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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on July 10, 2024

Commencing at 10:00 a.m.

Held at

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

I. CALL TO ORDER

II. APPROVAL OF MINUTES

June 19-20, 2024

III. TENTATIVE MEETING SCHEDULE

IV. Hawai'i State Ethics Commission Live Training

A live training session conducted by the Hawaii State Ethics Code. This session aims to educate the Commission on ethical standards and requirements, including conflicts of interest, gifts and hospitality, confidential information, and fair treatment. The training will provide practical examples and scenarios to ensure a comprehensive understanding of ethical obligations and promote adherence to state ethics laws.

V. Informational Briefing: State Commission on Water Resource Management

Informational briefing from the Commission on Water Resource Management planners overviewing the State Water Code, Hawaii Revised Statute Chapter 174C, which was created by the 1987 Hawaii State Legislature to protect and manage the waters of the State of Hawaii for present and future generations.

VI. ADJOURNMENT

BEFORE:

HAWAII STATE LAND USE COMMISSION
MEETING

HELD ON
WEDNESDAY, JULY 10, 2024

1 APPEARANCES

2
3 **COMMISSIONERS:**

4 Dan Giovanni, Chair

5 Brian Lee

6 Bruce U'u

7 Mel Kahele

8 Michael Yamane

9 Myles Miyasato

10 Nancy Carr Smith

11
12 **COMMISSIONERS EXCUSED:**

13 Kuikeokalani Kamakea-'Ohelo

14 Ken Hayashida

15
16 **LUC STAFF:**

17 Daniel Orodener, Executive Officer

18 Martina Segura, Staff Planner

19 Ariana Kwan, Chief Clerk

20 Melissa Goldman, Esq., Deputy Attorney General (via

21
22 **STATE OF HAWAII, ETHICS COMMISSION**

23 Robert Harris, Executive Director

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APPEARANCES (CONT'D)

STATE OF HAWAII, DLNR CWRM:

- Katie Roth, Hydrologic Planning Program Manager
- Alexa Deike, Legal Fellow
- Bonnie Lu, Secretary
- Alyssandra (Lyss) Rousseve, Hydrologist
- Nicholas Ing, Planner
- Neal Fujii, Drought and Water Conservation Coordinator

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:

- Mary Alice Evans, Director
- Katia Balassiano, Planning Program Administrator
- Aaron Setogawa, Senior Planner
- Brandon Soo, Planner

1 **HAWAII STATE LAND USE COMMISSION**

2 **MEETING**

3 **HELD ON**

4 **WEDNESDAY, JULY 10, 2024**

5
6 **CHAIR GIOVANNI:** Aloha -- aloha mai kakou.

7 Good morning, everyone. This is the July 10, 2024
8 Land Use Commission meeting. This is an in-person
9 meeting. It's physically being held at Leiopapa A
10 Kamehameha State Office Tower, Room 405, 246 South
11 Beretania Street, Honolulu, and it's open to the
12 public.

13 Court Reporting transcriptions are being
14 done from the Zoom recording of this meeting. For
15 all meeting participants, I'd like to stress the
16 importance of speaking slowly, clearly, and directly
17 into your microphone. Before speaking each time,
18 please state your name and identify yourself for the
19 record.

20 Even though this is an in-person meeting,
21 please be aware that all meeting participants are
22 being recorded on the digital record of this Zoom
23 meeting, and will be posted to YouTube, and it will
24 be used for court reporting purposes. Your
25 continued participation is your implied consent to

1 be part of the public record of this event. If you
2 do not wish to be part of the public record, you
3 should exit the meeting now.

4 My name is Dan Giovanni, and I have the
5 pleasure to serve as the LUC Chair. We currently
6 have nine seated commissioners, seven of which are
7 here in attendance today. Along with me are
8 Commissioner Michael Yamane from Kawaii, Commission
9 Mel Kahele, Commissioner Brian Lee, and Commissioner
10 -- I think that's it from O'ahu. And Commissioner
11 Nancy Carr Smith from Hawaii Island, Commissioner
12 Bruce U'u from Maui, and Commissioner Myles
13 Miyasato, also from O'ahu. I missed that.

14 He's from Big Island? Oh, that was a
15 error in my notes. I apologize for that.

16 So Commissioner Miyasato, my apologies,
17 and welcome from Hawaii Island.

18 Excused from today are Commissioner
19 Kamakea-'Ohelo and Commission Hayashida.

20 Also in attendance are the LUC Executive
21 Officer, Daniel Orodener, LUC Staff Planner,
22 Martina Segura, LUC Chief Clerk, Ariana Kwan. And
23 joining us by Zoom is LUC Attorney General, Melissa
24 Goldman.

25 Again, court reporting transcriptions are

1 being done from the Zoom recording.

2 At this time, the Chair would like to take
3 a minute and reflect upon a former commissioner who
4 we unfortunately lost this past weekend. Mr. Aaron
5 Mahi, a great statesman, a great musician, a great
6 representative of our state, served as a
7 Commissioner on this commission for several years.
8 I had the pleasure to work with him for about one
9 year, and it was inspiring to be in his presence.

10 Mr. Orodenger, do you have anything to
11 offer on this point?

12 **MR. ORODENKER:** Yes, Mister Chair, thank
13 you. We've prepared a little couple of statements,
14 and we're going to show a -- a video of Aaron at one
15 of his -- one of the -- the music projects that he
16 was involved in. But first, I'm going to say a
17 little bit, and then after that, we'll -- we'll show
18 the video, and then I'll -- I'll read Arnold's
19 statement. Arnold couldn't be with us today, but he
20 wanted to say something.

21 I -- I thoroughly enjoyed Aaron. Aaron,
22 as we all know, is one of the giants in the Hawaiian
23 cultural community and the music industry. He was
24 one of the most loving souls I have ever met. He --
25 I only saw him angry a few times, and even then, it

1 was righteous anger. He was passionate and cared
2 deeply about the people and aina. He brought a
3 light to the commission while he served -- humor and
4 wit was his way, and a tremendous ability to express
5 himself.

6 Arnold has a couple of specific stories
7 about things they did on the Commission that I will
8 talk about later, but Aaron was adept at providing
9 some kind of story for each meeting that he was a
10 part of. I actually met Aaron long before he became
11 a commissioner. I was putting together a Christmas
12 party for Windward Community, and I called him up to
13 see if the Royal Hawaiian Band was willing to play.
14 This was when he was conductor. And not only did he
15 come and put on a tremendous performance for the
16 community, but he activated all the cultural
17 practitioners on the Windward side to come to this.
18 And it turned into an incredible, incredible
19 evening. And I thanked him for it, and I'll never
20 forget it.

21 Having him on the Commission was a
22 pleasure. I have a personal story to tell about
23 Aaron that kind of gives you an idea of what a
24 humble and giving person he was. We were headed --
25 a hearing one day, and -- from the airport, and

1 Aaron just starting sighing. And I said, Aaron,
2 what's -- what's wrong? And he said -- he said, in
3 two weeks, I have to go to New York City and do a
4 performance. A friend of his was being ordained as
5 a minister in the church, and it was going to be a
6 big deal. And she had asked him to come. She had
7 Hawaiian roots, and she had asked him to come and
8 play. And he said, I can't find anybody who plays
9 ukelele to go with me.

10 And at the time, my stepson, who was a
11 tremendous musician, was living in New York City, so
12 I said, well, Aaron, why don't you give -- I know
13 Kalani can play, you know, ukelele. Why don't you
14 give him a call. So he called up Kalani, and they
15 got together. And it was one of the most incredible
16 evenings that Kalani has had in his 35 years on this
17 planet. He -- not only did Aaron have him play with
18 him, but he took him to the back room party. And
19 there were all these really tremendous performers
20 back there, both from the mainland and from Hawaii.
21 And Aaron just made him feel like he was part of the
22 family. And that was Aaron.

23 He'll be sorely missed by the entire
24 Hawaiian community and by all of us here.

25 And Ariana, can you play that video now?

1 This was a project that Aaron was involved
2 in putting together.

3 **(WHEREUPON, a video was played.)**

4 **MR. ORODENKER:** Thank you for indulging us
5 staff a little bit with that.

6 Now, Arnold wanted me to read a couple of
7 things. Arnold Wong, former Commissioner and now
8 staff member. I'll read them verbatim except when
9 he screws up.

10 There are no words to explain how to say
11 you're going to miss a friend and a colleague. For
12 those who worked with Aaron, it was a pleasure to
13 listen to some of his zingers. For the rest of you,
14 let me give you a glimpse of a side of Aaron you may
15 not have known.

16 When I first met Aaron, I said, wow. I'm
17 going to work with a celebrity. He was a musician
18 and led the Royal Hawaiian Band. I was in awe due
19 to his status and found out that he was down to
20 Earth with a heart. I really found out that when we
21 had to work on the Executive Officer's evaluation
22 form at his church. Due to -- due to our schedules,
23 we had a lunch meeting. It was then that I found
24 out he had a sense of humor. We were so wrapped up
25 in talking story that we forgot why we were meeting

1 and had to do another meeting for our original
2 purpose.

3 He sometimes got pissed off at a hearing.
4 He was told -- this actually was a hearing on
5 Moloka'i, and Aaron had roots on Moloka'i. And at
6 one point, a young gentleman came up to testify, and
7 berated the Commission for not -- for -- for being
8 outsiders and not knowing anything about Moloka'i
9 and the cultural resources there. What actually
10 happened was Aaron got so upset that he was being
11 accused of not knowing anything about Moloka'i that
12 he went out after the hearing, when we were getting
13 ready to go to the hotel, and he took it all out on
14 Jonathan Troyer. I was -- he wasn't Chair at the
15 time, he was on the Commission. And I came out
16 afterwards, and Jonathan was standing in the parking
17 lot shaking and white as a sheet. Aaron was just
18 venting, but he was -- he was -- when he got
19 passionate, he got passionate.

20 As the cultural expert, we looked to Aaron
21 for guidance. It was very amusing when some of the
22 locals would not listen to him or his wisdom. It
23 was also funny that Aaron would tell them due to the
24 law, if we did not render a decision, we had a
25 hearing on -- Maui. And we were -- and -- it was --

1 Olowalu, and we had 250 people come to testify. And
2 Aaron finally stood up and told them that if they
3 didn't start keeping their testimony short and not
4 repeating themselves that the petition was going to
5 be automatically granted.

6 The other story that -- that Arnold wanted
7 me late about, Aaron was -- we were doing Waimanalo
8 Gulch several years ago. Many times we did
9 Waimanalo Gulch, and it was clear that the county
10 did not know what it was going to do and was just
11 there to kind of prevent us from lifting the SP.
12 And so Aaron all of a sudden starts saying, you
13 know, this is half baked. And he went through this
14 long, kind of, analogy about how to bake a lasagna.
15 And by the time he was done talking about baking
16 lasagna, we had to break for lunch because everybody
17 was so damn hungry. You could almost smell it the
18 way he was describing it. He was just very, very
19 good with words.

20 These stories and many more reminded
21 Arnold of Aaron, and I, for one -- this is Arnold
22 saying this. Arnold will remember him as a friend
23 and a colleague forever. Thank you. That's all I
24 have.

25 **CHAIR GIOVANNI:** Thank you, Dan.

1 Last time I saw Aaron, he was -- he was in
2 front of this Commission as a testifier, a community
3 representative still caring about land use issues
4 and wanting us to do our job in ho'oponopono way.
5 Just a real citizen of -- of Hawaii, and he will be
6 missed. So thank you, everyone, for indulging us to
7 acknowledge in memory of Aaron.

8 Okay. Let's go on for our next order of
9 business will be the adoption of minutes from the
10 meeting of June 19 and 20, 2024.

11 **COMMISSIONER YAMANE:** Mr. Chair, I'd like
12 to make a motion to approve minutes.

13 **CHAIR GIOVANNI:** Thank you, Commissioner
14 Yamane. Do I have a second regarding the minutes?

15 **COMMISSIONER CARR SMITH:** Second.

16 **CHAIR GIOVANNI:** Commissioner Carr Smith,
17 thank you.

18 Any questions or comments on the minutes?

19 **COMMISSIONER CARR SMITH:** I wanted to make
20 a comment. Per staff suggestion, there was just a
21 misspelling of my last name a couple of times, so
22 they know that it doesn't have a hyphen. Just
23 mentioning that.

24 **CHAIR GIOVANNI:** Oh. They -- they spelled
25 Smith correctly?

1 **COMMISSIONER CARR SMITH:** Yes, they did.

2 **CHAIR GIOVANNI:** Okay.

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

4 **CHAIR GIOVANNI:** It will be noted. Thank
5 you.

6 And just to confirm, we've received
7 written or testimony on the -- on the minutes.

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

9 **CHAIR GIOVANNI:** And no one has signed up
10 to testify on the minutes?

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

12 **CHAIR GIOVANNI:** Okay. Fine.

13 So let's take a -- all in favor of
14 adoption of the minutes as moved signify by saying
15 aye. Any opposed? None, so the minutes are
16 adopted.

17 Next order of business is our tentative
18 meeting agenda and schedule -- not agenda, but
19 schedule.

20 Mr. Orodénker?

21 **MR. ORODENKER:** Thank you, Chair.

22 July 23rd and 24th, we will be at the
23 Foreign Trade Zone here on O'ahu for Commissioner
24 training.

25 On August 7th and 8th, we have scheduled

1 hearings on the Waimanalo Gulch Sanitary Landfill.

2 Those will be at the airport.

3 On the 21st and the 22nd, we will be at --

4 **CHAIR GIOVANNI:** August?

5 **MR. ORODENKER:** Yes. August 21st and

6 22nd. We will be hearing the Makakilo Quarry map.

7 We have a couple of tentative dates with regard to

8 Makakilo Quarry because we're not sure how long it's

9 going to take, and as you know, we have a 45-day

10 deadline for special permits. So we have

11 tentatively -- and these are not confirmed dates --

12 the 29th for possible continuation of Makakilo

13 Quarry -- of August. And then September 10th for

14 the adoption of the Order. That will be a Zoom

15 meeting if it comes to that. The 11th, 12, and 13th

16 is HCPO on -- at the Hapuna Beach Resort on the big

17 island. September 25th and 26, we have tentatively

18 scheduled hearings on Maui to -- county's motion to

19 remove portions of the -- the waste facility over

20 there from IAL, and on the following day, to add

21 IAL. We're not -- we're not sure whether the

22 county's still going to do that or not. We'll keep

23 the Commissioners apprised.

24 On October 9th, we have a hearing on

25 O'ahu, destination to be determined -- or location

1 to be determined, for the RKII Partners Motion for
2 Declaratory Ruling.

3 On October 23rd and 24th, we have
4 tentatively scheduled the Mahi Solar matter on
5 O'ahu.

6 On November 6th and 7th, we will be on
7 Maui for and A&B Properties Motion, and for -- on
8 the 7th for Emmanuel Lutheran status report.

9 We don't have anything currently scheduled
10 for November 20th and 21st, or December 4th, 5th, or
11 18th and 19th.

12 **CHAIR GIOVANNI:** Thank you. So with the
13 exception of that one meeting on September 10th, all
14 other meetings are anticipated to be in person?

15 **MR. ORODENKER:** Yes, that is correct, Mr.
16 Chair. At this time.

17 **CHAIR GIOVANNI:** Yeah.

18 Commissioners, any questions or comments
19 on the tentative schedule?

20 **COMMISSIONER CARR SMITH:** Chair?

21 **CHAIR GIOVANNI:** Commissioner Carr Smith.

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

23 Dan, I'm not sure -- you mentioned a
24 Declaratory Ruling on October 9th?

25 **MR. ORODENKER:** Yes.

1 **COMMISSIONER CARR SMITH:** So is -- is the
2 Declaratory Ruling something that the Commission
3 decides --

4 **MR. ORODENKER:** Yes, it is.

5 **COMMISSIONER CARR SMITH:** -- whether to
6 proceed with -- you're suggesting this? Is that
7 correct?

8 **MR. ORODENKER:** Well, Declaratory Rulings
9 are funny animals. There are three ways you can
10 dispose of a Declaratory Ruling. You can decide on
11 the pleadings -- I mean -- but not us. The
12 Commissioners decide, which doesn't require a
13 Evidentiary Hearing. You can hold -- we have 90
14 days to complete this, by the way. That -- that's
15 one of the reasons it's on that date on the
16 schedule. You can hold a hearing where the parties
17 present oral argument and then render a decision.
18 Or you can schedule the hearing on the Declaratory
19 Ruling for a later date and have an Evidentiary
20 Hearing.

21 So you know, I mean it -- it depends on
22 how the Commission determines it wants to dispose of
23 it. But staff does not dispose Declaratory Rulings.

24 **COMMISSIONER CARR SMITH:** But it -- it
25 came to the agenda via staff?

1 **MR. ORODENKER:** Well, they filed a Motion
2 for Declaratory Ruling.

3 **COMMISSIONER CARR SMITH:** Oh, they did.
4 RKII did?

5 **MR. ORODENKER:** Yeah.

6 **COMMISSIONER CARR SMITH:** Oh, okay. Thank
7 you.

8 **CHAIR GIOVANNI:** Just to confirm, that
9 filing is posted?

10 **MS. KWAN:** It is still being reviewed and
11 it's not an official filing yet. We're waiting for
12 their filing fee.

13 **MR. ORODENKER:** Yeah, they haven't paid --

14 **CHAIR GIOVANNI:** Okay. So would you
15 please send out a note to all Commissioners when
16 it's posted so we know proactively that it's there
17 and we can review it.

18 **MS. KWAN:** Will do, Chair.

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

20 Anything further on the tentative
21 schedule? Okay. Thank you.

22 Our next order of business is a
23 presentation by the Hawaii State Ethics Commission -
24 - slide training. I want to welcome Mr. Robert
25 Harris, former colleague, to take position. This

1 training session is being conducted by the Hawaii
2 State Ethics Commission and will cover the key
3 provisions and guidelines outlined in the Hawaii
4 State Ethics Code.

5 The session aims to educated the
6 Commissioners on ethical standards and requirement,
7 including conflicts of interest, gifts and
8 hospitality, confidential information, and fair
9 treatment. The training is -- will provide
10 practical examples and scenarios to ensure a
11 comprehensive understanding of ethical obligations
12 and promote adherence to state ethics laws.

13 Ariana, has there been any member of the
14 public who wishes to testify on this agenda item?

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

16 **CHAIR GIOVANNI:** So we'll now --

17 Mr. Harris, will you introduce yourself
18 and give us an idea of the length of the
19 presentation?

20 **MR. HARRIS:** Aloha. My name is Robert
21 Harris --

22 **CHAIR GIOVANNI:** Is your button on?

23 **MR. ORODENKER:** Light's on.

24 **MS. KWAN:** Testing. All right.

25 **MR. HARRIS:** Thank you.

1 Aloha. My name is Robert Harris. I'm the
2 Executive Director and General Counsel for the
3 Hawaii State Ethics Commission. This is a general
4 ethics training. It will last approximately between
5 45 minutes to an hour, depending on the number of
6 questions or how much we want to talk. So if that's
7 okay, I'll go ahead and get started.

8 **CHAIR GIOVANNI:** Yeah, I'd like to thank
9 you, again, for being here and doing this in person.
10 And let me encourage the Commissioners -- you prefer
11 they hold questions till the end, or as you go?

12 **MR. HARRIS:** I happy to talk about that
13 sort of in depth. I -- I -- we are a small enough
14 group, and I recognize even though this is being
15 recorded and streamed that I'd be happy to have a
16 conversation. So if something comes up, feel free
17 to jump in. If it's something that's going to be
18 covered later in the presentation, I'll just go
19 ahead and let you know.

20 **CHAIR GIOVANNI:** Oh, that's great. That's
21 a good way to handle it. And just FYI, if we happen
22 to go long, I'll probably take a five-minute break
23 somewhere around 11:00 or 11:15 --

24 **MR. HARRIS:** Sure.

25 **CHAIR GIOVANNI:** -- just to refresh

1 everybody, and then we'll resume. So why don't you
2 proceed?

3 **MR. HARRIS:** Thank you, Chair.

4 Thank you, Commissioners, for taking the
5 time to be here, and thank you for your service.
6 This is bringing back memories. About 25 years ago,
7 as a law student, I took administrative procedure,
8 and it was a requirement that we had to testify
9 before an administrative agency. And so I came to
10 the Land Use Commission and testified on, I think,
11 some Constitutional points. To my horror, at the
12 time, Commissioner Bruce Kopa, started asking some
13 very detailed and specific questions, which I was
14 utterly unprepared to answer. I hope I'm better
15 prepared today. So again, thank you for the
16 opportunity to be here and to make up for that
17 experience.

18 Hawaii has a unique distinction of being
19 the first state to have created a independent Ethics
20 Commission. In establishment in the Hawaii State
21 Constitution and established a requirement that the
22 people -- you know, State employees -- and we'll get
23 into what that means, but officer, State employees
24 need to exhibit the highest standards of ethical
25 conduct, and those standards come from the personal

1 integrity of each individual in government.

