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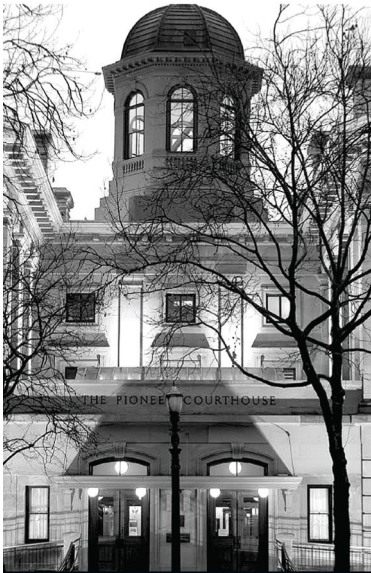
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**STATE OF HAWAII  
LAND USE COMMISSION**

Meeting held on November 15, 2023

Commencing at 10:00 a.m.

Held at

Leiopapa A Kamehameha

State Office Tower, Room 405

235 S. Beretania Street, Room 405

Honolulu, HI 96813

**I. CALL TO ORDER**

**II. ADOPTION OF MINUTES**

October 18-19, 2023

**III. TENTATIVE MEETING SCHEDULE**

**IV. DISCUSSION OF PROPOSED RULE AMENDMENTS TO THE  
LAND USE COMMISSION ADMINISTRATIVE RULES  
CHAPTER 15-15**

The proposed rule amendments can be viewed online at: <https://luc.hawaii.gov/2023-admin-rules> or in person, by appointment only, at the Land Use Commission office. The LUC office is located on Oahu at 235 S. Beretania Street, Room 406, Honolulu, HI 96813 from 8:00 am to 3:30 pm, Monday through Friday, except Holidays. To schedule an appointment to review the proposed rule rule amendments in person, please email [dbedt.luc.web@hawaii.gov](mailto:dbedt.luc.web@hawaii.gov) or call 808-587-3822.

**V. REQUEST FOR APPROVAL TO SUBMIT THE PROPOSED  
RULE AMENDMENTS TO HAWAII ADMINISTRATIVE  
RULES PROCESSING SITE (HARPS) AND FOR REVIEW/  
AUTHORIZATOIN TO PROCEED TO PUBLIC HEARINGS**

**VI. ADJOURNMENT**

**BEFORE :**

1 **LUC COMMISSIONERS :**

2 Dan Giovanni, Chairman (Via Zoom)

3 Lee Ohigashi (Via Zoom)

4 Brian Lee (Via Zoom)

5 Gary Okuda

6 George Atta

7 Michael Yamane (Via Zoom)

8 Kuike Kamakea-Ohelo (Via Zoom)

9 Nancy Carr Smith (Via Zoom)

10

11 **LUC STAFF :**

12 Daniel Orodener, Executive Officer

13 Scott Derrickson, Chief Planner

14 Martina Segura, Planner

15 Ariana Kwan, Chief Clerk

16 Daniel Morris, Esquire, Deputy Attorney General

17 (Via Zoom)

18

19 **PUBLIC TESTIMONY :**

20 Cal Chipchase

21 David Arakawa (Via Zoom)

22 Mary Alice-Evans (Via Zoom)

23 Zendo Kern (Via Zoom)

24

25

1           **CHAIRMAN GIOVANNI:** Very good. I like to  
2 call the meeting to order. Aloha mai kakou. Good  
3 morning, everyone. This is the November 15th, 2023  
4 Land Use Commission meeting. This is a hybrid  
5 meeting which is being held using interactive  
6 conference technology linking videoconference  
7 participants and other interested individuals of the  
8 public via the Zoom internet conferencing program.

9           For all meeting participants, I would like  
10 to stress the importance of speaking slowly,  
11 clearly, and directly into your microphone. Before  
12 speaking, please state your name and identify  
13 yourself for the record.

14           All meeting participants are being  
15 recorded on the digital record of this Zoom meeting  
16 for court reporting purposes. Your continued  
17 participation is your implied consent to be part of  
18 the public record of this event. If you do not wish  
19 to be part of the public record, you should exit the  
20 meeting now. Court reporting transcript are being  
21 done from the Zoom recording.

22           Also, please note that due to matters  
23 entirely outside of our control, occasional  
24 disruptions to connectivity may occur for one or  
25 more members of the meeting at any given time. If

1 such disruptions occur, please let us know and be  
2 patient as we try to resolve the audio/visual  
3 signals to effectively conduct business.

4 Please note that the Q and A feature of  
5 Zoom will only be monitored for signing up for  
6 public testimony. All other communications will not  
7 be addressed or part of the meeting record.  
8 Communications can be emailed to our email at  
9 dbedt.luc.web@hawaii.gov. I will also share with  
10 all participants that we will take breaks from time  
11 to time, nominally five to ten minutes every hour of  
12 the meeting.

13 My name is Dan Giovanni, and I have the  
14 pleasure to serve as the LUC Chair. We currently  
15 have nine seated Commissioners. Participating with  
16 me today are Commissioners Lee Ohigashi from Maui,  
17 Commissioner Michael Yamane from Kauai, Commissioner  
18 Gary Okuda, Commissioner Kamakea-Ohelo, Commissioner  
19 Atta, Commissioner Lee, all attending in Oahu. And  
20 Commissioner Carr Smith is attending from Hawaii  
21 Island. Commissioner Kahele is excused from today's  
22 meeting.

23 Also participating are the LUC Executive  
24 Director, Daniel Orodener, LUC Chief Planner, Scott  
25 Derrickson, LUC Staff Planner, Martina Segura, LUC

1 Chief Clerk, Ariana Kwan, and LUC Attorney General  
2 attending by Zoom, Dan Morris.

3 Our first order of business is the  
4 adoption of the minutes from our meeting of October  
5 18/19, 2023.

6 Ms. Kwan, has there been any written  
7 testimony submitted on the October 18/19, 2023  
8 minutes?

9 **MS. KWAN:** No, Mr. Chair.

10 **CHAIRMAN GIOVANNI:** Thank you, Ms. Kwan.  
11 Are there any members of the public who have signed  
12 up to testify on adoption of the minutes?

13 **MS. KWAN:** Lee Ohigashi has his hand  
14 raised.

15 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

16 **COMMISSIONER OHIGASHI:** I was going to  
17 make the motion when it's necessary.

18 **CHAIRMAN GIOVANNI:** Okay. Hold on a sec.  
19 Commission, is there any --

20 **MS. KWAN:** Can we please --

21 **CHAIRMAN GIOVANNI:** -- corrections or  
22 comments on the minutes? If not, is there a motion?

23 **MR. ORODENKER:** Mr. Chair, may I  
24 interrupt, please?

25 We're having a tremendous amount of

1 feedback here. Can we hold off for a couple of  
2 minutes until we resolve the problem?

3 **CHAIRMAN GIOVANNI:** Of course. So we'll  
4 take a short recess while you try to resolve that.

5 **(Recess taken from 10:05 a.m. to 10:07**  
6 **a.m.)**

7 **CHAIRMAN GIOVANNI:** So we were -- I'm  
8 going to go back up a little bit because I think I  
9 called on Ms. Kwan to affirm if anyone had signed up  
10 for public testimony, and I'm not sure I got a clear  
11 message, so I'm going to repeat that.

12 So Ms. Kwan, have any members of the  
13 public signed up to testify on the October 18/19,  
14 2023 minutes?

15 **MS. KWAN:** No one signed up to testify on  
16 the minutes.

17 **CHAIRMAN GIOVANNI:** Thank you.

18 Commissioners, are there any corrections  
19 or comments on the minutes? Hearing none -- hearing  
20 none --

21 **COMMISSIONER OKUDA:** Yeah. This is Gary  
22 Okuda. I'd like to abstain because I don't believe  
23 I was at either of the meetings. Thank you.

24 **CHAIRMAN GIOVANNI:** Very well, Thank you,  
25 Commissioner Okuda.

1 Do we have a motion to adopt the minutes?

2 **COMMISSIONER OHIGASHI:** so move.

3 **CHAIRMAN GIOVANNI:** Thank you,

4 Commissioner Ohigashi. Do I have a second?

5 **COMMISSIONER CARR SMITH:** I second.

6 **CHAIRMAN GIOVANNI:** Thank you,

7 Commissioner Carr Smith. It is noted for the record  
8 that I'm going to take a voice vote, but  
9 Commissioner Okuda is going to be silent. So all in  
10 favor of adoption of the minutes, signify by saying,  
11 "aye."

12 **(All said, "Aye.")**

13 **CHAIRMAN GIOVANNI:** Opposed? Hearing  
14 none, the minutes are adopted.

15 Thank you very much. The next agenda item  
16 is our tentative meeting schedule, and I'd like to  
17 call on Mr. Orodenger to give the schedule.

18 **MR. ORODENKER:** Thank you, Mr. Chair.

19 Tomorrow, we will be in Kona for 81-525 Y-  
20 O Limited Partnership motion for reconsideration.  
21 We do not -- oh, on December 6 we --

22 **COMMISSIONER CARR SMITH:** Excuse me. We  
23 can't hear you very well.

24 **MR. ORODENKER:** On December 6th, we will  
25 be on --DLRsDL

1           **CHAIRMAN GIOVANNI:** Mr. Orodenger, would  
2 you back up to the beginning with the November 16th?

3           **MR. ORODENKER:** Okay. Tomorrow we will be  
4 on -- in Kona for the Y-O Limited Partnership motion  
5 for reconsideration. On December 6th, we will be on  
6 Oahu for a presentation on the OPSD soil study. On  
7 January 24th, we will be on Oahu for the Halekua  
8 Development status report.

9           On February 7th, we will be in Kona for  
10 the Gamrex, Inc. status report. On February 21st,  
11 we will be on Maui for the AMFAC and HHFDC status  
12 report. We have tentatively penciled in Waimanalo  
13 Gulch for March 20th. Thank you very much.

14           Commissioners, we would appreciate your  
15 not -- or keeping the dates for the various other  
16 meetings available as we have petitions and special  
17 use permits that may come online. Thank you.

18           **CHAIRMAN GIOVANNI:** Thank you, Mr.  
19 Orodenger.

20           Commissioners, do you have any questions  
21 or comments on the tentative agenda? Hearing none.  
22 Thank you.

23           Our next agenda item is a discussion of  
24 the proposed rule amendments to the LUC  
25 Administrative Rules, Chapters 15-15. The proposed



1 rule amendments can be viewed online at  
2 luc.hawaii.gov/2023-administrative-rules.

3 On November 3rd, 2023, the Land Use  
4 Commission staff individual sent the commissioners  
5 the draft rule amendments for review and comment.  
6 LUC staff edited the proposed rule amendments to  
7 reflect Commissioners' suggested edits. On November  
8 7th, 2023, the LUC staff posted the draft rules for  
9 public review and comment.

10 I'd like to, at this point in time, for  
11 purposes of clarity for all participants and those  
12 joining us on Zoom, to give an overview of the  
13 process so that we're all on the same page and  
14 understand the process for -- from today going  
15 forward for the proposed rule amendments and how  
16 that will play out. And I'd like to call on Mr.  
17 Derrickson to give us that overview, if he would be  
18 so inclined.

19 So Mr. Derrickson, can you do that for us?

20 **MR. DERRICKSON:** Yeah. Can you hear me  
21 okay?

22 **CHAIRMAN GIOVANNI:** Speak up a little.  
23 Can you turn your camera on?

24 **MR. DERRICKSON:** Okay. How's that?

25 **CHAIRMAN GIOVANNI:** It's better.

1 **MR. DERRICKSON:** We're in the process.

2 **MS. KWAN:** I'm getting the camera now.

3 **MR. DERRICKSON:** Okay. So there's a  
4 number of quite a few steps in moving forward with  
5 the rule amendment process, and I've been talking  
6 with the deputy -- several different deputy AGs, the  
7 legislative reference bureau, to try to sort out  
8 exactly what our steps forward are.

9 Right now, before you today are the  
10 proposed rule amendments that are receiving -- we're  
11 receiving comments from different agencies from the  
12 public, and we are taking those into consideration  
13 at this point. We still need to go to the  
14 legislative reference bureau for them to review the  
15 rules for formatting.

16 The AG has done a preliminary review and  
17 provided some comments, but the AG needs to review  
18 as to the form of the rules. We still need to go to  
19 the small business regulatory bureau at DBEDT to  
20 address any impacts to small business of where we'll  
21 have to present at a scheduled small business  
22 regulatory hearing.

23 Once we've done that, we will be sending  
24 on proposed rules and requesting a public hearing,  
25 requesting the ability to go to public hearing from

1 the governor where we'll have to put up the rules in  
2 the Hawaii Administrative Rules processing site  
3 called HARPS, electronically, and then reviews will  
4 be done by budget and finance, DBEDT, other state  
5 agencies.

6 We are reaching out to the counties and we  
7 will continue to do that. Once we get an okay to go  
8 out to public hearing from the governor, then we  
9 will need to set a schedule for hearings, notice  
10 them in the papers, and electronically we'll start  
11 receiving testimony that way. We'll have to conduct  
12 hearings and prepare minutes of those hearings.

13 **MR. ORODENKER:** To interject. The public  
14 hearings are hearings that can be handled by staff.  
15 Commissioners are welcome, but we're not planning  
16 for those to be full Commission hearings.

17 **MR. DERRICKSON:** Yeah. Thank you.

18 I probably say that at this point, if  
19 there's any questions, this would be a good point  
20 for questions.

21 **CHAIRMAN GIOVANNI:** So two points I'd like  
22 you to address, Mr. Derrickson. First of all, the  
23 overall timeline that you expect, and I won't hold  
24 you to it, but is this a matter of days, weeks,  
25 months, or years? Could you clarify?

1           **MR. DERRICKSON:** Yeah. I'm going to let  
2 the Executive Officer field that question.

3           **MR. ORODENKER:** Thank you, Mr. Chair.  
4 This is a process that, based on our experience,  
5 could take anywhere from three to six months.

6           **CHAIRMAN GIOVANNI:** Okay. So now I have  
7 two more questions, not just one more. So within  
8 that three to six months, other interested parties,  
9 including the state agencies, will have a singular  
10 or multiple opportunities to weigh in with suggested  
11 edits and changes, correct or not correct?

12           **MR. ORODENKER:** That is correct, Mr.  
13 Chair. During -- once we publish the rules on  
14 HARPS, they'll have an opportunity to testify. The  
15 state agencies will have an opportunity to testify.  
16 But any time during the process, they can also  
17 provide testimony, and the same for the counties. I  
18 mean, we're not anticipating that we will deny  
19 anybody the opportunity to testify and submit  
20 comments.

21           **CHAIRMAN GIOVANNI:** Very well. Okay. My  
22 final question is, if you can, can you specifically  
23 identify in this process the role, the specific role  
24 that the Commission has to take, starting with its  
25 actions that would be expected, potentially, today,

1 in this meeting and then subsequently along the  
2 process, before we finalize new rules, the amended  
3 rules.

4 **MR. ORODENKER:** Thank you, Mr. Chair.

5 This Commission today, what we're asking for is  
6 essentially an adoption of a draft. And during this  
7 hearing, further amendments can be made to that  
8 draft that staff will place into the rules. Then  
9 once we've gone to HARPS, gone out to the public  
10 hearings, and collected all the information with  
11 regard to public testimony, we will come back to the  
12 Commission to determine whether or not the  
13 Commission feels that any or all of those comments  
14 should be adopted.

15 If the Commission determines that they  
16 would like to make substantive changes to the  
17 proposed rules, then at that time the process will  
18 start all over again. We'll go back out to public  
19 hearing, repost on HARPS, and then come back to the  
20 Commission again for final approval.

21 **CHAIRMAN GIOVANNI:** Okay. So what I heard  
22 was that today, you're looking for us to potentially  
23 approve a posting of the draft rules, then the  
24 process starts with all of the agencies, et cetera,  
25 to do the internal review and suggestion of

1 comments. Eventually, it will come back to this  
2 Commission for approval or further amendment.

3 And if on one end of the spectrum we just  
4 accept it as presented and it's approved, we're  
5 done. Other end of the spectrum, we could start the  
6 process all over and continue to evolve and modify  
7 the rules until we reach the point where everybody's  
8 happy and we can adopt them. Is that correct?

