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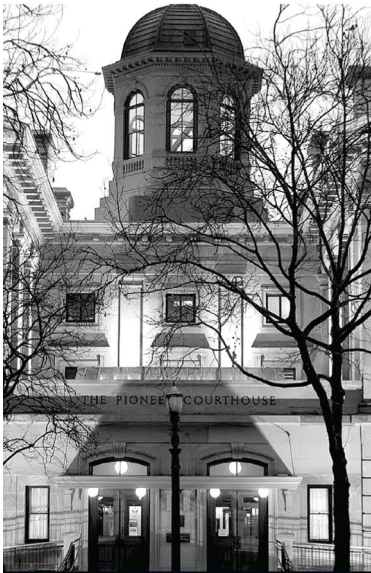
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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on December 6, 2023
Commencing at 9:32 a.m.

Held at
Leiopapa A Kamehameha, State Office Tower
Room 405
235 S. Beretania Street
Honolulu, Hawaii 96813

I. CALL TO ORDER

II. ADOPTION OF MINUTES

November 15, 2023
November 16, 2023

III. TENTATIVE MEETING SCHEDULE

**IV. PRESENTATION ON THE OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT (OPSD) SOIL
CLASSIFICATION STUDY**

V. COMMISSIONER TRAINING REFRESHER

- To Update Commissioners on Process and Case Law
 - a. Overview of Core Responsibilities
 - b. Review of Land Use Policies and Guidelines
 - c. Recent Case Law
 - d. Q&A Session

VI. ADJOURNMENT

BEFORE :

PARTICIPANTS

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LUC COMMISSIONERS:

- Dan Giovanni, Chairman
- Lee Ohigashi
- Brian Lee
- Gary Okuda
- George Atta
- Mel Kahele
- Michael Yamane
- Kuike Kamakea-Ohelo
- Nancy Carr Smith

LUC STAFF:

- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Martina Segura, Planner
- Riley Hakoda, Planner
- Ariana Kwan, Chief Clerk
- Julie China, Esquire, Deputy Attorney General

CITY AND COUNTY OF HONOLULU:

- Franz Kraintz, Department of Planning and Permitting

1 **CHAIRMAN GIOVANNI:** Good morning,
2 everyone. We'll start today's meeting. Aloha mai
3 kakou. This is the December 6, 2023 Land Use
4 Commission meeting. This is an in-person meeting
5 which is being held at the State Office Tower, Room
6 405, 235 South Beretania Street, Room 405, as I
7 said, Honolulu 96813. And this meeting is open to
8 the general public.

9 Court reporting transcripts are being done
10 from this Zoom recording of this meeting, but my
11 understanding is Zoom is not being broadcast
12 publicly, you know, contemporaneously, correct?

13 All meeting participants, I'd like to
14 stress the importance of speaking slowly, clearly,
15 and directly into your microphone. Before speaking,
16 please state your name and identify yourself for the
17 record.

18 As I said, even though this is an in-
19 person meeting, please be aware that all meeting
20 participants are being recorded on a digital record
21 of this Zoom meeting for court reporting purposes
22 only. Your continued participation is your implied
23 consent to be part of the public record of this
24 event. If you do not wish to be part of the public
25 record, you should exit the meeting now.

1 My name is Dan Giovanni. I have the
2 pleasure to serve as the LUC Chair. We currently
3 have nine seated commissioners, all present today.
4 Along with me from Maui is Lee Ohigashi. From Oahu
5 is Commissioner Gary Okuda. From Kauai is
6 Commissioner Michael Yamane. Also from Oahu is
7 Commissioner Mel Kahele and Commissioner Kuike
8 Kamakea-Ohelo, Commissioner George Atta,
9 Commissioner Brian Lee, and from the Big Island,
10 Hawaii Island, is Commissioner Nancy Carr Smith.

11 Also in attendance are the LUC Executive
12 Director, Daniel Orodener; LUC Chief Planner, Scott
13 Derrickson; LUC Staff Planner, Martina Segura; LUC
14 Chief Clerk, Ariana Kwan; and to my left LUC
15 Attorney General, Julie China. Again, court
16 reporting transcriptions are being done from Zoom.

17 Our first order of business is the
18 adoption of the minutes from our meeting of November
19 15 and 16. Ms. Kwan, has there been any written
20 testimony submitted on the minutes from the November
21 15 and 16?

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

23 **CHAIRMAN GIOVANNI:** Are there any members
24 of the public here today who have signed up and wish
25 to testify about the minutes of November 15 and 16?

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

2 **CHAIRMAN GIOVANNI:** Very good.

3 Commissioners, are there any corrections
4 or comments on the minutes? If not, is there a
5 motion to adopt the minutes for November 15 and 16?
6 Commissioner Ohigashi?

7 **COMMISSIONER OHIGASHI:** Chair, I move to
8 adopt the minutes of November 15th and 16th of 2023.

9 **CHAIRMAN GIOVANNI:** Thank you.
10 Is there a second?

11 **COMMISSIONER ATTA:** Second.

12 **CHAIRMAN GIOVANNI:** What was that?

13 Commissioner Atta provides a second to the motion.
14 All in favor of adoption of the minutes for November
15 15 and 16, please say, "Aye."

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

17 **CHAIRMAN GIOVANNI:** Is anyone opposed?
18 Hearing none, the minutes are adopted.

19 The next agenda item is the tentative
20 meeting schedule. Mr. Orodenger, will you bring us
21 up to date?

22 **MR. ORODENKER:** Thank you, Mr. Chair.
23 This is our last meeting in December. On -- in
24 January, we have currently scheduled January 24th at
25 the Foreign Trade Zone for the Halekua Development

1 status report. In February -- on February 7th, we
2 have the Gamrex, Inc. status report, and on February
3 21st, we have the AMFAC/HHFDC status report
4 scheduled.

5 **CHAIRMAN GIOVANNI:** Where are those?

6 **MR. ORODENKER:** The -- on the 7th, we will
7 be in Kona. On the 21st, we will be on Maui. And
8 then the 22nd is tentatively set aside for a review
9 of -- another review of the proposed rule
10 amendments. That may change depending on when we
11 can schedule meetings with interested parties.

12 In March, we have tentatively scheduled on
13 March 20th, on Oahu, the Waimanalo Gulch matter.
14 Once again, that is tentative. We're waiting to see
15 what the county's timeline is going to be to get the
16 documents to us. And that takes us through April.
17 Once again, we request that the Commissioners keep
18 the tentative dates open until we release them.

19 **CHAIRMAN GIOVANNI:** So what were the April
20 dates?

21 **MR. ORODENKER:** April we have nothing
22 scheduled --

23 **CHAIRMAN GIOVANNI:** But are there
24 tentative dates?

25 **MR. ORODENKER:** Yeah. The April dates

1 would be April 3rd and 4th, and April 17th and 18th.
2 And in May, the tentative dates are May 8th and 9th
3 and the 22nd and 23rd.

4 **CHAIRMAN GIOVANNI:** Okay. So I know --
5 just speaking for myself, the latter April dates I
6 will be unavailable. I don't know about others, so
7 let me encourage all Commissioners to inform LUC
8 staff of their availability on these tentative
9 dates.

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

11 **CHAIRMAN GIOVANNI:** Thank you.

12 Our fourth order of business is
13 presentation from the Office of -- is a presentation
14 of the Office of Planning and Sustainable
15 Development's soil classification study.

16 Ms. Kwan, is there any public testimony
17 that I should recognize, written public testimony on
18 this matter?

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

20 **CHAIRMAN GIOVANNI:** Thank you. Is there
21 anybody in attendance that wishes to provide
22 testimony today?

23 **MS. KWAN:** No public is in the room, Mr.
24 Chair.

25 **CHAIRMAN GIOVANNI:** Thank you.

1 So now we'll proceed. Is OPSD available
2 to provide a presentation on the soil study? I do
3 not see them in attendance.

4 **MS. KWAN:** We have a YouTube video to
5 show.

6 **CHAIRMAN GIOVANNI:** Very good. Is this
7 from OPSD?

8 **MR. DERRICKSON:** Yeah, Chair.

9 **CHAIRMAN GIOVANNI:** Let me recognize Scott
10 Derrickson for an update.

11 **MR. DERRICKSON:** Yeah. For the record,
12 Scott Derrickson, Chief Planner, State Land Use
13 Commission. I'm going to say a few words, and then
14 we'll watch the video regarding the soil study.

15 Just as background, so Act 189 in
16 Legislative Session on 2/2022, required OPSD to,
17 one, evaluate the current classification systems
18 that are used in Hawaii, develop recommendations to
19 improve their role in agricultural land regulation,
20 and request appropriate assistance from the State
21 Department of Ag, UH College of Tropical Ag and
22 Human Resources, the Land Use Commission, and, if
23 applicable, the U.S. Department of Agriculture.

24 OPSD Land Division is responsible for
25 managing the contract, the outreach, the interim

1 report that they're going to deliver in this
2 session, 2024, and a final report they plan to
3 deliver for the 2025 session. 325,000 was
4 appropriated for that study.

5 The study is partly a response to concerns
6 by landowners and government regulatory bodies about
7 the lack of a clear way to either update the
8 existing information or amend the Land Study Bureau
9 ratings based on new information. The LSB ratings
10 are incorporated into HRS 205-2 and 205-4.5(b) as a
11 method to limit the permissible uses on the best
12 lands to primarily agricultural activities.

13 It is the de facto reference for
14 regulating lands within the state agricultural
15 district, including when state special permits might
16 be required. LUC staff has participated in ongoing
17 steering committee meetings conducted by
18 Supersistence, LLC and OPSD Land Use Division
19 between July and November of 2023.

20 A recent meeting held on November 30th of
21 a steering committee discussed and reviewed an
22 initial draft of the interim report. This interim
23 report will be sent to the legislature prior to this
24 session. This represents the first phase of OPSD
25 LUD's study.

1 OPSD was asked about two months ago to
2 provide an overview of the soil study to the LUC at
3 its tentative December meeting today. They
4 declined. Therefore, we're going to watch a YouTube
5 video produced by OPSD Land Use Division and posted
6 to their public-facing website that provides an
7 overview of the soil classification study.

8 **CHAIRMAN GIOVANNI:** Would you like to
9 proceed with the video at this time?

10 **MR. DERRICKSON:** Yeah. And then once the
11 video is completed, we can entertain questions.

12 **CHAIRMAN GIOVANNI:** Very good. Okay. Is
13 this a publicly available YouTube video?

14 **MR. DERRICKSON:** OPSD does have this
15 posted on their, as I said, public-facing web page
16 regarding the soil classification study.

17 **CHAIRMAN GIOVANNI:** So for the record, can
18 you give us the exact name of the video so if
19 anybody wants to look it up on their own.

20 **MR. DERRICKSON:** It's called Soils
21 Classification Systems and Use in Regulating
22 Agricultural Lands Study Presentation.

23 **CHAIRMAN GIOVANNI:** That's what I was
24 looking for. Thank you.

25 **MR. DERRICKSON:** Okay.

1 (A video was played.)

2 MR. DERRICKSON: Okay. Scott, Land Use
3 Commission again. So that -- that is what the
4 Office of Planning has up on their website.

5 Now, to kind of explain to anyone who's
6 interested what this soil classification study that
7 was required of them by the legislature consists of
8 and kind of what they're -- what they're looking at,
9 moving into the future. So there will be an interim
10 report going to the legislature towards the end of
11 this month, and it will be up at that point.

12 CHAIRMAN GIOVANNI: So thank you, Scott.
13 I just have one quick question, and then we can open
14 up for more, but over the last month, you know, I
15 received -- you know, I don't know if other
16 Commissioners received -- a survey that seemed to be
17 tied to this study. Is that something you're
18 familiar with?

19 MR. DERRICKSON: No, I'm not. But I'm not
20 surprised because I think they're trying to broadly
21 reach out and find anybody who might want to provide
22 input because I'm attending, as staff, to the
23 steering committee, that's what I'm locked into.

24 CHAIRMAN GIOVANNI: Because it wasn't
25 clear how those -- I mean, I interpreted that to --

1 this is Giovanni. I interpreted that to be a form
2 of outreach?

3 **MR. DERRICKSON:** Correct.

4 **CHAIRMAN GIOVANNI:** I'm not sure to whom
5 it was sent.

6 **MR. DERRICKSON:** Right.

7 **CHAIRMAN GIOVANNI:** And I wasn't clear how
8 the feedback to the survey would be utilized in the
9 process that this contractor is --

10 **MR. DERRICKSON:** Right.

11 **CHAIRMAN GIOVANNI:** Do you know anything
12 about that?