2 Following the adoption, that's -- a number
3 of states actually started duplicating what Hawaii
4 has created, and it's become a national model.
5 Again, Hawaii was the first state to do that. We
6 are also the founding member of COGEL, which is the
7 Conference on Governmental Ethics and Law, which is
8 now an international entity, and again, Hawaii was
9 one of the founding members of that organization. I
10 say that just to say that we have some pride and
11 history. Doesn't mean we don't have work to do, but
12 it is something that we should be proud of, and it
13 is something that, you know, Hawaii is a clear
14 leader on.

15 So the State Ethics Code -- our
16 Constitution requires each political subdivision to
17 establish an Ethics Commission. So there are County
18 Ethics Boards or Commissions, and there is a State
19 Ethics Commission. State Ethics Commission has
20 oversight, and Ethics Code applies to legislators,
21 state employees, and members of state boards and
22 commissions.

23 For purposes of the Ethics Code -- just in
24 case this gets confusing later, the definition of
25 state employee is really broad. It includes

1 volunteer members of boards and commissions. So
2 even though we classically wouldn't think of you as
3 an employee, for purposes of the ethics code, you're
4 lumped in as a state employee.

5 **CHAIR GIOVANNI:** Robert, does it include
6 state -- Hawaii Supreme Court Justices?

7 **MR. HARRIS:** Good question. Ethics Code
8 applies to all employees of the judiciary, but it
9 does exempt Justices and Judges. They are subject
10 to the Code of Judicial Conduct and have their own
11 separate Review Board for that.

12 There are approximately -- there are over
13 60,000 state officials and employees, so the Ethics
14 Code -- in general, you find is fairly general, and
15 it was deliberately passed that way because there's
16 a recognition that some degree of flexibility needs
17 to apply to the different facts that happen, and to
18 the different situations. And so there's always a
19 balance in trying to make sure that -- that
20 government agency can function, but also trying to
21 balance the requirement of the highest standards of
22 ethical conduct.

23 And so that is part of the role that my
24 agency, The Ethics Commission, tries to serve under.
25 It is trying to make sure we are able to apply the

1 Code to each individual fact situation. And so
2 sometimes when people are saying, I just want a
3 clear answer. Can I do this or this? The answer,
4 unfortunately, too often is a little bit of a it
5 depends. And the reason why we do that is the
6 flexibility of trying to address different
7 circumstances, different situations, running from an
8 employee that is, you know, more of a blue collar
9 situation to say, a UH professor and sort of the
10 wide gamut that runs between that. But again,
11 holding that ultimate standard of highest standard
12 ethical conduct in mind.

13 The Ethics Commission provides education,
14 advice, we do enforcement, and we also handle all of
15 the disclosures and make sure those are available
16 for the public.

17 Let me just pause there for a quick second
18 because I really want to emphasize the advice part
19 of what the Ethics Commission does. We have a
20 attorney of the day who is specifically assigned to
21 basically sit there and handle any phone calls, any
22 inquiries, emails, and to be able to do that on a
23 confidential basis. We want people to come forward
24 to us, and advice is prospective. If you did
25 something wrong in the past, we're not going to do

1 as much about it, but prospective situations -- what
2 do I do about this coming up?

3 And again, we handle them confidential,
4 and even if it winds up being some type of
5 enforcement action, we won't use that call as a
6 basis for our enforcement. We want you to feel
7 comfortable in calling and asking questions.

8 And let me be a little bit more specific
9 about this. Part of the purpose of the Ethics
10 Commission is to help maintain public confidence in
11 government generally. We have as much of an
12 interest in keeping your name out of the paper for
13 an ethical misconduct as you do. We have a shared
14 interest there. And so the idea is to try to make
15 sure that we're able to help advise and help give
16 clarity.

17 There are situations where we'll provide
18 advice letters, for example, that you can keep. And
19 so if someone asks you a question, you can say, I
20 talked to the Ethics Commission. They gave me a
21 letter and I followed their advice. Right? That
22 helps ensure confidence that things were
23 appropriately handled and in the best way we can.

24 So again, let me emphasize -- please do
25 not be afraid to call and -- and ask for advice if

1 you have a situation coming up in front of you.

2 Okay?

3 So one of the basis that we are here is
4 there is now a mandatory ethics training requirement
5 for all state employees. We have approximately 82
6 percent, I think, of all state employees currently
7 have taken a mandatory ethics training, and that
8 there is a subset of folks that are required to take
9 a live training -- that includes this body, so I
10 appreciate you being here and participating. And
11 anyone else who is a state employee who is not sort
12 of in the what I call, high profile -- boards,
13 commissions, or sort of a high level, can take our
14 online self-directed training, which is available on
15 our website.

16 **CHAIR GIOVANNI:** Robert?

17 **MR. HARRIS:** Mm-hmm?

18 **CHAIR GIOVANNI:** Quick question. So we
19 have two Commissioners absent today. Is it
20 mandatory that they find a way to get this training
21 from you?

22 **MR. HARRIS:** Sure. Good question. Yes.
23 So as you can see that they do have an obligation
24 within 90 days to take the ethics training. We do
25 offer live trainings approximately once a month.

1 They're available on our website, and I'll show you
2 the link in just a second. So they can easily sign
3 up. I believe our next one is the 23rd. So they
4 sign up and take it, they'll get credit for that, as
5 well.

6 **CHAIR GIOVANNI:** Would that be by video?

7 **MR. HARRIS:** It is via Zoom. Correct.

8 And it will be substantially similar to this.

9 There's an opportunity, obviously, when you have
10 something specific agency, we can tailor a little
11 bit. This will be a little bit more general if they
12 take that. But again, it should -- it meets the
13 requirement and should hit all the important topics.

14 **CHAIR GIOVANNI:** Thank you.

15 **MR. HARRIS:** Sure.

16 So this will meet your requirement for the
17 next four years. We do keep a record of that. We
18 also can issue certificates, which you can keep,
19 too, just to make sure you have in your records to
20 say, hey, I met this requirement.

21 So this is our website on -- it has a
22 bright, green button on it. When you get to it, it
23 looks literally like this, so it makes it very easy
24 to find where to hit the training requirements. And
25 then, it does have the sign-up link for all the live

1 training in the future. And again, I'm sharing this
2 for anybody who may be watching it for the public,
3 but also for other staff employees, et cetera, that
4 need to meet this requirement.

5 Okay. So our program. We're going to
6 cover a bunch of different topics, and we're going
7 to try to loosely grip them together. And I'll sort
8 of talk about when we meet -- switching to different
9 topics. I'm -- for any of you that have taken
10 philosophy, or sort of studied ethics, or thought
11 about ethics in general, this isn't necessarily
12 that. This is a code. It is a directive -- here
13 are the things that you're supposed to do or not do.
14 And so it's less theoretical and maybe more applied.

15 And so walking through a code, just as if
16 I were to walk through the tax code may not always
17 be the most exciting thing -- I do hope you ask
18 questions. We do have hypotheticals in here, again,
19 to try to make sure you're thinking through what it
20 is. But again, I recognize some of the stuff may
21 not be as applicable to what you do on the Land Use
22 Commission, and some of it may be very applicable,
23 and I encourage you to try to ask those questions
24 when that comes up. Okay?

25 So these are different topics we're going

1 to go through. I won't read them for you. I assume
2 you can. And let's start with gifts. No problem.
3 So we have a general standard on gifts given to
4 state employees or board commission members. It's
5 the same one that's in almost every single state in
6 the United States, and it's pretty close to the
7 federal standard, too. It says, essentially, don't
8 accept any gift if it is reasonable to infer the
9 gift is offered to influence or reward you for
10 official action.

11 I attend a annual ethics conference, and
12 every state and every jurisdiction says this tends
13 to be one of the most controversial things. Tends
14 to be more legislators, to be frank, who complain
15 about this. State librarians, for some reason,
16 never ask me much about gifts that they're being
17 offered. But the -- the key thing I'm going to
18 strike here is that this is from a reasonable
19 perspective.

20 If you don't mind, go ahead and go back.

21 From a reasonable perspective. So it's
22 what, like, a person in the public would think. Not
23 necessarily you. Right? So you think, hey, a Moana
24 Pua is not going to influence me. Right? I -- I
25 don't need a Moana Pua. I don't -- I'm on a diet --

1 or whatever it may be. But the point is it's not
2 what you -- you specifically would think of the
3 situation, but it's what a member of the public
4 would think. And so we try to strive for that.

5 And this standard of what gifts can or
6 can't be given has evolved over the years. And so
7 there -- want to try and express something you may
8 have heard five, 10 years ago may no longer be true,
9 so please pay attention.

10 So the next slide -- what is a gift? The
11 legal definition, essentially anything of value, is
12 fairly broad, so it's applied to anything from gifts
13 of a golf trip, it can apply to food, travel, or
14 just gift baskets in general. Again, generally, if
15 it has value and it's being given to you, it -- it's
16 likely going to meet the definition.

17 So in 2020, the Ethics Commission adopted
18 a three-part factor test to determine if you can
19 accept a gift. There's also a list of things are
20 specifically exempted from this rule, and we'll get
21 into that in a little bit. The three-part factor
22 test -- and you can imagine how exciting it is for
23 people who say, well, can I take this gift? Let me
24 apply the three-part factor test. Maybe a little
25 more challenging than we like. The idea is it tries

1 to create some flexibility of situations when gifts
2 really benefit. And so it allows us to have more
3 flexibility, and it allows us to have more
4 flexibility in saying when people can take
5 something. It is not as bright line or clear,
6 perhaps, as we'd like, so we're going to take
7 another stab at trying to create some more
8 exceptions to create more of a bright light rule.

9 The things that we're going to look at --
10 -- sorry, stay back --
11 -- we typically are going to look at is
12 the relationship. So we're going to really talk
13 about this more in in a second. We're going to look
14 at the value of the gift, and we're going to ask is
15 there State benefit through accepting this gift?

16 So next slide.

17 So looking at the relationship, typically,
18 if it is being given by somebody that you inspect or
19 regulate, or is a vendor or contractor, or is a
20 lobbyist that appears before you, we generally are
21 going to say you can't accept gifts from them. And
22 fairly obvious reasons. Right? So if it's the
23 Public Utilities Commission and Hawaiian Electric's
24 offering a gift, typically, we're going to say, hey,
25 it's just not appropriate. You know, you shouldn't

1 accept it. And that's the relationship test. We're
2 look at are they asking you to take some type of
3 official action where, you know, you're going to
4 make a decision on something that impacts them?
5 That's the type situation where I'm going to say,
6 hey, pause. It's not appropriate.

7 Next slide.

8 We're also going to look at what the value
9 of the gift is, and sort of a sliding scale. If
10 it's worth a lot, we're more likely to say, hey,
11 maybe that's inappropriate. Or if it's something de
12 minimis or nominal, we'll more likely say that's
13 fine.

14 Next.

15 And then, probably the most important one,
16 is there a State benefit? So examples we'll talk
17 about a second might include travel. Someone's
18 offering to pay for you to attend a conference where
19 you're going to learn something that's going to
20 substantively allow you to do your job better. It's
21 a pretty high State benefit. Right? We're more
22 likely to say yes to that type of circumstance
23 versus something that is just purely entertainment.
24 Someone wants to give you a gift, say, to a Taylor
25 Swift concert. Say, there's really not a lot of --

1 I mean, sounds fun, but not a lot of State benefit
2 to that. Right? And so that's sort of how we're
3 going to look at those things.

4 So a county official who appears before
5 the Land Use Commission offers a gift basket to one
6 of the Commissioners. Can that Commissioner accept?
7 Show hands, yes. Show of hands, no. Great. This
8 is going to be a fun session. Thank you.

9 Next quiz. A developer meets with Housing
10 Director Zoe about an affordable housing RFP and
11 offers to pay for dinner. Can Zoe accept? Show of
12 hands, yes. Show of hands, no. Let me add an
13 additional question. Can Zoe meet with a developer
14 and have dinner? Just in general? If she pays her
15 own way? Yes, absolutely. Right? I mean, the
16 intent is not to stop interactions and discussions.
17 Right? We want government officials in general to
18 be responsive to the public, and so that -- that's
19 fine. It's just the idea is that there is sort of a
20 line of hey, you know, I'm going to pay for myself.
21 Let's -- let's go ahead and have that conversation.
22 And that's hopefully the culture, you know, we want
23 people to perceive government to have. I don't need
24 to buy things, I don't need to provide food or other
25 items in order to get serviced.

1 Again, we sometimes will get pushback.
2 Say well, hey, what about gifts aloha, or you know,
3 like, the -- the cultural experience. Right? Gifts
4 of aloha, in my mind, are typically if I have
5 tangerines, I give to my neighbor. They have
6 mangoes, they give to me. Right? There's not a
7 expectation, there's not a expectation of
8 reciprocity, and there's not a expectation they've
9 got to do something for that. Right?

10 The problem is from a member of the
11 public, if they see one government official having
12 mounds and mounds of food every day being piled up
13 in front of them, perception might be I've got to
14 give food in order to have service. I've got to
15 give food in order to be seen. Right? And -- and
16 no. Right? We're here to service the public in
17 general, and the expectation is no, you don't need
18 to do that.

19 So there are some specific gift exemptions
20 that are provided. I'm --

21 Go ahead, next slide. There we go.

22 So typical exemptions include gift of lei.
23 Not money lei, but lei. Have to say that.
24 Sometimes people say, well, but lei are really --
25 can be really expensive. It's just per se exempted.

1 So even if you get a, you know, really exotic lei
2 that's worth hundreds of dollars, you know, that's
3 per se exempted.

4 I -- nominal items that essentially are
5 things that you would get at a conference, like, you
6 know, they have somebody's name on it, or something
7 like a pen, that normally you wouldn't be able to
8 resell. That it really doesn't have any value, we
9 say that's okay. Doesn't mean that if it's, like, a
10 Yeti cup that has someone name on it that has some
11 value, you know, you would say okay, no, you
12 shouldn't take that, but pens, pencils -- you know,
13 just small things are okay.

14 We also recognized in this sort of teacher
15 situation, gifts that serve nominal value that are
16 connected to something specific that nobody would
17 reasonably think was really intended to influence a
18 reward. So a gift of an apple to a teacher kind of
19 circumstance. But again, the intent there is it's
20 supposed to be nominal.

21 If you have any questions about something
22 that's being offered to you, or -- or something
23 along those lines, if it would fit with the
24 exemptions, I encourage you to call us and talk to
25 us about it. And again, we are in the process of

1 working at admin rules to try to create more
2 exemptions, again, to create more bright line
3 scenarios. Okay?

4 **CHAIR GIOVANNI:** So I've got two questions
5 on gifts. So maybe it's my ancient memory, but I
6 used to recall something like a \$50 rule. Is that
7 relevant?

8 **MR. HARRIS:** So inflation may have hit
9 your memory. It was \$25. It used to be a gift of
10 aloha, \$25. We have moved away from that, and we
11 have the factor test. The rationale for that --
12 number of different reasons. We have lots of calls
13 where people got something that was \$29.99 kind of
14 circumstances, and just -- it started becoming very
15 arbitrary. The circumstances, for example, somebody
16 wanted to give you -- during COVID -- wanted to give
17 you -- you know, protection devices that worth more,
18 serve the State the benefit. We want to be able to
19 say say, yeah, that's entirely appropriate. Right?
20 So we moved to something that creates more
21 flexibility. Not quite as bright line. So that --
22 that rule no longer applies, and you know, part of
23 this training is to actively say, you know, that's
24 no longer something to look at.

25 **CHAIR GIOVANNI:** Good. The other conflict

1 -- potential conflict I see is the practice of
2 omiyage --

3 **MR. HARRIS:** Mm-hmm.

4 **CHAIR GIOVANNI:** -- which my wife is
5 receiving things almost weekly from friends that
6 travel and go places, and we see occasionally. And
7 it's just part of the culture. How does that factor
8 in?

9 **MR. HARRIS:** Sure. So again, something
10 that's received in your personal scenario -- so
11 personal situation, personal friend -- and again,
12 when I say this, I want to be really clear -- not
13 somebody you met in the scope of being on the Land
14 Use Commission, or scope of a state employment or
15 state board or commission. So like a neighbor, for
16 example. That's entirely appropriate. You're not
17 being given it because of your position. But if
18 it's because of your position, that's when we
19 started drawing the line, and the idea is -- so to
20 say it's not necessary. Right?

21 **CHAIR GIOVANNI:** Yeah.

22 **MR. HARRIS:** It's not expected. And sort
23 of, within an office, like with peer -- employees
24 that are peers of one another -- again, we in
25 general say that's okay. But we also try to avoid

1 the supervisor underling kind of scenario, where
2 there's expectation, or some type of perception of
3 impropriety in that.

4 **CHAIR GIOVANNI:** Thank you. That's
5 helpful.

6 **MR. HARRIS:** Sure.

7 **COMMISSIONER LEE:** Chair?

8 **CHAIR GIOVANNI:** Commissioner Lee.

9 **COMMISSIONER LEE:** Mr. Harris, can you
10 comment on the slight variation that Honolulu
11 County's rules have on what you just said? Thank
12 you.

13 **MR. HARRIS:** Yes, the Honolulu County just
14 adopted new county code, and they have gone in a
15 different direction. There's a lot of similarity,
16 but they've gone in a different direction, and that
17 is just that it's a mix of a couple different
18 things. You know, obviously, when you have two
19 different jurisdictions, they may go in different
20 directions -- that happens. I think also they were
21 trying to get those -- that ordinance passed for
22 over a year, so I think there's probably some give
23 and take that happened there.

24 I think, again, the benefit of having a
25 dollar value -- and a number of states have done

1 that -- and just anything below, you know, as it is
2 a lot easier to apply. We also see a lot more abuse
3 that happens with that, as well. Right? And so I
4 think the intent here was to try to build something
5 that's more flexible, but also was able to try and
6 prevent some of the abuse that was happening.

7 Gifts of travel. If you are offered by a
8 non-state or federal agency a trip to a conference,
9 for example, we do have on our website a
10 questionnaire. You're not required to fill it out,
11 however, if you do, you'll be asked some basic
12 questions like who's paying for it? What's the
13 agenda? Why are you going? We do issue a letter
14 back to you essentially saying, hey, this is allowed
15 on the Ethics Code, and it's something that you can
16 keep. So some agencies have made it a practice to
17 always do that for gifts of travel just in order to
18 have that assurance.

19 Some of the things that we will require,
20 for example, is it's supposed to be a modest food,
21 modest lodging, economy travel -- economy plane --
22 airfare, for example, which is a DAGS requirement.
23 It could just be clear for all state employees in
24 general. But the idea is, you know, we generally do
25 say yes to this, particularly if it's a genuine bona

1 fide conference, where you're going to have some
2 educational opportunity or benefit.

3 Next.

4 So Sean, a UH Hilo curriculum specialist,
5 was invited to go to an education conference. A
6 federal grant will cover his travel costs. Can he
7 go? Show of hands, yes. Anybody saying no?
8 Absolutely. And in fact, this is kind of an easier
9 question than it sounds because it's a federal
10 grant. It's not even a gift. We would -- would,
11 generally speaking, just say yes to that.

12 So there is a second requirement. Again,
13 a lot of people confuse these two. I want to be
14 really clear. There is a can I accept a gift, and
15 there's the next question is, do I have to report
16 it. Okay?

17 **CHAIR GIOVANNI:** Go back a slide.

18 **MR. HARRIS:** Go back a slide.

19 **CHAIR GIOVANNI:** So I go to this
20 conference, and they have -- there's a morning
21 session, and in the afternoon, we all go play golf.
22 And the golf is included in the -- do I have to
23 discriminate and pay for my own golf?

24 **MR. HARRIS:** Yeah, so those are the types
25 of questions that we would go through if you were to

1 ask a travel -- you know, ask for travel requests.
2 We would say, hey, the golf is -- typically is going
3 to be an entertainment function. There's really not
4 a state purpose. We would encourage you to not
5 attend or pay for it yourself. Just like if there
6 was a rock concert, or something along those lines.
7 There's really not a state benefit to being at that
8 part of the conference. Yeah.

9 So gift reporting -- if anyone receives a
10 gift from the same source that's worth more than
11 200, and it can be gifts -- like, plural, that
12 cumulatively are worth more than \$200, and the
13 source has interests that may be affected by your
14 official action -- to be clear, we read that pretty
15 broadly. If you're being given the gift in your
16 official role -- like, you're being invited as a
17 Land Use Commissioner to attend a event, a function,
18 a conference, we'll probably expand that and say
19 it's, you know, likely that your -- this would
20 probably apply. We'd encourage you to report that,
21 or we'd require you to report that if it's over
22 \$200.

23 Reporting deadline is June 30th, and it
24 applies for the calendar year previous.

25 So quick summary. Don't accept a gift if

1 it reasonably appears the gift is intended to
2 influence or reward you. Report gifts over \$200
3 from anyone who may be affected by your actions.
4 You can't accept a prohibited gift just because you
5 report it. Okay?

6 All right. Let's move on. Actually, let
7 me pause for a second. Any other gifts questions?
8 Okay. If you were legislators, I'd be getting a lot
9 more questions.

