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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on July 24, 2024

Commencing at 9:00 a.m.

Held at

Homer A. Maxey Center Conference Room

Foreign-Trade Zone No. 9

521 Ala Moana Boulevard

Honolulu, Hawaii 96813

I. CALL TO ORDER

II. COMMISSIONER TRAINING

The training session will provide the Commission an opportunity to consult with its attorney and LUC Staff regarding Hawaii Revised Statutes (HRS) Chapter 205, Hawaii Administrative Rules (HAR) Chapter 15-15. Topics also include district boundary amendments, special permits, declaratory rulings, important agriculture lands, and other types of Commission business. Additionally, the session will address the applicability of HRS Chapter 92 (State Sunshine Law), HRS Chapter 91 (Hawaii Administrative Procedure Act), HRS Chapter 92F (Uniform Information Practices Act), and Subsection 15-15-62 on ex parte communications.

VI. ADJOURNMENT

BEFORE :

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PARTICIPANTS

LUC COMMISSIONERS:

Dan Giovanni, Chair

Brian Lee

Bruce U'u

Ken Hayashida

Michael Yamane

Myles Miyasato

Nancy Carr Smith

LUC STAFF:

Daniel Orodener, Executive Officer

Scott Derrickson, Chief Planner

Martina Segura, Planner

Ariana Kwan, Chief Clerk

Daniel Morris, Esq., Deputy Attorney General (via Zoom)

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HAWAII LAND USE COMMITTEE

JULY 24, 2024

CHAIRMAN GIOVANNI: Aloha mai kakou,

everyone. We will resume the training for Commissioners that we started yesterday. By my count we did about 90 slides of the presentation. We've got about 70 to go and I'm going to push to see if we can get there maybe before we break for lunch. And if that's the case, we'll all have a nice day. So let's try to do that.

So let me turn it back to Mr. Orodenger and ask you to continue.

MR. ORODENKER: Thank you, Chair.

The next topic that we're going to discuss is what we call Orders to Show Cause. And Scott is going to do that for us.

MR. DERRICKSON: Aloha mai kakou.

Okay. Orders to Show Cause. Depending on where you're coming from, we've heard members of the development community talk about it as a nuclear option that the Commission has to kill a project. From agencies and public perspective it's an opportunity to hold petitioners to presentations they've made, agreements they've made for the

1 reclassification of property. And you can find the
2 statutory authority in Chapter 205-4 Part G. And
3 that's where the Commission has been given the
4 authority to put the conditions on approvals,
5 including the ability to say if you have not
6 substantially commenced or you are not compliant
7 with representations or conditions that exist, that
8 they can issue an order to show cause.

9 And I'll explain the process for order to
10 show cause but I think first what I want to indicate
11 is that we have been trying to be proactive as staff
12 that when we see potential problems occur, our first
13 -- our first line is not to try to issue an order to
14 show cause. Our first line is to basically contact
15 petitioner's representatives and find out what's
16 going on. And usually the reason we do that is one
17 of the main conditions -- it's a standard condition
18 in all petitions. It's for an annual progress
19 status report. And especially the older -- some of
20 the older approvals that have changed hands a number
21 of times were not getting annual reports every year.
22 Sometimes there will be a lag of 5 to 10 years and
23 we don't know what's going on. We don't know if any
24 progress has been made. We don't know sometimes who
25 owns the property anymore. And when that happens we

1 start -- and we've applied yet, we start trying to
2 identify, okay, who owns a property? Try to get in
3 contact with their representatives and find out,
4 hey, look. We need an annual report. We need to
5 find out where things are at. Are you having
6 trouble? Let us know. Are you intending to do a
7 different project now? What is that going to
8 entail. So we try to be proactive rather than
9 jumping to an order to show cause.

10 And that's why more recently we've been
11 having more of these status reports. And the status
12 reports are an opportunity for our petitioner to
13 come and talk to the Commission and say, hey, we
14 still intend to do this project. However, we might
15 need to change certain things so we do anticipate
16 coming before you in the future with a motion to
17 omit for one reason or another. That's great
18 opportunity. We recently did that on Maui for an
19 affordable housing project that Mau County has going
20 on at the Island of Lanai. That was useful because
21 not only did it update the Commission. It updated
22 some of the state agencies that were involved,
23 including the Office of Planning and Sustainable
24 Development so they knew some of the things that
25 they might need to do to help the county move their

1 project forward.

2 So the order to show cause is a very
3 formal process, and it's usually triggered when --
4 it can be triggered by a county agency. It can be
5 triggered by a state agency. It could be started up
6 by a member of the public who believes that a
7 petitioner is not complying with the conditions of
8 their approval. They can file a petition with us.
9 They're going to have to state the case. The
10 reasons why. And the LUC then holds a formal
11 hearing. And then the petitioner -- well, in this
12 case, the person who files the motion for an order
13 to show cause has to come and provide their evidence
14 why do you believe that there's been a breach in
15 this contract? The petitioner obviously has an
16 opportunity to counter any of that information.

17 Yeah. Flip to the next slide.

18 So the first box shows Motion for Order to
19 Show Cause. It can come from anywhere. And it can
20 come from the Commission themselves. We can't
21 trigger it because we haven't gotten any contact
22 from a petitioner for a long period of time. We
23 don't know the status of the project. We try to do
24 that with a status report instead but, you know, in
25 the absence of compliance we can't take this.

1 **CHAIRMAN GIOVANNI:** Yeah. This is
2 Commissioner Giovanni. In our recent hearings where
3 we've had status reports, one of the options
4 available to the Commission was to accept the status
5 report as presented as being adequate or to order a
6 show cause. So that's the time in which the
7 Commission can make this action. I just wanted to
8 clarify that.

9 **MR. DERRICKSON:** Right. And that's -- and
10 that will be based on evidence that's presented on
11 the record.

12 **CHAIRMAN GIOVANNI:** Yeah. It's an
13 informed decision.

14 **MR. DERRICKSON:** It's an informed
15 decision. Basically, if you've got a reason to
16 believe that there's been a failure to perform you
17 can move forward then with a formal order to show
18 cause proceeding.

19 So as you see in the box, progress
20 reports, no further action. But if we find there's
21 a reason to believe that there's been noncompliance,
22 we can order an official order to show cause hearing
23 to occur. That's a formal evidentiary hearing to
24 determine if there's a violation.

25 **MR. ORODENKER:** There are a couple of

1 nuances to this. First of all, Scott is right. We
2 hesitate to use motions for order to show cause. It
3 is the nuclear option but it's the only -- it's the
4 only thing in our toolbox and 12 years ago we tried
5 to get the legislature to give us more tools so that
6 we weren't -- our only option was to end the
7 project. We tried to get them tools to give us to
8 allow us to work it out.

9 And that stems from the Bridge Aina Le'a
10 case. One of the key issues on whether or not we can
11 even revert a piece of property is whether or not
12 there's been substantial commencement. What
13 standard commencement is we're not sure of. The
14 Supreme Court didn't give us a lot of guidance. But
15 one of the things that was set was very clear about
16 the Bridge Aina Le'a case is that you can't -- we
17 don't have the ability to say to a developer, you
18 know, we don't really want to end this project so if
19 you do X by such and such a date then we won't issue
20 the motion to order to show cause. Because once you
21 do that, whatever you're asking them to do is
22 probably going to qualify as substantial
23 commencement. So it's an all or nothing thing.
24 Either you say, okay, we're going to let you go
25 forward or we have to -- we have to revert. One of

1 the two. Which is not a good thing.

2 You know, when the Bridge Aina Le'a case
3 came down, a couple of developers said to me, well,
4 we won the Bridge Aina Le'a case. And I said, no,
5 you really didn't because it puts the Commission in
6 a position of having to act without giving you the
7 ability to come up with a resolution. Because once
8 they start doing something, even if it's by request
9 and even if we issue an order that says if you don't
10 do this we're going to revert, once they start doing
11 it we can't revert. Period. That was the lesson
12 from the Bridge Aina Le'a case.

13 So it's very difficult for the Commission
14 and it's a hard decision because if a property is in
15 violation, you can't wait. You can't say, okay,
16 well, we'll give them more time because once you do,
17 if they do a little bit then we're out and it
18 becomes the county's role to enforce. So that's why
19 staff sometimes is proactive in getting these
20 petitions that are probably in violation in front of
21 the Commission.

22 Now --

23 **CHAIRMAN GIOVANNI:** Hold up. Hold up.

24 Commissioner Lee?

25 **COMMISSIONER LEE:** Thank you.

1 Yeah, I understand why you have to be
2 cautious about asking for an order to show cause. I
3 think we should still not let people go five years
4 without giving a status report because, you know,
5 maybe the first year, you know, but I don't know
6 about, you know, five. You know, we should be on
7 top of that more if we want to, you know, reduce
8 housing and such.

9 **MR. ORODENKER:** Yeah. And we're trying to
10 stay on top of that. I mean, it's a big job because
11 there are a lot of projects out there that are not
12 moving and so we have to go and go back through the
13 files to see when the last time it was that they
14 gave us a status report.

15 **CHAIRMAN GIOVANNI:** Hang on. Hang on.

16 **COMMISSIONER LEE:** Can you tell me how
17 many there are? Because it can't be that many
18 because we have a count of 40 to 60,000 homes and so
19 are there like 20? Twenty projects?

20 **MS. SEGURA:** I don't have that information
21 in front of me but I can get it. Yeah, we don't
22 have the exact number in front of us but if you go
23 on the Lanai's Commission website and you look at
24 the preapproved or the existing approved projects
25 they're organized by island and year. And if you

1 look, go down like the list of years, that kind of
2 gives you an idea of how many there are. And there
3 are a lot.

4 **MR. ORODENKER:** Yeah.

5 **COMMISSIONER LEE:** Yeah.

6 **MR. ORODENKER:** And we don't have
7 everything on the website either.

8 **COMMISSIONER LEE:** Yes. That's what I
9 mean. Because I looked on it and it didn't seem like
10 there was that many, you know, so it should be
11 something not that hard to track.

12 **MS. SEGURA:** There are definitely a lot.

13 **COMMISSIONER LEE:** Then something is wrong
14 because --

15 **MS. SEGURA:** Yeah, there's a lot.

16 **COMMISSIONER LEE:** We should be tracking
17 that. You know.

18 **MR. ORODENKER:** Well, I mean, yeah. Okay.

19 Let's back up for a second because I
20 understand where you're coming from.

21 One of the difficulties that we're having
22 right now is the same difficulty that almost
23 everybody in government is having and that is that
24 we have two empty positions that we haven't been
25 able to fill.

1 Several years ago I had a conversation
2 with the legislature about that and that's where we
3 got the Planner 4 position. That's how we got
4 Martina's position. The position that Martina is
5 in. But right now we're missing a Planner 5. So
6 Martina is doing the Planner 5 work while we're
7 waiting which takes her away from -- the purpose of
8 getting that position was to chase down these
9 things, which takes her away from being able to, you
10 know, go after all these organizations. Because
11 it's not that simple. You have to look in the file
12 and figure out how long it's been since we had a
13 status report. And then nine times out of 10, you
14 have to figure out who owns the project because most
15 of the older projects have changed hands a couple of
16 times. So there's actually a lot of work involved.
17 And that was the reason that we got the Planner 4
18 position. Once we fill the Planner 5 position I
19 think that bottleneck will undo itself and we'll be
20 working further on that.

21 **COMMISSIONER LEE:** Yeah. I know like the
22 city and the OPSD, they have a list, like a master
23 list of all the projects in the pipeline. So I
24 think that's something we should really, you know --

25 **MR. ORODENKER:** Oh, we have that. That's

1 what Martina and Ariana were talking about. It's on
2 the website. It's broken down by island. But
3 chasing down some of those projects is difficult,
4 especially when you don't know who owns it. So it
5 is time consuming.

6 And like I say, the problem right now is
7 that we're one planner short.

8 **CHAIRMAN GIOVANNI:** So do you have budget?
9 Why aren't these positions filled?

10 **MR. ORODENKER:** It's a simple matter --
11 can we talk?

12 **CHAIRMAN GIOVANNI:** If it's a simple
13 matter, tell us what it is.

14 **MR. ORODENKER:** Yeah. DHRD is the
15 problem.

16 **CHAIRMAN GIOVANNI:** What?

17 **MR. ORODENKER:** Department of Human
18 Resources and Development. I mean, the whole system
19 of hiring is broken. It's severely broken.

20 **CHAIRMAN GIOVANNI:** Can you hire a
21 contractor?

22 **MR. ORODENKER:** No. No. Not under the
23 union agreements we cannot.

24 **CHAIRMAN GIOVANNI:** So you have budget
25 approved by the legislature to fill a position and

1 you have to go through a hiring process with this
2 other department and they're not hiring for you?

3 **MR. ORODENKER:** No. Well, what happens is
4 that -- the way it's supposed to work -- there have
5 been recent changes to the law so we're trying to
6 wait to see how that plays out. That might be
7 advantageous to us. But the way it has worked up
8 until June 30th is that if you have a vacant
9 position your human resources officer asks the
10 Department of Human Resource Development to post for
11 that position. What DHRD does is they put out an ad
12 that says the state is hiring a Planner 5. It
13 doesn't say for what division, for what department,
14 what the job duties are, anything. And then what
15 they do is they won't -- they won't even begin to
16 review the resumes that come in to see if there's
17 any qualified applicants until they have -- they set
18 a number. It's totally internal. Twenty
19 applicants.

20 **MS. KWAN:** It's usually 25.

21 **MR. ORODENKER:** Yeah. Twenty, 25, 30
22 sometimes. And so we end up with a list months
23 later. They then send us the list of the people
24 that they think are qualified. But it's been maybe
25 six months since they posted. So we call these

1 people up and ask for an interview and they say, we
2 already got another job. You know.

3 **MS. KWAN:** And by the time our office
4 receives the list there's usually only two or three
5 names on the list.

6 **MR. ORODENKER:** Yeah. Yeah. It's a
7 totally broken system. Totally broken.

8 **CHAIRMAN GIOVANNI:** Commissioner Lee?

9 **COMMISSIONER LEE:** Have you looked into
10 that exception from the Kono decision where if the
11 government can't do it in time and it's an urgent
12 matter that you can contract out?

13 **MR. ORODENKER:** Yes. I understand that
14 that's out there but, I mean, that's a tough row to
15 hoe. You know, I mean, it would probably take us
16 four or five months just to get permission to do
17 that. You know, and then we would have to get
18 somebody up to speed. It's a very -- this is the
19 biggest frustration -- one of my biggest
20 frustrations is the hiring process. And half the
21 time we get applicants under the process who say,
22 well, I didn't know what you guys do. I didn't know
23 what I was applying for. You know, I wanted to be a
24 planner for DOT. I didn't want anything to do with
25 this. You know, so the way I understand the changes

1 to the law, the different agencies are now capable
2 of advertising and getting their own applicants and
3 doing an internal analysis of their qualifications
4 so that we can hire.

5 But there are some bigger problems, too.
6 I mean, we don't pay well. Our benefits aren't as
7 good -- aren't better than the private sector
8 anymore. Planners in particular are very highly
9 sought after. There's no such - - in the state
10 there's no such thing as training in place other
11 than what I've been doing with Martina. You just
12 can't do it.

13 **COMMISSIONER LEE:** You know, the governor
14 has a housing emergency proclamation where one of
15 the provisions is speedy hiring. Going past DHRD.
16 HHFDC, other people have used this so maybe you can
17 talk to Scott Glenn and see if he can help you out.

18 **MR. ORODENKER:** Yeah. Well, I could
19 actually talk to Mary Alice because she's head of
20 the governor's emergency task force on housing. Or
21 she's one of the heads. Yeah. Yeah. I mean, we --
22 we have to -- well, there were a couple of things
23 that happened. First of all, we couldn't hire
24 anybody until we had paid out -- Riley was in that
25 position before. We had paid out Riley's vacation.

