, and even the ultimate outcome of what the Attorney General decided was that this proceeding has to be quasi-judicial versus rule-making I don't really know that anybody who didn't have legal experience would know what the distinction between those two was and what their rights and remedies were, so I think there are some pretty significant due process concerns here, and I would hope that your committee and your Commission takes that into consideration when evaluating the efficacy of what the county did and just unilaterally deciding some lands were IAL-
designated and some were not.

CHAIRMAN SCHEUER: Thank you for testimony. Let me see if there's any questions for you.

DPP, Ms. Apuna?

MS. APUNA: No questions.

CHAIRMAN SCHEUER: Ms. Kato?

MS. KATO: No questions.

CHAIRMAN SCHEUER: Mr. Yamamoto?

MR. YAMAMOTO: No questions.

CHAIRMAN SCHEUER: Commissioners? Seeing none, thank you for your written and your oral testimony this morning. We very much appreciate it.

Okay. Let me -- I've moved Mr. Goo to be an attendee. Let me sort of assess for us all the status of our proceedings. I have closed public testimony on this matter because we need to move on to actually hearing final arguments from the parties and deliberation.

I'm going to suggest -- it's 11:55 -- after I'm done talking, we take a 35-minute break, go -- come back at 12:30 for lunch -- after lunch. At 12:30, we will hear from Ms. Apuna from DPP any final arguments, and we will get questions from the Commissioners for her. I will then provide the
opportunity for any final comments from OPSD and DOA, and then I will actually provide a further opportunity to Ms. Apuna to rebut anything that might have come up in the last two discussions with OPSD and DOA.

After that, we'll move on to deliberation. Does that sound acceptable, Ms. Apuna?

MS. APUNA: Yes.

CHAIRMAN SCHEUER: Ms. Kato?

MS. KATO: Yes.

CHAIRMAN SCHEUER: Mr. Yamamoto?

MR. YAMAMOTO: Yes.

CHAIRMAN SCHEUER: Okay. Commissioners, we're good? Meet back at 12:30.

Thank you so much to everybody who's been listening. We will reconvene at 12:30.

(Recess taken from 11:55 a.m. to 12:31 p.m.)

CHAIRMAN SCHEUER: It is 12:31. We're going back on the record. We will now hear final arguments from Dawn Apuna of the Department of Planning and Permitting of the City and County of Honolulu.

MS. APUNA: Thank you, Chair. Can you hear me okay?
CHAIRMAN SCHEUER: We can. Just was just suddenly static somehow. It might have been your mic hitting fabric or something.

MS. APUNA: Okay. Is that better?

CHAIRMAN SCHEUER: Yeah.

MS. APUNA: Okay.

CHAIRMAN SCHEUER: Please proceed.

MS. APUNA: Thank you, Chair. So I would first like to address some of the issues that were presented in written testimony. And this is with regard to renewable energy. Some are fearful that the IAL policy of HRS 205-43-3, which, quote, "directs non-agricultural uses and activities from IAL to other areas and ensures that uses on IAL are actually agricultural uses," will have a chilling effect on renewable energy projects.

The city believes that this policy guideline does not preclude or prohibit non-agricultural uses on IAL but more accurately does not allow the supplanting or displacement of agricultural uses with non-agricultural uses. We believe this policy guideline could allow beneficial non-agricultural uses such as renewable energy projects on IAL so long as bonified agricultural uses are included or incorporated on the same land.
in substantial proportion.

For example, in September of last year, the Commission approved a special permit for the Mahi Solar Project that includes agrivoltaics which currently locates agricultural activities with the PV panels.

As an island with limited land resources, the co-location of agriculture and renewable energy is renewable and the renewable energy industry to work with the agriculture industry to create authentic agriculture includes assistance with renewable energy.

There could be good synergy between the two where renewable energy projects help to offset agricultural infrastructure costs.

Next, the establishment of incentives prior to county IAL designation. Yes, it would have been ideal to have an abundance of incentives in place so landowners would be busting down the city's door to have their lands designated IAL. But without more incentives established, the Commission is not precluded from moving forward with designation for the city-recommended IAL.

It would not be legally premature or procedurally improper for the Commission to accept
the city's recommendation to designate IAL at this time. While the enactment of incentives is required by the state and the counties, nothing in the statute requires their enactment precede the designation of IAL.

Additionally, incentives were enacted, including the refundable qualified agricultural cost tax credit, farm dwelling and employee housing of 205-45.5 and agricultural processing facilities permitting prior -- prioritization under HRS 205-46.5. To stop this process to await the development and passage of more incentives will further drag this already exhausting overspent process, which this generation and perhaps the next will never see to completion. The city is currently looking at ways to support agriculture and to develop incentives to support farmers.

Next is the city has provided or -- someone said the city has provided conflicting information on the effects of IAL. The DPP has done its best to interpret and communicate the IAL statute and its effects on landowners. But if anything is conflicting or unclear and creating fear, it's the actual statute.

The purpose behind the farm dwelling and
employee housing provision is to incentivize and
provide a benefit, not a burden or restriction,
greater than the current farm dwelling restrictions.
If it is a greater restriction or even a deprivation
of a significant property interest, it's likely a
result of bad drafting and with unintended
consequences.

HRS 205-4016 requires review of incentive
measures for IAL to determine their effectiveness
and allow for modification as needed. If the farm
dwelling and employee housing incentive is having
the opposite effect of an incentive, as we've seen
here, and in fact deterring and dissuading and
causing fear to farmers and potential farmers, it
should be fixed.

Alternatively, the farm dwelling
definition could conform to the IAL definition. If
the Commission accepts the city's recommendation, it
can defer designation while legislation is made
during the upcoming legislative session to fix and
repeal portions of the statute that can be
interpreted as more burdensome than beneficial to
farmers and landowners.

With regard to the city's requirement to
provide notice, under HRS Section 205-47D, the
county process for the recommendation of IAL calls
for reasonable action to notify each owner of those
lands by mail or posted notice on the effective
lands, to inform them of the potential designation
of their lands.

The county notice is to inform landowners
of potential designation, not actual designation.
Again, the city mailed out notices to the 1,800
landowners and a second notice by mail, consistent
with the plain language of HRS Section 205-47D. In
addition, the city provided public notices to
newspaper, advertisements, and other media of the
many community meetings and city council meetings on
the IAL recommendation.

What are the steps for the Commission?
Moving forward, there are a lot of issues that may
have muddied what your next steps are. But to be
clear today, all you should consider and determine
is whether, one, the city properly complied with the
county process for identification of IAL under HRS
Section 205-47 and that the properly -- I'm sorry,
the city properly applied the standards and criteria
for IAL identification under HRS Section 205-44.

The city properly complied with the county
process for identification of IAL. The city first
identified and mapped potential IAL, accept lands that have been designated through the state and county planning processes for urban use. The city developed maps of potential lands for designation of IAL and consultation of landowners interest groups, et cetera.

The city developed an inclusive process for public involvement and identification of potential lands, and the development of maps of lands to be recommended as IAL, including a series of meetings. And the city took notice of those lands that have already been designated IAL by the Commission, and it took reasonable action to notify each owner of those lands by mail on the affected lands, to inform them of the potential designation for their lands.

And consistent with the AG's opinion, the city properly applied the standards and criteria of HRS Section 205-44 by evaluating all eight criteria, weighing them against each other to meet the purposes of Article 11 Section 3 of the Hawaii State Constitution and the objective and policies for IAL.

If the Commission accepts the city's recommendation today, which is all that you need to 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.

   If the Commission chooses to exclude
4 certain parcels, the downside is that it will be
5 counter to the IAL objective to have contiguous
6 agricultural lands, which is important in preventing
7 disruptive spot zoning and providing larger swaths
8 of land to take better economies of scale for
9 agriculture.

   However, it would be possible for an
10 excluded landowner to come in later for voluntary
11 IAL designation. There's no time limit or deadline
12 for IAL designation.

   By accepting the city's recommendation of
13 IAL, the Commission will undoubtedly have -- I'm
14 sorry, will undoubtedly take on the second phase of
15 the (indiscernible) task. You'll have to decide
16 whether to include or exclude certain parcels,
17 whether to conduct contested case hearings, and most
18 importantly, it will need to make the ultimate
19 determination of IAL designation.

   There's a lot more work to be done by the
20 Commission and the counties, including the creation
21 of effective incentives, but this is what is
required under the IAL process.

In the alternative, the Commission may remand to the city for further review or clarification; however, to be frank, it is unlikely that the city will be back before the Commission on this IAL any time soon.

Again, the city's recommendation and the designation of IAL complies -- I'm sorry, the recommendation for the designation of IAL complies with the requirements of Sections 205-47, 48, and 49 of Hawaii Revised Statutes, and the proper procedural legal statutory and public notice requirements were met in developing this recommendation.

Based on the record before you, the city has crossed the goal line. To ask for anything more would be moving the goal line on the city. We did what we were supposed to do under the IAL statute and rules, and we are done.

This proceeding and your decision today is unlike any that this or any other Commission has experienced. It is not comparable to any of the district boundary amendments or voluntary IAL designs which are, for the most part, neatly 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 discomforted 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,
particularly for the no pressure statement. That just made it all okay.

Commissioners, questions for the city?
Commissioner Chang followed by Commissioners Wong and Cabral.

COMMISSIONER CHANG: Where does one begin, Ms. Apuna? Undoubtedly, this is very difficult. I will tell you I came into today's hearing sort of with an inclination; however, after hearing Mr. Miyamoto -- because in my view, I think the city -- and maybe it's because I've worked in government -- did the best that it could given what it had.

But what I also heard from Mr. Yamamoto -- Miyamoto today was a willingness and a recommendation to remand this back and to work with DPP. And I know both in your pleadings and your statement right now, it is very unlikely that DPP will take this on again. And I'm sure that is the party line. Quite frankly, I'm glad that you're here, and not Dean Uchida, as I'm sure Dean would -- he would describe this in a very different way.

But if you have assistance from the Farm Bureau, they help to seek legislation for funding, you fix, you know, some of the uncertainties regarding -- or misunderstandings or
misinterpretations regarding farm dwelling. And I
am very concerned about the lack of incentives. I
think that that really is -- to me, that's the
spirit of this law.

I think -- and I know this was done before
you came onboard, but I think there was a lot of
checking off the boxes here and not so much
following the spirit of the law. I recognize that
the people who came before us over the last several
months do not represent a majority of the people
that you've designated. And I think those people
are out there farming.

But I saw the -- I view the Farm Bureau as
sort of representing their interests because these
guys are out there farming. But -- so my question
to you is, being very candid and, you know, we have
a long relationship with you, if there is
collaboration and assistance from the Farm Bureau,
you mentioned going back to the leg. to fix -- what
is the likelihood of this -- of DPP taking on this --
this task but with different partners like the
Farm Bureau and those that Mr. Miyamoto mentioned?

**MS. APUNA:** So if you're talking about a
remand and a redo of the process, again, I think
we've met -- in a way, yes, we've checked all the
boxes, so I don't think there's more we could do.

But we are completely welcome to working with the Farm Bureau, the different farmers, to start looking at what incentives are needed to help these farmers.

I think we can do that. I think we can move forward and try to really address some of the barriers to farming and figure out how we can help them so that when the designation is made, that they can take advantage of these different opportunities.

But we can do that. I don't think we need to stop and look backwards. We should just move forward and try to create those incentives. And with everyone that is affected, whether it's the Farm Bureau or farmers or other agencies, we are -- we can definitely do that.

COMMISSIONER CHANG: So bottom line, it is unlikely that the city will go back and redo this process all over again?

MS. APUNA: I think, without specifically pointing to where we have failed under the county process or how we used the standards and criteria in an improper way, I don't know how we're supposed to go back and change anything without knowing what that error was.

As far as, you know, the farm dwelling
issue, I don't know if that's for us to fix, but it
-- I think we agree that people shouldn't be scared
by it, and there should be clarity. It should be
benefit. It should make people want to be part of
IAL and not run from it. So if that needs to be
fixed, that's a state statute that, you know, needs
to probably be looked at, just for the comfort of
all these people that are testifying and feel that
it's doing things that don't want them to be part of
IAL.

COMMISSIONER CHANG: But there's also an
enforcement issue as well, right, that the DPP has
jurisdiction over? Clearly, not everybody's farm
dwelling is associated with an agricultural use.
And DPP -- besides enforcement, DPP is also issuing
building permits to people on these ag lots to
permit them to do these dwellings, and that may have
happened before your term.

People relied upon those permits that were
given, knowing that that was the zoning. So you
know, I think -- and I'm sure this is going to be on
a case-by-case. But in your opinion, knowing what
you know now, would you do anything different on
outreach and consultation?

MS. APUNA: You know, I -- truthfully, I
don't think I can say I would have done anything differently. I think when an agency has this directive, and it is pretty broad and loose, you just try to find what the checkboxes are, and you do everything you can do to check them off. I mean, it doesn't sound -- probably not the answer you want to hear, but I think we're trying to -- we're trying to do the right thing under the statute. That's the guidance that we've been given and it's the administrative goals, so I can't say that I would necessarily do it any differently.

