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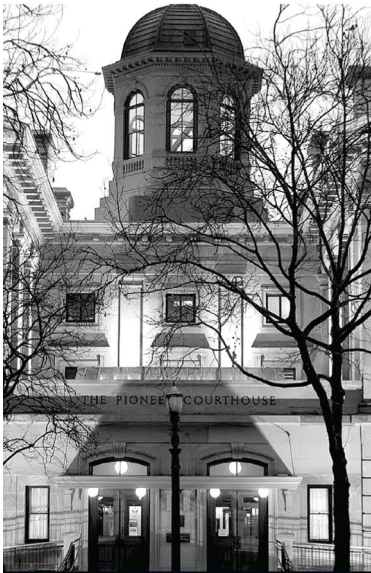
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STATE OF HAWAII

LAND USE COMMISSION

Hearing held on June 8, 2022

Commencing at 9:00 a.m.

Held at

Leiopapa a Kamehameha Building, Room 405  
235 South Beretania Street  
Honolulu, Hawaii 96746

I. CALL TO ORDER

II. ADOPTION OF MINUTES

May 25, 2022

III. DISCUSSION AND ACTION

To appeal Civil No. 3CCV-21-0000178 (Linda K. Rosehill), and the Third Circuit Court's Findings of Fact, Conclusion of Law, Decision and Order Reversing the State of Hawaii Land Use Commission's Consolidated Declaratory Order.

During the scheduled meeting, the Commission may elect to consult with its legal counsel in executive session pursuant to HRS Section 92-5.

IV. DISCUSSION AND ACTION

To file an application for writ of certiorari to appeal the Hawaii Intermediate Court of Appeals Memorandum Opinion in NOS. CAAP17-0000173 and CAA-17-0000181. (Ho'omoana Foundation V. Land Use Commission, and Pu'unoa Homeowners Association, Inc., and Ross R. Scott.)

During the scheduled meeting, the Commission may elect to consult with its legal counsel in executive session pursuant to HRS Section 92-5.

V. RECESS

BEFORE:

1 **APPEARANCES :**

2

3 **COMMISSIONERS PRESENT :**

4 Jonathan Scheuer, Chair

5 Dan Giovanni, Vice-Chair

6 Nancy Cabral

7 Gary Okuda

8 Dawn Chang

9 Kuikeokalani Kamakea-Ohelo

10 Lee Ohigashi

11 Arnold Wong

12 Edmund Aczon

13

14 **STAFF PRESENT :**

15 Daniel Orodener, Executive Officer

16 Scott Derrickson, Chief Planner

17 Riley Hakoda, Planner

18 Martina Segura, Planner

19 Ariana Kwan, Administrative Assistant

20 Julie China, Esq. Deputy Attorney General

21 Robert Nakatsuji, Esq. Deputy Attorney General

22

23

24

25

1 **APPEARANCES (CONTINUED)**

2

3 **PUBLIC TESTIMONY**

4 Cory Harden

5 Merry Anne Stone

6 Justin Cleveland

7 Tammie Evangelisa

8 David Hefer

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1           **CHAIRMAN SCHEUER:** Aloha mai kakou and  
2 good morning. This is the June 8th, 2022 Land Use  
3 Commission meeting. It is a hybrid meeting which is  
4 being held at the Leiopapa a Kamehameha Building,  
5 Room 405, and open to the public in Honolulu, as  
6 well as by interactive videoconference technology  
7 which links videoconference participants and other  
8 interested individuals of the public via the Zoom  
9 webinar platform, to comply with state law.

10           Members of the public are able to attend  
11 in person or view the meeting via the Zoom webinar  
12 platform. For all meeting participants, I would  
13 like to stress the importance of speaking slowly,  
14 clearly, and directly into a microphone. It is  
15 helpful if, before speaking, you state your name and  
16 identify yourself for the record.

17           This meeting is being recorded on the  
18 digital record of this Zoom meeting. The  
19 significance of that is twofold. First of all, if  
20 you do not wish to be part of the digital record of  
21 the Zoom meeting, you should leave now. Second of  
22 all, please be aware that we generate our recordings  
23 from the record of the Zoom meeting. Hence, the  
24 importance of speaking slowly, clearly, and directly  
25 into a microphone.

1 The Zoom technology allows the parties and  
2 each participating commissioner remote access to our  
3 meetings via our personal digital devices. Please  
4 note, due to matters entirely outside of our  
5 control, occasional disruptions to connectivity may  
6 occur for one or more members of the meeting at any  
7 given time. If this occurs, please let us know, and  
8 please be patient as we try to restore signals to  
9 continue to conduct business.

10 For any members of the public who wish to  
11 testify on any agenda item on which public testimony  
12 is allowed, if you are connecting to this via the  
13 Zoom software, indicate that you desire to provide  
14 testimony by pressing the raise- hand button. If  
15 you are calling in by phone to this Zoom meeting,  
16 you may use star 9 to indicate that you want to  
17 speak and star 6 that you want to be unmuted.

18 If it is necessary, we will take breaks  
19 from time to time, approximately ten minutes every  
20 hour. My name is Jonathan Likeke Scheuer. I have  
21 the honor and pleasure of serving as the Land Use  
22 Commission Chair. We currently have nine seated  
23 commissioners.

24 Along with me, Commissioner Ed Aczon,  
25 Commissioner Dawn Chang, Commissioner Ku'ikeokalani

1 Kamakea-Ohelo, Commissioner Gary Okuda, and  
2 Commissioner Arnold Wong are all on the Island of  
3 Oahu.

4 Also on the Island of Oahu is our  
5 Executive Officer, Daniel Orodener, our Chief  
6 Planner, Scott Derrickson, our Staff Planner, Riley  
7 Hakoda, our LUC Planner, Martina Segura, our Chief  
8 Clerk, Natasha Quinones. We have two Attorneys  
9 General with us today, Julie China, as well as  
10 Robert Nakatsuji.

11 Commissioner Nancy Cabral represents  
12 Hawaii Island. Commissioner Lee Ohigashi is from  
13 the Island of Maui. And Commissioner and First  
14 Vice-Chair Dan Giovanni is from the Island of Kauai.  
15 As I noted, court reporting is done from the Zoom  
16 recording.

17 Our first order of business in today's  
18 brief meeting is adoption of the May 25th, 2022  
19 minutes. Ms. Quinones, has any written testimony  
20 been received on adoption of the minutes?

21 **MR. HAKODA:** I don't think Natasha was  
22 able to make the meeting this morning.

23 **CHAIRMAN SCHEUER:** Okay. Is the staff  
24 aware of any written testimony that's been received  
25 on adoption of the minutes?

1           **MR. HAKODA:** Chair, no, no testimony that  
2 I'm aware of.

3           **CHAIRMAN SCHEUER:** Okay. So I see hands  
4 going up in the audience of people wishing to  
5 testify. But for now, just to be very clear, the  
6 only thing that you can testify on at this point in  
7 the meeting is adoption of the minutes.

8           I will offer an opportunity to offer  
9 testimony on the other agenda items as they come  
10 forward. So are there any people in the audience  
11 who wish to testify on adoption of the May 25th  
12 minutes? I see no hands raised and nobody calling  
13 in by phone.

14           Is there a motion to adopt the minutes?  
15 Commissioner Cabral?

16           **COMMISSIONER CABRAL:** I'd like to make the  
17 motion to adopt the minutes of May 25th. Thank you.

18           **CHAIRMAN SCHEUER:** Okay. Is there a  
19 second?

20           Commissioner waving his bidding sign for  
21 \$500 is Commissioner Arnold Wong seconding the  
22 motion.

23           **COMMISSIONER WONG:** I second, Chair.

24           **CHAIRMAN SCHEUER:** Is there any discussion  
25 on the motion to adopt the minutes? Seeing none,

1 Mr. Orodenger, please poll the commissioners.

2 **MR. ORODENKER:** Thank you, Mr. Chair. The  
3 motion is to adopt the minutes.

4 Commissioner Cabral?

5 **COMMISSIONER CABRAL:** Aye.

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

7 **COMMISSIONER WONG:** Aye.

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

9 **COMMISSIONER ACZON:** I would like to  
10 recuse. I wasn't in that meeting.

11 **MR. ORODENKER:** Thank you.

12 Commissioner Chang?

13 **COMMISSIONER CHANG:** Aye.

