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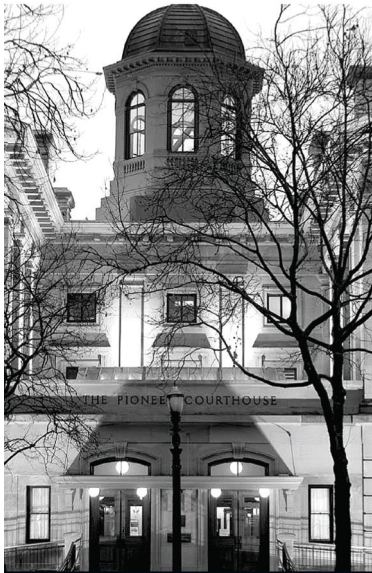
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STATE OF HAWAII
LAND USE COMMISSION

TRANSCRIPT OF COMMISSION MEETING HELD BY

VIDEOCONFERENCE ON:

WEDNESDAY, JULY 14, 2021



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COMMISSIONERS APPEARANCES BY VIDEOCONFERENCE:

- Jonathan Scheuer (Chair)
- Nancy Cabral
- Gary Okuda
- Arnold Wong
- Dawn N.S. Chang (excused)
- Daniel Giovanni
- Lee Ohigashi (excused)
- Edmund Aczon

STAFF PRESENT BY VIDEOCONFERENCE:

- Daniel Orodener, Executive Officer
- Daniel Morris, Deputy Attorney General
- Scott Derrickson, Staff Planner
- Riley Hakoda, Staff Planner/Chief Clerk
- Natasha Quinones, Program Specialist

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APPEARANCES BY VIDEOCONFERENCE CONTINUED:

Jeff Ueoka, Esq.
Attorney for Petitioner Von Tempsky Marital Trust

Michael Hopper, Esq.
Deputy corporation counsel
County of Maui

Michele McLean
Director of the Planning Department
County of Maui

Jordan E. Hart
Deputy Director, Planning Department
County of Maui

Jared Furaka
Planning Department
County of Maui

Alison Kato, Esq.
Deputy Attorney General
Office of Planning and Sustainable Development

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APPEARANCES BY VIDEOCONFERENCE CONTINUED:

Rodney Funakoshi
Land Use Administrator, OPSD

Lorene Maki
Planner, OPSD

1 **TRANSCRIPT OF COMMISSION MEETING HELD BY**

2 **VIDEOCONFERENCE ON:**

3 **WEDNESDAY, JULY 14, 2021**

4

5 **CHAIR SCHEUER:** Okay. Aloha kakou and
6 good morning. This is the July 14th, 2021, Land Use
7 Commission meeting, which is being held using
8 interactive conference technology linking video
9 conference participants and other interested
10 individuals of the public via the Zoom webinar
11 platform. We're doing this, of course, to comply
12 with the State and County official operational
13 directives during the still ongoing COVID-19
14 pandemic.

15 Members of the public are able to view the
16 meeting via the Zoom webinar platform. For all
17 meeting participants, I'd like to stress the
18 importance of speaking slowly, clearly, and directly
19 into the microphone. This is especially important
20 because we're also employing a new technology to
21 transcribe the audio recording of these proceedings.
22 So before speaking, please state your name and
23 identify yourself for the record.

24 Please also be aware, all meeting
25 participants -- and there's already a notice that

1 went out -- that this is being recorded on a digital
2 record of the Zoom meeting. Your continued
3 participation is your implied consent to be part of
4 the public record of this event and if you do not
5 wish to be part of the public record, you should
6 exit this meeting now.

7 This technology, as we all know, allows
8 the parties and each participant and commissioner
9 individual remote access to the meeting proceedings
10 via our own individual digital devices. So please
11 also note due to matters entirely outside of our own
12 control, from time to time occasional disruptions to
13 connectivity may occur. If this happens, please let
14 us know and please be patient as we try to restore
15 signals.

16 For any members of the public who wish to
17 testify during -- on any matter to which public
18 testimony is being accepted, if you are accessing
19 the meeting by smart phone or desktop software, you
20 can use the "raise your hand" function, or if by
21 telephone, hitting the key sequence star nine. You
22 also need to use the key sequence star six to mute
23 and un-mute.

24 Depending on the length of our proceedings
25 today, we will be taking breaks, approximately ten

1 minutes, every hour. My name is Jonathan Likeke
2 Scheuer and I have the distinct pleasure of serving
3 as the Land Use Commission Chair. Along with me is
4 Commissioner Aczon, Gary Okuda, Arnold Wong. And
5 our small but powerful staff, our LUC executive
6 officer, Daniel Orodener; our chief planner Scott
7 Derrickson; our chief clerk, Riley Hakoda; our
8 program specialist Natasha Quinones; along with our
9 deputy attorney general Dan Morris are all on the
10 island of Oahu.

11 Commissioner Dan Giovanni is on Kauai, and
12 Commissioner Nancy Cabral is on Hawaii island. Today
13 we have excused absences from Commissioner Dawn
14 Chang of Oahu and Commissioner Lee Ohigashi of Maui.

15 We currently have eight seated
16 commissioners of a possible nine.

17 Our first order of business is adoption of
18 the two sets of the minutes, June 9th and 10th, and
19 June 22nd.

20 Mr. Hakoda or Mr. Derrickson, has there
21 been any public written testimony submitted on this
22 matter?

23 **MR. HAKODA:** This is Riley. No one -- no
24 written testimony on this.

25 **CHAIR SCHEUER:** Are there any members of

1 the public attending through the attendee function
2 of this webinar platform who wish to testify on the
3 adoption of the minutes for these two meetings? If
4 so, raise your hand.

5 Seeing none, Commissioners, are there any
6 comments or questions on any of the -- either of the
7 two sets of minutes? Does anybody need to recuse
8 from one set but not the other? If not, I'll accept
9 a single motion to adopt both.

10 Commissioner Cabral.

11 **COMMISSIONER CABRAL:** I'll move to adopt
12 those.

13 **CHAIR SCHEUER:** Okay. Is there a second?
14 Commissioner Wong seconds the motion.

15 Any discussion? Commissioner Okuda.

16 **COMMISSIONER OKUDA:** No, Chair. I was
17 just un-muting myself for the vote. Sorry.

18 **CHAIR SCHEUER:** Okay.

19 **COMMISSIONER OKUDA:** This is Gary Okuda.

20 **CHAIR SCHEUER:** Yeah, Dan, would you do a
21 rollcall vote.

22 **MR. ORODENKER:** Thank you, Mr. Chair. The
23 motion is to adopt the minutes for (inaudible).

24 Commissioner Cabral.

25 **COMMISSIONER CABRAL:** Yes.

1 **MR. ORODENKER:** Commissioner Wong.

2 **COMMISSIONER WONG:** Aye.

3 **MR. ORODENKER:** Commissioner Aczon.

4 **COMMISSIONER ACZON:** Aye.

5 **MR. ORODENKER:** Commissioner Giovanni.

6 **COMMISSIONER GIOVANNI:** Aye.

7 **MR. ORODENKER:** Commissioner Okuda.

8 COMMISSIONER OKUDA yes.

9 **MR. ORODENKER:** Chair Scheuer.

10 **CHAIR SCHEUER:** Aye.

11 **MR. ORODENKER:** Commissioner Ohigashi and
12 Chang are excused. The motion is (inaudible).

13 **CHAIR SCHEUER:** Okay. Thank you, very
14 much. Our next meeting agenda item is the tentative
15 meeting schedule. Mr. Orodenger.

16 **MR. ORODENKER:** Thank you, Mr. Chair. The
17 hearings at the end July were continued to a later
18 date. We will be meeting on August 25th for a
19 status report on Kaonoulu Ranch. And I have to note
20 for the commissioners that (inaudible) January 1st
21 there will be holding meetings under the old rules
22 which would require either in person or notification
23 where the commission will be.

