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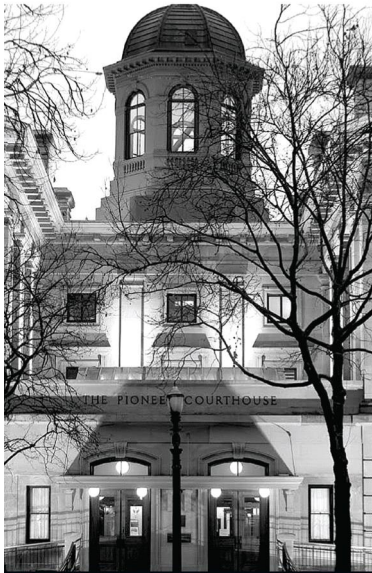
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STATE OF HAWAII
LAND USE COMMISSION
Meeting held on July 27, 2022
Commencing at 9:15 a.m.

Held at
Homer A. Maxey Center Conference Room
(Foreign-Trade Zone No. 9)
521 Ala Moana Boulevard
Honolulu, HI 96813

FINAL

I. **CALL TO ORDER**

II. **COMMISSIONER TRAINING (Continued)**

VI. **ADJOURNMENT**

BEFORE :

1 **APPEARANCES :**

2

3 **COMMISSIONERS PRESENT :**

4 Dan Giovanni, Chair (Via Zoom)

5 Dawn Chang

6 Gary Okuda

7 George Atta

8 Kuikeokalani Kamakea-Ohelo

9 Lee Ohigashi (2nd Vice-Chair)

10 Melvin Kahele

11 Michael Yamane

12 Nancy Cabral (1st Vice-Chair)

13

14

15 **STAFF PRESENT :**

16 Daniel Orodener, Executive Officer

17 Scott Derrickson, Chief Planner

18 Riley Hakoda, Planner

19 Martina Segura, Planner

20 Ariana Kwan, Secretary

21 Julie China, Esq. Deputy Attorney General (Via Zoom)

22

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1 **APPEARANCES (CONTINUED)**

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3 **OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:**

4 Bryan Yee, Esq., Deputy Attorney General

5 Mary Alice Evans, Director

6 Danielle Bass

7 Aaron Setogawa (Via Zoom)

8 Arthur Buto (Via Zoom)

9 Justine Nihipali (Via Zoom)

10 Lorene Maki (Via Zoom)

11 Ruby Edwards (Via Zoom)

12 Tom Eisen (Via Zoom)

13

14

15 **PRESENTERS, LUC STAFF:**

16 Daniel Orondenker

17 Scott Derrickson

18 Riley Hakoda

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1 **APPEARANCES (CONTINUED)**

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3 **PRESENTERS, OPSD:**

4 Mary Alice Evans

5 Arthur Buto

6 Bryan Yee

7 Danielle Bass

8 Justine Nihipali

9 Ruby Edwards

10 Tom Eisen

11

12

13 **PUBLIC TESTIMONY**

14 Ken Church

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1 **CHAIR GIOVANNI:** Thank you, Mr.
2 Derrickson. So with that hand clap, I will call the
3 meeting to order for today. Aloha mai kakou. Good
4 morning, everyone, and thanks for joining us again
5 today.

6 This is July 27, 2022, Land Use Commission
7 meeting. This is a hybrid meeting, which is being
8 held at the Homer A. Maxey International Trade
9 Resource Center Conference Room Number 401, which is
10 open to the public, and also being held by
11 interactive conference technology, which links
12 videoconference participants and other interested
13 individuals of the public via Zoom.

14 To comply with state law, members of the
15 public can attend in person or view the meeting via
16 the Zoom webinar platform. As chair, I will also be
17 participating this morning by Zoom.

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

23 Also, please be aware that all meeting
24 participants are being recorded on the digital
25 record of this Zoom meeting. Your continued

1 participation is your implied consent to be part of
 2 the public record of this event. If you do not wish
 3 to be part of the public record, you should exit
 4 this meeting now.

5 The Zoom conferencing technology allows
 6 the parties and each participating commissioner
 7 individual remote access to the meeting proceedings
 8 via their personal digital devices.

9 Please note that due to matters entirely
 10 outside of our control, occasional disruptions to
 11 the connectivity may occur for one or more members
 12 of the meeting at any given time. If such disruption
 13 occurs, please let us know and be patient as we try
 14 to restore the audiovisual signals to effectively
 15 conduct business.

16 For members of the public wishing to
 17 testify this morning, we are going to be taking a
 18 second round of public testimony at approximately 11
 19 a.m. today, depending on the progress made with the
 20 training presentations.

21 If you would like to access the meeting by
 22 telephone rather than by video contact, use *9 to
 23 virtually raise your hand and *9 to virtually lower
 24 your hand. You should also use the *6 function to
 25 mute and the *6 to unmute.

1 Again, we'll take additional round of
2 public testimony on the training at approximately 11
3 a.m. today.

4 I will also share with all participants
5 that we take breaks from time to time approximately
6 every hour, about a five to ten-minute break.

7 My name is Dan Giovanni, and I have the
8 pleasure to serve as the LUC chair. We currently
9 have nine seated commissioners. Along with me are
10 Commissioners Dawn Chang, Commissioner Nancy Cabral,
11 Commissioner Kamakea-'Ohelo, Commissioner Lee
12 Ohigashi, Commissioner Gary Okuda, Commissioner
13 Atta, Commissioner Michael Yamane, Commissioner
14 Kahele.

15 Also present is the LUC Executive Director
16 Daniel Orodener, LUC Chief Planner Scott
17 Derrickson, LUC Staff Planner Riley Hakoda, LUC
18 Staff Planner Martina Segura, and we welcome LUC
19 Attorney General Julie China, who's joining us by
20 Zoom today.

21 Court reporting transcriptions are being
22 done from this Zoom meeting.

23 The executive order of business today is a
24 continuation of commissioner training. At this time,
25 I'd like to turn the meeting back over to Executive

1 Director Daniel Orodener to continue the training
2 presentation.

3 **MR. ORODENKER:** Okay, Mr. Chair. At this
4 point, we'd like to pick up where we left off, and
5 Mr. Derrickson will be providing us a training
6 session on motions to show cause.

7 **CHAIR GIOVANNI:** Very well.

8 **MR. DERRICKSON:** Chair, you may want to
9 recognize that we have the Director of the Office of
10 Planning and Sustainable Development Mary Alice
11 Evans joining us in our audience and Deputy Attorney
12 General Bryan Yee.

13 **CHAIR GIOVANNI:** So acknowledged. Thank
14 you for clarifying that, Mr. Derrickson.

15 And welcome, Mary Alice.

16 And welcome, Mr. Yee.

17 **MR. DERRICKSON:** Okay. Aloha kakou. Okay.
18 So we're going to talk about orders to show cause.
19 There we go.

20 They are tied to district boundary
21 amendments. This is a -- it's a fairly rare
22 occurrence when we enter into an order to show
23 cause. The process is fairly -- pretty complicated,
24 because the result potentially is a reversion of the
25 original decision and order.

1 There are -- there is a condition that we
2 often put. We have in recent years made sure we put
3 a condition in our petitions that, absent
4 substantial commencement of a project, that the
5 commission may issue an order to show cause. And
6 that is reflected in our Hawai'i Revised Statute
7 Chapter 205-4(g).

8 These motions can be filed by an
9 interested party. Oftentimes -- well, as I said,
10 it's rare that we have these orders to show cause.
11 We've had only a handful in the last 20 years.

12 We have had orders to show cause motions
13 filed by the Office of Planning. We have had motions
14 filed by other parties with the county. And we also
15 have a motion for an order to show cause filed by
16 the original petitioner as well, which was extremely
17 unusual.

18 And the commission itself can do it by its
19 own action. The process that we follow is once we
20 get a motion filed alleging that there's failures to
21 perform according to conditions or representations
22 of the petition's approval, the LUC holds a hearing
23 on that motion.

24 Now, there is another avenue for this to
25 occur. And that is when the commission has asked or

1 scheduled a status conference from a petitioner
2 because we're not quite sure about what's going on
3 with compliance with conditions. And they may come
4 in and they may present this is how we've been
5 complying or not complying.

6 And based on that, if the LUC has reason
7 to believe there's been a reason to perform on those
8 conditions or the representations and commitments,
9 the commission itself will issue an order to show
10 cause. And that order then gets transmitted to the
11 petitioner, requesting that they appear for an
12 evidentiary hearing to explain why the petition
13 should not be reverted. And the LUC will host a
14 status conference. It's an order to show cause
15 conference.

16 And we also have to advertise it in the
17 newspaper more than a month in advance to the
18 public, indicating that we're having this order to
19 show cause hearing, all the parties to the original
20 petition as well as the movant, because the movant
21 is not always somebody who was an original party.

22 So generally, we have the petitioner, we
23 have the Office of Planning and Sustainable
24 Development, we have the county, usually represented
25 by the county Planning Department. And sometimes one

1 of those parties is the movant, and sometimes it's
2 the movant who is an interested party outside of the
3 original petition.

4 All those parties will then present their
5 case. The petitioner is likely going to be defending
6 themselves, but they need to come and present a
7 preponderance of evidence to show that they are in
8 fact adhering to the conditions as well as
9 representations and commitments enshrined in the
10 decision and order.

11 The end result is that after the
12 commission deliberates on it, we either find that
13 there's no violation occurred -- and in that case
14 then we dismiss the order to show cause; everyone
15 goes on their way -- or we find a violation.

16 If we find a violation, the commission
17 tends to have a couple of options. One is to move
18 forward with a reversion. And that's what some
19 people like to call the nuclear option that the
20 commission has, because pretty near, you know, it's
21 the worst thing that could possibly happen,
22 probably, from a petitioner's standpoint.

23 Often what will happen, though, is that if
24 we get to that stage, the petitioner will realize,
25 wow, I really don't want the reversion to occur, but

1 the only place I can go is the petitioner will ask
 2 if they can file a motion to amend, to make changes
 3 to reflect whatever change conditions they feel
 4 might be necessary.

5 So that is an option that has occurred in
 6 the past. But the commission has often moved, based
 7 on violation of conditions, based on an order to
 8 show cause, to revert a property.

9 **MR. ORODENKER:** If I can make a couple of
 10 comments.

11 **MR. DERRICKSON:** Yep.

12 **MR. ORODENKER:** There really, technically,
 13 when the petitioner -- when we file a motion for an
 14 order to show cause and request it to petitioner,
 15 the petitioner has the burden of showing why the
 16 property -- why there has not been a violation or
 17 why there is good cause for a violation.

18 Sometimes we've had situations where a
 19 violation is a time period to meet the time
 20 constraints set forth in the order, and the
 21 petitioner has been able to say, look, you know,
 22 these are the mitigating factors. There was a
 23 recession. There was this; there was that. The
 24 property was sold.

25 And it's not really that they say we're

1 going to file a motion to amend. Under those
2 circumstances, the commission actually renders a
3 decision that instead of reverting the property,
4 they're going to allow the petitioner to file a
5 motion to amend.

6 So I guess that there is a real subtle
7 difference there, you know. On the one hand, the
8 petitioner can't all of a sudden say I'm going to
9 file a motion to amend to stop the motion for order
10 to show cause. But the commission can allow the
11 petitioner to do that. So there's a slight
12 difference there. They can't subvert the process by
13 doing that.

14 And then we do need to talk about
15 substantial commencement, you know, when you're done
16 with this section, so.

17 **MR. DERRICKSON:** Yes. Thank you, Dan.

18 Before we talk about that substantial
19 commencement issue, just I want to point out this
20 process is -- there's multiple steps in the process.

21 So the first thing that happens usually is
22 that there's a motion made by someone. We call that
23 person the movant, but that motion alleges that
24 there's some violations occurring.

25 So that first hearing that we have is

1 based on that motion, and the movant, whoever it is,
2 whether it's an interested party or if it's one of
3 the original parties to the petition, they've got
4 the burden to show to the commission that, hey, the
5 commission should have reason to believe that
6 there's been some violations occurring.

7 **MR. ORODENKER:** As Scott mentioned,
8 sometimes the commission -- and this is what I think
9 some of you may be familiar with -- the commission,
10 based on an annual report, may conclude that we need
11 to bring a petitioner in for a status conference.

12 And that's what it'll be phrased. It won't
13 be phrased a motion for order to show cause. It'll
14 be phrased as a status conference.

15 But one of the options at that status
16 conference, if the commission feels -- the
17 commissioners feel that there has not been, or that
18 there may potentially be a violation, is then that
19 serves as that first motion for an order -- motion
20 hearing.

21 In other words, if we do it on our own, we
22 don't have to then file a motion on our own. We can
23 just -- the commission can request that the staff
24 begin order to show cause proceedings.

25 **MR. DERRICKSON:** That's a good point.

1 **COMMISSIONER CHANG:** Chair Giovanni, this
2 is Commissioner Chang, if I could just make a
3 comment to add on.

4 **CHAIR GIOVANNI:** Yeah.

5 **COMMISSIONER CHANG:** Thank you.

6 And I'm not too sure if Scott is going to
7 cover this, but this is really sort of like the last
8 resort. This is an extreme measure. But this is
9 probably the only remedy that the commission has.

10 So a lot of times, at least in those
11 proceedings that I have participated in, it may be
12 asking the county to follow up on, you know, what is
13 the status of compliance with certain conditions. So
14 sometimes in many instances, then, my experience has
15 been the community members have already expressed
16 concerns that certain conditions have not been met.

17 And a lot of this I find is managing
18 expectations, because I think a lot of times a
19 community believes that the Land Use Commission can
20 do something about enforcement.

21 But what I find our role to be in these
22 instances is really as a convenor to bring the
23 appropriate parties to the table to address some of
24 the concerns that have been addressed. And a lot of
25 times, it's been concerns raised by the communities,

1 so.

2 But we provide a process, a constructive
3 process, to have those discussions. But in -- at
4 least for me sitting on the commission, a reversion
5 is the last resort without exhausting other remedies
6 or considerations. Thank you.

7 **MR. DERRICKSON:** And I think that's
8 probably a good segue into getting into the
9 discussion about substantial commencement, which
10 I'll let Dan comment on.

11 **COMMISSIONER OHIGASHI:** Can I ask one
12 question, though? This is Lee Ohigashi. I was
13 wondering whether this process can be used in other
14 areas like special use permits.

15 For example, if we find that our county
16 wanted an industrial zone in an agricultural
17 district under a special use permit, if we find that
18 they didn't comply with the terms of the order
19 saying that they would apply for a district boundary
20 amendment within five years, could we institute this
21 process for purposes of changing -- or for the
22 purpose of getting rid of the SUP?

23 **MR. DERRICKSON:** That was kind of what
24 happened in the Waimanalo Gulch case where, you
25 know, we denied the extension of the special permit.

1 It went up to the Supreme Court, came back down, and
2 then we had to kick it back to the county for them
3 to not so much amend their special use permit, but
4 for further proceedings. That's the word that I was
5 looking for -- further proceedings.

6 By the time it came back up to us, the
7 special permit was long gone. And the conclusion
8 back then was that it wasn't very urgent, because
9 the permit didn't exist anymore.

10 Violations of special permits, because the
11 county has primary jurisdiction, so to speak, over
12 special permits, would be with the county. So if
13 there's been a violation, the county then has to
14 look at it.

15 If the county doesn't take enforcement
16 action, then an interested party would probably
17 bring it up to us. But at that point, it becomes
18 more -- we don't have any enforcement powers with
19 special permits, and this process, really, is not
20 designed for that.

21 **COMMISSIONER OHIGASHI:** So what I'm going
22 at it is that the problem is this. If the county
23 gets an SUP.

24 **MR. ORODENKER:** Yeah.

25 **COMMISSIONER OHIGASHI:** And they're

1 monitoring themselves.

2 **MR. ORODENKER:** Yeah.

3 **COMMISSIONER OHIGASHI:** And they're saying
4 we don't have to worry, because we're the guys who
5 put the gateway.

6 **MR. ORODENKER:** Right.

7 **COMMISSIONER OHIGASHI:** I'm just looking
8 at this process as being applicable for the
9 commission to take sua sponte up in order to show
10 cause why that special use permit should not be
11 reviewed or what the purpose of it.

12 **MR. ORODENKER:** Yeah.

13 **COMMISSIONER OHIGASHI:** So I'm just asking
14 if --

15 **MR. ORODENKER:** Yeah. No, no, no. Well,
16 first of all, the reversion provision is in the
17 section with regard to district boundary amendment.

18 **COMMISSIONER OHIGASHI:** No. But you can --
19 you can vacate a special use permit. It's just a
20 permit. It's not a sort of entitlement of, like a
21 boundary amendment.

22 **MR. ORODENKER:** Yeah.

23 **COMMISSIONER OHIGASHI:** So I'm just using
24 this provision as an example how we can, you know,
25 the force special use permits, especially against a

1 county, who doesn't listen to us.

2 **MR. ORODENKER:** Yeah. Well, yeah. The
3 question then becomes -- let's say we vacate the
4 special permit, but the waste dump is still there,
5 or the permit expires and the waste dump is still
6 there.

7 **MR. DERRICKSON:** Then they're in
8 violation.

9 **MR. ORODENKER:** Yeah. I mean, then it
10 becomes a matter of -- it's a whole different
11 scenario, you know. The private citizens could bring
12 a lawsuit for violation, as in the case of Waimanalo
13 Gulch, and/or if the attorney general decides he
14 wanted to get involved, they could bring an action.
15 But we don't -- the Land Use Commission doesn't have
16 any ability to, once we approve it -- for the sake
17 of argument, let's say we vacated a special use
18 permit. After that, we're done.

19 **CHAIR GIOVANNI:** Commissioner Okuda?

20 **COMMISSIONER OKUDA:** Thank you.

21 Just to add to this discussion, I think
22 order to show cause, yeah, you have to look at the
23 substance of what's written in the order. But from
24 the title, it's not necessarily prejudging what the
25 remedy -- even if there is a remedy. It's just show

1 cause, you know.

2 In other words, I think the order
3 initially is almost like two parts to it. One is
4 just to bring the matter up in a public forum, and
5 maybe there's a discussion then about what should be
6 the remedy. But maybe there -- and maybe the remedy
7 is going to be something else, but the first step is
8 always going to be, you know, what is really going
9 on, what's the factual basis.

10 So I would think, unless there's authority
11 contrary to it, that even if there isn't any
12 specific authority, it's kind of like inherent
13 agency authority to ask people are you complying
14 with what we've ordered. And depending on what the
15 evidence is which answers that question, then the
16 next step is, okay, what's the possible remedy?

17 It might be that the Land Use Commission
18 has no authority to do anything about it. But I
19 think there is value just to bring the issue up in
20 public so everybody can see that, you know, at least
21 we're paying attention to what we say and it's not,
22 you know.

23 So I think whether it's an order to show
24 cause or some other kind of order, that's a valuable
25 way of just making sure things are done as promised,

1 whatever legal term we put to that.

2 **COMMISSIONER OHIGASHI:** I'm not sure how
3 the rest of the commissioners feel, but what I would
4 hope is that we start -- we're always talking about
5 we don't have the enforcement powers. We don't have
6 this and that to actually make sure that these
7 conditions are met.

8 What I would think is that, especially in
9 other cases like SUPs, where there isn't a
10 substantial commencement provision, is that those
11 would be right for us to take a look at to determine
12 whether or not they have been meeting the
13 requirements under the SUP.

14 And I'm just putting this out there, since
15 it may -- I know it may increase the workload of
16 everybody, but I would just say that that's one
17 mechanism of trying to enforce on a term order, you
18 know, if that order make them shame or something
19 like that.

20 **CHAIR GIOVANNI:** This is the chair. Thank
21 you, commissioners, for your comments.

22 So I, for one, feel similarly to
23 Commissioner Ohigashi with regards to special use
24 permits. And the example that I would give is if we
25 grant a special use permit on agricultural land for

1 a term of, say, 30 years for a solar farm, and after
 2 10 years there's no commencement of that solar farm
 3 for one reason for another -- which has occurred --
 4 why can't -- what is the process by which we could
 5 vacate that permit?

6 And I'm a little confused by your answer,
 7 Mr. Orodenger. I wondered if you could in that
 8 particular example explain what options that the
 9 commission might have.

10 **MR. ORODENKER:** It's uncharted territory.
 11 There's no specific provisions in Chapter 205 with
 12 regard to our ability to vacate a special use
 13 permit. And as I said, one of the difficulties is
 14 that the county has primary jurisdiction.

15 If that situation -- excuse me?

16 **CHAIR GIOVANNI:** Continue.

17 **MR. ORODENKER:** If that situation did
 18 arise, we would have to get advice from the attorney
 19 generals as to how to proceed, because we haven't
 20 had that situation.

21 **CHAIR GIOVANNI:** Where I'm at is now where
 22 Mr. Okuda is, which is in that hypothetical example
 23 I just gave, I presume that, you know, we may or may
 24 not eventually get to test the waters of whether to
 25 vacate the permit. But why couldn't we do an order

1 to show cause and bring the whole issue to light
2 with an LUC hearing?

3 **MR. ORODENKER:** Oh, we could do a status
4 conference. That would actually be the way we bring
5 it up in public would be to ask the petitioner to
6 come in for a status conference.

7 George has been trying to get our
8 attention.

9 **COMMISSIONER ATTA:** What I was just
10 wondering is can we vacate maybe a half of a thing?
11 You know, the LUC has a large piece of the land
12 that's in the -- but what if they just would decide
13 that they're not complying for the mauka half or
14 something? Can we take that, a half of it, and,
15 yeah, separate it, the mauka versus makai or
16 something, and then say that they're not conforming
17 to the thing, and so we would remove half of the
18 project from the thing. Can we do that? I don't
19 know.

20 **MR. ORODENKER:** Chapter 205 provides that
21 we can revert all or a part of an action area.

22 **COMMISSIONER ATTA:** So that's the way we
23 could tell them, okay, we will vacate that upper
24 half. That would be an option.

25 **MR. ORODENKER:** Mm-hmm.

1 **COMMISSIONER ATTA:** Yeah.

2 **MR. ORODENKER:** We haven't done that. And
3 it creates a whole bunch of other problems.

4 And then this brings us -- this segues us
5 into the discussion of substantial commencement.

6 **MR. DERRICKSON:** Sorry. I just wanted to
7 point out with respect to special permits, we have
8 something that's similar and analogous to that
9 substantial commencement in that within a special
10 permit, the counties are supposed to set, basically,
11 a start date -- you know, from the time that a
12 special permit is issued, you must begin this use by
13 a certain date. And therefore, the county has some
14 enforcement ability if they don't start by that
15 date.

16 And we -- the commission has seen special
17 permit motions to amend come in for, you know, time
18 extensions, because they have been unable to perform
19 within that minimum start time. So I think --

20 **MR. ORODENKER:** That was what I was -- I
21 mean, Scott was explaining what I meant by the
22 counties having primary jurisdiction. You know, they
23 take the first crack at it.

24 **COMMISSIONER CHANG:** Commissioner
25 Giovanni, I'm just going to make one comment.

1 I think, Scott, I appreciate that comment.
2 I think some of the concerns that we've had come
3 before us, it's been that the community hasn't had -
4 - because they have raised the issue of whether the
5 county is enforcing, so there is, you know.

6 I think all of us are looking for a
7 platform to permit particular community members to
8 raise issues. Whether the Land Use Commission is the
9 forum I'm not sure, because we do have limited
10 jurisdiction.

11 But I think -- at least I know in a lot of
12 state lands or leases, we do include for permits or
13 licenses a provision in -- one of the terms in there
14 is our ability to revoke, to revoke the license or
15 the permit for failure to comply.

16 So I would hope that perhaps we can
17 explore this with the attorney general, what are our
18 potential options, as we have seen an increased use
19 of the special use provision for activities that are
20 -- that we've had questions about. Thank you.

21 **CHAIR GIOVANNI:** Thank you, Commissioner
22 Chang.

23 Let me also say -- this is the chair
24 speaking -- that in the most recent term of this
25 commission in consideration of some special use

1 permits that came before us, we included conditions
2 -- this is a segue to the discussion on substantial
3 commencement, but we have included conditions by
4 which the projects would go forward on a timeline
5 and indicated that failure to comply with that
6 condition would be a basis for enforcement by the
7 county.

8 And I would encourage this commission to
9 consider conditions such as that in future
10 considerations of special use permits that come
11 before us. Make it easier for the county to enforce.

12 **MR. ORODENKER:** Thank you, chair.

13 Once again, segueing into a short
14 discussion on substantial commencement. As you may
15 have heard me talk about yesterday, substantial
16 commencement is not clearly defined. But from a
17 procedural standpoint, when you're looking at orders
18 to show cause, the first question is whether there's
19 been a violation.

20 If the commission finds that there's been
21 a violation of a condition or representation, then
22 the next question is has there been substantial
23 commencement, if there's been substantial
24 commencement, if the commission believes that
25 there's been substantial commencement.

1 And petitioners who are faced with motions
2 for orders to show cause and a possibility of
3 reversion always argue that there's been substantial
4 commencement. But it's a factual finding by the
5 commission as to whether or the activity by the
6 petitioner amounts to substantial commencement of
7 the project.

8 If there has been, then the commission has
9 no further ability to enforce. If the commission
10 concludes there has been substantial commencement,
11 then the only enforcement entity that is able to
12 enforce is the county.

13 If there has not been substantial
14 commencement, then the commission can proceed to
15 making a determination as to whether or not it
16 wishes to revert the property or whether to allow
17 the developer to undertake a motion to amend.

18 Once again, as we discussed yesterday, I
19 can't tell you what substantial commencement is. It
20 is based on the facts. The Supreme Court hasn't
21 given us a clear definition of what substantial
22 commencement is.

23 I watched Bryan argue it at the Supreme
24 Court years ago, and although Bryan's arguments were
25 very logical, the Supreme Court's decision, if you

1 ask me, was kind of emotional. You know, it was, oh,
2 my god, they spent \$40 million. That has to be
3 substantial commencement.

4 Well, the project was three-quarters of a
5 billion dollars. So \$40 million really was a drop in
6 the bucket. But anyway, it is what it is.

7 But the reason that I bring it up once
8 again is that that's kind of the analysis. First,
9 has there been a violation? Second, has there been
10 substantial commencement? And then third is if there
11 hasn't been substantial commencement, then are we
12 going to revert or are we going to do something
13 else?

14 **CHAIR GIOVANNI:** Just to clarify, Dan --
15 Mr. Orodenger, the Bryan you're referring to is Mr.
16 Yee?

17 **MR. ORODENKER:** Yes. That's correct.

18 **CHAIR GIOVANNI:** Yeah. Let's try to -- for
19 the purposes of our record, let's try to refer to
20 each other for clarity by including last names.
21 Thank you.

22 **MR. ORODENKER:** Thank you, Mr. Chair, for
23 correcting me.

24 **COMMISSIONER CHANG:** Chair Giovanni, this
25 is Commissioner Chang. I just wanted to add to Dan's

1 comments about substantial commencement.

2 It's been sort of my experience sitting on
3 the Land Use Commission, because this issue has not
4 -- there's not a lot of clarity, and I don't think
5 any of us choose to go up to the Supreme Court to
6 ask them to clarify. So I have -- I think the land
7 use commissioners have been much more diligent about
8 including on their conditions specific timeframes.

9 I know that Chair Giovanni has talked
10 about asking the petitioner to quantify what's a
11 substantial commencement. But I think it has become
12 incumbent upon the commission that when we are
13 proposing conditions, that we are making them much
14 more specific, and so that you can quantify them,
15 and you can easily evaluate whether they have
16 commenced or not.

