

LAND USE COMMISSION
STATE OF HAWAII
Hearing held on April 29, 2021
Commencing at 9:00 a.m

Held via ZOOM by Interactive Conference Technology

VII. Call to Order

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

VI. ADJOURNMENT

Before: Jean Murray McManus, Hawaii CSR #156

1 APPEARANCES:

2 JONATHAN LIKEKE SCHEUER, Chair (Oahu)
3 NANCY CABRAL, Vice Chair (Big Island)
4 EDMUND ACZON, Vice Chair (Oahu)
5 LEE OHIGASHI (Maui)
6 ARNOLD WONG (Oahu)
7 DAWN CHANG (Oahu)
8 DAN GIOVANNI (Kauai)

9 STAFF:

10 JULIE CHINA, ESQ.
11 Deputy Attorneys General
12
13 DANIEL ORODENKER, Executive Officer
14 RILEY K. HAKODA, Chief Clerk
15 SCOTT DERRICKSON, Chief Planner
16 NATASHA A. QUINONES, Program Specialist
17
18 ALISON KATO, ESQ.
19 Deputy Attorney General
20 RODNEY FUNAKOSHI, Planning Program Administrator
21 State Office of Planning
22 State of Hawaii
23
24 DAWN TAKEUCHI-APUNA, ESQ.
25 Deputy Director
Deputy Director
RAYMOND YOUNG, Planner
DINA WONG, Planner
Department of Planning and Permitting
For IAL, C&C of Honolulu

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1 CHAIRPERSON SCHEUER: Aloha mai kakou and
2 good morning to everyone, both panelist as well as
3 people who are here for round two, day two of this
4 interesting and contentious docket.

5 Today is the April 29, 2021 portion of the
6 Land Use Commission Meeting, which is being held
7 using interactive conference technology linking
8 videoconference participants and other interested
9 individuals of the public via the ZOOM internet
10 conferencing program to comply with State and County
11 official operational directives during the COVID-19
12 pandemic. Members of the public are viewing the
13 meeting via the ZOOM webinar platform.

14 For all meeting participants, I would like
15 to stress to everyone the importance of speaking
16 slowly, clearly, and directly into your microphone.
17 Before speaking, please state your name and identify
18 yourself for the record.

19 Also please be aware that all meeting
20 participants are being recorded on the digital record
21 of this ZOOM meeting. Your continued participation
22 is your implied consent to be part of the public
23 record of this event. If you do not wish to be part
24 of the public record, you should exit this meeting
25 now.

1 This ZOOM conferencing technology allows
2 the Parties and each participating Commissioner
3 individual remote access to the meeting proceedings
4 via their personal digital devices.

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

12 I will note that I closed public testimony
13 on this agenda item at the close of yesterday at
14 4:30, when all people who had submitted written
15 testimony had been given a chance to testify, as well
16 as individuals who raised their hand had been given
17 at least once the opportunity to testify.

18 To state again what I stated at that time,
19 should the Commission choose to determine that the
20 City and County of Honolulu has met their burden and
21 followed the procedures laid out in Hawaii Revised
22 Statutes 205 for bringing this matter before us, we
23 will again open up public testimony when we consider
24 the merits of the City and County's proposal. And
25 any individual property owner will have the chance to

1 contest their desire or lack of desire to have their
2 lands included as IAL, but we won't be accepting more
3 public testimony on the agenda items today.

4 My name is Jonathan Likeke Scheuer, and I
5 currently have the honor and pleasure of serving with
6 my fellow Commissioners as the Chair of the Land Use
7 Commission, along with me Commissioners Ed Aczon,
8 Dawn Chang, Arnold Wong, LUC Executive Officer Daniel
9 Orodenker, Chief Planner Scott Derrickson, Chief
10 Clerk Riley Hakoda, our Deputy Attorney General Julie
11 China, and our Court Reporter Jean McManus, as well
12 our Program Specialist Natasha Quinones are all on
13 the Island of Oahu.

14 Also another Commissioner, Gary Okuda, but
15 he has been recused from the docket that remains
16 before us today.

17 Commissioner Nancy Cabral is on Hawaii
18 Island, Commissioner Lee Ohigashi is on the Island of
19 Maui, and Commissioner Dan Giovanni, who should be
20 joining us at approximately 9:30, is on the Island of
21 Kauai. We currently have eight seated Commissioners
22 of a possible nine.

23 Yesterday we deferred approval of the
24 minutes because they were not completed from our
25 previous meeting and that was due to the tremendous

1 amount of fielding of telephone inquiries and other
2 inquiries from members of the public regarding the
3 County's IAL Petition.

4 The minutes are not ready today for
5 approval, and we will instead take up approval of the
6 minutes from our previous meeting at our next
7 meeting, should the minutes be ready.

8 At this time I want to confirm with two
9 members of the meeting who had to leave early that
10 they were able to review the ZOOM recording of the
11 meeting. Commissioner Wong?

12 COMMISSIONER WONG: Yes, Chair, I have
13 reviewed it.

14 CHAIRPERSON SCHEUER: And Commissioner
15 Aczon?

16 VICE CHAIR ACZON: Yes, Mr. Chair, I did
17 review the recording.

18 CHAIRPERSON SCHEUER: Thank you very much.

19 And I would like to ask Mr. Derrickson or
20 Mr. Hakoda, when there were a number of inquiries in
21 the chat, the Q and A rather, about when and how the
22 meeting recording might be posted to our website,
23 could you share that for interested members of the
24 public?

25 CHIEF PLANNER: This is Scott Derrickson.

1 We will post a link to the recordings on
2 our website under the City and County IAL matter
3 under our Pending Petitions within the next couple
4 days.

5 CHAIRPERSON SCHEUER: Great. Thank you so
6 much for that, Scott.

7 And I think that's it. Our next agenda
8 item is the continued hearing, and possible action on
9 the conformance of the City and County of Honolulu
10 Important Agricultural Lands, IAL, recommendation to
11 their applicable statutory and procedural
12 requirements.

13 We are here to consider whether or not the
14 City and County of Honolulu recommendations for the
15 designation on Important Agricultural Lands on the
16 Island of Oahu complies with the requirements of
17 Sections 205-47, 205-48 and 205-49 Hawaii Revised
18 Statutes, and whether the proposed proper procedural
19 legal statutory and public notice requirements were
20 met in developing the recommendations.

21 The lands recommended for designation have
22 been listed in Appendix H in the City and County of
23 Honolulu's IAL Petition, which, along with meeting
24 materials, have been and are available for public
25 review at the LUC's website under the City and County

1 of Honolulu IAL link.

2 I will also note just for the record that
3 we later yesterday received additional written
4 testimony, which should be posted to our website from
5 John McCauslin, Simon G. Chong, Karen Wong, Ralph
6 Aona and Peter Updahl.

7 With that, where we left off yesterday,
8 again, was close of public testimony on this matter;
9 and we will now -- our order for the day will be to
10 hear from the City and County of Honolulu, and
11 questions from the Commissioners for them.

12 We will hear from the Office of Planning
13 and questions from the Commissioners for them.

14 And then the Commission deliberation and
15 action, if we choose to, regarding the question
16 before us today on the adequacy of the County's
17 compliance with procedural and other requirements of
18 Chapter 205.

19 Parties, would you do appearances, and also
20 respond whether or not there is any questions on our
21 procedures for today, starting with the City and
22 County.

23 MS. APUNA: Chair, members of the
24 Commission, Deputy Director Dawn Apuna on behalf of
25 DPP. Here with me today is Ray Young and Dina Wong.

1 I have no questions regarding the process
2 today. Thank you.

3 CHAIRPERSON SCHEUER: Thank you.

4 MS. KATO: Good morning, Commissioners,
5 Alison Kato, Deputy Attorney General for Office of
6 Planning. Also here with me is Rodney Funakoshi from
7 Office of Planning. Thank you, no questions on the
8 procedures.

9 CHAIRPERSON SCHEUER: So with that, I will
10 note there is a question in the Q and A, and I'm sure
11 our staff will respond to it. We're not accepting
12 additional oral testimony today. If somebody wishes
13 to submit written testimony, they can do so at any
14 time before close of today's hearing.

15 We did, after a number of hours of
16 testimony yesterday, close oral testimony on the
17 matters before us.

18 With that, Ms. Apuna, are you ready to
19 proceed with your presentation?

20 MS. APUNA: I was wondering if I could
21 share my screen?

22 CHAIRPERSON SCHEUER: Please go ahead.

23 COURT REPORTER: Excuse me, Chair, this is
24 Jean.

25 I'm getting more feedback, something going

1 on with Ms. Apuna's -- there's more talking in the
2 background.

3 CHAIRPERSON SCHEUER: It's like we are
4 picking up background noise from your office, Ms.
5 Apuna.

6 MS. APUNA: We have really thin walls over
7 here. Hold on.

8 CHAIRPERSON SCHEUER: She's yelling, "hey,
9 shut up".

10 MS. APUNA: Okay.

11 CHAIRPERSON SCHEUER: If that's the best we
12 can do, that's the best we can do.

13 MS. APUNA: I'll try to speak loudly.

14 CHAIRPERSON SCHEUER: It's more than just
15 the background that's coming through.

16 Please proceed.

17 MS. APUNA: Thank you.

18 Just let me try to share my screen. Can
19 you see my screen?

20 CHAIRPERSON SCHEUER: Yes, we can.

21 MS. APUNA: Thank you for this opportunity
22 to present City's recommendation of IAL for City and
23 County of Honolulu.

24 First, we should clarify what it means and
25 does not mean to have one's land designated as IAL.

1 Under the statute, the objective of IAL is
2 to "identify and plan for the maintenance of a
3 strategic agricultural land resource base that can
4 support a diversity of ag activities and
5 opportunities that expand ag income and job
6 opportunities and increase ag self-sufficiency."

7 While we are currently focused on the
8 recommendation of IAL for designation that creates
9 strategic agricultural land resource base, the other
10 major component of IAL is the incentives and
11 protections to be made available to landowners and
12 farmers, to enable, support and perpetuate
13 agriculture on their IAL lands.

14 And because these incentives and
15 protections aren't fully developed yet, we understand
16 how they only see the stick and not the carrot of
17 IAL.

18 The Counties and the State are charged with
19 creating incentives and protections that IAL
20 landowners can take advantage of because of their IAL
21 designation. Currently, there is the IAL Qualified
22 Ag Cost Tax Credit, although unfortunately, I
23 understand that credit will sunset at the end of the
24 tax year. From this point, hopefully having
25 completed the recommended mapping portion of the IAL

1 process, the City is committed to continue working
2 with landowners, the community and appropriate
3 agricultural entities to develop these incentives and
4 protections for IAL landowners to enhance their
5 ability to use their property for agriculture for now
6 and into the future.

7 The County process is important because it
8 takes care of small farmers and landowners who can't
9 afford to spend the time and 60 to \$100,000 in
10 lawyers' fees to go through the volunteer IAL
11 designation process.

12 We don't believe LUC has ever seen a small
13 farmer or landowner come in for voluntary IAL
14 designation. DPP does know of farmers that have been
15 waiting for the County process to move forward
16 because they've wanted to take advantage of the IAL
17 Qualified Ag Cost Tax Credit.

18 Going back to understanding the designation
19 of IAL, IAL is an overlay to the current State
20 Agricultural District classification and the County
21 AG-1 and AG-2 zoning, and is similar to the City's
22 community growth boundary, which is to identify and
23 plan for protection or encompassing of land uses.

24 And IAL designation is not a
25 reclassification or rezoning in the conventional or

1 State or County sense. It is not a change from the
2 current State Agricultural District classification
3 and County AG-1 and AG-2 zoning. Therefore,
4 generally, whatever uses are currently allowed on
5 one's property, which is basically agriculture, will
6 not change and will not be affected by IAL
7 designation.

8 However, HRS 205-45.5 does appear to create
9 relatively greater restrictions on farm dwellings and
10 employee housing on IAL designated lands. HRS
11 205-45.5, more narrowly defines the use of farm
12 dwellings and employee housing on IAL. Under HRS
13 205-4.5 the definition of "farm dwelling" that this
14 Commission is familiar with based on last year's
15 declaratory ruling on short-term rentals used as farm
16 dwellings on the Big Island, requires more generally
17 that the farm dwelling or employee housing be
18 "located on and used in connection with a farm...or
19 where agricultural activity provides income to the
20 family occupying the dwelling".

21 Whereas, the IAL farm dwelling requires
22 occupancy of "farmers and their immediate family
23 members who actively and currently farm on IAL".

24 HRS 205-45.5 also requires any new farm
25 dwelling and employee housing unit on IAL shall be

1 supported by agricultural plans that are approved by
2 the Department of Agriculture. Currently, ag plans
3 are not required for new farm dwellings on
4 agriculturally classified or zoned land. However,
5 this requirement helps to protect against gentleman's
6 estates and purely residential use of farm dwellings.

7 The limitation of five percent of the total
8 IAL land area for farm dwellings and all
9 appurtenances may or may not be more restrictive than
10 the City's current requirements, depending on the
11 circumstances.

12 For AG-1 County zoning, one farm dwelling
13 is permitted within a 5,000 square-foot polygon for a
14 minimum two-acre lot.

15 To be clear, if the landowner is not
16 currently using their land for agricultural use, for
17 example, they are using it for residential use only,
18 they may well be in violation of State and County
19 land use laws, regardless of IAL designation.

20 We heard yesterday that farmers want to
21 retire on their land or have multiple generations to
22 continue living on the land, which is reasonable, but
23 the intent and the law, even without IAL designation,
24 would prohibit purely residential uses unrelated to
25 agriculture. If the intent is to remain on

1 agriculturally classified or zoned land without
2 farming it, ideally, the landowner should reclassify
3 or rezone their land to the more compatible or
4 appropriate classification or zoning.

5 Should an IAL landowner decide to
6 reclassify or rezone their property and take it out
7 of its current State and County Agricultural zoning,
8 for example, to Urban or Residential, the proposed
9 reclassification or rezoning would require the LUC or
10 the County to specifically consider certain standards
11 and criteria as outlined under HRS 205-50.

12 This is basically the IAL process in
13 reverse, to weigh whether the removal from IAL would
14 disrupt or fragment agricultural activities in the
15 area, and to consider whether it is reasonable to
16 remove the property from the greater IAL strategic
17 agricultural land resource base.

18 The statute also allows for a landowner to
19 petition the Commission to remove the IAL designation
20 if a sufficient supply water is no longer available
21 to allow profitable farming on the land due to
22 government actions, acts of God, or other causes
23 beyond their control.

24 We would also like to clarify the City's
25 and the Commission's role in the IAL designation

1 process.

2 The City was tasked with following the
3 county process and IAL standards and criteria 205 to
4 identify and map potential IAL. Our job is to cast a
5 wide net of participants and community members, as
6 well as in the application of the standards and
7 criteria.

8 From there, we tailored the map based on
9 County plans, comments from agencies, landowners,
10 interest group, representations or position
11 statements of owners whose lands are subject to
12 potential designation. The County Council reviewed,
13 further edited, and transmitted the proposed maps to
14 the Commission.

15 The proposed IAL before you is a
16 recommendation to the Commission, not the final IAL.
17 All that we need to do today, however, is determine
18 whether the City fulfilled the County process as
19 outlined under HRS 205-47, and whether it serves the
20 status and criteria were properly applied under
21 205-44. Generally, that's it.

22 There is no need to consider whether the
23 outcome was what you expected, no need to look at the
24 maps or even consider individual parcels of
25 landowners, just determine whether the City followed

1 the process and the application of standards and
2 criteria as written in HRS 205.

3 You may not be happy with the results, but
4 focus on whether the City complied with the
5 requirements of the law. What you may realize is
6 that you're not happy with the results, but the City
7 correctly followed the process and met the
8 requirements. Perhaps the process itself has failed.
9 If that is the case, the Commission's recourse is
10 with the process, not the City.

11 Is the County process as provided under the
12 statute perfect? No, far from it.

13 Being the first County to come before this
14 Commission with the recommendation, we are seeing
15 some of the flaws in the statute. If you remand the
16 project back to the City, it must be based on a
17 failure of the City to meet the standards of the
18 County process of HRS 205, and we ask that you state
19 definitively how we did not meet the standards of HRS
20 205, so that we and the other counties have a clear
21 path forward.

22 If the Commission accepts the City's
23 recommendation of IAL, it is the Commission's role to
24 proceed to identify and designate IAL. At this
25 stage, the Commission will not be limited to the

1 City's recommendation or its record. The Commission
2 is instructed under HRS 205-49, to also consider IAL
3 declaratory orders, any other relevant information,
4 and importantly -- landowner position statements and
5 representations like those that were made yesterday.

6 The City will have handed off its
7 recommendation, will provide any other relevant
8 information, if requested for by the Commission, and
9 will defer to the Commission in its process to
10 identify and designate IAL, including any decision to
11 exclude or include individual parcels.

12 Now, moving on to the City's recommendation
13 of IAL.

14 The City began the IAL process back in
15 2011, Over \$350,000, hundreds of volunteers and
16 countless hours have been spent on this project.
17 Over the past decade the project has changed hands
18 among three or four different project managers, under
19 at least four different DPP directors. However, we
20 are here today to demonstrate that the City has
21 stayed the course and its recommendation for
22 designation of IAL sufficiently complies with the
23 statutory requirements of HRS Chapter 205, Part III,
24 including the proper procedural, legal, and public
25 invoice requirements.

1 The City's process for the designation of
2 IAL can be broken down into two basic phases:

3 Phase I: The preparation of resource maps
4 and weighing of criteria under the Technical Advisory
5 Committee (TAC); and

6 Phase II: The community engagement process
7 of various rounds of public meetings, landowner
8 notifications, and public comments on the proposed
9 IAL designation.

10 Thereafter, DPP finalized the maps,
11 published an ad in the paper and transmitted the maps
12 and report to City Council. The City Council
13 reviewed the maps, held public hearings, and adopted
14 the maps with a few changes, and transmitted the
15 recommendation to the LUC.

16 IV. City's IAL Recommendation Meets the
17 County Process Requirements

18 The City's process for the identification
19 of IAL meets the County process of HRS 205-47, which
20 has five essential requirements: The standards and
21 criteria of HRS 205-44, consultation, and inclusive
22 process for public involvement, reasonable action to
23 notify affected landowners, and submission to City
24 Council for decision-making.

25 (a) 205-47(a): The IAL was based on the

1 standards and criteria in HRS 205-44, which we will
2 get to later.

3 (b) 205-47(b): The City's identification
4 of IAL was developed in consultation with landowners
5 and appropriate ag interest groups and agencies. The
6 City's Technical Advisory Committee or TAC included
7 25 farmers and ag representatives with expertise
8 and/or experience in the ag industry. The TAC with
9 DPP and its consultant Helber, Hastert & Fee met six
10 times from 2012, during which they essentially
11 weighed the standards and criteria, developed
12 resource maps and map refinements.

13 While there was only one landowner in the
14 TAC, multiple landowners were also consulted through
15 the various focus groups and community meetings
16 throughout the entire County process.

17 (c) 205-47(c): The City's identification
18 of IAL was an inclusive process for public
19 involvement, including a series of public meetings.

20 (1) Following the development of the
21 resource maps and criteria weighting by the TAC,
22 there were three focus group meetings in January
23 through February 2015 for preliminary consultation.
24 And then three community meetings throughout the
25 island for further development of the maps.

1 (2) There were also two separate 60-day
2 comment periods, and a City website featuring an IAL
3 web-based viewer.

4 (d) 205-47(d) states that the City shall
5 take reasonable action to notify each landowner of
6 the potential designation of their lands by mail or
7 posted notice on the affected lands to inform them of
8 the potential designation of their lands.

9 (1) Mailed Notices:

10 On December 29, 2016, the City mailed
11 notices through the USPS to the approximate 1,800
12 landowners that would be affected by the proposed IAL
13 designation, informing them of the upcoming community
14 meeting.

15 On November 8, 2017, the City sent notices
16 for a subsequent community meeting.

17 On January 10, 2018, the City sent notices
18 for returned mail from the prior mail-out to
19 addresses based on DPP searches with BFS Real
20 property, the DCCA, and internet searches.

21 These mail-outs included explanation of IAL
22 and the County process as well as contact information
23 for further questions.

24 (2) Press Releases. Additionally, DPP
25 issued press releases on March 25, 2015; April 7,

1 2015; January 5, 2017; and November 13, 2017, to
2 inform the public of upcoming IAL community meetings.

3 (3) And on October 7, 2018, DPP published
4 a half-page ad in the Star Advertiser that included
5 the proposed IAL map.

6 The City took reasonable action to notify
7 each landowner of their lands potentially being
8 designated IAL by sending multiple mail-outs to
9 landowners to meet the standard of HRS 205-47(d). On
10 top of that, to further spread the word, the City
11 made multiple press releases and a half-page ad in a
12 newspaper of general circulation.

13 I'd like to note that for a County
14 rezoning, which is an actual change in land use, the
15 City is only required to send out one mail-out and
16 one publication.

17 Although many of the testifiers said they
18 did not receive notice from the City, the majority of
19 them are on the City's mail-out list. If there are
20 roughly 100 of 1800 landowners who say they did not
21 get a mail-out, about 5 percent, which is not a huge
22 percentage.

23 Of this 5 percent, some may have been lost
24 in the mail or were overlooked by recipients. We
25 don't know, but the City met the standard of HRS

1 205-47(d) by taking reasonable action to notify each
2 landowner by mail.

3 (e) Lastly under HRS 205-44(e), the City
4 submitted the proposed IAL maps to the City Council
5 for decision-making on August 31, 2018. In its
6 deliberations, the City Council eliminated three
7 parcels. The City Council transmitted Resolution
8 18-233 to the Commission on September 22, 2020.

9 Based on the foregoing, the City has met
10 four of the five requirements for the County process
11 for designation of IAL.

12 V. City's IAL Recommendation Meets the
13 Standards and Criteria for Identification of IAL

14 As for the fifth requirement, the standards
15 and criteria for the identification of IAL.

16 The Commission is familiar with the eight
17 IAL standards and criteria of HRS 205-44(c), and that
18 not all eight need be satisfied. Rather, lands
19 meeting any of the criteria shall be given initial
20 consideration; provided that the designation of IAL
21 shall be made by weighing the standards and criteria
22 with each other to meet the constitutional purposes
23 and objectives and policies of IAL.

24 The City created a criteria weighting
25 methodology to select the priority criteria used in

1 the City's mapping process. Following initial
2 consultation with the TAC to better define the
3 criteria, TAC members completed a ballot to
4 distribute a total of 100 points across the eight
5 criteria. The value of the combined score was used
6 to determine the larger group's combined preference;
7 criteria with more cumulative points received a
8 higher score and were considered to have a greater
9 degree of importance. Criteria with the highest
10 values were identified as priority criteria based on
11 the natural grouping of scores.