9 **MR. ORODENKER:** That is correct, Mr.  
10 Chair.

11 **CHAIRMAN GIOVANNI:** Okay. So I just  
12 wanted that clarification for all of our Commission,  
13 all my fellow Commissioners and myself, so we know  
14 what we're dealing with today. So this is not an up  
15 and down, we're going to change the rules today.  
16 All we're doing is agreeing to move the process  
17 forward, in my view.

18 So do any Commissioners have any questions  
19 on what was just explained by Mr. Derrickson and Mr.  
20 Orodenker at this time?

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

22 **CHAIRMAN GIOVANNI:** Commissioner Okuda,  
23 please.

24 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
25 So my question is to either the Executive Officer or

1 to Mr. Derrickson. Does our vote, if we were to  
2 vote to move the process forward, is that taken in  
3 any way to be an endorsement about the in favor of  
4 the draft of the rules? In other words, is that to  
5 be construed in any way to say that we agree with  
6 the substance of the draft of the rules, or is the  
7 vote to move this forward simply just to move it  
8 forward? And it's not to be interpreted as an  
9 endorsement or agreement to any of the draft rules?

10 **MR. ORODENKER:** Well, that's kind of a  
11 loaded response on our part. There has to be  
12 something that the Commission adopts as a draft, so  
13 that's why this agenda is broken up into two  
14 different things, because we have to have a draft  
15 that the Commission approves that we can put up on  
16 the website. So you are, to a certain extent,  
17 approving a document but only as a draft.

18 **COMMISSIONER OKUDA:** Okay. Thank you.  
19 That answers my question, actually.

20 **CHAIRMAN GIOVANNI:** Yeah. The way I  
21 interpreted it, it's a conditional approval, but  
22 it's subject to change. And even at this point in  
23 time, later in today's hearing, I will be inviting  
24 Commissioners to make specific motions, if they so  
25 choose, for further modifications of the draft that

1 they'd like to see, even at this point in time. And  
2 that modification could be to add something or to  
3 remove something as well.

4 Okay. Commissioner Carr Smith, comment?

5 **COMMISSIONER CARR SMITH:** Thank you. Yes.  
6 I was -- I think this is a good time for me to ask  
7 this question. I was wondering why the staff opted  
8 to not consult with the affected agencies prior to  
9 this first draft?

10 **MR. ORODENKER:** We -- well, first of all,  
11 there's plenty of opportunities for the other state  
12 agencies to comment. And that was foreseen as a  
13 part of the process. With regard to what we're  
14 doing today and why, it kind of feeds into that. We  
15 didn't even have anything that we felt that the  
16 Commission was comfortable with, which is why we're  
17 holding this hearing, for other agencies to comment,  
18 because this is basically the Commission's draft.

19 **COMMISSIONER CARR SMITH:** Okay. Thank  
20 you.

21 **CHAIRMAN GIOVANNI:** Okay.

22 **MS. KWAN:** Brian Lee has a comment.

23 **CHAIRMAN GIOVANNI:** Commissioner Lee?  
24 Thank you for pointing that out to me.

25 Commissioner Lee.



1           **COMMISSIONER LEE:** Thank you, Chair. I  
2 had a question for the Executive Officer. You know,  
3 in a previous meeting you had mentioned that there  
4 would be some admin rules proposals regarding  
5 affordable housing. I didn't see anything there.  
6 Can you elaborate?

7           **MR. ORODENKER:** After discussion with  
8 several other Commissioners, we could not come to a  
9 consensus as to what that change would look like, so  
10 at this point in time, we have not proposed a change  
11 to that section. Of course, during the course of  
12 the comment process, that could change, but as of  
13 this moment we did not have a consensus on that  
14 particular portion of the amendment.

15           **COMMISSIONER LEE:** Great, thank you. You  
16 know, I'm just going to state that I'm really  
17 uncomfortable with some of the proposals that were  
18 made. I feel that it delegate the authority on some  
19 of the decisions to one single person or bodies that  
20 are not actually prepared to make decisions on some  
21 of the issues that should rightly go before us. And  
22 if they're able to preempt some decisions, it  
23 doesn't give us the opportunity to cross-examine or  
24 discuss and question the decision. So I'm going to  
25 state that I have some concerns. Especially, I

1 agree with many of the assertions that were made by  
2 the OPSD testimony.

3 Thank you, Chair.

4 **CHAIRMAN GIOVANNI:** Commissioner Lee, I'd  
5 like you to -- that was a point well taken, and I  
6 think there will be an opportunity during today's  
7 hearing for you to expand even further a little  
8 later in the hearing.

9 **COMMISSIONER LEE:** Thank you, Chair.

10 **CHAIRMAN GIOVANNI:** Thank you. Okay. Any  
11 other comments before we proceed with public  
12 testimony?

13 Commissioner Ohigashi?

14 **COMMISSIONER OHIGASHI:** I just was  
15 wondering what the sequence of events that we're  
16 going to take up right now. Are we going to --  
17 we're not discussing any of this part right now.  
18 We're going to take public testimony, and then we're  
19 going to be able to discuss what we want on this?

20 **CHAIRMAN GIOVANNI:** That's correct. We'll  
21 take public testimony. And in fact, the expectation  
22 is entities such as OPSD will be welcome to make on  
23 the record any comments they want to make as part of  
24 public testimony. Once the public testimony is  
25 concluded, we'll revert back to the Commission for

1 individual comment and suggestions and questions.

2 Does that work for you, to answer your question?

3 Good. Okay.

4           Public testimony. If there are any  
5 individuals on Zoom who wish to provide public  
6 testimony, please type your name and organization,  
7 if applicable, into the Q and A feature. You will  
8 be added to the chronological list. We will then  
9 call each testifier by name and then promote you to  
10 the panel to the provide your testimony. When  
11 called upon, please turn on your camera and unmute  
12 your microphone. After being sworn in, members of  
13 the public providing testimony will have two minutes  
14 to testify.

15           Again, the Q and A feature will only be  
16 monitored for signing up for public testimony. All  
17 other communications will be addressed or in part of  
18 the meeting record communications that can be  
19 emailed or on our email at [dbedt.luc.web@hawaii.gov](mailto:dbedt.luc.web@hawaii.gov).

20           The protocol for testifying today by phone  
21 only if you are participating in the Zoom meeting by  
22 phone and wish to provide testimony, you may  
23 indicate you want to testify by entering -- what is  
24 that -- it's printed so small --

25           **MS. KWAN:** Star.

1           **CHAIRMAN GIOVANNI:** Is it a star? Ms.

2 Kwan, what is that? Is that a star?

3           **MS. KWAN:** It's a stat like the pound --

4 not the pound. What is the --

5           **CHAIRMAN GIOVANNI:** Star key.

6           **MS. KWAN:** Asterisk, that's the word.

7           **CHAIRMAN GIOVANNI:** Say again? The

8 asterisk?

9           **MS. KWAN:** Asterisk, yes.

10           **CHAIRMAN GIOVANNI:** Okay. So if you want  
11 to testify by phone, enter an asterisk and then 9 on  
12 your phone keypad. After entering the asterisk and  
13 the 9, a voice prompt will let you know that the  
14 host in the meeting has been notified. When  
15 recognized, you may unmute yourself by presenting  
16 the asterisk and the 6 on your phone. The voice  
17 prompt will tell you -- will let you know that you  
18 are unmuted. Once you are finished speaking, please  
19 enter an asterisk and the 6 again to mute yourself.

20           I will now acknowledge any written  
21 testimony. Ms. Kwan, has there been any written  
22 testimony submitted on the proposed rule amendments?

23           **MS. KWAN:** Yes, Mr. Chair. We received  
24 one from Office of Planning on November 13, one from  
25 Commission on Water and Resource Management on

1 November 14th, and this morning we received  
2 Department of Agriculture and County of Hawaii. All  
3 have been posted to the website.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 So the two that -- the water resources and  
6 the Department of Agriculture, when were those  
7 posted?

8 **MS. KWAN:** Water Resource Management was  
9 posted yesterday, and this morning we posted  
10 Department of Ag and County of Hawaii.

11 **CHAIRMAN GIOVANNI:** Okay. Thank you. And  
12 OPSP was posted when?

13 **MS. KWAN:** November 13th.

14 **CHAIRMAN GIOVANNI:** Thank you.

15 Okay. Ms. Kwan, are there any members of  
16 the public at today's meeting that wish to give oral  
17 testimony?

18 **MS. KWAN:** Yes, Mr. Chair. We have Cal  
19 Chipchase in the room who would wish to give  
20 testimony.

21 **CHAIRMAN GIOVANNI:** Okay. Can we promote  
22 him to the panel, or is that him in the blue shirt?

23 **MS. KWAN:** That's him in the blue shirt.

24 **CHAIRMAN GIOVANNI:** Where's his suit and  
25 tie? I don't recognize him.

1 Okay. Mr. Chipchase, will you please  
2 identify yourself for the record, and then I'll  
3 swear you in.

4 **CAL CHIPCHASE:** Very good, Chair. Cal  
5 Chipchase, not in a suit and tie, considered it but  
6 thought that public testimony should be in an aloha  
7 shirt.

8 **CHAIRMAN GIOVANNI:** Appropriate. Mr.  
9 Chipchase, do you swear the testimony you're about  
10 to give will be the truth?

11 **CAL CHIPCHASE:** Yes, Chair, I do.

12 **CHAIRMAN GIOVANNI:** Please proceed. You  
13 have two minutes.

14 **CAL CHIPCHASE:** Thank you. Chair,  
15 Members, I appreciate the opportunity to comment on  
16 these rules. I'll be brief because I have a brief  
17 amount of time.

18 I'm focused on a number of rule sections.  
19 I'll begin with Rule 50, and in particular, the  
20 provisions related to requiring a petition to  
21 receive prior certification from both the Commission  
22 of Water Resource Management and OPSD. Those  
23 substantive requirements are also repeated in Rule  
24 90 with respect to conditions in Rule 94 with  
25 respect to modifications and amendments.

1 I do not believe that those requirements  
2 are lawful. I believe that they are an improper  
3 delegation of this body's authority to other  
4 agencies. I believe that the delegation exceeds --  
5 or the requirement, I should say, to petitioners to  
6 include those certifications or approvals exceeds  
7 this commission's power as set forth in Chapter 205,  
8 in particular Section 17 with respect to the  
9 criteria for decision-making.

10 I believe that they impose on other  
11 agencies powers that those agencies don't have, as  
12 set forth in their governing statutes, 174(c) for  
13 the Water Commission and 225(m) for the Office of  
14 Planning and Sustainable Development. I also  
15 believe that to the extent the -- the delegation is  
16 made, it is currently without any standard for  
17 approval. In other words, it does not guard against  
18 the arbitrary, capricious, and unreasonable denials,  
19 or approvals, for that matter, which again is  
20 another legal deficiency.

21 And it fails to consider those agencies,  
22 in particular Commission of Water Resource  
23 Management have their own processes for approval of  
24 well or stream division permits, or, in the case of  
25 water management area, the approval of existing or

1 new uses. And so it interferes with those separate  
2 processes, some of which cannot be engaged in until  
3 this body and other land use approving bodies have  
4 made their decisions, and so it has that further  
5 affirmance.

6 It -- to the extent those comments are  
7 necessary, and, indeed, they are, there's already a  
8 process for them, namely the hearing on the petition  
9 for the district boundary amendment, at which time  
10 comments from those agencies and, indeed, testimony  
11 related to those issues may be elicited from the  
12 agencies and from other representatives.

13 If I may briefly jump to other sections.  
14 Section 77, which deals with a change involving  
15 dismissal of petitions. I believe that is a  
16 violation of due process. A contested case hearing  
17 is initiated when the petition's accepted, even if  
18 there is no intervention. It should not be subject  
19 to dismissal simply because there's a later  
20 determination that there's insufficient information.  
21 A petitioner has an opportunity to supplement the  
22 record.

23 And if a petitioner still does not carry  
24 his or her or its burden, the Commission can always  
25 deny the petition. It doesn't need a separate rule



1 for dismissal.

2           With respect to Rule 95 dealing with SUPs,  
3 in particular, Section C(4), imposes additional  
4 limitations on that criteria which was meant to deal  
5 with changes writ broadly in land use conditions and  
6 trends. This change would focus it on the  
7 particular property at issue. I believe that  
8 improperly incorporates something akin to a variance  
9 standard, which was not the intent of an SUP and  
10 makes it virtually impossible that an SUP could be  
11 granted under those standards.

12           Finally, Chair and Members, if I may,  
13 there are a number of minor changes. In particular,  
14 I'll note that there are a number of deletions of or  
15 additions of an "e" in "therefor." In other words,  
16 the original word was t-h-e-r-e-f-o-r. The "e" is  
17 added in a number of rule sections that  
18 fundamentally changes the meaning of the word.  
19 "Therefore" with an "e" meaning thus or since,  
20 "therefor," without an "e," meaning that is.

21           And so the original draft is correct,  
22 technically, grammatically. The addition makes the  
23 rule incomprehensible. I'll point to Rule 63 as an  
24 example of that, but it's found elsewhere. Those  
25 conclude my comments, Chair and Members, and I

1 appreciate the opportunity.

2 **CHAIRMAN GIOVANNI:** Thank you, Mr.

3 Chipchase.

4 Commissioners, do you have any questions  
5 for Mr. Chipchase?

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

7 **CHAIRMAN GIOVANNI:** Commissioner Okuda.

8 **COMMISSIONER OKUDA:** Thank you very much,  
9 Mr. Chair.

10 Thank you, Mr. Chipchase. Since you are  
11 appearing not as an advocate like you normally do  
12 but as a witness, if you --

13 And Mr. Chair, if you could just indulge  
14 me just for a couple minutes.

15 **CHAIRMAN GIOVANNI:** Please.

16 **COMMISSIONER OKUDA:** Mr. Chipchase, so  
17 that we can place your testimony in context, first  
18 tell us about what your educational background is  
19 and, secondly, what your professional experience has  
20 been with respect to land use and land use issues?

21 **CAL CHIPCHASE:** Very good, Commissioner.  
22 I'd be happy to. I'm an attorney licensed to  
23 practice in Hawaii and Iowa, of all random places.  
24 I'm a graduate of the University of Hawaii  
25 Richardson School of Law. I'm employed at Cades

1 Schutte, where I have been, other than leaves for  
2 clerkships, since 2001.

3 I'm not here currently representing any  
4 particular client. I'm testifying based on my work  
5 in the land use arena and what I see as good process  
6 before the LUC and otherwise. I have been  
7 practicing in land use and real estate for more than  
8 20 years now, and I have taught land use and real  
9 estate, as well as writing courses, at the  
10 University of Hawaii at different times since 2003.

11 I've published extensively on the subjects  
12 as well. I have appeared before the LUC on special  
13 use permits and on district boundary amendments, as  
14 well as designations of important agricultural  
15 lands, and I've done so many times over many years  
16 now.

17 **COMMISSIONER OKUDA:** And have you spoken  
18 at professional seminars or seminars of professional  
19 organizations on the topic of land use, land  
20 planning, or related matters?

21 **CAL CHIPCHASE:** Yes, Commissioner, I have.  
22 I have served both as a moderator and a panel member  
23 on a number of land use panels and other panels in  
24 different fora, whether they are the annual legal  
25 update that I do for the -- for the Hawaii Office of

1 Planning Officials, Congress Planning Officials, or  
2 other one-off CLEs. I also host the biannual CLE  
3 for the seminar group on sea level rise and climate  
4 change.

5 **COMMISSIONER OKUDA:** Okay. And the  
6 testimony that you just gave, was that based on your  
7 education and experience that you've described?

8 **CAL CHIPCHASE:** Yes, Commissioner, it is.

9 **COMMISSIONER OKUDA:** Can I ask you this  
10 process question. Do you agree that the section of  
11 the HRS that governs what we are doing is HRS  
12 Section 91-3, the procedure for adoption, amendment,  
13 or repeal of rules?

14 **CAL CHIPCHASE:** Yes, Commissioner, I do.

15 **COMMISSIONER OKUDA:** Are you aware of any  
16 other section that we should be looking at  
17 specifically as far as what procedure we should  
18 follow regarding the adoption of rules?