17 But I also want to comment, because I
18 think, George, you made a comment about mauka/makai.
19 Part of the challenges that we've had with this
20 particular provision is if it's been determined that
21 they have substantially commenced even on a portion
22 of the project -- and the entire DBA is one, you
23 know, is defined as the project -- we may have a
24 very difficult time bifurcating, unless they have
25 agreed to.

1 And at times they have. We have had
2 situations where they have come forth to bifurcate
3 because there actually have been two developers.

4 But I think a lot of -- at least my
5 experience sitting on the commission, also being a
6 lawyer not wanting to go up to the court to litigate
7 issues because of the uncertainty when it comes back
8 down, is that we are all trying to be much more --
9 much more proactive in the conditions that we're
10 preparing so that it is very clear when someone has
11 complied or not complied, whether there's
12 substantial commencement.

13 But it is ensuring that our conditions
14 there's -- it's not vague, it's not ambiguous, but
15 there's no dispute in what our intentions are.
16 Because a lot of times we are reviewing actions that
17 a previous commission has made at times 20 years ago
18 and trying to understand what were their intentions.
19 But also, trying to be very -- to maintain the
20 integrity of those intentions has been difficult.

21 So I think it is -- I just find that it is
22 in our best interest collectively to make our
23 conditions, and in particular our findings of fact
24 that support the conclusions on the conditions, very
25 specific. So thank you.

1 **CHAIR GIOVANNI:** This is the chair. And I
2 fully concur with your suggestion/recommendation and
3 encourage this commission as we move forward to
4 include as much specificity in our orders as
5 appropriate and as possible. It will only help with
6 the entities that are -- have the job of enforcement
7 and will only help future commissions interpret the
8 original intent of our decisions that were made at
9 this point in time.

10 So, thank you, Commissioner Chang. Very
11 much on point. Thank you.

12 Back to Mr. Orodenger. I'm not sure where
13 we're at.

14 **MR. ORODENKER:** Commissioner --

15 **COMMISSIONER CABRAL:** Commissioner Cabral
16 here, Chair, if I could say.

17 I think I'm trying to listen and speak
18 less, but having gone through a number of these
19 hearings over my past years, it seems like the mess
20 is that the land, when it was okayed by the prior
21 Land Use Commissions 20, 25 years ago, was a whole
22 different world.

23 Things were different. The properties
24 often have gone through foreclosure, have been
25 purchased and been re- foreclosed and re-foreclosed.

1 And here we are, you know, 25 years later with a
2 whole different world, different developers. You
3 know, there's -- it's gone through so many different
4 changes.

5 And I think that -- I think we're going to
6 have to keep dealing with this lack of any kind of
7 common sense until possibly we go to the
8 legislature, or somebody goes to the legislature,
9 and tries to have some clarity put to some of these
10 rules.

11 And I'm not sure if that will ever happen
12 because of funding, and it's not something anyone
13 thinks is important as a legislature. It doesn't
14 make news and that.

15 But anyway, just my two cents is I think
16 we're going to continue to have these problems
17 dealing with old decisions of the commission. And
18 there's probably just thousands of lots out there.
19 We know if we've got 40,000 lots out there, that
20 there's a whole lot of them in our subdivisions that
21 are going to continue to be problematic until they
22 get developed or cleaned up or something.

23 So anyway, I don't know that there's
24 funding, but common sense has gone awry here. So
25 anyway, that's my two cents. Thank you.

1 **CHAIR GIOVANNI:** Commissioner Cabral,
2 thank you very much for sharing your two cents,
3 which is always welcome, and bringing some common
4 sense to the discussion. So do not hesitate.

5 **COMMISSIONER OKUDA:** Chair, Gary Okuda, if
6 I may.

7 **CHAIR GIOVANNI:** Commissioner Okuda,
8 you're recognized.

9 **COMMISSIONER OKUDA:** Thank you. I believe
10 what Commissioner Chang is suggesting makes a lot of
11 sense, especially in the appropriate case --
12 appropriate case again to look at specific
13 development timelines.

14 And her suggestions are consistent with
15 what the Supreme Court said in the case that lays
16 out all of these issues with respect to reversion
17 and substantial commencement, which is the DW Aina
18 Le'a versus Bridge Aina Le'a case.

19 And what the Supreme Court said in that
20 case is the -- I don't want to call it the evil, but
21 the harm that we're supposed to avoid is where a
22 landowner gets a boundary redesignation to urban.
23 Just the fact that there's redesignation creates
24 value for the land, and the landowner, however, does
25 not keep its promises to the community, whether it's

1 the development as promised, the affordable housing
 2 as promised, protection of water or other
 3 environment resources as promised.

4 So in other words, promises are made. The
 5 landowner gets the zoning to urban. That just
 6 creates value, and if the promises aren't kept, it
 7 allows people to speculate.

8 So I believe what Commissioner Chang is
 9 suggesting is definitely a good way to mitigate
 10 against -- I don't want to call it the evil, but the
 11 harm that the Supreme Court in the case said we are
 12 supposed to work to avoid, which is basically land
 13 speculation with no concurrent benefit to the
 14 community. Thank you.

15 **CHAIR GIOVANNI:** Thank you, Commissioner
 16 Okuda.

17 Any other commissioner wish to comment at
 18 this point?

19 I cannot tell, so, Mr. Derrickson, help me
 20 recognize them.

21 **MR. ORODENKER:** A couple of quick
 22 statements with regard to that before we move on.
 23 First of all, I agree with Commissioner Chang's
 24 specificity with regard to conditions is very
 25 important and very helpful.

1 However, specificity does not prevent
2 substantial commencement. I mean, you can be very
3 specific all with regard to a condition, and
4 substantial commencement could have occurred for
5 other reasons.

6 But I have to point out that the real
7 lesson from the Bridge Aina Le'a case, if you looked
8 at what happens actually, is that it's now -- in
9 that case the commission was, for all intents and
10 purposes, trying to work it out with the developer
11 and saying, you know, okay, if you do this, then we
12 won't revert; if you do that, we won't revert.

13 We can't do that, you know. At the time
14 that we hold the hearing, it's all or nothing. You
15 can't say, you know, okay, well, we'll hold this at
16 bay and see, you know, how you handle this. Or if
17 you do this, then we won't. It's all or nothing. We
18 don't have any negotiation powers with the developer
19 anymore.

20 If we decide that we're not going to
21 revert, we want to give the developer a chance, then
22 we may very well in fact be giving up our ability to
23 revert.

24 Okay. I'd like to move on the next topic,
25 which is boundary interpretations. And we just put

1 this in here. We haven't gone over this before,
2 mainly because we've had three of these in the past
3 couple of years come up to us.

4 Boundary interpretations are usually
5 handled completely internally. We have a graphing
6 technician. You all know Fred -- or may know Fred.

7 And basically, what's happening with
8 boundary interpretations is for one reason or
9 another, whether it be with regard to something
10 they're building or with regard to some permit that
11 they're requesting from the county, a landowner must
12 determine exactly where the line is between
13 conservation, ag, or urban on their property.

14 The way they do that is that I certify a
15 map that Fred produces showing the exact line. Some
16 of the boundary interpretations are not that easy
17 because the original boundary was set using what
18 available technology there was in 1960. And so, we
19 have to not reinterpret, but we have to examine what
20 was said to see how close we can get to exactly what
21 they were saying. Usually, this is not a problem.

22 Recently, we've had some issues with
23 regard to boundary interpretations. And if a
24 landowner disagrees with our interpretation of
25 exactly where the boundary is, they have the ability

1 to ask for a declaratory ruling from this commission
2 on whether or not the boundary interpretation that
3 we have issued is appropriate.

4 It's extremely fact based. The recent
5 hearings that we had on this concerned what was
6 meant by the commission back in 1967 or 1974, when
7 they did their boundaries, which is very difficult
8 to do because we have to go back to old records and
9 try and figure it out.

10 But we don't see many of those. I think
11 it's an aberration that we've seen some recently.
12 We're hoping that we don't see many more.

13 Anyway, okay. Now the next section that
14 we've got is decision making -- go ahead.

15 **CHAIR GIOVANNI:** This is the chair. Just
16 to -- for clarity, when you say it is -- those
17 matters are typically managed or handled internally,
18 you mean by staff without the involvement of the
19 commissioners; is that correct?

20 **MR. ORODENKER:** That's correct.
21 Technically, the Land Use Commission is the
22 authority holding the maps that determine where the
23 boundaries are. And those are theoretically set, and
24 all we're doing is we're producing maps pursuant to
25 our records.

1 And as I said, sometimes the maps are
2 based upon top of pali or something like that, that
3 may have moved, may not have moved, top of pali was
4 never specifically designated, it's a camel hump,
5 whatever, you know.

6 And so that's -- the drafting technician
7 has to use his knowledge to make a final
8 determination as to exactly where that boundary line
9 is.

10 **CHAIR GIOVANNI:** Thank you.

11 **MR. ORODENKER:** It's not anything that the
12 commission decides. It's a pretty much fact-based
13 decision.

14 **CHAIR GIOVANNI:** Yup. Okay. Proceed.

15 **MR. ORODENKER:** Okay. The next section is
16 decision making in the public hearing process. And
17 very quickly, we'll go over a lot of things that the
18 commissioners may already be familiar with.

19 As Attorney General China pointed out
20 yesterday, we're kind of an interesting hybrid.
21 We're subject to Chapter 92, which is the sunshine
22 law, and the Uniform Information and Practices Act,
23 but we hold contested case hearings, which is kind
24 of unique or very rare in the state system.

25 The sunshine law in brief says that all

1 meetings must be noticed and agenda posted. It has
2 to be done a week in advance, so if you have
3 something that you want to put on an agenda that you
4 want to bring up for the next meeting, you have to
5 get it to us more than a week in advance.

6 I would advise the commissioners to let us
7 know well, well before that week comes up, because
8 we have to do a mailout and produce things.

9 Hearings are open to the public, and
10 minutes are taken, as well as a recording of the
11 proceedings. And as you know, we do transcripts as
12 well.

13 The public has to be given the opportunity
14 to testify, and we've discussed that now it must be
15 done not only at the beginning of the hearing, but
16 at the end. The public testimony could be limited in
17 time when it's taken during the hearing.

18 Some good examples are Olowalu and some
19 other cases where we had 200 people testifying and
20 we limited them all to two minutes, because we never
21 would have gotten through it otherwise.

22 The other part of the sunshine law that's
23 very important, as we've discussed, is that all
24 deliberations must be in public. There can be no
25 deliberations toward a decision in executive session

1 or in a separate meeting.

2 And as I said, this is very, very
3 important, and the commissioners shouldn't be shy
4 about expressing their opinions in open session.
5 It's important what their thought process is.

6 Executive sessions have to be by motion.

7 It's very important to keep in mind that
8 more than two commissioners are prohibited from
9 meeting without notice. Staff's not decision makers,
10 so we're not subject to that restriction. So you can
11 feel free to talk to us at any time, more than one
12 of us, about a petition if you have questions or
13 concerns.

14 Five members are needed for a quorum.
15 That's a majority, since there's nine of us. But six
16 affirmative votes are needed for any action
17 concerning a district boundary amendment or a
18 decision and order on the district boundary
19 amendment.

20 As a practical matter, if what's in front
21 of us concerns a district boundary amendment, we try
22 not to hold a meeting with less than seven
23 commissioners, because if there's only six, any
24 decision has to be unanimous. And that makes
25 petitioners very uptight, you know.

1 Okay. So but what's the basis for your
2 decision, and what's the decision-making criteria?
3 There are several sections in the rules that cover
4 the decision-making criteria for specific types of
5 petitions, and those are set out there, and I urge
6 you to take a look at them.

7 Staff will remind you in a bulletin, our
8 staff reports, and any discussion, what those
9 criteria are. But in addition to those criteria,
10 there's the general requirement that there be good
11 cause shown and that there be a preponderance of the
12 evidence with regard to your decision.

13 The preponderance of the evidence
14 requirement is really one that's more about, you
15 know, given everything that's been said, what's more
16 likely, you know. What has been shown? What has been
17 proved? What are we confident of with regard to the
18 facts?

19 This is 205-17. This is the criteria with
20 regard to reclassification for a district boundary.
21 Pursuant to this chapter, the commission shall
22 specifically consider the following. And I won't
23 read them, but this is the list.

24 When we draft a decision and order, we
25 will go through all of those in the decision and

1 order to ensure that all of these criteria have been
2 met, you know. And the Office of Planning and
3 Sustainable Development is critical in helping us
4 with rendering a decision on this, because they will
5 present evidence with regard to these criteria.

6 **CHAIR GIOVANNI:** So, Dan, this is the
7 chair. Mr. Orodenger, can you speak a little bit
8 about the circumstances by which this commission
9 must rely solely on the evidence in the record to
10 make its decision?

11 **MR. ORODENKER:** Yes. I touched on that
12 yesterday. Once again, the commission's decision
13 must be based on what is presented to it. It cannot
14 be based on things that the commissioners might
15 know.

16 I mean, let's face it: Hawai'i's a small
17 state, you know. You hear things with regard to a
18 petition that, you know, may not necessarily come
19 out in the course of a hearing. If that information
20 doesn't come out during the course of a hearing, you
21 can't say, well, I'm not going to vote for this
22 because I heard so and such and such.

23 The evidence has to be in the record. Now,
24 does that mean that if you've heard something, you
25 can't get it into the record? No. I mean, you can

1 get it into the record, but you can't just blurt it
 2 out.

3 What has to happen is you have to ask the
 4 petitioner or the witness, you know, do these
 5 circumstances exist? Do they not exist? What is your
 6 financial situation? Whatever the question -- the
 7 situation revolves around, you can question the
 8 petitioner with regard to what you know and try and
 9 get it out on the record.

10 Of course, if the petitioner denies it,
 11 then, you know, you can't say, well, I know
 12 different. There has to be somebody to support you.

13 Your conclusions are -- there has to be
 14 some testimony to support your conclusions or some
 15 evidence to support your conclusions. It is not
 16 unheard of for the commission to request that a
 17 witness be brought back for further questioning.

18 So if something doesn't come out, and then
 19 you realize that you need to get that out of the
 20 witness or the petitioner or the Office of Planning
 21 or the county, you can ask to have the witness
 22 recalled so that you can question them with regard
 23 to that matter.

24 But it's kind of a -- you have to be
 25 cognizant of the fact that it's a little bit of an

1 art, sometimes, to get the information out of the
2 witness that you want. If you have concerns about
3 how to do that, staff is here to help you, you know,
4 to direct you as to what type of questions may
5 assist you in getting that information out of a
6 witness or a petitioner, and I would urge you to
7 utilize us as a resource to assist you.

8 But once again, you have to base your
9 decision on what's contained in the record.

10 **COMMISSIONER CHANG:** Chair Giovanni, this
11 is Commissioner Chang. Can I make a comment?

12 **CHAIR GIOVANNI:** Please.

13 **MR. ORODENKER:** Yes.

14 **COMMISSIONER CHANG:** I think -- thank you,
15 Dan. I think in addition to the decision making, one
16 thing that comes up regularly is disclosure, to
17 ensure that there is not a conflict of interest.

18 So whenever we've got before -- you know,
19 when a matter on the agenda comes up and we may know
20 a party, we may know even one of the attorneys, the
21 chair will usually ask if the commissioners have any
22 disclosures or conflicts of interest. To maintain
23 the integrity of the decision, it's really critical.

24 And then many of us will make the
25 disclosure, and then the chair will go around and

1 ask the parties if they have any objections to the
2 commissioner continuing to participate in the
3 proceedings. If there is, or if there is indeed a
4 conflict of interest, then that commissioner will
5 not participate in the proceedings at all.

6 So I think it is really important that,
7 you know, we all as -- kind of goes back to Dan's
8 comment about this is a small community, and
9 inevitably we know many of the people that come
10 before us. So it's always good to take the lead, and
11 Commissioner Okuda is probably the best at
12 disclosures.

13 But it is no -- I find it is better to err
14 on the side of making a disclosure than later on to
15 come back and having to, you know, one of the
16 parties say, eh, but, you know, this person knew
17 someone.

18 So that, I think, is important as part of
19 the decision making, is making sure that there's
20 full disclosures of any potential conflicts of
21 interest so that it's on the record and there can be
22 no dispute about, you know, the decision at the end.
23 Thank you.

24 **MR. ORODENKER:** Thank you, Commissioner
25 Chang. We have a -- we will be going over -- have an

1 ethics section, too, that we'll go over. That's
2 okay.

3 **CHAIR GIOVANNI:** We're ahead of you.

4 **MR. ORODENKER:** Okay.

5 **COMMISSIONER CABRAL:** Chair, I have one --
6 again, my common sense to our new commissioners in
7 particular. It's so wonderful to have nine
8 commissioners. For a long time, we only had eight,
9 to get down to seven was really easy to happen, and
10 to get down to six occurred.

11 So, of course, we had those couple of
12 years of COVID, where things were always on Zoom.
13 And now we have the luxury of having the combination
14 of in-person, which I think is preferred for
15 discussion purposes, but as our chair is on Zoom, we
16 can also do that.

17 I have made it a real priority again, out
18 of my common sense brain, to try and be available
19 and make all of the hearings, because I've realized
20 over the years how difficult it is when this starts
21 to happen, because if we don't have that necessary
22 quorum or that necessary number, the whole thing
23 might have to be canceled. It really puts a whole
24 lot of people into a tailspin, I'm sure, with the
25 staff.

1 So I have really tried and ask you folks
2 to look at that as a real priority, you know. I know
3 your paycheck may not appreciate it, but, you know,
4 but instead, even when I travel, I travel before
5 those days or whatever so that I can be available by
6 Zoom nowadays.

7 So I just want to make that again as
8 something to pay attention to, because you've got
9 nine busy people here. And I apologize I have to
10 leave early today, so thank you.

11 **CHAIR GIOVANNI:** Thank you, Commissioner
12 Cabral and Commissioner Chang.

13 **COMMISSIONER OHIGASHI:** Mr. Chair, Lee
14 Ohigashi.

15 **CHAIR GIOVANNI:** The chair recognizes the
16 esteemed commissioner from Maui, Lee Ohigashi.

17 **COMMISSIONER OHIGASHI:** I have a question.
18 We all know that it takes six affirmative votes to
19 pass anything, right, to pass a boundary amendment.
20 Does it take six affirmative votes to deny a
21 boundary amendment?

22 **MR. ORODENKER:** Okay. This is where things
23 get messy. The answer to that is no. I mean, we
24 could end up with a five-four vote failure, and that
25 would -- the motion to affirm would fail to pass, or

1 to grant the petition would fail to pass. So
 2 technically, the answer to that is no.

3 From a practical standpoint, it becomes
 4 very difficult for us to, yeah, preparing findings
 5 and a decision and order, because we don't have a
 6 decisive decision by the commission.

7 So in those circumstances, if a motion
 8 fails to pass in the affirmative, we would hope that
 9 one of the other commissioners would make a motion
 10 to deny, and we would obtain six votes to do that.

11 The commissioners are free to make their
 12 own decisions, but we would urge the commission to
 13 somehow reach at least a consensus of six to go in
 14 either direction.

15 **COMMISSIONER OHIGASHI:** That was my
 16 recollection of what happened in Waimanalo Gulch,
 17 that we weren't able to get the necessary five or
 18 either affirmative or even a denial of the permit or
 19 vacation revert. But eventually, we were able to get
 20 five for a compromise position.

21 So what I'm understanding is that the
 22 commission is being -- it's recommended by staff
 23 that we attempt to reach a six decision whether or
 24 not it is --

25 **MR. ORODENKER:** That's correct. Staff

1 really, would really appreciate that.

2 **CHAIR GIOVANNI:** This is the chair. I just
3 want to echo a couple of points regarding the most
4 recent discussion among the commission and staff.
5 And it has to do with transparency of this
6 commission. The fact that we deliberate publicly is
7 to me something I'm very proud of for this
8 commission.

9 It communicates to all parties and to the
10 community at large where we're coming from, and
11 that's so important. And consistent with that, being
12 very transparent about disclosure, and as
13 Commissioner Chang was speaking to, is just another
14 part of that process in which this commission
15 operates with full transparency. And I think that's
16 an attribute that we should be proud of and
17 continue.

18 Okay. Back to you, Mr. Orodenger.

19 **MR. ORODENKER:** I'm going to jump to the
20 ethics section, since we're on it already, and it's
21 fairly brief.

22 The state ethics code is Chapter 84.

23 **CHAIR GIOVANNI:** Just a quick time check.
24 Should we take a break after the ethics session?
25 That will be just over an hour.

1 **MR. ORODENKER:** That's -- yeah, okay.

2 That's fine, Mr. Chair.

3 The state ethics code, Chapter 84 HRS,
4 governs how the -- the ethics for the commissioners.
5 And that's -- let me point out that that's different
6 from disclosure; okay?

7 So basically, what the ethics code, what
8 we're talking about is whether or not you have a
9 conflict of interest. And the way that's defined in
10 the ethics code is whether you or someone in your
11 family would benefit monetarily from the decision or
12 benefit financially from your decision in some
13 manner.

14 Just for everybody's knowledge, there was
15 a Supreme Court case with regard to union
16 representation. The fact that a union is going to
17 benefit from a decision doesn't require the recusal
18 of the union representative in those circumstances.

19 That being said, if you believe that you
20 may have that type of a conflict, you should contact
21 us and contact the deputy AGs, who will direct you
22 to the right people to make a determination as to
23 whether you do in fact have a situation in which you
24 must recuse yourself.

25 Unfortunately, a lot of times it's a gray

1 area. And what we've said to urge the commissioners
2 to apply, the standard that we urge them to apply,
3 is whether there's an area of impropriety if they
4 remain a decision maker on a particular petition.
5 And what that means is that -- and I will put it --
6 it just doesn't look good.

7 So, you know, once again, if you feel that
8 you have a situation, you should talk to staff, and
9 we can help you through it. And if you feel that you
10 have a conflict, then you may recuse yourself. You
11 can do that at the hearing. You can do that ahead of
12 time in communication with the chair.

13 The thing about recusal is that it doesn't
14 mean, okay, so I recuse myself from this; now I'm
15 going to sit back and watch. You got to leave. You
16 actually have -- you can't even be in the room. You
17 have to, you know, walk away from the hearing.

18 Now, the interesting other part of ethics,
19 the ethics situation, is the one that Commissioner
20 Chang brought up. And that is disclosures.

21 Once again, small community. We have
22 different relationships with different people. We
23 may know people involved with the petitioner, and
24 it's -- oh, we may have a relationship with an
25 organization that is a party to a proceeding. It's

1 always good to let everybody know.

2 We've had things from "I sat on with a
3 board for the Hawaiian Land Trust, which would
4 benefit from this project if it passed" to "I've
5 been to traveling and, you know, gone traveling with
6 the attorney for the petitioner many years ago." But
7 it's always good to disclose, even if you think,
8 hey, this isn't going to affect anybody, nobody
9 should really care about this.

10 But if you have some kind of a
11 relationship or there's some connection between you
12 and one of the parties, the petitioner, or somebody
13 related to the parties or the petitioner, it's
14 always good to disclose.

15 We've had commissioners disclose
16 relationships with public witnesses just so that
17 everybody knows that it's out there. If everybody
18 knows it's out there and none of the parties object
19 to the commissioner continuing after the disclosure,
20 then at least we're up front.

21 There have been a couple of times, one
22 time in particular where allegations were made with
23 regard to a relationship by a party that we
24 determined were irrelevant. That occurred in the
25 Waimanalo Gulch case when one of the intervenors

1 tried to get various commissioners to recuse
2 themselves because they were members of the Sierra
3 Club. And we concluded that there was really no
4 reason to do that.

5 Anyway, so that's very quick ethics. And
6 once again, if there's any question in your mind, we
7 urge you to contact staff.

8 **COMMISSIONER CABRAL:** Chair, this is
9 Commissioner Cabral again with more common sense.

10 This comes up a lot. And like in Hilo, we
11 have had so many developments, so we don't have a
12 lot of important hearings there that are, you know,
13 in any way very exciting.

14 And the one biggest one, which was the
15 Connection School, I couldn't even sit in on it. And
16 I did consult with staff, because I said, oh, I'm
17 not biased; I could make an objective opinion.

18 So it was really good for me to be able to
19 call staff ahead of time and reveal what my
20 connection was. And the fact that I got paid money
21 for managing their building every month meant that I
22 couldn't sit in on the hearing at all. I mean, I
23 just -- I didn't, you know, I just didn't even
24 attend, because I could not make a ruling, and so my
25 attendance even.

1 So it's best to, if you think you have any
2 connection, ahead of time let staff know. Let Dan
3 know. And then he can help make that determination,
4 as opposed to having that sort of drug out at the
5 hearing, the beginning of the hearing, you know, and
6 then everybody starts to think what is this, you
7 know. So anyway, communication common sense. Thank
8 you.

9 **CHAIR GIOVANNI:** Thank you, Commissioner
10 Cabral. I just want to clarify when you said let
11 staff know, let Dan know, that's Dan Orodener, not
12 the chair.

13 **COMMISSIONER CABRAL:** Yes. Yes. Thank you.
14 Sorry. Yes, there's two of you.

15 **COMMISSIONER CHANG:** Chair Giovanni, if I
16 can make one more -- one comment, since we're
17 talking about ethics and sort of just kind of legal
18 processes.

19 It's ex parte communication. You know,
20 there have been instances where we're in a
21 proceeding and one party totally unintentionally
22 sends a commissioner some information, and another
23 party alleges ex parte communication, which then
24 created a conflict.

25 So we just have to be very careful that

1 we're not even getting emails from parties, we're
2 not communicating with them. And, you know, like I
3 said, Hawai'i is a really small place. So we have
4 different relationships with people. We just have to
5 be very conscious that when we are meeting them
6 outside the context of the hearing, we're not
7 talking about the project.

8 But the ex parte communication continues
9 all the way until the case has been closed. So just
10 be cautious of that as well.

11 **MR. ORODENKER:** We do not give out
12 commissioners' emails. We don't give out their phone
13 numbers even when they're asked. So you can be
14 assured that if somebody's contacting you, it's --
15 yeah.

16 There's a couple of things that I want to
17 point out. Very often you will get emails from us
18 that will contain, you know, a heading that go to
19 all of you all at once. Don't Reply All, okay,
20 because that's kind of a violation of the sunshine
21 law, because you're communicating with more than one
22 commissioner.

23 Reply to staff individually. If you get an
24 email like that and you have a question, don't hit
25 Reply All; all right?

1 **COMMISSIONER OHIGASHI:** I have a question,
2 Mr. Chair. It's a comment actually, but --

3 **CHAIR GIOVANNI:** Commissioner Ohigashi?

4 **COMMISSIONER OHIGASHI:** The question is
5 that I always wondered where the requirement of
6 getting yourself out of the room when you declare a
7 conflict or not appearing at a hearing or not having
8 any kind of presence at a hearing -- where does that
9 requirement come from? Because I noticed that other
10 bodies, they don't require it to be taken out.

11 My comment is that the slide before this
12 ethics slide, and I'm thankful that you've used my
13 high school graduation picture, but.

14 **COMMISSIONER CHANG:** It's an AG.

15 **MR. ORODENKER:** That's what I was going to
16 say. It's the attorney general has advised us.

17 **COMMISSIONER OHIGASHI:** Is that because
18 we're a quasi-judicial, and that it's sort of like
19 having a juror not present because they have a
20 conflict or something like that?