14 **MR. ORODENKER:** Commissioner Giovanni?

15 **COMMISSIONER GIOVANNI:** Aye.

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

17 **COMMISSIONER OHIGASHI:** Yes.

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

19 **COMMISSIONER OKUDA:** Aye.

20 **MR. ORODENKER:** Commissioner Kamakea-

21 Ohelo?

22 **COMMISSIONER KAMAKEA-OHELO:** Aye.

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

24 **CHAIRMAN SCHEUER:** Aye.

25 **MR. ORODENKER:** Thank you, Mr. Chair. The



1 motion passes with eight affirmative votes and one  
2 abstain.

3 **CHAIRMAN SCHEUER:** Okay. Thank you. Our  
4 next agenda item is the tentative meeting schedule.  
5 Mr. Orodenger?

6 **MR. ORODENKER:** Thank you, Mr. Chair. On  
7 June 23rd, we will be meeting on Oahu for the  
8 adoption of the order in the KS Waiawa matter and  
9 continuation of election of officers and performance  
10 review. We'll also be receiving an update from the  
11 Attorney General's Office with regard to the DW and  
12 the IMO.

13 On July 27th and 28th, we will be  
14 undertaking a new commissioner training at the  
15 Foreign Trade Zone. Those are scheduled to take  
16 place on both days.

17 August, at this time, is clear. On  
18 September 14th, 15th, and 16th, it is the HCPO on  
19 Kauai. All the commissioners are invited to attend.  
20 It's not a meeting. There's no Sunshine Law  
21 implications to that. It's simply a conference that  
22 everyone is entitled to attend.

23 And that takes us through the summer. And  
24 once again, I would caution the commissioners to  
25 keep their calendars open on the dates provided in

1 case we have matters that are going to come before  
2 us.

3 We do know of a couple of special permits  
4 and a 201H project that should be in the works. And  
5 those will be agendized as soon as we get word on  
6 Monday. Thank you, Commissioners.

7 **CHAIRMAN SCHEUER:** Thank you very much,  
8 Mr. Orodenker.

9 Commissioners, any questions for Dan about  
10 our schedule? Looking around the rooms, seeing  
11 none.

12 Our next agenda item is a discussion  
13 action to appeal Civil Number 3CCV-21-0000178, Linda  
14 K. Rosehill, and the Third Circuit Court's Findings  
15 of Fact, Conclusion of Law, and Decision and Order  
16 Reversing the State of Hawaii's Land Use  
17 Commission's Consolidated Declaratory Order.

18 The LUC staff has advised me that public  
19 testimony was received on this matter and have  
20 subsequently advised me that this has been posted to  
21 our website in the public sections of our website.  
22 Testimony received prior to our meeting -- our  
23 previous meeting on May 19 was from Steve Lopez,  
24 Jerry Allison, Cynthia Melani, and Cindy and Thomas  
25 Fisher.

1 Testimony has been received for today by  
 2 Cynthia Melani, Steve Lopez, Harry M. Pritikin -- I  
 3 apologize if I've mispronounced your name -- Michael  
 4 Matsukawa, Cory Harden, Richard and Debra Koval, and  
 5 Walter and Kathy Koning.

6 These have been posted to the website  
 7 under Docket DR 20-70. I'm now going to call for  
 8 any public oral testimony on this matter. If you  
 9 wish to testify, please do so by raising your hand  
 10 using the raise-your-hand function on the Zoom  
 11 software. If you -- when you -- I call your name, I  
 12 will admit you to be a panelist. You will then be  
 13 able to enable (inaudible) --

14 **COMMISSIONER WONG:** Chair, you're frozen.

15 **CHAIRMAN SCHEUER:** -- or your audio and  
 16 video -- I am still here. I am still here. Okay.  
 17 I think people started to move again. Can you hear  
 18 me again?

19 **COMMISSIONER WONG:** Yes.

20 **CHAIRMAN SCHEUER:** I just -- as a warning,  
 21 and I didn't want to say anything to botch it after  
 22 having, during the pandemic, nearly flawless  
 23 connectivity. For the last week, something has  
 24 happened in my neighborhood, and I've -- I've lost  
 25 connectivity every once in a while. So hopefully we

1 get through today smoothly.

2 In any case, so just to repeat. I will  
3 admit people one by one to be testifiers. I -- you  
4 -- when you are admitted, you will then be able to  
5 enable your audio and video. At that time, I will  
6 swear you in. You will give your testimony. You'll  
7 be available for questions from the Commission, and  
8 then we'll move on to the next testifier.

9 Cory Harden, followed by Merry Anne Stone.  
10 I will admit Ms. Cory Harden. Ms. Harden, if you  
11 enable your audio and video. Good morning, Ms.  
12 Harden. Can you hear me?

13 **CORY HARDEN:** Yes.

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

17 **CORY HARDEN:** Yes.

18 **CHAIRMAN SCHEUER:** Okay. Please state  
19 your name and address for the record and proceed.

20 **CORY HARDEN:** Cory Harden from Hilo on  
21 Hawaii Island. I'd like to speak about the short-  
22 term vacation rentals. I first want to thank you  
23 folks for your service on the Commission.

24 I'm really concerned about allowing more  
25 of these vacation rentals on ag land. They increase

1 the risk of unsustainability. That means less local  
 2 food and more tourism. And if you open the door to  
 3 vacation rentals, the number's going to explode.

4 At Kapoho Vacationland, before the lava  
 5 came in, there were vacation rentals in about four  
 6 out of every five houses. And in 2019, close to  
 7 half of the 4,000 vacation rental applications on  
 8 our island were for nonconforming use certificates,  
 9 and they were mostly for agricultural land.

10 And our island has over one million acres  
 11 of ag land, which means we could get quite a few  
 12 vacation rentals. And, as you know, the vacation  
 13 rentals means serious impacts, less food self-  
 14 sufficiency. We get the carbon footprint of  
 15 importing food and footprint from tourists flying  
 16 back and forth. We get noise and light pollution  
 17 traffics for the neighbors, and there's also higher  
 18 rents and higher property taxes for the neighbors.

19 It seems unlikely that the legislature  
 20 intended for a loophole allowing vacation rentals in  
 21 ag districts by just saying they are farm dwellings.

22 The primary use of ag management would be  
 23 ag. The Hokulea Project got shut down three years  
 24 because the court ruled one-acre properties with ag  
 25 activities in the easement or building envelope

1 wasn't sufficient.

2 And Hokulea was supposed to come to you  
3 folks to get its ag designation changed to rural.  
4 It hasn't done that. And so the county has allowed  
5 it to do roads and other infrastructure under less  
6 restrictive rules and regulations than it should be  
7 doing.

8 And every Hawaii County building permit  
9 applicant must sign a form saying they're aware of  
10 the Kelly versus Oceanside Partners ruling that  
11 requires homes to be farm dwellings. So thank you  
12 for listening.

13 **CHAIRMAN SCHEUER:** Thank you very much,  
14 Ms. Harden.

15 Are there questions, Commissioners, for  
16 the testifier? Commissioners?

17 Commissioner Cabral?

18 **COMMISSIONER CABRAL:** Ms. Harden, this is  
19 Nancy. I'm here on the -- well, I'm not on the Big  
20 Island right now, but I am the commissioner from the  
21 Big Island, and I absolutely want to thank you for  
22 your testimony and your obviously knowledgeable  
23 position and information for us. So thank you very  
24 much for coming to see us today. Thank you.

25 **CORY HARDEN:** Okay.

1           **CHAIRMAN SCHEUER:** Thank you. Any other  
2 questions, Commissioners, for our testifier?

3           Thank you very much for your testimony.  
4 I'm going to move you back to be a member of the  
5 audience, and then I'm going to admit Merry Anne  
6 Stone.

7           When Merry Anne Stone is admitted, they  
8 should enable their audio and video. And we will go  
9 through the same procedure. I will swear you in,  
10 ask you to state your name and address for the  
11 record, and then give your testimony. Can you  
12 enable your audio and video?

13           **MERRY ANNE STONE:** How do I do my video?

14           **CHAIRMAN SCHEUER:** There you go. Okay.  
15 And if you tilt your screen slightly down, we'll see  
16 all of you. There we go.

17           **MERRY ANNE STONE:** Sure.