It's been a very long process, so many different people involved, so I can't fault anyone before me that didn't do the right thing. I think they tried to do everything possible to follow what was required of them.

COMMISSIONER CHANG: And you're right. I mean, I'm not faulting anyone. I think due to just time, the length of time that it took. If this would have happened in three years, I think that would have been very different outcome than what we have today.

I suspect you would agree with me, and we've sat through numerous hearings together, merely
checking off the box on community outreach and engagement -- I mean, obviously, many of these people have no idea what IAL means. They think you're going to evict them or take their land away, so there's a lot of misinformation.

I'm not saying that reflects everyone. But merely checking off the box, I don't know if that's the right thing. That is -- I mean, you're complying with the law, so -- okay. I will let other Commissioners address any questions they may have to you. I appreciate the hard place that you're in -- the rock and the hard place, and you guys are trying to do the best you can.

But finally, I thought I also heard you say if the lands aren't designated IAL, it really doesn't change the city's commitment to supporting sustainable ag, and that you will continue to support them, try to adopt some incentives. So it doesn't diminish the city's commitment to sustainable ag if there's not an IAL designation.

Is that what I heard you say?

**MS. APUNA:** Yes. That's correct.

**COMMISSIONER CHANG:** Okay. All right.

Thank you, Ms. Apuna.

Thank you, Mr. Chair.
MS. APUNA: Thank you, Commissioner.

CHAIRMAN SCHEUER: Okay, Commissioner Chang.

Commissioner Wong followed by Cabral.

COMMISSIONER WONG: Thank you, Chair.

Thank you, Ms. Apuna. As you know, we have laws. And I understand we have laws and statutes and rules, but it was made up from the people -- the people to protect the people. And I mean, no offense, but I've kind of taken some offense to your closing statement, because we are here to help the people and protect the people and to protect the land.

Our job, to me, is to assist, not to stop or stifle. And I guess what I'm trying to say is, you know, yes, we're going to check -- as Dawn said -- Commissioner Chang said, we're going to check the boxes. But is that correct? Or is that the only thing we have to do?

Or do we have to do more to help to alleviate? You know, we're -- everyone doesn't like government. We heard it from all the testifiers. They don't trust government. And if government says, "We are checking the box and that's it. Too bad," then why do we have -- you know, what is
government, then? Government is stifling to me.

Government should be there to assist and to help the people.

You know, I'm very concerned about, you know, yes, you guys did a TAC. You guys did an outreach, but from what I heard and gathered, people didn't -- said, "so, I didn't get any call back. I didn't do anything," you know, "nothing came back."

And so I'm just trying to say if we remanded it back, I hope that the county understands they are for the people, not for the laws also, but yes, they're for the laws, but they have to protect the people and assist the people in protecting our small farmers. So that's what I'm trying to say, Ms. Apuna.

I know it's not a question. It's just a statement, but I just hope you understand where I'm coming from, and I wanted to say that. Thank you.

MS. APUNA: Thank you, Commissioner. I mean, I -- I -- sorry if I offended anyone. It wasn't my intention. I think we're trying to do what the state wants us to do under the law, and so -- and we do want to do what's right for the people.

But you know, a lot of this even, I think, that we heard today that the law itself, the IAL
law, it wasn't -- maybe didn't provide some of the protections that people are asking for, whether it's an appeal process or specifically to opt out. I think we did take in any information that was given to us, and we tried to respond accordingly.

But yeah, I think that there could be more within the IAL process that would have satisfied the general public and the landowners. But it wasn't in there, and I can understand a lot of the issues that we're hearing today, but we do -- I think our intention is to help -- to definitely help farmers to grow agriculture and to do the right thing.

COMMISSIONER WONG: Yeah. So I got a question for you. You know, Mr. Miyamoto, I think Ms. -- the first testifier, Ms. Maluafiti, said, "We're willing to go to legislature because right now it's unfunded mandate." Unfunded meaning -- for those people out there, meaning you didn't get any money to do this. So it's a mandate -- it's a law that has no money attached to say, "Here, county, here's the money."

So if we remand it back, could you -- because session is coming up, could you work with Farm Bureau and others to say, "We'll go back, try to fix the law. Let's get some funding." I mean,
maybe that's a possibility to work -- to look at, too. So I just wanted to state that for the record.

MS. APUNA: Yeah. I mean, I think, again, we'd have to know what we would have to fix, because I don't think it's clear what -- how we erred under the law. But we're definitely open to working with the Farm Bureau and others to -- you know, if there's legislation, that would be helpful.

COMMISSIONER WONG: Thank you, Ms. Apuna. I wish you a Happy New Year, if I didn't say that before. But thank you, Ms. Apuna, again.

Thank you, Chair.

MS. APUNA: Thank you, Commissioner Wong.

CHAIRMAN SCHEUER: Thank you, Commissioner Wong.

Commissioner Cabral?

COMMISSIONER CABRAL: Thank you, Chair.

Yeah. Thank you, Ms. Apuna. And you always write up such a good -- make such good presentation. It's always so pleasant and somewhat convincing, but I don't agree.

But it's been touched on now quite a bit, including your last few comments, and I am more and more hearing our feeling like -- well, absolutely, the situation is flawed; however, it came down --
whatever happened, there's a whole lot of problems here because a whole lot of people didn't know, don't know, whatever, whatever.

And then on top of that, I get -- the more deep we get into it, I feel like what you just said, there are some flaws in the actual legislative laws that was passed, or the details of it, that when put to actual application, do not work out.

So do you think that it should go back to the legislature? Is that something you would see us being able to try and do to send it back to the legislature for a better rewrite or clarity before the city and county would want to attach this again?

**MS. APUNA:** I think you could accept our recommendation and still move forward with making some changes to the statute. I think that we should all move forward in every, you know, capacity.

We definitely have satisfied whatever the Commissions have been set up currently. I think the issues with some of the discrepancies on the farm dwelling, that's not our doing, or we didn't create the discrepancies, and we don't need to address those in order for the Commission to just accept our recommendation.

What I'm saying, though, is that once you
accept the recommendation and before you actually
designate, there can be things done such as
legislation that maybe repeals the farm dwelling
portion so that people aren't concerned that it's
not clear or that it's taking away certain rights.
And you can also not include certain parcels.

But in the end, if we move forward, if you
accept our recommendation and we do these things, we
can, you know, designate IAL and work on incentives
and just move closer to protecting and preserving
agricultural land, which is the main objective,
right, to protect it and to help invigorate it.

So I don't think we need to stop. We can
just go forward and make some little changes, if
possible, but keep moving forward and doing certain
things in tandem is completely allowed under the
statute, and it's a matter of time, and we should
keep going.

COMMISSIONER CABRAL: I appreciate your
commitment and your dedication to your new job
title. But I got to tell you I’m really a long ways
from wanting the way the city and county is moving
forward doing this, to have that go forward, because
it concerns me that there's potentially hundreds of
people out there, if not thousands, who don't even
understand what's going on to even know that they could opt out or whatever, whatever into the future. So I would be -- I'm not going to support going forward. I can say that right now, and I'm just looking to see, based on what comment -- even some of your comments, as well as Mr. Miyamoto, and clearly based on all the people, I'm more and more thinking it should go back to the legislature. And I'd like to think that Land Use as well as your office could give it a whole lot of suggestions on how the clarity would need to be worked out, because we certainly don't want to spend this many days, hours, not to mention all of the public people that have spent the hours meeting with us to testify and to write things, as well as the stress in between those hours that these individual farmers and ranchers have had to go through. I don't want to share that with any other county moving into the future. So okay. Thank you very much, though, for your dedication to the job.

MS. APUNA: Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Cabral.

COMMISSIONER OHIGASHI: By saying that
you're -- we're accepting your recommendation sort
of misleads -- sort of misleads what we're actually
doing.

But what I think we're doing here is
you're saying -- you're telling us -- you're asking
us to make a finding that the report recommendations
that coming from the city and county met all the
requirements that we -- that it was meant to do, was
-- went out there and doing some adequate fact-
finding and determining where the line should be
drawn.

And it is for Land Use Commission to make
the determination utilizing due process rules that
the Attorney General has indicated in their opinion,
make the final decision as to whether these lands --
whether or not these lands should be located within
-- should be designated IAL lands. Is that my
understanding of what your presentation is all
about?

**MS. APUNA:** Yes, I think that's correct.

Today, you can accept or find that the city met the
county process and the standards and criteria, and
then it's the Commission's duty to -- or decision to
actually designate the lands for IAL.

**COMMISSIONER OHIGASHI:** And so that would
leave the Land Use Commission with several options, right? One, it could accept your recommendations in total as a finding of the Commission that, yes, this should be redesignated as IAL lands.

Or two, it could say, hey, some parts of it we like; some parts we don't like. So these are the areas. Or three, we could just sit on it and do nothing, isn't that right? Because I don't know of any time limit or time extension that -- time requirement.

MS. APUNA: Yeah. I'm not aware of a -- I think that you need to find that the record is complete. And as far -- once it's complete, I think you have 365 days within which to designate. But yeah, I think those are the only deadlines involved.

COMMISSIONER OHIGASHI: So essentially, we can say the record is not complete because the statute is incomprehensible or unenforceable, is ambiguous, and we -- before we complete the record, we could ask the legislature to do something, is that right?

MS. APUNA: So I think if you're talking about the rights that -- rights -- the property owners' rights with a designation, I think that's separate from what we're doing today and separate
from whatever the county's influence is on what
determines the rights of these landowners. The
statute --

COMMISSIONER OHIGASHI: So I --

MS. APUNA: Uh-huh?

COMMISSIONER OHIGASHI: I'm just talking
about procedure. And I'm just not -- I'm talking
about if we accept the report or, using your words,
accept the county's report, and we -- we have these
options. And so long as the record is incomplete by
us, there is no time limit for us to act.

We could make a determination that the
record cannot be complete because the legislation is
flawed. Is that right?

MS. APUNA: I think you could -- you could
sit on it, but, again, I don't think that what the
city and county has done, it's not flawed because of
the process. I think there might be flaws in, you
know, the restriction --

COMMISSIONER OHIGASHI: I understand your
arguments.

MS. APUNA: Uh-huh.

COMMISSIONER OHIGASHI: I just wanted to
get the options available.

The last thing is that what prejudice
would there be to landowners who chose number three, my option number three? Does potential designation have an effect of detriment to the landowners themselves?

MS. APUNA: No. I think their current -- the current interest or rights would remain the same until you made the designation of IAL.

COMMISSIONER OHIGASHI: Your -- the city's position is they don't believe that there will be any detriment to the landowners (indiscernible) the legislature to decide?

MS. APUNA: No. No -- yeah, no change to their current status as a landowner.

COMMISSIONER OHIGASHI: And the only reason why I'm asking this is I'm just trying to see what my options are. Thank you.

MS. APUNA: Thank you, Commissioner.

COMMISSIONER OHIGASHI: Oh, and Happy New Year, too.

MS. APUNA: Happy New Year to you.

CHAIRMAN SCHEUER: Thank you, Commissioner Ohigashi.

Commissioners, further questions for Ms. Apuna?

Commissioner Giovanni?
COMMISSIONER GIOVANNI: Thank you, Chair.

Greetings, Ms. Apuna. Nice to see you in 2022.

MS. APUNA: Nice to see you, too,
Commissioner.

COMMISSIONER GIOVANNI: Just a quick follow-up on Commissioner Ohigashi's option number three. If we chose that and the Commission did not -- or decided not to act on it, is your interpretation that the landowners would still have an option to voluntarily proceed to designate their own land as IAL?

MS. APUNA: Yes. Yes, they could voluntarily designate their land.

COMMISSIONER GIOVANNI: So any landowner that decided they wanted an IAL could seek to do that voluntarily, and any landowner that did not want IAL, by not acting and by the Commission not acting, would have status quo?

MS. APUNA: Yes, that's correct. I think that the only differences with the county's process, we're doing it for them. If they do it on their own, they're going to have to -- yeah, on their own accord and with their own financial ability to do so, they would -- they would come before you
individually.

COMMISSIONER GIOVANNI: Okay. Thank you for that. I want to move on to some other stuff. Your opening statement -- in the beginning of your statements today, you talked about whether or not IAL precludes renewable energy developments. And you cited a very specific project, which the LUC approved in recent months, which was actually called -- they called themselves Agrivoltaic Project. Is that the one you referred to?

MS. APUNA: Yes.

COMMISSIONER GIOVANNI: My perspective is that agricultural lands could be dedicated for agriculture purposes; they could seek -- currently seek a special use permit to put on a renewable energy project, but if designated IAL, they would be forced to do an agrivoltaic option, basically that narrow option.

Is that what you're saying when you mean it does not preclude renewable energy?

MS. APUNA: Yeah. They would definitely have to have an agricultural significant -- you know, substantial agricultural component.