21 **MR. ORODENKER:** Well, I think it's
22 actually because they recognize that our
23 commissioners are really good at giving stink-eye,
24 so they always sit in the back and, you know. I'm
25 not sure why.

1 **CHAIR GIOVANNI:** The chair recognizes Ms.
2 China.

3 **MS. CHINA:** Yeah. That advice applies to
4 all boards and commissions. In general, you're not
5 supposed to -- once you recuse, you're not supposed
6 to stay in the room. You know, how much it's
7 enforced I don't know, but, you know, in boards and
8 commissions that, you know, I've advised, it's, you
9 know, get out of the room.

10 The other thing is that if you want a
11 really quick take on whether or not there is an
12 ethical conflict or something like that, the ethics
13 commission, you know, Office of Ethics, has an
14 attorney of the day that you can just call to get a
15 quick take on it. And their phone number is 808-587-
16 0460.

17 And, you know, so it's an attorney who
18 will give you advice if you have a question. And,
19 you know, it's confidential, and you can just, you
20 know, ask.

21 **CHAIR GIOVANNI:** Thank you.

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

23 **CHAIR GIOVANNI:** Yes, Mr. Okuda?

24 **COMMISSIONER OKUDA:** Thank you, chair.

25 Yeah, regarding the attorney of the day, let me

1 disclose that I think one of the attorneys there,
2 Virginia Chock, used to work with me at the old law
3 firm Okumura Takushi.

4 But leaving the room I believe is
5 consistent with the rule that the Supreme Court set
6 in the Mauna Kea II case. The issue there was should
7 the hearings officer, who was acting in an
8 administrative capacity for the Board of Land and
9 Natural Resources, retire Judge Riki Amano. Did she
10 have to recuse yourself under certain circumstances
11 that were presented?

12 And I think the Supreme Court said two
13 things. One thing is you have to look at the statute
14 and see if the statute or rules mandate or require
15 or suggest a recusal. But there's a second part,
16 which is, to put in plain English, I think, is does
17 it look bad. Is there an appearance of impropriety?

18 And so, and the Supreme Court said in
19 Mauna Kea II that the standards that apply to judges
20 essentially apply that to kind of situation. So
21 based on the fact that I think the standard that
22 applies to us, based on Mauna Kea II, is what would
23 be required of a judge, it's, I think, a two-step
24 evaluation.

25 One is is there a specific statute or rule

1 that requires a recusal? But the second thing is is
2 there an appearance of impropriety? Does it look
3 bad?

4 And you were talking about the Hilo
5 charter school. Well, one of the reasons why I
6 recused myself -- and this might or might not be on
7 the record, but I don't mind it being there -- is
8 the fact that one of the lawyers involved in the
9 proceeding is basically on the same side of a case
10 that I'm involved in. And even though it did not
11 appear that that would necessarily be a specific
12 statutory violation, frankly, it just wouldn't look
13 right.

14 So I think that's a two-step thing. But I
15 think leaving the room is consistent with the rule
16 that we should avoid appearances of impropriety.

17 Thank you, Mr. Chair.

18 **CHAIR GIOVANNI:** Thank you, Commissioner
19 Okuda. Yeah, I would agree that conflicts of
20 interest can be real or perceived. And in some
21 instances, a perceived conflict of interest actually
22 is greater concern and should be a basis for
23 recusal, but certainly a basis for disclosure.

24 So I'm looking at the clock, Mr.
25 Orodenker, and I'm inclined to take a break at this

1 point in time, unless you recommend differently.

2 **MR. ORODENKER:** To be honest with you, Mr.
3 Chair, if we can keep powering through this, because
4 we've got -- you know, the Office of Planning and
5 Sustainable Development is supposed to give their
6 presentation at 11. So we've got two sections that
7 we've got to complete before then. One of them is
8 with regard to intervention, and the other is with
9 regard to the public trust doctrine, so.

10 **CHAIR GIOVANNI:** So please -- so then
11 proceed. Power through. We also need to take
12 community testimony, if there's anyone present who
13 wishes to do so, before we entertain the Office of
14 Planning.

15 **MR. ORODENKER:** Okay. Thank you, Mr.
16 Chair.

17 **MR. DERRICKSON:** Okay. I'm going to --
18 this is Scott again. I'm going to cover
19 intervention.

20 I'll start by reminding the commissioners
21 that, particularly with respect to district boundary
22 amendments, there's three mandatory parties: whoever
23 it is that's petitioning, the Office of Planning and
24 Sustainable Development for the state, and the
25 County. Those are the parties.

1 Now, interested persons or organizations
2 can intervene, and there is a process by which they
3 can do that. When we talked about district boundary
4 amendments, we indicated that there's an initial
5 petition that's filed with us, and along with that
6 there's a notice of that filing in the public.

7 That triggers the first 30-day opportunity
8 for an interested party to file an intent -- a
9 notice of intent to intervene. Basically, they're
10 letting the petitioner know, they're letting the
11 Land Use Commission know that, hey, we think we want
12 to intervene and become a party, so heads up.

13 And what that does is that now the
14 petitioner and the other parties -- Office of
15 Planning and Sustainable Development, the county --
16 if they file anything, they will have to file a copy
17 to these folks who have given us this notice to
18 intervene.

19 So we've got down there that the
20 intervention is allowed for district boundary
21 amendments and declaratory rulings, but not special
22 permits. Why not special permits?

23 As I pointed out before when we talked
24 about special permits, really the action occurs at
25 the county level for special permits. Remember it

1 comes up to us afterwards. The evidentiary hearing
2 occurs at the county level, and so the parties are
3 established at the county level. So when it comes up
4 to us, no new parties are accepted.

5 That doesn't mean that the public and
6 interested parties cannot participate by providing
7 public testimony. And they do. It's just that we
8 don't go through the process at our level to allow
9 new parties to come in, because we're not accepting
10 new evidence.

11 Next slide?

12 Okay. So who can intervene? This shall be
13 admitted. Basically, any department or agency of the
14 state, any department or agency of the county in
15 which the property is situated can ask for
16 intervention, and it's granted.

17 Anybody with a property interest who
18 resides on the land. That could be somebody who --
19 you know, there may be more than one owner of a
20 piece of property that's being considered for a
21 petition.

22 That last one -- all other persons may be
23 admitted -- usually, when they can demonstrate that
24 their interest is clearly distinguishable by one of
25 the other parties that's taking place already.

1 You know, often we'll have intervention by
2 -- sometimes we'll have intervention by a department
3 such as the Department of Education because a
4 petition is going forward and they feel that they
5 want to protect their interest over and above what
6 might be covered by the state Office of Planning.

7 Go ahead. Next one.

8 So intervention. This commission has been
9 very liberal with granting intervention, because we
10 want to make sure that anybody who is willing to go
11 through the, you know, the process to become a party
12 and file and to present expert witnesses to cross
13 examine would be allowed.

14 We can deny. If the position of a proposed
15 intervenor is -- if we determine that it's about the
16 same as one of the parties that's already there and
17 that -- or that if we allow these, you know, one or
18 more intervenors, that it's going to render our
19 proceedings inefficient or unmanageable.

20 And then we can also deny it if the
21 request is untimely.

22 I think we have one more slide. Okay. This
23 is just how intervention works. I will say that the
24 commission can limit the scope of intervention.

25 There may be an intervenor who says, you

1 know what, we are the Society for the Preservation
 2 of the Hawaiian Butterfly. We're really concerned
 3 because the habitat might be impacted here, and we
 4 want to intervene.

5 And if the commission says, okay, look,
 6 we're going to allow you intervention, but we are
 7 going to limit the scope of the intervention just
 8 addressing the issues surrounding the habitat of the
 9 Hawaiian butterfly. We're not going to let you get
 10 into traffic mitigation measures or school
 11 requirements or affordable housing requirements.

12 **COMMISSIONER CHANG:** Chair Giovanni?
 13 Scott, did you have something more? Okay.
 14 Chair Giovanni, this is Commissioner
 15 Chang. If I can just add to that?

16 **CHAIR GIOVANNI:** Please do.

17 **COMMISSIONER CHANG:** I think the
 18 commission, in my experience sitting, we have been
 19 very liberal with allowing intervention. I mean, a
 20 lot of what I find that we do is how do we minimize
 21 risk on appeal. So it's better to have people at the
 22 table.

23 But there have been interventions granted
 24 because they would be helpful to the commission.
 25 Let's say they represent a community group or they

1 represent the interest that may not necessarily be
2 represented by one of the parties. And what is
3 really helpful about that is the burden's now on
4 those parties to present all the evidence.

5 But they participate as all other parties.
6 They get to cross examine. But we also hold them to
7 the same standard as the party. Some of the
8 intervenors come in as pro se, but they are expected
9 to participate and as do all the other parties.

10 But we have been rather liberal with
11 allowing interventions, especially if it's going to
12 be helpful to the commission in our proceedings.

13 **MR. ORODENKER:** A couple of things about
14 intervention, a couple of comments.

15 Number one is that I have never seen the
16 commission deny intervention. And that's just
17 because of what Commissioner Chang said. You know,
18 we want to make sure we get everything on the record
19 and we minimize the potential for appeal.

20 The other thing is that intervention can
21 really make a mess out of things. We have had
22 intervenors come in the day that the hearing's
23 supposed to start and say we're filing a motion to
24 intervene.

25 We actually have to -- with a motion to

1 intervene, we actually have to agendize it, hold a
2 hearing on it, render a decision on whether we're
3 going to allow the intervention. And that can reset
4 the clock. It can move everything to a different
5 timeframe and our timing with regard to -- you know,
6 when we were going to schedule the hearing, and when
7 we were going to hold hearings gets thrown out the
8 window.

9 It makes everybody crazy sometimes, but
10 it's one of those things that we have to deal with.

11 Now I'm going to go very quickly over the
12 public trust doctrine. And one of the reasons that
13 I'm going to go over it quickly is because, as
14 everybody may be aware, we took the opportunity to
15 record a presentation by Jonathan Scheuer, who
16 teaches public trust doctrine, a course on public
17 trust doctrine at University of Hawai'i.

18 And that is available to the commissioners
19 to see. It's online. Ariana can help you find the
20 link. It's actually on YouTube, but we have a link
21 to it in the Commissioners Checkpoint.

22 So a very brief review of the public trust
23 doctrine. The public trust is the right of the
24 people to have the waters protected. This is from
25 the Waiahole water decision, and this was concerning

1 water.

2 Comprehensive source planning is intrinsic
3 to the public trust concept, which also demands
4 provision for traditional and customary Hawaiian
5 rights, wildlife, maintenance of ecological balance,
6 and scenic beauty.

7 So basically, what it's saying is that
8 cultural resources, water, and the general
9 environment are subject to the public trust
10 doctrine.

11 This is further bolstered by the Hawai'i
12 State Constitution Article 11 Section 1. And you can
13 see what it says right there. All the public natural
14 resources are held in trust by the state for the
15 benefit of the people. And we'll talk about what
16 that means in a minute.

17 It's very different from a mandate to
18 mitigate impacts. Mitigation of impacts are saying,
19 okay, you know, we're going to lose this but, you
20 know, we'll do this to make up for it, or we'll
21 minimize the impact.

22 There is an affirmative requirement to
23 ensure that public trust resources are preserved for
24 future generations and that decisions do not overly
25 impact the public's right to utilize those

1 resources.

2 That's the requirement for a trustee. You
3 know, you're looking at the resources not so much in
4 terms of, well, this is only a minor impact and, you
5 know, so what? It's, look, this has to be preserved
6 for the future for everybody.

7 So if there's any question in your mind as
8 to whether or not this public resource is going to
9 be negatively impacted, then, you know, you're
10 either going to craft the condition that maintains
11 that public resource, or we're going to deny the
12 permit. It's not -- you'll see in a minute what the
13 Supreme Court has said with regard to that.

14 The first priority must be the long-term
15 protection of the resources. First consideration
16 must be the long-term health and sustainability of
17 the resource. When there's -- as I just said, when
18 there's a doubt about the impact with the resource,
19 the agency should err on the side of caution.

20 Watershed protection, historic sites,
21 cultural protection, environmental natural
22 resources, air, minerals, and energy resources are
23 traditionally within the public trust doctrine.

24 For the LUC purposes, the public trust
25 doctrine is compounded by federal and environmental

1 regulations, which may go beyond what we consider
2 the public trust.

3 We got to fix that up somehow, because
4 it's covering up some of the language.

5 In addition, public resources are
6 inextricably interlinked with the right to
7 traditional and customary practices. Without the
8 resource upon which to practice, there can be no
9 practice.

10 Okay. Hold on a second. Okay. Yeah. Okay.
11 Thank you, Martina.

12 Yeah, and the state must act as a trustee
13 and not simply as a good business manager. And this
14 is the famous quote. "It must not relegate itself to
15 the role of a mere umpire passively calling balls
16 and strikes for adversaries appearing before it, but
17 instead must take the initiative in considering
18 protection and advancing public rights and that
19 resources at every stage of the planning decision-
20 making process."

21 That's, once again, from the Waiahole
22 case.

23 Before we get into Ka Pa'akai, which is
24 another resource, what we're really trying to --
25 what the Supreme Court is really saying here is that

1 there's an affirmative burden on the part of the
2 petitioner or the agency that's impacting the
3 resource to show that they're not going to harm it.

4 And if they don't come forward with
5 evidence that they're not going to harm the
6 resource, then you can't say, well, I don't think
7 they're going to, so let's let it -- no. You know,
8 they have to affirmatively show that they're not
9 going to harm the resource in the long term.

10 The Ka Pa'akai case. You'll hear us talk
11 about it all the time, staff and some of the
12 commissioners who have been on for a while. There
13 has to be a Ka Pa'akai analysis in every one of our
14 petitions.

15 And basically, Ka Pa'akai says that the
16 state and its agencies are obligated to protect the
17 reasonable exercise of customary and traditionally
18 exercised rights of Native Hawaiians to the extent
19 feasible.

20 We're obligated to make an assessment,
21 independent of the developer or the applicant, of
22 the impacts. The independent assessment must include
23 three factors known as the Ka Pa'akai framework. And
24 here they are.

25 Identify valued and customary. In other

1 words, identify it and the extent to which
2 traditional -- pretty strong traditional are
3 exercised, the extent to which those resources will
4 be affected, and the feasible action to be taken to
5 protect rights.

6 And Jonathan in his -- that little YouTube
7 video has a very concise way of putting it. For more
8 information on the public trust doctrine, refer to
9 Dr. Scheuer's presentation. We urge you to look at
10 that. It was very well done. The people who were
11 participating in it, the commissioners who
12 participated in it, were very moved by it, and it
13 was very helpful. And go back and look at it again
14 and again. It's very helpful.

15 The next topic --

16 **COMMISSIONER CHANG:** Can I -- sorry. Chair
17 Giovanni, if I can add to Dan Orodener's
18 presentation.

19 I guess I want to emphasize that we have
20 an affirmative -- the commission, like the Board of
21 Land and Natural Resources, like a planning
22 commission, the decision makers under Article XII,
23 we have a constitutional obligation to preserve and
24 protect traditional customary practices exercise by
25 Native Hawaiians, subject to government regulations.

1 So there is some -- there is a balance.
2 And the burden is on the applicant. And the
3 applicant must provide us sufficient findings,
4 sufficient information for the commission to make
5 findings and conclusions to support whether
6 traditional customary practices will be adversely
7 impacted.

8 If we cannot -- if there is insufficient
9 evidence, I do believe that the Supreme Court and
10 the constitution requires us to deny the permit.

11 It is unlike most other, as Dan was
12 talking about, other mitigation measures -- traffic,
13 even protections, you know, traffic, other kinds of
14 impacts. That's not a constitutional obligation that
15 we have. And the Supreme Court has expanded what is
16 the public trust even in the Mauna Kea case, the
17 Pohakuloa case, that -- and we will get sued if we
18 don't comply with that.

19 So I find that it is really important for
20 us to make sure that we are placing the burden not
21 on the community, but on the applicant to come
22 forward with sufficient evidence to support its
23 ultimate conclusion.

24 That conclusion is not made by the
25 applicant, whether they're going to harm the

1 resources or not. That is really a burden upon the
2 commission, but we have to make sure that the
3 applicant has provided sufficient information.

4 Many a times, in particular with Article
5 XII, Section 7, Native Hawaiians, you have Native
6 Hawaiian practitioners who come forward, and they
7 raise the issue. I do believe that we have a
8 responsibility when those issues are raised, whether
9 it's in the record or at public testimony, to have
10 the applicant address those issues so that we can
11 make an adequate finding.

12 If not, I believe that we may be subject
13 to our decision being reversed on appeal. So this is
14 something that, obviously, I take very seriously.
15 But it is a constitutional obligation that we have,
16 so I would just reiterate the public trust.

17 And I'm sure Jonathan's public trust video
18 is very helpful, but I think that that's something
19 that we as commissioners, when we have matters that
20 come before us, whether they're an SUP, a DBA, I
21 think those -- this obligation is required for all
22 of our actions. Mahalo.

23 **CHAIR GIOVANNI:** Thank you, Commissioner
24 Chang.

25 **MR. ORODENKER:** Mr. Chair, at this point I

1 suggest that we take a break.

2 **CHAIR GIOVANNI:** And when we come back, do
3 you have more to present?

4 **MR. ORODENKER:** No. When we come back,
5 we'll have a presentation by the Office of Planning
6 and Sustainable Development.

7 **CHAIR GIOVANNI:** So before we go there,
8 Mr. Derrickson, do you -- can you observe anyone in
9 the audience that wishes to provide additional
10 public testimony on the training?

11 **MR. DERRICKSON:** Yes, Chair. I think we
12 have one attendee who has raised their hand. They
13 priorly let the staff know that they wanted to
14 present public testimony today. So that's Mr.
15 Church. And I can facilitate by -- if you agree,
16 I'll put him among the panelists.

17 **CHAIR GIOVANNI:** Yeah. Let's invite Mr.
18 Church to provide his public testimony at this point
19 in time. And then we'll take a break.

20 **MR. DERRICKSON:** Okay. Will do. Okay. It's
21 in the process of -- he's in the process of coming
22 on.

23 **CHAIR GIOVANNI:** Mr. Church, I see your
24 name. Please let us know when you can activate your
25 audio and/or video.

1 **MR. DERRICKSON:** Chair, I've asked him to
2 unmute. As occurred yesterday, it takes them a
3 little while, I think, to get it to connect.

4 **CHAIR GIOVANNI:** There we go.

5 **MR. CHURCH:** I'm trying again.

6 **CHAIR GIOVANNI:** No, we hear you now, Mr.
7 Church. Please state your name and address for the
8 record one more time.

9 **MR. CHURCH:** My name is Ken Church. I live
10 on the Big Island in the area of Hakalau.

11 **CHAIR GIOVANNI:** And please provide -- you
12 have two minutes for additional public testimony.
13 Please proceed.

14 **MR. CHURCH:** It's a big problem that the
15 LUC's administrative office does not always comply
16 with deadlines that are specified in HAR, yet
17 specified deadlines for petitioners' performance is
18 vigorously enforced. I have maybe five points here.

19 As point 1, pointing to yesterday's
20 hearing began with Ms. Chang describing how public
21 testimony should be managed under the law. And she
22 said at the end of each day, the public should
23 testify, so here we are today dealing with yesterday
24 as well as today.

25 The administrative office, another point.

1 The administrative office abuses its authority by
2 not accepting petitions as complete, when they are
3 indeed complete. That blocks the 180-day deadline,
4 and sometimes no matter what one does, they can't
5 meet the standard that the administrative law office
6 supplies.

7 Boundary interpretations are a big
8 problem. We talked about it a little bit today. The
9 LUC's rules should require that LUC shall consider
10 other LUC records when requested to do so by
11 petitioner. Your current rule says maybe.

12 A hearing should be fact based. Ours was
13 not. In our case, we were required to correct a
14 boundary on a neighboring property.

15 **CHAIR GIOVANNI:** Mr. Church, if I can, I'd
16 like you to confine your testimony to the training
17 that we've observed, not to your particular case.

18 **MR. CHURCH:** Well, you just learned about
19 boundary interpretations. My point --

20 **CHAIR GIOVANNI:** Generic, not --

21 **MR. CHURCH:** My point is that it's
22 improper to force a petitioner to correct a boundary
23 that doesn't exist on their property. And that's
24 what's happened to us.

25 Another point. You also talked about staff

1 -- I also raise the issue of staff memorandums that
 2 are given to petitioners before a hearing. Those
 3 should always be given a petitioner also in order
 4 that if there are errors in it, it may be corrected
 5 in the petitioner's rebuttals. That happened also in
 6 our case.

7 Preponderance of evidence and burden of
 8 persuasion come from 91-10(5), and it's cited -- 91-
 9 10 is for contested case hearings. So the commission
 10 has to rely solely on the evidence. Discretion is
 11 not provided for in the rules, and cross-examination
 12 of witnesses should be applied if you're going to
 13 apply 91-10(5) as a standard.

14 **CHAIR GIOVANNI:** Mr. Church, could you
 15 please summarize your testimony?

16 **MR. CHURCH:** I have one paragraph left.
 17 Mr. Orodener stated that decisions and orders must
 18 be based on what is presented to the commissioners.
 19 That is not always done, and sometimes declaratory
 20 orders cite evidence that was never presented during
 21 the hearing. That's all my comments.

22 **CHAIR GIOVANNI:** Thank you very much for
 23 your testimony.

24 Commissioners, do you have any questions
 25 for Mr. Church?

1 I cannot see, Mr. Derrickson, if there is
2 anybody -- any commissioners raising their hand. Can
3 you let me know if anybody would like to ask any
4 questions?

5 **MR. DERRICKSON:** There's no -- none of the
6 commissioners are raising their hands.

7 **CHAIR GIOVANNI:** Okay. Thank you, Mr.
8 Church.

9 Are there any other members of the public
10 that wish to testify at this time, Mr. Derrickson?

11 **MR. DERRICKSON:** None of the attendees --
12 sorry. None of the other attendees are raising their
13 hand to testify.

14 **CHAIR GIOVANNI:** Okay. Thank you. It's
15 10:58. We're going to take a break, 10-minute break,
16 and we will resume with a presentation by the Office
17 of Planning and Sustainable Development. I'll see
18 you all at 11:08.

19 **(Recess taken from 10:58 - 11:08 a.m.)**

20 **CHAIR GIOVANNI:** Thank you. We'll go back
21 on the record now. This is Chair Giovanni speaking.

22 So now we will be inviting a presentation
23 from the Office of Planning and Sustainable
24 Development. My understanding is that Attorney
25 General Bryan Yee will present -- make a

1 presentation on the roles and relationships within
 2 the office, in particular the Land Use Division, the
 3 Coastal Zone Management Program, the GIS Program,
 4 and the Environmental Review Program.

5 Following that, we'll take a lunch break
 6 and then resume after lunch with a further
 7 presentation by the state sustainability
 8 coordinator, Danielle Bass, who will inform us about
 9 the statewide sustainability program.

10 So at this time, I'd like to invite Mr.
 11 Yee to take command of the mic and have his
 12 presentation.

13 **MR. ORODENKER:** Mr. Chair --

14 **CHAIR GIOVANNI:** I can't hear you, Mr.
 15 Orodenker.

16 **MR. ORODENKER:** Mr. Chair, we have a --

17 **CHAIR GIOVANNI:** Problem with the audio.

18 Cannot understand what you're saying. Mr. Orodenker,
 19 are you there? Can you hear me?

20 **MR. ORODENKER:** Hello?

21 **CHAIR GIOVANNI:** Yes. That's better.

22 **MR. ORODENKER:** Okay. And to repeat, we
 23 have the director of the Office of Planning and
 24 Sustainable Development, Mary Alice Evans, here who
 25 will begin the presentation, and take it from there.

1 **CHAIR GIOVANNI:** Thank you.

2 Ms. Evans, would you please -- again,
3 welcome to the Land Use Commission today.

4 **MS. EVANS:** Thank you, Chair Giovanni and
5 members. Can you hear me? Is my sound okay? Sound
6 check.

7 **CHAIR GIOVANNI:** Yeah. Very good. Thank
8 you.

9 **MS. EVANS:** Thank you. First of all, thank
10 you so much for inviting us to come and share with
11 you some of the broader elements of the Office of
12 Planning and Sustainable Development. We are very
13 happy to be here today.

14 Next slide?

15 I wanted to give you a quick overview of
16 some of the statutes that we look at and I know
17 impact your work. And there is an important
18 omission, and that is Chapter 174(c), the state
19 water code. And I intended to put that on there.

20 And as you can see, land use planning and
21 state planning have an impressive amount of
22 statutory code that we all have to look at and see
23 how they interact.

24 Next slide, please?

25 Chapter 225M lays out the responsibilities

1 of the Office of Planning and Sustainable
 2 Development. And we have 10 responsibilities, and I
 3 just want to quickly run through them. And some of
 4 them have been there since the beginning, when the
 5 office was created in 1986 as the Office of State
 6 Planning, and have continued.

7 We've significantly downsized in staff and
 8 capacity since that initial office in 1986 and '87,
 9 which was in the governor's office. So some things
 10 we don't have the staff to do on a regular basis.

11 Next slide?

12 As you can see, there's some additions --
 13 climate adaptation planning, smart growth and
 14 transit-oriented development, and an environmental
 15 review program. Those are recent additions to the
 16 Office of Planning and Sustainable Development, and
 17 you will be hearing from the transit- oriented
 18 development team and the environmental review team
 19 later.

20 Next slide?

21 These are official programs that are part
 22 of the Office of Planning and Sustainable
 23 Development -- the Coastal Zone Management Program,
 24 which is governed by Chapter 205A; the Environmental
 25 Review Program, which is the former Office of

1 Environmental Quality Control, which was created in
2 the Department of Health, and then the legislature
3 transferred it over to the Office of Planning and
4 Sustainable Development in the regular session of
5 2021; the Land Use Commission; the Land Use
6 Division; Special Plans Branch.

7 Transit-oriented development was created
8 by the legislature and also the State Geographic
9 Information System and the Statewide Sustainability
10 Program.

11 Next slide?

12 Oh, yeah, a few notes on boards. The
13 Marine and Coastal Zone Advocacy Council advises our
14 Coastal Zone Management Program. It's a very active
15 council. They look at protection of fisheries,
16 coastal zones, the Muliwai between mauka and makai.
17 And they provide -- they're statewide. There are
18 representatives from all of the islands.

19 The Environmental Advisory Council. That
20 came over with the Office of Environmental Quality
21 Control. They also are a statewide body. They meet
22 monthly, and they look at how to -- they look at the
23 policies that Chapter 343 charges the state with.

24 The Land Use Commission. I want to note
25 that the Land Use Commission, both staff and the

1 commission, have a policy firewall between the
2 administration of the Office of Planning and
3 Sustainable Development. That's provided in the law
4 so that all of your work is you're an autonomous
5 body, and our office does not -- other than our
6 areas where we are a party to your proceedings, we
7 don't attempt to make decisions for you and for your
8 staff.

9 But we have both a policy firewall and
10 statute and a fiscal firewall in a memorandum of
11 agreement that Dan Orodener and I have executed.
12 That's to protect the public's understanding of your
13 proceedings as being autonomous and transparent.

14 The Statewide Comprehensive Economic
15 Development Strategy Committee. Every five years,
16 the state conducts a comprehensive economic
17 development strategy for the purpose of making state
18 and county agencies and nonprofits eligible to apply
19 for economic development funds from the federal
20 government.

