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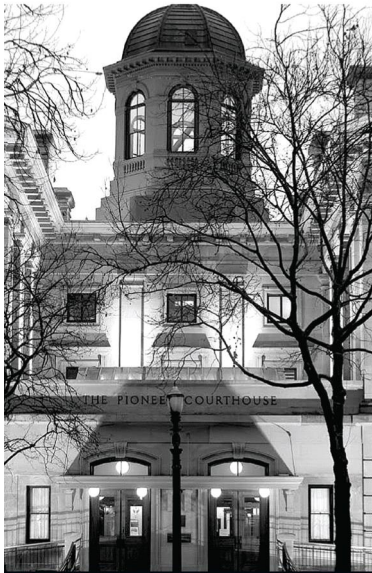
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STATE OF HAWAII

LAND USE COMMISSION

STATE OF HAWAII

LAND USE COMMISSION

Hearing held on November 23, 2021
Commencing at 9:00 a.m.

Held via Zoom by Interactive Conference Technology

- I. **CALL TO ORDER**
- II. **ADOPTION OF MINUTES**
November 10, 2021 Minutes
- III. **TENTATIVE MEETING SCHEDULE**
- IV. **ACTION**
A21-810 PULAMA LANAI-Hokuao 201H Project (Maui)
To Amend the Agriculture Land Use District Boundaries into the Urban Land Use District for approximately 56.436 acres of land, consisting of a portion of Tax Map Key No. (2)4-9-002:061 (por.); and (2)-4-9-014:001(por.) (por.) at Lanai City, Island of Lanai, County of Maui, State of Hawaii
- V. **OPSD PRESENTATION-STATE LAND US REVIEW OF DISTRICTS**
- V. **ADJOURNMENT**

BEFORE :

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APPEARANCES BY VIDEOCONFERENCE :

COMMISSIONERS PRESENT :

- Jonathan Scheuer, Chair
- Edmund Aczon
- Dawn N.S. Chang
- Arnold Wong
- Gary Okuda
- Nancy Cabral
- Lee Ohigashi

COMMISSIONERS EXCUSED :

- Daniel Giovanni, Vice Chair

STAFF PRESENT BY VIDEOCONFERENCE :

- Daniel Morris, Esquire
- Deputy Attorney General
- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Riley Hakoda, Chief Clerk/Staff Planner

1 Hearing held on November 23, 2021

2 Commencing at 9:00 a.m.

3 Held via Zoom by Interactive Conference Technology

4

5 **CHAIR SCHEUER:** Aloha mai kakou and good
6 morning. This is the November 23, 2021, Land Use
7 Commission meeting, and is being held using
8 interactive conference technology linking
9 videoconference participants and other interested
10 individuals of the public via the Zoom Internet
11 conferencing program to comply with the state and
12 county official operational directives during the
13 COVID-19 pandemic.

14 Members of the public are able to view the
15 meeting via the Zoom webinar platform.

16 For meeting participants, I would like to
17 stress to everyone the importance of speaking slowly
18 and clearly and directly into your microphone.
19 Before speaking, it is helpful if you state your
20 name and identify yourself for the record. Also,
21 please be aware that all meeting participants are
22 being recorded on the digital record of this Zoom
23 meeting. Your continued participation is your
24 implied consent to be part of the public record of
25 the event. If you do not wish to be part of the

1 public record, you should exit the meeting now.

2 The Zoom technology allows the parties and
3 each participating commissioner individual remote
4 access to the meeting via our own personal digital
5 devices. Note that because of this, sometimes due
6 to matters entirely outside of our control,
7 locational disruptions to connectivity may occur for
8 one or more members of the meeting at any given
9 time. If such disruptions occur, please let us know
10 and be patient as we restore audiovisual signals so
11 we continue to be able to conduct business during
12 the ongoing pandemic.

13 For the members of the public who may wish
14 to testify on any item during any agenda item which
15 allows public testimony, if you are calling in by
16 phone you can use the *9 sequence to virtually raise
17 your hand. Otherwise, you can use the raise your
18 hand function on the Zoom software.

19 From time to time, I will take breaks,
20 approximately 10 minutes every hour. I will also
21 note that due to departures of commissioners, we
22 intend to be done with business by 11:45 a.m.

23 My name is Jonathan Scheuer, and I
24 currently have the honor and pleasure of serving as
25 the Land Use Commission Chair. Commissioners Aczon,

1 Chang, Wong, Okuda, our LU Executive Officer Daniel
2 Orodenker, our Chief Planner Scott Derrickson, our
3 Planner Riley Hakoda, and our Deputy Attorney
4 General are on the island of Oahu. Commissioner
5 Cabral is on Hawai'i island. Commissioner Ohigashi
6 is on Maui, and I reside on Oahu as well.

7 I note that Commissioner and Vice Chair
8 Giovanni will be excused for today's meeting. We
9 currently have eight seated commissioners of a
10 possible nine. Court recording transcriptions are
11 being done from this Zoom recording.

12 Our first agenda item is the adoption of
13 the November 10, 2021 minutes. However, those
14 minutes are not finished and we will defer this
15 matter for this time.

16 With that, we go to our tentative meeting
17 schedule. Mr. Orodenker?

18 **MR. ORODENKER:** Thank you, Mr. Chair.

19 December 8th and 9th meetings are no
20 longer going to occur. One hotel matter is not
21 ready for processing, so those two dates are free
22 for the commissioners.

23 December 22nd and 23rd, we're taking up
24 the Honoipu Hideaway matter.

25 **CHAIR SCHEUER:** That's okay. One moment.

1 That's fine. Can you just repeat? So December 8th
2 and 9th are now not going to have meetings.

3 **MR. ORODENKER:** The meetings have been
4 canceled and those dates are free for the
5 commissioners. LUC calendar is clear for those
6 days.

7 December 22nd and 23rd is the Hideaway
8 matter.

9 And then I know that the schedule has been
10 adjusted in January. Mr. Hakoda is trying to find
11 that out.

12 **CHAIR SCHEUER:** Mr. Orodenker?

13 **MR. ORODENKER:** Yes?

14 **CHAIR SCHEUER:** The 22nd and 23rd, is it
15 going to be Zoom or --

16 **MR. ORODENKER:** That's going to be by
17 Zoom.

18 The commission should be aware that --
19 commissioners should be aware that we are
20 anticipating the expiration of the Governor's
21 Emergency Proclamation sometime early next year. I
22 think that February will be -- the Governor's
23 Emergency Proclamation will no longer be in effect.
24 However, the legislature passed legislation last
25 year that allows for meetings via Zoom to continue

1 to (inaudible).

2 The questions we -- we posed some
3 questions to the attorney general on whether or not
4 we can have hybrid meetings where some of the
5 commissioners attend in person or by Zoom, and
6 whether parties can participate by Zoom if the
7 commissioners are meeting at a place, whether or not
8 commission meetings have to be held on the island.
9 If there is going to be live meetings, whether they
10 continue to have to be held on the island where the
11 property is located.

12 We have a series of questions that we
13 would trust the attorney general with regard to the
14 use statute. So we will be getting back to you on
15 where the meetings will be located.

16 Thank you for your patience with regard to
17 the schedule.

18 January 5th and 6th, we have LUC meetings
19 scheduled for important agricultural land
20 designation. The Oahu important agricultural land
21 designation.

22 January 19th we have a Maui -- I mean, a
23 Kauai IAL petition and we also have the Oahu IAL
24 matter also scheduled for the 19th and 20th.

25 February 2nd and 3rd, we have a tentative

1 meeting scheduled. We have not ascertained whether
2 or not the Maui Hotel will be moved to that period
3 of time.

4 And we also have meetings scheduled for
5 February 16th and 17th. That's as far out as we
6 have the calendar set for.

7 **CHAIR SCHEUER:** Okay. Commissioners, any
8 questions for Mr. Orodenger?

9 So I apologize. I was reading from the
10 script and not looking at the Zoom screen. Where is
11 our attorney general?

12 **MR. DERRICKSON:** We just sent an email out
13 to find out. They've all been sent an invitation so
14 we're not sure who's on today.

15 **CHAIR SCHEUER:** I mean, I personally have
16 no problem proceeding without their presence. I
17 would defer to our executive officer.

18 **MR. ORODENKER:** Mr. Chair, we usually have
19 an attorney general to advise us on procedural
20 matters. I don't know why they're not here.

21 **CHAIR SCHEUER:** But they can't advise us
22 on the procedures for their not being here, can
23 they, when they're not --

24 **MR. ORODENKER:** That is true, Mr. Chair.
25 I believe that the matters on the agenda in front of

1 us are fairly straightforward. I'm comfortable that
2 we can proceed.

3 **CHAIR SCHEUER:** Okay. I'm going to text
4 the head of the division.

5 **MR. ORODENKER:** I believe --

6 **CHAIR SCHEUER:** I will proceed.

7 **MR. ORODENKER:** -- Chow is on vacation.

8 **CHAIR SCHEUER:** Okay. Let's move on.

9 Our next agenda item is the adoption of
10 the order, Docket No. A21-810, Pulama Lanai, the
11 Hokuao 201H Project in Maui County. To amend the
12 agricultural land use district boundaries into the
13 urban land use district for approximately 56.4368
14 acres of land consisting of portions of two Tax Map
15 Keys, 24-9-002:061 and the same, but lot one at
16 Lanai City, County of Maui, State of Hawaii. The
17 commission last heard this matter on November 10,
18 2021 via Zoom.

19 I've been advised that we've had no
20 written testimony on this matter. Is that still the
21 case, Mr. Hakoda?

22 **MR. HAKODA:** That's correct, Mr. Chair.
23 And, also, I was able to contact, Dan Morris, he's
24 signing in shortly.

25 **CHAIR SCHEUER:** Okay. Are there any

1 members of the public who wish to testify on this
2 matter? If so, you may use the raise your hand
3 function in the Zoom software.

4 Seeing none we can move on to formal
5 deliberations.

6 Well, actually, let's -- sorry. Can we do
7 appearances quickly?

8 **MR. CHIPCHASE:** Cal Chipchase for
9 petitioner, Chair.

10 **MR. WHITTAKER:** Keola Whittaker for the
11 Maui Department of Planning. I just want to make
12 sure the record is correct. An administrator
13 changed my name to Cal but I think the only Cal here
14 is Mr. Chipchase, so I'm Keola, K-E-O-L-A,
15 Whittaker. Thank you.

16 **CHAIR SCHEUER:** Thank you, Keola. And
17 yes, there can only be one Cal.

18 Office of Planning?

19 **MS. KATO:** Alison Kato, Deputy Attorney
20 General for the Office of Planning and Sustainable
21 Development.

22 **CHAIR SCHEUER:** Okay. I'm recognizing the
23 presence of our Deputy Attorney General, Mr. Morris.

24 Mr. Aczon, Commissioner?

25 **COMMISSIONER ACZON:** Mr. Chair, I just

1 want to disclose that I watched the full four hours
2 of the hearing, including the breaks. I also took
3 the breaks so I can say that I'm ready to
4 participate on this matter.

5 **CHAIR SCHEUER:** Thank you, Commissioner.
6 I'm going to check with all the members that they're
7 prepared to deliberate. A perfect transition.

8 So before we take up the motion or any
9 motion, the chair would like to confirm for the
10 record that all commissioners and myself are
11 prepared to deliberate in these proceedings.

12 Commissioner Aczon has just confirmed that
13 he's reviewed the recording from November 10th and
14 is prepared to deliberate.

15 Commissioner Cabral, are you prepared?

16 **COMMISSIONER CABRAL:** Yes. Thank you,
17 Chair. I am prepared to deliberate on this
18 unbelievable wonderful topic. Thank you.

19 **CHAIR SCHEUER:** Commissioner Okuda?

20 **COMMISSIONER OKUDA:** Yes, I am. Thank
21 you.

22 **CHAIR SCHEUER:** Commissioner Wong?

23 **COMMISSIONER WONG:** Yes, Chair.

24 **CHAIR SCHEUER:** Commissioner Ohigashi.

25 **COMMISSIONER OHIGASHI:** Yes, sir.

1 **CHAIR SCHEUER:** Commissioner China?

2 **MS. CHINA:** Yes. I, too, am prepared to
3 take action.

4 **CHAIR SCHEUER:** And the chair is also
5 prepared to participate.

6 The Commission will now consider adoption
7 of the order.

8 Commissioners, before you for your
9 consideration, deliberation, and adoption are the
10 proposed findings of fact, conclusions of law, and
11 decision and order prepared by the staff as
12 constructed at the last meeting on this docket.

13 Is there any discussion?

14 Seeing none, the chair will now entertain
15 a motion.

16 Commissioner Ohigashi?

17 **COMMISSIONER OHIGASHI:** Mr. Chairman, I
18 move to adopt the proposed findings of fact,
19 conclusions of law as I guess, would it be as
20 amended or as updated?

21 **CHAIR SCHEUER:** I think the motion -- I'll
22 defer to Mr. Orodenger but I believe it would be to
23 adopt the order as stipulated by the parties and
24 prepared by the Commission.

25 **MR. ORODENKER:** As prepared by the staff.

1 **COMMISSIONER OHIGASHI:** I'll confirm my
2 motion to your --

3 **CHAIR SCHEUER:** My language. Okay. What
4 he said.

5 Commissioner Cabral?

6 **COMMISSIONER CABRAL:** I would be honored
7 to second that motion and support my fellow
8 commissioner and the island of Lanai and the county
9 of Maui on such a wonderful project to come forward
10 before us. Thank you.

11 **CHAIR SCHEUER:** Okay. Commissioners, we
12 have motion before us. Is there any -- we have a
13 motion before us made by Commissioner Ohigashi and
14 seconded by Commissioner Cabral.

15 Is there any discussion?

16 I think we all laid our praise on the
17 project before, so Mr. Orodenger, will you please
18 poll the Commission?

19 **MR. ORODENKER:** Thank you, Mr. Chair.

20 The motion is to adopt the proposed
21 findings of fact and conclusions of law as prepared
22 by LUC Commission staff.