13 **MR. DERRICKSON:** I do. I -- as I said,
14 the last meeting we had on November 30th, the
15 steering committee was looking at the draft interim
16 report, and included in the draft interim report is
17 kind of a collection of all the input that they've
18 received, both from steering committees as well as
19 through surveys, as well as online comments that
20 they've got there as well.

21 **CHAIRMAN GIOVANNI:** Let me open it up for
22 questions.

23 Mr. Atta -- Commissioner Atta?

24 **COMMISSIONER ATTA:** I was just wondering,
25 Dan, is the survey they're talking about the one

1 that in Group 70 that is -- that does? Wait, now,
2 they're actively working with the Office of State
3 Planning, and I've been attending some of them --
4 some of the things, so --

5 **CHAIRMAN GIOVANNI:** I don't recall if it
6 was or was not managed by G70.

7 Do you know, Scott?

8 **MR. DERRICKSON:** Well, okay. There's a
9 prime contractor, which is -- you saw the gentleman
10 who was presenting, Hunter Heavilin. He's -- his
11 company's called Supersistence, LLC. They're the
12 prime contractor. G70 is one of the subconsultants,
13 and they have, you know, a fairly large role in
14 terms of the outreach work (audio disruption).

15 Yeah, so I think some of what Dan and I
16 will be presenting next. You'll see some of the
17 tie-in with this project that OPSD is involved in.

18 **CHAIRMAN GIOVANNI:** Okay. Well, let me
19 turn it over -- unless there's a question by
20 commissioners, we'll turn it back to the staff for
21 further presentation.

22 Commissioner Okuda?

23 **COMMISSIONER OKUDA:** Thank you, Chair.

24 So Scott, you know, since the statute
25 which governs us, you know, a lot of times it says

1 that our powers have to be applied based on ratings
2 of the land, A, B, C, D, whatever. So is the
3 underlying goal here to update really where
4 authorities should be exercised and what kind of
5 authorities should be exercised, or -- and related
6 to that, the assumption or the underlying assumption
7 of this group moving forward, as directed by the
8 legislature, is we're basically operating on kind of
9 like stale -- or data which is kind of like, you
10 know, old and not reliable.

11 **MR. ORODENKER:** Thank you, Commissioner
12 Okuda. This is Dan Orodenker, the Executive Officer
13 for the Land Use Commission.

14 The answer to that is yes and no. I was
15 actually actively involved in moving this concept
16 through the legislature. It's not what we
17 originally envisioned. Part of the problem that we
18 have is -- and the way this originated was that we
19 had various petitioners saying to staff, look, this
20 is rated A, B, but it's not. You know, it's really
21 not, and these are the reasons why. And our
22 response was, well, we don't have a mechanism to
23 change it.

24 So when we first approached the
25 legislature, it was to deal with that issue, and it

1 morphed into a larger study on reclass -- or
2 reanalyzing the classifications because they are
3 based on, basically, pineapple and sugar cane, you
4 know, man's useability for pineapple and sugar cane.

5 The intent -- the original intent of this
6 study, as discussed with the legislature, was to
7 update what had been done to meet modern
8 classifications and being more accurate. It was not
9 something that -- the original concept was to have
10 College of Tropical Ag do this, not OPSD or the Land
11 Use Commission. It became -- because it was
12 supposed to be purely to look at the land based on
13 agricultural capabilities.

14 It was modified to its current format
15 because there were a whole bunch of other issues
16 raised at hearings by the public on, you know, what
17 it could be used for, what it should be used for,
18 and all the rest. It has -- the current study looks
19 at it more as a planning tool, which wasn't the
20 original intent.

21 Unfortunately, when the study is
22 completed, if there is a redesignation, we'll be
23 stuck with it, but our intent is to ensure that the
24 study is unbiased from a planning standpoint and,
25 rather, focused more on what is actually useable.

1 I would note, though, that some of the
2 most successful farms in Hawaii right now are not
3 even utilizing land, but they're -- what do you call
4 it -- hydroponics, hydroponics. And those have been
5 extremely successful with regard -- especially with
6 regard to things like lettuce. So I'm not sure
7 these classifications, in kind of the long run,
8 won't have to be redone again, based on what we're
9 seeing in the agricultural field. But our concern
10 is that the Department of Agriculture be more
11 heavily involved.

12 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** The dirty part is
14 hard.

15 Is any part of the original intent still
16 part of this study? Because the original -- it
17 sounds like the original thing was to upgrade this
18 classification system and to determine whether lands
19 actually -- and our new criteria as to what lands
20 actually belong in the A or B or C category, or even
21 change that category to -- and what necessary -- the
22 problem is what necessary intertwining statutes
23 you're going to have to modify. So I'm just
24 wondering if any part of that is still there --

25 **CHAIRMAN GIOVANNI:** You turned your mike

1 off.

2 **MR. DERRICKSON:** Thank you. This is
3 Scott.

4 Yes, I think that they -- the path they're
5 taking, they are looking at both the Land Study
6 Bureau ratings, which are kind of like I said,
7 that's the de facto regulatory sort of
8 classification system that we use, as well as all
9 the other ones that were mentioned on the video,
10 which have been utilized in different ways over the
11 years.

12 I think what they're trying to look at is
13 what are the strengths and weaknesses of each
14 classification system as a regulatory mechanism and
15 try to figure out whether or not any one of them or
16 a combination of them or something new might be
17 better to address, you know, regulatory issues. So
18 ultimately, I don't -- you know, I don't think
19 anybody can tell you this, what the end result is
20 going to look like, but I mean, I think it's -- I
21 would say it's useful in that we're trying to look
22 at it again and determine whether the Land Study
23 Bureau that we're using now is the best way to go.

24 **CHAIRMAN GIOVANNI:** So this is Dan
25 Giovanni.

1 Accompanying the survey that I received
2 was a very interesting document that provided a lot
3 of background, background on the study as well and
4 the work that's going on. My takeaway -- my primary
5 takeaway from that whole process, reading that and
6 going through the survey, was that one of the
7 primary things they were attempting to do was to
8 review and update the permissible uses of each
9 classification, A, B, C, D, and E.

10 Are you seeing any -- in your experience
11 with the steering committee, any evidence that
12 that's where the focus might be on the permissible
13 uses? Are we defining those permissible uses?

14 **MR. DERRICKSON:** This is Scott again.

15 No, not at this point. I think the real
16 -- the focus that I've seen is really on looking at
17 each of the soil classification systems that are out
18 there --

19 **CHAIRMAN GIOVANNI:** Higher level.

20 **MR. DERRICKSON:** -- to look at what the
21 strengths and weaknesses are and whether they can be
22 updated in an efficient cost-effective manner, and
23 to be utilized. So we haven't really been
24 discussing the permissible uses aspect of it.
25 There's been discussion, but it's more geared

1 towards, hey, things have evolved in how
2 agricultural lands are -- and the pressures for use
3 of agricultural lands has occurred. So there has
4 been discussion about that sense and to see, you
5 know, how well does a soil classification system
6 help you regulate, you know, putting solar panels
7 on.

8 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

9 **COMMISSIONER OHIGASHI:** I just want to
10 follow up.

11 So how involved in the Department of
12 Agriculture that Dan, our Executive Officer,
13 indicated is involved in this, because I figure that
14 you need to look at the science or the -- what is
15 going on on agricultural land in order to relate it
16 to what classifications mean and how we can modify
17 those classifications to make it more effective. I
18 just was curious as to what the Planner had to say.

19 **MR. DERRICKSON:** Yeah, so the Department
20 of Ag is on the steering committee. They have
21 several people that are attending, including Earl
22 Yamamoto, who's a planner who, along with me, you
23 know, the -- some of these soil classification
24 systems are as old as we are and both he and I have
25 been working for the state for a long time, and so

1 he's got an incredible corporate memory and huge
2 working knowledge of talking with a variety of farm
3 ranchers, people doing work in the agricultural
4 district as well.

5 **COMMISSIONER OHIGASHI:** As part -- as far
6 as the interim report, will there be a -- some kind
7 of survey as to what exactly uses are within --
8 because that would make sense to me that you would
9 say, okay, let's take a look at A lands, and let's
10 see what -- what is growing doing on it right now
11 and how much -- what actually is occurring on those
12 properties right now. And let's look at B lands and
13 C lands and -- and take a look and find out what is
14 the major agricultural pursuit within those areas.

15 Is there any kind of attempt to get that
16 kind of data? Wouldn't that be a first step to
17 figure out what it's actually being used for and
18 then trying to implement a system to accommodate?

19 **MR. DERRICKSON:** Well, I can't speak to
20 that aspect. I haven't seen anything in that
21 direction. I think the real focus is on the soil
22 classification systems and what -- as I said,
23 they're looking at the strengths and weaknesses of
24 each one, how easy would it be to and how expensive
25 would it be to update, especially update it on a

1 regular basis and who would best do that.

2 **CHAIRMAN GIOVANNI:** Commissioner Okuda?

3 **COMMISSIONER OKUDA:** This is Gary Okuda.

4 Thank you, Chair.

5 Follow-up question, following up with what
6 the Executive Officer said. So is it within the
7 scope of your steering committee group to look at
8 how, like, urban farms -- the Executive Officer
9 mentioned hydroponics, but I saw Dr. Kerry Kakazu
10 was aeroponics operation. You know, guy used to be
11 at cancer center, then decided he's going to be a
12 modern farmer, and it's in a warehouse in Kaka'ako,
13 you know, air-conditioned, high-tech, computerized
14 spraying of nutrients on the roots of these plants
15 and very little crop loss because you don't have
16 bugs or people breaking in and stealing stuff. I
17 mean, is that part of the scope of your group or
18 that's for another day, maybe another body or
19 another time?

20 **MR. DERRICKSON:** This is Scott. I can say
21 that hasn't -- some of that stuff has been discussed
22 and talked about, but it's not the focus of this
23 study. They're really looking at land, the resource
24 base, actual land, so the soil, the water --

25 **MR. ORODENKER:** If I can comment on that a

1 little bit. Dan Orodener.

2 You know, this is a system that's not
3 keeping up with the times to a certain extent. You
4 know, if you look at all the agricultural land in
5 the state and the competing uses for that
6 agricultural land, you begin to boil down into,
7 well, how many more golf courses do we need on
8 agricultural land, how much solar is going to be
9 needed to put on primary or cultural land and all
10 the like.

11 It -- the focus of this study and what's
12 contained in Chapter 205 are not really geared
13 towards a system where we're promoting the most
14 efficient and active production of food. I mean,
15 it's more of a state or -- and to use the bad words,
16 land bang. What is the best agricultural land that
17 we may need for our future generations to produce
18 the maximum amount of food that we can.

19 Now, does that mean those lands are
20 actually practical for production? Not always. And
21 does that really mean that the best lands for
22 certain types of agricultural production are A and B
23 lands? Not always. It's a -- it's a flawed sort of
24 analysis; however, large-scale agriculture, you
25 know, traditional agriculture is very land-

1 intensive.

2 The concept behind the ratings was to
3 identify those lands that are best suited for that
4 type of agriculture. Once again, going back to what
5 I was saying about it being based in, you know,
6 corporate agriculture and pineapple and sugar cane.

7 I don't know where we end up with this in
8 the long run. It may be that ten years from now,
9 the legislature takes another look at it and says,
10 you know, this whole thing doesn't make any sense.

11 **CHAIRMAN GIOVANNI:** Commissioner Okuda?

12 **COMMISSIONER OKUDA:** Thank you. Gary
13 Okuda.

14 So follow-up questions to Executive
15 Officer and maybe to Mr. Derrickson. So are you
16 telling us basically, from a stepping back, neutral
17 position, not looking at any pending petitions or
18 anything like that, the law basically requires us to
19 implement a system which probably, in some cases,
20 doesn't make sense, but we've got to go and do it
21 that doesn't make sense kind of the thing because
22 we're implementing a statute that is, you know,
23 times have changed and it's dated, but the law is
24 the law, so we've got to go and implement that?

25 **MR. ORODENKER:** No, not necessarily,

1 Commissioner. There is a lot of value to protecting
2 large plots of prime agricultural land, and that is
3 a worthwhile goal. Here's what I was getting to was
4 that when you're talking about -- when you're not
5 looking at land use but you're looking at food
6 production, these lands may not be where our
7 greatest production of food comes from in the long
8 run.

9 So you have to kind of take that out of
10 the equation because I agree with you that there are
11 a lot of modern methods of producing the food that
12 are extremely lucrative and don't require Class A or
13 Class B lands.

14 **CHAIRMAN GIOVANNI:** Commissioner Carr
15 Smith?

16 **COMMISSIONER CARR SMITH:** Thank you,
17 Chair.

