

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on January 28, 2021
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

- I. Call to Order
- II. Adoption of Minutes
- III. Tentative Meeting Schedule
- IV. Legislature Matters Impacting the LUC and
Legislative Committee Formation
- V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

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

10 STAFF:

11 JULIE CHINA, ESQ.
12 Deputy Attorney General

13 DANIEL ORODENKER, Executive Officer
14 RILEY K. HAKODA, Chief Clerk
15 SCOTT DERRICKSON, Chief Planner

16 BRYAN YEE, ESQ.
17 Office of Planning
18 State of Hawaii
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1 CHAIRPERSON SCHEUER: Aloha mai kakou and
2 good morning.

3 This is the January 28, 2021 Land Use
4 Meeting and it is being held using interactive
5 conference technology linking videoconference
6 participants and other interested individuals of the
7 public via the "ZOOM" internet conferencing program
8 to comply with State and County official operational
9 directives during the COVID-19 pandemic. Members of
10 the public are viewing the meeting via the "ZOOM"
11 webinar platform.

12 For all meeting participants, I would like
13 to stress to you to remember to speak slowly, clearly
14 and directly into your microphone. Before speaking,
15 please, it helps if you state your name and identify
16 yourself for the record. Also please be aware that
17 all meeting participants are being recorded on the
18 digital record of this "ZOOM" meeting. Your
19 continued participation is your complied consent to
20 be part of the public record of this event. If you
21 do not wish to be part of the public record, please
22 exit this meeting now.

23 This "ZOOM" conferencing technology allows
24 the parties and each participating individual
25 Commissioner individual remote access to the

1 meeting's proceedings via their personal digital
2 devices. Also please note that due to matters
3 entirely out of our control, occasionally disruptions
4 to connectivity may occur for one or more meeting
5 members of the meeting at any given time. If such
6 disruptions occur, please let us know. And be
7 patient as we try to restore the audiovisual signals
8 to effectively conduct business during the pandemic.

9 For members of the public participating via
10 telephone, please use the *6 function to "mute" and
11 then *6 to "unmute". Use *9 to virtually raise your
12 to virtually lower your hand. And you can also use
13 *6 to indicate to the meeting host that you wish to
14 be unmuted.

15 My name is Jonathan Likeke Scheuer and I
16 have the pleasure of currently serving as the Land
17 Use Commission Chair. Along with me are
18 Commissioners Dawn Chang, Gary Okuda, and Arnold
19 Wong, the LUC Executive Office Daniel Orodener, LUC
20 Chief Planner Scott Derrickson, Chief Clerk Riley
21 Hakoda, the LUC's Deputy Attorney General Julie
22 China, and the Court Reporter, Jean McManus are on
23 O'ahu. Commissioner Edmond Aczon is supposed to join
24 us in a couple minutes.

25 Commissioner Nancy Cabral is on Hawaii

1 Island, Commissioner Lee Ohigashi is on Maui, and
2 Commissioner Dan Giovanni is on Kauai.

3 We currently have eight seated
4 Commissioners of a possible nine.

5 Mr. Hakoda or Mr. Derrickson, has there
6 been any written testimony submitted on our first
7 order of business, the adoption of the December 30th
8 and January 6, 2021 minutes?

9 CHIEF CLERK: Chair, this is Riley Hakoda.
10 No public witnesses or comments on the minutes.

11 CHAIRPERSON SCHEUER: I'm going to
12 acknowledge the presence of Commissioner Aczon is now
13 with us. Welcome.

14 Is there any member of the public who is an
15 attendee who wishes to testify on this matter? If
16 so, use the "raise your hand" function or by phone
17 *9.

18 I'll take the motions in order, first
19 December 30th. Any comments or motion on the
20 adoption of the December 30th minutes?

21 Commissioner Cabral.

22 VICE CHAIR CABRAL: I move to adopt. I
23 read them very recently and they bring back found
24 memories.

25 COMMISSIONER OHIGASHI: I'll second, but

1 I'm against --

2 CHAIRPERSON SCHEUER: What are you against?

3 COMMISSIONER OHIGASHI: (Indecipherable.)

4 CHAIRPERSON SCHEUER: Is there any further
5 comments on the December 30th minutes? If not --

6 Our first order of business, the adoption
7 of December 30th and January 6, 2021 minutes.

8 CHIEF CLERK: This is Riley Hakoda. No
9 public witnesses or comments on the minutes.

10 I'm going to acknowledge the presence of
11 Commissioner Aczon now with us as well.

12 Is there any member of the public who is an
13 attendee who wishes to testify on this matter? If
14 so, use the "raise your hand" function or if connected
15 by phone, *9, anybody wishes to testify? If not,
16 I'll take the motions in order.

17 First, December 30th. Any comments or
18 motion on adoption of the December 30th minutes?
19 Commissioner Cabral, moving to adopt?

20 VICE CHAIR CABRAL: Yes, they bring back
21 found memories.

22 CHAIRPERSON SCHEUER: Commissioner
23 Ohigashi.

24 COMMISSIONER OHIGASHI: I'll second, but
25 I'm against.

1 CHAIRPERSON SCHEUER: What are you against?

2 COMMISSIONER OHIGASHI: Just used
3 strenuously in the December 30th.

4 CHAIRPERSON SCHEUER: Is there any further
5 comment on the December 30th minutes? If not, show
6 by voice and raise of hands, all in favor say "aye".

7 Anybody opposed? The minutes are adopted
8 for December 30th.

9 Is there any comment or question about the
10 January 6, 2021 minutes? If not, may I have a motion
11 to adopt? Commissioner Cabral.

12 VICE CHAIR CABRAL: I move to adopt.

13 CHAIRPERSON SCHEUER: Seconded by
14 Commissioner Ohigashi. Are you only aghast for
15 December 30th?

16 COMMISSIONER OHIGASHI: Only aghast for
17 December 30th.

18 CHAIRPERSON SCHEUER: All in favor, say
19 "aye" and raise your hand for adoption. Anybody
20 opposed? The motion carries unanimously with the
21 Commissioners present.

22 Our next agenda item, tentative meeting
23 schedule. Mr. Orodener.

24 EXECUTIVE OFFICER: Thank you, Mr. Chair.

25 On February 10, we will be meeting once

1 again virtually on the U of N Bencorp matter with
2 regard to the certain authority for their EIS, and
3 begin discussion of how the Important Agricultural
4 Land designation by City and County of Honolulu be
5 handled.

6 On Thursday, the 11th, we will have a
7 meeting specifically dedicated to the discussion of
8 how the important IAL filing by the City and County
9 of Honolulu be handled.

10 On February 24th, we will need to discuss
11 the Barry Trust Motion matter, and begin work on City
12 and County IAL submittal as well as the 25th.

13 On March 10th, we will be meeting regarding
14 Hokuia Place, and the 11th is also set aside for that
15 matter.

16 On March 24th we will be adopting the Barry
17 order resulting from the Barry Trust matter. We will
18 also be discussing IAL matters as well on March 25th.

19 In April we have the Windward Hotel matter
20 to take up, the date for that is probably the 15th
21 instead of the 1st, but I have to check with the
22 Chief Clerk with regard to scheduling on that.

23 April 14th, we will be taking up a
24 declaratory ruling request from County of Maui. That
25 has not been filed yet, but we expect it will be

1 filed in a timely manner.

2 On April 28th we will take up the Kamalani
3 motion to extend time.

4 On May 12th we will take up the AES West
5 Oahu solar matter, and on the 13th, the Pohakea
6 matter on Maui.

7 May 26 is also set aside for the Pohakea
8 matter, and that takes us through June, which is as
9 far as our confirmed calendar goes.

10 CHAIRPERSON SCHEUER: Thank you, Mr.
11 Orodanker.

12 Commissioners, any questions for Dan?

13 Seeing none, our next agenda item is
14 legislative matters impacting Land Use Commission and
15 formation of a legislative committee.

16 Before we take up this matter, I'm going to
17 advise the Commission that we have been advised
18 differently than previous advice from our Deputy
19 Attorney General that it's not advisable to form a
20 separate committee, so we're only going to discuss
21 legislative updates on this matter.