12 Among the three highest-ranked, four
13 highest-ranked, or six highest-ranked criteria, the
14 TAC voted to use the three highest ranked criteria,
15 which are as follows:

16 Criterion 1: Current agricultural
17 production.

18 Criterion 2: Soil qualities and growing
19 Conditions; and

20 Criterion 5: Availability of water.

21 After considering the implications of the
22 different ways to apply the criteria, consistent with
23 the objective to be as inclusive as possible, the TAC
24 recommended that lands satisfying any one of the
25 three highest-ranked criteria should qualify for

1 designation as IAL. This approach was presented at
2 the first community meeting, March through April
3 2015, and carried through to the final map
4 recommendations.

5 Based on this criteria weighting
6 methodology and the application of the three
7 highest-ranked criteria, the City's proposed IAL
8 satisfies the standards and criteria identification
9 of HRS 205-44(c).

10 The City did not visit individual
11 landowners to check for current ag production, soil
12 qualities, availability of water, et cetera, because
13 data on those criteria were readily available to the
14 City, and were put into maps for the TAC, focus group
15 and community members to view and analyze.

16 VI. Conclusion.

17 In conclusion, the City believes it has met
18 the standards of HRS Chapter 205, Part III, and
19 therefore, humbly asks the Commission to accept the
20 City's recommendation for IAL.

21 Thank you. We are available for any
22 questions.

23 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
24 If you would stop screen sharing, please.

25 Commissioners, questions for the City and

1 County of Honolulu? Who wants to go first?

2 Commissioner Wong.

3 COMMISSIONER WONG: Okay, Chair.

4 You want to give other Commissioners a
5 chance first after reviewing this and after reviewing
6 the docket? I have like four pages of questions.

7 CHAIRPERSON SCHEUER: I have some
8 confidence that all of the Commissioners have a great
9 deal of questions for the City and County after
10 yesterday's very long day, so why don't you start;
11 and then maybe take a break part way through and give
12 a chance to other Commissioners, and we can come back
13 to you.

14 COMMISSIONER WONG: Want to say "Hi", to
15 Commissioner Giovanni.

16 CHAIRPERSON SCHEUER: Welcome Commissioner
17 Giovanni. Thank you.

18 COMMISSIONER WONG: Good morning, Ms. Apuna

19 MS. APUNA: Good morning, Commissioner.

20 COMMISSIONER WONG: Please forgive me if I
21 keep calling you County counsellor instead of the
22 Deputy Director.

23 Going through this, what year did the
24 report come out, again, the DPP is using on its
25 recommendation?

1 MS. APUNA: So if you're referring to the
2 City Council's submittal, that would be September
3 22nd, 2020 City Council transmitted the Resolution to
4 the LUC.

5 COMMISSIONER WONG: So the Technical
6 Advisory Committee report, when did that one come
7 out?

8 MS. APUNA: I don't think there was --

9 MS. WONG: Hi, this is Dina Wong, DPP. Our
10 final report was published in August 2018, and it
11 included the appendices of the meetings.

12 COMMISSIONER WONG: Chair, do you want to
13 swear in Dina or Raymond just in case?

14 CHAIRPERSON SCHEUER: Do you swear or
15 affirm that the testimony you're about to give is the
16 truth?

17 MS. WONG: Yes.

18 CHAIRPERSON SCHEUER: Thank you.

19 Please continue.

20 DINA WONG

21 Was called as a witness by and on behalf of the City
22 and County of Honolulu, was sworn to tell the truth,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 COMMISSIONER WONG: When was the last

1 Technical Advisory Committee meeting?

2 CHAIRPERSON SCHEUER: Who are you speaking
3 to?

4 COMMISSIONER WONG: My question, again,
5 when was the last Technical Advisory Committee
6 meeting? I want to make sure everyone knows what day
7 it is.

8 MS. WONG: Just give us a moment to look up
9 that date for you. February 4th, 2015.

10 COMMISSIONER WONG: So the last meeting was
11 five years ago; is that correct, approximately?

12 MS. WONG: Yes. Well, it's 2021, so about
13 six years ago.

14 COMMISSIONER WONG: So the report from that
15 Technical Advisory Committee for the basis of your
16 submittal was done approximately five to six years
17 ago; is that correct?

18 MS. WONG: The actual report was finalized
19 in August of 2018.

20 COMMISSIONER WONG: So that's approximately
21 three years ago?

22 MS. WONG: Yes.

23 COMMISSIONER WONG: You know, when you sent
24 out the notice to all the landowners of their
25 properties to be designated IAL, I just wanted --

1 MS. WONG: Can we just go back to clarify
2 the previous question? Was it at the TAC meeting or
3 focus group meeting?

4 COMMISSIONER WONG: TAC meeting?

5 MS. WONG: I apologize, June 19, 2013.

6 COMMISSIONER WONG: So that was eight years
7 ago, then, correct?

8 MS. WONG: Yes.

9 COMMISSIONER WONG: So the focus group
10 meeting, that one was a little bit later, is that
11 correct? That was the date you were stating?

12 MS. WONG: Yeah, the 2015 date I stated
13 earlier was the focus group meeting.

14 COMMISSIONER WONG: So all these, your
15 submittal was inclusive of both the focus group and
16 the Technical Advisory Group meetings, correct?

17 MS. WONG: Yes, the final report reflected
18 all of the input provided by the TAC and the focus
19 groups.

20 COMMISSIONER WONG: So going to my last
21 question, just wanted to make sure on the record.

22 When did you send out the notice to
23 landowners on their property that could be designated
24 IAL, what dates again?

25 MS. WONG: Hold on a second, please.

1 December 2016.

2 MS. APUNA: December 29, 2016, November 8,
3 2017, and January 10th, 2018.

4 COMMISSIONER WONG: That was approximately
5 two-and-a-half to three years ago, correct?

6 MS. WONG: Yes.

7 COMMISSIONER WONG: So there was nothing in
8 the future like some of the public witnesses stated
9 that they just bought their property last year or
10 anything, there was no way to touch them at all;
11 correct?

12 MS. WONG: After the County's submittal to
13 the City Council, it was in their hands. So if
14 people wanted to testify that they wanted to be in or
15 out, that was their chance at City Council, so they
16 did not come to DPP.

17 COMMISSIONER WONG: When was the City
18 Council meeting on this?

19 MS. WONG: It was at the Zoning and Housing
20 Committee on April 25, 2019; and then full council at
21 June 5th, 2019 --

22 MR. YOUNG: They had another meeting on May
23 8.

24 MS. WONG: I'm sorry -- also May 8, 2019.

25 CHAIRPERSON SCHEUER: For the record, if

1 Mr. Young is going to continue to speak, I'm going to
2 swear you in too.

3 Do you swear or affirm the testimony you
4 are about to give, Mr. Young, is the truth?

5 MR. YOUNG: I do.

6 CHAIRPERSON SCHEUER: Please, also for the
7 court reporter, identify yourself before speaking
8 since we can hear you.

9 MR. YOUNG: Okay.

10 RAYMOND YOUNG

11 Was called as a witness by and on behalf of the City
12 and County of Honolulu, was sworn to tell the truth,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 CHAIRPERSON SCHEUER: Thank you, please
16 continue, Commissioner Wong.

17 COMMISSIONER WONG: Thank you, Chair.

18 So as a result of your notices that was
19 sent out approximately three years ago, how many
20 comments did you receive from the public about the
21 notice?

22 MS. WONG: I'm sorry, Commissioner, was
23 your questions after we sent it to council or before?

24 COMMISSIONER WONG: Before.

25 MS. WONG: Okay. We had approximately 93.

1 COMMISSIONER WONG: And how many landowners
2 did you send out to? How many letters did you send
3 out or are impacted by this IAL?

4 MS. WONG: I believe it was approximately
5 1800.

6 COMMISSIONER WONG: So if my rough math is
7 correct, it's approximately five percent that would
8 be like returned some comments, approximate?

9 MS. WONG: Yes, that would be correct.

10 COMMISSIONER WONG: Okay. So the other
11 question.

12 Of that five percent, four to five percent,
13 were there any objections on these comments of the
14 designation?

15 MR. YOUNG: This is Raymond Young. In our
16 testimony we detail all these different steps. So of
17 the 74 landowners that responded with written
18 comments, 67 expressed dissatisfaction.

19 Actually this is on page eight of our
20 testimony.

21 COMMISSIONER WONG: I understand about your
22 testimony. I reviewed your testimony.

23 But for those people that didn't have the
24 time or effort to review your testimony, especially
25 the general public, I would like to state it on the

1 record, that's why I'm asking these questions, Mr.
2 Young.

3 MR. YOUNG: Understood.

4 COMMISSIONER WONG: So, again, of the 67
5 that said dissatisfaction, did you follow up?

6 MR. YOUNG: What do you mean "follow up"?

7 COMMISSIONER WONG: Like saying -- let's
8 say I said I'm dissatisfied. Did you follow up and
9 say, okay, so let's talk about this. Let's try work
10 it out. Or let's say this is the process to say I
11 object, to get my stuff out of this.

12 Did you say anything after that?

13 MR. YOUNG: Yes. We have individual
14 letters going out to each of these landowners who
15 commented, and the letter basically says we will take
16 your comments into consideration, and then let them
17 know of the final results before we send to council.

18 COMMISSIONER WONG: How many letters did
19 you send out before it was sent to council?

20 MR. YOUNG: I haven't had a chance to go
21 through all those letters. So I'm under the
22 impression that everyone who sent in a written
23 comment received an individual reply written in a
24 letter from the director.

25 COMMISSIONER WONG: Meaning, yes, they're

1 taken out, is that what you're trying to say?

2 MR. YOUNG: No, that we will take their
3 comments into consideration and let them know of the
4 final decision.

5 COMMISSIONER WONG: So that's pretty much
6 saying, we'll talk to you later after everything is
7 done, instead of saying we're going to do something
8 about it, because -- I'm trying to get into my mind,
9 could DPP at that point in time with the director
10 say, okay, let's take these people out, because
11 they're too small, or they're not in agricultural
12 use?

13 MR. YOUNG: If you're asking whether or not
14 the director took each of these comments into
15 consideration before preparing the final map, yes.

16 COMMISSIONER WONG: But that seems like all
17 67 still went to the full council, and even though
18 they had objections, nothing was done about it.

19 MR. YOUNG: That is incorrect. We actually
20 took out quite a bit before sending the final map to
21 full council.

22 And after -- or at the time we sent the
23 final map to the full council, we did send out
24 postcards to all the people who sent in written
25 comments telling them to basically look at our online

1 map to determine whether or not they are still in the
2 proposed IAL map. And that they can further
3 participate in the process by contacting City
4 Council.

5 COMMISSIONER WONG: So do you have a number
6 of how many people you took out of the final map
7 before it went to council?

8 MR. YOUNG: That's going to take me a
9 moment. I can go through the report, which indicates
10 in the matrix how many were actually removed, how
11 many were added in, and all the different decisions
12 that the director had made. Hold on a minute.

13 MS. WONG: Hello, this is Dina Wong.

14 In our report of August 2018, we removed 45
15 from IAL, and seven were added in by landowner's
16 request.

17 COMMISSIONER WONG: That's interesting.
18 Okay, thank you.

19 Of the notices that you sent out, how many
20 of them was returned mail because of no addresses, or
21 you know, they don't live here, or they don't know
22 where to go?

23 MR. YOUNG: This is Raymond Young. So
24 there was two series of notices, the 2016 notice that
25 we sent out indicating to the landowners, this is the

1 first draft of our proposed map. We don't have, at
2 this moment, a record of how many were returned.

3 However, for the 2017 mail out of notices
4 indicating this is the revised draft, we have about
5 125 return envelopes for which we researched perhaps
6 they have a different address online, the tax office
7 records and so forth, and those who signed up for
8 previous meetings.

9 We revised their addresses and sent out
10 again. So basically about 125 for the 2017 notice.

11 COMMISSIONER WONG: So I got a question for
12 you. You know, you were here yesterday. You heard
13 all of the public witnesses, and a lot of them, I
14 would say a good majority of them said they weren't
15 notified. How would you respond to that?

16 MR. YOUNG: The process doesn't require
17 documentation that were receiving or they received
18 the notice.

19 So we did a regular USPS mail-out, standard
20 letter, first class. And based on a list that was
21 created in 2016 and 2017, and I would say 90 percent
22 of those who said they were not notified, were on our
23 2016 list. And I can double check and reply to you
24 back on the 2017 list.

25 COMMISSIONER WONG: At the same time, you

1 know, that notification letter that you submitted, is
2 it part of your exhibits, anywhere in your exhibits?

3 MR. YOUNG: I don't believe so.

4 COMMISSIONER WONG: Could you send a copy
5 to LUC, because I would like to see what it said, and
6 if possible, also the postcard or anything you sent
7 out to the public.

8 MR. YOUNG: Okay, will do.

9 COMMISSIONER WONG: Thank you.

10 You know, I still have concerns with some
11 of the public witnesses that said, hey, you know, I
12 bought this land in 2017, 2018. I didn't know
13 anything about it.

14 Was there any way to update this, or just
15 to say, hey, you know, you're going to be IAL, or
16 it's going to be in the process?

17 MR. YOUNG: I appreciate where your
18 question is coming from. We, as the City Department
19 of Planning, was tasked with doing this mapping and
20 being very inclusive with the community and all the
21 landowners involved. We did multiple notices,
22 multiple public meetings, created the TAC, just like
23 what Chapter 205 IAL law required.

24 When we completed this task, it was all
25 sent out off to City Council, the report, the maps,

1 and the lists of TMKs that we were proposing to be
2 candidate IAL.

3 After it had gone to council, we believe it
4 was the council, if they believed that they needed to
5 do future notices, or at their deliberation process
6 require another notice to be sent out.

7 They didn't ask us to do that. They
8 proceeded through pretty much their own process,
9 which is publish their agendas and notices, and
10 that's pretty much similar to all other ordinances or
11 resolutions that they process through. And that was
12 sent to the LUC back in, I think it was 2019, with
13 the Resolution 18-233.

14 So we did not do any -- bottom line, there
15 was no additional notices after the recommendation
16 was sent to City Council as far as how we did
17 individual mail-outs to affected landowners.

18 CHAIRPERSON SCHEUER: Commissioners Wong,
19 when do you think you'll have a breaking point?

20 COMMISSIONER WONG: Give me three more
21 questions, then return, Chair, back to the floor,
22 back to you, sir.

23 Did you take into account, or you know, the
24 Land Use Commission does a lot of renewable energy,
25 solar farms, wind farms, et cetera, and they're on ag

1 land.

2 Did you take into account on those like
3 solar farms that are on ag land?

4 MR. YOUNG: Are you referring to the
5 selection process?

6 COMMISSIONER WONG: Yes.

7 Or did you contact those owners about that?

8 MR. YOUNG: That I was not familiar with,
9 but in the three criteria, the main three criteria
10 that the TAC had selected, one of them was ag use.

11 So if there was a PV farm on the land, it
12 did not preclude the availability of that farm lands
13 to be made available to compatible ag, which is in
14 accordance with the statute. So I imagine, yes, we
15 did.

16 COMMISSIONER WONG: So I guess my last
17 question following up on this issue about solar farms
18 or wind farms, were any of the energy producers on
19 the TAC?

20 MR. YOUNG: Give me a moment and let me
21 check.

22 MS. APUNA: Commissioner Wong, Dawn Apuna,
23 I just -- under the standards and criteria 205-44,
24 the eight criteria, I don't believe that there is any
25 criteria that speaks to energy production.

1 COMMISSIONER WONG: I just was wondering
2 just because, as you know, Ms. Apuna, that we did
3 solar farms on ag land. I just was wondering if they
4 were even part of this conversation.

5 So you can answer, Mr. -- whoever, DPP, you
6 can answer that later. I'm going to return the floor
7 back to the Chair.

8 Thank you, DPP; thank you, Chair.

9 CHAIRPERSON SCHEUER: Thank you very much,
10 Commissioner Wong. I look forward to coming back to
11 you as well.

12 Commissioner Chang.

13 COMMISSIONER CHANG: Thank you very much,
14 Mr. Chair, and thank you, Ms. Apuna. Very nice to
15 see you on the other side of the table.

16 I will tell you, reading the City's report,
17 I had one perspective, and then listening to the
18 public testimony yesterday really made me think long
19 and hard.

20 So I'm going to ask you a series of
21 questions, and hoping that you can help clarify for
22 me, based upon my reading of the statute, as well as
23 your own testimony.

24 The role of the County is to prepare the
25 maps and make recommendations for IAL designation;

1 correct?

2 MS. APUNA: Yes, that's correct.

3 COMMISSIONER CHANG: Ultimately it is the
4 Land Use Commission that makes the final
5 determination on those recommendations on the final
6 IAL maps; is that correct?

7 MS. APUNA: Yes, that's correct.

8 COMMISSIONER CHANG: Okay. And I wanted to
9 confirm, because I don't see anything in the statute
10 or the rules, but do you know, again, any statute,
11 rule or law, that requires each County to designate
12 or recommend a percentage of ag land that should be
13 in IAL?

14 MS. APUNA: No, I don't believe there is
15 such a requirement.

16 COMMISSIONER CHANG: I couldn't find any
17 either.

18 Looking through your, I guess it's your
19 petition, your recommendation, looking to the
20 recommendations, if you can confirm these facts for
21 me, because I'm trying to calculate the amount of
22 acreage we're talking about.

23 That there's approximately 386,000 acres on
24 the Island of Oahu; is that correct?

25 MS. APUNA: Yes, I believe that's correct.

1 COMMISSIONER CHANG: And out of those
2 386,000, 128,000 acres is designated Agricultural
3 District?

4 MS. APUNA: Yes, that's correct.

5 COMMISSIONER CHANG: Out of that 128,000,
6 approximately 54,145 acres have been voluntarily
7 designated IAL by the private landowners; is that
8 correct?

9 MS. APUNA: I'm not exactly sure.

10 MS. WONG: This is Dina Wong. About
11 56,145 acres were excluded. So that included, as you
12 mentioned, landowner initiated process, as well as
13 land owned by the State of Hawaii, or by the federal
14 government.

15 COMMISSIONER CHANG: I was trying to -- not
16 too sure where I got the 54,000, but I could have
17 read the numbers wrong.

18 Nonetheless, we're looking at approximately
19 56,000 acres that -- well, I'm trying to determine
20 how many -- what's the total acreage of IAL?

21 So the City, I'm looking for currently the
22 private landowners that have designated, voluntarily
23 designated IAL.

24 Let's just agree about 55,000 acres, would
25 that be approximately correct?

1 MS. WONG: We had recommended in the
2 resolution 41,407 acres as IAL. So that did not
3 include the voluntary designation ones, which I don't
4 have a number on that. If you would just give us a
5 minute.

6 COMMISSIONER CHANG: I am trying to
7 calculate the total number of acres that are being
8 proposed for IAL.

9 So one, I'm looking at currently the
10 private landowner land that's been designated as well
11 as the City's proposed recommendation for IAL. And I
12 have 45,420 acres the City is proposing.

13 MS. WONG: I don't have a current figure
14 readily available, but as of February 2019, 14,094
15 acres were designated IAL through the landowner
16 initiated process. And that included Castle and
17 Cooke, Kamehameha Schools, Monsanto, Hartung Bros.,
18 Kualoa Ranch, Robinson-Kunia and Malaekahana pending
19 before the LUC.

20 COMMISSIONER CHANG: Because I am reading
21 your written recommendation that's in the record, and
22 I'm reading through page two where it says:

23 "Of the 128,000 acres, approximately 56,145
24 acres were excluded from the (indecipherable) area
25 ineligible, that included lands currently designated

1 as IAL through landowner initiated process, lands
2 owned by the State, and lands owned or being in the
3 process of being acquired by the federal government."

4 And Dina, or the City, out of that 56,000,
5 can you tell me -- are you telling me -- let me ask
6 you this.

7 So could you provide me the number of
8 acreage that is currently designated IAL by the
9 private landowners?

10 MS. WONG: The number I have, which is not
11 as of today, but was February 2019, was the 14,094
12 acres.

13 COMMISSIONER CHANG: Okay, all right. I'm
14 going to take your word for it.

15 So February 14,094 acres?

16 MS. WONG: Yes.

17 COMMISSIONER CHANG: And my understanding
18 is that the City -- are you currently recommending
19 45,428 acres?

20 MS. WONG: Our errata sheet corrected that
21 to 41,407 acres.

22 COMMISSIONER CHANG: So would I be correct
23 if I am adding those, so approximately 55,000 acres
24 is potentially IAL. Would you agree, is that about
25 that much? Okay.

1 And that would be -- and currently there's
2 128,000 that's ag, so that would be less than
3 50 percent of the ag designated land would
4 potentially be in IAL. You would agree?

5 MS. WONG: I'm sorry, Commissioner. Can
6 you repeat your numbers that you're adding?

7 COMMISSIONER CHANG: You gave me 14,094 for
8 the private landowners, and approximately 41,000 that
9 the City is recommending.

10 MS. WONG: Yes.

11 COMMISSIONER CHANG: So potentially 55,000
12 acres is potentially in IAL?

13 MS. WONG: Yes, but the 14,094 is already
14 IAL.

15 COMMISSIONER CHANG: Right. I'm just
16 trying to get the total potential acreage in IAL. I
17 don't want to belabor this point.

18 MS. WONG: Yes, that is correct, if you add
19 those two figures together.

20 COMMISSIONER CHANG: Okay, all right.

21 And, again, that would be less than we are
22 probably looking at about 40 percent of the ag land
23 potentially could be in IAL?

24 Let me go on to the next question.

25 Now, Ms. Apuna, in your presentation you

1 talked about the objectives for IAL, which is the
2 strategic -- kind of a strategic foundation to
3 promote strategic agriculture land resource base.

4 So could you explain that? How does is
5 putting lands that exceed 20 percent slope is
6 consistent with the strategic agricultural base?

7 MS. APUNA: I think it's part of the
8 creating contiguous plots of land, contiguous areas
9 of agricultural land. So a lot of times, you know,
10 the topography, we'd rather keep everything intact
11 rather than like (indecipherable) -- so what I
12 understand, you know, based on prior dec orders in
13 IAL, back on Kauai and here on Oahu, that there were
14 even steeper slopes included within IAL.

15 I think Kualoa Ranch there were some 25
16 percent slope, and on Kauai, the Robinson IAL it
17 might have 70 percent or more.