18           **CHAIRMAN SCHEUER:** Good morning. I need  
19 to swear you in. Do you swear or affirm the  
20 testimony you're about to give is the truth?

21           **MERRY ANNE STONE:** Yes.

22           **CHAIRMAN SCHEUER:** Okay. So if you would  
23 state your name and address for the record and then  
24 proceed to share your testimony.

25           **MERRY ANNE STONE:** Merry Anne Stone, White

1 Sands Subdivision in Kona, and I wanted to thank  
2 Nancy -- or actually Cory for all of her good  
3 information.

4 I am opposing the vacation rentals in the  
5 rural areas. We do not need to eliminate the  
6 tranquility of our rural communities. Vacation  
7 rentals, as a whole, have been just a horrible  
8 experience personally for myself, and the fact that  
9 20 people -- 20 property owners are trying to change  
10 this island-wide, that, to me, is just scary.

11 The county has said that they've got 50  
12 applicants that are waiting. They're on hold until  
13 this Rosehill case proceeds. I think the county  
14 needs to stand up. The county needs to say no to  
15 these folks, and the county needs to create a  
16 department to handle all the vacation rental issues  
17 and clarifications.

18 It's so confusing and it's so time  
19 consuming that there is not a body that can address  
20 this. The bill needs to be addressed. We do not  
21 need to allow any more vacation rentals in  
22 nonconforming.

23 I live in a small cul de sac. I have two  
24 illegal vacation rentals. Both of them have three  
25 kitchens. What can I do? I do the best I can with



1 the county, but the county does the best they can.

2 So I just want to say thank you, again,  
3 Cory, for all your great information. And  
4 personally, I do not want to see any more vacation  
5 rentals allowed in areas where it's nonconforming.  
6 We do need food -- anyway, thank you very much.

7 **CHAIRMAN SCHEUER:** Thank you very much,  
8 Ms. Stone. Please let me see if there's questions  
9 from the commissioners for you.

10 Commissioners, any questions for the  
11 testifier? Commissioners? Seeing none, thank you  
12 very much for taking the time out of your day to log  
13 in to testify. We really appreciate it. I will now  
14 admit you to be an attendee.

15 Are there -- okay. There is another. I'm  
16 going to admit Justin Cleveland to be a panelist.  
17 When they are admitted, they should enable their  
18 audio and video.

19 And then anybody else who wishes to  
20 testify should indicate by using the raise-your-hand  
21 function. I do not see anybody calling in.

22 Good morning. Do you swear or affirm the  
23 testimony you're about to give is the truth?

24 **JUSTIN CLEVELAND:** I do.

25 **CHAIRMAN SCHEUER:** Awesome. If you would

1 state your name and address for the record, and then  
2 proceed.

3 **JUSTIN CLEVELAND:** Yeah. My name is  
4 Justin Cleveland. I have a property at 75-5229 Lua  
5 (phonetic), which is in Kailua Kona.

6 And I actually just got -- I just saw this  
7 article, and I wanted to join. So I am pushing to  
8 allow short-term vacation rentals on ag land. My  
9 property is over an acre, and it is ag land.

10 We purchased the property in 2015, and we  
11 built a house on it. And we have been renting it.  
12 We use it about -- we're there probably -- I don't  
13 know -- a quarter of the year or so as a family, or  
14 our relatives stay there. But we also supplement it  
15 by renting it short-term to people usually from the  
16 Mainland, and they're very good renters.

17 Now, the one thing that I will state is we  
18 pay a lot in taxes to the state and to the county.  
19 I've paid my taxes ever since we started renting it  
20 in 2016. We've never had any problems with the  
21 renters. They're very respectful of the community,  
22 of the property, and of the area, and they love it.  
23 And we've had a lot of return renters.

24 So when I filled out for the short-term  
25 vacation rental, I was denied for the permit. I'm

1 happily able to pay it. I have no problem paying  
2 any fees, permits, or anything to allow us to  
3 continue to rent the property. And I'm happy to do  
4 so. I want to give as much money back to the  
5 government and to the state to fund the projects to  
6 make the island a better place for everyone.

7           And I just wanted to make sure that you  
8 were aware of that. And you know, homeowners like  
9 myself, when this came about, we were very, I guess,  
10 torn apart because it was something that we really  
11 enjoyed. It was our property. It was almost like  
12 taking the land from underneath us, how we were  
13 using it.

14           And just to be clear, my community is  
15 about 35 properties that are all over an acre, and  
16 they're all designated ag land. And what's  
17 interesting is not one person is doing anything  
18 agricultural to give back to the community on the  
19 property.

20           And we obviously have tons of fruit trees  
21 and things like that that we harvest and enjoy when  
22 we're there, but there's nothing -- you're not  
23 selling it anywhere or doing anything with it.  
24 You're not -- you're not doing, you know, coffee  
25 plantations or anything on an acre. It's very

1 difficult on an acre of land to do much of anything  
 2 when it's agricultural, right? Especially when  
 3 you're on top of the hill, and you have rock wall  
 4 all around you, you basically have a half an acre of  
 5 usable space.

6 So I would consider the ag land where we  
 7 are not really ag land, per se, but it is classified  
 8 that way, which -- which would put us outside of  
 9 that short-term vacation rental, which I would like  
 10 to -- you know, my point of being here and making  
 11 the point to be here is to make sure that people  
 12 like ourselves that have paid taxes for the last  
 13 five to seven years are respected and we're able to  
 14 continue -- barring --

15 I do stand for some kind of permitting  
 16 process, making sure that the people have paid their  
 17 taxes and they continue to pay their taxes, and  
 18 allowing them to rent their properties on a short-  
 19 term basis, paying some kind of permit or fee  
 20 process as well.

21 **CHAIRMAN SCHEUER:** Thank you very much for  
 22 your testimony. Let me see if there are any  
 23 questions for you from the Commission.

24 Commissioner Cabral?

25 **COMMISSIONER CABRAL:** Thank you. I've got

1 it slow. It's on my lap here.

2 So Justin, thank you for coming forward.

3 And obviously, what you're discussing is a lot of  
4 people are doing a similar type thing. But you said  
5 you're not doing anything agricultural in terms of  
6 agricultural income-producing on your property, on  
7 your one acre, okay?

8 When you got your -- but you built your  
9 home there. You said you built your own home there?

10 **JUSTIN CLEVELAND:** Correct.

11 **COMMISSIONER CABRAL:** Okay. When you got  
12 your permit from the county, was there any  
13 discussion with the county asking you about  
14 agricultural use, or were you even told you were  
15 supposed to have agriculture use on your property?

16 **JUSTIN CLEVELAND:** There was nothing.  
17 They basically let us build a single-family home  
18 there with no discussion that we had to do anything  
19 agricultural.

20 **COMMISSIONER CABRAL:** Oh, okay. Well,  
21 thank you very much for that information. Okay.  
22 Thank you.

23 **JUSTIN CLEVELAND:** Yes.

24 **CHAIRMAN SCHEUER:** Commissioners?  
25 Commissioner Okuda?

1                   **COMMISSIONER OKUDA:** Thank you very much.

2 And thank you very much for your testimony.

3 Democracy always works better when you have an open  
4 discussion.

5                   Please don't take offense to any of the  
6 questions I might be asking in this. But many times  
7 because we on the Land Use Commission are what we  
8 call a quasi-judicial body, we are duty-bound to ask  
9 certain types of questions.

10                  And this question deals with it really --  
11 you know, fundamental requirements regarding the  
12 uses permitted on agricultural land. Are you aware  
13 right now, as you sit here today, that, in fact,  
14 there is a legal requirement that if you are  
15 occupying or using agricultural land, it has to be  
16 used for purposes -- agricultural purposes, which  
17 the Hawaii law, the statutes permit on agricultural  
18 land?

19                  And if the statute or the law does not  
20 permit those activities, they're not permitted. In  
21 other words, they're illegal. Are you aware of  
22 that?

23                  **JUSTIN CLEVELAND:** I was not aware that  
24 there was anything to do with short-term vacation  
25 rentals when we purchased the property. In fact,

1 our bylaws of the community actually allowed for  
 2 short-term vacation rentals when we purchased the  
 3 property. That was one of the reasons that we  
 4 purchased it, because we wanted to supplement the  
 5 property by doing that.