21 We're in that process right now. We have a
22 statewide committee that's been talking about what
23 kinds of strengths we can assist, opportunities and
24 threats are involved in keeping a healthy,
25 sustainable economy for the whole state of Hawai'i.

1 The State Transit-Oriented Development
2 Council. I co-chair that with Denise Iseri-
3 Matsubara, who is the executive director of the
4 Hawai'i Housing Finance and Development Corporation.
5 That focus -- legislatures wanted us to look at ways
6 to increase housing density and create mixed-use
7 communities on transit corridors and the rail line.

8 That's all in the urban district, so I
9 don't think any of that will come before this board.
10 But it is a very active group. We normally have
11 about 50 people on every meeting, and we are -- the
12 legislature has been kind enough to give us some
13 resources to do planning studies in all four
14 counties around transit corridors.

15 The Hawai'i Board of Geographic Names.
16 Very quiet, small board, but it actually has
17 executive authority to decide on the names of
18 geographic features within the state. So they talk
19 to members of the community around that, a new
20 feature such as Fissure 8 on the Big Island, and
21 they take testimony from lineal descendants, from
22 Hawaiian experts. And they make a decision on a
23 name, and then that goes to the U.S. Board of
24 Geographic Names and on all maps.

25 The Greenhouse Gas Sequestration Task

1 Force. That's a permanent body charged with reducing
2 carbon emissions on natural and working lands. And
3 that -- we have a report due to the legislature for
4 the 2023 session.

5 And then the Hawai'i Climate Change
6 Mitigation and Adaptation Commission. The Office of
7 Planning's director co-chairs that with the Land
8 Board's chair. And that's also an extremely active
9 group as we look at the issues of sea level rise,
10 heat stress, carbon emission reductions, and
11 adaptations to have Hawai'i more resilient in the
12 face of increasing climate volatility.

13 So with that, I'd like to turn the next
14 briefing over to Arthur Buto, who is the head of our
15 statewide geographic information system. I believe
16 he's joining us on Zoom.

17 **CHAIR GIOVANNI:** Thank you, Ms. Evans.

18 Mr. Buto, will you take the mic?

19 **MR. BUTO:** Morning, chair, commissioners.
20 My name is Arthur Buto. As Mary Alice said, I'm the
21 manager of the statewide GIS program. And my
22 apologies if you're already familiar with the term,
23 but I'd like to start by defining GIS.

24 GIS stands for Geographic Information
25 System, and it is sort of the whole ball of wax of

1 an information system. So at its core, it's data,
2 but it includes methods to collect that data, input
3 that data. Things that you may be familiar with are
4 things like GPS in your phones or on more
5 sophisticated devices to collect location
6 information.

7 It's the visualization system of that
8 data. Typically, you'll see it in a map -- whether
9 it's an online map or a printed map or a copy map --
10 and as well, analysis applications. So ways to take
11 all that data and perform some kind of analysis on
12 it. That's all part of the GIS.

13 And some familiar things that you see
14 every day are things like weather maps, traffic flow
15 maps. You're probably familiar with Google Maps.
16 Yelp uses the GIS in the background. And then COVID
17 dashboard more recently, and the Red Hill maps as
18 well.

19 So all that is using data that has some
20 kind of spatial or location-relevant information in
21 it, data in it, and using it to visualize or
22 represent that data in a more user friendly way.

23 And among the benefits of the GIS is that
24 it can take multiple sets of data in a particular
25 geographic frame that may be related to each other,

1 or a relationship may reveal itself by appearing
2 together on a map. And technology is a big part of
3 the GIS to perform that analysis.

4 Having said that, GIS is not an
5 authoritative set of data. The boundaries that you
6 see in GIS are not survey boundaries, as Dan O.
7 alluded to. A lot of these data are old, historical.
8 Or parts of those data are old, and they may have
9 been developed in the '60s or '70s various ways --
10 tracing lines, literally tracing lines on a map or a
11 photo.

12 So as technology has gotten better, as
13 data collection has gotten better, some of those
14 boundaries may appear a little bit out of whack. So
15 it's not -- GIS is not a system of legal data. It's
16 not to be used in that way.

17 And again, getting back to the boundary
18 interpretation, we do have the state land use
19 district in our GIS dataset. But again, it's not
20 authoritative, and any questions -- it's used as a
21 planning tool and as a broad visualization tool, but
22 any questions or concerns about specific items,
23 those are interpreted by -- or those are analyzed by
24 the Land Use Commission staff.

25 So with that, I am going to move on to the

1 next slide.

2 So by statute we're --

3 Sorry, didn't want to advance the slide.

4 Sorry, Dan.

5 We're in the 225M statute. And in there we
6 are tasked with coordinating GIS efforts among
7 state, county, and federal agencies. We maintain the
8 data, a geodatabase of our 400 layers. Included in
9 there is the state land use district boundary layer.

10 And we provide a way for agencies to share
11 data either internally, within other agencies, or
12 with other agencies, or with the general public. And
13 those 400-plus datasets, almost all of them are
14 being shared with the general public through our
15 geoportal.

16 And in addition, we do develop some
17 applications for agencies and the general public. So
18 one of the ones that we have is a state land use
19 district locator app. And that's, again, a
20 visualization or a map-based interface that shows
21 the land use district boundaries and allows you to
22 search by TMK or by street address to see where you
23 may lie.

24 And again, it's not a legal
25 interpretation, but it does give you a general idea

1 within the accuracy of those boundaries and of the
2 parcel boundaries as well, because those will vary.

3 But it gives you an idea of just generally
4 where you may be in relation to the stand land use
5 district's district boundaries.

6 We also respond to requests for maps and
7 data from state agencies and the legislature. We're
8 a resource for other agencies consulting on GIS
9 projects or projects that may involve GIS.

10 And more recently in the last -- within
11 the last 10 years, the state has had an agreement,
12 enterprise agreement, with Esri, one of the global
13 leaders in GIS solutions. We have an enterprise
14 license agreement with them, so it allows any state
15 employee to have a license for the desktop software.
16 As well, we can provide accounts in the online
17 mapping platform.

18 Land Use Commission staff. I think Fred
19 and Scott both have accounts, and I think they both
20 have licenses for the software. So we're there to
21 support them in their use of the platform as well.

22 And that's about it. Thank you.

23 **CHAIR GIOVANNI:** Thank you, Mr. Buto.

24 Ms. Evans, where do we go next?

25 **MS. EVANS:** Thank you, chair. The next

1 presenter will be Justine Nihipali, the planning
2 program manager for the Coastal Zone Management
3 Program.

4 **CHAIR GIOVANNI:** Terrific. Let's proceed.

5 **MS. NIHIPALI:** Thank you, chair. Sound
6 check. Everything okay? Okay. I will take that --
7 you're muted, so I'll take that as a yes.

8 **CHAIR GIOVANNI:** Yes.

9 **MS. NIHIPALI:** Okay. Great. Thank you.
10 Good morning, chair and commissioners, and thank you
11 for the opportunity to appear before you this
12 morning. My name is Justine Nihipali. I am the
13 planning program manager here with the Coastal Zone
14 Management Program. We're housed as, you know, in
15 the Office of Planning and Sustainable Development
16 in the Planning Division.

17 Next slide, Aaron?

18 I just wanted to share just kind of a
19 broad overview of, you know, how we came to be. The
20 National Coastal Zone Management Act was passed in
21 1972, which recognized the increasing growth
22 pressures on coastal zone and the need to balance
23 that with the environment.

24 In Hawai'i the CZM program was established
25 by the state in 1977 and approved in 1978 by the

1 National Oceanic and Atmospheric Association, and
2 we're supported by the Office for Coastal
3 Management. We're one of 34 states and territories
4 with an approved program across the nation.

5 The program itself is a voluntary
6 partnership between the state and the federal agency
7 and establishes what's called a cooperative
8 agreement between the two entities, and the purpose
9 of which is to provide for the effective management,
10 beneficial use, protection and development of the
11 coastal zone.

12 As the slide notes, there are two major
13 incentives for the state to establish a program. The
14 first is to receive federal funding from NOAA to
15 support the program, as well as the privilege of
16 administering what is called federal consistency,
17 where certain federal actions must be in compliance
18 with state authorities in the coastal zone.

19 Next slide, please?

20 The Hawai'i Coastal Zone Management
21 Program. I want to show a brief video -- hopefully,
22 it will pop up -- about what CZM is within the
23 state.

24 And if it doesn't play, that's okay,
25 Aaron.

1 Okay. I think we're having some -- maybe
2 the link didn't go through.

3 The statutory authority for the CZM
4 Program is within HRS 205A, which is in four parts.

5 If we can bring that slide up, Aaron, that
6 would be great.

7 Part I is the objectives and policies for
8 the CZM Program. Part II is the Special Management
9 Area Permitting System.

10 Let's see. Can we move forward? Sorry, I
11 don't want to lose anyone, because there are notes
12 there on the slide. Thank you.

13 Part III is the Shoreline Setbacks, so the
14 distance between the established shoreline and how
15 the county derives the siting of new development, as
16 well as Part IV, Marine and Coastal Affairs, which
17 establishes the Ocean Resources Management Plan and
18 our responsibilities as the Coastal Zone Management
19 Program to lead the implementation and coordination
20 of the Ocean Resources Management Plan.

21 We also administer with Department of
22 Health the Coastal Nonpoint Pollution Control
23 Program, which is a requirement by NOAA and EPA and
24 jointly administered at the federal level by those
25 two entities.

1 Next slide?

2 So what do we mean by the coastal zone?

3 The coastal zone actually encompasses the entire of
4 the state from mauka to makai out to three nautical
5 miles. The structure of the program itself
6 establishes what is called a network program, which
7 utilize the laws and functions of existing agencies
8 in the state and the counties.

9 Actions cross multiple jurisdictions along
10 the way from the ridgeline to agriculture,
11 conservation, and urban land, our beaches, as well
12 as near shore waters.

13 The Hawai'i legislature designed the CZM
14 law to create a program that crosses many of these
15 boundaries, and each county also participates in the
16 program. And together with all the state agencies,
17 they must assure that their statutes, ordinance,
18 rules, and actions comply with the CZM objectives
19 and policies in HRS 205 Part I.

20 So where does the Land Use Commission fit
21 in?

22 Next slide, Aaron?

23 As an example, and this is a little hard
24 to see, these are the agencies with statutory
25 authority and administrative rules that uphold the

1 objects of CZM law. Within the scope of its
2 authority, the Land Use Commission is one of many
3 entities that, in combination with other agencies
4 such as DLNR and county authorities, carries out a
5 portion of CZM objectives and policies related to
6 providing coastal recreational opportunities
7 accessible to the public.

8 And we do thank the commission and the
9 commission staff for its role to implement CZM law
10 within its authorities.

11 Next slide, please?

12 I just wanted to provide some additional
13 resources in your spare time, as you all know. The
14 first link, I believe you guys have this
15 presentation. It's to the National Coastal Zone
16 Management Program. We've also created a resource
17 called the Authorities Matrix, which identifies each
18 of the agencies and its governing laws,
19 administrative rules, that help to implement the 10
20 objectives and policies of CZM law.

21 There's further information relating to
22 Special Management Area Permitting System, which the
23 county are authorities for the planning commissions,
24 with the exception of City and County of Honolulu,
25 whose city council is the authority for determining

1 and issuing the permits with support from the
2 planning departments.

3 We provide support and technical
4 assistance to the planning departments through
5 support of 14 employees in the planning departments
6 for Kaua'i, Hawai'i, and Maui counties. And we are
7 working with the Department of Planning and
8 Permitting to reestablish support for positions
9 there, if funding does increase over time.

10 County Profiles. It's a link for you to
11 learn how CZM funding has or is being utilized
12 within your county. We have established projects
13 with those counties to address some of their
14 priority concerns relating to coastal zone
15 management and balanced use of resources in their
16 state.

17 And then I have a link also to the Hawai'i
18 Ocean Resources Management Plan, which by statute
19 state agencies, with support from federal agencies
20 as partners and county, are tasked with
21 participating in implementation of the plan to
22 address issues that may not be adequately addressed
23 by existing policies and functions.

24 And we are tasked with coordinating around
25 those issues to try to address that with CZM funding

1 and CZM staff resources. We work on these
2 initiatives with agencies that do manage the natural
3 resources in the state.

4 And then we have another additional
5 resources that highlight a number of the recent
6 projects and current projects that we're working on,
7 including documenting and working with the
8 University of Hawai'i to provide technical resources
9 to inform decision making related to shoreline
10 setbacks and siting of new development with Dr. Chip
11 Fletcher and his team.

12 And we are also working on an initiative
13 set forth by Act 178 of 2021, which addresses sea
14 level rise impacts and state facilities and develop
15 the adaptation strategies and prioritization for
16 adaptation within the state.

17 We're also leading discussions and
18 implementation to coordinate efforts between
19 agencies such as DLNR and the county planning
20 departments and technical experts to address
21 shoreline management issues such as coastal erosion
22 and sea level rise impacts, and as part of that,
23 assessing this strategy or adaptation option of
24 managed retreat by looking at legal and policy
25 implications as it relates to existing policies and

1 land use issues.

2 We're also working on projects with HI-EMA
3 and the Building Code Council to strengthen building
4 codes for resilience to tsunami hazards to inform
5 future siting as well as stronger building codes for
6 essential facilities within the state.

7 We also work to develop guidance to
8 address the reduction of nonpoint source pollution
9 within the environmental review process as well as
10 decision making from county and state reviewers.

11 And then we're also collaborating with
12 DLNR DAR to strengthen its ability to work with
13 communities to inform near shore fisheries
14 management and regulations.

15 So as you know, the Coastal Zone
16 Management Program has a vast authority, and we do
17 work with as many agencies as possible to address
18 some of these current issues that have been
19 identified in the Ocean Resources Management Plan as
20 well as the requirements that we have to provide
21 technical oversight over SMA and facilitating the
22 administration of the federal consistency program.

23 With that, I'm going to conclude my
24 presentation, because I know that we have a number
25 of people to hear from today. Thank you.

1 **CHAIR GIOVANNI:** Thank you very much.

2 Mr. Derrickson, can you advise if any of
3 the commissioners have any questions or comments on
4 what they've already heard from OPSD?

5 **MR. DERRICKSON:** None of the commissioners
6 at this point want to ask any questions. I will let
7 you know if any hands go up.

8 **CHAIR GIOVANNI:** Okay. Great.

9 So I have a quick question for Ms.
10 Nihipali. I've been reading and following the fact
11 that traditional fishponds are coming back with an
12 abundance around the state. Is there a role that
13 your program plays in that process?

14 **MS. NIHIPALI:** There are a few roles that
15 our office plays. The first is for federal
16 consistency, we work with the Army Corps and the
17 Department of Health for the Clean Water Act to
18 address actions within the water for permitting
19 purposes.

20 The second is something that we aspire to
21 do, but we haven't embarked on that initiative just
22 yet, is to better understand how cultural resources
23 do serve as, in some cases, ways to protect
24 shoreline areas.

25 We do have an initiative that we are

1 looking to embark on that we want to ensure that any
2 climate adaptation policy that is developed by our
3 state addresses cultural resources, particularly
4 along the shoreline, not to exclude heiau, other
5 pohaku and cultural resources.

6 We've had some preliminary discussions
7 with scholars at the university about how to even
8 frame and approach that, since this is not something
9 that we, you know, we would feel as comfortable
10 leading. We would want to support and have community
11 entities that help to find how that would occur.

12 But, yes, traditional resources, I think,
13 particularly fish ponds, would serve as that valid
14 perspective relating to food sustainability,
15 strengthening cultural communities, as well as, in
16 some cases, act as protection against coastal
17 erosion.

18 But I do know that a lot of these
19 community practitioners do need a lot of assistance
20 to their small, small nonprofits and often families
21 who are managing those efforts. So we don't have
22 direct projects right now.

23 **CHAIR GIOVANNI:** Great. Thank you for the
24 commentary.

25 So, Ms. Evans, I'll turn it back to you

1 for continuation.

2 **MR. DERRICKSON:** So next up is Ruby
3 Edwards. Ruby?

4 **MS. EDWARDS:** Thank you. Good morning,
5 Chair Giovanni and commissioners. My name is Ruby
6 Edwards. I'm a senior planner with the Land Use
7 Division and the acting community planning program
8 manager.

9 Within the Land Use Division, we also have
10 a TOD council coordinator, who staffs this new
11 program which was established -- which Mary Alice
12 mentioned earlier, was established in 2016 to really
13 facilitate statewide TOD planning, especially around
14 state lands. And this was all instigated primarily
15 by the rail development along the Honolulu rail
16 corridor.

17 So the Act 130 established both the
18 Hawai'i Interagency Council for Transit-Oriented
19 Development. It's that forum to advise state and
20 county agencies and to coordinate around statewide
21 TOD planning efforts. And the Act also designated
22 OPSD as the lead state agency for Smart Growth and
23 TOD, mandate 225M and its responsibilities there.

24 Next slide?

25 Very briefly, the TOD Council is a 25-

1 member advisory council made up of state and county
 2 agencies, legislator reps, and nonagency reps from
 3 the community, as well as an ex-officio member from
 4 HUD. They have been responsible for approving state
 5 transit-oriented strategic plans for transit-
 6 oriented development issued in -- last issued in
 7 2018.

8 And of that plan, there are about 65-plus
 9 TOD projects that were identified for -- to pursue
 10 by state and county agencies and where this council
 11 meets to discuss some of those projects and how to
 12 promote to agencies statewide.

13 Next slide?

14 Real quickly, what is TOD? It's really
 15 basically a Smart Growth tool. It really looks at
 16 improving urban communities. So we're using it as a
 17 means to look at increased mixed income and
 18 affordable housing stock, preserving and conserving
 19 agricultural lands in our rural open spaces, trying
 20 to improve the livability of communities, reducing
 21 vehicle miles traveled and associated greenhouse gas
 22 emissions, and managing the costs of urban
 23 infrastructure.

24 Next slide, Aaron?

25 And what exactly is TOD? It's really

1 basically a compact, walkable development centered
2 around and integrated with transit, generally a
3 walking distance, a walkable distance of one-quarter
4 to half a mile from a transit station or transit
5 node.

6 And the defining elements really are
7 fairly straightforward: a lot of transit, transit-
8 rich areas, higher density, a mix of uses with
9 commercial and civic anchors uses, as well as
10 residential, integrated in a compact area, a very
11 strong pedestrian orientation, and a lot of
12 connectivity, preferably along or around a grid that
13 allows for people to have multiple means of being
14 able to move within a neighborhood, and multi-model
15 transportation options that is giving a lot of
16 mobility options to residents.

17 So the sum of this really, really is
18 looking at creating a dynamic live-work-play
19 community, a full community that really promotes a
20 shift from individual auto use and reliance on autos
21 to -- for our daily activities.

22 Next slide, Aaron?

23 So what does TOD look like? Through the
24 TOD Council, OPSD and its state and county agencies
25 will work very closely with the counties to try to

1 identify what are the TOD -- what's the TOD
 2 potential across the state and how do we achieve
 3 potential.

4 On O'ahu, of course, we're talking about
 5 housing and mixed use communities at stations along
 6 the Honolulu rail corridor. On the neighbor islands,
 7 we're looking at housing and mixed-use communities,
 8 at transit, bus transit centers and hubs, a little
 9 smaller scale, lower scale, and lower density than,
 10 of course, the urban core on O'ahu.

11 Next slide, Aaron?

12 So what does this mean for you? Not really
 13 that much, because, of course, most of the areas
 14 that we're working are really already within the
 15 urban land use district and are already urbanized.
 16 So we're really focusing on urban infill and really
 17 looking at how to improve the urban communities that
 18 have already been entitled into our -- already in
 19 place.

20 Next slide, Aaron?

21 But if we were to try and leave you with
 22 anything, it's really looking at what does that land
 23 use decision making look like through a smart growth
 24 of TOD lands.

25 And really, it's asking questions of does

1 a proposal support or contribute to a development
2 pattern that is compact? Is it dense? Is it walkable
3 and pedestrian-oriented?

4 Does it promote transit ridership and
5 transit use? Is it going to be transit rich? Does it
6 incorporate many mobility options -- walking,
7 cycling, rolling? Does it promote mixed income
8 housing and create vibrant mixed-use, livable work-
9 play communities that our residents can enjoy?

10 And that's where I turn it over to the
11 next person. Thank you.

12 **CHAIR GIOVANNI:** Thank you.

13 Next person?

14 **COMMISSIONER OKUDA:** Chair, this is Gary
15 Okuda. May I ask a question?

16 **CHAIR GIOVANNI:** Please do, Commissioner
17 Okuda.

18 **COMMISSIONER OKUDA:** Yeah. Thank you very
19 much for your presentation. To put you on the hot
20 seat, in your view as a planner, does this mean that
21 if we want to really increase housing stock to
22 provide housing for local people to the extent the
23 law requires or allows, what we really have to look
24 for is more dense development in the urban core. And
25 really, that's more effective in delivering housing

1 to the people of Hawai'i versus redesignating
 2 agriculture to urban.

3 **MS. EDWARDS:** From a --

4 **COMMISSIONER OKUDA:** I mean, it -- go
 5 ahead. I'm sorry.

6 **MS. EDWARDS:** From a professional planning
 7 perspective with the mission of smart growth and
 8 having to balance growth with agricultural
 9 feasibility and viability and the protection of
 10 rural and natural lands, I would have to say, yes,
 11 that we're an island community, limited land area,
 12 and that our best options for providing housing is
 13 to do so in our urban areas with higher density.

14 That's going to provide more units. There
 15 are costs to that, though. The building costs, as
 16 you go higher, the building costs go up. So it's not
 17 easy, and sometimes the infrastructure is
 18 insufficient to support that kind of density. But
 19 ultimately, we're going to get more housing units as
 20 we really are able to do more infill redevelopment
 21 into higher density areas.

22 **COMMISSIONER OKUDA:** Okay. And as a short
 23 follow- up question, based on your knowledge and
 24 experience as a professional planner, do you believe
 25 that if one of the goals is to deliver housing units

1 more quickly and in larger numbers, even taking all
2 the infrastructure issues that you face in an urban
3 area, but also considering the infrastructure you
4 have to build out in agricultural areas, that it's
5 probably faster and maybe more efficient to some
6 extent to do infill development, build more denser -
7 - or with more density in the urban area, because
8 that is probably the more efficient or faster way of
9 delivering housing for locals on O'ahu, anyway?

10 **MS. EDWARDS:** Well, certainly, you know,
11 if you do urban infill residential development,
12 you're going to lop off a lot of that entitlement
13 time, you know, reclass time, rezoning, you know,
14 changing land use designations. You kind of lop off
15 that front end that delays and adds cost to the
16 development process. Yes.

17 **COMMISSIONER OKUDA:** Okay. So the final
18 question is so, if we got to make some hard choices,
19 maybe the hard choice we have to make as a community
20 is we have to be willing to live with higher density
21 in the urban core if we really want to deliver
22 housing for our local residents. Would that be a
23 fair statement?

24 **MS. EDWARDS:** That would be a fair
25 statement.

1 **COMMISSIONER OKUDA:** Okay. Thank you very
2 much. Thank you for your testimony and explanation.

3 **CHAIR GIOVANNI:** I would also add that,
4 Commissioner Okuda, there's a correlating effect on
5 traffic issues with that approach as well, which
6 could be beneficial.

7 Okay. Next presenter, I presume?

8 **MR. DERRICKSON:** The next presenter is Tom
9 Eisen.

10 **CHAIR GIOVANNI:** Please proceed, Mr.
11 Eisen.

12 **MR. EISEN:** Hello. I think that you can
13 hear me?

14 **CHAIR GIOVANNI:** Yes. All good.

15 **MR. EISEN:** I'm Tom Eisen, a planner with
16 the environmental review process, and I know we're
17 running late, so I'll go through this as quickly as
18 we can.

19 But Hawai'i's environmental review process
20 is established and codified in HRS Chapter 343. It's
21 been in existence since the '70s. It was modeled in
22 general after the federal environmental review
23 process, which goes by the acronym NEPA for the
24 National Environmental Policy Act.

25 So even though Chapter 343 is not called

1 the -- it's not titled the Hawaiian Environmental
2 Policy Act, the process often goes by HEPA as an
3 acronym, so expect to hear that from time to time.

4 Next slide, please?

5 Okay. At the present, we are minimally
6 staffed. I'm the planner, and there's two others in
7 the office with me. My primary responsibility is to
8 produce and publish the Environmental Notice, which
9 you may know is a bulletin that's put out twice each
10 month advertising the availability of environmental
11 documents that have been submitted at various points
12 along the process line -- draft EAs, final EAs,
13 EISs, things like that.

14 I maintain an online database of all the
15 EAs and EISs and other environmental documents so
16 they can be searched and found online, and then, in
17 general, provide guidance and support to all the
18 stakeholders in the process. I'll get into that a
19 little bit later.

20 We have another specialist, Les Segundo.
21 He is primarily responsible for providing staff
22 support to the Environmental Advisory Council that
23 our director mentioned came over with us when we
24 moved to OPSD last year. So it's a volunteer
25 appointed body, but he's the one member who has

1 staffing for them. And he also provides guidance and
 2 support to the different stakeholders in the
 3 process.

4 And then we have a secretary who provides
 5 a lot of great administrative support to the
 6 program.

7 Next slide, please?

8 Okay. I won't read this, but here's some
 9 statutory language that reinforces the idea that
 10 balance is key to the process. So pretty much
 11 whenever we're doing everything, balance, balance,
 12 balance.

13 Next slide, please?

14 Here are some guiding principles. I'll run
 15 through them pretty quickly. Probably the first and
 16 foremost is a realization that the process is a
 17 disclosure process. It is not a permitting process.
 18 It exists to provide some vetted objective
 19 information to decision makers before it gets into
 20 the permitting process.

21 Okay. A proposed action must hit a trigger
 22 for HEPA to apply. So there's many actions that HEPA
 23 does not apply to and don't have to do an EA or EIS.
 24 We're constantly being asked why didn't this project
 25 require an EA or that one? And the triggers are in

1 the next slide. I'll go through that.

2 As far as the Land Use Commission in
3 particular, you guys issue discretionary consents,
4 and so that makes you an approving agency under
5 HEPA. And as an approving agency, you have the
6 authority to make all the necessary determinations
7 for any action that is going through you. So the
8 authority lies with you.

9 A lot of people think we have the
10 authority. Our office, we have very, very little
11 authority over any given project going through. It's
12 always the approving agency or a proposing agency
13 that gets to make all the determinations and get
14 sued, if somebody doesn't like those determinations.

15 The whole notion of significance is pretty
16 important in various stages of the process. There
17 are significant criteria in the rules. I'll refer
18 you to the rules if you want to go through them, but
19 determining the appropriate level of review is
20 something -- does it need an EIS or does it need an
21 EA is whether a significant impact is likely. So
22 that's an important concept to keep in mind.

23 There are three general levels of
24 environmental review: exemption, which they're
25 exempted from the erstwhile requirement to prepare

1 an EA, or an EA, or if there's a likelihood of
2 significant impact, then the full-blown
3 environmental impact statement would be required.

4 So if significance is not anticipated,
5 then exemption is likely the appropriate process. If
6 an agency feels that they can just say right off the
7 bat that there will not be a significant impact,
8 they're potentially able to exempt it from the
9 requirement to prepare an EA.