18 I was just wondering if you could share
19 with us some of the recommendations and concerns
20 that you've given to the steering committee from the
21 perspective of LUC?

22 **MR. DERRICKSON:** This is Scott. At this
23 point, it's not about making specific
24 recommendations. Part of it is they're in this
25 first phase, which is really gathering information.

1 And although a lot of the people are on the steering
2 committee as well as some of the groups that they
3 reach out to have a history with a soil
4 classification, different soil classification
5 systems, I don't think any one of us is so
6 knowledgeable about not just this Land Study Bureau
7 but the history and the, again, strengths and
8 weaknesses of each of those systems and providing
9 the type of information that a regulatory body might
10 want to use.

11 So I still think we're both -- we're
12 becoming educated about these systems and sharing
13 with each other the difficulties. I mean, from a
14 Land Use Commission standpoint, you know, I can
15 speak to how using the Land Study Bureau's system
16 helps us and also sometimes can hinder activity with
17 regulating agricultural lands.

18 **CHAIRMAN GIOVANNI:** Mr. Orodenker?

19 **MR. ORODENKER:** Yeah. If I can add to
20 that, Commissioner. Dan Orodenker.

21 One of the things that we're focused on is
22 not so much what I would call practical input
23 because we're not experts in that. We have no
24 designs on being experts in that, and we don't
25 pretend to be.

1 What we're more focused on is process of
2 the study. In other words, making sure that we're
3 getting good input from all of the people who might
4 have either an interest in this or might have
5 expertise in that. That's really what we're focused
6 on. That's why we're not here today talking about
7 results from the study or anything like that.

8 We want to make sure that this study is as
9 unbiased as possible when -- and we don't influence
10 because of -- influence it because of some land use
11 issues. We want it to be a study that is inclusive
12 and results in the best possible classification of
13 agricultural lands. And then we'll implement that
14 from a policy standpoint.

15 **COMMISSIONER CARR SMITH:** Just one quick
16 follow-up, then. So when a petitioner comes before
17 LUC to reclassify agricultural lands, how do you
18 folks handle that, then? If you're not the experts,
19 who comes in to advise you on how to handle that?

20 **MR. ORODENKER:** Well, there are two ways.
21 Number one is the soil classifications. You know,
22 provide us the current soil classification, provide
23 us with information. The soil classifications, when
24 it comes to DBA's, impact the level of evidence.
25 They don't really impact the use.

1 With regard to special permits, soil
2 classifications impact the allowed uses, for
3 instance, and whether or not there even needs to be
4 a review by us. The best example is solar farms.
5 If it's on C, D, or E lands, they don't even need to
6 come to us. If it's on, you know, A and --

7 **MR. DERRICKSON:** A and B --

8 **MR. ORODENKER:** A and -- well --

9 **MR. DERRICKSON:** -- or B and C.

10 **MR. ORODENKER:** -- B and C. B and C
11 lands, I'm sorry, I misspoke. D and E lands, they
12 don't have to come to us. B and C lands they do.
13 Formerly, and this is how things were ten years ago
14 or so, solar farms were not an allowed use, period,
15 on B and C lands, so, I mean, this is how things are
16 changing. And this is why we suggested a re-review
17 of what is A, B, C and D lands or rate some other
18 system. But we don't -- we don't get involved in
19 the value of the land for agricultural purposes.
20 That's -- that's the soil classifications.

21 Now, having said that, OPSD is supposed to
22 go and talk to the Department of Agriculture and get
23 their position on whether or not those lands are --
24 if they were taken for urban purposes, for instance,
25 would cause irreparable harm to the agricultural

1 system. But like everything else, we don't do the
2 analysis on that. We would provide the
3 Commissioners with what information we have with --
4 so that they can make the decision.

5 **COMMISSIONER CARR SMITH:** Thank you for
6 that explanation.

7 **CHAIRMAN GIOVANNI:** So you raised a couple
8 of questions in my mind with that response. First
9 of all, what do you mean by solar are not allowed,
10 period? What are you talking about?

11 **MR. ORODENKER:** There was a period of time
12 when solar farms were not allowed on -- I think it
13 was -- was it B and A --

14 **MR. DERRICKSON:** A and B --

15 **MR. ORODENKER:** -- or just it was simply
16 not allowed.

17 **CHAIRMAN GIOVANNI:** But --

18 **MR. ORODENKER:** -- probably prohibited or
19 written under Chapter 205 --

20 **CHAIRMAN GIOVANNI:** So that they couldn't
21 apply for a special permit for an exemption?

22 **MR. ORODENKER:** No.

23 **CHAIRMAN GIOVANNI:** So what changed that?

24 **MR. ORODENKER:** Legislation was passed
25 that modified Chapter 205, 4.5 and allowed

1 agricultural lands on B and C lands with a special
2 permit.

3 **CHAIRMAN GIOVANNI:** Correct. So just FYI
4 for Commissioners, some of the more interesting
5 cases that came before this Commission in the last
6 three years were for large agricultural sections of
7 land that applied for special permits on B and C
8 land for energy projects.

9 And to follow on to that, I got the sense,
10 in looking at this survey and all the questions in
11 it, that is a primary focus for review by the study
12 that's ongoing.

13 **MR. ORODENKER:** And we hope that that is
14 going to be a partial review or a partial of a focus
15 of this study.

16 **CHAIRMAN GIOVANNI:** So one of the things
17 that -- one of the -- and I won't cite the specific
18 petition, but I do find it troublesome that this --
19 the Land Use Commission did approve the use of
20 agricultural lands -- I think it was B land -- for a
21 major huge housing project, which was never built,
22 and then they came in and wanted to amend that
23 special permit to allow a solar farm in the interim.

24 How do you see that playing out? Is it
25 still going to be up to the LUC to sort through

1 issues such as that?

2 **MR. DERRICKSON:** This is Scott. Just to
3 be a little more specific, is not the project on
4 Oahu --

5 **CHAIRMAN GIOVANNI:** You can cite the
6 project. It's --

7 **MR. DERRICKSON:** -- Waipio?

8 **CHAIRMAN GIOVANNI:** Waipio, yeah.

9 **MR. DERRICKSON:** Yeah, okay.

10 **CHAIRMAN GIOVANNI:** Kamehameha Schools.

11 **MR. DERRICKSON:** Yeah. So actually, we've
12 got to be clear that that's not a special permit.

13 That is in fact an urban -- it was --

14 **CHAIRMAN GIOVANNI:** It was DBA.

15 **MR. DERRICKSON:** -- so it was district
16 boundary amendment --

17 **CHAIRMAN GIOVANNI:** Okay. I misspoke,
18 yes.

19 **MR. DERRICKSON:** -- so it wasn't -- at
20 that point, the decision had already been made years
21 before to reclassify the land --

22 **CHAIRMAN GIOVANNI:** As urban.

23 **MR. DERRICKSON:** -- as urban. And so
24 therefore, the Land Study Bureau, E, B, C, D
25 classifications didn't come into play in terms of

1 deciding to allow them to do the solar farm there.
2 It was that question that you guys had to answer
3 was, do we allow a solar farm to be here for a
4 certain period of time, given that this project
5 doesn't anticipate any building occurring on this
6 portion of the property in that timeframe.

7 **CHAIRMAN GIOVANNI:** That's correct.
8 That's the way it came down. And there were very
9 specific number of conditions on that original DBA
10 that were tied to the housing that never got built,
11 and those conditions had to be reviewed in that
12 context for the solar farm.

13 **MR. DERRICKSON:** Yes.

14 **CHAIRMAN GIOVANNI:** Correct?

15 **MR. DERRICKSON:** Yeah. And that's -- if I
16 may say, that is the portions of the agricultural
17 district that have the most intense focus are those
18 lands that are those lands that are relatively flat
19 or, you know, gently sloping, have access to water,
20 and are in, you know, a good sun area. Those are
21 also the same areas that a solar farm wants to
22 locate in, a housing development wants to locate in,
23 so that's part of the dilemma that you on the Land
24 Use Commission have to grapple with.

25 **CHAIRMAN GIOVANNI:** So the other area

1 where they're looking to grapple is with IAL,
2 important agricultural land, and did you -- is that
3 going to be addressed in this study as you
4 understand it or reviewed? And in what context?
5 IAL.

6 **MR. DERRICKSON:** That's an excellent
7 question. I don't know the answer to that. I think
8 that they're going to be looking at all lands in the
9 agricultural district, you know, that are subject to
10 right now Land Study Bureau ratings. That would
11 include the important agricultural lands that have
12 already been designated.

13 **MR. ORODENKER:** Dan Orodenker here. That
14 is a very good question, but it's -- it's kind of a
15 circular thing because part of the IAL analysis is
16 the land -- land -- soil classification, so they
17 feed on each other, but the soil classification is
18 based more on definitive evidence as to the
19 capabilities (audio disruption) capacity of those
20 individual lands where the IAL classification is --
21 uses up only solar study -- solar classifications as
22 only one of the criteria.

23 **CHAIRMAN GIOVANNI:** Isn't it feasible
24 today for an agricultural parcel to be classified,
25 let's say, as C or D or E or have a special permit

1 thereby -- well, no. Let me rephrase.

2 In an agricultural parcel that is D or E
3 has permissible use of a solar farm; however, is it
4 possible that it would be -- they would seek IAL
5 designation for that same parcel and thereby
6 prohibit a solar farm?

7 **MR. ORODENKER:** Theoretically, yes.

8 **CHAIRMAN GIOVANNI:** Okay.

9 **MR. DERRICKSON:** Anybody else?

10 **CHAIRMAN GIOVANNI:** I think we're good.
11 Thank you.

12 **MR. DERRICKSON:** I'll just say that --
13 Scott Derrickson. Although OPSD was not able to
14 provide a briefing today for you folks, they are now
15 planning to make sure that they do a briefing at the
16 LUC once they have some recommendations down the
17 road, so they do intend to come before a commission.

18 **COMMISSIONER OHIGASHI:** But not for the
19 interim report?

20 **MR. DERRICKSON:** That's correct.

21 **COMMISSIONER OHIGASHI:** Because there
22 won't be any recommendations --

23 **MR. DERRICKSON:** That's my understanding,
24 correct.

25 **COMMISSIONER OHIGASHI:** And for example,

1 they won't say, let's get rid of the system ALIs
2 (sic) and let's just go straight everybody goes in
3 there and presents soil analysis of their own and
4 determine what will be the highest and best use and
5 then come to Land Use Commission or whatever
6 government body, so none of those recommendations
7 would be --

8 **MR. DERRICKSON:** For the interim report?

9 **COMMISSIONER OHIGASHI:** Yes.

10 **MR. DERRICKSON:** That's -- from what I
11 could see from the draft that I reviewed, that's the
12 type of things that are not going to be in the
13 interim report at this point.

14 **COMMISSIONER OHIGASHI:** What utility would
15 it have for the legislature if there are no
16 recommendations? That's a rhetorical question. You
17 don't have to answer.

18 **MR. DERRICKSON:** That's what I was going
19 to ask you.

20 **CHAIRMAN GIOVANNI:** So in terms of -- this
21 is Giovanni. In terms of impact to LUC
22 deliberation, this process is going to be an interim
23 report to the legislature who may or may not act on
24 it, and the earliest they will see it is the 2025
25 session?

1 **MR. DERRICKSON:** Right. According to
2 OPSD's timeline that they will have a final report
3 for the 2025 legislators.

4 **CHAIRMAN GIOVANNI:** And then may or may
5 not act on it?

6 **MR. DERRICKSON:** That's correct.

7 **CHAIRMAN GIOVANNI:** So it's 2025/26 at the
8 earliest before we see any impact, noteworthy impact
9 to LUC, from a regulatory point of view.

10 **MR. DERRICKSON:** Assuming that the
11 legislature makes some regulatory changes, you know,
12 legal changes to Chapter 205, say.

13 **CHAIRMAN GIOVANNI:** Yeah.

14 **MR. DERRICKSON:** Yeah.

15 **CHAIRMAN GIOVANNI:** Okay.

16 Commissioner Atta?

17 **COMMISSIONER ATTA:** You know, will LUC get
18 involved in the A, B, C classification system --
19 land, because I know that in the discussion, there
20 was a big, big fight over, you know, whether
21 marginal agricultural lands for pastures, they
22 wanted to raise it to -- for to get the tax
23 benefits, and so that kind of question came up, to
24 raise it, raise or lower and the A, B, C, D
25 classification, so that the -- there was big

1 argument in that, so I was just wondering if this
2 deal would have gone to agricultural land, or do we
3 -- you know, LUC had get involved in that kind of
4 decision.