COMMISSIONER GIOVANNI: I'd just like the record to show that my interpretation of that
project that we approved was somewhat experimental, and it also included substantial acreage not dedicated to renewable energy that would be surrounding the solar panels that would be used for grazing.

So I'm not convinced in my own mind that it's a classic, typical, prototypical project that could be characterized as something that would be straightforward and can be accommodated on IAL land without problem. I'm not -- that's not a question. It's just my own perspective.

So as much as I supported that project, I think it was unique and not prototypical of what we can expect for IAL land going forward.

**MS. APUNA:** And I agree, Commissioner. You know, we look at those case by case. And like you said, that was kind of experimental or something new. And we hope that some of these developers of renewable energy, that they continue to look at the most -- really try to come up with creative ways that go beyond and we're -- we don't want to just have a few goats on -- underneath the panels kind of thing. So it's a good opportunity for more development in that area, definitely.

**COMMISSIONER GIOVANNI:** Well said. And I
I agree with your perspective. I want to switch gears a little bit. One of the things that really troubles me about what the county did and how they interpreted their role in this process was when they interpreted the intent of the legislation to do large -- I think these are your words -- large swaths of land that were contiguous and all IAL next to each other.

And in doing so, you avoid a patchwork of parcels owned by different entities, some of which would be IAL and some not. Is that a proper characterization of what -- how you interpreted -- how you implemented your process?

**MS. APUNA:** I think -- so the policies and goals of IAL, it does recommend contiguous parcels, and I think I mentioned that larger tracts, I've heard -- I don't know -- at least five acres, as far as economies of scale. It's -- it makes it easier for farmers to farm.

When you have spot zoning or you have (spoke Hawaiian) that aren't IAL or ag, they tend to threaten the surrounding areas with urbanization, so it's more of a protective measure. But I understand there's a lot of issues under that, whether it's small parcels, but it -- all of these policies and
standards that we used, which are in the -- you know, it's part of the standards and criteria. I think we try to, as best as we could, interpret that and to apply it accordingly.

COMMISSIONER GIOVANNI: Well, you may feel that way, and I can understand why you feel that way. But there's been an outpouring of the public that the small farm owners do not feel that way. They feel they're being swept up in the process and just in order to have a contiguous swath of property really dominated by the larger landowners as opposed to the smaller landowners.

At the same time, we're hearing that they've not been given a process by which they -- at least one that they understand or that they could follow through on, which would allow them to apply for an appeal or an exemption or to opt out in doing so.

So it seems to me to be out of balance. In fact, it seems to be out of balance to the benefit of the large landowner and the large farm. And here I'm talking about small and large farms, and the Executive Director of the Farm Bureau couldn't even tell me what the difference was between a small and a large farm. The criteria is
just not there.

But I could sense from the community members that have come forth, many of which who have lived on the land they own for decades, that one, two, three acres of land is a small farm. And I'm concerned that the -- what's driving the IAL are the large landowners.

And it may work very well for them, but I do not feel that the county has adequately addressed the concerns of what I call the small landowners. I'll just leave that there. You can comment if you wish.

MS. APUNA: Yeah. I understand what you're saying, Commissioner. I do think that, you know, that these smaller farmers that are part of that, maybe they're not every single small parcel, but this county process is supposed to help them and provide them the opportunity to take advantage of the incentives. So it's a hard balance between the two.

COMMISSIONER GIOVANNI: It is.

My other concerns were adequately questioned by my former -- my other colleagues, other Commissioners, so I will leave it at that.

Chair, I'll return it to you.
Thank you, Ms. Apuna.

**MS. APUNA:** Thank you, Commissioner.

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

Commissioners, further questions?

Commissioner Aczon?

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

I believe doing nothing is not the best option that we have. We need to give these property owners some closure. Doing nothing is just putting some kind of limbo to everybody.

So I'm just kind of wondering what is the city's -- how much is city's commitment on this. So besides the -- besides accepting your recommendation, city's recommendations, the other options would have -- will take time and not to mention some money.

I'm just trying to kind of -- you know, presentation to me is telling us we made our recommendations, take it or leave it. That's how I feel it -- feel your presentation.

So again, besides accepting your recommendations, the other options are -- will take some time and money. If we accept your recommendation, I feel that the Commission is going
to be ending up doing the work that city should have
done, to take the -- giving the incentives or
determining what, you know -- what properties has
the option of opting out. So we going to end up
doing the work if we go with your recommendation.

The question I have is, how much -- out of
those options that we have, how much -- where does
city can assist us the most?

**MS. APUNA:** So I think we are definitely
committed to working with farmers and other agencies
to figure out the incentives part of this whole
process and trying to address that and make it
better for farmers who are in the IAL-designated
areas.

**COMMISSIONER ACZON:** How about in this --
if we take it to the legislature, how you can help
us -- how the city can help us?

**MS. APUNA:** Well, I think that
specifically, if the issue about the farm dwellings
and employee housing is causing so much angst and
fear, I would suggest that that be amended or
repealed. Because if that's taken out of the
equation, then we're just relying on the current
definitions of farm dwelling, and so there's no
change in the rights of potential IAL landowner.
And then --


MS. APUNA: But I mean, I feel like this county, we've gone through the whole process. I don't know where the other counties are. I'm sure they're listening or watching and learning.

But if you want more in that process, if you want to require more from the other counties, as far as appeals processes or other things that came up, I think you could add that. But I feel that the county has gone through the process itself and as it currently stands.

COMMISSIONER ACZON: Yeah. I -- I hear you loud and clear, and that's the city's position.

The other option is probably out of the question, remanding it to the DPP again. I guess, based on your testimony, if you remand it, the city's not going to do anything on it.

So my other questions kind of basically the process later, whether we accept your recommendation. I want to kind of see what comes -- what process comes next. So I guess, the question is for our second above the Chair or the Chair.

Thank you very much, Ms. Apuna.
Thank you very much, Mr. Chair.

MS. APUNA: Thank you, Commissioner.

CHAIRMAN SCHEUER: Mahalo, Commissioner Aczon.

Commissioners, further questions for Ms. Apuna?

Commissioner Chang?

COMMISSIONER CHANG: Oh, sorry.

Commissioner Giovanni's discussion raised a point for me.

Ms. Apuna, you indicated, one, that if -- that the private landowners, they could -- there's nothing to preclude them from filing their own petition, is that right? Is that what you said?

MS. APUNA: Yes.

COMMISSIONER CHANG: But my understanding, when I go back and I look at the rules, if a private landowner seeks to petition, don't they have to comply with -- adhere to Chapter 343?

MS. APUNA: I don't recall. I don't recall.

COMMISSIONER CHANG: I think so, and I think that's why this -- the county process was deemed to be sort of facilitating, you know, a lot of these smaller farmers. And I think you even said
the smaller farmers -- many of those are the ones who came before us -- it's the incentives that were intended to help drive them. But in this case, we don't have those incentives.

The large landowners, I think the incentives have been provided for in the statute. As long as they designate more than 51 percent, no other lands get designated. But for these farmers who have, you know, less than five acres, the designation is the entire property.

So I think -- and I -- as I understand your position, you know, what you're saying is just accept -- just find that the city has met -- has satisfied all of the criteria. There's been adequate consultation and you have satisfied the criteria to designate because you have the TAC and you've applied, and you balanced all of the criteria in coming up with these amounts.

Is that -- that's basically what you're asking us to do today, right?

MS. APUNA: Yes. I think that's what you guys are tasked with today.

COMMISSIONER CHANG: Right. But if any one of those are fundamentally flawed, for example, if there is a question about the adequacy of the
notification, I mean, again, I think, you know, our
exchange was, you guys did the best that you could,
but the lapse of time creates these voids, and it
doesn't look like the city filled the void with
anything.

At least for most of these people, they're
-- they got their information from LUC, and I
appreciate -- I applaud the effort by LUC staff. I
mean, they did an extraordinary job notifying, but
that's how most of these people got notice, or
through the lawyers, but it sounds like the city
went on silent.

So if we find that you checked off the
box, you know, in years three and four, but you did
nothing over the last seven years, I don't -- I
don't know if I feel comfortable saying that that's
-- that that's adequate notice, because, through
that lapse of time, the city provided no additional
information.

I think at the beginning when you had
consultants, you did a lot about -- so again, if
what I'm hearing you ask us and what we're tasked
with today, if we find that there's a fundamental
flaw in either one of those, the consultation or the
criteria -- because Office of Planning has -- OPSD
has also -- and we'll ask Ms. Kato, but they
recommended that there be some -- some -- some
smaller parcels less than two acres and any state
land -- so they've asked for things to be deleted.

My concern is that if we start
piecemealing and doing these deletions, that, to me
-- that -- that does impact the fundamental
criterias that the city applied. So it's becoming,
for me, much more difficult to even say
procedurally, that there's been adequate compliance
given some of these additional issues that have been
raised.

So okay. I just wanted to clarify that
with you. Yes. I just wanted to clarify that with
you. So okay. Thank you very much. Nothing
further.

CHAIRMAN SCHEUER: Thank you, Commissioner
Chang.

Commissioners, anything further? I have
some questions for Ms. Apuna. I know we've been
going an hour. I probably have five to ten minutes'
worth. Do we want to break, or do we want to finish
my questions and then take a break? Okay.

Ms. Apuna, we're going to start with
quoting -- I'll say I preferred and appreciated your
written supplemental arguments far more than your oral closing today.

You made a statement in your written that said, "any dissatisfaction or frustration in the outcome of the county IAL process should be directed at the IAL statute that created the process, not the city that properly implemented the process." I think I've read that correctly.

MS. APUNA: Yes.

CHAIRMAN SCHEUER: Okay. So I want to explore that. Touching first on what Commissioner Chang just mentioned. There was -- how many years of a gap was there between the time when the city, through its consultants, held community meetings, and you presented the final maps to the LUC?

MS. APUNA: Let me make sure I have it correctly. I have staff available, too, who might - - if they have it sooner than I do. Okay. The third community meeting in IAL was in 2017, November.

CHAIRMAN SCHEUER: And the petition was presented to us?

MS. APUNA: 20 -- I'm not sure.

Dina, do you know?

MS. WONG: The city finalized our IAL
report in 2018. And once we transmit it to counsel
--

CHAIRMAN SCHEUER: Dina, I'm going to
swear you in. Sorry. Do you swear or affirm the
testimony you're about to give is the truth?

MS. WONG: Yes.

CHAIRMAN SCHEUER: Okay. Dina Wong,
please continue.

MS. WONG: Dina Wong, Department of
Planning and Permitting, Planning Division.

Once we transmitted to city council in
2018 -- I don't have the exact date -- it's in city
council's hands, and they do the notifications in
terms of when it's going to be offered at city
council and at the Zoning and Housing Committee
meetings --

CHAIRMAN SCHEUER: Well, when did the LUC
-- just focus. When did the LUC receive it from the
city?

MS. WONG: The complete record was
transmitted -- no -- you guys have that on you. I
think it was last year.

CHAIRMAN SCHEUER: 2021. I believe you're
correct.

MS. WONG: 2020?
CHAIRMAN SCHEUER: So either -- from 2017 to either 2020 or 2021, correct?

MS. WONG: Yes.

CHAIRMAN SCHEUER: Okay. Thanks. So now I want to go back to questioning Ms. Apuna.

So do you find that that gap in time still means that you fulfilled the requirements of the statute despite that gap in time?

MS. APUNA: In what sense are you saying that?

CHAIRMAN SCHEUER: Does that gap in time between when you held your last community meeting, where you actually engage with the public, giving them reasonable notice, to when it came to us, do you feel that you've complied with the statute in that regard?

MS. APUNA: I think so, and I think that the additional hearings by the city council and notices continue to --

CHAIRMAN SCHEUER: Notices to --

MS. APUNA: -- inform --

Public notices. Notices to the public --

CHAIRMAN SCHEUER: The city council meetings.

MS. APUNA: Yes.
CHAIRMAN SCHEUER: Okay. Do you have any idea how many properties changed hands between 2017 and it coming to the Land Use Commission, of the 1,800 properties involved?

MS. APUNA: No, I don't know.
Dina, do you guys have any? No.

CHAIRMAN SCHEUER: So would -- whether or not a new property owner who had acquired this between the last public meeting and this coming up, how would that perhaps affect your definition of reasonable notice to the property owner? Are you saying it doesn't matter?

MS. APUNA: Well --

CHAIRMAN SCHEUER: It's a simple question, Ms. Apuna.

MS. APUNA: The reasonable notice as --

CHAIRMAN SCHEUER: If it's -- if there is some new property owners from the time you went from 2017 to when it came to the LUC in 2020 or 2021, three to four years, you still feel that these new property owners have received reasonable notice from the city? And which we don't know how many because you're not reporting to us how many there are.

Yes, no, or I don't know in terms of you feel that that complies with the reasonable notice
requirements of the statue?

MS. APUNA: I don't know. I mean, it's --

CHAIRMAN SCHEUER: Okay. That's fine.