6 Now, there was no discussion of we had to  
 7 have a farm or anything like that, like I said, on a  
 8 one-acre parcel, which is really a half an acre.  
 9 It's very difficult to do anything around  
 10 agricultural, right?

11 Now, whether I'm going to have -- raise  
 12 pigs, chickens, farm coffee, it's very difficult to  
 13 do that on the parcel of land that's about -- after  
 14 you factor in the hillside and all that kind of  
 15 stuff, it's really like a half an acre of usable  
 16 space.

17 So I have -- definitely, we have  
 18 agriculture things there like fruit trees, mango  
 19 trees, pineapples, but it's not like a farm, right?  
 20 And we are -- we use them for our personal use.

21 **COMMISSIONER OKUDA:** Okay. And -- and let  
 22 me just ask the question this way. I sympathize  
 23 with the factual situation that you're presenting,  
 24 but my question is more fundamental.

25 Are you aware, as you sit here today, or

1 have you become aware that to have certain types of  
 2 activity on the land designated agricultural, your  
 3 dwelling must qualify and fall within a specific  
 4 definition under the law of what's called a farm  
 5 dwelling --

6 **JUSTIN CLEVELAND:** Yes. I actually -- I  
 7 do understand that.

8 **COMMISSIONER OKUDA:** Okay.

9 **JUSTIN CLEVELAND:** Now, one thing when I  
 10 did contact the county before, the county planning  
 11 division, and we had a discussion, I had brought it  
 12 to their attention that when we filed for a permit,  
 13 they basically allowed us to break the law by  
 14 approving the dwelling that we built on the property  
 15 on agricultural land. And they basically said, you  
 16 know, we kind of look the other way on ag land, and  
 17 we approve your permit, so forth.

18 So I am aware that we -- the property that  
 19 we have is probably not in line with the actual  
 20 agricultural land use building permit structure, but  
 21 the county allowed us to build it that way.

22 **COMMISSIONER OKUDA:** And I do agree with  
 23 your description of what took place as, quote,  
 24 "breaking the law." Just so that you don't think  
 25 that I'm personally a hypocrite, in prior hearings I



1 have told representatives of various county planning  
 2 departments that it is frankly not proper for the  
 3 counties to take positions or do things which break  
 4 the law.

5 Do you think it's fair to say that  
 6 everybody in government should not break the law?

7 **JUSTIN CLEVELAND:** Well, I would say  
 8 breaking the law is not a great thing to do in any  
 9 respect. Whether it's a county person allowing me  
 10 to have a permit for a structure that is going  
 11 against the proper planning procedure, I don't know  
 12 much about that.

13 Now, my other big thing is I'm also in  
 14 tune of if you do buy a property, you should not be  
 15 told what you have to do with the property. So now,  
 16 I get like what kind of structures you can put on  
 17 there and get permits for, but I have several  
 18 houses. And I am able to rent those properties as I  
 19 feel in other locations without any issues, right?  
 20 And some of them are bigger than others --

21 **CHAIRMAN SCHEUER:** We have some other  
 22 testifiers and there's other questions for this  
 23 witness, so we need to --

24 **COMMISSIONER OKUDA:** Okay, Chair. Let me  
 25 just conclude by asking this question. Well, no. I

1 think we have enough on the record from this  
2 witness. Thank you, Mr. Chair. No further  
3 questions.

4 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
5 Okuda.

6 Commissioner Giovanni.

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

8 Thank you, Mr. Cleveland, for coming  
9 forward today and being so frank with the  
10 Commission.

11 And my question is similar to the inquiry  
12 that you made when you were getting your building  
13 permit. I want to back up a step.

14 When you were buying the property and  
15 dealing with real estate agents or whoever you were  
16 dealing with, did you -- did they clarify for you  
17 that it was agricultural land and what would be the  
18 limits or constraints on building?

19 **JUSTIN CLEVELAND:** There was no anything  
20 about what we could or couldn't build, but there was  
21 more of since it was agricultural land, there was a  
22 difference in property tax value.

23 We were more -- you know, we were just  
24 kind of thrown off by -- it was a great piece of  
25 property and a great view, so you know, we were

1 like, well, whatever. We did ask about the  
2 constraints of renting it. And since the bylaws we  
3 had for our actual division said it allowed for  
4 short-term rentals, that's kind of where it stopped.

5 So there was -- there was nothing that the  
6 real estate agent came back and said, "It's  
7 agricultural land, and you cannot use it for short-  
8 term vacation rentals." That was nothing at the  
9 time we bought it in 2015.

10 **COMMISSIONER GIOVANNI:** So the actual real  
11 estate agent you referred to, was that part of the  
12 representative of the greater development that you  
13 moved into, or was it an independent real estate  
14 agent?

15 **JUSTIN CLEVELAND:** It was an independent  
16 real estate agent for Century 21 at the time.

17 **COMMISSIONER GIOVANNI:** Thank you very  
18 much. No further questions.

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

21 Commissioners, further questions?

22 Mr. Cleveland, sorry. You didn't state  
23 your address for the record. Could you at least  
24 tell us what state in which you reside as your full-  
25 time residence?

1           **JUSTIN CLEVELAND:** I reside in California,  
2 yes. And I stated my property address in Hawaii.

3           **CHAIRMAN SCHEUER:** Okay. Thank you very  
4 much. Thank you for your testimony. Anything  
5 further? Seeing none, I'm going to move you to be  
6 an attendee.

7           We have two more people who have raised  
8 their hands to testify. Tammie Evangelista,  
9 followed by David Hefer. I'm promoting Tammie  
10 Evangelista to be a panelist.

11           If you may, please enable your audio and  
12 video.

13           **TAMMIE EVANGELISTA:** Aloha, good morning.

14           **CHAIRMAN SCHEUER:** Aloha, good morning.

15 Let me swear you in. Do you swear or affirm the  
16 testimony you're about to give is the truth?

17           **TAMMIE EVANGELISTA:** Yes.

18           **CHAIRMAN SCHEUER:** Okay. And then if  
19 you'd state your name and address for the record,  
20 and then proceed, please.

21           **TAMMIE EVANGELISTA:** My name is Tammie  
22 Evangelista, and I live at 88-1513 Umi Avenue, which  
23 is Milolii Subdivision.

24           **CHAIRMAN SCHEUER:** Okay.

25           **TAMMIE EVANGELISTA:** And I just wanted to

1 clarify some things. Like, as far as ag land goes,  
 2 aren't we supposed to use ag land for ag land? I  
 3 mean, like, we have a food shortage right now, you  
 4 know. Kanaka Maolis are being pushed out.

5 I just want to make sure that the planning  
 6 committee does -- and I commend all you guys for the  
 7 job you guys do. I know it's a volunteer position.  
 8 Thank you so much for all the information.

9 And like, how do we hold real estate,  
 10 planning department, all these people responsible  
 11 for giving people wrong information? That's so  
 12 wrong. Ag land should be for ag land. You should  
 13 have at least something on it.

14 All these people are coming from the  
 15 Mainland and trying to get short-term profits off  
 16 our land, and we have limited resources. How can we  
 17 be giving these people an acre -- you can grow a lot  
 18 on an acre. You can make a small farm. You can  
 19 have a kalo patch. You can have a vegetable garden.  
 20 There's so much you can do.

21 And if you're not harvesting it, at least  
 22 give it to people so that they can use it. Like,  
 23 give it to the community, you know. Open up your  
 24 properties so that people can come and pick this  
 25 food for people that are starving. Because a lot of

1 our Hawaiians and our sovereign people and people  
2 that are trying to live off the land can't do it  
3 because these people from the Mainland are trying to  
4 make an extra buck.

5 And the people who are responsible for  
6 holding these people responsible aren't doing their  
7 jobs. How do we fix this? I'm sorry --

8 **CHAIRMAN SCHEUER:** Mahalo.

9 **TAMMIE EVANGELISTA:** -- that's just all I  
10 had to say.

11 **CHAIRMAN SCHEUER:** No, no, no. It's hard  
12 on Zoom, yeah? But when we're together, sometimes  
13 like the pause is natural, just taking in what you  
14 are saying. So mahalo for your testimony. Let me  
15 see if there's any questions for you from the  
16 commissioners.

17 **TAMMIE EVANGELISTA:** Thank you very much.

