



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

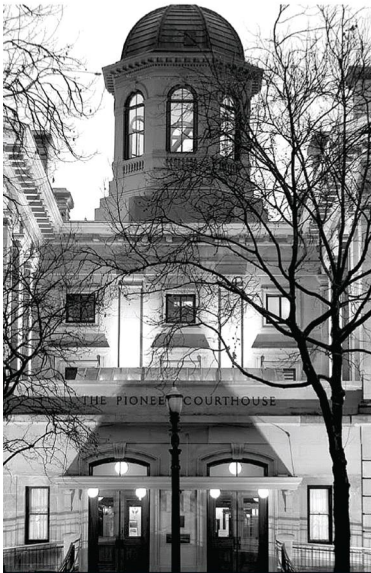
TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



NAEGELI
DEPOSITION & TRIAL



(800) 528-3335

NAEGELIUSA.COM

**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on June 19, 2024

Commencing at 11:00 a.m.

Held at

University of Hawaii Maui College
Pilina Event Center

310 W. Ka'ahumanu Ave, Kahului, HI 96732

I. CALL TO ORDER

II. APPROVAL OF MINUTES

June 5, 2024

III. TENTATIVE MEETING SCHEDULE

IV. SP97-390 Department of Environmental Management, County of Maui

Status and progress report and action (if necessary) in response to the recently submitted 2023 annual report. Approximately 95.659 acres of land within the Special Permit for the Development of Recycling and Diversion Facilities.

TMK (2) 3-8-003: 019 (por) and

TMK (2) 3-8-003: 20 (por)

V. Commissioners Discussion on Executive Officer Contract Terms and Salary Adjustments

Pursuant to HRS Section 92-5(a)(2), the Commission may enter into Executive Session where consideration of matters affecting privacy will be involved.

VI. RECESS

BEFORE:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PARTICIPANTS

LUC Commissioners:

Dan Giovanni, Chairman

Lee Ohigashi

George Atta

Mel Kahele

Michael Yamane

Brian Lee

Nancy Carr Smith

Ku'ikeokalani Kamakea-Ohelo

LUC Staff:

Daniel Orodener, Executive Officer

Scott Derrickson, Chief Planner

Martina Segura, Staff Planner

Ariana Kwan, Chief Clerk

Miranda Steed, Esquire, Deputy Attorney General

Office of Planning and Sustainable Development:

Alison Kato, Esquire, OPSD Deputy Attorney General

Aaron Setogawa, OPSD Senior Planner

PARTICIPANTS CONTINUED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Department of Environmental Management (DEM), County of Maui:

Shayne Agawa, Director, County of Maui Department of Environmental Management (DEM)

Michael Kehano, Chief, Solid Waste Division, DEM

Sage Kiyonaga, Managing Engineer, DEM

Elaine Baker, Project Manager, DEM

Andrew Nelson, Esquire, County of Maui Deputy Counsel, DEM

Mark Roy, Vice President/Planning Consultant, Hiraga, DEM

Department of Planning and Permitting, County of Maui:

Kate Blystone, Director, County of Maui Planning

Mimi DesJardins, Esquire, First Deputy Corporation County of Maui, on behalf of the Planning Department

1 **CHAIRMAN GIOVANNI:** Aloha mai kakou. Good
2 morning, everyone. This is the June 19, 2024 --
3 also known as Juneteenth, that's a federal holiday -
4 - Land Use Commission Meeting.

5 This is an in-person meeting which is
6 being held at the University of Hawai'i Maui College
7 Student Lounge, Piilina, 310 West Ka'ahumanu Avenue,
8 Kahului, Hawaii 96732. This meeting is open to the
9 public. Court reporting transcriptions are being
10 done from this Zoom meeting recording.

11 For all meeting participants I would like
12 to stress the importance of speaking slowly,
13 clearly, and directly into your microphone. And
14 before speaking each time please state your name and
15 identify yourself and your affiliation for the
16 record.

17 So even though this is an in-person
18 meeting, please be aware that all meeting
19 participants are being recorded on the digital
20 record of this Zoom meeting and it will be posted on
21 YouTube and it will be used for court reporting
22 purposes to record this event. If you do not wish
23 to be part of the public record you should exit the
24 meeting now.

25 I will also share with participants that

1 we will be taking breaks from time to time,
2 including a longer break for lunch. Typically every
3 hour or so we'll take five minutes.

4 My name is Dan Giovanni. I have the
5 pleasure to serve as the LUC Chair. And we have
6 currently have eight seated commissioners.

7 Along with me today are Commissioner Lee
8 Ohigashi from Maui, Commissioner Michael Yamane from
9 Kauai, Commissioner George Atta, Commissioner Mel
10 Kahele, Commissioner Brian Lee from Oahu,
11 Commissioner Nancy Carr Smith from Hawaii Island.
12 Commissioner Kamakea-Ohelo is inbound from Oahu and
13 will be joining this meeting in progress.

14 Also in attendance are LUC Executive
15 Officer Daniel Orodener, LUC Chief Planner Scott
16 Derrickson, LUC Staff Planner Martina Segura, and
17 LUC Chief Clerk Ariana Kwan.

18 A special aloha to Ms. Miranda Steed, who
19 is our LUC Attorney General. This is her first
20 meeting of the LUC. So welcome.

21 Before I proceed to the first agenda item
22 I'd like to also do an acknowledgement for the
23 record that we lost a real super player yesterday, a
24 gentleman by the name of Willie Mays.

25 And I had the pleasure of seeing him play

1 many wonderful baseball games for the San Francisco
2 Giants, my team. So Willie, we're thinking of you.
3 And thanks for all you did to bring joy to our
4 lives.

5 Our first order of business is the
6 adoption of minutes of the June 5, 2024 meeting.

7 Ms. Kwan, has there been any written testimony
8 submitted on this June 5, 2024 minutes?

9 **THE CLERK:** No, Mr. Chair.

10 **CHAIRMAN GIOVANNI:** Are there any members
11 of the public who have signed up to testify on this
12 agenda item?

13 **THE CLERK:** No, Mr. Chair.

14 **CHAIRMAN GIOVANNI:** Commissioners, do I
15 have someone who would wish to move to adopt the
16 minutes?

17 **COMMISSIONER OHIGASHI:** Mr. Chair, I move
18 to adopt.

19 **CHAIRMAN GIOVANNI:** That was Commissioner
20 Ohigashi has moved. Do I have a second?

21 **COMMISSIONER YAMANE:** Mr. Chair, second.

22 **CHAIRMAN GIOVANNI:** Seconded by
23 Commissioner Yamane. All in favor of adoption of
24 the minutes, please indicate by saying "aye."

25 **MULTIPLE SPEAKERS:** Aye.

1 **CHAIRMAN GIOVANNI:** Any opposed? Hearing
2 none, the minutes are adopted. Thank you. Our next
3 order of business is the tentative meeting schedule.
4 Mr. Orodenger, please proceed with your
5 presentation.

6 **MR. ORODENKER:** Thank you, Mr. Chair.
7 Tomorrow we will again be here for A11-792, the
8 COMDH HS DHAC status report. On July 10th we will
9 be on Oahu at the State Office Tower for ethics
10 commission training. The 11th is currently open.

11 On July 23rd and 24th we will be having
12 commissioner training -- general commissioner
13 trainer. That is, if you would note, that's a
14 Tuesday and a Wednesday, not a Thursday and a
15 Friday, to accommodate the commissioners' schedules.

16 On August 7th and 8th we will be on Oahu
17 at the airport to discuss Waimanalo Gulch, the
18 special permit for Waimanalo Gulch Sanitary
19 Landfill.

20 On August 21st and 22nd at a location is
21 still undetermined we will be on Oahu to adopt the
22 order for the Waimanalo Gulch Sanitary Landfill and
23 to hear Makakilo Quarry on the 21st and the 22nd.

24 We also may be having to hold a hearing on
25 the 29th of August to adopt the order from Makakilo

1 Quarry. And that is a result of the time
2 constraints associated with the approval of special
3 permits.

4 We also tentatively have, in case we need
5 them, the 30th of August and September 4th for
6 Makakilo Quarry. We don't anticipate that we will
7 need those but we would ask the commissioners to be
8 aware of those potential dates.

9 On September 11th, 12th, and 13th we will
10 be on the Big Island for the Hawaii Conference of
11 Planning Officials. On September 25th and 26th we
12 tentatively have scheduled the Mahi Solar special
13 permit on Oahu. We also have October 9th and 10th
14 tentatively scheduled for that.

15 On October 23rd and 24th we will be -- on
16 October 23rd we will be taking up the A&B Properties
17 motion in the A07-772. And the 24th will be an
18 Emanuel Lutheran A07-773 status report. And that
19 takes us through November, when the schedule becomes
20 tentative again.

21 **CHAIRMAN GIOVANNI:** Thank you, Mr.
22 Orodenker. Commissioners, any questions or comments
23 on the tentative schedule? Just one. Are all of
24 these meetings in-person or is that still to be
25 determined?

1 **MR. ORODENKER:** That's still to be
2 determined. It depends on -- the adoption of order
3 meetings may be virtual. But we're not sure yet.

4 **CHAIRMAN GIOVANNI:** Okay, thank you. So
5 our fourth order of business is a status and
6 progress report on SB97-390 from the Department of
7 Environmental Management, County of Maui, in
8 response to a recently submitted 2023 annual report.

9 Approximately 95,659 acres of land with a
10 special permit for the development of recycling and
11 diversion facilities. Will the parties please
12 identify themselves for the record, starting with
13 Maui County, please?

14 **MR. NELSON:** Good morning, Chair,
15 commissioners. My name is Andrew Nelson, Deputy
16 Corporation Counsel for the County of Maui on behalf
17 of the Department of Environmental Management, which
18 you all refer to as DEM.

19 Representing DEM today is Shayne Agawa,
20 director; Mike Kehano, Solid Waste Division Chief;
21 Sage Kiyonaga, managing engineer; Elaine Baker,
22 project manager; and our planning consultant, Mark
23 Roy, of Munekiyo and Hiraga.

24 **CHAIRMAN GIOVANNI:** Thank you. Let me
25 just note when these other participants will testify

1 we'll have to swear them in. So from the State?

2 **MS. KATO:** Good morning. Alison Kato,
3 Deputy Attorney General for the Office of Planning
4 and Sustainable Development. Also here is Aaron
5 Setogawa from -- a planner from OPSD. Thank you.

6 **CHAIRMAN GIOVANNI:** Welcome. Back to the
7 County of Maui from DPP.

8 **MS. DESJARDINS:** Aloha. Good morning,
9 Chair. Good morning, commissioners. Mimi
10 DesJardins, Deputy Corporation Counsel. I am
11 secondary to Mr. Nelson on this. But I'm also here
12 with Kate Blystone, the director of the Department
13 of Planning. Thank you.

14 **CHAIRMAN GIOVANNI:** Yes, welcome. Good to
15 see you again. So let me briefly explain our
16 procedure for this item. First I will ask my fellow
17 commissions if there are any conflicts of interest
18 or disclosures they wish to make and then I will
19 update the record. In fact, I'm doing to do that
20 right now.

21 So fellow commissioners, do any of you
22 have any conflicts of interest or disclosures that
23 you would like to make regarding this agenda item?
24 Seeing none, we'll proceed accordingly.

25 Then I will -- next I will recognize

1 written public testimony that has been submitted in
2 this matter and identify the person or organizations
3 who have submitted the testimony.

4 Next I will call on members of the public
5 who wish to testify in this matter. Each member of
6 the public will be granted two minutes to provide
7 their testimony and should stand by after their
8 testimony to respond to any questions by the parties
9 or the commissioners. When all questions have been
10 completed, the Chair will excuse the witness and
11 call the next witness.

12 After completion of the public testimony
13 portion of these proceedings, Chair would like the
14 petitioners to provide their status report. The
15 Chair will then call on parties -- that's OPSD from
16 State and County's Planning Department -- for their
17 comment regarding the status report.

18 The petitioners will then be allowed to
19 respond to comments made by the County and the
20 State. Commissions will then ask questions of the
21 parties at the conclusion of each of their
22 presentations.

23 At the conclusion of the parties'
24 testimony and commissioners' questions, the public
25 will be again granted a second opportunity to

1 provide public testimony in the same manner that it
2 was set forth previously.