22 Was there any written testimony submitted
23 on this item, Mr. Derrickson or Mr. Hakoda?

24 CHIEF CLERK: Chair, this is Riley. There
25 was nothing received by the office.

1 CHAIRPERSON SCHEUER: Anybody who is
2 attending the meeting who wishes to testify on this
3 matter? If so, use the "raise your hand" function.
4 Seeing none.

5 Mr. Orodenker, can you please advise the
6 Commission on what to expect during the next
7 legislative session?

8 EXECUTIVE OFFICER: Thank you.

9 As every year we do, every year we have put
10 together a list of bills that somehow impact or
11 concern the Land Use Commission. And it's an
12 interesting year. It's heavily budget-focused, and
13 there's also attempts to formalize the virtual
14 meeting capabilities of various boards and
15 commissions after the expiration of the Governor's
16 Executive Order, which has been what has allowed us
17 to do virtual meetings in the manner that we have.

18 I'm not going to go through each individual
19 bill. There are as many as eight bills submitted
20 that would allow for virtual meetings.

21 There are -- there is one from the
22 administration, and one through community
23 administration, but many of them are duplicative.
24 We're not sure which ones are going to end up going
25 to hearing.

1 There are a couple bills that we have
2 problems with that we will be testifying on. One of
3 them would require -- or one set of bills would
4 require that there be a public location available for
5 participants.

6 This would be extremely problematic for a
7 couple reasons. Number one, if there aren't many
8 State facilities available that would allow for that
9 kind of participation, I think this is one of the few
10 that would, and I'm not sure that the legislature is
11 aware of that.

12 It would become extremely problematic to
13 try and create ZOOM meeting places on the neighbor
14 islands. It would probably require travel on the
15 part of staff to make sure everything is set up.

16 Under such circumstances there was also a
17 concern that those individual meeting rooms where a
18 group of people may come to testify could result in a
19 loss of control on the part of the Commissioners. I
20 mean, if 100 people show up at a meeting room -- at
21 one meeting room, it would be difficult to control.
22 Anyway, our testimony will be intent to resolve that
23 issue.

24 There also are a couple of the bills which
25 would require that the Commissioner's location, each

1 individual Commissioner's location, and counsel's
2 location, and agencies' location, be published as
3 part of the Notice.

4 Now, as you may imagine, that could be
5 quite problematic. I'm sure Nancy wouldn't like to
6 host 100 people in her office, looking over her
7 shoulder, for instance. So we will also be
8 testifying with regard to those bills, those
9 provisions, to get those provisions removed.

10 Also a number of bills that I won't be
11 talking about that adjust what is or is not allowed
12 in the Agricultural District, and further defines
13 things like, you know, what is agricultural activity
14 or increases the requirements or burden of proof on
15 an agricultural lot homeowner with regard to whether
16 or not a structure or a home or a residence is built
17 in conjunction with agricultural activity.

18 Those bills we usually stay out of because
19 we feel we are the implementer of legislative policy
20 and not the creator of legislative policy when it
21 comes to uses.

22 That being said, I can run through a number
23 of bills that are also impacting us. There is one
24 bill that I should mention right up-front, and that
25 is House Bill 1149.

1 The Chair and Staff have been in discussion
2 with leadership in the House, in particular with
3 regard to the House's representatives feelings that
4 the government needs to be streamlined and
5 consolidated in general. This has resulted in a
6 number of bills all coming from the subject matter
7 "committee chairs" that seek to consolidate various
8 departments, programs, whatever, into similar areas.

9 The HB 1149 reorganizes and integrates the
10 Land Use Commission within a modified and renamed
11 Office of Planning. The office name would be changed
12 to Office of Planning and Sustainable Development.
13 It also reclassifies some of the programs within the
14 Office of Planning, the newly created Office of
15 Planning and Sustainable Development.

16 There was an attempt made, and we have been
17 involved with advising Representative Tarnas with
18 regard to how that could happen. Our focus has been
19 on maintaining the integrity of the Land Use
20 Commission as an independent entity within OP. HB
21 1149 would integrate OP into the Office of Planning
22 and elevate the Office of Planning's Executive -- I
23 mean, Office of Planning's Director to a Cabinet
24 level position. The theory being that by doing that,
25 the Office Planning Director and the Commission, all

1 you Commissioners, would be at the same level from an
2 organizational standpoint, because you Commissioners
3 are obviously appointed by the Governor as well as
4 the Director of the Office of Planning.

5 We also attach the Land Use Commission to
6 the Office of Planning rather than the Department of
7 Business and Economic Development for administrative
8 purposes.

9 I have to say that we spent a lot of time
10 talking with OP about this bill, Mary Alice and
11 myself and a couple of other staff members, and we
12 think that the biggest problem facing the bill is an
13 attempt to figure out how we would operate, or on a
14 problem associated here, how we would operate once
15 the merger occurs.

16 Office of Planning right now is a
17 participant in all of our hearings. We would need
18 Office of Planning to or somehow continue to
19 participate. That would mean internally we would
20 have to create walls between the planners, similar to
21 the walls that are put in law firms sometimes with
22 regard to cases in front of us. It's problematic.

23 I think that my personal opinion is that
24 the legislatures are not going to be overly
25 concerned about this. They're going to be looking at

1 cost savings and streamlining and then tell us to go
2 figure it out.

3 In discussions with the Office of Planning,
4 Mary Alice, we recognize that issue. There's an
5 attempt to codify that requirement so that if we run
6 into problems, then we can handle it under the
7 umbrella of the legislative authorization.

8 I believe that this bill is going to at
9 least move its way through the house, because, folks,
10 Representative Tarnas, who drafted it, and Chair Luke
11 have been involved in pushing for it.

12 Our Representative Chair Luke took the
13 initiative and actually had discussions with our
14 Chair. If you don't mind me relating that, Chair,
15 with regard to this. So I think there's some actual
16 traction on this bill.

17 CHAIRPERSON SCHEUER: To discuss -- I'll be
18 more than happy to share with the Commissioners how I
19 was contacted by Chair Luke.

20 EXECUTIVE OFFICER: There is another
21 component to that bill that was originally being
22 discussed that is currently in flux, and that is the
23 bringing in the Office of Environmental Quality
24 Control into the Office of Planning and the Land Use
25 Commission. That is done through House Bill 1318.

1 Representative Lowen introduced that bill. She is
2 Chair of the Environmental Committee. We didn't have
3 much input into that.

4 I'm not sure how it's going to lay out, so
5 we will be watching that closely to see how it is
6 handled by the legislature, and in particular by
7 House Finance.

8 Moving on. Unless there are any questions
9 on that right now?

10 Chair Scheuer, you're muted.

11 CHAIRPERSON SCHEUER: Sorry about that. I
12 rearranged my dual display.

13 I want to sort of summarize where we are at
14 so we can have useful discussion. I want to say what
15 I think the four categories of bills are that we are
16 talking about, and maybe we can talk about. One is
17 this idea of reorganization of State agencies that
18 would include the LUC.

19 The second is the ongoing issue over County
20 versus State jurisdiction on rezoning.

21 The third is activity in the Agricultural
22 District;

23 And four, how we conduct our meetings
24 remotely.

25 Is there another category of bills we're

1 concerned about?

2 EXECUTIVE OFFICER: I think that covers
3 most of it. There are a few outliers. The next
4 category that I was going to go into was the bills
5 with regard to jurisdiction over district boundary
6 amendments.

7 CHAIRPERSON SCHEUER: So sorry to
8 interrupt. Why don't we finish your summary, then we
9 can talk about in turn those four categories.

10 EXECUTIVE OFFICER: There are a couple
11 bills introduced from both House and Senate side that
12 increase the amount of land that the County has
13 jurisdiction over in granting district boundary
14 amendment. House Bill 260 is one of them. There are
15 a couple of others.

16 The House Bill 260, and its contend bill on
17 the Senate side both seek to raise the County's
18 jurisdiction from 15 acres to 100 acres, to grant
19 district boundary amendment where 50 percent of the
20 housing units are set aside for families with income
21 below 140 percent of median.

22 The justification for this bill seems to be
23 that there would be more control and more equitable
24 responsibilities for infrastructure. That's a house
25 responsibility for infrastructure with small and

1 median projects. This justification is severely
2 flawed.