1 And he had a ton of vacation. So it was just about
2 a month ago that we got to that point anyway. But I
3 mean that's administrative issues. These are
4 administrative issues that we're working through.
5 But when we're fully -- my point is that when we're
6 fully staffed there will be more effort and energy
7 focused on this stuff.

8 **CHAIRMAN GIOVANNI:** Yeah. So I want to go
9 back to Commissioner Lee's original request which
10 was not about hiring. It was about a goal to
11 produce a list or a spreadsheet or projects that are
12 delinquent in providing their annual reports.
13 And I'd still like to see that established as a
14 goal.

15 **MS. KWAN:** We can get that to you but we
16 also have to add to it when we receive anything. So
17 it's an evolving list.

18 **CHAIRMAN GIOVANNI:** Understand.
19 Understand. Yeah.

20 Commissioner Carr Smith?

21 **COMMISSIONER CARR SMITH:** Isn't that what
22 Arnold is working on?

23 **MR. ORODENKER:** No. Arnold's role is to,
24 for lack of a better word, we started to call him a
25 development concierge. So he's looking at projects

1 that are not necessarily delinquent or in violation
2 but are not moving. And so what he's trying to do is
3 trying to find out why they're not moving and
4 negotiate with other agencies and county agencies
5 and, you know, other landowners to facilitate those
6 projects moving forward.

7 **COMMISSIONER CARR SMITH:** So through that
8 process he must be learning which ones are
9 delinquent, which ones are dead, which ones changed
10 hands, all that stuff; right?

11 **MR. ORODENKER:** Yeah. Yeah. I mean, so
12 we have -- he's adding to the database but he's
13 focusing on projects that have the potential to
14 move. You know, not on ones that we don't know
15 what's happening and things. So he's looking at --
16 his first criteria when he's looking at things is
17 how many homes were promised. You know, and then he
18 works downward from there. Some of the status
19 conferences that we've had have been a result of
20 Arnold's work. But I've asked him to focus on
21 projects that he can help move along and he's had
22 some success with that. We had a developer tell us
23 the other day that there was a bottleneck at the
24 county that once Arnold got involved just
25 disappeared and now the project is moving forward at

1 a much more rapid pace.

2 So that's the type of thing I want him to
3 focus on. I understand the staffing problem is very
4 frustrating for all of us. We also, I don't have a
5 secretary. That I think we can resolve quickly,
6 probably in the next month or two. But I mean, when
7 you put out an ad for Planner 5s for the entire
8 state and you only get a list with one person on it,
9 I mean, it's tough. It's really tough, so.

10 **CHAIRMAN GIOVANNI:** This is Commissioner
11 Giovanni.

12 So you mentioned in your discussion the
13 words "substantial commencement." Is there more in
14 this training on that topic coming up? Or should I
15 ask my question?

16 **MR. ORODENKER:** You can ask your question
17 now.

18 **CHAIRMAN GIOVANNI:** Okay. So can you
19 elaborate on what substantial commencement means?
20 To the best you can from the Bridge Aina Le'a
21 decision and how that, more importantly, how that
22 impacts the business of this Commission.

23 **MR. ORODENKER:** Substantial commencement
24 is a very difficult issue because the Bridge Aina
25 Le'a case was almost like the U.S. Supreme Court

1 case on pornography. I know it when I see it. And
2 I actually disagreed with the courts on the Bridge
3 Aina Le'a case and whether or not there had been
4 substantial commencement because it was a three-
5 quarters of a billion dollar project and they went
6 in saying, look, we spent \$40,000,000. I mean, if
7 you look at it as a percentage, it wasn't
8 substantial.

9 **CHAIRMAN GIOVANNI:** But you don't get to
10 decide.

11 **MR. ORODENKER:** No. I don't get to decide
12 that but I'm just giving you an idea of how
13 difficult it is to define substantial commencement.

14 **CHAIRMAN GIOVANNI:** Okay.

15 **MR. ORODENKER:** If, my belief, based on
16 Bridge Aina Le'a is that if a developer has made
17 substantial progress and spent substantial amounts
18 of money with regard to infrastructure or in any way
19 moving dirt then that's probably substantial
20 commencement. The only time that I would say there
21 has not been substantial commencement is if the
22 developer can only show soft costs.

23 **CHAIRMAN GIOVANNI:** So I want to take it a
24 little bit different for my fellow Commissioners.

25 So the only enforcement tool that we have

1 for a delinquent project is to revert it. So if we
2 had approved a project and reclassified the land
3 from, for example, from agriculture to urban and we
4 have all these conditions, the only thing we can do
5 if it's a delinquent project in terms of our
6 enforcement ability -- not the county's but ours --
7 is to revert it back to its original classification?

8 **MR. ORODENKER:** That's correct.

9 **CHAIRMAN GIOVANNI:** However, if it's been
10 determined one way or the other that substantial
11 commencement has occurred -- in other words, the
12 developer has proceeded to do something, which can
13 be interpreted as substantial commencement, then
14 even that enforcement action is taken away from us?

15 **MR. ORODENKER:** That's correct.

16 **CHAIRMAN GIOVANNI:** That's the nuts and
17 bolts of it; correct?

18 **MR. DERRICKSON:** So actually, from the
19 Bridge Aina Le'a, if there has been substantial
20 commencement, if the Commission still believes that
21 the project is not moving forward, it's not
22 compliant, if they want to revert the property they
23 cannot use the order to show cause process. They
24 would have to go through a regular petition process.

25 **MR. ORODENKER:** I didn't talk about that

1 because it's a nonstarter.

2 **CHAIRMAN GIOVANNI:** It's a nonstarter.

3 Yeah.

4 **MR. ORODENKER:** Because we would have to
5 put on the case. I mean, staff. And we're not set
6 up to do that.

7 **CHAIRMAN GIOVANNI:** No.

8 **MR. ORODENKER:** Theoretically, the Office
9 of Planning and Sustainable Development could put on
10 the case but --

11 **CHAIRMAN GIOVANNI:** So for all practical
12 purposes, if substantial commencement has occurred
13 on a given project, no matter how delinquent it is
14 in our mind's eye, we don't have the ability as a
15 Commission to revert as a practical matter?

16 **MR. ORODENKER:** Once there's been
17 substantial commencement.

18 **MR. DERRICKSON:** To revert? Yes.

19 Do we have other avenues to enforce? I
20 think we do.

21 **CHAIRMAN GIOVANNI:** What are they? I've
22 never heard of them.

23 **MR. DERRICKSON:** One, I think, is a
24 progress report. You know.

25 **MR. ORODENKER:** But that's not

1 enforcement, Scott.

2 **MR. DERRICKSON:** It's not enforcement per
3 se but oftentimes it identifies issues or weaknesses
4 --

5 **CHAIRMAN GIOVANNI:** Yeah, I agree.

6 **MR. DERRICKSON:** -- that are out there
7 that then lead to --

8 **CHAIRMAN GIOVANNI:** Solutions.

9 **MR. DERRICKSON:** -- compliance.

10 **CHAIRMAN GIOVANNI:** Yeah. So we can help
11 them along. But from a hardcore enforcement
12 perspective, we don't have anything.

13 **MR. ORODENKER:** No, we don't have
14 anything.

15 **CHAIRMAN GIOVANNI:** Commissioner Lee?

16 **COMMISSIONER LEE:** Scott, what about if
17 there were conditions given when the DBA was granted
18 and they don't meet those conditions, such as you
19 need to do this by this date or provide this and
20 then that wasn't done, wouldn't that be something
21 that you could come back for?

22 **MR. DERRICKSON:** Yes.

23 **COMMISSIONER LEE:** So we should be very
24 careful with our conditions to make sure that --

25 **MR. DERRICKSON:** Absolutely.

1 **MR. ORODENKER:** Yes.

2 **COMMISSIONER LEE:** -- they're going to
3 move forward.

4 **MR. DERRICKSON:** The more clarity you have
5 in your conditions -- and you're going to see this
6 in your tenure as Commissioners, particularly when
7 we're handling motions to amend, you're going to be
8 looking at old conditions that you're going to
9 wonder, wow, this creates so much gray area. Now we
10 have to try to clean this up. Why weren't they more
11 careful before?

12 **MR. ORODENKER:** Yeah. It's not uncommon
13 for us at this point to say, who the hell drafted
14 that?

15 **COMMISSIONER LEE:** Or if they come back to
16 amend then that's where we can also --

17 **MR. ORODENKER:** Well, yeah. I mean, there
18 are several different ways you can get to a motion
19 for order to show cause. One of them is if they
20 come back to amend a condition and we don't agree
21 with the amendment. But that's rare. I mean,
22 usually when a petitioner comes back to amend a
23 condition to reflect what the current project needs
24 are, we usually grant it. I mean, we're not trying
25 to stop the projects. This is not about stopping

1 projects.

2 In my time, we've only had a couple of
3 motions for order to show cause that ended up in
4 reversion. One was -- or several of them were
5 actually at the request of the petitioner. We want
6 to revert our property back. And they can't just
7 agree to that. We have to go through a motion of
8 order to show cause.

9 And the only other one that we've had that
10 I think that we did was the Waikoloa Mauka case and
11 that was -- that was an interesting case that
12 somebody could write a book about but it was
13 basically a scam. The owners were, you know --

14 **CHAIRMAN GIOVANNI:** So I want to respond
15 to Commissioner Lee.

16 On a couple of hearings or petitions
17 before us we actually attempted in deliberations to
18 articulate a condition that defined what substantial
19 commencement would be for that specific project. I
20 don't know that we were ever successful in
21 articulating such a condition.

22 **MR. ORODENKER:** Yeah. No, it's very
23 difficult to do that.

24 **COMMISSIONER LEE:** Okay. So we do have
25 some tools but it all kind of starts with checking

1 them, the projects and status reports, otherwise
2 we're not even going to get to the next step.

3 **MR. ORODENKER:** Yeah. And like I said,
4 the original reason for me asking the legislature
5 for the Planner 4 position was to stay ahead of it.
6 And once we resolve our Planner 5 issues we should
7 be -- that bottleneck should end. And believe me,
8 we're working diligently on it. We're also working
9 diligently on hiring a secretary before Ariana
10 crashes and burns. Because she's basically doing
11 two jobs right now but, you know --

12 **CHAIRMAN GIOVANNI:** Thank you, Ariana.

13 **MR. ORODENKER:** -- this hiring process is
14 difficult.

15 There's one other thing that -- oh, go
16 ahead.

17 Are there any other questions before I --
18 I have another thing to bring up. Go ahead.

19 **COMMISSIONER CARR SMITH:** So the
20 Commission previous to this one determined that Aina
21 Le'a had not had substantial --

22 **MR. ORODENKER:** Okay. So --

23 **CHAIRMAN GIOVANNI:** Two commissions ago.

24 **MR. ORODENKER:** Yeah. It was about four
25 or five commissions ago, actually, well before my

1 time. But I had to deal with it because the court
2 case was going on when I got here.

3 What actually happened was that, I mean,
4 there were so many things happening in the
5 background. Bridge Aina Le'a, the company that
6 bought the project was not a developer. Okay? They
7 were basically an investment company and they would
8 buy investments. And in the case of real estate,
9 they would sell off the development rights to
10 portions of the project with a buyback clause and
11 monthly payments. Right. And then they would take
12 that money and they would invest it in -- they
13 claimed in a bank and somewhere in Southeast Asia
14 where they were getting 30 percent return. I mean,
15 that's what they claimed and that's what they tried
16 to prove in court.

17 They sold off a portion of the project to
18 DW Aina Le'a and DW Aina Le'a bought the portion of
19 the project that was supposed to be affordable
20 housing. It never -- it wasn't happening. It
21 wasn't getting off the ground in part because DW
22 Aina Le'a couldn't get funding. And they were
23 already paying, for lack of a better word, the
24 mortgage on the property. And so, the Commission at
25 that time -- and remember, this is just what was in

1 the court pleadings because I wasn't there. None of
2 us were there. The Commissioner at that time
3 decided that what they wanted to try and do was to
4 try to work it out. So they kept saying -- at three
5 different points in time they said to DW Aina Le'a,
6 if you get X done by a certain date, we won't revert
7 the property. And they were trying to work out a
8 settlement basically is what was happening. And so
9 DW -- the last thing that they did was they said,
10 okay, if you build X number of units -- I can't
11 remember how many.

12 **MR. DERRICKSON:** Sixteen.

13 **MR. ORODENKER:** Sixty units.

14 **MR. DERRICKSON:** Sixteen.

15 **MR. ORODENKER:** Sixteen units by a certain
16 date then we won't revert the property.

17 So what DW did is that they put up
18 buildings with no sewer connection, no water
19 connection. I mean, they were not inhabitable. And
20 they said, okay, look, we did it. And the
21 Commission said, no, no. That's not what we meant.
22 We meant habitable 16 units. And so they reverted.

23 **COMMISSIONER CARR SMITH:** I understand
24 that but at the same time they built 16 units.

25 **MR. ORODENKER:** Well, that was the

1 position --

2 **COMMISSIONER CARR SMITH:** That were
3 complete except for connections to utilities.

4 **MR. ORODENKER:** Yeah. And, but what
5 happened was, the Commission said that wasn't what
6 we -- and they reverted. And so then DW Aina Le'a -
7 - no, Bridge Aina Le'a actually sued over that. And
8 that was -- it went all the way up to the Supreme
9 Court. And that was when they came up with --

10 **CHAIRMAN GIOVANNI:** Sued. Do you mean
11 appealed -

12 -

13 **MR. ORODENKER:** Yes.

14 **CHAIRMAN GIOVANNI:** -- the decision?

15 **MR. ORODENKER:** Yeah. That was when the
16 substantial commencement definition sort of came
17 down.

18 Subsequently, Bridge Aina Le'a tried to
19 prove in federal court that there had been a taking.

20 **CHAIRMAN GIOVANNI:** Wait. Wait. You
21 skipped an important part.

22 **MR. ORODENKER:** What?

23 **CHAIRMAN GIOVANNI:** The Supreme Court
24 agreed with the -- did not agree with the action
25 taken by the Commission.

1 **MR. ORODENKER:** That's correct.

2 **CHAIRMAN GIOVANNI:** Right.

3 **MR. ORODENKER:** But we're trying to --

4 **CHAIRMAN GIOVANNI:** So what constituted
5 unconnected 16 units, uninhabitable in the Supreme
6 Court's eyes, it did constitute substantial
7 commencement.

8 **MR. ORODENKER:** That's correct. That's
9 correct. So they agreed with you, Nancy, actually is
10 what I'm trying to say.

11 And then, but it turned out that there
12 were no damages involved and the state didn't have
13 to pay anything. But the reversion was undone.

14 There's a lot more history to it. The --
15 what's his name, the attorney on the Big Island who
16 sued over the EIS?

17 **MR. DERRICKSON:** Vitousek?

18 **MR. ORODENKER:** Yeah. Vitousek. He sued
19 on the Big Island. Yeah. District Court. And was
20 able to succeed in a case saying that the EIS was
21 inadequate and had to be redone. And that stalled
22 the project for God knows how many years after that.

23 I believe when the current administration
24 came in they gave the project the go ahead but
25 nothing has happened because DW Aina Le'a is

1 basically bankrupt.

2 **COMMISSIONER CARR SMITH:** I have one final
3 question on this.

4 Do Commission members ever go out to the
5 sites --

6 **MR. ORODENKER:** Yes.

7 **COMMISSIONER CARR SMITH:** -- to see? So
8 did Commissioners go and see --

9 **MR. DERRICKSON:** Not individually.

10 **COMMISSIONER CARR SMITH:** -- that site?

11 **MR. ORODENKER:** Not individually but as a
12 group we have -- we haven't had a site visit in a
13 long time because we haven't had a DBA. Before we
14 do every DBA we always do a site visit. So. But we
15 have also done a couple of site visits when motions
16 implicated or the need for the Commissioners to see
17 what was happening, so.

