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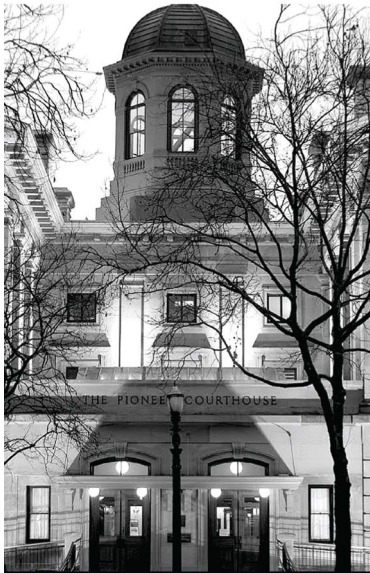
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STATE OF HAWAII

LAND USE COMMISSION

Meeting held on May 19, 2022

Commencing at 9:04 a.m.

Held at

University of Hawaii at Hilo
Campus Center Facility - Room 301
200 W. Kawili St.
Hilo, Hawaii 96720

I. CALL TO ORDER

II. ADOPTION OF MINUTES

April 14, 2022

III. TENTATIVE MEETING SCHEDULE

IV. ACTION - DR21-72 Kenneth S. Church and Joan E. Hildal (Hawaii)

To Consider Petitioner's Motion for Reconsideration of Order Denying Petition for Declaratory Order and Reimbursement and Waiver of Fees filed March 15, 2022, pursuant to Hawaii Administrative Rules ("HAR") Section 15-15-84.

V. EXECUTIVE SESSION

To consult with Commission's attorney regarding 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.

VI. ADJOURNMENT

BEFORE :

1 **APPEARANCES :**

2 **COMMISSIONERS PRESENT :**

3 Dan Giovanni, Vice-Chair

4 Gary Okuda

5 Edmund Aczon

6 Kuike Kamakea-Ohelo

7 Dawn Chang

8 Nancy Cabral

9 Lee Ohigashi

10 Arnold Wong

11

12 **COMMISIONERS EXCUSED :**

13 Jonathan Scheuer, Chair

14

15 **STAFF PRESENT :**

16 Daniel Orodener, Executive Officer

17 Scott Derrickson, Chief Planner

18 Riley Hakoda, Staff Planner

19 Martina Segura, Staff Planner

20 Natasha Quinones, Chief Clerk

21 Julie China, Esq. Deputy Attorney General

22

23 **PETITIONER :**

24 Kenneth S. Church

25 Joan E. Hildal

1 **VICE-CHAIR GIOVANNI:** This is an in-person
 2 meeting, and it's being held at the University of
 3 Hawaii in Hilo. So nice to be back in Hilo after
 4 two years.

5 Please be aware that this meeting is being
 6 recorded via Zoom, and court reporting will be done
 7 from the digital record. For all meeting
 8 participants, I would like to stress the importance
 9 of speaking slowly, clearly, and directly into the
 10 microphone. Before speaking, please state your name
 11 and identify yourself for the record.

12 Your continued participation is your
 13 implied consent to be part of the public record of
 14 this event. If you do not wish to be part of the
 15 public record, you should exit the meeting now.

16 My name is Dan Giovanni, and I currently
 17 serve as the Land Use Commission Vice-Chairman, and
 18 I will be conducting the proceedings today. We
 19 currently have nine seated commissioners.

20 On with me today are Commissioners Aczon;
 21 Dawn Chang; Nancy Cabral, who is from Hilo,
 22 representing the Big Island; Gary Okuda; Lee
 23 Ohigashi from Maui; Arnold Wong; Ku'ike Kamakea.
 24 Jonathan Scheuer, our normal Chair, is excused from
 25 today's meeting.

1 Also with me is staff, LUC Executive
2 Director, to my left, Daniel Orodener; LUC Chief
3 Planner Scott Derrickson; LUC Staff Planner Riley
4 Hakoda; LUC Staff Planner Martina Segura; LUC Chief
5 Clerk, Natasha Quinones; and to my right is LUC
6 Attorney General Julie China.

7 All are present today. As I said earlier,
8 court reporting transcriptions are being done from
9 this Zoom recording.

10 Our first order of business is to adopt
11 the minutes from the meeting of May 11 and 12, 2022.

12 Ms. Quinones, has there been any written
13 testimony submitted on this matter?

14 **MS. QUINONES:** Good morning, Vice-Chair.
15 No written testimony was received on the minutes.

16 **VICE-CHAIR GIOVANNI:** Thank you. Are
17 there any members of the public who wish to testify
18 on the adoption of the minutes from the meeting of
19 May 11 and 12, 2022? If so, please raise your hand
20 to be recognized. You will then be called upon to
21 the witness chair and given two minutes to testify.
22 I see none, so we will proceed.

23 Commissioners, are there any corrections
24 or comments on the minutes? If not --

25 Commissioner Cabral?

1 **COMMISSIONER CABRAL:** I'd like to make a
2 motion to approve the minutes as presented and also
3 commend our staff for the excellent job at getting
4 these turned around in such a short timeframe.
5 Thank you.

6 **VICE-CHAIR GIOVANNI:** Thank you,
7 Commissioner Cabral.

8 Do I have a second?

9 **COMMISSIONER WONG:** Chair, I second. It's
10 Commissioner Wong.

11 **VICE-CHAIR GIOVANNI:** Thank you,
12 Commissioner Wong.

13 Commissioner Cabral has moved to adopt,
14 and Commissioner Wong has seconded. Does anybody
15 have any corrections to the minutes?

16 Mr. Orodenger, please poll the
17 commissioners.

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

20 Commissioner Cabral?

21 **COMMISSIONER CABRAL:** Yes.

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

23 **COMMISSIONER WONG:** Aye.

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

25 **COMMISSIONER ACZON:** Aye.

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

2 **COMMISSIONER CHANG:** Point of
3 clarification, Dan. What would commissioners do
4 when we need to approve the minutes? I'm not going
5 to participate since I was not at the meeting.

6 **VICE-CHAIR GIOVANNI:** Okay.

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

8 **COMMISSIONER OHIGASHI:** Aye.

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

10 **COMMISSIONER OKUDA:** Yes.

11 **MR. ORODENKER:** Commissioner Kuike
12 Kamakea-Ohelo?

13 **COMMISSIONER KAMAKEA-OHELO:** Point of
14 clarification as well that I was not in attendance
15 on the 11th, so I will be recusing myself on the
16 vote.

17 **MR. ORODENKER:** Thank you.
18 Chair Giovanni?

19 **VICE-CHAIR GIOVANNI:** Aye.

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

22 **VICE-CHAIR GIOVANNI:** Thank you, Mr.
23 Orodenker.

24 Our second order of business is the
25 tentative meeting schedule.

1 Mr. Orodenger?

2 **MR. ORODENKER:** Thank you, Mr. Chair. On
3 May 25th, we will be on Oahu for a continuation of
4 the KS Waiawa matter. Our next meeting after that
5 scheduled right now is June 22nd for any additional
6 KS Waiawa matters.

7 On July 27th and 28th, we will be having
8 training on the island of Oahu from 9:15 at the
9 Aloha Tower both 27th and 28th. That is all we have
10 scheduled.

11 I caution the commissioners that we do
12 have a couple of short timeframe petitions that
13 we're waiting receipt of, so keep the dates open
14 until such time as you hear otherwise. Thank you.

15 **VICE-CHAIR GIOVANNI:** Commissioners, any
16 questions for -- on the schedule?

17 Commissioner Cabral?

18 **COMMISSIONER CABRAL:** Yeah. Should we
19 continue to somewhat reserve the 2nd and the 4th
20 Wednesdays and Thursdays, the balance of my life?

21 **MR. ORODENKER:** Yes, Commissioner. That's
22 correct.

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

24 **VICE-CHAIR GIOVANNI:** We will now move
25 forward to the third agenda item for today. It's an

1 action regarding Docket Number DR21-72, Kenneth S.
2 Church and Joan E. Hildal of Hawaii. It's to
3 consider the petitioner's motion for reconsideration
4 of order denying petition for Declaratory Order and
5 Reimbursement and Waiver of Fees filed March 15,
6 2022, pursuant to Hawaii Administrative Rules,
7 Section 15-15-84.

8 **COMMISSIONER WONG:** Mr. Chair?

9 **VICE-CHAIR GIOVANNI:** Yes, Commissioner
10 Wong.

11 **COMMISSIONER WONG:** Because of this issue,
12 I would like to request an executive session to get
13 advice from our attorneys on the legal standards to
14 be applied in determining whether to grant or deny a
15 motion for reconsideration and what limitations can
16 be placed on oral arguments.

17 **COMMISSIONER ACZON:** I'll second that.

18 **VICE-CHAIR GIOVANNI:** Anybody opposed to
19 this motion request?

20 **COMMISSIONER CABRAL:** I'm not opposed, but
21 I want to clarify. I think you read into the record
22 that Mr. and Mrs. Church are from Kauai.

23 **VICE-CHAIR GIOVANNI:** No. Hawaii.

24 **COMMISSIONER CABRAL:** Oh, Hawaii. Okay.
25 My bad ears. Thank you. Okay. Sorry.

1 **VICE-CHAIR GIOVANNI:** Commissioner Okuda?

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

3 Clarification just so that I'm clear. So this
4 executive session is only to discuss the legal
5 standards. There will be no discussion about the
6 merits of the petition that's presented to us,
7 simply legal standards. Is that -- is my
8 understanding correct?

9 **VICE-CHAIR GIOVANNI:** Your understanding
10 is consistent with mine, and that is correct. And
11 we'll be guided by the AG to assure that that's the
12 case.

13 **COMMISSIONER OKUDA:** Okay. So no
14 deliberations --

15 **VICE-CHAIR GIOVANNI:** No deliberations in
16 executive session.

17 **COMMISSIONER OKUDA:** Okay. Thank you, Mr.
18 Chair.

19 **VICE-CHAIR GIOVANNI:** Mr. Church?

20 **KEN CHURCH:** We have a letter from Mr.
21 Orodenker that --

22 **VICE-CHAIR GIOVANNI:** Could you please
23 speak into the microphone and announce your name
24 first?

25 **KEN CHURCH:** Do I have to push a button

1 down first? We apologize for being late today. We
 2 had three road closures coming in and detours which
 3 wasn't planned for. We planned for one.

4 Anyway, Mr. Orodenker wrote us a letter.
 5 I don't have it in front of me, but in the last two
 6 weeks. It said that this hearing may also address a
 7 letter that we had sent in just prior to the last
 8 hearing as to whether we would be able to have a
 9 contested case hearing.

10 I believe -- I could read it out, but --

11 **VICE-CHAIR GIOVANNI:** Mr. Church, the
 12 subject at hand is a motion to go into executive
 13 session. Do you have comments specifically on that?

14 **KEN CHURCH:** No.

15 **VICE-CHAIR GIOVANNI:** Thank you. Anybody
 16 else have any additional comments? We will adjourn
 17 and go to --

18 Mr. -- Commissioner Wong?

19 **COMMISSIONER WONG:** Chair, you have to
 20 take a vote on that, sir.

21 **VICE-CHAIR GIOVANNI:** I have to take a
 22 vote?

23 **MS. QUINONES:** Yes.

24 **VICE-CHAIR GIOVANNI:** Mr. Orodenker, can
 25 we have a vote, please, on the motion to go into

1 executive session?

2 **MR. ORODENKER:** A motion has been made to
3 go into executive session.

4 **VICE-CHAIR GIOVANNI:** Hey, bud.

5 **MR. ORODENKER:** Yes? Sorry. A motion has
6 been made to go into executive session.

7 Commissioner Wong?

8 **COMMISSIONER WONG:** Aye.

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

10 **COMMISSIONER OKUDA:** Yes.

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

12 **COMMISSIONER OHIGASHI:** Yes.

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

14 **VICE-CHAIR GIOVANNI:** Aye.

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

16 **COMMISSIONER CHANG:** Aye:

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

18 **COMMISSIONER CABRAL:** Yes.

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

20 **COMMISSIONER ACZON:** Aye.

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

22 Ohelo?

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

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

1 **VICE-CHAIR GIOVANNI:** Okay. So we will be
2 going into executive session, so we'll excuse
3 everyone from this room, and we'll have the
4 executive session in here. The commissioners and
5 the AG and executive director will remain.

6 So with that, if I can ask all --
7 everybody else to excuse themselves from the meeting
8 room, and we'll call you back into session when the
9 executive session is completed. Thank you.

10 **MR. ORODENKER:** Mr. Chair, a
11 clarification. I'd like to have staff remain to
12 take minutes for the executive meeting.

13 **VICE-CHAIR GIOVANNI:** We will agree to
14 that as well. Executive staff for the commission
15 will remain as well, to take minutes.

16 **AUTOMATED VOICE:** Recording stopped.

17 **(Executive session not transcribed.)**

18 **VICE-CHAIR GIOVANNI:** 9:37 by my clock.
19 We completed executive session, and we're going to
20 resume on the third agenda item, Docket DR21-72.
21 Will the parties please identify themselves for the
22 record?

23 **KEN CHURCH:** My name is Ken Church. I'm
24 the petitioner or the motion movant.

25 **VICE-CHAIR GIOVANNI:** Thank you, Mr.

1 Church.

2 **JOAN HILDAL:** Ms. Joan Hildal. I'm the
3 other petitioner.

4 **VICE-CHAIR GIOVANNI:** Thank you. Before
5 we begin, let me update the record. On September
6 8th, 2021, the commission met via Zoom and heard
7 petition for declaratory order for boundary
8 interpretation for DR21-72. Church/Hildal petition
9 was denied.

10 On October 4th, 2021, the commission
11 received an email from the petitioner with a notice
12 of objection to declaratory order process. Also on
13 that date, the commission received an email with
14 executive services casework number 70226 from the
15 petitioner.

16 On March 15th, 2022, the LUC issued an
17 order denying the petition for declaratory order and
18 reimbursement and waiver of fees and mailed a copy
19 of the order via certified mail and emailed to Mr.
20 Church.

21 Also on that date, the commission emailed
22 the order to the county and the Office of Planning
23 and Sustainable Development as a courtesy.

24 On March 28th, 2022, the petitioner filed
25 his motion for reconsideration. On March 31st,

1 2022, the commission received OPSD's letter
2 informing that they have no further comments and did
3 not intend to participate or attend this hearing.

4 On April 18th, 2022, the LUC mailed and
5 emailed the LUC's agenda for today's meeting to all
6 parties statewide and county agenda list.

7 On April 4th, 2022, the commission
8 received petitioner's letter and request to postpone
9 the meeting. On April 25th, 2022, the commission
10 emailed a meeting cancelation notice to the parties
11 statewide and the county agenda list.

12 On May 10th, 2022, the commission mailed
13 and emailed an LUC agenda for May 19th, 2022 to all
14 parties statewide and county agenda list. On May
15 10th, 2022, the commission mailed a letter to
16 petitioner, notice of new meeting date.

17 On May 13th, 2022, the commission received
18 the petitioner's filings for motion to reconsider,
19 cover letter, index, introduction, staff reports,
20 errors, final DNO errors, Exhibits AA, BB, CC, EE,
21 F, G, H, J, SCOS.

22 Now, let me briefly run over our hearing
23 procedure for this docket. First, I will give an
24 opportunity for the petitioner to comment on the
25 commission's policy governing reimbursement and

1 hearing expenses.

2 Next, I will recognize any written public
3 testimony that has been submitted to this matter,
4 identifying the person or organizations who have
5 submitted the written public testimony.

6 Then I will call for those individuals in
7 the audience who want to make public testimony for
8 this docket. Please note, there is a sign-up sheet
9 located on the table at the side of the room.

10 Those who wish to provide public testimony
11 should sign up, and we will be making public
12 testimony in the order from this sheet.

13 Please wait for your name to be called and
14 come forward to testify in the witness chair.
15 Please note that we will be calling the names of the
16 next person on the list if there are more than one
17 person.

18 After completion of the public testimony
19 portion of the proceedings, I will call the
20 petitioner to make its presentation. After the
21 petitioner's presentation, we will hear
22 commissioner's questions or comments. Finally, the
23 commission will enter deliberations.

24 I'd also like to note for the parties that
25 from time to time, I will be calling for short

1 breaks, approximately five to ten minutes every
2 hour.

3 Are there any questions for today's
4 proceedings?

5 Petitioner?

6 **JOAN HILDAL:** Proceedings, Ken.
7 Proceedings.

8 **KEN CHURCH:** It seems that in your
9 background list of relevant information that are
10 before you, one item is missing, I believe, and
11 that's the February motion for boundary
12 interpretation that was in front of all of this.

13 **VICE-CHAIR GIOVANNI:** February what date?

14 **JOAN HILDAL:** It was May 20, Ken.