3 Once public testimony concludes, the
4 Commission will enter deliberations regarding the
5 status report to decide if any action is necessary.

6 Again I'm going to note that we'll be
7 taking short breaks and a longer one for lunch. And
8 Commissioner Kamakea-Ohelo will join us in progress.
9 Does anybody have any questions on the procedure,
10 starting with the petitioner?

11 **MR. NELSON:** No questions. Thank you.

12 **CHAIRMAN GIOVANNI:** Thank you, Mr. Nelson.
13 County of Maui, do you have any questions on the
14 procedures?

15 **MS. DESJARDINS:** No, thank you very much.

16 **CHAIRMAN GIOVANNI:** And State?

17 **UNIDENTIFIED SPEAKER:** No questions.
18 Thank you.

19 **CHAIRMAN GIOVANNI:** Yeah. And please let
20 me remind you when you do speak state your name. It
21 just helps in preparation of the transcripts.

22 Also in accordance with legal, ethical
23 standards, commissioners should disclose any of the
24 relationships business or social or otherwise. And
25 I have confirmed that none have expressed any

1 potential or prevailing conflicts of interest or
2 disclosures.

3 Please be informed that all relevant
4 records and documents pertaining to this matter can
5 be accessed for review on the Land Use Commission
6 website at <https://luc.hawaii.gov/sp97-390>.

7 Ms. Kwan, it is time for public testimony.
8 Have anybody signed up for public testimony?

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

10 **CHAIRMAN GIOVANNI:** Has there been any
11 written testimony submitted on this matter?

12 **MS. KWAN:** We received one testimony from
13 Department of Agriculture. That has been posted to
14 the website.

15 **CHAIRMAN GIOVANNI:** Thank you very much.
16 It is now time for the status report. So Mr.
17 Nelson, would you please give me an indication,
18 estimate, of how much time you have for your
19 prepared remarks?

20 **MR. NELSON:** Thank you, Chair. Andrew
21 Nelson. Our presentation will be approximately 15
22 minutes.

23 **CHAIRMAN GIOVANNI:** Okay. Please proceed.

24 **MR. NELSON:** Okay. Thank you, Chair. We
25 are here to provide a status update on DEM's

1 compliance with Conditions 19, 21, and 23 of the
2 LUC's D&O approving the Fourth Amendment to Special
3 Use Permit for the Operation of the Central Maui
4 Landfill per the LUC's January 31, 2024 letter
5 request for this hearing.

6 Now before we consider each of the
7 individual conditions, our planning consultant, Mark
8 Roy of Munekiyo and Hiraga will provide a brief
9 overview of the CML, its permitting history, and its
10 layout and configuration.

11 You'll find the presentation slides he
12 refers to in Exhibit D to DEM's letter to the LUC,
13 which we submitted on June 11th and I believe is
14 included in your meeting materials.

15 **CHAIRMAN GIOVANNI:** Is it Mr. Roy; is that
16 correct? Mr. Roy, please state your name for the
17 record and affiliation. And then I'll swear you in.

18 **MR. ROY:** Mark Roy with Munekiyo Hiraga.

19 **CHAIRMAN GIOVANNI:** How do you spell your
20 last name?

21 **MR. ROY:** R-O-Y.

22 **CHAIRMAN GIOVANNI:** And do you swear your
23 testimony you're about to give today will be the
24 truth?

25 **MR. ROY:** Yes, I do.

1 **CHAIRMAN GIOVANNI:** Please proceed.

2 MARK ROY, having first been duly sworn to tell the
3 truth, testified as follows:

4 **MR. ROY:** Thank you. Good morning, Chair,
5 members of the Commission. It's a pleasure to be
6 here with you all today. My name is Mark Roy with
7 the planning firm of Munekiyo Hiraga.

8 The County of Maui Department of
9 Environmental Management, DEM, has asked me to
10 attend today to present the brief permitting
11 background on the Central Maui Landfill.

12 Our company, Munekiyo Hiraga, has assisted
13 with processing of certain special use permit
14 applications for the landfill over the years and we
15 are also currently contracted to help DEM with an
16 environmental impact statement that the County will
17 be preparing in support of an upcoming district
18 boundary amendment petition that will be filed for
19 the landfill property.

20 Very briefly, here is a map showing the
21 location of the Central Maui Landfill highlighted in
22 yellow, which is located along Pulehu Road in
23 Puunene, east of Kahului. Central Maui Landfill is
24 the main solid waste disposal facility for Maui.

25 The main landfill parcel is identified

1 here on this slide as Parcel 19. And it's shown as
2 No. 1 on this map in the middle.

3 This includes a 40-acre Central Maui
4 Landfill facilities project that was approved by
5 this Commission in 2020. This allowed for the
6 integration of solid waste management uses intended
7 to reduce the overall amount of waste going into the
8 landfill.

9 Parcel 25 on the Kahului side, highlighted
10 here as No. 2 on the slide, was purchased by the
11 County to allow for future expansion opportunities
12 of the Central Maui Landfill.

13 In addition, the County is in the process
14 of acquiring Parcel 20 -- which is identified -- the
15 smaller parcel on this slide is No. 3 -- through a
16 condemnation, excuse me, action for use as a
17 preferred site -- the preferred site for the
18 permanent Lahaina Wildfire Debris Disposal Project.
19 This site is shown as No. 3 on this slide.

20 In terms of background and as summarized
21 on this next slide, the landfill is authorized
22 through both State and County special use permits
23 that have been issued and amended over the years
24 since the initial establishment of the landfill in
25 the late 1980s.

1 These special permits are currently valid
2 until the end of October 2028. The most recent
3 amendment was, as mentioned earlier in opening
4 comments, a fourth amendment to special permit SP97-
5 390 in 2020 to incorporate the 40 acre of Central
6 Maui Landfill facilities project that I mentioned
7 earlier.

8 This added 40 acres adjacent to the
9 landfill is to allow for opportunities for DEM to
10 consolidate solid waste management operations at
11 Maui's main landfill. This project envisioned
12 implementation of various facilities to increase the
13 diversion of waste from landfilling, thus extending
14 the remaining capacity of the landfill itself.

15 These facilities included an office, a van
16 and vehicles area, metals processing, construction
17 and demolition materials recovery, household
18 hazardous waste, and electronic waste collection and
19 storage, including warehouse storage areas, a refuse
20 collection office, as well as parking and other
21 maintenance areas.

22 Also as a housekeeping item, the fourth
23 amendment to the special permit in 2020 also allowed
24 for removal of a portion of Parcel 20 from the
25 special permit as it was not owned by the County at

1 that time.

2 This slide summarizes the fourth amendment
3 actions. The pink here on the slide identifies the
4 40-acre Central Maui Landfill facility project. And
5 the yellow area on the righthand side of the slide
6 shows the portion of Parcel 20 that was removed from
7 the permit.

8 As part of approving the fourth amendment
9 to the special permit, the Land Use Commission
10 elected to attach certain conditions relating to
11 important agricultural lands as well as district
12 boundary amendment.

13 These conditions will be the subject of
14 today's status update report by the County. The
15 Commission added Conditions Nos. 19 and 21 relating
16 to IAL and Condition No. 23 that relates to the need
17 for a DBA for the area covered by this particular
18 special permit.

19 For context, this map shows the
20 approximately 22-acre portion of the 40-acre
21 facilities site that is as of today designated IAL -
22 - important agricultural lands.

23 **UNIDENTIFIED SPEAKER:** Mr. Roy, just for
24 context, all of this land is classified
25 agricultural; is that correct?

1 **MR. ROY:** Thank you.

2 **UNIDENTIFIED SPEAKER:** That's a yes?

3 **MR. ROY:** Yeah. The highlighted L-shape
4 that you see on the slide there is the 40-acre
5 piece. And it's the green area of that 40-acre
6 piece which is designated IAL. Does that answer the
7 question?

8 **UNIDENTIFIED SPEAKER:** Even the land
9 that's not IAL is agricultural. And you're
10 operating with a special permit.

11 **MR. ROY:** That's correct. Sorry if I
12 misunderstood the question. So there are two IAL
13 conditions in the fourth amendment, one relating to
14 the designation of new IAL lands to offset the loss
15 at the Central Maui Landfill and the other to remove
16 the IAL designation from the 40-acre area that I
17 showed on the earlier slide.

18 These next slides show the verbiage of the
19 actual conditions that LUC placed on the special
20 permit. So Condition 19 here on this slide I'll
21 just read very briefly.

22 "Within one year of approval of this
23 fourth amendment, the County shall identify county-
24 owned agricultural property of similar land
25 properties and equivalent acreage on Maui and submit

1 a request to have it designated IAL to compensate
2 for the loss of the 22 acres of IAL associated with
3 the CML facilities project."

4 Condition 21, "That the applicant shall
5 submit a petition for declaratory ruling to the LUC
6 to withdraw the 22 acres of IAL from the IAL
7 designation within one year of LUC's decision and
8 order for the applicant or of the amendment
9 request." So those are the two IAL conditions.

10 Moving to the third condition. As
11 background, during the Commission's 2020
12 deliberations there was some concerns expressed
13 about the use of special permits in the regulation
14 of landfill support facilities.

15 And as a result it was decided by the
16 Commission that the condition of approval requiring
17 the CML to initiate a district boundary amendment
18 process within five years would be included in the
19 approval. This DBA would seek to formally change
20 the land use designation of the special permitted
21 area from agricultural to urban.

22 And so this next slide shows Condition 23.
23 I'll just briefly read it. "That the applicant
24 shall commence the process to seek a district
25 boundary amendment with the LUC for the

1 approximately 95.659 acres of the total permitted
2 area of the Central Maui Landfill, the CML, within
3 five years of the LUC's decision and order for the
4 applicant's fourth amendment request."

5 At today's meeting, as Chair mentioned at
6 the beginning of this presentation, the County will
7 be offering the Commission an update on the status
8 of its work to address compliance with these three
9 conditions from the fourth amendment as well as
10 address any questions that the commission members
11 may have.

12 That concludes my presentation today.
13 I'll now hand back to Mr. Andrew Nelson with the
14 County of Maui's Department of Corporation Counsel
15 for delivery of the status report. Thank you very
16 much.

17 **CHAIRMAN GIOVANNI:** Thank you, Mr. Roy.

18 **MR. NELSON:** Thank you, Mark. This is
19 Andrew Nelson. Now we'll proceed by reviewing
20 Conditions 19, 21, and 23; and by providing an
21 update on DEM's efforts to comply with each.

22 It may be helpful to refer to DEM's letter
23 to the LUC dated June 11th. Much of the information
24 that I'll present today is also included there.

25 Beginning with Condition 19. Condition 19

1 requires that the County identify county-owned
2 agricultural property of similar land properties and
3 equivalent acreage and submit a request to have it
4 designated as IAL to compensate for the loss of the
5 22 acres of IAL associated with the CML facilities
6 project.

7 DEM acknowledges that it is late in
8 complying with this condition but has taken recent
9 action to comply with it.

10 On June 4th, DEM submitted a draft
11 petition for declaratory order to designate IAL to
12 the LUC, the OPSD, State of Hawaii Department of
13 Agriculture, and the County of Maui Planning
14 Department for review and comment.

15 DEM will incorporate the input it receives
16 into a final petition, which we plan to file in mid-
17 July 2024. And that's all I have on this condition
18 unless you have any questions before I move on?

19 **CHAIRMAN GIOVANNI:** We'll take questions
20 at the end.

21 **MR. NELSON:** Okay, that sounds great. So
22 moving to Condition 21. This condition requires
23 that the County submit a petition for declaratory
24 ruling to the LUC to withdraw the 22 acres of IAL at
25 the CML from the IAL designation.

1 DEM again acknowledges that it is late in
2 complying with Condition 21 but has taken recent
3 action to comply with it.

4 On June 4th, DEM submitted a petition for
5 a declaratory order to remove important agricultural
6 lands designation to the LUC, the OPSD, State of
7 Hawaii Department of Agriculture, and County of Maui
8 Planning Department for review and comment.

9 And again DEM will incorporate the input
10 it receives into a final petition, which we plan to
11 file in mid-July 2024. Okay.