24 **CHAIR SCHEUER:** Dan, I don't know if you
25 can go closer to your microphone, but the audio is

1 not picking up particularly well.

2 **MR. ORODENKER:** Thank you, Mr. Chair. I
3 have to (inaudible) for the commissioners that
4 beginning in August, we will go back to the old
5 rules which requires (inaudible) at least until
6 January 1st (inaudible) the legislation goes into
7 effect. That means that meetings will be held in
8 person on the island in which the land is located.
9 Virtual attendees will have to be located at a place
10 where the public can also attend, and notification
11 of those locations given to the public.

12 So August 25th we will be on Maui for the
13 Kaonoulu Ranch status report. On September --
14 excuse me. On September 8th, we will travel to the
15 Big Island for the Church matter. On September 9th,
16 we will be on Oahu for the (inaudible) solar matter.
17 On September 22nd, we will travel again to the Big
18 Island for the Honi Opu (phonetic) Hideaway
19 (inaudible). On the 23rd, we will be on Maui for
20 the Waikapu Properties matter. October we are
21 hoping that we can take up the IAL matter on Oahu on
22 October 13th and 14th. That's pending the
23 completion of the review (inaudible) Chinatown.

24 And November (inaudible) is open. On
25 December 8th, we have the Windward Airport Hotel

1 matter on Maui, and that takes us through the end of
2 the year.

3 **CHAIR SCHEUER:** Okay. Thank you, very
4 much.

5 Commissioners, are there questions for --

6 **COMMISSIONER GIOVANNI:** What was the date
7 in October?

8 **MR. ORODENKER:** October 13th and October
9 14th.

10 **CHAIR SCHEUER:** Thank you.

11 **COMMISSIONER GIOVANNI:** Thank you.

12 **CHAIR SCHEUER:** Commissioners are there
13 questions? Okay. Seeing none, our next agenda item
14 is Docket No. A-11790, Kula Ridge, LLC, Maui, to
15 consider an order to show cause for Docket No. A-
16 11790, in which the Commission granted the
17 redesignation of approximately 34.516 acres of land
18 from the agricultural district to the urban district
19 and approximately 16.509 acres of land from the
20 agricultural district to the rural district at Kula,
21 Maui, Hawaii, for residential park and open space
22 uses.

23 Will the parties please identify
24 yourselves for the record beginning with the
25 petitioner.

1 **MR. UEOKA:** Good morning, Chair and
2 members of the commission. My name is Jeff Ueoka
3 representing the Von Tempsky Marital Trust.

4 **CHAIR SCHEUER:** Thank you.
5 County.

6 **MR. HOPPER:** Good morning, Chair and
7 commission members. Michael Hopper, deputy
8 corporation counsel, on behalf of the Maui County
9 Department of Planning. With me are deputy planning
10 director Jordan Hart and planner Tara Furakawa.

11 **CHAIR SCHEUER:** Jordan looks very
12 different, Michael. I think you have Michelle
13 McLean with you.

14 **MR. HOPPER:** Oh, it's listed as Jordan
15 Hart here.

16 **CHAIR SCHEUER:** But I'm looking and I'm
17 pretty sure it's Michelle McLean.

18 **MS. MC LEAN:** I can hear Jordan laughing
19 in his office.

20 **MR. HOPPER:** Sorry. He was here for the
21 last item. She's here as well. Thank you, Chair.

22 **CHAIR SCHEUER:** No problem. Office of
23 Planning -- and maybe if your clients would make
24 themselves visible, we won't have any confusion.

25 **MS. KATO:** Good morning, Chair and

1 Commissioners. Allison Kato, deputy attorney
2 general, for the Office of Planning and Sustainable
3 Development. Also here are Rodney Funakoshi and
4 Lorene Maki from the Office of Planning and
5 Sustainable Development.

6 **CHAIR SCHEUER:** Thank you.

7 Now, let me update the record now that
8 we're we've done correct appearances.

9 Rodney, you can stay visible.

10 On April 14th, 2021, the Commission met
11 via Zoom virtual conference technology to hear a
12 status report on this matter. On June 3rd, 2021,
13 the Commission issued and mailed its order to show
14 cause, Exhibit A, petition area map, certificate of
15 service, and notice of hearing to all the parties,
16 as well as a letter to the petitioner.

17 On June 18th the Commission received the
18 Office of Planning's position statement of no
19 position. On June 24th, the Commission received the
20 County of Maui's position statement that it was not
21 opposed to the reversion of the petition area back
22 to the agricultural district from the urban and
23 rural land use designations.

24 On July 2nd, the Commission mailed our
25 meeting agenda for today's meeting to the parties in

1 this docket through our statewide and county mailing
2 lists. On July 8th, the petitioner filed a
3 stipulation of the parties on the LUC's order to
4 show cause, dated June 3rd.

5 On July 9th, the Commission received
6 public written testimony on this matter from Dana
7 Naone Hall. Also on July 9th, the Office of
8 Planning and Sustainable Development filed an
9 amended statement of position to the order to show
10 cause, a certificate of service, and amended list of
11 exhibits numbered Exhibit 1-A, 1-B, 2, and 3.

12 Just to go over our procedures, I will
13 first recognize any other written testimony received
14 on this docket. I will then call for any
15 individuals who wish to provide oral testimony on
16 this docket. After you raise your hand using the
17 "raise your hand" function, I will bring you in,
18 swear you in, ask that you state your name and
19 address for the record, and then give you the
20 opportunity to testify. Following your testimony,
21 you will need to remain available for questions from
22 the parties in this docket and the commissioners.

23 Following the closure of public testimony,
24 if any, I will allow the petitioner to present their
25 case in their order to show cause. Should it choose

1 to do so, the petitioner can be allowed to introduce
2 evidence as to why the petition area should not be
3 reverted to the original classification.

4 After the petitioners's presentation,
5 we'll receive questions and comments from the
6 commissioners. I will then do the same procedures
7 for the County of Maui and the Office of Planning.

8 Petitioner will be allowed to offer any
9 closing arguments that they might make, and then
10 following that after any questions from the
11 commissioners to any of the parties, the Commission
12 will conduct formal deliberations.

13 That probably took longer to say than the
14 hearing might take today, but we'll see. I will
15 note, as I did before, from time to time, I will
16 reserve the right to take breaks.

17 Are there any questions with our
18 procedures today starting with the petitioner?

19 **MR. UEOKA:** No questions, Chair. Thank
20 you. Jeff Ueoka.

21 **CHAIR SCHEUER:** Thank you.

22 Mr. Hopper.

23 **MR. HOPPER:** No Chair, thank you.

24 **CHAIR SCHEUER:** Ms. Kato.

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

1 **CHAIR SCHEUER:** Okay. I noted for the
2 record that we received testimony in written form
3 from Dana Naone Hall on July 9, 2021.

4 Mr. Hakoda, has there been any further
5 written testimony received on this matter?

6 **MR. HAKODA:** No, Chair.

7 **CHAIR SCHEUER:** Okay. The testimony of
8 Ms. Hall, I believe, has been posted to our website
9 as well and made available to the parties.

10 Are there any members of the public who
11 wish to testify on this matter? If so -- no one is
12 calling in by phone so use the "raise your hand"
13 function in your Zoom software. Does anybody wish
14 to testify on this matter? Seeing none, we will
15 have no public testimony on this matter.

16 We can now hear from the petitioner.

17 **MR. UEOKA:** Jeff Ueoka. Thank you, Chair.
18 I believe Mr. Welch presented thoroughly at the
19 earlier meeting so I'll be available for questions
20 if you have any -- you or the members have any
21 questions. Thank you.

22 **CHAIR SCHEUER:** Okay. Thank you. Are
23 there any questions for the petitioner from the
24 commissioners?

25 Commissioner Okuda.

1 **COMMISSIONER OKUDA:** This is Gary Okuda.