23 Commissioner Ohigashi?

24 **COMMISSIONER OHIGASHI:** Aye.

25 **MR. ORODENKER:** Commissioner Cabral?

1 **COMMISSIONER CABRAL:** Aye.

2 **MR. ORODENKER:** Commissioner Aczon?

3 **COMMISSIONER ACZON:** Yes.

4 **MR. ORODENKER:** Commissioner Chang?

5 **COMMISSIONER CHANG:** Aye.

6 **MR. ORODENKER:** Commissioner Giovanni is
7 absent.

8 Commissioner Okuda?

9 **COMMISSIONER OKUDA:** Yes.

10 **MR. ORODENKER:** Commissioner Wong?

11 **MR. WONG:** Aye.

12 **MR. ORODENKER:** Chair Scheuer?

13 **CHAIR SCHEUER:** Aye.

14 **MR. ORODENKER:** Thank you, Mr. Chair.

15 The motion passes unanimously with seven
16 affirmative votes.

17 **CHAIR SCHEUER:** Thank you very much.

18 Thank you. Congratulations, Mr. Chipchase and
19 Pulama.

20 **MR. CHIPCHASE:** Thank you, Chair. Thank
21 you, everyone. Have a nice day.

22 **CHAIR SCHEUER:** Okay. Thank you.

23 So, with that said, our next and last
24 agenda item is a presentation by the Office of
25 Planning and Sustainable Development on the State

1 Land Use review of districts. Staff informed me as
2 well that no written testimony was received
3 regarding the presentation.

4 Is that still the case, Mr. Hakoda?

5 **MR. HAKODA:** Yes, Chair, that is correct.

6 **CHAIR SCHEUER:** Are there any members of
7 the public wishing to testify on this matter? If
8 so, use the raise your hand function.

9 Seeing none, the Office of Planning and
10 Sustainable Development, would you please make your
11 presentation to the Commission?

12 **MS. EVANS:** Thank you, Chair.

13 **CHAIR SCHEUER:** I'm sorry; just
14 procedurally, Mr. Orodenger, this is not a quasi-
15 judicial hearing so I don't think I need to swear
16 anybody in; is that correct?

17 **MR. ORODENKER:** I believe so, Mr. Chair.

18 **CHAIR SCHEUER:** Okay. Mary Alice?

19 **MS. EVANS:** Thank you.

20 Yes, this is not a "for action." It is a
21 presentation of a draft so it doesn't require any
22 action but we will be happy and welcome any comments
23 or questions that the commissioners have at the
24 completion of our presentation.

25 So thank you, commissioners, for allowing

1 the Office of Planning and Sustainable Development
2 to make this presentation. The presentation is
3 going to include the Act 153, session was 2021,
4 Amendments to Chapter 205-18. We will then proceed
5 to give you the revisions and responses from the
6 county comments and then we will be providing
7 findings as required by law. So options for you and
8 the governor and the legislators to consider as we
9 move toward a final report.

10 We'll start with -- can we share a screen,
11 Chair?

12 **CHAIR SCHEUER:** Actually, Director, if you
13 would start by introducing yourself as well as the
14 members of your team who are participating.

15 **MS. EVANS:** Thank you, Chair.

16 I'm Mary Alice Evans, the director of the
17 Office of Planning and Sustainable Development.
18 With me today are Rodney Funakoshi and Aaron
19 Setogawa, senior planner.

20 **CHAIR SCHEUER:** Thank you.

21 We are seeing not a full view of your
22 slides, whoever is sharing their screen. Now we're
23 seeing presenter view.

24 **MS. EVANS:** Rodney, is it supposed to show
25 the notes as well or can we go to full screen?

1 **MR. FUNAKOSHI:** I thought it was in full
2 screen.

3 **MS. EVANS:** No.

4 **MS. KATO:** Maybe it's the display settings
5 at the top.

6 **CHAIR SCHEUER:** There we go.

7 **MS. EVANS:** Thank you. That's great.

8 Okay, next slide. And then next slide.

9 Okay. As some of you may be aware, 205-
10 18, which is the periodic review of districts, was
11 amended by the legislature this last year. There
12 were several changes made to the language that was
13 in the statute previously. The Office of Planning
14 and Sustainable Development may, but not shall
15 anymore, but may review the classification and
16 districting of all lands in the state, focus on the
17 Hawaii state plan, the county general plans, and
18 development of community plans. And we are to
19 submit a report of findings to the Land Use
20 Commission, the governor, the legislature, and state
21 and county agencies. OP may initiate state land use
22 boundary amendments which it deems appropriate.
23 However, no boundary amendments are proposed in this
24 updated due to resource constraints.

25 I'm going to ask Rodney Funakoshi to

1 present the next couple of slides if, Chair, is that
2 okay?

3 **CHAIR SCHEUER:** Yes.

4 **MS. EVANS:** Okay. Thank you.

5 **MR. FUNAKOSHI:** Okay. Good morning,
6 commissioners.

7 First, I'd like to give a recap of
8 previous boundary review efforts. Actually, there
9 have only been three -- 1969 by the LUC; 1974, it's
10 very old; and more recent is still 30 years ago by
11 the Office of State Planning at the time in 1992.
12 And it was an extensive review that required that
13 cost \$1.25 million. Cost now would probably be
14 double that. There were two years of consultant
15 studies and three years of boundary amendments.
16 This resulted in approximately 17,000 acres moved
17 into the conservation district and 3,500 acres into
18 the urban district.

19 We've reviewed the 1992 boundary review,
20 and previous recommendations to reclassify to the
21 conservation district are still very much warranted.
22 We still believe that these should be pursued as
23 resources become available. And so these have been
24 incorporated into the current report as a
25 recommendation that we continue to support.

1 There were some recommendations
2 recommending reclassifications to the urban and
3 rural districts. We are recommending these not be
4 pursued at this time pending the passage of time, as
5 well as county's review and concurrence with these
6 recommendations.

7 So this is reflected in this table. Most
8 of the recommended reclassifications were to the
9 conservation district. They were priority one and
10 two recommendations. The one in red, agricultural
11 and conservation to the urban and rural we are not
12 recommending at this time pending further county
13 review. And there are also areas of critical
14 concern that relate to some natural resource areas
15 that warrant protection. Also, the boundary
16 recommended reclassifications are on the island of
17 Hawaii as you can see here. There are 230,000 acres
18 recommended for reclassification.

19 Historical perspective for the state land
20 use districts. From 1969 to 2020, the relative
21 percentage while the population has increased, 83
22 percent from 1970 to 2020, but the districts
23 themselves have not changed a whole lot. The
24 agricultural district was decreased by two percent.
25 The conservation district remained at 49 percent.

1 The urban district increased by two percent and the
 2 rural district remains at 0.3 percent.

3 And this is a state-wide look at the land
 4 use districts. So conservation district encompasses
 5 49 percent, two million acres; the agriculture
 6 district, 45.7 percent, 1.8 million; the urban
 7 district at five percent, 200,000 acres; and the
 8 rural district at 0.3 percent, 10,000 acres.

9 On the major islands, on Oahu,
 10 conservation district is 41 percent; the
 11 agricultural district in the lighter green shown
 12 here is 31 percent; the red are the urban areas, 27
 13 percent. And there's no rural districts on Oahu.

14 In Maui, the conservation district is 44
 15 percent. The agricultural district is 50 percent.
 16 The urban district is 5 percent, and rural is 0.9
 17 percent.

18 On Molokai, most of the land use is in the
 19 agricultural district and conservation district, 31
 20 percent.

21 On Lanai, conservation is 45 percent,
 22 agricultural is 49 percent, and 3 percent urban and
 23 2 percent rural.

24 On the Big Island, conservation district
 25 is 52 percent. The agricultural district is 46

1 percent. The urban district is 2 percent, and rural
2 is 0.3 percent, amounting to less than 1,000 acres.

3 Finally, on Kauai, the conservation
4 district is 58 percent of the lands. The
5 agricultural district encompasses 41 percent. The
6 urban district, 4 percent. And rural, 0.4 percent.

7 At this point I'd like to turn it over to
8 Aaron to continue findings.

9 **CHAIR SCHEUER:** Please do.

10 **MR. SETOGAWA:** Thank you, Rodney.

11 The review of districts provided a series
12 of analyses that covered the state agricultural
13 district as well as urban district. For today's
14 presentation, we're going to focus on three areas --
15 land within the county growth area not classified as
16 urban; the availability of good agricultural land
17 outside the county growth areas; and the extent of
18 development in the state agricultural district, of
19 course, outside of the county growth areas.

20 County growth areas are defined
21 differently depending on the county, but generally
22 what these means is areas that are already developed
23 or planned for developed according to the county
24 community development plans or the general plan.

25 Next slide, please.

1 Lands within the county growth area not
2 classified as urban. This was developed by
3 overlaying the county growth areas over the state
4 land use district maps. And we pulled out the urban
5 areas within the county growth areas and identified
6 what's left as agricultural or rural, generally non-
7 urban.

8 Next slide, please.

9 This slide shows the island of Hawaii,
10 approximately 46,671 acres of land is within the
11 county growth boundary but not urban.

12 Next slide.

13 And this zeros in on the Kona area. As
14 you can see, the area outlined in blue is the blue
15 peg, urban usage, which is the county's urban growth
16 areas, and you can see that the areas shaded in red
17 are state ag lands that are inside the urban growth
18 boundary.

19 Next slide.

20 This is an analysis of Oahu, 927,275 acres
21 are classified as non-state urban lands within the
22 county urban growth boundary.

23 Next slide.

24 Hawaii, 4,700 acres of land within the
25 county urban growth boundary that's non-state urban.

1 Next slide.

2 And finally, Maui. About 7,787 acres are
3 within the county growth boundaries that's not
4 classified as state urban.

5 Next slide.

6 The second area that we wanted to focus on
7 today is our analysis of the extent of good
8 agricultural lands outside of the country growth
9 areas.

10 Next slide, please.

11 As you know, there are two generally used
12 classifications for agricultural productivity in the
13 state. One is the ALISH or agricultural land of
14 importance to the state of Hawaii which rates land
15 from prime, unique, or other, and the other system
16 that's commonly used is the Land Study Bureau's Soil
17 productivity ratings from A, Excellent, down to E,
18 Poor. For the purposes of our analysis, we defined
19 good agricultural lands as either ALISH prime,
20 unique, and other or LSB soil ratings A, B, or C.

21 Next slide, please.

22 This one shows the good agricultural lands
23 on Hawaii Island. You see the total is about --
24 there are over 400,000 acres. Just for some
25 context, 44.8 percent of the state agricultural

1 district is made up of ALISH land. ALISH land rated
2 prime, unique, or other. And 23.4 percent of the
3 state agricultural district is A, B, or C rated
4 lands according to LSB.

5 Next slide, please.

6 This shows the good agricultural lands on
7 Oahu, some 45,000 acres.

8 Next slide.

9 For Kauai, you're talking about 70,700
10 acres of good agricultural land.

11 Next slide.

12 And finally for Maui, we have 103,761
13 acres of good agricultural land outside of the
14 county growth boundaries.

15 Next slide, please.

16 The final area we wanted to focus on today
17 is our analysis of development in the state
18 agricultural district outside of the county growth
19 boundaries. Just to note, our methodology, how we
20 came up with this analysis was we used the NOAA's
21 coastal change analysis program which uses satellite
22 and aerial imagery to look at land covered data.
23 This program identifies developed areas, including
24 buildings, roads, parking lots, and developed open
25 space.

1 One of the limitations of this analysis is
2 that it does not distinguish between agricultural
3 development and nonagricultural development. For
4 example, when it shows roads, it's not possible to
5 determine whether the road is serving a residential
6 subdivision versus an agricultural farm road. So
7 because of that, the point of this is illustrative
8 and we intend to investigate ways to refine this
9 analysis for future review. That may require field
10 inspections to verify the data.

11 Next slide, please.

12 As you can see, the extent of development.
13 And again, some of this is agricultural development
14 and agricultural roads and some is not.

15 Next slide.

16 This is the Kona area, the LUPAG in blue
17 is the county-designated urban areas of growth, and
18 the red shows scattering of development in the state
19 agricultural district.

20 Next slide.

21 For Oahu, a similar situation. The red is
22 a development in an ag district outside its urban
23 growth areas.

24 Next slide.

25 And for Kauai, again, red shows

1 development in ag district outside of urban growth
2 area and the orange shows the county code areas.

3 Next slide, please.

4 And for Maui.

5 Next slide.

6 This one zooms in. And a particular area,
7 upcountry Maui, you can see there's quite a bit of
8 development outside of the county growth areas.
9 Again, some of these may be agricultural development
10 but that would need to be verified in future
11 studies.

12 Next slide, please.

13 Now I'm going to turn it over to Mary
14 Alice to share with you some of our findings. Thank
15 you.

16 **MS. EVANS:** Chair, may I go ahead?

17 **CHAIR SCHEUER:** Please.

18 **MS. EVANS:** So we're going to look at four
19 areas of findings -- consistency with the county
20 plans, important agricultural lands, nonagricultural
21 development on ag lands, and rural districts.

22 Next slide.

23 Okay. We'll start with the consistency
24 with county plans. These are not urban but within
25 the county growth areas. And these are options to

1 improve consistency between the state land use
 2 districts and the county plans as directed by the
 3 statute.

4 So we looked at three options. They're
 5 not mutually exclusive. They may overlap. We
 6 looked at the possibility of an expedited land use
 7 commission review. If consistent with the county
 8 plans, possibly in terms of expedited, one option is
 9 the 201H process.

10 We also looked at county plan based
 11 regional boundary amendments before the Land Use
 12 Commission. These could be regional petitions by
 13 the counties based on conformance to the plans. And
 14 Land Use Commission quasi-legislative decision for
 15 conditions for compelling state interests.

16 We also looked at a third option and
 17 that's to allow the counties to reclassify from ag
 18 and rural to urban if within a county growth area
 19 with consultation by OP and state agencies with
 20 interests in the area.