10 If they do anticipate a significant
11 impact, then it would go direct to the EIS. And so,
12 it's basically the situations where an agency is
13 unsure if it's significant or not that an
14 environmental assessment is prepared, and it's
15 prepared just to be able to make that determination
16 of significance or not. There's basically two
17 outcomes.

18 The last point. You would make an issue --
19 you'd issue a finding of no significant impact or
20 you would say that an EIS is required and then
21 ultimately accepted. That's the determination at the
22 end of the EIS process.

23 There's a lot of public comments involved
24 in our process, similar to yours. So that's just
25 part of the situation. And a final EA or EIS must

1 include an adequate response to all substantive
 2 comments submitted. That's a big point in the review
 3 process.

4 Next slide?

5 Okay. These are the triggers. I won't go
 6 through them all. I highlighted number 7. So any
 7 reclassification of land classified as conservation
 8 district, that is a trigger for the HEPA process, so
 9 it would require, presumably, an EA, maybe an EIS.
 10 It could be exempted, but it is a trigger.

11 The other triggers are listed here. It's
 12 probably unlikely that any of those would come to
 13 you. The most common trigger across the board is the
 14 first one, the use of state or county lands or
 15 funds. So basically, anything that any agency does,
 16 state or county, hits trigger 1. A whole lot of
 17 actions that are proposed by agencies go through
 18 this process.

19 But there are other sensitive areas that
 20 the legislature has decided become a trigger.

21 Next slide, please?

22 Okay. Again, a lot of what we do is
 23 provide guidance to the various stakeholders,
 24 whether they're agencies, applicants, consultants,
 25 members of the general public, special interest

1 groups. So we encourage everybody to contact us, and
2 we kind of provide them guidance.

3 We can't always answer their questions. We
4 help them noodle through problems and try to make
5 their own decision. Again, we don't have the
6 authority. We can't say what is right and what is
7 not right or anything. We just provide support and
8 guidance, and we provide it to your staff, and we're
9 available and online in a lot of ways.

10 So I'll wrap up my presentation now. Thank
11 you.

12 **MR. YEE:** Thank you. If there are no other
13 questions, I'd like to introduce myself. My name is
14 Bryan Yee. I'm a deputy attorney general with the
15 Attorney General's Office.

16 I have been appearing before the Land Use
17 Commission for a number of years, although there is
18 a position available to be devoted to OPSD which is
19 currently vacant. So if anyone knows a bright
20 attorney who's intellectually curious and loves land
21 use, please have them call me.

22 The OPSD promised me 30 minutes. They
23 lied. And I know I am the only thing standing
24 between you and lunch, so I'm going to do my best to
25 kind of rush through this. But regardless of the

1 amount of time, I do want to take a moment, because
2 -- you probably did this yesterday, but I want to be
3 able to say, especially to new commissioners, thank
4 you and welcome.

5 You will expend more work for less pay
6 than you may do for anything else, but I am really
7 hoping it will be very satisfying, because it has
8 been for me. And because of your service, you're
9 really making a difference in the future of this
10 state, so thank you.

11 **CHAIR GIOVANNI:** Mr. Yee, this is the
12 chair. I want to encourage you to take the time you
13 need today to make your points and not overly rush
14 through it. You always provide commentary of value
15 to this commission, and I very much appreciate it.

16 **MR. YEE:** Thank you very much, chair.

17 Next slide?

18 I'm going to go over three things. The
19 first are just what's the role of OPSD in your
20 dockets? You'll be dealing with the Land Use
21 Division for OPSD most often.

22 The second would be the types of matters.
23 This was discussed by Scott Derrickson, but I'll be
24 talking about what OP does on each of these matters.

25 And then the third will be some of the

1 major issues. There are a lot of issues, but we'll
2 go ahead and pick a few of them just to highlight
3 initially for today.

4 Next slide?

5 OPSD's role primarily does two things.
6 One, it provides informed analysis; and second, it
7 provides your recommendations.

8 So it's important because we are able to
9 provide you with information. We can provide you
10 with state witnesses, documents, and not really well
11 discussed a lot, we also cross-examine the
12 petitioner's witnesses. So they have a lot of
13 information, but it's also important to sometimes
14 draw out some of the -- the entire picture from the
15 witnesses, not just one side.

16 In addition to the information, we provide
17 you with the analysis of why is this information
18 important, how does it affect your decision.

19 I don't know how they teach math now, but
20 back in the day, you were always required to show
21 your work. And that's what's probably more important
22 for you than anything else that we do, is we explain
23 to you why we think the information important, how
24 does it affect your decision, and we show you that
25 analysis for your ultimate decision. But at least

1 you can see how we applied it.

2 And then, of course, we will provide you
3 with a recommendation. So you can agree, you can
4 disagree. You do disagree, and that's perfectly
5 fine. But it's at least a viewpoint that you'll be
6 able to have, that you have what our recommendation
7 would be.

8 By the way, I'm going fairly quickly, but
9 let me just take a moment to say if at any time
10 during the presentation you have a question or a
11 comment, just feel free to ask. The presentation is
12 often most interesting based on those questions or
13 comments, so feel free to do so.

14 Next slide?

15 I should mention three things, by the way,
16 about OPSD's role. One is OPSD provides you with a
17 relatively neutral position. So we're not going to
18 benefit or disbenefit from whether the land is or
19 isn't reclassified, so it gives you just sort of a
20 neutral position on it.

21 Second, you get a unified position from
22 all state agencies. And there are a lot of state
23 agencies. So we give you one unified presentation on
24 that state position. And sometimes that requires
25 some effort on our part to make sure it's all

1 unified, but that's one of the things we do.

2 And finally, we give you an analysis on an
3 individual case considering the larger context;
4 right? Because the petitioner is really concerned
5 about their parcel. But we appear in front of you on
6 all of the district boundary amendment cases and
7 special permits, et cetera, so we're aware of how
8 this applies to other cases, and we want to make
9 sure you are also aware of that as well. So we will
10 try to bring before you how it fits into the larger
11 context as best we can.

12 Sorry, moving on. These are some of the
13 tasks that we do. In district boundary amendments,
14 we are a mandated party. You know, you may not want
15 to see us, but you're going to see us anyway,
16 because you have to. It's like seatbelts. It's the
17 law. So we are going to appear in every single one
18 of these district boundary amendment petitions.

19 And then these are some of the types. I
20 won't go through all of these things individually.
21 Let me just highlight a couple of them.

22 One of the things is we discuss the issues
23 with the petitioner throughout the process. And that
24 means before the petition is filed, we'll meet with
25 them, and we'll try to talk it over with them about

1 what are you proposing, what are the problems you
2 anticipate, what are the problems we anticipate,
3 what are the additional facts you're going to need
4 to draw out -- very preliminary, of course, and
5 we're going to continue that discussion throughout
6 the process.

7 So when they file their EA, we may have a
8 discussion; before the hearing, we may have a
9 discussion; during the hearing, we may have a
10 discussion. And I think that is intended to do a few
11 things.

12 One is to make your job easier, so that
13 you can get some of these issues narrowed, and if we
14 can focus, because we may or may not agree with the
15 petitioner in all things, and that's perfectly fine.
16 Petitioners are allowed to have their point of view.
17 We're not saying we're always right. But at least we
18 can say -- we can find out what are the issues, why
19 we disagree.

20 We also want to make sure we tell the
21 petitioner. We don't want to surprise a petitioner.
22 We want them to know what our concerns would be, and
23 for them to tell us why they disagree. As I said, if
24 we're wrong, we want to know. And we would much
25 prefer to be able to have that process with them

1 without going through sort of a really long hearing
2 until we ultimately conclude, oh, I'm sorry, we're
3 wrong, they're right.

4 So we want to have that discussion without
5 having to involve your precious time. And, of
6 course, it streamlines the process. There's always
7 criticism about state processes and how it could be
8 streamlined, made shorter, made faster.

9 To some extent, some of it is built into
10 the process. You need time to consider. You need
11 time to get all the evidence. But to the extent we
12 can, to the extent we can narrow the issues and not
13 take so much time in the hearing, we want to do
14 that, and so we talk with the petitioner to try to
15 do that.

16 We also solicit comments from a large
17 number of agencies. It takes a lot of time. It's one
18 of those, you know, ducks on a pond. Those feet are
19 paddling furiously beneath the water. We work really
20 hard. And as you can imagine, testifying in front of
21 the Land Use Commission is on no one's top 10 list
22 of things to do.

23 But we go and we convince them why it's
24 important. And it is important. It's important that
25 you hear from some of these state agencies. But, you

1 know, sometimes it takes a little bit of effort. But
2 we make the effort, and we're generally successful
3 at it.

4 It also takes some time, so just to
5 acknowledge now that sometimes we -- you know, we
6 would like to get you things faster. It sometimes
7 takes us a while to get all the information. I'm not
8 going to name names, but I think everyone in the
9 development community knows how long it takes to get
10 stuff from state agencies sometimes. We try to help,
11 so that it doesn't delay this process. And we do our
12 best.

13 Next slide?

14 **CHAIR GIOVANNI:** Mr. Yee? Question.

15 **MR. YEE:** Yes.

16 **CHAIR GIOVANNI:** When you talk about your
17 interactions with the petitioner, that often results
18 in your recommendation of conditions to be included
19 in our order, which are, quote-unquote, amenable to
20 the petitioner itself. Can you speak to how that
21 process works? Because I think that to be of great
22 value.

23 **MR. YEE:** Yes. So on all matters, not just
24 district boundary amendments, but particularly
25 district boundary amendments, the Office of Planning

1 and Sustainable Development may agree that the land
2 should be reclassified, but would be concerned about
3 some of the impacts from the project. So we want to
4 impose conditions which would minimize those
5 impacts.

6 And so, based upon the information we get
7 from other state agencies, we then create a set of
8 proposed conditions, and we try to send that to the
9 petitioner ahead of time. So before we send them to
10 you, we send to the petitioner and get their
11 feedback.

12 Sometimes they agree. Sometimes they are
13 persuaded. Sometimes they're not. And to the extent
14 we can get that agreement, it's so much faster.

15 You know, we still present you with the
16 factual basis, but it does make the process much
17 faster than when we are going to be in disagreement
18 and when we know we have to give you a really iron-
19 tight, you know, case on why something needs to be
20 done -- so, you know, why this particular traffic
21 identification is required in this case -- because
22 it's really important. And we will have conflicting
23 experts, et cetera, et cetera.

24 **CHAIR GIOVANNI:** Thank you.

25 **MR. YEE:** Okay.

1 **COMMISSIONER CHANG:** Mr. Chair, can I ask
 2 Mr. Yee -- raise a question?

3 **CHAIR GIOVANNI:** Please.

4 **COMMISSIONER CHANG:** Like the chair, I
 5 really appreciate you being here, and please take
 6 the time. Quite frankly, I think this is a really
 7 important component for our training.

8 One of the questions I have is you help to
 9 coordinate and get comments from state agencies. And
 10 I have found that many instances, comments from the
 11 Department of Transportation, Department of Land and
 12 Natural Resources with respect to especially
 13 protection of endangered plants, species, and State
 14 Historic Preservation Division impacts to historic
 15 resources, in my mind those are really critical
 16 kinds of timely responses that LUC needs.

17 And we always don't get that. And I know
 18 you guys are doing the best that you can, but
 19 sometimes I feel like we are at a disadvantage by
 20 not getting those responses. So, you know, what is
 21 the process that you go through, and what kind of
 22 recommendations do you make when we do not get
 23 timely responses from those agencies?

24 **MR. YEE:** So the a district boundary
 25 amendment, which is probably the most extensive

1 amount of work that we do among the types of
2 matters, when the petition is complete and there's a
3 determination made by the LUC that, yes, this
4 petition is now complete, copies of the petition are
5 sent to a large number of agencies, including DOT
6 and various parts of DLNR -- actually, all of DLNR -
7 - and then it goes to a number of different agencies
8 within DLNR.

9 We then give them a deadline to reply. We
10 then call them after the deadline is passed. And
11 then we talk to certain individuals in those
12 agencies, sometimes multiple people, if we don't get
13 a response. And, I mean, you know some of the
14 problems some of these agencies -- particularly,
15 right? Some agencies are more pressed than others.

16 We sometimes do not get the response that
17 we need, because some of the agencies you mentioned
18 have very substantive information to provide. It is
19 not a yes or no; it's not a checkbox. It's an actual
20 analysis of the EIS, of the expert testimony and
21 what they said, to determine, oh, yes, we have
22 looked at the traffic impact analysis report, there
23 are eight problems, eight concerns we have.

24 And they are detailed as -- they can be as
25 detailed as the estimated number of people leaving

1 from the project in the morning is too low. What is
2 this based on, because a prior project, you know,
3 located 15 miles away, which seems to be similar to
4 yours, has a much higher number. And so, you know.

5 And it will be that -- it will be that
6 level of analysis and review of the TIAR that is
7 done. Others are simply just really busy and, you
8 know, we have those challenges. That is a larger
9 problem that OPSD cannot solve. We can only try to
10 help mitigate for LUC.

11 **COMMISSIONER CHANG:** Just a follow-up
12 question. So when those particular agencies do not
13 respond, in those instances do you include as a
14 proposed condition subject to the applicant
15 consulting and getting concurrence from, you know,
16 DOT or DLNR or SHPD in particular? Because it really
17 could make a difference on the project by their
18 responses.

19 **MR. YEE:** Probably the more likely thing
20 we do is we submit amended conditions. So we submit
21 late conditions, which is another problem, right,
22 because we're trying to make sure the petitioner
23 sees it, the petitioner is aware of the issue.

24 We might call the petitioner and say we
25 don't have any comments from, but we are less likely

1 to submit to you conditions which don't have a
2 factual basis.

3 **COMMISSIONER CHANG:** Just my final
4 comment. I know that you mentioned that there's a
5 lot of discussions that your office has with the
6 petitioner. Do you also encourage the petitioner to
7 confer with these agencies in advance so that it's
8 on their radar and that they may provide more timely
9 responses?

10 **MR. YEE:** Yes and no. To a certain extent,
11 the petitioners need to be ready before they talk
12 with the agencies. So if you don't have a TIAR, you
13 know, your discussions with the Department of
14 Transportation are pretty limited, because they
15 really want to see that analysis. But certainly
16 after they've, you know, finished it, they should.

17 We got a motion to amend recently where,
18 you know, they had not talked to the state agencies
19 at all. And in that particular motion, submitted a
20 little different, because we're not aware of motions
21 to amend, the district boundary amendments have --
22 you know, you file the complaint, and it's a long
23 time before you get the hearing.

24 On a motion to amend, until you file that
25 motion to amend, we often don't know. Sometimes

1 they'll call ahead of time, but some people gave us
2 no notice, so in that particular case, we had no
3 idea it was coming in. We saw it, and then we asked,
4 and they said, oh, well, yes, we just put a call in.
5 Like, wow, okay. But that's -- you know, that's not
6 helpful. I mean, it's not unhelpful, but it's --
7 you know, the timing is poor.

8 But certainly, if their EIS is done, if
9 their TIAR -- maybe not the entire EIS, but the TIAR
10 is done, they should have been talking to DOT. And
11 we certainly would tell them that.

12 Most of the major developers know that.
13 The problem, of course, is some of the newer
14 developers, or the developers that don't practice in
15 the state of Hawai'i very often or have hired
16 consultants that might not do Land Use Commission
17 matters very often -- and, you know, there's no
18 requirement to consult with us.

19 Our purpose -- I mean, we hope developers
20 understand that our purpose is not to make their
21 life horrible; it's actually to smooth the process
22 and identify the issues.

23 I'm taking probably more time than you
24 need, but, yes, yes.

25 **CHAIR GIOVANNI:** So Mr. Yee, this is the

1 chair. Are the processes that you're describing
2 different in any way if the petitioner is actually a
3 state agency such as the Department of Education?

4 **MR. YEE:** No. And logically, it should
5 really be easier, right, because it's another state
6 agency. So logically for a private petitioner, we
7 have to be a little more careful, because we are not
8 -- I mean, you don't own the lands. It's their
9 lands, their proposal.

10 With a state agency, logically you would
11 think we would have more say and can push harder on
12 some of this. But really, it's -- in my experience
13 it's dependent on the agency rather than the type
14 and character.

15 **CHAIR GIOVANNI:** Yeah. Okay. Please
16 proceed.

17 **COMMISSIONER OHIGASHI:** Mr. Yee, I'm just
18 curious. Do you have an in-house? Or what is the
19 process in dealing with the public trust doctrine
20 review and the cultural -- I guess cultural
21 significance review. What is the process in the
22 OPSD?

23 **MR. YEE:** So we rely very heavily on the
24 State Historic Preservation Division for the review
25 of the archaeological inventory survey, which is, of

1 course, a very major component of the Ka Pa'akai
2 analysis.

3 I will tell you just frankly, our analysis
4 of the cultural impact section is pretty limited. We
5 can look at the process and methodology they
6 followed, but it is very hard, because there are no
7 other criteria for determining the adequacy.

8 So we could look, for example, at the
9 cultural impact to say, you know, you only talked to
10 five people. Or we could look at it and say, you
11 know, you sent this out once, and then you've never
12 done it again. But, you know, other than that, it's
13 hard -- I mean, honestly, that CIS is tough for us.

14 EIS is different. The archaeological
15 inventory survey is a little more set in how you're
16 supposed to do it, and we can analyze that a little
17 better. But we do rely very heavily on the State
18 Historic Preservation Division and their comments.
19 And then we go back to your previous history of how
20 do we get comments from --

21 **COMMISSIONER OHIGASHI:** Just a follow-up
22 on that. I'm just curious. Is there anybody
23 specifically or is it contemplated that you would be
24 hiring somebody or relying in somebody within your
25 agency or group of agencies to do the --

1 **MR. YEE:** Yeah, but --

2 **COMMISSIONER OHIGASHI:** Because I can see
 3 that being a benefit to trying to get projects to
 4 the LUC and limiting or make things smoother and
 5 faster if that type of analysis is assisted to the
 6 developers.

7 **MR. YEE:** Right. Yeah. So a lot of the
 8 expertise you're talking about does not lie within
 9 OPSD itself. It relies -- it exists in other state
 10 agencies. So if you talk about public trust as well,
 11 so CWRM, Commission of Water Resources Management,
 12 we consult with to get their input. But we do not
 13 have a person sort of devoted to being the public
 14 trust expert or the Native Hawaiian, you know,
 15 couple of resources expert.

16 We rely on the state agencies to get us
 17 the information.

18 **COMMISSIONER OHIGASHI:** And maybe a new
 19 attorney.

20 **MR. YEE:** Anything you want to give new
 21 attorneys is perfectly fair game. Emphasis on the
 22 new attorney.

23 Next slide? Oh, I'm sorry. Where were we
 24 on the next slide? Oh, yeah, okay.

25 Let me just briefly talk. I think you'll

1 probably discuss this as well, but one of the things
2 we do that's important is we have conditions.

3 And the conditions have to be supported
4 because we need to demonstrate constitutionally that
5 there's a nexus, a link between what the conditions
6 imposed and what the interest is or the impact is,
7 and then as well as a proportionality between what
8 we're asking for and what the impact is.

9 So, for example, if there is a new
10 development that will cause significantly increased
11 traffic, we don't based on that say, "And therefore
12 you need to create a million-dollar park." Because a
13 park just isn't related. There's no nexus between a
14 park and traffic.

15 Or if the amount of traffic would require
16 \$100,000 in traffic mitigation, we don't say, "Give
17 me a million dollars." So it's not based on how much
18 the developer can pay or, you know, how much can we
19 squeeze out of them. It's based on what is the
20 impact from the development.

21 Next slide?

22 The first, number A, which identifies the
23 documents of witnesses. I've compressed a lot of
24 work into just, you know, a sentence. But it's a lot
25 work. And I'm just going to leave it right there.

1 On the D&O, just to let you know, a
2 district boundary amendment D&O could be over 100
3 pages. And if the Office of Planning agrees with the
4 basic conclusion that the petition should be
5 granted, it just makes sense to us. And what we do
6 is we'll look and we'll let the developer draft the
7 D&O. And then we will review and revise it.

8 And that's still a lot of work, because if
9 we have just a little time, we'll review it to make
10 sure that it's accurate and the conditions are
11 adequate.

12 But if we have more time -- and there's
13 always a little bit of a tension between what the
14 LUC wants and what OPSD asked for on time -- but one
15 of the things we can do if we have more time is we
16 look through the record to make sure that the
17 representations that the petitioner made are
18 included in the D&O.

19 Now, the reason that's important is one of
20 the conditions that's included in all of the D&O --
21 decisions and orders -- is that the petitioner
22 substantially comply with the representations made
23 to the Land Use Commission.

24 But no one goes through a transcript to
25 figure out what the representations are. The only

1 possible way you can figure it out, if it's not
2 exclusively stated as a condition, is if you go to
3 the D&O itself. And it's a big document, and even
4 then it's a big document; right? So we want to make
5 sure that at least the D&O has those representations
6 contained.

7 So if the petitioner says, "We will
8 develop bikeways", then we want to say, "Petitioner
9 said that they would develop bikeways." And, you
10 know, because sometimes you can't sort of put every
11 representation in the conditions. It might be
12 something like the petitioners represented or stated
13 that they would perform the mitigations outlined in
14 the EIS or an equivalent or better mitigation just
15 because, you know, there's a lot of stuff in the
16 EIS. We can't include it all within a condition.

17 Yes?

18 **COMMISSIONER CABRAL:** Mr. Yee --

19 Chair, I'd like to ask Mr. Yee a follow-up
20 question.

21 Wouldn't you agree that -- and this would
22 apply to even the proportionality, the nexus -- to
23 the extent that the petitioner agrees, that is
24 always the better outcome?

25 **MR. YEE:** Yes.

1 **COMMISSIONER CABRAL:** So even though it
2 may not be proportionate or you can -- probably more
3 than if the petitioner agrees to a particular
4 mitigation or a petitioner agrees that these are the
5 representations, then that should always be part of
6 the record, part of the D&O. Would you agree?

7 **MR. YEE:** Yes.

8 **COMMISSIONER CHANG:** Yes.

9 **MR. YEE:** And just to build a little bit,
10 it's sort of like, you know, if a tree falls in the
11 forest, right -- if the petitioner agrees to a
12 condition, whether it's proportional or not is
13 almost irrelevant; right?

14 **COMMISSIONER CABRAL:** Right.

15 **MR. YEE:** Because no one's going to appeal
16 the decision.

17 **COMMISSIONER CABRAL:** Right.

18 **MR. YEE:** So, yes, the fact of the -- the
19 petitioner agreement and the fact of the
20 petitioner's agreement is important. It should be
21 included in the D&O.

22 In addition to doing that in reviewing the
23 D&O, we also take time to make sure that all of the
24 facts that are in there, and this occurs -- these
25 are sort of more nuanced, but it might be something

1 like we wanted an issue on the market study. It
2 probably doesn't affect, maybe, your final income,
3 but we want to make sure of it.

4 You know, we're not saying building tons
5 of luxury homes is a great thing. What we really
6 want to say is "And you're building this amount of
7 moderate-priced homes" because that's the important
8 fact that we want to make sure is included in there.

9 Or it might be something from our expert
10 that said, yes, that's true, but remember that if
11 this -- you know, if other things happen, then
12 further mitigation may be required.

13 So decision. It's their point of view.
14 They're not trying to -- I'm not accusing the
15 petitioners of anything wrong, but, you know,
16 sometimes you needed a fuller record from a
17 different point of view. And if we have the time, we
18 try to do that as well.

19 And, of course, there's always the
20 wordsmithing. You know, sometimes we disagree on the
21 nuance of the tone. So if we have the time, we'd
22 like to work on that.

23 And then very quickly, if we're not in
24 agreement, if we say, no, this petition should be
25 denied, we will draft our own D&O. It happens

1 rarely, but if it does happen, we would offer to
2 draft our own D&O.

3 Next slide?

4 Post-hearing motions. Scott talks about
5 several of them. I'm happy to answer any questions
6 about them. All I will say at this point is the
7 complexity and time requirements vary widely. Some
8 are quite simple. Some are even more difficult than
9 the initial boundary amendment.

10 So I want to just leave that and be happy
11 to answer any other questions.

12 Next slide?

13 Important agricultural land designations.
14 There is a constitutional requirement that the state
15 protect important agricultural lands. Okay. I have
16 to remember not -- I have this long rant about how
17 the state could do more to protect agricultural
18 lands, but let me just say with respect to IAL,
19 we're not a party. The statute doesn't make us a
20 party.

21 We are available -- we do provide
22 comments, often because we're the only one there. I
23 mean, for some farmer petitioners, farmer petitions,
24 it's the petitioner and us and DOA and nobody else,
25 not even the public sometimes.

1 So it's important you get another point of
2 view, and we do. We'll critically analyze their
3 petition. Some people, of course, will, you know,
4 maybe say, well, if they want to designate, why not?
5 The Office of Planning does take the criteria
6 seriously and does examine, well, you know, you
7 wanted this much, but really, this is the only good
8 land that you're proposing, and so that's the land
9 we think that should be designated.

10 Let's see. Yeah, so anyway, so we are
11 involved, and then hopefully you will find that our
12 involvement is helpful.

13 Next slide?

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

15 **MR. YEE:** Yes.

16 **COMMISSIONER CHANG:** Sorry. And I
17 apologize for asking so many questions, but I want
18 to add a follow-up on your comment that OPSD
19 supports important ag lands in general.

20 So for purposes of the Land Use
21 Commission, many times there are competing state
22 policies, especially DBAs. We've got they are
23 seeking to change zoning from ag to urban or -- but
24 outside of ag, they're going to put it in a
25 renewable energy project or they're going to put it

1 in something other than ag.

2 So, you know, I look to OPSD to really
 3 provide that kind of state policy perspective. So
 4 does OPSD -- do you look at the competing state
 5 interests, policies, when you evaluate whether it's
 6 a DBA, whether it's a -- you know, whatever, SUP,
 7 whatever the matter may be that you're participating
 8 in. Is that a consideration by OPSD?

9 **MR. YEE:** So the answer is yes. And how we
 10 do it is -- can be a little complicated. And if I
 11 may, if you can wait four more slides.

12 **COMMISSIONER CHANG:** Okay. Okay.

13 **MR. YEE:** I will get specifically to that
 14 question, because I think it's a really, really good
 15 one.

16 Next slide?

17 Just so that you know on IAL petitions,
 18 you cannot -- a farmer may come in and ask not only
 19 that their land be designated as IAL, but also that
 20 additional land be reclassified. So ag land gets
 21 protected, and additional ag land gets converted to
 22 urban.

23 We have never had a case like that. And
 24 what I could have put on this slide is just, you
 25 know, a picture of a bunch of poker chips, because

1 all I really want to say is if that ever happens,
2 all bets are off. The process is going to be
3 different.

4 We've never had to face it. We're going to
5 have to figure out what to do. We don't really know
6 what we would do then, and we will face it when it
7 comes. And I think we'll deal with that another day.

8 Next slide?

9 Special permits and declaratory petitions.
10 These are two very different processes, but OPSD's
11 actions are actually quite similar. Scott talked
12 about what they are, so I'm not going to -- I won't
13 get into that. For special permits we are not a
14 party unless we intervene at the county level. Scott
15 said no one intervenes for you. That's true.

16 We are -- OPSD as well as the Land Use
17 Commission and DOA, I think, are mandated recipients
18 of the copies of the special permit applications. So
19 we are supposed to be getting copies of every
20 special permit application that's filed at the
21 county. That is often true. Maybe not always, but it
22 is often true.