18 **CHAIRMAN GIOVANNI:** Let me say that if any
19 Commissioners feel the need for us as a group to do
20 a site visit I'd like to hear it and we can try to
21 get organized.

22 **MR. ORODENKER:** Yeah. We welcome that. I
23 mean, I think it's good for Commissioners to see the
24 site. We can't do it on every project because it
25 becomes a budgetary issue. Right? We've got to --

1 because unless we're having a hearing on that island
2 the same day, you know, it's an added flight and
3 expense and, you know, all the rest of that.

4 **COMMISSIONER CARR SMITH:** I'm sure that
5 some might say that there's a sunshine issue there
6 as well.

7 **MR. ORODENKER:** No. We have to -- we
8 notice it. It's a sunshine visit. The public is
9 welcome to join us. They're not allowed -- we tell
10 them they're not allowed to ask questions because
11 there's no court reporter with us or anything else
12 so it won't be part of the record. But the
13 Commissioners are allowed to ask questions of the
14 developers. And they're allowed to follow along.

15 Okay. One other item on orders to show
16 cause is that the LUC files an order to show cause
17 but what that is is an order to the petitioner or
18 the developer to tell us why we shouldn't revert.
19 So in other words, the burden is on them. Because
20 if we have reason to believe that there's been a
21 violation, enough evidence to believe there's been a
22 violation and issue the order to show cause, they
23 have to prove to us why we can't do it. So the
24 burden is on the developer not --

25 **CHAIRMAN GIOVANNI:** So isn't it a

1 Commission decision by vote to issue that order?

2 **MR. ORODENKER:** Yes.

3 **CHAIRMAN GIOVANNI:** Staff can't issue it.

4 **MR. ORODENKER:** Yes. That is correct.

5 That is correct. We can't do it unilaterally. It's
6 always a Commission decision.

7 **MR. DERRICKSON:** So there's a preliminary
8 hearing based on someone filing a motion for an
9 order to show cause.

10 **CHAIRMAN GIOVANNI:** I just wanted to
11 clarify it's a Commission action.

12 **MR. DERRICKSON:** In evidence from part of
13 the record. Then the Commission decides whether or
14 not they've got a reason to believe that there's
15 been noncompliance. If so, then the Commission
16 issues an order to show cause requiring the
17 petitioner to come in.

18 **MR. ORODENKER:** Let me give you an
19 example, a real-life example of something that
20 almost happened and it resulted in an order to show
21 cause but was resolved.

22 We got information on a particular project
23 that one of the conditions in the DNO, and I'm kind
24 of paraphrasing here, was that they developed a
25 drainage system that was supposed to go in

1 conjunction with the military because it was
2 adjacent to military property. We got word on them.
3 I can't remember how or whether it was through the
4 military or through somebody else. Maybe somebody
5 on the neighborhood board that they were no longer
6 going to do that drainage program.

7 **MR. DERRICKSON:** That was actually
8 disclosed in an annual report.

9 **MR. ORODENKER:** Yeah. It was disclosed in
10 an annual report.

11 So I mean, when we know that there's going
12 to be a violation like that we can -- once we know
13 that they're not going to do it, adhere to the
14 condition then we can issue the order to show cause.
15 And then they have to prove to us that even though
16 they are going to violate that condition, we
17 shouldn't revert the property because they have a
18 good reason as to why they're doing what they're
19 doing that we should accept. So that's kind of the
20 way the process works.

21 **MR. DERRICKSON:** And it leads down to, you
22 know, you have the evidentiary hearing. You may
23 find that, yes, they are noncompliant. They are in
24 violation. So you have options. You can revert the
25 property based upon that. But there's also

1 opportunities for, and usually this is what happens,
2 the petitioner doesn't want a reversion of their
3 property and they recognize that they've been in
4 violation of conditions. Based on the evidence on
5 the record, they agree, you know what? We're going
6 to come in with a motion to amend. We understand
7 that we're not in compliance with conditions.
8 Here's -- we're going to come in with a motion to
9 amend it, tell you how we're going to actually fix
10 it.

11 **MR. ORODENKER:** And the Commission has the
12 ability to say at the motion in order to show cause
13 hearing is that, okay, we won't revert the property
14 if you come in with a motion to amend in so many
15 months or so many days.

16 **CHAIRMAN GIOVANNI:** And in my mind, the
17 more likely scenario is they come in and say, we're
18 noncompliant but we've substantially commenced. So
19 you can't revert anyway.

20 **MR. DERRICKSON:** Actually, actually, what
21 we've found is that the specter of an order to show
22 cause, even to have the order to show cause hearing
23 we've been told is a financial detriment for them to
24 seek investment dollars. They want to avoid that.

25 **CHAIRMAN GIOVANNI:** Sure.

1 **MR. DERRICKSON:** They're more willing to -

2 -

3 **MR. ORODENKER:** Do a motion to amend.

4 **MR. DERRICKSON:** -- come in with a motion
5 to amend to address those issues rather than trying
6 to, you know, pin their hopes on, oh, we've
7 substantially commenced. Therefore, we can violate
8 anything and everything.

9 **MR. ORODENKER:** And I've got to tell you
10 that outside of the ones -- the motions for order to
11 show cause which were requested by the petitioners
12 themselves, the only one that we've really ended up
13 in reversion was the Waikoloa Mauka one. And I
14 could spend 10 minutes explaining why that was such
15 a scam but basically, it was a Ponzi scheme by a
16 bunch of Ukrainian businessmen.

17 **CHAIRMAN GIOVANNI:** Okay. Let's move on.

18 **MR. ORODENKER:** Yeah. So, you know.

19 **MR. DERRICKSON:** Yeah. Yeah. So just
20 really quickly, the question that Commissioner Carr
21 Smith had about the Bridge Aina Le'a, yes, they did
22 put up 16 shell buildings but what the Commission
23 had conditioned them to do was not just 16 outer
24 shell structures. They required that there were
25 occupancy permits issued. Meaning that they had to

1 be fully connected to utilities, habitable
2 dwellings, not shells of dwellings but habitable
3 dwellings. And that was an important distinction.
4 The Commission did -- was concerned that, yes, you
5 could just build the structures but not be connected
6 to any infrastructure and that is exactly what
7 occurred. And that's one of the reasons why the
8 Commission then decided to move forward with an
9 order to show cause.

10 **MR. ORODENKER:** One of the things to note
11 about what occurred there is that you can't draft a
12 DNO around the substantial commencement clause
13 because that's what they tried to do. They tried to
14 draft a DNO that said if you complete these 16
15 units, and they meant habitable units, by such and
16 such a date then we won't revert. If you don't
17 finish them by then, then we're going to revert.

18 And so they were trying to get around the
19 substantial commencement clause and they can't do
20 it. That's what the courts basically said. They
21 said you can't get around the substantial
22 commencement clause.

23 **MR. DERRICKSON:** Yes. And in a ways,
24 that's a cautionary tale for you Commissioners
25 sitting now and those in the future is that do you

1 try to allow them more time to substantially
2 commence or do you say, look, based on all the
3 information that we've got at this point in time,
4 you're not going -- you're not going to comply. And
5 therefore, we should just go ahead and revert now.
6 Because if you allow them to substantially commence
7 then there's a problem with how you might be able to
8 enforce things in the future.

9 **MR. ORODENKER:** Okay. I think we're done
10 with that.

11 So next is Boundary Interpretations. Is
12 that right?

13 **MS. SEGURA:** Yay. This one should be
14 fast.

15 **MR. ORODENKER:** Martina?

16 **MS. SEGURA:** Boundary Interpretations are
17 typically done in-house by staff.

18 Oh, next slide.

19 **MR. ORODENKER:** This is something -- I
20 should start out by saying this is something that
21 the Commission never deals with but --

22 **MS. SEGURA:** Sometimes they do.

23 **MR. ORODENKER:** -- we thought you should
24 know what is happening.

25 **MS. SEGURA:** Yeah.

1 **MR. ORODENKER:** Okay. So, go ahead.

2 **MS. SEGURA:** So, yeah. So they're mostly
3 done by staff and it's basically a geospatial
4 analysis of where the district boundary line lays.
5 So we overlaid the district boundary line and
6 property lines to determine where the lines are and
7 that's important for permitting processes. And
8 that's done typically with the staff but if someone
9 disagrees, they can bring it to the Commission in
10 the form of a DR. And there are rules on how to
11 conduct boundary interpretations for the property
12 owner to follow and the staff to kind of follow and
13 figure out along the way. But that's boundary
14 interpretations in a nutshell. It's very internal.

15 **MR. ORODENKER:** The way these come up is
16 that somebody wants to build something on their
17 property. And the Planning Department or Board of
18 Land and National Resource if it's conservation land
19 says, well, you've got to get a boundary
20 interpretation first because we don't know what the
21 boundaries of your property are from a district
22 standpoint because there's always some controversy
23 usually over whether or not a portion of the
24 property is an ag or in conservation or whatever.

25 We are, the Land Use Commission is tasked

1 with keeping the boundaries. We are the
2 organization that holds the maps for all of the
3 boundaries of all of the districts in the state.
4 And so when somebody gets -- are told they need to
5 get a boundary interpretation then we have a
6 process. And they give us meets and bounds and
7 things like that and we do the boundary
8 interpretations. But they usually don't come in
9 front of the Commission.

10 **CHAIRMAN GIOVANNI:** Commissioner Yamane?

11 **COMMISSIONER YAMANE:** I was going to ask
12 about that. So are those surveyed and you evaluate
13 survey meets and bounds and you guys kind of
14 negotiate that or how does that work?

15 **MR. ORODENKER:** Well, it's not a
16 negotiation process. What really happens is -- huh?
17 Yeah. Yeah. It's a -- Martina can tell you.

18 **MS. KWAN:** So we get the meets and bounds
19 certified surveys from the property owner. And we
20 overlay the district boundary lines. So our
21 personal maps on top of those. And then we'll then
22 send it back to the landowner to get the survey
23 again with the line on top of it to get those meets
24 and bounds measurements to determine where the line
25 is in relationship to the property.

1 **MR. ORODENKER:** The district boundary
2 line.

3 **MS. KWAN:** Yes. Yes.

4 **MR. ORODENKER:** We're going to move on to
5 Sunshine Law.

6 **MS. KWAN:** May we bathroom break?

7 **CHAIRMAN GIOVANNI:** Yes. Anytime Ariana
8 wants a break. We will take a five-minute recess.

9 **(Recess taken from 9:47 a.m. to 9:55 a.m.)**

10 **CHAIRMAN GIOVANNI:** It's 9:55 and we will
11 resume on the record, Sunshine Law.

12 Mr. Morris, are you online with us? Mr.
13 Morris?

14 **MR. MORRIS:** Yes, I am.

15 **CHAIRMAN GIOVANNI:** So you asked for an
16 opportunity to comment when we got to this point.

17 **MR. MORRIS:** Yeah.

18 **CHAIRMAN GIOVANNI:** And I'm giving you
19 that opportunity.

20 **MR. MORRIS:** Thanks so much.

21 Can I ask that we move back to slide 8,
22 please?

23 **CHAIRMAN GIOVANNI:** Slide 8, page 8?

24 **MR. MORRIS:** Page 8, yeah.

25 **CHAIRMAN GIOVANNI:** So Ariana? All right.

1 **MR. MORRIS:** Okay, so --

2 **MS. KWAN:** Is this the correct one?

3 **MR. MORRIS:** Yes. When we got to this
4 slide, a question came up about matters that come up
5 before the Commission that are either agendized or
6 perhaps before they get agendized. And the way I
7 understood Commissioner Carr Smith's question was
8 that if commissioners aren't supposed to discuss
9 matters between them amongst a group of people under
10 the Sunshine Law, then is that okay before it gets
11 placed on an agenda? And that's how I understood
12 the question. And I think there was a suggestion
13 that perhaps the Board of Land and Natural Resources
14 had been advised that if it's not yet on an agenda
15 that it's okay to have those sort of discussions.
16 And I pushed back on that because that wasn't my
17 understanding. And under Chapter 92, which governs
18 the Sunshine Law there's a definition under Chapter
19 92-2 of what board business is. And board business
20 includes matters that are both pending before boards
21 and commissions but also matters that are reasonably
22 anticipated to arise in the foreseeable future.

23 So in my mind, that was the distinction I
24 was trying to articulate, that it doesn't necessary
25 have to be a matter that's currently pending. Or

1 business can also include matters that are
2 anticipated to arise in the foreseeable future.

3 So I think that was an important
4 discussion in the context of Sunshine Law that's
5 shown on this slide.

6 But then I got a call this morning and the
7 question was posed to me, you know, you know, have
8 you sort of got something for us? And I was told
9 that perhaps the question related more to a
10 different matter on this page about ex parte
11 communications. And so the question in this context
12 was, well, can a board member or a Commission member
13 talk with someone about a matter that might come up
14 before the board or the Commission individually?
15 Not in a group, not a Sunshine Law issue, but just
16 from an ex parte communication standpoint.

17 So that's not how I understood the
18 question. And I have to apologize if I
19 misunderstood it. And I was sort of given the sense
20 that, gee, I might need to do a little research on
21 this and I got a little pushback on that because
22 it's such a timely question. So I wanted to give a
23 little feedback on the response in the context of ex
24 parte communications and what may have been told to
25 the Board of Land and Natural Resources.

1 The first thing I want to point out is
2 that the Board of Land and Natural Resources and the
3 Land Use Commission have separate rules,
4 administrative rules. Administrative rules have the
5 force of law. The Board of Land and Natural
6 Resources has an administrative rule, which is 13-1-
7 37, that talks about ex parte communications. And
8 what that rule for the Board of Land and Natural
9 Resources says is that if there is a contested case
10 matter that is pending, that ex parte communications
11 between a decision-maker, like someone on the board
12 and someone who is a party or a witness in that
13 contested case, those kind of ex parte
14 communications are inappropriate. And so that talks
15 about contested case proceedings.

16 The Land Use Commission has their own
17 rules. Their rule 15-15-62 also talks about ex parte
18 communications. But that rule talks about
19 proceedings before the Land Use Commission. It's
20 not limited to contested case proceedings. So it's
21 a good example of how administrative rules can
22 differ between various state agencies and boards and
23 commissions.

24 So I think because the Rule 15-15-62 for
25 the Land Use Commission talks about proceedings, it

1 could be interpreted in a broader way that ex parte
2 communications about board business are
3 inappropriate. And I think that's generally been
4 the practice of the Commission. That rule also
5 gives a list of ex parte communications that are
6 okay. Some of those communications can be authorized
7 by the Land Use Commission. It also says it's okay
8 to have ex parte communications about the status of
9 a particular matter. It also talks about
10 communications where there's been an agreement
11 amongst the parties to a particular proceeding that
12 ex parte communications are okay. And there's a
13 reference to communications with respect to media
14 communications.

15 So you'll see that there are certain kinds
16 that are okay and some kinds that aren't. And I
17 think the best practice is to try and avoid it. And
18 as staff and Dan Orodener have said, you know,
19 going through staff, if you hear those kinds of
20 communications or questions, it's probably the
21 fairest and most appropriate and conservative way to
22 deal with this.

23 It did sort of raise in my mind a good
24 suggestion I have which is that I have a little
25 binder that has Chapter 205, as well as the set of

1 administrative rules. And obviously, as the attorney
2 advising the Commission that's an obvious part of
3 what I should have in my resources. But I think for
4 each of the Commissioners in terms of an
5 orientation, I think it's useful to have that binder
6 and to look through it. They're not that long. The
7 rules, nor the Chapter 205 are that long so it's a
8 useful tool to have handy. And in particular,
9 talking about ex parte proceedings, that 15-15-62
10 rule is particularly useful.