15 **KEN CHURCH:** No. The -- I think either
16 the 7th or the 9th.

17 **VICE-CHAIR GIOVANNI:** What year?

18 **KEN CHURCH:** 2022, and it's on your
19 website. Oh, it would have been 2021. Sorry.

20 **VICE-CHAIR GIOVANNI:** Would you please
21 restate? I couldn't follow your rambling, sir.

22 **KEN CHURCH:** Before this process started,
23 we first filed a motion for a boundary
24 interpretation that the commission determine that.
25 And that was filed in February of last year.

1 **VICE-CHAIR GIOVANNI:** These proceedings
2 and this summary that I presented were the
3 proceedings and matters since our decision in March,
4 not before that.

5 **KEN CHURCH:** It was discussed in your
6 decision in March.

7 **VICE-CHAIR GIOVANNI:** And I did
8 acknowledge the March proceedings.

9 **KEN CHURCH:** Okay.

10 **VICE-CHAIR GIOVANNI:** Thank you.
11 Commissioners, any other questions? Okay.

12 Next order of business. Good morning, Mr.
13 Church and Ms. Hildal. Have you reviewed HAR
14 Section 15-15-45.1, with regard to the reimbursement
15 of hearing expenses?

16 **KEN CHURCH:** Yes.

17 **VICE-CHAIR GIOVANNI:** Do you agree to
18 adhere to this policy?

19 **KEN CHURCH:** Yes.

20 **VICE-CHAIR GIOVANNI:** Thank you. Now
21 we'll proceed with public testimony.

22 Ms. Quinones, has there been any written
23 testimony submitted on this matter?

24 **MS. QUINONES:** No written testimony has
25 been received on this matter.

1 **VICE-CHAIR GIOVANNI:** Thank you.

2 Are there any members of the public who
3 wish to testify in this matter? Please raise your
4 hand to be recognized. Thank you. Seeing none,
5 we'll proceed.

6 So the Office of Planning and Sustainable
7 Development has stated its position in writing and
8 has chosen not to appear at this hearing. Let me
9 also acknowledge for the record that the County of
10 Hawaii has chosen not to appear at this hearing.

11 So Mr. Church, now we're going to proceed
12 with -- with your presentation, and I'd like to
13 provide you some guidance from the chair to help
14 assist.

15 So first of all, there's a very exhaustive
16 record on this matter. A lot of testimony has been
17 received from you, and I have received assurances
18 from my fellow commissioners, and let me assure you
19 that we have reviewed all of that in detail, in
20 advance of the hearing today.

21 I'd also like to refresh what are the
22 standards that we have for this consideration that
23 you're bringing forth.

24 Primarily, the movant, which is you, has
25 to show new evidence and evidence that could not

1 have been brought up in the prior hearing that you
 2 are asking -- for which you're asking for
 3 reconsideration.

4 Reconsideration of a decision can be based
 5 on a motion, which is your motion for
 6 reconsideration. It needs to state specifically the
 7 grounds on which the movant, you, considers the
 8 decision that we made to be unreasonable, unlawful,
 9 or erroneous. So we like you to focus your
 10 presentation on those matters.

11 We also ask and direct you to really
 12 emphasize new information that you'll be bringing
 13 for our consideration, new information that is not
 14 currently on the exhaustive record that we have
 15 already reviewed.

16 And in this context, we ask you to confine
 17 your presentation to one hour. And in that hour,
 18 you may use your time as you wish to bring forth
 19 what you think is of the most salient and important
 20 information you would like us to consider relevant
 21 to your motion for reconsideration.

22 So let's proceed. I'll hand it back to
 23 you.

24 **COMMISSIONER OKUDA:** Excuse me. Mr.
 25 Chair?

1 **VICE-CHAIR GIOVANNI:** One second,
2 Commissioner Okuda.

3 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
4 Just so that the standard is clear, may I ask
5 someone to actually read the standard from the
6 Administrative Rules?

7 **VICE-CHAIR GIOVANNI:** I did.

8 **COMMISSIONER OKUDA:** Okay. Well, I just
9 wanted a clarification, then, because I'm not sure
10 if the standard -- it said that it had to be
11 evidence that could not have been presented earlier.

12 **VICE-CHAIR GIOVANNI:** That was my guidance
13 in the sense that we have an exhaustive record which
14 we're all familiar with, and I encouraged them to
15 use their time wisely to focus on new information.

16 But the standard -- and I'll read it again
17 for the record: The motion for reconsideration is
18 15-15-84, Reconsideration of the Decision, Section
19 B. "A motion for reconsideration shall state
20 specifically the grounds of which the movant
21 considers the decision or order unreasonable,
22 unlawful, or erroneous."

23 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
24 I stand corrected.

25 **VICE-CHAIR GIOVANNI:** Thank you. Okay.

1 Anything else?

2 It's currently 10 minutes until 10:00, so
3 assuming we take a ten-minute break within the next
4 hour, we'd like you to shoot to complete your
5 presentation by 11 o'clock.

6 **KEN CHURCH:** I will first say that that's
7 an unlikely timeline. If I can remind the
8 commissioners, they said that we did not give them a
9 preponderance of evidence nor the burden of
10 persuasion. We didn't meet those standards, so we
11 have new evidence.

12 We have to deal with the staff memorandum,
13 which we feel was improper before the commission in
14 the last hearing. And we have the declaratory order
15 to deal with because there's errors in it, as well
16 as the new information, the transcripts of the 1969
17 hearing -- hearings.

18 And if I can just refer to them as
19 transcripts, one of them is a minutes of meeting,
20 but there's three transcripts. They're generally a
21 hundred pages, and they have a lot of information in
22 them. And again, I'll remind that we were told that
23 we didn't meet the burden of persuasion or the
24 preponderance of evidence.

25 So we want to go through that. The

1 hearing before did not properly acknowledge we had
2 stated repeatedly in writing and during the hearing
3 that HRS 205-2(A) (3) was applicable authority, and
4 in no way is it discussed in the -- was it discussed
5 during the hearing other than us raising it a few
6 times, and in the declaratory order it wasn't.

7 So we have a lot of ground to cover. And
8 I can assure that one hour -- and there's two of us,
9 so we're two petitioners. One hour isn't going to
10 meet that standard. Not even close.

11 **VICE-CHAIR GIOVANNI:** Let me remind you
12 that we have read your briefs. We know your
13 position as you've expressed it on the record.
14 You've just wasted, in my judgment, five minutes of
15 your hour. So please proceed.

16 **KEN CHURCH:** I'll give it to my wife. She
17 has an opening statement.

18 **VICE-CHAIR GIOVANNI:** Thank you.

19 **JOAN HILDAL:** So I guess -- hello. My
20 name is Joan Hildal.

21 **VICE-CHAIR GIOVANNI:** Can you bend it up a
22 little bit?

23 **JOAN HILDAL:** Sure.

24 **VICE-CHAIR GIOVANNI:** Thank you very much.

25 **JOAN HILDAL:** There you go.

1 So concerning whether the procedures that
2 were erroneous, I wrote a list of my objections to
3 the previous hearing. And the first one was the
4 fact that we weren't allowed to present our case as
5 we had prepared, because they cut off our video feed
6 immediately, so we had no chance to present our case
7 at all.

8 So the second part of that is the
9 questioning by both the chair and the commissioners
10 were completely about things that didn't have
11 anything to do with the declaratory ruling, which is
12 whether the districting was correct or the boundary
13 interpretation was correctly written. So the
14 procedure was actually wrong, too.

15 And I think there was also a confusion
16 about whether this was based on 101, where the four
17 different denials would have been A, B, C, or D, or
18 a contested case hearing, which would have been the
19 preponderance of evidence and burden of proof.

20 But if we didn't get a contested case
21 hearing, burden of proof and preponderance of
22 evidence shouldn't have been the standard. So it
23 was a big confusion for us what we were dealing with
24 right from the very start. So I guess for those
25 reasons, we objected to the initial hearing.

1 So I'd like to do my opening statement.
2 It will take about a half an hour. Is that all
3 right?

4 **VICE-CHAIR GIOVANNI:** It's your hour. You
5 can use it any way you wish.

6 **JOAN HILDAL:** Okay. So we're only going
7 to get one hour?

8 **VICE-CHAIR GIOVANNI:** That's the guideline
9 I'm giving you, yes.

10 **JOAN HILDAL:** What do you want to do, Ken?

11 **KEN CHURCH:** We simply want to make -- go
12 on the record that we object.

13 **VICE-CHAIR GIOVANNI:** So noted.

14 **JOAN HILDAL:** Okay. Aloha. Good morning,
15 everybody. We've seen each other a lot already.
16 I'm really sorry about that.

17 We're just trying to get the right correct
18 thing and we expect your impartial decision after
19 this. Anyway, good morning and mahalo for
20 considering my opening remarks.

21 This hearing has always been about facts
22 at the time of the property's apparent redistricting
23 and the subsequent boundary interpretation 92-48,
24 nothing more.

25 It is simply about removing the continued

1 uncertainty that exists from the apparent
 2 redistricting that designated an ag conservation
 3 boundary line on a property that was fully
 4 agriculture without including any associated date of
 5 redistricting, associated law, or authoritative
 6 lawful reference as many other boundary
 7 interpretations include.

8 There's no evidence that anything other
 9 than the inclusive -- inconclusive flood maps had
 10 been used in the designation of the conservation
 11 redistricting in 1969 or the subsequent boundary
 12 interpretation in 1992. So sadly, uncertainty
 13 remains after all these years.

14 We respectfully ask for your open-minded
 15 attention, patience, and consideration in order for
 16 you to make an impartial decision based on proven
 17 facts and established policies as required in Act
 18 193, Section 1.

19 The commission is constructed as a quasi-
 20 judicial body and mandated to make impartial
 21 decisions based on proven facts and established
 22 policies.

23 If you can put 193 up there. Okay.

24 And there's Act 193 if you want to refer
 25 to it. We discovered late --

1 **VICE-CHAIR GIOVANNI:** I'm sorry, ma'am.

2 So when you say, "there is," are you referring to
3 the -- no, are you referring to the projection on
4 the screen?

5 **JOAN HILDAL:** Yes, sir.

6 **VICE-CHAIR GIOVANNI:** Please make that
7 clear so that we can --

8 **JOAN HILDAL:** Oh, okay. So on projected,
9 we're going to project a lot of our --

10 **VICE-CHAIR GIOVANNI:** So when do you want
11 us -- when you refer to it, just please note it.
12 It's on the screen.

13 **JOAN HILDAL:** We discovered late that the
14 boundary interpretation in question, boundary
15 interpretation 92-48, actually contained no stated
16 foundation in law. It is not settled law until
17 determined to be factually based after applying the
18 laws and policies that existed at that time and then
19 determined by the commission or court of law, so
20 uncertainty remains.

21 We are blessed that Hawaii law allows the
22 citizens the right, first, to request additional
23 boundary interpretations, which we did, but we got
24 no response. And then if uncertainty still remains,
25 to request a determination upon written application,

1 which we also did, to correct the uncertainty that
2 still exists.

3 Uncertainty still exists because it does
4 not appear that the LUC, at the time of
5 redistricting or even at the time of the boundary
6 interpretation, considered the state's interests,
7 Hawaii's constitutions, Hawaii's laws, or applicable
8 legal authorities like the 1969 boundary review
9 report stated to be the applicable legal authority
10 from which the maps were to be made to correctly
11 make the designation of agriculture for this
12 property.

13 Property owners have suffered economic
14 invested use loss because of those errors. Here,
15 the question is clear and the facts and policies
16 necessary to determine the questions presented
17 simply whether the districting in 1969 or the
18 boundary interpretation may have been made in error.

19 The only matter for the commission to
20 decide is the application of the law, state's
21 interest according to those undisputed facts.

22 State interest defined is a broad term for
23 any patter of public concern that is addressed by a
24 government and law or policy, so here we are.

25 So compare Stengel, Morrogan (phonetic),

1 and McCauley boundary interpretations. DR 99-21
 2 Stengel -- oh, here's the screen. Sorry. It's the
 3 Stengel map is on the screen for you to look at.

4 DR 99-21's order should have the same
 5 force and effect as it has the same factual
 6 situation as our DR 21-72. It was an intensive ag
 7 use at the time of redistricting. The apparent line
 8 on the map bisected the intensive ag use of the
 9 property that went right up to the pali. It also
 10 had a railroad transecting the ag use. Original
 11 maps are not available, so it's difficult to know
 12 where the original line was.

13 **VICE-CHAIR GIOVANNI:** Ms. Hildal?

14 **JOAN HILDAL:** Yes.

15 **VICE-CHAIR GIOVANNI:** I just want to
 16 affirm, to my recollection all of this information
 17 was in the record and presented in the hearing, and
 18 you're repeating that again.

19 **KEN CHURCH:** If you recall --

20 **VICE-CHAIR GIOVANNI:** This is not new
 21 information to the commission --

22 **KEN CHURCH:** Well, it is.

23 **VICE-CHAIR GIOVANNI:** How is it new?

24 **KEN CHURCH:** There was a discussion --

25 **JOAN HILDAL:** We weren't allowed to --

1 **KEN CHURCH:** -- share --

2 **VICE-CHAIR GIOVANNI:** You did not -- the
3 commission is not aware of this?

4 **JOAN HILDAL:** No. We weren't allowed to
5 present it in our previous hearing. We had prepared
6 this whole thing to present in our last hearing, and
7 they cut off our video feed.

8 **VICE-CHAIR GIOVANNI:** Yeah. I'm just
9 trying to clarify this. That's -- at the last
10 hearing, did the commission have an opportunity to
11 see this exhibit?

12 **JOAN HILDAL:** No.

13 **VICE-CHAIR GIOVANNI:** No? Okay. So then
14 proceed, and we'll get the exhibit.

15 **JOAN HILDAL:** Okay.

16 **KEN CHURCH:** And I want to say why it's
17 significant. Because in the plight of the Morrogan
18 one and two hours, Chair Scheuer had a discussion
19 with Maki -- Maki regarding whether there was a
20 comparable property where there was a district and
21 --

22 **COMMISSIONER OHIGASHI:** Mr. Chair.

23 **VICE-CHAIR GIOVANNI:** Just a second.
24 Commissioner Ohigashi?

25 **COMMISSIONER OHIGASHI:** Can we have one

1 petitioner at a time speak because I just was trying
2 to follow her argument and --

3 **VICE-CHAIR GIOVANNI:** I'm fully distracted
4 now.

5 **COMMISSIONER OHIGASHI:** -- and I'm lost
6 now.

7 **VICE-CHAIR GIOVANNI:** Yeah. I don't know
8 where he's going with that, so it's not helpful.

9 Let's return to your presentation. I just
10 wanted to clarify whether or not we'd seen this
11 before.

12 **JOAN HILDAL:** Okay. So none of our -- our
13 -- our exhibits have been shown --

14 **VICE-CHAIR GIOVANNI:** Well, it's in the
15 record, but you did not have the opportunity to
16 present it as testimony --

17 **JOAN HILDAL:** That's right.

18 **VICE-CHAIR GIOVANNI:** -- verbally, so
19 we're familiar with this because it is in the
20 record.

21 **JOAN HILDAL:** So we'll just show it again
22 for you --

23 **VICE-CHAIR GIOVANNI:** You can show it and
24 interpret it and comment on it as you wish.

25 **JOAN HILDAL:** Okay. So the reason I'm

1 presenting it now is we're comparing the different
 2 boundary interpretations, and most of them contain a
 3 legal reference that our McCauley boundary
 4 interpretation contained no legal reference, not
 5 even a date of its redistricting. So that's why I'm
 6 doing this now.

7 **VICE-CHAIR GIOVANNI:** Okay. Thank you.

8 **JOAN HILDAL:** So original map's not
 9 available. It is on the Hamakua Coast, described as
 10 from Waiapi'o to Hilo, map 66. So you can show the
 11 quad maps now.

12 **KEN CHURCH:** Okay.

13 **JOAN HILDAL:** Anyway, there's different
 14 maps from the judicial maps, and then there's the
 15 quad maps. And the quad maps is what I believe
 16 Waiapi'o to Hilo, map 66 quad map, not Hilo to
 17 Kapoho, map 66 to Kapoho, if you can see there, it's
 18 -- Waiapi'o isn't contained in the one in the north
 19 down to the Hilo district, which starts at the
 20 Wailuku River, which actually begins the Hamakua
 21 Coast, the fertile cliff lands that were all mostly
 22 in sugar cane production at the time.

23 It is a leased prime agricultural land
 24 with high capacity for intense cultivation, and
 25 there is no statute of limitations limiting the time

1 to challenge a boundary interpretation.

2 Stengel's DR was decided quickly with
3 prompt disposition with a seven to zero unanimous
4 vote and decided with very little evidence. Ours
5 has been months with hundreds of pages of factual
6 evidence and laws supporting it. And because we're
7 accused of not having the preponderance of evidence,
8 that's why we continually give more preponderance of
9 evidence.