10 Fair treatment. This is a pretty broad
11 term that applies for a lot of different functions.
12 It, generally speaking, means you can't use your
13 state position to obtain unwarranted privileges,
14 advantages, or treatment for yourself or others.
15 Now, we're going to get into some very specific
16 parts of this, but this is the general overview what
17 it means.

18 Next.

19 So -- may not be as applicable here, but
20 you cannot use your state position to obtain outside
21 employment or contracts for yourself. Let's give an
22 example of that.

23 Next.

24 Celia, a utilities regulator, is reviewing
25 O'ahu Solar's permit request. Again, anybody who's

1 familiar is probably going to say that doesn't
2 really happen, but just please go with it. She
3 plans to leave the agency. Celia meets O'ahu
4 Solar's CEO and asks if they need a compliance
5 officer. Is that okay? Show of hands, yes. Show
6 of hand, no. Thank you.

7 So yeah, in this circumstance, the
8 perception is that the O'ahu Solar might feel
9 compelled because this is somebody regulating me,
10 and I'm probably going to have to try to hire this
11 person or give it to them. And it appears like
12 she's using her position in order to get this job.

13 Now, if it was an open job offer, for
14 example, and she just applied, it would be a
15 different circumstance. In that circumstance, I'd
16 probably encourage her to talk to her supervisor and
17 -- and recuse herself from anything involving this
18 company, and make sure that's transparent and clear.
19 But again, the idea is you can't use your position
20 to try to get employment in some way that's
21 leveraging it.

22 Go ahead.

23 **CHAIR GIOVANNI:** So for every petition
24 that comes before us -- if the O'ahu Solar came
25 before us, as a matter of course, we ask the

1 Commissioners to disclose whether or not they have
2 any potential conflict, real or perceived. And
3 then, based on that, we invite comment if anybody
4 has issue with that. And we -- we'll make a
5 decision to have that person participate or not
6 participate in that specific hearing. Is that
7 protocol a reasonable way to deal with some of --
8 some of this type of potential conflicts?

9 **MR. HARRIS:** Absolutely. I think it's a
10 great standard. We do have a separate conflict of
11 interest section that we will get into that also
12 applies. This is really looking at using -- for
13 example, in that hypothetical, if halfway through
14 the proceeding -- I'm sure none of the Commissioners
15 here would do this, but if one of the Commissioners
16 were to call a petitioner --

17 **CHAIR GIOVANNI:** Yeah, it happens.

18 **MR. HARRIS:** -- and say, hey, are you guys
19 hiring. Right? That -- you know, this would not
20 only be a conflict of interest, it also create a
21 fair treatment issue. So there would be two
22 violations that we'd be looking at.

23 **CHAIR GIOVANNI:** Yeah. It's not uncommon,
24 for example, during the course of a -- of an
25 evidentiary hearing, where there is a witness that

1 might come forward and present, and a Commissioner
2 might have a relationship with that. So even at
3 that point in time, we'll invite a -- a disclosure.

4 **MR. HARRIS:** Yeah.

5 **CHAIR GIOVANNI:** And then deal with it.

6 **MR. HARRIS:** I do want to separate --
7 because we are going to talk about what is a
8 conflict of interest for purposes of the Ethics
9 Code. And that may be -- that may be more apropos
10 what you're saying versus somebody using their
11 position affirmatively to get an advantage. Right?
12 So I'm going to try to get a job. Right?

13 **CHAIR GIOVANNI:** Yeah. Something of
14 value.

15 **MR. HARRIS:** Yeah.

16 Go ahead and go to the next section.

17 So in addition, state employees and board
18 official members are not allowed to accept double
19 compensation for performing your state duties,
20 unless permitted by law. So I recognize you are all
21 very, very well paid for the current positions you
22 have. Thank you for your service.

23 **CHAIR GIOVANNI:** You could double it.
24 Right?

25 **MR. HARRIS:** Yeah. A example for this

1 might be is someone saying, hey, you guys are doing
2 a great job. I'd like to give you a couple hundred
3 bucks. Right? This would apply. I would say no.
4 I mean, this is -- you know, it's a volunteer,
5 unpaid position. You're not allowed to take money
6 as a attempt to appear to reward or influence you in
7 some way.

8 This comes up in the question of
9 honorarium a lot. If someone's speaking in their
10 state capacity and speaking on something they know.
11 For example, Director of DOT's talking about future
12 state projects, and someone, you know, offers him an
13 honorarium, we'd say no, hey, it's a part of your
14 state job. You're not really supposed to get double
15 compensation for that. Maybe you deserve to be paid
16 more. Maybe all of the Board of Commissioners
17 deserve to be paid. Right? You know, that's a
18 valid conversation, but you shouldn't individually
19 try to take advantage or get compensated from it.

20 Don't use state time, equipment,
21 facilities, or other state resources for private
22 business purposes. Let's break this one out for a
23 second.

24 Go ahead to the next slide.

25 What is a private business? It is a very,

1 very broad term. It includes both for-profit and
2 nonprofit organizations. It also includes political
3 campaigns. Broad term. Private business.

4 Next.

5 So examples would be not doing outside
6 work for a private employer while on state time or
7 state resources, or state facilities, selling foods,
8 crafts, et cetera to co-workers, fundraising for
9 private clubs, organizations, or charities, campaign
10 activities, such as asking for campaign
11 contributions, campaign events, et cetera.

12 Next.

13 There are some exceptions that have been
14 built in for fundraising that have been expressly
15 recognized. They include Aloha United Way, Hawaii
16 Foodbank, and Blood Bank or Hawaii, where state
17 employees are allowed to do fundraising around these
18 specific entities. In addition, the Governor and
19 the Senate President, the Speaker, and the UH
20 President are allowed to designate other specific
21 fundraising situations. But again, just in general,
22 we say, you know, you're not allowed to do that on
23 state time. Okay?

24 In addition, under the fair treatment,
25 you're not allowed to use state property for private

1 business or private use. So you can't take a state
2 equipment or machinery home for private or personal
3 use.

4 All right. So Rich works for the Land Use
5 Commission, and volunteers on a nonprofit board.
6 Rich uses his agency's Zoom equipment to help his
7 nonprofit run a meeting. Is that okay? Show of
8 hands, yes. Show of hands, no. Seems really easy
9 when I put it in context of this, but we do see this
10 pretty often because people just want to help out.
11 Right? There's that sort of aloha compassion -- oh,
12 of course. I can't use it. It's not being used. I
13 can just take it so it can be used for this thing.

14 But then, if it -- you know, A, you're
15 providing a benefit to that one nonprofit, and all
16 the other nonprofits have the similar expectation of
17 why can't I use it? There's nothing stopping, for
18 example, if the Land Use Commission wanted to make
19 this facility open to all nonprofits, wouldn't be a
20 fair treatment issue. If you start saying only this
21 one, or only that one, now we start having a fair
22 treatment issue. Okay?

23 Next.

24 And I think this is the final subsection
25 of the law, which says, you can't enter into

1 substantial financial transactions with subordinates
2 or those you supervise or inspect. So maybe being a
3 bit specific with a hypothetical, but I haven't
4 really thought through, so forgive me if it winds up
5 failing. If Dan wanted to sell his car to Dan, we
6 would say, hey, no, you're not allowed to do that
7 because there might be an appearance of coercion, or
8 an appearance that, you know, I've got to accept or
9 I've got to say yes. Even though it's maybe a
10 perfectly above board transaction, we'd still say
11 that's a violation. Okay? Loan, sale. Those kinds
12 of things.

13 So Jayna, a food inspector, works as a
14 real estate agent on the weekend. During
15 inspection, she offers to help the restaurant owner
16 find a new location. Is this okay? Show of hands,
17 yes. Show of hands, no. And so this is going to go
18 back to the -- the discussion of, you know,
19 essentially trying to find -- again, this
20 hypothetical may not be as well written as I'd like.
21 The earlier discussion we had about not trying to
22 find outside employment, the assumption here is if
23 she's going to get a commission for finding a new
24 location, she's using her position as the food
25 inspector to basically say, hey, can I represent you

1 as my part-time weekend job?

2 And so we'd say no. Like, this is
3 inappropriate. Again, hypothetical's not as clear
4 as it should have been, but you know, you can't pick
5 up outside real estate work while you're in your
6 position as a food inspector. Okay?

7 Quick summary. Don't use your state
8 position to get outside employment, don't accept
9 double compensation, or maybe I should just say,
10 compensation here, don't use state resources for
11 private business activities, and don't enter into
12 substantial financial transactions with
13 subordinates.

14 Any questions on fair treatment? This is
15 one of our bigger topics. Just to be clear, we have
16 one other, which is conflicts of interest, and then
17 the rest of the sections get pretty fast and quick,
18 so bear with us. We're -- we're making good time
19 here.

20 We do have a new nepotism law. I'm not
21 sure if it will necessarily come up in the context
22 of the Land Use Commission, but just so you're aware
23 of it, state employees, state board members, except
24 employees in the legislative and judicial branches
25 are not allowed to hire supervisor --

1 -- go ahead and go to the next one --
2 -- are not allowed to take action
3 affecting relatives or household members. So
4 actions would include employment, hiring,
5 supervising, or awarding or administering contracts.

6 Okay?

7 Next. I think we can skip this one.

8 Okay. Let me just quickly say that
9 nepotism, we do have a good cause process where if
10 there is, for example, only one employee -- or one
11 person applied for an open position, it was
12 important to fill that position, and the agency has
13 done a really good job of advertising and just,
14 there's nobody else available, it's a type of
15 situation where the Ethics Commission has the
16 ability to give a good cause exception to the
17 nepotism law as a public process. Idea is it's
18 transparent so everyone can see the steps the agency
19 did to try to fill the position. Nobody else is
20 available and it's publicly posted, so if someone
21 has a question later, why is your son, daughter,
22 hanai, adopted relative working for you, there's a
23 public good cause exception that's available for
24 people to see.

25 **UNIDENTIFIED SPEAKER:** So that was my

1 question. Do you define relative specifically?

2 **MR. HARRIS:** There is a definition, and
3 off the cuff, I'm not able to give that to you. I
4 think it's --

5 **UNIDENTIFIED SPEAKER:** It's spelled out.

6 **MR. HARRIS:** -- it is clearly spelled out.
7 It's like two degrees of -- of -- again, don't quote
8 me on that. But it's clearly spelled out. It's on
9 our quick guide. It also includes hanai -- so just
10 to be -- we're picking up the DLIR's definition of
11 hanai in that, as well. It also includes household
12 member. So if someone lives with you, that also is
13 included.

14 **UNIDENTIFIED SPEAKER:** I have another
15 question. On the slide before for the financial
16 transaction, you mentioned subordinates. That does
17 assume that your coworkers, it's okay?

18 **MR. HARRIS:** That is correct. So some
19 agencies are really large. Department of Education,
20 I think, has over 20,000 employees. There's nothing
21 prohibiting multiple family members working for
22 Department of Education. The key really is looking
23 at supervising, sort of being in a position of
24 power, sort of what classically is thought of
25 nepotism. Hiring and supervising.

1 **COMMISSIONER CARR SMITH:** Chair? Sorry.

2 **CHAIR GIOVANNI:** Go ahead, Ms. Carr.

3 **COMMISSIONER CARR SMITH:** Can you explain
4 more about the groups that mentioned that are an
5 exception to the law, and why they are?

6 **MR. HARRIS:** Oh, so both the legislative
7 branch and the judicial branch have enacted their
8 own rules on nepotism, and so it is prohibited, but
9 they are self-governing themselves in that.

10 **CHAIR GIOVANNI:** Mr. Lee.

11 **COMMISSIONER LEE:** Were you referring more
12 to, like, the Aloha United Way and -- and those
13 groups?

14 **COMMISSIONER CARR SMITH:** No, on the first
15 slide of nepotism, or maybe it was the second, it
16 talked about some groups that -- except employees in
17 legislative and judicial branches. Those are the
18 ones I'm talking about. But they're -- those are
19 the ones that are self-governing.

20 **MR. HARRIS:** As many of you are familiar,
21 the political process is sausage-making, so
22 sometimes laws come out maybe not quite the way I
23 would have drafted it, but again, I -- I feel fairly
24 confident that both branches of legislature and the
25 judiciary have taken steps to essentially prohibit

1 nepotism. So they have slightly different, you
2 know, restrictions, but this law applies to any --
3 essentially anyone else, and so that is, you know,
4 the bulk, you know, 95 percent, probably, of all
5 state employees.

6 **CHAIR GIOVANNI:** So just a point in
7 general clarification for all of the ethics rules
8 and regulations, I presume that they apply to -- you
9 talk about employees that -- employees that are
10 hired on these -- on a sole source basis, for these
11 89-day contracts commonly throughout government in
12 Hawaii? I presume that all -- all this applies to
13 them, as well.

14 **MR. HARRIS:** A large amount applies to
15 them. There's going to be some exceptions, and
16 we'll actually talk about some of those. Like,
17 there's post-employment law restrictions, for
18 example, that may not apply to somebody who's only
19 been an 89-day hire. But yes, the definition of
20 state employee is pretty broad. It would even
21 include an intern, for example. And the reason for
22 that is -- like, for example, we're going to have to
23 cover confidentiality. If an intern comes up and
24 learns something that is confidential, the idea is
25 that those restrictions still apply to them And,

1 you know, again, if they have a position of power --
2 typically, interns aren't quite as high up. If they
3 have a position where they're making official
4 actions, a lot of these restrictions would still
5 apply to them, as well. Okay?

6 So confidential information. What good
7 timing. So this is probably one of the shortest
8 sections, although you see some recurring references
9 to it. Essentially, don't disclose confidential
10 information. And that's a permanent restriction.
11 And don't use it to benefit anyone. Most of what
12 government does is public. It's a public record. A
13 lot of your -- you know, essentially, all your
14 hearings are public, so you may not be privy to a
15 lot of confidential information, but classic
16 examples might include Social Security numbers, or
17 something else that is privileged and protected, you
18 just wouldn't be allowed to, then, turn around and
19 use that information to benefit yourselves, or to
20 disclose it more broadly. If you have questions
21 about what is confidential -- a lot of times we'll
22 actually rely on the agency itself to help define
23 what's confidential, or if it's expressly protected
24 by law, we're going to say, hey, that's just stuff
25 you can't use outside. Okay?

1 Another example might be, for example, if
2 a employee knows access to social media accounts for
3 the government agency and they need employment, they
4 can't turn around and start using the information
5 they have to -- for their own personal benefit or
6 provide it outside. Just giving you some common
7 examples we've seen. Okay.

8 Next.

9 Okay, now we're going to jump into
10 conflicts of interest. This is probably the other
11 large section, and, you know, with that, we'll
12 probably be through the meat of the Ethics Code.

13 Let's go ahead and go to the next slide.

14 So we're going to talk about -- we're
15 going to break this out, but this is probably the
16 one that is the most common conflict of interest
17 section that we talk about, which is disqualifying
18 yourself or not taking official action affecting a
19 business in which you have a financial interest. So
20 let's break what that means out.

21 Financial interest means being an owner,
22 employed, an officer or director, even if you're not
23 receiving any compensation. Let me highlight that
24 one. If you're a officer or director of a
25 nonprofit, for example -- lots of people probably in

1 your positions are. Right? You're exactly the type
2 of folks people would want on a nonprofit, that is
3 going to be considered a fiduciary duty. You have
4 fiduciary duty as a member of a board, or as a
5 officer director to that nonprofit. You are
6 supposed to keep their financial interest above and
7 beyond your own, and that is going to fit within the
8 definition of a financial interest. You're supposed
9 to help elevate that entity that you're a part of.
10 So a lot of people don't necessarily pick up on
11 that. Right? Like, I'm not getting paid, you know.
12 No, it's still a financial interest in that entity.

13 Owner of real property, a loan or debt, or
14 a creditor of an insolvent business all meet the
15 definition of what is a financial interest.

16 **CHAIR GIOVANNI:** How about a trustee?

17 **MR. HARRIS:** Trustee, yeah, would -- would
18 meet the definition of that.

19 **COMMISSIONER CARR SMITH:** And a spouse?

20 **MR. HARRIS:** We'll get to that --

21 **COMMISSIONER CARR SMITH:** Okay.

22 **MR. HARRIS:** Just a second. Yeah.

23 Next.

24 So an employee's financial interest --
25 thanks for the leading question -- includes a

1 spouse, a civil union partner, or dependent
2 children. And the very first question I usually get
3 is what's a dependent child? It means for tax
4 purposes. If they're still on your tax filings as a
5 dependent child. So again, you can't just look at
6 your financial interest, you also have to talk to
7 your spouse or -- and we've had some unusual
8 circumstances happen. For example, somebody's child
9 -- you know, somebody started volunteering for an
10 entity that somebody regulates. And you know, the
11 person like, well, wait a second. You know, like, I
12 -- I had nothing to do with it. Still would be
13 defined as a conflict of interest, and you have
14 something we'd have to work through. Okay?

15 Next.

16 Official action. So what does official
17 action mean? It is a pretty broad term.
18 Essentially, if anybody knows the difference between
19 sort of a ministerial or discretionary. So anything
20 that's discretionary is going to fit within the
21 definition of a official action. It can include a
22 recommendation. So a lot of times, someone will
23 say, well, I don't make the ultimate decision.
24 We'll still ask, did you make a recommendation that
25 someone's going to rely upon? If so, that's an

1 official action. Okay?

2 Next.

3 **UNIDENTIFIED SPEAKER:** I have a question.

4 **MR. HARRIS:** Sure.

5 **UNIDENTIFIED SPEAKER:** So what would be --

6 **UNIDENTIFIED SPEAKER:** Microphone.

7 **UNIDENTIFIED SPEAKER:** What would be the
8 penalty if you were to violate one of these sections
9 in the Act?

10 **MR. HARRIS:** So looking at penalties,
11 there are a couple. One, Ethics Commission has the
12 ability to issue fines, and we do do that in
13 enforcement proceeding. The fines can go up to
14 \$5,000 per violation, so sometimes, if there's been
15 multiple actions, it can be a number of violations
16 that have occurred. Even though it's just one
17 entity, you can have multiple situations where
18 something happened.

19 In addition, the agency itself can be
20 ordered to stop if it can't be a part of something
21 that's unethical. So the entire process can be held
22 up as a result of that. In addition, the AG's
23 office has the ability to go and undo actions that
24 were taken unethically. And so it would be an AG
25 decision if it's something that they want to pursue.

1 Classic example might be a contract that was awarded
2 unethically. The AG can actually go in and -- and
3 have that contract undone. Okay?

4 Next.

5 So DHS, or the Department of Housing
6 Services, issues an RFP for a graphic design
7 service. Ken was asked to serve on the evaluation
8 panel. His wife's employer, Noa Design Inc., is one
9 of the bidders. Does he have an issue? Show of
10 hands, yes. Show of hands, no. Okay. Thanks.

11 Again, just exploring. You know, it does
12 include spouse, and you may have to have some hard
13 conversations. You know, what are you involved in?
14 What are you doing? I need to know for purposes of
15 this because I don't want to have a surprise later
16 on in time. And again, having a process -- for
17 example, if an entity's coming before you, to have
18 that check-in is a really good idea.

19 I also emphasize -- we have talked about -
20 - actually, why don't we keep going a little bit.
21 I'm going do a little bit of wrap up.

22 Go ahead.

23 All right. So there are a couple of
24 different sections. We just covered the ones
25 probably the most common. Let me get through these,

1 and I'm going to do a -- a Gestalt conversation.
2 You're not allowed to create new conflicts of
3 interest. So if you -- if you walked into being a
4 Land Use Commissioner with pre-existing financial
5 interest and involvements of people before you,
6 you're obligation is to recuse yourself, and that
7 takes care of it. That -- that's the only thing you
8 have to do.

9 However, once you're in the position,
10 you're not allowed to create a new conflict. So if
11 you believe that an entity is going to come before
12 you and take -- and you're likely to take official
13 action affecting that business, you're not allowed
14 to suddenly acquire a financial interest in that
15 entity.

16 Next.

17 Mari is a director of community outreach
18 and works with several nonprofits as a part of her
19 state job. She would like to do more volunteer work
20 and was asked by one of the nonprofits to serve on
21 their board. Is that okay? Show of hands, yes.
22 Show of hands, no. So it is a no. And the reason
23 why is serving on the nonprofit -- serving on the
24 board is acquiring a financial interest or fiduciary
25 duty to that nonprofit, and if it's a part of her

1 state job to interact, she has now created herself a
2 conflict of interest. Nothing's stopping her from
3 volunteering. That's fine. Right? You can do
4 stuff on your outside, but it's creating a
5 financial, fiduciary involvement.

6 **CHAIR GIOVANNI:** So she can volunteer for
7 that nonprofit, but she can't serve on the board?

8 **MR. HARRIS:** The board. Correct.

9 **COMMISSIONER LEE:** Chair, I have a
10 question.

11 **CHAIR GIOVANNI:** Mr. Lee.