11 I also want to point out that there's
12 another rule that is 15-15-34 that says that the
13 intent of Chapter 205 is to establish quasi-judicial
14 procedures. And quasi-judicial procedures are
15 where this ex parte communication problem arises
16 because when you're acting as a judge or in a quasi-
17 judicial capacity like courts, you know, they can't
18 be having a conversation with one of the litigants
19 in front of them when they're acting in that
20 judicial capacity. And in the same way, when the
21 Land Use Commission is exercising their role, which
22 broadly speaking is a quasi-judicial role, the same
23 type of constraints might apply.

24 So that's sort of a general comment. And
25 it led me to also, because it was a little stressful

1 for me trying to answer, you know, as we do a
2 training about everything the Land Use Commission
3 does and people think of hypothetical questions on
4 these areas of law that are difficult and often gray
5 areas, it's really hard to answer on the spot. And
6 sometimes I might need a chance to do some research
7 and give a more careful response. But I do think
8 that it's good to know there are levels of attorney
9 advice from your deputy AG. One level of advice can
10 be done in a formal published opinion that's
11 approved by the attorney general. We can also give
12 legal opinions in a letter form that are either
13 approved by the AG or an informal Ag letter advice.
14 And we can also give one-to-one advice in a more
15 informal context.

16 There are also opportunities during Land
17 Use Commission hearings for executive sessions,
18 which require a particular number of members to vote
19 for that executive session. I believe it's two-
20 thirds of the members present.

21 And so those executive sessions have their
22 own sort of array of rules. And I provided to Dan
23 Orodener a nice little summary that the Office of
24 Information Practice has provided that talks about
25 what topics can be covered in executive sessions and

1 how minutes need to be taken and how you limit the
2 scope of those executive sessions to the topics that
3 you went into in executive session for.

4 But there's also advice where we're in the
5 middle of a Land Use Commission proceeding meeting
6 and people will turn to the deputy AG and say, well,
7 what do you think? And that's an appropriate
8 question. It's not always one that I or other
9 deputies will be prepared to answer on the spot but
10 if we are, we sort of do a mental calculation of,
11 you know, do we give complicated legal advice that
12 might be controversial and perhaps confidential on
13 the spot? Or can we give some general guidance that
14 we know off the top of our head? So it's that sort
15 of difficult discretionary call that we're trying to
16 make to make sure we provide good public service for
17 you folks but also that we don't sort of blurt
18 something out without doing the work we need to do
19 to make sure we carefully evaluated a particular
20 issue.

21 So those are some of the tensions that
22 arise. And just a little snippet on what my role is
23 in this whole process.

24 So thank you for the opportunity to give a
25 couple minutes on that topic.

1 **CHAIRMAN GIOVANNI:** Thank you, Mr. Morris.

2 I'm going to turn back to Commissioner
3 Carr Smith to see if that helped or if you have
4 further questions.

5 **COMMISSIONER CARR SMITH:** Yeah. Thank
6 you, Dan, for that.

7 **CHAIRMAN GIOVANNI:** So Dan, I think the
8 original question was we were talking about ex parte
9 communications that might lead to a disclosure
10 before a Commission during a hearing. So I think
11 the general rule is that, if I interpret what you're
12 saying correctly, is that if it's -- if a matter is
13 anticipated to come before the Commission or if it's
14 in the pre-application stage with staff and it's not
15 yet a complete application and it's not yet been
16 agendized, we need to be very careful if there's a
17 reach out by the developer or the petitioner,
18 prospective petitioner and they want to carry on
19 some Q&A with an individual commissioner. You just
20 need to be careful. But if those type of
21 discussions do occur, I think there's an obligation
22 on that commissioner to disclose it to the
23 Commission at the evidentiary hearing and then we'll
24 deal with it at that time. Is that fair?

25 **MR. MORRIS:** Yes. That's definitely a

1 fair comment.

2 And I had one more thing in my little
3 notes I want to slip in which is that, you know, in
4 Sunshine Law, which is the next topic that's going
5 to be discussed, it's really critical that groups of
6 people not discuss matters that either are pending
7 or might come before the Commission. And one thing
8 that sort of caused me pause yesterday, we were
9 talking about general concepts of the role of the
10 Land Use Commission in particular cases even. And
11 one of the topics that came up was either the
12 landfill case or the county's IAL petition. And I
13 think that's a good learning or teaching point to
14 know that we really shouldn't talk about specifics
15 of cases in this training session on matters that
16 might come before the board.

17 For example, that county IAL petition is
18 pending before the High Court and may well come back
19 before us. And so it's not on the agenda so I think
20 our discussion about the LUC's role and their
21 decision-making process needs to be a little more
22 generalized, which I think there's been an effort to
23 do. But a couple times it seems like some specifics
24 crept in and that probably is not an appropriate
25 thing under our Sunshine Law because it would be a

1 group of us discussing something that wasn't on an
2 agenda.

3 **CHAIRMAN GIOVANNI:** So you raise an
4 interesting new question in my mind, Mr. Morris.
5 This is Commissioner Giovanni. In my mind there's a
6 difference between clarifying what factually
7 occurred during a prior matter that did go to a DNO.
8 It might be related to a prospective going forward
9 but if the discussion is confined to what occurred
10 in a completed action, what's wrong with that type
11 of a discussion?

12 **MR. MORRIS:** No, I agree. I understand.
13 It's sort of just the historical facts and not sort
14 of what we thought or something. But if, for
15 example, a matter is likely to come back before the
16 board and there's sort of a discussion of sort of,
17 you know, staff's thoughts and you know, you know,
18 the rationales, it may be more than just sort of the
19 status of the case or sort of, you know, the bare
20 bones facts. It's not a bright line and I would
21 have jumped in if I thought something was really out
22 of line. It just made me think that it's something
23 to keep in mind about matters before the board --
24 before the Commission or that might come before it.
25 And but I agree. Just, you know, the fact that

1 there was a case and that that case is on appeal,
2 you know, perhaps even the bare bones of the case,
3 but you have to think on your mind of, you know, we
4 certainly don't want any discussion of positions or
5 rationales or sort of group discussions about the
6 case. That would be the concern.

7 **CHAIRMAN GIOVANNI:** Understood. But in my
8 mind, lessons learned from closed cases are great
9 examples that help facilitate the training.

10 **MR. MORRIS:** And I would agree definitely
11 on a closed case. Your point about a closed case is
12 a very good one. That if the matter is concluded
13 and everyone knows it's concluded and not likely to
14 come back, that is fair game really for what the
15 board thought. You know, let's talk about it.
16 Let's use it as a learning opportunity.

17 **CHAIRMAN GIOVANNI:** Commissioner Lee?

18 **COMMISSIONER LEE:** Mr. Morris, this is
19 Commissioner Lee. Isn't that line a little less
20 bright when it's just two people talking to each
21 other and not asking for a commitment to vote?

22 **MR. MORRIS:** Well, that is a very good
23 point that two commissioners can meet and have a
24 discussion about matters before the Commission
25 without violating Sunshine Law. And it's sort of

1 that line of if it's more than two, if it's three,
2 then you get into a problem. It's sort of this
3 oddly arbitrary line. So that is a correct
4 observation.

5 **COMMISSIONER LEE:** And then there's also
6 the issue of serial communication. So you can't
7 just go one by one and pass that along and, you
8 know, that's also not allowed; isn't that correct?

9 **MR. MORRIS:** Absolutely.

10 **CHAIRMAN GIOVANNI:** Okay. Thank you.

11 Back to slide number --

12 **MR. DERRICKSON:** I did want to clarify one
13 thing. One of the questions that you were asking our
14 deputy AG. And you were focusing on ex parte with
15 respect to petitioner and/or their representatives.
16 But it's actually ex parte with any parties. So
17 that could include Office of Planning and
18 Sustainable Development.

19 **CHAIRMAN GIOVANNI:** Sure.

20 **MR. DERRICKSON:** It could include the
21 county.

22 **CHAIRMAN GIOVANNI:** Anybody.

23 **MR. DERRICKSON:** County representatives as
24 well. And including any witnesses that might be
25 involved.

1 **MR. MORRIS:** Thank you, Scott.

2 **CHAIRMAN GIOVANNI:** Okay. Slide 96.
3 Slide 97.

4 **MR. ORODENKER:** We'll go through this
5 section fairly quickly.

6 **CHAIRMAN GIOVANNI:** Yeah. You always
7 promise that but it never happens.

8 **MR. ORODENKER:** I lie. I can't help it.
9 Okay. All our meetings are subject to the
10 Sunshine Law. I mean, this is something that we
11 already talked about basically.

12 The Sunshine Law in Brief. Next slide.
13 Yeah. And it's fairly easy. All meetings of the
14 state and county boards are required to be open to
15 the public.

16 Agendas. Meetings have to be noticed and
17 an agenda must be posted no less than six calendar
18 days prior to the meeting.

19 We have to keep minutes as well as a video
20 recording. We run our agendas by the attorney
21 general to make sure that they conform with Chapter
22 91 and 92 -- or 91. And so that they're worded in
23 such a way that we can do the business that we need
24 to do.

25 And the unfortunate thing -- fortunate and

1 unfortunate thing about the Sunshine Law is that we
2 have to -- our discussions at the hearings have to
3 stay within the four corners of what was noticed.
4 We can't bring up another matter or whatever. What
5 you can do if you wanted to talk about something
6 that's not agendized is ask the staff to agendize it
7 for a future meeting.

8 The public is allowed to provide written
9 or oral testimony on any agenda item.

10 You can limit the amount of time.

11 We're not required to accept oral or
12 written testimony unrelated to items on the agenda
13 for the meeting.

14 We've talked about -- we just finished
15 talking about this. More than two commissioners are
16 prohibited from meeting without notice if discussing
17 business matters. Staff are not decision-makers. We
18 are not subject to those restrictions.

19 **CHAIRMAN GIOVANNI:** So if commissioner --
20 question. If Commissioner Lee and I want to talk
21 one-on- one with each other, I understand we can do
22 that. Can we include a member of staff to be part
23 of that discussion?

24 **MR. ORODENKER:** Yes. Yes, you can.

25 **CHAIRMAN GIOVANNI:** So we can have -- like

1 if we wanted you and Scott to join us --

2 **MR. ORODENKER:** Yeah.

3 **CHAIRMAN GIOVANNI:** Or Scott and Martina,
4 that's okay?

5 **MR. ORODENKER:** Yeah.

6 **CHAIRMAN GIOVANNI:** Okay.

7 **MR. ORODENKER:** Yeah. That is fine.

8 **CHAIRMAN GIOVANNI:** Commissioner Lee?

9 **COMMISSIONER LEE:** Maybe this question is
10 for Mr. Morris. But isn't there also another
11 exception where multiple commissioners can meet with
12 the department head or the governor on a matter
13 that's not before the future or anticipated to be
14 agendized?

15 **MR. MORRIS:** I'm going to give that one an
16 "I'm not sure." And I don't know off the top of my
17 head.

18 One thing I will mention is that the
19 Office of Information Practice administers Chapter
20 92, which is our Sunshine Law. And they take a very
21 proactive role in terms of providing advice to us as
22 deputy AGs or members of the public that have
23 questions on Sunshine Law. And they're very
24 responsive and good. If I don't find an answer in
25 my review or research, I call them up more and more

1 frequently and that's been a useful tool. But I
2 don't know the answer to your question.

3 **COMMISSIONER LEE:** Yeah, I asked that
4 because I think I knew the answer but it would be
5 good to have your endorsement of that as well. And
6 maybe a bunch of us can go to the governor and ask
7 for staffing for the LUC as an example.

8 **CHAIRMAN GIOVANNI:** Yeah.

9 **MR. ORODENKER:** Thank you.

10 **CHAIRMAN GIOVANNI:** Okay. So Mr. Morris,
11 you'll follow up if you get some better information
12 for us on that question.

13 **MR. MORRIS:** Yes, I will.

14 **MR. ORODENKER:** I would be interested in
15 that question. I can tell you a funny story about
16 way back.

17 **CHAIRMAN GIOVANNI:** No time for that.
18 We'll move forward.

19 Okay. Public Trust Doctrine.

20 **MR. ORODENKER:** Okay. And I'm sorry about
21 this because this is going to take some time and
22 there's going to be --

23 **CHAIRMAN GIOVANNI:** This is long.

24 **MR. ORODENKER:** Yeah. And there's going
25 to be some redundancy because what we've done is

1 we've given you the Public Trust Doctrine briefing
2 that we gave commissioners up until a month ago.
3 And then we had a case come down about a month ago
4 that reiterates everything and kind of expands on it
5 in certain places. And I want to talk about that
6 case in detail. And some of it is going to be
7 redundant but I think it's worthwhile going through.

8 The Public Trust Doctrine is probably the
9 most important doctrine that we have to deal with in
10 our hearings. And the courts have actually expanded
11 that recently to include almost everything that we
12 do, not just our contested cases, right down to
13 rule-making. And so it's got to be on the forefront
14 of your mind at all times. The Waiahole water
15 decision in 2000 was the first real expression by
16 the Supreme Court of what the public trust doctrine
17 is all about.

18 The public trust is the right of the
19 people to have water -- that was a water case --
20 protected for their use. And they talked about
21 comprehensive planning being intrinsic to the public
22 trust concept which also demands provision for
23 traditional and customary Hawaiian rights, wildlife,
24 maintenance of the ecological balance, and scenic
25 beauty.

1 Remember that because when we talk about
2 the case that just came down that gets further
3 expanded upon.

4 And this arose from the Hawaii State
5 Constitution Article XI -- one more. Article XI,
6 Section. For the benefit of present and future
7 generations, the state and its political
8 subdivisions shall conserve and protect Hawaii's
9 natural beauty and all natural resources, and so on.
10 All public natural resources are held in trust for
11 the state -- by the state for the benefit of the
12 people.

13 There is an affirmative requirement to
14 ensure that public trust resources are preserved for
15 future generations and that decisions to not overly
16 impact the public's right to utilize those
17 resources. The first consideration must be the
18 long-term health and sustainability of the resource.
19 When there is doubt about the impact on the
20 resource, the agency should err on the side of
21 caution.

22 And what that has evolved into is the
23 concept that commissions in particular act as
24 trustees. You're not making a decision based on,
25 you know, what you think is best in terms of

1 balancing project value against public trust or the
2 public trust considerations. You are tasked to act
3 as a trustee to preserve those resources for future
4 generations. Which means that if the proposed
5 action is going to destroy that public resource so
6 that future generations cannot enjoy it then you
7 can't grant the petition.

8 This applies to watershed protection.
9 Historic sites and cultural sites. Environmental
10 and natural resources. Air, water, and minerals and
11 energy. Cultural resources and the ability to
12 access land for cultural activities.

13 For LUC purposes, the public trust
14 doctrine is compounded by federal environmental
15 regulations. So, you know, the Endangered Species
16 Act and things like that also come into play.

17 Public resources are inextricably linked
18 with the right to traditional and customary
19 practices. Without the resources upon which to
20 practice there can be no practice.

21 And once again, I caution you to keep that
22 in mind when we discuss the case that just came
23 down.

24 The state must act, being commissioners,
25 as a trustee and not simply as a good business

1 manager.

2 It must not relegate itself to the role of
3 a mere umpire passively calling balls and strikes
4 for adversaries appearing before it but instead must
5 take the initiative in considering, protecting, and
6 advancing public rights in the resources at every
7 stage of the planning and decision- making process.
8 That's from the Waiahole case.

9 Now, a case that evolved from a Land Use
10 Commission decision was the Ka Pa'akai O Ka Aina v.
11 Land Use Commission. And that has basically set up
12 a program on how commissioners are supposed to
13 handle public trust doctrine issues.

14 The state and its agencies are obligated
15 to protect the reasonable exercise of customarily
16 and traditionally exercised rights of Native
17 Hawaiians.

18 The agencies are obligated to make an
19 assessment independent of the developer or the
20 applicant of the impacts on traditional and
21 customary practices of Native Hawaiians.