2 Thank you, Mr. Chair.

3 Mr. Ueoka, let me tell you one of the
4 concerns I have. Although, I'm not sure if the
5 Commission has a remedy. It is true that the
6 decision and order required a certain amount of
7 affordable housing units to be built as a condition
8 of the boundary redesignation; isn't that correct?

9 **MR. UEOKA:** That is my understanding -- or
10 Jeff Ueoka. That is my understanding, Commissioner
11 Okuda.

12 **COMMISSIONER OKUDA:** And I understand that
13 it wasn't your client that may have made, you know,
14 certain representations, but this requirement, as we
15 lawyers say, runs with the land and is an
16 encumbrance on the title unless the Land Use
17 Commission today decides otherwise. Is that
18 correct?

19 **MR. UEOKA:** Jeff Ueoka. That is my
20 understanding; it is a condition that is on title
21 for this parcel or the parcels.

22 **COMMISSIONER OKUDA:** And this is Gary
23 Okuda again. You know, given the fact that in the
24 D.W. Aina Lea case -- and since we don't have a
25 court reporter. D.W. is capital D, capital W. Aina

1 is A-i-n-a. Lea is L-e-a. Development is
2 abbreviated D-e-v.

3 There was an admonition at page 709 of
4 Volume 339 Pacific 3rd and 187. That's the page of
5 134 Hawaii Reports where the Supreme Court, quoting
6 the underlying legislative history, raised a red
7 flag about the fact that land that gets a boundary
8 redesignation gets valued just because of the fact
9 that the boundary or the zoning has been changed.
10 Do you agree with that?

11 **MR. UEOKA:** Jeff Ueoka. I'm not overly
12 familiar with that case, but it seems like you are
13 reading from it so I can't disagree.

14 **COMMISSIONER OKUDA:** This is Gary Okuda.
15 So during the time from when the landowner received
16 the boundary designation up until today, have there
17 been any parties that, for lack of a better term,
18 took equity out of the property; in other words,
19 made money or made a profit because there was this
20 change in a boundary designation from the prior
21 designation into urban?

22 In other words, did someone make money off
23 of this property because of the fact that you had
24 this boundary designation- - redesignation?

25 **MR. UEOKA:** Jeff Ueoka. As far as I know,

1 Member Okuda, no, there has been no gain by anyone.
2 It's -- I think it's took a lot of expenses, but I
3 don't think there's been any gain by anyone. Thank
4 you.

5 **COMMISSIONER OKUDA:** Okay. Is there
6 anything in the record that indicates that no one
7 made money off of this property during the interim?

8 **MR. UEOKA:** Jeff Ueoka. Member Okuda, not
9 that I am aware of.

10 **COMMISSIONER OKUDA:** Okay. This is
11 Gary Okuda. This is the concern I have, and
12 maybe you can tell me if it can be addressed: The
13 concern I have is that we receive representations by
14 petitioners that certain things will be done such as
15 affordable, housing and these promises are not kept.
16 Besides a reversion, do you see anything -- any
17 government agency can do -- and I'm not limiting
18 government agency simply to the Land Use Commission.
19 But do you see anything that other government
20 agencies can do to require compliance with these
21 representations so that promises, for example, of
22 affordable housing are not just simple -- simply
23 empty promises to the community?

24 **MR. UEOKA:** Jeff Ueoka. Member Okuda,
25 it's an interesting concept. For years I actually

1 worked for the County and I was -- I used to advise
2 the Department of Housing and Human Concerns so I am
3 familiar with affordable housing. And the position
4 I often had for the, I guess, incentive for
5 developer to follow through on everything was
6 typically when they do these projects, there's a
7 profit at the end of it, so it behooves them to
8 fulfill all of their requirements, and a lot of
9 these units don't get the market units without doing
10 the affordable units.

11 So that would be the requirement that
12 would need to be met in order to -- you know,
13 typically the market units are where you make the
14 money, so that was always my understanding and feel
15 on why someone would go through the process of, you
16 know, change in zoning for the County level or 201H
17 fast track affordable housing project and the
18 district boundary amendment on the State level is
19 the idea that they would be profiting somehow from
20 the development.

21 So at the end of the day, that was always
22 my understanding of what would motivate individuals
23 to follow through on the requirements and get the
24 project going. Thank you.

25 **COMMISSIONER OKUDA:** Yeah, this is Gary

1 Okuda. My final question to you, Mr. Ueoka --
2 and I might pose similar questions to the other
3 parties -- is: I do agree that economic carrots are
4 the best way to have efficiency in the economy, but
5 do you think that sometimes there's a necessity for
6 a legal stick, for example, bringing an action for
7 what we call in the law specific performance? In
8 other words, where a request is made to the court to
9 order an owner of a property which is subject to
10 this type of encumbrance to carry out the
11 representations that were made?

12 Is there anything in the law that, you
13 know, prohibits the use of a specific performance
14 action to require a developer to or a landowner who
15 has property which is subject to a requirement to
16 provide affordable housing to be specifically
17 required to perform that promise or encumbrance?

18 **MR. UEOKA:** This is Jeff Ueoka. Thank
19 you, Commissioner Okuda. I'll leave that more to
20 your -- Mr. Morris or Ms. Kato to give you specifics
21 on what you guys can do. I am not aware of a
22 prohibition in the law.

23 However, I will say if specific
24 performance is something that you could be subjected
25 to as a developer, I'd be very hesitant to advise my

1 clients to move forward on certain matters. It
2 would have a chilling effect almost. You would
3 probably get less development in the state because
4 developers would be afraid that if circumstances
5 change -- a pandemic hits. Who knows. Things in
6 the world change. I don't know what else could
7 happen. The pandemic kind of blew my mind, so I
8 don't know what else could happen anymore.

9 But if circumstances change and you can't
10 develop for whatever reason and, you know, you'll go
11 bankrupt or, you know, lose a lot of money and you
12 have this onus on you that the State can force you
13 to perform, that's -- that's a huge risk that you'd
14 take. And I understand the importance of getting a
15 district boundary amendment from this body, but
16 that's a large risk. Thank you.

17 **COMMISSIONER OKUDA:** This is Gary Okuda.
18 Thank you, very much, Mr. Ueoka.

19 Thank you, Chair. No further questions.

20 **CHAIR SCHEUER:** Thank you, Commissioner
21 Okuda.

22 Commissioners, further questions for Mr.
23 Ueoka at this time?

24 Seeing none, Mr. Hopper.

25 **MR. HOPPER:** Thank you, Chair and members

1 of the commission. The County of Maui along with
2 Office of Planning and the current landowner have
3 entered -- oh, I'm sorry. I have no questions for
4 the --

5 **CHAIR SCHEUER:** No, no, I was asking you
6 to present your case.

7 **MR. HOPPER:** Okay. I just wanted to be
8 clear because there's been no witnesses in this
9 case. The County of Maui has entered into a
10 stipulation with both the current landowner and
11 Office of Planning similar to the Hale Mua docket
12 agreeing to not oppose the reversion of this
13 property to agriculture.

14 The Department has filed a statement of
15 position stating no opposition to the reversion
16 given that there are a number of conditions that
17 have not been complied with and probably most
18 significantly, the current landowner has stated that
19 they don't have the ability or the capability to
20 complete the project as represented.

21 Therefore, the County of Maui does not
22 oppose reversion and it, in fact, has signed a
23 stipulation, again similar to Hale Mua, because we
24 think the circumstances are similar, to allow for
25 the reversion of the property without the necessity

1 of going through the full hearing.

2 But we are -- I am available for
3 questions. Planning Director Michelle McLean is
4 here as well and can answer questions if there's
5 something that needs to be addressed. But, you
6 know, we have filed both a statement of position as
7 well as a stipulation in this docket and so I think
8 our positions been made clear. Thank you.