3 And also we have some serious concerns
4 about whether or not this is good planning. I mean,
5 there are a lot of competing uses out there right now
6 for Agricultural land. Food sustainability, energy.
7 There is climate change issues. There's water
8 issues. Allowing the counties to rezone up to 100
9 acres in a piecemeal fashion could result in severe
10 impacts on those other initiatives.

11 So we will be testifying in opposition to
12 those.

13 There is also a bill that raises the
14 County's jurisdiction from 15 acres to 25 acres in
15 the case where affordable housing is going to be
16 built, 60 percent affordable housing is going to be
17 built.

18 That is actually interesting, because the
19 language is almost word for word taken out of the
20 larger bill that was submitted last year that was an
21 attempt to stimulate the construction of affordable
22 housing. That was many pages long and impacted
23 various statutes, various levels, and created a
24 fund -- (indecipherable). That bill was actually
25 hard fought and negotiated between all of the

1 parties. And it -- there were trade-offs and there
2 were balances. And that bill, the Land Use
3 Commission's position was, okay, if you're going to
4 do that, then you kind of need to give us our
5 enforcement powers which we have been trying to get
6 for some time.

7 So the trade-off was there. This bill just
8 lifts the 25 acre language out of that bill and
9 submits it as a separate bill without all those
10 trade-offs, the checks and balances that were
11 occurring in that larger bill.

12 So we have concerns about that one as well.

13 There are a number of bills, and this is
14 more in the ambit of, you know, outliers, talking
15 about contested case hearings. There is one in
16 particular that requires all our contested case
17 hearings to be -- the way it's written, it would
18 require all our contested case hearings to be handled
19 by a hearings officer designated by Department of
20 Commerce and Consumer Affairs, and we would have to
21 reimburse DCCA for that work.

22 Obviously, I think this bill was aimed at a
23 lot of agencies that don't regularly do contested
24 case hearings. And our concern is that we were swept
25 up in an attempt to handle a problem that doesn't

1 exist for us. It would usurp the powers of this
2 Commission to render decisions and hold hearings and
3 render decisions on contested case hearings.

4 Hearings officers would be required to
5 handle all contested case hearings and then report
6 back to the Commissioners.

7 There is also a bill out there to change
8 the allowable uses on Agricultural land so that solar
9 facilities would no longer under any circumstances be
10 allowed on B lands.

11 There is also a bill with regard to Native
12 Hawaiian rights training that would -- that's a
13 little bit Draconian that we have concerns about that
14 would require Commission members to complete the
15 course within a certain amount of time, and if they
16 don't, they can't serve or render decisions.

17 That's problematic, given that we are not
18 in control of when those classes are given and, you
19 know, can't make a class and then they are not given
20 again for six months. It may cause significant forum
21 problems.

22 That's pretty much all the different
23 categories of bills that there are out there.

24 One other bill, SB41 which is
25 well-intended, but I mean, it's not aimed for us but

1 it sweeps us up, that would require that land --
2 discretionary permits for housing developments, and
3 the way I read it, also district boundary amendments,
4 or anything associated the with the development
5 permit would have to be decided within 60 days or
6 it's automatically approved.

7 Obviously, this creates a lot of problems
8 for us, especially since after a petition seems
9 complete, we're usually giving the parties 30 to 60
10 days to file their position statements, and all the
11 rest. It's just not workable, so we will be opposing
12 that one as well.

13 And I believe that covers just about
14 everything.

15 CHAIRPERSON SCHEUER: Thanks, Dan. So
16 there's six sort of broad categories. In no order of
17 importance, LUC versus County level of jurisdiction
18 over rezoning.

19 Bills that describe the kinds of activities
20 allowed in the Ag District.

21 Bills that cover how meetings are run,
22 particularly during the pandemic.

23 Bills on the potential reorganization of
24 State government that would affect the LUC, obviously
25 the budget bill, and then bills that affect sort of

1 contested case and other administrative and
2 quasi-judicial procedures.

3 There's so much to potentially talk about,
4 I'm just going to throw open the floor and see if
5 there are particular questions the Commissioners have
6 at this time.

7 Commissioner Cabral.

8 VICE CHAIR CABRAL: I'll start it off.

9 On the meetings, we definitely want to be
10 able to at least have that option to have ZOOM
11 meetings, and/or I see, because I do hundreds of
12 condominium meetings. Right now I'm in the middle of
13 100 of them. But I see the future as having a
14 combination of where you would have participants
15 potentially on ZOOM and live.

16 So i.e., like Arnold is doing right now.
17 He went to the location. If I was in Honolulu and I
18 wanted to go be there, I would have that ability, you
19 know, as the Commissioner to be there. So I can see
20 how we would try and work out some kind of
21 combination like we did before, but have a big
22 screen, like we do there, and everybody can see who's
23 there and who's participating.

24 So I think that -- and as well as being
25 able to ZOOM, because then we don't have to spend

1 State money to fly over and stay in hotels and all of
2 that. So I see that combination. I think it's
3 completely unworkable if you think that I'm going to
4 open my office, or even let people know where I live
5 or anything, sorry, but I live in downtown Hilo, and
6 I probably, if I opened this office to have people
7 over my shoulder, I could have -- right now, if I
8 walked outside, I would probably have at least 20
9 homeless people come right in and be all warm and
10 fuzzy and out of the rain, et cetera.

11 So I think that's completely dysfunctional
12 to think that we have to have a space on that island
13 for every meeting that people could attend, instead I
14 have a solution. We have State public libraries
15 everywhere, and in almost all the towns, or some kind
16 of set up has been even in Na'alehu, or even in small
17 areas, some kind of public library with a computer or
18 two. Have it be posted that everybody could go to
19 those sites, if they don't have their computer, and
20 attend by ZOOM at a public library setting or
21 something.

22 So I think use of facilities the State
23 already has instead of imposing on crazy new ones, so
24 I don't know all the details, but I'm saying who
25 makes up this stuff? I mean, what are they smoking?

1 So I would say definitely use the libraries
2 or something so the public can attend, if they don't
3 want to fly to Honolulu for the meeting, or they
4 don't have their own computer.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Cabral.

7 Commissioner Ohigashi.

8 COMMISSIONER OHIGASHI: Question about the
9 removal of jurisdiction from the Land Use Commission
10 up to 100 acres. Is there anything in the
11 legislature that make sure that there is consistency
12 of decision Statewide that would implement that?

13 EXECUTIVE OFFICER: There is not. I mean,
14 the 100 acre bills -- and I've had discussions with
15 the heads of the various departments, Planning and
16 Permitting, although that's in flux right now because
17 we've got a couple new ones, but not only is there a
18 lack of consistency required in the bill, but I'm not
19 sure -- well, the Planning Directors understand what
20 they're getting into if this happens, because it's my
21 personal opinion that the Supreme Court hasn't
22 mellowed with the 15-acres decision because there
23 hasn't been a lot of lawsuits over it.

24 Once you're talking about 100 acres, I
25 think that the Counties are going to find themselves

1 in a position where they're going to have to do
2 exactly what we do, and that is hold contested case
3 hearings for every decision that they render. And
4 the Planning Directors are actually weary of this
5 bill, because they're afraid that they're going to
6 end up having to handle the Public Trust Doctrine
7 issues that they don't have to handle right now,
8 because we handle it for them.

9 Although it would seem that the Mayors, for
10 instance, are in support of this bill, the head's of
11 Department of Planning and Permitting are not because
12 it's scarey. And that is one of the problems is that
13 the inconsistencies with regard to the
14 decision-making would come to the forefront.

15 One of the other problems that we see is
16 that the Counties are notorious for ignoring the
17 State's issues. And the things that come to us from
18 OP that need to be handled with regard to
19 infrastructure that would cost the State if the
20 developers weren't going to have to build it. And
21 would probably not get put into any conditions on the
22 bills, I mean, on the decisions and orders. And
23 issues that the Land Use Commission would raise and
24 Office of Planning would raise with regard to impacts
25 on the needs of land for food sustainability, climate

1 change and the rest probably wouldn't get it either.