5 **MR. DERRICKSON:** This is Scott. I think
6 part of what you're talking about is the tax
7 structure that the counties are --

8 **COMMISSIONER ATTA:** I know, and that --
9 yes, I know that. That is a tax structure, but
10 because of that, that the landowners wanted to raise
11 or lower their thing depending on what the tax
12 structure is, and so that's -- that's not an -- it
13 is partly agriculture because it comes with the --
14 it -- it pastures go up or down, and so -- so they
15 -- that's where they used to come up the thing.

16 **MR. DERRICKSON:** Okay. Well, I'm not sure
17 if I'm going to be answering your question; however,
18 so again, the Land Use Commission, we are bound by
19 using and applying the Land Study Bureau's A through
20 E --

21 **COMMISSIONER ATTA:** So that's why I asked
22 if you --

23 **MR. DERRICKSON:** -- but the -- it's the
24 county themselves, through ordinance, that would
25 manage their -- the tax structure and any tax

1 exemptions or lowering based on soil
2 classifications.

3 I think part of what you're asking about
4 in terms of raising or lowering, you know, your
5 classification, if you look at the Land Study Bureau
6 A through E, some lands that are E or D rated, if
7 they're non-irrigated then they're D or E. But if
8 they're irrigated or have sufficient water, they can
9 turn into B, C, A rated lands. So with the
10 application of water in some cases, an E rated
11 parcel of land could become an A rated parcel.

12 I don't know how the counties allow for
13 that --

14 **COMMISSIONER ATTA:** But that's --

15 **MR. DERRICKSON:** -- factor in --

16 **COMMISSIONER ATTA:** -- that decision.

17 **MR. DERRICKSON:** No.

18 **CHAIRMAN GIOVANNI:** So Scott or Dan, this
19 is Giovanni. Is there any study or information
20 generally available to the public that translates
21 the value -- like dollars per acre value of A versus
22 B versus C versus D versus E, that you're aware of?

23 **MR. DERRICKSON:** No. I mean, not to my
24 knowledge. Again, you know, the competition for
25 agricultural lands, like I was saying, particularly

1 lands that are well drained, you know, deeper soils,
2 flat, don't have a lot of rocks --

3 **CHAIRMAN GIOVANNI:** Has water available.

4 **MR. DERRICKSON:** -- there's a tremendous
5 amount of competition for those lands, so those --
6 on the open market, those lands are fetching prices
7 that don't reflect their agricultural use and
8 capability, I think.

9 **CHAIRMAN GIOVANNI:** Because they have
10 other value?

11 **MR. DERRICKSON:** Yeah. Higher and better
12 use.

13 **CHAIRMAN GIOVANNI:** Yep.

14 Okay. Going once, going twice, any
15 further question for staff? Okay.

16 Thank you, guys.

17 So Ariana, is there any other second round
18 of public testimony on this matter? Is there
19 anybody in attendance that wishes to testify that
20 you're aware of?

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

22 **CHAIRMAN GIOVANNI:** Thank you.

23 So we'll move on from there. So the next
24 agenda item I have is an update from staff on
25 commissioner training. Mr. Orodener?

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

2 This bit of training that we're going to do is not
3 really intended to be comprehensive. As those of
4 you have been subjected to it know, when we do
5 commissioner training, we usually take two days and
6 we bore the daylights out of you.

7 This is more of a 10,000-foot quick look
8 at some of the things that are happening and some of
9 the things to be mindful of as we move forward.

10 The first subitem under this section is an
11 overview of core responsibilities. To be very brief
12 about it, if we -- if I was going to put it in one
13 sentence, I would say very simply that we have to
14 follow the law and rules in making decisions.

15 To a certain extent, this puts borders on
16 our discretion because we have to do the analysis
17 that are required by statute and by law and by our
18 rules. All sorts of different types of analyses
19 that we -- as you may have seen in some of our
20 hearings.

21 Sometimes, we really want to make one
22 decision, but either because of the lack of
23 information or the extent of the adverse impacts,
24 we're forced into a negative decision because we
25 haven't met our obligations. We don't have enough

1 information to meet our obligations.

2 Sort of backing up a little bit, if you
3 look at the history of land use law in Hawaii,
4 you'll notice that in the late 80s to early 2000s,
5 the LUC was the organization that was afield from
6 caught frequently, and that led to definitive case
7 law in many important issues. Ka Pa'akai, for
8 instance, and the Turtle Bay case are two good
9 examples that came out of Land Use Commission
10 decision-making that have had a broad impact on how
11 things are done in all of the state agencies in
12 relation to land.

13 Believe it or not, this period of time was
14 very distressing for developers because appeals led
15 to delays and losses led to rehearing of projects
16 and then times for those projects was appealed from
17 became excessive. The best example of that is Koa
18 Ridge, and that has had a permanent impact on the
19 psyche of some of the developers and that certainly
20 would alert because it took over ten years to get
21 land use approval of that project -- Land Use
22 Commission approval of that project because it went
23 up and down to the Supreme Court three times, all
24 appealed from our decisions.

25 What staff tries to do, and what you as

1 Commissioners should be focused on, is ensuring that
2 we have done all of the analyses that is required by
3 the courts to render decisions so we don't get
4 appealed from and housing projects don't get caught
5 in the time mirage that comes from appeals and
6 rehearing.

7 The easiest way for someone who doesn't
8 like a project to appeal is to say, oh, they didn't
9 do a proper analysis. They didn't follow the law.
10 They didn't follow the case law. The courts have
11 rarely, if ever, overturned us because of a factual
12 decision or a substantive decision. Of course,
13 Waimanalo Gulch is an outlier.

14 What we have been successfully appealed
15 from is cases where we have made decisions that were
16 either procedurally incorrect or ones that have not
17 met our burden of fulfilling our duty under the law
18 or constitution.

19 To a certain extent, we are unique in
20 government agencies. Most other commissions that
21 deal with land -- most other commissions deal with
22 land that has already been classified as urban, such
23 as the Planning Commission, or -- and then the
24 counties or conservation, such as B and O. As a
25 result, their analysis tends to be the more limited

1 or much more environmentally and culturally direct.
2 The only organization that really faces the
3 difficult constitutional questions that we do is the
4 Commission on Water Resource management.

5 From a practical standpoint and because
6 we're limited to what is on the record, petitions
7 become a problem when parties have not presented
8 enough evidence to satisfy the decision-making
9 prerequisites. The most likely denial of petitions
10 and motions is a lack of current information with
11 regard to cultural environment -- and environmental
12 impacts and mitigation measures.

13 From a purely -- from a pure policy
14 standpoint, our role is to balance the need for
15 housing and other urban uses against the need to
16 preserve land for agricultural and public and
17 cultural purposes. Those are the areas where our
18 discretion lies. So as long as we have met the
19 court-imposed and constitutionally derived analysis,
20 we can move forward with doing that analysis.

21 Sometimes that analysis, especially with
22 regard to Ka Pa'akai and the public trust doctrine
23 issues, has sometimes made not so much from whether
24 or not the information that was presented gives us
25 enough factual information to render a decision, but

1 rather, whether or not there is a lack of
2 information to render that decision. That's where
3 our biggest problems lie.

4 Where a petitioner and the county and OPSD
5 had not given us enough information to inform us as
6 to whether or not, for instance, there are any
7 impacts on cultural resources on a piece of
8 property. And as we know, Supreme Court decisions
9 have said, to quote their own language, "it's not a
10 matter of calling balls and strikes when you come to
11 these issues."

12 We have to act as trustees to protect
13 those interests and those public trust doctrine
14 issues. And if we don't have enough information to
15 render a decision, then we have to deny because
16 we're acting as trustees. That's a little bit
17 different of a mind frame from the way other boards
18 and commissions handle the issues that they are
19 faced with.

20 And this is a really big distinction, and
21 it's really one that requires a lot of thought when
22 we're holding hearings. And I -- if you'll excuse
23 me for saying this, there was a time when OPSD would
24 do that analysis and present us with evidence to
25 support a decision one way or another. That has not

1 happened in the past at least six years or more.

2 As a result, this Commission has had to be
3 more probative in its questioning to ensure that it
4 has enough information to render a decision with
5 regard to, for instance, Ka Pa'akai, and Bridge Aina
6 Le'a and Local 5 Turtle Bay and the public trust
7 doctrine issues associated with water and cultural
8 resources, archeological resources, and the
9 environment.

10 Information gathering has become
11 problematic for the Commission, and that's why I
12 think this Commission has become a lot more focused
13 on asking the hard questions. And that's why some
14 of our decisions are based on the fact that we don't
15 have enough information even though there's an
16 allegation that there's something going on on the
17 land that we need to be protective of.

18 A lot of this is driven by the
19 Constitution. For all intents and purposes, for at
20 least the provisions concerning the protection of
21 agricultural land and cultural resources, we are the
22 entity that effects those provisions. And I would
23 just note that the more discussion on those issues
24 that you folks have, the easier it is for staff to
25 support your final decisions and their written

1 decisions and orders.

2 I have watched this Commission struggle
3 with some of the things that have been before it.
4 I'm going all the way back to years ago, and we were
5 faced with an SP that did not reveal that there was
6 -- the petitioner did not reveal that there may have
7 been a -- a trail across the property. And even
8 though we weren't sure what it was, we had to defer
9 the decision until they came back with the
10 information to show us either that that trail was
11 not on the property or that the project would not
12 impact that trail. It's difficult when you have a
13 project that you want to approve but you don't have
14 the information.

15 The Turtle Bay case, the Local 5 Turtle
16 Bay, as it's commonly referred to, created a whole
17 new set of issues for us because we have a lot of
18 petitions that we approved way back when that don't
19 have any timeframes on them. And when they come
20 back to us and ask to approve an amendment for that
21 petition and it's been 40 years or more since
22 they've done any environmental work, we have an
23 obligation to ensure that the information in front
24 of us is up to date.

25 Which also makes it hard because, once

1 again, you have projects that are already approved
2 that may already have been placed in the urban
3 expansion district for the county or counted on as
4 part of the urban expansion district, but the
5 environmental work hasn't occurred in 40-50 years
6 and it needs to be updated.

7 It results in, as we've seen recently,
8 decisions by the Commission, that say, look, you
9 have to come back to us when you've done this. It's
10 not that we oppose the project. It's what you have
11 to do so that we can meet our constitutional
12 obligations. And we'll have an opportunity for the
13 Commissioners to ask questions at the end, unless
14 you'd like to do it segment by segment, Chair. It's
15 at your discretion.

16 **CHAIRMAN GIOVANNI:** No questions.

17 **MR. ORODENKER:** If there are no questions,
18 then I'm going to ask Scott to talk a little bit
19 about land use policies and guidelines.

20 **MR. DERRICKSON:** Okay. This is Scott,
21 State Land Use Commission. So I'm going to kind of
22 do -- Dan was giving you the high level. I'm going
23 to try to get into the weeds a little bit and remind
24 you of --

25 **CHAIRMAN GIOVANNI:** Scott, let me just --

1 we've been going for an hour and 15 minutes.

2 **MR. DERRICKSON:** Sure.

3 **CHAIRMAN GIOVANNI:** Do you have a two-
4 minute thing or more than two minutes?

5 **MR. DERRICKSON:** It's going to be a little
6 bit longer.

7 **CHAIRMAN GIOVANNI:** So let's take a five-
8 minute break. So it's now 10 -- 11:01. Let's come
9 back at 11:10.

10 **MR. ORODENKER:** Okay.

11 **(Recess taken from 11:01 a.m. to 11:10**
12 **a.m.)**

13 **CHAIRMAN GIOVANNI:** We're back on the
14 record. Ms. China is going to be absent for a brief
15 period of time, but we'll proceed in her absence.

16 So back to you, Scott.

17 **MR. DERRICKSON:** Okay. Yes, this is Scott
18 again.

19 So Land Use Commission is guided in its
20 decision-making by constitutional statutory and
21 administrative rule provisions. I'm going to go
22 over some of at least statutory provisions, some of
23 which connect up to constitutional requirements.

24 So Chapter 205, State Land Use Law 205-2,
25 the Commission originally grouped all the lands into

1 one of four categories, one of four districts, and
2 they set the standards for determining those
3 boundaries of those districts. 205-2 says when
4 you're making your decisions, you have to give
5 consideration to the master plan or general plan of
6 the counties where the land that's being
7 redistricted is.

8 Section 205-4, part (g), decision has got
9 to be made within 365 days. You have to file
10 findings of fact and conclusions of law and impose
11 conditions necessary to uphold the intent and the
12 spirit of this chapter -- that's Chapter 205 -- and
13 the policies and criteria in Section 205-17 or to
14 assure compliance with representations made by
15 petitioners. Those conditions will then run with
16 the land.