18 **CHAIRMAN SCHEUER:** Commissioners,  
19 questions for Ms. Evangelista?

20 Just -- I will just thank you and just  
21 acknowledge also that the community you are calling  
22 from is well known as a subsistence community on  
23 Hawaii Island, so thank you --

24 **TAMMIE EVANGELISTA:** Thank you.

25 **CHAIRMAN SCHEUER:** -- for bringing those.

1 **TAMMIE EVANGELISTA:** We're the last  
2 fishing village.

3 **CHAIRMAN SCHEUER:** Yeah. So thank you for  
4 bringing those perspectives and those voices to our  
5 discussion. We really appreciate it.

6 **TAMMIE EVANGELISTA:** Mahalo for hearing  
7 me. Aloha.

8 **CHAIRMAN SCHEUER:** Okay. Aloha. I'm  
9 going to move you to be an attendee. And I'm going  
10 to admit David Hefer.

11 If you enable your audio and video,  
12 please?

13 I'll note for the folks at the Leiopapa a  
14 Kamehameha Building, I muted you because I was  
15 picking up some mic noise from Riley. So if you  
16 want to speak, you're going to have to unmute.

17 Good morning. Do you swear or affirm the  
18 testimony you're about to give is the truth?

19 **DAVID HEFER:** I swear, yes.

20 **CHAIRMAN SCHEUER:** Okay. So please state  
21 your name and address for the record and proceed.

22 **DAVID HEFER:** I'm Dr. David Hefer. My --  
23 I'm -- my Hawaiian address is 82953 Coffee Drive in  
24 Captain Cook, 96704. I'm in the process of moving  
25 to New York, so I don't have that New York yet, but

1 I will be switching states.

2 I was working at Kona Hospital for four  
3 years, and I'm right now still working at Wilcox on  
4 Kauai. But I'm transitioning back to New York where  
5 I trained.

6 When I moved from Kona to Wilcox, we owned  
7 a home on the Big Island, and we wanted to keep it  
8 there in order to be able to use it as -- for our,  
9 you know, vacation purposes but also vacation rent  
10 it in the meantime. So I'm actually in the  
11 situation like the Rosehill group is, but I'm not  
12 part of that lawsuit.

13 The reason why I want to testimony here is  
14 that, you know, I did this pro se, so I'm not a  
15 lawyer, but unfortunately, the elephant in the room  
16 of the Land Use, which is -- it's a very good law in  
17 Hawaii, but unfortunately it was not maintained  
18 because, as I'm sure you know, is that the five --  
19 your bond re-review was never performed since the  
20 year 1992.

21 So if -- you know, if words fall here  
22 that, you know, the law is being violated, it's a  
23 little bit of a paradox situation that you, as the  
24 Land Use Commission, actually does not fulfill, you  
25 know, Chapter 205-18 of the Hawaii State Land Use



1 law.

2           You know, one has to say that simply,  
3 because what just happened the last, you know, 20 or  
4 30 years almost now is that, basically, the land use  
5 situation in Hawaii was frozen in the situation of  
6 1992, and I think intent of the state law was to  
7 review that every five years to make sure it's up to  
8 date.

9           And in that role, you know, as the  
10 previous testimony said, it's very hard to do ag use  
11 on a one-acre property. Now, those subdivisions are  
12 made because they're homes of people who are now in  
13 an ag subdivision. Also, it should be rural.  
14 That's the -- that's the logical designation it  
15 should have.

16           And I'm sure your commissioner from the  
17 Big Island, you know that there's a huge problem on  
18 the Big Island with agricultural subdivisions which  
19 should be rural. So I'm just, you know, as somebody  
20 who's -- you know, who appealed the denial of the  
21 vacation rental permit, we were intending to stay on  
22 Kauai for long-term. We had to now move to New York  
23 for health reasons of the family.

24           Now, you know, there's health physician  
25 shortages. I always wanted to go back to Kona

1 Hospital to provide care there as a hospitalist, but  
2 I couldn't because now I have to long-term rent the  
3 property. So I basically have, for me, personal use  
4 of this house, and again, unfortunately, you know, I  
5 don't think as a commission you can say, you know,  
6 why wasn't the five here.

7 I mean, it's clear, it is a very expensive  
8 undertaking where the state could not just do it.  
9 But basically, you have invalidated the law. Okay?  
10 I think that's a safe statement to make right now  
11 because the intent of the law was to maintain the --  
12 the --

13 **CHAIRMAN SCHEUER:** Is this the conclusion  
14 of your testimony, Doctor?

15 **DAVID HEFER:** Not yet.

16 **CHAIRMAN SCHEUER:** If you could wrap it  
17 up, please?

18 **DAVID HEFER:** I just want to also say,  
19 again, I'm not part of the Rosehill group, but you  
20 know, whatever your decisions make here, whatever  
21 comes out with, it's a pended application in front  
22 of the Land Use. I will be in New York, and I  
23 reserve the right to do this at federal court case  
24 in New York later on.

25 It's specifically going to include if by

1 not having, you know, 205-18 followed for 30 years,  
2 what is this entire land use law worth at this  
3 moment? That's it. Thank you.

4 **CHAIRMAN SCHEUER:** Questions for the  
5 witness?

6 Commissioner Cabral?

7 **COMMISSIONER CABRAL:** Yeah. Dr. Hefer,  
8 thank you very much for your testimony. In terms of  
9 your personal use of the house and it being a  
10 rental, are you aware that you can in fact rent your  
11 house out for six months or more and then come and  
12 stay in it as a short-term resident because you own  
13 the house. That is not then a vacation rental.

14 So you could have your house rented for a  
15 period of time, come back and stay in it for a  
16 while, you know, and then rent it again, as long as  
17 you -- there are -- would be recommended parameters  
18 there on the timeframe, but you renting it -- you  
19 personally using it short-term is not considered a  
20 rental.

21 So the situation to be in full compliance  
22 with the confusing contradictory laws that may be  
23 existing, you would be okay to do that for your own  
24 personal self. Are you aware of that?

25 **DAVID HEFER:** I'm very well aware of that.

1 I'm not sure if that situation would help any  
2 renters who only have to move every six months.  
3 It's not very fair to any families. We right now  
4 have a family with three kids in the house, renting  
5 to them.

6 I don't think it's very fair to kick them  
7 out after half the year and two -- a weekend and  
8 find another renter. I don't -- that's my -- you  
9 know, there is some social responsibility, and  
10 again, that's not what my testimony was about.

11 My testimony was about why did not -- why  
12 did the State of Hawaii fail to do, you know, a  
13 five-year boundary amendment, you know --

14 **CHAIRMAN SCHEUER:** Okay. So --

15 **DAVID HEFER:** -- was last --

16 **CHAIRMAN SCHEUER:** Excuse me. Excuse me.

17 **DAVID HEFER:** Yeah.

18 **CHAIRMAN SCHEUER:** You're a witness.

19 You're not here to argue with individual  
20 commissioners, to be very clear.

21 **DAVID HEFER:** Okay. Yeah, yeah.

22 **COMMISSIONER CABRAL:** Yeah.

23 **CHAIRMAN SCHEUER:** Any further questions,  
24 Commissioner?

25 **COMMISSIONER CABRAL:** No. Thank you very

1 much. I do appreciate your perspective, and I'm  
2 aware -- we are all aware of the problem. Thank  
3 you.

4 **DAVID HEFER:** Okay.

5 **CHAIRMAN SCHEUER:** Commissioners, further  
6 questions for the witness? I would advise the  
7 witness to read the more recent amendments to  
8 Chapter 205, which specifically address this  
9 concern, which you appear to not be aware of due to  
10 your testimony.

11 Anything further? If not, thank you very  
12 much for your testimony. I'm going to move you to  
13 be an attendee.

14 Last call. Is there anybody who is  
15 attending this meeting who wishes to provide oral  
16 testimony on this agenda item? Raise your hand.  
17 Seeing none, I'm closing public testimony for this  
18 matter and moving onto the Commission's discussion.

19 I would advise the Commission we do have  
20 available with us counsel if you wish to be advised  
21 on any updates on this case. We can go into  
22 executive session or we can simply proceed to  
23 discussion.

24 Commissioners, any questions or comments,  
25 or what is your pleasure?

1 Commissioner Wong?

2 **COMMISSIONER WONG:** Yes, Chair. Thank  
3 you. I would like to move into executive session to  
4 speak to our Attorney General regarding these legal  
5 matters pertaining to this stuff.