9 **CHAIR SCHEUER:** Thank you, very much, Mr.
10 Hopper.

11 Are there questions for the County of Maui
12 from the commissioners?

13 Commissioner Aczon.

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

15 Good morning, Mr. Hopper. This is in line
16 with Commissioner Okuda's questioning of the
17 petitioner. As you know, Land Use Commission -- the
18 only option we have on this if the conditions are
19 not being followed is to revert the property to the
20 original designation, while the County has all the
21 enforcement power to make the petitioner comply with
22 the conditions.

23 What have you done -- what has the County
24 done to make the petitioner comply to this
25 conditions and also, again, in line with

1 Commissioner Okuda's questioning, is there any way
2 or -- any way that, you know, the County can force
3 the petitioner to comply with those condition?

4 **MR. HOPPER:** Thank you, Chair. To date, I
5 think the County up until -- I think the first
6 indication that the property would not be in
7 substantial compliance was there was a letter
8 earlier -- I believe it was earlier this year. It
9 may have been in 2020 -- where the new landowner
10 had, you know, stated that they did not have the
11 capability of going forward with the project and
12 then the order of show cause ensued.

13 I think because there had not been
14 substantial commencement and reversion was still an
15 option, that that was -- that was the preferred
16 method of enforcement. The other options -- and I
17 did look at this a bit because I know Commissioner
18 Okuda had asked about it, and under HRS 205-13,
19 there can be monetary fines issued for
20 noncompliance. However, that does require
21 essentially a 60-day notification in advance of
22 those fines being issued and, essentially, allowing
23 the landowner an opportunity to comply.

24 And it would have been I think in this
25 case difficult to fine because I think the landowner

1 essentially has said that we're going forward with -
2 - we request reversion because they admitted they
3 did not have the capability to go forward. And so
4 since they did not oppose reversion and that's one
5 of the methods, and it's, in fact, in your decision
6 and order that reversion is a potential method of
7 enforcement, I think that route was considered an
8 available one and a preferred one.

9 As far as a legal action, I do think if a
10 landowner is violating the conditions, that there
11 could be a potential for injunctive relief to stop
12 that violation from going on, but an action for
13 specific performance, I don't want to -- I don't
14 want to foreclose any possibilities of legal action
15 in the future, just to note that it would maybe be
16 difficult to have a court require somebody to build
17 a project in a certain way. I don't know if there's
18 any precedent for that in any area of the country.
19 Maybe there is, but not that I'm aware of, where a
20 court has ordered the completion of a development.

21 I mean, I think you can say complete the
22 development this way or else there can be fines or
23 the development will be halted until it's in
24 compliance. That's another method of compliance I
25 suppose. The County could withhold future permits

1 for a project if it was no longer in compliance.
2 Maybe they had started to build, you have
3 substantial commencement, and an order to show cause
4 would be, you know, a potential method, but you
5 could still state that the project couldn't go
6 forward anymore.

7 Now, we're getting a little bit into the
8 theoretical here. I do think in this particular
9 docket, there has not been substantial commencement,
10 and reversion is a method of enforcement that the
11 legislature as well as the Commission have both
12 outlined as a potential enforcement method. And I
13 think that's where, you know, the County would think
14 the appropriate enforcement would take place.

15 But there are some other options for
16 enforcement. Fines, most likely injunctive relief
17 or withholding future development approvals until
18 there is compliance, I think are all potential
19 options that the County could have in enforcement in
20 addition to reversion.

21 **COMMISSIONER ACZON:** This is Edmund Aczon
22 again. I guess I'm not going to ask you what course
23 of action the County has in mind, but if the -- if
24 the Commission decided to revert the property to its
25 Commission designation, is that course of action

1 still applicable that you were thinking --

2 **MR. HOPPER:** Well --

3 **COMMISSIONER ACZON:** -- or the County

4 thinking?

5 **MR. HOPPER:** I think if it's reverted to
6 an agriculture, the decision and order would most
7 likely be released; right? I mean, I -- the land
8 wouldn't be urban anymore so the conditions that
9 were essentially mitigating conditions in exchange
10 for the urban designation would -- I would think --
11 and the landowner can correct me if I'm wrong, but
12 they would be seeking to have the conditions
13 released because the land would be agriculture
14 rather than urban.

15 **COMMISSIONER ACZON:** (Inaudible) if you
16 make a decision to (inaudible) there's nothing the
17 County can do or any agency can do?

18 **MR. HOPPER:** Well, they wouldn't be in
19 violation of anything, I think. They would be
20 agriculture, so I think that's the idea of the
21 reversion is that you go back before the Commission
22 took its action and they would no longer be -- it
23 would no longer be urban; therefore, the conditions
24 would not be applicable.

25 **COMMISSIONER ACZON:** Edmund Aczon again.

1 This is not a question. It's just trying to kind of
2 share Commissioner Okuda's concern and, you know,
3 also my concern that, you know, I don't really
4 believe that, you know, nobody made money on this
5 property. And, you know, as you know, every time
6 the property change hands, somebody makes money,
7 and, you know, that's the nature of this
8 development.

9 And I'm always also concerned that, you
10 know, I think the last meeting they asked -- the
11 petitioner what do they have, you know, planned for
12 the property, and they said they don't have any
13 plans. I'm afraid that, you know, later on they
14 come back with another proposal and, you know, with
15 different conditions favorable or trying to, you
16 know, get away from the original conditions and
17 getting a better conditions than before.

18 You know, like I said, you know, we going
19 to be watching this property. You know, I cannot
20 really, you know, believe, you know, that the owner
21 of the property just going let this property fallow
22 or, you know, no activity or, you know, development
23 in the future. I just can't believe that.

24 Thank you, Mr. Chair.

25 **CHAIR SCHEUER:** Thank you, very much,

1 Commissioner Aczon.

2 Commissioners, further questions for Mr.
3 Hopper for Maui County?

4 You know, I had none, but he had has
5 inspired me. I want to follow up on a couple things
6 that he said and this might be a question for Ms.
7 McLean.

8 Does the County of Maui have some kind of
9 tracking system for all the affordable units that
10 have been promised for already entitled projects?

11 **MS. MC LEAN:** Chair, do I need to be
12 sworn?

13 **CHAIR SCHEUER:** Yeah. Do you swear or
14 affirm that the testimony that you're about to give
15 is the truth.

16 **MS. MC LEAN:** I do.

17 **CHAIR SCHEUER:** Okay.

18 **MS. MC LEAN:** Yes, the County does have
19 the Department of Housing and Human Concerns and the
20 Planning Department track 201H or the County-level
21 2.97 fast track housing approvals. Additionally,
22 the County tracks all entitled projects, even ones
23 that didn't go through that kind of process.

24 **CHAIR SCHEUER:** So do you have a ballpark
25 number on how many units have been promised but not

1 delivered right now, say, on the island of Maui?

2 **MS. MC LEAN:** Not off the top of my head,
3 but it wouldn't be hard to get that information if
4 you'd like it.

5 **CHAIR SCHEUER:** That would be very
6 interesting. And is there a process for tracking
7 compliance related to progress and conditions
8 knowing that progress is being made towards -- or
9 are we surprised when we get a letter from the
10 landowner?

11 **MS. MC LEAN:** We -- excuse me. I don't
12 know what happened to my voice.

13 **CHAIR SCHEUER:** Same thing that happened
14 to Dan's, apparently.

15 **MS. MC LEAN:** I think so. Once a project
16 is commenced, there are a number of administrative
17 permits that need to be obtained, and through the
18 site work process as well as vertical construction,
19 various levels of County reviews. Through that
20 process, we track compliance because often there are
21 milestone conditions that certain things cannot
22 happen before preliminary subdivision approval or
23 before certificate of occupancy. So there are
24 milestones like that through which we track
25 progress.