22 Now, what that means to make an
23 independent decision is that we can have petitioners
24 or parties come in and say, look, we satisfied Ka
25 Pa'akai because we identified the resource. This is

1 how it's going to be impacted, and this is what
2 we're going to do to protect it. But that doesn't
3 mean anything. The Commission has to make its own
4 independent decision on whether or not what's being
5 proposed is adequate and/or whether or not there are
6 other conditions that need to be put in place to
7 protect that resource, if possible. And that cannot
8 be abdicated under any circumstances to another
9 party, a third party. It's the obligation of this
10 commission.

11 **CHAIRMAN GIOVANNI:** This is Commissioner
12 Giovanni.

13 So I'm glad you stated that the way you
14 stated it today which was different than how I heard
15 you say it yesterday. It's an important distinction
16 in my mind so I want to make it clear to all fellow
17 commissioners.

18 The commission has a duty and a
19 responsibility and the authority to determine if the
20 Ka Pa'akai analysis that is put forth by a
21 petitioner is adequate and substantially satisfies
22 the requirements. But the Commission in and of
23 itself doesn't do the analysis of -- that is the
24 manhours that are put into place to determine and
25 answer the questions.

1 Is that correct?

2 **MR. ORODENKER:** Well, that's somewhat
3 correct. The Commission has to decide whether the
4 evidence presented before it is credible and is
5 enough to satisfy the Ka Pa'akai criteria.

6 **CHAIRMAN GIOVANNI:** Yes.

7 **MR. ORODENKER:** But it does not go out and
8 --

9 **CHAIRMAN GIOVANNI:** To the field.

10 **MR. ORODENKER:** -- independently, yeah, do
11 a -- ask for cultural resources studies.

12 **CHAIRMAN GIOVANNI:** Correct.

13 **MR. ORODENKER:** Yeah.

14 **CHAIRMAN GIOVANNI:** And in my recent
15 experience there are a growing number of
16 consultants, qualified consultants within the state
17 that does that work and it costs thousands of
18 dollars and takes a lot of time.

19 **MR. ORODENKER:** Yeah. Yeah.

20 **CHAIRMAN GIOVANNI:** Okay. And our
21 commission and our staff does not do that field
22 work?

23 **MR. ORODENKER:** Right. That is correct.

24 **CHAIRMAN GIOVANNI:** Thank you.

25 **MR. ORODENKER:** There are three factors

1 known as the Ka Pa'akai analysis. You have to
2 identify the valued cultural, historical, or natural
3 resources and the extent to which traditional
4 practices and resources are exercised. As Jonathan
5 Scheuer likes to call it, Whatcha got.

6 The extent to which those resources will
7 be affected or impaired by the proposed action,
8 Whatcha doing.

9 The feasible action to be taken to protect
10 rights and whether the action will irrevocably harm
11 the resource such that it cannot be enjoyed by
12 future generations, Whatcha gonna do.

13 So those are the three criteria that
14 you'll see over and over and over again. And EISs,
15 petitions, whatever that have to be addressed before
16 this commission can render a decision.

17 All resources in the public trust must be
18 identified on the record. The impact on the
19 resources must be clearly and fully analyzed through
20 the evidence. Any mitigation measures must be
21 identified. The long-term loss, if any, needs to be
22 presented to the Commission. Only after all the
23 evidence is presented can the Commission render a
24 decision. If there are still questions about the
25 impact on the natural resources, or whether or not

1 the resources exist, the Commission must err on the
2 side of caution.

3 And what that basically means is that if
4 the Commission doesn't find what's put in front of
5 it credible, or they don't think that the analysis
6 was done by the petitioner in a proper manner, all
7 the resources were identified, anything that's
8 associated with that analysis, they can't render a
9 decision. That doesn't mean they have to deny the
10 petition. You can always say, look, we think your
11 cultural resource analysis is inadequate because
12 public testimony was that, you know, this area was
13 used for additional things other than what you
14 identified. You can send them back to say, hey,
15 look, you've got to come back before us after you've
16 done this analysis.

17 So it's not a death no but you cannot move
18 forward with approval until you've got all the
19 information that you need.

20 The promise of preserving and protecting
21 customary and traditional rights would be illusory
22 absent findings on the extent of their exercise,
23 their impairment, and the feasibility of their
24 protection.

25 All parts of the Ka Pa'akai analysis must

1 be fully represented by the facts and contained in
2 the decision and order through specific findings and
3 conclusions to avoid appeal. And once again, it's
4 good if the Commissioners comment in the discussion
5 period on whether or not they feel Ka Pa'akai has
6 been satisfied or not satisfied and why. So it
7 makes it easier for the staff to write up the DNO
8 because it has to be contained in the DNO. It's --
9 the Supreme Court doesn't give you any leeway on
10 that.

11 Now I want to talk about the Na Wai Eha II
12 case.

13 **CHAIRMAN GIOVANNI:** (Off mic)

14 **MR. ORODENKER:** Okay.

15 **COMMISSIONER LEE:** So then practically
16 speaking, where is this analysis? Is it part of the
17 EIS? Is it a separate thing that says Ka Pa'akai
18 analysis? Where do we see this?

19 **MR. ORODENKER:** Yeah. On a DBA. A newly
20 initiated proceeding. It should be contained in the
21 EIS. I mean, Chapter 343 requires that type of
22 analysis. So if there has been a recent EIS done
23 that is adequate, and we don't know that sometimes
24 until we have a hearing on it. Then the information
25 in the EIS can be used to satisfy the Ka Pa'akai

1 requirements.

2 **COMMISSIONER LEE:** So that doesn't
3 necessarily will be pointed out as Ka Pa'akai
4 analysis.

5 **MR. ORODENKER:** No. No. What usually --
6 I mean, more recently because of recent Supreme
7 Court case decisions, you will have an attorney for
8 the petitioner represent that they've gone through
9 the Ka Pa'akai analysis and they'll explain it. But
10 traditionally, what we just got was the cultural
11 resource assessment, the impacts, and you know, then
12 we had to render a decision. Not specifically
13 talking about Ka Pa'akai but they had to give us
14 that information so that we could move forward.

15 **CHAIRMAN GIOVANNI:** Commissioner U'u?

16 **COMMISSIONER U'U:** You know, when did this
17 take place as far as I guess inserting the Ka
18 Pa'akai?

19 **MR. ORODENKER:** Well, the concept has been
20 around since Waiahole, which was 2000 or earlier
21 even. And it's contained in the constitution. But
22 the courts have interpreted it time and time again
23 and give us more guidance on it but it's always been
24 there.

25 **COMMISSIONER U'U:** So the date will be

1 what date you said? When was it?

2 **MS. KWAN:** The court -- the court cites it
3 at 2000.

4 **MR. ORODENKER:** 2000. Waiahole was 2000.

5 **CHAIRMAN GIOVANNI:** Yeah.

6 **COMMISSIONER U'U:** Thank you.

7 **MR. ORODENKER:** Okay.

8 **CHAIRMAN GIOVANNI:** One second.

9 **MR. ORODENKER:** Any more questions before
10 I move on?

11 **CHAIRMAN GIOVANNI:** Yes.

12 **COMMISSIONER HAYASHIDA:** So does somebody

13 --

14 **MS. KWAN:** Microphone. Hold on.

15 **COMMISSIONER HAYASHIDA:** Does somebody on
16 staff actually give us guidance and do the review
17 for us or --

18 **MR. ORODENKER:** Yeah.

19 **COMMISSIONER HAYASHIDA:** Does somebody --

20 **MR. ORODENKER:** What we will do is we will
21 point to evidence in the record before going into a
22 hearing in our staff report that helps to satisfy
23 the Ka Pa'akai analysis. But that doesn't mean --
24 our staff reports aren't the be all and the end all
25 as I pointed out a couple of times. We've gone into

1 hearings thinking that, oh, everything was fine.
2 Our staff reports indicated everything was fine.
3 And then we get public testimony that, hey, my
4 family has been throwing net down there for 40 years
5 -- for 40 generations and not no more. You know,
6 nobody talked to us. So that's why we always
7 caution that staff reports are our take on what's
8 happening going in. You never know what's going to
9 happen in a hearing. And if you get testimony like
10 that that indicates that the cultural resource
11 assessment was inadequate or that there are other
12 issues that were not touched upon that are
13 associated with Ka Pa'akai then what staff has told
14 you before doesn't mean anything.

15 **CHAIRMAN GIOVANNI:** So Commissioner
16 Hayashida, so as a general rule, a petitioner is
17 encouraged to bring forth their -- the person or the
18 company that performed their Ka Pa'akai analysis as
19 an expert witness during the evidentiary hearing.
20 And the Commissioner and the other parties get an
21 opportunity to question and follow up directly with
22 the entity that did that.

23 It's also not uncommon that if members of
24 the general public take issue that perhaps the
25 analysis was incomplete or had flaws in it, that

1 that type of testimony also comes forth before the
2 Commission during the evidentiary portion of the
3 hearing. So ultimately, we have to weigh what the
4 experts are saying and what the community is saying
5 and then make the judgment call. But a lot of that
6 just kind of unfolds in front of the Commission in
7 live action.

8 But in addition and in preparation for the
9 live action hearing, evidentiary hearing, we do get
10 the staff report and sometimes we'll actually see as
11 part of the EIS or even a standalone document that
12 represents the analysis that was done.

13 **MR. ORODENKER:** Yeah. I think you have to
14 remember that the staff reports are based on the
15 stuff that's been filed already. What happens in
16 the hearing could be completely different.

17 **MR. MORRIS:** Can I add one quick -- this
18 is Dan Morris.

19 **MR. ORODENKER:** Go ahead.

20 **MR. MORRIS:** One comment I had is that
21 Chapter 343, Hawaii's version, it's called HEPA,
22 Hawaii's Environmental Protection Act, it requires
23 one of the things you have to do is to look at
24 cultural impacts. And that's why those types of
25 statements help in the Ka Pa'akai analysis. But

1 looking at cultural impacts is really not the
2 identical thing as considering those three
3 components that have to be -- that they have to show
4 up in the findings that the Commission comes up
5 with. So it is useful and it may cover the whole
6 issue but it's not really structured or sort of
7 framed exactly the same.

8 **MR. ORODENKER:** That is correct. An EIS
9 has -- very often has a lot of the information
10 necessary for us to perform a Ka Pa'akai analysis.
11 But it may not have everything. And it's up the
12 petitioner to bring it forward.

13 This has become very controversial and
14 I'll go into that in the discussion of the Na Wai
15 Eha case.

16 **COMMISSIONER HAYASHIDA:** So when they come
17 in with amendments, are we seeing some of these
18 older projects that didn't have this analysis done?
19 Are you seeing in the amendments that these analyses
20 can be required or added on to?

21 **MR. ORODENKER:** They should be. I mean,
22 the recent Supreme Court case decisions indicate
23 that every time we make any type of decision, no
24 matter what it is, we have to do a Ka Pa'akai
25 analysis. So if they haven't done one, if they come

1 in for a motion to amend, for instance, and they
2 haven't done a Ka Pa'akai analysis or they can't
3 point to where one has been done, we can't move
4 forward. Okay.

5 **CHAIRMAN GIOVANNI:** Yeah. Let me also say
6 by example, to give an example, if we get an EIS in
7 which the Commission feels that the traffic study
8 was inadequate, that's a similar judgment we could
9 make to say we don't feel that the EIS has been
10 accepted. And we want you to do an updated traffic
11 study as part of the EIS.

12 **MR. ORODENKER:** Yeah. Yeah.

13 **CHAIRMAN GIOVANNI:** And send it back for
14 further work.

15 **MR. ORODENKER:** Yeah. And that's not
16 uncommon either.

17 **CHAIRMAN GIOVANNI:** Commissioner Lee?

18 **COMMISSIONER LEE:** Following up on
19 Commissioner Hayashida's question then, so if a
20 status update comes up and that petitioner had not
21 done a Ka Pa'akai analysis before would that be
22 something that would be brought up?

23 **MR. ORODENKER:** It can be. I mean, we're
24 not taking action unless -- I mean, usually we're
25 not taking action of a status report. The only

1 action that we would potentially take would be to
2 file a motion for order to show cause which is sort
3 of, you know, we're protecting that.

4 **COMMISSIONER LEE:** I'm just saying that in
5 case we have another lawyer that's similar to a
6 previous one that likes to bring that up --

7 **MR. ORODENKER:** Yeah.

8 **COMMISSIONER LEE:** -- and would want to
9 bring that up at any opportunity. So that would not
10 be something that would routinely be required from
11 an annual status update?

12 **MR. ORODENKER:** No. No. Usually our
13 status updates are associated with the conditions
14 that we've already placed on the project.

15 If the petitioner was to file a motion to
16 amend I think they would probably have to do a Ka
17 Pa'akai analysis. But just telling us what they're
18 doing they don't have to do one. Because
19 theoretically, it was done when we issued our
20 decision the first time, so.

21 **CHAIRMAN GIOVANNI:** Commissioner Yamane?

22 **COMMISSIONER YAMANE:** Just wanted to
23 clarify, the Ka Pa'akai framework applies to all
24 Hawaii boards and commissions, not just Land Use?

25 **MR. ORODENKER:** That is correct.

1 **COMMISSIONER YAMANE:** But the case was
2 brought in front of a Land Use decision?

3 **MR. ORODENKER:** The Ka Pa'akai analysis
4 came out of a case in front of the Land Use
5 Commission.

6 **COMMISSIONER YAMANE:** Okay. And then I
7 guess, I just want to clarify Chair Giovanni's
8 Commission doing the Ka Pa'akai analysis, the
9 petitioners doing the Ka Pa'akai analysis, it's not
10 really explicit. Like you said, it can be in the
11 EIS, all the three factors, but not listed as Ka
12 Pa'akai.

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

14 **COMMISSIONER YAMANE:** So is that what you
15 mean by saying that we need to look at those three
16 things from our commission standpoint?

17 **MR. ORODENKER:** Yeah.

18 **COMMISSIONER YAMANE:** It's okay. That one
19 is met. That one is met.

20 **MR. ORODENKER:** Yeah.

21 **COMMISSIONER YAMANE:** But in the EIS it
22 doesn't say this is our Ka Pa'akai analysis. So
23 maybe that's why you keep referring to saying the
24 Commission does an analysis but it's the petitioner
25 that does all the legwork on these three things.

1 **MR. ORODENKER:** Yeah. The Commissioner
2 does the analysis based on the information that it
3 obtained, the evidentiary information.

4 **COMMISSIONER YAMANE:** Like I said, it
5 might not be pointed out as Ka Pa'akai. That's why
6 it's for us staff to say, hey, keep that in mind on
7 the Ka Pa'akai.

8 **CHAIRMAN GIOVANNI:** Yeah. Yeah. Yeah.
9 Yeah. Thanks.

10 **MR. ORODENKER:** And staff will -- if we
11 think that there's a problem and the analysis is
12 inadequate or hasn't been done we'll let you know.
13 But you do have to keep that in mind that the Ka
14 Pa'akai analysis needs to be done and satisfied.

15 **MR. DERRICKSON:** Dan, just so you guys
16 know that the consultants and the legal
17 representatives out there understand a lot more
18 about Ka Pa'akai now so it's not uncommon that you
19 will see a Ka Pa'akai analysis included in an EIS or
20 an EA and a petition or even motions to amend. And
21 we do discuss this when we talk to the consultants
22 or the legal reps of petitioners who are attempting
23 to bring things before us. So we do mention, hey,
24 look, Ka Pa'akai analysis is one of the things
25 that's going to have to be addressed. How are you

1 doing that? Make sure you do that. Make sure you
2 cover all the basis so that then the Commission can
3 in effect render a decision.

4 **MR. ORODENKER:** Okay. Na Wai Eha. Okay.
5 It sort of took this one step further and I'll
6 explain that as we go through it.