21 Next slide.

22 Okay. I'm going to turn it over to Rodney
 23 Funakoshi to present to you our findings and options
 24 for the important agricultural lands if that's all
 25 right, Chair.

1 **CHAIR SCHEUER:** Please do.

2 **MS. EVANS:** Thank you.

3 **MR. FUNAKOSHI:** Okay. Thank you, Mary
4 Alice.

5 Two options for IAL. One, we would like
6 ensure and fund completion of IAL designations by
7 the counties. And just a quick recap, the County of
8 Kauai undertook IAL studies that were completed in
9 2015, but subsequently decided that there was
10 sufficient amounts of IAL land voluntarily
11 designated that did not require further designations
12 by the county. The city and county in 2019
13 completed their IAL designation which is now before
14 the commission. On Maui, they have initiated
15 mapping in fall 2020, and so that has -- some
16 initial products have been produced that is
17 undergoing review. The Big Island has yet to start
18 on any IAL designations. Also, the state is also
19 required to designate IAL from Department of
20 Agriculture and Department of Land and Natural
21 Resources held lands and so that mostly has not
22 started, although we are aware of a pending ADC
23 tenant voluntary IAL on Kauai designation.

24 The third area I'd like to describe is
25 some options for handling nonagricultural

1 development in the agricultural district. And one
2 of the things that has been very elusive over time
3 is the need to define, better define farm dwellings.
4 And so that is still needed, particularly for an
5 enforceable definition of farm dwellings. We've
6 also tried to explore through our Act 278 study with
7 various stakeholders, agency and private
8 stakeholders, means to restrict subdivisions,
9 condos, and shared ownerships which convert large
10 lots into smaller lots for residential use. This
11 has made enforcement difficult.

12 This past session, Act 77 implemented some
13 of the initial recommendations from our Act 278
14 study and so basically what it did was clarified
15 farm dwellings as clearly need to be accessory. It
16 allowed county enforcement on leasehold subdivisions
17 and also allowed for earlier county comments in CPR
18 registrations. But there is a continuing need to
19 study how we can address and recognize our rural
20 sediments in the agricultural district.

21 Which leads to the fourth area that we've
22 looked at some potentially. There's really the
23 underused rural district currently at 0.2 percent
24 statewide that there's a lot of potential and we
25 will be discussing the beginning of December with

1 the counties on how we can better use and expand the
 2 rural district as a means to accommodate farming,
 3 smart growth, as long as to better improve our
 4 policy and allowable uses in the rural areas. So
 5 one of the thoughts we had is to allow the counties
 6 to be able to reclassify, petition the Land Use
 7 Commission to reclassify from the agricultural
 8 district to the rural, similar to what was discussed
 9 earlier in terms of a regional plan based, county
 10 plan based reclassification. And this would
 11 encompass areas that are already rural like that
 12 have lower quality soil areas and if consistent with
 13 county plans. And so, you know, that has been a
 14 longstanding concern. For example, in the Pula
 15 (phonetic) district which has basically
 16 nonconforming ag uses there.

17 Okay. That concludes our basic findings.
 18 I'll turn it back to Aaron now to go over some of
 19 the county and IEC comments we have received.

20 **MR. SETOGAWA:** Thank you, Rodney.

21 A previous version of this review was
 22 shared with the County Planning Department in April
 23 of 2021, and we also presented, made a presentation
 24 to the County Planning Department at that time. And
 25 subsequently, we received written comments in May

1 and June, and these next slides summarize the county
2 comments. And I will also summarize some of our
3 responses to them.

4 For the County of Hawaii, they looked at
5 our 92 recommendations and they suggested that these
6 be analyzed for consistency with their current
7 community development plans and general plan and we
8 agree. Any effort to reclassify based on these
9 recommendations would require looking at the current
10 community development and general plans and other
11 studies.

12 Secondly, they suggested deleting the Puna
13 and Kau subdivisions from the urban growth area.
14 What this involves is in a previous version our maps
15 for the county defining the Hawaii County urban
16 growth area was based on their 2005 general plan.
17 They have since updated that general plan and
18 they've removed rural category from their urban
19 growth area. So consequently, areas like Puna and
20 Kau subdivisions which are classified rural were
21 taken out of their urban growth area. So in
22 response to that we updated our maps for Hawaii
23 County and removed the rural category from there.
24 So the maps you see now are up to date for Hawaii
25 County.

1 Third, they identified that some of the
2 lands in the state urban outside the county urban
3 growth area were golf courses and they had no
4 intention on providing agriculture to expand growth
5 in those areas and we agree with that.

6 Fourth, they were very critical of the
7 current ALISH and Land Study Bureau rating system.
8 They haven't found it very useful in identifying
9 good quality agricultural lands. And as you know,
10 the Big Island has a lot of poor quality
11 agricultural land. So they're suggesting that this
12 system should be replaced with -- they suggested the
13 Department of Agriculture's ag land use space. Maui
14 County also had a similar criticism of the current
15 system and we have, in the report, we're looking
16 into a study to find a replacement for these
17 systems.

18 Next slide.

19 Hawaii County also asked us to define
20 development in the state ag district other urban
21 growth area because the imagery analysis
22 overestimates nonagricultural development and we
23 agree with that. And as we said, this would have to
24 be refined in a further future review. But that
25 generally they supported the findings about

1 consistency of the state urban district with county
2 plans.

3 Next slide, please.

4 The County of Honolulu again cited that
5 there needs to be further analysis to gauge actual
6 development in the undeveloped lands within the
7 state urban district. They generally supported the
8 findings to give the counties authority to
9 reclassify ag district lands to the urban district
10 if within the county's growth areas. Third, they
11 suggested omitting additional protective measures
12 for IAL lands.

13 I need to explain, in a previous version
14 of our review, one of the options in addition to the
15 options Rodney also discussed was to further protect
16 IAL lands by eliminating some of the permitted uses,
17 current permitted uses for IAL such as energy. So
18 the County of Honolulu said that this would not be a
19 very good measure without improving the incentives
20 for IAL lands designation at the same time. And we
21 agreed with that. So the current review eliminates
22 these protective measures for IAL. For your
23 information, IAL lands has currently designated only
24 accounts for 7.2 percent of land in the state
25 agricultural district.

1 Next slide, please.

2 One of their other comments revolved
3 around the difficulty of them enforcing state
4 agricultural district standards in the state ag
5 district and they cited problems with HRS Section
6 205-4.5(a)(3) that allows ag use for personal use.
7 The exemption, single family dwellings on lots in
8 the ag district that existed before June 4, 1976 and
9 they asked that farms, farm dwellings, unpermitted
10 structures and accessory uses need to be further
11 refined. We agree with that and we provided, as we
12 said, Rodney mentioned efforts to further define
13 farm dwelling. The county also asked for a further
14 discussion of rural districts on Oahu. Honolulu has
15 not used rural district very much in the past but I
16 think they're more interested in it now.

17 Next slide, please.

18 The County of Kauai's comments wanted us
19 to clarify the county's community urban growth
20 classification. There was some confusion about this
21 and when we said that this basically is areas that
22 have already developed or plan for development by
23 the county general plan or community development
24 plan. They also asked that we include the Town
25 decision in the findings when discussing giving the

1 counties authority for a larger role in processing
2 district boundary amendments and we agreed with
3 that. They've cited that their planning department
4 lacks the personnel to process district boundary
5 amendments, the larger district boundary amendments
6 on their own. So the review was revised to state
7 that most planning departments now have a lot more
8 personnel and ability to handle such matters but not
9 necessarily all departments.

10 Fourth, they asked us to define transit
11 planning, focusing on the rural district impacts of
12 reclassified ag district lands to rural. A previous
13 version of the report had a much deeper detailed
14 discussion of the rural district and after
15 reconsidering this we thought that that review, that
16 much detail was not appropriate or necessary at this
17 level that the review is looking at so that section
18 was refined and eliminated.

19 Next slide, please.

20 The County of Maui's comments, they
21 generally supported our recommendations for
22 improving the consistency of the state urban
23 district with county plans. They also supported our
24 IAL recommendations defining bona fide farming
25 operations, so it's enforceable. They supported

1 recommendations on non-ag developments in the ag
2 district to define farm dwellings so that it's
3 enforceable. And as I said before, they believe
4 that the ALISH and LSB systems are outrated and need
5 to be replaced.

6 Next slide, please.

7 They did support recommendations to allow
8 counties to file district boundary modifications to
9 reclassify land from the state ag district to the
10 rural district.

11 And then I'll turn it over to Mary Alice
12 to complete our presentation. Thank you.

13 **MS. EVANS:** Chair, may I go ahead?

14 **CHAIR SCHEUER:** Please.

15 **MS. EVANS:** Thank you.

16 I just have two slides. The last one --
17 second to last is we've summarized the comments from
18 the Land Use Commission staff on the draft report.
19 We want to say that we very much appreciate getting
20 these comments and I'll summarize them for you. The
21 Land Use Commission should have been consulted in
22 the early development of the review in setting the
23 scope and guidelines. We'd like to note that we
24 responded in writing to the Land Use Commission
25 staff detailing our efforts to provide a

1 presentation and get comments from them. They noted
2 that there's no nexus between the data presented in
3 sections 4.1 to 4.5 and the approaches in 5.1 to
4 5.4, our written response takes a look at that
5 comment and provides some feedback to the Land Use
6 Commission staff on how we see that as a connected
7 set of findings and options.

8 They also mentioned that there was no
9 discussion of the Town case and its impact on
10 possible approaches in sections 5.1 to 5.4. We
11 agreed with that and we added the Town decision in.

12 And then they did note that there was no
13 discussion of climate or the requirements of the
14 2050 State Sustainability Plan. That's correct.
15 However, we would note that we believe this review
16 is consistent with sustainability principles because
17 we support the sustainable practice of concentrating
18 developments in areas with adequate existing
19 infrastructure and measures to promote sustainable
20 food promotion in the ag district.

21 We will continue to in future reviews
22 provide that linkage between our 2050 sustainability
23 plan 10-year update and this review of districts.
24 So that concludes our presentation. I'd like to,
25 next slide, give the Land Use Commission an idea of

1 what our timeline is. We've already distributed and
 2 posted the draft for agency and public review. This
 3 is our presentation to the Land Use Commission. We
 4 are hoping that comments will come in and we will
 5 revise the draft report based on comments that we
 6 receive. We plan to present the report to the
 7 governor and the legislature in December as required
 8 by law, and in December, the end of December,
 9 finalize the report.

10 So the draft report is available at
 11 planning.hawaii.gov/lud for Land Use Division.

12 Mahalo, Chair and commissioners. We
 13 really appreciate the opportunity to make this
 14 presentation and we're available for any comments or
 15 questions that you may have.

16 **CHAIR SCHEUER:** Thank you very much.
 17 We'll stop screen sharing, please.

18 It's 9:56 a.m. I'd like to call for a 10
 19 minute recess. That went longer than anticipated
 20 and we will resume at 10:06 with questions from the
 21 commissioners.

22 **(Recess taken from 9:56 a.m. to 10:07**
 23 **a.m.)**

24 **CHAIR SCHEUER:** It's 10:07. We're back on
 25 the record. I'd like to -- it's really helpful for

1 folks to be here on time.

2 Okay. Director Evans, you are ready for
3 questions?

4 **MS. EVANS:** Yes, we are, sir.

5 **CHAIR SCHEUER:** Okay. Commissioners,
6 questions or comments on the presentation we've
7 received and the report that it was based on?

8 **COMMISSIONER WONG:** Chair?

9 **CHAIR SCHEUER:** Commissioner Wong?

10 **COMMISSIONER WONG:** Yes. I don't know if
11 you want to give Commissioner Okuda since he has a
12 hard stop or we just --

13 **CHAIR SCHEUER:** We're hard stopping with
14 Commissioner Okuda. Yeah. And the camera in the
15 room is no longer -- you're no longer visible.

16 **COMMISSIONER WONG:** I moved the camera.
17 That's why, Chair.

18 **CHAIR SCHEUER:** You're merely a booming
19 voice, so.

20 Would you like to start, Commissioner
21 Wong?

22 **COMMISSIONER WONG:** If you don't mind,
23 Chair. Thank you.

24 **CHAIR SCHEUER:** Please.

25 **COMMISSIONER WONG:** So Ms. Evans or Mary

1 Alice, which one would you rather me -- prefer I
 2 call you?

3 **MS. EVANS:** Mary Alice, please.

4 **COMMISSIONER WONG:** Okay. Thank you, Mary
 5 Alice.

6 So, again, the purpose of this, it's a
 7 plan; right? So it's a five-year boundary review;
 8 is that correct? Or is it just a -- what is it for?

9 **MS. EVANS:** It started out in 1969 as a
 10 five-year boundary review done by the Land Use
 11 Commission staff. And then I think in the '80s, but
 12 I'm not sure when, the legislature transferred that
 13 duty to the Office of State Planning. It was a
 14 five-year boundary review. You're correct about
 15 that. But after the Town decision when boundary
 16 amendments were conducted through a contested case
 17 hearing process, the cost of doing the review to get
 18 all of the data that is required for a district
 19 boundary amendment made it more costly. And after
 20 1992, which is kind of just before the state's --
 21 the economic situation declined in the '90s, there
 22 really wasn't the resources to do the review. So in
 23 this last amendment, it's no longer a five-year
 24 review and it is a "may," not a "shall." And so it
 25 has changed, Commissioner Wong.

1 **COMMISSIONER WONG:** Thank you. So it's a
2 "may."

3 **MS. EVANS:** Correct.

4 **COMMISSIONER WONG:** So if time permits and
5 if money permits, then we can go through this
6 process; correct?

7 **MS. EVANS:** Correct.

8 **COMMISSIONER WONG:** So then the other
9 thing is, you know, I think the counties were asked
10 to evaluate this plan and went through some sort of
11 -- you went through some sort of process with the
12 counties.