1 If a project never even begins, like Hale
2 Mua, like this one, we may contact the landowner or
3 the applicant just to say what's going on, but we
4 don't track compliance in the same way as we do once
5 a project has broken ground.

6 **CHAIR SCHEUER:** So do you have any sense
7 of how many projects might be out there that are in
8 this land that Hale Mua and this project -- occupy
9 this space, rather?

10 **MS. MC LEAN:** Again, not off the top of my
11 head, but I can readily get that for you.

12 **CHAIR SCHEUER:** I think my last question
13 would be -- I had one for Mr. Hopper, too, but my
14 last question would be -- and this is maybe just for
15 future consideration, but are there any things that
16 the Land Use Commission could better in its
17 construction of conditions that would facilitate the
18 County's tracking and enforcement?

19 And, you know, this is almost -- I said
20 this at the beginning. This comes from -- as
21 volunteers, we are the subject of a ritual annual
22 beating in front of the legislature that we are the
23 problem with the State's progress towards affordable
24 housing. I'm kind of tired of it. I want to help.
25 I don't think we're actually the problem. So if

1 there is something we can do better, tell us how we
2 can work that out with the County to make sure
3 things actually get produced.

4 **MS. MC LEAN:** I sympathize with you. I
5 have been the recipient of many public blows myself.
6 In terms of tracking and enforcing condition
7 compliance, the wording of the conditions can be
8 very important.

9 **CHAIR SCHEUER:** Again, if this is just
10 something for future consideration, that's fine,
11 too.

12 **MS. MC LEAN:** No, I think it would be
13 helpful for us to be more of a participant when the
14 language is crafted and also for the applicant to
15 participate because what seems a reasonable
16 milestone to me or to the Land Use Commission, might
17 not be so reasonable for the applicant, and just
18 adjusting that milestone a little bit could be a
19 significant difference.

20 But in this case it's -- there's nothing
21 in the conditions that prevented this project from
22 being built. It's external conditions, water
23 availability, that have been the problem here.

24 **CHAIR SCHEUER:** Thank you, Ms. McLean. And
25 I recognize Commissioner Giovanni has his hand up,

1 but I did say I had one quick question for Mr.
2 Hopper, which is, you said that it's possible to,
3 perhaps, prevent developers from coming forward and
4 getting entitlement in the future if they fail to
5 comply with previous conditions. Did I hear you
6 correctly, Mr. Hopper?

7 **MR. HOPPER:** I didn't -- I don't think I
8 intended to say that. I talked about -- I think
9 that injunctive relief could be possible in certain
10 cases as well as preventing -- I didn't mean future
11 entities in other dockets.

12 I'm talking about if a projects starts to
13 build and, for example, they were supposed to build
14 affordable units before market units or they do
15 something out of order, I think the County could say
16 stop building. You're not getting any more units
17 until you do X, Y, and Z. Or if they were supposed
18 to build a road or something before units and there
19 were -- you know, the road's not built or something
20 like that, you could say you're not getting any more
21 building permits for this projects until the road's
22 built.

23 **CHAIR SCHEUER:** Thank you for that
24 clarification.

25 **MR. HOPPER:** Yeah, as far as, you know,

1 the same landowner, I mean, I think you do evaluate
2 the financial capability of landowners as part of
3 your docket. So I think if the same landowner has
4 had -- has had financial issues in the past or has
5 failed to complete projects in the past and it's the
6 same landowner or same developer, that's something
7 you may consider in a docket in the future, but I
8 don't think you can necessarily bar someone from
9 applying.

10 But, you know, that could -- potentially,
11 the track record of the developer, perhaps, could be
12 a consideration if part of your docket
13 considerations are the financial capability to
14 complete the projects.

15 **CHAIR SCHEUER:** What about their counsel?
16 Could we consider that, the track record of their
17 counsel?

18 **MR. HOPPER:** I -- I'm an attorney so I
19 can't necessarily -- I feel like --

20 **CHAIR SCHEUER:** You don't have to answer
21 the question. It was rhetorical.

22 Commissioner Giovanni.

23 **COMMISSIONER GIOVANNI:** Thank you, Chair.
24 This is Commissioner Giovanni. And I don't have
25 questions but I do have comments to offer on this

1 topic. I, as the Chair has said, have similar
2 feelings to those expressed by Commissioner Aczon
3 and Commissioner Okuda and the Chair as well on this
4 topic, and it's about follow through of commitments
5 made by developers.

6 And my comment is that it -- in
7 recognition of -- I think over the last 48 hours,
8 there's been a fair amount of news statewide about
9 the Hawaii Community Assets Plan for 5,000
10 affordable housing units on Maui, and that plan is
11 being submitted to Maui County government for review
12 and consideration.

13 Obviously, there's a great need for
14 affordable housing on all islands and Maui is no
15 exception, and I was happy to see this plan being
16 developed in a community setting and with a lot of
17 community representation. I don't know a lot about
18 the details of it yet but I am looking at it.

19 My encouragement to you, Ms. McLean and
20 Mr. Hopper, is to take the issues you've heard about
21 today of enforcement and delivery and on promises
22 and see if you can put some teeth into whatever
23 comes from this plan and its consideration for
24 affordable housing. Don't -- don't ignore the
25 opportunity to identify measures that can be put in

1 to these programs that will help ensure that they
2 will go forward and the developers will do it. And
3 the ideas that Mr. Hopper just articulated casually
4 amount ago were the types of things that might help
5 deliver these projects to reality.

6 And in that context, if there's anything
7 that is recognized that the LUC can do to help the
8 process to help ensure that these projects come to
9 fruition, we'd like to hear about it. So thank you.
10 That's my comment.

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

13 Further questions for Mr. Hopper at this
14 time or Ms. McLean? Seeing none, Office of
15 Planning, Ms. Kato.

16 **MS. KATO:** Allison Kato. Thank you, Chair
17 and Commissioners.

18 The Office of Planning and Sustainable
19 Development has no objection to the reversion of
20 petition area to its former agricultural district
21 classification.

22 As Mr. Hopper mentioned, we entered a
23 stipulation with the County and petitioner and we
24 also submitted an amended position statement
25 confirming our position. The Office of Planning and

1 Sustainable Development consulted with relevant
2 State agencies, and we found that conditions remain
3 undeveloped by the petitioner.

4 In particular, we wanted to check with the
5 State of Hawaii Housing Finance and Development
6 Corporation to see if they want to work -- have any
7 interest in working on an arrangement with the
8 petitioner to take over the projects, but they
9 indicated in an e-mail, which we included as Exhibit
10 1-B, that they and the County of Maui are not
11 interested in taking over the projects. As such, we
12 have no objection to reversion.

13 **CHAIR SCHEUER:** Thank you.

14 **MS. KATO:** That's all. Thank you.

15 **CHAIR SCHEUER:** Commissioners, questions
16 for the Office of Planning?

17 Commissioner Aczon.

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

19 Good morning, Ms. Kato. Edmund Aczon.

20 One quick question: What happens if this
21 Commission is not able to get a vote to revert the
22 property to its current -- to original designation?
23 Let us say, you know, the vote wasn't there. So
24 happens?

25 **MS. KATO:** If you vote to not revert it?

1 **COMMISSIONER ACZON:** Yes, or couldn't get
2 enough votes to revert it.

3 **MS. KATO:** In that case, I'm not sure that
4 the situation would change from what it is now. And,
5 I mean, the petitioner's already stated that they
6 are not -- they do not intend to fulfill any of the
7 requirements or to go forward with this project. I'm
8 not sure in that case what would happen. I think it
9 would just remain as is, but I'm not sure again.

10 **CHAIR SCHEUER:** Anything further,
11 Commissioner Aczon?

12 **COMMISSIONER ACZON:** No. I'm just
13 contemplating what's -- what the best way to do an
14 executive session or not.

15 **CHAIR SCHEUER:** Commissioner Giovanni.