12 So moving now to Condition 23. This
13 condition requires that the County of Maui commence
14 the process to seek a district boundary amendment
15 with the LUC for the approximately 95.659 acres of
16 the total permitted area of the CML within five
17 years of the D&O for the fourth amendment.

18 DEM provided an update on this condition
19 in its 2023 annual report. In the LUC's January 31,
20 2024 letter scheduling this hearing it requested
21 additional information on the progress of technical
22 studies and the environmental impact statement
23 associated with the DBA.

24 As noted in DEM's 2023 annual report, the
25 County is working with planning consultant Munekiyo

1 and Hiraga and engineering consultant AMR, Inc. on
2 the EIS and DBA application processes.

3 Since the LUC's August 2020 adoption of
4 the D&O for the fourth amendment, DEM's plans for
5 the future of the landfill have changed. One aspect
6 of that change is the properties and areas
7 comprising the landfill.

8 In late 2020 the County of Maui purchased
9 approximately 59 acres of land to the north of the
10 existing CML area from Alexander and Baldwin, Inc.

11 DEM and the County also continued efforts
12 to acquire an approximately 20-acre parcel located
13 to the south of the existing CML area from a private
14 party. Those efforts have proved unsuccessful.

15 And perhaps most significantly, the August
16 8, 2024 Maui wildfire disaster and subsequent
17 recovery efforts have required DEM to rapidly shift
18 plans for the CML, which serves a critical role as
19 the island's major municipal solid waste landfill.

20 In response to overwhelming public support
21 for the CML to serve as the permanent disposal site
22 for the wildfire disaster debris, the County
23 initiated a condemnation action to obtain the
24 approximately 20-acre parcel located to the south of
25 the existing CML.

1 Earlier this month the County of Maui
2 filed a motion for an Order of Possession of the
3 subject property. The County anticipates that the
4 Court will rule on that motion at some point next
5 month.

6 DEM urgently requires possession of the
7 subject property in order to construct the
8 improvements necessary to begin receiving the
9 wildfire disaster debris beginning in around January
10 2025.

11 Also worth mentioning is that the -- is
12 that DEM has consulted with the State of Hawaii,
13 Department of Health Solid and Hazardous Waste
14 Branch, and Solid Waste Facility Development
15 Regulator regarding its plans for the wildfire
16 disaster debris and received comments from that
17 agency.

18 That guidance includes a directive for DEM
19 to submit a solid waste facility development permit
20 and conduct surveys and technical studies such as
21 cultural, historic, and archaeological survey and
22 monitoring before receiving the wildfire disaster
23 debris.

24 DEM also remains in ongoing, regular
25 contact with a number of other federal and state

1 agencies in connection with wildfire disaster
2 recovery efforts. Those agencies include the United
3 States Army Corps of Engineers, FEMA, HIEMA, and the
4 State of Hawaii Department of Health Solid Waste and
5 Hazardous Waste Division.

6 Following the wildfire disaster, DEM and
7 its consultants formulated a revised site plan,
8 which was finalized in April of this year.

9 Given that the revised CML site plan has
10 only recently been approved, technical studies,
11 including traffic, flora and fauna, cultural
12 assessment, archaeology, agricultural impact
13 assessment, air quality and greenhouse gas
14 emissions, noise study, hydrogeological study, and
15 view analysis have yet to be conducted.

16 DEM anticipates that work on those studies
17 will begin at some point this year. Work on the
18 preparation of an EIS will also remain ongoing.

19 I also want to bring to the Commission's
20 attention that DEM has published its integrated
21 solid waste management plan, which will guide solid
22 waste management in the county for the next ten
23 years. The plan is currently in the public comment
24 period and a public hearing on it will be held next
25 month.

1 Expanding capacity at the CML and handling
2 waste in a more sustainable fashion are important
3 components of the plan that have been incorporated
4 into the revised site plan for the CML. Thank you,
5 Chair and commissioners. That is the conclusion of
6 our presentation.

7 **CHAIRMAN GIOVANNI:** Thank you, Mr. Nelson.
8 Commissioners, any questions for the County?
9 Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** Are you able to
11 comment or respond to questions regarding the
12 11/27/2023 landfill report and report that was filed
13 or have you only prepared for those three areas?
14 Because I wanted to ask some questions about that
15 particular filing. Is there someone in your group
16 that can answer?

17 **MR. NELSON:** Andrew Nelson speaking.
18 Commissioner Ohigashi, what -- the filing -- who
19 submitted the filing and to who?

20 **COMMISSIONER OHIGASHI:** There was an
21 11/27/2023 filing to the Land Use Commission -- the
22 annual report --

23 **MR. NELSON:** Oh, right, right.

24 **COMMISSIONER OHIGASHI:** -- 2023 that --

25 **MR. NELSON:** Yeah, we can try --

1 **COMMISSIONER OHIGASHI:** -- you guys did.

2 **MR. NELSON:** You know, in preparation for
3 this meeting we did focus on the three conditions --
4 19, 21, and 23. But we could try to answer any
5 questions you might have regarding --

6 **COMMISSIONER OHIGASHI:** Yeah, so --

7 **MR. NELSON:** -- the other --

8 **COMMISSIONER OHIGASHI:** -- if you get that
9 up in front of you, if you look at the first page, I
10 was wondering -- you say land purchase of 59 acres.
11 But it doesn't say anything about the -- I'm not
12 sure what it's saying.

13 It doesn't say anything about what acres
14 or anything. It was just -- and so can you explain
15 to me what that meant? Because I'm not a smart guy
16 so when I read something --

17 **MR. NELSON:** Sure.

18 **COMMISSIONER OHIGASHI:** Yeah, it says land
19 purchase, 59 acres. On June 3, 2022, scientific
20 consultant (inaudible) for concurrence on the
21 archaeological for this additional property at CML.

22 I'm just wondering what 59 acres are we
23 talking about? Is this the one that you guys bought
24 in 2020? It's just standing alone so I was just
25 wondering what it meant.

1 **MR. NELSON:** Andrew Nelson. Sure thing.

2 In the exhibit that we've pulled up from our earlier
3 presentation, the 59 acres is displayed as Item 2.

4 **COMMISSIONER OHIGASHI:** Okay. So if I
5 count that 59 acres plus the 96 that we talked about
6 in the original D&O plus the 20 -- doesn't it reach
7 259 that you have listed in here in your response
8 that you just went through?

9 It says that you -- that all areas
10 combined at CML are approximately 259 acres. I was
11 wondering how this -- that jives. So that's what I
12 -- that's how I link this one and that.

13 **MR. NELSON:** Got it. I believe that that
14 larger number is the sum of Items 1, 2, and 3.

15 **COMMISSIONER OHIGASHI:** Well, 1 is 59. Or
16 1 is 96; right?

17 **MR. NELSON:** Yeah. That's a good
18 question.

19 **COMMISSIONER OHIGASHI:** Two is the 59 and
20 three is the 20 acres. So I didn't major in math.
21 But that doesn't it's probably over 59.

22 **MR. NELSON:** Right, right.

23 **COMMISSIONER OHIGASHI:** We've got 100
24 acres missing here.

25 **MR. NELSON:** Could I ask Mark Roy, our

1 planning consultant --

2 **COMMISSIONER OHIGASHI:** Sure.

3 **MR. NELSON:** -- to comment?

4 **MR. ROY:** Thank you, Commissioner, for the
5 question. I don't have specific acreages in front
6 of me this morning.

7 But my understanding is that the 259, 260
8 acre number that Commissioner is referencing
9 incorporates both the 97 special permit area, the 59
10 acres that the County purchased, the 20 acres that
11 they are currently under condemnation action for,
12 plus the area of the other special permit that
13 governs the landfill from the 80s. I think that's
14 where the difference in the acreage comes into play.

15 **COMMISSIONER OHIGASHI:** Okay. So we're
16 talking about some other space. Can you identify
17 that area that you're talking about?

18 **MR. ROY:** Sure --

19 **COMMISSIONER OHIGASHI:** The other 90 some
20 odd acres?

21 **CHAIRMAN GIOVANNI:** Eighty-six.

22 **COMMISSIONER OHIGASHI:** Eighty-six acres.

23 **MR. ROY:** Yeah, it's approximately on this
24 graphic that's shown on the presentation on the
25 screen right now. The area identified by No. 1

1 includes both of those special permitted areas. And
2 I believe that earlier special permit largely
3 governs the area that falls closer to the HC&D
4 quarrying area that you see on the top side.

5 **COMMISSIONER OHIGASHI:** Are all 259 acres
6 owned or possibly -- or to be owned by the County of
7 Maui? I'm just concerned about that additional
8 area. Are those owned by the County or not?

9 **MR. NELSON:** Thank you, Commissioner.
10 Andrew Nelson. Of the 259 acres, it's only the
11 approximately 20-acre parcel designated as Item 3
12 that is not owned by the County currently and is the
13 subject of ongoing litigation.

14 **COMMISSIONER OHIGASHI:** And the reason why
15 I'm asking is that the 59 acres that you acquired --
16 is that an IAL-designated area?

17 **MR. NELSON:** Yes.

18 **COMMISSIONER OHIGASHI:** Okay. So you're
19 going to have to deal with that; right?

20 **MR. NELSON:** Yes. Thank you for that.

21 **COMMISSIONER OHIGASHI:** All right. No,
22 that's what I understand is what you want to deal
23 with.

24 **MR. NELSON:** And I think that just to
25 explain our intent -- we wanted to comply with

1 Conditions 19 and 21. Recognizing that we are late
2 in complying with those, we wanted to deal with --
3 address those as quickly as we could and also in
4 that process get a better understanding for how we
5 will also be addressing that additional IAL acreage.

6 **COMMISSIONER OHIGASHI:** Going back to this
7 filing of 2023, under Condition 14 -- I don't have
8 the -- Page No. 5 -- it says that the full
9 compliance for the requirements of Condition No. 14,
10 the full compliance with the Departments of State
11 Department of Health for Sanity and Landfill shall
12 be rendered, right?

13 And your report is landfill operations
14 comply with the terms in Permit No. LF-0074-13
15 issued by the Department and effective February 23,
16 2023. This was filed on 11/27/2023. Did you get an
17 extension to that 2023 permit -- February 2nd
18 permit? I'm just curious.

19 **MR. NELSON:** Andrew Nelson. I'm going to
20 defer that question to Sage Kiyonaga from Department
21 of Environmental Management.

22 **CHAIRMAN GIOVANNI:** Please state your name
23 and your affiliation and I'll swear you in. Okay,
24 go now.

25 **MR. KIYONAGA:** Thank you.

1 **CHAIRMAN GIOVANNI:** Say --

2 **MR. KIYONAGA:** We have submitted --

3 **CHAIRMAN GIOVANNI:** Wait, wait, wait,
4 wait.

5 **MR. KIYONAGA:** Yes?

6 **CHAIRMAN GIOVANNI:** We're at the
7 beginning. State your name and your position,
8 affiliation, and then I'll swear you in.

9 **MR. KIYONAGA:** Sage Kiyonaga, County of
10 Maui, Civil Engineer 6.

11 **CHAIRMAN GIOVANNI:** Mr. Kiyonaga, do you
12 swear your testimony will be the truth?

13 **MR. KIYONAGA:** I swear.

14 **CHAIRMAN GIOVANNI:** Please proceed.
15 SAGE KIYONAGA, having first been duly sworn to tell
16 the truth, testified as follows:

17 **MR. KIYONAGA:** Thank you. So we have
18 submitted a renewal application to the State
19 Department of Health. They are reviewing that
20 application.

21 And on top of that, we did submit another
22 renewal application for the area in question that we
23 may be kind of encroaching into a buffer area that
24 is faced by the extension directly adjacent to
25 Parcel 20, the basics property -- so we did submit a

1 renewal application.

2 And in accordance with Hawaii
3 Administrative Rules 58.1, after six months if we do
4 not hear back from the Department I believe that we
5 are administratively approved for permit renewal.

6 **COMMISSIONER OHIGASHI:** I wanted to be
7 sure because February 2023 -- it expired it seemed.

8 **MR. KIYONAGA:** Right.

9 **COMMISSIONER OHIGASHI:** And now we're
10 talking about, what, we're in June 2024. So it's
11 more than six months. So I was just -- when I was
12 reading that, that popped into my mind.