12 **COMMISSIONER LEE:** Mr. Harris, what if the
13 nonprofit has nothing to do with your state
14 position? Like, for example, you know, we're here,
15 and then, also then the Humane Society asks me if I
16 want to join -- and I suppose if they're going to,
17 you know, buy land and develop property, maybe, but
18 let's say, you know, until that bridge comes, you
19 know, is that allowed?

20 **MR. HARRIS:** Sure.

21 Do you want to go back a slide, if you
22 don't mind?

23 So great question. Thank you. The key is
24 if you have a reason to believe that you'll take
25 official action affecting that business. Right? So

1 again, you're probably in a -- and I think staff of
2 the Land Use Commission are in a good position,
3 probably, to help analyze -- is it likely that this
4 entity is going to come before you? If it's known
5 that they're likely to come be involved for some
6 reason, then, you know, we'd say, hey, just, you
7 know, wait until you're done with your service on
8 the Land Use Commission. But if it's -- again,
9 somebody's not doing any land use development
10 whatsoever, then, yeah, obviously, this would not be
11 applicable.

12 Go ahead and go forward two, please.

13 Other prohibitions include you are not
14 allowed to assist or represent others for pay in a
15 transaction before your agency on a matter in which
16 you have participated or will participate. So
17 again, if somebody asks for your assistance in
18 helping prepare a petition or something before the
19 Land Use Commission, now or in the future, if it's
20 something you've participated in, or would -- would
21 participate in with, you can't do that for pay. You
22 probably would also create some issues if it is
23 something you're to be deciding. For example, from
24 a Chapter 91 issue. So there -- there's other
25 issues, as well, but again, from an Ethics Code

1 perspective, this would be prohibited. Okay?

2 Now, I might even include, for example,
3 situations where it's not something that come up to
4 the Commission itself but may only be a staff
5 decision. Just how do I help fill this out, or
6 whatever it may be. Again, for pay, you wouldn't be
7 allowed to do that. Okay?

8 Greg is a DBEDT economist who does private
9 consulting work in his spare time. One of his
10 clients asks him for help in applying for a DBEDT
11 small business loan. Is this okay? Show of hands,
12 yes. Show of hands, no.

13 **CHAIR GIOVANNI:** Is he getting paid for
14 it?

15 **MR. HARRIS:** Yeah. Again, some of these
16 hypotheticals aren't as great, and every time I do
17 one of these presentations, I always think I have to
18 tighten this up. I think the presumption is it's
19 one of his clients, so it's for pay. And even if
20 he's maybe being paid for other aspects of it, it's
21 still going to be looked like you're being paid for
22 this. So you would say no, can't do it. Okay?

23 So quick summary. Disqualify yourself
24 when you have a conflict of interest. Don't create
25 new conflicts of interest for yourself, and don't

1 assist others for pay before your agency.

2 If you don't mind, I'm just going to take
3 a quick second. Many of you are probably familiar
4 with the building code. Building code creates the
5 minimum floor. Right? To build something, you have
6 to meet that, at least. Right? Doesn't stop you
7 from building better. It doesn't stop you from
8 going for lead or whatever other kind of standards
9 you want to achieve.

10 Similarly here, the Ethics Code is the
11 baseline. Right? But we have a Constitutional
12 mandate saying the highest standards of ethical
13 conduct. And so there are many situations where,
14 hey, it may not be a financial involvement, but
15 there may be questions that, from a common layperson
16 point of view, people are going to say, that kind of
17 looks like a conflict, even though, for purposes of
18 the Ethics Code, it may not rise to it.

19 I'd encourage you to have that
20 conversation with us, with staff and -- and talk
21 about it, how to address it. It may be a matter of
22 just putting on the record, for example, as it
23 sounds like the standard, and allowing parties to
24 object or no object. You know, just again, we
25 frequently will give advice on what we call

1 appearances of impropriety, and we'll just make
2 recommendations. Again, if you've met the Ethics
3 Code, you've met the baseline, that's it. Yeah, you
4 can proceed forward. But out interest, as I said
5 before, is to keep you out of the paper. Our
6 interest is to -- you know, just like you don't
7 necessarily want to be in the paper for something,
8 so if there's going to be an appearance, we'll try
9 to help walk through what can we do to help try to
10 resolve that?

11 And again, you know, being able to say
12 that you talked to the Ethics Commission. You're
13 following their advice. I think that creates some
14 level of objectivity, and from a public confidence
15 perspective, helps. And so we encourage you to take
16 advantage of that. It is a confidential. We will
17 issue a written summary for you, and it's your
18 ability to do with that written summary as you wish.
19 Okay?

20 All right.

21 **COMMISSIONER CARR SMITH:** Chair?

22 Question.

23 **MR. HARRIS:** Sure.

24 **COMMISSIONER CARR SMITH:** On conflict of
25 interest and recusals, does the Ethics Code get into

1 detail about recusals, or is there a standard
2 operating procedure within the state, different
3 boards and commissions, as to how -- if you recuse
4 yourself, what do you do? Do you leave the room?
5 Do you just be silent? That kind of thing.

6 **MR. HARRIS:** Thank you for the question.
7 Again, people can take a more broad version of when
8 to recuse and when they need to recuse. For the
9 Ethics Code, it's at subsection A, where you have a
10 financial interest in a business. And it may be
11 you, your spouse, or a dependent child, where
12 recusal is mandated. And we essentially say you
13 have to step away from all official action, which
14 would include making recommendations. And so the
15 thing -- you know, the most common situation I've
16 seen is someone saying, well, I won't vote, but
17 here's what I think. Right? No, you can't do that.

18 So I don't think we would obligate you to
19 leave the room, per se, but you can't share your
20 opinion, or advice, or recommendations, and try to
21 influence essentially that decision.

22 **CHAIR GIOVANNI:** If I may. We've been
23 advised -- we've been advised by our Attorney
24 Generals that if you recuse yourself, you have to
25 leave the room. I don't know if they've been

1 talking with -- about that -- what we've been told.

2 **COMMISSIONER CARR SMITH:** Yeah, that's why
3 I asked the question because you get different
4 feedback on this kind of thing. So I wondered if
5 there was a standard that we should all be using.

6 **MR. HARRIS:** So let me address that
7 briefly again, sort of in the context of the
8 building code. The Ethics Code, in this
9 perspective, creates the floor. Your own
10 administrative rules might have, you know, a higher
11 threshold, or you may have a practice that's at a
12 higher threshold. And that's perfectly fine, and --
13 and you know, I'd encourage you to follow that.
14 We're just sort of telling you what the bare minimum
15 is required to avoid getting into an unfortunate
16 situation. Okay?

17 **MS. KWAN:** Chair, break?

18 **CHAIR GIOVANNI:** I think that's a great
19 idea.

20 So it's 11:20. We'll come back in five or
21 six minutes. Recess.

22 **(Recess taken from 11:20 - 11:30 a.m.)**

23 **CHAIR GIOVANNI:** Okay. It's 11:30. We're
24 going back on the record. Executive Director will
25 join us in progress. There he is. Let's go.

1 Robert, back to you.

2 **MR. HARRIS:** So thank you.

3 I think we just have a few more minutes of
4 discussion, and obviously, again, welcome any
5 questions you might have.

6 So let's go ahead to the next slide.

7 So there is a provision that applies to
8 state contracts. This is specific to contracts
9 going to a state employee or a legislator. So if it
10 is a non-bid contract valued over \$10,000 that's
11 going to a state employee or legislator, it is
12 required that a public notice be given on the Ethics
13 Commission's website before that contract can be
14 awarded.

15 So an example might be a school hiring one
16 of its employees to do some type of plumbing, or
17 some other type of work in a non-bid contract, this
18 would trigger. And I think the intent, really, is
19 to make sure there is no impropriety, that it's not
20 a, you know, a attempt to reward an employee or
21 something, and that's -- it gives the public an
22 opportunity to object or be noticed.

23 This doesn't happen very often, to be
24 clear. And I suspect it is a combination of this is
25 not a -- it's pretty common -- most things are going

1 to be a bid contract, but also, we are trying to
2 make sure people are aware of this provision.
3 Again, that contract could be voided if they don't
4 follow this, so you know, again, it's everybody's
5 interest to try to make sure to follow this.

6 Other state contract provision includes
7 state agency is barred from contracting with a
8 business that is assisted in the matter by someone
9 who is 1, an employee or board member within the
10 past two years and worked on the same contract
11 matter as an employee or board member.

12 So an example might be somebody helps
13 prepare the RFP, leaves the agency, and then goes to
14 work for a potential bidder. That company would be
15 barred from being able to apply. And the -- the
16 purpose for the policy for this, really, is to
17 prevent, sort of, a influence peddling, or using
18 some unique knowledge to steer a benefit that --
19 that company. So pretty severe standard, but
20 hopefully, it's a circumstance that doesn't happen
21 too often.

22 Probably the most obvious or, sort of,
23 common sense approach -- we don't want to see
24 potential bidders hiring away state employees in an
25 order to try to get in a better position to get that

1 contract. Okay?

2 There are post-employment restrictions,
3 which -- for 12 months, you're not allowed to
4 represent others as a paid representative before
5 your former agency or division on matters you worked
6 on. There are --

7 Next slide.

8 There's an additional restriction which
9 would apply to former legislators and generally,
10 sort of, the director level, or cabinet level, from
11 lobbying for 12 months after leaving service. And
12 this is just to prevent, sort of, that influence
13 peddling, like, they -- they know each other kind of
14 circumstance. There's a cooling off period to try
15 to create a distance in those relationships.

16 In addition, the post-employment, as I
17 said before on confidential information, just a bar.
18 You're not allowed to ever disclose or use that
19 confidential information you may have gained.

20 I'm pretty sure we're going to talk about
21 exception in a second, but I wanted to make sure I
22 flagged it for Dan. If -- there is an exception for
23 -- I think you have to have been in service for 90
24 days, and that will come up in a second. I'll show
25 it to you.

1 So here, Deputy Director Reina retired
2 last month and is now working as a workforce
3 consultant. She calls up Senator Tom to discuss a
4 job training bill on behalf of her client. Is this
5 okay? Show of hands, yes. Show of hands, no.
6 Okay. Thanks.

7 The definition of represent is pretty
8 narrow. Generally speaking, having communication.
9 So it is the picking up the phone and calling that
10 creates the problem. People are not prohibited from
11 going out and getting employment, and potentially
12 assisting, and -- behind the scenes. The idea is
13 they just can't communicate with their former
14 officials, or former colleagues, or in some
15 situations, lobby.

16
17 So sorry. I said 90 days. It's six months. So
18 employed by the state less than six months, post-
19 employment does not apply, except for the
20 confidentiality rule. And there's an exception that
21 allows agencies essentially to rehire their own
22 employees. So classic example might be someone's
23 retiring, but they have that unique experience on
24 one project, and the agency just wants to have them
25 stay on for a little bit longer to help wrap it up.

1 That's an exception to post-employment rule. Okay?

2 So talking about penalties. So this is
3 actually out of date. The law just changed as of a
4 couple days ago. It's now up to \$5,000 per
5 violation. Typically, everything that happens
6 before the Ethics Commission is then referred back
7 to the agency for potential disciplinary action.
8 And then, the state can recover illegal gifts or
9 profits. The state can cancel contracts, license,
10 or permits that were granted as a result of
11 unethical behavior. Okay?

12 Let me talk about this enforcement a
13 little bit more. It's probably not the thing any of
14 us like to do, but we do treat it very seriously.
15 We receive, on average, about 30 to 40 complaints
16 per month. Many of those complaints are not our
17 jurisdiction -- they're county, or someone's
18 complaining about their realtor or something that's
19 just not really applicable. But you know, we do a
20 lot of investigations, and we have a healthy amount
21 of our staff focused on enforcement.

22 It has been the pattern of practice of our
23 Commission to be public about all enforcement
24 actions. Typically, our investigations are all
25 confidential. And that's to protect both the

1 complainant and the individual who has been
2 complained about. It allows us to investigate. If
3 there's nothing there, it can go away, and nobody
4 knows about it. But at some point, our enforcement
5 actions do become -- if they go far enough, they
6 could become more formal, and they, much like
7 matters before the Land Use Commission, they become
8 a hearing that's visible.

9 Most of our enforcement actions do wind up
10 in settlement just because -- you know, it's yeah, I
11 did it, and I don't really want to spend a lot of
12 time, money, and effort trying to defend it. So we
13 try to work something out. And again, those
14 settlements, as pattern practice, have always been
15 public. So usually, it's the idea to give
16 confidence to the public that we're doing our job
17 and we're doing enforcement.

18 Again, let me emphasize. We don't love
19 doing the enforcement. We'd much rather be doing
20 advice. We'd much rather be doing education, so we
21 really encourage you to reach out because we want to
22 avoid this if we can.

23 In addition, people who call for advice
24 that is prospective, and they accurately detail the
25 facts, and they rely upon that advice cannot have an

1 enforcement action brought against them. So that's
2 sort of another incentive to try to ask for advice.

3 Financial disclosure statements. We --
4 January 31st, and employee and boards, it's due 30
5 days of taking office, and then May 31st of each
6 year. And then, those are filed electronically on
7 our Commission's website. My staff -- I'm really
8 fortunate. I didn't hire many of them. They all
9 are there, and they're all really good. And so if
10 you have questions -- hey, I need help, they will
11 walk you through it, and you know, universally,
12 everyone says they do a great job. So please just
13 feel free to say, hey, I need help. Try not to wait
14 until the last day. Try not to wait until after
15 4:30 because no one's going to pick up the phone.
16 And if you need a extension on filing financial, we
17 can grant one automatically -- anything 15 days.
18 It's an automatic extension. So please just call,
19 talk to us. Try to do it early, when not everybody
20 else is also calling at the same time.

21 **CHAIR GIOVANNI:** So do you -- do you know
22 when someone's delinquent, and do you notify them?

23 **MR. HARRIS:** So we send multiple emails.
24 Sometimes those emails go to spam, so I just warn
25 you, whatever you've registered with us, and as part

1 of our system, we will send you reminders. I think
2 we send at least four before the deadline. And then
3 post the deadline, we start sending stuff out, too.
4 At some point, we wind up phone calling, and when we
5 phone call, it's probably you're late. And the
6 penalty now is a \$50 fine if you have not filed your
7 financial disclosure statement. And then, if you
8 don't file it within 30 days after the deadline, it
9 becomes another \$250 fine. In addition, we're
10 supposed to issue a press release indicating who
11 hasn't filed. We hate doing that, so we'll do
12 everything we can to try to prevent that from
13 happening. Generally speaking, if you're late, we
14 will do the phone call, and if you file promptly, we
15 don't do a press release on you.

16 Again, the idea is we want the financial
17 disclosure filed. We don't want to fine. We don't
18 want to have to do all that other stuff because
19 particularly for people who are volunteering on a
20 board, you know, we're sensitive to the fact that
21 hey, I'm -- I'm volunteering. Things happen. We
22 encourage you to call us, tell us, get an extension.
23 Whatever we can do to try to make sure it -- it
24 works. We want to work with you. But at the end of
25 the day, it is our obligation to make sure these are

1 posted, and are public, particularly for this
2 commission. And you know, at the end of the day,
3 we're going to do what we need to do to get that to
4 happen.

5 Next.

6 So you asked about ways to contact us.
7 This is a -- a screenshot of our website. We try to
8 make it really easy to find the things that you
9 need. So advice, if you click on this button, it's
10 going to give you our phone number, our email
11 address, and a web form. Pick whichever one you
12 want. We have an attorney of the day. We try to
13 make sure it's practice to get back to you within 24
14 hours. If it's a really complex issue, we may say,
15 hey, it's going to take us a few more days. But we
16 really try to be as responsive as we can. Again,
17 those requests for advice are confidential as to the
18 person asking. If you're asking about something
19 that's already happened, we'll probably tell you,
20 hey, we can't really do as much to help you. You
21 know, we can walk you through some remedies. We'll
22 do that, but generally, we -- we want to look at
23 stuff that's coming up.

24 You've probably already seen the file your
25 forms if you filed your financial disclosure. The

1 purple button. And then the green button for
2 training. And then, obviously, if you have a
3 complaint, you can click the yellow button.

4 Next slide.

5 And again, here is also our information.
6 We will provide this -- a PDF of this presentation
7 to Daniel, and he can provide it, and make it public
8 for everybody who wants to review it again later.

9 Any questions?

10 **CHAIR GIOVANNI:** Commissioner Yamane?

11 **COMMISSIONER YAMANE:** Thanks. Question on
12 one of your quizzes you had about the graphic
13 designer wife and the husband. Is the solution that
14 the husband pull himself off the evaluation
15 committee, or is the solution that the wife can't
16 bid for the project, or both?

17 **MR. HARRIS:** So the State Ethics Code
18 applies to the state employee. We would not have
19 jurisdiction over the wife, per se -- or if -- I
20 can't remember which one it was, but the person
21 applying for the -- the grant. So the requirement
22 would be for the individual to recuse themselves.
23 And there might be a factual situation of could they
24 recuse themselves just to that one applicant, or do
25 they have to just recuse themselves entirely from

1 the process entirely. Sure.

2 **CHAIR GIOVANNI:** Thank you.

3 Anybody else?

4 **MR. HARRIS:** Let me thank you for your
5 service. I have some understanding of how
6 challenging to be on the Land Use Commission is, and
7 how much work, and time, and effort it is, and I
8 really appreciate your service. It's because of
9 commissions and boards like this I think our state
10 government is able to run. I appreciate your
11 commitment to ethics and that highest standard of
12 ethical conduct. It is important that we all try
13 to, from a public point of view, act as ethically
14 and as prudently as we can because again, it just
15 takes one bad player to sort of cast a shadow on
16 everything else that's going on.

17 It's my sincere belief that 98 percent of
18 all state employees, both volunteer and paid, are
19 really trying to do their best every day that they
20 show up, and really do great work. I think there's
21 one percent of people try to push the envelope. You
22 know, like, get away with what they can. And then
23 there are some bad -- bad apples, and it's our
24 interest to try to catch that, stop it, and prevent
25 if from creating a bad situation.

1 But again, I thank you. Thank you for
2 your time commitment to this, and again, please call
3 if you have questions. Thank you.

4 **CHAIR GIOVANNI:** Thank you, Robert. One
5 last thing. Just give us a overview of your
6 Commission. How big it is, how many employees you
7 have, what is the reach?

8 **MR. HARRIS:** Sure. So we have five
9 positions. One's vacant right now. They are for
10 four-year terms, and it's been pretty traditional
11 that everyone who's been on it has applied for a
12 second term, so generally speaking, they serve for
13 eight years. Wonderful Commission. It is a diverse
14 group of -- we have both lawyers and medical
15 professionals, and sort of, you know, that -- the
16 normal range and gamut.

17 We have a total of 12 employees, and you
18 know, I think we have one of the best agency staffs
19 around. We helped to train, for example, 45,000
20 people last year with 12 staff. No additional
21 budget, no additional employees. We have a number
22 of attorneys, and some of our attorneys have been
23 with us for over 30 years. Just -- there's a
24 genuine commitment to the cause, and a lot of
25 understanding, a lot of, you know, good people. So

1 I'm -- I cannot say enough about how great that
2 staff is.

3 **CHAIR GIOVANNI:** Great. Thank you.

4 Last call for questions. Seeing none,
5 thanks, Robert.

6 **MR. HARRIS:** Aloha. Thank you.

7 **CHAIR GIOVANNI:** Thanks for sharing your
8 time today.

9 All right. So my understanding is we will
10 have a -- the CWRM presentation is scheduled at a
11 specific time. Is that correct? 1:00 p.m. So
12 Commissioners, what is your pleasure? We can take a
13 lunch break now and resume at 1:00 p.m. Make sense?

14 Commissioner Lee?

15 Commissioners?

16 Okay. We will recess until 1:00 p.m.

17 **(Recess taken from 11:45 a.m. - 1:00 p.m.)**

18 **CHAIR GIOVANNI:** Good afternoon. We're
19 back in session. Our fifth order of business today
20 is an informal briefing from the State Commission on
21 Water Resource Management. Informal briefing from
22 the Commission on Water Resource Management planners
23 is to provide an overview of the State Water Code,
24 Hawaii Revised Statutes, Chapter 174C, which was
25 created by the -- or the 1987 Hawaii State

1 Legislature to protect and manage the waters of the
2 State of Hawaii for present and future generations.

3 Ariana, has there been any members of the
4 staff who wish to provide testimony on this agenda
5 item?

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

7 **CHAIR GIOVANNI:** Thank you.

8 Page here. Can I ask the members of the
9 Commission from Water Resource Management to
10 introduce themselves individually, and then we'll
11 begin.

12 **MS. ROTH:** Aloha. Thank you, Chair.

13 Maybe before I introduce myself, I'll pass it over
14 to staff who have joined us today from the
15 Commission --

16 **CHAIR GIOVANNI:** Sure.

17 Have to use the microphone.

18 **MS. DEIKE:** Aloha, Commissioner, it's
19 Alexa Deike here. I'm the Legal Fellow for the
20 Water Commission for about three years now, and I'm
21 a Richardson grad.

22 **CHAIR GIOVANNI:** Thank you.