16 **COMMISSIONER GIOVANNI:** This is
17 Commissioner Giovanni.

18 Commissioner Aczon raises a very
19 interesting question in my mind and would it be
20 possible, Chair, for us to address that question
21 back to the County in the context of -- my
22 understanding of the County's position is that they
23 are not considering alternative enforcement actions
24 because the preference is for reversion, but if this
25 County -- if the LUC does not approve reversion, I'd

1 be curious as to what enforcement -- alternative
2 enforcement actions the County would be considering.

3 **CHAIR SCHEUER:** Okay. So, you know, the
4 way the procedure was laid out for today, we were
5 going to hear from all three parties, questions for
6 all three parties, and then any questions for any of
7 the parties. So let me just make sure there's no
8 questions at this time specific to OP and then I'll
9 allow you to ask that question of the County.

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

11 **CHAIR SCHEUER:** Anything more for Ms. Kato
12 at this time, Mr. Funakoshi or Ms. Maki? Seeing
13 none, questions for any of the parties, Mr.
14 Giovanni.

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

16 So let me offer the opportunity to
17 Commissioner Aczon since it was his question in the
18 first place to whether or not he'd like to ask that
19 to the County or he wanted me to do it.

20 **COMMISSIONER ACZON:** Go ahead,
21 Commissioner Giovanni.

22 **COMMISSIONER GIOVANNI:** Thank you.

23 So, Mr. Hopper, in your -- this is
24 Giovanni again. Mr. Hopper, in your response to
25 some questions put forth, I think your words were

1 that the in recognition that the developer has
2 expressed that it's not going to go forward when you
3 were asked about what enforcement actions the County
4 could take, I think you said in general that
5 reversion seemed to be the preference, but in the
6 event that this commission does not approve
7 reversion or doesn't have the votes to approve
8 reversion, what alternative means for enforcement is
9 the County considering?

10 **MR. HOPPER:** Yes, Chair, I think -- I did
11 outline under the law some of the possible options.
12 Director McLean's here. I don't want to --

13 **CHAIR SCHEUER:** Ms. McLean's hand is
14 raised.

15 **MR. HOPPER:** So yes, she would like to
16 answer that. I think that she could, if you're okay
17 with that.

18 **COMMISSIONER GIOVANNI:** Certainly. That
19 would be great.

20 **CHAIR SCHEUER:** Ms. McLean.

21 **MS. MC LEAN:** Thank you, Chair. Thank
22 you, Commissioner.

23 It would leave the property somewhat in
24 limbo because it would have certain entitlements
25 that would dictate what uses are allowed on that

1 property as opposed to a reversion to agriculture,
2 which would mean that agricultural activities could
3 be conducted.

4 I do not see the County taking any kind of
5 aggressive enforcement if the reversion isn't
6 approved today. I did work for some time in the
7 private sector with a real estate development
8 company and there is -- and I know I don't need to
9 tell the Commission this, but what goes into the
10 development process to go through the effort to get
11 the entitlements of this property obtained says, to
12 me, that the applicant was not going into this
13 project in a lighthearted way.

14 They fully intended to develop it, but
15 then the realities of what that development would
16 mean in terms of the practical reality of providing
17 infrastructure to the project, the cost of
18 financing, the cost of developing -- that reality
19 must have hit very hard. You don't go through an
20 entitlement process like this even if it's just at
21 the County level without fully intending to develop
22 the project. I would imagine a significant amount of
23 money was lost in obtaining those entitlements and
24 then really being able to do nothing with the land.

25 So for the County to then go after the

1 applicant or the property owner for failure to
2 perform, it just not the philosophy of the County
3 government at this time. But it would leave the
4 property with -- like I said, in limbo with limited
5 opportunities for any sort of use.

6 **COMMISSIONER GIOVANNI:** Thank you.

7 **CHAIR SCHEUER:** Commissioner Aczon.

8 **COMMISSIONER ACZON:** Does the --
9 basically, this -- really, my main point that the
10 owner cannot just say they don't -- they don't
11 intend to do anything on this property -- you know,
12 like, what you're saying. They cannot just leave it
13 in limbo. But the petitioner is not very open with
14 us on what they intend to do with the property in
15 the future. Yeah, development is always a risk, you
16 know. As you go into this, you know that there's a
17 risk involved, so I understand that.

18 **CHAIR SCHEUER:** I guess a further question
19 for Ms. McLean from me is, say, tomorrow -- today
20 they have no plans for the future of the property.
21 Tomorrow they come in with a 14.99-acre request for
22 a portion of the property to go into the urban
23 district. How do you consider this docket, if at
24 all, in the consideration of that request?

25 **MS. MC LEAN:** That's --

1 **CHAIR SCHEUER:** Ms. McLean or Mr. Hopper.

2 **MS. MC LEAN:** Yeah, that's a great
3 question. Just as background, I have had extensive
4 discussions with Mr. Orodener about these 14.99-
5 acre applications that we get and we are endeavoring
6 to curtail those and, you know, have realistic
7 boundaries to truly determine whether something
8 should be considered at the County level or come to
9 this Commission.

10 But putting that aside for a moment, we
11 would want to see much more information about
12 viability to develop the project. I don't -- I
13 didn't go so far back into when this original
14 boundary amendment was approved to see what the
15 applicant had represented in terms of their ability
16 to perform, but if something new came in, we would
17 certainly want to see a lot of that up front so that
18 we wouldn't go through this process a second time.

19 **CHAIR SCHEUER:** But there's nothing that
20 would allow you, really, to reference this earlier
21 docket. Wouldn't -- I mean, the petitioner's
22 counsel would probably strenuously object and just
23 say, listen, that's not -- that's no longer at all
24 part of this property at all.

25 **MS. MC LEAN:** Well, we would have to

1 prepare a staff report to the Maui Planning
2 Commission and the matter would go to the County
3 Council, and in that staff report we would give a
4 background history of the project.

5 Mr. Ueoka often objects to things that I
6 say and do. That doesn't keep me from doing them
7 because I think that's -- you know, it's legitimate
8 context in this case. If we didn't make any
9 reference to it, the Planning Commission would say
10 hey, wasn't this that Kula Ridge project? And, you
11 know, we wouldn't be doing our jobs if we went oh,
12 yeah, but we -- you know, we didn't include that in
13 the staff report.

14 One thing that can be done -- I mean, I
15 was thinking about a prior question. Generally,
16 generous time lines are given for when construction
17 has to complete, has to be initiated, and there are
18 reasons for those, but, perhaps, some thought can be
19 given as to how those might be worded or maybe to
20 elaborate on them more so that not just this
21 Commission, but the County as well could have an
22 indication early on as to whether something is
23 really going to move forward that might be
24 informative. It might just give us more of a status
25 rather than something sitting and languishing for

1 such a long time.

2 **CHAIR SCHEUER:** Thank you.

3 Any further commissioners for any of the
4 parties? Commissioner Aczon.

5 **COMMISSIONER ACZON:** I must apologize, Mr.
6 Chair. I'm trying to avoid it but, you know, I am
7 really kind of concerned. So I would like to move
8 for executive session to consult with our legal
9 counsel on the commissioners' duties and
10 responsibilities.

11 **CHAIR SCHEUER:** Related to a failure to
12 revert? Sorry. You're muted.

13 **COMMISSIONER ACZON:** What the
14 ramifications --

15 **CHAIR SCHEUER:** Okay. Is there a second,
16 Commissioner Cabral?

17 **COMMISSIONER CABRAL:** I am in support of
18 my fellow Commissioner Aczon. I will second his
19 motion.

20 **CHAIR SCHEUER:** Okay. We have a motion to
21 go into executive session. If we do so, this
22 meeting will stay open. The commissioners will go
23 into a separate meeting, Zoom meeting, room for
24 executive session and then come out when we're done
25 back to this meeting room.