Do you feel -- given the various interpretations of the practical impact of the different definitions of what you can do with housing on IAL versus non-IAL ag land, do you feel that the representations made by the city and its consultants have been consistent and accurate throughout the entire process?

MS. APUNA: I think we've consistently said that we didn't -- we thought it was little to no effect.

CHAIRMAN SCHEUER: Right. Do you recognize that there are perhaps reasonable people who disagree with that?

MS. APUNA: Yes.

CHAIRMAN SCHEUER: I believe you've stated that in your response to other Commissioners.

MS. APUNA: Yes.

CHAIRMAN SCHEUER: Okay.

MS. APUNA: Yes.

CHAIRMAN SCHEUER: We've heard -- we haven't conducted sort of evidence other than oral testimony from landowners, of people saying, "Hey, I
have this land. It's rocky" or "it's under water"
or "it's half in a stream bed" or, you know, "it's
just coral fill or it's filled -- old landfill, but
it's clearly not IAL -- it's clearly not farmable
land," or "I have no access to water."

How -- explain -- what am I missing that's
where your transmission of that to us is a proposed
parcel that should be designated as IAL, sort of
fulfills the statute's requirements?

**MS. APUNA:** Well, I think, you know, we
try to apply -- you know, we evaluated and applied
all of the eight criteria. Like, these are the
eight criteria. None of them say to disallow
certain types of property, whether they're too
rocky, they're too steep, there's -- you know,
they're not farmable. The criteria we have and the
basic policies of the IAL statute are pretty
general.

I think, based on the process that we went
through in identifying how the criteria should be
applied and their actual application when looking at
the maps and comparing them, and also the
calculation of what would actually -- that -- the
end result would go from hundred -- I'm sorry -- 103
to a thousand acres down to, you know, ten, and I
think there's a lot lost and --

CHAIRMAN SCHEUER: Well, I guess, here's what I'm trying to get at. You're proposing to us -- you said we could accept your thing in entirety as one of our options, which would designate as IAL, based on the information of -- the limited information from landowners' testimony, is clearly not farmable agricultural land. How does that fulfill the statute?

MS. APUNA: Because the statute says it doesn't have to necessarily -- that it has the -- I mean, the -- that the -- one of the objectives of IAL, as it is defined as important ag lands, is that it will contribute to -- I'm sorry. It's needed to promote the expansion of agricultural activities and income for future, even if currently not in production.

So I think it's the possibilities that can happen with that land. I mean, you say it's not farmable, but you know, I think one witness said it's not farmable because there's maybe some pollutants, there's some tires on it, there's some (spoke Hawaiian). But is it really not farmable, I mean, if they're able to somehow clean it up?

So I don't -- I think that it's trying to
be as inclusive as possible and to -- there's
nothing in the law that says that we have to take
out certain physical -- lands with certain physical
features.

CHAIRMAN SCHEUER: Okay. I hear your
response. Thank you.

My last, I think, question on this line is
so you know, one of the things that happens, and I
think has made this so much more difficult is that a
letter went out from a private law firm. It made
some fairly smited statements about the impact of
this action, things saying like -- that you know,
this might be their last chance to do anything and
this was going to dramatically affect people's
property rights.

Was there any legal requirement in the
statute that the city, which was aware of this
letter going out and aware of this petition coming
in front of the LUC -- was there any legal
requirement the city had to reach out and say, "hey,
hey, hey. You know, you might be hearing these
things, but that's not actually what we mean.
That's not what we think is going on." Is there any
legal requirement for you to do it?

MS. APUNA: No, but I think we're trying
to address some of those inaccuracies here --

CHAIRMAN SCHEUER: Just here.

MS. APUNA: You know, I think --

CHAIRMAN SCHEUER: Did the mayor make a

statement?

MS. APUNA: No --

CHAIRMAN SCHEUER: Was a press release put

out from DPP?

MS. APUNA: No.

CHAIRMAN SCHEUER: Was a mailing done to

any of these people?

MS. APUNA: No.

CHAIRMAN SCHEUER: But that's not legally

required?

MS. APUNA: It is not.

CHAIRMAN SCHEUER: I think the thing that

bugs me the most -- well, particularly when, in your

closing statement, when it's all up to you or -- I
can't remember what your catch phrase -- no

pressure, that somehow implied that if we don't move

forward with this process, we're setting back

Hawaii's agriculture and agricultural land

protection today.

I do not think that the letter from the

law firm that alerted many people to this was
completely accurate and fair or balanced in its representation, but it clearly sent people up in arms and has made -- has caused many people to be very concerned, very fretful, very scared.

It's not a couple of years where you particularly needed additional human suffering going around. And what I have found lacking in the city's presentation throughout this entire process, and particularly today, is any sort of expression, meaningful expression of sympathy even as the differing interpretations from that other put forward. I find it very distressing.

MS. APUNA: Sorry. I couldn't hear the last part that --

CHAIRMAN SCHEUER: I find it very distressing that the city has not responded with, in essence, any emotional content in addition to your legal arguments. That's just the Chair's opinion.

I don't think I have anything further, but you may respond.

MS. APUNA: I mean, this is completely exhausting. I -- I -- it -- we're trying to follow the law. We're trying to do everything that's required under the statute, and we're being told it's not enough.
And we have, you're right, outside influences that are creating all of this anxiety. It's all very frustrating, based on everything that has been put into this. You're right, I don't know what to say.

The only thing that I can say and -- is that we want to do more for these farmers somehow. I mean, we're trying to do that internally and reaching out to different agencies and interests. And I think that this whole process makes it hard to just do what we're trying to do. And sometimes maybe it's just a matter of us doing it without being under this microscope of how we're doing it. I don't know.

I don't know. This has taken a lot out of us, I think. But it's not -- I don't mean for us to not care about what's going on. We certainly care and don't like hearing how landowners feel that their land is going to be taken away or they're going to be kicked out of their houses. It's certainly not the intention or anything that the county would want.

We just want to try to do what's right for agriculture on this island and for the people that are trying to do that, which are farmers who are
already struggling. I don't know what else to say.

MS. WONG: Chair Scheuer, this is Dina. Can I just add that, you know, we definitely hear the concerns of the landowners. And you know, in hindsight, perhaps we could have done a better job at educating the general community about what IAL really and truly means for their own property rights and things of that sort.

But I think what's before the Commission is really looking at setting broad policy that covers the entire island and not so much looking at every individual landowner, because this isn't about, like, approving a specific project or a certain type of regulation that would change their rights.

So from that perspective, you know, we definitely want to hear what the landowners have to say, and it's something we could work on in the future when we do our community outreach. But you know, what's before us now is really setting long-term policy on protecting and preserving ag land for the future.

CHAIRMAN SCHEUER: Thank you, Ms. Wong.

MS. WONG: Thank you.

CHAIRMAN SCHEUER: Thank you, Ms. Apuna.
I have nothing further, Commissioners. It is 1:42. I propose a ten-minute break. We will then hear from any final comments from OPSD and Department of Agriculture will have a chance. I'll offer a chance for Ms. Apuna to make any final short statement, and then we'll go into deliberation.

Reconvene at 1:52.

(Recess taken from 1:42 to 1:52 p.m.)

CHAIRMAN SCHEUER: It's 1:52. We're back on the record.

Offering the opportunities for any final comments to OPSD, Ms. Kato, Earl Yamamoto from the Department of Agriculture, any final statement/rebuttal from Ms. Apuna, and then we'll go into deliberation.

Ms. Kato.

MS. KATO: Thank you, Chair, all Commissioners. I just have a few brief comments. As stated in OPSD's written testimony, OPSD believes that the city met the requirements for its development and submission of recommendations of potential lands suitable for designation as IAL under HRS Chapter 205, as the law is currently existing.

The IAL law requires the city to develop
maps of potential lands for designation of IAL in conformance with the specific statutory requirements set out in HRS 205-47.

The city provided a detailed description of the efforts they took to meet the IAL requirements in their supplemental brief, so I'm not going to go over that. OPSD believes that the city has met their base statutory requirements.

The city -- the city recommends potential lands for designation as IAL, but it does not itself designate any lands as IAL. So these are recommended maps. The LUC must then conduct its own independent review and choose what lands to designate as IAL.

Under HRS 205-49, the city's maps are just one of the things that the LUC needs to consider. The LUC can determine, with the guidance of its legal counsel, how and what process it needs to and will provide in its own review and designation -- final designation of lands for IAL and its final adoption of the maps.

Regarding the discussion on incentives for IAL, OPSD's understanding is that there isn't a specific timeline for a county to determine the proper incentives that they, you know, would like to
pursue.

So while providing incentives is, of course, an important part of the IAL law, and it was the intent to provide incentives, I'm not sure that it's necessary to give prerequisite to the county IAL process.

As Dawn Apuda mentioned, if this matter is remanded back to the city, I think it should be made clear what requirements that the city failed and what actions that they need to take in order to correct and meet those requirements. So just specific instructions would be good.

Also, I -- it was discussed earlier, but deferring the matter to seek statutory changes or adding more incentives is also an option.

OPSD also provided written comments with respect to the suitability of the lands recommended by the city, but I understand that that is not before the Commission today, so unless you want to hear from me on that, I'm not commenting on that. Thank you. That's all the comments I have.

CHAIRMAN SCHEUER: Thank you, Ms. Kato.

Commissioners, questions for Office of Planning and Sustainable Development, beginning with Commissioner Wong.
COMMISSIONER WONG: Thank you, Chair.

Ms. Kato, you know, I -- I guess long time ago they used to have something called civics class, and sorry, that's showing my age, okay? But anyway, I remember the statement that my teacher said is "government is by the people for the people, and laws are made for the people by the people."

Your statement, as I told Ms. Apuna, is yes, you're checking boxes; yes, you're following the laws; you're following the rules, but what about the people? Where's the heart? Where's the knowledge that I'm helping the people?

So what is -- I know you're saying, yes, they followed all the boxes, they checked the boxes. It's almost like EIS. But where is that issue that we just heard all these testimonies from all these testifiers for how many months that's saying, "You may be hurting me" or "I didn't get any information on this" or "you know, I just bought the place. I have no knowledge." What -- how -- where's OP's issues on this or where's their statements to say, "hey, you know, maybe we" -- "the planning wasn't all the way thought through. The steps done as a planner should have been done a little bit longer."

What is your statement on that?
MS. KATO: My understanding of what the IAL law is and what its intent to be is that it is intended to be for the people -- for the benefit of the people. It's to preserve agricultural land for the future generations. You know, it supports sustainability.

And my -- I do understand that it was intended to provide incentives, and it did provide some incentives. At the state level at least, there were tax benefits. There should probably be more incentives, but I think that's a thing that needs to be done through legislature or at the county level.

I think that there has been a lot of misunderstanding, as I'm seeing from the public testimony. There's been a lot of comments about how land is being taken by this IAL designation or how their use is going to change, which, from my understanding of what IAL does, is IAL is an overlay. It's a resource overlay. And it's not intended to change the use of the property, because this property is already agricultural land, and it should be used for agricultural purposes, not as a junkyard or -- you know --

COMMISSIONER WONG: Right.

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.

   COMMISSIONER WONG: Yeah. So you know, I
5. agree with everything you're saying. Ms. Apuna's
6. saying that IAL is a planning tool. It's an
7. overlay, as you just stated.

   But for the common farmer, the guy who's
8. getting their hands dirty, you know, they don't
9. understand what a planning tool is. They don't
10. understand what -- you know, what it means to be an
11. overlay. They only know, you know, I'm planting my
12. seeds. I'm going to water it. I'm hoping for sun.
13. I'm going to fertilize it, and I'm going to take it
14. to market. You know, grow it and take it to market.
15. So what I worry about is the explanation
16. to, you know, Farmer John, just say, 'Hey, we are
17. not going to take your land. You're going to keep
18. it, but we want to protect you so you can farm
19. forever.' You know, that's what I'm worried about,
20. that discussion hasn't gone to that point yet, to
21. that -- you know, to that level.
22. And let's say I'm a gentleman -- I
23. shouldn't use the word gentleman farmer, but I only
I have one acre in my backyard, and I'm growing papaya
trees and banana trees just for my own family's
consumption. Because the IAL is so broad or so --
it hasn't been defined enough that -- I worry that
one-acre parcel -- maybe I wanted to use it in the
future and say, "I'm going to come to the city and
say, I'm going to move it to urban or rural and, you
know, subdivide it for my son or my daughter or my
grandkids," an IAL would not allow me to do that.

They're going to say I can't do anything
except farm, and I'm going to die, and what they're
going to do with it, except have a goat on it, you
know what I'm saying. That's what I worry about is
just a discussion that -- that it's being limited.

So I understand where you're coming from.
I hear you, what you just said that, yes, the city
did do what -- their due diligence to the point that
they could. But when I know that our staff --
sorry, the Land Use staff went beyond that, went and
said, "let's send out more, you know, letters and
notices," like some of our testifiers said. This is
the first time.

It bothers me as, you know -- you know,
Joe Blow here, just thinking about those things, so
it's just more of a statement and -- but I do hear
what you're saying, too. Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Wong.