6 **CHAIRMAN SCHEUER:** Okay. Is there a  
7 second?

8 **COMMISSIONER OHIGASHI:** Second.

9 **CHAIRMAN SCHEUER:** Motion's been made by  
10 -- oh, thank you, Commissioner Ohigashi. I'm sorry  
11 I didn't see your hand raised. It was lost in the  
12 background of your screen.

13 Motion has been made by Commissioner Wong  
14 and seconded by Commissioner Ohigashi to go into  
15 executive session to consult with our Attorney  
16 General on our powers, duties, privileges, and  
17 immunities related to this docket, this agenda item.

18 Is there any discussion on the motion?  
19 Mr. Derrickson, Mr. Hokuda, or Mr. Orodener, will  
20 we go into a separate meeting or how will we handle  
21 our executive session if the motion prevails?

22 **MR. HOKUDA:** Chair, this is Riley. We  
23 sent invitations for a separate meeting for the  
24 executive session for everyone. Mr. Nakatsuji, I  
25 wasn't expecting him, or he should have a separate

1 email.

2 **MR. ORODENKER:** Riley, I don't have it.

3 **CHAIRMAN SCHEUER:** Yeah. We don't have  
4 it.

5 **MR. ORODENKER:** You need to resend it. I  
6 don't think anybody has it.

7 **MR. DERRICKSON:** Yeah. We will resend it,  
8 and you'll -- Commissioners and the Deputy AGs  
9 should -- can sign out of this meeting, and it will  
10 stay up and active, and we can sign back into it  
11 afterwards.

12 **CHAIRMAN SCHEUER:** So thank you for  
13 clarifying that for the public, Mr. Derrickson.  
14 Should this motion prevail and we go into executive  
15 session. The Commissioners will leave this Zoom  
16 meeting and go into a separate Zoom meeting, but  
17 this meeting will remain open, and we will come back  
18 to this meeting when out of executive session and  
19 same way in which we would physically depart a  
20 meeting room or ask the public to leave the meeting  
21 room if we were going into open session -- executive  
22 session, excuse me.

23 So is there further discussion on the  
24 motion? If not, Mr. Orodenker, would you please  
25 poll the Commission. You are muted.

1           **MR. ORODENKER:** I'm sorry, Mr. Chair, I  
2 may have missed it. But I don't recall the second  
3 on the motion.

4           **CHAIRMAN SCHEUER:** Commissioner Ohigashi.

5           **MR. ORODENKER:** Okay. Thank you.  
6 The motion is to go into executive  
7 session.

8           Commissioner Wong?

9           **COMMISSIONER WONG:** Aye.

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

11          **COMMISSIONER OHIGASHI:** Aye.

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

13          **COMMISSIONER ACZON:** Yes.

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

15          **COMMISSIONER CABRAL:** Yes.

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

17          **COMMISSIONER CHANG:** Aye.

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

19          **COMMISSIONER GIOVANNI:** Aye.

20          **MR. ORODENKER:** Commissioner Okuda?

21          **COMMISSIONER OKUDA:** Yes.

22          **MR. ORODENKER:** Commissioner Kamakea-  
23 Ohelo?

24          **COMMISSIONER KAMAKEA-OHELO:** Aye.

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



1           **CHAIRMAN SCHEUER:** Aye.

2           **MR. ORODENKER:** Thank you, Mr. Chair. The  
3 motion passes unanimously.

4           **CHAIRMAN SCHEUER:** For members of the  
5 public, predicting the length of our executive  
6 sessions is a hazardous business, but I do not  
7 expect this one to be particularly long.

8           With that, we are going into executive  
9 session. This meeting room will remain open, and we  
10 will return to it when done with executive session.

11           **(Recess taken 9:44 - 10:17 a.m.)**

12           **CHAIRMAN SCHEUER:** It's 10:17. We're back  
13 in open session. For everyone, remember we are on  
14 our docket item related to the Rosehill appeal.

15           Commissioners, discussion? What is your  
16 pleasure?

17           Commissioner Wong?

18           **COMMISSIONER WONG:** Chair, after hearing  
19 all the testimonies and reviewing our past with this  
20 docket, I would like to make a motion to move to --  
21 move to appeal this case. So I guess we have to  
22 move -- make a motion to tell the Attorney General  
23 to go forward with this case and any other legal  
24 persons needed for this case.

25           **CHAIRMAN SCHEUER:** So your motion is to

1 support appeal of the reversal of our decision?

2 **COMMISSIONER WONG:** Yes.

3 **CHAIRMAN SCHEUER:** Okay. Commissioner  
4 Cabral?

5 **COMMISSIONER CABRAL:** I'd like to go ahead  
6 and second Commissioner Wong's motion.

7 **CHAIRMAN SCHEUER:** Okay. I'll allow the  
8 movant and the seconder to say anything towards the  
9 motion that they wish.

10 **COMMISSIONER WONG:** Chair, I guess I said  
11 most of it at our first -- when this first came up,  
12 but also, just a reminder that on my motion I want  
13 to make to have the AG allowed to get outside  
14 counsel if needed for this appeal. So if I can add  
15 that to the motion. That's all.

16 **CHAIRMAN SCHEUER:** Does -- Commissioner  
17 Cabral, do you agree with the friendly amendment to  
18 the motion?

19 **COMMISSIONER CABRAL:** Yes, I do agree.

20 **CHAIRMAN SCHEUER:** Okay. Commissioner  
21 Cabral, do you wish to speak to the motion?

22 **COMMISSIONER CABRAL:** Same. I think that  
23 our explanations and our position and our  
24 understanding of and interpretation of what the law  
25 allows and doesn't allow was correct at that time.

1 And I -- the facts have not changed, so I agree that  
2 we should go ahead and appeal that decision. Thank  
3 you.

4 **CHAIRMAN SCHEUER:** Okay. Commissioners,  
5 we're in discussion. We have a motion on the table  
6 to appeal the Rosehill decision. Any discussion?  
7 Going once.

8 **COMMISSIONER OKUDA:** Chair, Gary Okuda.

9 **CHAIRMAN SCHEUER:** Commissioner Okuda.

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

11 This is Gary Okuda. I will be supporting the  
12 motion. I interpret the motion to also include the  
13 fact that to the extent necessary, we are confirming  
14 what the Department of the Attorney General has  
15 already done, including the filing of the Notice of  
16 Appeal.

17 So to the extent that the Attorney General  
18 needed prior approval or approval by the Land Use  
19 Commission, effective as of the time that they made  
20 the decision, you know, I interpret this motion to  
21 confirm or ratify -- ratify the actions taken by the  
22 Department of the Attorney General for the reasons  
23 that we all -- that I stated at the other meeting.

24 I also think that because the issues here  
25 are those of statewide importance and statewide

1 application, it's important that we have a decision  
2 from the highest possible court in spelling out what  
3 the rules are, so that we will know exactly what we  
4 have to comply with statewide. Thank you.

5 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
6 Okuda.

7 Commissioner Giovanni.

8 **COMMISSIONER GIOVANNI:** Thank you, Chair.  
9 I similarly will be supporting the motion that we  
10 recommend to the Attorney General that they go  
11 forward with the appeal on this case.

12 I personally feel that decisions to appeal  
13 or not appeal should not be made based on a  
14 prediction or estimation of success in an appeal,  
15 but rather on the merits and the need for  
16 clarification from a higher court of an issue which  
17 seems to be confusing.

18 So we need to hear from a higher court and  
19 get the clarity we need on this commission so we can  
20 move forward on a consistent basis. And it's  
21 irrelevant to me what our chances might be of  
22 success that is being estimated by third parties.  
23 Thank you.

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

1 Commissioner Chang?

2 **COMMISSIONER CHANG:** Thank you, Mr. Chair.

3 I too will be supporting the motion. I think this  
 4 has very broad policy issues and repercussions for,  
 5 in particular, the Land Use Commission. As we have  
 6 consistently said over the last several years, the  
 7 dockets that have come before define farm dwelling  
 8 as having to be associated with an agricultural use  
 9 of the property.