23 So sometimes we'll get these special
24 permit applications, every once in a while anyway,
25 and we're, like, what is this? Generally, if there's

1 still prejudice, we don't raise the fuss. But,
2 obviously, I just mention it now because if anyone
3 is listening, please make sure you get us those
4 applications, because it makes our life a little
5 easier.

6 Declaratory petitions. Again, not a party
7 unless we intervene at the LUC level, which
8 sometimes we do, sometimes we don't, because some
9 can just -- doesn't require an actual intervention
10 or a contested case hearing.

11 Next slide?

12 What do we do within those? So this
13 discusses them. I'm not going through all of that.
14 Let me just say that we always provide you with
15 comments, similar to the other cases in which
16 sometimes there can be no one there except the
17 petitioner and us. It's important that OPSD, I
18 think, participates -- and we do -- so that you have
19 another point of view.

20 We might be in agreement, but at least you
21 have someone else who looked at it and said, yeah, I
22 agree. Or I agree with everything except be aware of
23 that. And we'll try to give you the information and
24 the analysis, you know, in fulfilling our role with
25 the Land Use Commission.

1 The LUC has also allowed us to participate
2 in a meeting for these matters. Even though we are
3 not parties, we certainly appreciate it, and we hope
4 that our participation has been helpful to your
5 decision making.

6 Next slide?

7 This is the issue on which we want to talk
8 about this. It is a difficult question, and it is
9 absolutely a fair one. But how do you figure -- how
10 do you balance all of these competing interests?

11 So when someone comes before you, it's a
12 nice piece of agricultural land, it's good
13 agricultural land. But it's also good for energy.
14 It's going to be great to create, you know, a
15 sustainable future for on the energy front. It's
16 also going to be terrific to provide housing. And so
17 which one is going to happen? And how do you figure
18 it out?

19 And this is not just difficult because the
20 question itself is difficult. It's also difficult
21 because these larger issues really cannot be
22 adequately answered with respect to one parcel of
23 property.

24 Really, this question is look at the
25 entire county, or at least look at the region, and

1 say where do we think growth should occur? Where do
2 we think housing should be developed? What are the
3 areas that we think agriculture should be
4 maintained? You know, if we do decide to go to
5 urban, which ones are housing, which ones are going
6 to be industrial, you know, which ones are going to
7 be for something else?

8 And that process currently, under the laws
9 that exist, is done at the county level. Those are
10 done in county community plans, sometimes called
11 development plans, sometimes sustainable community
12 plans or sustainable development plans. But
13 regardless, they're regional plans, and sometimes
14 the regional plans are added together into an island
15 plan.

16 The counties have been pretty good about -
17 - well, the process the counties follow have been
18 good. Sometimes they're a little slow in updating.
19 And so in the past, we've sometimes had problems
20 when someone would come to us, and they'd say I'd
21 like to urbanize this area, it's not consistent with
22 the county plan, but the county agrees that we
23 should be urbanized. And the county will come in and
24 say, yeah, you know, it's -- the county plan really
25 should have been updated.

1 So what do you do? One of the criteria
2 that I was mentioning -- I think it's 205-17 or 205-
3 18, one of those two -- consideration of the county
4 community plans is one of the statutory criteria you
5 have to do.

6 So this is a long explanation in saying,
7 technically, you have to look at how do you balance.
8 One thing you do -- one thing you do -- is to look
9 at those county plans to figure out how the county
10 decided to balance, you know, agriculture, energy,
11 housing, all those other things.

12 Sometimes -- but as a practical matter,
13 sometimes that is more helpful than others, because
14 sometimes those plans are outdated. And then you get
15 into the question of, well, even if this land is
16 slated for housing, is it appropriate to housing
17 now?

18 So if you're saying this area should be
19 urban but, you know, urban is here and everything
20 else is agriculture, maybe you don't want to develop
21 agriculture here today, right, because you can have
22 this great big gap of agriculture between. Really,
23 you should have more of the urban development closer
24 to the rest of the infrastructure, closer to other
25 urban developments rather than putting, you know,

1 one spot over here.

2 And so that's also a decision you have to
3 reach.

4 OPSD certainly looks at those competing
5 issues, and the loss of agricultural lands -- of
6 good agricultural lands; not all agricultural lands
7 is, frankly, good -- but the loss of good
8 agricultural lands is frequently a concern.

9 We have tried to address it in the past
10 sometimes with mitigation. We have asked -- on one
11 occasion I think we asked the developer to designate
12 other lands as IAL. On other occasions we've asked
13 the developer to put in a transition plan for the
14 existing farmers. In some cases we don't require
15 anything. It's really sort of a case-by-case basis
16 on what we do.

17 And, of course, in some cases the answer
18 is no. In some cases, you know, you may want to say
19 either it's not included in the county plan, which
20 is the easiest, or if it is included in the county
21 plan, it's not appropriate to do now.

22 And there's not -- there's no good answer
23 to the question. There just isn't. It's a tough
24 judgment call. And it's made more complicated by the
25 fact that what you do is a contested cases hearing.

1 You don't do regional planning.

2 So how do you, on a contested cases for
3 this parcel, decide how to balance the entire
4 island? And in some ways you can't. You can't
5 actually do that entire balancing. You just have to
6 sort of look at how it fits. And then make your
7 judgment.

8 So not a very good answer, and there are
9 limited -- and part of it is, by the way, just to
10 say, part of it says that we have the statutory, you
11 know, construction that we have. I mean, it is what
12 it is.

13 And we can go and we can go ask the
14 legislature for changes, if there are any number of
15 potential changes we could maybe make to make
16 improvements, but that's a political process. And
17 that is beyond certainly my scope of discussion.

18 **CHAIR GIOVANNI:** This is the chair. I'm
19 just doing a time check. How much more do you think
20 you've got?

21 **MR. YEE:** I have -- almost done.

22 **CHAIR GIOVANNI:** Please proceed.

23 **COMMISSIONER CHANG:** I'm sorry, Mr. Chair.
24 Can I just make one comment? I'm sorry.

25 So, Mr. Yee, the challenge that I have

1 with sometimes the plans are going to be outdated is
2 that there is a -- what we are cutting short is a
3 community engagement process. And what's happening
4 is that -- because normally in the county planning
5 when they update, there is a public process to do
6 that.

7 But when we unilaterally make a
8 determination -- we being whether it's the county, a
9 developer, OPSD, even LUC -- what we're cutting
10 short is the community in that process. And so that
11 is a real concern to me.

12 And I think we've got to -- that's got to
13 be factored into some of these issues, is the role
14 of the community in that process when we are
15 changing something or raising an issue that has not
16 been fully vetted by the community planning process.

17 **MR. YEE:** That's an excellent point. I
18 agree.

19 Next slide?

20 I'm going to -- all this was to tell you
21 is that Chapter 205 and Chapter 343 are different,
22 and the fact that you accept an EIS doesn't mean
23 you're going to just say, yes, this should -- the
24 petition should be granted. So we're not litigating
25 whether or not -- what conditions should be imposed

1 on the project when you accept the EIS.

2 At the same time, when we get to the
3 petition hearing, you may very well see additional
4 issues raised and demands for more information than
5 was contained in the EIS. All of that is, I think,
6 perfectly fine, and will happen.

7 Next slide?

8 Basically, I just briefly wanted just to
9 say one of the things that sometimes happens is
10 there are motions for reconsideration. OPSD puts
11 great stock in the validity of prior decisions, and
12 we respect those prior decisions.

13 So there certainly have been examples in
14 which someone moved -- there was a district boundary
15 amendment, and there were seven commissioners, and
16 five were in favor, two were against, and therefore,
17 it failed, because you didn't have six members.

18 So they filed the motion for
19 reconsideration. Why? Because at the next meeting
20 there were nine commissioners. And the two missing
21 commissioners might have voted in favor of the
22 petitioner originally.

23 OPSD's position: Deny. Even though we
24 supported the original petition, our position is
25 once the LUC makes a decision, we're going to

1 respect that decision unless there's new
2 information. I mean, if there's new information, you
3 know, a new analysis, something that was missed,
4 fine. But not just because we had a different group
5 of commissioners.

6 And the same is actually true for motions
7 to amend. When they file a motion to amend, if they
8 just disagree, generally, our fallback position is
9 no. You can't get a D&O, let the period, the statute
10 of limitations to appeal pass, and then years later
11 come back and say, no, I don't like this because I
12 just disagree with the original decision. No. You
13 have to come up with the reason why.

14 And this goes even if we really think this
15 decision could have been better. And there are some
16 older decisions where the sophistication of the
17 analysis was frankly different. The information we
18 could give to the LUC was different.

19 You know, there are cases in which, yeah,
20 this was not required, public trust was not
21 considered. And even then, OPSD does not propose the
22 addition of, let's say, a condition that we found,
23 oh, this really would have been posted initially --
24 because they got their entitlement, and a decision
25 was made.

1 And while it's true that, you know,
2 business certainty is not a highly discussed value,
3 you know, nevertheless it is an important part of
4 any land use process, that businesses, once they get
5 their decision and order, have to be able to rely
6 upon their entitlement. And so, we respect that, and
7 that's our position.

8 Stipulations' importance to public
9 participation, very quickly, is -- simply deals with
10 the issue of sometimes petitioners come to us and
11 ask us to stipulate to a D&O before the hearing. And
12 while that might make your life a little faster,
13 OPSD won't stipulate to the actual D&O. We'll have a
14 position, but we won't stipulate to the D&O until
15 after the public hearing.

16 For OPSD it's important that the public
17 have an opportunity for meaningful participation.
18 That means that OPSD won't come to its final
19 conclusion until after we hear from the public. So
20 we want to be able to hear from them before we
21 stipulate to a specific D&O in case the public tells
22 us something that we were not aware of or we had not
23 considered.

24 And with that, the next slide, I think, is
25 just an opportunity for questions, but if none, I

1 want to thank you very much for the opportunity to
2 present.

3 **CHAIR GIOVANNI:** Thank you, Mr. Yee.

4 Commissioners, do you have any burning
5 questions or --

6 **COMMISSIONER OKUDA:** Yes. This is Gary
7 Okuda, if you don't mind. I'll keep it short.

8 **CHAIR GIOVANNI:** Keep it short.

9 **COMMISSIONER OKUDA:** Yeah. Mr. Yee, based
10 on all your years of experience before the Land Use
11 Commission, can you tell us the number one thing you
12 think we should do to be good commissioners?

13 **MR. YEE:** First of all, I'm a huge
14 supporter of the LUC. I have told people, both to
15 the Supreme Court and to elsewhere, that the LUC is
16 composed of uniformly talented individuals in their
17 field. And I don't say it because I'm going to
18 appear in front of you again. I really have said
19 that.

20 There are times in which I think it's
21 important that you understand not just what you want
22 to do, but what you're statutorily allowed to do.
23 And so there are times in which I sometimes think
24 that you're trying to reach -- you're trying to do
25 something you're not going to be allowed to do. And

1 in some ways it's kind of not my place, you know,
2 because I'm not your attorney.

3 So you're talking about -- honestly,
4 you're talking about special permits. I'm not aware
5 of any statutory rule that allows you to revoke a
6 special permit. But, you know, if you want to
7 explore that and go through that process, I'm not
8 going to stop you.

9 **COMMISSIONER OKUDA:** Yeah. Well, okay,
10 thank you. You know, well, at any time I'm sure,
11 because you're not a so-called shrinking violet, I
12 don't think any of us have a -- you know, take any
13 criticism, constructive or otherwise, negatively.

14 So if at any time you think there's things
15 we can do to improve -- or me to improve, I will.
16 And I know one of the things is to shut my mouth,
17 which I'm going to do right now.

18 Thank you, Mr. Chair.

19 **MR. YEE:** Thank you.

20 **CHAIR GIOVANNI:** Thank you. So let me call
21 on Mr. Orodener for some advice here relative to
22 the clock. Obviously, we would like to take a lunch
23 break at this time. And Ms. Bass is scheduled at
24 1:30. What do you recommend, Mr. Orodener, in terms
25 of a lunch break and rescheduling for Ms. Bass?

1 Also, please be aware that over the lunch
2 break, you will lose two commissioners. Commissioner
3 Cabral has to head back to Hilo, and Chair Giovanni
4 has another commitment that he can't get out of. So
5 Second Vice Chair Commissioner Ohigashi will be
6 taking over the gavel when we resume after lunch.

7 So, Mr. Orodenger, what is your advice?

8 **MR. ORODENKER:** I would defer to the
9 commissioners as to how long they want to take for
10 lunch. Yesterday you seemed to want to go fairly
11 quickly, so 45 minutes for lunch, is that acceptable
12 to everybody? Okay.

13 Then the commission will resume at 12:35 -
14 - or 1:35, actually, excuse me, 1:35.

15 **CHAIR GIOVANNI:** Okay. I think that's a
16 great suggestion. We will recess at this time and
17 resume under the chairmanship of Commissioner
18 Ohigashi at 1:35.

19 Before I depart, I just want to thank
20 everyone involved in the Office of Planning and
21 Sustainable Development for your presentations
22 today. I always learn something new and helpful, so
23 thank you very much.

24 And I'm sorry I'm going to miss Ms. Bass'
25 presentation. I enjoyed her presentation last year,

1 and I'm sure the update would be of value. But I
2 will catch up with her as well.

3 So with that, I am going to recess the
4 meeting for now, and it'll reconvene at 1:35. Thank
5 you all.

6 **(Recess taken from 12:47 to 1:35 p.m.)**

7 **CHAIR OHIGASHI:** Back to order, our
8 training session at 1:35 p.m. And I guess we're
9 about to continue with our training session with Dan
10 Orodanker leading us today.

11 **MR. ORODENKER:** Thank you, Vice-chair
12 Ohigashi.

13 The next section we're going to be talking
14 about is sustainability and climate change. In our
15 rules under 15-15(c)24 and 25, we require
16 petitioners to give us information with regard to a
17 variety of issues that are sustainability and
18 climate change related.

19 At the current time, they're not a
20 decision-making criteria; however, because of the
21 way our statutes tie back into the state plan and
22 things like that, we are required to take them into
23 account.

24 And in order to explain the interaction of
25 how the statutes work and what sustainability and

1 climate change are, we have our sustainability
2 coordinator, Ms. Danielle Bass, to tell us all about
3 it. And I'll turn it over to her from here.

4 **MS. BASS:** Dan, aloha, and staff. Aloha,
5 Land Use commissioners. I'm glad to meet and work
6 with all of you. Looking forward to working
7 together. Again, my name is Danielle Bass. I'm the
8 state of Hawai'i sustainability coordinator. That's
9 a position with the Office of Planning and
10 Sustainable Development. Been in this role for about
11 the last five years.

12 So we're going to be -- I'll be providing
13 you and overview of planning for sustainability and
14 climate change as it relates to your kuleana as Land
15 Use commissioners and the dockets before you. So
16 we'll be going over policies and such.

17 So next slide, please?

18 Again, I'm going over the roles and
19 responsibilities of the Office of Planning and
20 Sustainable Development. Those rules expanded over
21 the last -- the history of these five years, the
22 establishment of the statewide sustainability
23 branch, which is the branch I'm housed in within the
24 Office of Planning and Sustainable Development.

25 We're going to a brief, very quickly

1 overview of climate change and global warming as
2 well as Hawai'i's work towards climate change
3 adaptation, our state sustainability and climate
4 targets. Those are the -- we need to achieve
5 something by 2045. So there's quite a lot of those
6 policies codified in our statutes as well as the
7 general summary and recommendations of the 2050
8 sustainability plan.

9 Next slide, please?

10 So going into the Office of Planning and
11 Sustainable Development.

12 Next slide?

13 You'll see in the last, in the recent
14 years -- it's 2022, so really very recently in the
15 last two, going into three years, our statutes in
16 the Office of Planning have significantly changed.

17 Not only were we renamed -- it's now the
18 Office of Planning and Sustainable Development that
19 my colleagues have actually presented on today,
20 earlier this morning with you, and the expansion of
21 the Environmental Review Program as well as the
22 inclusion of the Environmental Advisory Council,
23 which is attached to the OPSD, but we've also
24 expanded to work on climate adaptation and
25 sustainability planning and coordination as well as,

1 in terms of our coastal and ocean policy work, that
2 has also expanded into sea level rise adaptation
3 coordination, which my colleague from the CZM
4 Program presented to you earlier this morning.

5 Next slide, please?

6 So briefly, to just show to you the
7 statewide sustainability branch, again, it was
8 recently created in 2020. Currently, there is only
9 one staff -- that is myself -- but the Office of
10 Planning and Sustainable Development continues to
11 work with the legislature and the governor's office
12 and the administration to expand the staffing and
13 financial support to that branch.

14 This branch has a wide variety of roles.
15 It is required to develop, organize and promote
16 policies and programs to assist the state of
17 Hawai'i, not only our government agencies, state and
18 county, but our private sector, our nongovernment
19 organizations, in terms of sustainability targets as
20 well as our climate issues.

21 Next slide, please?

22 So what is climate change? We know from
23 climate science and data collected all the way
24 dating back to the 1800s that we are experiencing as
25 a world changes in global and regional climate

1 patterns from the rise in average global
2 temperatures due to the increase of human greenhouse
3 gas emissions.

4 Next slide, please?

5 So going a little deeper into the climate
6 data from our own Mauna Loa observatory, which is
7 often referred to globally in terms of our climate
8 science data collection, we see that currently our
9 CO2 emissions as a world is 418 parts per million.

10 Now, you'll see in the slide that safe
11 levels of atmospheric concentrations of CO2 is
12 really 350 parts per million of CO2. So we are far
13 beyond that 350. And the last time CO2 levels were
14 actually this high, humans did not exist.

15 This is why climate change is such a very
16 important issue not only to the sustainment of our
17 own generation, but for future generations of
18 humanity moving forward.

19 When you think about parts per million of
20 CO2 and greenhouse gas emissions, you can actually
21 convert that into carbon budgets, their operations,
22 their developments, which is really your carbon
23 footprint.

24 Next slide, please?

25 Now, expanding beyond CO2, you do hear a

1 lot about the carbon dioxide, which is quite
2 prevalent, but there are other greenhouse gases that
3 actually have high global warming potential as well.
4 This includes methanes, nitrous oxides,
5 hydrofluorocarbons, perfluorocarbons, as well as
6 sulfur hexafluorides.

7 So the methanes, you'll start hearing that
8 that's released in our landfills and our waste
9 management practices. And that's why you're starting
10 to see more sustainable efforts even in our waste
11 management.

12 Next slide, please?

13 So globally, you're seeing that the United
14 Nations is even taking action with among the 196 UN
15 states within the United Nations. And first and
16 foremost is the Paris Agreement. One hundred ninety-
17 six countries across the world have agreed to this
18 agreement, which limits -- which seeks to lower our
19 global warming potential through our greenhouse gas
20 emissions to hit only by limiting the temperature
21 increase of 1.5 degrees Celsius to pre- industrial
22 levels. Again, that's dating back to our data going
23 back to the 1800s from what we recall; okay?

24 Moving forward to the next slide,
25 concurrently, the United Nations has also created

1 what are known as the 17 sustainable development
2 goals. These are supposed to be intertwined, if you
3 will. Think of it as a weaving with the Paris
4 Agreement of greenhouse emission reduction.

5 So not only are we striving to lower those
6 greenhouse gas emissions, but we're really trying to
7 proactively, sustainably develop as we're trying to
8 meet the many serious issues affecting humanity,
9 including quality education, including affordable
10 housing, including equity.

11 We want to make sure as we strive to move
12 forward towards these -- to this progress toward
13 sustainable development, this is intertwined with
14 greenhouse gas emission reduction.

15 Next slide, please?

16 So what about Hawai'i?

17 Next slide?

18 We see that we are experiencing climate
19 change impacts now. We can see that there are coral
20 bleaching, excessive rainfall, and excessive drought
21 during la nina years, which is what we are within
22 right now. We're seeing significant amount of
23 droughts in our neighbor islands, specifically in
24 Maui and Hawai'i counties.

25 Concurrently, when our climate scientists

1 and data collectors show that we're actually -- that
2 the globe is changing back to el nino in our region
3 of the globe, we'll see more extreme rainfalls;
4 okay? So this is kind of like a back and forth of
5 the constant changes affecting Hawai'i. So you see
6 too much rainfall; you see not enough.

7 Additionally, we are islands, so we're
8 seeing the increase of sea level rise. We're seeing
9 coastal erosion. And this is again because of the
10 global warming potential that the globe is
11 experiencing, polar melts in the polar fields, which
12 is adding to that sea level rise.

13 Next slide, please?

14 In terms of what our state of Hawai'i is
15 doing, we actually have quite a few climate
16 adaptation resources available dating back to 2017.

17 So within the last five years, the state
18 of Hawai'i has documented this really strongly. You
19 see that in our Hawai'i Coral Bleaching Recovery
20 Report, the Sea Level Rise Vulnerability and
21 Adaptation Report published by the Hawai'i Climate
22 Commission, the State Hazard Mitigation Plan, which
23 is actually being updated in 2023. It will actually
24 include more sustainability and climate issues as we
25 look at hazards affecting our islands.

1 My colleague from the CZM Program also
 2 noted that they have produced the managed retreat
 3 feasibility strategies. This is something in terms
 4 of land use. Do we need to -- what do we need to do
 5 in terms of very vulnerable coastal communities;
 6 right? This is a little more farther out and not
 7 immediate, but how are we looking at that? Do we
 8 need to contemplate managed retreat?

9 The Department of Transportation also has
 10 resources that include Coastal Highway Program
 11 Report as well as their adaptation action plan. The
 12 CZM Program has, of course, produced the Ocean
 13 Resource Management Plan so we can protect those
 14 natural resources, and the South Shore Promenade
 15 Coastal Open Space Study.

16 Finally, we recently published last year
 17 the Hawai'i 2050 Sustainability Plan, which legally
 18 serves as the state of Hawai'i's Sustainability and
 19 Climate Adaptation Plan. And it is intertwined with
 20 the Hawai'i State Planning Act. So these things are
 21 connected.

22 Next slide, please?

23 Going into policy, what the state of
 24 Hawai'i is doing.

25 Next slide?

1 Here we are into the targets for
2 sustainability and climate change. In 2020, there
3 was a requirement for our state to actually reduce
4 our greenhouse gas emission levels by the year 2020
5 to 1990 emission standards. I'm pleased to report
6 that through all this collaboration as well as the
7 hard work of our colleagues in the Department of
8 Health that we have actually met those 1990 emission
9 levels and are below them.

10 So as a policy, we need to start moving
11 forward to even lowering our carbon and our
12 greenhouse gas emissions footprint moving forward.

13 Next slide?

14 Another statutory target is a ban on coal
15 power. You're starting to see this more prevalent in
16 our news reporting. By this year, coal operations
17 will cease at the end of this year. And you're going
18 to start seeing our coal producers on this island to
19 start shutting down that process in September. But
20 really, they need to conclude by the end of this
21 year.

22 So when we're seeing these prohibitions
23 and these requirements to lower our greenhouse gas
24 emissions and our fossil fuel dependency, we need
25 to, of course, compensate for that in terms of just

1 increasing our renewable clean energy opportunities
 2 within the state.

3 Next slide, please?

4 By 2030, there is a requirement on the
 5 Department of Agriculture to double food production
 6 and increase food exports in eight, going on seven
 7 years away. So when we think about our aina, when we
 8 think about our ag lands, there's a requirement on
 9 the state of Hawai'i to double our food production.

10 Additionally, this year the state
 11 legislature has actually expanded and supported
 12 local food production, food self-sufficiency and
 13 sustainability by codifying local farm to state meal
 14 goals.

15 So for the Department of Education, Public
 16 Safety, Health, Defense, and the University of
 17 Hawai'i system, by 2030 -- again, eight, going on
 18 seven years away -- these state entities must
 19 include 18 percent of local food served within their
 20 foods procured by these departments.

21 This is because these are heavy
 22 consumption of food departments, right, when you
 23 think about the University of Hawai'i, the meals
 24 that they provide the students, the Department of
 25 Education same. In our prison systems, what we're

1 feeding our inmates. Our Department of Health, what
2 we're feeding those patients in the state hospital.

3 So this is why we're starting to diversify
4 and require these local farm to state meal goals.
5 And by 2050, 50 percent of food sourced by these
6 departments must be produced locally. So when we're
7 thinking about the future of our land uses, the
8 future of our agricultural lands, we need to be
9 mindful of how are we getting, how are we meeting
10 these goals of 18 percent by 2030, 50 percent by
11 2050?

12 Moving on to the next target, as an
13 attempt to continue, diversify to continue to reduce
14 our emissions within the state of Hawai'i, the state
15 legislature last year codified a law to actually
16 reduce the carbon footprint of all of the state's
17 fleet vehicle systems; right? So by 2030, all of our
18 state fleet, all of those state cars you see are
19 required to be zero-emission vehicles.

20 So this is an opportunity when we're
21 thinking about our transportation impact, right,
22 just the commuting impact across all of our islands,
23 how do we reduce that carbon footprint? You see the
24 state leading that way through a requirement such as
25 this, and that transition.

1 That requirement is not on the general
2 public. It is just on the state government.

3 Next slide, please?

4 Additionally, we have the Aloha+
5 Challenge, which are 2030 sustainability goals. I
6 want to highlight this because you might have heard
7 messaging about the Aloha+ Challenge, which
8 highlight clean energy, local food production,
9 natural resource preservation, waste reduction,
10 smart sustainable communities in our built urban
11 environment, and green workforce development.

12 I want to stress, however, that as
13 important as this challenge is to meet these
14 respective goals by 2030, they're not legally
15 codified, as the other laws I have explained and
16 will continue to explain throughout this
17 presentation. This is a legislative resolution of
18 goals in which the legislature is urging all of us
19 to meet. These are not mandated. They are not laws.

20 Next slide?

21 Continuing in our sustainability and
22 climate policies, by the year 2035, this state
23 legislature has mandated that all University of
24 Hawai'i campuses, as well as Department of Education
25 campuses across the state, must be net zero. This

1 means that they are consuming the same amount of
2 electricity that they are producing in a clean way.

3 So you're going to start seeing a lot more
4 projects and developments in terms of photovoltaics
5 on these buildings, energy storage in terms of
6 batteries, and anything to diversify, lower the
7 carbon footprint of those facilities, as well as
8 generate clean, renewable energy opportunities of
9 those facilities. This is how you even out the
10 carbon footprint for facilities, even pre-existing
11 facilities.

12 Next slide, please?

13 Going on to state facilities, there are
14 mandates that future state facilities, if developed,
15 must be at least LEED silver. So when you think
16 about facility design, there is a sustainability
17 certification for LEED, which actually looks at not
18 only your energy consumption and production like we
19 just talked about, but also waste management
20 practices.

21 Is it only just regular trash that's going
22 to go to the landfill? Are we recycling any of this
23 trash? Are we composting any of this trash? How does
24 that impact the landfills on the island? How does
25 that impact the composting availability on the

1 island; right?

2 This goes to that zero waste movement your
3 scientists see. So waste management gets to be very
4 important in terms of facility operation, design,
5 building, and maintenance.

6 We've heard a lot about water. We want to
7 make sure our water resources are clean, we're not
8 overconsuming, and we are providing enough water
9 resources for the users, but we're not overconsuming
10 to make a terrible impact on the aina surrounding
11 the facility. So that is what LEED certification can
12 also do here.

13 In terms of design for state buildings,
14 and this year the legislature actually passed
15 requirements that all new state facilities must
16 maximize energy and water efficiency, energy
17 generation potential, as well as the use of building
18 materials that reduce the carbon footprint.