18 And I recall we saw some goats and cows on
19 there. I think it's keeping these lands fully part
20 and contiguous and inclusive, and ranching can be
21 performed on these slopes.

22 COMMISSIONER CHANG: And I'm not making a
23 judgment whether your analysis is right or wrong,
24 just trying to understand how these particular
25 considerations further your strategic agricultural

1 land resource base.

2 So one, these extreme slopes, your
3 consideration was because it was contiguous to
4 existing land, and that there could be possibly
5 ranching also conducted on these parcels.

6 Could you explain how the small parcels,
7 less than one acre in size, supports your strategic
8 agricultural land resource?

9 MS. APUNA: I think part of that is similar
10 to the slopes that we didn't necessary -- if they
11 were within a larger area of agriculture, we didn't
12 want to just pluck it out and have these little
13 donuts or circles in the middle.

14 I'd also defer to Ray and Dina if they
15 wanted to expand more on the smaller parcels that
16 were selected.

17 MS. WONG: This is Dina Wong.

18 So as Deputy Director said, we didn't want
19 to have like that full area or IAL potential land,
20 but also if those smaller areas were right adjacent
21 to that larger area, we did include it in the
22 recommended parcels.

23 COMMISSIONER CHANG: And these
24 determinations were not based upon a site visit, but
25 based upon existing maps; is that correct?

1 MS. APUNA: I think it muted --

2 MS. WONG: Sorry, that is correct. Site
3 visits to each parcel were not made. But the
4 criteria were -- it was a resource base
5 decision-making process using various data basis and
6 layers and GIS.

7 COMMISSIONER CHANG: Because we heard
8 yesterday from some of the landowners that many of
9 their lands are currently just in residential use,
10 there's no ag going on. Some of them are less than
11 an acre and there's no agriculture.

12 So my understanding is the City relied upon
13 those, your database, but did not do any specific
14 ground truthing of these particular parcels to
15 determine whether they were in existing ag?

16 MS. WONG: Yes, that is correct. But the
17 parcel had to meet only one of the three criteria.
18 So even if there was no agriculture occurring on the
19 site, if there was water availability or good quality
20 soils, then it would meet the criteria for
21 recommending it as potential IAL.

22 COMMISSIONER CHANG: I am also trying to
23 understand, given the overall objective of IAL, that
24 the City used the strategic agricultural land
25 resource, that you have these criteria, but there's

1 really no confirmation that the actual use of the
2 land would further your strategic agricultural land
3 resource base.

4 And so I'm trying to understand that your
5 decisions that affected many of these private
6 landowners, while it may show up on your maps, or may
7 show up in your database, is really not -- or maybe
8 you can explain to me how does it support your
9 strategic agricultural land resource base, if the
10 reality is not consistent with your data basis?

11 MS. WONG: I think we're looking at it more
12 in terms of the long-term goals of IAL. So although
13 the current landowner may not be doing agricultural
14 activities on their site, if there is water and the
15 soil quality is good, there could be potential for
16 such activity in the future. And with the IAL
17 designation, future landowners could be eligible for
18 incentives which would all go towards helping to
19 further our agricultural goals, you know, islandwide.

20 COMMISSIONER CHANG: And I appreciate that,
21 but there's -- but what we heard from many of the
22 commentators yesterday was that some of these lands
23 have been in their hands for generations, and they
24 intend to keep them in generations. So there's not
25 an intention to necessarily deviate from some of

1 their existing uses.

2 Did you take any of those kinds of
3 information into consideration?

4 MS. WONG: No. The length of ownership of
5 each parcel was not considered.

6 CHAIRPERSON SCHEUER: Commissioner Chang, I
7 know that there's other -- do we want to take a
8 break? Do you want to keep going?

9 COMMISSIONER CHANG: Chair, if you would
10 like to take a break, I know we have been going on
11 for almost an hour now.

12 CHAIRPERSON SCHEUER: A little bit over.

13 COMMISSIONER CHANG: We can always go onto
14 another Commissioner.

15 CHAIRPERSON SCHEUER: I just want to give
16 everybody a chance, and also give every Commissioner
17 a chance to ask every question they have.

18 It's 10:15. I think we should take a break
19 until 10:25, reconvene. At that time I'll call on
20 Commissioner Giovanni and Aczon to ask questions, as
21 well as Commissioner Cabral. Okay, ten-minute recess
22 until 10:25.

23 (Recess taken.)

24 CHAIRPERSON SCHEUER: We're back on the
25 record.

1 Before I hand it over to Commissioner
2 Giovanni and then Commissioner Aczon for questions,
3 for any members of the audience who are attending who
4 perhaps did not attend yesterday's hearing, just to
5 repeat a few things I tried to share yesterday.

6 First of all, the eight members of the
7 Commission who are sitting on this are all
8 volunteers. We are not paid to be here. We serve as
9 volunteers. We apply, appointed by the Governor,
10 confirmed by the State Senate, serve up to four-year
11 terms, and we do so because it's our way to help
12 Hawaii implement its State Land Use laws.

13 We do the best that we can. We work with
14 advice of counsel and a very small five members, but
15 very dedicated staff.

16 We certainly appreciate many people in the
17 public who are taking time off from work and other
18 duties. We hope that our questioning of the City and
19 County will answer some of the questions that you
20 guys raised yesterday.

21 With that, Commissioner Giovanni had
22 questions for the City followed by Commissioner
23 Aczon.

24 COMMISSIONER GIOVANNI: I just want to be
25 certain Commissioner Chang was finished with her

1 questions.

2 COMMISSIONER CHANG: Thank you,
3 Commissioner Giovanni, I'm not, but please go ahead.
4 There will be ample time for all of us to ask all our
5 questions. Thank you.

6 COMMISSIONER GIOVANNI: Ms. Apuna, great to
7 see you again before this Commission. Wish I could
8 see you in person, of course. I apologize for
9 missing a portion of your presentation this morning.
10 Let me assure you that I have also pre-read and
11 reviewed all of the information that the City and
12 County has put on record in this matters, so I'm kind
13 of up to speed, but might have missed a couple parts.

14 The first is about the criteria that was
15 TAC. Do I understand correctly that if any one of
16 the three priority criteria are met, that that
17 qualifies a parcel for IAL designation?

18 MS. APUNA: Yes, that's correct. We try to
19 be as inclusive as possible. I can give the range of
20 IAL.

21 COMMISSIONER GIOVANNI: Could you explain
22 to me the logic behind that, or at least as you
23 understand that, how a parcel that has no water,
24 covered with lava rock, no soil, could be considered
25 for agricultural purposes?

1 MS. APUNA: So I think based on the TAC,
2 and the experts, they're the experts in this case,
3 they looked at the criteria when they first defined
4 it, more based on what their practices, on their
5 practices what they thought would be necessary for
6 agriculture. And, again, to cast the widest net
7 possible.

8 So I don't think we're saying that you can
9 definitely grow agriculture at this moment, but at
10 least one of those criteria is the building block.

11 And when you get intentions involved, and
12 the different things that can help farmers to include
13 their land to grow agriculture, that we just are on
14 our way to strategic landowners base.

15 COMMISSIONER GIOVANNI: Is there any backup
16 information that is not on record yet in this docket
17 that better explains the TAC's rationale toward
18 specifically how they applied the criteria in order
19 to be more inclusive, as you say?

20 MS. APUNA: I think there's information in
21 the minutes within the TAC meetings. That's part of
22 the record.

23 I'll defer to Ray and Dina if they have
24 further information or anything further.

25 COMMISSIONER GIOVANNI: Dina or Ray, do you

1 have anything to add at this time? I will review the
2 minutes.

3 MR. YOUNG: Can you restate the question?

4 COMMISSIONER GIOVANNI: I'm trying to
5 understand the rationale that TAC applied to come up
6 with this inclusive approach, that is any one of the
7 priority criteria are satisfied that does qualify the
8 land as IAL?

9 MR. YOUNG: Essentially the TAC, and the
10 way the statute is read, is to be as most inclusive
11 as possible. So rather than having a parcel meet all
12 three, it made sense under that provision, to allow
13 any criteria of the top three as long as its touch
14 would be considered for IAL.

15 COMMISSIONER GIOVANNI: I understand that
16 to be the case as you presented, but I have to admit
17 it doesn't make a lot of sense to me, that's why I
18 wanted to research it in a little more depth, and I'm
19 looking for minutes of the TAC meeting which they
20 might have explored this idea in more detail. And
21 I'm hoping that might be on the record in this
22 matter.

23 MS. WONG: This is Dina Wong. It is in the
24 August 2018 report, there are appendices, and
25 Appendix B has the Technical Advisory Committee

1 meeting notes, and Appendix C has focus meeting
2 notes.

3 So perhaps within those detailed notes
4 there may be more on how they came up with those
5 three criteria.

6 COMMISSIONER GIOVANNI: That would be
7 helpful. Is that August 28th, what year?

8 MS. WONG: The report that we submitted to
9 council was August 2018.

10 COMMISSIONER GIOVANNI: Okay, got it.
11 That's good.

12 I want to move on in terms of process. I
13 have the sense that the large landowners are fairly
14 well-positioned, and know how to take advantage of
15 opportunities to participate in this process that's
16 gone on for about five years to seek that their land
17 either be qualified or not qualified as IAL.

18 I'm very concerned, however, that the small
19 landowners may not be so well-positioned to do so.

20 So my question is -- and I think this goes
21 to you, Ms. Apuna.

22 Can you describe the process by which small
23 landowners could opt in if so incentivized or opt out
24 if so incentivized of the IAL designation process.

25 MS. APUNA: So exactly what this County

1 process has allowed, you know, rather than paying the
2 big bucks for the lawyers to come in for the
3 voluntary designation, in the County process we are
4 trying to be as inclusive as possible hoping to get
5 all the small farmers in there. And if they weren't
6 part of that, they always had the option to come to
7 us and say that they were interested in IAL
8 designation or to opt out, which is also considered.

9 So it's to have the County do it for them,
10 and get the IAL designation without having to
11 individually take the time and the money and to go
12 before the Commission.

13 COMMISSIONER GIOVANNI: So --

14 MS. WONG: This is Dina Wong. I just want
15 to add to what Deputy Director stated, and also to
16 correct my response earlier.

17 I think the question from one of the other
18 Commissioners was how many landowners requested to be
19 excluded or opted out of IAL.

20 The correct number, and documented in
21 Appendix E of the report is we had 75 requests come
22 in from landowners requesting to be excluded, and out
23 of those 75, 44 of their parcels -- and some of them
24 have more than one parcel, these are just the
25 landowners -- either their property was removed

1 entirely, or portions were removed. And 30 were
2 retained in.

3 COMMISSIONER GIOVANNI: So I'm interested
4 in process, and that's very helpful, Ms. Young (sic).

5 Can you describe the process by which --
6 just take a for instance, not for anyone of these
7 small landowners -- how would they proceed?

8 I'm assuming that they would be notified
9 and somehow alerted, and somehow -- and then given an
10 opportunity to request to be opted out or request to
11 be exempted.

12 Could you explain that in little more
13 detail as you understand it?

14 MS. APUNA: I think it's part of the whole
15 process. We put out different press releases and
16 other notifications just generally, right, just
17 generally to the community that we're going through
18 this process, so if they're interested, come to the
19 community meeting.

20 We wanted to make them aware generally, and
21 then the mail-outs were to the specific potential
22 owners, the potential farmers that were interested.
23 But I think a lot of the -- we had press releases and
24 other notifications that went out to the full
25 community. So that they were aware that this whole

1 process was available.

2 So at this time that they let us know if
3 they were or were not in the first maps considered
4 for designation, they could just call our office and
5 we would take their information and consider them for
6 the IAL designation.

7 COMMISSIONER GIOVANNI: Is it fair to say,
8 Ms. Apuna, that they didn't have a clear option in or
9 out? They had the option to request an exemption or
10 not; is that right?

11 MS. APUNA: I think it goes both ways. So
12 we're trying to capture as much as we can, but we
13 might have missed. One reason or another, they might
14 have been outside of the designation, proposed
15 designation. So they could opt in; they could opt
16 out. I don't think it's necessary weighted in
17 either --

18 COMMISSIONER GIOVANNI: My questions is a
19 little different.

20 Who has the authority, in or out, is it the
21 County or is it the landowner?

22 MS. WONG: This is Dina. My understanding
23 is the landowner requested to the department if they
24 wanted to be excluded, and we looked at their
25 property, and at the criteria, and basically, you

1 know, to make it a fair process, we really looked to
2 the criteria. And so even if they wanted to be out,
3 and they met some of the criteria, their property was
4 retained in IAL.

5 COMMISSIONER GIOVANNI: So they did not
6 have the option to opt out, they had the option to
7 request to opt out, and County had final say whether
8 in or out; is that correct?

9 MS. WONG: Well, they had the option to
10 request, and the County -- we are just recommending
11 potential IAL, though it's not a definitive decision
12 yet.

13 COMMISSIONER GIOVANNI: Fair enough,
14 understood.

15 One of the gaps that seems to have occurred
16 in the process to me had to do with land that was in
17 transition of ownership during this last five-year
18 period in which this process has gone forth, which
19 owners of land, that made their land for sale, were
20 not obligated, even if they knew about the IAL
21 process, to inform perspective buyers about it, and
22 perspective buyers were not informed.

23 There was no disclosure of this IAL process
24 to new landowners, so they were acquiring land, and
25 then, because they were not recognized as a landowner

1 when the process started back in 2016, comes a big
2 surprise in 2019 or 2020, when it comes forth.

3 Would you agree that this is a potential
4 gap in terms of the process, in terms of disclosing
5 and informing owners or perspective owners about this
6 process?

7 MS. APUNA: It might be a gap, but I think
8 that, you know, this is not our final decision what
9 the County is bringing forth, this is just a
10 recommendation.

11 So even with any type of due diligence that
12 is on the buyers, I mean that's their burden, right,
13 and they're going to look at a property, you'll find
14 the current zoning, but you won't find what is
15 perspective, or what is in the works necessarily when
16 you do that type of due diligence.

17 So I don't think it's any different than
18 any other type of purchase of property. Nothing is
19 finalized at this point.

20 So as far as the timing, probably be a lot
21 better if we could have done it more swiftly. But I
22 don't think that -- this designation has not been
23 made yet. So I don't think they necessarily were
24 entitled to some type of notification, or that
25 property was already designated as IAL.

1 COMMISSIONER GIOVANNI: I agree with your
2 statement of conditions that we currently live by,
3 but would you agree or disagree that it would be a
4 good idea for sale of agricultural lands, parcels in
5 Hawaii, that there be some form of a disclosure that
6 the land may be subject to IAL designation?

7 MS. APUNA: I think it would be helpful.
8 But there's nothing in the statute that would require
9 us to provide that type of --

10 COMMISSIONER GIOVANNI: Yeah, I agree with
11 that. But it would be helpful in that perspective,
12 purchaser of land, it would trigger their due
13 diligence, where today there's nothing that triggers
14 it.

15 MS. APUNA: Right.

16 COMMISSIONER GIOVANNI: Chair, that's all
17 the questions I have at this time. Thank you.

18 CHAIRPERSON SCHEUER: Thank you very much.
19 Next call on Commissioner Aczon followed by
20 Commissioner Ohigashi.

21 VICE CHAIR ACZON: Thank you, Mr. Chair.

22 Good morning, Ms. Apuna, Dina and Raymond.

23 I really appreciate the effort done by the
24 City on this subject, so many years, so many efforts,
25 time and effort spent that not only the department

1 but community organizations.

2 I just have some follow-up questions based
3 on Commissioner Wong and Commissioner
4 Giovanni's questions.

5 I know you be probably already covered
6 this, but probably didn't understand, so forgive me
7 if I repeat some of those.

8 First of all, I heard that you folks sent
9 out at least 1,800 notices to these landowners, and
10 out of 1800 that was sent, how many was returned
11 percent-wise?

12 MS. WONG: Approximately 130 were returned.

13 VICE CHAIR ACZON: And then I understand
14 that, you know, out of those 130 that was returned,
15 you folks sent out another notice to these people.
16 With that, how many came back that was undeliverable?

17 MS. WONG: Two were returned.

18 VICE CHAIR ACZON: So it's safe to say that
19 everybody received those notices with exception of
20 those two, that the City cannot find those people?

21 MS. WONG: I think it's inevitable that
22 there were some that could not be delivered. And we
23 made that extra effort to run that ad in the
24 Advertiser to ensure that folks had an opportunity to
25 know about this.

1 So that was just an extra step that we took
2 to ensure that we met the statute and --

3 VICE CHAIR ACZON: I understand. I'm just
4 trying -- I just got out of a ZOOM meeting that if
5 the letter didn't come back, that means that the
6 owner received the notice?

7 MS. WONG: It was sent by regular mail. So
8 there is no absolute that they were received, but if
9 it didn't come back, we assumed it was delivered.
10 Whether the owner actually looked at it, you know, we
11 can't really say that for sure.

12 VICE CHAIR ACZON: I understand.

13 And then out of those 1800, five percent
14 you said came back with a comment, and majority of
15 them were dissatisfied or, you know, object.

16 Did I hear that correctly, five percent
17 came back with a comment?

18 MS. APUNA: So the five percent, I think we
19 were kind of estimating based on some of the feedback
20 we're getting for this hearing. Maybe about 100 that
21 said they weren't notified, and so based on the 1800
22 total, about five percent said they didn't get
23 notice.

24 VICE CHAIR ACZON: And out of those that,
25 you know, five percent with comments, and they were

1 satisfied, you were saying that six, seven were taken
2 out from that, from the IAL -- 45 removed, that's
3 what I heard, seven were added?

4 MS. WONG: Out of the public comments that
5 we got from landowners, we had 75 requests, and 45 of
6 their properties were removed either entirely or
7 portions of.

8 VICE CHAIR ACZON: Okay, thank you.

9 What are the criterias used to remove these
10 45 lands? I know you have three criteria, but I just
11 want to kind of get some idea what prompted the City
12 to remove these property?

13 MS. WONG: We really just looked at those
14 three criteria. We also looked at our contact to see
15 if they were part of a larger critical mass.

16 MR. YOUNG: Sorry, this is Raymond.

17 And also a lot of them were in the Country
18 zoning. And I think that was most of them that were
19 removed, Country zoning allows both residential use
20 and agriculture use. So it didn't make sense to us
21 to include, because we couldn't require agriculture
22 use if the zoning allowed residential use.

23 VICE CHAIR ACZON: So in other words, the
24 City basically reviewed each, you know, each property
25 and come out with not only based on the criteria or

1 some other reason was taken into consideration just
2 like what you said?

3 MR. YOUNG: That is correct.

4 In fact, when we did the removal of the
5 Country District lots, not all of them were removed,
6 even though they were zoned Country.

7 We took, for example, up in Pupukea
8 Heights, essentially the whole mountain of small one
9 acre, even though they did not request to be removed.

10 VICE CHAIR ACZON: If I heard it right,
11 there was two acres minimum to be included, to be
12 designated IAL?

13 MR. YOUNG: I think one of the size cutoffs
14 was at one acre, I believe.

15 VICE CHAIR ACZON: One acre. I thought it
16 was two -- I heard earlier two acres. That's the
17 reason why I'm trying to verify all those --

18 MS. WONG: Parcels that had five percent or
19 less of their land area in IAL were removed, and
20 parcels less than an acre. But there were, as we
21 mentioned earlier, some exceptions made if doing so
22 would create a hole in a sea of IAL.

23 VICE CHAIR ACZON: I'm just trying to
24 setup, verify between the two acre and the one acre
25 that I'm hearing now. Earlier I heard two acres. So

1 it is one acre.

2 So any property less than one acre is not
3 going to be included, because some testifiers
4 yesterday, they have less than one acre, or little
5 over one acre. That's the reason why I'm trying to
6 figure out, you know, are those landowners just, you
7 know, being alarmed for nothing? Two acres or one
8 acre?

9 MR. YOUNG: I believe it was one acre. I
10 think the reference to two acres that you're
11 referring to was from a comment letter from the
12 Department of Ag, if I'm not mistaken. And when I
13 asked DOA staff about that, where did they get the
14 two acres from, it was because the minimum ag lot
15 size is two acres.

16 And in my conversations with various people
17 that was forwarded to me from the LUC staff, I found
18 out that there are some lots as small as 6,000 square
19 feet, which is fully occupied by residential uses
20 that were also included.

21 Personally, I don't have any objections
22 removing those, because there's no way on 6,000
23 square feet you can have a reasonable farming
24 operation.

25 VICE CHAIR ACZON: So you can see my

1 confusion. And if I'm confused, I'm pretty sure some
2 of the landowners pretty much confused too, evidence
3 yesterday's testimonies.

4 I also understand that there are, no matter
5 what we do, no matter what how many notices we sent,
6 there is going to be a portion of those people that
7 going say they didn't receive it or, you know, they
8 just didn't -- not paying attention, you know.

9 I sent out all those notices every time,
10 45, 5,000 notices, and most of them come back. Later
11 on when we making final decision and, oh, we didn't
12 really receive it, matter of fact we have
13 documentation that they received it.

14 So the question I have, I don't know if
15 you're privileged to disclose, you have this
16 Technical Advisor Committee, organizations. Are you
17 willing to tell us who are these organizations? I'm
18 looking for organizations that are membership based
19 that could have helped spread word to their members.
20 Because I know you have a landowner. You have
21 different organizations.

22 MR. YOUNG: Yes, we can share that list
23 with you, or if you want to know it now, I have it up
24 on my screen.

25 VICE CHAIR ACZON: Just quick one, because

1 I believe that they also responsible to that, you
2 know, people know what is going on if they are
3 membership based.

4 MR. YOUNG: Let me go through the list.
5 There are about 20, maybe 23; and in the Phase II TAC
6 members we have David Arakawa from the Land Use
7 Research Foundation, Robert Cherry from --

8 VICE CHAIR ACZON: Landowners, yeah?

9 MR. YOUNG: They represent the major
10 landowners. We have Robert Cherry from Flying R
11 Livestock Company. Edward -- I'm sorry, Ruby
12 Edwards, or Rodney Funakoshi from the Office of
13 Planning. Alan Gottlieb from Hawaii Livestock
14 Farmers Coalition. Shin Ho from Ho Farms, Kenneth
15 Kamiya from Kamiya Gold, Inc., Dr. Po Yung Lai the
16 City's agriculture liaison, Daniel Nellis from Dole
17 Foods Company Hawaii. Dean Okimoto from Nalo Farms.
18 Mark Phillipson from Syngenta Seeds. Charles Reppun
19 from Waiahole Poi Factory, Anthony Rolfes from U.S.
20 Conservation Soil Survey, Leon Sollenberger from
21 Agricultural Enterprises. Ashley Stokes from the UH
22 College of Tropical Ag. Allen Takemoto from
23 Monsanto. Mark Takemoto from Pioneer Hi-Bred.
24 William Tam from Commission on Water Resource
25 Management Department of Land and Natural Resources.