19 **CAL CHIPCHASE:** No, Commissioner. I  
20 believe this is clearly a rulemaking procedure.

21 **COMMISSIONER OKUDA:** If we moved ahead  
22 with the process of adoption of the rules that have  
23 been described by staff just immediately prior to  
24 your testimony. Do you see an potential violation  
25 of HRS Section 91-3 by the Commission?

1           **CAL CHIPCHASE:** Not pursuant to the  
2 process, Chair (sic). And I'll caveat that with one  
3 statement. The Commission, of course, has  
4 obligations to consider standards that are not  
5 specifically set forth in statutes such as Ka  
6 Pa'akai and such as other due process  
7 considerations. I wouldn't opine as to whether  
8 these rules meet or fail to meet those standards. I  
9 offer no opinion one way or the other.

10           But in terms of the rulemaking process  
11 that was described at the beginning of the meeting,  
12 I believe that captures it correctly. I've chosen  
13 to testify today because from a public perspective  
14 this is early in the process, and I believe that  
15 getting the rules as right as possible before they  
16 go out to broader review and broader comment is the  
17 best process, rather than receiving comments, then  
18 making changes, and then sending them back out.

19           If we want to be efficient, and I think we  
20 all do, I hope that the Commission takes this  
21 opportunity to make those changes that it deems  
22 appropriate before the rules go out to broader  
23 comment.

24           **COMMISSIONER OKUDA:** Okay. So your -- and  
25 stop me if I'm putting words in your mouth because

1 that's not my intention.

2 **CAL CHIPCHASE:** Of course.

3 **COMMISSIONER OKUDA:** So based on your  
4 education and experience, is it your suggestion that  
5 we take more input right now with respect to the  
6 draft rules, maybe make some changes to the draft,  
7 and then engage in the process which staff has  
8 explained would be the process going forward?

9 **CAL CHIPCHASE:** With respect, that is my  
10 recommendation so that the rules would go out for  
11 broader comment, best reflect this Commission's  
12 views as to what the correct rule should be and the  
13 most input that the Commission can receive at this  
14 time in drafting those rules.

15 **COMMISSIONER OKUDA:** Okay. Let me kind of  
16 ask the reverse question for your opinion. What's  
17 the harm to the Commission or the public process if  
18 we just send the draft rules out as drafted now,  
19 take in not only your comment but other comments  
20 that are made, and then make whatever revisions are  
21 necessary? I mean, what's the harm in doing that?

22 **CAL CHIPCHASE:** Sure. And to be candid,  
23 there may not be a harm in doing that. But what I  
24 would see as the potential harm and far greater than  
25 the risk the other way where I see no harm in taking

1 public comment now and making those changes that the  
2 commission believes are appropriate now. I think  
3 there's no downside to that.

4 The potential downside looking the other  
5 way are that if substantive changes are made later  
6 in the process, as staff described, the rules will  
7 need to resume or reinitiate the process, and others  
8 that could take much loner if you do it that way.

9 The other problem or potential harm that I  
10 see is that you -- you -- although you have  
11 opportunities to comment, these things are not  
12 always known to all people. I found out about  
13 today's opportunity to comment independently from a  
14 staff member on the Maui County Council, and so not  
15 people are at all times checking all agendas, which  
16 is why the most opportunity comment being as broad  
17 in your reach is the best because it captures the  
18 most people, gives them the most opportunities.

19 The third potential problem that I would  
20 see is one of inertia. Once you adopt, at least for  
21 discussion purposes, a series of rules and then they  
22 go out, there's sometimes a reluctance to make  
23 changes later on because they occur or happen so  
24 late in the process, leading us to restart it, as I  
25 talked about earlier.

1 I think it's best to avoid that inertia,  
2 to put out what this Commission as a body believes,  
3 today or whenever it does, are the best set of  
4 rules, the rules it believes should be adopted.  
5 That way, comments are focused on not just rules  
6 that we all know or believe should change -- there's  
7 no point in having those discussions -- but focused  
8 on what this Commission believes should be adopted.  
9 And that, I believe, presents and produces the best  
10 set of rules for final approval.

11 **COMMISSIONER OKUDA:** Final question, and I  
12 really promise this is my final question, based on  
13 your experience that you have described in your  
14 testimony, what would you suggest the process be and  
15 the timeframe to maybe try to get the best draft  
16 together before it's sent out?

17 **CAL CHIPCHASE:** I appreciate that. And  
18 what I would say is in the meeting today, I hope the  
19 Commissioners -- and I really, actually don't even  
20 need to hope. I know that you will take the time to  
21 voice your opinions on which rules should change.

22 If I may just digress a moment. I went  
23 through a four-year process with the Maui County  
24 Planning Commission to adopt its new SMA and  
25 shoreline rules. I was on a working group that



1 participated in small, closed discussions and then  
2 in many presentations to the Commission and to other  
3 groups on those rules. It was a very long process  
4 and much longer than I think is necessary or could  
5 be contemplated here.

6 But because of that process, all voices  
7 were heard, all changes were either made or at least  
8 considered, and usually compromises were reached.  
9 The product, which was just adopted again yesterday,  
10 was universally, or nearly universally, welcomed by  
11 the people who are affected by it in the entire  
12 meeting, because there have been so many other  
13 meetings, took less than two hours, including public  
14 testimony and Commissioners' comments. That, while  
15 painful, was a good process and produced a good  
16 series of rules.

17 And so what I would hope today is that  
18 that process for the Commissioners really begins  
19 with them offering their comments, changes,  
20 corrections to rules, and if there's -- if the  
21 body's able to reach consensus on those, then make  
22 those changes and incorporate them into the rules.

23 If they're not able to get through all of  
24 those comments and all of those changes that these  
25 Commissioners may have, don't just put it out there

1 to get something done. Take the time to continue  
2 that process at this stage, at the Commission stage,  
3 before it goes out for further review.

4 **COMMISSIONER OKUDA:** Yeah, I apologize. I  
5 do have a follow-up question to what you said.

6 **CAL CHIPCHASE:** Of course you do.

7 **COMMISSIONER OKUDA:** Is it -- is it your  
8 recommendation that working groups be set up by the  
9 Land Use Commission?

10 **CAL CHIPCHASE:** I don't -- in this  
11 instance, I don't think that's necessary because the  
12 changes that are being proposed, on the whole, are  
13 okay. I focused on a -- on -- from my perspective.  
14 They're not significant. They're housekeeping, in a  
15 lot of ways and not things that fundamentally change  
16 the process.

17 The portions of the rules that I focused  
18 on, I do believe, are fundamental changes and  
19 potentially damaging or illegal changes. I think  
20 that those can be -- those concerns can be addressed  
21 without a working group. That said, if the  
22 Commission felt that it's more appropriate to have  
23 those kinds of groups so that there's broader  
24 comment, I certainly don't oppose it. I just --  
25 from my perspective, that may not be necessary given

1 the changes that are being considered.

2 **COMMISSIONER OKUDA:** Thank you, Mr.  
3 Chipchase.

4 Thank you, Mr. Chair. No further  
5 questions.

6 **CHAIRMAN GIOVANNI:** Thank you,  
7 Commissioner Okuda.

8 Commissioners, any other comments or  
9 questions for Mr. Chipchase?

10 Mr. Chipchase, I had a couple. Well, I  
11 have a question and a request. The question is, it  
12 kind of got my attention as well the word  
13 "certified" appears numerous times in the draft. In  
14 lay terms or in legal terms, could you expand what  
15 your interpretation of the word or the requirements  
16 associated with the word "certified" is?

17 **CAL CHIPCHASE:** I'd be happy to, Chair.  
18 Certify would ordinarily mean to verify, to confirm.  
19 And I think that that is probably the meaning  
20 intended here because it's paired with "or approve,"  
21 I believe. Certification or approval is the way it  
22 typically means. And so the way I take that to mean  
23 in these rules is that a certification or  
24 preapproval of the application, at least with the  
25 Water Commission as to the water use and water

1 sources OPSD other considerations is necessary  
2 before a petition could even be accepted.

3           And so whether we view it as a  
4 verification, a certification, or approval, I think  
5 we end up at the same place. It is effectively  
6 giving those agencies plenary power to withhold a  
7 necessary element that this Commission deems must be  
8 received before we'll even accept a petition for  
9 consideration. That plenary power, however we  
10 phrase it, I believe, goes too far.

11           **CHAIRMAN GIOVANNI:** Thank you. And my  
12 request. First of all, I appreciate you coming  
13 forward today to provide oral testimony in this  
14 matter. And I find that -- personally find that the  
15 points you raised to be of personal interest to me  
16 as well. And I concur that we want the best product  
17 at the end of the process.

18           My request is, if you don't mind, to  
19 consider providing written testimony on these points  
20 as a follow-up to today's hearing. I'm concerned  
21 that some of what you had to say might be lost in  
22 translation or, you know, consistently interpreted  
23 by what you intend to say. And it could only be  
24 better interpreted if you provide us a more detailed  
25 explanation of your points that you want this

1 Commission to consider by providing written  
2 testimony. So if you so choose, I would welcome it.

3 **CAL CHIPCHASE:** I appreciate the  
4 invitation, Chair. I would be happy to.

5 **CHAIRMAN GIOVANNI:** Thank you so much.  
6 Commissioners, anything further for this  
7 witness?

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

9 **CHAIRMAN GIOVANNI:** Mr. Okuda.

10 **COMMISSIONER OKUDA:** Follow-up to the  
11 Chair's question. How much time would you need to  
12 provide written testimony going over your opinions  
13 and including what you testified to with respect to  
14 the draft rules?

15 **CAL CHIPCHASE:** Commissioner, we could  
16 have that to the body within a week.

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

19 **CHAIRMAN GIOVANNI:** Thank you,  
20 Commissioner Okuda.

21 Thank you, Mr. Chipchase. You are  
22 excused.

23 **CAL CHIPCHASE:** Thank you, Chair.

24 **CHAIRMAN GIOVANNI:** Ms. Kwan, is there any  
25 other entity or person wishing to provide oral

1 testimony at this time?

2 **MS. KWAN:** Not in the conference room, but  
3 we do have on Zoom.

4 **CHAIRMAN GIOVANNI:** Who do we have on  
5 Zoom?

6 **MS. KWAN:** First we have David Arakawa  
7 signed up, and I can promote him to panelist. Just  
8 give me a second.

9 **CHAIRMAN GIOVANNI:** Before you do that,  
10 can you tell me how many have signed up?

11 **MS. KWAN:** As of right now, we have three.

12 **CHAIRMAN GIOVANNI:** Okay. So let's  
13 proceed with Mr. Arakawa and then we'll take a short  
14 break.

15 **MS. KWAN:** Mr. Arakawa, if you could turn  
16 on your camera and microphone and give us a mic  
17 check?

18 **DAVID ARAKAWA:** Testing. This is Dave  
19 Arakawa.

20 **MS. KWAN:** Thank you.

21 **CHAIRMAN GIOVANNI:** Welcome, Mr. Arakawa.  
22 Could you please state your name and affiliation for  
23 the record, and then I'll swear you in.

24 **DAVID ARAKAWA:** Thank you very much,  
25 Chair. My name is David Arakawa, and I am

1 representing the Land Use Research Foundation of  
2 Hawaii.

3 **CHAIRMAN GIOVANNI:** Do you swear the  
4 testimony you're about to give today will be the  
5 truth?

6 **DAVID ARAKAWA:** Yes, I do.

7 **CHAIRMAN GIOVANNI:** Please proceed. You  
8 have two minutes.

9 **DAVID ARAKAWA:** Okay. Because I have two  
10 minutes, I will agree with everything that Cal  
11 Chipchase presented, and I had the same issues with  
12 some of those provisions.

13 I would respectfully request a deferral at  
14 this time to -- and I would recommend, you know,  
15 setting up a working group on this matter, as was  
16 done for the EIS rules. So there's template for  
17 getting this done and getting rules passed and  
18 getting I passed quickly -- not quickly but  
19 expeditiously.

20 We would suggest a reasonable process that  
21 would actually save time, and it was used in the EIS  
22 rules, as we said, in 2018. It would include  
23 stakeholder input before the LUC approves a draft  
24 that goes out to public hearing. This would  
25 actually save time because if the fights occur at

1 the small business issue, small business hearings,  
2 small business agency or group hearings, they will  
3 have to come back and then more issues could be  
4 raised the second times it goes to these other  
5 places, and it would have to come back.

6           So in the EIS process, we brought in all  
7 parties, all relevant parties, and, like Mr.  
8 Chipchase said, by the time it went through all the  
9 public hearings, everybody had a consensus on the  
10 issues that were being presented by OEQC. Those  
11 were agreement on housekeeping matters, and we  
12 believes these rules are well meaning, and you know,  
13 we'd like to see the housekeeping matters passed,  
14 but there is some that cause legal issues, and what  
15 happened is they put the contentious issues or  
16 issues people objected to on the side to be worked  
17 on later, and unfortunately, COVID and other issues  
18 got in the way. This was done at the city and  
19 county -- for other city and county issues also and  
20 the state Building Code Council. So there is a  
21 template for all of this.

22           I would point out -- go over the same  
23 issues that Mr. Chipchase raised. Sorry, I'm  
24 rushing because of the time, but I would note that  
25 CWRM on 15-15-50, the form and contents of the



1 petition and CWRM certifications. CWRM only has  
2 jurisdiction over certain lands that come within  
3 their kuleana. They do not have jurisdiction over  
4 other lands, so they cannot -- it would be  
5 impossible for them to issue a certification or  
6 approval for lands outside their jurisdiction, their  
7 particular jurisdiction in some matters. They do  
8 represent the state. They do represent state water,  
9 but those would be other issues.

10 We share the concerns on all the other  
11 sections that were cited (audio disruption).

12 **CHAIRMAN GIOVANNI:** We lost you. We lost  
13 your verbal, your -- we can't hear you any longer.  
14 Oh, wait, you're back. Okay.

15 **DAVID ARAKAWA:** Okay. I'm sorry.

16 On the issues relating to OPSD, again,  
17 it's one person making a decision, and OPSD is  
18 already a mandatory party in the district boundary  
19 amendment process, and so it would allow input from  
20 other county and state agencies, you know, who --  
21 Climate Change Commission, DLNR, Climate Change  
22 Commission.

23 And finally, I'm not going to go over --  
24 every single one of the issues he raised were on my  
25 list, but because of time, I'll just point out

1 another -- another matter that -- well, you know  
2 what, that dismissal of the petition, if the  
3 Commission has insufficient time, that is -- is --  
4 we believe it would violate due process.

5 But the last thing I'm going to raise  
6 because of time and I would appreciate the  
7 opportunity to send written comments, is a well-  
8 meaning one. It's the very last thing on your list,  
9 and it is deleting the term, "acts of God," which is  
10 a legal term and has been legally litigated, and  
11 excusing certain issues with the IAL.

12 I helped draft the IAL law, both versions  
13 of the important ag lands law, but deleting that and  
14 inserting "natural disasters or accidents that are  
15 caused without human intervention." That would  
16 cause the Lahaina fires to be mitigated in front of  
17 the Land Use Commission, right? Without human  
18 intervention. So there will be an issue as to that.

19 So it's well-meaning. It was well-  
20 meaning, and it was put in there to address an  
21 issue, but it would cause a loss (audio disruption)  
22 -- it would cause, you know, a presentation of -- of  
23 all of the parties that are being accused of being  
24 involved or responsible for the Lahaina fires in  
25 front of your Commission, right?

1 So those are some of the issues that --  
2 that you know, trouble us. And yeah, and so that's  
3 it. And going forward, we think that you folks  
4 could pass the housekeeping matters. You guys could  
5 go out to stakeholder input, starting with the  
6 government agencies and with -- and with any  
7 interested parties, including the petitioners or the  
8 holders of district boundary amendment approvals,  
9 decision and orders, and ask for their comments.  
10 Start with that government agencies and the public  
11 nonprofit organizations that do appear before you  
12 and get the comments and maybe start with that.

13 And there may be a number of contentious  
14 issues or issues that people don't agree on, put  
15 that on the site, and that will be the subject of a  
16 working group, not the whole thing. Thank you.