19 So this is what we're starting to see more
20 transitioning in terms of current facilities'
21 operation and maintenance.

22 Next slide, please?

23 The 2045 statutory targets. There's been a
24 lot of talk about these targets. There are three of
25 them, the first being, of course, the 100 percent

1 renewable portfolio standard by the year 2045.

2 Within that law, there are benchmarks. So
3 by the year 2030, the state of Hawai'i, as well as
4 its electric utilities, must meet 40 percent of
5 electricity generation -- clean, renewable
6 electricity generation that is, yeah, renewable --
7 40 percent by 2030, 70 percent by 2040, and 100
8 percent by 2045.

9 So when these types of projects, the
10 developments, start coming forward, we need to be
11 mindful of these benchmarks and that state target as
12 well in those decision-making opportunities.

13 Secondly, there's a zero emissions clean
14 economy target by 2045. This law requires the entire
15 state of Hawai'i, not just the government -- Hawai'i
16 -- to sequester more atmospheric carbon and
17 greenhouse gases than we emit, as quickly as
18 practicable or by 2045. So that is a net negative
19 requirement.

20 When you start hearing about carbon
21 neutrality, this is what you need to think about --
22 this law. Because we need to sequester, we need to
23 collect more greenhouse emissions, put that in our
24 soils. We need to start reducing greenhouse gas
25 emissions more than we emit; right?

1 So again, that goes back to your carbon
2 footprint. Think your carbon budgeting so that we
3 can hit net -- we can hit carbon neutrality and by
4 2045 hit net negative in terms of carbon consumption
5 and greenhouse gas consumption and emissions.

6 Next slide, please?

7 Finally, by 2045, all state and county
8 facilities must reclaim water, 100 percent of its
9 water consumption. It must be reclaimed. This is
10 water recycling, just plain and simple. With the
11 exception of potable and drinkable uses.

12 So, you know, when you got to go to fill
13 your water bottles, no worries. But in terms of
14 those sinks, in terms of those toilets, in terms of
15 irrigation surrounding that facility, that needs to
16 be -- that requirement means that that water needs
17 to be recycled according to law.

18 So you're starting to see the state and
19 the counties making these -- imposing these mandates
20 upon themselves. And this is something that we can
21 consider for even a broader impact for all of our
22 state.

23 Next slide?

24 Finally, in terms of the statutory
25 targets, the 2050 statutory target, mandatory

1 cesspool upgrades by 2050. Across the state of
2 Hawai'i, it is estimated that there are 88,000
3 cesspools attached to our residential communities
4 and homes. There is a requirement on these homes, on
5 our counties, our state, on our Department of
6 Health, to convert all of these cesspools to the
7 upgraded, either through septic systems or threw
8 sewage management. But they must cease to exist by
9 2050.

10 So that is the final sustainability
11 statutory target that our policymakers have codified
12 in our statutes.

13 Moving on into the Hawai'i 2050
14 Sustainability Plan, there's a brief overview of our
15 process and public outreach. In terms of our
16 process, we've actually -- we had a very extensive
17 public outreach. This is during the middle of the
18 pandemic in 2020, and we're very proud that we
19 actually heard from nearly 1,000 people on virtual
20 platforms. We couldn't go island to island.

21 So what was great about that was we had
22 people from other islands interacting with each
23 other and understanding that these communities,
24 these rural areas, these vulnerabilities are
25 regionally based and can be different based on which

1 island and region and community you're from.

2 We actually reviewed over 150 of our laws
3 and policies in terms of Hawai'i sustainability and
4 climate planning. We engaged with over 65 state and
5 county reviewing agencies and had over 230
6 participating organizations in this outreach -- all
7 to whittle this back down to easily consumable,
8 understandable eight focus areas, 30 strategies, and
9 262 recommendations.

10 This plan is available at the Office of
11 Planning and Sustainable Development's website and
12 our offices. If you would like a copy, please reach
13 out to me or the LUC staff. I'll be happy to provide
14 it to you.

15 Next slide?

16 In terms of the Hawai'i 2050
17 Sustainability Plan, what we wanted to achieve was
18 alignment of our state laws, our state plans, our
19 county climate and sustainability plans, the Aloha+
20 Challenge that I presented to you earlier, the
21 governor's Sustainable Hawai'i Initiative, all in
22 alignment with these United Nations sustainable
23 development goals that over 196 countries signed
24 onto to give that final product of the Hawai'i 2050
25 Sustainability Plan.

1 Again, by law this plans serves as our
 2 Sustainability and Climate Strategic Action Plan for
 3 this decade between 2020 and 2030. It will be
 4 revised when we get closer to the 2030-2040 decade.
 5 So this is what we're working with now.

6 Next slide, please?

7 Going into our recommendations, we have
 8 identified eight focus areas recommended for this
 9 decade of action ranging from, first and foremost,
 10 coming out of the COVID-19 pandemic, we know we need
 11 to promote a sustainable economic recovery. We need
 12 to continue to reduce our greenhouse gas emissions.

13 We need to improve climate resilience --
 14 that's the adaptation, the sea level rise --
 15 building our urban area to address urban heat
 16 impacts, all of these climate adaptations through
 17 climate resilience, advancing sustainable
 18 communities in our urban areas, advancing equity,
 19 making sure we're not disenfranchising different
 20 communities, vulnerable populations, and that all of
 21 Hawai'i can be equitably, affordably sustainable and
 22 climate resilient.

23 We need to continue to institutionalize
 24 sustainability throughout government, preserve our
 25 natural environment, of course, through clean water,

1 marine resources and ecosystems and natural resource
 2 protection, and all of this while perpetuating the
 3 traditional ecological knowledge and values of our
 4 kanaka maoli, our indigenous people, who have been
 5 here before we all moved, before all of these
 6 residents, our 1.4 million residents and this
 7 population.

8 We need to go back to our roots and learn
 9 through that perpetuation of how we can move
 10 forward.

11 Next slide, please?

12 Again, I already presented on these eight
 13 focus areas. If you see -- if you take a look in the
 14 plan through sustainable economic recovery, three of
 15 these strategies focus on agricultural
 16 diversification and expand into economic
 17 diversification as well as lowering our tourism
 18 footprint.

19 Next slide?

20 In terms of reduction of greenhouse gas
 21 emissions, not only do we need to continue to
 22 manage, measure, and maintain greenhouse emission
 23 reduction, but incorporate this into our decision-
 24 making processes, our planning processes, et cetera,
 25 and start promoting energy conservation and

1 efficiency through outreach communication. So more
 2 focusing on composting, waste generation,
 3 alternative modes of transportation, all of these
 4 collectively to reduce our GHGs.

5 Next slide, please?

6 In terms of improving climate resilience,
 7 again integrating adaptation resilience into
 8 planning and implementation decision making, as well
 9 as implementing actions to improve the state's
 10 resilience to climate change.

11 This even goes into hurricanes. How can we
 12 strengthen our hurricane shelters to make sure we're
 13 more -- we are stronger as a people, and our
 14 hurricane shelters are even improved and adaptable,
 15 since we know that storm systems are actually
 16 increasing, and more severely, in terms of managing
 17 sustainable communities, advancing smart growth
 18 initiatives, and sustainability in our operations
 19 and design?

20 Next slide, please?

21 In the focus area to advance equity, how
 22 do we implement these strategies; right? We've
 23 identified opportunities to implement these
 24 strategies to make sure this is more equitable and
 25 affordable for our people in Hawai'i as well as

1 through institutionalizing sustainability -- that
2 focus area -- ensuring that these policies are
3 starting to align and not contradict with each
4 other. We want alignment when we're striving for
5 this future.

6 Next slide?

7 In terms of the focus area to preserve our
8 natural environment, we want to continue to improve
9 our water quality. We want to ensure that we have
10 enough water supply for future generations, not only
11 now, but for our future.

12 We want to continue to preserve and
13 protect our marine ecosystems and ensure that they
14 are protected from more climate change impacts as we
15 see this data and science continuing to come
16 through.

17 We need to continue to protect and manage
18 those watersheds. Again, we know that our watersheds
19 lead to more water on our islands, which, of course,
20 is a source of life for all of us as we coexist with
21 this natural environment, so multiple strategies
22 identified there to achieve this focus area.

23 Next slide, please?

24 And again, to lift all of this up,
25 perpetuating our traditional ecological knowledge

1 and values throughout all of these focus areas. It's
 2 not one or the other. It's all of these integrated
 3 together in alignment.

4 Next slide, please?

5 I just wanted to mahalo the Land Use
 6 Commission and the commissioners. Earlier this year
 7 in April 2020, Hawai'i's 2050 Sustainability Plan
 8 actually won a national merit award for excellence
 9 in sustainability from the American Planning
 10 Association at our national conference for the state
 11 and regional plans category. That's from the APA's
 12 Sustainable Communities Division.

13 So I want to mahalo all of you for that
 14 opportunity and just mahalo for the support. It
 15 really meant a lot to see the LUC there with me as
 16 we accepted this award. So it just shows that
 17 collaboration.

18 And finally, I just wanted to end this
 19 with the kuleana that our best preparation for
 20 tomorrow is doing the best you can today. So thank
 21 you for your service and support of the state of
 22 Hawai'i. And I'm available for any questions.
 23 Mahalo.

24 **COMMISSIONER KAHELE:** Chair?

25 **CHAIR OHIGASHI:** Yes, Commissioner Kahele?

1 **COMMISSIONER KAHELE:** Well, I guess maybe
2 a comment and a question.

3 **CHAIR OHIGASHI:** Sure.

4 **COMMISSIONER KAHELE:** You know, with all
5 this stuff that's going on, you know, saving the
6 planet, you know, and all of these environmental
7 issues going on, how does landfills affect your
8 department or the state from accomplishing the goals
9 that you're trying to accomplish by meeting the 2050
10 goal?

11 **MS. BASS:** In terms of the landfills from
12 a sustainability lens, you need to think about the
13 emissions generated from the landfill. So with all
14 the waste just aggregated in a specific site, you
15 start seeing the methane emissions released in those
16 landfills, which go back to that slide from
17 greenhouse gas emissions.

18 You don't want to actually increase your
19 greenhouse gas emissions, so we need to find
20 opportunities to actually either capture those
21 methane emissions and use that for renewable natural
22 gas or find alternatives to landfilling, like
23 composting.

24 **COMMISSIONER KAHELE:** Yeah. Thank you.
25 Because, you know, we've been wrestling this issue

1 about landfills on O'ahu for many years; right? And
2 you came up with some alternatives -- HazMart,
3 replacing landfills. But it's never happened.

4 We've got two current landfills on O'ahu
5 that we know -- one's in Nanakuli, and one's in
6 Waimanalo Gulch -- so I guess with one taking
7 construction demolition, I don't know you guys going
8 to be able to prevent the landfill from continuing
9 to take construction demolition with all the
10 construction going on here; right?

11 You know, Kakaako, Kapolei, all over the
12 island we got all construction, tearing down,
13 demolishing. And in Waimanalo Gulch, it's been going
14 on for years. And I believe there's a cap or a term
15 limit of when they can continue to operate.

16 So is the state looking at possibly
17 looking at alternatives instead of trying to look
18 for another location to build another landfill after
19 Waimanalo Gulch closes down, I believe, in 2027?

20 **MS. BASS:** In terms of the state, I guess,
21 pool, in particular what agency are you considering?

22 **COMMISSIONER KAHELE:** Well, I believe --
23 huh? Yeah, there's a special use permit right up
24 until, I believe, 2027. So it's kind of like the
25 city's kuleana.

1 **MS. BASS:** Yeah.

2 **COMMISSIONER KAHELE:** But yet, the state
 3 is pushing for this environmental control stuff,
 4 right, and so, you know, I guess again my question
 5 is what can the state do to try to prevent another
 6 landfill where we're going to be experiencing all
 7 these problems with emissions and methane gas, and
 8 we end up with the same problem that we currently
 9 have right now with the current landfills?

10 **MS. BASS:** Well, there was a law that was
 11 passed by the legislature in terms of limiting the
 12 availability of landfills in the proximity that they
 13 are adjacent to residential communities.

14 In terms of a special permit, I'd have to
 15 actually defer that to the director of the Office of
 16 Planning and Sustainable Development. That might be
 17 a more appropriate question she can answer.

18 But alternatives, Commissioner Kahele, is
 19 we can start looking into composting, definitely.
 20 And composting is actually quite limited on this
 21 island and other islands.

22 **COMMISSIONER KAHELE:** I guess my concern
 23 and my question would be most of the stuff that's
 24 going there is municipal solid waste, stuff that's
 25 coming out of the homes; right? If it cannot be sent

1 to H-Power, they going still be at Waimanalo Gulch.

2 So I don't know how -- if the state would
 3 be able to come up with, you know, a compost plan or
 4 something that would be able to accommodate the
 5 stuff that's coming out of the homes, municipal
 6 solid waste, that's not being able to burn. It's
 7 still going to the dump.

8 **MS. BASS:** Yes.

9 **COMMISSIONER KAHELE:** Yes. So anyway --

10 **MS. BASS:** Yes. Yes. Actually, that is
 11 something that is -- you might see it at the
 12 legislative level. There's so much advocacy for
 13 composting, not only on this island, but on others,
 14 and we're really starting to have that conversation
 15 on a policy scale in terms of land use, waste
 16 management with our regulators at the Department of
 17 Health, and even the counties.

18 We need to make more progress on a policy
 19 level and in terms of financing composting
 20 throughout the state of Hawai'i and our respective
 21 counties.

22 **COMMISSIONER KAHELE:** Thank you, Danielle.

23 Yeah. I just have one for Danielle. You know, what
 24 are the LUC doing with these, you know, these goals?

25 **MR. ORODENKER:** That gives me an

1 opportunity to ask Danielle a couple of questions. I
2 sure appreciate, and probably make me pay for it
3 later.

4 Okay. From a pragmatic standpoint when
5 we're making decisions, what should we be looking
6 for in submittals with regard to climate change and
7 sustainability? I mean, other than the fact that,
8 you know, we obviously don't have to be wary of
9 projects that are being built in areas that are
10 prone to flooding, what else should we be looking
11 for?

12 **MS. BASS:** Well, I know that the LUC has
13 already done a very good job in leading that through
14 the administrative rules you folks have adopted.
15 You're starting to see carbon footprinting, carbon
16 budgeting in terms of projects coming before you,
17 and I think that that's very helpful.

18 We're starting as a state to really go
19 into carbon footprinting and carbon budgeting
20 through all these greenhouse gas emission reduction
21 mandates, and so when we think about that, you need
22 to think about just the scopes of those emissions.

23 How direct are those emissions? And it's
24 really interesting when you start talking about
25 Scopes 1, 2, and 3, you know, and the direct -- if

1 the material of that project, of that development,
2 is actually -- you know, what is the carbon
3 footprint, the impact of that, versus even the
4 transportation of that material, how it came on a
5 ship, how it came on an airline. That's going to be
6 your Scope 3 indirect emission.

7 So when you start thinking about carbon
8 footprinting, when you start integrating that into
9 your projects, these are really interesting
10 conversations to have, is just the footprint. How
11 much kuleana are we going to look at? The direct
12 climate impact of building the home, you know, and
13 whether or not the equipment is actually used as
14 collected from a renewable send, a renewable energy
15 or a fossil fuel energy? That is a direct Scope 1
16 emission versus the import, the Scope 3 emission.

17 So carbon footprinting is very important.
18 And I think that that is a wonderful way to go. In
19 terms of -- so that's your climate mitigative way to
20 integrate into projects, proposals, et cetera.

21 In terms of climate adaptation, you can
22 start looking about the use of the land. Of course,
23 you mentioned sea level rise and proximity to that.
24 But also, in terms of adapting, how green is that
25 space? How much concrete is around? How much actual

1 foliage is nearby?

2 We know that with additional concrete,
3 there is increased opportunity for runoff into our
4 marine ecosystems. So when we see urban areas, we
5 can integrate more foliage, more local fauna, more
6 trees to sequester carbon emissions, to provide
7 urban heat island reductions in the development
8 strategy.

9 So these are ways through adaptation you
10 can start incorporating, or even thinking about it
11 for future projects and proposals.

12 **MR. ORODENKER:** Okay. While we're kind of
13 on the subject of carbon footprints, among the
14 things we -- for some of the commissioners who
15 weren't here -- are understanding is that one of the
16 things that we ran into with a project was they
17 claimed carbon neutrality, but just so everybody's
18 aware, that's in a -- measuring that is an emerging
19 field.

20 So Danielle's difficulty is what metrics
21 is she going to apply, you know, what measurements
22 and things like that? So you may see some comments
23 from OPSD that are not definitive, only because we
24 don't know -- really know right now what to measure.

25 But let me ask you a question, another

1 question, Danielle. I mean, I'm sorry Bryan's not
2 here, because he was talking about nexus on
3 conditions. But given that the state goals and the
4 state sustainability plan and the state plan in
5 general, do you think it's reasonable to say to a
6 developer, for instance, that one of the conditions
7 on the project is that all the homes have potable
8 tag on the roofs?

9 I mean, is that -- can we go that far, do
10 you think? Is that -- do you think that's -- does it
11 have a nexus between sustainability goals and
12 requesting that type of thing from a petitioner?

13 **MS. BASS:** Well, of course, I respect all
14 of the decisions of the Land Use Commission. But you
15 could actually start seeing alignment of ideas like
16 that with the renewable portfolio standard, with the
17 zero emissions clean economy target by 2045.

18 In order to get to these, we need to
19 include more renewable generating clean energy and
20 storage capacity. So when we want electric vehicles,
21 so to speak, in our cars -- you know, in our homes,
22 excuse me, and in our own households, we need to
23 ensure that there's an electrical charger.

24 We need to incent -- you know, this is
25 from a grander standpoint, right, from a statewide

1 standpoint. We really need to start incentivizing
2 our residents to have electrical vehicle chargers at
3 their homes; right? You know, you go to -- like,
4 what is that, that phrase, you know, it's older but,
5 you know, you got to build it. If you build it,
6 they'll come.

7 **MR. ORODENKER:** If you build it, they will
8 come.

9 **MS. BASS:** Same concept, right? They need
10 the charger. They're not going to buy an electric
11 vehicle if they don't have a charger in their house;
12 right? Then you don't have to drive all over
13 Honolulu for charge, you know. That's not going to
14 work. That's not going to -- it's going to impose
15 more hardship on the person, on the individual, on
16 the public; right?

17 So we need to start thinking about
18 opportunities to really connect our houses as
19 electric vehicle charging stations, as storage
20 capacity; right? Batteries, right? You're going to
21 need a battery to charge the electric vehicle. And
22 how does that relate to photovoltaics on your homes?
23 You want to generate the energy. So these things are
24 all interconnected.

25 Now, whether the Land Use Commission wants

1 to make that decision, I absolutely defer to you.
2 But when we're talking about climate mitigation and
3 sustainability, that's how I think we should look
4 at.

5 **MR. ORODENKER:** Well, will we be getting
6 comments from the Office of Planning and Sustainable
7 Development with regard to some things that we may
8 want to require, like charging stations in homes on
9 new developments and things like that? I mean, is
10 that something that you foresee, the Office of
11 Planning and Sustainable Development making
12 recommendations like that to the Land Use
13 Commission?

14 **MS. BASS:** Well, again, I'm not the
15 director, so I don't want to speak for the entire
16 OPSD. However, we are definitely working together as
17 an agency. And, of course, there is a limiting
18 factor of there only being one individual in my
19 respective branch. And, of course, my kuleana is to
20 advise not only you, but all the state of Hawai'i
21 and the counties and the private sector.

22 So I would hope so. I would like to see
23 that. And, you know, I do see alignment with the
24 RPFs with the zero emissions clean economy as
25 opportunities to start aligning these types of

1 projects. You know, there is -- I mean, I am not a
 2 lawyer, so I would hope that Bryan were here, but I
 3 could see alignment with those statutes.

4 **CHAIR OHIGASHI:** Commissioner Kahele wants
 5 to speak.

6 **COMMISSIONER KAHELE:** Chair, just one more
 7 comment. Oh, if you buy me a Tesla, I'll buy the
 8 battery. But --

9 **MS. BASS:** Got to get the charger, too,
 10 yeah?

11 **COMMISSIONER KAHELE:** You know, and when I
 12 was referring to the Waimanalo Gulch, you know, and
 13 I got to go back to these landfills.

14 **MS. BASS:** Yeah.

15 **COMMISSIONER KAHELE:** We have one on every
 16 island. So your 2050 goal, does that also include
 17 reducing and finding all modern alternatives again
 18 to replace these landfills that's located in the
 19 Native Hawaiian communities that's being -- that
 20 we're currently being impacted by? You know, and I'm
 21 just curious.

22 **MS. BASS:** Yes. In terms of the Hawai'i
 23 2050 Sustainability Plan, the State Sustainability
 24 and Climate Plan, I do believe of the 262
 25 recommendations, there is one, or a few I can't -- I

1 do not have them all memorized, and I apologize to
 2 you, Commissioner.

3 But there is -- we did take on some
 4 landfill recommendations in there, and really it's
 5 just to reduce the footprints of landfills. That is
 6 a recommendation in the 2050 Sustainability Plan. It
 7 is a recommendation.

8 And we wanted to see opportunities to
 9 convert the emissions from waste generation,
 10 including of landfills and wastewater treatment
 11 facilities so that we can capture those emissions
 12 and convert them into renewable natural gases.

13 **COMMISSIONER CHANG:** Mr. Chair, can I ask
 14 a comment?

15 **CHAIR OHIGASHI:** Normally, I would say no.
 16 Go ahead, Commissioner Chang.

17 **COMMISSIONER CHANG:** I'll make it quick.
 18 I'll make it quick. As always, Danielle, you are
 19 just so impressive and so energetic. I really
 20 appreciate your passion.

21 This is is sort of a follow-up on Dan's
 22 kind of question, is have you quantified impacts for
 23 purposes of mitigation? So can we tell if you build
 24 a certain amount of square footage or acreage, this
 25 is what your impact will be; therefore, it's easier

1 for us to quantify in more dollar values? So to make
2 an appropriate mitigation measure.

3 **MS. BASS:** No. I have not, nor has the
4 state Office of Planning and Sustainable
5 Development, nor has any state agency to my
6 knowledge.

7 However, from what I understand across
8 sustainability professions is that there are metrics
9 and opportunities available globally for that. The
10 state of Hawai'i hasn't integrated it.

11 And, you know, it could possibly be that
12 the fact that the state sustainability branch is --
13 the lack of staffing becomes an issue; right? I
14 mean, if we -- if there's only really the one
15 individual, if there are no staff, we're -- I'm not
16 going to impose anything; right? I'm not going to
17 come down with a hammer; right?

18 I mean, there's no staff to come out with
19 that metric to post on our website, to integrate
20 with our community, right, to help all of the other
21 planning firms and agencies to start adopting that.
22 So that lack of staffing really matters.

23 **COMMISSIONER CHANG:** So let them know that
24 administration, you know, lack of staffing may be a
25 signal to their priorities.

1 **MS. BASS:** Yes.

2 **CHAIR OHIGASHI:** Who wants to speak? Oh,
3 Commissioner Okuda?

4 **COMMISSIONER OKUDA:** Thank you, chair.

5 I'd like to follow up on what Commissioner
6 Kahele's landfill questions, because I think it was
7 my motion that I brought in front of the Land Use
8 Commission which set the deadline to close down the
9 Waimanalo Gulch landfill; okay?

10 And my comments aren't intended to negate
11 any of that or anything like that, but following up
12 on what Commissioner Kahele said, but just to give a
13 short explanation.

14 One of the reasons why I brought the
15 motion and in support of the motion was my view was
16 that the standard of review on locating these types
17 of negative public facilities should be the same as
18 if the dump was going to be in Lanikai. I said
19 Kahala or Portlock. And there's just something wrong
20 with a -- where somehow these types of facilities
21 end up on the Leeward coast.

22 But I recognize the fact that we need a
23 landfill. And without commenting, you know, on what
24 evidence which may or may not show up if the PBT
25 matter ever ends up in front of us, you know, there

1 is going to be a certain amount of construction
2 materials that have to be disposed of in a
3 construction landfill. Because it's a balancing
4 test.

5 But unless there's an alternative, if we
6 have no construction landfill, we're not going to
7 have construction. And then the question is, you
8 know, who is going to bear the burden of the fact
9 that now we're not going to have jobs? Because some
10 people would argue, you know, the burden of not
11 having jobs may disproportionately fall on, you
12 know, people who don't necessarily live out in
13 Nanakuli -- or don't live out in Portlock, Kahala,
14 or Lanikai.

15 So my question is basically this. Given
16 the fact that at least the media reports that
17 there's been difficulty of the landfill committees
18 that the city and county is putting together to site
19 new landfills and there's these restrictions being
20 placed by the legislature, wouldn't it be a good
21 rule for the state of Hawai'i, the state government,
22 to take the lead and try to facilitate among all the
23 counties, you know, giving technical advice to try
24 to deal with this landfill issue? Because it's going
25 to be -- it's a problem on all the counties.

1 And, you know, we can talk about all these
2 great goals and objectives, but if we don't have
3 concrete solutions, we're not going to have -- we're
4 going to have difficulty maintaining jobs, we're
5 going to have difficulty doing other things. And,
6 you know, and that might be, you know, a similar
7 type of harm on local working people.

8 So I would urge the state to actually
9 start stepping in and showing the leadership, or at
10 least facilitating, you know, trying to bring new
11 solutions here. Because I personally don't believe,
12 based on the evidence I was presented in the
13 Waimanalo Gulch case, that we can totally eliminate
14 landfills. And we just have to try to be a little
15 bit smarter and more aware about how we do it.

16 But I do think that that decision was
17 correct, because there is something, I believe,
18 fundamentally wrong when certain communities end up
19 with the dump and other communities don't.

20 Thank you, Mr. Chair.

21 **CHAIR OHIGASHI:** No problem, Commissioner
22 Okuda. I'm sorry I didn't look that way.

23 Does anyone else want to make a comment?

24 Before anybody else makes a comment, I
25 remember that case, and I remember that the first

1 motion that you made was to deny the extension, and
 2 you and I were the only two votes, I think --
 3 passed. But anyway --

4 **COMMISSIONER OKUDA:** Yeah. That's correct.
 5 Your recollection's correct. Denied the permit
 6 totally.

7 **CHAIR OHIGASHI:** Do we have any other
 8 questions you want to ask?

9 **COMMISSIONER KAMAKEA-'OHELO:** Yes, chair.

10 **CHAIR OHIGASHI:** Mr. Kamakea-'Ohelo?

11 **COMMISSIONER KAMAKEA-'OHELO:** Hey, you got
 12 it. Good try. Right on.

13 **CHAIR OHIGASHI:** Mahalo.

14 **COMMISSIONER KAMAKEA-'OHELO:** Mahalo.
 15 Danielle, mahalo for the great
 16 presentation.

17 I really just have one simple question,
 18 and this comes from the agricultural perspective and
 19 point of view. To the best of your knowledge through
 20 the research and studies done, what is the best
 21 accepted practice to sequester carbon?

22 **MS. BASS:** So the Office of Planning and
 23 Sustainable Development has attached to it the
 24 Greenhouse Gas Sequestration Task Force. It's
 25 another unfunded and lack of staffing board and

1 commission in the state of Hawai'i. However, what I
2 want to highlight about that is it's one of the two
3 climate boards and commissions in the state of
4 Hawai'i. So we have the Mitigation Adaptation
5 Commission as well as the Greenhouse Gas
6 Sequestration Task Force.