1 Barry Usagawa from the Board of Water Supply,
2 Stephanie Whalen, Hawaii Ag Research Center, Earl
3 Yamamoto State Department of Ag, and there is a Larry
4 Yamamoto. I'm not sure what the representation there
5 is, could be a citizen with no affiliation.

6 In the Phase I members, we have a listing
7 of two, but I'm sure it was pretty much the same
8 people, Duane Okimoto and then Alenka Remec from the
9 mayor's Economic Development Office.

10 VICE CHAIR ACZON: Out of those
11 organizations or individuals that you mentioned, any
12 one of them would you say represents small
13 landowners?

14 MR. YOUNG: The big one is David Arakawa.

15 VICE CHAIR ACZON: I know he represents big
16 landowners. I'm kind of trying to figure out small
17 landowners.

18 MR. YOUNG: My impression is the smaller
19 farms like Robert Cherry, Shin Ho from Ho Farms,
20 Kamiya Gold, these are people that was on the TAC
21 that do represent the smaller farm operations.

22 VICE CHAIR ACZON: I'm familiar with them.

23 The other mention I have follow up on
24 Commissioner Giovanni's question about the ownership.
25 I understand that, you know, there is no requirement

1 by for the County to disclose to any length or -- but
2 I believe, I don't know, I might be wrong -- that,
3 you know, whoever is the seller or real estate agent
4 are subjected by law to disclose those information.

5 So, you know, I'm just trying to kind of
6 see where, you know, I know Commissioner Giovanni's
7 question, and I was kind of thinking that how did
8 this thing happen that, you know, a person buying a
9 property and didn't know what the requirements for
10 the land.

11 So you can say that there's a crack on the
12 process or whatever but, you know, that's really a
13 real concern that land can just have without any
14 proper disclosures.

15 Maybe you got something that we need to
16 look at, and how we can correct the mistake.

17 One last question I have for -- I'm trying
18 to kind of figure out, you know, a chance for let us
19 say, Land Use Commission, you know, agreed, approved
20 the recommendation by the City and County.

21 Then who's really final decision, whether
22 it's on the City or Land Use Commission to make those
23 final decision designating IAL?

24 I'm trying to figure out if the maps that
25 was recommended by the City, is that it, or Land Use

1 Commission has a chance to look at all those
2 properties, and landowners still have a chance to
3 petition Land Use Commission to, you know, in other
4 words, another chance they have to voice their
5 objection.

6 I don't know, maybe Ms. Apuna, do you have
7 any insight on that?

8 MS. APUNA: Yes, Commissioner Aczon.
9 You're correct, this is not the City's decision to
10 make under the statute, it is the Commission's, your
11 decision. And you don't have to take our
12 recommendation wholesale. If there are many certain
13 parcels, you can add to it. I think you do have the
14 authority to look at properties individually, to look
15 at certain objections individually, and to weigh each
16 one, and say whether you want to exclude those
17 parcels or not.

18 So that the ball is in your court. And you
19 can do what you want with our recommendation. And I
20 think if you do accept our recommendation, our job
21 would be done. It would be up to you and the rest of
22 the Commissioners to further refine the maps as you
23 feel fit.

24 VICE CHAIR ACZON: I just want to kind of
25 assure some of those people that, you know, testified

1 yesterday or those people that couldn't testify but
2 have concern, that they have another chance to, you
3 know, voice objection. This is not a final, you
4 know, thing for them.

5 MS. APUNA: Absolutely. Yeah, I think that
6 is -- I mean, I'm sure your AG -- but that I believe
7 is within your authority, and the City would not
8 necessarily weigh in on what you will do with those
9 parcels.

10 VICE CHAIR ACZON: Thank you for the
11 clarification.

12 Mr. Chair, that's all I have. Thank you.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Aczon.

15 Commissioner Ohigashi. Before the break I
16 indicated I would allow Commissioner Cabral to speak
17 after Commissioner Aczon, so when you raised your
18 hand I got distracted. I'll have Commissioner Cabral
19 ask questions, then Commissioner Ohigashi.

20 COMMISSIONER CABRAL: Thank you. I could
21 have waited, but I'm a little more bothered now.

22 So, Ms. Apuna, I know we previously saw you
23 on the bigger small screen as maybe wearing a
24 different hat.

25 So how long have you been in your current

1 position and responsible for this City and County's
2 problem?

3 MS. APUNA: It feels like three decades,
4 but maybe three months, little more than three
5 months.

6 COMMISSIONER CABRAL: Don't take this
7 personal, since this has been going on for so many
8 years, and I read everything, and then, of course,
9 hearing things, and it's hard because there's so many
10 numbers.

11 At one point I heard approximately 55,000
12 lots put into IAL that were volunteered in by private
13 landowners, then I heard some other numbers, but give
14 or take 10,000 acres at this point, big landowners,
15 what the heck, right? So anyway we've got a lot of
16 land in there.

17 Is there a requirement by State, City and
18 County or something that you, the County, are
19 required to have a certain number of acres in there?
20 Is that why you're going after these smaller parcels?
21 I mean, what is the motivation that's taken this much
22 time and effort and money from the City and County to
23 go after small landowners?

24 MS. APUNA: There is no minimum requirement
25 or percentage of acreage that we're supposed to

1 propose. I think, again, based on the criteria that
2 we narrowed down to, we're trying to cast the widest
3 net so that as much IAL is designated, but we aren't
4 necessarily looking at individual parcels. We're
5 looking at the basic criteria of land that would
6 qualify.

7 As far as how long it's taken, you know,
8 it's a lot of work. And I think since I've been
9 here, there's a lot of work to be done on a daily
10 basis. So these projects kind of take awhile, but
11 the whole process to have that many focus group
12 meetings, TAC meetings, community meetings, it takes
13 quite a process that does become drawn out.

14 I think that's part of the reason as well
15 as financial resources to get consultants, that
16 that's why it has taken some time to put this before
17 the Commission.

18 COMMISSIONER CABRAL: I can appreciate
19 that, but I could attack that heavily since I'm in
20 private business and do a whole lot more than that on
21 a weekly basis.

22 So I am tapping in to tell you how much I'm
23 almost feeling personalized with this. I am
24 terrified now. I have agricultural land on the Big
25 Island, and so now I better pay attention to all the

1 mail I get now, even though it may appear to be junk
2 mail, particularly if not personalized to me, or
3 appear to be personalized with my name and TMK
4 number, so I very much appreciate that we have been
5 asked to see a copy of these.

6 Apparently, over a long time period, but
7 actually very few mail-outs that went out to the
8 individual lot owners and landowners. Again, with
9 the magnitude of mail and junk mail that comes in,
10 essentially if it says, "Dear Landowner", I would be
11 hard pressed to think it was personalized, and
12 nowadays, with computers, even if it's got my name
13 and everything else on it, unless it's very specific
14 and personalized -- and just to let you know, when us
15 in private business want to make sure somebody gets
16 it, we send it -- we note on the bottom, regular mail
17 send certified, return receipt, hand delivered posted
18 on door, photo taken, slipped under door photo taken
19 and a witness.

20 So there's ways to make sure people get
21 mailings, okay? But also 1800 or so lots, that is
22 not really that many. And right now, on the
23 computer, you guys are in Honolulu -- I'm in Hilo, I
24 used to fly to Honolulu to go to the Bureau of
25 Conveyances and look up addresses and names and stuff

1 when I had to collect money from people.

2 You guys are right there, and it's now on
3 the computer, Bureau of Conveyances and your tax
4 records. You can find out everything. You can find
5 out every easement on that copy, get a copy of it.

6 And also, just for your information, the
7 incline on land when it was Robinson's land -- I
8 think you were there for those hearings -- the
9 incline when it's cattle grazing on 5,000 acres, that
10 can still handle a lot of ag production.

11 An incline on 30,000 square feet, excluding
12 that -- plus the house, can't handle very much ag
13 because you can't have a cow on less than an acre
14 without huge supplementing, because I have cows,
15 which means you're not cost effective at all.

16 So huge differences, and all of the other
17 IAL land we have been looking at, we didn't look, oh,
18 whoopie, they met one of the criteria, so let's throw
19 them into that.

20 Instead, if you're saying if it meets one,
21 it's okay, we are going to make it IAL land. We
22 tried to make sure they met almost all of them. So
23 this whole thing, I mean, I have to -- I'm crying for
24 some of these landowners who clearly may or may not
25 have received notice. Absolutely every realtor needs

1 to include this.

2 I am appalled that this is taking place.
3 And that you say it took \$300,000 worth of tax money
4 to do that. I'd be out of business if it took me
5 that much. I manage more than that many lots that I
6 get in touch with several times a year and make sure
7 I --

8 CHAIRPERSON SCHEUER: Commissioner
9 Cabral --

10 VICE CHAIR CABRAL: Well, my only other
11 question is: So now my understanding from the recent
12 statement -- is this a correct understanding -- that
13 it's now up to the LUC to determine if we're going to
14 keep these parcels individually in this IAL or
15 release them?

16 So is that what this is right now? So we
17 need to do the legal proper humane job, we need to
18 get hold of all these people and find out what is the
19 best thing for that land? Is that where we are at
20 with this process?

21 MS. APUNA: If you should accept our
22 recommendation, then, yes. You can look more closely
23 at the individual properties if you like, and further
24 exclude or include property.

25 VICE CHAIR CABRAL: And then if it took you

1 guys six years, I guess that could be on a waiting
2 list for our staff. If we don't accept your
3 recommendation, what happens?

4 MS. APUNA: If you're not going to accept
5 it, then you have to let us know how we didn't
6 fulfill the requirement or meet the standards that
7 were provided to you under the statute.

8 And at that point, if you find inadequacies
9 of our process based on the statute, we can -- you
10 can tell us what we think we should do in order to
11 meet those standards.

12 VICE CHAIR CABRAL: I do have to say that
13 your opening information did an excellent job of
14 showing how the County met the requirements.

15 And I'm not crazy about those requirements
16 obviously now, because it appears to be some
17 throw-net type situation, well, we're just going
18 to -- everybody that's got an "A" in their zoning,
19 we're going to make them IAL. And I think they get
20 lower taxes. Maybe that will help, as they can't
21 market their land or do things in the future.

22 But 1800 lots, about how many acres was
23 that? I can't remember getting that clarified.

24 MS. APUNA: I think it's about 45,000,
25 roughly 45,000 acres.

1 MS. WONG: The total land area considered
2 was 63,855.

3 VICE CHAIR CABRAL: That's including all of
4 those 1800. Did anybody ever analyze how many of
5 those are less than one acre?

6 MS. WONG: The study area or the potential
7 IAL?

8 VICE CHAIR CABRAL: Your 1800 lots, how
9 many of those are less than one acre?

10 MS. WONG: We did not do that analysis.

11 VICE CHAIR CABRAL: Just for your
12 information, all that information is right there at
13 your fingertips on the computer with the City and
14 County tax record Bureau of Conveyances, lots of
15 information right there, one screen. Don't have to
16 leave your seat.

17 So if it took you six years to get to this
18 point, I'm upset and I'm sorry about -- it is
19 unbelievable that the process has been done, which is
20 just -- it may have met the criteria and the
21 requirements of the law, of the statute, but I think
22 it's really inappropriate to the people involved in
23 the City and County. Not maybe all of them but --

24 CHAIRPERSON SCHEUER: Commissioner Cabral,
25 I want to have full opportunity for all the

1 Commissioners to ask as many questions and gather
2 information from the City and County. And we will
3 have full and complete discussion over whether or not
4 we choose to accept the City's --

5 VICE CHAIR CABRAL: Thank you.

6 Well, my closing part as a cow girl that I
7 am, that even with lipstick, a pig is still a pig.
8 Thank you for the lovely lipstick job.

9 CHAIRPERSON SCHEUER: Thank you very much,
10 Commissioner Cabral.

11 Commissioner Ohigashi, you're next.

12 COMMISSIONER OHIGASHI: Thank you, Mr.
13 Chair. You know, sometimes I'm left speechless. I'm
14 going to try and concentrate --

15 VICE CHAIR CABRAL: And I should have been
16 speechless. Thank you.

17 COMMISSIONER OHIGASHI: I'm going to try
18 and concentrate my questions.

19 Ms. Apuna, nice to see you back. Trying to
20 concentrate on how the criteria was developed. And
21 what was the process used by the City.

22 Essentially my understanding, the City read
23 the statute, said, hey, all these are big landowners
24 are only 50, 51 or 50 percent over kind of
25 designation, so they can -- other lands are

1 untouchable, so we're going to have to go forward
2 with some kind of proposal so that we can try
3 implement the statute before these big landowners.

4 Is that my understanding?

5 MS. APUNA: First of all, IAL process, yes,
6 so I think they could do that, so that they could
7 ensure that 50 percent of their property would not be
8 designated as IAL. So they could do what they wanted
9 with the remaining 50 percent of their property.

10 COMMISSIONER OHIGASHI: And I recall on
11 several voluntary IAL petitions that the City and
12 County would always respond, and say that, hey, we're
13 in the process of doing our review, and we're trying
14 to figure out, so could you hold off on this
15 voluntary designation and wait for our review.

16 Is my recollection correct?

17 MR. YOUNG: Commissioner Ohigashi, this is
18 Raymond Young.

19 Essentially, yeah, we made some earlier on
20 comments to that effect. We were hoping that we
21 could conclude our process before many of these lands
22 were designated IAL by the Land Use Commission.

23 However, over time I think our position has
24 changed, and we generally supported the major
25 landowners declaratory ruling request before the Land

1 Use Commission.

2 As you may or may not know, the IAL law in
3 Chapter 205 was passed many years ago, and we only
4 got to mapping it in, I think, beginning 2012.

5 So the large landowners had quite a bit of
6 years to work on submitting a declaratory ruling
7 request to the LUC. But I think most of 'em starting
8 doing that when we started our mapping project.

9 COMMISSIONER OHIGASHI: And essentially
10 that was the purpose of the legislature trying to get
11 the big landowners to try and do their own
12 designation so that we can have a body of preserved
13 agricultural lands for the purposes of future
14 generations.

15 So what I'm trying to get at is in 2012
16 when you started your mapping, did you develop a sort
17 of like checklist or procedure list that would --
18 that you would follow in preparing for this
19 submittal, these recommendations that --

20 MS. WONG: Our guide on this was really
21 following the statute, and to make sure that we met
22 the process requirements. And so in looking at the
23 criteria, we went with the eight criteria that's
24 defined in the statute, and I believe there was a
25 ninth one added on by the Technical Advisory

1 Committee, and it had to do with agricultural
2 easements.

3 So the whole process was based on meeting
4 the statute requirements.

5 COMMISSIONER OHIGASHI: And I'm not
6 familiar with the City and County's requirements, but
7 does this type of action, which involves a land use,
8 essentially a land use change or designation, does
9 this action require that the City and County send
10 this out to things like the (indecipherable) awards
11 or Planning Commission?

12 MS. APUNA: Under the statute, no.

13 COMMISSIONER OHIGASHI: Not under the
14 statute, I mean, the City's own rules, this is a
15 resolution essentially passed by City Council, so I'm
16 assuming that you have your own rules in regards to
17 getting a matter before the City Council involving
18 zoning.

19 I'm familiar with the Maui County Charter,
20 which seems to imply that all -- seems to grant the
21 Planning Commission certain powers. So I'm just
22 curious within your own rules whether or not you're
23 required to submit this to the neighborhood boards,
24 or the Planning Commission or any other --

25 MS. APUNA: So first of all there's rules,

1 the HRS rules -- I'm sorry, the rules for the IAL
2 statute, there are State rules which we did follow.
3 15-15, Title 15 of Chapter 15 Hawaii Administrative
4 Rules. We don't have specific rules, City rules for
5 IAL.

6 However, this is not considered a rezoning.
7 So it wouldn't fall under zoning rules for the City.
8 This is just an overlay. We don't believe that this
9 is a change in land use or affects, necessarily, the
10 specific rights of developers or landowners.

11 So it wouldn't require under our rules that
12 we go to the neighborhood boards or the City Council.
13 I mean, the City Council is part of the statute. We
14 are required to submit it to the City Council for
15 review and -- but other than that, we're not required
16 to go to Planning Commission or the neighborhood
17 boards.

18 COMMISSIONER OHIGASHI: Did that decision
19 to not -- was that a decision that City and County
20 decided affirmatively, or just didn't think about it
21 prior to -- there's nothing to stop you from
22 submitting it to the neighborhood board or Planning
23 Commission for their review?

24 MS. APUNA: You're correct, there's nothing
25 stopping us. We could have done that. We could have

1 taken it to the neighborhood boards. Maybe looking
2 back, but we're guided by the statute which requires
3 public notice by mail-outs.

4 But in addition to that, above the standard
5 that was required, we did do press releases,
6 advertisements in the newspaper to further, you know,
7 spread the word about County IAL process.

8 COMMISSIONER OHIGASHI: I'm not talking
9 about notices at this point in time. I'm just trying
10 to find out how the decision-making process was made
11 and whether or not consideration was given to send
12 this out to the neighborhood board.

13 There was one comment that was made, and I
14 was just questioning whether or not decided not to do
15 that affirmatively, or you just didn't think about
16 that.

17 Second thing is that the Planning
18 Commission, which I think would have jurisdiction to
19 at least review what it has had in total hearings on
20 it.

21 Any reason that was sidestepped or not
22 considered? I'm just asking those questions.

23 MS. APUNA: Yeah, I mean, I think we're
24 guided by what the statute requires us to do. That's
25 what we did.

1 COMMISSIONER OHIGASHI: I'm not making a
2 judgment as to whether or not you did or not, I'm
3 just curious about whether those options were
4 considered.

5 MS. APUNA: I would defer to Ray and Dina
6 if they have any comment on that. (Indecipherable).

7 MS. WONG: I think earlier on, as with all
8 contracts, we had a consultant work on this study in
9 collaboration with the department. And they worked
10 out their scope of work and community outreach. I
11 guess a decision was made that they were going to
12 hold these rounds of community meetings and publicize
13 it in the newspaper, and things of that sort, to get
14 the word out.

15 So it was a choice in the process not to do
16 presentation to all of the neighborhood boards.

17 COMMISSIONER OHIGASHI: The other question
18 that I have is, the TAC, I'm looking for what is that
19 acronym for, but TAC, did they have to sign off on
20 your submittal to the, I guess, the County Council,
21 City Council?

22 MS. WONG: No, they did not need to.

23 COMMISSIONER OHIGASHI: Did they --

24 MS. WONG: We did not need to get their
25 sign off to submit to council.

1 COMMISSIONER OHIGASHI: I know you didn't,
2 but you're -- I understand that. But did they? Did
3 they review it and determine to say, yeah, this is
4 what we've been working on. Let's submit it to City
5 Council, and agree with you?

6 MS. APUNA: I don't believe they did. But
7 they were, you know, voting on the criteria. So they
8 took certain actions that affected the final
9 submittal to City Council. But there wasn't an
10 official signoff.

11 COMMISSIONER OHIGASHI: So would it then be
12 fair to say that it was DPP's recommendation solely
13 for these recommendations be placed before the City
14 Council?

15 MS. APUNA: Could you repeat that again?

16 COMMISSIONER OHIGASHI: Was there anybody
17 else who reviewed it before it was submitted to the
18 City Council? Just trying to get an idea besides
19 DPP.

20 MS. WONG: I'm sorry, Commissioner, just to
21 go back to your previous question.

22 I got clarification that the report, our
23 final recommendation to council was presented to the
24 TAC, and they had no objections to it, and that
25 solidified our decision to transmit to council.

1 COMMISSIONER OHIGASHI: I was trying to
2 look for that. Is that in the record someplace?

3 MS. WONG: We would need to check through
4 all of the notes if it's indicated in that.

5 CHAIRPERSON SCHEUER: Commissioner
6 Ohigashi, if I may, we have been going one hour. How
7 much longer do you have?

8 COMMISSIONER OHIGASHI: Just a few more
9 questions.

10 CHAIRPERSON SCHEUER: So my intention,
11 folks, would be to go to 11:30, then take an early
12 lunch to noon, half hour only. We lose Commissioner
13 Aczon at 12:45. We will be down to six members, and
14 five are needed to take action on this item.

15 Does that sound like a reasonable plan?

16 COMMISSIONER WONG: You know, lunch -- for
17 lunch, if it's possible, can we do an hour just
18 because my stomach needs to be filled, or even
19 45 minutes?

20 COMMISSIONER OHIGASHI: I can resume my
21 questioning after lunch.

22 VICE CHAIR CABRAL: Wait until 12:30

23 CHAIRPERSON SCHEUER: I'm trying to
24 accommodate the needs of our counsel for a 11:30
25 break.

1 VICE CHAIR CABRAL: Whatever you determine.

2 CHAIRPERSON SCHEUER: I'm trying to balance
3 sort of basic needs that we all have along with the
4 fact that we have so many people attending and trying
5 to manage their schedules and their lives in addition
6 to participating in this matter.

7 Let's finish up your questions,
8 Commissioner Ohigashi. We will try and end by 11:30.
9 If we go slightly past 11:30 we might lose Ms. China,
10 and we will end taking a break for 45 minutes,
11 Commissioner Wong, resuming at 12:15.

12 Commissioner Ohigashi, thank you, please
13 proceed.

14 COMMISSIONER OHIGASHI: I'm just curious.
15 When it went to the council, was there testimony in
16 regard to this matter?

17 I was just looking at your No. 8 and 9, and
18 I was trying to glean from that what the testimony
19 was, but I was just wondering if there was testimony?

20 MS. WONG: I'm sorry, Commissioner, I don't
21 recall if there was written or oral testimony at the
22 hearing. We could check online, if you want to wait
23 a few minutes.

24 COMMISSIONER OHIGASHI: I don't need to
25 wait. Just submit it. Just let me know, or you can

1 indicate to counsel later on as to what part you're
2 looking at. Just wondering.

3 The last set of questions really deals with
4 that. I'm assuming that the council passed this by
5 unanimous --

6 MS. WONG: Yes, it was unanimous.

7 COMMISSIONER OHIGASHI: And following what
8 all council do they publish in the newspaper a
9 resolution, et cetera, is that right?

10 MS. WONG: Yes.

11 COMMISSIONER OHIGASHI: And would that
12 include all of the TMK numbers?

13 MS. WONG: Yes, the resolution that was
14 adopted 18-233 CD1, FD1 had two attachments. One was
15 the listing of all the TMKs; and one was a set of the
16 maps.