10 So two, boundary interpretation Morrogan.
11 Morrogan's boundary interpretation done in 2007,
12 number 7-19, is just five miles north of us. The
13 designation of the subject parcel was established on
14 August 4th, 1969, stated in the boundary
15 interpretation, and the landward portion of the
16 subject parcel was deemed SLU agriculture, and any
17 coastal lands from the top of the sea piling down
18 was deemed SLU conservation.

19 Morrogan property also had a railroad
20 within 300 feet of the top of the pali that
21 transected the ag use of the property. The top of
22 the pali was used as established on August 4th,
23 1969, by the acts instated in the 1969 boundary
24 review report.

25 It is also difficult to determine -- what?

1 **KEN CHURCH:** Point to the railroad.

2 **JOAN HILDAL:** Oh. They can see. There's
3 a railroad there.

4 **KEN CHURCH:** He's told you --

5 **JOAN HILDAL:** Oh, I'm sorry. Again, I'm
6 referring to the map. This is the Morrogan boundary
7 interpretation. And then in the written part of the
8 boundary interpretation they list top of the sea
9 pali established on August 4th.

10 **VICE-CHAIR GIOVANNI:** Can you cite the
11 exhibit number from your -- from the Morrogan?

12 **KEN CHURCH:** 2.

13 **VICE-CHAIR GIOVANNI:** Exhibit 2?

14 **KEN CHURCH:** Motion for reconsideration.

15 **VICE-CHAIR GIOVANNI:** Correct.

16 **JOAN HILDAL:** It is also difficult to
17 determine where the original line was, as the
18 original map is unavailable. It could have been the
19 railroad or the 200- to 300-foot contra line inland
20 until the LUC determined it in 1999 to be the top of
21 the pali by use of the 1969 boundary review report
22 as the legal authority for it to be the top of the
23 sea pali.

24 And on their own accord, they subsequently
25 changed the maps. We are simply requesting a new

1 boundary interpretation using the top of the pali
2 for our property as the correct conservation
3 boundary, according to the rules of the 1969
4 boundary review report and Hawaii's laws.

5 So on the screen you can see boundary
6 interpretation. This is for McCauley.

7 **VICE-CHAIR GIOVANNI:** And this is Exhibit
8 3 --

9 **KEN CHURCH:** Exhibit 3.

10 **VICE-CHAIR GIOVANNI:** -- in the instant
11 docket?

12 **KEN CHURCH:** Yes.

13 **JOAN HILDAL:** Boundary interpretation 92-
14 48, all it says is, "Please be advised that the
15 subject parcel is designated within the conservation
16 agricultural districts," period. No date of
17 redistricting, no legal authority, no reference to
18 anything as to why it was put there. And it
19 bisected -- at that time, it was one big lot, not
20 our lot and their lot. It was one large lot, and it
21 transected the agricultural use that went straight
22 up to the pali at that time.

23 The commission is bound by its rules.
24 Macamene (phonetic) versus Trustee, the boundary
25 time assistance explains a reviewing court may

1 modify the decision and order of the agency to
 2 fashion appropriate relief where an agency, by
 3 failure to follow its own rules, prejudices the
 4 substantial rights of a party before it.

5 Again, I only mention this to show our own
 6 frustration with trying to work legally,
 7 respectfully, and within the law for the last eight
 8 years just to get agricultural use. I mean, it's
 9 pretty bizarre, I think.

10 Anyway --

11 **VICE-CHAIR GIOVANNI:** Ms. Hildal, your
 12 editorial comment notwithstanding, we understand the
 13 frustration you may have, and it's shared throughout
 14 the room.

15 **JOAN HILDAL:** Okay. Four, 205-41,
 16 declaration of policy. It is declared that the
 17 people of Hawaii have a substantial interest in the
 18 health and sustainability of agriculture as an
 19 industry in the state.

20 There is a compelling state interest in
 21 conserving the state's agriculture land resource
 22 base and assuring the long-term availability of
 23 agricultural lands for agriculture use to achieve
 24 the purposes of conserving and protecting
 25 agricultural lands, promoting diversified

1 agriculture, increasing agricultural self-
2 sufficiency, assuring the availability of
3 agriculturally suitable land pursuant to Article 11,
4 Section 3 of the Hawaii State Constitution.

5 Number five -- and you can see it on the
6 --

7 **VICE-CHAIR GIOVANNI:** This is Exhibit 5
8 that's now on the screen?

9 **KEN CHURCH:** This isn't an exhibit. This
10 is a --

11 **JOAN HILDAL:** No. This is not -- we're
12 doing 205-2.

13 **VICE-CHAIR GIOVANNI:** We're confused. Ms.
14 Hildal, will you clarify what you have on the
15 screen?

16 **JOAN HILDAL:** Yeah. I'm trying to put on
17 HRS 205-2(a)(3), which is another law that's very
18 clear about protecting agricultural lands.

19 HRS 205-2(a)(3) basically, in effect, all
20 the different -- in a different wording, since 1963,
21 in effect now and at the time of the boundary
22 interpretation and at the time of supposed
23 redistricting, and the laws really haven't changed.

24 It's the maps that were to reflect those
25 laws and rules that have proven inconsistent with

1 the laws over time in the establishment of the
 2 boundaries of the ag districts, the greatest
 3 possible protection shall be given to those lands
 4 with the high capacity for intensive cultivation,
 5 not conservation land.

6 Ours is prime and in intensive ag use at
 7 the time, and even special assessment ag dedicated
 8 land. Ken actually mentioned this law over 40 times
 9 in our petition and brief as an applicable legal
 10 authority, but it was never referred to once in the
 11 final order as if it did not apply to the commission
 12 in this case, the rules under which the property was
 13 to be districted and the maps to be made.

14 Number 6, boundary review report.

15 **KEN CHURCH:** That's number seven.

16 **JOAN HILDAL:** Page 3, these are the rules
 17 that --

18 **VICE-CHAIR GIOVANNI:** What exhibit is
 19 this?

20 **JOAN HILDAL:** 19 -- it's number 6.

21 **VICE-CHAIR GIOVANNI:** Exhibit 6 is on the
 22 screen?

23 **KEN CHURCH:** In the motion it's going to
 24 be up around -- I can't tell you exactly. It's
 25 going to be around my public report. Just let me --

1 it will take me a minute to find it.

2 **VICE-CHAIR GIOVANNI:** Let's proceed under
3 your assurance that it's one of your exhibits.

4 **KEN CHURCH:** This is one of our exhibits
5 in the motion. It's called the report, 1969 report
6 or something like that.

7 **VICE-CHAIR GIOVANNI:** Very good. Let's
8 go.

9 **KEN CHURCH:** And this is page 3 of it.

10 **JOAN HILDAL:** 1969 boundary review report,
11 page 3. This clarifies that this boundary report
12 wasn't just recommendations. It was the actions
13 actually taken by the LUC at the time.

14 Chapters 4 through 7 are a summary of the
15 recommended changes to the district boundary in the
16 four counties. Since these changes were acted upon
17 during the preparation of this report, we are able
18 to provide the commission's decisions with respect
19 to them. In this way, the text becomes not just a
20 report to the commission, but a record of these
21 actions as well.

22 These four chapters are a functional
23 necessity. In other words, this text of the report
24 is a record of the LUC's actions in districting and
25 from which the district maps were to be made, as

1 testified to be fact by both Commissioner Scheuer
2 and Ms. Kato at our last hearing, transcript page
3 107, line 9 to 12.

4 And then seven is further part of the 1969
5 boundary review report, page 86. These are the
6 recommendations to be used at the time of the
7 redistricting. Recognition that the shoreline --

8 **VICE-CHAIR GIOVANNI:** Is this -- is this
9 one that's on the screen now number 7?

10 **JOAN HILDAL:** This is page 86. It's --

11 **KEN CHURCH:** Did -- it's the same exhibit.

12 **VICE-CHAIR GIOVANNI:** Same exhibit, page
13 7?

14 **JOAN HILDAL:** Page 7 --

15 **VICE-CHAIR GIOVANNI:** Thank you --

16 **JOAN HILDAL:** Page 86, sorry -- oh, oh.
17 My page seven, yeah.

18 Recognition that the shoreline is a zone
19 rather than a line has been the basis for
20 recommending that the designation of the
21 conservation district be inland from the line of
22 wave action at various distances relating to
23 topography and other use factors.

24 A number of criteria has been developed as
25 a result of the search for the physical boundaries

1 that more easily and better designate shoreline
 2 conditions from adjacent agricultural uses and
 3 districts.

4 Similar problems do not exist in relation
 5 to urban or rural districts along the sea because
 6 the Land Use Commission has designated shorelines in
 7 these situations as part of the urban and rural
 8 districts, and these areas are therefore under
 9 county control.

10 Four major conditions have been
 11 recognized, and recommendations based on use
 12 conditions have been made for the new conservation
 13 district boundaries.

14 Number one, where a plantation, farm
 15 route, accessway or public road exists at the edge
 16 of the agricultural use within a reasonable
 17 proximity to the shoreline, it was used as a
 18 boundary between agricultural and conservation
 19 districts.

20 **VICE-CHAIR GIOVANNI:** Excuse me one
 21 second. I just want to clarify that you are reading
 22 -- you're using your time to read one of your own
 23 exhibits that's in the record, which we've already
 24 acknowledged we've read --

25 **JOAN HILDAL:** Yes.

1 **VICE-CHAIR GIOVANNI:** -- so I just caution
2 you if this is the best use of your time. We've
3 read this.

4 **JOAN HILDAL:** Well, I think it is because
5 --

6 **VICE-CHAIR GIOVANNI:** Very well. You've
7 got that option. I just wanted to help you.

8 **JOAN HILDAL:** Okay. It was in the last
9 hearing but wasn't acknowledged. No one ever
10 referred to it from the commission to us. We
11 referred to it, but they kept changing to another
12 issue.

13 Anyways, so this -- the first one is about
14 -- it's supposed to be on the agricultural edge
15 where a vegetation line, such as a windbreak or row
16 of trees is more clearly by the edge of the
17 agricultural practice.

18 So we had a row of trees on the edge of
19 the agriculture --

20 **KEN CHURCH:** And a clifftop.

21 **JOAN HILDAL:** In cases where the shoreline
22 is bounded by steep cliffs, we had steep cliffs at
23 the edge of the -- of the agricultural use at the
24 top of the pali.

25 So -- and number four were no readily

1 identified physical boundaries such as any could be
 2 determined. Only then a line 300 feet inland of the
 3 line action was used. And so that's not applicable
 4 to our property. 1969 boundary review --

5 **VICE-CHAIR GIOVANNI:** This is Exhibit 8?

6 **JOAN HILDAL:** 36.

7 **KEN CHURCH:** No. It's still the same
 8 exhibit. It's page 36.

9 **VICE-CHAIR GIOVANNI:** Very well.

10 **JOAN HILDAL:** The shoreline --

11 **KEN CHURCH:** Just give me a second.

12 **JOAN HILDAL:** Oh, wait. I'm on page 36,
 13 yeah.

14 **KEN CHURCH:** That's where I am.

15 **JOAN HILDAL:** Conservation district. 1969
 16 boundary review report, page 36, the Hamakua Coast
 17 has a high rainfall of between 100 and 200 inches
 18 per year. The result of such high rainfall is a
 19 landscape frequently dissected by steep-walled
 20 scenic valleys.

21 The major valleys starting at Waiapi'o,
 22 Ka'awali'i, and continues down the coastline,
 23 Hakalau, Kolekole, and ends at Wailuku, which is the
 24 border between Hilo and the Hamakua Coast.

25 Ours is between Hakalau and Kolekole, and

1 so that's right at the beginning of that self --
 2 Hilo district. We are between Hakalau and Kolekole,
 3 placing us on the Hamakua Coast, according to the
 4 creators of the 1969 boundary review report.

5 And the last valley mentioned is actually
 6 right above Hilo or quadrangle map 66. The Wailuku
 7 Valley is 10 miles south of us and included -- all
 8 of that is included in the Hamakua Coast, according
 9 to their record.

10 Number 9, quadrangle maps.

11 **KEN CHURCH:** Give me a second here.

12 **JOAN HILDAL:** So as you can see, Waiapi'o
 13 starts up where the blue is, if you can refer to the
 14 screen. Sorry. Waiapi'o starts where the blue
 15 starts and then goes down to where the Wailuku River
 16 is at the beginning of the Hilo district, which is
 17 quadrangle map 66.

18 Can you kind of circle that little square
 19 there?

20 **KEN CHURCH:** Yeah, this one right here.

21 **JOAN HILDAL:** Yeah. And then --

22 **VICE-CHAIR GIOVANNI:** Since you're trying
 23 to clarify for our benefit --

24 **JOAN HILDAL:** Yes.

25 **VICE-CHAIR GIOVANNI:** -- where your

1 property is, can you -- I'm pretty familiar, right?

2 I lived in this area for five years.

3 **JOAN HILDAL:** Oh, okay.

4 **VICE-CHAIR GIOVANNI:** Where is your

5 property relative to Laupahoehoe Point?

6 **JOAN HILDAL:** Oh, it's south of

7 Laupahoehoe Port. It's --

8 **VICE-CHAIR GIOVANNI:** By approximately how

9 far?

10 **JOAN HILDAL:** Probably ten miles. It's

11 between the Kole -- if you're familiar with this

12 area, you know the Kolekole bridge, the Hakalau

13 bridge. We're about equal distance between those

14 two bridges.

15 **VICE-CHAIR GIOVANNI:** Thank you.

16 **JOAN HILDAL:** So -- yeah. So that shows

17 -- and then they have the next -- well, I'll get to

18 that later. So the next paragraph in the 1969

19 boundary review report talks about the shoreline in

20 reference to the conservation districts.

21 The shoreline 1969 boundary review report,

22 page 36 continues in the next paragraph. The steep

23 pali coast of East Kohala is presently within the

24 conservation district. This district should be

25 extended to include the sandy beach at Waiapi'o and

1 then to include the pali lands of the Hamakua Coast
2 already just described in -- on page 36, just above
3 in the previous paragraph.

4 This district -- using the ridgetop as a
5 boundary line, commission action partially approved
6 areas in agricultural use that were excluded. Our
7 property should have been excluded and use the
8 ridgetop as the boundary.

9 Quadrangle maps. 1969 boundary review
10 report continues.

11 Can you go back to the quadrangle maps?

12 The 1969 boundary review report continues.

13 From Hilo (indiscernible) 66 to Kapoho, not 73 --

14 **COMMISSIONER CHANG:** Mr. Chair?

15 **VICE-CHAIR GIOVANNI:** Commissioner Chang?

16 **COMMISSIONER CHANG:** May I -- is it Hido
17 (sic)?

18 **JOAN HILDAL:** Hildal.

19 **COMMISSIONER CHANG:** Ms. Hildal, is -- may
20 I ask you a question?

21 **JOAN HILDAL:** Sure.

22 **COMMISSIONER CHANG:** I appreciate the
23 presentation and, obviously, the extensive work that
24 both of you have put into this matter over the last
25 eight years.

1 I will share with you what -- and this is
2 a reconsideration. But I will share with you the
3 sentiment that I had at the original hearing. And
4 this I read, it's from the report. "The final
5 boundaries in 1969 were the LUC's judgment as a
6 result of considerable input from studies, site
7 inspections, public hearings, talk with landowners,
8 and the commissioners' own personal knowledge and
9 experience."

10 So a lot of what you're sharing with us,
11 these were guidelines.

12 **JOAN HILDAL:** Uh-huh.

13 **COMMISSIONER CHANG:** But part of those
14 guidelines, they were -- they were factors to be
15 considered. And the difficulty that I'm having,
16 sitting in 2022, is to put myself back in the place
17 of 1969 with those commissioners. And it is very
18 difficult to know all of the things that they
19 considered.

20 I'm sure they looked at all of these
21 different -- these -- these four factors, so you're
22 essentially asking us to stand in the shoes of the
23 commissioners in 1969, and you have made very
24 plausible arguments why it's at the top of the pali,
25 what -- but I also know you bought the property

1 knowing that it was in conservation lands.

2 You bought the property knowing that it
3 was -- you wanted to use it for ag, but it --
4 portions of it was in conservation land. So I guess
5 I'm just -- I would like you to help me better
6 understand why -- why aren't you doing this as a
7 district boundary amendment rather than coming in as
8 a dec action to reinterpret?

9 You spent eight years going through this
10 process. Obviously, you've done a lot of work on
11 this. So this is a reconsideration. We're not
12 reopening the original hearing. And a lot of what
13 you're presenting is what was presented at the last
14 hearing.

15 You may not have been able to physically
16 present it, but it was made available for the
17 commissioners to review, the reports, the various
18 similarly situated cases that you presented to us.