2 COMMISSIONER OHIGASHI: What is the
3 development community feeling or input into the bill
4 regarding this matter? Because there is a sense
5 of -- at least there is a sense of knowing what to do
6 for a developer at the present time. And there is
7 no -- the lack of consistency would create some
8 problems for developers. I'm just curious as to
9 whether or not --

10 EXECUTIVE OFFICER: That's exactly right.
11 There's a lot of misrepresentation as to what would
12 occur with this bill. Some of the less akamai
13 developers, shall we say, are convinced if the County
14 handles things, then there would be a lot of appeals.
15 I mean that's one of the reasons some developers are
16 in support of this bill.

17 There is a feeling on the part -- not a
18 feeling, but I mean, Nancy, has put it very
19 succinctly in a couple conversations. You know, the
20 County Councils are more easily to be circumspective
21 about it, are much more easily influenced than the
22 Land Use Commission.

23 The County Councils are political. There's
24 all sorts of things that they need and want from
25 developers as politicians, or that developers can

1 give them. The development community's feelings are
2 that some of the development community feels that
3 that control will allow them to move projects forward
4 in the face of community opposition.

5 COMMISSIONER OHIGASHI: The last question I
6 have, does this bill grant to any specific authority
7 within the County structure? In other words, does
8 this bill require the Planning Commission to follow
9 it to implement, or does it require the Council,
10 because once you get the Council involved, wouldn't
11 that be more like a legislative act rather than
12 quasi-judicial?

13 EXECUTIVE OFFICER: That's exactly part of
14 the problem, the bill leaves it to the
15 decision-making authority at the County. That's a
16 big part of the problem.

17 I should point out that our understanding
18 is that it's not the developers that are pushing this
19 bill, that it's the realtors.

20 CHAIRPERSON SCHEUER: Further questions,
21 Commissioners?

22 Commissioner Okuda.

23 COMMISSIONER OKUDA: Thank you very much,
24 Mr. Chair.

25 You know, what I'm going to say in answer

1 to the question, what does the development community
2 think, it's not based on any scientific study or
3 anything like that, but what I tried to, since
4 frankly, I'm not really a planner. When I got on the
5 Commission, I tried to talk to a whole bunch of
6 people because I knew -- I was being very frank about
7 it -- I was being appointed not because I knew
8 anything specific about land use planning.

9 Now whether or not this perception is true
10 or not, it seems a perception that we have these
11 additional layers of government, it makes the process
12 inefficient.

13 So I think if the process is inefficient in
14 some ways, then, you know, inefficiency should be
15 addressed. If the perception is wrong about
16 inefficiency existing in the process, then the
17 perception should be addressed.

18 You know, the State spent good money
19 sending me and all of us to various national planning
20 conferences. I think one of the things which is
21 really not just in any of these bills, but could be
22 considered, is one of the city's in the Bay Area
23 basically created a concierge kind of position where
24 this one government official would be the concierge
25 to basically help shepherd developments through

1 whatever regulatory processes are there. You know,
2 its a sad commentary that many of our private clients
3 feel like they have to higher consultants called
4 "expeditors" to get their projects through County
5 Planning Departments or Building Departments.

6 So I think just the fact that things are
7 just left to the County doesn't necessarily take away
8 inefficiencies, but to the extent a bill is designed
9 to remove inefficiencies of multiple types of
10 approvals where you're really resubmitting the same
11 old, same old things, things that should be looked
12 at, but otherwise, I see what Dan is saying.

13 Chair, if I could say one more thing about
14 having, you know, hearings or meeting places for the
15 public.

16 I think ZOOM technology is really good, but
17 it's really important to have actual physical
18 location where people can come and voice their views.
19 And I agree it could be the public library, it could
20 be whatever alternate site, and though there is a
21 concern that things might get out of control, I would
22 urge everyone to kind of err on the side of actually
23 expanding participation.

24 If there ever was a hearing that would have
25 led to, you know, a real contentious-type of things

1 getting out of control, it was the Mauna Kea hearing.
2 And in the end, I think probably some people would
3 agree with my assessment, the vote of the Land Use
4 Commission was frankly contrary to the vast majority
5 of the people who were in the meeting room at the
6 Nani Loa Hotel, and was not consistent with what they
7 wanted. But the feeling I got in the end with the
8 people who we basically did not agree with, they were
9 the ones coming up shaking our hands and saying
10 "thank you very much for coming out to the community.
11 Thank you for listening to us. Yeah, you didn't vote
12 in our favor, but we understand what your position
13 is. We might not agree, but thank you for coming
14 out."

15 I think one of our jobs is basically to
16 restore trust of the people in government. And trust
17 in government is not going to be helped if everybody
18 is remote.

19 It's really important, not only for the
20 LUC, but for all other boards and commissions to
21 actually go out, at least have some people out at the
22 community level to make it clear that, you know,
23 we're showing by action we really want to listen to
24 you, and we're here.

25 Aside from the fact some people can't use

1 technology. That's my comment, Mr. Chair.

2 CHAIRPERSON SCHEUER: Thank you.

3 Mr. Orodenker.

4 EXECUTIVE OFFICER: I would strongly agree
5 with Chair (sic) Okuda. It's our experience that
6 there is a tremendous amount of value in holding
7 hearings. I actually think that this virtual meeting
8 system is working and is convenient, but in terms of
9 public trust -- not the Public Trust Doctrine, but
10 the public trust there is tremendous value in this
11 Commission actually traveling to the communities in
12 which the issues are being raised, and being present
13 and having the community be able to come and see and
14 watch in person exactly what is happening.

15 I don't think that virtual technology gives
16 the community the same level of comfort that they are
17 being listened to and that the issues are being
18 well-aired and discussed as it does in a public
19 meeting in person, as opposed to virtual meeting.

20 So I would agree with Commissioner Okuda.
21 The difficulty that we're facing right now -- I
22 didn't mention this, but the Governor's budget right
23 now proposes that next year or the coming fiscal year
24 that our travel budget which is most of our
25 non-personnel budget, be cut by 50 percent, and the

1 following year be cut by a 100 percent.

2 Assuming that that is what we end up with,
3 we won't have any choice but to hold meetings
4 virtually, and the second year, the biennium any
5 Chapter 91 or Chapter 92 requirements that would have
6 us needing to travel, even staff to a neighbor
7 island, would be impossible for us to handle because
8 our budget will be gone for that.

9 CHAIRPERSON SCHEUER: Thanks, Dan.

10 Commissioner Giovanni.

11 COMMISSIONER GIOVANNI: I concur with the
12 comments of Commissioner Okuda, and as expanded by
13 Mr. Orodener. I see real value in especially our
14 more controversial contested cases. I think if,
15 looking back over the last year, I go back to Mauna
16 Kea case that Commissioner Okuda referenced, and that
17 had incredible community engagement, and it was very
18 appropriate and important for us to be able to
19 interact and be before the public, that public trust.

20 I look back over the numerous ZOOM meetings
21 we have had, we have not had an outpouring of the
22 community really showing up in numbers like that.
23 I'm a little concerned about the forthcoming meeting
24 in March on Kauai. There's a tremendous amount of
25 community interest in that case, and it's a ZOOM

1 meeting. I think it will be a real test for us, eye
2 opening. I wish we would have some of that meeting
3 in person. It's not going to be possible. But going
4 forward I think that we should thrive for some
5 meetings in person, especially on the neighbor
6 islands for the cases that are a large number of
7 community members that are interested, have expressed
8 interest in those cases.

9 CHAIRPERSON SCHEUER: Thank you,
10 Commissioner Giovanni. Commissioners? Commissioner
11 Wong. Followed by Commissioner Chang.

12 The "raise your hand" function is harder in
13 your room.

14 COMMISSIONER WONG: I guess what happens,
15 we are in a quandary right now, especially for the
16 Land Use Commission and the State as well, because we
17 have the COVID issue; we have the budget issue. The
18 budget is driving everything for the State of Hawaii
19 in terms of travel and reorganization and all that.
20 Our hands are pretty much tied on that issue, right,
21 if I hear it correctly.

22 I agree with Commissioner Okuda and also
23 Commissioner Giovanni that we should be out in the
24 different islands if possible because of our
25 connection with them, but right now it's hard because

1 of the travel restrictions and the budget.