13 **MR. KIYONAGA:** I think it was pretty close
14 to a year prior to the expiration of the permit we
15 submitted that permit renewal application.

16 **COMMISSIONER OHIGASHI:** Okay. So
17 technically you believe it's been approved?

18 **MR. KIYONAGA:** We are administratively
19 approved. Yes, sir.

20 **COMMISSIONER OHIGASHI:** Okay.

21 **CHAIRMAN GIOVANNI:** It might be good to
22 put that into your reports in the future.

23 **MR. KIYONAGA:** Yeah. Apologies. We'll
24 try and be more mindful of those status reports to
25 the Commission. Department of Health Solid and

1 Hazardous Waste Branch would be a good authority to
2 confirm what I'm saying here.

3 **COMMISSIONER OHIGASHI:** Are you guys
4 having trouble trying to remove the IAL designation
5 off the 20 some odd acres that you filed for? Is
6 there a problem going on procedurally or anything
7 that you can tell us?

8 **MR. NELSON:** Andrew Nelson. We, you know,
9 recognize that we're late in complying with that
10 condition. We have submitted the draft petitions
11 and anticipate that the final ones will be filed in
12 mid-July.

13 We did receive a suggestion that we might
14 consult with OPSD, Department of Agriculture, and of
15 course we did consult with our own Planning
16 Department and incorporate those comments into a
17 final petition. So that is the reason why that
18 final petition hasn't been filed.

19 **COMMISSIONER OHIGASHI:** And the 59 acres -
20 - you plan to also remove it from IAL designation;
21 right?

22 **MR. NELSON:** Yes.

23 **COMMISSIONER OHIGASHI:** Okay. Now this
24 might be not a question that you can answer. But my
25 understanding is that when A&B went in for this IAL

1 designation what they did was they said, "Okay,
2 we're going to designate under the statute one-half
3 of our lands -- so about 50 percent of 50 percent of
4 our lands into IAL. That way it prevents the County
5 from coming in to designate IAL."

6 That's what the statute says, okay?
7 That's one of the reasons why they added to that.
8 They had some tax benefits that they could apply
9 for. They had a higher -- so and their other lands
10 became more available for urbanization, okay?

11 So what if by taking out these 70, 80
12 acres it falls below the original 50 percent
13 designation to A&B? Would A&B then not be able to
14 prevent the County from designating IAL, assuming
15 that the County desires to do so given the fact that
16 Oahu tried and miserably failed? So that's my
17 question about this -- the operation of this
18 statute.

19 The statute involves the balancing of the
20 County's interference in designating IAL and the
21 landowners right to say, "Okay, I'm going to
22 designate before you and I'm going to go 50 percent.

23 "If I go lower than 50 percent, the County
24 still can designate IAL all over the place. It can
25 come in and designate on my property." So I'm just

1 pointing that out to you that -- the thought of
2 that.

3 The second thing is that the IAL statute
4 only requires a six-vote majority on the Land Use
5 Commission. It's like a boundary amendment. It
6 requires a six vote super majority. That's what the
7 IAL statute requires.

8 So what I am suggesting is that if the
9 County comes forward with its boundary amendment for
10 the purposes of determining that area as urban and
11 however you want to use it in the future to
12 determine that, that meets the IAL hurdle.

13 In other words, all you need is six votes
14 to change IAL lands into urban. And it's the same
15 as doing a DBA.

16 I have one other comment that I want to --
17 is that -- or question. Are you going to develop
18 the 20 acres under the Governo's EO -- executive
19 order -- thereby necessitating not needing any kind
20 of special permit or anything like that to develop
21 that?

22 **MR. NELSON:** Thank you for that question.
23 Andrew Nelson. Due to the fairly firm deadline that
24 we face to begin moving the wildfire disaster debris
25 from the temporary disposal site at Olowalu to the

1 permanent disposal site at the CML we do anticipate
2 needing to proceed under the Governor's EP.

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

4 **MR. NELSON:** Yes. Yes, emergency
5 proclamation.

6 **COMMISSIONER OHIGASHI:** Is that
7 (inaudible). So that's your intent, right?

8 **MR. NELSON:** Yes. And again that would
9 only occur in very close collaboration with our, you
10 know, various regulators, including --

11 **COMMISSIONER OHIGASHI:** Right. I'm not --
12 don't worry. That's not the gist of my question.
13 My question is mostly this. It's that once the EP
14 ends what designation are we going to put on that
15 piece of property?

16 It's not covered by the special permit.
17 Unless you urbanize it, it may not be covered under
18 that. But once the EP ends -- it's going to have a
19 time when the EP has to end, right, and you have
20 this property filled with contaminated dirt from
21 Lahaina.

22 What restrictions does -- what designation
23 would it be and how are the public going to feel
24 that there are specific restrictions on the use of
25 that property that will carry on -- run with the

1 property?

2 Because the EP gives you carte blanche to
3 put on property what you want to put on it and you
4 can bypass certain things. But what things will be
5 used to make sure that that property is properly
6 designated in the future?

7 **MR. NELSON:** Thank you for that question.
8 Andrew Nelson. Our intent is to include that 20-
9 acre property in the DBA -- district boundary
10 amendment -- that's the subject of Condition 23
11 along with the rest of the CML.

12 **COMMISSIONER OHIGASHI:** Intermittently
13 would you -- is the County going to agree that the
14 terms of the special permit that you now have would
15 also apply or be written into that area so that
16 there is some environmental protections concerning
17 that area?

18 If you're not empowered to answer it, my
19 advice to you is say, "I don't have the answer to
20 that, Mr. Ohigashi. Maybe we have to have a
21 discussion with the department head."

22 **MR. NELSON:** Thank you, Commissioner.
23 Your advice is very well-taken. And that's the
24 position that I'll take as well.

25 **COMMISSIONER OHIGASHI:** I'm almost

1 (inaudible), so I'm not going to try and trap you
2 with it. My other question is I read from news
3 reports -- and maybe I'm wrong or anything like that
4 -- is there's a controversy as to whether or not
5 you're going to need all 20 acres for the debris
6 removal, storage, and there will be additional space
7 that will be used for -- the question is if the
8 County wants to use it for additional space for the
9 -- what is it -- for future use for waste disposal.

10 The question that I have is really is that
11 is the EP going to cover all of the 20 or only apply
12 for the area that's necessary? If you know.

13 **MR. NELSON:** Thank you for that question.
14 Andrew Nelson. I do not have an answer to that
15 specific question. But I, you know, will
16 acknowledge that, you know, what you stated is
17 consistent with our intent in terms of initially
18 disposing of the wildfire debris and then later
19 using the balance of the remaining capacity for
20 municipal solid waste, you know, ongoing use.

21 **COMMISSIONER OHIGASHI:** And one of the
22 questions that I have is that you're doing -- you're
23 starting the process of doing an EIS, is that right,
24 for that area?

25 **MR. NELSON:** Yes.

1 **COMMISSIONER OHIGASHI:** Is that the 259
2 acres or -- is that what you guys are doing?

3 **MR. NELSON:** Yes. That's the current
4 intent.

5 **COMMISSIONER OHIGASHI:** Okay. And who
6 will be the receiving agency?

7 **MR. NELSON:** DEM has been in the past.

8 **COMMISSIONER OHIGASHI:** DEM will be the
9 receiving agency. Is there a problem with the
10 energy case that you made? The case.

11 **MR. NELSON:** I am aware of that recent
12 decision. I would need to look into that question
13 further to answer.

14 **COMMISSIONER OHIGASHI:** I just was curious
15 about that. That was one of the things that I had.
16 The last question -- the last is more of a comment.
17 It's that when I was here in 2020 and I sort of
18 insisted on the boundary amendment -- my thing is
19 that it was an industrial use being proposed for
20 that area.

21 But more and more I'm looking at things
22 that are happening in State that special use permits
23 are being used for, for example, like, Waimanalo
24 Gulch. You know, it becomes a political nightmare.

25 I think that we have an area here that is

1 going to be used for designated waste disposal.
2 It's going to be used for, well, the dirt -- the
3 contaminated dirt -- that probably will make that
4 whole area not usable for agriculture or significant
5 recreation for some time until it's determined that
6 it's safe, right?

7 And more and more if you keep a special
8 permit, you run into people like myself, sit on
9 these boards and commissions, who listen to -- well,
10 listen to the public and want to try and get a
11 public -- I think that the proper people to
12 determine the use of that area is probably the
13 County for Waste Disposal.

14 Given the nature of that area -- and I've
15 been there how many times in the past -- but given
16 that nature of that area it seems to me that a
17 boundary amendment there would be the best solution.

18 You put it under your control, if you
19 folks own the property, put it all under your
20 control, you have the council designate what its use
21 can be. And then we have a permanent facility for
22 years to come.

23 And maybe until we develop technology that
24 will eventually not require having that kind of
25 waste disposal. So that's my only comment.

1 And, sir, I'd like to say, yeah, maybe I
2 was right for the wrong reasons way back when. But
3 that's my comment. Thank you.

4 **CHAIRMAN GIOVANNI:** Thank you,
5 Commissioner Ohigashi. Appreciate your 17 final
6 questions. I do remember 2023. And there was
7 strong encouragement from this Commission for you to
8 pursue that DBA for this site.

9 I just want to -- I just have a couple
10 questions for clarification. I think you covered
11 it. But I want to make sure we don't have any
12 confusion. And then I'll open it back up to the
13 commissioners for questions.

14 So there's 260 or 250, 260 acres that one
15 way or another constitutes the area that you intend
16 to use for waste management; is that correct?

17 **MR. NELSON:** Yes. That area includes all
18 of the CML, including portions that are no longer
19 active.

20 **CHAIRMAN GIOVANNI:** Correct. So of that
21 260 acres I understand that 79 are currently IAL; is
22 that correct?

23 **MR. NELSON:** I don't have that particular
24 figure handy. But that does -- that's also
25 consistent with my understanding.

1 **CHAIRMAN GIOVANNI:** So it's 20 plus the 59
2 that you mentioned in your earlier testimony today -
3 - 79. And it's your intent to remove all 79 from
4 IAL designation; is that correct?

5 **MR. NELSON:** Yes.

6 **CHAIRMAN GIOVANNI:** And that you have
7 started the process on 22 of the -- it might be 20
8 or 22 of the 79 acres; is that correct?

9 **MR. NELSON:** Yes. We will be filing a
10 petition in mid-July. Right now we are just seeking
11 comment.

12 **CHAIRMAN GIOVANNI:** So that petition that
13 you forecast to file in mid-July would include the
14 59 acres or only the 22?

15 **MR. NELSON:** No, it would not include the
16 59 acres. Our intent is to get through that initial
17 petition process, which of course would also -- you
18 know, it's two petitions.

19 One is to remove and one is to designate
20 in county-owned agricultural land in IAL. And so
21 our intent is to comply with those conditions and
22 then to do another set of petitions to address that
23 remaining IAL acreage as well.

24 **CHAIRMAN GIOVANNI:** So for the first 22
25 could you describe the -- have you identified the

1 land that you intend to move into IAL? Just in
2 general. I know you're not petitioning today.

3 **MR. NELSON:** Yes. It is an approximately
4 30-acre parcel located in the Kula Ag Park, which is
5 in active agricultural use currently.

6 **CHAIRMAN GIOVANNI:** Okay -- in the future
7 into IAL?

8 **MR. NELSON:** No, we have not. But we do
9 also intend for that to be in the Kula Ag Park.

10 **CHAIRMAN GIOVANNI:** Okay. I'm going to
11 add a little refresh from my memory that goes along
12 with Commission Ohigashi. And the Commission at the
13 time gave very strong encouragement to a DBA for
14 this.

15 We thought it made a lot of sense for you
16 to centralize the waste management operations and to
17 include industrial technology as part of that entire
18 operation and for it not -- and for it to have a
19 sense of long-term or permanence to it, which is not
20 really a perfect fit for a special use permit on
21 agricultural land.

22 And that was the basis why you were
23 strongly encouraged to pursue the DBA. And we echo
24 that again today. It does look like that makes the
25 most sense for you in the long run and it just makes

1 common sense to me personally.