23 **MS. LU:** Aloha, I'm Bonnie Lu, Secretary
24 for Planning Branch of the Commission on Water
25 Resource Management. Thank you.

1 **MS. ROUSSEVE:** Aloha mai kakou. My name
2 is Lyss. I'm a hydrologist in the Planning Branch.

3 **MR. ING:** Hi, I'm Nicholas Ing, a Planner
4 with Planning Branch.

5 **MR. FUJII:** Aloha, Chair, Commission
6 members. Neal Fujii, also in Planning Branch.
7 Thank you. Thanks for having us.

8 **CHAIR GIOVANNI:** Thank you.

9 **MS. ROTH:** All right. And my name is
10 Katie Roth. I am the Planning Program Manager with
11 the Commission on Water Resource Management. Thank
12 you again for inviting us today to share a bit more
13 about our agency and what we do.

14 **CHAIR GIOVANNI:** So just a second before
15 you begin.

16 I'd like to welcome Mary Alice and the --
17 her colleagues from OPSD.

18 So are you going to be testifying today,
19 or are you just here to listen? Okay. Glad to see
20 all of you. Thank you for coming.

21 So can you give us a general idea before
22 you begin of about how long your presentation is?

23 **MS. ROTH:** Sure. We've estimated or
24 planned for about 20 to 30 minutes for our
25 presentation, with an opportunity for questions at

1 the end.

2 **CHAIR GIOVANNI:** Okay. And you prefer
3 that we hold questions to the end?

4 **MS. ROTH:** Actually, you know, we're happy
5 to field questions as we go through the
6 presentation. We thought we could keep it somewhat
7 informal and let you ask questions as we go along
8 since there's definitely a lot of information to
9 cover, and some of it might be new.

10 **CHAIR GIOVANNI:** Yeah, I think that
11 keeping it informal, and if there's even points of
12 clarification or confusion, if you don't mind us
13 interrupting and getting that straightened out as we
14 go.

15 **MS. ROTH:** Absolutely.

16 **CHAIR GIOVANNI:** Okay. So proceed.

17 **MS. ROTH:** Thank you.

18 So again, Katie Roth with the Planning
19 Program at the Commission on Water Resource
20 Management. Again, we have staff here from the
21 Planning Branch, but as you'll see in my
22 presentation, we have a few more staff that aren't
23 represented here today. That includes a couple
24 other Branch Chiefs, and our Acting Deputy Director,
25 who unfortunately, couldn't be here today. Several

1 of them are on vacation.

2 So again, today I'm going to present more
3 information about the Commission on Water Resource
4 Management. I guess I have to scroll. Okay.

5 This is a little presentation overview
6 about the different topics I'm hoping to touch on
7 today. Again, who we are. I think most of you are
8 familiar with the name, but you may not be
9 intimately familiar with all the work that we do.
10 So I'll give a little bit of more information about
11 the various programs under the Commission. Alexa is
12 going to do more of a deep dive into water law in
13 Hawaii, including our water management and
14 permitting processes. I'm going to talk a bit more
15 about the Hawaii Water Plan and how that intersects
16 with land use planning, as well as touch on current
17 engagement that our office and agency has with the
18 Land Use Commission, and the potential opportunities
19 for improvement.

20 All right. Who is the Water Commission?
21 So in 1978, during the Constitutional Convention,
22 there were amendments to Hawaii's Constitution. One
23 of those amendments was to mandate and establish a
24 water resource agency within the State of Hawaii.
25 That agency is what came to be known as the

1 Commission on Water Resource Management, but it took
2 about 10 years before we were actually established.

3 We're administratively attached to the
4 Department of Land and Natural Resources. The staff
5 you see here today, as well as others with the
6 Commission are all based here on O'ahu, but our
7 mission and mandate is state-wide. So we have staff
8 in addition to a seven-member Commission, and I have
9 more information about the Commissioners -- who they
10 are, on a future slide.

11 We are the primary guardian -- guardian of
12 the public trust, so we are essentially the Trustee
13 of Water. It's our role within the State to protect
14 the resource and manage it properly. We have a dual
15 mandate of both protection of specific uses of
16 water, as well as to provide for maximum, reasonable
17 and beneficial use. Sometimes those mandates do
18 come into conflict, and we'll talk a bit more about
19 that in some later slides.

20 We administer the State Water Code, Hawaii
21 Revised Statutes 174C, and we regulate all waters of
22 the State, so ground and surface water. Ground
23 water is our aquifers, surface water refers to
24 rivers and streams. We do not regulate coastal
25 waters. And we also regulate all water users,

1 including the counties. So if the county wants to
2 drill a well, they would come to us for a permit to
3 drill that well.

4 We also -- we primarily manage and deal
5 with issues of water quantity, not quality. Quality
6 issues tend to be under the jurisdiction of the
7 Department of Health, but we know that quantity and
8 quality issues are interrelated, so we view the
9 Department of Health as a co-trustee of water, and
10 we try to work intimately with them on a variety of
11 issues.

12 The pictures along the bottom represent
13 the current make-up of our seven-member Commission.
14 In our statute, it identifies who should sit on the
15 Commission. That includes the Chairperson of the
16 Board of Land and Natural Resources, or the Director
17 of the Department of Land and Natural Resources. At
18 the moment, that is Dawn Chang. Also the Director
19 of Health is considered an ex-officio voting member.
20 DOH has a designee, Kathleen Ho, who currently sits
21 on the Commission. We -- all of the other fives
22 members must have substantial experience in the area
23 of water resource management. They are all
24 appointed by the Governor and approved by the
25 Senate.

1 You can see we have a question mark there
2 at the end. We have one vacancy currently on the
3 Commission, and that is the member that needs to
4 have substantial experience and expertise in
5 traditional Hawaiian water resource management. So
6 that seat is currently vacant, and we're hoping that
7 it gets filled soon.

8 Here's another overview of our mission --
9 what our vision is. This is really just to
10 illustrate how broad and expansive it is. There's a
11 lot that we are responsible for and have a mandate
12 to do, but due to limited budgets and staffing,
13 obviously, we can't do all those things. But I just
14 wanted to paint the picture for you that we are
15 responsible for a lot, and it's a very broad mission
16 and mandate that we have.

17 Oops. Sorry about that.

18 Here's more of an organizational chart
19 describing the programs that are under the
20 Commission. I'll get -- go into more detail in a
21 future slide. Currently, we have 28 positions
22 within the Commission. We're in the process of
23 trying to fill another four or six that were
24 recently authorized by the legislature.

25 Of the 28 positions, they're all based

1 here on O'ahu, as I mentioned, but we do do
2 extensive travel -- travel to the neighbor islands
3 to conduct various community meetings, outreach,
4 data collection, things like that.

5 The budget that we have currently is
6 approximately \$4 million a year. That's our
7 operating budget. Most of that gets eaten up by
8 personnel costs. About \$1 million of that gets
9 eaten up by an agreement we have with the US
10 Geological Survey, and they assist us with various
11 monitoring and data collection efforts. We also
12 have a fairly small budget for capital improvement
13 project money. That's money that we use to develop
14 our deep monitor wells, and I'll talk a bit more
15 about that later.

16 So again, the four programs within the
17 Commission are the Survey Branch, Planning Branch,
18 which I am the Head of, Ground Water Regulation, and
19 our Stream Protection and Management Branch -- we
20 call them SPAM for short.

21 So here's an overview of those various
22 programs. Planning, we are responsible for
23 developing long-range plans for the protection of
24 the resource. I'll talk more about that again in a
25 later slide. Ground Water Regulation issues various

1 ground water permits, they monitor aquifer health,
2 they establish sustainable yields. Stream Water
3 Protection and Management also issue permits but
4 related specifically to surface water. They are
5 responsible for establishing interim instream flow
6 standards. They also do a lot of data collection
7 and hydrologic monitoring of our streams and surface
8 waters systems.

9 **CHAIR GIOVANNI:** One quick question. When
10 you say a permit, is that synonymous or really
11 different than an allocation?

12 **MS. ROTH:** I would -- it depends. So we
13 have water use permits, which we will talk about
14 later. Alexa will go into more detail on that.
15 Those are associated with a specific allocation of
16 water, and those are only issued in designated water
17 management areas, which we'll again, talk about more
18 later. We also have, like, well construction
19 permits, stream diversion work permits, which we
20 consider to be more ministerial. Those permits
21 aren't taken before our Commission, and those do not
22 have a specific allocation associated with them.

23 **CHAIR GIOVANNI:** That's very helpful.
24 Thank you.

25 **MS. ROTHER:** We also have our Survey

1 Branch, and they're responsible for collecting and
2 analyzing various hydrologic data that helps us
3 determine the health and viability of the resource.

4 Along the site here, you'll see various
5 logos from different agencies and partners. I
6 wanted to illustrate that even though we are the
7 primary trustee of water, we can't do this work
8 alone, and we require on a variety of other agencies
9 and water resource management organizations to
10 assist us. The Division of Forestry and Wildlife,
11 as you may know, is responsible for Makawao
12 Watershed protection, native ecosystem protection,
13 forest protection. We don't have water if we don't
14 have healthy forests, so we look to them to do a lot
15 of that work, which we obviously can't do, given our
16 limited budget and staffing.

17 We have the Department of Health, which I
18 mentioned is a co-trustee of water, primarily
19 responsible for quantity -- or quality issues. USGS
20 assists us with various studies, hydrologic
21 monitoring, data collection. We pay them to do
22 stream flow assessments, seepage runs, things like
23 that to help us have a better understanding about
24 the resource and what's going on.

25 Division of Aquatic Resources. They

1 manage near shore waters. You know, more of
2 aquatic, coastal ecosystems and habitats. There's a
3 lot of unknowns as it relates to wells that are
4 drilled near the coastline and how those may impact
5 these sensitive habitats and environments, so we
6 work with DAR to try to better understand impacts of
7 water use on those -- on those systems.

8 The University of Hawaii. They have a
9 Water Resource Research Center that we collaborate
10 with regularly, again on a variety of more studies
11 and research-related inquiries. And then, Aha Moku.
12 Anytime that we are reviewing a permit, or, you
13 know, having to make decisions about water resource
14 allocations, we typically will route submittals and
15 projects over to them for review so that we
16 understand what the implications are of that project
17 -- of that water use on traditional and customary
18 practices.

19 Planning Branch. We implement the State
20 Water Code through these long-range plans. We're
21 also engaged in a lot of the community outreach
22 efforts. Agency coordination, again, is a big deal.
23 We're typically the ones reaching out to the
24 different agencies and water resource managers to
25 better understand work that they're doing, and how

1 that may dovetail with initiatives that we have
2 going on at the Commission. We develop and update
3 the Hawaii Water Plan, which I will talk more about
4 later. The Hawaii Water Plan is essentially
5 supposed to be our guide for how we manage and
6 protect the resource. That also involves county
7 water use and development plans, which has a land
8 use component to it, so I'll talk about that.

9 Planning Branch is also responsible for
10 developing water conservation, water shortage and
11 drought plans, as well.

12 Ground Water Regulation. Throughout the
13 state, we have identified different aquifer system
14 areas, which you can see outlined here in the map of
15 Molokai. Each aquifer has what we call a
16 sustainable yield, or the amount of water that can
17 be sustainably withdrawn without impacting the
18 integrity of the resource. Statewide, we have over
19 5,000 wells, all permitted within our agency. On
20 O'ahu, over 2,000 of those are just based around the
21 island of O'ahu. Statewide, we have 110 aquifer
22 system areas. So again, this is to illustrate
23 there's a huge amount of area, in terms of land,
24 that we're responsible for, and all the aquifers of
25 the state that we have to manage and -- and monitor.

1 Stream Protection Management. This map of
2 Kauai is to show you all the different perennial
3 streams. You can see here in blue. The black dots
4 are known diversions. A lot of those are historic
5 diversions from the days of sugar and plantations.
6 We're still dealing with the repercussions of a lot
7 of those plantations, you know, ceasing to exist and
8 what that infrastructure, you know, does today, how
9 we manage the resources where water is still being
10 conveyed outside of watersheds. Statewide, we have
11 about 1,300 diversions, and we're often responsible
12 for looking and reviewing of permits that may seek
13 to make changes to those historic diversion systems.
14 Oftentimes, it's removal of those diversions to allow
15 stream flow to -- to flow again.

16 The branch of the Commission -- the SPAM
17 Branch of the Commission is responsible for
18 establishing those interim instream flow standards,
19 so that's the amount of water that we need to keep
20 in a stream to provide for a variety of instream, as
21 well as off-stream uses. So that's been a big
22 initiative within the last 10 years is to establish
23 more instream flow standards statewide. At the time
24 our inception, you know, in the '90s, basically we'd
25 said that the instream flow standards for all

1 streams was status quo. So even if there were
2 diversions happening, or there was no water flowing
3 in the stream, we just said that's the status quo.
4 The Supreme Court has since told us that that's not
5 acceptable, and that we need to actually go through
6 an analysis process and investigate how much water
7 should be returned to streams to again meet those
8 instream flow standards.

9 **CHAIR GIOVANNI:** Is that the decision that
10 just came down?

11 **MS. ROTH:** No, it's not. Well, that is
12 related, but the initial -- the initial decision
13 from the Courts that said we could not continue to
14 operate under the status quo is from decades ago, I
15 think --

16 **CHAIR GIOVANNI:** Yeah.

17 **MS. ROTH:** -- under wai hulei (phonetic),
18 I believe.

19 **CHAIR GIOVANNI:** But it was refined, and
20 somewhat -- you could explain that to us if you get
21 a -- if you -- if you can at the right time.

22 **MS. ROTH:** We can take that opportunity
23 now.

24 **CHAIR GIOVANNI:** Okay.

25 **MS. ROTH:** It's better -- we can -- we'll

1 do it later.

2 **CHAIR GIOVANNI:** Okay, we'll wait.

3 **MS. ROTH:** Thanks.

4 **CHAIR GIOVANNI:** That would be great.

5 **MS. ROTH:** Again, our Stream Protection
6 Management Branch does do a lot of data collection,
7 hydrologic monitoring of stream systems. This is to
8 illustrate how many monitoring sites we have across
9 the state. Our Stream Protection and Management
10 Branch Chief -- Acting Branch Chief, Aaron -- many
11 of you may know him or have seen him, Aaron Strouk.
12 He's constantly traveling to do a lot of this data
13 collection. He's in the field constantly with his
14 team. But as much as he's in the field, we still
15 need more data collection, so that's where the USGS
16 comes in, and again, we pay them about \$1 million a
17 year to assist us with the data collection work
18 that's needed.

19 Survey Branch. I mentioned that they are
20 also responsible for data collection and monitoring.
21 For a variety of reasons, mostly because there's
22 only one staffer currently in that program, they
23 primarily focus on groundwater data collection and
24 monitoring. So they're not involved in stream
25 monitoring at the moment. They visit -- we do have

1 two people now. There's just one. So he visits the
2 different deep monitor well sites we have across the
3 state.

4 Currently, we only have -- this says 12,
5 but I believe it's 13. Ideally, we need more deep
6 monitoring wells. These are the wells that
7 penetrate through the freshwater, through the
8 transition zone into the saltwater. You can see
9 here in this graphic. These are the wells that we
10 use to assess and ascertain the health of our
11 aquifer systems. Helps us with the -- to
12 understand, you know, if we're pulling too much out
13 of the aquifer, or what needs to be done in terms of
14 policy changes and better regulation.

15 The CIP money that I mentioned, again, is
16 paying for the construction of new deep monitor
17 wells. The \$2 million a year, though, is getting us
18 approximately one new well. So these are very
19 expensive projects to undertake.

20 And here is a map of those deep monitor
21 well sites. The CWRM sites are in white, and those
22 under construction are in yellow. Again, that adds
23 up to about 13. The black dots indicate where there
24 are other monitoring wells that are not CWRM wells.
25 Some of them are USGS wells, some of them are County

1 Departments of Water Supply, but we try to engage as
2 much as possible in information sharing, so the data
3 collected by the county is -- should be and is being
4 shared with our agency for analysis.

5 **COMMISSIONER CARR SMITH:** Chair?

6 **CHAIR GIOVANNI:** Where is that from?

7 **COMMISSIONER CARR SMITH:** Me. Excuse me.

8 I just --

9 **CHAIR GIOVANNI:** Please.

10 **COMMISSIONER CARR SMITH:** Before we --
11 there's so much information, I don't want to --

12 **MS. ROTH:** Absolutely.

13 **CHAIR GIOVANNI:** Commissioner Carr Smith,
14 please.

15 **COMMISSIONER CARR SMITH:** -- forget my
16 thoughts.

17 Can you go back a slide?

18 **MS. ROTH:** Sure.

19 **COMMISSIONER CARR SMITH:** Thanks. So it
20 says ideally, there should be three deep monitoring
21 wells in each aquifer system.

22 **MS. ROTH:** Yes.

23 **COMMISSIONER CARR SMITH:** Doesn't it
24 depend on what the aquifer opposition is, or is that
25 really just a --

1 **MS. ROTH:** Well, given that these wells
2 are helping us better understand resource health and
3 availability, unfortunately, we don't have as much
4 information as we need to fully understand what
5 areas may be threatened. We do get water use
6 reports, and we have sustainable yield information,
7 but it's these wells and the data we collect from
8 them that really helps us better understand what's
9 happening with the resource.

10 You're right, though, that there is
11 different geography on each island. This is, you
12 know, kind of a blanket statement about how many,
13 ideally, we would want --

14 **COMMISSIONER CARR SMITH:** Mm-hmm.

15 **MS. ROTH:** -- but yeah. The placement of
16 those wells varies, and the cost of them varies, as
17 well, depending on the location and depth that we
18 have to drill.

19 **COMMISSIONER CARR SMITH:** Can you tell me
20 where the two on Hawaii Island are, please?

21 **MS. ROTH:** I'll go back to the map.

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

23 **MS. ROTH:** Yeah, so we have two south of -
24 - I guess that north -- is that north -- is that
25 north of Kona? I think that Koloko Neo. What's the

1 other one?

2 **UNIDENTIFIED SPEAKER:** Keauhou?

3 **MS. ROTH:** There is -- it's in the --
4 Keauhou Aquifer. Yeah, and then, we're also
5 drilling one up north -- Hapuna State Park. So that
6 is a project currently in process at the moment.

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

8 **MS. ROTH:** Water resource reporting.
9 Anyone who gets a permit from us has to report
10 monthly on their water use. Compliance in that area
11 is improving, but it's definitely something that is
12 not consistent across the board. We have pretty
13 good compliance when it comes to our groundwater
14 reporting. Surface water is in some cases much
15 harder to do, and therefore, we have less data
16 that's coming into us. But this slide is just to
17 let you know that everyone is required to report per
18 our admin rules.

19 We need all the data in order to
20 understand, again, resource availability, how to
21 make informed policy and management decisions. We
22 have a couple of vacant positions, I mentioned, that
23 would focus on enforcement, so we're hoping to get
24 those filled and then we could actually get people
25 going out into the field to investigate and work

1 with water users to, you know, understand what the
2 issues are with the lack of reporting. But that's
3 something that -- that's in process at the moment.

4 And with that, I will hand it over to
5 Alexa.

6 **CHAIR GIOVANNI:** Just take a second. Let
7 me see if there's any questions on your part of it.

8 Anybody? Any further questions?

9 **MR. ORODENKER:** I got a couple.

10 **MS. ROTH:** Sure.

11 **MR. ORODENKER:** When you use the word
12 diversion, do you differentiate between a stream
13 diversion that goes -- is diverted and then it has a
14 -- for use, and it's diverted -- and it's diverted
15 back into the stream?

16 **MS. ROTH:** I guess I'd have to refer to
17 possibly our statute or admin rules for the specific
18 definition of a diversion. But in my understanding,
19 it's a -- the physical infrastructure that's taking
20 water out of a stream and diverting it. So it -- I
21 think it could relate to water that's taken out of
22 the stream but then is returned eventually. Yeah.

23 Go ahead.

24 **CHAIR GIOVANNI:** Sorry. We've got another
25 one coming your way. There we go. Now you've got

1 all kinds.

2 **UNIDENTIFIED SPEAKER:** Yeah. It would
3 refer to --

4 **CHAIR GIOVANNI:** Speaking right into the -
5 -

6 **UNIDENTIFIED SPEAKER:** -- sorry. Yeah,
7 diversion is referring to the point in the stream
8 where water is withdrawn from the stream. Whether
9 or not it goes back.

10 **CHAIR GIOVANNI:** So whether or not it goes
11 back, it doesn't -- you don't make a difference?

12 **UNIDENTIFIED SPEAKER:** Yeah. Yeah. Could
13 be consumptive, could be non-consumptive, like a
14 lo'i kalo, where it's returned to the stream at some
15 point. But regardless of the -- what happens, it's
16 where the point of removal of the water from the
17 stream.