17 **CHAIRMAN GIOVANNI:** Very good. Thank you,  
18 Mr. Arakawa.

19 Commissioners, any questions for Mr.  
20 Arakawa, starting with Commissioner Ohigashi.

21 **COMMISSIONER OHIGASHI:** Thank you, David  
22 -- Mr. Arakawa. Sorry.

23 **DAVID ARAKAWA:** Aloha.

24 **COMMISSIONER OHIGASHI:** I'm kind of  
25 confused at yours and, I guess, Cal Chipchase's

1 testimony. Specifically, the certification  
2 regarding the approval of a water resources  
3 management or -- utilization of water power,  
4 specific aquifer, is that the one you're concerned  
5 about that we should not require that as part of the  
6 petition?

7 **DAVID ARAKAWA:** Yes, that's one of them,  
8 Commissioner Ohigashi. From Maui, there are only  
9 certain areas of Maui that come under their  
10 certification as ground water areas, right, you  
11 know, ground water special areas. And so if it's a  
12 petition for an area outside of their kuleana  
13 jurisdiction on Maui, then what happens, right --

14 **COMMISSIONER OHIGASHI:** So --

15 **DAVID ARAKAWA:** -- get a certification --

16 **COMMISSIONER OHIGASHI:** So would you be  
17 amenable to having that particular proposed rule  
18 change limited only to those areas where they can  
19 certify or approve, and if they're not, if they  
20 don't have jurisdiction, then they're not required  
21 to provide a certification?

22 **DAVID ARAKAWA:** The answer, Commissioner,  
23 is no. And I was just raising one issue of the  
24 possibility that the reason why is this might be  
25 another impossibility issue is that to get approval

1 for -- from C-W-R-M, CWRM, you need certain -- you  
2 would need certain other entitlements in effect. So  
3 you may need to show that you got confirmation from  
4 the Land Use Commission as to the number of units,  
5 the number of people the acreages cover and all  
6 that. You may need zoning or whatever it is. And  
7 you cannot get that because the LUC is at the  
8 beginning of the process.

9 So when you're going to see -- there's  
10 already a process for CWRM to do this stuff, and  
11 that process, again, requires certain prior  
12 government approvals. And you're not going to have  
13 that, right? So it would be -- it's a catch-22. So  
14 you never get it, right? So I do want to raise that  
15 he did that. He raised that.

16 Mr. Chipchase raised the timing of the  
17 process, the certain timing or certain steps to get  
18 approval for development, and this puts it up front,  
19 and you don't have what you need at that time to get  
20 that certification. That's a simple way -- I should  
21 have said it that way. I should have said it that  
22 way.

23 **COMMISSIONER OHIGASHI:** And the last  
24 question I'm asking is I can see the utility in  
25 determining any kind of project having available

1 water prior to getting its okay or it's -- because  
2 then we tie up -- the tendency is that if we do it  
3 after the fact, we tend to tie up agricultural lands  
4 that have been into this amounts of -- it's  
5 inventory that keeps -- continues to grow where the  
6 LUC has asked -- given boundary amendments in the  
7 past, and we have a lot of areas we haven't been --  
8 that inventory hasn't been billed.

9           So the question that I have for you is,  
10 then, assuming that there is an availability to get  
11 some indication from the Water Commission or even  
12 county water departments as to what -- if they  
13 petition, what's the harm in requiring simply that  
14 they inquire and that they say that these are the  
15 resources available. And if not -- or what is the  
16 -- and in fact, if I was planning on development,  
17 wouldn't I be -- one of the first people that I'd be  
18 talking to is the Water Resources Commission as well  
19 as the Departments of Water Supply, see the  
20 potential development petition.

21           So I'm just looking at this as a practical  
22 type of petition submittal that we may want to  
23 require in some form but may not be the form that's  
24 being proposed. Let's hear your comment on that.

25           **DAVID ARAKAWA:** Okay. Excellent,

1 excellent issue, Commissioner Ohigashi. The answer  
2 to that is it's already covered in the existing  
3 processes, right?

4           You know, DLNR and CWRM are commenting  
5 parties for the EIS, so you're going to get it in  
6 the EIS. You know, you're going to get it -- and  
7 the Departments of Water Supply are commenting  
8 parties for the EISs and the counties are mandatory  
9 parties for the land use district boundary amendment  
10 process, and so is OPSD, and OPSD gets comments from  
11 all state agencies. So you will have that.

12           Getting that preapproval is an issue, and  
13 we talked about the impossibility, but I asked --  
14 Maui is used to this show me the water kind of a  
15 thing, right, you know? But I asked Honolulu, how  
16 do you guys deal with developments, right? And they  
17 say once the development has their -- we comment to  
18 the process, but once the development has their  
19 entitlements, the State Land Use Commission  
20 approval, and the zoning, then we look at our -- our  
21 operations and see, okay, we've got to get our  
22 resources up. We've got to -- we've got to drill  
23 wells. We've got to do storage. We've got to do  
24 transmission lines to serve this area, and they work  
25 at it that way.

1 But they cannot commit, right, at the very  
2 first step before this thing goes to Land Use  
3 Commission that, oh, yeah, yeah, we're going to  
4 drill these wells. Yeah, we're going to dig these  
5 transmission lines. You know, they cannot do it at  
6 that time, so it's a process thing, and it's -- I  
7 hate to -- not I hate to, but it's a kakou thing,  
8 right?

9 County Departments of Water Supply need to  
10 work with CWRM. And it's not one person or the CWRM  
11 board saying, okay, I certify this, right? You need  
12 the county water departments involved, too. So I  
13 think, for purposes of this item, maybe we can take  
14 it off the list and have the county water  
15 departments -- I don't know if the county water  
16 departments were asked to comment on this, right,  
17 you know, this particular one. But they -- I think  
18 the Maui County Water Department would say, hey,  
19 we'd like comment on this, right, you know? So  
20 that' -- that's the issue on water.

21 I'm not sure how many developments that  
22 the LUC has approved are not -- are not proceeding  
23 solely because of lack of water, solely because of  
24 lack of water. It's more financing, market timing,  
25 and things like that. But if there are any



1 developments that are not proceeding, and that's a  
2 valid concern of you, Commissioner Ohigashi, then we  
3 can work on that. We can work on seeing how the  
4 water approvals work for those types of development.  
5 And we'd be willing -- Land Use Research Foundation  
6 would be willing to work with the Commission as DLNR  
7 on those issues.

8 But I do not think -- not I do not think.  
9 I do not know of any projects that are not going  
10 forward solely because they don't have this water  
11 certification from CWRM. Thank you.

12 **CHAIRMAN GIOVANNI:** Thank you.

13 Commissioner Ohigashi, anything further?  
14 Okay.

15 Other Commissioners?

16 Mr. Arakawa, thank you for coming forward.  
17 I would like to echo my request that I made to Mr.  
18 Chipchase in that you take the time, if you're so  
19 inclined, to provide written testimony, it's far  
20 more helpful in terms, you know, of rulemaking where  
21 we're really looking at the details. And for you to  
22 just say you agree with somebody else's testimony  
23 really doesn't give us the detailed guidance we  
24 need, so I'll give you the opportunity to put your  
25 concerns in writing and your suggestions in writing,

1 and the Commission will take those seriously upon  
2 receipt. So if you're so inclined, I would welcome  
3 those from you.

4 **DAVID ARAKAWA:** I will definitely do so,  
5 Mr. Chair. And thank you for the opportunity.  
6 Thank you, LUC Commissioners and staff for working  
7 hard on this -- these sets of rules. Thank you.

8 **CHAIRMAN GIOVANNI:** Thank you very much.  
9 Who was that?

10 **COMMISSIONER OKUDA:** Gary Okuda, Chair.  
11 If I can ask Mr. Arakawa just one question?

12 **CHAIRMAN GIOVANNI:** Yes. Please proceed,  
13 Mr. -- or Commissioner Okuda.

14 **COMMISSIONER OKUDA:** Mr. Arakawa, how long  
15 will it take you to submit written testimony  
16 responding to what the chair has asked you to help  
17 us with?

18 **DAVID ARAKAWA:** I would say -- I would say  
19 best case, two weeks, right? I would need to talk  
20 to the -- I would go out to the stakeholders. I  
21 would go out to the Department of Water Supplies. I  
22 would go out to OPSD. I would go out to the state  
23 agencies that will be affected by this.

24 I already put in a call to the state  
25 agencies on the housing. And I'm asking for their

1 comments. So I think with going out and doing that  
2 kind of work and hopefully going to the County  
3 Planning Department -- see, all of this could have  
4 been done, right, by others, but now I'm doing it,  
5 right, and so -- so that's the other thing.

6 I think a Commissioner raised this already  
7 about going to state agencies and county agencies  
8 that would be directly, directly affected by these  
9 rules. But I would do that, Mr. Okuda. And I may  
10 need an extension, and I'll write that letter. If I  
11 cannot get all of the -- or as many of the major  
12 state and county agencies to provide comments on  
13 these issues that could -- yeah -- could affect the  
14 stakeholders and the --

15 **COMMISSIONER OKUDA:** Yeah. Mr. Arakawa, I  
16 don't think we intend you to do our work, okay? So  
17 my question was just how much time you would need to  
18 submit your testimony, doing whatever you plan to do  
19 with your testimony but in no way it's to foist on  
20 you our duties to do our own due diligence, so you  
21 think --

22 **DAVID ARAKAWA:** No, no. I --

23 **COMMISSIONER OKUDA:** -- you can submit  
24 your testimony in two weeks, or you would need more  
25 time?

1           **DAVID ARAKAWA:** Two weeks, best case. One  
2 month would be better. And I apologize if it was --  
3 if any of my comments were made to seem that I'm  
4 doing your guys' job, but I take Land Use Research  
5 Foundation seriously, so if I'm going to make  
6 comments, I've got to do the research, right, you  
7 know, so that's the reason why I've got to talk to  
8 all of these state agencies and stakeholders because  
9 I want to make sure that when my comments get  
10 presented, you know, they have the necessary  
11 research behind it, so thank you, Mr. Okuda. One  
12 month -- I'd ask for a month, please.

13           **COMMISSIONER OKUDA:** Okay. And just so  
14 that I treat you as fairly as Mr. Chipchase, can you  
15 briefly give your educational and experience with  
16 respect to land use matters?

17           **DAVID ARAKAWA:** I've been working in land  
18 use since 1983, so that's 40 years. I served as the  
19 City and County Corporation Counsel for eight years.  
20 I've been a panelist, moderator, guest speaker at  
21 numerous land use conferences and shoreline  
22 conferences. I had a hand in drafting the Important  
23 Ag Lands laws, school impact fee law, state  
24 shoreline laws, the EIS rules, Ewa Water  
25 Corporation, you know, setup that took place with

1 water, took all of the Ewa projects. I even worked  
2 on the Kauai, you know, Shoreline Management Rules  
3 and so a variety of rules.

4 I do serve as a commissioner on the Hawaii  
5 Tourism Authorities, so I appreciate how Chair runs  
6 this meeting and how the rest of you participate in  
7 this meeting as a state board and commission. So  
8 yeah, 40 years.

9 We've seen processes like this work, like  
10 the EIS and what the Chair is looking to do. We've  
11 seen processes like this work. And even at the  
12 State Building Code Co-Council, I think some of the  
13 Commissioners here may have experience with that,  
14 that passing -- anyway. Okay. I said it --

15 **COMMISSIONER OKUDA:** And since you served  
16 as eight years as the city and county's corporation  
17 counsel, the head city attorney, that means that  
18 you're a law school graduate, correct?

19 **DAVID ARAKAWA:** The University of Hawaii  
20 School of Law, 1981.

21 **COMMISSIONER OKUDA:** Okay. Thank you, Mr.  
22 Arakawa.

23 Thank you, Mr. Chair. No further  
24 questions.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 So Mr. Arakawa, I want to further clarify  
2 and agree with comments by Commissioner Okuda.  
3 Yeah. I'm -- my request is that you put your public  
4 testimony in writing so that it has more weight and  
5 that we better understand your concerns.

6 I'm not asking you to reach out to all the  
7 agencies. They'll have their opportunities before  
8 us as part of our due diligence, as part of the  
9 process. But we would really like you to take your  
10 concerns and your suggestions in another level of  
11 detail for our consideration but not to do our work  
12 for us. Is that clear?

13 **DAVID ARAKAWA:** Yes. Yes, it's clear.  
14 Thank you very much.

15 **CHAIRMAN GIOVANNI:** Okay. So you're  
16 excused, Mr. Arakawa.

17 I'm going to take a short break right now.  
18 It's 11:11, and we'll resume at 11:20.

19 **(Recess taken from 11:11 a.m. to 11:20**  
20 **a.m.)**

21 **CHAIRMAN GIOVANNI:** Ms. Kwan, who is the  
22 next person in line to give public testimony?

23 **MS. KWAN:** Next we have Mary Alice Evans  
24 from OPSD.

25 **CHAIRMAN GIOVANNI:** Welcome.

1           Could you promote Ms. Evans to the panel,  
2 please?

3           **MS. KWAN:** She has just been promoted.

4           And Mary Alice, once you get online, can  
5 you turn on your camera and microphone. Mary Alice,  
6 can you turn on your microphone and camera for  
7 testimony.

8           **MARY ALICE EVANS:** Thank you. I  
9 appreciate that. Chair, do you want me to proceed?

10          **CHAIRMAN GIOVANNI:** Mary Alice, please  
11 state your name and affiliation and then I'll swear  
12 you in and you can proceed.

13          **MARY ALICE EVANS:** My name is Mary Alice  
14 Evans. I am the interim director of the Office of  
15 Planning and Sustainable Development.

16          **CHAIRMAN GIOVANNI:** Do you swear the  
17 testimony you're about to give today is the truth?

18          **MARY ALICE EVANS:** I do.

19          **CHAIRMAN GIOVANNI:** And I'd like to grant  
20 you additional time beyond the two minutes because  
21 we are in receipt of your written testimony, which  
22 we've taken a look at, and it covers quite a bit.  
23 So if you need a little more time, take the time.  
24 So please proceed.

25          **MARY ALICE EVANS:** Thank you, Chair.

1 Thank you, Commissioners. I won't raise our written  
2 testimony. Thank you for accepting it and thank you  
3 for allowing me to testify as a public witness.

4 As you well know, we do have concerns  
5 primarily that we haven't had the time -- sufficient  
6 time to do more than a very preliminary review of  
7 these proposals. That preliminary review did lead  
8 us to have some concerns, but -- which we would like  
9 to have the opportunity to do more with, and so we  
10 are requesting that the Commission defer their  
11 approval on this draft and continue the hearing so  
12 that we will be able to present you with a more  
13 thoughtful, more thorough review of these proposals  
14 and be able to serve you and the public better as a  
15 result. Thank you, Chair.

16 **CHAIRMAN GIOVANNI:** Thank you, Ms. Evans.  
17 Commissioners, any questions for Ms.  
18 Evans?

19 Commissioner Okuda?

20 **COMMISSIONER OKUDA:** Thank you very much,  
21 Mr. Chair.

22 Thank you for being present, Ms. Evans.  
23 Same similar question that I raised to Mr. Chipchase  
24 and Mr. Arakawa. Can you briefly tell us your  
25 education and experience with respect to land use,



1 land use planning, or land use matters?

2 **MARY ALICE EVANS:** Thank you, Commissioner  
3 Okuda. I have a master's in urban and regional  
4 planning from the University of Hawaii at Manoa. I  
5 have served on the City and County Planning  
6 Commission for five years, one year as its chair. I  
7 have worked for the Office of Planning since 1987 at  
8 its inception on various matters, not all of them  
9 land use. I've worked -- and I have also served in  
10 various appointed positions throughout that time for  
11 other departments and the Governor's Office.

12 I worked under Abe Nisuta, who was the  
13 Land Use Division Administrator for eight years,  
14 working on petitions, drafting testimony and  
15 position statements to the Land Use Commission, and  
16 I've served as the director of the Office of  
17 Planning and Sustainable Development since 2019 and  
18 then with a break, and now again, as interim  
19 director.

20 **COMMISSIONER OKUDA:** And this deferral of  
21 the hearing that you're asking for, how much time  
22 would you like the hearing deferred?