7 First of all, the evidentiary requirement,
8 the promise of preserving and protecting customary
9 and traditional rights would illusory absent
10 findings on the extent of their exercise, their
11 impairment, and the feasibility of their protection.
12 So that's reiterating Ka Pa'akai even though it
13 doesn't use that language.

14 All parts of the Ka Pa'akai analysis must
15 be fully represented by the facts and contained in
16 the decision or through specific findings and
17 conclusions to avoid appeal.

18 And once again, this is a reiteration of
19 some of the stuff that we've already talked about
20 but the courts were a little more precise with what
21 they were saying in the Na Wai Eha decision.

22 Any balancing act between public and
23 private purposes begins with a presumption in favor
24 of public use, access and enjoyment.

25 That comes from the Waiahole case. And

1 what they're saying there is once again that public
2 -- protection of the public trust trumps economics,
3 basically. You know, even if the project has
4 economic benefit, if it's going to destroy a public
5 trust resource it doesn't meet the criteria.

6 There's a higher level of scrutiny with
7 regard to private, commercial uses. So almost
8 everything that comes in front of us is a private
9 commercial use. So that would mean we have that
10 elevated standard.

11 The burden ultimately lies with those
12 seeking or approving such uses to justify them
13 considering the purposes protect by the trust.

14 And once again that goes back to the fact
15 that the parties have to present their case with
16 regard to Ka Pa'akai.

17 Burden of Proof is on the applicant.
18 Besides advocating the social and economic utility
19 of their proposed uses, permit applicants must also
20 demonstrate the absence of practicable mitigation
21 measures.

22 That's a little confusing. And if the --
23 this is a little bit new because the Ka Pa'akai
24 analysis actually has mitigation measures, the
25 proposed mitigation measures. If there are no

1 mitigation measures possible, the applicant has to
2 reveal that. And the Commission has to decide
3 whether or not the absence and form of mitigation is
4 going to destroy the public trust resource.

5 It's intrinsic to the public trust and the
6 definition of reasonable and beneficial.

7 Decision makers must not approve
8 applications with minimal scrutiny. In other words,
9 you can't let somebody come in and say, oh, yeah, we
10 did it. It's fine. I mean, you have to push them on
11 this. If there's an affirmative duty on the part of
12 the Commission to dig into this stuff, they can't
13 just pass it off. They must take the initiative to
14 gather information before it acts. So if you have
15 any questions about what's happening, you need to
16 let us -- you need to ask it and you need to let us
17 know.

18 This is difficult for staff. Okay? This
19 case surrounded the Commission on Water Resource
20 Management decision. And the Commission on Water
21 Resource Management is different from us because
22 they have hydrologists, geologists, all the rest of
23 those guys on board do an analysis of the impact of
24 the proposed action on the water resource. We don't
25 have that. So this affirmative duty places a burden

1 on staff to think about not just what's been
2 presented to us but what hasn't been presented to
3 us, which is the next step. And this is new.
4 Right? Because before we were just looking at what
5 came in and is there anything that comes up at
6 hearing that would implicate the public trust
7 doctrine? Now, because of this affirmative duty, we
8 have to go beyond what's on the record and say,
9 look, staff will point out, we think this actually
10 implicates such and such and there's no evidence on
11 the record with regard to whether or not this
12 project is or is not going to implicate that
13 resource. So it's made it harder for us staff and
14 we may miss something. So you, as commissioners,
15 need to think one step ahead.

16 If there's not definitive evidence on a
17 public trust doctrine public trust resource, the
18 Commission cannot render an approving decision.
19 Once again, that doesn't mean you have to deny but
20 it may mean that, hey, look. We think there's going
21 to be an impact on the limo (phonetic) gathering
22 below this project. And you didn't talk about it.
23 Go back and do a study on it.

24 So you don't have to have the answer but
25 you can make them go and get the answer.

1 **CHAIRMAN GIOVANNI:** Yeah. I want to
2 comment on that. You know, I mean, the reality is
3 we don't know what we don't know, and we can't be
4 expected to know what we don't know. But there is a
5 way that kind of unfolds in front of us that helps
6 us. And that's through the community or the public
7 testimony that comes before us. So oftentimes, the
8 public testimony, especially in a controversial
9 petition before us, the public testimony will raise
10 public trust issues that may or may not be included
11 in what's presented by the petitioner as part of
12 their Ka Pa'akai assessment. That's an opportunity
13 where we, as commissioners, can say, hey, this one
14 was brought up. You did not address it. We think
15 it's real or at least deserves some further
16 investigation and we're going to send it back to you
17 to do that.

18 **MR. ORODENKER:** Okay. Not quite correct.
19 In this case, the Supreme Court kind of called
20 bullshit on that.

21 **CHAIRMAN GIOVANNI:** How is that?

22 **MR. ORODENKER:** What, okay, and --

23 **CHAIRMAN GIOVANNI:** So they're saying I'm
24 supposed to know what I don't know?

25 **MR. ORODENKER:** Yeah.

1 **CHAIRMAN GIOVANNI:** I don't agree with
2 that.

3 **MR. ORODENKER:** What the Supreme Court
4 said in this specific situation was, okay, so one of
5 the issues was the restoration of water to the
6 streams in Lahaina. Okay? Because they'd been dry
7 for a century.

8 **CHAIRMAN GIOVANNI:** Yep.

9 **MR. ORODENKER:** So what the Supreme Court
10 said was you have to restore the natural flow in
11 those streams to determine whether or not there
12 could be or would be cultural gathering practices
13 taking place in those streams before you can
14 complete your analysis.

15 **CHAIRMAN GIOVANNI:** I think that's
16 reasonable. I don't think that falls into --

17 **MR. ORODENKER:** Well, the argument that
18 the Commission of Water Resource Management was
19 making said we don't know. You know, what are we
20 supposed to stop and not do anything? And the
21 Supreme Court said, yeah. You're not supposed to --
22 you're supposed to stop until you started the stream
23 --

24 **CHAIRMAN GIOVANNI:** Yeah. So let's
25 continue this hypothetical.

1 **MR. ORODENKER:** Yeah.

2 **CHAIRMAN GIOVANNI:** So if there's a dry
3 stream bed, in my mind there's definitely a
4 consultant out there that will address the question
5 for you, what do you think might be the practices
6 that would occur if this stream is at full flow?

7 **MR. ORODENKER:** Yeah. But what the
8 Supreme Court was actually saying was that you don't
9 know if the (inaudible) are going to come back. If,
10 you know, the shrimp are going to come back.

11 **CHAIRMAN GIOVANNI:** Well, somebody will
12 speculate on that and then you can make a judgment
13 call.

14 **MR. ORODENKER:** Yeah. Yeah. But --

15 **CHAIRMAN GIOVANNI:** They're just saying --
16 in my mind what they're saying is you can't ignore
17 it.

18 **MR. ORODENKER:** What they actually said is
19 you've got to restore the streams first before you
20 can make a decision.

21 **CHAIRMAN GIOVANNI:** You have to restore
22 the stream in the water case?

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

24 **CHAIRMAN GIOVANNI:** So you have to do a
25 practical experiment to --

1 **MR. ORODENKER:** Nobody knows. I mean,
2 this decision just came out a month ago.

3 **CHAIRMAN GIOVANNI:** Okay. Fine.

4 **MR. ORODENKER:** Yeah.

5 **CHAIRMAN GIOVANNI:** Enough on this. I
6 want to move forward. Okay.

7 **MR. ORODENKER:** I'm not saying I agree
8 with this. I'm just telling you this is what the
9 Supreme Court said. I mean, from a practical
10 standpoint it causes a lot of problems. What's even
11 more disconcerting for most of the development
12 community is that it used to be -- the principle
13 used to be that if you had a water allocation, say
14 for a golf course, and then there was, you know, a
15 designation of water for other uses, you were
16 guaranteed that water. You know, you still had
17 that. Because it had been given to you prior, you
18 had that allocation. And the Supreme Court said no.
19 No. You know, you can lose your water. If your
20 utilization of water for a golf course is going to
21 impact water needed or reduce the amount of water
22 needed to -- for cultural resources and practices,
23 then yeah, you can lose your water.

24 **CHAIRMAN GIOVANNI:** Yep.

25 **MR. ORODENKER:** So that was new, too. And

1 it has the development community quite upset but
2 that's what the Supreme Court said.

3 **CHAIRMAN GIOVANNI:** Okay.

4 **MR. ORODENKER:** One of the other things, I
5 mean, we talked about Article XII, Section 7, which
6 is sort of a further reiteration of the protection
7 of cultural resources. But one of the other things
8 to keep in mind is the obligation is not delegable.

9 **CHAIRMAN GIOVANNI:** Is not what?

10 **MR. ORODENKER:** Delegable. The Commission
11 must affirmatively act to protect the resources, not
12 delegate the responsibility to a private party, via
13 condition -- via a condition instructing them to
14 generally protect the resource. In other words, you
15 can't say, well, okay. We'll grant your petition but
16 we don't know if what you're doing is enough to
17 protect the resource so we're going to leave it up
18 to you to protect it. You cannot do that. You
19 cannot craft a condition that puts the onus on a
20 developer or a petitioner to protect the resources.
21 We can craft conditions that forces the petitioners
22 to take action under certain circumstances.

23 One of the best examples of that is the
24 standard condition that we always put in about if
25 they find bones they have to stop and address that.

1 But we can't leave it up to them to figure out how
2 to do it. Okay.

3 **CHAIRMAN GIOVANNI:** Two more slides and
4 then we'll take a break.

5 We can go on to the next slide.

6 The overall impact of the decision is that
7 there is an affirmative obligation to develop
8 evidence on the impact on the resources is further
9 expanded. In other words, that affirmative
10 obligation is further expanded. The streams had to
11 be returned to a natural state. This, as we were
12 just talking about, places somewhat of a speculative
13 obligation on the agencies.

14 Cultural practices are prioritized as well
15 as environmental. If there is anything left of the
16 resource after then the next priority is
17 agriculture. Then -- actually, those resources are
18 protected. Then residential or public with the
19 bottom being things like golf courses and
20 recreational uses.

21 And that is -- we also would refer you to
22 the recording that we have of our former chair, who
23 actually teaches a course on public trust at the
24 University for your review. I think it's valuable
25 and very helpful.

1 **CHAIRMAN GIOVANNI:** Commissioner Yamane?

2 **COMMISSIONER YAMANE:** What brought about
3 the Ka Pa'akai versus Land Use Commission? What did
4 the Land Use Commission do that --

5 **MR. DERRICKSON:** Do you want me to talk to
6 that?

7 It goes back to that snippet of an
8 obligation is not delegable. That's really the crux
9 of that decision.

10 The Land Use Commission approved a
11 development project on the Big Island. And they
12 basically put in a condition that said, okay,
13 developer, you need to create a cultural resource
14 group and find out what they think, you know, about
15 what are the traditional and customary practices
16 that have been occurring or want to occur and how
17 they might be addressed. We basically delegated
18 that authority to the developer.

19 **UNIDENTIFIABLE SPEAKER:** The developer
20 balked at it.

21 **MR. DERRICKSON:** The developer didn't balk
22 at it. The developer actually never really put
23 anything meaningful together.

24 **CHAIRMAN GIOVANNI:** Who appealed?

25 **MR. DERRICKSON:** Yeah. Ka Pa'akai Okina,

1 a group that came up around that specific issue. I
2 mean, it was practitioners and people within the
3 community who had used those lands for generations.

4 **CHAIRMAN GIOVANNI:** Martina?

5 **COMMISSIONER CARR SMITH:** And they built a
6 cultural center by the way.

7 **CHAIRMAN GIOVANNI:** Yeah. Martina, do you
8 want to say anything?

9 **MS. SEGURA:** It had to do with the salt
10 ponds and activity in the salt ponds near the
11 petitioner area specifically.

12 **CHAIRMAN GIOVANNI:** Very good.

13 I also want to harken back a couple weeks
14 to a presentation that was made to us by the folks
15 from the Water area. And I think it underscores the
16 importance of what, you know, came out of that
17 presentation was a willingness for a direct
18 relationship between CWRM and the LUC. If we get a
19 petition before us that has water issues, we can
20 refer to them, you know, questions directly to them
21 or staff can refer issues to them directly for them
22 to weigh in on directly back to us to help us do our
23 job as opposed to what kind of was the state before
24 that it had to kind of go through OPSD to Water and
25 then back and then to us. So I think where we

1 landed was it's kind of a three- way. That if there
2 are water issues, and a lot of this public trust
3 stuff goes to water issues, they can be more
4 intimately involved in our work and including OPSD.
5 So that's a good thing, I think.

6 **MR. ORODENKER:** Yeah. There are several
7 ways that we can get their involvement at a hearing.
8 One of them is to ask OPSD to call them as a
9 witness. I mean, we can do that. Staff can do that
10 ahead of time. Or if during the hearing the
11 Commissioners feel that they need Commission of
12 Water Resource Management's input we can ask OPSD to
13 call them as a witness.

14 The other way we can do it is to subpoena
15 them but we would rather have OPSD call them as a
16 witness.

17 **CHAIRMAN GIOVANNI:** I think a phone call
18 is better.

19 **MR. ORODENKER:** Yeah. Yeah. So.

20 **MR. DERRICKSON:** I do want to point out
21 though just to remind you that OPSD has a statutory
22 authority and responsibility both under Chapter 205
23 and under their own creation document, Chapter 225.
24 Yeah. Their responsibility is to present the
25 state's -- a broad state -

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CHAIRMAN GIOVANNI: Oh, understood.

MR. DERRICKSON: And that includes -- that includes with CWRM.

CHAIRMAN GIOVANNI: Yeah. Not bypassing them but I just want -- I think the Commission is well advised. If we perceive there are water issues on a matter before us that we make the effort to make sure they get involved.

MR. DERRICKSON: Absolutely. And generally, staff does that by trying to discuss that with OPSD to make sure that, hey --

CHAIRMAN GIOVANNI: Yeah, but now you've got an opportunity. I don't think you were there at this meeting, were you?

MR. DERRICKSON: I wasn't there but I was part --

CHAIRMAN GIOVANNI: It ended with a willingness for a two-party --

MR. DERRICKSON: -- generated that.

CHAIRMAN GIOVANNI: Okay. I'm good.

MR. DERRICKSON: Yeah, absolutely. If in the absence of other state, you know, representation of that interest we will directly respond and request CWRM's participation.

1 **CHAIRMAN GIOVANNI:** Okay. Good enough.

2 Commissioner Carr Smith?

3 **COMMISSIONER CARR SMITH:** I have an odd
4 question. I'm wondering who wrote our training
5 materials on public trust? Was it you or the AG's
6 office or Jonathan Scheuer or --

7 **MR. ORODENKER:** A combination of all of
8 us.

9 **MS. SEGURA:** And some quotes are taken
10 directly from --

11 **MR. ORODENKER:** Yeah.

12 **MS. SEGURA:** -- court cases.

13 **MR. ORODENKER:** The only thing --

14 **COMMISSIONER CARR SMITH:** Yeah. I could
15 tell the quotes but then after that you guys would
16 insert some statements about what we should do and
17 I'm pretty sure that's not a quote but it's
18 somebody's interpretation of what we should and
19 shouldn't do. And so I was just curious.

20 **MS. SEGURA:** Which slide? Which slide are
21 you referring to with a quote?

22 **COMMISSIONER CARR SMITH:** For example,
23 105. Just an example.

24 **MS. SEGURA:** I have it on the screen.

25 **COMMISSIONER CARR SMITH:** I'm assuming

1 that's not a quote from --

2 **MR. ORODENKER:** No, it's a paraphrase.

3 **COMMISSIONER CARR SMITH:** Yeah.

4 **MR. ORODENKER:** I mean, and a lot of these
5 things 8

6 **COMMISSIONER CARR SMITH:** And this is when
7 somebody is telling us what must be.

8 **MR. ORODENKER:** Yeah. Yeah. I mean, a
9 lot of these are paraphrased because the actual
10 verbiage would take five slides, you know.