2 All right. So those are my questions and
3 clarification. Let me reopen it to commissioners
4 for any other questions they have on your
5 presentation. Commissioner Carr Smith?

6 **COMMISSIONER CARR SMITH:** Thank you,
7 Chair. That helps. I've been trying to understand
8 what the reasoning is behind wanting them to do a
9 DBA as opposed to continuing their special permit.
10 So what you just said helps a little bit. I'm still
11 ensure whether I totally understand the reasoning
12 there.

13 But can you clarify -- I think I heard you
14 say that the 20 acres is in litigation. Can you
15 explain a little bit more about that, please?

16 **MR. NELSON:** Thank you, Commissioner.
17 Andrew Nelson. Yes, that's correct. The 20 acres
18 is currently subject to a condemnation action
19 imminent domain, which has been -- the complaint was
20 filed by the County of Maui in State Court. It was
21 then removed by the landowner into Federal Court.
22 And that's where the litigation is currently
23 situated.

24 **COMMISSIONER CARR SMITH:** Okay, thank you.
25 I thought you were referring to something else. But

1 I'm good now, Chair. Thank you.

2 **CHAIRMAN GIOVANNI:** So the 20 acres that's
3 in litigation that's not the 22 that's IAL that was
4 identified previously. The 22 that was identified
5 previously is part of the 96; is that correct?

6 **MR. NELSON:** That is correct. The IAL is
7 situated more towards the north. And then the 20-
8 acre parcel is at the bottom -- the very south.

9 **CHAIRMAN GIOVANNI:** Understood. Thank
10 you. Commissioners? Commissioner Lee?

11 **COMMISSIONER LEE:** Thank you, Chair. For
12 the petitioner, you know, you mentioned that you
13 most likely will be taking advantage of the
14 Governor's emergency proclamation provisions.

15 Can you tell me which provisions you would
16 likely be taking? For example, some of them are --
17 you mentioned you were going to do an EIS but you --
18 that is a potential exemption in the emergency
19 proclamation.

20 Also hiring procedures, prevailing wage,
21 procurement, historic preservation -- do you have an
22 idea which ones of those exemptions in the emergency
23 proclamation you might be using?

24 **MR. NELSON:** Thank you for that question.
25 Andrew Nelson. I am not prepared to identify, you

1 know, with specificity each of the HRS chapters that
2 we are looking to, you know, be exempted under the
3 EP.

4 However, it is, you know, obviously
5 something that we are -- that we've researched and
6 are working on. I just don't have any firm position
7 to offer today.

8 **COMMISSIONER LEE:** All right. Seems like
9 you guys are taking Commissioner Ohigashi's
10 recommendation to say you don't know very seriously.
11 Thank you, Chair.

12 **CHAIRMAN GIOVANNI:** You don't know, you
13 don't know. Commissioners? Okay. We'll move on to
14 hear from the Department of Planning from County and
15 from the State. And then Petitioner will be given
16 another opportunity to provide additional comments
17 after that. So let me turn now to the County
18 Planning Department.

19 **MS. DESJARDINS:** First Deputy Mimi
20 DesJardins. Thank you, Chair. The Planning
21 Department doesn't have any comments in addition to
22 the presentation and the question and answers. But
23 we really appreciate the input from you folks
24 because, as you can tell, this is a moving target.

25 I will make one comment very briefly on

1 the use of the -- any emergency proclamation. And
2 that is as we move further away from the epicenter
3 of any disaster we are constantly evaluating what do
4 we need to pay attention to and take advantage of
5 and what can we do to not depend so directly on that
6 emergency proclamation.

7 Because it's qualified by actions that
8 would impede our immediate response to disaster so
9 as we get further into the recovery process -- but I
10 will say that when we do rely on an emergency
11 proclamation we always attempt our clean-up at the
12 other end because we certainly don't want to not
13 comply.

14 But there are times where these
15 proclamations have made a difference between us
16 being able to meet the community's needs and not.
17 So that's sort of how we look at it whether it's the
18 Mayor's or the Governor's proclamation.

19 So I hope that gives you some sense of
20 comfort that we're not completely carte blanche, you
21 know, either violating laws or ignoring laws but we
22 are trying to balance. Thank you.

23 **CHAIRMAN GIOVANNI:** Does that conclude
24 your remarks?

25 **MS. DESJARDINS:** Yes, sir. Thank you.

1 **CHAIRMAN GIOVANNI:** Okay. Commissioners,
2 any questions for County of Maui? Okay. Thank you
3 very much. OPSD, please make your presentation.

4 **MS. KATO:** Thank you. Alison Kato for
5 Office of Planning and Sustainable Development. DEM
6 has acknowledged they're late on compliance but they
7 have submitted the necessary documents to remedy
8 this.

9 We understand it's being treated as a
10 draft for now. And we've received them and can
11 provide -- OPSD can provide initial comments to the
12 County to incorporate in its final submittal.

13 Regarding concerns from state agencies,
14 the Department of Health provided comments with
15 respect to Conditions 4 and 14 having to do with the
16 DOH permit to operate the landfill.

17 They said that while the County is
18 currently landfilling in a portion of property not
19 currently permitted to accept waste, they've
20 submitted a permit modification to DOH to address
21 this.

22 I understand there's some sort of right-
23 of-entry issue. But DOH understands County is
24 working to fix that so they don't have any immediate
25 concerns with this. Sorry, one second. Sorry. We

1 wanted to ask just to confirm about the IAL that was
2 mentioned -- the 59 acres. So I guess can you

3 **CHAIRMAN GIOVANNI:** Why don't you ask it
4 in the form of a rhetorical question and then maybe
5 the commissioners could take it up from there? Or
6 express your concern or --

7 **MS. KATO:** So did you say that the 59
8 acres are IAL?

9 **CHAIRMAN GIOVANNI:** That's what was put on
10 the -- that's what was said.

11 **MS. KATO:** Okay. And that's the L-shape
12 that was on the map?

13 **CHAIRMAN GIOVANNI:** That's the --

14 **MS. KATO:** The land purchase.

15 **CHAIRMAN GIOVANNI:** My interpretation,
16 that's the inland parcel. Can we put that map back
17 up? It clearly shows could I ask the petitioner to
18 put the map up? It clearly shows the 59 acres.
19 Just for clarification. Mr. Roy, could you speak to
20 which parcel is the 59?

21 **MR. ROY:** Yeah, thank you for the
22 question. Mark Roy with Munekiyo Hiraga. So the
23 graphic that we're showing that outlines the
24 entirety of the Central Maui Landfill on 1 and 2
25 here -- that's currently owned by the County of

1 Maui. Number 2 identifies the 59-acre piece that
2 was purchased from A&B.

3 **MS. KATO:** And that's entirely IAL?

4 **MR. ROY:** That is AIL, yes.

5 **MS. KATO:** Thank you. OPSD has no further
6 comments on the presentation.

7 **CHAIRMAN GIOVANNI:** Thank you.
8 Commissioners, any questions or comments to OPSD?
9 Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** So you heard my
11 thoughts that I did before. Assuming that the 59
12 acres and the 22 or 20-acre parcels are removed from
13 IAL, would that --

14 **CHAIRMAN GIOVANNI:** Twenty-two, yeah.

15 **COMMISSIONER OHIGASHI:** Yeah. Does that
16 mean that A&B may have fallen below the 50 percent
17 requirement? And would that mean then that the
18 County can designate any part of A&B lands IAL if
19 they desire to do so?

20 **MS. KATO:** We'd have to check the docket
21 so we can't answer that as this time.

22 **COMMISSIONER OHIGASHI:** What is the
23 purpose then of having it removed and supplemented
24 or removed and replaced? Is there a purpose in that
25 -- that the OPSD -- I think it was your proposal

1 originally in 2020 that resulted in this, well, this
2 swap -- this idea. So if I remember correctly, what
3 is the purpose of having those 59 or those 22 acres
4 replaced as IAL?

5 **MS. KATO:** I believe -- and I wasn't part
6 of it at the time -- but I believe it was -- the
7 reasoning is because it did not appear appropriate
8 to have IAL be a landfill. So because part of the
9 expansion are was IAL the thought was to take that
10 out of IAL and then replace it with lands elsewhere.

11 **COMMISSIONER OHIGASHI:** Would OPSD also
12 recommend if they do a boundary amendment for the 59
13 acres a replacement of that 59 acres from IAL?

14 **MS. KATO:** I mean, along the same
15 reasoning that would probably be correct.

16 **COMMISSIONER OHIGASHI:** So you remember
17 what I recited about IAL designation and what does
18 it mean? Is that basically your understanding too
19 that if you -- they're saying 50 percent and that
20 leaves your other lands alone and you're free to
21 urbanize it? It prevents the County from coming in
22 and urbanizing or IAL-designating those lands. Is
23 that what --

24 **MS. KATO:** Sorry, just one second. I'm
25 not entirely clear on what the question is.

1 **COMMISSIONER OHIGASHI:** The question -- do
2 you understand the question?

3 **MS. KATO:** Can my client answer it --

4 **COMMISSIONER OHIGASHI:** Yeah, they can.

5 **MS. KATO:** -- talk to this?

6 **COMMISSIONER OHIGASHI:** Anybody can.

7 **MS. KATO:** He needs to be sworn in.

8 **CHAIRMAN GIOVANNI:** Sure. Please state
9 your name and affiliation for the record then I'll
10 swear you in.

11 **MR. SETOGAWA:** Aaron Setogawa, Office of
12 Planning and Sustainable Development.

13 **CHAIRMAN GIOVANNI:** Mr. Setogawa, do you
14 swear your testimony today will be the truth?

15 **MR. SETOGAWA:** I do.

16 **CHAIRMAN GIOVANNI:** Please proceed.
17 AARON SETOGAWA, having first been duly sworn to tell
18 the truth, testified as follows:

19 **MR. SETOGAWA:** Okay. Yes, Commissioner
20 Ohigashi, I understand your question. So just to
21 put it in context and to confirm that I understand
22 it, when private party comes in for IAL designation
23 they are required to provide at least 51 percent of
24 the land that they own in their parcel to receive
25 the designated IAL in order to benefit from the

1 benefits of IAL such as tax breaks and so on.

2 So your question is if this 59 acres in
3 addition to the 22 well, if you've taken out 22
4 acres as part of one of the conditions of the
5 renewal and then now you're going to take another 59
6 acres out when the overall landfill becomes in a DBA
7 urban does that impact the original IAL designation
8 for A&B land?

9 And the answer is I'm not sure because I'm
10 not familiar with the original docket. We'd have to
11 go back and see how much land in total A&B entered
12 into IAL and how much land they kept out. I would
13 think that if it does affect the ratio then whatever
14 benefits they enjoy would be in jeopardy.

15 **COMMISSIONER OHIGASHI:** And the County of
16 Maui -- are they able to partake of this 51 percent
17 designation? If the County owns lands, they say,
18 "Well, we want to do 51 percent" -- are they
19 eligible or is it only for private entities?

20 **MR. SETOGAWA:** I don't think that -- okay.
21 So you're asking if the County is subject to -- if
22 the County designates land --

23 **COMMISSIONER OHIGASHI:** Their own land.
24 Their own land.

25 **MR. SETOGAWA:** Yeah, I know, their own

1 land as IAL -- are they bound to provide 51 percent?
2 I don't think so. Well, let me put it this way. If
3 they're doing it under the basis of a county-wide
4 IAL then no.

5 **COMMISSIONER OHIGASHI:** Okay. So --

6 **MR. SETOGAWA:** But if they're doing it as
7 an individual parcel, you know, I would -- that's a
8 good question.

9 **COMMISSIONER OHIGASHI:** So I'm just trying
10 to get a point across. The statute appears to be
11 focused upon not necessarily preserving important
12 agricultural land but providing a mechanism for
13 private landowners to say, "I'm going to give up --
14 I'm going to put this in IAL but I can develop the
15 rest of this in the future."

16 That's the purpose of the statute that I
17 can see. So my real question is do they even have
18 to substitute? Because what they're planning on
19 substituting, my understanding is, Kula Ag Park,
20 which will never be subject to development, which
21 will always be agricultural lands.

22 And it will be just stupid for the County
23 itself to say, "Oh, we're going to designate this
24 IAL" because we own the land and we want to
25 substitute and then say that. But it's built for

1 agriculture. That's the purpose of that park.