19 But the problem I have with those other
20 cases, I don't know all of those facts. Those facts
21 aren't before us. I don't know what those
22 situations are, so all I can do is rely upon the
23 record that we have and the decisions that were made
24 by the Land Use Commission at that point in time.

25 **JOAN HILDAL:** Is this part of our hour?

1 **VICE-CHAIR GIOVANNI:** No. I will
2 appropriately adjust it, but --

3 Commissioner Chang, thank you for your
4 comment. Could you just restate the specific
5 question regarding the --

6 **JOAN HILDAL:** She's speaking about
7 reliance.

8 **VICE-CHAIR GIOVANNI:** No. She's speaking
9 about why haven't you gone to a DBA?

10 **COMMISSIONER CHANG:** Well, that is one,
11 but it is also -- I guess I am just trying to share
12 my own personal angst with this process because we
13 are now at a reconsideration, and you are presenting
14 to us information that was made available to the
15 commission, may not have been presented as you would
16 have wanted it to be, but it was made available to
17 the commission.

18 This information that you have was
19 available at the time of the original hearing, so I
20 guess I -- I ask you -- and I know that you're a
21 lawyer, so you understand --

22 **JOAN HILDAL:** I'm not a lawyer.

23 **VICE-CHAIR GIOVANNI:** No, they're not
24 attorneys.

25 **COMMISSIONER CHANG:** Oh, I thought you

1 were a lawyer. I thought in the previous --

2 **JOAN HILDAL:** Thank you very much, but I'm
3 not.

4 **COMMISSIONER CHANG:** -- you very eloquent.
5 Your statements are very eloquent. I thought you
6 were one.

7 But I guess what I'm asking you is you're
8 -- you're -- you're asking us to -- to interpret --
9 you believe an error was made in the boundary
10 interpretation in 1969.

11 I've read to you a statement that was made
12 in the report about how the Land Use Commissioners
13 made their decision. They took into consideration
14 all of these factors. And you're wanting us to go
15 back and sit in the shoes of those commissioners in
16 1969.

17 But I'm asking you what is that -- what
18 are you presenting to us today that was either in
19 error with our previous decision, was unreasonable
20 or --

21 **COMMISSIONER CABRAL:** Erroneous.

22 **COMMISSIONER CHANG:** -- unlawful. Those
23 three things, those are the grounds upon which the
24 reconsideration that we are looking at, so I'm
25 asking you could you please -- because I want you to

1 use your time very judiciously.

2 So if you could identify for me what's
3 unreasonable, what's unlawful, and what is erroneous
4 in our previous decision on the reconsideration?

5 **VICE-CHAIR GIOVANNI:** So -- and what about
6 the question about why didn't they do --

7 **COMMISSIONER CHANG:** Yeah. Yeah. And I
8 mean, that's ultimately the question. You've spent
9 eight years on this interpretation --

10 **JOAN HILDAL:** Erroneous --

11 **KEN CHURCH:** Joni will answer most of
12 that, but I know you all think that you've read all
13 of this, but indeed, your opening statement is
14 evidence that you're not familiar with the report.

15 You quoted page 85 of the report, which is
16 in chapter 8 or 9. And that is how they came up
17 with the recommended lines, not the approved lines.

18 Joni referred you to page 3 of the report, which
19 described that chapters 4 through 7 are fundamental.

20 You have to read that because that was not
21 just the recommended maps, that's what they actually
22 approved. And on page 36 it says they only
23 partially approved the recommended map from page 85,
24 where you read that text.

25 So on page 85, they're describing how they

1 came up with these recommended district lines on the
2 maps. But on page 36 it says, no, no, no, we're
3 only going to partially approve that.

4 **COMMISSIONER CHANG:** And thank you, Mr.
5 Church. I appreciate the clarification.

6 Nonetheless, when the commission makes its
7 determination, it looks at everything in totality.

8 And that's -- I mean, that's how I look at when I
9 make a decision, sitting on the commission now.

10 We are guided by principles of law,
11 principles of the rules, and the facts before us.
12 So I appreciate you clarifying for me, but it is
13 still the same process that we apply. We're looking
14 at all of those.

15 But I also bring you back to -- for
16 purposes of the reconsideration, if you could
17 identify what was an error, what was unlawful, and
18 what was unreasonable about the original decision
19 that was made at the Land Use Commission?

20 **VICE-CHAIR GIOVANNI:** Thank you,
21 Commissioner Chang.

22 And before you respond to that, I'd like
23 to take a little break and give you time to think
24 about how you want to respond to that.

25 **JOAN HILDAL:** Okay. Thank you.

1 **VICE-CHAIR GIOVANNI:** And we'll give you
2 an extra ten minutes or so. We'll adjust
3 accordingly. So let's take a short break. It's
4 currently 10:29. We'll reconvene at 10:39.

5 **(Recess taken 10:29 - 10:39 a.m.)**

6 **VICE-CHAIR GIOVANNI:** We're back on the
7 record. Can you start the recording?

8 **MS. QUINONES:** I did.

9 **VICE-CHAIR GIOVANNI:** Is the video on?
10 Oh.

11 **JOAN HILDAL:** So I think the question --

12 **VICE-CHAIR GIOVANNI:** Yeah, you may
13 continue, Ms. Hildal.

14 **JOAN HILDAL:** I think the question period
15 is supposed to be after my presentation, but I'll
16 answer those questions now for you.

17 There was an error in law in previous
18 hearing, not just because our video feed wasn't
19 allowed and we weren't allowed to make our video
20 presentation, but also because the basic issue of a
21 declaratory ruling was only about the legal aspects
22 of our property and why it was put in the
23 conservation to begin with, the laws.

24 That's why Stengel's declaratory ruling
25 was so quick, because he just said boundary review

1 report, and this is also like 23 years later. It's
 2 not really a question of time. It's a question of
 3 are the rules correct or not. Has the maps been
 4 made according to the legal reasons or not?

5 And I kept saying that during our hearing,
 6 but nobody ever asked me about that question. There
 7 wasn't really a single question about the legality
 8 of the 1969 boundary review report at that time.
 9 And that's why there's error in law.

10 **VICE-CHAIR GIOVANNI:** Excuse me. I'd just
 11 like to clarify for the record --

12 **JOAN HILDAL:** Okay.

13 **VICE-CHAIR GIOVANNI:** -- you referred to
 14 your inability to make your presentation at the
 15 prior hearing, but you were compromised because of
 16 the problem -- technical problems that were
 17 occurring at your end of the connection.

18 **JOAN HILDAL:** Well, I also --

19 **VICE-CHAIR GIOVANNI:** It wasn't that you
 20 weren't allowed to do it --

21 **JOAN HILDAL:** Well, he cut off our video
 22 feed.

23 **VICE-CHAIR GIOVANNI:** It wasn't working.
 24 We couldn't understand it because it was --

25 **JOAN HILDAL:** Well, he only gave us like

1 two minutes to figure it out.

2 **VICE-CHAIR GIOVANNI:** It was a very poor
3 connection.

4 **JOAN HILDAL:** There were other people that
5 were having problems, but they were patient with
6 that and allowed them to rediscover their video feed
7 and their -- and their --

8 **VICE-CHAIR GIOVANNI:** Can one of you talk
9 at a time and not do this side-by-side stuff?

10 **JOAN HILDAL:** Okay.

11 **VICE-CHAIR GIOVANNI:** I was participant in
12 that hearing --

13 **JOAN HILDAL:** Uh-huh.

14 **VICE-CHAIR GIOVANNI:** -- I couldn't -- I
15 was on -- it was a Zoom hearing, if I recall. And I
16 could not comprehend what you were trying to
17 present. It was very distracting.

18 **JOAN HILDAL:** Well, we never got a chance
19 to present it.

20 **VICE-CHAIR GIOVANNI:** You got a chance.
21 You couldn't deliver on your connection. That's my
22 position, so let's resume the hearing today.

23 So you can argue that we didn't allow you.
24 I disagree with that. I think you were allowed, but
25 your technical connection was -- it was just

1 inadequate.

2 **JOAN HILDAL:** Well, we had a
3 videoconference from that same location, with the
4 same internet connection as we did before --

5 **VICE-CHAIR GIOVANNI:** It could have been
6 the cloud cover. I have no idea. I have no idea
7 what your problem was, but it didn't work.

8 **JOAN HILDAL:** Well, we were only given --

9 **VICE-CHAIR GIOVANNI:** But to suggest --

10 **JOAN HILDAL:** -- two minutes to correct
11 the problem.

12 **VICE-CHAIR GIOVANNI:** But to suggest that
13 the commission did not allow you is, in my judgment,
14 incorrect.

15 **JOAN HILDAL:** Well, when you shut off
16 somebody's video feed, I think that's, you know, not
17 allowing.

18 **VICE-CHAIR GIOVANNI:** We didn't shut it
19 off. It wouldn't connect.

20 **JOAN HILDAL:** And you shut it off.

21 **COMMISSIONER OKUDA:** Chair.

22 **VICE-CHAIR GIOVANNI:** If you want to be
23 argumentative, fine. You're using your time to do
24 so.

25 **JOAN HILDAL:** All right. All right.

1 So the next thing is --

2 **VICE-CHAIR GIOVANNI:** Just a second. Do
3 you want to shift to Mr. Church at this point?

4 **KEN CHURCH:** During other hearings, not
5 this one, whenever one of the commissioners can't
6 make the video connection --

7 **JOAN HILDAL:** We don't need that --

8 **KEN CHURCH:** -- they were invited to a
9 recess for them to make a better connection. That
10 opportunity was not given to us.

11 **JOAN HILDAL:** Okay.

12 **VICE-CHAIR GIOVANNI:** Proceed.

13 **JOAN HILDAL:** Okay. Okay. So I think
14 there's also a misunderstanding again about what
15 this actual reconsideration of our district
16 declaratory order is. It's really only about the
17 facts that determine the conservation boundary.
18 That's it.

19 The facts that created that -- and that's
20 why Stengel's DR was so quick because they could
21 look at the boundary review report from which the
22 maps were to be made, and they determined it within
23 ten minutes.

24 And then ours, because you want to bring
25 in all these different factors, including the things

1 like, well, why didn't you do a DBA, why didn't you
 2 do this, why don't you do that. Those have nothing
 3 to do with the reasons that our property was
 4 incorrectly put into conservation. That's the basis.

5 This is the crux of this declaratory
 6 ruling. And this is what we're asking you to
 7 finally clarify this uncertainty. I can understand
 8 your positions of, you know, wanting to understand
 9 all these other issues, but this isn't the issue for
 10 this declaratory ruling.

11 It is an issue about a DBA, but it's not
 12 an issue for this declaratory ruling. And I'll tell
 13 you why --

14 **VICE-CHAIR GIOVANNI:** Ms. Hildal?

15 **JOAN HILDAL:** Yes.

16 **VICE-CHAIR GIOVANNI:** Commissioner Chang
 17 asked you to -- relative to the decision that was
 18 made --

19 **JOAN HILDAL:** Yes.

20 **VICE-CHAIR GIOVANNI:** -- to make your case
 21 today why that decision was unreasonable --

22 **JOAN HILDAL:** I said.

23 **VICE-CHAIR GIOVANNI:** -- unlawful, or
 24 erroneous.

25 **JOAN HILDAL:** I said. It's because we

1 didn't stick to the issue of the declaratory
 2 reading. They were all, "Why didn't you have a tax
 3 number? Where is your agricultural use?" All the
 4 things that we are asked by the commission was all
 5 about present day issues.

6 They hardly ever asked --

7 **VICE-CHAIR GIOVANNI:** The commission could
 8 explore, for contextual reasons or other, where they
 9 want to go relative to the issue.

10 **JOAN HILDAL:** Well, that's -- that's
 11 really not - - I'll read you what a declaratory
 12 ruling is supposed to be about. There we go now.
 13 It's only supposed to contain the facts. And the
 14 facts -- it's the facts of the districting in 1969
 15 or the boundary review now that the boundary -- the
 16 boundary interpretation that was given to Mr.
 17 McCauley before. That's all it's about. Were they
 18 incorrect or correct, period, according to the laws?

19 **VICE-CHAIR GIOVANNI:** Okay.

20 **JOAN HILDAL:** According to the laws then
 21 and according to your own laws at this time.

22 On a petition for a declaratory ruling,
 23 the evidence is really not in dispute. The only
 24 matter for the commission to decide is the
 25 application of the law to the undisputed facts of

1 what happened in 1969 in the boundary
2 interpretation.

3 So and your other question about why
4 didn't we issue -- why didn't we do it by a DBA? We
5 did petition for a DBA, Number 18, 2018-2805. To
6 this day, it's been stated to be incomplete even
7 though we issued it four years ago. And on our
8 first meeting together, you said work with the
9 staff, and we've been trying to work with the staff
10 ever since that day, and it's still being
11 incomplete.

12 So we look for alternatives. The second
13 thing we did, we've asked for a boundary
14 determination, which is supposed to be okay with
15 just a written application, which we did, and that
16 was ignored.

17 And then we asked -- we applied by the
18 form for a boundary interpretation, and that was
19 ignored. And so finally, we issued this declaratory
20 ruling, and so what I'm saying is our frustration is
21 working with LUC has been difficult because every
22 step we've taken has been thwarted for some reason
23 or another. We don't understand.

24 **KEN CHURCH:** We don't have a lawyer.

25 **JOAN HILDAL:** Is it because we don't have

1 a lawyer?

2 **COMMISSIONER CHANG:** We've had other pro
3 se petitioners before --

4 **VICE-CHAIR GIOVANNI:** Please speak into
5 the microphone. Commissioner Chang is recognized.

6 **COMMISSIONER CHANG:** I'm sorry, Mr. Chair.
7 Commissioner Chang.

8 Yes, we have had other petitioners that
9 were pro se.

10 I do want to ask you, in response to your
11 response to my questions, on the declaratory action
12 that you filed, wouldn't you agree that the -- that
13 the commission has a discretion to apply that -- it
14 is the commission's responsibility and duty to apply
15 the facts to the law, but that is discretion within
16 the Land Use Commission to determine.

17 You were asking us to determine whether
18 there was an error in the boundary map that was made
19 in 1969. Is that what you're asking in this
20 declaratory ruling?

21 That's the question you've asked us. And
22 --

23 **COMMISSIONER CABRAL:** Excuse me. Are you
24 -- I can't hear you. Are you talking to us?

25 **VICE-CHAIR GIOVANNI:** Are you speaking to

1 the commission?

2 **KEN CHURCH:** No.

3 **COMMISSIONER CHANG:** Okay. So that's the
4 question you're asking the commission under the
5 declaratory ruling, right?

6 **JOAN HILDAL:** Uh-huh.

7 **COMMISSIONER CHANG:** You're asking the
8 commission to determine whether there was an error
9 in the map, where the line was drawn in 1969.

10 **JOAN HILDAL:** Or the boundary
11 interpretation in 1999 -- '92, sorry.

12 **COMMISSIONER CHANG:** And -- and we
13 determined that there was no error. We determined
14 that the map is accurately drawn, so I guess I'm
15 asking -- so now -- and then you filed a motion for
16 reconsideration, so I guess now we're asking -- this
17 is not -- a reconsideration is different from an
18 original declaratory action. You present all the
19 evidence.

20 In the reconsideration, based upon that
21 administrative rule, it is to identify for the
22 commission the grounds upon which there was the
23 ruling -- the order -- or the decision was unlawful,
24 unreasonable, or erroneous.

25 So in many instances, it's to identify in

1 a particular specific findings that we made or the
 2 -- so if you could, that would help me if you could
 3 identify -- because you're essentially asking us to
 4 reopen the dec action, but we've made a decision.

5 And so if you could identify specifically
 6 where were we in error, or where was the decision
 7 unlawful or where was it unreasonable?

8 **JOAN HILDAL:** So I'll read to you the
 9 applicability of a declaratory order. "An order
 10 disposing of the petition shall apply only to the
 11 factual situation described in the petition or set
 12 forth in the order. It shall not be applicable to
 13 different fact situations or where additional facts
 14 are not considered in the order exist."

15 They'll have the same force and effect as
 16 other orders issued by the commission. So I can
 17 read out many, many examples in our past hearing
 18 where they kept referring back to issues that
 19 weren't about that declaratory order, and that's
 20 where it's erroneous.

21 Our video feed was cut off, for one thing,
 22 so procedurally, and also Chair Scheuer kept
 23 referring to other issues that weren't in the
 24 declaratory order and kept avoiding things like law
 25 and definition of a declaratory order, and things

1 like that that should have been applicable.

2 He should have been bringing it up. It
3 should have been an impartial hearing where you guys
4 are just supposed to listen to the -- to the
5 arguments and not direct a hearing to support your
6 own opinions.