2 And I just wanted to state for the record
3 that, you know, it's going to be hard for us to
4 figure out even next year because the biennium budget
5 is zero travel. But we should try to figure out
6 something.

7 I like Commissioner Cabral's statement for
8 allowing people to use the library. I didn't even
9 think about that. So Commission Cabral had a great
10 idea, that issue that we don't invite them to our
11 house, but let's say for Oahu, we may have to use
12 this conference room we're at for Oahu people to
13 come, I mean, as long as its less than so much people
14 because of the COVID.

15 That's all I'm saying, that a lot of larger
16 issues that we have to think about besides our own
17 little issue about how it's going to affect
18 everything else. Thank you, Chair.

19 CHAIRPERSON SCHEUER: Thank you.

20 Commissioner Chang, followed by
21 Commissioner Cabral.

22 COMMISSIONER CHANG: Thank you, Mr. Chair.

23 I think that we are -- it's one, a question
24 of balance. What do we need versus what may be the
25 best. I will tell you, I have found that these

1 virtual meetings have opened participation to a much
2 broader group, because people don't physically have
3 to be at the location. They don't have to travel.
4 So to that extent, I have welcomed the virtual
5 platform of the way of engaging the community, and
6 whether they participate or not, there's an
7 understanding of our process and they see how we
8 conduct it.

9 So I see great value. I also think that's
10 the reality of the future. Even if we address COVID
11 and the pandemic, whether it's the budget shortfall,
12 but I think there will be this virtual platform that
13 has created an ability to reach a larger
14 constituency.

15 I do agree that there is value to having
16 in-person representation, or an opportunity to see
17 it.

18 My suggestion would be when we have a
19 matter involving that particular island, that that's
20 where there would be the island representative. We
21 find a public facility, whether it's a library, but
22 that would be the place where we would open it up to
23 the public. And you would have that island
24 representative being there. But we would not have to
25 have one on each island, so that we can satisfy at

1 least the constitutional mandate to be at the
2 location where the land is located.

3 But I think that way addresses where we
4 don't all have to travel. I will tell you, this has
5 been a luxury for me that normally when we have LUC
6 meetings, I mean, we are leaving our houses at
7 5:00 o'clock in the morning and don't get home until
8 7:00 at night. Now we are able to do other work.

9 So part of it is, as I think we have all
10 mentioned, this is a voluntary board, but we are all
11 giving up a considerable amount of time to do the
12 travel. So one, to accommodate the community, I
13 think it would be appropriate to have the island
14 representative and a public facility where the public
15 on that island can attend in addition to the virtual
16 platform. But I see great value in continuing the
17 ZOOM or some kind of virtual meeting.

18 I was -- last night we had a town-hall
19 meeting for Kaneohe. We had over 120 people on the
20 ZOOM. And the legislative said normally they get
21 about two-dozen people. So again, I think if we're
22 looking at public participation, this is the wave of
23 the future, at least a portion of it where I think
24 people are getting used to, but it also ensures some
25 safety, but again, greater public participation.

1 So I think we can come up with some kind of
2 hybrid, and if we anticipate, it's going to be a very
3 controversial meeting, I'm certain we can make some
4 kind of travel adjustments where maybe more of us can
5 travel. But I think that at a minimum the island
6 representative would provide a facility on that
7 island.

8 Thank you, Mr. Chair.

9 CHAIRPERSON SCHEUER: Thank you.

10 Commissioner Cabral followed by
11 Commissioner Ohigashi.

12 VICE CHAIR CABRAL: I agree with everybody,
13 in-person meetings are wonderful, especially
14 controversial, but so many aren't. Again, if we did
15 a hybrid, but no travel money, limited options.

16 The other thing, rather than on Oahu, your
17 office there or the conference room, I'm assuming
18 that's the conference room down the hall from the LUC
19 office, is nice and convenient. But I would really
20 recommend that we try and find like on Oahu, the
21 airport as your meeting room that's on the top floor
22 there, because any place you can be that you take
23 that public away from your own office, you know,
24 whatever, there's plenty of parking there. There's
25 security there, somebody else's security. There's

1 somebody else is cleaning the place constantly,
2 because, you know, COVID is going to be a long time,
3 and then even after that, I think people are going
4 to -- so if you're going to have hybrid-type
5 meetings, I say use public facilities outside of, you
6 know, the normal ones, even at hotels, I think Dawn
7 is talking about sort of like we did when we had them
8 and go down in the basement of the State building.

9 So I would be there, and if people did show
10 up, and that was okay and stuff, but I think hybrid
11 and ZOOM is never going to go away. It's all about
12 the money right now. There's no money, so they've
13 got to figure out how do it, and I think the
14 legislators err on the side of -- if you worry about
15 the minority of people who do not have access to a
16 computer, the minority of people. It's like, if you
17 wanted to come to a LUC meeting, and they don't
18 drive, are we supposed to send a driver for them?
19 There are those people. You cannot cater to the
20 whole world, to that miniscule number of people who
21 can't do something.

22 So people are finding their way to ZOOM. I
23 have an unbelievable -- I manage all these
24 condominiums and subdivisions with all these senior
25 citizens, and it's amazing how many of them find

1 their way to the ZOOM meeting when they want to.

2 So I think there is the ability of our
3 citizens to figure it out, and if you have a constant
4 place where they don't have a computer, which a few
5 don't, but so many more do. So I think we just got
6 to come up with what we're going to support, and of
7 course, Dan going to the legislature, he's got to
8 connect with other agencies, and I feel like our LUC
9 meetings and our staff are much more advanced on how
10 to figure out how to have these meetings than many of
11 these other State agencies.

12 I mean some of these State agencies, I
13 think they just went home. They pick up their pay
14 check and that's the only duty they do. I'm sorry,
15 not all of them, but there's quite a few agencies
16 that have no other duty that they're doing. So I
17 mean, it's a balance, but with no money we have no
18 option, and every year it can change. The law needs
19 to be written to where it can be flexible. It can't
20 be "you must" or "you must", because then every year
21 it has to change. That's my two cents again.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner.

24 Commissioner Ohigashi.

25 COMMISSIONER OHIGASHI: Like Gary, I wasn't

1 chosen for my vast land use. Like Gary, we were just
2 chosen for our good looks.

3 But I find that the inhouse, the group
4 meeting is an important factor. I point back to the
5 one we had on Lahaina project. I don't think that
6 there would be such a settlement and community buying
7 without that initial first meeting. And, you know,
8 and I understand the dollars and cents-wise, but
9 that's the trade-off we are making, and I think we
10 lose that kind of opportunity.

11 The second thing is that I'm finding random
12 talks about what concerns we have. I'm little kind
13 of worried about how are we going to utilize existing
14 legislative whatever protocols they have. How are we
15 going to go without a committee or without some of us
16 pointing to the legislative committee or do the
17 necessary lobbying.

18 So if Dan can explain to us what options,
19 what the procedure will be, that way we can at least
20 maybe agree to conditions or --

21 CHAIRPERSON SCHEUER: Mr. Orodener?

22 The question is essentially we had the
23 permitted interaction group as a way of making sure
24 that the staff, who was tracking bills and have to
25 often turn on a dime to develop and write a position,

1 have a way of keeping in touch with the Commission,
2 it's policy desires.

3 What do we do?

4 EXECUTIVE OFFICER: Without having -- there
5 is no way that this Commission can react quickly
6 enough to handle changing issues at the legislature.
7 The only way that I can foresee handling this is
8 that -- first of all, under the OIP's guidance, two
9 of you can talk at any time as long as you are not
10 talking about deliberating towards a decision on a
11 substantive matter.

12 So you're free to talk to each other about
13 your concerns with regard to any legislation that's
14 out there. The only way that I can perceive of
15 handling this is I'm simply going to have to call
16 various Commissioners on the day that we get
17 information on a bill, and sometimes there may be
18 only a few hours before a hearing is scheduled to
19 discuss the matter. That's one by one. That's the
20 only way that I can foresee doing it.