1 Mr. Orodenker, please poll the Commission
2 -- or sorry. Is there discussion? Is there
3 discussion on the motion? Seeing none, Mr.
4 Orodenker, please poll the commission.

5 **MR. ORODENKER:** The motion is to go into
6 executive session. Commissioner Aczon.

7 **COMMISSIONER ACZON:** Aye.

8 **MR. ORODENKER:** Commissioner Giovanni.

9 **COMMISSIONER GIOVANNI:** Aye.

10 **MR. ORODENKER:** Commissioner Cabral.

11 **COMMISSIONER CABRAL:** Yes.

12 **MR. ORODENKER:** Commissioner Okuda.

13 **COMMISSIONER OKUDA:** Yes.

14 **MR. ORODENKER:** Commissioner Wong.

15 **COMMISSIONER WONG:** Aye.

16 **MR. ORODENKER:** Chair Scheuer.

17 **CHAIR SCHEUER:** Aye.

18 **MR. ORODENKER:** The motion passes

19 unanimously.

20 **CHAIR SCHEUER:** I apologize to the parties
21 for bachi-ing it by saying this would be quick. I
22 think that's the legal term. So we're going to go
23 into executive session. The commissioners will be
24 leaving the Zoom meeting room and use the Zoom
25 meeting link previously provided by Mr. Derrickson.

1 (At which time the public meeting was
2 recessed.)

3 CHAIR SCHEUER: Okay. We're ready to go.
4 It's 10:32 a.m. We're back on the record. Where we
5 were procedurally is we were in final questions for
6 the commissioners for the parties. Before I turn it
7 to formal deliberation, is there any more questions
8 for the parties from the commissioners?

9 I'll ask one more time for the record, Mr.
10 Ueoka, because -- what are your client's plans for
11 this property after it is reverted?

12 MR. UEOKA: Thank you, Chair. Jeff Ueoka.
13 My understanding is per the earlier meeting that
14 they had when Commissioner Aczon asked Mr. Welch
15 what their motivation was to get the properties --
16 just to clear a couple things up, they owned the
17 property originally. They sold it to Kula Ridge
18 with some seller financing. Kula Ridge did not
19 perform, so to protect their interest, they had to
20 foreclose on the property and they got the property
21 back.

22 This family trust has been in existence --
23 well, I shouldn't say the family trust, but it's a
24 long-time Maui family that has the property. So to
25 protect their interest, they had to foreclose on the

1 property and they took the property back. And I'm
2 not sure -- I don't know if they have any real
3 plans.

4 Per Mr. Welch, I believe he stated that
5 they would probably sell the property again. I'm
6 not sure what their plans on development are. I
7 don't think they -- they're the family trust.
8 They're not developers. I don't believe they would
9 develop it themselves at all. So that's my
10 understanding of the situation. Thank you, Chair.

11 **CHAIR SCHEUER:** Thank you. Anything
12 further, Commissioners, before we enter into
13 deliberations? Seeing none, the Commission will now
14 enter into formal deliberations on whether to grant
15 or deny the order to show cause.

16 I will note for the parties and the public
17 that during the Commission's deliberations, it will
18 not entertain any additional input from the parties
19 or the public unless those individuals or entities
20 are specifically requested to do so by me as the
21 Chair. If called upon, I would ask that my comments
22 be limited to the question at hand.

23 Commissioners, let me confirm with each of
24 you that you have reviewed the record and are
25 prepared to deliberate on the subject docket. After

1 I call your name, would you please signify with
2 either an aye or nay that you're prepared to
3 deliberate on this matter.

4 Commissioner Aczon.

5 **COMMISSIONER ACZON:** Aye.

6 **CHAIR SCHEUER:** Commissioner Cabral.

7 **COMMISSIONER CABRAL:** Yes.

8 **CHAIR SCHEUER:** Commissioner Giovanni.

9 **COMMISSIONER GIOVANNI:** Aye.

10 **CHAIR SCHEUER:** Commissioner Okuda.

11 **COMMISSIONER OKUDA:** Yes.

12 **CHAIR SCHEUER:** Commissioner Wong.

13 **COMMISSIONER WONG:** Aye.

14 **CHAIR SCHEUER:** The Chair is also prepared
15 to deliberate on this matter.

16 Commissioners, I will entertain a motion
17 that the LUC either grants or denies the order to
18 show cause before us. The motion should state the
19 reason for acceptance or nonacceptance of the
20 petition and the conditions that will apply.

21 Commissioners, when it's your pleasure --
22 I note the absence of a Maui commissioner who we
23 often defer to on island matters.

24 Commissioner Wong.

25 **COMMISSIONER WONG:** Chair, I move that we

1 approve the order to revert this property and that
2 we release any involvement and all the conditions by
3 the decision and order that was prior on this
4 property. And I would like to also authorize the
5 LUC to make any changes -- you know, not
6 substantive, like formatting, to ensure consistency
7 and authorize the Chair to sign the order on behalf
8 of the Commission.

9 **CHAIR SCHEUER:** Okay. Commissioner
10 Cabral.

11 **COMMISSIONER CABRAL:** I will second
12 Commissioner Arnold on that motion.

13 **CHAIR SCHEUER:** Okay. Commissioner Wong,
14 would you speak to your motion.

15 **COMMISSIONER WONG:** Yeah, Chair, to me,
16 this is a pretty easy one because everyone agreed,
17 even the landowner, to revert this property back to
18 its original designation of ag. So, you know, I'm
19 just -- and we also had the public testifier
20 agreeing on this, so I feel that it's in the best
21 interest of the Maui to revert it back.

22 **CHAIR SCHEUER:** Commissioner Cabral, do
23 you wish to speak to the motion?

24 **COMMISSIONER CABRAL:** Yes. I am going to
25 agree with this motion and the fact that all parties

1 are agreeable to it, and yet it's with great
2 hesitation that we withdraw the potential of having
3 more housing units in a state and on an island that
4 is in desperate need of housing in all economic
5 levels, both affordable workforce as well as
6 profitable housing. So it's with reluctance but the
7 fact that there's a good basis (inaudible). I'm
8 agreeable. Thank you.

9 **CHAIR SCHEUER:** Commissioners, we have a
10 motion before us.

11 Commissioner Aczon.

12 **COMMISSIONER ACZON:** Mr. Chair, I just
13 want to confirm that six votes are needed to pass
14 this motion.

15 **CHAIR SCHEUER:** Confirmed. Because this
16 is related to a district boundary amendment, we need
17 six affirmative votes for this motion to succeed.

18 **COMMISSIONER ACZON:** Very unfortunate that
19 we only have six in attendance today, but anyway, I
20 think we had a really good discussions on the issues
21 that face the Commission. As you know, developers
22 and property owners come to us and promise all these
23 good things, jobs for Hawaii, housing, affordable
24 housing, but yet when we don't deliver, Land Use
25 Commission is being blamed by all these lack of

1 housing, lack of development, and yet, we only have
2 one option, one tool in our belt, to do it. You
3 know, that is to revert, you know, the property back
4 to its original designations.

5 Everything -- all the tools, all the
6 enforcement powers was left to the counties. And
7 even, you know -- I don't really blame the counties
8 fully because yet they also are lacking some tools.
9 So I'm just kind of frustrated that, you know,
10 things like this happens and yet, you know, our
11 hands are tied. Like was said, you know, we ask the
12 powers to be session by session that, you know, give
13 us more tools to do our job, but yet, we are being
14 denied and at the end of the day, we also take all
15 the blames.

16 So I'm just going kind of frustrated. I'm
17 not -- I just want to kind of have this discussion
18 publicly so people understand our predicament.

19 **CHAIR SCHEUER:** Thank you, Commissioner
20 Aczon.