11 **COMMISSIONER CARR SMITH:** I understand. I
12 just think, you know, you guys need to be careful
13 about what you're providing us and where is it
14 coming from.

15 **MR. ORODENKER:** We get a lot of advice on
16 the public trust doctrine. I mean, it comes to us
17 constantly from various sources. It is a
18 combination of interpretation of the cases by staff,
19 as well as interpretation by former commissioners,
20 as well as interpretation by the attorney general's
21 office and how we've been advised. I mean, I don't
22 think that any of the statements that are made in
23 this section are challengeable.

24 **CHAIRMAN GIOVANNI:** Commissioner U'u?

25 **COMMISSIONER U'U:** Yeah. I just wanted to

1 bring up a point. I can see why it's important, Ka
2 Pa'akai, especially in the 2000s when this came
3 about. Yeah? But as we enter 2025, I don't want to
4 be reactive, and I feel even Ka Pa'akai is reactive
5 because maybe what we lost from the '80s, the '90s,
6 going to the beach, collecting the limos, surfing
7 limos. We can break them down with a bunch of limo;
8 right? We can do so much, right, because we lost a
9 lot. And at the current present time we're losing
10 our residents. So when you're saying, oh, you
11 cannot be an umpire. Make the decisions based on I
12 guess economic decisions. But the economic impact
13 hits the Hawaiians first. We're the first to leave.
14 I'll just make that point out because I don't want
15 to be here in 2050 when Ka Pa'akai now adds, hey,
16 how do we keep our residents on island? Because I
17 think that is the most precious resource that we
18 have because it's missing and it's lacking in your
19 document about humans. Lahaina lost homes and they
20 are out migrating faster than we ever saw. And it's
21 missing in your documents. And again, we are
22 reactive and not proactive. And I'm not disagreeing
23 with what you've got up there. I'm just saying
24 we're missing a valuable component.

25 When I was on the Cultural Resource

1 Commission (CRC), they used to say, oh, guys, we've
2 got to keep the housing intact to have the look of
3 Lahaina. That was the intent in certain areas,
4 historic districts; right? But what they missed is
5 it's not the house. It's the person within the
6 house. So if you're going to protect lands that is
7 now not with Hawaiians on top of it, who are we
8 protecting them for? We need to talk about
9 generations. I like to be specific on what
10 generation you're talking about because our
11 generation is leaving. If we're saving it for the
12 future, you tell me who the future is at this
13 current trend. It's not my grandkids. I've got 10
14 of them. So I want to be specific in who we're
15 doing and who we're saving them for because it's
16 missing in your document. I've got to put that in
17 writing, and I don't disagree because I agree with
18 the trusts. I agree with the water resources.

19 Just to let you know, I got cousins who
20 raise cows for a living. I go to the beach. I'm
21 born and raised next to the beach. I'm all for it.
22 But we've got to take in all impacts that affect
23 Hawaiian people and that comes with economic impacts
24 also. So that's my two cents.

25 I'm just saying. You don't need to

1 respond. We're running out of time.

2 **MR. ORODENKER:** Well, that's okay. It is
3 very controversial and there is a lot of argument
4 about it. What we've done here is we've presented
5 you with the information that comes from the Supreme
6 Court as to how we're supposed to behave.

7 **COMMISSIONER U'U:** And again, it's
8 reactive. That's what I'm saying to a certain
9 degree.

10 **MR. ORODENKER:** The courts -- it's the law
11 of the land; right? We can't get around it. That
12 argument was made by one of the petitioners in the
13 Ka Pa'akai -- not Ka Pa'akai, in the latest
14 decision. And the courts, they actually made a
15 specific statement with regard to that and what they
16 said was that if -- if the idea is to protect the
17 native Hawaiian culture, if you don't protect the
18 resources by which they practice their culture then
19 you don't have a culture. I mean, it said that in
20 the decision.

21 I understand exactly what you're saying.
22 Yeah. I understand exactly what you're saying. But
23 if we don't follow these Supreme Court decisions
24 then we run the risk of being overturned.

25 **CHAIRMAN GIOVANNI:** So I want to add my

1 two cents on top of Commissioner U'u. First of all,
2 I really appreciate you making that statement that
3 you did, Commissioner.

4 I find more often than not that we're
5 living with interpretations and decisions of
6 historical policy that is out of sync with reality
7 today and that are in dire need of some revision and
8 updating. That's a process that has to occur in its
9 own natural state. But the reality is we're caught
10 in a vice where the Supreme Court is interpreting
11 things from a bygone era or bygone days or a bygone
12 time they're written. In a different context. It's
13 contextual. And I would not be surprised -- I mean,
14 I can't foresee it but I would not be surprised if
15 there's a new generation of policy and laws that
16 come forth as a result of the current context that
17 Commissioner U'u so clearly articulated and I thank
18 him for.

19 Commissioner Lee?

20 **COMMISSIONER LEE:** Yeah. I just want to
21 chime in on this because if we look at slide 110.
22 The first paragraph, the last word is "feasible."
23 And then if you go to the next slide 111, the last
24 paragraph, the second word is "feasible." And I
25 think that, you know, even Supreme Court justices

1 evolve and change. And so I don't know that some of
2 this stuff is gospel, that will forever be true. And
3 so that's what I think Commissioner Nancy Carr Smith
4 was saying is that, yeah, some of the -- some of
5 what we got from previous commissioners and maybe,
6 you know, current state of thinking, may or may not
7 actually hold as things change, as more local people
8 get pushed out, who are we saving the water and the
9 resources for if all the Hawaiians have to leave?
10 So that might change the calculus of some of these
11 decisions.

12 **MR. ORODENKER:** I don't disagree with you.
13 I think that that's one of the problems with the
14 current constitution. Dan Giovanni, Chair Giovanni
15 and I were having a discussion about that. I mean,
16 the last Constitutional Convention was in the '70s.
17 Things have changed a lot since then. And that is
18 what the Supreme Court is interpreting is the
19 constitution.

20 **COMMISSIONER LEE:** Even feasible is a
21 judgment call; right? So --

22 **MR. ORODENKER:** Well, the feasible in this
23 section refers to -- that's actually a protective
24 word because what they're saying is you can't force
25 a petitioner to do something that is --

1 **COMMISSIONER LEE:** Not feasible.

2 **MR. ORODENKER:** Prohibitively expensive.

3 **COMMISSIONER LEE:** Right.

4 **MR. ORODENKER:** You know, to protect the
5 resources.

6 **COMMISSIONER LEE:** Even in the state
7 constitution it talks about balancing -- about
8 balancing the needs -- economic, cultural,
9 environmental. You know, one is not higher than the
10 other necessarily.

11 **MR. ORODENKER:** I'm not a Hawaii
12 constitutional scholar. The only thing that we're
13 pointing out is what the Supreme Court has said and
14 what we've got to live with. I mean, I don't
15 disagree with Commissioner U'u or yourself or
16 Commissioner Giovanni that, you know, we've got to
17 build some houses, you know, to keep people here.
18 But if we do it outside -- in conflict with the Ka
19 Pa'akai analysis that's required and the
20 constitutional provisions that are required, we run
21 the risk that we will be appealed from.

22 **MR. MORRIS:** This is Dan Morris. I wanted
23 to just make one quick comment. I thought it was a
24 very good comment about this balancing. The
25 constitution does talk about balancing protection of

1 the resources with private development and so on.
2 So that is a definite component of the
3 constitutional analysis. I do note on slide 114
4 there is a comment from Na Wai Eha II, which I
5 haven't read myself, but it looks like a quote that
6 says, "Any balancing between public and private
7 purpose begins with a presumption in favor of public
8 use, access, and enjoyment."

9 And so that sort of suggests that, yeah,
10 you've got to balance but you sort of start with
11 this presumption. But that doesn't take away the
12 fact that there is a balancing process. So I don't
13 think you have to feel like your hands are tied in
14 every decision to, you know, force you to side a
15 certain way without going through that balancing
16 process.

17 **CHAIRMAN GIOVANNI:** Commissioner U'u?

18 **COMMISSIONER U'U:** Thank you.

19 **CHAIRMAN GIOVANNI:** Is that the comment?

20 On that note we'll take a recess. We'll
21 come back 11:15.

22 **(Recess taken from 11:06 a.m. to 11:14**
23 **a.m.)**

24 **CHAIRMAN GIOVANNI:** It's 11:14. We came
25 back a minute early.

1 **MR. ORODENKER:** Okay. We're going to jump
2 to Sustainability and then come back to Ethics later
3 on. We thought it's a good segue from Public Trust
4 to Sustainability.

5 So Martina is going to do that.

6 **MS. SEGURA:** So since we were talking
7 about basically sustainable practices in the public
8 trust section, that's why we skipped over a little
9 bit. But the Land Use Commission does have
10 requirements to consider sustainable practices and
11 that relates to climate change and other natural
12 resource management. And that's in Hawaii Admin
13 Rules 15-15 and it's also in the statutory
14 requirements.

15 Yeah. Oh, wait, can you go back? And
16 then, sorry.

17 The image on the right is actually of the
18 State's Hawaii Sustainability Plan. And that was
19 conducted in the Office of Planning and Sustainable
20 Development's Sustainability Branch Program. And if
21 you want to take a look at that it's really
22 interesting. It lays out the UN goals and lays them
23 out to state initiatives and laws. And it breaks
24 out everything from housing to energy components and
25 food requirements.

1 **MR. ORODENKER:** Yeah. I think that, if I
2 may interrupt this session, Martina. The fact that
3 it's contained in 226-108 and 109 were the
4 sustainability requirements and the sustainability
5 plan where all state agencies are actually mandated
6 to adhere to those -- that plan and those
7 requirements. So this is not something that we just
8 decided we wanted to do. It's something we're
9 supposed to do.

10 **MS. SEGURA:** And specifically, if you look
11 at 226-108, there are seven guidelines and
12 principles that kind of guide the sustainable
13 principles that we have to look at. And if you look
14 at specifically number one, it encourages balanced
15 economic, social, community, and environmental
16 priorities, which automatically incorporates the
17 public trust and those economic values that we hold
18 so dear.

19 And in five, actually, all of those seven
20 are really crucial to balancing the things that the
21 state needs the most to make communities strong and
22 keep local people here.

23 And in 226-109, that's specific to the
24 climate change adaptation priorities which are
25 components of EIS and EAs that we as the Land Use

1 Commission and Land Use Commission staff have to
2 look at when we are looking at DBAs and other
3 motions in front of us. And that has to do with --
4 sorry, where was I? Balancing and preserving the
5 natural with the built environments, like coral reef
6 protection and watershed mitigation. Yeah.

7 Next slide.

8 Components that we see specific to
9 sustainability are solar, wind, and renewable
10 projects. We get those a lot in the form of special
11 permits and we also get a lot of sustainable issues
12 and principles arise through motions to amend DBAs.
13 So we've seen projects that promote sustainability
14 through energy components. So like housing with
15 solar panels and that's something that you as
16 commissioners need to take into account when you're
17 considering things in front of you.

18 **CHAIRMAN GIOVANNI:** Thank you, Martina.

19 I think the one thing I would add to that
20 list for consideration, because as part of our
21 administrative rules for LUC, we're obligated to
22 consider climate change and global warming effects.
23 And the way that I've seen it also come into play is
24 projects that eliminate green space and eliminate
25 trees and things, we're always asking the developer,

1 what are you doing on balance? So are you creating
2 a park? Are you planting a tree in a different
3 place? That sort of thing. That's a way we can
4 make it work.

5 **MS. SEGURA:** Yes. Exactly. Because of
6 the interactions with the built and natural
7 environment you have to consider those factors, like
8 the green spaces, as well as climate change. So a
9 thing that also comes in front of the Commission
10 frequently which has been mentioned is the impacts
11 of climate change on water resources. And that's
12 just another thing that the Commission has to
13 balance in their decision-making process because
14 climate change is a known problem that addresses the
15 water use across the state.

16 **CHAIRMAN GIOVANNI:** Thank you.

17 **MR. ORODENKER:** The section of our rules
18 that requires discussion by the petitioner of
19 sustainability measures is 15-15-50. Let me see if
20 I've got this. I think it's (a)24. No, (b) --
21 (c)24.

22 **MS. SEGURA:** The one on the screen.

23 **MR. ORODENKER:** Yeah. Yeah. And if you
24 look at that, the way it's worded is they just need
25 to present us with information with regard to the

1 impacts on sustainability. It is not a, so to
2 speak, a decision-making criteria. In other words,
3 if their carbon footprint is bad, it's not a reason
4 to reject the project. But it does -- we're
5 supposed to be collecting the information and
6 encouraging the petitioners to adhere to the
7 sustainability plan.

8 **MR. DERRICKSON:** Well, so Chapter 226,
9 which is being referenced -- 226-108 and 109, that's
10 the state plan. That is one of the things that you
11 have to consider in your decision-making criteria
12 under Chapter 205-17, Land Use Commission Decision-
13 Making Criteria.

14 So the state plan. These are components
15 of it. You have to take this into account when you
16 make your decisions. So you need the information
17 provided to you to be able to take it into account.

18 **UNIDENTIFIABLE SPEAKER:** Yeah, that's
19 interesting you brought that up, Scott, because at
20 the last meeting with CWRM and OPSD, they kind of
21 said there was no state plan.

22 **MR. DERRICKSON:** They are incorrect.

23 **UNIDENTIFIABLE SPEAKER:** That's what I
24 thought.

25 **MR. DERRICKSON:** Politely speaking.

1 He knew I was rolling my eyes.

2 **UNIDENTIFIABLE SPEAKER:** You should have
3 said something then.

4 **MR. DERRICKSON:** I think what they may
5 have been alluding to was not a state plan itself
6 but the functional plans that are a component of the
7 state plan. Because the functional plans have not
8 been updated in many cases for many decades.

9 **CHAIRMAN GIOVANNI:** Commissioner Carr
10 Smith?

11 **COMMISSIONER CARR SMITH:** So I assume that
12 staff when looking at a petition will review 226-108
13 and 109?

14 **MR. DERRICKSON:** Yes.

15 **COMMISSIONER CARR SMITH:** And then will
16 you --

17 **MR. DERRICKSON:** It's not -- it's not for
18 us as staff to review 108 and 109 and provide you
19 with information about it if the petitioner or OPSD
20 or the county have not provided evidence into the
21 record on that. We may point out that, hey, there's
22 nothing from -- there's nothing on the record to
23 this point to address these issues. And we suggest
24 the Commission specifically question.

25 **COMMISSIONER CARR SMITH:** Right.

1 **MR. DERRICKSON:** The petitioner and/or a
2 witness and/or the county or the state.

3 **COMMISSIONER CARR SMITH:** That's what I
4 was getting at.

5 **MR. DERRICKSON:** Yeah.

6 **COMMISSIONER CARR SMITH:** So in your
7 report you would mention that because these are
8 pretty general statements, actually, so I can't
9 imagine --

10 **MR. DERRICKSON:** They do provide a good
11 amount of latitude for a petition or other entity to
12 provide you with information that they believe meets
13 the requirements.

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

15 **MR. DERRICKSON:** It'll be up to you to
16 judge whether or not that's sufficient, credible.

17 **MR. ORODENKER:** This is also an
18 opportunity for me to talk a little bit about what
19 actually happened.

20 Staff doesn't just take in all this
21 information and then blindsides the petitioner if
22 they're missing something. If we go through a
23 petition, all the documents that have been filed,
24 and we see something that's missing, we'll call up a
25 petitioner and say, hey, look, you know, we're

1 keying in the Commissioners to the fact that you
2 didn't cover this in your documents so you'd better
3 be prepared to answer it at hearing. So it's not
4 like they're blindsided when they come in. We talk
5 to them about the deficiencies that we're seeing so
6 that they're prepared when they come in with the
7 information they need to, you know, add to the
8 record.