7 So the Office of Planning and Sustainable
8 Development, myself, the director, we've actually
9 been working with that for the last five years, this
10 task force. It is coming out with a preliminary
11 report at the end of this year to the state of
12 Hawai'i about how we can best sequester. And, of
13 course, that task force has to come out with future
14 reports every year following in terms of increasing
15 sequestration.

16 In terms of the best, there is data, and
17 there are entities that have actually conflicting
18 data. How I want to answer your question is we just
19 need to do it. So the best way to do it in
20 agriculture, we can see that through our plant
21 management, where our plants, our grasses, we can
22 start sequestering more.

23 We can see that there are ranching; right?
24 And through just sustainable ranching management
25 practices that the Hawaiian Cattlemen's Council has

1 actually testified that they are already conducting.
2 We can see that there are forestry management as
3 well.

4 So these are the leading waves in our
5 natural working lives that we can start seeing more
6 integrated sequestration opportunities.

7 **COMMISSIONER KAMAKEA-'OHELO:** Okay. Mahalo
8 for answering that question. Let me follow up with
9 this question.

10 **MS. BASS:** Sure.

11 **COMMISSIONER KAMAKEA-'OHELO:** For every
12 new home built, exactly how much trees need to be
13 planted to sequester and attain the state's goal of
14 a carbon neutral society?

15 **MS. BASS:** To the best of my knowledge, I
16 do not have an answer to that question.

17 **COMMISSIONER KAMAKEA-'OHELO:** For the
18 record, they don't know. Nah, nah. Mahalo. Mahalo.
19 Right.

20 **MR. ORODENKER:** Okay.

21 **CHAIR OHIGASHI:** Any other questions?

22 I have a few. Just a couple. You mentioned
23 status 1, 2 -- about different --

24 **MS. BASS:** Scope 1, 2, and 3.

25 **CHAIR OHIGASHI:** Scope 1, 2, and 3.

1 **MS. BASS:** Yes.

2 **CHAIR OHIGASHI:** We have rock quarries on
 3 Maui, and we have a rock quarry going on. If we --
 4 one of the things is that the rock quarry serves the
 5 area. And it requires transportation. If we were to
 6 buy those rocks and we have to ship them over, is
 7 that the type of choices that we must make in the
 8 future, whether or not to locally produce these
 9 things versus shipping them in, which would add to
 10 the carbon footprint?

11 **MS. BASS:** So in climate mitigation and
 12 carbon footprinting, you need to identify the
 13 source. And that is the Scope 1, 2, and 3. Now, that
 14 is a whole other presentation, which I could provide
 15 to you at a later date, if you'd like. There are no
 16 mandates on our state right now -- right now to do
 17 this day on Scopes 1, 2, and 3 emissions. Right now
 18 we're just generally reducing emissions; right?

19 I could see possibly, as a sustainability
 20 professional, where that becomes something later,
 21 where our policymakers start being more mindful of
 22 Scopes 1, 2, and 3.

23 But to answer your question, Scope 1 is
 24 your direct, right, versus the coming in is the
 25 Scope 3. And when we start having these greenhouse

1 gas emission conversations, Hawai'i has a very large
2 Scope 3 emission; right? All the imports. And right
3 now we need to figure whether we're measuring those
4 correctly and measuring them consistently.

5 **CHAIR OHIGASHI:** In the past there was a
6 big controversy about sand mine. And now, because
7 the sand mine was transporting to O'ahu or going off
8 island, so my question would be is that now O'ahu
9 may not be -- avail themselves of close-by sand from
10 Maui and has to go out further. Would that kind of
11 balancing test be applied in that kind of situation
12 to determine whether or not we should be carbon
13 emission centers?

14 **MS. BASS:** That's a really good question.
15 And I think when we get farther out, you know, that
16 might become more prevalent as a question. What I
17 think now, when we do greenhouse gas emissions, we
18 need to understand that our sources right now, our
19 electrical sources are fossil fuel based, are coal
20 based; right?

21 That is the lowest hanging fruit right
22 now; right? Our transportation is -- 1 percent of
23 our transportation statewide is only zero emission
24 vehicles -- 1 percent; right? So when we think about
25 emissions, it's our energy sector, it's our

1 transportation; right?

2 So when we start looking at some materials
3 or even our agricultural areas, right, I think that
4 those are important, but we really need to focus.
5 And it says so in our greenhouse gas emissions
6 report. We need to focus on our energy sector and
7 our transportation center.

8 **CHAIR OHIGASHI:** And I understand that,
9 but from the Land Use Commission standpoint, I'm
10 looking at situations where we may have to make some
11 tradeoffs or -- because we don't affect fossil fuel
12 as much. We don't do that kind of -- that's not our
13 kuleana or -- our kuleana, so.

14 Ours would be how does the carbon --
15 reserving or getting the best carbon outcome versus
16 balancing it off with the various tests that we must
17 do regarding the environment and different aspects
18 of that.

19 I'm just trying to put it all together in
20 my mind, because, yeah, the carbon issue is our life
21 or -- is our life. But the question is how do you
22 place it within the scheme of making a decision on a
23 land use matter that has all this other --?

24 **MR. ORODENKER:** Chair Ohigashi, let me see
25 if I -- I think I can help Danielle out a little bit

1 here.

2 Okay. So with regards to special permits
3 and DBAs, we have specific criteria that we have to
4 take into account. And one of the points that I was
5 trying to make at the beginning was that because we
6 require sustainability information to be provided in
7 these permits now and because we're required to take
8 the state plan and the various subsets of that into
9 account, it's not unreasonable for a commissioner to
10 ask a petitioner -- for instance, let's say it's a
11 rock quarry -- have you done a carbon analysis on
12 how much emissions are involved with shipping send-
13 over as opposed to mining it locally, and making
14 that a part of your decision.

15 If, for instance, the testimony was that
16 it's for whatever reason, and I have no clue, that
17 shipping the send-over was actually -- had a smaller
18 carbon footprint than buying it here, then it's
19 reasonable for the commission to make that a part of
20 its decision.

21 But once again, that evidence has to be on
22 the record, and a lot of times petitioners aren't
23 prepared to answer that question.

24 **CHAIR OHIGASHI:** Okay. And the only reason
25 about the sand is that I live on a sand dune.

1 **MR. ORODENKER:** Well, we're going to mine
 2 under your house.

3 **CHAIR OHIGASHI:** No. And the problem with
 4 the sand dunes is that it has significantly suffered
 5 from --

6 **MR. ORODENKER:** Well, there are other
 7 issues, you know.

8 **CHAIR OHIGASHI:** And so I'm just trying to
 9 figure out in my mind how we're going to balance
 10 this out versus -- because there are good things
 11 that can -- that we can produce here that would
 12 reduce our carbon footprint, or state's carbon
 13 footprint.

14 **MR. ORODENKER:** Well --

15 **CHAIR OHIGASHI:** But then, it affects
 16 other parts of the environment as well as the
 17 cultural aspects of it. And so, I just look at that
 18 as --

19 **MR. ORODENKER:** Well, it's actually an
 20 interesting question, because if there are cultural
 21 elements involved with sand mining, that's a public
 22 trust doctrine issue. But then again, it could be
 23 argued that, you know, carbon footprints are a part
 24 of -- you know, in fact the environment -- and that
 25 could be a public trust doctrine issue as well.

1 So I'm just glad I'm executive officer and
 2 I'm not a commissioner is what I'm saying.

3 **CHAIR OHIGASHI:** Well, at this time I only
 4 have two more years of involvement in that. Anyway,
 5 I'm just raising that as some issues that I thought
 6 would be interesting to raise.

7 Does anybody have any other questions, I
 8 wonder?

9 **MR. ORODENKER:** I have a couple of
 10 comments.

11 **CHAIR OHIGASHI:** Okay. Sure. I'll
 12 recognize Dan Orodenker if there's -- for any final
 13 comments.

14 **MR. ORODENKER:** A couple of comments that
 15 I want to make. One of them is that then we have --
 16 the Land Use Commission staff year-in, year-out for
 17 five years now has done the best we could to support
 18 Danielle's efforts at the legislature for increased
 19 staffing.

20 I've made it very clear to the legislators
 21 that Danielle not having staffing is hampering our
 22 efforts. And so I just want everybody to know that
 23 we're very much in support of what Danielle is doing
 24 and doing everything we can to try and get her the
 25 staff so that she has the ability to do some of

1 these things that she's talking about.

2 The second comment that I want to make is
3 that, you know, there are some aspects of
4 development proposals that we look at and that we
5 should be concerned about that aren't as readily
6 apparent as impacts with regard to sustainability
7 and climate change.

8 And none of the commissioners who are
9 currently sitting on the commission except for
10 Nancy, I believe, was -- were trained or went to the
11 conferences by the Blue Zones Project on walkable
12 and sustainable projects.

13 And the focus of those conferences was on
14 livability, creating communities that are livable.
15 But there are -- there's also an environmental side
16 of that. If you create walkable communities and we
17 require walkable communities to be created, then you
18 have two immediate impacts.

19 One of them is on traffic, because now you
20 have fewer trips, but those fewer trips report in
21 fewer carbon emissions, which is also a
22 sustainability goal. So that's one of the other
23 things that we urge the commissioners to look at, is
24 the walkability of the projects that are being
25 developed.

1 Hopefully, we'll be able to get back to --
2 the Blue Zones group has not done one of those tours
3 since before the pandemic, but hopefully, we'll be
4 able to get back to doing some of those so that the
5 commissioners can understand what's happening.

6 Commissioner Atta, were you privy to any
7 of those when you were planning director to the Blue
8 Zone Stores? Yeah. Yeah.

9 Anyway, thank you, Danielle. Thank you
10 very much as always, and we appreciate it. And we
11 will continue to do what we can for you.

12 **MS. BASS:** If I may?

13 **MR. ORODENKER:** Yeah.

14 **MS. BASS:** I wanted to just thank the
15 commission again. You all took a vote earlier this
16 year to support my budget request -- OPSD's budget
17 request. We did request for staff -- it was in the
18 governor's executive budget -- along with operating
19 expenses to help us work. Actually, one of our next
20 steps, ideally, would be to create a climate
21 adaptation plan for the state. But, of course, you
22 know, funding provided.

23 We did have that included in the
24 governor's executive budget, our staffing and our
25 operating expenses. It did pass the House of

1 Representatives. In fact, the House of
2 Representatives added to that and gave us just
3 equipment, everything else to just help improve and
4 modernize the OPSD.

5 I want to report you all with my mahalo
6 that it was, unfortunately, not concurred in the
7 state senate. The State Ways and Means Committee
8 actually deleted the state sustainability budget.

9 We are -- and my goal is to work with the
10 state Senate Ways and Means Committee in the coming
11 2023 fiscal year and the biennium. It was a very sad
12 moment for OPSD, since we are transforming and
13 modernizing and looking into climate and
14 sustainability, which is quite exciting.

15 But that doesn't stop us. We will continue
16 what we do. And I just want to mahalo all of you for
17 that support. So thank you for that vote. It was
18 helpful. We actually testified to that and said the
19 Land Use Commission supports this. Go on. But c'est
20 la vie. And so we will move on to fight another day.
21 Mahalo.

22 **CHAIR OHIGASHI:** You're welcome. Thank
23 you, Danielle and the Office of Planning and
24 Sustainable Development. And we'd be remiss not to
25 say that we also even thank Bryan Yee in this

1 matter.

2 So to take a hard -- or finish this off by
3 3:15 today. And we have a few administrative stuff
4 to do, but because I'm acting chair, I get to
5 declare a break for five minutes. After that, Dan
6 has his say.

7 **MR. ORODENKER:** No, I just wanted to --
8 since we're on the subject -- very briefly say that
9 with regard to legislative matters, generally, staff
10 looks at potential bills for the upcoming sessions
11 and budget issues, and in some cases drafts
12 legislation, what we think would help make the
13 commission's job easier.

14 From a policy standpoint, if the
15 commission -- this commission feels that we should
16 have a meeting to address what it feels would be
17 appropriate to draft bills -- for staff to draft
18 bills for submission to the legislature, we can put
19 that on an agenda at a later date.

20 Just so that you're aware of that, that we
21 appreciate input from the commissioners. Or we can
22 have one-on-one conversations. You can have one-on-
23 one conversations with staff with regard to some of
24 your ideas.

25 **COMMISSIONER CHANG:** We might wait until

1 after to do that.

2 **MR. ORODENKER:** Well, unfortunately, I
 3 just an email today saying that it's time to start
 4 putting together our legislative packet, so.

5 **CHAIR OHIGASHI:** So anyway, we're going to
 6 take a break for five minutes only and come back
 7 here at 10 to 3 and finish up with whatever we have
 8 to finish up on.

9 **MR. ORODENKER:** I just have -- the only
 10 remaining items that we need to cover are some
 11 administrative matters that Riley will be giving us
 12 a presentation on, and then closing, and that's it.

13 **CHAIR OHIGASHI:** Okay. And normally, I
 14 would say let's go ahead, but as I'm acting chair, I
 15 get to say if we have a break.

16 **(Recess taken from 2:45 - 2:49 p.m.)**

17 **CHAIR OHIGASHI:** Calling it back into
 18 order. Mr. Orodenker?

19 **MR. ORODENKER:** Now we'd like to just
 20 cover some administrative matters. Riley, who was
 21 for years the one in charge of all the
 22 administration and chief clerk, but has since moved
 23 on to more difficult things -- or things that are
 24 more difficult for him. Let me put it that way.
 25 He'll give you the -- he's going to give you a

1 little bit of an explanation on some of the
2 administrative things that you need to keep in mind.

3 **MR. HAKODA:** This is the toilet paper
4 portion of the meeting, often overlooked but very,
5 very necessary. And if you don't pay attention to
6 it, it gets very messy afterwards.

7 **MR. ORODENKER:** Riley's a walking HR
8 problem, in case anybody does not --

9 **MR. HAKODA:** Okay. Well, first of all,
10 mahalo to the veteran commissioners. They've made my
11 life as the chief clerk very, very simple. I cannot
12 tell you what kind of troupers they've been, because
13 through the thick and thin, they've been able to
14 make regular attendance to all the meetings
15 punctually. And it's made us able to conduct a lot
16 of business efficiently.

17 And sorry, but they set such a high bar
18 for all the new guys, the LUC's reputation. But if
19 you cannot make it, we try and project far out in
20 advance what the meeting schedule is going to be so
21 that you know and can mark your calendar, reserve
22 your days.

23 But sometimes when no can, no can. Like,
24 you know, the accommodation we had to make with a
25 meeting on a Tuesday, yesterday. And that's when we

1 have to scramble.

2 Just to kind of you give an idea of how
3 much money is involved with these meetings, it can
4 range anywhere from three to six thousand dollars a
5 meeting when you factor into all the LUC staff time,
6 your valuable time as commissioners volunteering.

7 And if we have a presentation by, say, a
8 petitioner, they appear -- you know, these high-
9 price attorneys, but they have expert witnesses on
10 hand. If it all caves in at the last minute, a lot
11 of money down the drain, so we try and avoid that at
12 all cost.

13 So fortunately, my chief clerk position
14 has been replaced with two much prettier women and
15 much more efficient and smarter than I. Again.

16 **MR. ORODENKER:** HR problem.

17 **MR. HAKODA:** HR problem. Just calling the
18 truth. But they're much better and doing my job than
19 I was, and they'll seek you out, let you know when
20 the meetings are in advance, get a head count so
21 that we can be sure we have quorum to do business.

22 Sometimes, you know, things happen. But we
23 try and book facilities far, far in advance so that
24 we secure someplace to meet. In the past when we
25 attended in person, it wasn't a problem, because we

1 didn't have to worry about wi-fi availability. Now
2 we're so high tech we depend on cameras, we depend
3 on making sure everybody has an iPad so he can tune
4 in to the meeting.

5 Now we have the website. We have a
6 Commissioners Checkpoint for you to stay in
7 communication and contact with us, email. And
8 they're so good at following up with you on your
9 attendance and all that. It should be very smooth
10 sailing going forward as long as we have our
11 calendars all set. And sometimes even that at the
12 very last minute will blow up in our face. But we
13 can reduce it as much as possible by being very
14 attentive to our schedule.

15 I just want to make sure that -- you know,
16 we do travel a lot, and it's important for you to
17 know the benefits of our corporate Hawaiian Airlines
18 corporate account. Because a lot of times you're
19 looking at the watch, you're figuring, well, what
20 about my check-in for my flight? If I want to leave
21 earlier, how do I do that?

22 Well, because of the corporate account,
23 leaving early is not a problem; right? You just --
24 we do the jailbreak to the airport. You check in
25 with Hawaiian Airlines staff and let them know I may

1 be finished early, I want to try and get out on the
2 next available flight to wherever your respective
3 island is. They put you on the standby list, and
4 then you're set to be called for that flight.

5 If it's delayed, then we'll try and make
6 an accommodation. But oftentimes we find out little
7 bit too late, so same thing. If you end up in a
8 delay situation, we'll try and contact the airline,
9 let them know.

10 But if you get separated from us, you just
11 have to just fess up to the agent and just say I
12 missed my flight, I'm a corporate member, I want to
13 try and get back to my home island standby. And
14 they'll try and accommodate you. But you do have a
15 little better ranking because you're a corporate
16 member.

17 And, you know, we'll be traveling a lot
18 more now that COVID is kind of in the back rearview
19 window.

20 We did ask you all for some very sensitive
21 information to secure your credit card and all that.
22 The way it works with your credit card. There's the
23 stuff that our credit card, our line of credit card
24 can pay for. But they cannot cover stuff like hotel
25 rooms.

1 So if we're going to travel and it
2 requires an overnight stay, you're going to have to
3 use your credit card to secure that hotel room. So
4 that's the bad part about being a commissioner. You
5 guys working for aloha, but you might end up having
6 to front some money as far as your hotel bills go.

7 We'll try and reduce that impact to you as
8 much as possible, but that kind of falls into the
9 second part about making sure you get your receipts
10 all in order and submit them as timely and possible.
11 And not only your receipts, your boarding passes as
12 well; okay?

13 So all that paperwork involved with your
14 travel, turn it in to any one of the LUC staff so we
15 can collect it and get it to the admin services
16 offices so that we can start processing your
17 reimbursements. And they're on the cycle with the
18 payroll, so the faster you get it to us, the faster
19 you'll get your reimbursements.

20 So it's not only a one-way street of
21 giving time and money to the state bank, but there's
22 a payback as well. You get to travel a lot. You
23 should probably easily make Lani Gold.

24 But there's some educational benefits as
25 well. We have conferences periodically, something

1 commissioners will be able to get to if the schedule
2 allows for it, either locally or on the mainland.
3 And as they come up, Dan will be contacting you to
4 see if it fits into your schedule and, you know,
5 whoever's available, and make it, you know.

6 Some of the veteran commissioners can tell
7 you it's not all work. Actually, you're not supposed
8 to have fun, but you do have fun when we travel.

9 **MR. ORODENKER:** No fun.

10 **MR. HAKODA:** No fun. Again, there's also
11 the site visits. The site visits were mentioned. We
12 haven't been doing them because of COVID, but many
13 times we'll go to a petition area. Depending on
14 which island it is, sometimes you get to see sites,
15 pieces of Hawai'i that you've not been able to see
16 before.

17 For myself, I was able to go on to Parker
18 Ranch and the Robinson ranch on Kaua'i and on the
19 Big Island for the first time. You know, otherwise,
20 we would have been kapu, no entry. I couldn't have
21 seen the beautiful landscape and get to hear from
22 the families or the property managers themselves.

23 You hear the story of what's involved with
24 the landscape, and it's very rewarding. For me,
25 that's what makes work at the Land Use Commission a

1 lot of fun for myself. It's a learning experience.
2 Even when you sit in and you hear public testimony
3 or you hear the expert witnesses during a
4 presentation on a petition, it's always -- for me,
5 this information has been popping up that I never
6 knew before until I heard it firsthand.

7 Well, sometimes, you know, you can suffer
8 from overload of public response like one we had,
9 the petition for Aiea on O'ahu. I don't think anyone
10 else in the office got to talk to the 300 people I
11 got to talk to, that were all upset with being
12 included or not notified that the land was part of a
13 list of properties to be declared important ag land.

14 But you do get to see members of the
15 community step up and step forward to be heard. And,
16 you know, it kind of takes -- you kind of -- you
17 give them a lot of credibility, because they care,
18 you know.

19 Chair Scheuer was really good at that. He
20 would really empathize with the public, and they saw
21 that, you know. He wasn't faking it. He was for
22 real. So I think -- I give him high bars for that.
23 And that's kind of like the expectation level that,
24 you know, the public is viewing you in.

25 And now that we have Zoom, there's a TV

1 audience out there that's also viewing you. So if
2 you're not prepared for a meeting, it'll show. It'll
3 show like, you know, when they go and interview
4 somebody off the street, and they don't know
5 anything, you know they don't know anything. So you
6 got to really be prepared for our meetings.

7 So we try and prepare you with our staff
8 reports as much as possible so that you're ready,
9 you know, to deliberate when you come in.

10 I think that's pretty much what I needed
11 to let you know. But main thing is you continue to
12 check in with our Commissioners Checkpoint. We work
13 hard to make sure that a lot of that information is
14 current and very important to you.

15 Other things for you to know, too. You
16 might have missed it a little bit earlier. There's
17 the Ethics Commission. Yearly they'll let you know
18 that you need to file a financial disclosure. Every
19 four years you have to take an ethics course. And
20 even LUC staff will be taking a course later this
21 year.

22 There's also Native Hawaiian law course
23 that's offered at the university. For the attorneys
24 in the audience, they've been able to pick up their
25 continuing education credits that way. But it's

1 really good information to know. Again, you get to
2 learn the history of Hawai'i. And, you know, some of
3 it is -- I know some of you were asking questions or
4 using the chat, because I sat in on that, and I'm
5 pretty sure that you benefited from that. I saw your
6 comments.

7 Other things that you need, like parking
8 permits, very simply stuff, but if we have a meeting
9 and it's at the state office tower or if you need to
10 make a visit to the capitol, we have parking permits
11 available. I know Mel got a couple of current ones.
12 I did give you outdated ones. I apologize. I gave
13 Kuishi outdated ones, too, so don't use them.

14 For the airport, you have parking permits
15 that we've acquired for you from the Department of
16 Transportation. So pretty sure Ariana got them out
17 to you. If you haven't, we have your parking permits
18 for the new commissioners.

19 There's information that you need to write
20 on the backside of the ticket that you receive that
21 will involve your license plate number, your permit
22 number, the department you work for, all that. It's
23 spelled out in the fine print in the back of the
24 parking permit.

25 But at the respective airports that you go

1 to, it should get you in and out of the parking lot
2 without you having to pay.

3 To think about ecology, Martina's made
4 sure for me to ask if you don't need printed copies,
5 let her know. If you can --

6 **MS. SEGURA:** If you want printed copies.

7 **MR. HAKODA:** If you want printed copies,
8 let her know. Otherwise, we'll assume that you're
9 okay with the Checkpoint electronic digital version.

10 And finally, I know we're going to be
11 going to HCPO next month, the Hawai'i Congress of
12 Planning Officials. And the hotel is already booked,
13 the whole hotel in Poipu. So the alternate hotel is
14 the Royal Sonesta in Lihue. So some of the LUC staff
15 is going to have to stay at Royal Sonesta, too. So
16 we'll figure out the logistics of transportation and
17 all.

18 But if you could finalize and confirm your
19 wish to attend with Ariana, that would really be
20 appreciated, because make sure that you have -- if
21 room runs out at the alternate hotel, well, then I
22 don't know what we're going to -- come pick you up
23 at the top 10 somewhere.

24 **MR. ORODENKER:** Is that all?

25 **MR. HAKODA:** Yeah. I think so.

1 **MR. ORODENKER:** Okay. That last part about
2 who's going to be a driver, I thought that was you.

3 **MR. HAKODA:** Right. Yeah, okay. See, I
4 have a reason for eyesight, so yeah. And going along
5 with the logistics, just by show of hands, who
6 doesn't want to do driving, in case we get into a
7 pinch and we need drivers, some commissioner to be a
8 driver. Who doesn't want to drive? Raise your hand
9 so we -- we won't. Otherwise, okay.

10 **CHAIR OHIGASHI:** I'm old. That's why.

11 **MR. HAKODA:** Yeah. Me, too.

12 **CHAIR OHIGASHI:** I wasn't going to stay
13 overnight.

14 **MR. HAKODA:** Oh, no, no.

15 **MS. KWAN:** Just for any meeting.

16 **MR. HAKODA:** Any meeting. Any meeting.

17 **MS. KWAN:** Who would not want to be a
18 driver?

19 **MR. HAKODA:** Yeah.

20 **MS. KWAN:** Because sometimes we're short
21 drivers.

22 **MR. HAKODA:** Yeah.

23 **MS. KWAN:** Okay.

24 **COMMISSIONER KAHELE:** I'm willing to
25 drive.

1 **MR. HAKODA:** Okay. With that, I think that
2 then wraps it up.

3 **CHAIR OHIGASHI:** Okay. Is there anything
4 more?

5 **MR. ORODENKER:** Just some closing
6 comments.

7 **CHAIR OHIGASHI:** Before we do that, I want
8 to recognize Ariana or Mom if she has any more
9 comments to add to Riley's.

10 Seeing that she doesn't have any more,
11 Dan, do you want to --

12 **MR. ORODENKER:** That concludes our
13 training session. I know there are more questions.
14 If you have them, please ask staff.

15 But, you know, the Land Use Commission can
16 be a lot of fun. All we ask is that you show up and
17 that you make good decisions. But as you may have
18 noticed, some of the newer commissioners may have
19 noticed, we spend a lot of time together and develop
20 a lot of camaraderie. We have good commissioners.
21 All of us are great people, and we enjoy each other,
22 and we enjoy what we do.

23 And I have to say I'm blessed with
24 probably the best staff of any organization in the
25 state. Every one of them is just incredible. I

1 really have to thank Scott and Riley, and especially
2 Martina and Ariana for helping us put this together
3 and doing a lot of great work for us, and very
4 efficiently.

5 But we're here for you, and we're here to
6 serve you in whatever you need us to do. Just let us
7 know. Thank you all.

8 **CHAIR OHIGASHI:** Okay. Is there anybody
9 else want to make a comment before we adjourn?

10 I have a few things that I have to do. As
11 our next meeting will be at a remote location, and
12 we intend to work through the lunch, I would like to
13 request the LUC staff to arrange for lunch to be
14 provided to the commissioners in order to facilitate
15 the meeting. That's one of the things I have to do.

16 The second is I want to thank Dan and the
17 staff. I agree that they are the best staff that I
18 have known, and I think that I can say that for
19 sure, because I have been here for about a couple of
20 years now, and I can attest to their competency and
21 quality. And I want to thank them for putting on
22 this great training session.

23 I want to acknowledge that Riley does have
24 bad eyesight, because he picked me up at the airport
25 today, and I had to go -- I had to get out of the

1 car quickly.

2 So this concludes day two of the Land Use
3 Commission training. Next time that I am chairman,
4 you don't have to call me chairman. I'll be glad to
5 go by the honorific of sir.

6 If there's no further business, I declare
7 this meeting adjourned.

8 **(Meeting adjourned at 3:09 p.m.)**

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1 CERTIFICATE

2
3 I, Davilyn Payne, 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 hand this
13 11th day of August, 2022.

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19 _____
20 Davilyn Payne
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