13 Was there any other people asked to go
14 through this plan, or is just the county, their
15 (inaudible)?

16 **MS. EVANS:** Well, we asked all four
17 counties and the Land Use Commission staff to allow
18 us to make a presentation on the early draft. The
19 counties were willing to let us do that, and we did.
20 And then they looked at our draft. They made
21 comments. We made amendments. And we arrived at
22 the draft that you all have, which is dated Draft
23 November 9, 2021.

24 Does that answer your question?

25 **COMMISSIONER WONG:** Yes. Well, it's

1 leading up to my other question.

2 Just because -- as you've seen in our
3 other hearings, we have a lot of community input,
4 not only from the petitioner and any other
5 intervenors, but we also have public intervenors,
6 and we're going through a Zoom process.

7 Why couldn't you do a Zoom to the
8 different islands and say, hey, you know, Maui today
9 or Sierra Club or et cetera? Why don't you look at
10 our plan and tell us what you think? Was that ever
11 done or was -- did you already have any community
12 involvement?

13 **MS. EVANS:** Commissioner Wong, we're
14 looking forward to receiving comments from as many
15 different community stakeholders as possible now
16 that the draft has been posted on our website which
17 is accessible to everyone. So we're very much
18 hoping to get comments from as many stakeholders as
19 possible. Thank you.

20 **COMMISSIONER WONG:** So the question I have
21 is, after the community statement, will you be
22 changing this plan in any way or will you just say,
23 oh, thank you for it but that's it. This plan is
24 set in stone?

25 **MS. EVANS:** Commissioner Wong, the plan is

1 not set in stone. It's still a draft. And as you
2 may have noted in our presentation to you, we made
3 changes based on all of the four county planning
4 departments' comments and we did make changes from
5 the Land Use Commission staff where they were
6 similar to the counties' comments. So, no, it's not
7 set in stone. We look forward to getting comments
8 and we will make changes if they make sense.

9 **COMMISSIONER WONG:** Thank you.

10 So the other questions I have -- Chair,
11 I'll just take five minutes if you don't mind and
12 then I'll pass it on to the other commissioners.

13 **CHAIR SCHEUER:** Please proceed.

14 **COMMISSIONER WONG:** So I guess the
15 question I have is, you know, I was -- I took some
16 classes because of land use about public trust
17 doctrines, et cetera. So was the public trust
18 doctrines every brought up in this plan?

19 **MS. EVANS:** Commissioner Wong, actually,
20 myself and all our staff have also taken that
21 training and we incorporate it into our work on land
22 use planning as well. So I believe that this plan
23 is reflective of our, you know, having taken that
24 training. I took it twice and I think it was very
25 valuable. So I don't think there's any conflict

1 with the review and the Native Hawaiian law training
 2 that's been provided by Richardson Law School.

3 **COMMISSIONER WONG:** Thank you.

4 So the other question I have is, you know,
 5 one of your last slides talked about the
 6 sustainability portions. So, you know, the
 7 sustainability is not only ag but it's also, you
 8 know, about housing, about -- it's sustainability
 9 pretty much that touches everyone in terms of
 10 energy, et cetera. Have we ever, I mean, it looks
 11 like it was touched upon but not really -- the plan
 12 doesn't really follow through to the next level. I
 13 feel it doesn't. It doesn't hit, let's say, all.
 14 We're not going to just build in urban areas. It
 15 didn't really talk about infrastructure. How the
 16 infrastructure is going to be planned out to these
 17 portions. I don't know if I got it wrong or I'm not
 18 getting it. Can you explain?

19 **MS. EVANS:** Yes. Thank you, Commissioner
 20 Wong.

21 As you know, the Office of Planning and
 22 Sustainable Development distributed the 2050
 23 Sustainability Plan Update for the 10 years from
 24 2020 to 2030 last year and made presentations to the
 25 Land Use Commission, the governor, the legislators,

1 and that's posted on our website. We are strongly
 2 in favor of all of the findings, focus areas,
 3 actions that are listed in that plan. The statute
 4 for this review requires us to undertake a review of
 5 the classification and districting of all lands in
 6 the state and focus our efforts on reviewing the
 7 Hawaii state plan, the county general plans, county
 8 development, and community plans. Now, the Office
 9 of Planning and Sustainable Development is
 10 responsible for the Hawaii state plan and it does
 11 include some very clear sustainability provisions.
 12 We are to promote mitigation and adaptation for
 13 climate change and sea level rise, and we take that
 14 very seriously. And that is incorporated into all
 15 our work in the Office of Planning and Sustainable
 16 Development. This particular review was not
 17 directed at the 2050 Sustainability Plan. It was
 18 directed at looking at the state plan and the county
 19 plans for consistency.

20 Does that answer your question?

21 **COMMISSIONER WONG:** Yeah, it does. It
 22 bothers me in the sense that, you know, in our
 23 future land use hearings, I know we also, besides
 24 the Town case and the public trust doctrine, we
 25 should look at sustainability. Like, for example,

1 our solar farms we've been dealing with. How it's
2 going to affect the state and also the counties. So
3 somehow I'm missing something here. I don't know if
4 -- maybe it's just myself but it seems like
5 something is missing in terms of the plan and that
6 sustainable development plan. So just FYI, you may
7 want to look at it again just to say, hey, we're
8 going to put two and two, making sure it's four and
9 not one or something. That's all I'll say.

10 The other issue I have is more of, you
11 know, I understand we're looking at the county
12 plans, the county growth plans and the state growth
13 plans, how it adds up. And to me saying this is the
14 county plan, this is the state plan, but it's not
15 going to the next level. It's just saying here it
16 is. You know, where are we going? I mean, where is
17 our future? How is land use going to be involved in
18 this future? Something -- I can't see it. I'm
19 sorry, I know the other commissioners -- I know
20 they're smarter than me. They can add it up there.
21 So, I'll ask, you know, even though I ask
22 Commissioner Okuda for assistance on this and
23 Commissioner Ohigashi, just because I can't add it
24 up at this time. So I just wanted to say, you know,
25 the plan right now is nice but I don't know if I

1 need more time before we send it to the legislature
2 because it's not adding up to me somehow. That's
3 all I'm saying. It's just a statement, Mary Alice,
4 and I yield back to the chair. Thank you.

5 **CHAIR SCHEUER:** Thank you. Thank you,
6 Commissioner Wong.

7 We'll have Commissioner Okuda followed by
8 Commissioner Chang.

9 You're muted, Commissioner Okuda.

10 **COMMISSIONER OKUDA:** There we go. I
11 pressed the wrong thing.

12 Thank you to everyone at the Office of
13 Planning. Even if nothing happens with the draft,
14 the draft provides very important information and I
15 think it's very, very helpful just from, you know, a
16 planning standpoint and giving us information on
17 things that we should keep in mind.

18 This is my question and I'm not sure who
19 can answer the question. At the end of the day when
20 everything contemplated by the Office of Planning
21 takes place regarding what is being prepared here,
22 is there an intention that the result will be that
23 the land use designations of certain parcels will
24 change, you know, when this process that you're
25 engaged in is finished? Is that the intention?

1 **MS. EVANS:** I think those are one of the
 2 options that we're presenting. They're not
 3 recommendations. They're options to explore, for
 4 further exploration. Any changes will be up to the
 5 land use commission and the legislature. The Office
 6 of Planning and Sustainable Development does not
 7 have the authority to make those changes, nor do we
 8 contemplate making changes on our own because we
 9 can't.

10 **COMMISSIONER OKUDA:** Do you and anyone
 11 else at the Office of Planning, including your
 12 deputy attorney general can answer the question, do
 13 you believe that any government agency, including
 14 the Land Use Commission, can change a boundary
 15 designation or a state land use designation simply
 16 on the basis of adoption of whatever this boundary
 17 review plan is without going through the full-blown
 18 boundary review process which we normally do or take
 19 into account on a parcel by parcel basis?

20 **MS. EVANS:** I'll start. That's a no.
 21 There's no possibility of doing that under the
 22 current statute and the current rules.

23 **COMMISSIONER OKUDA:** Okay. I'm sorry, it
 24 could be my audio here but you were kind of fading
 25 out. Can you give that answer a little bit louder,

1 please?

2 **MS. EVANS:** Certainly. My answer is no.
3 We can't do that under the current statute and
4 rules.

5 **COMMISSIONER OKUDA:** Okay. Okay. Because
6 the way the Town case is -- that's T-O-W-N, and the
7 full citation is Town versus Land Use Commission, 55
8 Hawaii 538, which is a 1974 Hawaii Supreme court
9 case. And I guess it dates us because when I looked
10 it up in West Law, the deputy attorney general was a
11 person by the name of Benjamin Matsubara. And I
12 guess Town was the person who ended up being Judge
13 Michael Town later. So, you know, I guess it's a
14 little historic information there.

15 But the Town cases distinguishes between
16 rule-making authority and basically what can be done
17 or what has to be done using a contested case
18 process; correct?

19 **MS. EVANS:** Commissioner Okuda, I'm a
20 planner, not an attorney. But I believe, you know,
21 that the legislature took the Town decision and
22 incorporated it into law. And so that's what we
23 follow is the law.

24 **COMMISSIONER OKUDA:** Yeah. But let me
25 just read this just so that we can frame it. I know

1 there's no real decision-making taking place here
2 but what the Supreme Court said at 55 Hawaii, and
3 this is from pages 546 to 48. It says, and this is
4 just a couple of sentences. Let me read it. And I
5 quote, "We are of the opinion that the adoption of
6 district boundaries classifying lands into
7 conservation, agricultural, rural, or urban
8 districts, or the amendment of said district
9 boundaries is not a rule-making process within the
10 meeting of the above-cited definition." And there's
11 a citation to the Aquair, A-Q-U-A-I-R versus Hawaii
12 Housing Authority case. And there's a citation to
13 the Vol. 55 Hawaii report and the 522 Pacific
14 reports. Then the section or the opinion continues,
15 "HRS Section HRS Section 205-34 and Section 205-4
16 empower the appellate to effective the setting of
17 boundaries under the scheme provided by HR Res. Sec.
18 205-2.5. It logically follows that the process for
19 boundary amendment is not rule-making or quasi-
20 legislative but is adjudicative of legal rights of
21 property interests in that it calls for the
22 interpretation of facts applied to rules that have
23 already been promulgated by the legislature."

24 So in other words, just so that we're
25 careful about how we move forward, I think it's

1 really, really good that the Office of Planning is
2 preparing this review. You know, when I was first
3 nominated to serve on the Land Use Commission since
4 I'm really not a planner and not a long-range kind
5 of thinker, I actually went around, and I still
6 periodically do, talking to various people and
7 asking them where should Hawaii be 30 to 50 years
8 from now and what do we have to do to get there??
9 So I can see the extensive thought and work that you
10 folks have put into the project and I think it is
11 very, very valuable no matter what the outcome is.
12 But if the ultimate outcome is going to involve an
13 actual change of boundary designations of individual
14 parcels, I'm not sure if just the adoption of this
15 type of plan complies with the Town case and it
16 really implicates due process rights of individual
17 property owners which might be affected.

18 So that's just my commentary that, you
19 know, in moving forward, I think we have to be
20 conscious not only about the Town case but of
21 potential due process arguments and, you know, both
22 procedural due process and substantive due process,
23 but again, you know, I'd like to really recognize
24 and applaud the hard work you folks have done. This
25 is very good information. Even if you did nothing

1 further with the draft, this is quite an
2 accomplishment. So thank you very much.

3 **MS. EVANS:** Thank you, Commissioner.

4 **CHAIR SCHEUER:** Thank you very much,
5 Commissioner Okuda.

6 Commissioner Chang?

7 **COMMISSIONER CHANG:** Thank you.

8 Good morning, Mary Alice. It's nice to
9 see you.

10 I, like Commissioner Okuda, applaud the
11 efforts of your office for doing this. I think a
12 lot of the findings that you came up with were
13 consistent with some of the struggles that LUC has
14 faced in reviewing a lot of the district boundary
15 amendments. So thank you for the report.

16 I just want to -- I have several points --
17 I have several questions. But the first one I'm
18 going to follow up with Commissioner Okuda's line of
19 questioning. I think you've made it clear, this
20 report is not intended in any way to circumvent the
21 Town decision. However, the question I have is,
22 one, does Office of Planning, or are you aware of
23 any legislators or the governor's office proposing
24 to make any legislative amendments to Chapter 205
25 based upon this report?

1 **MS. EVANS:** No, I am not, Commissioner
 2 Chang. I'm not aware of any such thinking on the
 3 part of people that I've been talking to.

4 **COMMISSIONER CHANG:** You're kind of fading
 5 out, too, Mary Alice.

6 **MS. EVANS:** But I am aware of one thing.
 7 It's not to your point but legislators are looking
 8 at the possibility of asking the Office of Planning
 9 and Sustainable Development to do a study on what an
 10 appropriate replacement might be for the outdated
 11 ALISH and Land Study Bureau classifications. We
 12 would support such a legislation on the part of the
 13 legislature. We think that it's time. I think both
 14 ALISH and LSB were down in the sixties or seventies
 15 and they were probably based on plantation
 16 agriculture. And so we'd like to see a more
 17 accurate updated soil characteristics and assessment
 18 of ag potential.

19 **COMMISSIONER CHANG:** And I think the Land
 20 Use Commission would support that clarification as
 21 well. We've had numerous cases where lands, they're
 22 classified a certain way but if they're like on a
 23 cliff or a poly, or their former, you know, so I
 24 think you were right. That a lot of these
 25 definitions or classifications may have been based

1 upon a different time period in our agricultural
2 history. So I think it is appropriate to look at
3 that.

4 The second part -- and I'm sorry, I did
5 not -- this is the first time I've, you know, seen
6 the presentation so I've not fully absorbed all of
7 your points. But based upon the presentation, it
8 would appear that a lot of the urban development on
9 ag land that's outside the state classified --
10 that's outside the state classified urban zoning.
11 Would you agree with that?

12 **MS. EVANS:** Well, is Zoning data? The
13 data that we use has some serious limitations. So,
14 we have included it in the review because the
15 question has been raised by a number of different
16 stakeholders, but we require that that requires
17 further exploration and verification before we could
18 see that.