7 And I feel that Chair Scheuer avoided at
8 every chance and also tried to influence the State
9 Office of Planning in a direction that she didn't
10 want to go because she was just putting her facts
11 down.

12 And there are a couple of examples where
13 she said, you know, one thing, and he kept pushing
14 it. It even says it in the transcript. "I'll push
15 you. I'll push you. I'll take all day and push
16 until I get you to say the right answer."

17 **COMMISSIONER CHANG:** Perhaps I would ask
18 that we stick to this, to the motion for
19 reconsideration. Chair Scheuer isn't here today, so
20 --

21 **JOAN HILDAL:** Well, that's part of the
22 hearing.

23 **COMMISSIONER CHANG:** -- if you are
24 alleging that there's been misconduct by any of the
25 commissioners, that's a different matter. But this

1 is you filed a motion for reconsideration, so I want
 2 you to make the best use of your time.

3 And if you can tell us -- share with us
 4 exactly -- you know, again, for me, applying the
 5 rules for reconsideration, if you could identify the
 6 grounds that the decision that we made was in error,
 7 unlawful -- and -- and if you've done that, that's
 8 fine. Then we can move on. So if you've done that,
 9 we can move on. I don't want to -- I don't want to
 10 belabor the point.

11 **JOAN HILDAL:** Ken wants to answer that
 12 question.

13 **KEN CHURCH:** So I want to first say that
 14 there's new evidence. We have probably 200-plus
 15 pages of transcripts from the 1969 commission
 16 hearings, where it was repeated over and over and
 17 over again that no land was in agricultural use was
 18 going to be redistricted.

19 And that's part of our package to you, and
 20 the Chair has said that you've all read that, so I'm
 21 not going to re-read that. I'm going to assume you
 22 read that.

23 They repeatedly talked about the Hamakua
 24 Coast and the map I have here is from the planning
 25 office here in Hilo. That is --

1 **VICE-CHAIR GIOVANNI:** This is Exhibit --
2 what number is this?

3 **KEN CHURCH:** It's simply in our brief.

4 **JOAN HILDAL:** No, it's --

5 **KEN CHURCH:** It's not an exhibit. It's in
6 our brief.

7 **VICE-CHAIR GIOVANNI:** It's in your brief?

8 **KEN CHURCH:** Yeah, it's in --

9 **JOAN HILDAL:** 14 --

10 **KEN CHURCH:** If you've read it, you would
11 see this in three places.

12 **VICE-CHAIR GIOVANNI:** Very well. So he
13 says it's in -- the brief is Exhibit 14 that he's
14 referring to?

15 **KEN CHURCH:** I don't know. We -- it's
16 listed in your list here of what we're talking about
17 today, the --

18 **VICE-CHAIR GIOVANNI:** Okay. Proceed.

19 **KEN CHURCH:** So that is what's called the
20 Hamakua Planning District, and Joni referred to page
21 36 of the report, which is not what was recommended.
22 This is what was approved, and your staff
23 memorandum, which we've alleged was improper in
24 several areas and omitted things, they took it and
25 said, no, no, that means the South Hilo Planning

1 District when it said it went down to Hilo.

2 Well, if you read page 36, it's real
 3 clear. The paragraph above the one that says
 4 Hamakua Coast describes what the Hamakua Coast is.
 5 And it's all those valleys from up at the top down
 6 to the Wailuku River. That is the Hamakua Coast.

7 Page 36 describes very clearly that the
 8 Hamakua Coast lands in agricultural use were
 9 redistricted. And the next paragraph from Hilo to
 10 Kapoho, it's all new lava flow, so that land didn't
 11 have agricultural potential.

12 But everything from the Hamakua Coast,
 13 from the Wailuku River, which is the County of
 14 Hawaii's planning area right there, that whole area
 15 is Hamakua Coast. That's the Hamakua Planning
 16 District. It has nothing to do -- there's nothing
 17 on page 36 that references the South Hilo Judicial
 18 District. It's irrelevant. It's --

19 **VICE-CHAIR GIOVANNI:** Mr. Church -- Mr.
 20 Church, are you asserting -- looking at this figure
 21 on the screen, are you asserting that everything in
 22 yellow wasn't agriculture and there should be no
 23 conservation in this yellow area?

24 **JOAN HILDAL:** No.

25 **VICE-CHAIR GIOVANNI:** Are you asserting --

1 **KEN CHURCH:** No. I'm saying that on page
2 36, it refers to the Hamakua Coast, okay?

3 **VICE-CHAIR GIOVANNI:** Okay.

4 **KEN CHURCH:** And your own staff memorandum
5 --

6 **VICE-CHAIR GIOVANNI:** What are you saying?
7 Don't worry about that. What are you saying about
8 this exhibit that --

9 **KEN CHURCH:** Well, you said it in your
10 declaratory order. You cited exactly what they
11 pointed to. They said, no, no, no, they didn't mean
12 that, on page 36. They meant just down to the South
13 Hilo Judicial District, which it -- it wasn't cited
14 on page 36. Page 36 said it's the Hamakua Coast.
15 That is the Hamakua Planning District for the
16 county.

17 Go ahead.

18 **VICE-CHAIR GIOVANNI:** Ms. Hildal.

19 **JOAN HILDAL:** They referred to page 37,
20 which we never referred to in our brief or anywhere
21 in our declaratory ruling. They actually referred
22 to the South Hilo Judicial District in reference to
23 urban districts, not to conservation or agriculture,
24 which is page 36.

25 So 37 was not even a point --

1 **KEN CHURCH:** It wasn't --

2 **JOAN HILDAL:** -- in our declaratory --

3 **VICE-CHAIR GIOVANNI:** Wait. Let her talk.

4 One at a time.

5 **JOAN HILDAL:** Okay. That's all I have --

6 **KEN CHURCH:** Page 37 was not exhibited.

7 So in your staff report they come up with stuff from
8 page 37, which wasn't exhibited, wasn't part of our
9 -- the hearing, and they referred this South Hilo
10 Planning District somehow was being what the reports
11 page 36 was talking about when it said the Hamakua
12 Coast.

13 And they're saying, in effect -- and it
14 was reflected in the declaratory order, so the error
15 went from what you were told in the staff report,
16 which had many errors and omissions, and you
17 reflected that in your declaratory order. The error
18 simply propagated.

19 So we're talking here about the errors --
20 if I may, 91-10-5 was cited as an applicable legal
21 authority in your decision and order. And that's
22 for a contested case hearing.

23 If you read 91-10, all of 91-10 is
24 contested case hearings. It was cited in the
25 declaratory order as applicable law. It was

1 referred to by Mr. Okuda in the transcript. He
2 said, hey, you've got to have a preponderance of
3 evidence and burden of persuasion. You have to meet
4 that.

5 So as an error in law, we were saying we
6 want to cross-examine Maki. You called people to
7 testify that we weren't allowed to cross-examine.
8 And under 91-10, contested case rules, 3 says,
9 "Cross-examination of parties is permitted."

10 So in planning, which I called it sucking
11 and blowing, you can't do both at the same time.
12 You can't --

13 **JOAN HILDAL:** Let me finish my
14 presentation, please.

15 **KEN CHURCH:** Well, I want to -- we're
16 going to run out of time, and I want to cover these
17 legal issues, and then I'll turn it back to you.

18 **JOAN HILDAL:** Okay.

19 **VICE-CHAIR GIOVANNI:** One second here.
20 You're going a little bit astray.

21 Commissioner Aczon?

22 **COMMISSIONER ACZON:** Chair, I'm just --
23 I'm getting confused on who's making presentation.
24 I just want to repeat what Commissioner Ohigashi
25 said. Presentation one at a time and quit

1 interrupting each other.

2 And perhaps, Mr. Chair, we can -- we can
3 let the petitioners make their presentations and the
4 commissioners ask questions later.

5 **VICE-CHAIR GIOVANNI:** I agree. We're
6 going to hold our questions.

7 Ms. Hildal, will you complete your 30-
8 minute presentation, please?

9 **JOAN HILDAL:** Thank you very much. So I
10 was back on -- we're back to the review report, page
11 --

12 **COMMISSIONER ACZON:** Who is making
13 presentation now?

14 **VICE-CHAIR GIOVANNI:** Ms. Hildal. Ms.
15 Hildal is making the --

16 **COMMISSIONER ACZON:** Okay.

17 **JOAN HILDAL:** So I'm back to the
18 shoreline. The 1969 boundary review report, page 36
19 continues in the next paragraph. So first they
20 talked about where the Hamakua Coast was from
21 Waiapi'o down to Wailuku River, which is just the
22 border into the town of Hilo. And we are 14 and a
23 half miles north of the boundary of Hilo.

24 So the shoreline -- the steep pali coast
25 of East Kohala is presently within the conservation

1 district. This district should be extended to
 2 include the sandy beach at Waiapi'o and then to
 3 include the pali lands of the Hamakua Coast, so
 4 using the ridgetop as a boundary line, so the
 5 commission action partially approve because areas in
 6 agriculture use were excluded. Our property should
 7 have been excluded and used the top of the ridgetop
 8 as the boundary.

9 Quadrangle maps. The next paragraph is
 10 about from Hilo map 66 to Kapoho map 73. The shore
 11 is rocky with only occasional beaches, product of
 12 recent lava flows, recommended 300-foot mauka of the
 13 high-water mark. Commission approved.

14 So our area is not -- shore is rocky with
 15 only occasional beaches and part of recent lava
 16 flows. Our area is a product of old lava flows with
 17 very rich productive agricultural soils, which I'll
 18 show later.

19 So Act 187, map soils, slopes, and
 20 rainfall. It's the next one down. That's the cover
 21 page, and these were why the areas were put into
 22 agricultural use to begin with.

23 Prime ag land and 187 was to be rated by
 24 these factors affecting the delineation of the
 25 agricultural district on the island. The character

1 of the soil, that's the first one. And so ours was
2 A, B. That's the same as the ALISH determinations.

3 Kenny, what did you --

4 **KEN CHURCH:** I didn't do anything.

5 **JOAN HILDAL:** But can you pull it down a
6 little bit?

7 **KEN CHURCH:** Just a minute. I'm shaky.

8 **JOAN HILDAL:** Here. Okay. You can see
9 from Waiapi'o down to just on the border. That's
10 where all the good soils were. And from -- from 14
11 and a half miles up to Hakalau, it was all being
12 used in sugar cane intensive agriculture.

13 So the next picture. The next
14 characteristic was to be slopes less than 20
15 percent. As you can see in this map, ours was less
16 than 10 percent, the slope of our property.

17 And third was average annual rainfall of
18 at least 25 inches, which everybody knows Hilo and
19 our area, in particular, has lots of rainfall.

20 So it goes on to say, "According to the
21 Land Study Bureau, the land area with these
22 characteristics, prime agricultural land, is 115,600
23 acres or only 4.5 percent of the total island area."

24 What was determined in this study was that
25 prime agricultural land was only four and a half

1 percent of the total land area of this island. So
2 those are the areas that should be protected, and
3 that's exactly the idea of all our laws that are
4 trying to protect agricultural land.

5 The largest area of prime agricultural
6 land are on the northern tip of the Kohala District
7 and along the Hamakua coastline from Waiapi'o to
8 Hilo, about 66, as stated and as illustrated by its
9 supporting maps.

10 If you still adhere to the false premise
11 that the Hamakua Coast does not include the steep
12 fertile lands from Hakalau to Hilo, those exact
13 lands would have then been the only area of
14 shorelands neglected to be mentioned on the entire
15 east island shoreline and not described in the 1969
16 boundary review.

17 As the next description on the map then
18 began from Hilo down to Kapoho, the shore is rocky,
19 not from Hakalau or Papaikou, which is in our map --
20 map 65 down because the topography isn't rocky or
21 recent off lava flows. It's lush and fertile with
22 high steep cliffs and, most importantly, prime ag
23 land, ALISH, ag use, and dedicated for intensive ag
24 production at the time of redistricting. So you saw
25 the Hamakua map already.

1 The Hamakua --

2 Yeah, you can show it again.

3 **KEN CHURCH:** Quadrangle map?

4 **JOAN HILDAL:** Hamakua map.

5 **KEN CHURCH:** Oh.

6 **JOAN HILDAL:** The Hamakua development plan
7 implements the general plan for the region,
8 including the districts of Hamakua, North Hilo, and
9 what they call rural South Hilo, which is the
10 northern part of the South Hilo District. You can
11 see it in green. That's the northern part of the
12 South Hilo District, which was an intense
13 agricultural use at the time, all prime ag land, and
14 it's called the rural South Hilo portion of the
15 South Hilo District, which is north of the Wailuku
16 River.

17 We are located ten miles north of the
18 Wailuku River and the rural south portion of the
19 South Hilo District.

20 So quadrangle maps. So what we think --
21 confusion and uncertainty still exists not from the
22 report or from the laws, the legal authorities which
23 have not substantially changed over time, greatest
24 possible protection for prime ag lands but from the
25 maps.

1 The maps have been inconclusive, not the
 2 laws, which have proven over time to be inconclusive
 3 with the report, the laws, and the interest of the
 4 state, which actually are its laws.

5 So then I'm down to testimony by Williams
 6 and Dagenhart. This is the testimony that was made
 7 in the -- in the beginning --

8 **KEN CHURCH:** Which exhibit number?
 9 Transcripts?

10 **JOAN HILDAL:** 16.

11 **KEN CHURCH:** 16, that's a quadrangle. It
 12 must be the next one. Okay.

13 **JOAN HILDAL:** So the testimony --

14 **KEN CHURCH:** Here you go.

15 **JOAN HILDAL:** -- of the -- those people
 16 that were in the Land Use Commission at the time
 17 continually state over and over again that lands and
 18 ag use were not to be redistricted. They were
 19 supposed to be left as ag.

20 So if you can see in these -- people
 21 asked, oh, what about the 300-foot shoreline. And
 22 he said, well, in that case, if your property is in
 23 intensive ag use, it should not be redistricted.
 24 Over and over again, people ask questions, what
 25 about this and what about that? Well, if your land

1 is in the ag use, it's not to be redistricted.

2 These are the testimonies. These are the
3 people speaking in those meetings that were
4 constructed to create the maps and to create the
5 laws.

6 So -- so he's talking about the -- the
7 boundary lines, and he's saying it is flexible in
8 the same manner as all boundaries are upon
9 application. We feel it is more realistic
10 distinction between agricultural uses and the
11 shoreline than presently exists.

12 **VICE-CHAIR GIOVANNI:** So it's 11:11.
13 You've gone --

14 **JOAN HILDAL:** Okay. I've got just a
15 little bit more --

16 **VICE-CHAIR GIOVANNI:** Yeah, so how much
17 more do you want to get to the end of your --

18 **JOAN HILDAL:** I've got three pages.

19 **VICE-CHAIR GIOVANNI:** Okay. So we'll
20 break at that point.

21 **JOAN HILDAL:** So you asked about reliance.
22 The commission discussed whether a landowner had
23 relied on state zoning when he purchased the
24 property. Reliance is principally relevant to the
25 question of whether a landowner has a vested right

1 to take an action or continue a use that would not
 2 be allowed after change in the law.

3 Waikiki Marketplace versus Chair of Zoning
 4 explains that a landowner may rely on zoning
 5 ordinance in effect at the time, 1969 and 1992,
 6 because preexisting lawful uses of property are
 7 generally considered to be vested rights that zoning
 8 ordinance may not abrogate.

9 The vested rights analysis comes into play
 10 when the government unilaterally takes action
 11 against a landowner. Reliance is not a relevant
 12 inquiry where the landowner affirmatively asks the
 13 government to take action to correct an error. And
 14 that's what we're doing at this moment.

15 Looking at this point from another angle,
 16 an error cannot be perpetuated simply because the
 17 error has been around for a long time. The
 18 (indiscernible) does not apply in this case as we
 19 and the previous owners are allowed by law to apply
 20 for a new boundary interpretation, petition for a
 21 DR, and to re-petition for DBAs every one year if
 22 the first one failed.

23 If uncertainty remains, if the flood maps
 24 were deemed to be the final authority, the law and
 25 the commission's rules would not have availed these

1 options to the public.

2 We also have testimony by many officials
3 with some district lines on the flood maps are
4 inconclusive. Statutes of limitations do not apply
5 to boundary interpretations.

6 Supposed fear of litigation, dangerous
7 precedent, or increased workload are suppositions,
8 not valid criteria to deny a state interest when
9 analyzing this factual situation at the time of
10 redistricting and subsequent boundary interpretation
11 92-48.

12 Even so, there's only been two cases we
13 are aware of that have been brought forward, DR 99-
14 21 and DR 96-17. And in both cases, the commission
15 agreed with the petitioner so no litigation would
16 have been forthcoming.