17 Section (h), no boundary amendment unless
18 the LUC finds upon clear preponderance of the
19 evidence -- it's one of those standards that
20 Commissioner Okuda constantly reminds us and parties
21 who come before us about -- so clear preponderance
22 of evidence. That the change is reasonable, doesn't
23 violate HRS Section 205-2 and part 3 of the chapter
24 which regards important agricultural lands, and is
25 consistent with policies and criterias in Sections

1 205-16 and 205-17.

2 So if you'll notice, if you look at our
3 decisions and orders, we always have sections in
4 there laying out the findings of fact that show how
5 your decision meets those different sections of the
6 law.

7 Section 205-12 about enforcement.
8 Counties shall enforce the land use districts
9 adopted by the LUC and the restrictions on their use
10 except in the State Conservation District, where
11 that's the Board of Land and Natural Resources
12 kuleana.

13 So to Section 205-16, which is compliance
14 with the Hawaii State Plan, which is another
15 statutory section. No amendment to your district
16 boundaries nor any other action of the LUC can be
17 approved unless the action conforms to the Hawaii
18 State Plan, and I'll talk a little bit about
19 portions of this Hawaii State Plan shortly.

20 Section 205-17, this is the LUC decision-
21 making criteria. When considering
22 reclassifications, the LUC has to consider these six
23 specific criteria, and those criteria seeks to
24 balance both protection and conservation with
25 managing growth and development. So some of these

1 criteria are the extent of the conformance with the
2 Hawaii State Plan, and we're speaking of any action
3 that comes before the Land Use Commission.

4 Second one is extent of the conformance
5 with the land use district criteria that are set in
6 Section 205-2. The impact of the proposed
7 reclassification on areas of state concern, and this
8 is -- these things are stemmed from Constitutional
9 Articles 9 and 12, in particular. That would be the
10 preservation and maintenance of natural systems,
11 maintenance of valued cultural, historical, and
12 natural resources; commitment of state funds and
13 resources; provision of employment and economic
14 development; provision of housing for all incomes,
15 particularly low, moderate, and gap groups;
16 standards and criteria for reclassifying important
17 agricultural lands; county general plans and
18 community development or community development
19 plans, and representations and commitments made by a
20 petitioner in securing a boundary change.

21 So those are some of the primary decision-
22 making criteria that you, as Commissioners, need to
23 bring to bear when approving not just a petition but
24 also motions to amend. So one of the criteria I
25 mentioned was Chapter 225, which is the Hawaii State

1 Planning Act, and it's really the state's planning
2 framework. Its intent is to improve the planning
3 process and provide for wise use of resources while
4 also guiding future development of the state.

5 It's a guide for future long-range
6 development and it provides a basis for determining
7 priorities and allocating the limited resources,
8 particularly public funds, part 1, section 225 --
9 226-5 to 226-27 provide the objectives and policies
10 for a very full complement of issues to be
11 considered that include things like housing,
12 infrastructure, water, cultural resources.

13 Part 2, Sections 226-51 to 226-65 actually
14 lays out the statewide planning system of which the
15 Land Use Commission and OPSD and the counties play
16 critical roles. Section 226-52, land use and
17 regulatory decision-making of state agencies need to
18 conform with the goals, objectives, and policies
19 stated in the state plan and the use priority
20 guidelines, as well as the state functional plans.

21 Chapter 226-65, Hawaii 2050 Sustainability
22 Plan shall serve as the state's climate and
23 sustainability action plan, and OPSD is the lead
24 agency responsible for providing guidance on its
25 implementation and updates.

1 Part 3 is the priority guidelines. They
2 identify priority areas of statewide concern,
3 including Sections 226-108 and 226-109 that cover
4 sustainability and climate change adaptation
5 guidelines, some of which are directly referenced in
6 the LUC Administrative Rules and need to be included
7 in our petition approvals and our decisions.

8 Now I'll talk real quickly about Chapter
9 225M, State Planning. This is the -- authorizing a
10 statute for Office of Planning and Sustainable
11 Development. 225M-2 calls for OPSD to develop and
12 present the position of the state in all boundary
13 change petitions and proceedings. That would be --
14 that would include special permits, declaratory
15 rulings, and motions. So it's their job to present
16 the state position before the Land Use Commission.

17 225M-2 also calls for OPSD to advise and
18 assist private industries, government departments
19 and agencies, and other persons on the requirements
20 of HRS Chapter 343 and its implementation. That's
21 environmental assessments, environmental impact
22 statements. Chapter 225M also provides that the LUC
23 is administratively attached to OPSD.

24 I think that's all I'm going to hit you
25 with right now except to tell you that before I was

1 here at the Land Use Commission, I was at the Office
2 of Planning in the Land Use Division, so I have a
3 fairly unique perspective here because I used to be
4 on the other side where I was helping to develop
5 state's position by going out and doing the
6 groundwork to talk to the different state agencies
7 who had a dog in the fight in any given petition or
8 motion and providing that information and testifying
9 before the Land Use Commission about those
10 positions, both the legality and the background
11 information that you needed to have I your findings
12 of fact and conclusions of law to make your
13 decisions.

14 I'm well aware of what the role and
15 responsibility is from the OPSD side as well as what
16 we here at the Land Use Commission have to address
17 in the context of making our findings of fact and
18 conclusions of law. And I think I'll leave it at
19 that.

20 **CHAIRMAN GIOVANNI:** Thank you very much,
21 Scott.

22 Questions, anyone?

23 Commissioner Atta, questions?

24 **COMMISSIONER ATTA:** I -- I -- there isn't
25 a lot of conditions and stuff that we're supposed to

1 -- so I was wondering if you folks would help us by,
2 you know, repeat all of the things that we have to
3 follow, you know, in the report because that's a
4 lot, actually.

5 **MR. DERRICKSON:** You're right. And -- and
6 our -- we -- we do attempt in our staff reports to
7 cover the bases and to point out what you need to
8 factor in to make determinations on in terms of your
9 findings of fact and how you go about the decision-
10 making process.

11 But for petitions or special permits,
12 declaratory rulings, as well as motions, if you
13 notice, in most of our staff reports we have a
14 section in there that explains, you know, what that
15 process is and how you go about making your
16 decision.

17 However, as I said, part of our staff
18 reports is a survey of the information that's come
19 both from the petitioner who's asking for something
20 to be done, as well as the Office of Planning and
21 Sustainable Development putting together the state's
22 position and of the county providing information as
23 well. And we try to provide all of that in the
24 context of how those things address the decision-
25 making criteria.

1 **COMMISSIONER ATTA:** And it says OP will be
2 the -- the lead of the state, right?

3 **MR. DERRICKSON:** Right.

4 **COMMISSIONER ATTA:** So we the LUC can't
5 settle that -- try to solve a problem if OP has a
6 position. You know, the one end of the -- of the --
7 Kona's the one that we just recently passed, you
8 know. We -- we didn't follow OP's recommendation.

9 **MR. ORODENKER:** If I can address that.
10 I'd like to talk about the staff reports first
11 before I answer that question.

12 Our staff reports are intended to help
13 give the Commissioners guidance as to what the
14 outstanding issues are and what the factual
15 information is that's been provided. Because we
16 can't -- the only -- our decision-making has to be
17 based on what's on the record.

18 A lot of times our staff reports will
19 point out inadequacies that need to be addressed at
20 hearing, so that we can get more information out of
21 the petitioner or OPSD or other counties. Now, with
22 regard -- but let me finish that by saying but
23 ultimately, it's the Commission's decision.

24 There have been many times where we --
25 staff has expressed concern about a particular

1 petition. And then at hearing, either the
2 Commission was able to extract enough evidence from
3 the petitioners so that those issues were resolved
4 or the Commissioners just disagreed. I mean, we
5 don't -- we're not proud. We're not the decision-
6 makers. We're just trying to provide you with as
7 much information as possible.

8 With regard to OPSD's position --

9 **CHAIRMAN GIOVANNI:** Dan, can you restate
10 Commissioner Atta's question for the record that
11 you're about to answer?

12 **MR. ORODENKER:** Yeah. The question, if I
13 understood it correctly, Commissioner Atta, was we
14 were presented with information from OPSD and we
15 rendered a decision contrary to that position. That
16 is not uncommon.

17 OPSD's primary obligation is to present us
18 with evidence regarding state concerns and state
19 issues. They are not -- when it comes to legal
20 positions, especially, they're not always correct, I
21 mean, in this Commission's eyes. And sometimes they
22 give us opinions that are what we feel is -- or the
23 Commission feels -- because, as I say, staff doesn't
24 make these decisions -- is contrary to the evidence.

25 In recent years, they have provided us

1 with positions that may be the basis for which may
2 be flawed, and the Commission has identified that.
3 None of the information provided by anyone is to be
4 taken on its face if you have concerns and you have
5 questions. They're just positions. They're not
6 necessarily bound -- we're not necessarily bound by
7 those positions.

8 There have been times when we have taken
9 different positions than the county with regard to
10 things like drainage or lighting, you know. I mean,
11 we have other obligations besides just protecting
12 the county's concerns. So it's a decision -- it's a
13 fact-gathering process, and this Commission has
14 discretion to accept or disregard any position or
15 any testimony based on what you hear and what you
16 feel is best.

17 **CHAIRMAN GIOVANNI:** Commissioner Yamane?

18 **COMMISSIONER YAMANE:** Thank you, Mr.
19 Chair. For you or Dan or Scott. What does
20 "administratively attached" mean? I was reading
21 225M. What is that?

22 **MR. ORODENKER:** Technically, what
23 "administratively attached" means is that the agency
24 that you are administratively attached to is
25 supposed to handle all the administrative work for

1 you. In other words, your -- your travel
2 reimbursements, developing the budget and things
3 like that. It's to prevent the additional expense
4 for those individual agencies of having to hire
5 people to handle those things for them.

6 Technically, that's what it means.

7 **COMMISSIONER YAMANE:** Thank you. Because
8 it kind of refers to 205-1(c). Then on 205-1(b)
9 also is the Commission shall be part of the office
10 planning -- OPSD for administrative. Is that the
11 same thing?

12 **MR. ORODENKER:** Yes.

13 **COMMISSIONER YAMANE:** Okay. Thank you.

14 **MR. ORODENKER:** Yeah.

15 **CHAIRMAN GIOVANNI:** Commissioner Lee?

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

17 Since Mike mentioned it, I guess LUC is
18 not administratively attached to OPSD. It's part of
19 OPSD and OPS, and so both are administratively
20 attached to DBEDT, is that correct?

21 **MR. ORODENKER:** Actually, we're
22 administratively attached to OPSD, and OPSD is
23 administratively attached to DBEDT.

24 **COMMISSIONER LEE:** So we're like the
25 subcontractor, the sub-subcontractor.

1 **MR. ORODENKER:** To a certain extent, yes.

2 I mean --

3 **COMMISSIONER LEE:** Who writes the checks?

4 **MR. ORODENKER:** Yeah. Because we used to
5 be directly -- it actually has some benefit to us.
6 We used to be directly attached to Department of
7 Business and Economic Development. It was perceived
8 by the legislature a few years back that certain
9 commissions and divisions could be consolidated with
10 OPSD to prevent duplication.

11 We weren't the only one who has moved.
12 OEQC no longer exists. It is actually a division in
13 OPSD. We maintained our independence. We also have
14 an agreement with OPSD that prevents them from
15 decision-making with regard to our budget and things
16 like that even though we're administratively
17 attached to them, because it prevents the possible
18 implication that they are somehow controlling our
19 decision-making for their budgets.

20 **COMMISSIONER LEE:** Yeah. And one example,
21 I think, of that is I recalled your Agricultural
22 Development Board. It used to be attached to Ag,
23 and now they're attached to DBEDT, and there's a
24 subtle message that -- or maybe not so subtle
25 message that the legislature sent when they did

1 that, is that true?

2 **MR. ORODENKER:** Yeah. That -- that's --
3 there's some history on that that goes back to John
4 Waihe'e times, and so, you know, I mean, we can talk
5 about that further offline, but that ADC movement
6 was something that was associated with a little bit
7 of a different concern.

8 **COMMISSIONER LEE:** Great. Okay. So I
9 guess my main question -- or maybe it's to get your
10 thoughts on this, Scott or Dan. 205-17 specifies
11 the 8 to 10 criteria that we're supposed to
12 consider. Some of those are contradictory or
13 conflicting. Some are long-term versus short-term.
14 And some are just judgment calls, right? So I think
15 that's where we will struggle in some of those
16 decisions.