21 CHAIRPERSON SCHEUER: Do you have a
22 follow-up, Commissioner Ohigashi?

23 COMMISSIONER OHIGASHI: I think that's a
24 good idea, but that is the way it looks like it's
25 going to have to be. But if there is some issues

1 that you want to -- is it permissible for you to
2 email all of us and say this issue came up with
3 regards to legislation and --

4 EXECUTIVE OFFICER: It's permissible --

5 CHAIRPERSON SCHEUER: I want to recognize
6 our Deputy Attorney General, Ms. China.

7 MS. CHINA: I think you're still going to
8 have a Sunshine issue, and you can still create a
9 permitted interaction group as regards to certain
10 bills or certain issues that you want to have
11 represented by you to the legislature.

12 I mean, it's just that at today's meeting
13 it was not properly recognized as the Sunshine agenda
14 issue was not proper. You can still, at your next
15 meeting, have your permitted interaction group to go
16 forward in this legislative session. We've never
17 said you can't do that.

18 EXECUTIVE OFFICER: That is a completely
19 unworkable situation. By the time -- in order to
20 notice this meeting, we had to send out the notice a
21 week ago. Most of these bills were not posted until
22 two days ago, and we already have hearings scheduled
23 on it. It is impossible to work under those
24 situations in the manner in which the Attorney
25 General is suggesting. That is why we're left with

1 the staff having to contact the Commissioners
2 individually when these matters arise. There is no
3 way we can schedule a meeting under the Sunshine Law
4 in time to handle the notice and these individual
5 bills as they come you up.

6 MS. CHINA: Mr. Orodenker, you know, I am
7 not the bad guy. This opinion of the OIP, this is
8 what they have been telling us about how to handle
9 this. If something is super urgent and you can't do
10 it, you can't create your permitted interaction group
11 to handle a certain bill for the rest of the
12 legislative session because that's what we have been
13 advising.

14 You can do it, that you can, you know, now
15 that you know what the bills are, and now you can
16 actually create your permitted interaction group to
17 handle these bills for the rest of the session. It's
18 not that we have told you that you need to have a
19 created permitted interaction group every time you
20 have a notice of the bill.

21 Now you know what the bills are. And can
22 use comitted interaction groups -- and as alternative
23 you can have an emergency meeting. That's what OIP
24 has said.

25 CHAIRPERSON SCHEUER: Ms. China, if I may.

1 I don't think anybody was suggesting you were the bad
2 guy or woman.

3 I appreciate the tone of frustration. I
4 want to recognize Commissioner Okuda followed by
5 Commissioner Aczon.

6 COMMISSIONER OKUDA: Thank you very much,
7 Mr. Chair.

8 This is just me personally. I have no lack
9 of confidence. I have a lot of confidence that as
10 these matters come up, that the Executive Director
11 and the staff and you, Mr. Chair, and whoever else
12 you might want to consult with consistent with the
13 requirements of the Sunshine Law, how you want to
14 handle these things on a specific case, I really
15 don't have a problem with that.

16 Mainly, because if I had a problem with
17 something like that, you know, we could bring a
18 motion to remove you as Chair or, you know, make a
19 nasty statement to the Executive Director.

20 I think we all strive to comply with the
21 Sunshine Law, and that's good for the community.
22 Hey, whatever we do, it should be out in the open.

23 But as far as, you know, these procedural
24 things where there's been -- and I know there has
25 been consultation on procedural things. I have not

1 ever seen you or the Executive Director or anybody
2 else do things which have been contrary to what
3 people on the Commission have thought even
4 informally, and/or that anything was being done in a
5 nefarious way for playing office politics. By the
6 way, I've seen office politics in government, so I
7 think I can recognize that.

8 So I think the Deputy Attorney General, her
9 position, I think she accurately states the law.
10 Following the Sunshine Law is not only the law, but
11 it's important for us to keep trust in government,
12 but I have a lot of confidence based on seeing the
13 actions previously taken that when these issues come
14 up very quickly at the legislature, you and the
15 Executive Director with consultation of staff and to
16 the extent you need to consult with other Commission
17 members consistent with the Sunshine Law, I think
18 we're actually okay.

19 And so to the Executive Director, I'm not
20 saying we shouldn't, you know, we shouldn't be
21 concerned or focused on these things, and it's a very
22 good we focus on it, but it's really not a situation
23 right now that I plan to lose any sleep over. Thank
24 you.

25 CHAIRPERSON SCHEUER: Commissioner Aczon.

1 VICE CHAIR AZON: Good morning, everyone.
2 Sorry I'm late joining you this morning. I just
3 finished a conference from early this morning,
4 international conference. I finished at 9:00, and I
5 was able to join two minutes after.

6 So, you know, the reason I'm saying this is
7 this conference international, we have over 800
8 people participating, the entire United States also
9 in Canada. And we were able to talk to somebody from
10 Toronto, or somebody in New York or even California
11 one on one, so this technology has lot to offer for
12 everyone, not only for individuals but also State
13 government agencies.

14 So this technology, ZOOM or other platform
15 are here to stay. So the sooner we can be activated
16 or vary these technologies, the better for us moving
17 forward.

18 In-person meetings or in person, you know,
19 one on one is very important, but sometimes we cannot
20 get everything we want. Like, you know, Commissioner
21 Wong saying even when people ask me, you know, how is
22 work? How is construction? You know, it all depends
23 on money. Our trade, our department is based on
24 economy, you know. Money not coming in, there's no
25 work. So same thing with government, the budget. If

1 there is no budget, we need to adapt that.

2 So going back to the in-person meetings, it
3 should be, I believe, you know, updated basis, you
4 know. I would defer to the Chair or the staff on,
5 you know, to choose what meetings should be
6 in-person. You know, like the controversial Mauna
7 Kea or whatever that, you know, really the community
8 would benefit on in-person meeting. So they have the
9 staff or the Chair, even some of the Commissioners
10 have a better feeling, especially their home counties
11 on those important issues.

12 And by the way, you know, most of the times
13 it's controversial issues, they have certain
14 organizations that pushing one way or another. And
15 usually these organizations or groups tend to
16 organize themselves.

17 I've been to a meeting that certain groups
18 coordinated, you know, organized themselves, they
19 rented a room, and participate as a group, so there
20 is other ways that we can do, you know, there is
21 other ways that we can getting everything too. But
22 again, going back to budget, sometimes we cannot get.

23 So the sooner we plan on those, the better
24 for us. I believe there's going to be some kind of
25 policy, some kind of strategy on moving forward on

1 how to deal with these meetings.

2 So again, you know, everything is based on
3 economy, based on money. We just going to have to
4 deal with what we are given.

5 CHAIRPERSON SCHEUER: Thank you very much,
6 Commissioner Aczon. Thank you all Commissioners for
7 this robust discussion.

8 I have a few thoughts. Commissioner Wong,
9 you're raising both hands.

10 COMMISSIONER WONG: Chair, sorry. Going
11 back to AG and our Executive Directors's
12 conversations.

13 CHAIRPERSON SCHEUER: Colloquy as one of
14 the legal representatives before us would say.

15 COMMISSIONER WONG: Sorry. I'm just a
16 local boy. Don't say anything, Lee. These hours,
17 maybe eight hours, where do we go from here?

18 CHAIRPERSON SCHEUER: I had a couple
19 specific followups regarding that. Can I articulate
20 those, Commissioner Wong, to our Deputy Attorney
21 General in the hopes of trying to get to where we're
22 going?

23 One question I had, Ms. China, given the
24 legislative ability to do gut and replace. Even like
25 this week's list of bills is not next week's list of

1 bills, much less the list of bills that's going to
2 necessarily carry us through the rest of the
3 legislative session.

4 So I understand what you're saying about
5 your interpretation of the Sunshine Law, but how do
6 we deal with that practicality of how the legislature
7 actually operates?

8 MS. CHINA: What you can do is you
9 separated it into certain categories. You had four
10 categories.

11 CHAIRPERSON SCHEUER: Which I expanded to
12 six.

13 MS. CHINA: You have a bunch of categories.
14 With those categories you can create permitted
15 interaction groups just on those categories saying
16 with regard to certain categories or all, we're going
17 to create one permitted interaction group or six
18 permitted interaction groups to address these. And
19 at your meeting, you know, you can discuss, you know,
20 what in general your policy is towards these
21 categories, and these permitted interaction groups
22 could actually address, you know, be on a pivot when
23 these legislations or bills, when the new ones pop
24 up, or when there is gut and replace, because they're
25 on the permitted interaction groups for these

1 specific categories.