17 Litigation should not be expected if after
18 a fair quasi-judicial non-adversarial meeting,
19 hearing the commission rules, impartially and
20 according to Hawaii's Constitution, HRS 205-2(a)(3),
21 Acts 193, Act 187, and LUC's rules, HAR 15-15-19 and
22 HAR 15-15-22, and the 14th Amendment of the
23 Constitution of the United States were all taken
24 into account.

25 The citizens of Hawaii trust and depend on

1 you to make impartial decisions based on proven
2 facts and established policies. No litigation
3 should ever be forthcoming unless the commission
4 ignores their own Hawaii's Constitution, laws, and
5 rules, which are the state's interests and the facts
6 of this declaratory order.

7 Ironically, Scheuer cited relaxed
8 allowance of building homes and residences in ag
9 districts, which would go to the fundamental purpose
10 that we are charged with protection.

11 I haven't read any laws more strongly
12 stated or clearer than HRS 205-2(a)(3) in effect now
13 and basically the same law when the Land Use
14 Commission was formed. Any establishment of the
15 boundaries of ag district, the greatest possible
16 protection -- it's mandatory -- be given to those
17 lands with a high capacity for intensive
18 cultivation, not conservation land.

19 Giving our single-family resident -- and
20 this is really important. Getting our single-family
21 residents, which we first applied for a farm
22 dwelling, permitting was a relatively simple permit.
23 But allowing the continued vested agricultural use
24 of our property is seeming an administrative
25 impossibility.

1 We don't understand how the commission
2 doesn't see how their administration has actually
3 promoted and contributed to the relaxed allowance of
4 building homes in scattered urban sprawl rather than
5 encouraging the vested ag use as its property seems
6 to protect over anything else.

7 What other choice does a conservation
8 property owner have? What's really going on here is
9 that the state's management of conservation property
10 ultimately leaves an owner with only three choices,
11 none of which support ag use.

12 The first one, scattered urban sprawl. To
13 get a residence is a relatively easy permit process,
14 but seemingly, there's no chance to permit the
15 historical and vested agricultural use as our
16 expensive and time-consuming experience of eight
17 years working lawfully to achieve has shown.

18 So the second choice is just simply
19 allowing the property to go fallow with derelict
20 cars, piles of garbage, invasives, fire ants, rats,
21 pigs, et cetera to take over because of the owner's
22 fear of doing anything else. Even just a simple
23 fence is a huge application that could bring on a
24 fine.

25 Most people choose this one because they

1 think, oh, it's conservation land, we can't do
 2 anything. I'm not going to do anything. It's too
 3 much trouble. But they actually do have vested ag
 4 rights if they stand up and fight for them.

5 Number three choice, sell the property and
 6 let someone else deal with the state. That was the
 7 previous owner's choice after giving up after many
 8 unsuccessful attempts for years themselves.

9 Time to get a legally liable agricultural
 10 operation going on properties with historical,
 11 legal, and vested ag use seems to be a total
 12 impossibility, so we really don't get it.

13 We've never understood the resistance to
 14 allowing the historical, legal, and vested
 15 agricultural use that is protected by most ag land
 16 use laws and policies and even mandated. And you
 17 swore an oath to protect and be given the greatest
 18 possible protection.

19 Are those rights to be shuffled out willy-
 20 nilly to some but not others, or is it that the
 21 commission is adverse to a perceived increase
 22 workload or setting a dangerous precedent in lieu of
 23 relying on the laws you were sworn to protect?

24 Why so strongly stand against a historical
 25 and legal and vested agricultural use of our prime

1 ag land? What's the motive here? We don't
 2 understand. This is actually the crux of the
 3 matter.

4 State Office of Planning had no objection
 5 to our petition after having analyzed all of the
 6 facts and laws. Commissioner Okuda said himself,
 7 and because of the fact that reasonable people like
 8 the Office of Planning, which has the charge of
 9 protecting the public interest and the public trust
 10 cited the fact that the commission had discretion.

11 Kanalua was not a reason to base a denial
 12 on. They were only stating the simple truth of the
 13 situation. The Land Use Commission always has
 14 kanalua. They have the discretion. The state
 15 offered a planning does not have the discretion to
 16 make that decision. You have the discretion to make
 17 that decision.

18 The truth is, as they were trying to say,
 19 it is simply the duty and the responsibility of the
 20 commission, not the State Office of Planning, to
 21 decide, after hearing all the facts, including the
 22 Office of Planning's, and then impartially applying
 23 its laws and policy according to Acts 493.

24 Similarly, to the State Office of
 25 Planning, we acknowledge and respect the Land Use

1 Commission's right to discretion. As is always the
2 case, that this discretion must also encompass its
3 responsibility, duty, and oath of office to
4 administer its decisions impartially and according
5 to the state's interest which is its laws.

6 Mahalo for considering my opening remarks.

7 **VICE-CHAIR GIOVANNI:** Thank you very much,
8 Ms. Hildal. Appreciate it.

9 Commissioners, any questions at this
10 point?

11 Commissioner Okuda?

12 **COMMISSIONER OKUDA:** Thank you for your
13 presentation. And believe me, I've read everything
14 you folks have submitted, and I've listened closely
15 to what you've had to say.

16 I give you credit for pointing out your
17 disagreements with me on the standards. If I -- you
18 know, I'm just a human being, so --

19 **JOAN HILDAL:** We are, too.

20 **COMMISSIONER OKUDA:** -- yeah, and so our
21 process works when everybody's willing to listen
22 with an open mind and not get defensive, you know,
23 if people point out there could be an error in
24 applicable standards or anything like that.

25 So you know, so believe me, your

1 presentation and pointing out things is not taken in
2 any negative way. But let me ask you this. Do you
3 believe that the documents you have submitted for
4 this -- for your motion for reconsideration or your
5 request for reconsideration completely and
6 accurately spells out your position? In other
7 words, is there anything left out in any of those
8 documents which were -- or any point that you
9 believe needs to be made but is not contained in
10 what you filed with respect to your motion to
11 reconsideration and the exhibits therein?

12 **JOAN HILDAL:** Well, if I can answer that.
13 I would say if you stick to the facts of the
14 declaratory order, and which this is a declaratory
15 reconsideration, then that would be the case.

16 But if you want to go into present-day
17 situations and other facts that don't apply to this
18 --

19 **COMMISSIONER OKUDA:** Yeah. I'm sorry to
20 interrupt, but let me tell you why I'm asking that
21 question. I just want to be sure that you have
22 given us everything you want us to consider.

23 Because if we make a decision one way or
24 the other, and I don't think anybody's predisposed
25 anyway to what decision to make, you know, I don't

1 want somebody to say later, oh, but we had something
2 else, and you just didn't ask about the something
3 else.

4 So my -- I'm asking, is there something
5 else that we also have to look at with respect to
6 your motion for reconsideration, or is everything
7 contained in what you presented?

8 **JOAN HILDAL:** Can I ask you a question,
9 then? Am I able to --

10 **COMMISSIONER OKUDA:** Well -- well, yeah.
11 You can ask me and I'll tell you whether I feel like
12 I can answer or not or whether it's appropriate.

13 **JOAN HILDAL:** Okay. So my question would
14 be, are you referring to things like you asked us
15 before, tax numbers, present agricultural use --

16 **COMMISSIONER OKUDA:** Well --

17 **JOAN HILDAL:** We'd be happy to answer
18 those questions again. But you know, they don't
19 apply to the declaratory order.

20 **COMMISSIONER OKUDA:** Okay. Yeah. I don't
21 want to get into the argument about the merits. I
22 just want to be sure whether in your view you have
23 presented in your motion for reconsideration
24 everything that you think you need to have presented
25 with respect to the motion for reconsideration.

1 **JOAN HILDAL:** Can you give me an example
2 of what may otherwise be --

3 **COMMISSIONER OKUDA:** I -- I don't know.
4 It's your -- yeah, I don't know. It's your motion.
5 So I --

6 See, I want to be sure. I want to be sure
7 that you have had the full opportunity to give us
8 the documentation that you believe supports your
9 motion, okay?

10 So is there anything else that you believe
11 needs to be submitted to support your motion? In
12 other words, is your motion -- maybe let me ask it
13 this way.

14 Is your motion complete or is it not
15 complete?

16 **JOAN HILDAL:** Well, I had two other
17 presentations to give today.

18 **COMMISSIONER OKUDA:** Yeah, but my question
19 is the presentations and the -- what you have
20 included or you intend to include in the
21 presentations, are all of those things included and
22 covered in your motion for reconsideration?

23 **JOAN HILDAL:** I'll let Ken answer that.

24 **COMMISSIONER OKUDA:** Well, the answer is
25 either yes, no, or I don't know.

1 **JOAN HILDAL:** Well, he'll say.

2 **COMMISSIONER OKUDA:** Okay.

3 **KEN CHURCH:** If you include the brief in
4 there also, yes, it's all there.

5 **COMMISSIONER OKUDA:** Okay. Okay. So if
6 we were to look at everything that you submitted,
7 including -- and let's just make sure that we're all
8 on the same page.

9 When you, Mr. Church, say "the brief," can
10 you tell me what you mean by "the brief" so that we
11 know exactly which document we're talking about.

12 **KEN CHURCH:** The staff memorandum that was
13 given to you by staff --

14 **COMMISSIONER OKUDA:** Okay.

15 **KEN CHURCH:** -- describes the brief and
16 all of its elements.

17 **COMMISSIONER OKUDA:** Okay.

18 **KEN CHURCH:** So the total list is there.
19 It's posted on your website. And to answer your
20 question, there's nothing else out there, and we
21 believe everything we've given to you is correct.

22 The new -- the new things we brought to
23 your attention and we intend to -- if we were given
24 enough time, to really get into is the transcripts
25 of those hearings that was repeatedly described the

1 landowners that that entire coastal area was not
2 going to be redistricted above the coastal ridgetop.

3 **COMMISSIONER OKUDA:** Okay. Well, the
4 transcripts say what the transcripts say. In other
5 words, if I were to tell you the transcripts say
6 something and they really don't say those things,
7 well, you know, what I have to say really doesn't
8 amount to a hill of beans because the transcripts,
9 as we all say, speak for themselves, or the
10 testimony there.

11 So again, you believe everything that you
12 need -- everything in support of your motion for
13 reconsideration has been submitted. In other words,
14 the record is complete, meaning -- meaning whatever
15 you filed with the Land Use Commission, and that
16 includes your motion for reconsideration and the
17 exhibits, everything -- there's nothing else that
18 needs to be submitted to complete that record.

19 **JOAN HILDAL:** Well, our objections were
20 also submitted, so I would include those in it.

21 **COMMISSIONER OKUDA:** I'm sorry. Can you
22 speak louder?

23 **JOAN HILDAL:** Our objections were both
24 submitted, some by me and some by Ken, our
25 objections to the previous hearing, they're also

1 submitted into the record.

2 **COMMISSIONER OKUDA:** Okay. And they're --
3 yeah. I'm just trying to find out. And I hate to
4 belabor the point, but I want our record to be
5 really clear and my understanding to be really
6 clear. There is really nothing else that needs to
7 be submitted for us to make a decision.

8 And let me tell you this is not a trick
9 question. I'm not saying and therefore we're going
10 to make a decision right now. That's a separate
11 question, okay? But I just want to make sure are we
12 dealing with all the pages in the book, or are there
13 some other pages that have been ripped out or
14 forgotten to be put in the book that we got to look
15 at?

16 **KEN CHURCH:** Well, if I can answer that.
17 It is your staff that brought pages into the final
18 decision --

19 **COMMISSIONER OKUDA:** Mr. Church, yeah,
20 yeah. I just want to know, yes, is it all complete
21 --

22 **KEN CHURCH:** We believe it's all complete,
23 but I want to come back to your statement about
24 transcripts. It's one thing if you find it in one
25 spot in the transcript where someone was told this

1 or that --

2 **COMMISSIONER OKUDA:** Mr. Church --

3 **KEN CHURCH:** Repeatedly --

4 **COMMISSIONER OKUDA:** Mr. Church, I
5 understand your argument. I don't mean to cut you
6 off. I'm just trying to make it so we have a
7 possible efficient decision maker --

8 **KEN CHURCH:** Of it all.

9 **COMMISSIONER OKUDA:** Yeah. And I'm not
10 sure whether my commissioner -- fellow commissioners
11 are going to agree with me, but I'm just trying to
12 look at it all.

13 **VICE-CHAIR GIOVANNI:** So just let me for
14 the record, because you were speaking over -- I just
15 heard Mr. Church say the following words, "You have
16 it all."

17 **KEN CHURCH:** That's correct.

18 **VICE-CHAIR GIOVANNI:** So we have it all.

19 **COMMISSIONER OKUDA:** Okay. Okay.

20 **KEN CHURCH:** It's on the commission's
21 website.

22 **COMMISSIONER OKUDA:** Okay.

23 **VICE-CHAIR GIOVANNI:** Ms. Hildal, did you
24 want to comment?

25 **JOAN HILDAL:** Yeah, I did.

1 **VICE-CHAIR GIOVANNI:** Do you want to agree
2 or disagree with Mr. Church?

3 **JOAN HILDAL:** One of our biggest problems
4 --

5 **VICE-CHAIR GIOVANNI:** Do you want to agree
6 or disagree with Mr. Church?

7 **JOAN HILDAL:** I kind of want to disagree
8 until I get some clarification. One of our problems
9 for the last hearing was whether this -- this
10 hearing and even this hearing now is based on 101,
11 A, B, C, D. Is that how you're going to determine
12 it?

13 **COMMISSIONER OKUDA:** No.

14 **JOAN HILDAL:** Or is it preponderance of
15 evidence contested case?

16 **COMMISSIONER OKUDA:** No. I hear what --
17 the point you made about the standard of review, and
18 I'm going to go back and reconsider what I said,
19 okay? Because we're all human beings.

20 And frankly -- and with the Chair's
21 permission, let me just say 30 seconds about
22 something. I believe our democracy works best when
23 we have a free discussion and people are willing to
24 reconsider or think about whether or not what they
25 said was really accurate or not. So I have no

1 problem going back and checking and questioning what
2 I have said earlier.

3 The only way I can do that is to be sure
4 we have the entire record in front of us, and I
5 understand we do. So let me ask this next question,
6 okay, because this is important about how certain
7 other things are handled.

8 Let me just ask it personally for me. Do
9 you believe that I have shown bias towards or
10 against you or anybody else involved in this
11 proceeding? If you think I'm biased, tell me I'm
12 biased, you know?

13 **JOAN HILDAL:** No. I think the commission
14 may have been misled.

15 **COMMISSIONER OKUDA:** Okay. Well, being
16 misled is different than biased.

17 **JOAN HILDAL:** Right.

18 **COMMISSIONER OKUDA:** Yeah. Is it your
19 position that we're biased?

20 **JOAN HILDAL:** No.

21 **COMMISSIONER OKUDA:** Okay. Let me ask you
22 this question. And I'm not prejudging or speaking
23 for anybody here. Would you have an objection if
24 instead of having a decision made today, we take
25 some time, but not too much time, to go back and --

1 I know this is kind of like for the umpteenth time
2 reading through many, many pages, and I know people
3 --

4 **VICE-CHAIR GIOVANNI:** Speak in the
5 microphone.

6 **COMMISSIONER OKUDA:** Yeah. I know it
7 means, you know, maybe going back and looking at
8 pages, but would you have an objection if before we
9 enter into deliberations, we -- I don't know what
10 the proper legal term is.

11 If we go back and look at the entire
12 record again, you know, all the exhibits, all the
13 transcripts, all the reports, everything that you've
14 presented, and then we have deliberations. But we
15 probably would have to do the deliberations before
16 three of the commissioners term-limit all at the end
17 of June. I mean, would that be objectionable?

18 **JOAN HILDAL:** All we're looking is for an
19 impartial decision based on the facts. And if it --
20 if you need more time to do that, I have no
21 objection to that.

22 What about you?

23 **KEN CHURCH:** We would welcome it. The --
24 one of the most -- something that I want to try to
25 help you with there, we started out writing these

1 things without having a clue what a statute or an
2 act or a rule -- I mean, if you go back two years,
3 some of the stuff we were writing --

4 **VICE-CHAIR GIOVANNI:** Can you get to the
5 question?

6 **KEN CHURCH:** I am.

7 **VICE-CHAIR GIOVANNI:** You said you would
8 welcome it. Is there anything more you want to add?

9 **KEN CHURCH:** I'm going to be helpful. I'm
10 trying to be helpful here. If you --

11 **VICE-CHAIR GIOVANNI:** I think you're
12 taking time, and we want to --

13 **COMMISSIONER OKUDA:** Yeah. My own
14 question, Mr. Church, if you had no objection. If
15 you had an objection to us, you know, taking some
16 additional time before the end of -- you know,
17 before deliberating, then, you know, we'll take that
18 position into account.