2 So rather than playing all these games, my
3 understanding of the statute is that it requires six
4 votes. And if we give them six votes to do a
5 boundary amendment we can take it out of IAL lands
6 and we can take it out of and we can change the
7 boundary.

8 But it's up to the future Land Use
9 Commission to make that determination, not me. But
10 that's my understanding of the law. So I don't see
11 the purpose. And I've never seen, frankly, the
12 purpose of substituting one property for another
13 unless A&B is going to give us 80 more acres of
14 their land to put back into agriculture.

15 But to put the County's agricultural park
16 into an IAL designation -- it seems to be stupid
17 because it's already going to be used for
18 agriculture for as long as we know. That's just a
19 practical thought.

20 **CHAIRMAN GIOVANNI:** So let me add a
21 question on a comment. I think that the logic to
22 replace the area on a like-for-like basis for what's
23 removed from IAL to new land to IAL was not driven
24 to just go find some other agricultural land but
25 might actually be tied to this 51 percent

1 requirement for where that land was coming from.

2 So I don't know if you can comment on
3 that. But I think Commissioner Ohigashi's first
4 question is if and this is hypothetical.

5 If the removal of the 22 plus 59 acres
6 from IAL affects the 51 percent number so that it
7 becomes less than 51 percent is it your perspective
8 that other land owned by that same landowner would
9 have to be the source of replacement so that it
10 could go back above 51 percent?

11 **MS. KATO:** I'm not sure I can speak that
12 clearly without looking at this more. But that
13 would seem to make sense.

14 Although I guess when you're saying what
15 is the purpose of designate other land as IAL -- my
16 understanding is that the purpose of IAL is to
17 basically designate lands that are appropriate to
18 preserve and that will receive benefits from IAL
19 designation.

20 So if you're saying why should an ag park
21 be designated as IAL, it seems to me that if we lose
22 IAL lands it would make sense to have it replaced
23 with additional lands to be preserved for
24 agricultural as IAL that could receive these
25 benefits. Just --

1 **CHAIRMAN GIOVANNI:** Yeah, I think there's
2 a caution --

3 **MS. KATO:** -- generally.

4 **CHAIRMAN GIOVANNI:** -- to the County that
5 when you identify the replacement 22 acres or
6 replacement 59 acres that we don't end up in a
7 quandary because of the 51 percent rule for the
8 original land that was designated. Does that make
9 sense?

10 **MR. NELSON:** Andrew Nelson. I am not
11 familiar with the 51 percent rule. But you know, we
12 would have to look into that.

13 **CHAIRMAN GIOVANNI:** Yeah. I think the
14 Commission today Mr. Ohigashi and myself are just
15 throwing a caution out there and that it may be more
16 complicated than just go finding land in the ag park
17 that's already agriculture and saying, "Well, we
18 just designate that IAL." There might be other
19 complications and it's worth a little more research.

20 **MR. NELSON:** Thank you.

21 **CHAIRMAN GIOVANNI:** Okay. Ms. Kato, does
22 that conclude your remarks?

23 **MS. KATO:** Yes, thank you.

24 **CHAIRMAN GIOVANNI:** Okay. Commissioners,
25 any further questions for Ms. Kato? Okay. So I've

1 heard that our lunch wagon has been delayed. I
2 think -- is it here? Oh, he made it. Thank you.

3 So commissioners, what's your pleasure?
4 We could take a brief recess for bio breaks and come
5 back and deliberate and finish this agenda item or
6 we could take lunch now. What is your pleasure?

7 Well, there was one person that spoke up. So we're
8 going to take a 30-minute break for lunch. It's now
9 12:23. We'll resume at -- I'm going to take 27
10 minutes. We'll resume at one o'clock.

11 **(Recess taken from 12:23 p.m. to 1:00**
12 **p.m.)**

13 **CHAIRMAN GIOVANNI:** Back on the record.
14 It's one o'clock. So where we left off was with the
15 presentation and comments by commissioners to OPSD.
16 So we've heard from OPSD and the County Planning
17 Department. So Petitioner, do you have any further
18 comments, rebuttal, or questions at this time based
19 on what you've heard?

20 **MR. NELSON:** Thank you, Chair. Andrew
21 Nelson. No further comment.

22 **CHAIRMAN GIOVANNI:** Thank you.
23 Commissioners, any further final questions or
24 comments for the parties?

25 **COMMISSIONER OHIGASHI:** I just have a

1 comment before -- well --

2 **CHAIRMAN GIOVANNI:** Mr. Ohigashi.

3 **COMMISSIONER OHIGASHI:** If you intend to
4 include the 20 acres in any filing -- the 20 acres
5 that you've under - you're seeking under
6 condemnation in any filing before the Commission, it
7 should be -- the Commission normally requires that
8 the owners and all ownership interest be part of the
9 petition.

10 So it would behoove you to get specific
11 authority within any federal court order that you
12 may eventually hopefully get to include that.

13 That's just

14 **CHAIRMAN GIOVANNI:** Okay. Ms. Kwan, final
15 call for public testimony. Does any members of the
16 public wish to provide new and additional testimony
17 on the status and progress of SP97-390?

18 **THE CLERK:** No, Mr. Chair.

19 **CHAIRMAN GIOVANNI:** Thank you, Ms. Kwan.
20 Commissioners, this has been a status report. And
21 we're not required to make any motion or take any
22 action at this time. If no action is taken,
23 requirement of continued annual status reports will
24 remain.

25 However if the Commission feels that its

1 concerns have not been adequately addressed based on
2 the comments and responses provided by the
3 petitioner, the Chair will entertain a motion that
4 either the petitioner's status report has not
5 sufficiently addressed the Commission's concerns and
6 that further meetings or status updates are
7 necessary and provide the opportunity to do so at
8 future dates to be determined by LUC staff.

9 Or if there is reason to believe that the
10 petitioner will not adhere to the conditions set
11 forth in the D&O and request that staff move forward
12 with a formal order to show cause proceedings -- any
13 discussions on this further? Commissioner Carr
14 Smith?

15 **COMMISSIONER CARR SMITH:** Thank you,
16 Chair. I do have a question for the petitioner
17 about Condition 23 and the deadline for the DBA.
18 I'm not sure whether that's the filing for the DBA
19 or the approval?

20 **CHAIRMAN GIOVANNI:** I think the language
21 was commence the DBA process.

22 **COMMISSIONER CARR SMITH:** Process.

23 **CHAIRMAN GIOVANNI:** Process, right.

24 **COMMISSIONER CARR SMITH:** Okay.

25 **CHAIRMAN GIOVANNI:** Five years.

1 **COMMISSIONER CARR SMITH:** And that's 2025.

2 Do we know when in 2025 is that?

3 **CHAIRMAN GIOVANNI:** So it's by October 31,
4 2025 they have to commence the process to pursue the
5 district boundary amendment.

6 **COMMISSIONER CARR SMITH:** Okay. So my
7 question is is that reasonable? Do you plan to be
8 able to meet that deadline?

9 **MR. NELSON:** Thank you. Andrew Nelson.
10 Yeah, it is our intent to -- we are targeting that
11 deadline. Obviously there are a number of technical
12 studies that will need to be completed before then.
13 But again we do intend to meet the condition.

14 **COMMISSIONER CARR SMITH:** Okay. So I've
15 learned a few things today, which is always good.
16 So now I understand that the special permits in ag
17 zone districts or ag-designated districts when the
18 permit is filed that the property needs to be
19 returned to its original use and be able to be used
20 for ag, right?

21 And I think that's been made clear to me
22 that because it won't be able to be returned to ag
23 and because you plan to use it in perpetuity or
24 that's estimated; is that correct?

25 **MR. NELSON:** Thank you. Andrew Nelson. I

1 do know that in connection with the fourth amendment
2 proceedings the potential for remediation of the
3 areas that were formerly landfill into some sort of
4 agricultural use was at least considered.

5 I think that with respect to the more
6 permanent facilities, you know, related to recycling
7 and I think other kind of waste handling, you know,
8 those would not be returned to agriculture.

9 And so I think that that was part of the
10 rationale that the -- at least some of the
11 commission members had to recommend a DBA approach
12 as opposed to continue with special permits.

13 **COMMISSIONER CARR SMITH:** Okay. So that's
14 one of your conditions for you to submit for a DBA.
15 So why would you be bothering with the important ag
16 land swaps, removing the designation, finding
17 replacement properties if your plan is to proceed
18 soon with the DBA application? Why would you bother
19 going through these other steps?

20 **MR. NELSON:** You know, probably the main
21 reason is to comply with the conditions of the D&O
22 as written, you know, as opposed to seeking a
23 modification at this point.

24 **COMMISSIONER CARR SMITH:** It wouldn't make
25 more sense for you to ask for them to be removed or

1 to seek modification as you put it?

2 **MR. NELSON:** I think that may be something
3 that we consider, especially once the petitions have
4 been formally filed in mid-July and we receive the
5 Commission's feedback on those petitions.

6 **COMMISSIONER CARR SMITH:** Are you
7 referring to the removal of the AIA -- the important
8 ag lands when you say "petitions"?

9 **MR. NELSON:** Yes, the petition to
10 designate approximately 30 acres of the Kula Ag Park
11 and then the separate petition to remove
12 approximately 22 acres at the CML from IAL
13 designation.

14 **COMMISSIONER CARR SMITH:** Okay. So you
15 feel you still need to do those even if you're going
16 to go forward with the DBA?

17 **MR. NELSON:** Yes.

18 **COMMISSIONER CARR SMITH:** Okay, thank you.

19 **CHAIRMAN GIOVANNI:** Thank you,
20 Commissioner. Anything further, Commissioners? Is
21 there any further discussion among us before we go
22 into deliberation? Hearing none, Commissioners,
23 what is your pleasure? Again let me -- I'm just
24 going to read this again so you know what our
25 options are.

1 Our options are that we consider the
2 status report to be adequate and that we are
3 satisfied pursuing with the petitioner pursuing
4 their work as they've described it to us and
5 including annual reports as specified.

6 Or we may take a more specific action and
7 require additional information updates or a
8 declaratory order proceeding with the show cause.
9 So what's your pleasure? Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** I move that we
11 accept the status report and that we await for the
12 July findings.

13 **CHAIRMAN GIOVANNI:** So you're satisfied
14 with the adequacy of today's presentation?

15 **COMMISSIONER OHIGASHI:** I can comment on
16 that.

17 **CHAIRMAN GIOVANNI:** Okay. So the motion
18 is to -- could you -- I'm sorry, Commissioner.
19 Could you restate the motion?

20 **COMMISSIONER OHIGASHI:** To accept the
21 status report.

22 **CHAIRMAN GIOVANNI:** Thank you. Do I have
23 a second to this motion? Commissioner Carr Smith
24 seconds the motion. Commissioner Ohigashi, do you
25 want to speak to your motion?

1 **COMMISSIONER OHIGASHI:** Yeah. Even though
2 there are some inadequacies I think in the --
3 because of the lateness in trying to resolve some of
4 the issues by the County, I think that they've
5 indicated their course of action in this matter.

6 And I find it -- I think that it
7 represented that they will be completing their
8 petition to refile -- at least their petition to
9 refile so the issues can be discussed by this
10 Commission within a reasonable time from this date.

11 And the indication or the statements or
12 the reliance that they're giving me is July. And I
13 tend to think that they will be complying with it
14 because after the status conference was scheduled
15 they seem to have moved quicker -- quickly in trying
16 to resolve some of the basic issues that they are.

17 The rest of the comments that I've made
18 during this hearing is merely my own opinion as to -
19 - about the IAL process and my feelings about it.

20 And I think that's up to you folks and
21 this commission to work out this. I would note that
22 I -- initially I think I voted against this. You
23 know, but that's neither here nor there.

24 **CHAIRMAN GIOVANNI:** Thank you.
25 Commissioner Carr Smith, do you want to speak to

1 your second?

2 **COMMISSIONER CARR SMITH:** I don't really
3 have much to add. I guess the only thing would be
4 is if they don't have anything for us in July we
5 need an update of some sort; right?