17 And then so at some point, the LUC may
18 lead or follow, depending on, you know, how dated
19 some of the plans are, the direction, just what time
20 we woke up and how we felt that morning, but I think
21 back to relitigate the last issue, but the county
22 general plan and the sustainable communities plans
23 and so forth, sometimes they're stronger than the
24 state plan in certain aspects, so it's like isn't
25 this -- although you mentioned there are guardrails

1 and there's regulatory and legal guidelines that we
2 follow, 205-17 really is where we're going to have
3 to hash things out as what is more important, and
4 that might change over times. Is that how you would
5 see it?

6 **MR. ORODENKER:** Well, I think that the
7 language contained in 205 is going to remain for
8 some time. I don't think that's going to change
9 very quickly. But putting those --

10 **COMMISSIONER LEE:** But -- Commissioner
11 Lee. But it's the interpretation that will change,
12 right, or it's the judgment call that would change
13 over time.

14 **MR. ORODENKER:** Well, either commission --
15 the Commission has the ability to make judgment
16 calls with regard to all of those criteria. That's
17 where -- when I talk about guardrails, I'm talking
18 more about the 10,000-foot, you know, Supreme Court
19 decisions that we have to adhere to before we get to
20 the -- I would call that a discretionary area.

21 We can -- once we get past those
22 guardrails, we can -- the rest of the stuff is
23 completely at the Commission's discretion, and it
24 always has been. You know, things like, you know,
25 does it conform to the county plans, that's been

1 handled in a lot of different ways. Sometimes we've
2 had projects in front of us that did not, and what
3 we've said to them is one of the conditions on
4 approval is that you get the county to amend the
5 plan, you know.

6 So there's a lot of discretion in those
7 areas that are contained in Chapter 205. That's the
8 big area of discretion on your part. You have to
9 figure out whether or not the project -- when I say,
10 "you," I mean the Commissioners -- has met those
11 criteria in one way or another. And sometimes, you
12 know, it's not simply a black and white. You have
13 the ability to determine whether or not, based on
14 the evidence in front of you, those criteria have
15 been met or are okay or are even not necessary to
16 look at. That's your discretion.

17 **COMMISSIONER LEE:** Just a last comment. I
18 think that's where the struggle might come, because
19 some of these criteria, some are conflicting. I
20 might say housing is more important because if I
21 don't have a place to live I have to move or not
22 have shelter. But then, I might run into some
23 valuable ag land that long-term we're going to need,
24 but today and this month and this year I might need
25 somewhere to live more urgently. So that's where

1 the balance and the -- the discretion would probably
2 be the issue.

3 **MR. ORODENKER:** Yeah. And that's exactly
4 correct, and that's what the Commission's designed
5 and set up for is for the Commissioners to look at
6 the evidence in front of them and say, you know,
7 right now, housing is more important than
8 agriculture.

9 I would caution on that a little bit
10 there, though, because under Article -- we are the
11 effectuating body for Article 12 of the
12 constitution. I mean, there's nobody else who does
13 what we do with regard to protecting agricultural
14 land.

15 So the courts are going to require us to
16 do a pretty good analysis on why that agricultural
17 land can be converted over to housing, but you know,
18 even the state plan changes. And each
19 administration changes with regard to what their
20 priorities are. And this Commission has changed
21 over time, even in the 12 years that I've been here,
22 with regard to what some of its priorities are. I
23 would say it's been pretty consistent, but there
24 have been changes.

25 I think that the Commission back in the

1 80s and 90s, when I was appearing in front of it,
2 had a much different focus than this Commission does
3 now. And also, you know, the way that that
4 discretion has evolved over time is largely a
5 function of the Supreme Court cases that have
6 interfered with that discretion, for lack of a
7 better word, and said, no, you can't do that unless
8 you have done this analysis.

9 The last Koa Ridge appeal, the Justices
10 were concerned when giving an indication in our
11 case, a practical application. Under our rules and
12 under the statutes, there's supposed to be a
13 slightly higher analysis with regard to IAL lands if
14 you're going to convert it to urban.

15 The Justices made a distinction between
16 the Koa Ridge case and the DR Horton -- Ho'opili
17 case. In Ho'opili, the Commission didn't have to do
18 as -- as elevated an analysis because Ho'opili came
19 in with evidence that, yeah, this would probably be
20 IAL land if it was going to be designated, but these
21 are the reasons why we feel housing is more
22 important on this land and how it won't impact the
23 overall food production capabilities for the state.

24 Koa Ridge said -- didn't even do the
25 analysis. They didn't even bring in -- didn't even

1 recognize that it was IAL land and they didn't do
2 anything to provide the Commission with evidence.
3 And so the distinction isn't so much that there's a
4 policy difference as between those two projects.
5 The distinction lay in the fact that in one case,
6 Ho'opili, they did the analysis and in Koa Ridge
7 they didn't, you know.

8 So the Supreme Court isn't going to get
9 involved so much. They should not get involved so
10 much in our discretionary decision-making as long as
11 we have evidence to support our position. And as I
12 mentioned before, most of the times when we've
13 gotten in trouble, it hasn't been because our
14 analysis was particularly flawed. It's because we
15 didn't have enough evidence to support our analysis.
16 And those are two different things.

17 **CHAIRMAN GIOVANNI:** Commissioner Okuda?

18 **COMMISSIONER OKUDA:** This is Gary Okuda.

19 Yeah. A comment on -- I recall what
20 happened at the 201-H La'alei project, and I don't
21 want to say anything which indicated that I
22 prejudged anything, okay? I actually had an open
23 mind.

24 But my initial view, looking at the
25 petitions for the 201-H project was this is I don't

1 want to say a no-brainer, but you know, okay, we'll
2 be there for a few hours and why is the staff
3 keeping us overnight? Because, you know, this is
4 really, yeah, a no-brainer. And there's a Ka
5 Pa'akai report, and so okay, no problem.

6 And Dawn Chang asked the cultural
7 consultant, well, have you considered the Ka Pa'akai
8 questions, and I think, not to read Dawn's mind, but
9 she's just checking the boxes, right? Okay, you
10 know, the consultant would say, because the
11 consultant wrote the report saying Ka Pa'akai
12 standards were complied with. You know, okay. You
13 know, I did it.

14 But the consultant testified Ka Pa'akai,
15 what's that? And yeah, it was all quiet. And so
16 Dawn tried to rephrase the question, well, did you
17 look at the standards that are laid out in the Ka
18 Pa'akai case, and the consultant said, I don't know,
19 I didn't do that. I followed what I think some
20 other office talked about. And when the session
21 broke at that -- at that evening, you know, my
22 thought was this valuable housing project where
23 they've got -- the mayor's got them financing. It's
24 ready to go. It's going to go down the toilet
25 because this is an incompetent presentation.

1 Now, to Bernard Carvalho's credit, that
2 evening, I understand, he got -- he was on Oahu. He
3 flew back to Kauai, you know, and even though the
4 naysayers were telling him, hey, this is a dead
5 project, he found a witness who actually -- she had
6 a, I think, a masters in archeology, and she's from
7 the Waimea Valley area, and she put in the evidence
8 that basically saved the project. I remember my
9 last question to outside counsel, a guy from
10 Honolulu who the county had hired, was, let me give
11 you the citation to the Ka Pa'akai case. Here's the
12 Hawaii Reports citation. You've got to address this
13 tomorrow.

14 And so I think -- you know, I don't think
15 we're against housing, and I agree with what the
16 Executive Officer says. If we check off these
17 boxes, then the standard that the Supreme Court has
18 said is, you know, if we believe the traffic light
19 was green or if we believe this is a good project,
20 even if other people say no, you know, the Supreme
21 Court said it's the discretion of the Land Use
22 Commission.

23 But where the box isn't checked off, what
24 should be a simple matter for applicants, that's
25 where the problem is, but I was horrified because I

1 thought, you know, they've got financing. This is
2 going to be needed housing, you know? And just
3 because a consultant who signed off on a report
4 says, I don't know what my report is talking about,
5 I mean, it's like holy moly. Anyway, editorial
6 comment.

7 Thank you, Mr. Chair.

8 **CHAIRMAN GIOVANNI:** Thank you,
9 Commissioner.

10 Commissioner Ohigashi?

11 **COMMISSIONER OHIGASHI:** That was my first
12 meeting.

13 Anyway, I think the problem that I -- that
14 -- well, the thing that I want to impart to you,
15 since I'm a short-timer anyway, is that the danger
16 is -- not the danger, but the problem is that
17 standards or standings to appeal is very, very open.
18 And that any decision -- whether or not there's an
19 intervenor or even if somebody yelling and screaming
20 in the crowds or putting on evidence as a public
21 witness, any decision without the necessary backing
22 will -- can be -- is susceptible to an appeal.

23 An appeal is bad because it costs money on
24 the developer and weighs on their resources and it
25 creates more problems for the continuation of the

1 project, in my opinion. And I think that with
2 probably the new hire that the Land Use Staff had
3 hired to look up old projects that this will become
4 a permanent type of issue as to what -- when do we
5 declare -- or when did we find that circumstances
6 are so changed that we're going to have to say,
7 enough already. Let's go back, save everybody time
8 and money, and try and figure out what things have
9 to be done to meet that requirement.

10 And it's a sensible thing to do. Now,
11 people will say, well, you're against housing, but I
12 don't have the statistic in front of me, but I
13 believe that the amount of housing or the amount of
14 housing projects that the Land Use Commission has
15 approved that hasn't been built would put a big dent
16 or at least maybe make -- not maybe needed but put a
17 big dent in what the housing needs of the state are.

18 And then everybody's going to say, well,
19 but you guys are the ones that's stopping it, all
20 the housing, and we say, no, you know, they have the
21 right to proceed. And if you come back to us with a
22 changed project or something different, then the
23 Supreme Court has put us all on these obligations,
24 so it makes sense for us to follow the law. And you
25 know, that's my philosophy here, right, you know.

1 And we have lawyers on this side of the
2 table but -- you know, essentially that we're given
3 parameters and we try to stick by it.

4 The last comment, I wanted to ask the
5 Attorney General because I just overheard some
6 comments that she made that may make the Ka Pa'akai
7 analysis more important in our review as we go
8 forward. And I don't know if the Attorney General
9 has anything to comment on it, her recent experience
10 in front of the court.

11 **MS. CHINA:** Julie China, Deputy AG. I
12 just made a Ka Pa'akai comment because I was
13 watching Supreme Court proceedings yesterday. Both
14 my deputies had two oral arguments.

15 One of the justices did ask some probing
16 Ka Pa'akai questions, and so I think that when you
17 do an analysis, it's -- it's just -- it's going to
18 be part of what you're going to have to do in the
19 future and have to look at closely. So yeah.

20 **COMMISSIONER OHIGASHI:** What I was hoping
21 -- what you're saying is -- what I gather from what
22 you're saying is that, look, this is going to be
23 more of essential question in the future. Old
24 projects that never went through it will have to go
25 through it.

1 This is going to be the standard, I
2 believe, that this court is going to require, and
3 the heightened importance of it, even in discussion,
4 rather than an opinion, seems to indicate to me that
5 to be on the safe side, that this is the direction
6 that may have to be taken. And given I'm a short-
7 timer, I'm glad that you guys will have to decide
8 that.

9 **MR. ORODENKER:** Mr. Chair, if I may? I
10 have a couple comments.

11 **CHAIRMAN GIOVANNI:** Mr. Orodenker?

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

13 I agree with both Julie and Lee one of the
14 problems that we're facing is this Ka Pa'akai
15 analysis issue has become very important to the
16 Supreme Court, and recent decisions would indicate
17 that the state cannot render any type of decision
18 unless it's done a Ka Pa'akai analysis on anything,
19 in any division.

20 You were even talking about roadways and
21 things the DOT does and everything else. In the
22 land use arena, one of the things that the counties
23 have not faced is that if we weren't here to do that
24 analysis on larger projects, they would have to do
25 it. I mean, right now, they kind of skate because

1 they know we're going to do it. But if we disappear
2 tomorrow, they would have to do it.

3 The second comment I would like to make is
4 that I think you heard me mention early on, and
5 which Lee just reiterated, is that one of the
6 reasons that we do this is to prevent appeals up and
7 down for developers.

8 There's a big cost savings in telling a
9 petitioner, look, why don't you come back in six
10 months when you've gotten the evidence put together
11 to support this, as opposed to, you know, we're
12 going to render a decision, but you're probably
13 going to get appealed from it, and then that's
14 months and years and everything. It's better for us
15 to do that from a developer's standpoint than to
16 send them up and down to the Supreme Court.

17 And one of the things that Lee said was
18 very -- very important, and that is you don't even
19 have to be a party to a proceeding to appeal from
20 one of our decisions. If you're just sitting in the
21 audience or even if you look at YouTube a month
22 later or a couple of weeks later on this side, yeah,
23 they made a mistake with this, so I'm going to
24 appeal.