17 COMMISSIONER OHIGASHI: Was that published
18 also?

19 MS. WONG: It's all public record, so it's
20 on the City Council's website.

21 COMMISSIONER OHIGASHI: I'm just asking if
22 it was published in the newspaper, the resolution and
23 -- if you know?

24 MS. WONG: There's a requirement that the
25 hearing needs to be publicized, but the outcome and

1 the actual reso is not published like in the
2 newspaper, but it is publicly available on the City
3 Council's website.

4 COMMISSIONER OHIGASHI: My absolute last
5 question is that there was concern, people wanting to
6 testify. That they were kicking out -- this IAL,
7 kicking out some people who couldn't be farmers or
8 couldn't work as farmers.

9 Do you guys have any comment as to whether
10 or not this IAL designation intended or will be doing
11 that sort of Draconian method, Draconian outcomes?

12 MS. APUNA: I don't think that is the
13 intention at all to kick out landowners who are not
14 farming their land currently. But as I stated
15 earlier, under the law current for just
16 agriculturally zoned or classified land, the
17 intention under the law is that the land be actively
18 in agriculture.

19 So potentially there are probably many
20 people that are just residing or retired on their
21 land. But that doesn't mean that they are in
22 conformance with the statute or the ordinances.

23 But, again, I don't think that's the
24 intention, and I don't believe that's the County's
25 intention to go after people who are necessarily in

1 compliance, but that I think currently those people
2 are probably not in compliance with the law.

3 COMMISSIONER OHIGASHI: Would you be able
4 to provide to me the County's ordinances relating to
5 defining what a farm dwelling is and what it would be
6 used for?

7 MS. APUNA: Sure, we can provide you that.

8 COMMISSIONER OHIGASHI: Thank you. No
9 further questions.

10 CHAIRPERSON SCHEUER: Sorry, Ms. Wong, did
11 you, have something?

12 MS. WONG: I was going to provide -- the
13 County's farm definition is contained in our Revised
14 Ordinance Honolulu Chapter 21 land use ordinance, and
15 it's defined as a dwelling located on and used in
16 connection with a farm where agricultural activity
17 provides income to the family occupying the dwelling.

18 CHAIRPERSON SCHEUER: I think there has
19 been a request to make sure that's in the record, so
20 if you can please provide that as well.

21 It is 11:32. I recognize Commissioner
22 Giovanni has his hand up. I recognize I sort of
23 prematurely stopped Commissioners Wong and Chang from
24 asking their full set of questions. I will note the
25 Chair has an extensive set of questions for the City

1 and County as well, which I'm eager to give.

2 We are going to go into recess until 12:15
3 when we will resume the questioning of the City and
4 County by the Commissioners. Thank you everyone for
5 your continued work and patience on this important
6 matter.

7 (Noon recess taken.)

8 CHAIRPERSON SCHEUER: It's 12:16. We will
9 go back on the record.

10 Welcome back, everyone. Start off with
11 Commissioner Giovanni, followed by Commissioner
12 Chang.

13 Please indicate to me if you have any other
14 questions you want to ask, Commissioner Giovanni.

15 COMMISSIONER GIOVANNI: I would like to
16 resume my questioning pretty much along the same
17 lines, focusing first on the criteria, nine criteria
18 that the TAC put in place after much deliberation. I
19 think the process actually occurred in the year 2013.

20 I would like to look at things both in a
21 micro and macro view. I think you have to do both to
22 get a full consideration of the significance of the
23 situation that's going on.

24 So I was taken by -- my attention was taken
25 by remarks by the City and County about small land

1 parcels that were found to be in a sea of IAL land,
2 large parcel or large group of land designated as
3 IAL, and the macro view being that you really don't
4 want to have islands in that sea that are not IAL
5 land.

6 Is that a correct interpretation of the
7 remarks before us by the County?

8 MS. APUNA: I think that's correct. Part
9 of it, Commissioner, is that, you know, if you read
10 these small kind of outside of IAL, there is the
11 potential for those little pukas to get up-zoned,
12 right, to Residential or Urban, and then you have a
13 huge -- about how this up-zoned property has a hard
14 time living with agricultural uses surrounding their
15 property.

16 So it's best to keep the land consistently
17 IAL, or even ag, because you don't want the potential
18 for this type of up-zoning that could create problems
19 in the future.

20 COMMISSIONER GIOVANNI: I think that's a
21 fair comment taking the macro view.

22 My concern is that if I take the micro
23 view, which is the view of the individual landowner
24 of the small piece of land, he may get a completely
25 different view.

1 When I went back and actually took the time
2 to read all the minutes from the TAC, which was your
3 Appendix B of August 2018 report, and in particular
4 the development of the criteria, there is absolutely
5 no mention of a criterion such as this as being
6 important.

7 So where did this criteria come from to
8 make that judgment, if not from the TAC or nine
9 criteria put forth?

10 MS. APUNA: As far as the need to keep it,
11 what I just spoke about?

12 COMMISSIONER GIOVANNI: Yeah, the need for
13 eliminating islands or pukas within a sea of IAL, how
14 that might affect an individual landowner of an acre
15 or so that otherwise does not qualify by the nine
16 criteria for IAL.

17 MS. APUNA: I think those pukas, they would
18 at least qualify for one of the three that we have
19 noted down based on the TAC. But I would have to
20 defer to Ray and Dina as far as what discussion, what
21 policy discussion, because this overall is a policy,
22 right? It's a policy that we're putting forward, and
23 that the Commission is moving forward.

24 It's not about individual landownership
25 rights, it's a policy that we're generally trying to

1 apply to move forward the strategic land base to
2 protect and conserve agriculture.

3 I will defer to Ray and Dina. I think
4 they're logging on. Maybe not.

5 COMMISSIONER GIOVANNI: I'll wait for their
6 additional comment.

7 CHAIRPERSON SCHEUER: Mr. Young and Ms.
8 Wong, are you --

9 MS. WONG: Yes, we're on.

10 CHAIRPERSON SCHEUER: We can see both of
11 you, though it is an odd view.

12 MR. YOUNG: Dina was moving in front of the
13 camera.

14 MS. WONG: They can see me, Ray. It's
15 okay.

16 MR. YOUNG: Sorry, Mr. Chair, we had to
17 move from our conference room, and I'm not used to
18 using this new computer yet.

19 CHAIRPERSON SCHEUER: You would not be the
20 first person during the pandemic who struggled with
21 ZOOM.

22 MR. YOUNG: Looks like this is a dual lens
23 camera.

24 CHAIRPERSON SCHEUER: We can see
25 sufficiently. If you could answer Commissioner

1 Giovanni's questions.

2 MR. YOUNG: Commissioner Giovanni, restate
3 the question.

4 COMMISSIONER GIOVANNI: Happy to.

5 My concern is having to do with
6 consideration of a small parcel of less than an acre
7 nominally that is found to be located in a sea -- I
8 think those were the words the County used -- sea of
9 lands or large mass of land that was otherwise IAL.

10 And my concern is that none of the nine
11 criteria that the TAC put forth identified this
12 particular aspect or criterion as being a factor that
13 should be taken into account for inclusion of small
14 parcel of IAL.

15 What was the policy or the judgment or the
16 process of what looks to be arbitrary, in my mind, to
17 include the very small parcels that just happen to be
18 in a sea of IAL?

19 MR. YOUNG: I took from one of the eight
20 criteria, if we first do contiguous line blocks of
21 agricultural land, I believe that was one of the
22 basis for us --

23 COURT REPORTER: Excuse me, I'm having a
24 very difficult time hearing Ray.

25 MR. YOUNG: Sorry, mask is too tight.

1 What I was referring to is, I believe there
2 was a provision in the IAL law that talks about
3 having large contiguous blocks of IAL land. So that
4 was the primary reason we included small parcels.
5 Even though they may not have met the top three
6 criteria, they do meet the large block of IAL land
7 criteria.

8 MS. WONG: Basically, that's in 205-44,
9 that's No. 7 contiguous to maintaining a critical
10 land mass according to agricultural operating food
11 activity.

12 COMMISSIONER GIOVANNI: So you're saying
13 that Criterion No. 7 is the basis for which the
14 County is recommending that a small piece of land
15 that happens to be situated contiguous to a large
16 mass of land that is IAL should also be IAL
17 regardless of whether it meets any of the three top
18 criteria? That's what I heard you say. Is that
19 correct?

20 MS. WONG: It still needed to meet one of
21 the three criteria to be recommended as potential --

22 COMMISSIONER GIOVANNI: And in particular,
23 you're citing Criteria No. 7. Is that correct?

24 MR. YOUNG: Let me clarify. TAC chose the
25 top three for which the draft maps were first

1 created. DPP in subsequent iterations was not
2 limited to the top three. It did allow other lots to
3 be considered if it met any of the eight criteria
4 listed in the -- (indecipherable).

5 The ninth one was added by TAC. It was not
6 part of the eight in the statutes.

7 COMMISSIONER GIOVANNI: Let me proceed.

8 So in review of the minutes from the TAC,
9 which I think you were trying to follow in their
10 discussions of the top three criteria, and I'm citing
11 specifically their minutes from their meeting of
12 July 31st, 2013, which is in Appendix B of your
13 report, it does not have a page number.

14 Let me quote from the minutes. It says:

15 "There was confusion about what was meant
16 by the bulletproof item, slide five, inference to
17 require that all three criteria are present,
18 qualified for IAL. Following discussions, the group
19 agreed that the wording should be changed, and that
20 it was not the intent to require all three criterion
21 to be present to qualify for IAL designation. Lands
22 that have all three criteria present would be given
23 the highest priority for IAL. A combination of the
24 three criteria was preferred."

25 They go on.

1 "It was agreed that the report should
2 include a statement about the criteria being specific
3 to the City's IAL designation process and that the
4 City use one"-- pardon me -- "the City use of the
5 three criteria should not influence the LUC review,
6 individual landowners applications, that is (i.e., a
7 petition for voluntary designation should not be
8 required to have all three criteria)."

9 So my reading of the intent -- and there is
10 a lot more discussion in the minutes -- was not that
11 the TAC is saying, as has been conveyed this morning
12 by the County, that in order to be inclusive, we're
13 only searching for one of the three criteria.

14 They clearly said they don't want to
15 exclude the land that has only one of the three, and
16 it strongly prefers to have all three.

17 It seems like it's gotten twisted somehow
18 in the process since 2013 to interpret it to be just
19 have to be one of the three, because we want to
20 include all of the land that has at least one of the
21 three.

22 That's not the way I read the intent of the
23 TAC at all.

24 So I just wonder if you can comment on that
25 at, or if you could correct my interpretation?

1 MS. APUNA: I can speak a little bit more
2 about that, Commissioner.

3 Under HRS 205-43, it requires State and
4 County agricultural policy, land plan ordinances and
5 rules that shall promote long-term viability of ag
6 use of important lands, and shall be consistent with
7 and implement, and that the following policies -- and
8 it lists eight policies that include, No. 1, promote
9 the retention of IAL in blocks and contiguous intact
10 and functional land units are large enough to allow
11 flexibility in ag production and management.

12 2. Discourage the fragmentation of IAL and
13 the conversion of these lands to nonagricultural
14 uses.

15 So those two out of the eight for 205-43,
16 this is part of the policy that were considered when
17 a decision was somewhat as to whether we include
18 these little pukas or not, and I think it speaks to
19 what I had talked about earlier, that looking forward
20 if we don't include those pukas, there could be
21 consequences down the line where the spot building
22 and up-zoning that can fragment or disrupt the
23 overall land base for IAL.

24 COMMISSIONER GIOVANNI: I appreciate that
25 and that's the response I was looking for, for my

1 first question. Thanks for following up on that.

2 The question I just raised a moment ago
3 before you spoke, however, was about the notion that
4 purposes of inclusion that any one of the top three
5 criteria can be met and justify inclusion.

6 Whereas, the way I read the TAC is
7 opposite. It's like they should not be excluded if
8 they happen to have one of the three top criteria,
9 and, in fact, it's strongly preferred to have all
10 three.

11 Where did this interpretation or my
12 interpretation go wrong in that it looks like it's
13 not to be exclusionary as opposed to err on the side
14 of inclusion?

15 MS. APUNA: Because I know that there was
16 the voting, and when they decided -- because once
17 they decide one, two and five were the top three,
18 that there was a vote as to whether there needed to
19 be all three to be IAL or just one was enough.

20 So they concluded that one was sufficient.

21 COMMISSIONER GIOVANNI: You're absolutely
22 correct, that's exactly what happened according to
23 the minutes. They started off with requiring all
24 three, and they changed it to be that one was
25 sufficient.

1 That's different in my mind than saying if
2 you meet any one of these three, you are included.
3 It means that you could be included.

4 Anyway, enough said on this. I've gotten
5 the answer I'm looking for. I return it to you,
6 Chair. Thank you, Ms. Apuna.

7 CHAIRPERSON SCHEUER: Thank you very much,
8 Commissioner Giovanni.

9 Commissioner Chang.

10 COMMISSIONER CHANG: Thank you, Mr. Chair.
11 Thank you, Ms. Apuna and the County.

12 I'm leaving. Commissioners Giovanni and
13 Ohigashi asked a lot of questions regarding the
14 process related to the criteria.

15 My concerns are primarily related to the
16 public involvement process and the landowner
17 notification, whether you have satisfied that under
18 the rules.

19 But let me make sure that -- I want you to
20 confirm that you concur with my understanding on the
21 following so that I am on the same page with you.

22 These are going to be a series of questions
23 about the IAL designation process.

24 Would you agree that there is essentially
25 two processes to place private lands in IAL. One is

1 voluntary designation, which we have heard can cost
2 up to \$75,000 and requires an EA; or two, the County
3 recommend IAL designation in compliance with the
4 detailed regulatory process, and LUC makes the final
5 decision on the recommendations.

6 And this is at no cost to the private
7 landowner. Would you agree?

8 MS. APUNA: Yes, I would agree.

9 COMMISSIONER CHANG: Again, you agree that
10 Land Use Commission make the final decision on which
11 properties should be designated in the IAL and
12 approved the final maps?

13 MS. APUNA: Yes.

14 COMMISSIONER CHANG: So like the landowners
15 who voluntarily decided which of their private lands
16 to include in IAL, you know, and we realize in some
17 instances these private landowners they did it to
18 ensure that the rest of their property wouldn't be
19 forced into IAL.

20 But you would agree that, you know, sort of
21 based upon that kind of experience, LUC has the
22 authority to take individual private small landowners
23 properties out of your City recommendations?

24 MS. APUNA: Yes.

25 COMMISSIONER CHANG: And in the future,

1 assuming that the City does develop the incentives
2 for IAL and makes it more attractive, if a private
3 landowner wants to designate their land as IAL after
4 this process is complete, assuming it is completed,
5 to take advantage of those incentives they would have
6 to file their own private landowner declaratory
7 action and go through the private landowner process;
8 is that correct?

9 MS. APUNA: I believe so, but I would have
10 to look at the statute. I tend to believe that once
11 this process, this County process that the Commission
12 is deciding on, that that would be the final say,
13 that there wouldn't be the ability to individually do
14 voluntary IAL designation, but I might be wrong.

15 COMMISSIONER CHANG: I'll go back and look
16 at that too then.

17 Okay. I thought that there could be
18 continuing placement of properties in IAL, again, you
19 know, major incentives to encourage have not been
20 developed, so a lot of these landowners that have
21 come forward with concerns, I mean, I understand,
22 have been those incentives to encourage them.

23 I'm going to look at the rules, the law,
24 and you look at that as well.

25 Let me ask you this question. Given your

1 policy considerations as the County, what impacts
2 would Land Use Commission's withdrawal of private
3 landowners who request to opt out have on your
4 policies?

5 MS. APUNA: I think just other than just
6 having that overall Band Aid, I don't know of any
7 specific impacts to our policy. I would defer to Ray
8 or Dina.

9 MR. YOUNG: I imagine -- this is Ray --
10 that if many of these owners are objecting, and you
11 may end up with a checker board type of IAL polygon
12 which may not be conducive to feasible agriculture
13 for the remaining folks who want to be in IAL. But
14 that's -- I don't know if that can be proven though,
15 but it does kind of counteract the provision in the
16 statutes for land contiguous blocks.

17 I think DOA would agree that it's easier to
18 farm to larger blocks of ag land than not.

19 COMMISSIONER CHANG: Okay, but that would
20 ultimately -- Land Use Commission makes that
21 determination to the landowner who comes forward and
22 requests to opt out, and that is one of the
23 consequences. We could withdraw that parcel from the
24 designation. Do you agreed?

25 MR. YOUNG: Correct. And in furthering

1 this process, we would rather not penalize those that
2 want to be designated IAL, if those who don't want to
3 be designated IAL disrupt the entire process.

4 COMMISSIONER CHANG: Well, sometimes we
5 just -- we don't get everything that we want. Going
6 to do the best that you can.

7 MR. YOUNG: That's right.

8 COMMISSIONER CHANG: Let me ask you
9 questions about the public involvement process.

10 The rules require an inclusive process of
11 public involvement. As I understand it, you had your
12 TAC meetings, community meetings, you had
13 publications, individual landowner notifications,
14 postcards and then you have the City public -- the
15 City Council public meeting.

16 Were there other forms of engagement with
17 the public?

18 MS. WONG: There are also focus group
19 meetings.

20 COMMISSIONER CHANG: Focus group meetings.

21 And quite frankly, a lot of my practice is
22 public engagement and community outreach. And that's
23 a very good practice, so I understand you have to try
24 to the best that you can.

25 MS. WONG: Something to consider, we did

1 have -- during the course of the project there was a
2 website dedicated for this, and there was a map where
3 you could ZOOM in on your parcel to see. So it was a
4 very informative website.

5 Since then that's been taken down, but we
6 have the report on our DPP website.

7 COMMISSIONER CHANG: Could the public have
8 left comments on the website?

9 MS. WONG: No, they couldn't.

10 MR. YOUNG: To clarify the web page is
11 still up on our DPP server, however, it says -- it's
12 dated for, I believe, August 2018, the day we
13 submitted it to City Council. So even though it's
14 still up there, it's not up to date.

15 COMMISSIONER CHANG: Does it still contain
16 all of the information about the IAL process and
17 information up-to-date, up to 2018?

18 MR. YOUNG: Yeah, I believe that is
19 correct. And there's an FAQ on the website. The map
20 is interactive. You can click on the soil layer, the
21 water layer, the existing ag layer and you can ZOOM
22 in and see your property even if it's very small.

23 MS. WONG: It went to City Council, so they
24 have on their website the adopted resolution and the
25 TMK list and maps. And I think there may be a link

1 to that on the DPP --

2 COMMISSIONER CHANG: It looks like
3 Commissioner Cabral is probably looking at them right
4 now.

5 And it would be easy for me to second guess
6 if I was doing this, would I do the outreach
7 differently? I expect, Ms. Apuna, you probably would
8 have included the neighborhood boards, a lot of those
9 low hanging fruit to keep people informed, you would
10 have done other outreach forms.

11 However, I guess we have to evaluate it
12 based upon what you did do. So I just wanted to
13 confirm that those were all the things that you did.

14 Did you publish not only in the newspaper,
15 but did you also publish in Office of Hawaiian
16 Affairs Ka Wai Ola, any of this information published
17 in that publication? I didn't see anything.

18 MR. YOUNG: I'm not aware of that being
19 published.

20 COMMISSIONER CHANG: All right. I just
21 wanted to make sure that I understood the extent of
22 your public involvement. I want to ask some
23 questions regarding landowner notification.

24 In my experience, five percent return rate,
25 not that bad, given that you did 1800 mail-outs.

1 But, and then I also heard the City's
2 testimony that other than five percent, you did some
3 additional research and you subsequently mailed out
4 the letters that were returned, and two came back.
5 Is that correct?

6 MR. YOUNG: Yes, that's correct. We're
7 still trying to come up with the rest of the
8 statistics on this, because there were two mail-outs,
9 and I think the second mail-out was recent of about
10 somewhere around 120, 130, and of that two came back.

11 The first mail-out end of 2016 was still
12 going through those returns to see how many were
13 recent. But once we get that number out, we can give
14 you that information.

15 COMMISSIONER CHANG: Because when I read
16 the rules, it says either by mail or posting on the
17 property, posting the notice on the property.

18 Did you post the notice on any of these
19 properties, the two properties or any other
20 properties where they were not received?

21 MR. YOUNG: No, we did not do that.

22 COMMISSIONER CHANG: And could you make
23 sure that you identify which of the properties the
24 TMKs did not receive either written notice or
25 posting? Can you make sure we get a copy of that?

1 MR. YOUNG: Okay, we will try to search for
2 those.

3 COMMISSIONER CHANG: And based upon what
4 was recently up loaded to LUC website, it looks like
5 the notices went out in 2017 to 2018 to the
6 landowners.

7 MR. YOUNG: I think original notice was
8 2016, and second notice was in the later part of
9 2017. Let me check the notices that I sent over to
10 your staff's office.

11 COMMISSIONER CHANG: Okay.

12 We did hear numerous testimony yesterday
13 from people who said they didn't receive notice. And
14 I know you were taking down their TMK numbers.

15 Did you confirm whether they received
16 notice or not?

17 MR. YOUNG: The process we used was the
18 regular USPS system. We did not, nor did the statute
19 require us to send out with some kind of receipt
20 saying the recipient received it. We did not go
21 through that.

22 So the assumption is if it didn't get
23 returned, that the recipient got the mail, the
24 notice.

25 COMMISSIONER CHANG: I see.

1 MS. APUNA: But as far as the TMKs that we
2 wrote down yesterday, we checked it against the list,
3 our mailing list, and I think most, if not all of
4 those, were on the mailing list. So they should
5 have -- it should have been mailed out to them.

6 COMMISSIONER CHANG: Again, the assumption
7 was if the letter did not come back, the assumption
8 was that it was received?

9 MS. APUNA: Yes.

10 COMMISSIONER CHANG: I guess
11 notwithstanding, again, whether they received notice
12 or not, you would agree that Land Use Commission,
13 again, has the ultimate authority whether to -- I
14 mean, we can offer to opt out or opt in all private
15 landowners, you would agree?

16 MS. APUNA: Yes, we agree.

17 COMMISSIONER CHANG: And this may be more
18 of a comment, but on the ag designation, I mean I do
19 agree, Ms. Apuna, with your comment about if the land
20 is zoned ag, it should be used in ag purposes and not
21 residential, unless it is associated with the ag.

22 I mean, Land Use Commission has taken some
23 very strong positions on farm dwellings, that it must
24 be associated with the ag purpose.