19 It's either yes, you have an objection;
20 no, you don't have an objection; or you don't know.

21 **KEN CHURCH:** Read it from the present
22 going backwards because the present has captured
23 most of the past more accurately and without a whole
24 bunch of extra words.

25 **VICE-CHAIR GIOVANNI:** Okay. Thank you.

1 **KEN CHURCH:** Okay.

2 **VICE-CHAIR GIOVANNI:** One second.

3 Commissioner Wong, did you have a question?

4 **COMMISSIONER WONG:** Yeah. Mr. Chair, so
5 does that mean Commissioner Okuda is going to make a
6 motion for something right now at this point in
7 time?

8 **VICE-CHAIR GIOVANNI:** It could be.

9 **COMMISSIONER OKUDA:** Well, I don't want to
10 cut off the Churches if they have more time that --

11 **VICE-CHAIR GIOVANNI:** They're at the end
12 of their time.

13 **COMMISSIONER OKUDA:** They're at the end of
14 time? Okay. Well --

15 **JOAN HILDAL:** So I'd like to ask
16 something. Is this a contested case hearing with a
17 preponderance of evidence is being --

18 **COMMISSIONER OKUDA:** No.

19 **JOAN HILDAL:** -- A, B, C, or D?

20 **COMMISSIONER OKUDA:** No. If I can -- what
21 I am suggesting is, at least for me personally --
22 and I'm trying to make a motion. If the motion
23 passes, I will go back and look at everything you
24 submitted, look at all the issues you raised. And
25 based on that review and probably a review of the

1 statutes, maybe some appellate cases, determine
2 whether or not reconsideration should be granted or
3 not granted. And if it's granted, to what extent
4 and under what circumstances.

5 So in other words, I -- I can't tell you
6 one way or the other, to answer your specific
7 question, because it depends on going back and me
8 keeping an open mind and reviewing what has been
9 presented, the whole package.

10 **JOAN HILDAL:** We welcome that.

11 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
12 I have no further -- nothing further.

13 **VICE-CHAIR GIOVANNI:** So commissioners,
14 you still have an opportunity to direct specific
15 questions to the testimony that's been presented by
16 the Churches.

17 So Commissioner Cabral.

18 **COMMISSIONER CABRAL:** Yes. I have a
19 question. You've had a number of items on the
20 screen here today that you've named or not named as
21 exhibits, and you've made numerous references of not
22 being allowed to show those in the past because of
23 the disconnect and -- Zoom disconnects and living
24 out of town in Hilo, and you've got real problems
25 like -- I agree with that but not necessarily the

1 commission's problem.

2 But have any of the exhibits or the items
 3 that you put on the screen today not been presented
 4 to us in the past?

5 I have been -- in preparation for today,
 6 I've reviewed hundreds, if not thousands, of pages
 7 and numerous maps, because I'm familiar -- I live on
 8 this island. I'm familiar with your area. I've
 9 sold land up there in my past, et cetera, and I'm
 10 familiar with even the landowners who owned it
 11 before you, as well as dealing with Hamakua sugar
 12 land numerous times in numerous ways.

13 So it appears that in the papers that I
 14 have on my computer and the information that's been
 15 presented from you to the commission in the past,
 16 that even -- not just your maps but a lot of your
 17 quotes in these items like you have on the screen
 18 now, that they've been given to us in the past.

19 Is that the case that they've been given,
 20 so some of these are new?

21 **JOAN HILDAL:** Some of those are new. The
 22 transcripts from the meetings that took place when
 23 the boundary review report was being made --

24 **COMMISSIONER CABRAL:** In 1969.

25 **JOAN HILDAL:** Yes. Those are new.

1 **COMMISSIONER CABRAL:** Okay.

2 **VICE-CHAIR GIOVANNI:** But they're in the
3 record.

4 **COMMISSIONER CABRAL:** But they're in our
5 record now?

6 **JOAN HILDAL:** In the Hamakua CDP.

7 **COMMISSIONER CABRAL:** Okay. That's my
8 question.

9 **JOAN HILDAL:** They're in the record now,
10 yes.

11 **COMMISSIONER CABRAL:** So this information
12 on your screen was given to us before today, before
13 it appeared on the screen?

14 **JOAN HILDAL:** Yes.

15 **COMMISSIONER CABRAL:** Okay. That means I
16 have them all. Because I'm looking at what's on my
17 -- in my data given to me via you, we have received
18 it in the past. I just want to clarify that we've
19 received that --

20 **KEN CHURCH:** Can I add a tiny bit to this?
21 The first paragraph on page 36, there's three
22 paragraphs that we brought up, and there was a lot
23 of debate in the last hearing what was the Hamakua
24 Coast when it said --

25 **VICE-CHAIR GIOVANNI:** That point has been

1 made already.

2 **KEN CHURCH:** Yeah, I'm aware of that.

3 **COMMISSIONER CABRAL:** That we didn't
4 highlight that first paragraph during the last
5 hearing --

6 **VICE-CHAIR GIOVANNI:** Yeah, but you're --

7 **KEN CHURCH:** We didn't think it was an
8 issue.

9 **COMMISSIONER CABRAL:** Okay. I -- I know
10 where the -- my office is located on the Wailuku
11 River. I know the area you're talking about. I see
12 it daily. Okay.

13 **VICE-CHAIR GIOVANNI:** I think -- my
14 interpretation of what transpired is Mr. --
15 Commissioner Okuda's questions and their answers is
16 that we have it all.

17 **KEN CHURCH:** Yes. Okay. That's -- I just
18 wanted to make sure. And that what --

19 **VICE-CHAIR GIOVANNI:** Including what was
20 presented --

21 **COMMISSIONER CABRAL:** Right. That's what
22 I want -- that's what I want to say is we've seen it
23 all, so it's -- we have it all.

24 **VICE-CHAIR GIOVANNI:** Yes.

25 **COMMISSIONER CABRAL:** Okay. Now, my other

1 question -- this is a question question (sic).
2 Based on the data you've given us, that entire
3 Hamakua Coast from my office in Hilo at Wailuku
4 River, from above my office, across my river, all
5 the way past Waiapi'o Valley, the entire coastline
6 is agriculture. Is that your data you're showing?

7 **JOAN HILDAL:** No. Only --

8 **COMMISSIONER CABRAL:** Oh, I'm sorry. That
9 has been in agriculture use in high A, B land value.
10 You had maps there that you showed the entire
11 coastline to be high agriculture value, high
12 agriculture use.

13 **JOAN HILDAL:** No. There is rural --

14 **KEN CHURCH:** Those are new to --

15 **JOAN HILDAL:** Those are --

16 **VICE-CHAIR GIOVANNI:** One at a time,
17 please.

18 **JOAN HILDAL:** And there's urban, and that
19 goes all the way down to the shoreline, those
20 districts.

21 **KEN CHURCH:** Okay. I'm sorry.

22 **JOAN HILDAL:** Only the properties that
23 were in bonified agricultural use, that was supposed
24 to be the top of the pali. So each property should
25 be evaluated to its individual use to determine

1 whether it was supposed to be put into conservation
2 or agriculture.

3 **COMMISSIONER CABRAL:** Okay. Well, because
4 based on your maps, my reading of what you've given
5 us that, obviously, some land that was going to --
6 unless you have nothing in conservation on that
7 entire coastline, because you're not going to take
8 something that's urban or rural and convert it back
9 to conservation. Something from agriculture was
10 going to have to become --

11 I'm just clarifying your maps because you
12 had one where the whole sweep of that is in ag --

13 **JOAN HILDAL:** We're not asking for you to
14 do anything about any other properties but our own.

15 **COMMISSIONER CABRAL:** Okay.

16 **JOAN HILDAL:** To determine the line for
17 our properties.

18 **COMMISSIONER CABRAL:** Okay. Thank you
19 very much.

20 **VICE-CHAIR GIOVANNI:** Mr. Wong?

21 **COMMISSIONER WONG:** No, thank you.

22 **VICE-CHAIR GIOVANNI:** Okay. Any other
23 questions, commissioners?

24 Thank you for your presentation. So --

25 **JOAN HILDAL:** Oh, can I add one other

1 thing?

2 **VICE-CHAIR GIOVANNI:** You want to add one
3 more thing? We're at the end.

4 **JOAN HILDAL:** I know, but I had --

5 **VICE-CHAIR GIOVANNI:** The one-more-things
6 have gone on for 45 minutes now, so I'm going to cut
7 it off.

8 **JOAN HILDAL:** But I wanted to submit these
9 other --

10 **VICE-CHAIR GIOVANNI:** I'm going to cut it
11 off. You had your opportunity to put those in your
12 hour and I gave you an hour and a half. You should
13 have done --

14 **KEN CHURCH:** Am I still allowed my half
15 hour?

16 **VICE-CHAIR GIOVANNI:** No. She used it.
17 You had an hour and a half --

18 **KEN CHURCH:** I just aired my objection. I
19 understood I was going to be provided a half an hour
20 also earlier here, and if I've misunderstood that, I
21 guess I could rely on the transcript.

22 **VICE-CHAIR GIOVANNI:** You are together as
23 a petitioner. You have two voices. I gave you an
24 hour. You said that she would go first --

25 **JOAN HILDAL:** Is there any laws that says

1 we're required to only --

2 **VICE-CHAIR GIOVANNI:** No. No, I'm not --

3 **JOAN HILDAL:** -- do it for an hour?

4 **KEN CHURCH:** We object.

5 **VICE-CHAIR GIOVANNI:** You object to my
6 guidance that I've given you and how I've --

7 **KEN CHURCH:** Because I had some things
8 that I would have brought out had I not
9 misunderstood, and I didn't think I did, that I was
10 going to get a half an hour.

11 **VICE-CHAIR GIOVANNI:** Understood.

12 **KEN CHURCH:** So here's some --

13 **JOAN HILDAL:** And is there any law that
14 says we only get an hour?

15 **VICE-CHAIR GIOVANNI:** You've used your
16 time, and we're going to move forward, and you
17 object to how we did that.

18 Okay. Commissioner Okuda?

19 **JOAN HILDAL:** I'd like to submit my -- my
20 other briefs, then --

21 **COMMISSIONER OKUDA:** Excuse me --

22 **JOAN HILDAL:** -- as records.

23 **COMMISSIONER OKUDA:** Excuse me. I'd like
24 to make a motion. I move that the commission prior
25 to deliberation -- well, let me strike that.

1 I make this motion. Number one, through
2 the Executive Office Officer, schedule a further
3 hearing on the motion for reconsideration. Number
4 two -- and this additional time will allow all
5 commissioners, to the extent the commissioners
6 believe are necessary, to review the entire record.

7 Number two, that by the close of business
8 on Monday -- this coming Monday, close of business
9 meaning -- is it 4:45 -- 4:30 p.m. -- 4:30 p.m. that
10 the petitioners here have opportunity to submit the
11 statements that they made here today -- may I ask
12 the petitioners how many total pages are your
13 statements?

14 **JOAN HILDAL:** I have about ten more pages.

15 **COMMISSIONER OKUDA:** Okay. Ten pages.

16 And Mr. Church, how many pages would your
17 statement that you would -- you wanted to say how
18 many pages would that amount to?

19 **KEN CHURCH:** The brief that you have on
20 file --

21 **COMMISSIONER OKUDA:** No, no. I --

22 **KEN CHURCH:** -- the introduction chapter
23 in the brief was my opening statement, so it's
24 there.

25 **COMMISSIONER OKUDA:** Okay.

1 **KEN CHURCH:** But I'm missing at this point
2 -- I had some very specific errors in law that I
3 thought was being asked, and I wanted to say --

4 **COMMISSIONER OKUDA:** Okay.

5 **KEN CHURCH:** -- and I can do that in five
6 minutes.

7 **COMMISSIONER OKUDA:** No, no. I think it's
8 more helpful you put it in writing so that, frankly,
9 we'll have that in front of our face, and it will
10 talk to us even if you're not talking.

11 So how many pages what you wanted to say
12 to us in five minutes or whatever comprise total?

13 **KEN CHURCH:** It would simply be a summary
14 --

15 **COMMISSIONER OKUDA:** How many pages?

16 **JOAN HILDAL:** How many pages, Ken?

17 **KEN CHURCH:** Well, there's -- I -- my
18 comments aren't going to be about --

19 **COMMISSIONER OHIGASHI:** The motion
20 shouldn't be negotiated. Give him an opportunity to
21 submit whatever -- that's what I understand.

22 **COMMISSIONER OKUDA:** Okay.

23 **COMMISSIONER OHIGASHI:** You have to have
24 one day to submit what you want. Whether or not
25 that's -- that's what I understand the motion is.

1 **VICE-CHAIR GIOVANNI:** Thank you,
2 Commissioner Ohigashi.

3 Let me suggest, Commissioner Okuda, that
4 you allow them to submit whatever they want with no
5 page limit by that deadline.

6 **COMMISSIONER OKUDA:** Okay. That's fine.
7 So the motion point number two would be the
8 petitioners may submit whatever additional
9 statements they intend to make --

10 **VICE-CHAIR GIOVANNI:** In writing.

11 **COMMISSIONER OKUDA:** -- in writing by the
12 close of business 4:30 on Monday. And the Land Use
13 Commission Staff Office must receive the submissions
14 by that date.

15 And number three, that the Executive
16 Officer or the staff schedule a further hearing on
17 this matter to occur prior to the time when our
18 three commissioners term- limit out.

19 **VICE-CHAIR GIOVANNI:** Which is before June
20 --

21 **KEN CHURCH:** Would that be --

22 **COMMISSIONER OKUDA:** Right.

23 **KEN CHURCH:** -- by email followed by USPS
24 --

25 **COMMISSIONER OHIGASHI:** Sir, I don't

1 believe that the petitioner should comment when --

2 **VICE-CHAIR GIOVANNI:** Listen --

3 **COMMISSIONER OHIGASHI:** -- a motion is
4 being made.

5 **VICE-CHAIR GIOVANNI:** Absolutely correct.
6 I admonish the petitioner to please be quiet. We're
7 considering a motion being made by a commissioner.

8 **COMMISSIONER OKUDA:** Yes, Mr. Chair. To
9 clarify, that would be before June 30, 2022.

10 **VICE-CHAIR GIOVANNI:** Okay.

11 **COMMISSIONER OKUDA:** And that's the
12 motion.

13 **VICE-CHAIR GIOVANNI:** Okay. So let me see
14 if I can -- it's a three-part motion that you would
15 defer the hearing --

16 **JOAN HILDAL:** June or May?

17 **VICE-CHAIR GIOVANNI:** June 30. You would
18 defer the motion to allow more time for
19 commissioners to review the record to which the
20 petitioners have acknowledged is complete.

21 Number two, by the close of business
22 Monday, 4:30 p.m., the staff of the LUC must
23 receive, in writing, any additional commentary you
24 want to put on the record --

25 **JOAN HILDAL:** And that date would be?

1 **VICE-CHAIR GIOVANNI:** Monday, 5/23, I

2 believe it is.

3 **JOAN HILDAL:** Monday, 4:30 -- what date?

4 June --

5 **VICE-CHAIR GIOVANNI:** No. May 23.

6 **JOAN HILDAL:** Oh, May 23. Okay.

7 **VICE-CHAIR GIOVANNI:** And number three,
8 the Executive Director would schedule a follow-up
9 hearing on this matter to be on the schedule prior
10 to June 30, 2022.

11 **COMMISSIONER OKUDA:** That is correct, Mr.
12 Chair.

13 **COMMISSIONER CABRAL:** I'll second that
14 motion.

15 **VICE-CHAIR GIOVANNI:** Commissioner Cabral
16 seconds the motion.

17 Commissioner Okuda, do you want to speak
18 to your motion?

19 **COMMISSIONER OKUDA:** I think I've said
20 enough regarding the motion. I think this is the
21 most efficient, fair way of handling this.

22 **VICE-CHAIR GIOVANNI:** Commissioner
23 Ohigashi?

24 **COMMISSIONER OHIGASHI:** I'm going to vote
25 no on the motion. And the reason why I'm going to

1 --

2 **VICE-CHAIR GIOVANNI:** Is your thing on?

3 **COMMISSIONER OHIGASHI:** Yes, I have it on.

4 I don't have my thing on, though, my --

5 **COMMISSIONER CABRAL:** Oh, turn it up.

6 Okay.

7 **COMMISSIONER OHIGASHI:** The reason I'm
8 going to vote no on the motion is that I believe
9 that the record is complete. I believe that the
10 arguments made have been made before and are made in
11 the documents provided. And I think that we have
12 enough evidence -- we have enough of a record that
13 we are able to make a determination as soon as we
14 can, and my hope is today. That's my position.

15 **VICE-CHAIR GIOVANNI:** Thank you,
16 Commissioner Ohigashi.

17 Commissioner Aczon?

18 **COMMISSIONER ACZON:** Thank you, Mr. Chair.
19 Like Commissioner Ohigashi, I will vote no on this
20 motion. I believe after eight years, the
21 petitioners deserve a quick resolution on this.