19 But I think many of you know that, at
20 least in Hawaii county, along with the not
21 particularly productive ag lands, Sampada (phonetic)
22 and on that amazing lava flow in Kau, it would be
23 challenging to do commercial ag. I see Commissioner
24 Cabral nodding.

25 **COMMISSIONER CABRAL:** I'm looking sort of

1 at the other end of that structure. A lot of land
2 in Oahu is an ag zone but is being -- we've seen
3 several petitions to amend the boundary designation.
4 And I guess I'm wondering, what should be driving
5 development in Hawaii? Is it the same land use
6 zones or because just the short term that I've sat
7 on the LUC, we seem to be taking a lot of ag land
8 out for renewable energy projects for housing
9 developments that I'm wondering what should be
10 driving state land use? Is it private developers or
11 counties or should it be the state land use
12 boundaries?

13 Now, I recognize that this is -- we
14 haven't done a report in many years but it does -- I
15 will tell you, I have been troubled by the numerous
16 district boundary amendments or the taking out of ag
17 land for renewable energy projects. It is a
18 permissible use but it does take up very valuable ag
19 lands and I'm not too sure how to resolve that. I
20 don't know, you know, what kind of recommendations
21 you may be making in your report but, you know,
22 we've seen between land use -- well, refuge, you
23 know, the dumps, they're all on ag land. And is
24 that really appropriate? So again, it's not real
25 clear in my mind who's driving, you know what's

1 driving development or land use in Hawaii? Is it
2 our state land use designations or is it sort of
3 we're going to catch up by this piecemeal by having
4 developers our counties coming in and seeking
5 exemptions. You know, my fear is that the exemption
6 is going to become the norm. And there is -- so I
7 don't know if you've got an answer to that. It's
8 just that that was what I gathered from just a
9 review of our report and I'm wondering how does
10 Office of Planning, how do you weigh sometimes what
11 we've found, or at least what I've found,
12 conflicting policies, promotion of sustainable ag
13 versus renewable energy versus housing. I mean, how
14 does Office of Planning look at those policies,
15 those constitutional mandates? How are you, you
16 know, how is LP looking at that in relationship to
17 existing land use planning and our future?

18 **MS. EVANS:** Thank you, Commissioner Chang.

19 Very carefully. However, the point you
20 made at the end that this is agricultural priority
21 for the state. So that's one of the reasons why
22 this review includes that analysis of whether there
23 are good ag lands outside of the counties' urban
24 growth areas on each island because it is our
25 constitutionally required duty to protect good ag

1 lands.

2 Now, that's become less of a challenge on
3 the neighbor islands where they have more land. But
4 Oahu is a huge challenge. As the Commission has
5 dealt with in the Kaneohe area where Oahu is closing
6 out its last coal-powered electrical generation
7 plant in fall 2022 and I don't think anyone wants to
8 see us with rolling backouts as a result. So some
9 very tough decisions have been made on that.
10 Whether the right decisions in very case going
11 forward, I don't think there's a formula for that,
12 Commissioner Chang. I think the situation is
13 changing rapidly with climate change and our
14 commitment by the state legislature and governor to
15 transition out of imported fossil fuel for
16 electrical generation to renewable and hopefully
17 indigenous electrical generation to make possible --
18 actually more resilience and more sustainable
19 economy for us. We are going to have to site
20 renewable energy uses. I think the Land Use
21 Commission may be making some of those decisions.
22 So we are struggling with some of the same questions
23 that you are, Commissioner Chang, and trying to take
24 into account the safety and well-being of our
25 population.

1 **COMMISSIONER CHANG:** And I appreciate
2 that, Mary Alice. But it's becoming painfully
3 apparent to me that many of these renewable energy
4 companies are using ag land, one, it's available,
5 but two, because of the tax benefit. That became
6 very clear in the media story about if they can't
7 get the tax, the reduced tax, you know, for the
8 project that we recently approved, now, that's, you
9 know, and I also see that with residential housing.
10 Ag land is for farm dwellings. We -- Land Use
11 Commission defined what a farm dwelling is. It's
12 got to be associated with farming activity on the
13 property. And, you know, when the IAL petition came
14 forward, many of those who complained about the
15 designation weren't doing ag. They were doing
16 residential development. So it does, you know, I
17 think there has to be someone who is looking out,
18 including Office of Planning and the counties with
19 respect to the uses on the land should be
20 appropriate for the designation and not as a
21 discounted tax, a reduced tax. Because that is
22 clearly in my mind what is happening for many.

23 So, again, I think that these kinds of
24 considerations, I do look to the Office of Planning
25 to provide some overall guidance. And those

1 considerations be part of their assessment and
2 analysis when they come before us on district
3 boundary amendments that, you know, I really would
4 have appreciated having a full understanding of the
5 tax consequences of that recent renewable energy
6 project before we made a decision.

7 So, again, so think, I look at Office of
8 Planning. I hope in this report that those are some
9 of the kinds of considerations you do look at is how
10 do we balance the various mandates that we have as
11 well as making it more equitable? Because people
12 are getting a reduction of taxes from building on ag
13 lands, the people who are actually on residential
14 lands, which are mostly the local residents, are
15 paying a higher tax rate.

16 So, again, I think everything is connected
17 and I think -- I'm hoping that Office of Planning,
18 you do take a very serious look at appropriate uses.
19 You know, how do we look at land use zoning? What
20 is the role of the land use boundaries when we're
21 constantly pushing them out or taking good ag lands
22 out of those kinds of boundaries?

23 So that's just -- but I, like, you know,
24 the other commissioners, greatly appreciate the work
25 of Office of Planning and putting together this

1 report. It gave me a very different perspective.
2 It also made me a little bit more frustrated because
3 it brought to light the reality of what we're
4 facing. But, so a lot of what I have is more
5 comments for your consideration as you review the
6 report.

7 **MS. EVANS:** Thank you so much. I can
8 point out that the use of solar rays on ag land
9 doesn't actually change the district boundaries.
10 It's a special permit, as you know. So there is the
11 potential to, one, continue to do ag on those
12 properties and to return them to full ag use at the
13 end of the useful life of the energy projects.

14 **COMMISSIONER CHANG:** And Mary Alice,
15 that's just like the Waimanalo Gulch and the Maui
16 refuge. They're all, you know, special use permits.
17 The intention is they're going to go back and the
18 land can be rehabilitated for ag. But that's 65
19 years later or 50 years later. And we don't know
20 what kind of condition they'll be in. So I think
21 the balance is we're looking, you know, mandate as
22 sustainable ag now. When we're sending 93 percent,
23 we're having to ship in our goods, why aren't we
24 utilizing these ag lands that are quite valuable now
25 for ag purposes?

1 So I understand your point that it's a
2 temporary use but the reality is even if it may be
3 temporary, it's a very long temporary use when we've
4 got a constitutional mandate to pursue sustainable
5 ag.

6 All right. Enough with my little
7 editorializing but I appreciate the work by Office
8 of Planning and your staff. Thank you.

9 **MS. EVANS:** Thank you, Commissioner Chang.

10 **CHAIR SCHEUER:** Thank you, Commissioner
11 Chang.

12 So it's 10:45. We're going to have a hard
13 stop at 12:45 and we need to hear from other
14 commissioners and allow more back and forth. So
15 Commissioner Ohigashi followed by Commissioner
16 Cabral.

17 **COMMISSIONER OHIGASHI:** We could take a
18 five minute break for now and then come right back.
19 Is that okay?

20 **CHAIR SCHEUER:** I was going to take a
21 break in about a half hour. We've been going a half
22 hour. Do you need a break right now?

23 **COMMISSIONER OHIGASHI:** Yeah, just for
24 five minutes.

25 **CHAIR SCHEUER:** Okay. Five minute recess.

1 10:48 sharp.

2 (Recess taken from 10:43 a.m. - 10:48
3 a.m.)

4 CHAIR SCHEUER: It's 10:48. We're back in
5 session. Recognizing Commissioner Ohigashi,
6 followed by Commissioner Cabral.

7 COMMISSIONER OHIGASHI: Thank you, Mr.
8 Chair.

9 I'm going to go back to the last slide
10 that you had. You issued a timeline of December
11 referral to the governor and the legislature. And I
12 guess, I think the statute requires it also come
13 back to us, the commission. December 19th would be
14 according to the timeline.

15 MS. EVANS: Commissioner Ohigashi,
16 comments due on December 10th. We haven't
17 established dates to brief the governor and the
18 legislature. The statute only requires that we
19 submit a report and it will be up to them if they
20 want to have a briefing or not.

21 COMMISSIONER OHIGASHI: I recall that the
22 submission of the report will be made in that last
23 slide the end of December or sometime in December.
24 I just wanted to know if that's correct.

25 MS. EVANS: We will make every effort to

1 keep to that timeframe but we can't anticipate how
 2 many comments we'll get and how long it will take us
 3 to review them and incorporate changes that they may
 4 suggest.

5 **COMMISSIONER OHIGASHI:** So that's a
 6 floating time. That's an approximately that you're
 7 giving us. Okay?

8 **MS. EVANS:** Yes.

9 **COMMISSIONER OHIGASHI:** Is that right?
 10 Okay. My concern is that if that timeline was
 11 affixing it would be very difficult to obtain or to
 12 get input from other people or from the public I
 13 imagine. For example, on Maui, I know that the
 14 Kihei Community Association has been very involved
 15 in Land Use Commission meetings and is very
 16 concerned about our rules and our docket and
 17 especially things that occur on Maui. So, what
 18 efforts is your department going to do, will
 19 undertake to make sure that people like the
 20 community association, those who have been involved
 21 in the Land Use Commission meetings will get notice
 22 of this report and will have an opportunity to
 23 comment? This is your report so I'm just assuming
 24 that you'll be able to get it out to these people.

25 **MS. EVANS:** We hadn't planned on trying to

1 send a link to the report to every community in the
 2 state. I think that isn't the intent of 205-18.
 3 But we will welcome any comments that we do get.
 4 And perhaps if some of those stakeholders are
 5 listening to the Land Use Commission today, they
 6 will know that we would be very happy if they would
 7 give us comments on it now that they know where to
 8 find it.

9 **COMMISSIONER OHIGASHI:** Well, one of my
 10 concerns is that I think that the department -- I
 11 think that your department -- and you can take it
 12 for what it's worth, but my (indiscernible) would be
 13 -- would have more of -- I want to say credibility -
 14 - but more of a backing of this report if it reached
 15 out and sought community involvement in that. But
 16 that's my comment, and you can say, no, you don't
 17 want to do that and leave it up to everybody to
 18 fumble through the state department to figure out
 19 what we're doing. But I think that that should be
 20 done.

21 My second comment deals with sort of what
 22 Arnold was indicating to me, was indicating on the
 23 record. It seems as though that there was a
 24 reference in your presentation to urban areas that
 25 have not been granted boundary amendments in urban

1 areas within the growth areas, within the urban
2 growth areas of the county that haven't been
3 developed. And one of the things that leaves me is
4 that what incentives is there for those -- is there
5 going to be a plan or review by your department to
6 give recommendations and how the existing use,
7 existing urban areas that have not been developed,
8 how to move forward with those particular plans or
9 to figure out an incentive on how to get those
10 plans?

11 **MS. EVANS:** I am so glad you asked that
12 question, Commissioner Ohigashi, because the Office
13 of Planning and Sustainable Development Land Use
14 Division --

15 **CHAIR SCHEUER:** Hold on one moment.
16 There's a huge amount of noise from somewhere. Mr.
17 Setogawa, there we go. Thank you.

18 Please continue.

19 **MS. EVANS:** May I continue to answer the
20 question, Chair?

21 **CHAIR SCHEUER:** Please.

22 **MS. EVANS:** Yeah. So Commissioner
23 Ohigashi, we -- the legislature created for the
24 Office of Planning the Transit-Oriented Development
25 Council, which is comprised of representatives from

1 all four counties, state agencies, a business
 2 representative, an affordable housing
 3 representative, and a nonprofit representative. And
 4 that council and its associated investigative
 5 committees works very hard to help the counties plan
 6 for mixed use communities infill in the urban
 7 district where there are opportunities for transit
 8 hubs, transit corridors, or rail hubs. So that is a
 9 huge commitment on the part of our staff and all the
 10 state departments and county planning departments
 11 and transit offices to move forward with using those
 12 less than fully developed lands in the urban
 13 district for affordable housing and transit.

14 So you've just asked me almost my favorite
 15 question because our staff is working very, very
 16 hard to work with the counties and the state
 17 agencies to develop those less than fully developed
 18 lands in the urban district.

19 **COMMISSIONER OHIGASHI:** And so --

20 **MS. EVANS:** We hope that will take
 21 pressure off the ag district.

22 **COMMISSIONER OHIGASHI:** Well, that's fine
 23 that you're working on it. My question was more
 24 like will your department come up with
 25 recommendations and reviews -- recommendations in

1 its planning, substantive recommendations, I guess,
 2 to do the infill, to do that work?

3 **MS. EVANS:** We are. But we don't make
 4 those recommendations to the Land Use Commission
 5 unless you invite us to. We make them to the
 6 counties and the legislature which has been kind
 7 enough to provide us with planning funds that we
 8 used to jumpstart the counties' planning and state
 9 agencies planning for these new developments with
 10 affordable housing at their core.

11 **COMMISSIONER OHIGASHI:** So were you then -
 12 - will those plans be implemented prior to any
 13 support for additional boundary changes within the
 14 urban growth areas of each county?

15 **MS. EVANS:** They don't need district
 16 boundary amendments because they're taking place
 17 within the urban district. So they don't need --

18 **COMMISSIONER OHIGASHI:** I understand that,
 19 Director Evans. My question is more -- is not that.
 20 My question is simply this: All these areas have
 21 been designated urban by the Land Use Commission.
 22 All of them -- a lot of areas haven't been
 23 developed. A lot of them have infrastructure
 24 requirements that have to be done. All of them have
 25 to be done. In order for us to make sure that

1 development occurs in a natural state, not favoring
 2 a new developer or an old one, that the
 3 infrastructure will have to be phased in prior to
 4 new developments be planned. Otherwise, the new
 5 developments will have to carry the whole
 6 infrastructure cost, increasing the cost of all
 7 developments, including affordable housing.