COMMISSIONER WONG: Thank you, Chair.

CHAIRMAN SCHEUER: Commissioner Chang?

COMMISSIONER CHANG: Thank you.

Thank you, Ms. Kato. I've got just two -- well, one question first, and then another -- two questions.

First, I know you said you're not going to comment on specific, you know, some of the other things that you included in your filings, but you did ask for exclusion, is that correct? The two acres?

MS. KATO: Uh-huh. That's correct. And I can discuss it. I just was responding to Chair's statement that we're not talking about that.

COMMISSIONER CHANG: But you are advocating, essentially, a new criteria, because there's nothing in the eight criteria that says, "No more" -- you know, "it has to be greater than two acres." So OPSD is -- through your filings, you are -- you are advocating a new criteria. One, the size. Right?

MS. KATO: That is something that the LUC
should consider. We just think it makes practical sense.

**COMMISSIONER CHANG:** I -- I understand, and I appreciated that you went and highlighted so it became very clear, but that's probably based upon, I think, your documents. That was probably about almost 800 TMKs. I mean, that's --

**MS. KATO:** It was a lot.

**COMMISSIONER CHANG:** I mean, that's probably about a third of the 1,800, substantial amount, probably would address a lot of the testimony that we've heard.

So I understand why you may not have commented on it. But I think it doesn't go to, you know, designating individual lots. It is more applying the criteria. So I think it would have been helpful, but I guess I do want to just elaborate.

I share Commissioner Wong and Commissioner Scheuer's -- I think it's -- it's a sentiment of the role of government, and quite frankly, I look to the Office of OPSD as really, you know, helping us be -- sort of vet -- looking at larger policies, not looking at just checking of the box, but looking at what is the right thing to do, what is --
And here, we have both -- I feel both you
and Ms. Apuna, you are uniquely situated in a
position where you can advocate to do what's right,
not to do what's just checking off the box. You are
both -- you know, government has had its short end
of the stick, and it's not because -- I mean, a lot
of it has been government's doing. There's a great
mistrust of government.

I mean, many of -- you know, both Ms.
Apuna and yourself, you have sat through many of our
hearings where community members hear for the first
time about a project at a public hearing. I mean,
that's too late. We all know that's too late.

But both of you have an opportunity,
through your positions, to really advocate to doing
-- to -- beyond just the project that's before you,
but how do we re-instill trust in government? How
do we acknowledge that we could have done better,
and that when someone says something like, "oh, I'm
going to be evicted," we shouldn't just let that sit
there. We should respond to that and reassure that
person that that's not what the IAL designation
does. I'm not going to evict you.

In the absence -- in the absence of good
information, people are going to fill that void with
misinformation. The longer misinformation continues
on -- and you know, I do a lot of community
outreach. When perception becomes reality -- and
here, we are at that point.

The perception that IAL is -- is -- is
hurting small farmers, clearly that wasn't the
intent of the law. But that is the perception. The
media is picking that all up. Everybody who's
attending our hearings is picking all of that up.
But you both have an opportunity to correct that.

And it kind of puts LUC kind of in an
awkward position, because we kind of look like if we
-- if we shut this down, we're against ag. I don't
think that's going to be the point, but you know, I
guess it is the role that both of you have an
opportunity to play, to reassure the community.

And I think this is what Commissioner Wong
is talking about, you know, and our Chair, about,
you know, is that trust and that emotion that's
missing here. And I guess that's -- that's sort of
where I am -- I'm leaning towards that, filling
that, because I think the community has felt that
this has been the only venue for them to voice their
concerns.

And if we do -- if we just accept, Ms.
Apuna, what the city's done, many of these people will lose trust that LUC is -- we're just rubber stamping. So I mean, I think all of us are going to take a very hard look at what you've presented to us. But that's sort of my little editorial comment. I'm sorry, but I do look at both of you as being in positions to do more. So sorry, but I just wanted to say that.

So that -- you know, Ms. Kato, you, too. I mean, I think you have a great opportunity before you, you know, to look at those large policies in the context of our LUC dockets, so I would just ask you to look at that as well when you make your comments.

Okay. So enough of my little editorial, Mr. Chair. I probably said more than enough. Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Chang. I'm sure we'll have a robust discussion in deliberation.

Commissioner Giovanni?

COMMISSIONER GIOVANNI: Thank you, Chair. Ms. Kato, I -- I'm assuming that you heard my earlier comments and questions regarding the approach that the county -- city and county took in
trying to apply criteria in such a way that large
swaths of contiguous land were designated IAL, and,
in the process, swept up a lot of small parcels. Is
that correct? Do you know what I'm talking about?

MS. KATO: I recall that discussion.

There were a lot of questions. Sorry.

COMMISSIONER GIOVANNI: That's fine. But
I sense that that is the same type of concern that
OPSD may have had when they've -- when you put forth
your recommendation regarding exclusion of the
small, less than two-acre parcels, is that correct
or not correct?

MS. KATO: I think that recommendation was
based in part on what we -- the comments from the
Department of Agriculture and what they said made
sense, so we thought it made sense to have two acres
just because smaller than that, it's under separate
ownership, has diminished resource value for long-
term agricultural use.

But I do also understand the point of not
wanting patchwork. It's like this is IAL, non-IAL,
IAL, non-IAL. So there is an interest in trying to
keep together parcels, particularly if they're under
the same ownership. So you know, say a landowner
owns a lot of parcels in one area, I can understand
that interest.

COMMISIONER GIOVANNI: Sorry for interrupting you. Let me ask my question again in a little bit different way that may be simpler, and it's just better referred to the Department of Agriculture, because you said you took your initiative from them. That's fine. I'll ask them when they testify.

My question is, why -- what prompted you to make that recommendation? What did you see in the process? What was the flaw that prompted you to make that recommendation? Why did you do it?

MS. KATO: I'm not sure that I would call it a flaw so much as recommendation that seemed to us to make sense.

COMMISIONER GIOVANNI: To make sense to correct what? To do what? What are you trying to accomplish?

MS. KATO: I'm not sure if I know how best to answer that.

COMMISIONER GIOVANNI: Well, I'm interested in your answer from a process point of view, not the process of this hearing but the process that the county undertook that somehow manifest that you felt prompted or you needed to or
it was better or more practical to make that
recommendation. Why did you do it? Why did --

**MS. KATO:** I think it's --

**COMMISSIONER GIOVANNI:** What did you and
the Department of Agriculture see that prompted you
to do that? Because I think it could point to
something that was problematic with the process that
the city and county did. If it wasn't, explain it
to me.

**MS. KATO:** Well, I don't think that that
was a specific part of the criteria that was
discussed and considered. It's just another
consideration that we had that we thought of.

**COMMISSIONER GIOVANNI:** So there were
eight criteria. You're adding -- you're suggesting
that it be a ninth. Why?

**MS. KATO:** We're not saying that small
properties are completely useless as ag. We're
saying that small parcels just have less ag
usefulness. It's not a statutory criteria for IAL
land. It's kind of a -- you know, it's a sliding
scale. The smaller it is, the less likely -- if
it's a small parcel under two acres in size, it's
less likely to be used for IAL, but it doesn't mean
that it can't be or that it isn't.
In some circumstances, it may make sense to add those properties or at least some of those properties, but this is -- when we're talking about, you know, the county -- city IAL, it's a lot of land to consider. So I think it's very difficult to try and look at each property on a parcel-by-parcel basis. So unfortunately, there are some that may have fallen through the cracks, but --

COMMISSIONER GIOVANNI: I'll leave it there. Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Giovanni.

Commissioners, any further questions for OPSD?

I will have one brief and hopefully focus question, Ms. Kato. It is one of the same questions asked from Ms. Apuna.

Please defend the idea that with the four-year gap, three- to four-year gap between the last public meeting and the presentation of materials, a complete record to the Land Use Commission, considering deaths, change in ownership and other matters, how this constituted reasonable notice.

MS. KATO: I think that our feeling is that the city -- all of the things that they did in
their process, we feel like they have tried their
best to do as much as possible and to meet their
statutory requirements. If the Commission feels
that it's short, then it's within your discretion to
determine, and --

CHAIRMAN SCHEUER: So --

MS. KATO: -- I just want to clarify when
I say that the city's maps are just a
recommendation, it's really just a recommendation.
I think that the Commission can, if they want to,
provide more process at this stage, they can. Or
landowners, I think that they can reject and change
the recommendations. They can consider other
things.

CHAIRMAN SCHEUER: So you -- just to
clarify your answer, you think it is reasonable that
for some landowners the only notice that they have
received prior to the LUC taking this matter up, was
that this matter was being considered at a regular
meeting of the city council. That was a reasonable
notice to landowners.

MS. KATO: I have heard the public
testimony that some landowners did not receive
notice. I have no way of verifying whether that's
correct or not --
CHAIRMAN SCHEUER: I -- I'm going to assume that among the 1,800 people and based on testimony we've received, 1,800 lots, some lots exchanged hands between 2017 and 2020 or 2021. I think that's sort of indisputable. So for at least those categories of people, reasonable notice was met by a notice of the city council? Is that what OPSD's position is?

MS. KATO: I think OPSD can see that as reasonable notice, but I mean, we're not the decider of that.

CHAIRMAN SCHEUER: Okay. Thank you very much, Ms. Kato. Appreciate it.

Anything further?

Mr. Yamamoto, does the Department of Agriculture have anything to add at this time?

MR. YAMAMOTO: The department did not submit any written -- as you all know, the department didn't submit any additional written comments or any letter of notification other than what we had submitted back in February of 2021, I believe; however, we continue to support what -- the city's submittal to the Land Use Commission.

With respect to the matters of being discussed here throughout the entire day before the
Land Use Commission on these procedural matters and whether or not the HRS requirements have been met, I have nothing to say about that.

I would like to note, if I may, something about the -- the -- with respect to that two-acre thing that -- that -- that was brought up as part of the Office of Planning and Sustainable Development's most recent submittal. We did -- as a result of my quick look-through of all the properties by TMK, I thought that having properties under two acres would -- especially if they're isolated -- and I did go through the TMK maps manually for this. But I was not able to do a comprehensive look.

Obviously, I'm not a geographic information system expert, but I chose the two-acre minimum for mapping because of the city's zoning. The zoning ordinance allows a minimum lot size of two acres. And I thought that anything less than that could be problematic.

I have no basis to explain that. It's just that it seemed reasonable at the time I was doing this. And then I included that in our -- in our letter of February 2021, I believe.

If I may make one more comment. There are some discussion by testifiers as well as the
Commissioners that perhaps going -- having these -- the Oahu landowners of agricultural lands go through the 205 -- what is that -- 45 process or 47 process, whatever HRS reference -- the proper HRS references to the voluntary identification and designation of their property as important agricultural lands.

In having gone through all the existing -- since the beginning, the Kauai Coffee A&D petition on Kauai back I don't know how many years ago, but now if the same kind of expectation exists for smaller landowners -- and the farmers there are -- to have the same kind of resources, the same detail that is expected of the larger petitioners today, that would -- I don't see how the -- these smaller landowners would -- could come up with the resources necessary to hire the professional staff to accomplish even assembling a petition.

That has been a background of the Department of Agriculture. And that concludes my remarks.

CHAIRMAN SCHEUER: Thank you, Mr. Yamamoto.

Commissioners, questions for the Department of Agriculture?

Commissioner Giovanni?
COMMISSIONER GIOVANNI: Thank you, Mr. Yamamoto, for shedding light on the thought process that evolved there. And I'm not going to question you about what you thought was reasonable or not.

More specifically, you kind of defined a competitive process. On the one hand, if you're less than two acres, you're not automatically included in the county's recommendations, so you're left as-is. But on the other hand, if you are left out and you want to become IAL, you can't afford to do it.

So the small farmers, less than two acres, in this example would be betwixt and between, couldn't become IAL if they wanted to be because they couldn't afford it.

My question is, wouldn't it be simpler that -- to have a very simple opt-out process for these small farmers, that they could -- they don't have to hire a bunch of lawyers just to say, "I don't want to be included" and give them that option. Why wouldn't that work?

MR. YAMAMOTO: Well, on -- as you explained it, again, I'm not -- I'm not the expert in any -- well, we are (indiscernible) with the procedural requirements. But generally speaking,
the concept that you just expressed sounds reasonable to opt out.

But to -- in order to accomplish that, and if there's any other things that need to be attended to in accomplishing that, everything is -- everything we handle nowadays is pretty much a double-edged sword. And as a -- as being here on the Department of Agriculture and not having any regulatory authority whatsoever, we are continually aware of that -- that -- that hazard of just jumping into a concept and seeing it sounds like a great idea without fully going over it. I'd be remiss if I did that without studying it. And I'll leave it there.

COMMISSIONER GIOVANNI: So notwithstanding all the caveats you expressed at the end there, the concept sounds reasonable to you is what you said. I don't want to put words in your mouth, but I think that's what you said.

MR. YAMAMOTO: Yes. The concept is attractive.