23 **MARY ALICE EVANS:** I would leave that up  
24 to the Land Use Commission staff as to how much time  
25 they believe it might take to get a more thorough

1 presentation to yourselves, the Commission, on the  
2 proposals that have been put before you as a draft.

3           You know, I can tell you that from the  
4 Office of Planning and Sustainable Development's  
5 position, we would need more time to give, you know,  
6 more than just preliminary review. We really think  
7 that -- we respect the fact that the Commission  
8 wishes to amend its rules, and that gives -- I think  
9 that's a wonderful opportunity, and I want to  
10 commend you on undertaking this. And we would love  
11 to participate in, you know, all of your processes  
12 on this matter. I cannot tell you what -- what your  
13 staff may deem to be the proper amount of time.

14           **COMMISSIONER OKUDA:** Yeah. Well, if I can  
15 just interrupt, I just want to know how much time  
16 you need to submit the type of testimony that you  
17 believe would adequately present your position or  
18 the position of the Office of Planning? How much  
19 time do you need?

20           **MARY ALICE EVANS:** Commissioner, I'm  
21 wincing because of the sound you have, the feedback,  
22 not because of your question.

23           I think it would take us -- I think it  
24 would take us a couple of months.

25           **COMMISSIONER OKUDA:** So eight weeks you

1 think you can complete and present testimony that  
2 would satisfy the type of information you would want  
3 to present to us, eight weeks?

4 **MARY ALICE EVANS:** It's merely a guess.

5 And, as you can imagine, as we head into the  
6 Thanksgiving holiday, the Christmas holiday, and the  
7 New Years, things do take more time at this time of  
8 the year. So -- and as, you know, our legislature  
9 starts up, all of our state agencies, you know, have  
10 an interest in how that proceeds. So I think maybe  
11 to be safe, maybe a little longer than that,  
12 Commissioner.

13 **COMMISSIONER OKUDA:** Can you tell us how  
14 many weeks that you believe you would need to be  
15 safe?

16 **MARY ALICE EVANS:** To be safe. Okay.  
17 This is just a guess, but at least three months, I  
18 think.

19 **COMMISSIONER OKUDA:** Three months, okay.  
20 Okay. But you know, I'm asking that because if you  
21 don't give us -- or at least I'm only speaking from  
22 myself, yeah? I'm only speaking for myself. But  
23 if, for myself, I'm not told a definite date, then I  
24 would use my own discretion to determine what would  
25 be the definite date. So I'm trying to limit my

1 discretion by giving you the discretion to tell us  
2 how much time, because if you say, for example, one  
3 year, then you know, I might consider that, and I'm  
4 only speaking for myself, unreasonable, and we would  
5 go with an earlier date than, you know, people going  
6 to just have to work through the holidays. It's  
7 just one of those things.

8           So I don't want to guess, and I'm only  
9 speaking for myself. Other people might be okay  
10 with a guess. But I would like your best estimate  
11 at this time. So your best estimate of when you can  
12 give us the type of testimony which would satisfy  
13 what you have testified and described to, what is  
14 your best estimate of the amount of additional time  
15 you need?

16           **MARY ALICE EVANS:** I'm going to stick with  
17 three months, Commissioner.

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

20           Thank you, Mr. Chair. No further  
21 questions.

22           **CHAIRMAN GIOVANNI:** Okay. Other  
23 Commissioners?

24           Commissioner Lee?

25           **COMMISSIONER LEE:** Thank you, Chair.

1 Aloha, Director Evans. I've had the  
2 pleasure of serving with you on other boards, but  
3 please don't hold that against her.

4 My question has to do with what your  
5 thoughts are, since you've served on so many  
6 different departments, on how often admin rules are  
7 updated, in general, and how long it usually takes,  
8 in your experience. Thank you.

9 **MARY ALICE EVANS:** I've drafted rules.  
10 I've supervised the process of getting rules adopted  
11 over various -- for different -- none for the Land  
12 Use Commission, obviously, but for the Office of  
13 Planning and for DAGS and for other programs.

14 I do think that initial draft takes some  
15 time and thought, but I think the process of getting  
16 input from the stakeholders is probably the one that  
17 should take even longer. And so I would defer to  
18 the way OEQC did their rule amendment process. As  
19 you -- I think you may know that the former OEQC  
20 staff is now part of the Office of Planning and  
21 Sustainable Development, and I think we could  
22 provide or describe the process that they followed  
23 for the Commissioners' information, and that we  
24 could do, I believe, fairly quickly, I think within  
25 several weeks.

1           **COMMISSIONER LEE:** Just a follow-up.  
2    Would it be fair to say that rules are amended  
3    infrequently, years, and that the process from  
4    beginning to end probably take somewhere between one  
5    to three years in general, would that be a fair  
6    statement?

7           **MARY ALICE EVANS:** That would. It's  
8    deliberately designed to take longer than it takes  
9    to pass a law or amend a law because the decision-  
10   making body is not an elected -- comprised of  
11   elected officials, so there are more safeguards and  
12   checks and balances in the rule-drafting and  
13   adoption process than there are in getting the  
14   legislature or the City Councils to change their  
15   statutes or ordinances. So yes, it should take a  
16   long time for the reason of providing the public and  
17   stakeholders adequate opportunity to inform you of  
18   the impacts of proposed changes.

19           **COMMISSIONER LEE:** And finally, Chair.  
20           Director Evans, you've alluded to this,  
21   but administrative rules have the force of law. Is  
22   that your -- is that correct?

23           **MARY ALICE EVANS:** Yes.

24           **COMMISSIONER LEE:** Thank you, Chair.

25           Thank you, Director.

1           **CHAIRMAN GIOVANNI:** Thank you.

2           Other Commissioners?

3           So I have a couple of items, Director  
4 Evans, that if you permit me to proceed. I'd like  
5 you to -- you know, my understanding of the process  
6 that was described at the outset of today's meeting  
7 was that we're asked to put forth proposed -- a  
8 draft of proposed rules, and then the process would  
9 unfold with stakeholders given multiple  
10 opportunities to weigh in on those draft rules.

11           What I'm hearing from -- and I don't want  
12 to put words in your mouth, so I'm going to ask you  
13 to comment on this, but I'm asking -- what I'm  
14 hearing from you as well as in your written  
15 testimony is that you want to put more time in up  
16 front to make suggestions to the Commission and  
17 Commission staff about changes to the proposed draft  
18 prior to the Commission acting on that draft. Could  
19 you expand on that?

20           **MARY ALICE EVANS:** Yes, Chair. So draft  
21 rules are not normally submitted to the HARPS  
22 process to request Governor's approval to go out to  
23 public hearing until the draft is a final draft that  
24 the body that is adopting them as a final draft is  
25 perfectly satisfied with the content of those

1 proposed rules. And so that usually involves  
2 additional time prior to submitting them to the  
3 Governor's Office for Governor's approval to go out  
4 for public hearing.

5 The process that you described, Chair,  
6 would shift all of that input to the Commission  
7 after you've gone to the Governor and asked to go  
8 out to public hearing. And respectfully, I think  
9 the stakeholders and the Office of Planning and  
10 Sustainable Development would like the opportunity  
11 to provide you with our best suggestions prior to  
12 adopting a final draft to go to the Governor.

13 **CHAIRMAN GIOVANNI:** Thank you.  
14 Understood.

15 So now that leads directly into my second  
16 question. What we have on record by virtue of your  
17 written testimony is an expression of your concerns.  
18 It stops short of -- of remedies for your concerns  
19 or specific language that would address your  
20 concerns. And just now, you made the reference to  
21 -- I think the term you used was "best suggestions."

22 Is it -- can you elaborate what you mean  
23 by "best suggestions" and whether they would go  
24 further than just be a restatement of your concerns  
25 and whether those best suggestions would actually



1 include specific language addressing those concerns  
2 that you would recommend that we consider for  
3 adoption in the draft that we would publish.

4 **MARY ALICE EVANS:** Yes, Chair. That is  
5 exactly what I'm saying. We didn't have sufficient  
6 time to look for better ways to achieve your goals  
7 and make suggestions for possibly other variants  
8 that you might want to consider, with language that  
9 might accomplish that should you choose to go in  
10 that direction.

11 Yes, stating concerns doesn't give you our  
12 best --

13 **CHAIRMAN GIOVANNI:** Best suggestions.

14 **MARY ALICE EVANS:** Yes. It just -- it  
15 just, you know, gives you kind of a -- that's why  
16 I'd like to say that our written testimony, I hope,  
17 is not the last testimony that we're able to provide  
18 to you. It's just -- it's our way of -- of saying  
19 that we would like you to defer the decision to  
20 submit this to the Governor for approval to go out  
21 for public hearing at this time and hold at least  
22 one or two more hearings where you put this on your  
23 agenda and take in more testimony, including ours.

24 **CHAIRMAN GIOVANNI:** So to tie a bow on  
25 this, what I'm hearing from you is that -- tell me

1 if I'm interpreting this correctly or incorrectly;  
2 that if we defer for nominally three months before  
3 this commission would take up -- entertain a motion  
4 for adoption of the draft rules, that within that  
5 three-month timeframe, OPSD would submit to this  
6 Commission in writing its concerns and suggested  
7 resolution of those concerns in black and white.

8 **MARY ALICE EVANS:** Yes, sir.

9 **CHAIRMAN GIOVANNI:** Thank you.

10 Commissioners, any further questions for

11 --

12 Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** Yeah. I'm -- I'm  
14 -- my question is more substantive, I guess. 15-15-  
15 50(c)(27), I think you commented with regard to  
16 certification or approval by the State Office of  
17 Planning and Sustainable Development states  
18 sustainability coordinator at -- that all issues  
19 identified in et cetera, et cetera adequately  
20 address it. They include it as part of the  
21 petition.

22 Is it your position that that should not  
23 be done or is your position that that is not  
24 possible?

25 **MARY ALICE EVANS:** I'm not sure I

1 understand your question, Commissioner Ohigashi.

2 Can you -- I'm -- my apologies. Can you --

3 **COMMISSIONER OHIGASHI:** One of -- one of  
4 the complaints that the -- as the testifiers have  
5 indicated was being certain certifications by  
6 amending petition process to include certain  
7 certifications and approvals. One of them is from  
8 the State Office of Planning and Sustainable  
9 Development's Sustainability Coordinator saying  
10 that, yeah, they've met all these requirements in  
11 there.

12 Is that something that your department  
13 agrees with or disagrees with?

14 **MARY ALICE EVANS:** I think we see that  
15 there is a county function for looking at drainage  
16 plans and that when we go out to get comments on  
17 petitions, we do ask the County Planning Departments  
18 to circulate to their other involved departments and  
19 get those comments back. And those comments come to  
20 you with, I think, from the department that will be  
21 approving a drainage plan should you, in your  
22 wisdom, decide to grant that additional boundary  
23 amendment.

24 **COMMISSIONER OHIGASHI:** Maybe you don't  
25 understand my questions, Director Evans. I'm just

1 asking about this requirement that we're trying --  
2 one of the rules -- proposed changes was to require  
3 a certification from your office, the sustainability  
4 coordinator that the (inaudible) have been met  
5 adequately addressing climate -- environmental  
6 climate adaptation and mitigation measures identify.

7 That's one of the -- that's one of the  
8 complaints, I think, of the last few testifiers. My  
9 question to you is wouldn't that be something that  
10 your department normally would do anyway when it  
11 reviews any petition prior to coming to us?

12 **MARY ALICE EVANS:** We review that,  
13 absolutely. We do not certify it because  
14 sustainability does not have fixed standards or  
15 criteria. It is a moving target that we are all  
16 learning about as we go along to try to --

17 **COMMISSIONER OHIGASHI:** So is it your --  
18 is it your testimony that that is not necessary  
19 because it is the Land Use Commission's job to  
20 determine if the sustainability goes in.

21 **MARY ALICE EVANS:** We will provide you  
22 with the information on that issue, but --

23 **COMMISSIONER OHIGASHI:** You're not  
24 answering my question, Director Evans. My question  
25 is, is it our job to decide whether or not the

1 sustainability goals have been met, or is it your  
2 Office of Sustainability Coordinator's job to tell  
3 us, hey, we believe that it's been met?

4 **MARY ALICE EVANS:** It's our job to tell  
5 you whether we believe that the proposed development  
6 is sustainable. It's your job to decide whether  
7 those -- your criteria have been met.

8 **COMMISSIONER OHIGASHI:** So would it be  
9 then better -- one of the modifications could be  
10 that a requirement within the petition that they  
11 have some statement from the Department, some  
12 prestatement from the Department because I -- from  
13 -- my understanding is that your department reviews  
14 all petitions, prior to them being filed, for its  
15 completeness.

16 And one of the things that should be  
17 included in that petition is an evaluation or  
18 statement from the Department, from the Department  
19 regarding the goals of sustainability. Wouldn't  
20 that be something that our rules should include that  
21 we have something from your department clarifying  
22 that they have reviewed these and find -- and -- the  
23 opinion that, yes, it meets the goals?

24 **MARY ALICE EVANS:** We already do that, but  
25 that's different from certifying something that

1 doesn't have standards for certification.

2           **COMMISSIONER OHIGASHI:** You're missing my  
3 question again, Director. My question is, wouldn't  
4 it be better to have it as a condition -- as a  
5 petition requirement to have some kind of input  
6 concerning the specific area included as part of the  
7 petition, so there -- and that they'll be forced to  
8 go to you and create a document that says that your  
9 opinion -- you said it -- that's been in your  
10 kuleana to get -- that they have met all the  
11 sustainability goals. Wouldn't that be a -- a  
12 proper petition requirement?

13           **MARY ALICE EVANS:** I don't believe so, but  
14 it is --

15           **COMMISSIONER OHIGASHI:** (Inaudible.)

16           **MARY ALICE EVANS:** -- your -- it's the  
17 Commission decision on it.

18           **COMMISSIONER OHIGASHI:** Okay. From -- I  
19 think that your opinion doesn't technically match up  
20 with your testimony, but that is my opinion. You've  
21 answered my question. Thank you.

22           **CHAIRMAN GIOVANNI:** Thank you,  
23 Commissioner Ohigashi.

24           Other Commissioners, any questions  
25 further?

1 Thank you, Director Evans, for coming  
2 forward and for your written testimony.

3 **MARY ALICE EVANS:** Thank you.

4 **CHAIRMAN GIOVANNI:** Ms. Kwan, who is next  
5 on the list?

6 **MS. KWAN:** Third (sic) testimony will be  
7 from Zendo Kern from Hawaii County. Give me one  
8 minute to promote him.

9 **CHAIRMAN GIOVANNI:** Thank you.

10 **ZENDO KERN:** Aloha.

11 **CHAIRMAN GIOVANNI:** Aloha.

12 **MS. KWAN:** Can you give us a mic check?

13 **ZENDO KERN:** Mic check.

14 **CHAIRMAN GIOVANNI:** Please state your name  
15 in full for the record and your affiliation and then  
16 I'll swear you in.

17 **ZENDO KERN:** Zendo Kern, Planning Director  
18 for Hawaii County.

19 **CHAIRMAN GIOVANNI:** Thank you, Mr. Kern.  
20 Will the testimony you're about to give be the  
21 truth?

22 **ZENDO KERN:** Yes.

23 **CHAIRMAN GIOVANNI:** Please proceed.

24 **ZENDO KERN:** Thank you very much for the  
25 opportunity to testify. Thank you, Members of the

1 Commission, for your service. I have been in land  
2 use and building of homes, affordable homes for  
3 about 25 years. I was born and raised here on the  
4 Big Island and had the unique opportunity to serve  
5 as a Planning Commissioner Chair for two years,  
6 served as a County Councilmember, Chairman of the  
7 Planning Committee, served on the Water Board, and  
8 have worked extensively in the private sector and  
9 have had the opportunity to serve as the Planning  
10 Director for three years at this point in time.

11 Our request -- excuse me. Our testimony  
12 is similar to other testifiers that you've seen from  
13 Mr. Chipchase to Mr. Arakawa to Director Evans. Our  
14 request is that we take a little bit more time on  
15 this and give us a little more time to respond in  
16 writing. And I apologize that we weren't able to  
17 give a detailed response in writing. I do not want  
18 to come with complaints. I'd like to come with  
19 suggestions and opportunities to move forward  
20 together and work together in potential solutions  
21 within that. Having five working days to really  
22 review it is not enough time while we're running an  
23 office with a lot of other work that we're doing.