8 So my question to you is, is the Office of
 9 Planning positioned, then, that these infills or
 10 these areas should be developed prior to any more
 11 growth in the urban area -- urban growth areas of
 12 each county? Because it would make sense that the
 13 state concentrate its efforts, and the counties
 14 concentrate its effort, into developing already
 15 urbanized land.

16 **MS. EVANS:** We cannot tell the counties
 17 what to do, other than legislature, which can
 18 through Chapter 46 and session laws. However, we
 19 are putting --

20 **COMMISSIONER OHIGASHI:** That's why I asked
 21 you what is your position with regard to --

22 **MS. EVANS:** Our position is that we are
 23 supporting the counties in developing -- and state
 24 agencies that have affordable housing as their
 25 mission -- in the developing the infrastructure that

1 is needed in order to develop these urban district
2 areas. So that is -- a large part of our staff is
3 working on that issue. We don't have a large staff,
4 by the way. Commissioner Ohigashi, we're not a
5 department. We are an office, administratively
6 attached to the Department of Business, Economic
7 Development and Tourism.

8 Does that answer your question,
9 Commissioner?

10 **COMMISSIONER OHIGASHI:** That's hard
11 because I don't know your position. But that's
12 okay. I can go on the Internet. That's fine.

13 My final discussion is this, is that -- if
14 OPSD is recommending that the counties have the
15 jurisdiction to handle the urban area district --
16 their urban growth area boundary amendments for
17 agricultural land, does that include special use
18 permits within that area?

19 **MS. EVANS:** We're not making
20 recommendations, Commissioner Ohigashi. And we did
21 not consider special use permits in our review of
22 districts and state plan, county development --
23 general and development plans.

24 **COMMISSIONER OHIGASHI:** Sorry I'm eating
25 because I need to get my sugar up. I can't eat

1 pastry anymore.

2 Thank you. I just wanted those areas to
3 be cleared up.

4 **CHAIR SCHEUER:** Thank you, Commission
5 Ohigashi.

6 Commissioner Cabral?

7 **COMMISSIONER CABRAL:** Thank you, Chair.
8 And thank you fellow commissioners on your excellent
9 questions.

10 One of the things that came to mind as I
11 was reviewing your very length report, of which, of
12 course, I paid the most attention to the Big Island
13 and found my land in your maps, et cetera. But
14 appeals and changes. One of the things I find is
15 that we have people come to us and I just think,
16 wow. Because their land got put into conservation,
17 because their land got put into important ag land,
18 and maybe the owner 20 years ago got notified of it
19 and nobody else really pays attention of it. Nobody
20 knows what's going on with it and it doesn't really,
21 you know, and all of a sudden I want the green house
22 on my whatever or something is different than what
23 it is now, I suddenly have to go through potentially
24 several years of appeals to several agencies on a
25 county level, on an office state, Office of Planning

1 level and Land Use Commission level. And I just
2 kind of wonder about that. And I don't see anything
3 in your report but I have to agree. I mean, I read
4 parts of it in detail and others I don't see
5 anything. And I don't know whether that's ever been
6 discussed from your office with the counties or if
7 it should be. Or if it's not something we could
8 look at to make it so that -- I'm concerned after
9 some of the things we've seen and the recent IAL
10 discussions we've been having that I feel like the
11 citizens are just being, you know, I agree.
12 Dictatorships are truly the most efficient from of
13 government as long as I'm the dictator. But
14 otherwise, I'm a little concerned that democracy is
15 being lost to efficiency or someone's personal
16 thought of what's better for everybody else. So
17 what about appeals? Is anything going on with the
18 ability to make appeals to all of these changes?

19 **MS. EVANS:** Commissioner, I'm not aware of
20 that. It wasn't part of the legislative mandate for
21 this review. It is a good question and it isn't --
22 it's not out of order at all. It just wasn't within
23 the scope of this particular review.

24 We also have noted that there's
25 challenges. We also know that the counties in the

1 sixties and later created zoning in the ag district
2 that was either one acre or two acres and it's been
3 hard for commercial farmers to make -- not all.
4 Some are doing great but others are not able to make
5 an income in farming in those small ag subdivisions.
6 I think that's something that, you know, reached the
7 land use commission level with that. And it's your
8 call on -- yeah, it's a challenge. I agree.

9 **COMMISSIONER CABRAL:** Okay. Then my next
10 question is, and you referred to it in some cases
11 but I don't see it really, ever really defined is my
12 thought about exactly what you just touched on
13 because I am here in Hilo and at one point I managed
14 all of Hawaiian Paradise Park under the jurisdiction
15 of the circuit court over here under a master
16 receivership program. That's an interesting
17 position. But what about being able to take
18 something like these one acre ag zone properties and
19 change them to rural so that they have potentially
20 the ability to do and be what they actually are,
21 which is really a house. Somebody's house. I mean,
22 and sitting on a piece of property that is not
23 really any way shape, or form, good for agriculture
24 of anything, let alone income producing egg. I saw
25 some reference to that but I didn't see anything

1 really trying to make that movement or is that
2 something that the county should be coming forward
3 with?

4 **MS. EVANS:** Commissioner, I think with
5 reference to Commissioner Okuda's comments, I think
6 that's not something that the Office of Planning and
7 Sustainable Development can do. So but it is -- the
8 county Planning Departments, some of them have been
9 telling us that those small acre subdivisions, one
10 acre, two acre, sometimes on lava maybe shouldn't
11 have been in the ag district in the beginning. But
12 the royal district was created later after the
13 original division of the state into the three
14 earlier districts. And so lands that might more
15 logically have been classified originally as rural.
16 I didn't have that opportunity and because it's very
17 expensive and time consuming to go through a
18 district boundary amendment with an uncertain
19 outcome, it seems unlikely that folks that have --
20 are living on those one acre parcels will ever go
21 through that process.

22 **COMMISSIONER CABRAL:** Well, that's my
23 point is would it be something that would be
24 possible that at your level, if the state level
25 opened it up for it that it could be when I get my

1 tax bill and I say check, do I want to stay ag with
2 these following restrictions, or do what I like to
3 become rural, check here, and I will suddenly become
4 rural. With these more open opportunities or
5 something. I mean, is that simplification of common
6 sense?

7 **MS. EVANS:** I'm going to duck that one,
8 Commission.

9 **COMMISSIONER CABRAL:** That is really a
10 legal question. We can't do it right now.

11 **MS. EVANS:** Okay. Right. I know you
12 can't but just, yeah. Okay.

13 **COMMISSIONER CABRAL:** I will point out
14 that the rural district allows for farming. So it
15 isn't a shift from Ag to rural for those very small
16 subdivisions. It wouldn't prevent them or preclude
17 them from continuing to farm if subsistence farming,
18 family farming is their goal. So just a note.

19 **COMMISSIONER CABRAL:** Okay, thank you.

20 My only other comment would be, and I can
21 appreciate that you folks have been working hard on
22 this for a long time and that it's recently come to
23 us is that because it's going to have such a huge
24 effect potentially on the bottom citizen, you know,
25 I'm concerned that it's being kind of pushed ahead

1 because it's a task we want to get done and I want
 2 to make sure that, yeah, it's out there if you're
 3 paying attention, but I don't know if the public
 4 really knows about that. It probably doesn't know
 5 about something until it's a problem for them
 6 personally. And I hate to have it come to that down
 7 the road after everything's been passed and it's a
 8 fait accompli. So I'm just concerned about maybe
 9 the push on the timeline. I'd like to think that we
 10 have much more time because it's a massive document.
 11 I mean, like I said, it's hard for me to even
 12 comprehend all of its importance and its potential
 13 changes and ramifications. So I'm just concerned
 14 about the timeline. Okay. Thank you, though.

15 **CHAIR SCHEUER:** Thank you, Commissioner
 16 Cabral.

17 Commissioner Aczon, are you good? Do you
 18 have questions?

19 **COMMISSIONER ACZON:** Can you hear me, Mr.
 20 Chair?

21 **CHAIR SCHEUER:** Yes, I can. Thank you
 22 very much, Commissioner.

23 **COMMISSIONER ACZON:** Thank you, Mr. Chair.
 24 I don't really have anything. This has been a
 25 lively discussion and I think we should expect more

1 discussions. I do, however, thank the Office of
 2 Planning and Sustainability Development for putting
 3 this together. However, I'm also concerned about
 4 the timeline, coming out with a final report to the
 5 governor and to the legislature. I'm also concerned
 6 about is there going to be more discussion between
 7 your office and the Land Use Commission staff or
 8 even the commissioners before the pin goes to the
 9 governor? So, again, it's kind of concerning about
 10 the timeline coming out with the final report and
 11 going back to the community, stakeholders, and it
 12 seems like you're just going to put it on a website,
 13 the link, and you know, wait around for comments,
 14 not reaching out like, you know, maybe face to face
 15 like this in person, or virtual meetings. So I'm
 16 just, you know, like out of commission or -- I'm
 17 kind of concerned about that, but this is simply
 18 just fact, beginning of the discussion and
 19 hopefully there is more back and forth discussion
 20 between us and also other stakeholders.

21 **MS. EVANS:** Thank you, Commissioner Aczon.
 22 We're actually at the pleasure of the Land
 23 Use Commission. If you want to invite us back to
 24 provide an update on the comments we received and
 25 changes we might make, we'd be happy to do that.

1 **COMMISSIONER ACZON:** The last question of
 2 mail -- is the request going to the legislator or
 3 the governor whether or not the Land Use Commission
 4 is okay with it?

5 **MS. EVANS:** The new language in the law
 6 requires us to submit it to the Land Use Commission,
 7 the governor, the legislators, and the county
 8 planning departments. County, let's see, county
 9 agencies. State and county agencies. So it's not
 10 on your agenda but it's a "for action." This is a
 11 briefing on the draft and we'd be happy to come back
 12 at the Land Use Commission's invitation an present
 13 the final two. But you'll note that we don't have
 14 recommendations in here. We have options that may
 15 be explored. So, I don't know that this is going to
 16 generate action. I hope it will just continue to
 17 generate discussion. That's our goal, is to involve
 18 as many of the county planning departments, the Land
 19 Use Commission, state agencies, county agencies in a
 20 discussion of these findings. And they can add
 21 options. You know, there are other options that we
 22 may not have considered. We'd like to hear them.

23 **COMMISSIONER ACZON:** So in other words,
 24 you are required to report to LUC, the governor, but
 25 it's not necessarily you need a blessing from us to

1 go ahead with the report?

2 **MS. EVANS:** That's my understanding of the
3 law.

4 **COMMISSIONER ACZON:** Thank you.

5 Thank you, Mr. Chair.

6 **CHAIR SCHEUER:** Thank you, Commissioner
7 Aczon.

8 Commissioner, is it okay if I have -- I
9 have a couple of questions by which I mean 11. Can
10 I at least done some of them first before we go
11 around for a second bite? Okay. And some of them
12 are not questions. Some of them are comments.

13 So I think I'll start with echoing. If
14 this is the beginning of the conversation, I'm super
15 happy. That is, you're raising important issues to
16 the state and some of the GIS work is really very
17 valuable to give us some understanding of this. I'm
18 very grateful of that. But I share the concerns
19 about the outreach and the timeline.

20 Have you ever read, Mary Alice, the
21 Hitchhiker's Guide to the Galaxy by Douglas Adams?

22 **MS. EVANS:** I've heard the title. I might
23 have read it a few decades ago.

24 **CHAIR SCHEUER:** A humorous science fiction
25 book. And the scene with our hero lying in front of

1 a bulldozer tearing down his house which is being
2 torn down for a new expressway. And he discovers --
3 he had discovered the day before from a construction
4 worker that this was the plan but it had been
5 noticed in the Planning Office five times, for three
6 months previously. And we when we went to the
7 Planning Office they said, well, you know, it was
8 noticed. We put up the notice in our Planning
9 Office. And the tearing down of this house is
10 interrupted by the destruction of earth by an alien
11 species making a hyperspace bypass. And when one of
12 the earthlings manages to get a message to the Vogon
13 destruction fleet, the Vogons reply, what do you
14 mean you didn't get the notice? It's been posted in
15 Alfa Centauri for the last four years. How did you
16 not respond?

17 And in this day and age, and I don't just
18 mean Zoom technology being available and readily
19 known, but the desire for our communities to have a
20 meaningful role in engagement, I really find posting
21 a complex report and hoping for comments for
22 something as important as this, well, it brings up
23 that piece of literature for me. It is of great
24 significance, and I think we can do better. And we
25 can collectively do better.

1 I'd be happy if some people were attending
2 the meeting of the LUC today to comment on it but
3 not a single person testified so the indication is
4 that if this is your outreach plan, we need to do
5 better.

6 Going back to the beginning of the report,
7 we often repeat the statistics that only five
8 percent of the state is urbanized. Do you happen to
9 know, or Mr. Funakoshi or somebody else know what
10 percentage of the state is over 25 percent?

11 **MS. EVANS:** Good question.

12 **CHAIR SCHEUER:** Because I think it gives
13 us a false impression. A huge amount of lands are
14 just, I mean, unless without massive clearing and
15 infrastructure, undevelopable. You know, it's not a
16 real meaningful -- because the purpose, when I
17 usually hear five percent being used, it's just part
18 of an argument of we clearly don't have enough urban
19 land. It's only five percent. But that's not --
20 it's like, you know, it gives a false impression
21 that somehow 100 percent could theoretically be
22 urbanized but it couldn't possibly. So I'd rather
23 start off the conversation with we've doubled the
24 amount of urban land since the land use district has
25 over 100 percent. Has their population doubled?