22 From the beginning, the Chair kind of, you
23 know, outlined all the process. The petitioner
24 agreed with it. And I believe, like Commissioner
25 Ohigashi, that the record is complete. From the

1 beginning, all the commission read all the filings,
 2 all on the record. I don't -- I don't believe that,
 3 you know, we missed anything else. So therefore,
 4 I'll be voting no on this motion.

5 **VICE-CHAIR GIOVANNI:** Thank you.

6 Commissioner Chang?

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

8 I, too, will be -- probably am inclined to vote no
 9 because, one, we've had an acknowledgement by the
 10 petitioners that the record is complete. The only
 11 additional information would have been the
 12 presentation. But we did hear most of their
 13 presentation.

14 I also believe that a lot of the
 15 information -- and I do appreciate the amount of
 16 information that has been presented, including
 17 transcripts and your arguments before us today. But
 18 I think the record is complete and sufficient for
 19 the commission to make a determination on the motion
 20 for reconsideration.

21 My concern is also one of efficiency. We
 22 will come back to -- we will have to come back to
 23 Hilo to deliberate on this matter, and there are
 24 other matters pending before LUC. I don't want to
 25 diminish how important this is, as I realize how

1 long the Churches have worked on this project, but
2 like Commissioner Aczon, I believe we need -- we are
3 prepared to make a decision at this time.

4 **VICE-CHAIR GIOVANNI:** Thank you,
5 Commissioner Chang.

6 Commissioners, anybody else want to make a
7 comment relative to the motion that's before us?

8 Commissioner Okuda?

9 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
10 Let me try to change some minds. Okay. I'm not
11 saying that I would necessarily vote in favor of a
12 reconsideration, and I'm not saying that just
13 because people appear without an attorney they
14 deserve any special deference, because of the fact
15 that the rules apply for everyone equally whether or
16 not you have an attorney, okay? So I'm not -- I'm
17 not saying that.

18 It -- it's just that to whatever extent, I
19 would like to recognize the fact that the Churches
20 have -- and I hope you don't mind me calling you by
21 a single name.

22 The petitioners -- the petitioners have,
23 you know, submitted, I think, with great effort,
24 what they did. And so I don't really see the harm
25 to our operations, even though it will cause some

1 additional work to the staff, to hold this over
 2 until right before the end of June when everyone
 3 else term-limits out. But I think there's no harm
 4 in going back and looking at the record one more
 5 time.

6 I do recognize the fact that -- that
 7 conservation land is really important. I mean,
 8 that's the reason why I know we all have concerns
 9 about the people buy property that is clearly
 10 designated conservation and later on something else,
 11 you know, might take place.

12 But you know, putting all of that aside,
 13 this record is a voluminous record, and I think
 14 under those circumstances, it's worthwhile just
 15 taking a little bit more time -- it's not going to
 16 be months and months -- just to go back and look at
 17 the record to assure ourselves that we're meeting
 18 the standard that we're supposed to meet.

19 And so that's why I urge a vote to give
 20 this a little bit more time to look at it. I'll
 21 tell you, frankly, my initial view coming into this
 22 proceeding after spending hours reading through the
 23 record was, yeah, I -- you know, we're kind of
 24 coming down the same road.

25 But I think under the circumstances, maybe

1 this is the one time we should go down the same road
2 again and see if maybe there's something else that
3 we haven't seen. So that's my pitch to everyone
4 about just give it another one month. Thank you.

5 **VICE-CHAIR GIOVANNI:** Thank you,
6 Commissioner Okuda.

7 So the Chair is so inclined, also, to vote
8 negative on this motion. The record is voluminous.
9 Perhaps you wanted to go through that voluminous
10 record again. I've gone through it in detail -- the
11 record that was before us in detail before we made
12 our decision on March 15th. There's a lot of
13 exhibits and testimony and commentary before us
14 subject to the motion for reconsideration.

15 But in truth, I haven't seen or been
16 inclined to want to go through that again. I feel I
17 have adequate information to proceed to
18 deliberation, so I will be voting against this
19 motion.

20 Anybody else?

21 Mr. Orodenger, please take a roll call
22 vote on the motion.

23 **MR. ORODENKER:** Thank you, Mr. Chair. The
24 motion is to continue this matter for a month and to
25 give petitioner the opportunity to submit additional

1 written statements by Monday.

2 Commissioner Okuda?

3 **COMMISSIONER OKUDA:** Yes.

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

5 **COMMISSIONER CABRAL:** Yes.

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

7 **COMMISSIONER ACZON:** No.

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

9 **COMMISSIONER CHANG:** (Inaudible.)

10 **COMMISSIONER CABRAL:** You're on the bottom
11 of the list.

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

13 **COMMISSIONER OHIGASHI:** No.

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

15 **COMMISSIONER WONG:** No.

16 **MR. ORODENKER:** Commissioner Kamakea-
17 Ohelo?

18 **COMMISSIONER KAMKEA-OHELO:** Aye.

19 **MR. ORODENKER:** Chair Giovanni?

20 **VICE-CHAIR GIOVANNI:** No.

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

22 **COMMISSIONER CHANG:** I vote no.

23 **MR. ORODENKER:** Mr. Chair, the motion does
24 not carry.

25 **VICE-CHAIR GIOVANNI:** Commissioners, any

1 additional questions or comments at this time?

2 So I would like to -- commission will not
 3 conduct formal deliberations on whether to grant or
 4 deny the request for reconsideration. I would note
 5 for the parties and public that during the
 6 commission's deliberations I will not entertain
 7 additional input from the parties or the public
 8 unless I specifically request those individuals or
 9 entities to do so. If called upon, I would ask that
 10 any comments be limited to the question at hand.

11 Commissioners, let me confirm with each of
 12 you that you've reviewed the record and are prepared
 13 to deliberate on the subject docket. After I call
 14 your name, would you please signify with either an
 15 "aye" or a "nay" that you are prepared to deliberate
 16 on this matter.

17 Commissioner Aczon?

18 **COMMISSIONER ACZON:** Aye.

19 **VICE-CHAIR GIOVANNI:** Commissioner Cabral?

20 **COMMISSIONER CABRAL:** Yes.

21 **VICE-CHAIR GIOVANNI:** Commissioner Chang?

22 **COMMISSIONER CHANG:** Aye.

23 **VICE-CHAIR GIOVANNI:** Commissioner Okuda?

24 **COMMISSIONER OKUDA:** Yes.

25 **VICE-CHAIR GIOVANNI:** Commissioner

1 Ohigashi?

2 **COMMISSIONER OHIGASHI:** Yes.

3 **VICE-CHAIR GIOVANNI:** Commissioner Wong?

4 **COMMISSIONER WONG:** Aye.

5 **VICE-CHAIR GIOVANNI:** Commissioner

6 Kamakea?

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

8 **VICE-CHAIR GIOVANNI:** The Vice-Chair is
9 also prepared to deliberate on this matter.

10 **COMMISSIONER WONG:** Mr. Chair.

11 **VICE-CHAIR GIOVANNI:** Commissioner

12 Ohigashi, was that you or -- oh, Commissioner Wong.

13 Sorry, I was a --

14 **COMMISSIONER WONG:** -- the better-looking
15 commissioner.

16 **COMMISSIONER OHIGASHI:** Only less hair.

17 Only less hair, right?

18 **VICE-CHAIR GIOVANNI:** Sounded like a
19 Dodger fan.

20 **COMMISSIONER WONG:** Chair, I move to deny
21 the -- this motion for reconsideration.

22 **VICE-CHAIR GIOVANNI:** Thank you,
23 Commissioner Wong. Is there a second?

24 **COMMISSIONER ACZON:** Second.

25 **VICE-CHAIR GIOVANNI:** Seconded by

1 Commissioner Aczon.

2 Commissioner Wong, would you like to speak
3 to the motion?

4 **COMMISSIONER WONG:** Yes, Chair. I think
5 that we have all the documents and information and
6 all the exhibits that was provided to us plus -- I
7 mean, everything. And it's been eight years that we
8 have all this voluminous information.

9 I reviewed all of this record, and I still
10 think -- I'm still in -- about to deny this motion.
11 Thank you.

12 **VICE-CHAIR GIOVANNI:** Thank you,
13 Commissioner Aczon.

14 **COMMISSIONER OKUDA:** Mr. Chair, same as
15 Commissioner Wong, I believe -- you know, I remember
16 this issue from the time I got on this Land Use
17 Commission, and -- and I think we kind of discuss
18 and debate this several times already, and
19 everything that was presented today or before today
20 didn't change my mind. I think -- I'll just leave
21 it like that. Thank you.

22 **VICE-CHAIR GIOVANNI:** Thank you.

23 Commissioners?

24 Commissioner Ohigashi?

25 **COMMISSIONER OHIGASHI:** (Inaudible.) It

1 seems to be the same record -- it is the same record
2 only that we had before us only that there was
3 argument prepared by petitioners trying to spin or
4 put their understanding on the record.

5 The commission had this understanding and
6 the written documents when it made its initial
7 decision. I see nothing in there that changes that.

8 It appears to have been additional new
9 filings relating to certain transcripts that were
10 taken; however, my understanding is that these
11 transcripts were available at the time, so there
12 weren't newly -- this can't be newly discovered when
13 they were available. They were just chosen by Mr.
14 Church not to use it.

15 To allow additional information into a
16 reconsideration of a hearing that was held, I'm not
17 too sure that it can be allowed if they were
18 available at the time and decided strategically not
19 to be used at that hearing.

20 I see no basis to grant the motion for
21 reconsideration in this matter. I believe that the
22 commission made the right decision, and I'll be
23 supporting the motion.

24 As an aside, the commission is -- I
25 believe all members of us are concerned about the

1 protection of agricultural land; however, we believe
2 conservation lands are important also. And I'm of
3 the understanding that agricultural pursuits can
4 take place on conservation lands. And in fact, I
5 believe they are being pursued on agricultural land.

6 And I believe this parcel itself is being
7 used for agriculture. So I'm not afraid that this
8 decision diminishes the commission's push for more
9 agricultural lands. It doesn't detract from it. It
10 reduces the inventory of agricultural land. It
11 doesn't reduce the actual use of land for
12 agriculture purposes.

13 Finally, I don't see this -- I see this as
14 an imperfect methodology to skirt the type of
15 scrutiny that a DBA will provide where we are able
16 to seek whether or not there are significant
17 cultural traditional practices.

18 We have a policy right now, but who knows
19 what may obtain in -- we've had these type of
20 hearings where new evidence are prepared because it
21 is a contested case proceeding. And I think that to
22 deprive our opportunity of that review by declaring
23 -- just declaring that this is all of a sudden that
24 this is agriculture sort of diminishes the role of
25 the commission and a protection of conservation

1 lands. Nothing further.

2 **VICE-CHAIR GIOVANNI:** Thank you,
3 Commissioner.

4 Commissioner Chang?

5 **COMMISSIONER CHANG:** I'm going to get
6 another microphone next time. Thank you so very
7 much.

8 And to the petitioners, I have greatly
9 appreciated your presentation and the work that
10 you've done. I feel your frustration as well.

11 For me, the -- I've sat on the commission,
12 and there were many decision -- well, I shouldn't
13 say many. There were some decisions made by the
14 Land Use Commission before us that we had to adhere
15 to. Would I have made a different decision? I'm --
16 maybe so. But I have to respect the decisions that
17 were made by the Land Use Commission at that time.

18 I also have to believe that many of the
19 things that you presented to us were available to
20 the Land Use Commission when they made the boundary
21 lines.

22 I don't believe it was a mistake, because
23 that's what you're asking us to determine, that
24 there was an error or mistake by the Land Use
25 Commission when they made -- when they drew this

1 line.

2 You know, that was in 1969. I -- I think
3 a lot of what you presented was rather compelling,
4 the maps you showed, the concentration of testimony.
5 But I also have to believe that the commissioners
6 who ultimately drew the line heard that. They
7 received the -- they looked at the same laws. They
8 looked at -- the same facts that you have presented
9 to us was also what the commission looked at, at the
10 time that the lines were drawn.

11 Like Commissioner Ohigashi, I don't
12 believe that your options are -- by our denial of
13 your reconsideration, it limits your ability to use
14 of land as it's -- as you -- as you intend to.

15 I think you are frustrated because it is
16 conservation, and it's much more burdensome, and
17 that is for a particular reason. But there's also
18 another vehicle for you if you want to truly do ag,
19 and you do appear to be people who want to do
20 agriculture, that I am certain that you will find a
21 way to do that.

22 But I don't believe that the mistake has
23 been made or an error has been made, so for those
24 reasons -- and nor have I been convinced on a
25 reconsideration that you have presented to us where

1 we were in error or where it was unlawful or
2 unreasonable. So based on those considerations, I
3 am going to vote in favor of the motion. Thank you.

4 **VICE-CHAIR GIOVANNI:** Thank you,
5 Commissioner.

6 Commissioners? Anybody else want to
7 speak?

8 So the Chair is also going to support the
9 motion to deny. In my judgment, I was coming here
10 today to understand how our decision of March 15th
11 was unreasonable, unlawful, or erroneous.

12 What I heard instead and what the record
13 has shown is that the petitioners -- and I sense
14 your frustration. I really do -- really disagreed
15 with our decision. They didn't like it. They want
16 it changed. They're trying to get us to go back and
17 reconsider all the factors that went into the
18 decision we made at the time.

19 The record today is very similar to the
20 record that we had to base our decision on at the
21 time, and my decision -- my vote at the time was to
22 -- was consistent with the decision and order which
23 you are asking -- was made on March 15th and
24 finalized on March 15th, 2022.

25 I -- I very much agree with the commentary

1 from my fellow commissioner, Commissioner Ohigashi.
2 Thank you for that perspective. But I harken
3 directly to -- what resonates with me is what
4 Commissioner Chang brought forth earlier in her
5 comments and, again, now.

6 That the commissioners back in the day
7 that made the original decisions on this, it was in
8 their judgment, and that judgment was based on, I'm
9 sure, a number of complicated factors. And they
10 took it all into consideration. I just trust that
11 they did.

12 It wasn't a simple, oh, we looked at this
13 one rule, and we tried to follow that one rule.
14 It's complicated. These matters are always
15 complicated.

16 So I trust their decision, and I don't
17 feel that I've been given reason to change it. So I
18 will support the motion.

19 Any final comments before we take a roll
20 call?

21 Commissioner Cabral?

22 **COMMISSIONER CABRAL:** Thank you, Chair.
23 I, too, am going to support the motion. I -- as
24 previously stated, I do not think that we made an
25 error, that we are erroneous, or that we did not

1 have the information that anything was done wrong on
 2 our last hearing.

3 I do remember it well, and I know it was
 4 on Zoom. And I know that there are ways that --
 5 there are technicalities that occur that may not
 6 have happened in person, but I do not believe that
 7 the commission made those errors.

8 And so that -- I don't think we have to do
 9 a reconsideration. And I also agree with my
 10 commissioners that have commented on the decision
 11 that was made. And again, in 1969, that decision
 12 was made to zone that partial conservation, and that
 13 decision was recorded with the Bureau of Conveyances
 14 and with the State taxes. It was in that condition
 15 when they purchased the land.

16 And so whether -- again, we'd have to
 17 rethink how that decision was made and because it
 18 otherwise would be nothing up there of conservation
 19 or very little. So I think that -- I think that it
 20 -- rather than trying to rethink and redo everything
 21 that was done before, this is not the right vehicle
 22 to change the zoning of that land.

23 Thank you. I will vote yes in this
 24 motion. Mahalo.

25 **VICE-CHAIR GIOVANNI:** Thank you. Okay.

1 So Mr. Orodenger, will you poll the
2 commission on the motion?

3 **MR. ORODENKER:** Thank you, Mr. Chair. The
4 motion is to -- the motion is to deny the motion for
5 reconsideration.

6 Commissioner Wong?

7 **COMMISSIONER WONG:** Aye.

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

9 **COMMISSIONER ACZON:** Aye.

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

11 **COMMISSIONER CABRAL:** Aye.

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

13 **COMMISSIONER CHANG:** Aye.

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

15 **COMMISSIONER OHIGASHI:** Aye.

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

17 **COMMISSIONER OKUDA:** Yes.

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

19 Ohelo?

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

21 **MR. ORODENKER:** Chair Giovanni?

22 **VICE-CHAIR GIOVANNI:** Aye.

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

25 **VICE-CHAIR GIOVANNI:** Thank you to the

1 parties. We'll take a brief recess, and then we'll
2 move on to the next agenda. It's now 12:12. We'll
3 reconvene in five minutes, 12:17.

4 **(Meeting concluded at 12:12 p.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 28th day of June, 2022.

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18


19 _____
20 Jodi Dean
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