COMMISSIONER GIOVANNI: Okay. Thank you. Nothing further.

CHAIRMAN SCHEUER: Thank you.

Commissioner Aczon?
COMMISSIONER ACZON: This is a good question. If a property owner decided to opt out, would that change their agricultural zone designation?

MR. YAMAMOTO: As far as I know.

COMMISSIONER ACZON: Because right now agriculture -- zone agriculture, if they all opt out, then what happens?

MR. YAMAMOTO: You're -- from what I understand, the discussion is that you're opting out of the opportunity to get access to the important agricultural lands incentives, existing ones, not the ones that are coming from the city but the existing ones.

And that's it. As expressed by the other -- by -- by, you know, the city and by Office of Planning, this is resource overlay. The whole idea for important agricultural lands is to give that -- the opportunity to keep -- to -- to remain in agricultural -- ag operation, to remain in operation or to engage in it -- a new farmer, for instance, to engage in new farming.

And that's what they -- this incentive layer are -- this resource layer is intended to do. If you opt out, that means that that landowner and
farmer on that property that opts -- opts out will not have access to -- do I have an example?

Well, that incentive -- the one particular incentive that's most -- that brings them -- that generates the most attraction is that important agricultural lands qualify agriculture costs -- basically, a partial cost offset for the expenses incurred -- qualified expenses incurred on the property that is designated as important agricultural lands.

It is a percentage of basically what is spent on -- in terms of improvements -- the qualified improvements on the property in support of agricultural production. The person that opts out will not have access to that incentive. I don't -- to date, I don't think there are any strings attached.

I mean, I'm the guy that signs off on the tax credit when it comes through here, through our office, for our review, and then eventually, pass it off to the Department of Taxation for their final adjudication, whatever you call it.

So that incentive is -- I feel is really important to all scale of farmers, every -- all scale of farmers. And I think that alone will --
will help reduce the expense of continuing operations as well as establishing new operations, especially here on Oahu where we're land and other resources related to agriculture production are so expensive.

I'm sorry I went on so long, but I wanted to make sure that I complete the thought.

COMMISSIONER ACZON: Okay. In other words, the property remains zoned agriculture. If we change that, we have to come back to whoever -- you know, to the city, to use the property for something else than agriculture?

MR. YAMAMOTO: If you want to use it -- if it's designated as important agricultural lands, the -- the landowner can come in and, you know, seek a -- I don't know how likely it would be, but a change to the sustainable communities plan, a change to the zoning as with respect to what -- or boundary amendment to come before either the Planning Commission or the -- and/or the Land Use Commission.

It doesn't prohibit it. It requires a few more considerations kind of poorly explained in HRS, but it doesn't --

COMMISSIONER ACZON: You have answered my
question. Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Aczon.

Thank you, Mr. Yamamoto.

Further questions for the Department of Agriculture? Seeing none, thank you very much, Mr. Yamamoto.

MR. YAMAMOTO: You're welcome.

CHAIRMAN SCHEUER: Ms. Apuna, just going to offer you the opportunity to rebut or address any further things before we move into deliberation.

MS. APUNA: I would just -- I'm a little bit confused about the questions about not caring about the people or not -- and so I just wanted to say that I think this whole effort is to help this island and the communities within it to achieve agriculture.

And if there's for some reason a feeling that we don't care or we completely disagree with any of the misinformation that was put forth -- and we completely believe that this IAL is supposed to be beneficial and not restrictive or land grab or anything of that sort or to evict people. Like, that's ridiculous.

It's supposed to help people farm their
land or to think about farming and to help -- help -- basically, have the -- this county move forward to be sustainable in agriculture. So I just want to say that.

I would like to allow DPP staff, if they have anything else to add or say that -- if they could say anything at this point?

CHAIRMAN SCHEUER: I would allow that.

Would that be Ms. Wong?

MS. APUNA: Yes, or Franz.

MS. WONG: Yes. I just wanted to reiterate, you know, what Deputy Director said, that the intent of IAL is to incentivize agriculture. And we've been putting in policies in our long-range plans. Some of them are in process right now which calls for preserving and encouraging and supporting agriculture, and this could be a really helpful tool in helping us move forward and implementing our policies and in developing tools, you know, like incentives and things of that sort, so --

Okay. Thank you.

CHAIRMAN SCHEUER: Thank you very much.

Is that it, Ms. Apuna?

MS. APUNA: Yes, that's it. Thank you.

CHAIRMAN SCHEUER: Thank you very much.
So if there are no further questions, I would like now to enter into discussion with regard to this matter.

Commissioners, please keep in mind that should the Commission conclude, in the course of our discussion, that the county has met the requirements of Chapter 205 of the HRS in preparing its recommendations, a motion to proceed is not required to move to the next stage in this matter.

However, should one or more of the Commissioners believe that the county has not met the requirements of Chapter 205, a motion should be made. That motion should include the specific reasons as to why the Commission should not proceed and directing the county or any other parties to correct the deficiencies and resubmit their recommendations to the Commission once it has done so.

We will now conduct formal deliberations on the matter before us. For the parties and the public, I would remind you that during deliberations I will not entertain additional input from the parties or the public unless those individuals or entities are specifically requested to do so by me. If called upon, any questions -- answers will be
limited to the question at hand.

    Commissioners, let me confirm that each
    one of you have reviewed the record and are prepared
    to deliberate on the subject docket. After I call
    your name, please signify with either an "aye" or a
    "nay" that you're prepared to deliberate on this
    matter.

    Commissioner Chang?

    COMMISSIONER CHANG: Aye.

    CHAIRMAN SCHEUER: Commissioner Cabral?

    COMMISSIONER CABRAL: Aye.

    CHAIRMAN SCHEUER: Commissioner Giovanni?

    COMMISSIONER GIOVANNI: Aye.

    CHAIRMAN SCHEUER: Commissioner Ohigashi?

    COMMISSIONER OHIGASHI: Yes.

    CHAIRMAN SCHEUER: Commissioner Aczon?

    COMMISSIONER ACZON: Yes.

    CHAIRMAN SCHEUER: Commissioner Wong?

    COMMISSIONER WONG: Aye.

    CHAIRMAN SCHEUER: The Chair is also
    prepared to deliberate on this matter.

    Commissioners, we are in discussion. What
    is your pleasure?

    COMMISSIONER WONG: Chair, I have a
    question. This is Commissioner Wong.
CHAIRMAN SCHEUER: Commissioner Wong?

COMMISIONER WONG: Okay. So you know, try -- I need some assistance on this one, Chair. If we remand it back -- if someone makes a motion to remand it back, we have to say, "We are remanding it back to the county because we feel it's insufficient in these areas." Is that correct?

CHAIRMAN SCHEUER: That is correct. I also believe -- and this is my opinion as the Chair -- that we could conclude that even if the Commission -- or even if we believe the county technically met all of the requirements that, based on other findings, that the process overall is flawed, and we recognize that while the county may have met the legal requirements, that we would seek further action from the legislature to clarify matters or some combination thereof.

COMMISIONER WONG: So going to that portion that you just said about the legislature, so if we remand it back saying, "We have these issues, but we also would like you and OSP or Farm Bureau, whoever, to work with the legislature to clarify these points"?

CHAIRMAN SCHEUER: Yes. Now, we can do that. Let me say, so like, we don't actually have
the power to force the city to go to the legislature, right?

COMMISSIONER WONG: Right.

CHAIRMAN SCHEUER: But we can make a -- I think it is completely within our powers to make a finding that says, "You know what, they implemented a bad law, and you know, they did so in good faith. They did so with hard work. Maybe we'd have done some things better or worse."

Or we could find some combination like "we don't think they did everything well, so we're remanding it back, but we would highly advise them, 'Before you start working on it again, let's all go to the legislature because there are certain things that we believe are flawed about this statute.'"

COMMISSIONER WONG: Okay. So Chair, if no one's going --

CHAIRMAN SCHEUER: There --

COMMISSIONER WONG: Oh, go ahead.

CHAIRMAN SCHEUER: There are a couple of hands, so do you want to keep going or do you want me to --

COMMISSIONER WONG: I'll hold off. No, I'll hold off. Thank you, Chair.

CHAIRMAN SCHEUER: Commissioner Giovanni?
COMMISSIONER GIOVANNI: So Chair, when you
gave your initial instructions for deliberations, I
was troubled because you put us into a very narrow
box that said we had to give the specific reasons
why DPP may -- did not check the box properly.
Maybe they should have put an X instead of a
checkmark or whatever.
And I thought that is very narrow for us,
so I was really pleased to hear your further
explanation as a second option and response to
Commissioner Wong, which I think really goes, in my
view, to the heart of the matter here, which is did
DPP do a reasonable job, however they interpreted
that job, checking the boxes in a flawed process, or
do we need to dig deeper into this thing and get
more fundamental about how to fix the overall thing?
I don't think it's -- I don't think it's --
so I'm really pleased that you have elaborated on
what our options might be, and thank you for that.

CHAIRMAN SCHEUER: I apologize if my
initial instructions were not broad enough. Thank
you, Commissioner Giovanni.

Commissioner Ohigashi?

COMMISSIONER OHIGASHI: Yeah. I'm not
making a motion, but what I'm asking is a question.
Assuming that -- on the other side, assuming that we accept the recommendations, assuming that. The -- who would be the petitioner in this matter? Would it be Land Use Commission? And will our staff be required to do the work?

    Will it be OSP, OPSD -- I keep calling them PTSD -- because they're the planning arm, or will it be city and county?

**CHAIRMAN SCHEUER:** For the purposes of deliberations, I'd like to direct our Executive Officer to respond to that inquiry from Commissioner Ohigashi, specifically, who would -- who would appear, essentially, to justify any recommendations?

**MR. ORODENKER:** I -- I'm not sure exactly who, to be honest with you. OPSD is generally responsible for policy. Land Use Commission is generally responsible for effectuating that policy. I believe that in reality, it would be a joint effort by OPSD and the Land Use Commission along with the Department of Agriculture.

**CHAIRMAN SCHEUER:** Commissioner Ohigashi, you may follow up.

**COMMISSIONER OHIGASHI:** Thank you. I'm just curious.

**CHAIRMAN SCHEUER:** Okay.
Commissioner Aczon?

Thank you, Mr. Orodenker.

Commissioner Aczon?

**COMMISSIONER ACZON:** Yeah. Just a follow-up on Commissioner Ohigashi's question or inquiry.

Ask another question. If somehow we accepted the city's recommendation, what is the next process? What is the next step? Who's going to do what? How long is it going to take? All those kinds of -- you know, is going to come into play after this if we decided to make this, you know -- accept the recommendation.

**CHAIRMAN SCHEUER:** The Chair does not know.

**COMMISSIONER ACZON:** Well, I guess Executive Officer?

**CHAIRMAN SCHEUER:** Mr. Orodenker, again?

**MR. ORODENKER:** I have the same response as the Chair. I don't have -- I mean, it -- it's up to the city.

**CHAIRMAN SCHEUER:** Commissioner Cabral followed by Chang followed by Wong.

**COMMISSIONER ACZON:** Anybody know?

**COMMISSIONER CABRAL:** Thank you, Chair and fellow Commissioners. I'm really not comfortable in
trying to fix this problem and have send -- and I
don't believe that the city and county's, in a
sense, capable of doing it better at this point in
time. And I say that because I'm not a government
bureaucrat or a lawyer or something that's smarter.

But I do know that -- and I'm concerned
about somewhat of the attitude that we've just
expressed already, that we've checked the boxes.
And so technically -- and it's been expressed by
many of you where they've technically done what
they're supposed to do in their opinion. Well,
clearly, then, we don't have the right boxes that
they're -- we need to reset the boxes that have to
be checked.

I mean, from the prior hearings, the fact
that they didn't track on the ownership of 1,800
people. I used to manage Paradise Park, 8,835
owners I kept track of all of all the time. If the
Bureau of Conveyances doesn't talk to where -- they
don't have a good system for city and county to get
data from the Bureau of Conveyances. You can get it
through the Board of Realtors.

They're a commercial operation, and you
can just get that data. You can get it, and
constant ownership and constant address form, so you
can constantly stay in touch with these owners,
because we do it to make a living. So we don't get
a paycheck unless we do this right.

So I'm concerned that the government's
perspective on it -- and not to -- I'm not personal.
I think Ms. Apuna and Ms. Kato, all these folks are
wonderful people, but I'm concerned that it's just
that it's -- it's an arm's distance kind of thing.
It just doesn't matter. I did what I was supposed
to do. That gravely concerns me.

I'm a rancher. You know, I have cattle.
I have horses, three now, dogs, cats, sheep and goat
all at my property. So -- and I'm not sure I make
any money. I think I lose money all the time, but I
eat well.

So I'm concerned, though, that this whole
arm's -- this approach has been so badly done. So I
think I really want to support that we send it back
to the legislature and we, the Land Use, and
hopefully city and county as the first county that's
tried to tackle this problem and comply with the
law.