1 Maybe more than that? I don't know.

2 Next, and this is a specific follow up
3 question to an answer you gave to Commissioner
4 Okuda. He asked you whether or not under the Town
5 case you could move land into the urban district
6 without the quasi-judicial process, and I believe
7 your first answer was not under current law. Is it
8 your belief that the legislature could change the
9 law according to one of your -- I believe you're
10 calling them options and not recommendations?
11 According to one of your options and somehow get
12 around the requirements under Town?

13 **MS. EVANS:** Chair, I'm not an attorney, so
14 I really, you know, can't --

15 **CHAIR SCHEUER:** I'm happy to put it to Ms.
16 Kato.

17 **MS. KATO:** I'm not sure. I mean, I don't
18 know that that's something that we are
19 consideration.

20 **CHAIR SCHEUER:** That's one of the options.
21 That is one of the options, Ms. Kato. So my
22 question, following up on Commissioner Okuda's
23 question is, do you believe that a change in the
24 legislation that allows the counties to do this
25 without a quasi-judicial process based on simply

1 being in the urban growth area would be compliant
 2 with Town, even if the legislature said that they
 3 could do this?

4 **MS. EVANS:** So, Chair, the legislature I
 5 believe may be able to do so and then it's subject
 6 to the judiciary, the third branch of government if
 7 a complaint were filed to make a final decision on
 8 that. So I think we have a process for resolving
 9 such a question should such a question actually be
 10 posed. And I, you know, don't know whether that
 11 would be the case.

12 **CHAIR SCHEUER:** I guess I'm posing the
 13 question beforehand because I guess my belief is
 14 because, if you read the Town case, it's about the
 15 inherent property rights people have. That's not
 16 something that legislature can get rid of. They
 17 could tailor a different process that would protect
 18 people's due process rights but they couldn't get
 19 rid of due process by implementing these changes.
 20 So you still are going to have to have some kind of
 21 process in place to address these property rights.
 22 And that's the sense in which I believe, and I join
 23 in the staff's comments that it doesn't really
 24 reflect the requirements of Town.

25 **MS. KATO:** I think that requires a deeper

1 analysis of what the rights are that are being
2 affected and what process is required to address, to
3 give process. So I'm not sure that that's an easy
4 answer.

5 **CHAIR SCHEUER:** And I think it's something
6 that for something substantive as these options are,
7 that would be the kind of analysis I would want to
8 see in this document.

9 **MS. KATO:** My understanding is --

10 **CHAIR SCHEUER:** Rather than sending it out
11 for comment without that analysis.

12 **MS. EVANS:** Okay. Thank you for the
13 comment. We really appreciate that. It's helpful.

14 **CHAIR SCHEUER:** I'm very supportive of the
15 idea of relooking at ALISH and LSB. I just think
16 you have to note in the record not only is it based
17 on the plantation system but all the sort of
18 structural racism in the plantation system of what
19 was considered good and what was considered not good
20 lands and who would get to use it for what purposes.
21 So it would be really great to revisit that.

22 I'm a little confused and this might be a
23 question for Mr. Funakoshi since I understand he
24 received the credit for this report. I don't
25 understand that work on IAL as part of the DBA --

1 this DBA report as one of the key recommendations
 2 because we hear time and time again that IAL is not
 3 a zoning issue.

4 Mr. Funakoshi?

5 **MS. EVANS:** Rodney, do you want to go
 6 ahead?

7 **MR. FUNAKOSHI:** Well, IALs is an important
 8 part of the constitutional mandate and an important
 9 part of Chapter 205. There's a whole section on
 10 IAL. So it is part of Chapter 205. It is not a
 11 district but it's a significant overlay to the
 12 agricultural district. That of course, you know,
 13 has tremendous indications. You know, if not
 14 substantively in terms of the permissible uses, at
 15 least the perception of protection of important
 16 agricultural lands. So it's certainly important and
 17 you know, we are committed to ensuring IAL be
 18 implemented statewide. And so, you know, we do feel
 19 that recommendations are appropriate for the report
 20 that renews districts, which includes the
 21 agricultural district and, you know, the main subset
 22 of that is IAL.

23 **CHAIR SCHEUER:** I guess I don't understand
 24 that when we keep hearing that, you know, IAL is not
 25 zoning. IAL is not districting. Why -- it's not

1 that IAL doesn't need attention. It certainly needs
2 reform but I don't understand why it's in this
3 report. I guess I didn't fully -- it's an important
4 issue but I don't know how it's responsive to the
5 requirements of that section of 205.

6 **MR. FUNAKOSHI:** There are some
7 restrictions to what you cannot do in terms of IAL
8 such as reclassify or, you know, do special permits
9 on IAL.

10 **CHAIR SCHEUER:** I think I might have a
11 follow up for you, Rodney. I guess whether this
12 comment in the report is attributable to you but
13 there's a section in the report and I think it's in
14 section five that seems to state that the reason why
15 the counties -- or implies the reason why the
16 counties formerly were not in charge of larger areas
17 of redistricting was because of staffing
18 limitations. Is that your statement?

19 **MR. FUNAKOSHI:** No. I don't want to
20 attribute any statement to any individual. It's an
21 agency report.

22 **CHAIR SCHEUER:** Okay. So is that the
23 agency's perspective?

24 **MR. FUNAKOSHI:** That staffs initially were
25 not very large and now are substantial, I think

1 that's a fact.

2 **CHAIR SCHEUER:** No, but -- yes, that is a
3 fact but is that the reason why the counties have
4 historically only jurisdiction over moving parcels
5 15 acres or less from the ag district into the urban
6 district?

7 **MR. FUNAKOSHI:** I don't think we made that
8 causal relationship.

9 **CHAIR SCHEUER:** I think you did. You
10 certainly implied it. I can find the citation if
11 you'd like.

12 **MS. FUNAKOSHI:** Okay.

13 **MS. EVANS:** I think we'd have to go back
14 and look at the committee reports for the
15 legislation to try to figure out what their intent
16 was. And we didn't have the capacity to do that,
17 Chair.

18 **CHAIR SCHEUER:** I'm not going to. Perhaps
19 when other commissioners are asking their questions
20 I will give you the specific citation.

21 But is it true -- so first of all, why are
22 they not recommendations and instead options? Mary
23 Alice or Rodney or whomever?

24 **MS. EVANS:** The statute says findings, so
25 we were to submit our findings upon completion of

1 the review. So it does include findings. And then
2 because that naturally does lead to a conversation
3 about, you know, if this is a finding, you know,
4 does it -- does somebody need to think about whether
5 there's further action? So we provided some options
6 that we've heard discussed but they, you know, they
7 aren't recommendations. They're options for in some
8 cases further exploration.

9 **CHAIR SCHEUER:** But don't you think they
10 will be taken as recommendations by the legislature?

11 **MS. EVANS:** My experience is that the
12 legislature has its own ideas what it wants to take
13 up or not take up.

14 **CHAIR SCHEUER:** I guess I have no problem
15 envisioning the Land and Water chair holding the
16 report and saying, well, OPSD said it was good. And
17 they will functionally be the same. So I think, I
18 guess I'm a little troubled by the language.
19 Regardless, one of the key options is, right, to
20 allow anything that's been -- or options -- one of
21 the key options is to allow something that's already
22 been in the urban growth district or the growth
23 boundary area to go into the urban district. Do I
24 have that correct, that the counties put that in?

25 **MS. EVANS:** Counties have used various

1 different terminology but they all seem to have
 2 something that in their general plans and
 3 development plans that they have worked with their
 4 communities and come up with a definition for an
 5 urban growth area.

6 **CHAIR SCHEUER:** Yeah, so that's the idea.
 7 So what happens? So if one of these options is
 8 passed along the lines of the option laid out in
 9 your report, what would happen to lands that you've
 10 mapped out that are not in the urban district but
 11 are in the urban growth area? How do they get into
 12 the urban district under your options?

13 **MS. EVANS:** I think that's for the
 14 legislature to figure out if they want to. And the
 15 counties. You know, I think you'll note that we
 16 involved the county planning departments and so some
 17 of them may not want to make any changes. Others
 18 might but they don't have the option right now so
 19 it's speculative.

20 **CHAIR SCHEUER:** So then help me understand
 21 what the option is that you're laying out related to
 22 the urban growth area.

23 **MS. EVANS:** I think we listed it in our
 24 presentation. Let's see if I can find it. So I
 25 think it's under Finding 1, Consistency with County

1 Plans, which we were charged with looking at. And
2 in 205-18, and we looked at options to improve
3 consistency. And expedited Land Use Commission
4 review for something like -- for consistency,
5 approved consistency with county plans. A county
6 plan based regional boundary amendment before the
7 Land Use Commission. Or to allow counties to
8 reclassify ag and rural land if within a county
9 growth area. So those are the options related.

10 **CHAIR SCHEUER:** So I guess when I think of
11 what I know of Kona, for instance, and the Kona
12 Community Development Planner, which I have a lot of
13 colleagues and friends who participated in the
14 development of that. And if you're familiar with
15 the plan -- I assume you are?

16 **MS. EVANS:** No, I'm not. I'm sorry.

17 **CHAIR SCHEUER:** So the plan was developed
18 with the core element being a transit-oriented
19 development scheme along a large swath of North
20 Kona, even though actually buried in the plan is the
21 acknowledgement that Kona will never have the
22 densities to really justify transit-oriented
23 development. But the community went along with this
24 in part because of key provisions that they got in
25 the Kona Community Development Plan, including a

1 requirement for concurrency, that land wouldn't be
2 allowed to urbanize unless the infrastructure was
3 there first. And they were also assured that
4 because the plan was being adopted by ordinance that
5 all these requirements would be in place.

6 Subsequently to the adoption of the plan
7 with its aggressive urban growth area, the county
8 has at alternate times tried to argue that even
9 though it's not by ordinance, things can't be
10 required and to remove the concurrency element. So
11 I see a real disconnect between the urban growth
12 area developed in the Kona Community Development
13 Plan and then jumping into it's ready for urban
14 development because the community said it was ready
15 for urban development based on a set of associated
16 promises, which the county is not fulfilling.

17 **MS. EVANS:** Chair, that is one of the
18 areas that the county has selected as a focus area
19 for the Transit-Oriented Development Council to look
20 at and it is an area that we are encouraging the
21 county to work on. But those infrastructure
22 requirements are how much they cost, what the source
23 of financing would be. That's, you know, it's a
24 very complex set of goals and we are embarking with
25 the county on that under the TOD Council. So I

1 would agree with you that the infrastructure is not
 2 there now. I would agree with you that the
 3 community depends on the infrastructure being there
 4 before that area is urbanized. And therefore, I
 5 think there's no question that we agree with you on
 6 that and that we are working through a different
 7 means, the Transit-Oriented Development Council and
 8 the funding that the legislature has given us for
 9 seed funding for areas like that throughout the
 10 state that the counties have selected to try to
 11 bring that infrastructure into place before any
 12 development takes place.

13 **CHAIR SCHEUER:** I thank you for that good
 14 work. I'm not sure how that relates back to the
 15 option, excuse me, in the plan. Because without
 16 those things there, putting land into the urban
 17 growth -- into the urban district because it's been
 18 in the urban growth area boundary still remains a
 19 big chasm in my mind. Concurrency is only one of
 20 the concerns.

21 **MS. EVANS:** One of ours, too.

22 **CHAIR SCHEUER:** I'm going to stop.

23 Commissioner Wong, you've requested some
 24 additional time.

25 **COMMISSIONER WONG:** Thank you. Thank you,

1 Chair.

2 Director Evans, I've got a question. This
3 project is a "may"; correct? It's not a "shall"?

4 **MS. EVANS:** As of July 1, 2021, it became
5 a "may."

6 **COMMISSIONER WONG:** Okay.

7 **MS. EVANS:** Prior to that, when work
8 started on this, which was several years ago, it was
9 a "shall."

10 **COMMISSIONER WONG:** So the question I have
11 is, you know, since it's a "may," could you go back
12 to the legislature and say we need more time and
13 we'll give you a report next year instead. You
14 know, 2022. Could you do that because it's a "may"?

15 **MS. EVANS:** The legislature didn't set out
16 a timeline for us. The timeline -- and it's not in
17 the statute. There's no longer, as you know, we
18 weren't able to do the five-year review. The Office
19 of State Planning back in 1995 transferred from the
20 Governor's Office to the Department of Business,
21 Economic Development, and Tourism under Governor
22 Cayetano. Half the staff was RIF'd and our capacity
23 went, you know, was reduced by 100 percent. So we
24 weren't able to do it when it was a "shall" but we
25 did go ahead and get started on it because it was a

1 "shall." And so since we had most of the work
2 completed in the analysis part, we wanted to go
3 ahead and get it out into the public space and start
4 those conversations on whether there are other
5 options or there's merit to one of the options laid
6 out. So there is no deadline.

7 **COMMISSIONER WONG:** Okay. So the question
8 I have -- I'm just going to do a little sidetracking
9 on this. You know your sustainability comprehensive
10 plan, the 2051?

11 **MS. EVANS:** Yes.

12 **COMMISSIONER WONG:** I don't remember the
13 land use ever getting a report or even a
14 presentation on that at any time, and I was hoping
15 that you and our ED can work on a time so that we
16 can get -- well, just later on.

17 But anyway, let me go into this part. The
18 2050 plan --

19 **MS. EVANS:** -- to make that presentation.

20 **COMMISSIONER WONG:** Well, let me go to --
21 the issue is, the 2050 plan went through an
22 extensive amount of people to review. I mean,
23 through the Zoom and it went through, you know,
24 countless agencies, 60-70 agencies.

25 **MS. EVANS:** Sixty-five agencies.

1 **COMMISSIONER WONG:** Well, yeah. So, you
2 know, since this is a "may," can you hold off on
3 your timeline and go through that plan so, you know,
4 we have a more comprehensive review, not only of us
5 but more communities, more input from everyone?

6 **MS. EVANS:** Commissioner? Commissioner?

7 **COMMISSIONER WONG:** Yes.