10 Clearly, housing is important, but also  
 11 sustainable ag. We probably -- we ship in over 90  
 12 percent of our goods. There's really no reason that  
 13 we should not be having more agricultural use. And  
 14 as someone that -- one of the testifiers mentioned,  
 15 on a one-acre parcel of land, you can do a lot of  
 16 agricultural activity.

17 So for those reasons, I think Land Use  
 18 Commission has a much broader view of land use  
 19 planning than perhaps the counties, but we need to  
 20 provide guidance to the counties. And there is -- I  
 21 think our interpretation of the law, our  
 22 interpretation of farm dwelling, what's the  
 23 appropriate use on ag land is correct, and I support  
 24 us taking this up on appeal and ensuring that we  
 25 continue to have the -- our interpretation

1 implemented consistently.

2 So thank you very much.

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

5 Commissioners, further discussion?

6 Commissioner Aczon?

7 **COMMISSIONER ACZON:** Mr. Chair, I will  
8 support the motion, and I don't really have anything  
9 else to add. I just want to encourage the Hawaii  
10 County and OPSD to get onboard on this appeal. It's  
11 just concerning that, you know, the county and the  
12 Land Use Commission or the state is not on the same  
13 page on this one. This is a State of Hawaii issue,  
14 and all the agencies should be on the same page.

15 **CHAIRMAN SCHEUER:** Thank you very much,  
16 Commissioner Aczon.

17 Commissioners, we're in discussion.  
18 Anything further before I call for the vote?

19 I will offer my remarks. After doing this  
20 now for over 25 years, quasi-judicial proceedings,  
21 either appearing in front of commissions or now  
22 being on one, I observed that these issues always  
23 operate at least at two levels.

24 One is what is the correct interpretation  
25 of what sometimes is called the Black Letter law,

1 the written law. I have no doubt that we are  
2 accurate and were accurate in our interpretation of  
3 the law. But the other level at which our decisions  
4 operate are in the imperfect ways in which the law  
5 tries to achieve overall justice.

6 We are at a point in Hawaii where the biggest  
7 question for me that is before us is: Do we run  
8 Hawaii for outside capital, for visitors, and for  
9 other outside interests, or do we run Hawaii for  
10 ourselves and for those of us who live here in the  
11 islands themselves?

12 And I think that when we look at who is  
13 benefitting and who is losing in this transaction,  
14 it is unambiguous that the decision that was made by  
15 the LUC not only upholds the Black Letter law  
16 involved, but the greater idea that perhaps Hawaii  
17 should actually be run for those of us who live here  
18 and for the islands themselves.

19 Mr. Orodener, would you please poll the  
20 Commission?

21 **MR. ORODENKER:** Thank you, Mr. Chair. The  
22 motion is to instruct the Attorney General to move  
23 forward with an appeal of the Rosehill matter and  
24 retain outside counsel.

25 Commissioner Wong?

1 COMMISSIONER WONG: Aye.

2 MR. ORODENKER: Commissioner Cabral?

3 COMMISSIONER CABRAL: Aye.

4 MR. ORODENKER: Commissioner Kamakea-

5 Ohelo?

6 COMMISSIONER KAMAKEA-OHELO: Aye.

7 MR. ORODENKER: Commissioner Okuda?

8 COMMISSIONER OKUDA: Yes.

9 MR. ORODENKER: Commissioner Ohigashi?

10 COMMISSIONER OHIGASHI: Yes.

11 MR. ORODENKER: Commissioner Giovanni?

12 COMMISSIONER GIOVANNI: Aye.

13 MR. ORODENKER: Commissioner Chang?

14 COMMISSIONER CHANG: Aye.

15 MR. ORODENKER: Commissioner Aczon?

16 COMMISSIONER ACZON: Yes.

17 MR. ORODENKER: Chair Scheuer?

18 CHAIRMAN SCHEUER: Aye.

19 MR. ORODENKER: Thank you, Mr. Chair. The  
20 motion passes unanimously.

21 CHAIRMAN SCHEUER: Thank you very much.

22 Commissioners, in the interest of being

23 expeditious with what was expected to be a short

24 meeting, I'd like to proceed to our next agenda

25 item, a discussion action to file an application of



1 a writ of certiorari to appeal the Hawaii  
2 Intermediate Court of Appeals' Memorandum Opinion in  
3 Number CA AP17-0000173 and CA AP17-0000 -- that  
4 should have been a 4 -- 181, Ho'omoana Foundation  
5 versus Land Use Commission and Pu'unoa Homeowner's  
6 Association, Incorporated and Ross R. Scott.

7 The Land Use Commission staff has informed  
8 me that no written public testimony was received  
9 regarding this matter. Are there any members of the  
10 public who wish to testify on -- orally on this  
11 matter? If so, please use the raise-your-hand  
12 function in the Zoom software. I'm not seeing  
13 anybody who's calling in by phone..

14 If you wish to orally testify in this  
15 matter -- seeing none, I will close public testimony  
16 on this matter.

17 Mr. Orodenger, can you please provide us  
18 with some additional information on this action  
19 item?

20 **MR. ORODENKER:** Thank you, Mr. Chair.  
21 Some of the commissioners may recall that some time  
22 ago we had a case on Maui wherein the community  
23 association from an adjoining piece of agricultural  
24 land was asking the Commission to issue a  
25 declaratory ruling on whether or not overnight

1 camping accommodations were allowed under Chapter  
2 205.

3 Let me kind of expand on that a little  
4 bit. It needs to be understood that that facility  
5 was going to be used to house the homeless. The  
6 Commission found that Chapter 205 did not allow for  
7 overnight camping facilities on agricultural land.

8 The matter was appealed. The appellate  
9 court, the Intermediate Court of Appeals overturned  
10 the Commission's decision with regard to that  
11 decision based on its interpretation of some prior  
12 case law.

13 At the same time, it's my belief that if  
14 you read the decision, the ICA was asking us to  
15 appeal further because it was -- they didn't like  
16 what was being said, and they thought the matter was  
17 confused, and they made that clear.

18 Now, Attorney General Nakatsuji, I  
19 believe, is here to discuss this matter, and I don't  
20 know if you feel we need to go into executive  
21 session to get his opinion.

22 **CHAIRMAN SCHEUER:** Thank you, Mr.  
23 Orodenker.

24 Deputy Attorney General Nakatsuji is  
25 available to consult with us in executive session if

1 so desired and is, I believe, recommended by the  
2 nodding of our heads of our attorneys -- Deputy  
3 Attorneys General.

4 Commissioners, any questions for Dan, or  
5 is there a motion?

6 Commissioner Ohigashi?

7 **COMMISSIONER OHIGASHI:** I move that we go  
8 into executive session, and so our Attorney General  
9 -- that is --

10 **CHAIRMAN SCHEUER:** -- immunities and  
11 privileges related to this appeal.

12 **COMMISSIONER OHIGASHI:** Exactly what you  
13 said.

14 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
15 Ohigashi.

16 Commissioner Cabral?

17 **COMMISSIONER CABRAL:** I will second that  
18 elegant motion.

19 **CHAIRMAN SCHEUER:** Okay. Is there a  
20 discussion on the motion?

21 Commissioner Ohigashi?

22 **COMMISSIONER OHIGASHI:** I don't have any.

23 **CHAIRMAN SCHEUER:** Okay.

24 **COMMISSIONER OHIGASHI:** I shall accept  
25 that I'm not silver-tongued.

1           **CHAIRMAN SCHEUER:** Gold or platinum,  
2 perhaps.

3           Seeing no discussion, Mr. Orodenger, would  
4 you please poll the Commission on the motion to go  
5 into executive session.

6           If the motion prevails, we will do the  
7 same procedure with this meeting, and then we'll  
8 come -- we will remain open. We will go into the  
9 other room for what I suspect, but cannot guarantee  
10 is a brief briefing, and then we will come back into  
11 open session at the same meeting.

12           Please poll the Commission.

13           **MR. ORODENKER:** Thank you, Mr. Chair. The  
14 motion is to go into executive session.

15           Commissioner Ohigashi?

16           **COMMISSIONER OHIGASHI:** Aye.

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

18           **COMMISSIONER CABRAL:** Aye.

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

20           **COMMISSIONER CHANG:** Aye.

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

22           **COMMISSIONER ACZON:** Yes.

23           **MR. ORODENKER:** Commissioner Giovanni?

24           **COMMISSIONER GIOVANNI:** Aye.