God bless them for trying. That we try
and get better guidelines or some kind of better
language so when it comes out again, our -- maybe
the language has to be that the Department of Agriculture is capable of working with LUC or some entity, because things change over time, too.

    So I am really not -- don't want to send it back. I want to deny the whole thing that city and county has done in some way, shape, or form, and get it to the legislature to have it improved upon and corrected.

    CHAIRMAN SCHEUER: Thank you, Commissioner Cabral.

    COMMISSIONER CABRAL: Thank you.

    CHAIRMAN SCHEUER: Commissioner Chang?

    COMMISSIONER CHANG: In reading the Attorney General's opinion back to us -- and this is in response to Commissioner Ohigashi's question. As I read page 9, it says, "As discussed above, a quasi-judicial proceeding will require the LUC to, one, conduct an independent review of the extent to which the proposed IAL lands meet the statutory criteria and determination that IAL designation is necessary to make the broader objectives and, B, apply a quasi-judicial proceeding to provide an appropriate degree of due process."

    As I read that -- and we've also got our Deputy AG here, but as I read their guidance to us,
if -- if -- if we decide to accept the county's --
that they've complied, then the matter comes to LUC,
and we conduct a separate hearing and determine what
is -- you know, essentially, what is due process.

But it does appear as if LUC will be
responsible to providing everybody notice, to
applying the criteria, because now the determination
of -- and both, I think -- both the county, the
city, and OPSD concur that ultimately, it's LUC that
makes the determination of IAL.

So it would appear as if we would end up
doing a whole -- almost like a whole de novo review.
We would take what the county's given us, but we
would have to do notices, determine what's -- what
the due process is, hear the -- those who object. I
mean, that's how I read what the AG's opinion has
said, is that that would be LUC and then anybody who
wants to challenge it, then we would have separate
proceedings on that.

But Dan is here. He can clarify if I'm
misreading that.

MR. ORODENKER: Commissioner --

CHAIRMAN SCHEUER: Sorry, which Dan?

COMMISSIONER CHANG: Oh, Dan Morris, our

Deputy AG. If I'm misreading it.
CHAIRMAN SCHEUER: Mr. Morris followed by Mr. Orodenker followed by Commissioner Aczon.

MR. MORRIS: No. I think the opinion speaks for itself, and I think that's accurate that LUC would be tasked with an independent review of the criteria. The statute is pretty clear about that as well as the comment that they would have to determine what level of due process in terms of notice, and an opportunity to be heard would be a given to any individual landowners.

It doesn't mean it would be a full-blown trial type contested case hearing. But there is a spectrum of due process it can begin in. So I think that's a fair reading of the AG opinion.

CHAIRMAN SCHEUER: Thank you.

Mr. Orodenker?

MR. ORODENKER: Yeah. I would agree with what Dan said, from a practical standpoint. And this goes back to what I was saying before, what would happen would be that we would have to have the Commission make a determination, which would require OP and DOA and the county to give us argument on that particular issue.

We would guide -- staff would guide, help guide the specificity on the issues that needed to
have answered before the Commission, but the
Commission itself would be making the determination
based on the arguments presented by the three
parties.

**CHAIRMAN SCHEUER:** Commissioner Aczon?

**COMMISSIONER ACZON:** I also have the same
understanding and interpretation, and this is made
in my earlier statement. I said that looks like the
Commission is going to -- if we accept the
recommendation, looks like the Commission is going
to be ending up doing all the work which the city
should have done by themselves.

My question now is, do we have enough
resources to do all those work? And how much going
to cost? How much manpower needed to do these? If
you don't have all those, then we are -- our hands
are kind of pretty much tied.

**CHAIRMAN SCHEUER:** Mr. Orodenker, would
you like to respond to the staffing resources, even
a broadest-brush estimate?

**MR. ORODENKER:** I have no way of making a
broad-brush estimate. I do -- I will tell you that
we're already, you know, at capacity. This is
something we would have to handle.

The reason I don't have a broad-brush --
even a broad-brush estimate is that the initial
determination that will have to be made is how much
due process do we have to give. Once we know how
much due process we have to give, we know how
extensive the hearings would be.

And second question that we would have
from a staffing standpoint is how many people are
actually going to come in and object. Is it going
to be 50 people? Is it going to be a hundred
people? Is it going to be 200 people, or is it
going to be ten people? We don't know the answer to
that.

But my -- my guess, if I had to do a wild
guess, would be that it's going to tie up a lot of
resources for a significant amount of time.

CHAIRMAN SCHEUER: Commissioner Wong?

COMMISSIONER WONG: Thank you, Chair. You
know, I'm going to just make a motion -- sorry,
Chair -- to remand it back.

I understand where Commissioner Aczon was
going in terms of his thoughts, Commissioner
Ohigashi, but I just got to -- I just want to make a
motion already to remand back -- remand it back to
the county, just because -- sorry, I kind of -- you
know how articulate I am, so I'm going to try to put
it in a nutshell and you can clean it up if possible.

Remand it back to the county, just because, you know, I think the time issue was just too long from when they finished to give it to us; that, as you said, properties have changed, you know, hands. Plus, there's other things like due process. The community outreach, yes, but like for me, I live in Aiea, and I don't remember any farms in Aiea, but there may be, but I'm just saying that.

Representations that were made by different individuals and organizations or even attorney firms was unclear or scared people, that should be cleared up. And also, you know, let's do this stuff over the legislature, try and tell the county, Farm Bureau, and whoever else to work and clear the statute up. You know, try and work it out and make it a mandated fund -- funded mandate, not an unfunded mandate.

So all those things, you know, I want to put in somehow, Chair. So if you could -- well, hopefully it will get us to where we can work it out.

CHAIRMAN SCHEUER: Thank you. Thank you for the motion, Commissioner Wong.
Commissioner Ohigashi?

COMMISSIONER WONG: I'll second.

CHAIRMAN SCHEUER: Okay. Did you want to add anything to the discussion? The Chair has a few thoughts.

COMMISSIONER WONG: Yeah. No, Chair, not for me. You guys talk about it. Thank you.

CHAIRMAN SCHEUER: Commissioner Ohigashi?

COMMISSIONER OHIGASHI: I don't have any other thoughts. I do have thoughts, but I'm not -- I will express them when I decide how I'm going to -- make sure how I'm going to vote.

CHAIRMAN SCHEUER: So I believe that specifically, under 205-47, Part D, the statute says, "Upon identification of potential lands to be recommended to the county councils as important agricultural lands, the counties shall take reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of those lands."

I believe, at least in that narrow sense, that was not met. And I believe that evidence in our proceedings supports that contention. But I guess my intent, just to expand a little more before
recognizing Commissioner Chang, was -- actually,
I'll just stop there. I recognize that I have some
larger things to say about the process and my
general admiration for what DPP has tried to do and
the problems, but I will save those for later.

Commissioner Chang?

COMMISSIONER CHANG: Thank you, Mr. Chair.

Now, I -- I concur with your assessment. I think
from a legal standpoint, reasonable notice is a very
objective term. I think I -- in my mind, I think
the city met the reasonable notice test prior to --
maybe up until 2015. They conducted at least three
public meetings. They had a website, focus groups.
However, that gap, I think the Chair raised some
important issues regarding -- sorry, my Alexa turned
on for no reason.

So I think -- I think there is a legal
deficiency in the reasonable notice that I think
that the city could have easily sent out, similar to
what -- and that would be my instruction to the city
in elaborating on this motion is that the city be
instructed to send out -- and given the responses,
it would be in their best interest so they don't
have to do it over again -- by certified mail to the
landowner, with a notice on there that this is --
that if you choose to sell this property, that you are on notice to provide the new landowner information regarding the -- a potential IAL designation.

    I think, at a minimum, there should be a renotification to all of the landowners. Attached to that notification should be a fax sheet or a brochure what IAL designation means, what it is, and what it isn't. Very simple.

    There should be a website similar to what you had done previously, but it should be updated, and it should be maintained. But in addition to that, I think the community outreach should be in collaboration with the Farm Bureau who has been willing -- who has expressed a commitment to work with the city on this.

    So I think, undoubtedly, consultation needs to be expanded. I think we've -- you know, I've listed two things. At least, a certified mail to the landowner of record and you get a response where they have to -- they have to sign so you've got a record that they have received it.

    If you don't receive a response by 30 days, I'd post something on the property, and I'd take a picture of it. But I'd include some
information. I'd work with the Farm Bureau on doing an educational campaign about IAL. But I'd also, for purposes of the city, begin to start developing those incentives.

Throughout today's hearing, I heard the city mention several times that the incentives were supposed to help small farmers, but there are no incentives.

And the small farmers are the ones who have come to us. So to me, a timing on those incentives are critical. Perhaps some of these small farm owners would choose to have their lands designated.

But I would also ask the city to consider OP and Department of Ag's recommendation about two-acre parcels and explore that more clearly and carefully. So that would be -- because I think -- I think they -- they're TAC. I think they did apply the criteria properly. I think our AG opinion confirmed that, so I don't have a problem with the criteria that was applied by the city.

However, in light of Department of Ag and OPSD's recommendation for the two-acre exemption, I think that should be visited as well as an update on state lands. And I think as was mentioned numerous
times today, including in that letter, a request for
an -- if you want to opt out, send -- sign, send
this -- send this letter back to us. Make it easy
for them. Don't make it hard.

But I do believe that there has not been -
- that the statute has not been -- the city has not
adequately complied with the reasonable notice
requirement and so those are my guidance on
instructions on what they could do.

I'm sure others have more to add to that.
But that's my recommendation.

CHAIRMAN SCHEUER: Thank you, Commissioner
Chang.

Commissioners, we're in deliberation with
a motion before us.

Commissioner Giovanni?

COMMISSIONER GIOVANNI: Thank you, Chair.

I'm going to support the motion. I first want to
share my feelings that I think that the staff at DPP
did an incredible amount of work under trying
circumstances. It's tough to be a bureaucrat
processing these type of things, especially on an
unfunded mandate.

I think a lot of the problem that we're --
we've been discussing just even in the last 15
minutes stems from the fact that the staff completed their work four years ago -- three and a half, four year ago, and the city council sat on it for three years or took three years to process it. That's terrible. We need to send that message.

Why did that happen? And how many times were those people re-elected? And they're different people and they start over. So that was a real problem for me.

I agree that there ought to -- there should have been thought to giving a requirement for a disclosure document in any and all real estate transactions that the subject land was being under consideration for automatic IAL designation. The fact that that disclosure did not occur, and you're not going to -- it's not required, real estate agents aren't going to voluntarily give it because it's a disincentive for the sale. So I think that that's a real missing part.

I also feel -- and again, I'm speaking for the small landowners and small farmers that may not want to participate in this, but there might be small ones that do want to participate in that. I think it's a real missed opportunity to provide a provision for a simple opt-in or opt-out. I want to
opt into the county's process that potentially will
designate me for IAL, or I want to opt out. Leave
me out of it.

That simple thing alone would have led to
a lot of these problems going away and a lot of the
concerns we heard from the community.

And finally, I also agree that the
incentives should be clearly earmarked and specified
ahead of time, including ahead of time when you're
asking me to opt in or opt out. So like
Commissioner Chang said, there should have been
prepared a very simple document. What is IAL? What
does it mean? What does it mean to you as a
landowner?

And along with that, if you opt in, what
are the -- what happens if you opt out? What are
you giving up in terms of incentives? All of that
should be upfront, not as DPP is now saying, "we'll
work that out later." I don't agree with that.

And then, finally, as Commissioner Aczon
is so clearly worried about, and I worry as well, if
we accept this, which I do not -- I support the
motion, so I'm not recommending we accept the
recommendation from the county. But if we would,
which is the other alternative, I think it turns to
the Land Use Commission almost regardless of what
level or -- or complexity of due process is afforded
each landowner, but it turns our mission into a
completely different process. We become a different
bureau of the county.

And then, finally, I'm worried about the
neighbor counties. They're watching this. And they
-- they're like, you want me to do what? And you're
not going to pay me for it? I know my county hasn't
started on it. And then -- and so it ain't
happening. And it's not going to happen until this
thing's resolved.

And I mean, when I mean resolved, it's
like Commissioner Wong saying, "send a very strong
message to the legislature to revisit this and clean
it up, so that it can be implemented more
straightforwardly." I will support the motion.

Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner
Giovanni. I'd like to call on our Executive Officer
and then hear from Commissioners Ohigashi and Aczon.

MR. ORODENKER: I'm sorry, Chair. Is
there a specific question you'd like me to answer?

CHAIRMAN SCHEUER: You raised your hand
again.
Mr. Orodenker: I swear I am not touching my keyboard. I swear.

Chairman Scheuer: Okay. Scratch that.

Commissioner Ohigashi followed by Commissioner Aczon.

Commissioner Ohigashi: I made a second to the motion because I agree with what Commissioner Chang, the Chairman, and then Commissioner Giovanni has indicated on the record. I believe those are all important parts is the reason why I'm voting.