24 The concern that I would have about moving  
25 this forward without taking the time for the input



1 up front is that there's a perception. Now,  
2 perception is that those rules already have an  
3 endorsement of the Commission which begins to change  
4 the public understanding of that as it moves  
5 forward.

6           Knowing that there will be adjustments and  
7 potential changes as it moves forward, I think it  
8 makes sense to take that time now and get that  
9 foundation as right as it can be. There's a saying  
10 in land use and I think we've all heard it,  
11 sometimes we need to go slow to go fast. And I  
12 think in this case, this is one of those  
13 opportunities to look at it, to review it, perfect  
14 it a little bit now with some input, some valuable  
15 input, and then move that forward. I fear that not  
16 taking that time will create that perception.

17           And so we respectfully request some time  
18 to respond. I can respond in writing in details  
19 about or concerns with positive suggestions to  
20 moving forward, and I can make that work within the  
21 timeframe that any of the other testifiers have  
22 given. I prefer to coincide with Chair Evans'  
23 timeframe, ideally, with the holiday season coming  
24 up, and we are understaffed, and we do have a lot of  
25 work that we're doing.

1 I don't want to get into any of the  
2 substantive detail again because we didn't have the  
3 absolute time to really get into that, and I'd like  
4 to be, really, to the point invaluable within that.  
5 I'm really happy to answer any questions and, again,  
6 humbly and respectfully request additional time to  
7 engage in this and really that that concept of  
8 working together, that's what we'd like to be able  
9 to do.

10 **CHAIRMAN GIOVANNI:** Thank you very much  
11 for your testimony.

12 Commissioners, any questions for Mr. Zendo  
13 Kern?

14 Commissioner Lee?

15 **COMMISSIONER LEE:** Thank you, Chair.

16 Director Kern, were you asked for any  
17 ideas on your own for administrative rules proposals  
18 that, in your eyes, might improve the operations of  
19 the Land Use Commission?

20 **ZENDO KERN:** Not to my knowledge. You  
21 know, I get a tremendous amount of emails. I did  
22 have my staff check if we had been reached out to  
23 prior to this draft from LUC staff to opine on it.  
24 We could not find anything. To the best of my  
25 knowledge, we were not engaged early on in the

1 conversation.

2 **COMMISSIONER LEE:** And a follow-up  
3 question. If you were given some time, do you think  
4 that there might be some ideas that you or your  
5 department might propose?

6 **ZENDO KERN:** Absolutely. Our goal, if  
7 given the time, would be to go through -- there's a  
8 handful of areas that we have concern that's similar  
9 to what others have said, and what we'd like to do  
10 is propose what our concern is and then what we  
11 would propose as a reasonable solution to achieve  
12 the end result of what we're trying to do here.  
13 That would be our goal. And yes, we can do that.

14 **COMMISSIONER LEE:** Thank you, Director.  
15 Thank you, Chair.

16 **CHAIRMAN GIOVANNI:** Thank you,  
17 Commissioner Lee.

18 Commissioner Okuda, did I see your hand  
19 up?

20 **COMMISSIONER OKUDA:** Yes. Thank you very  
21 much, Mr. Chair.

22 Mr. Kern, thank you for your testimony.  
23 Similar to the other questions I asked of the other  
24 testifiers, you did give some background of your  
25 professional experience and experience with respect

1 to land use. Not that it's really necessary to  
2 qualify you as an expert, but do you have any  
3 educational background with respect to land use or  
4 urban planning?

5 **ZENDO KERN:** So my pathway to get here has  
6 been very different than most people. I grew up  
7 deep in the jungle of Puna, and I did not have the  
8 opportunity to go to school. I went to the school  
9 of hard knocks, took night classes, and have learned  
10 from being in the field, operating, doing, and  
11 serving, and through that I have become very  
12 efficient and effective at what I do for over 25  
13 years, whether it's building, whether it's land use,  
14 on a board or commission, or serving as a County  
15 Councilmember.

16 **COMMISSIONER OKUDA:** Okay. I was going to  
17 follow up on that. And by the way, one of the most  
18 intelligent people, smartest people I ever knew was  
19 my Uncle Yasuji Takazaki, who only had a third-grade  
20 education but built up Carmelo Orchids,  
21 Incorporated, which I believe is still the second  
22 largest exporters of potted orchids, and they  
23 operate off the Hamakua Coast. He's the one who  
24 told me I was not fit to be a farmer, go to law  
25 school instead.

1 But I wanted to follow up with that. You  
2 have -- you served on the County Council, is that  
3 correct?

4 **ZENDO KERN:** I did. I served on the  
5 County Council. And I Chaired the Planning  
6 Committee. And prior to that, I served on the  
7 Planning Commission for three years, Chaired for two  
8 years, and never missed a meeting of the Planning  
9 Commission over three years.

10 **COMMISSIONER OKUDA:** Can you give us  
11 approximate dates when you had the service -- or you  
12 gave the service on the Council and the Commission?

13 **ZENDO KERN:** Sure, yeah. County Planning  
14 Commission was first. That was around 2008,  
15 2007/2008, and the moved into County Council in  
16 2012. I ended up serving one term there. I decided  
17 not to run again due to personal reasons and then  
18 went back into private practice doing land use  
19 planning and consulting.

20 **COMMISSIONER OKUDA:** Okay. And your  
21 private practice involving land use planning and  
22 consulting, what period of time did that cover,  
23 approximately?

24 **ZENDO KERN:** So that was extensive after  
25 County Council. I focused on that quite a bit all

1 the way up into the point of becoming Planning  
2 Director. Prior to that, it was more engagement in  
3 the development side of it, building homes, doing  
4 entitlements but not for clients, more for my own  
5 company, and so we did a lot of affordable homes and  
6 some commercial projects. So it's kind of  
7 sandwiched on the front side of our own projects,  
8 government, and then after that it was 2014 to 2020  
9 helping clients navigate through the process of  
10 rezone and special permits use, permits variances,  
11 subdivisions. I had a small firm of around five  
12 people.

13 **COMMISSIONER OKUDA:** Okay. And your --  
14 you believe that your best estimate, not using the  
15 word "guess," but best estimate is in three months  
16 you could give us the type of input that you just  
17 described in your testimony, is that correct?

18 **ZENDO KERN:** Yes. That would be most  
19 ideal, and yes, we would be able to provide that,  
20 absolutely.

21 **COMMISSIONER OKUDA:** Thank you very much,  
22 Mr. Kerns.

23 Thank you, Mr. Chair. No further  
24 questions.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 Any further questions for Director Kerns?

2 Thank you. You are excused. Appreciate  
3 you coming in.

4 **ZENDO KERN:** Thank you. Aloha.

5 **CHAIRMAN GIOVANNI:** Aloha.

6 So it is currently 11:55, and we do have a  
7 continuation of some noise feedback issues in the  
8 room there in Oahu, so we're going to take a lunch  
9 break now and give our staff the opportunity to fix  
10 those problems and grab a bite. And we'll reconvene  
11 at 12:45. Does that work for everybody? Okay.  
12 We're adjourned until 12:45, and then we'll come  
13 back.

14 **(Recess taken from 11:55 a.m. to 12:45.)**

15 **CHAIRMAN GIOVANNI:** Okay. I'll call this  
16 meeting back into order. When we left off, we just  
17 concluded our third witness for public testimony.

18 Ms. Kwan, is there any additional people  
19 that have been waiting for public testimony?

20 **MS. KWAN:** Nobody has entered in the Q and  
21 A that they wish to give testimony.

22 **CHAIRMAN GIOVANNI:** Okay. Just the way we  
23 will proceed from here, I'm going to give staff --  
24 LUC staff an opportunity to weigh in and comment on  
25 the testimony that we've had already today. And

1 then I will give a second chance for anyone wishing  
2 to provide testimony -- public testimony before the  
3 Commission And then the Commission will make -- on  
4 its own, deliberate and see if it -- how it wants to  
5 move forward.

6 So with that, I think if there's nobody  
7 else waiting to testify in the first round of public  
8 testimony, I'll throw it to LUC staff Executive  
9 Director -- Mr. Orodenger, did you want to -- you or  
10 Mr. Derrickson want to follow up with anything  
11 you've heard so far?

12 **MR. ORODENER:** Thank you, Mr. Chair.

13 I'd like to address the Commission with  
14 regard to a number of things. First of all, I'd  
15 like to point out that unlike what happened with  
16 OAQC, which was a major rewrite of their rules, this  
17 rule change amendment was not an attempt to make  
18 major changes to how or what we do.

19 Ninety percent or more of the changes that  
20 we were suggesting were either to conform the rules  
21 to the Office of Information Practices requirements  
22 or to make changes that resulted from recent past  
23 two years or so Hawaii Supreme Court cases and  
24 federal cases. The AGs have been concerned that we  
25 have not made changes to our rules to conform to



1 those cases, and that was how this started out.

2           The two amendments, proposed amendments  
3 that seem to be of real concern are the ones with  
4 regard to certification, or whatever, or acceptance  
5 by the Commission of Water Resource Management --  
6 there's actually four paragraphs -- and the changes  
7 with regard to having the Office of Sustainability  
8 comment.

9           First of all, we would like to point out  
10 that, contrary to Director Evans' testimony, one of  
11 the reasons that we put in that language with regard  
12 to the Sustainability Coordinator was as a result of  
13 a recent hearing that we had on the cemetery in  
14 Kaneohe wherein the county's minimum requirements do  
15 not -- or have not changed in answer to the changing  
16 climate problems that we're having and the increased  
17 need for drainage and resources and runoff.

18           Be that as it may, the rest of the  
19 changes, as I said, are almost innocuous. We don't  
20 have any choice with regard to the changes that we  
21 made that arise from the Supreme Court cases and the  
22 federal cases. We did not engage with the community  
23 in Dushurets (phonetic) prior because those two  
24 changes that we were making, as Commissioner  
25 Ohigashi was pointing out in his line of

1 questioning, we thought that that should have been  
2 done by OPSD anyway.

3 Be that as it may, we don't believe that  
4 those are necessary for our continued operation, and  
5 my suggestion would be that we remove those from the  
6 proposed rule amendments at this time.

7 I would also suggest that we adopt some of  
8 Cal Chipchase's testimony with regard to the  
9 definitions of "therefore" and "therefor" and revert  
10 back to the original language. That being said, it  
11 is up to this Commission on how they want to  
12 proceed. The broader reach, in our mind, was to  
13 take place when we posted the rules and it went out  
14 for public testimony.

15 I agree with David Arakawa completely that  
16 -- which is -- as you may know, interesting. But  
17 the community does not monitor our website. The  
18 community doesn't know, you know, all the time what  
19 we're doing. And that public outreach efforts would  
20 get more people involved; however, we can't do that  
21 until we get authorization to hold public hearings  
22 because we don't know who to reach out to.

23 We do give notice to everyone who is  
24 signed up for personal notices with regard to our  
25 meetings and what we're discussing, and they get a

1 copy of the agenda, but we did not get any response  
2 from anyone with regard to that.

3 As I say, the purpose -- staff felt the  
4 purpose of this hearing was to begin the dialogue.  
5 If the Commission feels that now is not the time to  
6 move forward with these rules, that's fine. I would  
7 suggest, however, that one of the possible solutions  
8 is to remove that language, those four paragraphs  
9 with regard to the Office of Sustainability and the  
10 Commissioner Resource Management just so we can  
11 conform our rules to current law pursuant to my  
12 discussion with the AG.

13 I'm available for any questions that you  
14 may have.

15 **CHAIRMAN GIOVANNI:** Commissioners, any  
16 questions or comments to staff?

17 Commissioner Lee?

18 **COMMISSIONER LEE:** Thank you, Chair. I  
19 appreciate the comments by the Executive Director  
20 and commend him for trying to comport the rules with  
21 the recent legal developments.

22 I do have some questions, however. I  
23 would like to know when were the last two times that  
24 the LUC amended its rules and how long did it take  
25 for those last two times?

1           **MR. ORODENKER:** Scott, do you remember the  
2 dates?

3           **MR. DERRICKSON:** Yes. This is Scott  
4 Derrickson. The last time we amended our rules was  
5 in 2019. That process was about eight months and  
6 began earlier in 2018.

7           **COMMISSIONER LEE:** And then the time  
8 before that, do you have that information?

9           **MR. DERRICKSON:** I know we did one minor  
10 change that was a change that the Executive Officer  
11 was able to make a change to, but when you're  
12 talking about more significant changes, I believe it  
13 was about 2014, 2015.

14           **MR. ORODENKER:** Yeah, in 2014 we actually  
15 published our rules with regard to important  
16 agricultural land designations. That had not been  
17 done even though the law had been in effect for some  
18 time. And that took about eight months -- eight to  
19 ten months as well.

20           In both of those processes, what we did  
21 was we published the rules, gave public and all the  
22 state agencies the same opportunity to testify on  
23 what they thought about the rule amendments and make  
24 suggested changes after we had been authorized to go  
25 out to public hearing.

1 We then held hearings on every island  
2 before we brought them back to the Commission and  
3 obtained testimony from -- and including Molokai and  
4 Lanai before we came back. And that was what we  
5 intended to do this time to a certain extent,  
6 depending on how much funds we have available.  
7 Lanai and Molokai have become problematic at this  
8 point.

9 It -- this isn't -- what we're doing right  
10 now is no different than what we've done before.  
11 You know, we published a set of rules and gave  
12 everybody the opportunity to comment on them at the  
13 same time, including the public. Except for 2014,  
14 when we did the IAL rules, none of the rule changes  
15 that we've been involved in since have been anything  
16 that would amount to what I would call a major  
17 rewrite of our rules.

18 **COMMISSIONER LEE:** Okay. Thank you. I  
19 don't think there was any malice intended, and I  
20 like the idea of separating some of the less  
21 controversial proposals, so I'd like to see a better  
22 breakdown in writing of how that -- of how you see  
23 that.

24 But I was concerned with some of OPSD's  
25 comments that they're not able to do some of the

1 things that were proposed and also at the last  
2 meeting the Chair did advise to reach out to the  
3 counties planning departments or planning directors  
4 to see if there were any ideas, since we were going  
5 to go through this, to, you know, incorporate some  
6 of those ideas that, you know, we may or may not do  
7 that, but I thought that was a good idea, and I  
8 think we've heard today, at least from the Big  
9 Island, and I'm pretty sure on Honolulu they didn't  
10 either have the time or were not aware of that  
11 opportunity. And so I'd like to see more outreach  
12 on that.

13           And I'll just briefly share a screen. I  
14 know this is dangerous, but this is a four-page  
15 procedure on how admin rules are updated, and so I'm  
16 really impressed that you were able to do anything  
17 in six to eight months, so you know, I think you  
18 should be commended for that speed and efficiency.  
19 But you see it's a really detailed process. And I'd  
20 hate to have to go through that all over again if we  
21 didn't do a little bit more thought from the  
22 beginning.

23           Thank you, Chair.

24           **CHAIRMAN GIOVANNI:** Thank you,  
25 Commissioner.

1           **COMMISSIONER CARR SMITH:** I would --

2           **MR. ORODENKER:** I'd just like to point out  
3 that we -- I understand what you're saying, and  
4 that's why I'm proposing to remove those four  
5 paragraphs at this time.

6           The rest of the changes, it doesn't matter  
7 -- I shouldn't say it doesn't matter. But we could  
8 get a lot of testimony on that, but we won't be able  
9 to make any significant changes because the language  
10 was given to us by the AGs, and it's pursuant to  
11 law. Thank you.

12           **CHAIRMAN GIOVANNI:** Okay.

13           Any other questions or comments for the  
14 staff at this time?

15           Okay. Hearing none -- oh, Commissioner  
16 Carr Smith.

17           **COMMISSIONER CARR SMITH:** Sorry. I  
18 figured that others would have questions so I was  
19 waiting.

20           Yeah. I too was disappointed that it  
21 seems as though the counties were not contacted  
22 since we specifically asked for that. And I just --  
23 I just don't feel like it's appropriate to pull  
24 parts out of this, what is being proposed, when  
25 there's still so many people and so much testimony

1 that says that there needs to be more outreach to  
2 the stakeholders involved.