18 **MS. DEIKE:** Chair, to add to that, I think
19 it depends on the context. So we are -- are
20 counting for if water is being returned to the
21 stream, but in a different -- and so if you give us
22 a little more context --

23 **CHAIR GIOVANNI:** Context would be if it's
24 diverted out for a farm and used to raise
25 agricultural crops versus diverted into a

1 hydroelectric plant and then returned back to the
2 stream. Those, to me in my engineering mind, are
3 very different mechanisms, designs, and measures of
4 water use. So I just wondered if you distinguish
5 between the two.

6 **MS. DEIKE:** We do. What you're describing
7 is if it's being returned to the stream, it would be
8 like -- if it's, like, an in-stream use, so your --
9 your example was a hydroelectric plant, but, like,
10 our example that we are encountering more often is
11 lo'i kalo, for, like, traditional, customary --
12 they're diverting water into their lo'i and then
13 returning it back to the stream. This would be a
14 similar in-stream use. So --

15 **CHAIR GIOVANNI:** I think you just hit on
16 it, which is diversion means it comes out, doesn't
17 come back, but in-stream use, it could be --

18 **MS. DEIKE:** Yeah, so we are
19 differentiating between off-stream and in-stream
20 uses.

21 **CHAIR GIOVANNI:** That's helpful.

22 **MS. DEIKE:** That would be in the context
23 of when the Commission is setting interim in-stream
24 flow standards, that's what we are accounting for it
25 -- absent water use permits.

1 **CHAIR GIOVANNI:** Very good. That answer
2 my -- I'll hold my other questions. So go ahead.

3 **COMMISSIONER CARR SMITH:** Chair? I have a
4 stream question. Is now the time?

5 **MS. ROTH:** Sure. We'll see if we can
6 answer it.

7 **COMMISSIONER CARR SMITH:** Okay. Thank
8 you. Aaron did come to Waimea on Hawaii Island not
9 that long ago, and the audience had a lot of
10 different feelings about what should happen with the
11 streams that go through Waimea and down to the
12 ocean. And some seemed to think that the water
13 should just flow, and others think that it should be
14 used upstream because when it just flows, it ends up
15 in the ocean and it's really causing a lot of issues
16 to our reef and the fish. My husband and I go swim
17 every weekend down at Wailea Bay, and it's -- it's
18 been really bad this year because of the storms we
19 had and the runoff.

20 So what -- what is the Commission's view
21 on the stream water affected coral reefs, for
22 example?

23 **MS. DEIKE:** I think the nature of streams
24 in Hawaii is that they're really flashy, so what you
25 are describing is more like a flash flood event when

1 you have high rain events. Of course, the
2 Commission is very cognizant of, like, impacts on
3 near shore environment coral reefs, and that hence,
4 we are working very closely with DAR, the Department
5 of -- Division of Aquatic Resources. But also for
6 native wildlife or fish life, they actually need --
7 we need water to be flowing into the streams, so --
8 and when I'm going into our public trust uses of
9 water, this will be explained, as well.

10 So, like, stream flow -- like, Mauka to
11 Makai flow is exactly one of the four public
12 trustees that -- I hear your -- I hear your concern,
13 and we are concerned from the runoff events, but
14 those were -- would be actually different
15 infrastructure solutions that would be have be
16 found, which are actually not CWRM. That would be
17 our Engineering Division -- we're managing flood
18 infrastructure, or the Army Corps of Engineers.

19 **MS. ROTH:** If I could just add to that, as
20 well. So we have the Division of Forestry and
21 Wildlife, responsible for watershed protection,
22 forest protection. And that does play a role in,
23 you know, incidences of erosion, sedimentation
24 issues. What we're seeing impacts the sedimentation
25 on corollary -- shore waters.

1 So in our work, and you know, studying
2 interim instream flow, and our work in establishing
3 or re-establishing stream flow, we do want to try to
4 make those decisions in coordination with agencies
5 like DOFAW, and understanding what projects or
6 initiatives they may have happening within the
7 watershed -- whether that's invasive species removal
8 of animals, reforestation efforts, fencing efforts,
9 all of those things that kind of keep soil on the
10 landscape can also play a factor in that.

11 **MS. DEIKE:** May I proceed with water law
12 in Hawaii?

13 **CHAIR GIOVANNI:** Please speak -- state
14 your name again, if you don't mind, and then, see
15 what I'm doing? Speaking right into the microphone.

16 **MS. DEIKE:** Thank you, Chair. My name is
17 Alexa Deike. I'm the Legal Fellow for the Water
18 Commission, and I'll be presenting on water law in
19 Hawaii for you today.

20 So Hawaii water law relating to freshwater
21 use and managements is grounded primarily in the
22 Constitution. The Water Code, as Katie mentioned,
23 Chapter 174C and the Administrative Rules for CWRM,
24 and court decisions interpreting these and other
25 relevant laws.

1 So on the left side of the slide shows a
2 hierarchy of these laws, and with the Constitution
3 being on top. The court decisions listed here are
4 all Hawaii Supreme Court decisions pertaining to
5 water. The decisions marked with an asterisk are
6 for agencies other than CWRM. So the first example
7 is Kauai Springs felt that the water bottling
8 application before the Kauai County Planning
9 Commission. And the Lana'ians case -- I'm not sure
10 how many of you are familiar with it or were in the
11 LUC at that time -- is a case before the LUC.

12 Besides those two cases, the Hawaii
13 Supreme Court overturned the agency decisions --
14 CWRM's decision and remanded. I have included a
15 citation for each of those cases in case you wanted
16 to look up for your personal reading pleasure the
17 whole opinion.

18 The latest case, Na Wai Eha II -- this is
19 just a short form. The proper title a longer title
20 -- was just decided about three weeks ago and
21 doesn't have a citation yet.

22 In the following slides, where it's
23 preceded by quotation marks -- quotations marks and
24 in italics are the citations from these Hawaii
25 Supreme Court decisions.

1 Next slide.

2 Article XI, Section 1 of the Hawaii
3 Constitution establishes that all public natural
4 resources are held in trust by the State for the
5 benefit of the people. And Article XI, Section 7
6 specifically referenced water. Includes a directive
7 to protect, control, and regulate the use of
8 Hawaii's water resources for the benefit of its
9 people.

10 It's important to note here that on
11 Hawaii, there is no ownership of water, and water is
12 held in trust. Although other county, state, and
13 federal agencies may have overlapping jurisdiction
14 in some areas, CWRM is -- has the primary authority,
15 and is the primary guardian over fresh water use and
16 management. These Constitutional mandates and
17 duties do apply to other state and county agencies,
18 so whatever we are mandated as a primary guardian,
19 it also applies to the LUC or the PUC, and the
20 counties, as well.

21 So CWRM is tasked with many duties,
22 including establishing water conservation, quality,
23 and use policies, defining reasonable and official
24 uses, protecting ground and surface water, and
25 regulating Hawaii's water resource, as well,

1 assuring pertinent rights and existing --
2 correlative uses.

3 So with those Amendments and Article XI,
4 Section 1 and 7, the Hawaii Supreme Court stated,
5 the people of Hawaii have elevated the public trust
6 doctrine to a level of a Constitutional mandate. So
7 pursuant to the Constitution, the Water Code, and
8 common law, the State Water Resource Trust applies
9 to all water resources without any exception and
10 distinction.

11 The coordinate for the health in Waiahole
12 I is our seminal case from the year 2000, that the
13 public trust was a dual mandate of first, protection
14 and maximum reasonable and beneficial use, which
15 then establish an affirmative duty to take the
16 public trust into account in the planning and
17 allocation of water resources, and to protect the
18 public trust uses whenever feasible.

19 Next slide.

20 **CHAIR GIOVANNI:** Just a quick question.
21 You didn't mention federal. So does your
22 jurisdiction extend over to federally owned land and
23 federally owned enterprise?

24 **MS. DEIKE:** Yes.

25 **CHAIR GIOVANNI:** Thank you.

1 **MS. DEIKE:** So this slide deals with the
2 first prong of the dual mandate, protection. And
3 listed here are the Public Trust purposes or uses --
4 the terminology is, like, used interchangeably. So
5 the Supreme Court has identified four Public Trust
6 purposes. The first one is environmental protection
7 -- as maintenance of water in its natural state.
8 That would relate back to Commissioners Carr's
9 question on, like, stream water --

10 **CHAIR GIOVANNI:** Ariana, we lost the mic.

11 **MS. DEIKE:** Water --

12 **CHAIR GIOVANNI:** There we go. You're
13 back.

14 **MS. DEIKE:** Water -- water remaining in
15 the stream. The second Trust purpose is the
16 exercise of traditional and customary Native
17 Hawaiian rights. Then we have domestic water uses.
18 And the Supreme Court NY Olaf on the Molokai case
19 added DHHL reservations as Public Trust purpose, as
20 well. And it's important to note -- point out here
21 that there is no absolute priority between those
22 Public Trust purposes, so they're all equally
23 important.

24 The slide deals with the second prong of
25 the Dual Mandate, maximum reasonable and beneficial

1 use. So when you just look at the plain language of
2 the Water Code, you have the definition in Section 3
3 -- this is on the left-hand side. But the Hawaii
4 Supreme Court has clarified that when you're
5 interpreting the Code, you'll always -- always have
6 to use the lens of the Constitutional mandate and
7 duties. So in -- when we're looking at if a use is
8 reasonable and beneficial, we have to at least, at
9 minimum, use those other three requirements that are
10 listed here. So the applicant has to show their
11 actual water needs, then make sure that's -- the
12 propriety to drain water from the streams, for
13 example, and also have an absence of alternative
14 that they could use.

15 Next slide.

16 So under the Public Trust, any balancing
17 the CWRM or any agency -- LUC, PUC, or county would
18 have to do -- always begins with a presumption in
19 favor of the Public Trust. For the public use,
20 access, and enjoyment. The Public Trust also
21 prescribes a higher level of scrutiny for private
22 commercial uses. So therefore, CWRM must closely
23 examine any requests to use public resources for
24 private gain to ensure that the public interest in
25 the resource is fully protected.

1 So additionally, permit applicants have
2 the burden of justifying that the proposed uses in
3 the light -- that the proposed use is in the light
4 of public right, the resources are protected.

5 Next slide.

6 So I added this in because this comes from
7 the latest decision from three weeks ago. And this
8 slide highlights the additional fundamental
9 principles of the Water Resource Public Trust.
10 Those are direct quotes from the Supreme Court
11 opinion. And as the Court already has held Na Wai
12 Eha I in 2000 that there can be no automatic vested
13 rights to water for any person or entity. And I
14 think that this is really important for -- in
15 context of how CWRM's and LUC regulation interplay.
16 Because even if a development receives all
17 entitlements of the LUC or the county, it is not
18 guaranteed that this entity or development will --
19 will later on receive the requested or needed amount
20 of water when there might be a detriment to the
21 Public Trust.

22 **CHAIR GIOVANNI:** So where does get
23 adjudicated?

24 **MS. DEIKE:** Could you repeat your
25 question?

1 **CHAIR GIOVANNI:** If that example --
2 hypothetical, where they got everything in line, and
3 yet they don't have the water allocation because
4 there's a question that it might be in conflict, as
5 defined by this ruling, where does that become
6 adjudicated or addressed?

7 **MS. DEIKE:** I think, Chair, I will use
8 this example again later on this slide because we
9 have different types of regulation of water use,
10 depending on the areas of the state.

11 **CHAIR GIOVANNI:** I'll wait -- I'll wait
12 for you.

13 **MS. DEIKE:** Okay. So I will bring it up
14 there again, and then we can play through the
15 different scenarios.

16 Next slide.

17 So in addition to the Public Trust, the
18 Hawaii Supreme Court also adopted a precautionary
19 principle, ruling that the lack of full scientific
20 certainty should not be a basis for postponing
21 effective measures to prevent environmental
22 degradation, and that where the scientific
23 uncertainty exists, a Trustee's duty to protect the
24 resource mitigates in favor of choosing presumption
25 that also protect the resource. So it's basically

1 saying, when in doubt, protect the resource.

2 Next slide.

3 So I included this slide because in one of
4 those Supreme Court opinions, the Court was so nice
5 and gave you a cheat sheet. So the six principles
6 as a decision-maker that you have to fulfill to
7 fulfill your duties under the Public Trust.

8 And next slide.

9 The next slide shows the four affirmative
10 showings that the applicant needs to make to also --
11 you need to -- as a decision-maker, you need to
12 check is the applicant fulfilling the burden here.

13 And then moving on to water management and
14 permitting -- everyone's been waiting for. So here
15 -- so this slide shows CWRM's jurisdiction, as
16 mentioned earlier by Katie. CWRM regulates all
17 water of the state, excluding coastal waters and all
18 water users, including the County Water Boards and
19 Department.

20 So the map shows water management areas in
21 the state, and as of 2024, all of O'ahu, except
22 Waianae. Waianae and the island of Molokai, Iao
23 Aquifer on Maui, and Lahaina Aquifer Sector
24 designated ground water management areas.

25 Currently, there are no ground water management

1 areas on Lanai, Kauai, Niihau, and Hawaii Island,
2 although in February of 2017, the Water Commission
3 denied a petition to designate the Keauhou Aquifer
4 as a ground water management area.

5 And the most recent -- in August, 2022,
6 the Commission designated the Lahaina Aquifer Sector
7 area, both the ground and surface water management
8 areas, so that's what you see in blue highlighted in
9 the excerpt of the map. This is the area where have
10 ground and surface water management areas, and also
11 Na Wai Eha is a surface water management area.

12 The next slide.

13 So when is an area designated? So the
14 Commission shall designate an area when it's
15 threatened or endangered to become -- that the water
16 resources are threatened to become endangered. So
17 we have -- there's processes. So either it can be
18 done by petition, or the Chairperson can also
19 initiate designation proceedings. There's different
20 -- the Code establishes different criteria when an
21 area needs to be designated. There's three surface
22 water criteria, six ground water criteria. For
23 example, you have diminishing water levels, serious
24 conflicts, saltwater intrusion, water quality
25 degradation, and most importantly, when are

1 approaching 90 percent of the sustainable yield.

2 Also as a background information, so water
3 management area designation is nothing new. That
4 already preceded the Code from before 1987. And
5 originally, the Water Code was intended to have this
6 regime of water use permit statewide, but it was a
7 political compromise for the Code to pass in '87
8 that it would be, like, a phase in approach. So the
9 areas that you saw on the slide before, over the
10 years have become water management areas.

11 So next slide.

12 **MS. ROTH:** And maybe I'll just add that
13 that doesn't meant that new areas couldn't become
14 designated. And again, that's a process of us
15 understanding resource availability, having all the
16 data to understand what's happening and whether or
17 not we actually need to designate.

18 **MS. DEIKE:** I think this is the slide
19 Chair was waiting for. So to recap, CWRM regulates
20 all waters, and all water uses. However, CWRM does
21 not regulate all water use. So Hawaii has a by per
22 credit system, only in the water management areas,
23 the areas that you saw on the map earlier, you will
24 -- you will acquire a water use permit where we
25 setting limits on the amount of water that can be

1 used. In the rest of the state, we are not, per se,
2 setting limits of how much water you can use.

3 But even though the common law applies,
4 CWRM is still bound to use it, like, fulfill its
5 Public Trust duties, which means, then, for example,
6 just because you operate a stream diversion doesn't
7 mean that you can take the whole stream. So we're
8 setting the interim in stream flow standards that --
9 the amount that have to stay in the stream. This
10 would be an example of that.

11 Also want to note there's a third type of
12 regulated water use -- only have it small on the
13 slide with an asterisk because in -- if you are
14 trying to take water from state lands or drill a
15 well on state land, you would need a water lease.
16 But that's not under CWRM jurisdiction. That's the
17 Board of Land and Natural Resources that responsible
18 for that.

19 So I think the easiest way to visualize
20 this in Hawaii is, like, the way we're regulating
21 water use is not, like, we have one law for all
22 water use. It's like, whatever water the --
23 whatever land the water is falling on, this is the -
24 - the set of laws that we're going to apply.

25 Next slide.

1 So those are the permits that Katie
2 mentioned earlier. So all of these permits are
3 applicable statewide. And I want to make a little
4 correction. Those are not ministerial, they
5 actually do come before the Commission, with the
6 exception of a few well construction permits that
7 have been delegated to the Chairperson. All the
8 other ones do come before the Commission. But those
9 are very different than water use permits because
10 here -- for those permits, those are technically
11 construction permits, and they expire after two
12 years.

13 Next slide.

14 So water use permits, on the other hand,
15 are only required in water management areas. So
16 often areas designated, as you've seen on Lahaina,
17 all existing users have one year to apply for new
18 water use permit to continue the water use. And
19 water use permits do not have a time limit. So --
20 which means they can -- but they can be revoked if
21 someone isn't using the water use permit for four
22 years. It can be a total non-use or a partial non-
23 use. However, CWRM is required to review all water
24 use permits every 20 years.

25 It is also important to know that if

1 you're applying for a water use permit, you may also
2 still need to come in. If it's not an existing
3 infrastructure, if you need to drill a new well,
4 then we also have to get a well construction permit,
5 or a stream diversion permit.

6 **CHAIR GIOVANNI:** So this -- I don't know
7 what to call it. This -- these set of rules came
8 before us in a very recent case having to do with
9 new development on West Maui. And I'd like, if you
10 don't mind, to elaborate on the current state
11 because we were confused, which is existing water
12 users have one year to reapply or apply to secure
13 their original or some form of water use permit, and
14 that anybody else that never had water before has to
15 wait until that process is completely finished and
16 cannot even apply. Is that -- can you expand upon
17 what -- what reality is?

18 **MS. DEIKE:** I can expand on that, and it's
19 -- I mean, this may have been a process how we have
20 handled permits prior, but in -- especially in the
21 case of Mawai Ha, we have taken existing and new use
22 permits at the same time. And the latest ruling of
23 the Court also makes it very clear that CWRM can
24 take existing and new uses at the same time. I
25 assume you're referring to the Puukoolii development

1 that came before you.

2 **CHAIR GIOVANNI:** There were a couple.

3 **MS. DEIKE:** Yeah, a couple. So the water
4 purveyor for those -- potential water purveyor for
5 those developments could come in at this time to us
6 with a new use permit, but CWRM just did not receive
7 for those specific -- I think what I have in my --
8 we've noted before that Puukoolii was one, or
9 Kaanapali 2020. We have not received a water use
10 permit application for new use for those. But if
11 those purveyors were to send us a permit, at this
12 point, we can take it at the same time as we're
13 taking the existing use permits.

14 **CHAIR GIOVANNI:** So is there any sense of
15 -- so I understand they could submit the
16 application. Is there -- internally within CWRM, is
17 there any sense of priority established in
18 addressing those applications, whether it's a -- or
19 an existing use, or for a new use?

20 **MS. DEIKE:** The way we are going to tackle
21 the -- all the water use permits in the Lahaina area
22 -- sector area was that we're going region by
23 region, and our intent is to start with the region
24 where those particular developments are actually
25 location -- Nahana Kauai Aquifer, so we have already

1 reviewed all the existing use permits, and there's
2 one new use permit, as well. And if we were to get
3 a new use permit of this time, we would address them
4 at the same time. Just as I pointed out in the one
5 slide, from the Na Wai Eha latest decision, just
6 because you have an -- an existing use doesn't mean
7 that you actually will get that amount again because
8 if it's not reasonable beneficial, you will not get
9 the same amount.

10 And from the first glance at the
11 applications, we definitely have some concerns about
12 some uses in the area that we have to insure that
13 they're reasonable beneficial, and that we're not
14 wasting water.

15 **CHAIR GIOVANNI:** Yeah, that sounds very
16 reasonable approach. My concern that I -- in the
17 genesis of my question was whether or not they would
18 get attention -- whether it would be -- get reviewed
19 in a timely way. New versus existing. And what I'm
20 hearing you say is that they're all in there
21 together and they're being evaluated collectively.
22 Is that a fair statement?

23 **MS. DEIKE:** That is a fair statement. I
24 think -- I mean, I can't speak for the Council that
25 would be advising the applicants at that time --

1 **CHAIR GIOVANNI:** Sure.

2 **MS. DEIKE:** -- because Po Holo Koi
3 (phonetic) aquifer, for example is -- the reason why
4 we designated the area is because we are already
5 over sustainable yield. We have the documentation
6 on the Department of Health that we have water
7 quality issues. We have saltwater intrusion in that
8 area, too, because we have legacy contamination from
9 plantations. So the existing wells have to treat
10 their ground water to make it drinkable. So there's
11 a lot of issues in the areas already and have
12 reservations for the Department of Hawaiian Home
13 Lands, which is a Public Trust use.

14 So yes, it will be difficult for new use
15 applications to fit in, but depending on what the
16 Commission will decide -- what is reasonable,
17 beneficial -- if the existing uses as -- if I'm just
18 using some numbers. If this -- the applicant is
19 asking for four million gallons a day, but we are --
20 the Commission will determine that only three
21 million gallons a day are actually reasonable,
22 beneficial, this would free up one million gallons
23 for new user, for example.

24 So that's how we are going to approach
25 this and look at this issue.

1 **CHAIR GIOVANNI:** Okay, that's very
2 helpful. So if a developer comes in front of us
3 Commission, and says, I've got everything done. I'm
4 just waiting for my water allocation, and CWRM will
5 not even accept permit application, we can say on
6 the record that we're heard directly that that's not
7 the case, that -- that you can -- that you will, in
8 fact, at least accept an application for new use.