25 And I mean I do -- you know, I think this

1 important ag, IAL designation, if the State of Hawaii
2 is really committed to sustain ag, I mean, I think
3 this is the intent behind IAL is consistent with the
4 constitution and something I support. What the City
5 did, you know, would we have done some things
6 differently, maybe, but I am -- my concern was your
7 public involvement and your landowner notification.

8 There are other Commissioners who are much
9 more -- who will understand the criteria much better
10 than I, and have asked those questions.

11 So I have no other questions, Mr. Chair.
12 They have answered the additional questions I have.
13 Thank you.

14 CHAIRPERSON SCHEUER: Thank you very much,
15 Commissioner Chang. I note Commissioner Aczon
16 previously had said he had to leave the meeting.
17 Commissioners, further questions for the County at
18 this time?

19 COMMISSIONER WONG: Chair.

20 CHAIRPERSON SCHEUER: Commissioner Wong

21 COMMISSIONER WONG: I have some questions,
22 but, you know, I know you have questions also. So do
23 you want to go first before me?

24 CHAIRPERSON SCHEUER: I don't mind going
25 first, that's fine.

1 COMMISSIONER WONG: Thank you.

2 CHAIRPERSON SCHEUER: Aloha, Ms. Apuna.

3 I'm going to introduce my questions a
4 little bit with just some commentary.

5 You know, a year ago I think many of us, I
6 certainly was sort of scrambling, freaked out to see
7 whether or not I could get enough food in the
8 cupboards. It was a scary time at the start of the
9 pandemic, everything shutting down, and we weren't
10 sure where things were going.

11 It's not so far away that I don't remember
12 that. So I think for me one of the biggest tragedies
13 of the last couple days is that the basic goal in the
14 constitution that the people of Hawaii collectively
15 approved in 1978, that goal that the State shall
16 preserve and protect agriculture lands increasing
17 self-sufficiency and ensure the availability of
18 agricultural suitable lands.

19 We've lost sight of that in this
20 discussion. We have lost sight of that goal. That's
21 a really, really important goal, basic human need,
22 food, shelter, water, transportation, health care.

23 I think we have lost sight of those in the
24 last couple of days for a couple reasons. One is
25 what I think even the City might admit was not a

1 great outreach process, and many people would say is
2 a seriously flawed outreach process.

3 And the second is, we had a private law
4 firm, some private attorneys send out letters that I
5 think have really exploited peoples' fears regarding
6 those things.

7 And I'm particularly -- I got to note this,
8 because I really want to note this for the record.

9 There's a couple of people who were part of
10 the -- who actually love to publicly take credit for
11 passage of the IAL law, who have consulted or
12 testified in front of this Commission supporting
13 private landowners in their IAL designations.

14 And now in the letter from the direct firm,
15 were also then, apparently, part of the process of
16 whipping up small landowner concern over this very
17 same law, and it's cynical at best, to see that
18 that's occurring.

19 So my questions are going to be around
20 three main issues for you. First issue I need to
21 check in whether current County leadership is behind,
22 aware of, and endorsing, moving forward with this
23 process.

24 Second set of questions, most extensive set
25 really has to do with these claims from private

1 attorneys who have not themselves testified, but only
2 encouraged others to testify whether or not there is
3 any actual affect on people's private property rights
4 from an IAL designation by the County.

5 Third is, based on those answers, whether
6 or not even if the landowner communication was very
7 poor, whether there's been any due process concern.

8 So those are the three sort of areas of
9 questions.

10 First area about current County leadership,
11 we certainly have a new mayor and majority of new
12 members of the council. Is the current mayor aware
13 of, and has he endorsed moving forward with this
14 process at this time?

15 MS. APUNA: I can't state specifically that
16 he stated that yet, but I do understand that the
17 administrative is supportive of healthy farmers and
18 preserving and conserving agricultural land and
19 making sure it perpetuates (indecipherable).

20 CHAIRPERSON SCHEUER: But not on broad
21 goals, but specifically, you don't know whether or
22 not Mayor Blangiardi is supportive of DPP moving
23 forward with this set of lands and request to the
24 Commission?

25 MS. APUNA: We haven't -- the new

1 administration (indecipherable) to the mayor on the
2 IAL, no, we have not.

3 CHAIRPERSON SCHEUER: Secondly, is the
4 current council aware of this process going on, and
5 have they endorsed this process moving forward at
6 this time as they stepped into their leadership
7 roles?

8 MS. APUNA: I'm not aware of any
9 (indecipherable) -- to the council as far as IAL's
10 current use to council.

11 CHAIRPERSON SCHEUER: And then I'm really
12 grateful to Shar Poe for having raised this issue. I
13 just want to confirm there's no current past or
14 future plans at this point to communicate with the
15 neighborhood boards regarding this issue?

16 MS. APUNA: Not as of this moment. But I
17 completely understand Ms. Poe's concern, and it's
18 really a good suggestion. So I wouldn't say that we
19 wouldn't do it in the future, or in that communities
20 that are aware, and yeah, neighborhood boards are a
21 good way of getting that information dispersed.

22 So I won't say that we won't do it. But we
23 have definitely appreciated comments and direction.

24 CHAIRPERSON SCHEUER: I want to ask you
25 some questions, moving to the second area, about what

1 the actual effect, if any, is from potential County
2 designation of IAL through this process, through LUC.

3 Have you seen at least one letter sent out
4 by the direct law firm to landowners?

5 MS. APUNA: I did. I glanced through it.
6 I wasn't able to look at it closely, but I have seen
7 it.

8 CHAIRPERSON SCHEUER: Do you have general
9 impressions with regard to the assertions in the
10 letter?

11 MS. APUNA: I think they're trying to alert
12 landowners of potential issues, but I'm not sure that
13 they necessarily clearly state what that potential
14 implications are for IAL designation.

15 I think I spoke a little bit about this as
16 far as the occupancy of the farm dwelling under
17 205-45.5, it's a little more explicit, but not
18 necessarily far off from the farm dwelling definition
19 under 205-4.5

20 CHAIRPERSON SCHEUER: Specific point, can
21 you tell me if the land is designated as IAL in
22 205-45.5 now controls, how might it differ in any
23 substantive way?

24 MS. APUNA: The issue about you have to be
25 occupant, a family, immediate family must be

1 currently and actively farming the land, that's much
2 more explicit, and I think a testifier mentioned that
3 the children actively currently farming the land
4 based on the statute, plain reading that can be
5 interpreted that way. But sure, it wasn't the
6 intention or -- not sure, but the intention is
7 probably not to require children to be farming the
8 land. It could certainly (indecipherable).

9 COURT REPORTER: I'm having trouble hearing
10 with the background noise.

11 MS. APUNA: I'm sorry about that.

12 CHAIRPERSON SCHEUER: Do you want to tell
13 your co-workers to be quiet?

14 MS. WONG: I also wanted to add, you were
15 asking about other HRS IAL designation would affect
16 landowners, though in addition to what the Deputy
17 Director stated, their farm dwelling or employee
18 housing cannot occupy more than five percent of the
19 total IAL area controlled by the farmer or its
20 employees or employee, or 50 acres, whichever is
21 less, so there's also those conditions that would be
22 placed.

23 CHAIRPERSON SCHEUER: To that point, Dina,
24 there's been some public testimony of people who say,
25 you know, I have a fairly small lot which is mostly

1 occupied by my house now. Would they immediately be
2 in noncompliance upon designation of IAL?

3 MS. WONG: I guess it would depend how much
4 of their land is IAL.

5 CHAIRPERSON SCHEUER: So if the County has
6 recommended a small parcel, and over half the parcel
7 is occupied by a house, would they be at least
8 technically in violation of their IAL designation?

9 MR. YOUNG: There is a Section 205-8 --
10 this is Ray, by the way -- which is the section on
11 nonconformity, so one could interpret that with the
12 implementation of this map that those -- that have
13 been currently legally established as single-family
14 dwellings, for example, because the lots existed
15 prior to 1976. I think they would be able to
16 continue being a single-family dwelling even though
17 if they were designated IAL.

18 CHAIRPERSON SCHEUER: Would it, just
19 briefly on this line of questioning, which is
20 diverting from where I'm trying to go, however, say
21 they had to rebuild or wanted to modify, would, under
22 normal procedures, the City then kick them out of
23 being able to do so?

24 MS. APUNA: Not necessarily kick them out.
25 But I think they would be in violation of the law,

1 the ordinances, as they would be currently if they're
2 under Ag zone or Ag classified land.

3 CHAIRPERSON SCHEUER: So, Ms. Apuna, the
4 question, the core question is, do people have due
5 process rights that are, or perhaps have been
6 violated by not receiving fair notice during this
7 process?

8 And answering that question depends in part
9 on whether or not there is any material impact or not
10 from IAL designation. That's what I'm trying to get
11 at. What can you do to help me understand that?

12 MS. APUNA: Like I said, I think currently,
13 the current usage or current allowed uses in ag
14 regardless of IAL, requires or prohibits certain
15 uses.

16 So they do align pretty much with IAL, the
17 same restrictions.

18 So if there are a few little slight
19 differences, but generally, I don't think there's a
20 great change in the landowner's ability to use their
21 land.

22 So I don't think -- there's no taking,
23 certainly doesn't rise to a level of a taking or a
24 change in zoning. I think we talked about that.
25 There's no change in their entitlement in the zoning

1 at this point.

2 But there are some maybe finer points as
3 far as the farm dwelling occupancy, and that I think
4 they're required to provide an ag plan if it's a
5 uniformed dwelling, but I don't think it rises to a
6 level where IAL designation would be significantly
7 interfering with their use of their land.

8 CHAIRPERSON SCHEUER: In regards to that
9 position, a question was asked earlier by
10 Commissioner Giovanni about whether or not IAL
11 pending designation, or even existing designation
12 might appear in the title report.

13 Are you aware of whether or not for
14 existing IAL lands it appears in title reports?

15 MS. APUNA: I'm not aware, but I think it
16 would be.

17 CHAIRPERSON SCHEUER: That would give some
18 indication whether the private sector views it as
19 materially meaningful encumbrance on the land.

20 MS. APUNA: Even in our -- in the decision
21 and orders the Commission requires recordation.

22 CHAIRPERSON SCHEUER: I don't believe so.

23 Go back to the letter from the direct law
24 firm. Were there other general impressions you had
25 from the letter or points where you found

1 disagreement?

2 MS. APUNA: I would just generally say
3 that, you know, the people that receive these
4 letters, it's good that they're alerted, but I would
5 just be cognizant of maybe the motives that are
6 involved in these types of letters.

7 What are they trying to really do? Really
8 trying to alert or trying to do something more or
9 different?

10 CHAIRPERSON SCHEUER: Could you expand on
11 that?

12 MS. APUNA: Well, if they're successful in
13 convincing people that this IAL program is trying to
14 take away rights from people, or is a land grab,
15 which it is not, they might find -- they might feel
16 that they need a lawyer to represent them and to
17 really protect themselves, but the bottom line this
18 is not the intent of the IAL law.

19 It actually could benefit and help people
20 use their agricultural land to continue farming, or
21 to allow them to get into farming.

22 It's not meant to restrict rights or to
23 take their land away in any sort.

24 CHAIRPERSON SCHEUER: Do you know the word
25 "barratry"?

1 MS. APUNA: No.

2 CHAIRPERSON SCHEUER: I think it's like a
3 0.50 cent word for ambulance chasing.

4 Is that what you were trying to suggest?

5 MS. APUNA: Yeah.

6 CHAIRPERSON SCHEUER: Can I ask you, there
7 was a lot of testimony yesterday. Some of the
8 testifiers certainly indicated there's no
9 agricultural activity on their lands right now. Some
10 indicated they are renting out their properties for
11 residential purposes. Sometimes this was due to
12 simply lack of available resources to do farming,
13 such as water.

14 What does the City currently do to enforce
15 noncompliance? Two questions: Is that compliant
16 with existing agricultural zoning, and if not, what
17 does the City do to enforce?

18 MS. APUNA: Again, if you're not farming
19 your land and don't have any agriculture on your
20 land, probably under the law and ordinances under the
21 statute, you're not complying with the law. However,
22 we're not going out there and putting people in jail
23 for this.

24 A lot of what we do, as far as enforcement,
25 is complaint driven. So if your neighbor thinks that

1 you're not doing the proper thing on your land, you
2 might get a complaint. We might investigate. But
3 even investigations and ability to have sufficient
4 evidence to truly enforce is a challenge for the
5 County.

6 As far as any -- I think people are
7 admitting that they aren't in compliance, but I don't
8 think they should fear we are going to run out and go
9 and cite them.

10 CHAIRPERSON SCHEUER: So if somebody is,
11 for example, farming on their property right now, if
12 they are farming now, and land is designated as IAL,
13 does it have any meaningful affect?

14 MS. APUNA: No.

15 CHAIRPERSON SCHEUER: But if they're not
16 farming and not compliant, there is potentially an
17 affect?

18 MS. APUNA: Potentially, slightly. But I
19 think it's the same as the non-IAL designation.

20 CHAIRPERSON SCHEUER: So I guess my
21 question for you really is, what's the standard in
22 which somebody's due process, in the City's opinion,
23 what is the standard in which the City, if somebody's
24 due process rights might rise -- you say "slightly"
25 or "slightly affected", is that enough?

1 MS. APUNA: Just a matter of looking
2 closely at what 205-45.5 means and what is currently
3 required or not required.

4 I think there's just something there that
5 even I haven't completely come to, you know,
6 determination on. But other than that, the
7 landowners on ag, they are currently permitted to
8 have ag, farm their land. That does not change with
9 IAL designation. They can continue to use their land
10 as currently zoned or classified.

11 So in that respect, I don't think there is
12 any kind of taking or rights or level of taking or
13 interference with their rights to farm their land as
14 they currently are allowed.

15 CHAIRPERSON SCHEUER: So you believe this
16 Commission should not -- sorry for the double
17 negative -- we should not accept the proposal from
18 the County, because of the potential due process
19 concerns that some people may have alluded to?

20 MS. APUNA: Yeah. I think that they should
21 be free to accept the County's proposal without fear,
22 generally without fear of a genuine threat to due
23 process.

24 CHAIRPERSON SCHEUER: Last questions for
25 me, for at least right now.

1 You know, I know that like after carrying
2 this burden for decades, some people in the City
3 would be quite happy to hand it over to us. But, you
4 know, if we think back to the constitutional goal
5 that the people of Hawaii collectively set for
6 ourselves, just putting the classification on the
7 land in and of itself does not achieve any of our
8 goals of protecting ag land, and increasing
9 self-sufficiency, promoting diversified agriculture.

10 What will the City be doing post -- should
11 the Commission accept this -- to support, encourage,
12 inform, better engage owners both of IAL property and
13 of non-IAL properties in order to fulfill those
14 constitutional duties that the City, as a subdivision
15 of the State, also holds?

16 MS. APUNA: I think the City has learned a
17 lot from the last two days, and likes the suggestion
18 to the neighborhood boards, and do other outreach,
19 are well taken, and I think we can move forward and
20 try to implement a lot of those outreach efforts to
21 educate the public about IAL.

22 And additionally, the other part of the IAL
23 is creating the incentives and protection to the
24 farmers. So we have been doing that, and I think we
25 will continue to try to develop those programs to

1 really create those opportunities for farmers and to
2 make farming more robust.

3 CHAIRPERSON SCHEUER: Thank you very much,
4 Ms. Apuna, as well as Mr. Wong -- or Ms. Wong and Mr.
5 Young, appreciate your responses.

6 Commissioner Giovanni.

7 COMMISSIONER GIOVANNI: Chair, I have a
8 quick followup based on your line of questioning for
9 Ms. Apuna.

10 If I understood correctly, parcels of land
11 that are zoned agriculture today and are not doing
12 farming, City and County would not take enforcement
13 action unless there was a complaint; is that correct?

14 MS. APUNA: Yeah, generally speaking,
15 that's our practice.

16 COMMISSIONER GIOVANNI: So back to my
17 concern about the pukas that are in the sea of IAL
18 land, so if a small parcel that happened to be
19 located in the sea of -- a large sea of IAL land, and
20 on this -- and it was designated IAL by this process
21 that we're talking about, and there was a resident on
22 there, and they were doing no farming, and the
23 landowner that surrounded it, the big sea, filed a
24 complaint with City and County.

25 What action would the City and County take

1 against the small landowner?

2 MS. APUNA: I think we would -- we take all
3 complaints, and we would probably send an
4 investigator out there and look at what the land is
5 zoned, but it really depends on what was happening or
6 not happening on that land.

7 But I think it depends. It has to be case
8 by case, because if it's too small for them to farm
9 on, I think we would consider that as well.

10 COMMISSIONER GIOVANNI: My question is:
11 What kind of enforcement actions are in your quiver
12 to use? And it goes to the question that the Chair
13 raised about the underlying land rights of the owner
14 of the small parcel.

15 There's a complaint. You investigate.
16 What potential actions even exist, enforcement
17 actions?

18 MS. APUNA: I guess, if understand the land
19 use ordinance, if they are doing something other than
20 farming, or something that's not permitted within the
21 AG-1 or AG-2 zone, and it's activities that are
22 evidence enough to write up a citation, I think we
23 could write up a citation.

24 I defer to Ray and Dina if they have more
25 or better understanding about how we would or if we

1 could cite people in the Ag District.

2 COMMISSIONER GIOVANNI: My question is a
3 little bit the opposite consideration.

4 What if they're not farming? They're just
5 living there. And there's a complaint by the
6 surrounding landowner that they should be farming.
7 And you want to -- you conclude that that's true.

8 What kind of enforcement actions are
9 available to the County at that point?

10 MS. APUNA: So I think we allow them time
11 to correct any violation, and then if they're not
12 able to correct any violations, there are fines that
13 can be implemented.

14 COMMISSIONER GIOVANNI: Fair enough. Thank
15 you. No more questions, Chair. This time I mean it,
16 no more questions.

17 CHAIRPERSON SCHEUER: I'll say the
18 Commissioners, as a whole, including myself, are very
19 bad at sticking to that promise.

20 And to that point, Commissioner Chang.

21 COMMISSIONER CHANG: I'm a great example of
22 that. But that was just -- Commissioner Giovanni
23 just triggered something.

24 I want to clarify, Ms. Apuna, because there
25 are people who are listening to our hearing, and what

1 I understand is, one, if someone is just living on
2 the property right now, and it's zoned Ag, whether
3 it's designated IAL or Ag, you would apply the same
4 -- the enforcement action could be the same, right?

5 MS. APUNA: Yes.

6 COMMISSIONER CHANG: So that the IAL
7 doesn't create additional -- or make them more --
8 create a higher requirement that they have to be
9 farming or exclude them from this requirement; right?

10 MS. APUNA: That's right.

11 COMMISSIONER CHANG: And what I heard Mr.
12 Young say is that in some instances -- that's why you
13 said case by case -- there could be a situation where
14 some of these people may be grandfathered in if their
15 resident was there before?

16 MS. APUNA: Yes.

17 COMMISSIONER CHANG: Some of these people
18 who live in Waianae or Waimanalo, I'm sure they're
19 trying to figure out what do they do now. Should
20 they get a lawyer?

21 You know -- yeah, I just don't want to
22 cause unnecessary alarm. IAL doesn't necessarily
23 make them more susceptible to enforcement. It's the
24 same as if they just had Ag land as well, and weren't
25 doing farming?

1 MS. APUNA: Right. If the Commission
2 accepted our recommendation today, and then it
3 actually designated all of the land that we've
4 recommended, we wouldn't on that date therefore go
5 after landowners based on the IAL designation.

6 Nothing changes between today before the
7 IAL is designated and the day after it is designated
8 by the Commission.

9 COMMISSIONER CHANG: Let me ask you this,
10 the opposite way.

11 Let's say the Commission decides to
12 withdraw a parcel that is less than an acre, and all
13 they're doing is residential, but it's zoned Ag, if a
14 complaint comes in from adjoining landowner that
15 they're not doing Ag, even if they're not IAL, you
16 still could take enforcement action; is that correct?

17 MS. APUNA: That's correct, yes. The
18 agricultural use will not change, you know, the
19 ability to use, or the requirement to use your land
20 for agriculture does not change based on the IAL
21 designation.

22 COMMISSIONER CHANG: Okay, thank you.

23 CHAIRPERSON SCHEUER: Commissioners?

24 Commissioner Cabral.

25 VICE CHAIR CABRAL: I'll try and be nice,

1 because you've done such a good job to help me. I
2 appreciate the staff here that sent over the letters,
3 and I appreciate our land use staff that emailed them
4 to us, so I got them on the last break.

5 So the mail-outs that went to these
6 individuals, went out December 29, 2016, and then
7 there's two different ones that went out November 8,
8 2017, and then a final undated one came long ways
9 that, I guess, it's in response to those who made
10 comments.

11 Anyway, none of them are personalized. So
12 they're generic junk mail in a lot of ways. So
13 nowhere does it identify on the two -- and I'm
14 assuming that that's the way it went out, because
15 it's set up -- it's not like it's set up with the
16 ability to add an address.

17 So I really, in terms of process, have to
18 even question.

19 And then, two, computers nowadays that
20 probably the address was so generic with little codes
21 on it, I mean, you know, look at how much junk mail
22 we all get. I really have to question, you know.
23 Apparently all of these 100-plus people that
24 testified or were in the audience yesterday, many of
25 them say they never got notified, and yet staff is

1 saying they all got it. We all sent them something.

2 But I'm going to say, probably everybody is
3 telling the truth, because getting it and reading it,
4 are two completely different things.

5 In line two: We're notifying you directly
6 because our draft maps include property that you own,
7 based on information available to us.

8 Again, not real personal to me. So I
9 really have to question this process. I mean I spend
10 money. I personalize everything. I sign everything
11 in blue ink so people know it's original. I'll hand
12 address envelopes.

13 This was not well done to make sure people
14 got their attention when this mail came to them, and
15 to have it happen over a five-year period is to me
16 really ineffective. That's as nice as I can be.
17 Thank you very much.

18 CHAIRPERSON SCHEUER: That was very nice,
19 Commissioner.

20 Commissioners, are there further questions?

21 Commissioner Wong. I'm going to note that
22 we're close to an hour in again.

23 COMMISSIONER WONG: Do you want to take a
24 break and come back, I'll start my questioning?

25 CHAIRPERSON SCHEUER: Yeah. If we are to

1 get through with this docket today, we will still
2 need to hear from Office of Planning.