2 And I think that would work, and you could
3 create these groups as soon as your next meeting. I
4 don't really think, you know, that it would hamper or
5 hinder review in any way.

6 And what happened was, before this meeting,
7 we did send staff -- it came up from the OIP and it
8 was Sunshine Law options to address State legislative
9 issues and measures. And I think staff could forward
10 it to all of the Commissioners. And it gives options
11 on how to address this on a, you know, quick take,
12 because I think, you know, even OIP acknowledges that
13 it's -- you need to act fast.

14 CHAIRPERSON SCHEUER: Thank you. There
15 might be a specific question or followup from
16 Commissioner Wong or Mr. Orodener regarding that
17 response that would try to help our conversation.

18 COMMISSIONER WONG: Chair, so the question
19 is -- can we create a pick today for the six areas?

20 MS. CHINA: No, it wasn't agendized as
21 such.

22 COMMISSIONER WONG: So the question I have
23 is, we have hearings now. What can we do until we
24 create the PIG?

25 MS. CHINA: You know, I think you can give

1 your opinions here to, you know, what you think
2 should be done as far as six categories, but I don't
3 think you can create the PIG today.

4 COMMISSIONER WONG: So I understand. Let's
5 say we have to testify tomorrow to a certain bill
6 that will affect the Land Use Commission in general,
7 saying they want to do away with Land Use Commission.
8 How we going to testify to say we don't want to do
9 away with Land Use Commission?

10 MS. CHINA: I think you have two options
11 today as it is. You know, staff would definitely be
12 testifying against it, and you as individuals could
13 be testifying against it too. I mean, we were not
14 asked for our advice prior to this. And I understand
15 that you did it differently before, and you know, we
16 might not have, you know, as a group, not have been
17 advised that there is this memo from OIP advising
18 about such law and legislature.

19 CHAIRPERSON SCHEUER: I just want to assure
20 you that we did so on the advice of our previously
21 assigned Deputy Attorney General.

22 MS. CHINA: Yeah, so, I mean, we just,
23 we're just trying to give you the best advice that we
24 can, and we're trying to get this done.

25 CHAIRPERSON SCHEUER: It sounds like we

1 have a commitment, a productive commitment to work
2 together to first of all properly agendize the next
3 matter in a manner so that these topically based one
4 on one PIGs, we do have the most immediate issue of
5 any bills that come between now and the next time we
6 meet. We don't even know all the ones that might be
7 heard.

8 Commissioner Wong.

9 COMMISSIONER WONG: Chair, there is two
10 issues, first issue is I just want to ensure that you
11 know when we did agendize today's hearing, everyone
12 was noticed, so even Bryan Yee was noticed. So good
13 to see him, but I mean, I would assume that everyone
14 would do their homework once the agenda came up.

15 So you would assume that if there was
16 issues that arise, that our staff would be notified
17 or they would be called and say, hey, I have this
18 issue. So that's the first thing.

19 The second thing is, for our AG, can we
20 make a motion now to say on behalf of LUC can the
21 Chair and the staff work together on any of the
22 hearings that may occur until we create a PIG, and
23 you know, do our thing for that fact?

24 MS. CHINA: Yes, you can do that, you know,
25 until -- okay, yes, you can.

1 CHAIRPERSON SCHEUER: Commissioner Okuda.

2 COMMISSIONER OKUDA: Thank you, Chair. In
3 response to Commissioner Wong, whether the motion is
4 made and carried, I think the Chair and the Executive
5 Director already have that authority, and so -- but
6 yeah, I mean, I would be supportive of it, but even
7 if it wasn't a motion, I think the Chair and
8 Executive Director have the authority, and I kind of
9 would expect that even if we didn't raise the issue,
10 the Chair and Executive Director exercising their
11 duties and obligations would be doing so anyway.

12 CHAIRPERSON SCHEUER: If I may, at this
13 time, an hour and 20 minutes into our brief meeting.
14 There's a few things I want to say observations on
15 this overall discussion, and if -- would the
16 Commission indulge me to do those in the hopes of
17 sort of summarizing where we are at and how to go
18 forward?

19 I will continue to work closely with the
20 staff as legislative issues come up. I promised I
21 was going to share with you that I was approached by
22 House Finance Chair Luke to speak about -- well,
23 initially I got a call from the staff of
24 Representative Luke because, in response to an
25 opinion piece I wrote on a personal capacity for

1 Civil Beat, it was published in December, and her
2 staff indicated that Chair Luke wanted to discuss
3 that with me, to which I was surprised and slightly
4 nervous, but she actually expressed her appreciation
5 for the article that I had written. And then she
6 also shared with me that she was looking, in response
7 to the State's budgetary situation, wanted to know a
8 general orientation that we might have towards
9 looking at reorganization of the Land Use Commission
10 in its position in relationship to other land use
11 regulatory agencies.

12 I only expressed my personal opinion, I
13 didn't speak on behalf of the Commission, but I
14 thought that given the State's budget situation, it's
15 incumbent for all of us to say, yes, we are willing
16 to discuss new ways of doing business, new ways of
17 organizing that are thoughtful, logical approaches to
18 how we can do our business effectively and fulfill
19 our duties.

20 That was those discussions with her, and
21 Representative Tarnas. So I wanted to share that
22 with everybody.

23 I have a few other observations.

24 One, to go to, I guess, the discussion of,
25 and the interaction with Ms. China and our Deputies

1 Attorney Generals, I would actually like to agendize
2 for future Land Use Commission meeting really the
3 subject of our representation by the Attorney
4 General's Office. We have been, I think with the
5 transition from one division of the Attorney
6 General's Office to another, and with the practice in
7 this particular division of the Attorney General's
8 Office to rotate the Attorneys General rather than
9 keep one attorney general assigned to us, it's
10 presented certain different operational challenges to
11 our thing, and I would like the ability to agendize
12 that discussion so that we can talk about it in a
13 Sunshine compatible way.

14 Mr. Orodener, I'm going to ask you to
15 help working with the Attorney General, of course,
16 putting that on a future agenda.

17 Regarding the long and really thoughtful
18 observations about whether we hold in-person meeting
19 or remote or hybrids, one thing I'll say, not to be
20 Debby Downer or Donald Downer, COVID might be a three
21 to five-years rather than 12 or 18-month thing, so we
22 might be overly optimistic to be looking for the time
23 when we can choose voluntarily being in person and
24 being remote.

25 So I think that the legislature, I think

1 it's good that there's at least a vehicle out there
2 from the Office of Information Practices to address
3 remote meetings, but I think they might be premature
4 in thinking that they know what the world will look
5 like in six months to a year.

6 Ms. China, you would like to say something
7 at this point or later?

8 MS. CHINA: Yeah, just a quick statement
9 that I just would like to say that in addition to the
10 LUC, my division also represents a lot of other
11 boards and commissions, and all of the boards and
12 commissions, including the Board of Land and Natural
13 Resources and the Commission on Water Resource
14 Management have rotated Deputy Attorney Generals, and
15 I don't think that we have had a problem with how we
16 advise these boards and commissions.

17 I think you guys can set -- agendize this
18 for a future meeting to discuss. It has been raised
19 with our higher-ups, and the decision has been made
20 to provide you with rotating agenda of rotating AGs.

21 CHAIRPERSON SCHEUER: Thank you, Ms. China.
22 Commissioner Ohigashi.

23 COMMISSIONER OHIGASHI: I just wanted to
24 make a comment on the restructuring of the --

25 CHAIRPERSON SCHEUER: I was going to agree

1 with you. I was moving on to like the pandemic
2 ongoing. I don't know that we are going to get
3 in-person meetings. I do agree there is value in
4 being in person. I think that the meeting you
5 referred to Pulelehua, the Maui Land & Pine project
6 came out differently because of people like us, in
7 seeing in our eyes and having the chance to talk to
8 their decision makers.