9 **MS. DEIKE:** Yes. Yes, we can guarantee
10 that if all the existing reasonable, beneficial uses
11 are provided for that there will be water left -- we
12 can't guarantee that, but --

13 **CHAIR GIOVANNI:** Yeah. But those -- yeah.

14 **MS. DEIKE:** -- if there is, we -- we will
15 address new use applications.

16 **CHAIR GIOVANNI:** Okay. Thank you.

17 Question, Commissioner U'u.

18 **COMMISSIONER U'U:** Quick question. What
19 would be the timeline. Say, if you -- you make the
20 decision that there is adequate water available for
21 new use, is there a potential time period of -- I'm
22 just trying to figure out -- we lacking serious
23 housing on Maui. Pre-fire, right? Is there
24 anything we can do to help aid our island back in
25 building, whether it be existing uses, or new uses,

1 is anything CWRM is doing to help to bring us back
2 to some normalcy? Is there a process?

3 I know it can be very confusing for
4 someone like myself -- layman's terms in -- in
5 understanding the water issues, but I understand
6 that cane was very thirsty -- sugar cane, and there
7 is none -- sugar cane. I understand that we need
8 stream flow, but to what cost at housing, maybe?
9 What's -- what will be the -- you guys said prior
10 there's no priority in housing, but I know stream
11 flow -- I know people -- lo'i -- at these lo'i
12 farms, they have a lot of water being discharged
13 into the ocean -- kind of like what Commissioner
14 Carr Smith brought up.

15 And how does that equate to not having
16 housing? So I'm just trying to figure out how we
17 balance bringing some housing back because
18 everybody's looking for this answer on Maui. And
19 everyone is -- everyone on all islands -- and
20 everyone is saying, seriously, CWRM with Land Use
21 Commission, and now I'm joining the crowd, right --
22 which -- but how can we assure our old people and
23 our old island?

24 Like, what it said prior -- they're going
25 all over the place. Don't get me wrong -- that you

1 are the guardians of public trust, but also the same
2 time to protect and manage for present and future
3 generations.

4 And just to let you guys know, we leaving
5 -- our people leaving. So I want to understand how
6 we can accommodate to keep our people on Maui --
7 again, go be with housing, go be water -- is
8 anything available? And I understand that your job
9 is to balance that. Right? And I see a lot of
10 stream use going in the ocean, which is fine because
11 -- but I don't see that equating towards housing, or
12 how we could use it to housing, or how we can
13 utilize different waters -- be it off the injection
14 wells -- whatever we need to come up with some
15 solutions. I think everyone on Maui is waiting for
16 a few solutions and some guidance.

17 And I -- I watch the meeting. This is my
18 first meeting, so sorry. I watched the last
19 meeting. There is a lot of confusion from Kaanapali
20 land what this said and being what's heard here.
21 It's a major confusion. It's, like, totally
22 different people talking on a different -- it's like
23 we're not even in the same page, for sure.

24 How can we correct that? Sorry. That was
25 like 10 questions in one, but I am confused. And I

1 hope you can give me some peace of mind to give --
2 there's an end -- there's a light at the end of the
3 tunnel for Maui. I hoping for something from you
4 guys.

5 **MS. DEIKE:** Mahalo, Commissioner U'u. I
6 appreciate your question, and I share your concern.
7 I think Maui is very -- Maui is a great example, and
8 it's very specific which area you're looking at. If
9 you're looking at East Maui -- when you're, like,
10 NPHDNS, or if you're looking at West Maui, where
11 Pioneer Mill actually closed in 1999. The shortage
12 of water -- shortage would be too harsh of a
13 statement, but, like, the threatened water resources
14 in the Lahaina area -- that is something that was
15 actually on the radar, like, in the late '70s.

16 And then we averted -- avoided this type
17 of designation early on where we could have gotten a
18 handle on this earlier. But I appreciate that
19 you're bringing up alternative water sources because
20 I think that was the impetus of the Water
21 Commission, as well. When we designated this area
22 to have administrative control because only then --
23 only when we require water use permits, we can
24 require a user to use an alternative source, which
25 would be the O1 -- the injection wells. So

1 Kona/Kauai, for example, where we're over
2 sustainable yield, we're using ground water to water
3 golf courses, as well. Or we're using ground water
4 to irrigate landscaping of hotels or luxury homes.
5 If we could substitute those irrigation needs with
6 our one water, we would free up water that could go
7 towards housing developments.

8 I'm hoping that give you a little peace of
9 mind, but the other mission piece, which is not
10 CWRM's Kuleana in a sense, is water source
11 development, and that is -- I'm using Maui as an
12 example. So Maui County has not developed many new
13 sources, and Maui County traditionally was always
14 very dependent on the plantation systems. So Maui
15 County, compared to other islands, is way more
16 dependent on surface water for drinking water to
17 treat surface water. So you have that -- from the
18 EMI system, that surface water is being treated and
19 goes up country.

20 You have the same on Lahaina, so actually
21 we're still allowing -- at this point, allowing Maui
22 County to completely give water a stream to use for
23 drinking water on Lahaina than we have water out of
24 Kona Keauhou, which is also being treated to become
25 drinking water for the county. And that's why you

1 have -- but that -- on the west side of Maui, on
2 Lahaina, you have the county as a water purveyor,
3 and multiple other private water purveyors who have
4 access to ground water wells, which the county
5 doesn't -- and to a limited degree, only has. And
6 with climate change, the conditions are getting just
7 more dire because you have diminishing rainfall, you
8 have diminishing stream flow. So when your drinking
9 water supply is dependent on stream water, and you
10 have less stream water, we're going to run into
11 trouble.

12 And we have to really look into how can we
13 make sure for future generations that we have enough
14 ground water, as well -- that we're not taking too
15 much ground water because if you're taking too much
16 ground water, saltwater will come up. So that's
17 what we're trying to accomplish here.

18 **COMMISSIONER U'U:** Thank you. I've heard
19 rumors there's a proclamation coming out for the
20 county to work with private land owner programs, as
21 you say, to -- to take -- lessen the injection
22 wells, and again, utilize some of the waters for --
23 for better use. You guys would support something
24 like that, with CWRM? Or you guys would stay out of
25 that? Is that a possibility of some support that

1 you guys might show to help -- I would say, expedite
2 that process of asking the county to partner with
3 private water owners. Is that something you guys
4 do, or there's something the county would do, and
5 they'll come back and see you guys through to, I
6 guess, initiate the -- the process?

7 **MS. DEIKE:** Commissioner U'u, I think you
8 mixed a couple of question one again.

9 **COMMISSIONER U'U:** Okay.

10 **MS. DEIKE:** So I think the -- I'm not
11 quite sure what proclamation you're referring to,
12 and -- are you --

13 **COMMISSIONER U'U:** There's a resolution
14 coming up from one of the Council members, asking
15 the -- the county to partner with private water --

16 **CHAIR GIOVANNI:** Consider it -- consider
17 it a hypothetical for right.

18 **COMMISSIONER U'U:** Consider that. Yes.
19 There is, hypothetically, a resolution coming urging
20 partnerships so we can utilize some good water and
21 take away some of the injection well water and use
22 it for landscaping.

23 **MS. DEIKE:** Absolutely. This was one of
24 the reasons why we designated the Lahaina Aquifer
25 sector in the first place -- that we even have the

1 opportunity to even require alternative sources. So
2 if there will be -- it sounds more like there needs
3 to be infrastructure funding.

4 **COMMISSIONER U'U:** Right.

5 **MS. DEIKE:** Yes. CWRM would be supportive
6 of that.

7 **MS. ROTH:** Maybe I'll -- I'll just add to
8 that, as well because I think -- I have a couple
9 comments on -- on your question, Commissioner U'u.
10 So in terms of CWRM, and our jurisdiction, and how
11 we can better partner with other agencies, I think
12 you're exactly right. That is something we can do,
13 and need to do, and are attempting to do is be a
14 voice in those conversations with the counties, with
15 private water purveyors. In some cases, including
16 Lahaina, we see the pukas and the gaps, and we
17 understand improvements that could be made, whether
18 that's to infrastructure, R1 facility improvements,
19 we understand what needs to happen in order to
20 "create more water," in these water-stressed areas.

21 It's not necessarily our jurisdiction or
22 kuleana to make those types of improvements or
23 changes to water infrastructure, but we can advocate
24 for those changes, and we should advocate for those
25 changes, given our mission and mandate to protect

1 the Public Trust and water resources statewide. So
2 that's something we're trying to do is be that voice
3 in those conversation.

4 **COMMISSIONER U'U:** You made this a very
5 good meeting for me thus far, so thank you.

6 **MS. ROTH:** You're welcome. And then I
7 will also just mention, I think -- you kind of hit
8 on the crux of some of -- the biggest issue that
9 we're facing is the question of balance and how we
10 do that because we have Public Trust uses, which
11 again, are prioritized, not in a particular order.
12 But those are things that we are supposed to
13 consider and prioritize above others. Ultimately,
14 it will be up to our Commission to make a lot of
15 these decisions. When we bring these applications
16 before them, the water use permits, they are going
17 to be the ones making the decisions about who gets
18 what, and how to balance, and what that looks like.

19 **CHAIR GIOVANNI:** Thank you and forgive me
20 for making a very general characterization to lead
21 into my real question. My very general
22 characterization is that these water issues appear
23 in -- in many cases to be a -- a bottleneck. And so
24 my question -- my questions are can you speak to the
25 adequacy of the human resources you have available

1 at CWRM to get these problems worked on and solved.
2 And then, second, and maybe related to that, it
3 seems like when you do make progress and you do get
4 a Commission decision, the next thing you do is you
5 go to the Supreme Court for five years and get it
6 appealed. How big of a problem is that?

7 **MS. ROTH:** Maybe I'll address the first
8 part of your question, which is related to staffing.
9 The short answer is we don't have enough money and
10 we don't have enough staff. We need more of those
11 things in order to make decisions, to understand
12 threats to the resource. In terms of permitting --
13 like, processing permits, you know, I won't say I
14 agree necessarily that we're a bottleneck, but I
15 will say that we don't have enough staff.

16 **CHAIR GIOVANNI:** I asked for your
17 forgiveness on that up front.

18 **MS. ROTH:** We don't have enough staff to
19 do everything that's needed, and the number of
20 permits that come in to us, and our ability to
21 process them, and do the critical analysis that's
22 needed. It takes time, and we don't have enough
23 staff to make it happen.

24 Maybe I'll defer the second part of your
25 question to Alexa as it relates, I think -- maybe

1 you want to re-read it for Alexa. I think that
2 there's a legal component to that.

3 **MS. DEIKE:** I think I'm hopeful --

4 **CHAIR GIOVANNI:** My second questions was -
5 - is that you are -- you are -- you have -- part of
6 your kuleana to make really important decisions, to
7 move -- to move progress forward in the context of
8 the Public Trust in which you are -- you are the --
9 the -- responsible for upholding. But it looks like
10 anytime you make an important decision, it ends up
11 with the Supreme Court for five years. How do you
12 make progress?

13 **MS. DEIKE:** Thank you for that question,
14 Chair. Looking at the history of the Supreme Court
15 decisions that I mentioned on the slides, I think
16 there is definitely a learning curve for the
17 Commission to apply the law how the Supreme Court
18 wants us to apply the law. The last opinion, I
19 think we were really close making a -- coming down
20 with an Order that would be agreeable to the Supreme
21 Court but looking at in the future for the Lahaina
22 Aquifer sector area, I'm more hopeful there, given
23 the urgency of getting housing and water to the
24 people, that the parties will be more agreeable to
25 the position that CWRM's going to make. But I can't

1 speak for all the applicants how they will perceive
2 if we're telling them the four MGE that you're
3 asking for, you will only get three. So I can't --
4 can't speak for them.

5 **CHAIR GIOVANNI:** Fair enough. Let me just
6 offer, on behalf of the Land Use Commission, when
7 you do come forth with your position, please brief
8 us on it, and if we can do anything to support you,
9 we'll take it under consideration.

10 **MS. DEIKE:** Thank you.

11 **MS. ROTH:** So just a few more slides, if
12 you'll bear with me. I -- I did want to talk about
13 the Hawaii water plan -- what it is, what it is
14 intended to do, and the intersection with Land Use
15 Planning.

16 **CHAIR GIOVANNI:** So should we take a five-
17 minute break because it's been going on for an hour.

18 **MS. ROTH:** We can. There's --

19 **CHAIR GIOVANNI:** So let's -- I'm going to
20 take a five-minute --

21 **MS. ROTH:** Sure.

22 **CHAIR GIOVANNI:** It's 2:04. We'll come
23 back at 2:10. Six minute recess.

24 **MS. ROTH:** Perfect.

25 **(Recess taken from 2:04 - 2:11 p.m.)**

1 **CHAIR GIOVANNI:** Back on the record. It's
2 2:11.

3 So let Katie take it.

4 **MS. ROTH:** Sure. Again, for the record,
5 Katie Roth, Planning Program Manager with the Water
6 Commission. Just to wrap up our presentation, I
7 wanted to touch briefly on the Hawaii Water Plan --
8 what it is, what it's intended to do, and the
9 intersection with land use planning.

10 So when the Code was written, they
11 recognized that comprehensive planning was an
12 essential component to water resource management.
13 Our ability to manage, protect, and regulate the
14 resource. So they envisioned a plan, which we call
15 the Hawaii Water Plan, which is intended to do just
16 that.

17 It consists of five separate components.
18 There's a Water Resource Protection Plan, a Water
19 Quality Plan. These are considered to be our
20 protection policies when it comes to water. A State
21 Water Projects Plan, Agricultural Water Use and
22 Development Plan, which includes state needs, and
23 I'll talk a bit more in the next slide about the
24 specifics of each of these plans. And then there's
25 the County Water Use and Development Plans. So

1 these five components are what create what we call
2 the Hawaii Water Plan.

3 So again, getting a bit more into the
4 weeds on each component, the Water Resource
5 Protection Plan is actually a plan written and
6 drafted by us, by the Water Commission. The Water
7 Quality Plan is prepared by the Department of
8 Health. And those two plans are intended to tell us
9 how much water do we have, what's the available
10 resource, and what do we do to protect it in terms
11 of quantity and quality?

12 The State Water Projects Plan is prepared
13 by the DLNR Engineering Division. That gets into
14 more details about water needs for state projects,
15 including those of the Department of Hawaiian Home
16 Lands, the Agricultural Water Use and Development
17 Plan is prepared by the Department of Agriculture,
18 and that talks specifically about water needs for
19 agriculture.

20 County Water Use and Development Plans are
21 typically prepared by the County Water Departments,
22 and they are heavily informed by the County Land Use
23 Plans. So the -- the Water Use and Development
24 Plans are really kind of where you see the land use
25 component come into play in terms of understanding

1 current and future need, and what that looks like
2 when you talk about, like, authorized, planned use,
3 what developments are on the horizon, what are those
4 water needs look like?

5 Oh, maybe I'll just also mention that each
6 of these plans is supposed to be updated on a five-
7 year cycle. That doesn't currently happen for a
8 variety of reasons -- which makes it a little bit
9 challenging because the plans are intended to talk
10 to one another and be somewhat integrated and
11 operate in a more integrated fashion. Whether or
12 not they do this in the best way I think is open to
13 debate, and I'll probably be -- probably be the
14 first to say that they don't do it as well as they
15 could. And that's something that we're working to
16 improve.

17 I don't have a slide on this, but we're in
18 the process of updating our Hawaii Water Plan
19 framework document. The framework hasn't been
20 updated since 2000, but that's the document that the
21 counties and other plan preparers would refer to to
22 get more details and insight about how to go about
23 updating their plans, what information needs to be
24 included in these plans, how they think about these
25 plans. So that framework document is something that

1 we're in the process of updating at the moment,
2 which should hopefully lead to better planning and
3 policy.

4 **COMMISSIONER LEE:** Chair, I have a
5 question.

6 **CHAIR GIOVANNI:** Commissioner Lee.

7 **COMMISSIONER LEE:** Thanks for bringing up
8 the -- the county plans. Does the State General
9 Plan have any part?

10 **MS. ROTH:** The State General Plan? The --
11 I know the County General Plans are part of the
12 process that the counties go through -- they review
13 the County General Plans. I might defer over to
14 Neal --

15 The State General Plan -- is that in any
16 way involved?

17 **MR. FUJII:** I don't know of any State
18 General Plan. The counties do have. It might have
19 been way back in the day that there's a function --
20 all state functional plan, but any planning and --

21 **CHAIR GIOVANNI:** Mary Alice, you want to
22 speak to that?

23 **MS. EVANS:** I don't think the state has a
24 general plan. I think there are four county general
25 plans.

1 Thank you.

2 There are four county general plans. The
3 state has a Hawaii State Plan, which is Chapter 226,
4 and it encompasses a wide variety of different
5 goals, objectives, and includes the functional plans
6 and priority guidelines. But there is not a fifth
7 state land use general plan. There are state land
8 use districts, which the Land Use Commission
9 decides.

10 **CHAIR GIOVANNI:** That's consistent with my
11 understanding, too. The county plans -- the county
12 has general plans, and those are updated on a semi-
13 routine basis.

14 **MS. ROTH:** Yeah, so that's another kind of
15 complicating factor because you may have a County
16 Water Use and Development Plan that's being updated,
17 and partway through the update, the County General
18 Plan gets updated, and whether or not that
19 information gets input into the Water Use and
20 Development Plan is not always the case. And that's
21 something we're trying to work to rectify as much as
22 possible. But it -- it is challenging when you have
23 all these different plans that inform other plans,
24 and are supposed to talk to one another, and they're
25 all updated on different intervals and cycles. So

1 it is challenging, to say the least.

2 **COMMISSIONER LEE:** Chair, I've got a
3 question.

4 **CHAIR GIOVANNI:** Where are we?
5 Commissioner Lee? Yeah.

6 **COMMISSIONER LEE:** Yeah, still here. I'm
7 still here.

8 **CHAIR GIOVANNI:** Go. All yours.

9 **COMMISSIONER LEE:** You know with Red Hill
10 -- Red Hill contamination -- I believe Red Hill
11 aquifers fed 20, 25 percent of Honolulu. So now
12 that that's gone, most of it, have you guys looked
13 at other alternatives besides just looking at what
14 we currently have with the Waiahole Stream and what
15 we currently generating to -- to all rain
16 reservoirs? Have we looked at the increase in
17 hotels -- population? How are we going to be making
18 up that -- that loss. Does the Commissioners look
19 at alternatives like desalination, maybe solar
20 desalination. Anyway, I just --

21 **MS. ROTH:** It's a good question. So on
22 the topic of -- of Red Hill and the implications of
23 that disaster, and the closure of the Halawa Shaft,
24 which is under Board of Water Supply jurisdiction,
25 Board of Water Supply has had to pivot to use other

1 sources that they have around the island to make up
2 for that loss of source. This is a -- more on the
3 County jurisdiction. It's not something that we
4 necessarily would weigh in on in terms of where they
5 would get water from, but we do work with the Board
6 of Water Supply in developing their Water Use and
7 Development Plans.

8 So they're a little bit unique. They
9 don't have one island Water Use and Development
10 Plan, they have several, and they've -- they
11 basically make different plans according to
12 different mokus across the island. So they have, I
13 think, about six or seven. They call them Watershed
14 Plans, but those are -- essentially, they're Water
15 Use and Development Plans. They have a plan in
16 draft form for the primary urban center, which I
17 believe covers the Pearl Harbor aquifer, where Red
18 Hill is located. So within that plan, it will
19 hopefully discuss ways to rectify source issues, and
20 -- as it relates to Red Hill contamination and what
21 they can or cannot now pull from that aquifer.

22 **COMMISSIONER LEE:** Thank you.

23 **MS. ROTH:** So the Hawaii Water Plan and
24 how it intersects with land use planning -- it
25 really kind of relates directly to the Use -- Water

1 Use and Development Plans. Within our statute,
2 within the Water Code, within our admin rules, and
3 within the framework document that I mentioned,
4 there are specific requirements/recommendations that
5 the counties need to include these various things --
6 kind of a check box when they're writing the Plan.

7 So they do need to identify future and
8 existing land uses as it relates to water needs,
9 they need to make sure their plans are consistent
10 with respective county land use plans and policies -
11 - that includes the general plans, consistency with
12 state land use classifications and policies. These
13 plans look at a 20-year planning horizon, so looking
14 out ahead 20 years for what the water needs are,
15 what development looks like in the next 20 years.
16 And again, they're supposed to be consistent with
17 other components of the -- of the Hawaii Water Plan.

18 So when -- when these plans, these
19 components of the Hawaii Water Plan come before the
20 Commission for adoption, we do look at these check
21 boxes to see if they're met. So we do want to
22 ensure that the counties are talking to, you know,
23 they're planning departments, that land use is
24 considered in the development of these plans because
25 we know that the intersection between land and water

1 is critical, but they haven't always been talked
2 about, I think, as one. So that -- that's something
3 that we look at when we're adopting these various
4 plans.