6 **CHAIRMAN GIOVANNI:** Yeah, they'll have an
7 annual -- do we know the date the next annual report
8 is due? October of this year. So that's only
9 three, four months hence. So we'll be looking for
10 an update in the October timeframe. That will give
11 us more detail on their plans for the subsequent
12 year.

13 Anybody else want to comment on the
14 motion? I will just comment that I felt that this -
15 - the progress has been restarted and is being made.
16 It's a complex situation.

17 I'm satisfied with the adequacy of your
18 reporting today. And I thank you for it. And I
19 will be supporting the motion. So Mr. Orodenger,
20 please take a roll call on the motion.

21 **MR. ORODENKER:** Thank you, Mr. Chair. The
22 motion is to accept the current status report.
23 Commission Ohigashi?

24 **COMMISSIONER OHIGASHI:** Aye.

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

1 **COMMISSIONER CARR SMITH:** Aye.

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

3 **COMMISSIONER ATTA:** Aye.

4 **MR. ORODENKER:** Commissioner Kahele?

5 **COMMISSIONER KAHELE:** Aye.

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

7 Ohelo?

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

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

10 **COMMISSIONER LEE:** Aye.

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

12 **COMMISSIONER YAMANE:** Aye.

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

14 **CHAIRMAN GIOVANNI:** Aye.

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

16 motion passes unanimously.

17 **CHAIRMAN GIOVANNI:** Thank you. And thank

18 you for your time today and preparations for our

19 meeting. Appreciate it. Yeah, let's take a five-

20 minute recess. It's 1:15. We'll reconvene at 1:20.

21 **(WHEREUPON, a recess was taken.)**

22 **CHAIRMAN GIOVANNI:** Okay, it's 1:20. Back

23 in session. Our fifth order of business is the

24 Commissioner's Discussion on the Executive Officer

25 Contract Terms and Salary Adjustment.

1 LUC staff has informed me that there's no
2 public testimony written that's been received
3 regarding this agenda item. Ms. Kwan, are there any
4 members of the public that wish to provide
5 testimony?

6 **THE CLERK:** No, Mr. Chair.

7 **CHAIRMAN GIOVANNI:** Thank you. So I'm
8 going to provide a little bit of background. So the
9 performance evaluation was facilitated by
10 Commissioner Ohigashi and was discussed at our last
11 meeting.

12 Commissioner Ohigashi sent commissioners
13 the performance evaluation form that they
14 individually filed out.

15 **THE CLERK:** Chair?

16 **UNIDENTIFIED SPEAKER:** Chair --

17 **THE CLERK:** I think --

18 **UNIDENTIFIED SPEAKER:** We're missing one
19 commissioner.

20 **THE CLERK:** He's coming right now.

21 **CHAIRMAN GIOVANNI:** Okay. I will start
22 over when he gets here. Okay, we're going to
23 proceed on the fifth order of business for today,
24 which is the performance evaluation and contract
25 term review for our executive officer.

1 And in review of looking back at our last
2 meeting and prior to that, Commission Ohigashi
3 facilitated a performance evaluation and completion
4 of the form. It was done by each commissioner.
5 There was also a self-evaluation provided by the
6 executive officer.

7 That was taken into account and we went
8 into executive session in which the performance
9 evaluations were compiled. Subsequent to that
10 meeting I issued a summary of what happened in that
11 executive session as a note -- an email that I
12 drafted on May 8, 2024, a copy of which was directed
13 to the executive officer.

14 But in summary, I've handed -- to
15 facilitate today's meeting I've made copies of that
16 email. And Ms. Steed has acknowledged that it was -
17 - would be appropriate that I could hand out that to
18 you for reference purposes.

19 But in general it shows his compiled or
20 average ratings from among the commissioners in
21 eight different categories and with an overall
22 performance evaluation and who this meeting was
23 attended by.

24 It was then decided that we would look to
25 today's meeting to finalize the process. So what I

1 envision is a two-step process. The first step I
2 will entertain a motion from the commissioners to go
3 into executive session.

4 And while in executive session we will
5 further discuss the details of the executive
6 officer's performance evaluation as well as any
7 personnel or privacy matters that we want to be able
8 to discuss in private.

9 Following that we'll end the executive
10 session and proceed back to public session. And in
11 public session we will look to deliberate and make a
12 decision on any recommendation on a salary
13 adjustment based on the performance evaluation for
14 any other terms that might be in the employment
15 contract.

16 So does anybody have any questions or
17 comments on what I'm proposing in terms of the two-
18 step process? Seeing none, do I have a motion to go
19 into executive session?

20 **COMMISSIONER KAMAKEA-OHELO:** So moved.

21 **CHAIRMAN GIOVANNI:** Who was that?

22 **COMMISSIONER KAMAKEA-OHELO:** Commissioner
23 Kamakea-Ohelo.

24 **COMMISSIONER YAMANE:** Second.

25 **CHAIRMAN GIOVANNI:** Seconded by

1 Commissioner Yamane. So we will now go into
2 executive session.

3 **COMMISSIONER OHIGASHI:** Chair, I think you
4 have to also say who you want to be in the executive
5 session.

6 **CHAIRMAN GIOVANNI:** I want the
7 commissioners and the Deputy Attorney General
8 Counsel. Yeah. Was that the intent of the motion?

9 **COMMISSIONER KAMAKEA-OHELO:** Yeah.

10 **CHAIRMAN GIOVANNI:** Okay. So we have a
11 motion to go into executive session. And that would
12 be exclusive to the commissioners and the Deputy
13 Attorney General. And we have a second to that
14 motion. And I'd like to take a roll call to vote on
15 that. Active voice vote. All in favor, say "aye."

16 **MULTIPLE SPEAKERS:** Aye.

17 **CHAIRMAN GIOVANNI:** Any opposed? Okay.
18 Now can we go into -- now we go. Okay.

19 **(WHEREUPON, a recess was taken.)**

20 **CHAIRMAN GIOVANNI:** We're going back on
21 the record in public session. Can I ask everyone
22 take their seats? Thank you. So we've just
23 concluded executive session.

24 And I'd like to put on the record that
25 during executive session it was attended by all

1 eight of our current commissioners and also Deputy
2 Attorney General Miranda Steed. So that's who was
3 present in executive session.

4 **COMMISSIONER OHIGASHI:** Chair, I think you
5 meant all nine commissioners.

6 **CHAIRMAN GIOVANNI:** We don't have nine.
7 We have eight.

8 **COMMISSIONER OHIGASHI:** That's right.
9 Gary's presence is still felt for me I guess.

10 **CHAIRMAN GIOVANNI:** Yeah, I feel Gary but
11 he wasn't here. And Commissioner U'u will be with
12 us next month. Anyway, eight is the correct number.

13 During executive session we just previewed
14 -- or for reference purposes the substance of our
15 survey that was facilitated by Commissioner Ohigashi
16 and discussed in our last meeting.

17 And just for reference, that had a -- Mr.
18 Orodenker, our executive director, had an overall
19 performance rating by our own self-defined metrics
20 of 3.71. And for reference, 3.0 is equivalent to
21 meets expectations. So Mr. Orodenker in his
22 performance the past year exceeded our expectations
23 in his performance.

24 And that's the consensus of the -- that's
25 the compilation and the numerical average that was

1 done by the survey that was conducted of all
2 commissioners, and again excluding Commissioner
3 Okuda, who had recused himself.

4 We also had an opportunity for
5 commissioners to express any questions they had or
6 concerns they have about the process and how it
7 works and where we go from here. And that was a
8 good discussion we had. Most of that will be
9 retained in private.

10 So where we go from here is that we want
11 to deliberate as a commission in terms of his
12 specific salary adjustment that would be
13 commensurate with his performance evaluation that we
14 have completed.

15 So at this time the Chair will entertain a
16 motion from any commissioner regarding a
17 recommendation for a salary adjustment for Mr.
18 Orodener, our executive officer. And that
19 recommendation would go to the State for
20 implementation. We don't have the independent
21 authority to execute any change in salary.

22 **COMMISSIONER LEE:** Chair, I'd like to make
23 a motion.

24 **CHAIRMAN GIOVANNI:** Commissioner Lee?

25 **COMMISSIONER LEE:** Thank you for the good

1 discussions that we had. I think it was very good
2 to have opinions expressed and people listening to
3 each other's views.

4 Whether we agree with them or not, we have
5 our own views but -- and I appreciate that I had a
6 chance to talk with the executive officer and that
7 we had -- I feel we did some due diligence this year
8 in looking at things. And I thank you for that.

9 I would like to make a motion that
10 Executive Officer have a salary increase of at least
11 4.5 percent or the Bargaining Unit 13 increase,
12 whichever is higher.

13 **CHAIRMAN GIOVANNI:** Thank you. Do I have
14 a second to that motion? Seconded by Commissioner
15 Atta. So my understanding -- and this is just
16 through my own version of due diligence -- is that
17 the Bargaining Unit increase is 4.56 percent.

18 So with your motion, since that's slightly
19 higher than 4.5, your motion in effect is a
20 recommendation of 4.56 percent?

21 **COMMISSIONER LEE:** Yes, whichever is
22 higher. So yes, that would be effectively that.

23 **CHAIRMAN GIOVANNI:** Okay. Do you want to
24 speak to your motion?

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

1 Chair. I think there was some good discussion had.
2 And I think that going forward because of these
3 discussions things will be even better because it's
4 good to have frank discussions.

5 I think we're all here for the same thing.
6 You know, Mr. Orodenker has a difficult job. And I
7 think that we can help him do his job by setting
8 clear expectations.

9 And I think you've seen -- I think we've
10 all seen with some of the comments that have been
11 made that things have improved in a lot of ways as
12 far as information and communication. And I think
13 that will continue.

14 You know, I think we all have a part to do
15 in making the Land Use Commission as good as it can
16 be. And I appreciate that Mr. Orodenker has been
17 receptive to input and that he has responded
18 positively to that. So I think that, you know, I
19 appreciate everyone putting up with me actually. So
20 thank you very much.

21 **CHAIRMAN GIOVANNI:** We all have to put up
22 with you, Mr. Lee. And we all enjoy it.

23 Commissioner Atta, would you like to speak to your
24 second? In the microphone, please.

25 **COMMISSIONER ATTA:** Just the idea of

1 having either or -- I thought that was a novel way
2 of looking at that and going with, you know,
3 (inaudible) it makes sense. And I've been a member
4 of city or state government before. And then, you
5 know, I know how the unit sort of thing works. So I
6 think that's a good thing.

7 **CHAIRMAN GIOVANNI:** Thank you. Anybody
8 else? Did you want to speak? Okay. So just to
9 clarify numbers -- and these are to be verified but
10 I think they're accurate. Current salary, 154,176.
11 Annual salary with this adjustment of 4.56
12 it goes to 161,206. That's in the ballpark if it's
13 not the exact numbers. That sound about right?
14 Yeah, sounds about right. So no further discussion.
15 We'll take a -- I would like a roll call vote on
16 this. Could you execute it for me?

17 **MR. ORODENKER:** Thank you, Mr. Chair. I'm
18 not sure all right. Thank you, Mr. Chair.

19 **CHAIRMAN GIOVANNI:** Let's get the numbers
20 right.

21 **MR. ORODENKER:** The motion is to have the
22 Executive Officer have a salary increase of 4.5
23 percent or a Bargaining Unit increase, which is
24 approximately 4.56 percent, whichever is higher.
25 Commissioner Lee?

1 COMMISSIONER LEE: Aye.

2 MR. ORODENKER: Commissioner Atta?

3 COMMISSIONER ATTA: Aye.

4 MR. ORODENKER: Commissioner Yamane?

5 COMMISSIONER YAMANE: Aye.

6 MR. ORODENKER: Commissioner Ohigashi?

7 COMMISSIONER OHIGASHI: Aye.

8 MR. ORODENKER: Commissioner Kamakea-

9 Ohelo?

10 COMMISSIONER KAMAKEA-OHELO: Aye.

11 MR. ORODENKER: Commissioner Kahele?

12 COMMISSIONER KAHELE: Aye.

13 MR. ORODENKER: Commissioner Carr Smith?

14 COMMISSIONER CARR SMITH: Aye.

15 MR. ORODENKER: Chair Giovanni?

16 CHAIRMAN GIOVANNI: Aye.

17 MR. ORODENKER: Thank you, Mr. Chair. The
18 motion passes unanimously.

19 CHAIRMAN GIOVANNI: Thank you. Okay.

20 Thank you. And so the Chair will continue with the
21 process that we discussed in executive session. The
22 Chair would also entertain any motion regarding any
23 other term -- a recommendation regarding any other
24 term to the employment contract with the Executive
25 Officer.