21 Commissioners, we are in deliberation. A
22 motion before us to accept.

23 Commissioner Okuda.

24 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

25 I join in the concerns that were raised by

1 all my commissioners during this hearing. A lot of
2 these concerns are broader policy concerns which are
3 broader than, perhaps, this specific petition. I
4 think we all recognize and agree that if a project
5 is not going to pencil out profit-wise or
6 economically, the best ideas are just not going to
7 come to fruition. The best project designed on
8 paper is not going to take place if it cannot make
9 money.

10 So I believe all of us who have any say in
11 government would like to try to expedite and help
12 move forward projects which really serve the public
13 interest in ways which, you know, would help
14 minimize the risk to developers to actually get
15 housing on the ground so that Hawaii's people can
16 occupy that housing.

17 You know, at the same time, you can see
18 from what the Commission has been doing in other
19 cases, we will, however, carefully scrutinize the
20 financial statements of applicants who come before
21 the Commission to be sure that there really is
22 substance behind the representations and the
23 promises because as the Hawaii Supreme Court
24 admonished in the D.W. Aina Lea case, which
25 citations I gave before, one of the real problems or

1 harms that occur in to the community is where
2 boundary amendments or rezonings are given and, you
3 know, where a landowner gets the benefit of
4 urbanization and nothing is done except potential
5 speculation.

6 I do recognize that in the present case,
7 it's the original landowner that took back the
8 property in a deed in lieu of foreclosure, and, you
9 know, that is a factor. I will vote in favor of
10 this motion because under the facts and
11 circumstances of the case, this is probably the best
12 approach.

13 I really hope that going forward that if
14 there's a further petition to change this boundary
15 amendment from agriculture to something else, there
16 would be that type of very careful review and
17 scrutiny given to that type of application. And if
18 there's an attempt circumvent the role of the State
19 Land Use Commission by a future applicant bringing
20 in a petition for less than 15 acres so that by
21 statute, it does not have to come before the Land
22 Use Commission, I urge the County, not only of Maui
23 but all the various counties, to carefully
24 scrutinize representations that are being made.

25 I believe that it is our duty both under

1 the public trust doctrine and our duty towards the
2 citizens of the State of Hawaii that we carefully
3 review and require all applicants who seek a
4 financial benefit from what we do in government that
5 they live up to their promises and they actually
6 have the financial capability to do so. So for those
7 reasons, I'll be supporting the motion.

8 Thank you, Mr. Chair.

9 **CHAIR SCHEUER:** Thank you, Commissioner
10 Okuda.

11 Commissioner Giovanni.

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

13 Yeah, I share the feelings expressed by my
14 other commissioners, in particular, the frustrations
15 of Commissioner Aczon. I also totally agree with
16 the expressions of concern from Commissioner Okuda
17 and his suggestions of the diligence that this
18 Commission must apply on a going forward basis.

19 In that context, I know Commissioner Chang
20 is not with us today, but I hear her voice in my
21 mind echoing, "Performance bond. Performance bond."
22 So I just want to get that on the record.

23 In this instant petition that's before us,
24 I don't think we have much choice except for
25 reversion, and I will be supporting the motion.

1 Thank you.

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

4 Commissioners, is there further discussion
5 or deliberation on the matter before us? I will also
6 support the motion, really joining in all the
7 comments of my fellow commissioners. I've
8 appreciated the discussion. I found it valuable. I
9 think in this particular case, there's not much we
10 can do.

11 I find the testimony from Ms. Naone Hall
12 compelling in terms of the some concerns with the
13 project as it was laid out itself, the fact that all
14 the parties are agreeing to the reversion.

15 One thing I will leave this discussion
16 with is that not just for Maui County, who now has
17 said on the record that they actually could easily
18 compile the list of promised units, but I would love
19 to hear from all the counties when they comment on
20 our dockets proposing housing from now on like well,
21 how much is on the book right now? How much has
22 been promised and not yet delivered? That would
23 give us great value in our deliberations for knowing
24 whether what is being asked for is needed or what is
25 really needed is for people to deliver on promises

1 already made.

2 Is there anything further? If not, Mr.
3 Orodenker, will you please poll the Commission.

4 **MR. ORODENKER:** Thank you, Mr. Chair. The
5 motion is to approve the request to revert the
6 property, lift all conditions, as well as
7 authorizing the Chair to sign the order and
8 (inaudible) not substantive changes to the order.

9 Commissioner Wong.

10 **COMMISSIONER WONG:** Aye.

11 **MR. ORODENKER:** Commissioner Cabral.

12 **COMMISSIONER CABRAL:** Yes.

13 **MR. ORODENKER:** Commissioner Aczon.

14 **COMMISSIONER ACZON:** Yes.

15 **MR. ORODENKER:** Commissioner Giovanni.

16 **COMMISSIONER GIOVANNI:** Aye.

17 **MR. ORODENKER:** Commissioner Okuda.

18 **COMMISSIONER OKUDA:** Yes.

19 **MR. ORODENKER:** Chair Scheuer.

20 **CHAIR SCHEUER:** Aye.

21 **MR. ORODENKER:** Thank you, Mr. Chair. The
22 motion passes unanimously with six votes.

23 **CHAIR SCHEUER:** Thank you.

24 Mr. Ueoka, if Mr. Welch had the gumption
25 to tell you that this was a cake walk, you can make

1 him buy you lunch.

2 **MR. UEOKA:** Thank you, Chair. I will.

3 **CHAIR SCHEUER:** Okay. Thank you, very
4 much, to all the parties in this matter.

5 Our final agenda item before adjournment
6 is an executive session pursuant to HRS 925(a)(2),
7 to consider personnel matters where the
8 consideration of matters affecting privacy will be
9 involved.

10 The LUC staff has informed me that no
11 written testimony was received regarding this
12 executive session.

13 Is that still correct, Mr. Hakoda?

14 **MR. HAKODA:** That's correct, Mr. Chair.

15 **CHAIR SCHEUER:** Okay. The Chair will
16 entertain a motion for executive session. And I
17 will note for any members who are attending, any
18 parties or people attending the docket, we'll come
19 back into regular session to adjourn but that's all
20 we're going to do, so don't feel compelled to stick
21 around to make sure that we're going to do that. I
22 can assure you that's what we are going to do after
23 we come out of executive session.

24 Is there a motion to go into executive
25 session? So moved by Commissioner Cabral. Second?

1 Seconded by Commissioner Wong. All commissioners in
2 favor say aye and raise your hand.

3 Aye.

4 Any commissioners opposed?

5 Okay. The commissioners will go into
6 executive session, same virtual meeting room. This
7 room will remain open. We will briefly show up to
8 adjourn the hearing after our executive session to
9 consider personnel matters. Thank you to everyone.

10 **(At which time the public meeting was**
11 **recessed.)**

12 **CHAIR SCHEUER:** Commissioner Giovanni,
13 we're restarting. We have our attorney general.

14 Commissioner Wong, are you there?

15 **COMMISSIONER WONG:** I'm here.

16 **CHAIR SCHEUER:** Okay. Is the staff here
17 or they're still gone?

18 **COMMISSIONER WONG:** They're all gone.

19 **CHAIR SCHEUER:** There we go. No further
20 business. I declare this meeting adjourned.

21 **COMMISSIONER WONG:** Thank you, all. Take
22 care.

23 **CHAIR SCHEUER:** Thank you, all.

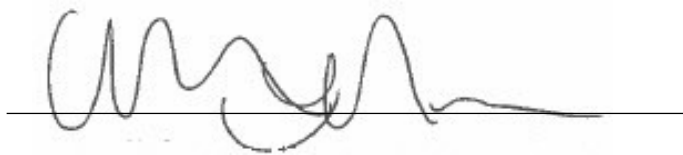
24 **(At which time the proceedings were**
25 **concluded.)**

CERTIFICATE

I, Melissa Noble, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 27th day of July, 2021.

A handwritten signature in black ink, appearing to read 'Melissa Noble', is written over a horizontal line.

Melissa Noble

RPR, CSR 376

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