25 They can do it. They don't even have to

1 be a party. So we subject -- whenever we throw a
2 decision out there, if we haven't followed the
3 Supreme Court's guidance, we throw it out there to
4 the wind and say, anybody going to appeal? It
5 doesn't -- you know, even if -- even if they were
6 not a party, you know, which is why we've been
7 appealed from several times.

8 So although it would appear on its face
9 that we are, you know, being somewhat supportive of
10 community issues, it's not simply that. It's that
11 we are trying to prevent a situation where we're
12 going to cost the developer a whole bunch of money
13 because we're in support of a project but we don't
14 have the evidence, so they get to appeal. That's
15 part of our goal is to prevent the developers from
16 having to spend a significant amount of money on a
17 Supreme Court appeal, which can quadruple the legal
18 costs for them.

19 Anyway, just those comments.

20 **CHAIRMAN GIOVANNI:** Thank you.

21 Anything further, Commissioners?

22 Commissioner Carr Smith?

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

24 I'm curious why would a petitioner not
25 provide the evidence that's required? Is there not

1 a checklist or is it not clear what they need to
2 come to the table with?

3 **MR. ORODENKER:** Sometimes -- let's take
4 the Kauai case, for instance. The consultant that
5 they hired just did a lousy job, you know, and we
6 didn't know until we went to hearing and the
7 community came out and said, you know, there are all
8 these other issues that they didn't touch on, and
9 she didn't understand the significance of Ka
10 Pa'akai, and so, therefore, she didn't do a coherent
11 analysis on it.

12 We've had other cases where we go to
13 hearing and we discover that -- and giving the
14 consultants the benefit of the doubt -- the
15 consultants didn't even know about these cultural
16 resources that they're faced with because, in all
17 honesty, a lot of cultural practitioners are
18 hesitant to talk to consultants because for a lot of
19 reasons. One of them may be just that, you know,
20 they don't want to broadcast that this is what their
21 family has been doing on this land for generations.

22 They don't trust, you know, the
23 consultants because they think they're going to spin
24 whatever they say or their motivation -- we don't
25 know. I mean, we don't know. A lot of times we

1 don't know until we go to hearing that there's even
2 an issue.

3 That case on Kauai was a good example.
4 Despite what the consultant may have thought she was
5 doing, there was a lot of things that she didn't
6 even consider that came out at hearing such as the
7 salt mining activity that was going on below the
8 project and things like that.

9 And when that happens, we have to say,
10 look, you know, this is -- we've got this testimony.
11 You've got to find out whether it's credible and
12 whether or not what you submitted to us meets Ka
13 Pa'akai and your proposed mitigation measures will
14 prevent damage to these cultural practitioners.

15 So you know, like I say, it's -- a lot of
16 time, it's not because they're doing anything
17 devious or trying to sneak something by us. It's
18 just because the community is not interacting with
19 the consultants or because the consultants don't
20 understand what their role is that we don't get the
21 evidence that we need, or we don't get all of the
22 evidence to render a decision.

23 **COMMISSIONER CARR SMITH:** Yeah. I -- I
24 understand the variables, but I still have the
25 question, what do you provide to an applicant or a

1 petitioner, or whatever the term is, that explains
2 to them exactly what they need to do? Or do you do
3 that?

4 **MR. ORODENKER:** We do and we don't. I
5 mean, a petitioner comes into us and asks us, what
6 do we need to do. And usually, a good petitioner
7 will come into us several times during the course of
8 preparation for a hearing, and we'll go over the
9 inadequacies in their petition or question them as
10 to whether they have done their analysis. But it's
11 not our role to do that. And it's not --

12 And part of the reason for that is that
13 these are not -- the analysis is not a checklist.
14 Making a decision on these different areas is a
15 checklist for us, but they need to look at Ka
16 Pa'akai, and they're usually represented by
17 attorneys who should know the law. And the attorney
18 should walk them through whether or not they've met
19 those criteria.

20 This is -- like I said -- as I've said
21 before, a tribunal rather than simply a commission,
22 so to speak, where we can make decisions
23 administratively, administerially. We will help
24 petitioners whenever we're asked to through these
25 things, but they should understand what their

1 obligations are, especially in light of the fact
2 that most of the petitioners --

3 Well, let me put it to you this way. If a
4 petitioner has done a really good EIS, you know, if
5 it's a new project and they've done a really good
6 EIS, they've satisfied everything, and we're going
7 to approve that EIS as the accepting authority. And
8 then the petitioner is merely going to distill
9 what's contained in the EIS into its petition.

10 We have situations where the attorneys
11 don't provide them with enough guidance or, you
12 know, the consultants don't provide the petitioners
13 with enough guidance. That's usually where we run
14 into problems, and that's a function of the free
15 market, I guess, for lack of a better word, because
16 there's some attorneys who are much better in this
17 than others, and there's some attorneys who don't
18 understand, you know, what they're supposed to be
19 doing.

20 **COMMISSIONER CARR SMITH:** May I ask one
21 last question, please?

22 **CHAIRMAN GIOVANNI:** Yeah. Commissioner
23 Carr Smith, please, continue.

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

25 Is Ka Pa'akai the only Supreme Court

1 decision that the LUC is obligated to consider?

2 **MR. ORODENKER:** No. There are a number of
3 Supreme Court decisions that impact all sorts of
4 different aspects of our decision-making.

5 **COMMISSIONER CARR SMITH:** And how would we
6 know that? Where is that information?

7 **MR. ORODENKER:** Most of that information
8 -- I mean, it's available. We just posted a bunch
9 of things to the websites, but a lot of that
10 information -- and this is what we were trying to do
11 with our rules when we updated them -- is to put
12 that into the rules, to amend our rules to reflect
13 those Supreme Court decisions and to require -- so
14 the petitioners know, by looking at our rules, what
15 they have to submit to us for evidence.

16 **CHAIRMAN GIOVANNI:** I think the question
17 was, what is available to the Commissioners
18 themselves so that we are fully informed of our
19 obligations relative to Supreme Court decisions.

20 Was that the question? Carr Smith, did I
21 state that correctly?

22 **COMMISSIONER CARR SMITH:** Yes, you did.
23 Thank you.

24 **MR. ORODENKER:** We -- and that's one of
25 the reasons we're here right now is that we usually

1 -- we do training sessions. Your tenure on the
2 Commission has been short enough that you haven't
3 been subjected to one of our two-day bores, but we
4 will be doing another one probably this summer that
5 will go through all of this stuff.

6 A lot of it is contained in our
7 orientation materials. We don't -- we don't go into
8 specific cases, but the general decision-making
9 policies are contained in there. It's difficult for
10 us to cover all of the cases that impact us on a
11 general basis, because sometimes we have unique
12 issues that arise during the course of a petition
13 that are impacted by some Supreme Court decision.

14 But generally, there is a very good
15 discussion of Ka Pa'akai and public trust doctrine
16 issues that's up on our website that was a video of
17 -- it's up on our website. The video, yeah, that
18 goes through an analysis of, you know, what's
19 necessary and what is required.

20 If there is a specific decision, Supreme
21 Court decision or Federal Court decision that
22 impacts a particular petition, staff will always
23 bring it to your attention.

24 **CHAIRMAN GIOVANNI:** In the staff report?

25 **MR. ORODENKER:** In the staff report, yeah.

1 **CHAIRMAN GIOVANNI:** One of the values that
2 I derived from my short term on this Commission is
3 that the collective knowledge and experience of this
4 Commission is shared among the Commissioners. So
5 I've never felt like I was expected to know it all,
6 but somebody here does know -- collectively, we got
7 the bases covered pretty well, and we can rely on
8 each other and rely on staff, so it kind of covers
9 the bases.

10 But I -- I share your concern that, you
11 know, some of these decisions that the Supreme Court
12 makes, you know, I'm not -- I don't have legal
13 experience. What does it really mean for me? What
14 am I being asked to do to put that forward? So I
15 think we need to look to the staff reports. We need
16 to look to the trainings. And we need to look to
17 the expertise of fellow Commissioners and the AGs to
18 bring it all together.

19 **MR. ORODENKER:** Yeah. The expertise of
20 Commissioners is widespread and varied. That's why
21 there's nine of you and not one. We don't expect
22 everybody to know everything. One of the best
23 examples of that is Dan Giovanni's -- Chair
24 Giovanni's experience in engineering, you know, his
25 expertise really helped us a lot when we were doing

1 a cemetery case with regard to drainage. You know,
2 you -- and the solar -- and the solar issues.
3 Everybody brings something a little bit different to
4 the table.

5 I think the most important thing that I
6 can say to any commissioner is to listen. Listen
7 not only to your fellow commissioners but to the
8 evidence that's being presented to you. It's
9 complex. There are a lot of different areas and a
10 lot of different topics that get covered during the
11 course of a petition that you my not be an expert
12 in, and we don't expect you to be, but somebody else
13 probably is.

14 **CHAIRMAN GIOVANNI:** I also want to make a
15 comment about follow-up to Commissioner Carr Smith's
16 inquiry about checklists or something up front, you
17 know. I just had the, quote, unquote, "pleasure" of
18 going through the process with the County of Kauai,
19 and they formally have a step in the process which
20 is called a preapplication meeting with the planning
21 staff, in which they point by point tell you what
22 you've got to do. And it was so helpful. I don't
23 know if there's an equivalent that you do
24 informally. This is formally in the -- in their
25 published process.

1 **MR. ORODENKER:** What?

2 **CHAIRMAN GIOVANNI:** Are they?

3 **MR. ORODENKER:** Yeah.

4 **MR. DERRICKSON:** If I could.

5 **CHAIRMAN GIOVANNI:** I'm going to recognize
6 Scott.

7 **MR. DERRICKSON:** Yeah. This is Scott. So
8 based on your question, Commissioner Carr Smith, our
9 administrative rules do have a section on the form
10 and contents of a petition, and it's lengthy, and it
11 spells out exactly the information that needs to be
12 contained in any petition that comes before us.

13 And when a petition does come in, that's
14 kind of our -- that's our checklist. That's my
15 checklist that I use as a staff planner when I'm
16 reviewing a petition to see whether we're going to
17 accept it as a complete --

18 **CHAIRMAN GIOVANNI:** Isn't it -- isn't it
19 Day Zero when you accept it as a complete
20 application?

21 **MR. DERRICKSON:** Actually, it's not Day
22 Zero. When we get a petition in, we have 30 days to
23 review it for completeness. Within that 30 days if
24 we identify that it's lacking in some way, we
25 provide that in a letter, and we specifically cite

1 to our administrative rule section what's lacking.
2 So a petitioner that actually comes before us after
3 we accepted their petition as complete -- and when I
4 say, "complete," that means that they provided
5 information on all those different areas.

6 That doesn't mean that we've gone through
7 and done an investigation to determine whether or
8 not that information is correct or current or
9 accurate. It's just that for us, they've provided
10 information in that area. And it is correct. And I
11 can tell you from my experience at OP as a planner
12 back before, when I was developing the state's
13 position, before the Land Use Commission, that was
14 our job.

15 Our job was to fact check. Our job was to
16 go to other state agencies like the Department of
17 Transportation. They'd indicated that there's no
18 traffic impacts here. Is that correct? Do you
19 agree with that? Do you have mitigation measures
20 that you believe need to be included? That isn't
21 the Land Use Commission's role. We don't do
22 investigations in that.

23 And when you make your decisions, your
24 decisions need to be made based on facts in the
25 record and there is an opportunity for you to

1 question whether those facts are supported, and
2 that's partly OPSD's role. It's partly the county's
3 role. But the primary role is whoever the applicant
4 petitioner is, they're the ones that have to provide
5 clear preponderance of evidence. They're the ones
6 that are on the hook for the facts that sway your
7 decision-making.

8 **CHAIRMAN GIOVANNI:** Okay.

9 **MR. ORODENKER:** If I can talk to that a
10 little bit.

11 **CHAIRMAN GIOVANNI:** Just a minute. I
12 skipped off Gary, so I want to get him up here.

13 **COMMISSIONER OKUDA:** Yeah. Gary Okuda.
14 Real quick. As one of the short-term lawyers on
15 this side of the table, we're going to term limit
16 out, but just --

17 **CHAIRMAN GIOVANNI:** Enough with the
18 excuses. Just say what you want to say.

19 **COMMISSIONER OKUDA:** Yeah, okay. Yeah.

20 I think in response to Commissioner Carr
21 Smith, I think part of the problem why we have these
22 deficiencies is, frankly, there's, in my view, a
23 reduction in the quality of legal representation
24 being provided by lawyers in town. Simply put, the
25 younger lawyers, they're just not willing to work.