5 Also when water use permits are taken
6 before the Commission, we will, you know, have a
7 section in the submittal that says, is this project
8 consistent with the Hawaii Water Plan. So not all
9 developments are listed within these Water Use and
10 Development Plans, but we would want to refer back
11 to them to see, like, yes, this -- this is a
12 development or project that was listed in the
13 county's Water Use and Development Plan. We know
14 that there's, you know, source available for it, or
15 they have at least the infrastructure in place to
16 make the project happen.

17 Just a couple more slides left. So one
18 thing I think we wanted to discuss was how our
19 processes can be better integrated, and things that
20 we felt would be pertinent or important for you as a
21 Commission to think about when you get land use
22 petitions coming before you. These are things that
23 you may or may not be thinking about, but I thought
24 it was important to -- to include here.

25 So changes in -- in water availability.

1 You know, I think this definitely applies to
2 petitions or amendments to projects that are coming
3 before you that may be were approved decades ago and
4 haven't been built, where at the time, you know, the
5 water situation was different. But you -- we need
6 to consider what's happened since then.

7 So changes in water availability. You
8 know, we mentioned the climate change is something
9 we're seeing statewide. There's just less water
10 available, and that has led to us having to
11 designate new areas. The end of sugar -- as you
12 mentioned, sugar is a very thirsty crop. That led
13 to a lot of, you know, recharge in particular areas,
14 but we're not seeing that recharge anymore because
15 there's no more sugar crops. We're just starting to
16 kind of feel, I think, the impacts and effects of
17 that, where we are seeing less recharge in some of
18 those areas because there isn't all that water being
19 recharged into the ground.

20 The effect of invasive species, both
21 animal and plant-related. Many of our invasive
22 species, plants in particular, just suck up more
23 water. So where you have, you know, high
24 concentrations of invasive species, you're just
25 going to see less water. And I think, you know,

1 this relates back to forestry and wildlife and the
2 work they do for the Land Use Commission to be
3 somewhat aware of where projects are happening to
4 restore watersheds, where active management is
5 happening to remove animals. In places where you
6 are seeing that active management and forest
7 protection and restoration, the hope is that they're
8 -- you know, we're protecting the source, and
9 hopefully creating more water, at least insuring
10 that the water -- that there is going to be water
11 available in the future.

12 Updates to our sustainable yield numbers.
13 These haven't been updated in some time, but we just
14 a new report from the US Geological Survey, actually
15 looking specifically at the impact of climate change
16 on water resource availability, so we're in the
17 process of taking that data and analyzing it to
18 update the sustainable yields for our aquifers
19 statewide. What that looks like I can't
20 specifically say, but in many cases, we probably
21 will see a reduction in sustainable yield, which
22 means there's going to be less water available for
23 us to allocate if we're looking specifically at
24 sustainable yield as our measure of what's -- what
25 we can and cannot go above.

1 We also need to consider where Interim
2 Instream Flow Standards have been establish. I
3 mentioned these are ongoing, and we're establishing
4 new flow standards every year.

5 Newly designated water management areas.
6 As I mentioned, this just kind of brings into a
7 whole new regime of permitting and process into the
8 conversation. So where you are looking at petitions
9 that are within a designated area, I think it is
10 important to get CWRM to consult specifically on
11 those types of petitions.

12 Water infrastructure requirements. A
13 petitioner may come before you and say that they
14 have the water, but I think it's important to probe
15 them to make sure you fully understand what that
16 means. Does a new well need to be drilled? Is the
17 county supplying this water? You know, what does
18 that actually look like?

19 And again, prioritization of public trust
20 uses of water. That is, you know, our duty to -- to
21 understand what comes first, or what should be
22 prioritized ahead of other uses.

23 So the current engagement of our --

24 **CHAIR GIOVANNI:** Can you go back?

25 **MS. ROTH:** Sure.

1 **CHAIR GIOVANNI:** I was holding this
2 question, but --

3 **MS. ROTH:** Sure.

4 **CHAIR GIOVANNI:** -- since you have it on
5 the slide -- do you have -- where is your confidence
6 factor in terms of the sustainable yields that are
7 advertised and presented to this Commission and
8 others?

9 **MS. ROTH:** Oh, as I mentioned, we're in
10 the process of updating them, so I can't give you a
11 timeline for when that will happen, but it's a
12 priority for us to update them as soon as possible.

13 Sustainable yield information is found in
14 the Water Resources Protection Plan, so that's
15 probably the plan that will be updated -- probably
16 just the section on sustainable yields, when we
17 complete our analysis.

18 We're having ongoing conversations
19 internally about how we're going to go about doing
20 this, whether it's focusing first on what we would
21 consider, like, hot spot areas or places that we
22 know sustainable yields may be going down. West
23 Maui could be one example of that -- and kind of
24 updating the -- the numbers on a key -- key spaces,
25 rather than statewide all at once.

1 **CHAIR GIOVANNI:** So for -- so when it
2 comes to the question of sustainable yields, your go
3 to contractors, USGS?

4 **MS. ROTH:** No. We can actually run that
5 analysis internally, using what we call a RAM model.
6 It's a pretty simple application, and there's folks
7 who have opinions about whether or not that current
8 form of analysis is the best way to go about
9 determining sustainable yield, so that's part of our
10 internal conversation -- whether there needs to be a
11 different approach to how we create these numbers
12 and come up with them.

13 **CHAIR GIOVANNI:** So if a new development
14 comes before us, and as part of the presentation --
15 it may be even part of NIS, they hired a private
16 consultant to address the sustainable yield.
17 Obviously, it's in the developer's interests for
18 that to be as big a number as possible. But I'm
19 more interested in it being accurate. Are you a
20 resource that the LUC can look to for a second
21 opinion on a sustainable yield for a particular
22 parcel of land?

23 **MS. ROTH:** Absolutely, yes. And if you
24 wanted to confirm the number they're presenting to
25 you, you could look in the Water Resource Protection

1 Plan. We also have that information on our website
2 in maps.

3 **CHAIR GIOVANNI:** So I offer that as a
4 lead-in to your next slide.

5 **MS. ROTH:** Yes, thank you very much. I
6 appreciate that.

7 So in terms of engagement, I just wanted
8 to maybe reiterate the current process, as I
9 understand it. I've only been in this position for
10 two years, but based on what I can gather, the way
11 that CWRM currently engages with the LUC is
12 petitions will get routed for comment to our agency,
13 but they're getting routed through OPSD, which then
14 sends something to our department, to DNLR, which
15 then goes to our land division, which then
16 disseminates to all the divisions within DNLR.

17 As you can see, there's a lot of things
18 that could get lost in that process, so we may or
19 may not receive the petition, or receive your
20 requests for comment for what we would call a doc
21 review. In some cases because, you know, it's
22 disguised on a land division letterhead, it may not
23 trigger in us this is, you know, a Land Use
24 Commission issues, or even -- but, you know, the
25 high priority that it may need.

1 So that is the second bullet point I guess
2 I wanted to mention is can that consultation process
3 potentially be improved upon. I don't think there's
4 anything that precludes our agency from working
5 directly with LUC staff or vice versa for them to
6 come to us directly. I have offered up Planning as
7 that point of contact. If there are specific
8 questions that need to be answered, we are happy to
9 do that, and we will make that our priority.

10 **CHAIR GIOVANNI:** Yeah, I think -- I think
11 that could work, and I'm offering an olive branch to
12 my friends over here in OPSD at the same time
13 because typically, we'll get a petition, and our
14 staff is of a certain capability to identify whether
15 we're going to have questions on water as a -- as a
16 priority. And if and when that -- so we don't have
17 to send everything to you.

18 **MS. ROTH:** Right.

19 **CHAIR GIOVANNI:** But when we see a
20 petition in which water is a prominent issue, I
21 think it's a three-way -- that we cannot let
22 something get lost in the sequence of events, and we
23 would welcome your presence, your involvement, your
24 attention to the water issues as part of the process
25 that we go through with OPSD. Absolutely.

1 **MS. ROTH:** Absolutely. Yeah.

2 **CHAIR GIOVANNI:** Fair enough?

3 **MS. ROTH:** Definitely.

4 **CHAIR GIOVANNI:** Yeah.

5 **COMMISSIONER CARR SMITH:** Chair?

6 **CHAIR GIOVANNI:** Where's that?

7 **COMMISSIONER CARR SMITH:** Over here.

8 **CHAIR GIOVANNI:** You. Okay. Commissioner
9 Carr Smith.

10 **COMMISSIONER CARR SMITH:** I just wanted to
11 confirm or clarify, so CWRM would be involved if we
12 were dealing with a petitioner that's in a
13 designated area. Right? If -- if it's not a
14 designated area, then it's the county. Correct?

15 **MS. ROTH:** Well, in -- in any area of the
16 state, we could weigh in. Just because an area
17 isn't designated doesn't mean that there may be
18 water issues, water conflict. So I think if the LUC
19 feels that there could be pertinent water-related
20 issues, regardless of whether it's in a designated
21 or non-designated area, we have the purview to weigh
22 in.

23 **CHAIR GIOVANNI:** I don't think it's an
24 either or. I think that most of our petitions,
25 we've got both the state and the county present, and

1 we would welcome you to be part of the commentary
2 offered by the state on water issues. That doesn't
3 preclude representatives from the county that have a
4 similar role. Right?

5 **COMMISSIONER CARR SMITH:** Exactly. I
6 would encourage that idea. Yeah.

7 **CHAIR GIOVANNI:** Yeah.

8 **MS. ROTH:** Yeah. I think my suggestion
9 here is that perhaps, in certain cases, CWRM should
10 be the entity representing its, you know, comments
11 rather than OPSD.

12 **CHAIR GIOVANNI:** Okay.

13 **MS. ROTH:** Not to say anything negative
14 about OPSD, but it is challenging with some of these
15 issues, which are very complicated. If they just
16 have a conversation with one of our staff, and have
17 to communicate that back to you, it -- it's
18 difficult. And so I think it would be better if
19 CWRM staff -- you know, one person, at least, could
20 attend the hearing --

21 **CHAIR GIOVANNI:** Yeah.

22 **MS. ROTH:** -- to provide a more detailed
23 comments that may come up, which is something I
24 noticed when I looked at the recording from May.
25 The LUC meeting in May.

1 **CHAIR GIOVANNI:** Well, good. Well, we
2 would welcome that. And it wouldn't be
3 groundbreaking. In other words -- it might be
4 groundbreaking for CWRM and LUC, but we've had
5 petitions where the Department of Transportation, or
6 the Department of Education, or the Department of
7 Health was needed to address prominent questions
8 within a petition. And OPSD has brough
9 representatives forth so that we could hear directly
10 on occasion.

11 **MS. ROTH:** Right. Yes. And we are happy
12 to do that.

13 **CHAIR GIOVANNI:** Yeah.

14 **MS. ROTH:** I know that many, or some of
15 these meetings are in person. You know, if it's on
16 island, or if we have the travel budget if you're
17 doing the hearing off island, we are happy to
18 participate. If there's a virtual option, even
19 better. We do a lot -- even our Commission meetings
20 are a hybrid, so we offer both in-person and a
21 hybrid option for attendance.

22 **CHAIR GIOVANNI:** We're similar.

23 **MS. ROTH:** Great. Okay.

24 Another, you know, area where improvement
25 maybe could be made is better coordination between

1 the counties and the LUC when it comes to outreach -
2 - when they're updating their Water Use and
3 Development Plans. I believe there has been a
4 conversation in the past about amendments to the LUC
5 admin rules, specifically maybe calling out more
6 explicitly consultation with the Water Commission.
7 I know nothing has really moved on that for a
8 variety of reasons, but maybe an alternative to an
9 admin rule amendment would be to devise some sort of
10 memorandum of understanding?

11 **CHAIR GIOVANNI:** Actually, we're in the
12 middle of updating the admin rules presently, so --
13 over the next weeks to months, and the opportunity
14 is now.

15 **MS. ROTH:** Great. And again, based on my
16 understanding, I think we have provided suggested
17 language to LUC staff for those admin rule
18 amendments, so we can continue the conversation if
19 needed, but I think we have some suggested language.

20 So in addition to that, we could also come
21 up with an MOU. CWRM has MOUs with other agencies,
22 including the PUC. These are, you know, nonbinding,
23 but it, you know, lays out in a very specific way
24 opportunities for collaboration, holding us
25 accountable. We may want to call them, I guess,

1 promises or commitments to work more candidly with
2 one another. And this has worked well for us, and
3 this is kind of something new that we've done in the
4 last few years just to further articulate the
5 relationship and the importance of inter-agency
6 collaboration.

7 And with that, I will end. Thank you so
8 much. We're happy to answer questions.

9 **CHAIR GIOVANNI:** Thank you.

10 Commissioners? Further questions or
11 comments?

12 **COMMISSIONER YAMANE:** Chair?

13 **CHAIR GIOVANNI:** Commissioner Yamane?

14 **COMMISSIONER YAMANE:** Hi. I had a follow-
15 up question related to sustainable yields. I just
16 wanted to confirm that we need the data from the
17 deep well monitoring to do the sustainable yields.
18 Is that correct?

19 **MS. ROTH:** That informs it. It's not --
20 it's not, I guess -- I don't want to say it's not
21 necessary. It informs it. It's one component of
22 that analysis, but it's -- yeah. It's not the only
23 component.

24 **COMMISSIONER YAMANE:** Well, what is the
25 components to do -- have a high confidence report on

1 sustainable yields.

2 **MS. ROTH:** Maybe I'll -- I'll ask Neal to
3 weigh in since he has a bit more familiarity with
4 the process we've gone through.

5 **COMMISSIONER YAMANE:** Thank you.

6 **MR. FUJII:** Thank you, Commissioner, for
7 the question. Yeah, so currently the -- the Water
8 Commission utilizes best -- what we call best
9 available data to estimate sustainable yield. In
10 the past, we've been using different recharge -- how
11 much water makes it into the aquifers? And based --
12 based on that amount -- and we call it the recharge,
13 there's different ways to estimate what the
14 sustainable yield is in order to sustain the
15 aquifer. And it's -- you know, sustainable yield is
16 defined in the Water Code as -- I can't quote it for
17 you, but it's -- it's the amount of water withdrawn
18 as to not harm the aquifer, as determined by the
19 Water Commission. Right? So it's -- it's not a
20 specific, quantitative thing, but it's -- it's based
21 on science and -- and judgment of -- of the
22 Commission ultimate.

23 And so recharge data, we call it. We use
24 best available data to estimate sustainable yield.
25 What the -- what the Commission currently uses and

1 has been using is a very simple, kind of a water
2 balance model, and it's basically how much water
3 going in, how much is allowed to flow into the
4 ocean, and whatever proportion of that is through --
5 through different formulas. The remainder is what's
6 available to be withdrawn up to a certain point.
7 And then, once you hit that point, you've got to
8 stop, so --

9 **COMMISSIONER YAMANE:** So water agreement,
10 is that rainwater, then? When you see water
11 agreement? Basically?

12 **MR. FUJII:** Yeah, generally it's the --
13 it's the rainwater, it's the land use -- the type of
14 land use, ground cover, you know, evaporate
15 transpiration. A number of components, including
16 stream flow, and how much of that stream water goes
17 into the ground. Things like that. The most recent
18 USGS study actually looked at reservoirs and what
19 that contributes to the recharge of the aquifer. So
20 it's very detailed. So I forgot what the original
21 question was.

22 **MS. ROTH:** I think the -- kind of the
23 simple way to say it is we take the data -- a -- you
24 know, USGS data being one example, and we plug it
25 into our RAM, or Robust Analytical Model to generate

1 the sustainable yield --

2 **MR. FUJII:** Yeah, the --

3 **COMMISSIONER YAMANE:** Okay. I guess my --
4 I was thinking that you didn't have enough data, so
5 I was curious whether the output of yield
6 sustainable is not high confidence, but it seems
7 like it's more than just the deep well monitoring
8 that you're getting the data from that contributes
9 to the sustainable yields.

10 **MR. FUJII:** Yes.

11 **MS. DEIKE:** We actually have two RAM
12 models, so the basic RAM model, the RAM 2 model.
13 That second model relies on data from deep
14 monitoring wells, so those deep monitoring wells
15 are, in fact, very important. So the more
16 information we have from those, we can make better
17 projections on what the sustainable yield really is.

18 **COMMISSIONER YAMANE:** Thank you. No more
19 questions, Mr. Chair. Thanks.

20 **CHAIR GIOVANNI:** Thank you.

21 Anybody else?

22 **COMMISSIONER U'U:** Chair, I got a -- I got
23 a point. I want to circle back. Sound like we in
24 trouble -- we will be in trouble the next 10 years.
25 Yeah? So going back to alternative sources. And I

1 know the water supply, we're looking at desalination
2 plant in Campbell? Have that resurfaced, or is that
3 being currently --

4 **MS. ROTH:** Neal?

5 **MR. FUJII:** Yeah, I -- I think they are
6 going forward with a pilot desalination project in
7 Kalaeloa --

8 **COMMISSIONER U'U:** Yes.

9 **MR. FUJII:** -- and I think -- I can only
10 speak for them, but it's about -- looking at about a
11 million gallons a day maybe. I don't want -- so
12 that's probably a better question for the Board of
13 Water Supply, but yeah, those are kind of
14 alternatives that the Honolulu Board of Water Supply
15 has been pretty progressive with, looking at the --
16 these recycled water in Honouliuli for irrigating
17 their, you know, landscape irrigation and things
18 like that. So that's a great example of alternative
19 water sources.

20 **MS. ROTH:** And I will just add that, you
21 know -- that's a very expensive --

22 **MR. FUJII:** Yes.

23 **MS. ROTH:** -- process, so I wouldn't say
24 that that's necessarily where we need to be headed.
25 It is one option, but it is quite expensive to do

1 that.

2 Maybe I'll just kind of take the
3 opportunity to mention our water audit program,
4 which I didn't mention in the slides. But Neal and
5 Nick lead our water audit program, which basically
6 is an assessment of water systems to understand
7 where efficiencies could be made -- fixes could be
8 made, repairs could be done to achieve greater water
9 efficiency. So fixing leaks. So they do that
10 annually, and you know, I don't know if you want to
11 comment more on that, but that's one -- one way that
12 we're trying to figure out how do you create more
13 source -- is just by plugging the holes,
14 essentially.

15 **COMMISSIONER U'U:** You know, I'm -- I'm
16 not a real good golfer, but I love to golf. We have
17 60 courses, I believe, on the island of O'ahu. So I
18 was just kind of curious with -- with this -- these
19 plans that's coming out in Kalaeloa. You know,
20 whether we could -- would be able to use it for some
21 of the golf courses, and it could be built elsewhere
22 on the island.

23 **MR. FUJII:** Yeah. That's a great
24 question. A lot of -- there's across the state in
25 the different islands, there actually are recycled

1 water. We call them recycled wastewater, treated to
2 a certain level, and actually do irrigate golf
3 courses on Kauai, Maui -- including O'ahu. I think
4 some of the island golf courses are irrigated with
5 the Honouliuli recycled water, so I don't want to
6 give any numbers, but the Honolulu Board of Water
7 Supply is -- is doing that.

8 So that is definitely an alternative
9 that's actually in practice. Yeah.

10 **CHAIR GIOVANNI:** Okay. I think we're
11 good. Do you have any other comments or questions?

12 **MS. ROTH:** I don't think so. Thank you
13 all for the opportunity. It's been great.

14 **COMMISSIONER CARR SMITH:** Chair?

15 **CHAIR GIOVANNI:** Oh, where am I?

16 **COMMISSIONER CARR SMITH:** Could we ask to
17 get a copy of the presentation? Thank you.

18 **MS. ROTH:** Yes, it's been shared with LUC
19 staff.

20 **CHAIR GIOVANNI:** Yeah, staff has it.

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

22 **CHAIR GIOVANNI:** So we'll have staff
23 distribute it.

24 So what's the plan? Are you going to just
25 post the -- the PowerPoint, or do you want to send

1 it out to us individually?

2 **MS. KWAN:** I will post both PowerPoints
3 presented today on the LUC website.

4 **CHAIR GIOVANNI:** That's great. That
5 works. Yeah.

6 Yeah. On behalf of all my -- fellow
7 Commissioners, and staff, and OPSD, we want to thank
8 you all for coming. It's been very informative, and
9 very timely. So thank you. Thank you very much.

10 **UNIDENTIFIED SPEAKER:** Are we adjourned,
11 Chair?

12 **CHAIR GIOVANNI:** One second. Just let
13 them --

14 This concludes our meeting. We are
15 adjourned.

16 **(Meeting adjourned at 2:42 p.m.)**

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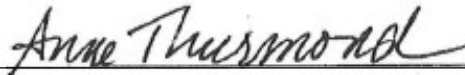
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CERTIFICATE

I, Anne Thurmond, 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 20th day of August, 2024.

A handwritten signature in cursive script that reads "Anne Thurmond". The signature is written in black ink and is positioned above a horizontal line.

Anne Thurmond