1 **COMMISSIONER OHIGASHI:** Mr. Chair?

2 **CHAIRMAN GIOVANNI:** Commissioner Ohigashi?

3 **COMMISSIONER OHIGASHI:** I move that we add
4 one more year to the existing contract. Essentially
5 roll it over for one more year to 2027. And I will
6 explain if I get a second as to what my reasoning
7 is.

8 **CHAIRMAN GIOVANNI:** Do I have a second to
9 that motion?

10 **UNIDENTIFIED SPEAKER:** I will second to
11 open the discussion.

12 **CHAIRMAN GIOVANNI:** Very well.
13 Commissioner Ohigashi?

14 **COMMISSIONER OHIGASHI:** I'm suggesting for
15 a one-year extension to this existing contract.
16 Essentially, yes, two years left after this June and
17 until 2026. So I'm suggesting we move it to 2027.
18 After one year of the new commission it'll be a two-
19 year contract back again right to where we started.

20 So I think that to give the Commission and
21 Executive Director an opportunity for him to perform
22 in a different or in accordance with the new
23 commissioners -- perform in the new commissioners'
24 desires or the needs or to meet their needs I think
25 that we should add another year for certain -- to

1 give him that opportunity and certainty to do that.

2 And essentially it'll wind up as a
3 decision next in 2025 as to whether or not to
4 continue his employment contact further than the
5 2027 deadline. So that's my

6 **CHAIRMAN GIOVANNI:** Okay, thank you. Mr.
7 Kamakea-Ohelo, do you want to comment on your
8 second?

9 **COMMISSIONER KAMAKEA-OHELO:** Mahalo,
10 Chair. You know, I really support the idea and the
11 concept. But the reason why I seconded it to open
12 for discussion is because there's one clarification
13 on the specific agenda item that we're discussing
14 right now.

15 So on the Agenda Item 5 it says
16 "Commissioners Discussion on Executive Officer
17 Contract Terms and Salary Adjustments." I just
18 wanted to make sure that if we are to take action
19 because this is in fact a motion.

20 **CHAIRMAN GIOVANNI:** So let me put that to
21 Ms. Steed. Would it be appropriate for this
22 Commission, based on how this item has been
23 agendized, to actually make a recommendation on the
24 term of the existing employment agreement or not?

25 **MS. STEED:** It would probably be better if

1 you --

2 **CHAIRMAN GIOVANNI:** Speak loud and clear.

3 **MS. STEED:** Probably better if you
4 postpone and re-agendize with an action item.

5 **CHAIRMAN GIOVANNI:** Fair enough. So for
6 those of you who may have not heard that interaction
7 between the Commissioner and Deputy Attorney
8 General, he seconded the motion. And I'm going to
9 paraphrase what I think you said, okay?

10 He seconded the motion because he wanted a
11 discussion on the matter to get clarification for
12 whether or not it was appropriate and advisable for
13 this Commission to make a recommendation on the term
14 of the Executive Officer's employment agreement at
15 this time relative to how this matter has been
16 agendized.

17 And then in question on that issue to the
18 Deputy Attorney General, the response was it would
19 be better if we postponed it and agendized it
20 directly.

21 **COMMISSIONER KAMAKEA-OHELO:** So mahalo for
22 the clarification, if I may follow up with a
23 question to our Deputy Attorney General?

24 **CHAIRMAN GIOVANNI:** Please.

25 **COMMISSIONER KAMAKEA-OHELO:** Can we take

1 action today or no?

2 **CHAIRMAN GIOVANNI:** This is on the record.

3 **MS. STEED:** Would you like to ask me these
4 questions in executive session?

5 **COMMISSIONER KAMAKEA-OHELO:** If it would
6 please the Chair I would entertain --

7 **CHAIRMAN GIOVANNI:** I think this is a
8 legal question and it's probably best we deal with
9 it in executive session. So --

10 **COMMISSIONER KAMAKEA-OHELO:** Mahalo,
11 Chair. I make the motion to enter into executive
12 session.

13 **CHAIRMAN GIOVANNI:** Do I have a second to
14 go? All in favor going into executive session
15 signify by saying "aye."

16 **MULTIPLE SPEAKERS:** Aye.

17 **CHAIRMAN GIOVANNI:** Any opposed? Thank
18 you. We are adjourned -- or recessed to go into
19 exec session.

20 **(The Commission entered into Executive**
21 **Session.)**

22 **CHAIRMAN GIOVANNI:** Okay. It's 2:43.
23 We're back on the recording I believe; is that
24 correct? All right. So we're back in general
25 session. We've just concluded an executive session

1 that was attended by eight active commissioners as
2 well as Deputy Attorney General Steed.

3 And it was to address legal questions in
4 our mind dealing with Sunshine Law. And we
5 concluded that session. And we're now back into
6 regular session. And we have a motion on the floor
7 that's been made by Commissioner Ohigashi and
8 seconded by Commissioner Kamakea-Ohelo.

9 And that motion is to extend -- to
10 recommend an extension of the Executive Director's
11 employment contract by one year with a consideration
12 to do something similar by the Commission a year
13 from now. Is that correct? Correct?

14 **COMMISSIONER OHIGASHI:** Yeah.

15 **CHAIRMAN GIOVANNI:** Okay. Did you want to
16 say anything further on your second?

17 **COMMISSIONER KAMAKEA-OHELO:** Yes, Chair.

18 **CHAIRMAN GIOVANNI:** Please.

19 **COMMISSIONER KAMAKEA-OHELO:** When I made
20 the original second it was to open discussion. And
21 I just want to say on the record that I am
22 comfortable in saying that I support the original
23 motion to extend the contract a year into the year
24 2027 I believe.

25 **CHAIRMAN GIOVANNI:** I believe that's

1 correct.

2 **COMMISSIONER KAMAKEA-OHELO:** Okay.

3 Mahalo, Chair.

4 **CHAIRMAN GIOVANNI:** Mahalo. Anybody else
5 want to speak? Commissioner Lee?

6 **COMMISSIONER LEE:** Chair, I understand the
7 sentiment. But since there are going to be three
8 new commissioners coming on next month I'm not
9 really comfortable with imposing something for the -
10 - almost their entire next term up until 2027 that
11 they would be effectively operating under without
12 their input. So I'm going to vote no.

13 **CHAIRMAN GIOVANNI:** Okay. Anybody else?

14 **COMMISSIONER CARR SMITH:** Yep.

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

17 **COMMISSIONER CARR SMITH:** I don't agree
18 with this either. I live in a world of contracts.
19 And Dan's got two more years on his contract. And
20 it seems reasonable to me for us to simply extend
21 his contract when it's time. I don't see any reason
22 to do it sooner.

23 **CHAIRMAN GIOVANNI:** Okay. Anybody else?

24 **COMMISSIONER YAMANE:** Yes, Chair.

25 **CHAIRMAN GIOVANNI:** Commissioner Yamane?

1 **COMMISSIONER YAMANE:** I'll be supporting
2 contract extension for the Executive Director.
3 Thank you.

4 **CHAIRMAN GIOVANNI:** Thank you. Anybody
5 else? Commissioner Kahele?

6 **COMMISSIONER KAHELE:** Chair, I'm
7 supporting the motion.

8 **CHAIRMAN GIOVANNI:** Thank you. Anybody
9 else?

10 **COMMISSIONER CARR SMITH:** Chair.

11 **CHAIRMAN GIOVANNI:** Commissioner Carr
12 Smith?

13 **COMMISSIONER CARR SMITH:** I support the
14 Executive Director. That's not what this is about
15 at all. There are just -- it seems unreasonable to
16 extend the contract early. What has been done in
17 the past? Executive Director, if you can answer
18 that, please.

19 **MR. ORODENKER:** I've had several contract
20 extensions before the term expired in the past.
21 Well, not several. A couple. I don't know. It's
22 what's been regular practice so -- I mean, it's not
23 something that is outside of this Commission's
24 experience.

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

1 **CHAIRMAN GIOVANNI:** So the Chair will
2 support the motion as well. I feel, I mean, the
3 number one thing to me is continuity.

4 And I would like to know and feel -- we
5 never know for sure -- but I would like to feel that
6 our executive director, whoever it may be, and in
7 this case Mr. Orodenger, can look forward to a
8 tenure and give his all for that tenure.

9 I don't want him sitting around with a
10 year left in his contract thinking about what he
11 does next and having more vision to not be here than
12 to be here. So I would support this motion for an
13 extension. I would support a motion for a longer
14 extension to be honest. But I will support this
15 motion. Anything further? Take a roll call,
16 please.

17 **MR. ORODENKER:** Thank you, Mr. Chair. The
18 motion as stated by the Chair to add one more year
19 to the existing employment contract for the
20 executive --

21 **CHAIRMAN GIOVANNI:** If I can clarify, it's
22 to recommend. We don't have the ability to make an
23 absolute decision. We can do that? It's our
24 decision?

25 **MR. ORODENKER:** Yeah.

1 **CHAIRMAN GIOVANNI:** Oh, I thought we had
2 to get the State HR people to --

3 **MS. STEED:** (Inaudible.)

4 **MR. ORODENKER:** I have to agree to it.

5 **MS. STEED:** (Inaudible.)

6 **MR. ORODENKER:** Yeah, no. I have to sign
7 the extensions.

8 **CHAIRMAN GIOVANNI:** So what's the right
9 way to phrase this motion? That we would extend an
10 offer to executive for a year? So the motion is to
11 offer our Executive Director a one-year extension to
12 his existing contract, which I think will be through
13 2027 -- July 2027. June 30, 2027. Okay? Okay, go
14 ahead.

15 **MR. ORODENKER:** Thank you, Mr. Chair. The
16 motion is as stated. Commissioner Ohigashi?

17 **COMMISSIONER OHIGASHI:** Yes.

18 **MR. ORODENKER:** Commissioner Kamakea-
19 Ohelo?

20 **COMMISSIONER KAMAKEA-OHELO:** Yes.

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

22 **COMMISSIONER ATTA:** Yes.

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

24 **COMMISSIONER CARR SMITH:** No.

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

1 COMMISSIONER KAHELE: Yes.

2 MR. ORODENKER: Commissioner Lee?

3 COMMISSIONER LEE: No.

4 MR. ORODENKER: Commissioner Yamane?

5 COMMISSIONER YAMANE: Yes.

6 MR. ORODENKER: Chair Giovanni?

7 CHAIRMAN GIOVANNI: Aye.

8 MR. ORODENKER: Thank you, Mr. Chair. The
9 motion passes with six affirmative votes.

10 CHAIRMAN GIOVANNI: Thank you. And
11 hopefully you will accept our officer.

12 MR. ORODENKER: I will accept, Mr. Chair.
13 Thank you.

14 CHAIRMAN GIOVANNI: So let me give you an
15 opportunity to speak to the Commission on the
16 actions we've just taken if you so desire? Which
17 was the salary adjustment and the extension. If you
18 want. If you don't want --

19 MR. ORODENKER: I just want to extend my
20 appreciation to the Commission for recognizing my
21 work. As stated by Commissioner Lee, it is -- I
22 strive to adjust how we handle things based on the
23 commissioners' needs and desires.

24 And I will continue to do so. I listen.
25 I'm very open to whatever the commissioners have to

1 say about how things are handled. And I hope I can
2 be as responsive as they require.

3 **CHAIRMAN GIOVANNI:** Thank you. If there's
4 no further business to today's agenda -- there is
5 none -- I declare this meeting recessed until
6 tomorrow at 10:00 a.m.

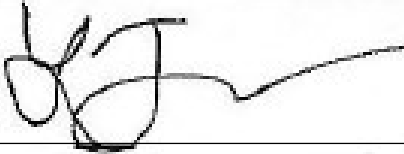
7 **(The meeting recessed at 2:50 p.m.)**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

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

IN WITNESS HEREOF, I have hereunto set my hand this 8th day of July, 2024.



Leann Trumble