1 Maybe it's a generational thing, but that's just
2 reality.

3 You know, I recall about 35 years ago I
4 did the land use change which helped build St.
5 Francis West Hospital, which is now Queens Hospital,
6 out in middle of a cane field. And I remember, I
7 personally went to see the staff planners at the
8 city, you know, checking with government people,
9 talking story -- actually, more than talking story,
10 begging for advice just to make sure the process
11 would go clearly.

12 And I think part of the problem, which we
13 probably can't fix, is the fact that today, young
14 lawyers who are tasked with a lot of these things,
15 many of them, they just don't want to work. And I
16 don't know what we're going to do about that. Thank
17 you.

18 **CHAIRMAN GIOVANNI:** Mr. Orodanker.

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

20 A couple of comments. I think a lot of
21 what has been happening over the past several years,
22 I'll be very blunt about it, is because OPSD is not
23 doing its job. You know, we used to get presented
24 -- OPSD not only presented us with significantly
25 more valuable evidence, but they used to meet with

1 every petitioner on every item at least two or three
2 times before going to hearing.

3 That was their role because they're the
4 ones who can help them develop a position based on,
5 you know, what the state's concerns are. That
6 doesn't happen anymore. Staff has been thrown into
7 a role having to guide petitioners when we formerly
8 didn't have to. That being said, we make every
9 attempt to do so. And you have to distinguish
10 between new petitions and motions.

11 New petitions we work very closely with
12 the petitioners on developing their EISs to make
13 sure they cover every issue and with petitioners
14 with regard to their final petition. One of the
15 things that we cannot do is force ourselves on
16 petitioners with regard to things. We can only make
17 suggestions. And we have to be careful how we make
18 those suggestions because we're not parties to the
19 proceedings. We're supposed to be even -- staff are
20 supposed to be objective, you know. We're not
21 (audio disruption) --

22 **COMMISSIONER OHIGASHI:** Whatever you say.

23 **MR. ORODENKER:** Yeah.

24 **COMMISSIONER OHIGASHI:** In their appeal,
25 if they're at least denied, so --

1 MR. ORODENKER: Yeah.

2 COMMISSIONER OHIGASHI: We shouldn't be
3 the ones to provide advice on what the Commission is
4 thinking. They should have competent attorneys, and
5 they should go to OPSD and talk to them. Our staff
6 is not there to provide them an issue on appeal.
7 And you know, and I think I'm pretty sure of that
8 because I know -- I've worked for several years with
9 them, and I've seen cases where they try to help the
10 person. And it goes and bites them in the okole,
11 especially Scott's good friend there.

12 But you know, that's what -- that's what
13 it's -- that's what I -- these guys are big guys.
14 They have money. They have the ability to put
15 together projects and then to blame our staff for
16 not providing the right information, that's
17 ridiculous. OPSD is supposed to provide it. If
18 they don't want to do it, we do our best to make
19 sure they meet the criteria that we played out. And
20 I think you're doing a fabulous job.

21 And if there's any questions as to why, as
22 to what their lack of doing, I think that -- I go
23 back to the proposed rules. I don't see anything
24 wrong with it. I'm hopeful that the more precise we
25 are in rulemaking and to show what they actually

1 need, the more these so-called developers would be
2 able to function in this environment. That's just a
3 -- I'm sorry. I'm sorry, I'm sorry.

4 **CHAIRMAN GIOVANNI:** Okay. Enough. No,
5 you're fine. That's a point well taken.

6 Commissioner Kahele?

7 **COMMISSIONER KAHELE:** A couple points.
8 Dan, we all know what happened last -- you know,
9 last hearing up in Kona, right? OPSD didn't care
10 about the Ka Pa'akai analysis. That put us in a
11 spot. We had motion made to approve the project and
12 motions to deny the project. So, you know, what do
13 you do to fix it? What do you go about and how do
14 you go about it fixing this problem?

15 If they are not --

16 **COMMISSIONER LEE:** Wait, wait. Chair,
17 oral clarification. Did OPSD say that they didn't
18 care about the Ka Pa'akai analysis?

19 **COMMISSIONER KAHELE:** No, but they
20 actually supported the project.

21 **COMMISSIONER LEE:** Right, right, but
22 that's --

23 **CHAIRMAN GIOVANNI:** You said
24 clarification. It was a motion.

25 **COMMISSIONER KAHELE:** I'm not going to get

1 into a disagreement.

2 **CHAIRMAN GIOVANNI:** It wasn't the project.
3 It was a motion to extend.

4 **COMMISSIONER LEE:** No, but the statement
5 that Commissioner Kahele said, so I just wanted to
6 clarify that that's not what OPSD said.

7 **MS. CHINA:** I don't think you should be
8 discussing any pending matters that haven't been
9 agendized for today.

10 **COMMISSIONER LEE:** Okay.

11 **MR. ORODENKER:** If I may, because I think
12 that --

13 **CHAIRMAN GIOVANNI:** Yeah, keep the
14 discussion generic.

15 **MR. ORODENKER:** Yeah. From a generic
16 standpoint, a lot of times -- and this is where the
17 wheels usually come off the bicycle -- a petitioner
18 will come to us and -- or we will go to them because
19 sometimes we do it on our own, and we'll discuss
20 what's deficient in the petition, and they'll simply
21 say, well, we don't agree with you. And we can't
22 stop them from coming forward with a petition if we
23 disagree with them, you know. They have a right to
24 come before the petition -- Commission, and then the
25 Commissioners get to decide whether or not they're

1 deficient.

2 Sometimes, the debate is over whether a
3 particular analysis is even legally required, and
4 then, once again, it's at the Commission's
5 discretion as to whether or not that is to occur.

6 **CHAIRMAN GIOVANNI:** Yeah. I --

7 **MR. ORODENKER:** They render that --

8 **CHAIRMAN GIOVANNI:** Fair enough.

9 I'd like to return to Commissioner
10 Kahele's comment, as I understood it, because I
11 think it's an important point. So this Commission
12 looks to the parties that are represented, whether
13 it be the petitioner, the county, and the state, for
14 their positions and their recommendations to this
15 Commission.

16 The Commission has the discretion
17 independently to agree or disagree with any one of
18 those parties. Of course, it's very helpful when
19 they all -- when we all agree. Sometimes we won't.
20 And we have to take that in our judgment and make
21 the best decisions we can. Is that a fair --

22 **COMMISSIONER KAHELE:** Yes. Am I able just
23 --

24 **CHAIRMAN GIOVANNI:** When you said you'd
25 like to fix it, can you elaborate just for a moment

1 on the problems, generically, not specific to that
2 case.

3 **COMMISSIONER KAHELE:** I guess my point was
4 because it was an analysis that needed to be done on
5 phase 2, I wasn't sure why OPSD came out with their
6 position --

7 **CHAIRMAN GIOVANNI:** So you agreed to --
8 you can take that under consideration and agree with
9 them or disagree with them as a Commissioner, right?

10 **COMMISSIONER KAHELE:** Right. Well,
11 considering they're a state agency, I will be
12 assuming that they'll be working with the Land Use
13 on all what's required closely before they even come
14 out and take a position.

15 **CHAIRMAN GIOVANNI:** Fair enough.

16 **COMMISSIONER KAHELE:** So you know --

17 **CHAIRMAN GIOVANNI:** You've got to be
18 careful --

19 **COMMISSIONER KAHELE:** -- that was my
20 concern.

21 **CHAIRMAN GIOVANNI:** Fair enough. We've
22 got to be careful not to go back to that specific
23 case.

24 **MR. ORODENKER:** Yeah, and in an ideal
25 world, that would happen.

1 **CHAIRMAN GIOVANNI:** Yeah. I'd just like
2 to end this on the note that we do have the
3 discretion. Occasionally, we will see flawed
4 presentations. In my personal experience of a few
5 years, I have found great value in the
6 representations that have been put forth by OPSD and
7 the county in support or in helping to negotiate
8 specific conditions that would apply to a decision
9 and order.

10 So I don't want the record to reflect that
11 we have a, quote, unquote, "flaw" that is ever
12 present, so to speak, because I do think it -- it's
13 a situation in which cases come before us. And on
14 occasion, we see that the record looks to be
15 relatively incomplete, and we would wish that the
16 parties would be in a position to make the thing
17 very clear for this Commission, but yet, the
18 Commission has to be very probative so that it can
19 render an informed decision.

20 And that's unfortunate, but sometimes that
21 happens. But any final comments?

22 Mr. Orodenger?

23 **MR. ORODENKER:** Mr. Chair, we didn't
24 really get to the last section of our presentation.
25 But one of the things that triggered this

1 presentation on the part of staff was Commissioner
2 Okuda was very helpful and provided us with some
3 analysis of recent case law and how it impacts our
4 decision-making, and I would urge the Commissioners
5 to all look at that.

6 As Gary has pointed out, it's more of the
7 statement of law than it is anything else. And some
8 legal minds may disagree with him, but I think it's
9 a pretty good analysis. But if I can -- if I can
10 finish, I would urge the Commissioners to look at
11 that.

12 The real purpose of this meeting was to --
13 of this agenda item was to kind of talk about those
14 things. But underlying all of this discussion is
15 the simple fact that we are mainly dealing with
16 contested case hearings, and that puts us in a
17 slightly different position, and it puts staff in a
18 slightly different position because we cannot walk
19 -- we cannot take a petitioner's hand and walk them
20 through everything.

21 As Scott has pointed out several times,
22 that's OPSD's job. We're constrained. The most we
23 can do is point out inadequacies, but we can't tell
24 them how to answer the question, and we can't guide
25 them on the law in large part because when we -- let

1 me -- just for a little bit of an aside here with
2 specifics.

3 One of my last appearances in the private
4 sector before the Land Use Commission was when I was
5 working for Molokai Ranch. And we had the Lau
6 petition in front of the Commission. And Tony
7 Ching, who was then sitting as the Executive
8 Officer, gave us some advice on what we could do if
9 things didn't go the way we wanted them to.

10 And in the course of the hearing, we did
11 what he told us to, and the AG and the Commission
12 said, you can't do that. Tony ended up resigning at
13 that meeting because he was -- he had done -- he had
14 guided us in a direction that the Commission felt it
15 had liability for. So we have to be very, very
16 careful how we handle petitioners. And yes, that
17 puts a lot of the onus on the petitioners to do a
18 good job.

19 As I said, some attorneys know how to do
20 that; some don't. And I wouldn't limit the laziness
21 to just new attorneys. I'd say there's some old
22 attorneys in town who are pretty lazy, too. Not
23 Gary and not Lee --

24 **CHAIRMAN GIOVANNI:** So enough with the
25 opinions.

1 MR. ORODENKER: Yeah.

2 CHAIRMAN GIOVANNI: Okay?

3 MR. ORODENKER: But anyway, that's kind of
4 what this --

5 CHAIRMAN GIOVANNI: I'd like to ask that
6 these documents that were prepared by Commissioner
7 Okuda be made readily available. Can they actually
8 be emailed to the Commissioners? Are they as such?
9 I mean, are they --

10 MR. ORODENKER: Yes, yes, we can do that.

11 CHAIRMAN GIOVANNI: Can you do that?

12 MR. ORODENKER: We can email them.

13 CHAIRMAN GIOVANNI: And then can we have
14 -- after the Commissioners have some time to review
15 them -- I think this is a very robust area for
16 discussion, so can we agendize another follow-on
17 session --

18 MR. ORODENKER: Yes, we can.

19 CHAIRMAN GIOVANNI: -- about training to
20 specifically --

21 MR. ORODENKER: Talk about these --

22 CHAIRMAN GIOVANNI: -- talk about these
23 things and make sure that Commissioner Okuda is
24 available at that meeting.

25 Commissioner Okuda?

1 **COMMISSIONER OKUDA:** I just want to say
2 this because this was in my cover email to the
3 Chair, who had Orodanker call me up and force me to
4 do this. But all joking aside, I have no pride of
5 authorship in any of this, and, as I put in my
6 email, this is just my personal view of what I think
7 the important points are.

8 Democracy and the rule of law I put into
9 emails always functions better if we have robust
10 disagreement. So you know, if you think I'm wrong,
11 I'm always happy to hear about it or you think my
12 views should be modified, because I'm not the guru
13 here, okay? This is really start of discussion, and
14 it's just my personal view. And again, I have no
15 pride of authorship, and so please keep that in
16 mind.

17 **CHAIRMAN GIOVANNI:** Thank you, Gary.
18 Thank you, Commissioner Okuda.

19 Okay. No further business to discuss
20 today. I declare this meeting adjourned.

21 **(The meeting concluded at 12:21 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 27th day of December, 2023.

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

Jodi Dean