But I do want to recognize that by remanding this matter, it may result in the probable non-action by the city and county. If that is the case, it may cause a chilling effect on any other counties dealing with this matter. And if that is -- if that happens, then the incentive for large landowners going to IAL designations may be affected, because they're going to say why worry about it.

(Indiscernible) the county to get -- you know, we don't have to go and do our alerting. I did -- but I'm still going to vote for this. And the reason why is what the Chair brought up. And what he indicated is that what is this IAL designation really means. What is it? When we were
able to put an industrial use on IAL property prior
to being changed on Maui, it came to me is that why
are we even designating these lands?

What's to stop people from using the
special permit process to use this property for
industrial purposes without going through the
process of changing? And that's why I'm willing to
vote for this.

And that's why I'm willing to take the
risk that this may affect all IAL designations in
the future, because after seeing that happen, I come
to the conclusion that the legislature needs to fix
this. And if this is what it takes, so be it.

Thank you, Mr. Chair.

CHAIRMAN SCHEUER: Thank you very much,
Commissioner Ohigashi.

Commissioner Aczon?

COMMISSIONER ACZON: Thank you, Mr. Chair.

Given the options that we have in front of us,
there's still really an ideal option that we can
take without, you know, going into what Commissioner
Ohigashi is saying, taking the risk.

So I will be reluctantly supporting this
motion. But having said that, at least, you know,
moving forward with its motion, we make a decision
rather than doing nothing.

But having said that, I just want to make a comment that, you know, I believe DPP, in support of them did their best in trying to address this matter, and I -- I was kind of struck on what Ms. Apuna said that, you know, we feel that DPP or city doesn't care for the people. I don't -- I don't honestly believe that. I believe that they are -- they did their best. They followed, you know -- they followed, you know, the law regardless of, you know, financial help or funding that they help, so you know, I just want to thank DPP, Ms. Apuna, for all their efforts that they put in on this one.

It took a lot of time, and I just didn't want to diminish those efforts that they put in. So thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Aczon.

Commissioners, is there further deliberation?

COMMISSIONER CABRAL: Yes, thank you, all. This is just really hard. Yeah, I mean, I think I'll support the motion because, obviously, it's going to give us all another bite at the apple
unless our terms expire before it comes back around.

But yeah, and I'm really hopeful that Land Use staff, even us as individual commissioners, might have ideas that don't have to be on an official basis.

Just maybe we start an outline of suggestions that have already been mentioned here, just throwing it back to them. I like the idea of making it simple, check opt in, opt out. Again, it's got to comply with the requirements, which apparently, you know, are the other side of this.

But I also -- my preference would be that you have to opt in. You know, that would be my -- as a landowner, if I don't pay attention, I don't read the English, I don't understand this stuff. I think if the person doesn't opt in after three attempted notifications or something, then you just -- then you leave them out. Otherwise, everybody's got to opt in, otherwise they don't stay in it.

And I know you want the land to be contiguous, but there's a lot of one-acre parcels and two-acres and what-have-you that are never going to be ag, and all you're going to do is restrict these people's ability to, in the future, add houses or do anything else with it that would make the land
more useable.

And for a lot of land, the most valuable crop that we have is housing. And clearly, we have a need for that, so I really hate the idea that we're just going to find one big swath of land, say that's all -- it's because you are nearby some other good land.

So I'd like to have them enforce it or have the county or city and county have people opt in. Otherwise, they're not part of it, you know. They can -- and again, it would be so hard to go into the individual, but that's their opportunity.

And I love the idea like Commissioner Chang said, have it all there, have the whole package, have the brochure, have the advantages, disadvantages. Spoon feed me.

I deal with people all the time, and it's not what I say, it's what they hear that matters, and we need to make sure that it's written in such a manner that it's really simple, no legalese, no lawyers -- sorry, guys, you know.

You can send it to me. I can dummy it down. Trust me, if I can understand it, it will be good. So I'll support it, though, because at least it gives us an effort to continue to have them move
forward if they can work with that, and Department
of Agriculture. Thank you.

**CHAIRMAN SCHEUER:** Commissioner Chang?

**COMMISSIONER CHANG:** I'll just make a
brief comment.

Ms. Apuna, please, I did not -- I know I
was a little harsh. I do want to applaud the city.
You were the first agency. You inherited a lot of
this, I think, and I guess I just -- you know, I
know -- how do I say it?

We've gotten to know you. We've gotten to
know your good intentions. And as I've shared, I
think you were in a unique position. I think even
if this gets remanded back, I hope the city does,
you know, seriously consider having this done in a
collaborative way, reach out to the partners.

And I think the next time it comes back to
us, which I hope it does, that I think at that point
in time, there will be less criticism and greater
support through education.

And if it takes a long time through the
Planning Commission, I find what may be helpful is
at least to provide the landowners and update -- let
them know where you are. You may not have to -- you
know, you don't have to do a public meeting, but at
least provide them an update.

I think that's what people get fearful of is when they don't hear anything, they think something's going to happen without them. So I think throughout this process -- I mean, I'm hoping other counties are paying attention, but I think the city has -- has set forth a good process. I think it's just we're helping to fine-tune it.

But I do want to acknowledge the good work of DPP, the courage it took to move forward, the courage it took for you sometimes to take a very hard position that reflect the agency and I'm sure not necessarily your own personal position. But again, I think at the end of the day, this pause may end up making your work in the long run a lot easier. I hope it does, at least.

So thank you very much to you and your staff. All right.

CHAIRMAN SCHEUER: Thank you, Commissioner Chang.

COMMISSIONER GIOVANNI: Thank you, Chair. Pretty much on the same level, but I interpreted a key element of Commissioner Wong's motion was to -- we're not only remanding this back or not accepting
it, but to send it all the way back to the state legislature to get it fixed.

So it's not -- I don't want this action by our Commission -- at least, I don't interpret our action by our Commission, by supporting this motion or passing this motion or adopting this order, to be one that the county failed. I don't think they failed at all. I think they did their job, and they did a pretty good -- pretty good job at it, with the exception of the thing sitting at the city council for three-plus years.

I think the real issue is the fundamental writing of the statute. And it can be fixed probably without too much difficulty, and I would imagine that in a collaborative way, the entity that has the most to offer about how to fix it would be DPP, because they've tried to live it.

And I would welcome their candid involvement with others to get back to that level, because I think that's where it needs to go. So again, like Commissioner Chang had expressed and others had expressed, I want to thank the DPP for their efforts over the years to make this thing workable and to get to this point.

But there's a far more problem going to
happen going forward adopting this than sending it
back. And I support sending it back. Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner
Giovanni.

Commissioners, anything further? If not, I'll just start my final remarks before calling on
the -- our Executive Officer to read the motion and
take a roll-call vote.

I'm reminded of a period or a time in my
life earlier where I acquired a piece of furniture
from Ikea, and it both had the wrong directions and
the mismatched set of parts, and there was one
frustrating day trying to get this fricking thing
together. There was no way, with those instructions
and those parts and the wrong tools, to make this
thing work. And it took a huge amount of time to
realize, oh, here's what's going on. I got to send
it back. That's where we're at.

I want to join and thank DPP and also call
out DOA. Like, you've tried to make this work with
the tools and things at hand. My criticisms were
merely really limited to the -- I think people need
to hear from the public that you get that they're
frustrated, and it's really important. And I didn't
hear that, and then it was said, so that was
important. But I acknowledge the many years of work
the DPP did.

   The thing that gives me pause is not the
effect same thing as other parties, the one thing
about voting in favor of this. Frankly, I have come
to the conclusion almost eight years on this
Commission, that IAL overall is fundamentally
flawed. It does not do much for Hawaii, for
agriculture, except for a few large farmers,
landowners. I think it's deeply flawed and needs to
be really redone.

   So it doesn't give me pause to send it
back for that reason that this might stall the
process. What gives me pause is that I think this
could be seen as rewarding -- and maybe I've been
too polite about it -- what I really perceive is bad
behavior from a private law firm who, I think, was
trolling for clients.

   Now, I know some people are like, "Hey,
we're super grateful that we heard from that law
firm." But the language that was used in that
letter was almost, but not entirely, inaccurate.
That letter said things like, "the IAL laws will
significantly impact and diminish your rights to use
your lands."
There's a question that they might, in a very, very small way, do so, and it's actually why we need the legislature to clarify whether or not that is the case. Is the housing different, or is it not? If they say it's no different, if they adopt the thing, that argument goes away.

There was an argument -- or a statement in the letter that said, "you need to know how to best protect your land use rights." These things were inflammatory. And if the city made a critical error, it was not directly getting out in front of that letter at multiple levels, DPP, mayor, and others, to just say, "listen, we're responding to that. We know -- we heard what you said. Here's what's going on." I don't want our rejection to be seen as a reward of that kind of behavior.

But the only way to deal with that -- and this is why I want the city to come back, but I need us to go to the legislature, too -- is to clarify these errors or critical points of dispute in the law, so that they're very clear and that nobody else can take advantage of the ambiguity going forward, because otherwise, we'll find ourselves in the same place.

Commissioner Cabral?
That concludes my statements. After Commissioner Cabral and if there's any other statements from the Commissioners, I will call for the vote.

COMMISSIONER CABRAL: Okay. Thank you.

I'm appreciating what I hope is the correct clarification from both you and -- you as Chair and Commissioner Giovanni. And so I want to really verify with Commissioner -- I'm trying to find you based on these screens. Commissioner Wong, there you are in front of your golf course or something.

Anyway, so as the maker of the motion, you're sending it back, meaning both to the legislature as well as the city and county to re-work it. Is that what we are really voting on? I'm definitely in favor of sending it back to the legislature.

CHAIRMAN SCHEUER: Mr. Orodenker?

COMMISSIONER WONG: I just --

CHAIRMAN SCHEUER: Commissioner Wong and then Mr. Orodenker.

COMMISSIONER WONG: Commissioner Cabral, it's both. Because of the -- it's a flawed statute, to me, like everyone else said. Plus -- but I think the process took too long, and a lot of the -- as
Chair said, there was a lot of misinformation out there that could have been done properly and what Commissioner Chang said.

So it's like two -- it's a motion with everything, second mulligans, too, or whatever you want to call it. That's all.

COMMISSIONER CABRAL: Okay. And then the only other thing I want to say -- and I don't get to see if anybody's -- if the public is still out there -- that I hope that we are -- this going back and forth for three-plus hours since anyone else got to talk was they hope they understand that they can rest, breathe for a little while.

Nothing's going to happen to their land. They don't lose it. Nothing's going to -- nothing bad's going to happen to their land at this point in time. They should receive a whole lot more communication and a whole lot more time and effort, and it's going to come back through this body before it -- everything -- anything else happens.

So I want the public to realize that their efforts in coming forward and communicating to us, this hearing and the other hearings and in writing, have, in a sense, made a big difference in what's going on. So that would be my last comment aside
from a vote. Thank you.

CHAIRMAN SCHEUER: Thank you, Commissioner Cabral.

Commissioner Ohigashi?

COMMISSIONER OHIGASHI: I'm sorry. I'm going to say this, and -- I'm going to say this. Arnold, are you using the word "mulligan" because you're on a golf course?

But that being said, I just want to -- I don't think that we can command anybody to go to the legislature or remand it to the legislature. It's a state law, so what we can do, I would imagine, is suggest -- Farm Bureau indicated that they -- that this area should be cleared up as well as the city as well as our own Executive Director if we can see whether or not we can submit amendments to seek to clear this matter up.

But that may be a separate motion, or that may be part of this motion. But I don't think we can technically remand it to the legislature.

CHAIRMAN SCHEUER: Thank you.

Mr. Orodenker, why don't you read the motion as it appears before us. Then I'll ask you separately to call for a vote.

MR. ORODENKER: Okay. It's been moved by
Commissioner Wong that we remand the matter back to the county because of time issues, due process uncertainties, community outreach defects, representations made by attorneys and others that need to be clarified, and to note that the statute needs to be revised and clarified, and that requests that the legislature make it a funded mandate.

CHAIRMAN SCHEUER: Are we comfortable taking the vote, Commissioners? Okay.

Mr. Orodenker, please call for the vote.

MR. ORODENKER: Thank you, Mr. Chair. The motion is as stated.

Commissioner Wong?

COMMISSIONER WONG: Aye.

MR. ORODENKER: Commissioner Ohigashi?

COMMISSIONER OHIGASHI: Yes.

MR. ORODENKER: Commissioner Giovanni?

COMMISSIONER GIOVANNI: Aye.

MR. ORODENKER: Commissioner Chang?

COMMISSIONER CHANG: Aye.

MR. ORODENKER: Commissioner Cabral?

COMMISSIONER CABRAL: Aye.

MR. ORODENKER: Commissioner Aczon?

COMMISSIONER ACZON: Yes.

MR. ORODENKER: Chair Scheuer?
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.)
CERTIFICATE

I, Jodi Dean, do hereby certify that the proceeding named herein was professionally transcribed on the date set forth in the certificate herein; that I transcribed all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true, and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 25th day of January, 2022.

Jodi Dean