3 How long, OP, do you intend to --

4 MS. KATO: I would assume about 10,
5 15 minutes.

6 CHAIRPERSON SCHEUER: Okay. It's 1:21.
7 Let's take a break until 1:31 and we'll come back and
8 recognize Commissioner Wong then. We're in recess.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: It's 1:34. We are
11 back on the record. Commissioner Wong has more
12 questions for the City.

13 EXECUTIVE OFFICER: Excuse me, Chair, I
14 believe OP needs to be represented by counsel. I
15 don't think we can proceed until OP's counsel is
16 here.

17 CHAIRPERSON SCHEUER: Okay.

18 (Off the record.)

19 CHAIRPERSON SCHEUER: Now we can start, Ms.
20 Kato is here.

21 MS. KATO: Sorry.

22 CHAIRPERSON SCHEUER: We are back on the
23 record. It is 1:36. Questions from Commissioner
24 Wong.

25 COMMISSIONER WONG: Thank you, Chair.

1 Good afternoon, Ms. Apuna, and again, Ms.
2 Wong and Mr. Young.

3 First off, Mr. Young -- well, just DPP in
4 general, thank you for sending us that information
5 that I requested, so just thank you again.

6 And the questions I have is kind of
7 interesting in the sense that one of the public
8 witnesses the other day was -- well, plantation
9 counts as part of the IAL process for this County?

10 MR. YOUNG: This is Raymond Young. There
11 were, I think, at least two cases where plantation
12 tents were being included, one from the testifier
13 yesterday, and another one just below the Kunia Loa
14 Farms. And one that was from the person who
15 testified yesterday.

16 On that spreadsheet that I emailed to Land
17 Use Commission staff and the Office of Planning
18 staff, it shows that TMK with multiple CPR's. Their
19 owners were listed in our 2016 mail-out.

20 And I understand that the actual contents
21 of the mail does not address the recipient, but the
22 envelopes do. So if I received, in my opinion, I
23 receive a government letter addressed to me and I
24 open the contents, I'm going to read what's there,
25 regardless if the content didn't say my name.

1 If it's important enough for the government
2 to send it to me directly with my name on the
3 envelope, I would pay attention.

4 COMMISSIONER WONG: So I got a question.
5 I'm unsure, so please explain this one to me.

6 I thought plantation tent were
7 grandfathered. We cannot touch them, or am I
8 mistaken?

9 MR. YOUNG: I don't believe the IAL law
10 exempted privately-owned plantation camps. It did
11 say State property is going to be excluded, because
12 they going to do their own identification, and other
13 properties not under the City's jurisdiction, like
14 those of the federal government, Hawaiian Home Lands,
15 HCDA, those were all excluded from consideration.

16 But the private ones, such as those CPR's
17 on that single lot, single parcel, I think it was
18 7-1-001:011, Parcel 11 out in Wailua, was included as
19 with the one up in Kunia right off of, I think it was
20 Kunia Road.

21 COMMISSIONER WONG: So the question I have
22 -- please explain to me. This is just for my own
23 knowledge, edification.

24 CPR's is like condominium units, right, or
25 all these same people on one TMK, so how does -- that

1 doesn't seem like they'll be like ag land, so why
2 wasn't that like kicked out?

3 MR. YOUNG: The process does not exclude
4 condominiums. In fact, many years ago when sugar and
5 pineapple plantation failed to begin -- I mean,
6 started failing for economic reasons, a lot of these
7 large lots were sold by their landowners for which
8 investors bought them and started creating condos
9 with them and sold off these condos.

10 And so there's a number of these large lots
11 around the island which have been separated by
12 condominiums, and many have been sold off. Again,
13 these are privately owned lots, or so to speak, CPR's
14 that are in the Ag District that supposed to be doing
15 ag.

16 Generally not allowed to construct single
17 family residents, and if they are allowed to
18 construct farm dwellings, they have a limitation as
19 to how many per the overall parcel. And they're not
20 allowed generally to have one farm dwelling per CPR.
21 Says they're not legally subdivided.

22 COMMISSIONER WONG: It just doesn't seem, I
23 guess, just local knowledge or just knowledge, I
24 think of, when I hear a CPR, I think of high-rise
25 townhouses, and it doesn't make sense, I mean just

1 logical sense to me to say, hey, even though it's ag,
2 but there's a CPR on it, why are you even hitting
3 these groups. You know what I'm trying to say?

4 MR. YOUNG: I understand where you're
5 coming from, Commissioner, but the opposite also
6 holds true. If we were to exclude these big large ag
7 lots with good water or soil and other growing
8 conditions just because it's a CPR, that would send a
9 message for all these large lot investors to CPR all
10 their lots to avoid getting an IAL designation. I
11 don't think that's the intent of the law.

12 COMMISSIONER WONG: Okay, I understand from
13 about the opposite side too. Thank you.

14 The other question I have, this is just for
15 my own edification again, is right now, we're talking
16 about ag land, right? So it's a State zoned ag land.

17 Are some of the City properties or City
18 lands that we're talking about more zoned something
19 else besides Ag, like Urban, Rural, Conservation --
20 you know, I mean I know about the four that we deal
21 with, but City and County has different zoning.

22 So does -- you guys using a different
23 zoning than ours right now for these properties?

24 MR. YOUNG: Yes, because once the Land Use
25 Commission classifies the State lands into Ag, both

1 the County and the State share within its land use
2 jurisdiction.

3 So we have various zoning districts within
4 the State ag, starting with most restrictive being
5 AG-1, which has minimum five-acre lot, which has the
6 most obnoxious uses in terms of Ag could locate to,
7 are then AG-2, which is less restrictive because the
8 lot size minimums are now two acres, but you
9 couldn't, for example, put a piggery on AG-2.

10 And then the next level up in terms of
11 higher level of zoning would be a Country District,
12 minimum lot size being one acre. But the uses could
13 be either/or residential or agriculture.

14 And then finally, after that, we do have
15 some parcels in P-2 General Preservation District
16 which are also in the State Ag District.

17 So the Preservation District would be more
18 restrictive than those of AG-1 or Ag-2, but they also
19 still allows agricultural use.

20 Some of the problems that come from that,
21 you know, are like those preservation lands within
22 Royal Kunia where it was supposed to be developed as
23 a golf course, but it ended up not being developed as
24 golf course, and the investors have started putting
25 in Ag structures for which we have been hearing a lot

1 of complaints from the surrounding residential lots.

2 Although I believe those are Urbanized
3 already, so it's within the jurisdiction of the City
4 now. But, essentially, the belief is that we have
5 multiple zoning types within the Ag District.

6 COMMISSIONER WONG: So going back to the
7 CPR's again, which zoning would they be in for the
8 City, not for the State?

9 MR. YOUNG: Well, it depends which
10 particular site. I'm looking at the one that the
11 testifier was referring to, and the zoning there is
12 AG-1, and that TMK -- let me call up the TMK so we
13 can know exactly which one it is.

14 It's TMK 7-1-001:011 which has -- my first
15 glance, like about 30 different owners. I imagine
16 there's a lease somewhere around there, 30 CPR's.
17 Again, zoned AG-1, so minimum lot size for that is
18 five acres. Let me see what the size of that lot is.

19 CHAIRPERSON SCHEUER: I'm losing the thread
20 here a little bit.

21 COMMISSIONER WONG: I just wanted to know
22 about the CPR's, why you have 20 or 30 on one
23 property, and if it's, you know -- what is that
24 zoning? Just for my edification, Chair.

25 The only other question I have is more of a

1 statement. You know, we're talking about the TAC,
2 which is Technical Advisory Group, and even focus
3 groups that you went out in the field to see. I was
4 looking at where the locations were, and some of the
5 locations were kind of interesting that like, for
6 example, one is by my backyard in Aiea, and we don't
7 have pretty much no farming.

8 So I was wondering why didn't you have it
9 in the district, you know, let's say in Waianae? In
10 Haleiwa? Where those -- the lands we're talking
11 about now. I just was wondering why didn't you have
12 it out there?

13 CHAIRPERSON SCHEUER: Why were the
14 community meetings not held in the areas with high
15 concentration of farm land?

16 COMMISSIONER WONG: Thank you, Chair.

17 CHAIRPERSON SCHEUER: City, were you going
18 to respond to the comment by Commissioner Wong?

19 MR. YOUNG: Personally I'm not sure why the
20 discussion ended up in those particular areas. I
21 imagine it had something to do with how the contract
22 was worded.

23 We tried to do as many as the contract
24 allowed in the community. For example, we did have
25 some out in Haleiwa, some in Kapolei, but due to the

1 limitations of the funding, we were not able to have
2 a meeting in every neighborhood, for example.

3 COMMISSIONER WONG: That's all I need to
4 know. Thank you, DPP; and thank you, Chair

5 CHAIRPERSON SCHEUER: Okay. Commissioners,
6 are there further questions for the City at this
7 time? If there are, that's fine; if not, we will go
8 onto Office of Planning.

9 Commissioner Chang.

10 COMMISSIONER CHANG: I promise this is my
11 final question.

12 Ms. Apuna, as a practical matter, if the
13 Land Use Commission determines the City did not
14 comply with the process and remands this back to the
15 City, what will you do?

16 MS. APUNA: Well, hopefully if you do
17 remand it, that the Commission will provide us very
18 explicitly how we did not meet those standards, and
19 how you think that we should proceed in order to meet
20 those standards.

21 I think we leave it up to you to point out
22 exactly how we have not done an adequate job and then
23 we would do what is --

24 COMMISSIONER CHANG: Because I was
25 wondering as a practical matter, will you redo this

1 process all over again?

2 MS. APUNA: I hope not. But I mean, if
3 there's parts that would need to be redone, if we
4 haven't met the standards, then I think we would do
5 that. I can't give a definite answer at this time.

6 COMMISSIONER CHANG: All right. Thank you.

7 CHAIRPERSON SCHEUER: I will have a brief
8 follow up to Ms. Apuna from that question,
9 Commissioner Chang.

10 You know, having sat on this Commission now
11 six-and-a-half years, the hardest projects are the
12 ones where members of the public still have basic
13 questions about the issue in front of us, because
14 whoever the proponent is, whether for rezoning,
15 district boundary amendment, or some other action
16 they have not done their outreach.

17 The easy ones are when the outreach has
18 been done so well that people aren't here for the
19 first time to learn about what is going on, but to
20 support or oppose.

21 Even when like there is some opposition and
22 some support, our job is very much -- we're able to
23 concentrate on the most important things when there's
24 not confusion over what the project is, what the
25 impact is, and what the issues are.

1 So I've heard what you said you would like
2 us to specify in what ways that you may or may not
3 have reached the criteria under 205, but the way I
4 see the opinion of this Commission was you might have
5 technically met the requirements, but we would rather
6 think that, you as the local agency, are better
7 equipped to do a bit more outreach before coming back
8 to us.

9 Would that not be within the realm of
10 something this Commission could do in order that we
11 can have a well-supported and effective process when
12 you next come to us up?

13 I remember a certain candidate saying:
14 "It's about you".

15 MS. APUNA: It's also just about a statute.
16 You know, I mean, I hear Commissioner Cabral and
17 other Commissioners that aren't happy with the result
18 necessarily, but I think it's largely the process
19 that we followed. And I don't think we can be dinged
20 for following the process, and the result wasn't what
21 you had expected or wanted.

22 CHAIRPERSON SCHEUER: If I may,
23 respectfully.

24 You can follow the process by checking the
25 boxes, and if -- one of your earlier comments was,

1 well, consultation with the neighborhood boards is
2 not technically required. And like, yeah, okay, so
3 as you followed the process, but nobody here would
4 debate whether or not that would be a good thing to
5 do.

6 MS. APUNA: Sure. But as far as statutory
7 requirement, we need to just meet the statute. If
8 the Commission, or if the statute required more,
9 obviously we would have met that.

10 I understand, yeah, we could have done
11 more. We did more than what the statute had
12 required, but I think our obligation here is to meet
13 the requirements of the statute.

14 MR. YOUNG: May I say something? This is
15 Raymond.

16 CHAIRPERSON SCHEUER: Go ahead.

17 MR. YOUNG: I see where this is all
18 heading, but, you know, the practical nature of doing
19 this is very difficult based on the funding, the
20 resources that we have.

21 Let's say we were to start this process of
22 notification again, if you were to send it back to
23 us, we would need to have meetings with all the
24 neighborhood boards affected with the limited staff
25 we have and the funding we have.

1 Then we would have to do another mail-out,
2 multiple mail-outs, and that takes resources and the
3 biggest problem is the amount of time this is all
4 going to take. Look how long it took us to go
5 through this process and to get to you. Would we
6 have to then go back through the entire thing, go
7 through City Council, come up to you again.

8 The logistics would end up giving you
9 similar kinds of errors like we have experienced in
10 the past. The parcel gets subdivided. Owners
11 change. Parcels are dropped. People move. So it
12 won't be error free.

13 I mean we can try to minimize it by
14 reducing the amount of time we spend in redoing this
15 notice or outreach again, but I don't know if the
16 results would be much better than what we have now.

17 You know, it's one thing to say we have all
18 the technology to do it, but actually applying it is
19 a whole different story. It takes a lot of effort,
20 and it takes a lot of time.

21 CHAIRPERSON SCHEUER: Respectfully -- your
22 response and I appreciate it. It's my --

23 (People over-talking each other.)

24 MS. WONG: May I add. I understand that
25 the people that testified yesterday, you know, they

1 said they didn't get notification. A lot of
2 misunderstanding of what IAL would mean for them.

3 But I don't necessarily think the basic
4 questions of what this means was not conveyed to the
5 general, to the public, because out of all those
6 folks that were notified, 1800-plus people, I don't
7 know the exact number that testified, but that's
8 still, you know, a small fraction of the larger
9 number.

10 And I think with community outreach
11 experience, it tends to be folks that are opposed
12 that are going to come in, or that they're confused,
13 while those that understand what it means are not
14 necessarily going to be submitting testimony.

15 That's just my personal observation.

16 CHAIRPERSON SCHEUER: Thank you, Ms. Wong.

17 MS. APUNA: Chair Scheuer, I can add. I
18 mean, if it would be helpful, I think we can work
19 with the neighborhood commission and put out this
20 information of what's happening currently. We can
21 definitely do that.

22 I know that the board's meet once a month.
23 We can put that out, and let them know the status of
24 the IAL, what it means, and basically do that. That
25 would be helpful to the Commission.

1 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
2 Commissioner Ohigashi followed by
3 Commissioner Cabral.

4 COMMISSIONER OHIGASHI: I'm going to just
5 say I think that this chain of argument or statements
6 would be much better reserved before we make the
7 decision, and I have some things to say about why
8 Maui County doesn't do it, because it's unfunded
9 mandate.

10 CHAIRPERSON SCHEUER: Thank you.

11 COMMISSIONER OHIGASHI: I think we should
12 try see if we get evidence.

13 CHAIRPERSON SCHEUER: Thank you.

14 Commissioner Cabral.

15 VICE CHAIR CABRAL: Thank you very much
16 everyone. And I am clearly appalled at the process.

17 But what I think that when we say, maybe we
18 you should go back to square one, I would go all the
19 way back to selecting the properties. This idea that
20 you throw a huge net over everything in the general
21 vicinity of, that may and probably has an A
22 designation, some of which apparently can have a dual
23 designation that allows for ag and Country or
24 something. I don't have that on my items.

25 But so the fact that you include all these

1 things, but Mr. Young indicated that based on data
2 that's available to you, you can know what the
3 rainfall is, you can know the soils on the property,
4 you can know the incline and things like that.

5 That would be where to start. And I mean,
6 I can appreciate that there's going to be -- I manage
7 properties. I get it. People are going to be pissed
8 off because the neighbor has chemicals, and then they
9 don't want it, they're residential. But that's what
10 you've already inherited.

11 You cannot go back 50, 60, even more years
12 before all this land started getting chopped up. All
13 of this land is what we have got to deal with now.
14 The fact that it's not an ideal situation doesn't
15 mean you can just suddenly -- I mean, a lot of these
16 properties were owned by families before statehood,
17 before there was zoning, before anybody cared what
18 you did.

19 So now to force them and say there's one
20 more level of what you'll be in violation of. I
21 don't know --

22 CHAIRPERSON SCHEUER: Did you have a
23 question at this point?

24 VICE CHAIR CABRAL: No, I have a
25 recommendation. If we are going to look at this,

1 they don't just go to neighborhood boards to say we
2 checked off another thing, but look at the land they
3 select to see if they're really ag lands or not.

4 CHAIRPERSON SCHEUER: Thank you for your
5 statement.

6 Are there further questions for the City at
7 this time? If not, bearing in mind the good advice
8 of Commissioner Ohigashi, we should continue onto the
9 evidentiary portion of our docket.

10 Are there further questions for the City at
11 this time? If not, Ms. Kato, let's continue with
12 Office of Planning's presentation.

13 MS. KATO: Alison Kato, Deputy Attorney
14 General for Office of Planning.

15 Thank you, Commissioners, for allowing us
16 to present our comments for today.

17 EXECUTIVE OFFICER: Mr. Chair, if I may.

18 For everyone's -- we just discovered that
19 there is an islandwide power outage on Kauai, which
20 is why we do not have Commissioner Giovanni.

21 CHAIRPERSON SCHEUER: That is problematic.

22 EXECUTIVE OFFICER: We are still recording
23 this. We can continue, because we do have quorum.
24 It may be at your discretion on whether or not you
25 would like Commissioner Giovanni involved with

1 decision-making. In that case, we could defer
2 decision-making until a later date, but we can
3 continue the hearing.

4 CHAIRPERSON SCHEUER: So if I may, with the
5 forbearance of OP, who had just planned to start, I
6 would like to assess the progress of our proceedings
7 right now.

8 I anticipate -- I'm not suggesting this or
9 urging any of my fellow Commissioners -- but I
10 anticipate that there may be certain questions that
11 will arise when we enter into deliberations on this
12 matter, for which we will want to go into executive
13 session to seek the advice of our counsel regarding
14 our powers, duties, privileges and immunities in
15 regards to the designation of IAL and the process
16 that's before us.

17 There is a lot of people waiting in the
18 room, and that's a lot of people to wait while we go
19 into executive session.

20 In addition, we have unfortunately lost
21 Commissioner Aczon as well, who would be helpful in
22 our deliberations as well as Commissioner Giovanni
23 who is now inadvertently, due to matters not within
24 his control, no longer able to participate.

25 Frankly, I'm concerned on whether or not we

1 can get five votes in any particular direction, given
2 just the tenor of the comments and questions from our
3 fellow Commissioners.

4 So my inclination is to proceed with the
5 presentation from Office of Planning, but at the
6 conclusion of any presentation from Office of
7 Planning and questions, we would not directly move to
8 deliberations on this matter, but we would defer
9 deliberations until we next gather as a Commission.

10 COMMISSIONER WONG: Chair, I agree on that,
11 but also would like to just say that because
12 Commissioner Aczon and Commissioner Giovanni didn't
13 have a bite at the apple with OP, they're allowed to
14 review the recording, then maybe have a bite at the
15 apple with them, ask questions.

16 CHAIRPERSON SCHEUER: In that case, the
17 recommendation would be that we would not actually
18 close the evidentiary portion of the proceeding, but
19 leave it open for the narrow purpose of further
20 questions from the Office of Planning from the two
21 absent Commissioners.

22 COMMISSIONER WONG: Yes, Chair, if that's
23 possible.

24 CHAIRPERSON SCHEUER: Commissioner Chang,
25 did you have something to say?

1 COMMISSIONER CHANG: I would support your
2 recommendation that we permit OP to proceed, and then
3 call a recess to permit the other Commissioners to
4 participate.

5 CHAIRPERSON SCHEUER: Well, it would be, I
6 think, technically not a recess, because it would be
7 the end of our hearing for today. So we would
8 adjourn, and it would come up at our next hearing.

9 Thank you. So with that, thank you for
10 your forbearance, Ms. Kato, here on your first time
11 before us, we appreciate it.

12 MS. KATO: Thank you. Rodney Funakoshi
13 from Office of Planning is here, and he's going to
14 present Office of Planning's comments.

15 And also want to mention that the
16 Department of Agriculture has someone here, Earl
17 Yamamoto who would like to present comments, if
18 possible.

19 CHAIRPERSON SCHEUER: So we should admit
20 Mr. Yamamoto. I will let you in.

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

23 MR. FUNAKOSHI: Yes.

24 CHAIRPERSON SCHEUER: And I'm admitting Mr.
25 Yamamoto as panelist as well.

1 CHAIRPERSON SCHEUER: Please proceed.

2 RODNEY FUNAKOSHI

3 Was called as a witness by and on behalf of the
4 Office of Planning, was sworn to tell the truth, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 MR. FUNAKOSHI: Good afternoon, Chair and
8 Commissioners. Rodney Funakoshi from State Office of
9 Planning. I'd like to present OP's comments on the
10 matter before us today.

11 An IAL designation signifies the resource
12 value of the land. Is the parcel capable of
13 producing sustained high agricultural yields?

14 Does it contribute to the State's economic
15 base and local food security?

16 Is the parcel needed to assure the
17 long-term availability of agricultural lands?

18 An IAL designation helps meet the State's
19 constitutional mandate to protect the State's
20 agricultural resource base. An IAL designation
21 discourages the fragmentation of high quality
22 agricultural lands and the conversion of these lands
23 to non-agricultural designation seeks to maintain
24 affordability of agricultural land. It does not
25 require that the land be currently used for

1 agriculture.

2 The Office of Planning has been charged by
3 the Legislature with updating the State's 2050
4 Sustainability Plan for the decade of 2020 to 2030
5 and integrating sustainable development into land use
6 planning.

7 Sustainability means, in part, using
8 Hawaii's limited resources sustainably in the
9 present, while preserving those resources for future
10 generations. One of those limited resources is
11 highly productive agricultural land.

12 IAL designation is a tool for protecting
13 those lands for future generations who will be living
14 with climate change, and the need for a locally grown
15 food supply as natural disasters threaten to isolate
16 Hawaii from imported food.

17 Oahu is especially vulnerable since almost
18 75 percent of Hawaii's residents live on Oahu. Food
19 grown on Oahu does not need to be transported by air
20 or water in the event of a natural disaster that
21 blocks access to our harbor and airports.

22 OP has provided comments and
23 recommendations on the process and maps for the
24 City's IAL submittal in our February 10, 2021
25 comments to the LUC. OP questioned the inclusion of

1 State lands, small lots and lands with steep slopes,
2 which would constrain commercial farming. These
3 issues underlie some of the concerns raised by public
4 testifiers in yesterday's hearing.

5 This is the second City submittal of its
6 IAL recommendations. Note that two-and-a-half years
7 ago in August 28, 2019, the City Council submitted
8 its IAL Resolution 18-233 CD1, FD1, and associated
9 files.