3 So I tend to feel that a deferral is  
4 appropriate, and we spend more time getting it right  
5 the first time for the first draft.

6 **CHAIRMAN GIOVANNI:** Thank you,  
7 Commissioner.

8 Anyone else want to comment at this time?  
9 Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** I'm just gathering  
11 my thoughts. First thing I'd like to say is that I  
12 appreciate everybody's concern that they want  
13 outreach and everything like that. However,  
14 outreach to the counties does not concern these two  
15 particular requirements. The two particular  
16 requirements are requirements that we are looking to  
17 do to state agencies.

18 You don't -- for example, on Maui, my  
19 understanding is that we have something like 8  
20 million -- if they're to develop what the Land Use  
21 Commission has authorized, they will use up to about  
22 eight million gallons per day of water in the  
23 Central area when the sustainable yield is probably  
24 about five. It makes sense that we require -- we  
25 ask our own state agency to say it's okay for the



1 development in that area. Everybody's talking about  
2 Maui this, Maui that, but I'm the one that lives  
3 here, and I see that happening. So it doesn't -- it  
4 makes sense. That change makes sense.

5           The other change about -- came about -- I  
6 remember that case. It was the cemetery case that  
7 we had. They didn't design for the -- for proper  
8 amount of drainage flow. We're asking that our own  
9 OSPD look at that and tell us does it mean -- meet  
10 sustainable -- those are the two controversial  
11 requirements, nothing to do with the counties. I  
12 fail to see what that argument is all about.

13           I can understand that you want -- you want  
14 input from the counties regarding the -- some of the  
15 other issues that may have been brought, and that's  
16 fine. But most of the changes are related to  
17 requirements that the AG is asking us.

18           So what does this tell me? This tells me  
19 that two things. One is that I think everybody  
20 wants to discuss this further, especially those two  
21 issues, which is fine with me because I'm a short  
22 timer. I believe that folks have all the right to  
23 discuss as much as you like. However, the changes  
24 that are required to be made, that the AG is forcing  
25 through either -- through Supreme Court action and

1 requires us to make those changes. And if -- we're  
2 going to -- we're not going to do it, we're going to  
3 be caught in a situation where we aren't able to  
4 essentially comply or send a signal out that we are  
5 compliant.

6           The last thing I'd like to say is that I'm  
7 disappointed in one aspect. I recall that there was  
8 an objection in a case as to us designated  
9 individuals as expert testimony because it's not  
10 specific in the rules. And I believe that if we  
11 should go forward, we should formulate a rule that  
12 allows us to designate or specifically designate  
13 expert witnesses in contested case hearings or in  
14 any case hearings.

15           That's my comments. I -- I agree with  
16 Dan. If you also want to discuss those  
17 controversial ones, that's fine with me. I think we  
18 should bifurcate -- I think we should move on with  
19 the required amendments in this matter.

20           **CHAIRMAN GIOVANNI:** Thank you,  
21 Commissioner Ohigashi.

22           I had one follow-up question to Mr.  
23 Orodenker based on Lee's questions and comments. If  
24 we bifurcate and leave those two issues out, as you  
25 suggest is possible, when are those addressed? Do

1 we wait for another rule making down the road or  
2 what?

3 **MR. ORODENKER:** Yes, Chair. That -- that  
4 would be what would happen. In discussions with one  
5 of the testifiers, Cal Chipchase, he made it -- he  
6 pointed out that there's some complexities to those  
7 issues, especially with regard to Commission on  
8 Water Resource Management.

9 The rule with regard to the sustainability  
10 coordinator is internal. But it would take some  
11 time to hash out that language. And it's not  
12 something that prevents us from moving forward. I  
13 mean, we don't really even need that rule at all, to  
14 be honest with you. It could be handled through a  
15 questioning by Commissioners to OPSD as to whether  
16 or not they have talked to Commission on Water  
17 Resource Management and requesting that, if they  
18 have not, that they should. So we don't really need  
19 that change.

20 We actually don't even need the  
21 sustainability coordinator change. That could be  
22 handled in the same manner. To a certain extent,  
23 those two rule amendments were proposed to flag the  
24 issues, so to speak, with regard to OPSD's  
25 participation.

1 I would also like to point out that we --  
2 we intend, and I think I said it at the first  
3 hearing when we were questioned with regard to  
4 having the county's input, that it is our belief  
5 that the current process, as it's set up, was  
6 designed to have the county's participation before  
7 it went out to public. But we need to be able to  
8 post that for them to have access to it. Actually,  
9 they have access to it on our website, but they  
10 don't look at it.

11 I did talk to the head of DPP on Oahu, and  
12 she did not take issue with what we were proposing,  
13 other than those two controversial ones where she  
14 said she'd have to look at them a little bit more.  
15 And I did talk to Kauai. Maui is problematic, as  
16 you may or may not know. The head of DPP for Maui's  
17 house was burned down in the Lahaina fire, so she  
18 did not respond to my phone calls right away.

19 The -- as I said, you know, outside of  
20 those two things, we really don't have choices with  
21 -- no matter how people testify with regard to  
22 modification of the rest. So the process -- without  
23 those two changes, the process is fairly simple.  
24 You know, we can get -- we go out to public  
25 testimony because that's part of the process and

1 maybe there's a slight tweak of the language as a  
2 result, but those other changes, you know, this is  
3 what the AG is telling us.

4 **CHAIRMAN GIOVANNI:** Commissioner Lee.

5 **COMMISSIONER LEE:** Thank you, Chair.

6 Mr. Orodenger, don't we have to follow the  
7 law anyway? Wouldn't the findings of fact and  
8 conclusions of law take care of what legal  
9 regulations that we'd have to follow?

10 **MR. ORODENKER:** Yes and no. Yes to the  
11 extent that we do have to follow current case law  
12 but not with regard to the language in our rules. A  
13 couple of the cases that were litigated were  
14 actually litigated on what our rules say and whether  
15 or not they comport to constitutional and due  
16 process issues and the rest. And that is why we're  
17 being urged by the AG to make those changes.

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

19 **CHAIRMAN GIOVANNI:** So Mr. Okuda, if I  
20 may, I'm going to -- I'd like to give -- we're kind  
21 of going into general discussion and Q and A, and I  
22 want to go there, but I want to give the community a  
23 second round of opportunity to testify if they want  
24 to before we go any further on general discussion  
25 among Commissioners and staff. Is that -- can you

1 hold our question or do you want to take it now?

2 **COMMISSIONER OKUDA:** If you don't mind,  
3 Chair, this is a specific question in reference to  
4 what the Executive Officer just said.

5 **CHAIRMAN GIOVANNI:** Okay.

6 **COMMISSIONER OKUDA:** So I'm asking for a  
7 response.

8 **CHAIRMAN GIOVANNI:** Please proceed.

9 **COMMISSIONER OKUDA:** Mr. Orodener, the  
10 direction that you testified to or stated coming  
11 from the Attorney General, is that in writing or is  
12 it oral or what form is it in?

13 **MR. ORODENKER:** I have a string of emails.

14 **COMMISSIONER OKUDA:** Okay. I don't know  
15 what the answer is regarding that. Is that  
16 something that should be made public, or is that  
17 considered internal attorney-client advice? I don't  
18 know. I just raise that.

19 The second question is the two items --  
20 and I apologize for being blunt, but is one of the  
21 motivations of the items which are being described  
22 as controversial because there's a belief by you or  
23 your staff, and I don't want to put words in your  
24 mouth, that Office of Planning is not giving the  
25 input that you believe is necessary?

1 **MR. ORODENKER:** Yes, Commissioner.

2 **COMMISSIONER OKUDA:** Okay. And so when  
3 you say we can handle it by questions, is it -- do  
4 you mean that, well, if we don't have the rule,  
5 basically Commissioners can ask or insist that the  
6 Office of Planning respond to those questions being  
7 raised.

8 **MR. ORODENKER:** Yeah. We can do it that  
9 way. The reason that we decided that it might be a  
10 good idea to put them in the rules is so that we  
11 didn't have to delay petitions and proceedings.  
12 Because if OPSD is not prepared with responses from  
13 both of those entities, then we have to continue the  
14 hearings to a later date until they have done that  
15 and come back with information.

16 So a lot of our intention was to actually  
17 benefit the petitioners by making sure the  
18 information was available so that we could get  
19 through a hearing in one day.

20 **COMMISSIONER OKUDA:** Okay. Thank you for  
21 your responses.

22 Thank you, Mr. Chair.

23 **CHAIRMAN GIOVANNI:** Thank you,  
24 Commissioner.

25 Thank you, Mr. Orodenker. Does that

1 conclude your comments you want to make, Mr.  
2 Orodenker?

3 **MR. ORODENKER:** Yes, at this time, Chair.

4 **CHAIRMAN GIOVANNI:** Very well. So at this  
5 time I want to give the members of the public a  
6 second opportunity to offer testimony, public  
7 testimony.

8 Ms. Kwan, has anybody indicated that  
9 they'd like to give additional testimony at this  
10 time?

11 **MS. KWAN:** Nobody has used the Q and A to  
12 indicate they wish to give testimony at this time.

13 **CHAIRMAN GIOVANNI:** And nobody's in the  
14 room?

15 **MS. KWAN:** And nobody's in the room but  
16 staff and Commission.

17 **CHAIRMAN GIOVANNI:** Okay. Very well. So  
18 let the record show that the opportunity was offered  
19 and nobody took advantage of it.

20 So at this time, Commission, we're open  
21 for continuation of discussion on this matter based  
22 on the information that has been presented in  
23 advance and written testimony provided on -- to us  
24 in advance, as well as any testimony that has been  
25 heard today. So let me throw it open to



1 Commissioners for comment.

2 Commissioner Yamane?

3 **COMMISSIONER YAMANE:** Thank you, Mr.

4 Chair. Can everyone hear me okay?

5 **CHAIRMAN GIOVANNI:** Yeah.

6 **COMMISSIONER YAMANE:** For the staff, Mr.  
7 Orodenker, if what I'm hearing you saying is you're  
8 willing to take out the proposed rule amendment that  
9 was supposedly controversial or people had issues  
10 with. What's the process then? Do you need to now  
11 redraft the amendment and repost and then do we have  
12 to go through this process again where we have to  
13 meet and make a decision? What happens then?

14 **MR. ORODENKER:** What we would do is we  
15 would meet with all the stakeholders, including the  
16 counties, the AGs, the Hawaiian community,  
17 Commission of Water Resource Management, and  
18 Sustainability Branch of OPSD, as well as OPSD  
19 itself, and work through what kind of language makes  
20 sense and whether or not the amendments even are  
21 needed, are necessary. Once we did that, then we  
22 would come back with new proposed language to do  
23 another amendment.

24 We wouldn't do that quickly. I mean,  
25 you're talking about a year, maybe even longer

1 before we would even have language that everybody  
2 was happy with. And then we would have to repeat  
3 this process. It's my belief that if we defer this  
4 matter so that we can work with the stakeholders to  
5 develop language that everybody would be satisfied  
6 with, we're deferring all of the changes for about a  
7 year.

8 **COMMISSIONER YAMANE:** And then on the  
9 other scenario where -- how you propose to take out  
10 the language that affected the other state  
11 jurisdictions and just leave the so-called  
12 housecleaning that we propose? How would that work?  
13 Would you then -- because right now, the rule  
14 amendment that's proposed and on the table is  
15 everything. Would that have to be also amended to  
16 take those out, or would there be a --

17 **MR. ORODENKER:** No. We wouldn't -- we  
18 would leave the rule amendments -- the proposed rule  
19 amendments in that we were instructed to make by the  
20 Attorney Generals, and we would leave the rule  
21 amendments in which are fairly minor with regard to  
22 the Office of Information Practices' direction on  
23 filings being ADA compliant and move forward to  
24 posting and to subsequent public hearing.

25 **COMMISSIONER YAMANE:** So a motion would

1 have to be specific to kind of spell that, in a  
2 sense, out where to post just the more housecleaning  
3 things and leave out the more substantive  
4 amendments, is that correct?

5 **MR. ORODENKER:** That is correct. And I  
6 wouldn't characterize it that way. It's more like  
7 the mandatory changes versus the discretionary  
8 changes.

9 **COMMISSIONER YAMANE:** Okay. Thank you.  
10 No more questions, Mr. Chair.

11 **CHAIRMAN GIOVANNI:** Thank you.

12 Other Commissioners, comments?

13 So the Chair has a few comments.

14 Personally, I was -- I take these amendments pretty  
15 seriously, and I commend the staff for taking the  
16 time to go through it line by line and clean up the  
17 housekeeping events and also to conform with what  
18 I'll call informal suggestions by email for the  
19 Attorney General to clean up and comport our rules  
20 to where they should be, and also to try to address  
21 some issues of significance involving the  
22 participation of critical state agencies in our  
23 process.

24 I, for one, have been concerned in recent  
25 months and in recent hearings that despite the fact

1 that opportunity is given to state agencies, they've  
2 been, in my view, missing in action on many cases  
3 before us. So I interpreted some of what Mr.  
4 Orodenker refers to as the more controversial,  
5 discretionary amendments to be a vehicle by which we  
6 would get the state more engaged in our process on a  
7 proactive basis by putting some obligations on them.

8 I think that's a noble effort, and I think  
9 it's welcome in many respects. But at the same  
10 time, we're also hearing from these agencies in  
11 writing and in testimony today, directly and  
12 indirectly, that it's problematic for them as  
13 currently drafted, all of which -- and there's four  
14 of them -- testified before us today in a consistent  
15 way in which they're asking for time, time to  
16 actually not just complain and raise concerns but to  
17 offer bona fide, suggestive language that would  
18 remedy their concerns and, at the same time, give us  
19 an opportunity to get them encouraged to commit to  
20 language that would get them involved in support in  
21 LUC processes.

22 So I don't really understand the timelines  
23 associated with the two scenarios that were just  
24 explained to Commissioner Yamane, but it sounds to  
25 me on the surface that one is let's just go take

1 care of the stuff we've got to take care of to make  
2 it comport with good housekeeping and suggested  
3 language by the Attorney General. I would go  
4 through this eight-month process to clean that up.  
5 But meanwhile, the things that are really important  
6 to us, we're going to kick that can down the road a  
7 bit and deal with it later.

8 I, for one, think that it's important that  
9 we raise these issues now and we try to deal with  
10 them now. And obviously, staff has put out some  
11 language that bothers some people. There's nothing  
12 wrong with bothering some people, in my mind. It  
13 calls them to action.

14 So we have heard from all four of these  
15 entities a willingness to translate their concerns  
16 into suggested remedies and to suggested language  
17 that would work for them. I think that's a  
18 worthwhile process. And if they don't follow  
19 through and do that, then it's shame on them, and we  
20 can move forward with staff on our own.

21 So I, for one, would actually -- if it's  
22 the sentiment of this Commission and majority, I  
23 would join them in entertaining a wait and see, a  
24 period that we would defer for a short period to  
25 give these parties an opportunity to work with staff

1 to get a more complete amendment rather than just  
2 deal with the obligatory ones up front. So I'm  
3 interested in what other Commissioners feel on those  
4 points.

5 **COMMISSIONER OKUDA:** Chair?

6 **CHAIRMAN GIOVANNI:** Who's this? Okuda?

7 **COMMISSIONER OKUDA:** Gary Okuda.

8 **CHAIRMAN GIOVANNI:** Mr. Okuda.

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

10 I make a motion that this matter be  
11 deferred for a period of three calendar months, 12  
12 weeks, however you want to be calculated, and if  
13 there's a second to my motion and if there's  
14 discussion, I'll state my reasons why I'm making the  
15 motion.

16 **COMMISSIONER LEE:** This is Commissioner  
17 Lee. I'll second that.

18 **CHAIRMAN GIOVANNI:** So motion to defer  
19 this matter for three months has been made by  
20 Commissioner Okuda and seconded by Commissioner Lee,  
21 and I'll go back to Commissioner Okuda who promised  
22 to explain why he's made the motion.

23 **COMMISSIONER OKUDA:** Mr. Chair, this is  
24 Gary Okuda. I incorporate, as I say, by reference,  
25 the reasons and the statement you made. Let me also

1 add to the statements that you made.