8 **MS. EVANS:** The legislature gave us
9 \$150,000 to conduct the 2050 Sustainability Plan
10 Update. The legislature has not given us -- and we
11 use a vendor, Conservation International, in order
12 to do that. So we would be delighted to get funding
13 to do that more extensive outreach but we don't have
14 the capacity to do that in-house. So it is
15 certainly something that we would be open to if the
16 legislature was able to provide funding for it.

17 **COMMISSIONER WONG:** So, yeah, I understand
18 that. But why did this process that we're doing now
19 not match -- I mean, even though you don't have
20 money couldn't, because of Zoom and email which is
21 pretty close to free, can't you do it the same way
22 the 2050 Kaina (phonetic) statewide update, do
23 something like that?

24 **MS. EVANS:** It's not actually the cost of
25 the Zoom subscription. It's a very large number of

1 hours on the part of the vendor and our staff. We
 2 only have one person in that branch, the
 3 sustainability branch. And it was an amazing
 4 accomplishment between the state sustainability
 5 coordinator, Danielle Bass and the vendor, that they
 6 were able to do that outreach. It was amazing. And
 7 I thank you for noticing that and acknowledging how
 8 much work that was. Thank you.

9 **COMMISSIONER WONG:** Yeah. So it's just
 10 that, you know, Ms. Bass did a very great job, and I
 11 think Mr. Funakoshi could do the same thing or Mr.
 12 Setogawa. Just because, you know, you have a
 13 roadmap of how she did it and you could do the same
 14 thing. That's, you know, and put this plan, you
 15 know, the timeline aside just to do a good job. You
 16 know, sorry, I'm going to tell you, I'm lazy. So
 17 I'd rather do a good job now than revisit it and
 18 say, hey, we didn't do a good job. We have to
 19 revisit it again. So let's do a good job now and,
 20 you know, so it's sure that everybody had a bit of
 21 the apple before, let's say you go to the
 22 legislature and you submit this plan. And I say, as
 23 the Land Use Commission, I don't like it. I
 24 disagree with it. What would you do? I mean, two
 25 state agencies disagreeing on their plan. How would

1 you, you know, say to the legislature? Or what
2 would you do? I mean, we shouldn't have that kind
3 of, you know, brother-sister fights, a family fight.
4 We should work on it together. That's what I'm just
5 trying to say. So make sure it's a good plan and
6 work together on it.

7 **MS. EVANS:** Thank you, Commissioner Wong,
8 for your comment.

9 **COMMISSIONER WONG:** Yeah. So the other
10 issue I have is, you know, as the chair stated, even
11 if it's just findings and options, some of the
12 legislators, because you're a state agency, will
13 say, hey, we should follow this to the letter. Some
14 of them may not -- that's -- that's validated
15 because sometimes I've seen it when I was working at
16 the state, and I just said, no, it's just an option.
17 You can do whatever you want. But it means taking
18 it to -- but we'll use it because I want to do it
19 this way anyway. So, you know, and you may have all
20 these oppositions to it. So I just want to say that
21 you may really want to try and work on a more
22 comprehensive plan to make sure everyone is
23 involved. That's all I'm just saying, Director
24 Evans.

25 **MS. EVANS:** Thank you.

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

2 Thank you, Director.

3 **MS. EVANS:** Thank you.

4 **CHAIR SCHEUER:** Thank you very much,
5 Commissioner Wong.

6 Commissioner Okuda?

7 **COMMISSIONER OKUDA:** Well, thank you, Mr.
8 Chair.

9 You know, a follow up, Ms. Evans, to what
10 the chair said. Let me just say this. Number one,
11 I think there's a real problem here with community
12 engagement. Whether or not you think it's required
13 under the law, my gut feeling which is really life
14 experience is that if this plan goes forward without
15 significant community engagement you're going to see
16 the kind of backlash that came through the IAL city
17 and county petition which is still ongoing which
18 thankfully I have recused myself. So there is a
19 real problem there.

20 The second thing is, I hear what you're
21 saying that, well, we don't really intend to violate
22 the law but in response to the chair's question, I'm
23 really concerned now that there really is a thought
24 process going here to go around the Town case. Real
25 briefly, the Town case is not a mere technicality.

1 When dues process rights of individual property
 2 owners aren't respected, then it leads to the same
 3 kind of backlash that occurs under the IAL process.
 4 So there really should be a careful legal analysis,
 5 a careful legal analysis of the due process
 6 implications here. Not simply, oh, we all got
 7 together in a room and we think it's okay. Somebody
 8 should prepare a legal memorandum and sign their
 9 name to it so that when the court challenge occurs,
 10 somebody takes responsibility for clearing this
 11 because these are the two real concerns I have. I
 12 mean, if this is done in a way as described by the
 13 chair that, oh, the stuff has been posted, you know,
 14 at some government agency and so it's the public's
 15 fault for not knowing, that, again, is a reason why
 16 people don't like us in government.

17 But Mr. Chair, I'm going to excuse myself
 18 now with your permission and I will look at the
 19 video to educate myself if you don't mind.

20 **CHAIR SCHEUER:** You're excused. I think
 21 we're wrapping up. Thank you very much,
 22 Commissioner Okuda.

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

24 **CHAIR SCHEUER:** Commissioners, does
 25 anybody else want to say anything before I

1 absolutely extend an invitation for our follow-up
2 conversation with OPSD?

3 Commissioners?

4 And with deference to, Mary Alice, you
5 said both that you're not an attorney more than
6 once, and you said more than once that this is not
7 an action item. I think that if the commission
8 wanted to take some kind of action as a body on this
9 report right now, I think we're able to. And if
10 we're not able to, or if you believe we're not able
11 to I would still defer to our deputy attorney
12 general rather than you on that interpretation of
13 our agenda.

14 What's the commission's pleasure at this
15 time?

16 **COMMISSIONER WONG:** Chair?

17 **CHAIR SCHEUER:** Mr. Wong?

18 **COMMISSIONER WONG:** At this time, I still
19 am very concerned on this plan. And I don't know
20 how to proceed, I'm going to tell you the truth,
21 just because I would like to see more community
22 involvement just because I'm very concerned.
23 Eventually, it's going to hit the legislature. It's
24 going to hit the governor's desk. But this plan
25 hasn't really hit our communities and got input so

1 we can really see a final draft. So I'm not sure
2 how to proceed but I would like to see, you know,
3 more involvement by other people, let me put it that
4 way. So we can't say we're not transparent at this
5 point in time.

6 That's all, Chair.

7 **CHAIR SCHEUER:** Yeah. I think that's the
8 concession point among the commission. At least one
9 of them is much greater community engagement around
10 this plan is something we believe is appropriate and
11 necessary.

12 Anything further, folks?

13 We would love to have you back. It's
14 really an open door. You're at every meeting
15 anyway. So, but we'd be happy to have you guys
16 present on further things.

17 Commissioner Wong?

18 **COMMISSIONER WONG:** Yeah, Chair, so, you
19 know, I mean, I would like to hear also Commissioner
20 Giovanni, his thoughts, because I always listen to -
21 - don't tell him I said this but I always listen to
22 Commissioner Giovanni, even though he's a Giants
23 fan. But we also want to ensure that we would like
24 to, you know, I want to do some sort of motion or
25 something to have some sort of staff, you know, our

1 staff's letters to talk about OP's statements and
 2 continue the commissioner's concerns. So let's say
 3 we make the staff send a letter to OP to say this is
 4 our concerns, OP. Sorry, I mean, you know, they're
 5 part of the family but, OP, and can you please
 6 inform us how you're going to proceed? So I don't
 7 know if we need a motion but I would like to make a
 8 motion if we need one to have our staff to work on
 9 something to respond to this, some sort of written
 10 documentation.

11 **CHAIR SCHEUER:** So just to be clear, that
 12 idea is to have a written request from the
 13 commission as opposed to the staff, saying we're
 14 supportive of the staff's concerns and we would like
 15 in particular --

16 **COMMISSIONER WONG:** Some sort of response
 17 to our concerns.

18 **CHAIR SCHEUER:** OPSD has responded.
 19 Commissioner Cabral? You're muted.

20 **COMMISSIONER CABRAL:** Yes, thank you.
 21 Thank you, Chair.

22 I'd like to support my fellow Commissioner
 23 Wong in that concern but I want to make it really
 24 clear that we're critically interested in all of
 25 this procedure and I want to make sure that we stay

1 fully aware of it and be a part of it and that it
 2 not just suddenly become, kind of become get on the
 3 freight train of government and suddenly run over
 4 all of the citizens. So I would like to support
 5 that idea. Thank you.

6 **CHAIR SCHEUER:** Commissioner Ohigashi?

7 **COMMISSIONER OHIGASHI:** I'd like to
 8 indicate to everybody -- I want this to happen. I
 9 want the ED to work on a response addressing -- a
 10 written response identifying our concerns in a
 11 letter. Also, I would like that the chair be
 12 empowered to execute the letter on behalf of the
 13 commission based upon our various questions and our
 14 concerns. I don't know if that's quite a motion but
 15 --

16 **CHAIR SCHEUER:** Mr. Morris, does it
 17 require a motion to direct the staff to write a
 18 letter expressing the concerns and recounting the
 19 questions we've raised today?

20 **MR. MORRIS:** I think the motion is
 21 appropriate.

22 **CHAIR SCHEUER:** Okay.

23 **COMMISSIONER OHIGASHI:** I so move.

24 **CHAIR SCHEUER:** There was sort of a
 25 pending-ish motion from Commissioner Wong, so do you

1 want to be the second? Or the third, actually. I
2 think Nancy --

3 **COMMISSIONER OHIGASHI:** Oh, okay.

4 **CHAIR SCHEUER:** I think the idea is there.

5 **COMMISSIONER OHIGASHI:** My understanding
6 is that Arnold's motion would be amended to include
7 mine.

8 **CHAIR SCHEUER:** Okay. Yeah, good idea.
9 Thank you.

10 Arnold, you're acceptable to the
11 amendments?

12 **COMMISSIONER WONG:** Of course.

13 **CHAIR SCHEUER:** Okay. And Nancy as the
14 seconder?

15 **COMMISSIONER CABRAL:** That's fine. I
16 don't have a problem stepping out and letting the
17 two of them fight over it.

18 **CHAIR SCHEUER:** No, no, no. You're the
19 seconder. So I'm confirming. Okay. And you're
20 fine with the amendments from Commissioner Ohigashi?

21 **COMMISSIONER CABRAL:** Okay. Thank you.

22 **CHAIR SCHEUER:** Okay.

23 **COMMISSIONER OHIGASHI:** I have one other
24 comment, Mr. Chair.

25 **CHAIR SCHEUER:** Yes.

1 **COMMISSIONER WONG:** I just want to be sure
2 that we don't lose track of this and that if the
3 chair feels it's necessary and along with our ED
4 that it be agendized (phonetic) for some future
5 meeting.

6 **CHAIR SCHEUER:** Yeah. I agree. Thank
7 you.

8 Commissioners, we have a motion before us.

9 I actually want to speak to the motion. I
10 know I'm speaking a little bit out of order but I
11 just want to point out for you, for those of you who
12 were on the commission during Oalulu (phonetic),
13 Oalulu is land that the county Planning Commission
14 voted to rezone, was in the urban growth area, and
15 the only thing that stopped that land from going in
16 was this commission listening to the community.
17 And, I would note that it's still in the urban and
18 growth district boundary. So this would actually be
19 a way for that area to be developed under this
20 proposed scheme.

21 Anything further in deliberation? If not,
22 Mr. Orodenger, would you poll the commission?

23 **MR. ORODENKER:** Thank you, Mr. Chair.
24 Excuse me.

25 The motion is to authorize staff to

1 prepare a letter containing the commission's
2 concerns raised at this hearing and I have the
3 Office of Planning will inform us as to the requests
4 that the Office of Planning inform us as to how they
5 want to proceed. The chair would be authorized to
6 sign said letter and a request has been made to
7 agendize this matter again for a future hearing.

8 Commissioner Wong?

9 **COMMISSIONER WONG:** Aye.

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

11 **COMMISSIONER CABRAL:** Aye.

12 **MR. ORODENKER:** Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** Aye.

14 **MR. ORODENKER:** Commissioner Giovanni is
15 absent.

16 Commissioner Aczon?

17 **COMMISSIONER ACZON:** Yes.

18 **MR. ORODENKER:** Commissioner Chang?

19 **COMMISSIONER CHANG:** Aye.

20 **MR. ORODENKER:** Commissioner Okuda is
21 absent.

22 Chair Scheuer?

23 **CHAIR SCHEUER:** Aye.

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

1 **CHAIR SCHEUER:** Thank you.

2 Mary Alice and Rodney, thank you so much.
3 Really a great discussion. Really great to hear
4 what you've bene working on and to learn from it and
5 we look forward to the next discussion. Thank you
6 so much, all of you.

7 Commissioner Ohigashi?

8 **COMMISSIONER OHIGASHI:** I'm going to raise
9 my hand. Sorry.

10 **CHAIR SCHEUER:** You're good. It's okay.

11 **COMMISSIONER OHIGASHI:** I forgot to
12 mention this but this is one of the questions I had
13 in my mind and it's just a comment. I know that in
14 order for a boundary amendment to take place we need
15 to have six votes which is a super majority and it
16 would seem that I've been in front of the Planning
17 Commission in Maui. I know it's a simple majority
18 so I'm not sure whether or not those types of issues
19 would be addressed in the future. That's just my
20 concern.

21 **CHAIR SCHEUER:** Thank you. Thank you very
22 much, Commissioner Ohigashi.

23 Commissioners, or Mr. Orodenger, is there
24 anything further?

25 **MR. ORODENKER:** No, Mr. Chair.

1 **CHAIR SCHEUER:** Okay. With that, I will
2 adjourn this meeting. Thank you very much. Aloha.

3 **(WHEREUPON, the meeting was adjourned at**
4 **11:53 a.m.)**

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CERTIFICATE

I, Valerie J. Morrison, 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 15th day of December, 2021.



Valerie J. Morrison