10 The Land Use Commission staff, by its
11 letter of October 16, 2019, to the City Council,
12 stated that the City's submittal did not meet the
13 requirements for processing as set forth in HAR 15-15
14 Subchapters 14 and 17.

15 It was clear from the testimony yesterday
16 that many people did receive notice of the City IAL
17 process. Could the City have done more public
18 outreach? Possibly, but planning processes cannot
19 ensure that all residents and landowners will
20 participate.

21 The LUC has the latitude under Chapter 205
22 to accept the IAL recommendations in part: To
23 exclude or include parcels for IAL designation. OP
24 and DOA provided recommendations in their letters
25 submitted in February as to what lands could be

1 excluded.

2 OP's position is that the City has met the
3 applicable statutory and procedural requirements in
4 developing its recommendations. The City's IAL
5 process included.

6 * Consultation with stakeholders,
7 landowners, agencies, agricultural interest groups.

8 * Development of a methodology for
9 identifying agricultural lands and IAL
10 lands through a Technical Advisory
11 Committee of which OP was a member.

12 * A public information process, including
13 Notification to affected landowners.

14 It is recommended that the LUC acknowledge
15 the efforts of the City in moving forward with the
16 County IAL designation process, and determine whether
17 the City has complied with the applicable statutory
18 and procedural requirements in developing their IAL
19 recommendations to meet the State's constitutional
20 mandate.

21 If you find that the City has met the
22 statutory and regulatory requirements, LUC may then
23 deliberate on whether the City's IAL recommendations
24 serve to protect Oahu's capacity to increase its food
25 security.

1 Thank you. That concludes my testimony,
2 and I'm available, as well as our counsel, both Ms.
3 Kato and Mr. Yee, to questions as well.

4 CHAIRPERSON SCHEUER: Ms. Kato, did you
5 want Mr. Yamamoto to present first, or make Mr.
6 Funakoshi available for questioning, then Mr.
7 Yamamoto?

8 MS. KATO: I think we can go into questions
9 at this point.

10 CHAIRPERSON SCHEUER: Commissioners?
11 Commissioner Wong.

12 COMMISSIONER WONG: Thank you, Chair.
13 Good afternoon, Mr. Funakoshi. Good to see
14 you again.

15 Just a question about that statement of
16 food sustainability. So in your opinion, this IAL
17 process is for future, is that correct, future
18 generations?

19 THE WITNESS: Yes, it does help.

20 COMMISSIONER WONG: It helps or is it a
21 planning tool to protect us for the future to ensure
22 that the State is sustainable in case of another
23 COVID function where everyone is grabbing for food,
24 emergency?

25 THE WITNESS: Yes. It's one of the

1 planning tools available to help with food
2 sustainability.

3 COMMISSIONER WONG: That's all I needed to
4 know. Thank you.

5 CHAIRPERSON SCHEUER: Commissioners,
6 further questions for Mr. Funakoshi? Seeing none at
7 this time.

8 Mr. Yamamoto, can you enable your audio and
9 video? Hi, Earl. Do you have some comments to
10 share?

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

13 MR. YAMAMOTO: Yes, I do.

14 CHAIRPERSON SCHEUER: Please proceed.

15 EARL YAMAMOTO

16 Was called on behalf of the Department of
17 Agriculture, was sworn to tell the truth, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 MR. YAMAMOTO: My name is Earl Yamamoto,
21 staff planner here at the Department of Agriculture.

22 As you can see from the video, I've been
23 here for a few years. We did not develop or -- yeah,
24 we did not develop separate testimony from what we
25 submitted to the Land Use Commission back on

1 February 9th, which is our letter to Dan Orodener.

2 So my comments would be basically to
3 summarize what we had submitted and what is contained
4 in that February 9th letter.

5 I will very quickly go over basically what
6 we put down. It's going to be in a format different
7 from what the Office of Planning, Rodney Funakoshi
8 has just presented, which reflects upon what has
9 transpired over earlier this morning, and yesterday,
10 throughout yesterday. So you have to excuse me for
11 being -- this is a little bit more distant.

12 Our comments are more not dwelling in the
13 details of process and procedure, but looking at it
14 from the standpoint of the utility of the Important
15 Agricultural Lands law, and moving our interest in
16 having it move forward beyond what it has done so far
17 with the participation of private landowners in the
18 voluntary Important Agricultural Lands designation.

19 So in brief, the department supports the
20 City and County of Honolulu's Petition or submittal
21 identifying IAL, and recommends that the agricultural
22 lands itemized in the Petition be designated as
23 Important Agricultural Lands.

24 We have reviewed the Petition and find that
25 it addresses, to our satisfaction, the valuation

1 criteria for State agency review as found in Section
2 205-48.

3 The deep economic damage brought upon
4 Hawaii by the pandemic upon many island businesses,
5 including farm operations, makes the approval of the
6 City's Petition much more than just achieving the
7 County identification of potential IAL as described
8 in Section 205-47.

9 The existing farms, many of which lost 40
10 to 60 percent of their sales, and those landowners or
11 others who may want to undertake agricultural
12 production may have access to the seven IAL
13 incentives.

14 The Department of Agriculture believes the
15 process utilized by the City, leading to the
16 development of the final maps, was deliberate and
17 thorough. We did participate in the Technical
18 Advisory Committee for about five years. And during
19 this period of time, the department kept in mind the
20 underlying intent of the IAL Act is to support
21 agriculture production, and not to be another zoning
22 layer.

23 Specifically Act 183 of the 2005 Session
24 Laws of Hawaii, Section 1, states that:

25 The intent of this Act is not only to set

1 policies for Important Agricultural Lands and to
2 identify Important Agricultural Lands, but also to
3 provide for the development of incentives for
4 agricultural viability in Hawaii, particularly, for
5 agricultural enterprises that farm Important
6 Agricultural Lands and for landowners of Important
7 Agricultural lands.

8 These incentives will be designed to
9 promote the retention of Important Agricultural Lands
10 for viable agricultural use over the long term.

11 I'm going to skip over the City process to
12 identify IAL. I believe we've had significant
13 discussion on that.

14 We did identify apparent anomalies, I
15 guess, of which is of concern to the Commission. We
16 did note that about 38 percent of the tax parcels
17 proposed for IAL designation along the Leeward Coast
18 from Waianae Valley through Lualualei are less than
19 two acres. Similarly about 45 percent of the tax
20 parcels proposed in the Waimanalo to Maunawili area
21 are also less than two acres.

22 We chose two acres because that's widely
23 understood as the minimum lot size in the City's
24 least restrictive agricultural AG-2 zone.

25 Department staff didn't have the time to go

1 over the remaining geographic areas to do a similar
2 analysis. Nevertheless, department believes that the
3 potential IAL areas described for the most part
4 significant areas of potential IAL in accordance with
5 Section 205-42(b) that states:

6 The objective for the identification of IAL
7 is to identify and plan for the maintenance of a
8 strategic agricultural land resource base that can
9 support a diversity of agricultural activities and
10 opportunities.

11 With respect, I recall some questions
12 yesterday brought up about State lands not being
13 included. I'm not sure if I would need to bring that
14 up, but just by definition, the land such as that
15 under the management or title, I guess, of the
16 Agribusiness Development Corporation are excluded.
17 They are not considered public lands, I guess,
18 pursuant to Section 171-2. And the same exclusion
19 applies for the Department of Hawaiian Home Lands
20 except for those lands, agricultural lands out in
21 Waimanalo, the University of Hawaii, which has
22 extensive agricultural lands in Waimanalo, and the
23 West Oahu campus, mauka side, Hawaii Housing Finance
24 and Development Corporation, Waiahole Valley, the
25 Waiahole Valley Agricultural Park.

1 As far as the identification of public
2 lands that are qualified to be Important Agricultural
3 Lands, yes, the Departments of Agriculture and
4 DLNR -- Land and Natural Resources realize our
5 statutory responsibility.

6 It's been awhile, it's been like 18 years
7 in the making, and we're still working on it.

8 The department firmly believes that the
9 County process of identifying IAL, as described in
10 the submittal, is separate and apart from the public
11 land process that is described in Section 205-44.5,
12 and is not a valid reason to delay the County process
13 from moving forward.

14 I do have some explanatory things about why
15 we agree that the City's usage of a certain soil
16 database was used instead of the Land Study Bureau,
17 which is a much more familiar soil quality index that
18 is commonly used, like proceedings before the Land
19 Use Commission, and historically the department has
20 used the LSB, the Land Study Bureau overall
21 productivity ratings, which range from A through E,
22 from best to worst productivity potential.

23 And that we also use the land type, which
24 is not found in any geographic information system
25 database that I know of here in the State. And the

1 land type that describes physical characteristics,
2 specific crop productivity, potential within the
3 LSB's reports. The data layer found in the Office of
4 Planning's geographic information system program maps
5 only the overall productivity ratings, and not the
6 other data attributes that we have historically used
7 in reviewing petitions for voluntary designation of
8 Important Agricultural Lands.

9 While this is a technicality, I believe
10 this is a very important thing to go over.

11 In summary, again, the department supports
12 the -- or finds the City's Petition addresses to our
13 satisfaction the evaluation criteria for State agency
14 review as found in Section 205-48, and we recommend
15 that the agricultural lands itemized in the Petition
16 be designated as Important Agricultural Lands.

17 Thank you. I'll be available for any
18 questions. That concludes my presentation.

19 CHAIRPERSON SCHEUER: Thank you very much,
20 Mr. Yamamoto.

21 MR. YAMAMOTO: You're welcome.

22 CHAIRPERSON SCHEUER: Commissioner
23 Ohigashi.

24 COMMISSIONER OHIGASHI: Mr. Yamamoto, is
25 that your office you're in?

1 THE WITNESS: Yes.

2 COMMISSIONER OHIGASHI: You didn't have to
3 tell us you're a long-term employee, I can see from
4 the desk.

5 But anyway, what I was more -- and this
6 question probably would go to Rodney too, forgot to
7 ask Rodney about it -- is that you were part of the
8 TAC?

9 THE WITNESS: Yes.

10 COMMISSIONER OHIGASHI: And I ask this
11 question about the last -- hi, Dan -- I ask this
12 question about the last time about the City as to
13 whether or not the TAC had approved the final
14 recommendation to the most recent recommendation to
15 the City Council.

16 Do you recall being at that meeting or
17 approving this matter?

18 THE WITNESS: When you say the "final
19 meeting", the meeting -- the last meeting of the TAC?

20 COMMISSIONER OHIGASHI: Yes.

21 THE WITNESS: Yes, I was.

22 COMMISSIONER OHIGASHI: When was that?

23 THE WITNESS: I'm sorry?

24 COMMISSIONER OHIGASHI: When was it?

25 THE WITNESS: I'm going to have to go over

1 my notes. That's such a long time ago.

2 COMMISSIONER OHIGASHI: Was it 2019? 2018?

3 THE WITNESS: Give me a few minutes. Let's
4 see if I do have that.

5 COMMISSIONER WONG: Chair, since we're
6 waiting, I wanted to say Commissioner Giovanni is
7 back on.

8 CHAIRPERSON SCHEUER: Yes. We welcome
9 Commissioner Giovanni back. And Commissioner
10 Giovanni, we noted in your absence that we might
11 conclude with the Office of Planning's presentation
12 today, but defer deliberation to another date.

13 THE WITNESS: I'm sorry, still looking.
14 I'm getting there.

15 CHAIRPERSON SCHEUER: I can again offer to
16 play the Jeopardy music.

17 THE WITNESS: Yes, past University of
18 Hawaii games, they put that on pretty quick.

19 Okay, no match is found. I cannot answer
20 that question.

21 COMMISSIONER OHIGASHI: Was it before it
22 was given to the City Council?

23 THE WITNESS: Yes.

24 COMMISSIONER OHIGASHI: You went over the
25 whole recommendation?

1 THE WITNESS: Yes. It was before the DPP
2 submitted the final, the package to the City Council.

3 COMMISSIONER OHIGASHI: Was there any
4 concerns raised by any of the participants at that
5 time?

6 THE WITNESS: I don't recall any strong
7 ones. But, again, my memory is not that good. Just
8 about my ability to add and subtract, it's kind of
9 declined in my -- as I increase in age.

10 I cannot recall any strong concerns about
11 any matter at that time. Frankly, I think a lot of
12 the members were kind of happy to see the process
13 actually end up with a tangible result, namely the
14 maps.

15 COMMISSIONER OHIGASHI: And was there a
16 final vote on the whole thing or just everybody
17 agreed?

18 THE WITNESS: I don't recall if there was a
19 hand vote or anything formal like that.

20 COMMISSIONER OHIGASHI: Mr. Yamamoto, you
21 did say that there were some areas I think that you
22 have not done certain calculations on; and you have
23 to excuse my memory on that. Can you explain to me
24 what was that amount?

25 THE WITNESS: That was with respect to what

1 we had submitted on February 9th to the Land Use
2 Commission in our letter. We did go over -- or I did
3 go over the tax map key for those parcels found in
4 the City Council's Resolution submittal to the Land
5 Use Commission. I did go over their -- the list of
6 the tax map key parcels that were less than two
7 acres.

8 So I did it in these regions that contained
9 that mix of ag, less than ag, active ag production on
10 the Leeward Coast and in Waimanalo. So I did that.

11 The idea was to, because I -- like
12 everybody else, it stands out that there's a lot of
13 parcels that was very surprising to me that there
14 were so many parcels that were less than two acres in
15 size.

16 I did not check to see if any of these less
17 than two-acre parcels were dedicated for property tax
18 purposes to agriculture production, which would
19 result in decrease in the property tax burden of that
20 particular landowner. So I did not look at it in
21 that matter.

22 COMMISSIONER OHIGASHI: Is that a necessary
23 or important factor that should be looked into prior
24 to a final decision on this matter?

25 THE WITNESS: These small less than

1 two-acre things?

2 COMMISSIONER OHIGASHI: You mentioned that
3 you didn't look whether or not they dedicated to
4 small two-acre lots dedicated to agriculture, or the
5 facts that we need to consider before we make a final
6 decision on this matter.

7 THE WITNESS: Well, it would add more
8 information to the decision whether or not it's
9 required on all this process and procedure stuff,
10 it's something that we obviously stayed away from,
11 stayed apart from.

12 But in terms of -- in case you're wondering
13 if these small agricultural parcels can be used for
14 agriculture, that would be -- and give an indication.

15 COMMISSIONER OHIGASHI: If we were to
16 accept the City's recommendation, and then move to
17 determination of whether or not to adopt it, modify
18 it, reject it totally after hearing, would you be
19 able to provide that information to the Commission?

20 THE WITNESS: I would prefer that the City
21 Department of Fiscal Services Real Property Division,
22 that that function provide that information, because
23 if not, I'd just be a third party. And, you know,
24 accuracy -- yeah, accuracy kind of degrades when
25 there's intermediaries between the source of the

1 information and the giver, which is me, and then you,
2 being the on the Commission, and the --

3 COMMISSIONER OHIGASHI: Just to
4 (indecipherable) you could, but it would be better if
5 we asked it from the City?

6 THE WITNESS: Directly, yes. That is
7 correct.

8 COMMISSIONER OHIGASHI: I don't have any
9 more questions.

10 CHAIRPERSON SCHEUER: It's 2:32. Going yet
11 another hour. How many folks have questions for OP
12 at this point?

13 Nancy, you are deliberating whether you do
14 or not, I can see. Anyone else? I could go either
15 way. We talked about leaving this hearing open, the
16 evidentiary portion open or, you know, widely or
17 narrowly, I can go either way.

18 I do think it is probably better, given the
19 way the matters have proceeded before us today, that
20 we try not to move to deliberation, but rather we do
21 what evidentiary work we can do today, then conclude.

22 Commissioner Chang.

23 COMMISSIONER CHANG: Thank you.

24 Mr. Chair, you know I'm not too sure. Many
25 of these attendees have been sitting here for two

1 days. And I would suspect they would like to hear
2 some of the discussion, so I would like us to think
3 about that.

4 I realize Commissioner Aczon isn't here.
5 But it would be very dissatisfying, I think, for
6 these attendees if they don't hear some of our
7 deliberation or discussion. That's just my thought.

8 CHAIRPERSON SCHEUER: Thank you for that
9 comment.

10 You know, I personally -- there's certain
11 matters that have been raised, particularly around
12 due process, that I want the benefit of discussing
13 with counsel prior to entering into deliberation.

14 COMMISSIONER WONG: Chair.

15 CHAIRPERSON SCHEUER: Yes.

16 COMMISSIONER WONG: Just my own, I think
17 that because Commissioner Giovanni wasn't here for
18 the entire proceedings of OP, and I'm not sure about
19 the rest of the City's, I think for him to deliberate
20 properly, he should review the recording of what he
21 missed. And so I don't think -- and given the
22 opportunity to, again, you know, ask questions before
23 starting deliberation.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Wong.

1 Commissioner Ohigashi.

2 COMMISSIONER OHIGASHI: I just was
3 wondering where are we at? Are we going to -- you're
4 deliberating whether or not we should keep the record
5 open for purposes of Commissioner Giovanni and
6 Commissioner Aczon?

7 CHAIRPERSON SCHEUER: I'm assessing where
8 we are in the proceedings, yes; and figuring out
9 whether, as a group, we might decide, or at least
10 give our sense for the Chair to decide what we should
11 do for the remainder of the day.

12 COMMISSIONER OHIGASHI: My preference is
13 that if Mr. Giovanni agrees, Mr. Aczon can't agree,
14 but I would think that they would want benefit of the
15 whole record before making a decision, as well as
16 opportunity to ask questions if they have any of Mr.
17 Funakoshi. That is just my --

18 CHAIRPERSON SCHEUER: I think procedurally
19 Commissioner Wong is correct, for Commissioner
20 Giovanni to deliberate, certainly Commissioner Aczon
21 would have to review the tapes. So I don't think, I
22 am -- I have tried to be very cognizant during these
23 proceedings of the tremendous public interest and the
24 long attention of attendees, and certainly the desire
25 by some of the attendees to, I would assume, see some

1 kind of decision come out of our proceedings today
2 that Commissioner Chang speaks to.

3 On the other hand, I want to make sure we
4 do this in as procedurally a clean way as possible.

5 COMMISSIONER GIOVANNI: Thanks, Chair. I
6 would like to review what I missed, which is about
7 30 minutes, before we enter into deliberations.
8 Maybe have the opportunity to ask questions of OP.

9 CHAIRPERSON SCHEUER: And, again, I also --
10 perhaps I'm the only Commissioner who seeks the
11 advice of counsel, but I would prefer to go into
12 executive session at some point on this matter prior
13 to deliberation. And in that regard, I have a
14 question for Ms. China.

15 If the Commissioners express a desire to go
16 into executive session, would it be possible within
17 the Sunshine law to agendaize such a session in a
18 manner that would be like, for instance, LUC will be
19 convening at 9:00, but will be moving into executive
20 session upon convening, and will convene into public
21 session say at 10:00 o'clock, so that people who are
22 wanting to attend and monitor our discussions would
23 not have to sort of sit around staring at a computer
24 screen waiting to come in.

25 Do we have that flexibility to be

1 respectful of all the people who are interested in
2 this?

3 MS. CHINA: I think you do have that
4 ability. I think though that when you first meet,
5 you might want to vote to go into executive session
6 and then you go into executive session.

7 CHAIRPERSON SCHEUER: Could we somehow
8 indicate that on the agenda?

9 MS. CHINA: You can say we plan to ask to
10 go into executive session then from 9:00 to whatever,
11 and that we anticipate that the public portion of the
12 meeting will reconvene at whatever time. I think
13 that's perfectly legit.

14 CHAIRPERSON SCHEUER: Commissioner
15 Giovanni.

16 COMMISSIONER GIOVANNI: I share your
17 interest in executive session.

18 CHAIRPERSON SCHEUER: Commissioner Cabral
19 is thumbs up, enthusiastically double thumbs up.

20 Commissioner Wong, do you have anything to
21 opine on this matter before us?

22 COMMISSIONER WONG: Nothing, Chair. I
23 agree with you on that matter, and thank you to our
24 AG about her opinion.

25 CHAIRPERSON SCHEUER: Again, we are trying

1 to, while I have some significant concerns, as has
2 been clear at the manner in which the impact, if any
3 of IAL designation, has been portrayed by outside
4 forces, I do recognize that has raised considerable
5 concern among property owners. And I want to be sure
6 we are as respectful as possible in respect to their
7 time and tuning in.

8 In that regard -- very briefly, I know
9 we're unorthodox, would somebody from the LUC staff
10 be able to share right now how one can join the
11 mailing list for LUC so they are sure to get the
12 e-mail notice of our meetings?

13 EXECUTIVE OFFICER: Thank you, Mr. Chair.
14 I think Scott can best explain.

15 CHAIRPERSON SCHEUER: Thank you, Mr.
16 Derrickson.

17 CHIEF PLANNER: Let me see if I can share
18 screen.

19 So on our website, which is LUC dot Hawaii
20 dot gov (luc.hawaii.gov), on the home page, on the
21 right-hand side you'll see this menu. People can
22 click on it to sign up for agenda notices. They will
23 fill out a little form. And then you'll get a notice
24 of the hearing probably about five or six days prior
25 to the hearing.

1 People also have the ability to, on the
2 home page, they can check the event calendar which
3 provides the tentative meeting dates. So if you
4 check that often, you'll be able to see when hearings
5 are scheduled. And as soon as an agenda is up and
6 available, it should be posted.

7 CHAIRPERSON SCHEUER: Thank you very much,
8 Mr. Derrickson, appreciate it.

9 So back to our proceedings then, any
10 further questions at this time for Office of
11 Planning? If none, I will ask if there is any
12 further business? And if there is not any further
13 business, my intention is to adjourn our proceedings,
14 noting that we will agendize this discussion,
15 including an opportunity to ask questions, for the
16 Commissioners to ask questions of, I will say, both
17 the City and County as well as Office of Planning and
18 their witnesses.

19 Any further business, Mr. Orodenker?
20 Anyone else?

21 EXECUTIVE OFFICER: Mr. Chair, I believe
22 that concludes our business for the day.

23 CHAIRPERSON SCHEUER: So we have, with
24 gratitude to all of you for your tremendous efforts
25 over the last two days, to the Office of Planning,

1 attendees, sorry we could not make decision-making on
2 this matter today, however, we have made progress and
3 we will agendize this matter for further action on a
4 future agenda.

5 With that, I adjourn today's meeting.

6 (The proceedings adjourned at 2:43 p.m.)

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CERTIFICATE

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

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on April 29, 2021 at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 29th day of April, 2021, in
16 Honolulu, Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
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23
24
25