2           The witnesses that testified, particularly  
3 the Office of State Planning, even though,  
4 unfortunately, required some prodding to get a clear  
5 response, basically says that they can -- their best  
6 estimate to respond and give us specific information  
7 or specific responses would be three months. So I  
8 believe there's no downside risk in giving them the  
9 three months which they stated is the best estimate  
10 of time they would need to respond.

11           Number two, three months gives even more  
12 time to the time that -- for example, Mr. Chipchase  
13 stated that he would need to provide supplemental  
14 written testimony, so I've believe three months is a  
15 reasonable time based on the witnesses' own  
16 testimony.

17           Secondly, the fact that response will be  
18 provided to us in writing will allow us to see in  
19 black and white exactly what the position of each  
20 party or testifier is. No more wishy-washy stuff.  
21 And if a party or a person submitting testimony, you  
22 know, desires just to give us vague and ambiguous or  
23 noncommittal types of testimony or responses, then  
24 we will weight and make a decision based on that.  
25 And so I think this will bring clarity to the

1 process and three months is not that much of a long  
2 time.

3 I share the Chair's concern about certain  
4 parties -- let me be blunt, the Office of State  
5 Planning and Sustainable Development being more than  
6 missing in action. I believe at one hearing, one of  
7 their representatives described their position as,  
8 in some cases, they're the watchdog, and in some  
9 cases they just compile information. They have a  
10 public trust, too, to protect things that are  
11 required to be protected under the Public Trust  
12 Doctrine, and they have an obligation -- in fact, I  
13 believe it's a fiduciary obligation -- to look into  
14 pending cases and take a position and be the  
15 watchdog.

16 I'm not saying watchdog means to oppose  
17 everything that comes before the Commission, but  
18 watchdog means to sniff around and see if there's  
19 some type of environmental bomb ticking away, a bomb  
20 ticking away which is going to affect the items that  
21 are required by the Constitution --

22 **COMMISSIONER CARR SMITH:** (Inaudible.)

23 **COMMISSIONER OKUDA:** -- protected such as  
24 -- such as Hawaiian cultural practices and  
25 resources. So that's the reason for my motion.



1           **CHAIRMAN GIOVANNI:** Thank you,  
2 Commissioner.

3           Commissioner Lee, do you want to speak to  
4 your second?

5           **COMMISSIONER LEE:** Not really, but since  
6 you gave me the opportunity, yeah, I'm troubled by  
7 the concern from the departments. I think it's a  
8 good thing. What I'd like to see, though, is in the  
9 meantime, if the Executive Director could show us in  
10 writing what is considered controversial versus  
11 noncontroversial. That way, maybe we'll have a leg  
12 up in case later on we decide that, you know, that's  
13 the route that we're going to take. But you know,  
14 so as we don't waste any time.

15           It would be good to have the ability to  
16 see that in writing because sometimes one person's  
17 idea of controversial may not be another person's  
18 idea. Thank you, Chair.

19           **CHAIRMAN GIOVANNI:** Thank you.  
20           Commissioners, any other comments on the  
21 motion?

22           Commissioner Ohigashi.

23           **COMMISSIONER OHIGASHI:** I'm going to  
24 reluctantly vote aye. The reason why I'm going to  
25 reluctantly vote aye is that I agree with your

1 statement that we are taking the things that we  
2 appear that we're trying to do the things that we  
3 should be doing and kicking the real problems down  
4 the road.

5 And I hope everybody remembers that when  
6 come back three months from now and when all these  
7 people who complained are fully allowed to make a  
8 statement and solutions are presented that we go  
9 forward with those solutions rather than saying, oh,  
10 wow, it's still controversial. You should -- we  
11 should carve these out.

12 I would agree with the Chair. We should  
13 give those persons who have expressed those concerns  
14 full opportunity to (inaudible). However, it's been  
15 my experience, along with Commissioner Okuda and  
16 along with the Chair, of the disappointing that say  
17 -- the disappointing presentations done by OPSD in  
18 the past. And I hope one day it will be able just  
19 to answer questions rather than (inaudible). Thank  
20 you.

21 **CHAIRMAN GIOVANNI:** Thank you,  
22 Commissioner.

23 Anybody else?

24 Commissioner Carr Smith?

25 **COMMISSIONER CARR SMITH:** Thank you,

1 Chair. I'm still learning this process, but -- so  
2 I'm trying to understand why there's such an issue  
3 with OPSD and wondering has anybody tried to sit  
4 down with them and express their concerns and try to  
5 figure out a way to go forward and have it work  
6 better for all involved? And I think that goes for  
7 the counties, too. There seems to be some issues  
8 with some counties, and I don't understand why that  
9 can't be resolved through conversation.

10 **MR. ORODENKER:** If I may address that, Mr.  
11 Chair, unless you'd like to proceed.

12 **CHAIRMAN GIOVANNI:** I will make a comment  
13 directly to the question raised by Commissioner Carr  
14 Smith, and then, Mr. Orodenker, if you so still  
15 would like to further comment, I would welcome that.

16 So as Commissioner Ohigashi just  
17 summarized, there has been an absence of -- in my  
18 view, an absence of participation by OPSD in matters  
19 before us and going back several month. On my  
20 personal account, I did address the representatives  
21 who did show up at meetings and informally asked  
22 where is everybody, why aren't you taking this  
23 seriously, why are you leaving the matters for us to  
24 discuss on the fly? And the general response that I  
25 got was, well, we have vacancies in our office, and

1 we don't have enough people to do our work that  
2 we're required to do.

3 So I followed that with a letter that I  
4 authored and signed and sent to DBEDT, in which I  
5 enumerated the issues as I saw them and asked for  
6 their support to have OPSD more present and  
7 supportive. I've not received any response to it.  
8 So that's the role that I've played, so we haven't  
9 been just quiet on the issue that I know of.

10 So Mr. Orodenger, would you like to  
11 comment?

12 **MR. ORODENKER:** Thank you, Mr. Chair.

13 First of all, with regard to the counties,  
14 the counties are not the problem. We -- we get good  
15 participation from the counties. With regard to  
16 OPSD, this has been an ongoing problem for four or  
17 five years, and I've had attempted to resolve the  
18 matter several times. I don't know the answer as to  
19 why there hasn't been a resolution, but it's not for  
20 a lack of trying.

21 **COMMISSIONER CARR SMITH:** Thank you.

22 **CHAIRMAN GIOVANNI:** Thank you.

23 Any other comments on the motion? So I'm  
24 going to -- the Chair is going to support the motion  
25 and vote aye, and you've kind of surmised my

1 reasoning by my comments I've made in the last half  
2 hour, but I'm going to, for the record, want to say  
3 a few things.

4 First of all, this Commission is not,  
5 quote, "hamstrung," end quote, in any way from doing  
6 its business by virtue of the fact that we're  
7 operating under administrative rules that need to be  
8 updated. In other words, we can go forward with our  
9 business, even though there are elements that  
10 obviously need to be updated. So in that respect, I  
11 don't see the three-month delay or deferment being  
12 consequential in terms of our ability to do  
13 business.

14 Second of all, I think that this  
15 Commission can do better work when it has important  
16 matters that are clearly on the record and in  
17 writing as opposed to just relying purely on verbal  
18 testimony. So I think that the Commission will make  
19 a better informed decision, provided we give  
20 opportunity to those who have legitimate concerns to  
21 express those concerns in writing and put them  
22 before this Commission.

23 This deferment gives them that  
24 opportunity. Whether or not they take advantage of  
25 that opportunity will also tell us how serious they

1 are about their concerns. So it works -- it works  
2 in that way.

3 And then the third comment I'd like to  
4 make is back to staff and to the AG, that it would  
5 also serve our Commission better if you could  
6 enumerate in writing what those concerns are and we  
7 don't have to rely on staff's interpretation of  
8 emails if they are matters of substance. Even if  
9 they might just be discretionary, they kind of sound  
10 important to me, and I'd like to see what they are.

11 So let me ask in the interim that staff  
12 and Attorney General provide a summary of what those  
13 issues are so we can distinguish them from other  
14 matters which might be more controversial, and that  
15 that be done within the next three months as well.  
16 So for those reasons, I will be voting in support.

17 And I also see Commissioner Ohigashi has  
18 his hand up again or forgot to take it down the last  
19 time. So Commissioner Ohigashi, do you have further  
20 comment? No? Okay.

21 So let me ask -- go ahead.

22 **MR. ORODENKER:** Mr. Chair, I'd just like  
23 to make one comment. For the most part, I agree  
24 with your statement that we can move forward without  
25 these rule amendments; however, I would like to

1 point out I believe it's the change to 15-15-95(c)  
2 that may expose us to reversal on special permit  
3 decisions if we don't change our rules.

4 **CHAIRMAN GIOVANNI:** Could you, for the  
5 record, put that change on -- could you read that  
6 change that you're talking about?

7 **MR. ORODENKER:** This language -- before I  
8 go forward, Scott, do I have the right language, the  
9 Thomas versus Chicago Park District case?

10 **MR. DERRICKSON:** Yeah.

11 **MR. ORODENKER:** This language arose from a  
12 case that didn't even involve us at the beginning.  
13 The county made a decision with regard to special  
14 permits that was made under their rules, but their  
15 rules mirrored ours. And the change that the Thomas  
16 case gives rise to is certain unusual and  
17 unreasonable uses within the agricultural and road  
18 districts other than those for which the district is  
19 classified may be permitted.

20 When determining whether or not an  
21 unreasonable and reasonable use is permitted, the  
22 County Planning Commission and/or the Commission, if  
23 Commission approval is required, may deny a permit  
24 only if one or more of the following guidelines is  
25 determined to be violated.

1 It sounds like we're dancing around on the  
2 head of a pin, which we really are, because the  
3 prior language just said may permit that the  
4 following guidelines are established, and the -- the  
5 -- the federal courts determined that that was too  
6 vague and there was a due process issue with regard  
7 to that.

8 And I do not believe that this is a  
9 significant issue and that we can --may perhaps  
10 handle this in any special permit decisions by  
11 actually reciting this language as a part of the  
12 decision and order; however, that doesn't mean that  
13 it won't be challenged.

14 **CHAIRMAN GIOVANNI:** That's a great point,  
15 Mr. Orodanker. I think we don't have a choice  
16 except to follow the direction that you're talking  
17 about. I mean, even if we propose every -- even if  
18 this Commission today voted in favor of moving  
19 forward and posting these draft as drafted, we'd  
20 still have that problem for six to eight months.

21 **MR. ORODENKER:** That is correct. I just  
22 wanted to make the Commission aware of that  
23 potential issue.

24 **CHAIRMAN GIOVANNI:** Yeah. And when I read  
25 that draft language, there was some grammatical



1 errors even in the draft that I noted in terms of  
2 the grammar that was used, so it needs updating  
3 anyway.

4 **MR. ORODENKER:** Well, I don't know --

5 **CHAIRMAN GIOVANNI:** Point well taken --

6 **MR. ORODENKER:** -- times get overactive.

7 **CHAIRMAN GIOVANNI:** Okay.

8 **COMMISSIONER OKUDA:** Gary Okuda.

9 **CHAIRMAN GIOVANNI:** Commissioner Okuda?

10 **COMMISSIONER OKUDA:** Yeah. Thank you,  
11 Chair. If I may just comment on that. You're  
12 correct that during the interim there may be these  
13 issues that we just can't get to because we can't do  
14 anything within 24 hours. But even if there is this  
15 problem, we probably can handle it in terms of  
16 questions at the hearing.

17 For example, you know, if the party who  
18 claims vagueness is asked to explain what is vague,  
19 their testimony may actually show that they really  
20 don't have a factual basis for claim of vagueness  
21 because they clearly understand what the standards  
22 are that's being applied there, and they might  
23 actually testify during a petition or hearing on the  
24 -- their petition that they really understand  
25 everything and nothing is confusing, and in fact,

1 nothing is vague.

2 And so since -- of course, the Deputy AG  
3 can better answer or correct me if I'm wrong, but if  
4 you don't preserve your objection on the record in  
5 front of the agency or the court, then it's deemed  
6 waived for purposes of appeal. So I think a lot of  
7 these things in the interim, we can handle it with  
8 the assistance of the Attorney General and with  
9 questions at the hearing. Thank you.

10 **CHAIRMAN GIOVANNI:** Yeah. And to that  
11 point, just the fact that these rules have been  
12 drafted and presented to us by staff, it puts issues  
13 such as that front of mind with us that we have to  
14 be cognizant as we proceed in hearings and matters  
15 during the interim before these rules are officially  
16 changed.

17 Anybody else want to comment before we  
18 take a roll call vote?

19 Commissioner Lee.

20 **COMMISSIONER LEE:** Sorry, just one quick  
21 question. This would be for Mr. Morris. Do you  
22 agree that you would be there to advise us if there  
23 was something that we -- you know, was against case  
24 law?

25 **MR. MORRIS:** Yes, that's certainly my

1 role.

2 **COMMISSIONER LEE:** Thank you, Mr. Morris.  
3 Thank you, Mr. Chair.

4 **CHAIRMAN GIOVANNI:** Thank you.

5 Okay. I think we have time for -- unless  
6 somebody else wants to comment, Mr. Orodenger,  
7 please take a roll call vote on the motion.

8 **MR. ORODENKER:** Thank you, Mr. Chair. The  
9 motion is to defer this matter for a period of three  
10 calendar months.

11 Commissioner Okuda?

12 **COMMISSIONER OKUDA:** Yes.

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

14 **COMMISSIONER LEE:** Yes.

15 **MR. ORODENKER:** Commissioner Kahele is  
16 absent.

17 Commissioner Atta?

18 **COMMISSIONER ATTA:** Yes.

19 **MR. ORODENKER:** Commissioner Carr Smith?

20 **COMMISSIONER CARR SMITH:** Yes.

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

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

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

25 **COMMISSIONER OHIGASHI:** Reluctantly, aye.

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

2 **COMMISSIONER YAMANE:** Aye.

3 **MR. ORODENKER:** Chair Giovanni?

4 **CHAIRMAN GIOVANNI:** Aye.

5 **MR. ORODENKER:** Thank you, Mr. Chair. The  
6 motion passes with eight affirmative votes.

7 **CHAIRMAN GIOVANNI:** Thank you. So Mr.  
8 Orodenker, I think it goes without saying, but we --  
9 I would encourage you as staff during this three-  
10 month period to reach out to not only the four  
11 entities that provided public and written testimony  
12 on this matter to us already but anyone else that  
13 you feel can add or may add a specificity that will  
14 allow these things to proceed. Because the  
15 intention is clearly at a hearing approximately  
16 three months from now for this Commission to take  
17 this matter seriously, and hopefully be in a  
18 position to move it forward in an affirmative  
19 manner.

20 **MR. ORODENKER:** Thank you, Mr. Chair. We  
21 will do so.

22 **CHAIRMAN GIOVANNI:** Great.

23 Let's go back -- so next one is this one.

24 So I just want to comment or everyone that  
25 our hearing tomorrow, November 16th, is a meeting to

1 be held at a remote location in the vicinity of  
2 Kona. And we intend to work through lunch and not  
3 take an extended lunch break in order to complete  
4 the business of this Commission on an expedited  
5 basis and allow people to then take lunch after. So  
6 I just want to forewarn you that you may want to  
7 have a big breakfast if in fact work a few -- a  
8 little bit extra time in the morning.

9           If possible, let me ask staff to provide  
10 any -- any food or drink that might be convenient  
11 for you to provide so we could actually enjoy that  
12 during the meeting itself or during breaks and the  
13 meeting itself, but we'll not be taking an extended  
14 lunch break.

15           So with that, I think that concludes our  
16 meeting for today. Is there any further business to  
17 conduct today before we meet tomorrow? Hearing  
18 none, I'll adjourn the meeting for the day. This  
19 meeting is adjourned, and I'll see you tomorrow in  
20 Kona. Thank you, all.

21           **(Meeting concluded at 1:43 p.m.)**

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CERTIFICATE

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

IN WITNESS HEREOF, I have hereunto set my hand this 8th day of December, 2023.

A handwritten signature in black ink, appearing to be 'Jodi Dean', is written over a horizontal line.

Jodi Dean