9 And I think the last point which was more
10 humerus than anything regarding Commissioner Cabral's
11 statement that almost everybody is online. Yes,
12 perhaps, but it reminds me of the rapper
13 (indecipherable) skit where he asks, "everybody who's
14 not here, let me know?"

15 So we don't necessarily know who's not here
16 to say that they're not here.

17 Commissioner Ohigashi.

18 COMMISSIONER OHIGASHI: I forgot about the
19 restructuring issue. What I'm concerned about is
20 that the Office of Planning or restructured Office of
21 Planning would become some kind of super agency that
22 would more than likely interfere with independence of
23 the Land Use Commission's decision. And I point out
24 to experience that I have on some County boards and
25 Commissions where they're governed by an executive

1 director of that particular area, and I think that
2 the problem is that the Commission becomes too
3 dependent and too responsible to the point of view of
4 the director of any kind of comission if it is placed
5 under it.

6 So that's just my concern with the
7 restructuring, that we would becoming, for me,
8 actually losing a lot of independence, or becoming
9 the preverbal rubber stamp.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Ohigashi. Appreciate that.

12 I think I believe, Mr. Orodenger, the tone
13 of the LUC's draft comments on potential hearings for
14 this legislation, correct me if I am wrong, are to
15 raise issues like that, and recognizing the
16 legislature it's sort of the prerogative to
17 reorganize government, but raise issues around what
18 legal procedures we would have for fulfilling our
19 business; is that correct?

20 EXECUTIVE OFFICER: That is correct, Mr.
21 Chair.

22 CHAIRPERSON SCHEUER: So the spirit of
23 Commissioner Ohigashi's comments can certainly
24 captures if we want to maintain our independence?

25 EXECUTIVE OFFICER: Yes.

1 CHAIRPERSON SCHEUER: Commissioner Okuda.

2 COMMISSIONER OKUDA: Just quickly,
3 regarding future legislation, can I also ask, just
4 ask that maybe we also, you and the Executive
5 Director keep your eye out on things which might be
6 outside of the Land Use Commission silo.

7 I just want to throw something out there,
8 that we're going to be in years of limited budget,
9 limited resources, and the question is, how do we
10 move the State into the future 40, 50 years from now?
11 How do we make sure that under represented or
12 unserved people are protected?

13 And if you agree, I would ask that you see
14 if a movement can be made to fund public classroom
15 teaching 100 percent. If there's going to be cuts,
16 let's not cut classroom public teaching, especially
17 in areas where we've got underserved or what some
18 people described as marginalized people. This
19 pandemic is showing that people who got money can get
20 their kids educated, and other people are being left
21 behind. I think we need in this community to make a
22 statement supporting public classroom education.

23 I'm not talking about high bureaucrats at
24 certain departments that sometime appear in front of
25 the Commission and we get all appalled that you're

1 getting paid so much money and can't answer our
2 question. I'm not talking about protecting their
3 jobs, their pay scale. What I'm asking is if you can
4 just maybe kokua a little bit public classroom
5 education. Thank you, Mr. Chair.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Okuda. Your reference to budget made
8 me -- thank you for your comment. Your reference to
9 budget made me just want to acknowledge, while
10 acknowledging the comments from Commissioner Cabral,
11 Aczon and Wong that indeed we are in a State budget
12 and our ability to travel or not is going to be
13 restricted.

14 I just want to remind everybody that our
15 total budget, I think, is \$500,000 a year. The
16 State's 1.4 billion dollar shortfall is not going to
17 be saved or lost or won based on an elimination of
18 LUC's travel budget.

19 So I don't have a problem if this
20 Commission feels that we really need to have some
21 flexibility to have the ability when safe to meet in
22 person, I don't have a problem advocating for the
23 small amount of necessary funds.

24 Commissioners, are there further comments
25 or questions on the agenda item that is before us

1 regarding legislative issues, or Mr. Orodenker within
2 this item any further clarification you would like to
3 have from the full Commission on pending matters?

4 EXECUTIVE OFFICER: Thank you, Mr. Chair.
5 Not at this time. I would point out to the
6 Commissioners that the Commissioners are always
7 welcome to participate in the legislative process as
8 individuals and as Commissioners and that the
9 legislature puts a lot of weight on Commissioner's
10 testimony with regard to various issues. So that if
11 something is occurring and you can't respond in a
12 manner that you would like as quickly as possible,
13 you are welcome to submit testimony.

14 We will try and keep the Commissioners
15 apprised of what is happening. One question that was
16 asked that I never got a chance to answer was, can I
17 email everyone, and the answer to that is yes, I can
18 email all the Commissioners with what is happening.
19 The problem is that the Commissioners can't respond
20 to everybody. They can respond to me as an
21 individual, but I would caution the Commissioners
22 once again on pressing that "reply all" button,
23 because that is a problem.

24 But I will be sending out emails of what's
25 happening, if there's anything significant.

1 CHAIRPERSON SCHEUER: Commissioner Chang.

2 COMMISSIONER CHANG: Thank you. This is a
3 thank you, Mr. Orodenker. In followup to your
4 comment, that would be really helpful if we, as the
5 Commissioners, could receive perhaps, I don't know if
6 you can do like a spreadsheet of the relevant bills
7 and status. I don't intend to make more work for
8 you, but that way you can put the Commissioners on
9 alert as to critical legislation that individual
10 Commissioners may want to provide testimony for,
11 because I don't check the status of legislative
12 bills, but if your office could create some kind of
13 form for us at the beginning, and then just have a
14 column on its status, so that you don't have to do
15 more work as the session goes on, that that might be
16 helpful, at least for me it would be.

17 EXECUTIVE OFFICER: Commissioner Chang, we
18 can do that easily.

19 CHAIRPERSON SCHEUER: Commissioner
20 Ohigashi.

21 COMMISSIONER OHIGASHI: I just wanted to
22 know from our Attorney General pointing to the box,
23 that from the Attorney General, Deputy, whether or
24 not -- what the contents of what the limitation in
25 the contents of any such email should be whether or

1 not solicitation from the or -- I just want to be
2 clear what kind of contents I'm not allowed.

3 MS. CHINA: Those are tricky. It really
4 should not be -- gosh, really can't be like, for
5 example, you know how you're playing telephone, you
6 know, you email Mr. Orodener and he emails back to
7 somebody else with information, and you email a
8 couple other Commissioners, so I guess he can give
9 you status, but it's more properly, you know, it
10 would really be more proper if we do things at
11 Commission meetings.

12 COMMISSIONER OHIGASHI: We cannot email?

13 MS. CHINA: Yeah, you really shouldn't be
14 emailing.

15 COMMISSIONER OHIGASHI: So the Director
16 cannot tell us status?

17 MS. CHINA: I guess he can send out email
18 giving you the status between now and the next
19 meeting, but it's going to be difficult because all
20 of you have to hold your tongue and not be responding
21 because it's going to be really easy to hit "reply
22 all".

23 CHAIRPERSON SCHEUER: I can assure the
24 Deputy we are a demure and quiet group.

25 MS. CHINA: It's just so tempting, right?

1 When you see a thing and it's like "I have to reply."

2 CHAIRPERSON SCHEUER: And one of the
3 possible solutions to this is that Mr. Orodener
4 bcc's the Commissioners, so if you hit "reply all" --

5 Is there anything else, Commissioners, at
6 this time? There being no further business, other
7 than to delightfully harass and welcome back Mr. Yee
8 to our company. Nice to have you back, Bryan.

9 Is there anything else, Commissioners? If
10 not, thank you very much. I was very encouraged by
11 our discussion, particularly my fellow Commissioners'
12 deep commitment to engaging with the community on
13 difficult issues face to face when possible, as open
14 as possible, making as many venues, avenues as
15 possible for interaction with us.

16 I think Hawaii is -- not to self-praise too
17 much -- but Hawaii is well-served by the spirit that
18 you bring to your work. Thank you so much.

19 With that, it's 10:37. We're adjourned.

20 (The proceedings were adjourned at 10:37
21 a.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on January 28, 2021, at 9:00 a.m.,
the proceedings contained herein was taken down by me
in machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 28th day of January, 2021, in
Honolulu, Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156