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

1 **COMMISSIONER OKUDA:** Yes.

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

3 **COMMISSIONER WONG:** Aye.

4 **MR. ORODENKER:** Commissioner Kamakea-

5 Ohelo?

6 **COMMISSIONER KAMAKEA-OHELO:** Aye.

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

8 **CHAIRMAN SCHEUER:** Aye.

9 **MR. ORODENKER:** All right. Thank you, Mr.  
10 Chair. The motion passes unanimously.

11 **CHAIRMAN SCHEUER:** Okay. It's 10:32.

12 We're going into executive session as to --

13 Commissioner Cabral?

14 **COMMISSIONER CABRAL:** Yeah.

15 Clarification. I did get two sessions. First,  
16 Scott's popped up, and then immediately, Riley's  
17 did. And I went back and forth with a lot of  
18 frustration last time trying to see, because both of  
19 them said that each of them were already in another  
20 Zoom or something. So which of those two is it I  
21 should go onto?

22 **CHAIRMAN SCHEUER:** Mr. Derrickson.

23 **COMMISSIONER CABRAL:** Okay.

24 **CHAIRMAN SCHEUER:** No. I'm clarifying.  
25 Mr. Derrickson?

1 **MR. DERRICKSON:** Yes, I'm here.

2 **CHAIRMAN SCHEUER:** Which of the two? Just  
3 use one.

4 **MR. DERRICKSON:** Yeah, I know. I wish.  
5 Use the one that Riley sent to you.

6 **CHAIRMAN SCHEUER:** Okay.

7 **MR. DERRICKSON:** They should actually be  
8 the exact same meeting, but just use one of them,  
9 yes.

10 **CHAIRMAN SCHEUER:** Okay. We're going into  
11 executive session. It's 10:32. We will reconvene  
12 to this room when done.

13 **COMMISSIONER CABRAL:** Thank you.

14 **(Recess taken 10:32 - 10:58 a.m.)**

15 **CHAIRMAN SCHEUER:** Thank you for starting  
16 the recording. It is 10:58 a.m. We are back in  
17 open session.

18 Commissioners, we are on the agenda item  
19 related to the Pu'unoa Homeowner's Association  
20 appeal.

21 Commissioner -- Commissioner Okuda?

22 **COMMISSIONER OKUDA:** Mr. Chair, I would  
23 like to make a motion.

24 **CHAIRMAN SCHEUER:** Please do.

25 **COMMISSIONER OKUDA:** I move that the Land

1 Use Commission recommend, authorize, and direct the  
2 Department of Attorney General file a petition or  
3 application to the Hawaii Supreme Court for a writ  
4 of certiorari with respect to the Intermediate Court  
5 of Appeals decision that was -- that was issued in  
6 this case, which we understand a judgment on appeal  
7 has not been entered as of yet. That is my motion.

8 **CHAIRMAN SCHEUER:** Is there a second?  
9 Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** Second.

11 **CHAIRMAN SCHEUER:** Okay. I will allow the  
12 movant and the seconder to speak to their motion and  
13 recognize Commissioner Giovanni following that.

14 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
15 The reason for my motion is very brief. I agree  
16 with the discussions that were made that we need  
17 clarity because the two decisions, the Waianae  
18 Neighborhood Board decision and the current ICA  
19 decision referring to prior precedent, it basically  
20 conflicts.

21 And we -- we will follow the law no matter  
22 what the law is, but it's -- it's not good. And I  
23 don't want to call it a disservice to the community  
24 if decisions have to be made where there is no  
25 clarity to the law.

1           Whatever the voice of the Supreme Court  
 2 decides is the law, I know we all have sworn an oath  
 3 to follow it, and we will do so. But it just  
 4 creates more work, more litigation, more uncertainty  
 5 where there is no clarity, so for those reasons, I  
 6 ask that the motion be granted. Thank you.

7           **CHAIRMAN SCHEUER:** Thank you.

8           Commissioner Ohigashi, followed by  
 9 Commissioner Giovanni.

10          **COMMISSIONER OHIGASHI:** I agree with  
 11 Commissioner Okuda. And I would like to add that I  
 12 think that the opinion issued, what I see, it sort  
 13 of pushes us in this direction. More than pushes  
 14 us, drags us in this direction. And I -- I'll be  
 15 supporting the motion.

16          **CHAIRMAN SCHEUER:** Thank you.

17          Commissioner Giovanni?

18          **COMMISSIONER GIOVANNI:** Thank you, Chair.  
 19 I similarly will support the motion. I -- my  
 20 regular disclaimer, I'm not an attorney. I don't  
 21 understand all of the mechanics of this, so I very  
 22 much appreciate hearing from my fellow commissioners  
 23 that have a legal background.

24          And I very much appreciate the  
 25 explanations and detail that was provided by the



1 Deputy AG in this matter because it helped me  
2 understand the situation. For those reasons, I  
3 follow the lead and concur with the movant and the  
4 second to the mover, and I will support the motion.

5 **CHAIRMAN SCHEUER:** Thank you.

6 Commissioners, we are in discussion. We  
7 have a motion before us. Is there further  
8 discussion? Seeing none, Chair intends to vote in  
9 favor of the motion as well, joining in the  
10 reasoning from Commissioner Okuda. Anything  
11 further?

12 Mr. Orodenger, would you please poll the  
13 Commission?

14 **MR. ORODENKER:** Thank you, Mr. Chair. The  
15 motion is to recommend -- the LUC to recommend to  
16 the Department of the Attorney General -- to  
17 authorize or direct the Department of the Attorney  
18 General to file a petition to appeal the ICA  
19 decision in the Ho'omoana matter.

20 Commissioner Okuda?

21 **COMMISSIONER OKUDA:** Yes.

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

23 **COMMISSIONER OHIGASHI:** Yes.

24 **MR. ORODENKER:** Commissioner Giovanni?

25 **COMMISSIONER GIOVANNI:** Aye.

1 MR. ORODENKER: Commissioner Chang?

2 COMMISSIONER CHANG: Aye.

3 MR. ORODENKER: Commissioner Cabral?

4 COMMISSIONER CABRAL: Yes.

5 MR. ORODENKER: Commissioner Aczon?

6 COMMISSIONER ACZON: Yes.

7 MR. ORODENKER: Commissioner Wong?

8 COMMISSIONER WONG: Aye.

9 MR. ORODENKER: Commissioner Kamakea-  
10 Ohelo?

11 COMMISSIONER KAMAKEA-OHELO: Aye.

12 MR. ORODENKER: Chair Scheuer?

13 CHAIRMAN SCHEUER: Aye.

14 MR. ORODENKER: Thank you, Mr. Chair. The  
15 motion passes unanimously.

16 CHAIRMAN SCHEUER: Thank you very much,  
17 Mr. Orodenker.

18 Members or staff, is there any further  
19 business that we have today?

20 MR. ORODENKER: Not that I'm aware of,  
21 Chair.

22 CHAIRMAN SCHEUER: Okay. Seeing none, we  
23 have intention to have one brief meeting on the  
24 26th, I believe. Is that correct?

25 MR. ORODENKER: That is correct, Mr.

1 Chair; although, this was supposed to be a brief  
2 meeting.

3 **CHAIRMAN SCHEUER:** Yes. With that, I  
4 thank everyone for your participation, including  
5 members of the public who testified. And I declare  
6 this meeting adjourned.

7 **MR. ORODENKER:** I would like to take a  
8 moment to thank our AGs, Julie China and Robert  
9 Nakatsuji for helping the Commission through these  
10 complicated matters.

11 **CHAIRMAN SCHEUER:** Very much so.  
12 Thank you, everyone. Aloha.

13 **(Meeting adjourned at 11:03 a.m.)**

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1 CERTIFICATE

2  
3 I, Jodi Dean, do hereby certify that the  
4 proceeding named herein was professionally transcribed on  
5 the date set forth in the certificate herein; that I  
6 transcribed all testimony adduced and other oral  
7 proceedings had in the foregoing matter; and that the  
8 foregoing transcript pages constitute a full, true, and  
9 correct record of such testimony adduced and oral  
10 proceeding had and of the whole thereof.

11  
12 IN WITNESS HEREOF, I have hereunto set my  
13 hand this 20th day of June, 2022.

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20 Jodi Dean  
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