9 **MS. SEGURA:** We also do that during the
10 environmental review period. So before we get the
11 final drafts of EAs and EISs, we look at those
12 components that are necessary. And if we see
13 something missing, like for example, 5 and 226-109,
14 if they don't specifically include information about
15 how the reef and watersheds are impacted through the
16 cultural or Coastal Zone Management Act, we'll point
17 out that there's a deficiency and then they'll have
18 to address that when they finalize their
19 environmental impact statement and assessment.

20 **MR. DERRICKSON:** Just so you know, we
21 actually take a proactive reach out and we do work
22 with petitioners often very closely. And there are
23 many instances where they have asked us, can we send
24 you a preliminary draft before we actually send this
25 in officially? And we don't like to do that but we

1 know that that's oftentimes useful and so we usually
2 make sure, okay, if you're going to do that, let us
3 know ahead of time. Make sure that we have staff
4 resources that we can actually review your documents
5 and give you a cursory analysis. But also, we try
6 to encourage them to do that with the Office of
7 Planning, as well as the county. And you know, that
8 way they make sure that when they do file something
9 that it's complete. It covers all the bases. We
10 might not agree with the analysis that they
11 specifically do but the main thing is we want to
12 make sure you've provided information in all the
13 areas that are necessary. Then it's going to be up
14 to, you know, staff to look at that analysis, but
15 also up to the Commission to identify whether or not
16 they find that evidence credible and whether it's a
17 preponderance of evidence. Whether it's sufficient.

18 **MR. ORODENKER:** Yeah. There's only a
19 couple of things I'm going to talk about in here
20 because we all got - - well, except for Ken, we all
21 got trained on the ethics by the Ethics commission.

22 The only things that I'm going to touch on
23 are some reminders and something that Robert brought
24 up with me after the discussion.

25 Commissioners have to take ethics training

1 every four years. You're also responsible to file
2 your financial disclosures annually.

3 No carry overs.

4 We already talked about ex parte
5 communications so we can skip that slide.

6 Reporting and Recusal. And this is more
7 of a function sort of discussion.

8 If a Commissioner, pursuant to the
9 discussion we had earlier about ex parte
10 communications, engages in an ex-parte
11 communication, they should let the staff know right
12 away and they probably should -- and they should
13 disclose it at the hearing. Depending on the nature
14 of the communication, the Commissioner may need to
15 recuse themselves from further participation.

16 Sometimes that's a judgment call on the
17 part of the Commissioner themselves and they may
18 choose to recuse themselves based on the
19 communication. Other times, once a Commissioner has
20 made a disclosure about an ex parte communication,
21 the chair will then ask the parties if they have any
22 objection to the Commissioner continuing to
23 participate in the proceedings.

24 By the way, Ken, feel free to disagree
25 with me on this one. Our advice in the past with

1 regard to recusal is that if you choose to recuse
2 yourself, you have to leave the room. You can't
3 even sit and watch, so just so you know.

4 **CHAIRMAN GIOVANNI:** Why?

5 **MR. ORODENKER:** I don't know why but
6 that's what we've been told. To be honest with you,
7 I think that the -- go ahead, Dan.

8 **CHAIRMAN GIOVANNI:** Commissioner Lee?

9 **COMMISSIONER LEE:** I think there was a
10 court case where someone's facial anguish or, you
11 know, expressions might have influenced others.

12 But I had a question for Deputy Morris on
13 recusal. You know, if someone had heard Waimanalo
14 Gulch on the County Planning Commission, are they
15 automatically disqualified from participating when
16 it comes before the Land Use Commission? And what
17 is the principle on that?

18 **MR. MORRIS:** So the question is whether
19 someone who was on a county council that handled a
20 particular matter that's going to come before the
21 Commission and then they leave the council and
22 they're on the Commission and should they recuse; is
23 that the question?

24 **COMMISSIONER LEE:** Correct.

25 **MR. MORRIS:** Well, one principle is that

1 the AG's office represents the Commission. A
2 decision whether or not to recuse is an individual
3 decision that the deputy AG advising the Commission
4 can't really give guidance to the individual.

5 So sometimes, there's been situations
6 where they'll be in a meeting and something will
7 come up and a member, a board member or a Commission
8 member realizes they know somebody or were involved
9 somehow, or their wife is involved and they'll say,
10 oh, deputy AG, should I recuse? And that's not in
11 this particular context an appropriate question for
12 the deputy AG. So it's a personal decision.

13 But that doesn't mean that in our training
14 here you can't ask me for, you know, well, would
15 that be a basis for recusal if, for example, a
16 Commissioner used to be on the county council and is
17 addressing a matter. I probably would have to look
18 at the ethics code, and there is the State Ethics
19 Commission that is also like the OIP, willing to
20 give advice to individuals about that. So I guess
21 I'm going to add that to the list of things to get
22 back to you on, whether that would be an automatic
23 recusal or whether it would depend on the age of the
24 involvement or the status of the matter or the
25 circumstances in front of you at that time.

1 **COMMISSIONER LEE:** Thank you, Deputy
2 Morris.

3 I asked that because I've always heard
4 that stated informally that if you participated.
5 And now we have five people here who have served on
6 county planning commissions and you know, so I was
7 curious as to where that -- was that a hard and fast
8 rule or was that something that the parties would,
9 you know, could opine on? So yeah, I'd appreciate
10 knowing that because we might have quorum issues or
11 other issues on something like that. Because I've
12 heard that before saying if you participate on the
13 county level then you can't participate here but
14 I've never heard any hard reason or where that came
15 from.

16 **MR. MORRIS:** No, it's a fair question and
17 a good one.

18 **CHAIRMAN GIOVANNI:** So I have my own
19 opinion on it. I'm going to stand silent for right
20 now but I'd like to request that the executive
21 commissioner reach out to Robert at the Ethics
22 Commission. And ask that specific question if
23 you've not already done so.

24 **MR. ORODENKER:** What Robert will probably
25 tell me is that the Commissioner involved needs to

1 ask the question because their opinions are --

2 **CHAIRMAN GIOVANNI:** Well, we have five
3 commissioners who have served on --

4 **MR. ORODENKER:** I understand.

5 **CHAIRMAN GIOVANNI:** Do you want me to
6 reach out?

7 **MR. ORODENKER:** But one of the
8 Commissioners needs to ask the question.

9 **COMMISSIONER LEE:** I'll ask that question
10 if you can help me draft it or whatever.

11 **MR. ORODENKER:** Yeah. I'd be more than
12 happy to. But Robert was very adamant that the
13 Commissioners need to -- we are not (inaudible).

14 **CHAIRMAN GIOVANNI:** Okay.

15 **MR. ORODENKER:** Their advice is it can
16 often be confidential.

17 **CHAIRMAN GIOVANNI:** But it's not relevant
18 to a specific Commissioner. It's generic as I
19 interpreted the question.

20 **MR. ORODENKER:** Yeah. I mean, I would
21 just --

22 **CHAIRMAN GIOVANNI:** Fine. So Commissioner
23 Lee, would you on behalf of this commission, reach
24 out?

25 **COMMISSIONER LEE:** I'll do that but if the

1 executive officer can assist me in formulating the
2 question and I will submit that.

3 I'm curious because, you know, we're going
4 to all do this de novo; right? No matter what we
5 did at the county. And I don't see how that's
6 different from if Mahi Solar came one time before
7 and then they had to pull out and then they come
8 back to this same commission, how is that any
9 different?

10 **MR. ORODENKER:** I honestly don't know the
11 answer. I mean, I can tell you that some
12 commissioners in the past would have taken the
13 position that your participation on another
14 commission with regard to the same matter would give
15 rise to the conclusion that you had already decided
16 the case. I'm not saying that that's what you're
17 doing but I'm just saying that that's been the
18 argument by some commissioners.

19 **COMMISSIONER LEE:** I would guess that that
20 would be the argument but I'm trying to get
21 Commissioner Hayashida not to squirm out of some
22 future meetings.

23 **MR. ORODENKER:** Yeah. No. I'll be more
24 than happy to frame that question because I actually
25 did ask Robert at one point at the hearing the other

1 day.

2 **CHAIRMAN GIOVANNI:** Well, is this a
3 question that we need to find a way to get on the
4 record?

5 **MR. ORODENKER:** Well, see, this is part of
6 what Robert was telling me. You know? Because I
7 asked him the question and what his response to me
8 was, well, have the Commission with the question
9 contact us because, you know, sometimes our --

10 **CHAIRMAN GIOVANNI:** Well, it's a generic
11 question.

12 **MR. ORODENKER:** I understand what you're
13 saying, Chair. I'm just telling you how Robert
14 responded. Because I asked him the generic
15 question.

16 **CHAIRMAN GIOVANNI:** Okay. So my follow-up
17 question is, whenever we get to resolve this, which
18 is a communication between Commissioner Lee and
19 Commissioner -- and Robert from the Ethics
20 Commission, I want it to go on the record. So how
21 do we get it on the record?

22 **MR. ORODENKER:** Well --

23 **CHAIRMAN GIOVANNI:** Do I have to agendize
24 it as a topic or what?

25 **MR. ORODENKER:** No. No. When we go into

1 the hearings on one of these matters, and there's
2 going to be plenty --

3 **CHAIRMAN GIOVANNI:** I want to deal with it
4 generically.

5 **MR. ORODENKER:** I understand.

6 **MR. DERRICKSON:** Wouldn't there be an
7 informal opinion that Robert would issue?

8 **MR. ORODENKER:** He could issue a formal
9 opinion. We could ask him for that. But it's very
10 easily handled. And that is that the first time we
11 have a hearing on one of these things where one of
12 the Commissioners has time on the planning
13 commission, you know, for example, Waimanalo Gulch
14 is coming up. And then during the time when the
15 chair is asking for disclosures the Commissioner
16 would state that, you know, I just want to disclose
17 that I sat on the planning commission and I
18 questioned OIP with regard to my participation and
19 they said -- they gave me an opinion that it was
20 fine for me to continue. And then you'll never have
21 to ask the question again.

22 **MR. DERRICKSON:** Then Deputy Morris could
23 agree or disagree with that as well; correct?

24 **CHAIRMAN GIOVANNI:** Is that question to
25 Mr. Morris?

1 **MR. MORRIS:** So the question is do I agree
2 with Dan Orodenker's recital that when the matter
3 comes up, the particular commissioner can state
4 whether they are, you know, they make the disclosure
5 about their prior participation and articulate on
6 the record what their advice was?

7 **MR. DERRICKSON:** No. That's not the
8 question. The question is, you could disagree with
9 OIP's opinion. Is that correct?

10 **MR. MORRIS:** That's correct. If you sort
11 of get guidance that, gee, OIP says you ought to
12 recuse and you say, you know what? I don't think I
13 should, the risk you run is that any decision that
14 you made or a vote you take could potentially be
15 challenged and affect the decision if ultimately a
16 court later said, oh, you should have recused so
17 your vote isn't good. And so all of a sudden the
18 action taken becomes challenged.

19 **MR. DERRICKSON:** The inverse is also true;
20 right? OIP said I could do it and then you want to
21 be safer and say no, you could disagree; correct?

22 **MR. MORRIS:** And that way works a little
23 better. You know, like you don't have to but in an
24 abundance of caution I'm going to. You really don't
25 get into trouble that way.

1 **CHAIRMAN GIOVANNI:** Commissioner Yamane?

2 **COMMISSIONER YAMANE:** So I guess kind of
3 leading to the disclosure during a hearing. Even if
4 a Commissioner did disclose and got an opinion, I
5 know the chair asked all parties if there are any
6 objections. If one person objects, does that kind
7 of shut that issue down no matter what the opinion
8 is?

9 **MR. ORODENKER:** No. If there is an
10 objection by a party after a disclosure, then it is
11 up to the chair on whether or not to allow the
12 Commissioner to proceed. And he can ask the other
13 commissioners how they feel about it. We can go into
14 executive session and discuss it. But ultimately,
15 it is the chair's decision.

16 **MS. SEGURA:** And here's a slide on
17 disclosures.

18 **COMMISSIONER YAMANE:** Excuse me though.
19 But if the chair goes against the intervener's
20 objection, that's something that could be challenged
21 in court, too. So by the same about playing it safe
22 that Deputy Morris said, that would be a dangerous
23 thing for the chair to do; isn't that correct?

24 **MR. ORODENKER:** Yes and no. I mean,
25 sometimes objections are frivolous. And I think

1 I've talked about the Sierra Club instance. You
2 know, that's something the chair has to weigh. And
3 that's why it probably would end up in executive
4 session so that the chair could get the advice of
5 council as to whether or not this was -- if it
6 wasn't appealed would this be, you know, would we
7 win? You know. How good is our position on this
8 and then render a decision, so.

9 **CHAIRMAN GIOVANNI:** Okay. so I'm going to
10 disagree with the executive officer on the process.
11 And I'm going to ask Commissioner Lee to handle it
12 generically with a generic question about to the
13 Ethics Commission and to report back generically.
14 Because I don't want to deal with it on a case-by-
15 case, commissioner-by-commissioner basis. Okay?

16 **MS. SEGURA:** Should he ask for that in
17 writing, Chair?

18 **CHAIRMAN GIOVANNI:** Yeah. I'd ask for
19 that opinion. And Commissioner Lee, if you don't
20 mind, Commissioner Lee, request that. I think it's
21 simple, really. I don't think it's that
22 complicated. Request an opinion on the generic
23 question from Ethics and report it back to us.

24 **MR. ORODENKER:** And I want --

25 **CHAIRMAN GIOVANNI:** Then I want to get it

1 on the record.

2 **MR. ORODENKER:** Yeah. I want to be clear,
3 Mr. Chair. I wasn't suggesting that we would have
4 to do it at every hearing that it came up. What I
5 was saying was one time and then we never have to
6 deal with it again.

7 **CHAIRMAN GIOVANNI:** Refer back to that one
8 time as precedent.

9 **MR. DERRICKSON:** Sorry. Can I just make a
10 point though that in you asking for that opinion,
11 it's going to be an opinion to you. So what you'll
12 have to do and you perfectly have the right is say
13 I'm happy with disclosing that publicly.

14 **CHAIRMAN GIOVANNI:** No, it's a little
15 different.

16 **MR. DERRICKSON:** But it's up to him.

17 **CHAIRMAN GIOVANNI:** The chair is asking
18 him to represent the Commission in inquiring to the
19 Ethics.

20 **MR. DERRICKSON:** Right. Then if that's
21 the case, if the opinion is to the Commission --

22 **CHAIRMAN GIOVANNI:** It is.

23 **MR. DERRICKSON:** -- then the Commission is
24 the client. The Commission is the one that has to
25 say we're happy to make this public, whatever the

1 opinion might be.

2 **CHAIRMAN GIOVANNI:** That's what I think.

3 We have to put it on the record. That's what I
4 meant by that.

5 **COMMISSIONER LEE:** Yeah. I think this
6 issue will come up quite a bit and so it would be
7 informative to even other boards because I can see
8 this coming up as well. So if the EO will help me
9 formulate that, I mean, I'll sign off on that.

10 **MR. ORODENKER:** Yeah. Just, you know, I
11 mean, I understand what the chair is saying about
12 wanting a generic answer but I asked Robert and he
13 said, no, no, an individual commissioner --

14 **COMMISSIONER LEE:** And also, OIP might
15 take a little bit of time to respond to you; right?

16 **MR. ORODENKER:** Yeah. Yeah. Yeah.

17 So we'll get to work on that right away.

18 **CHAIRMAN GIOVANNI:** I think he's at fault
19 for not bringing it up when he had our meeting.

20 **MR. ORODENKER:** There's a couple of things
21 that he didn't bring up that he talked to me about
22 after the meeting.

23 **CHAIRMAN GIOVANNI:** Anything else?

24 **MR. ORODENKER:** Yeah.

25 Okay. Let's talk about it. Since we're

1 on disclosures let's talk about disclosures first
2 and we'll get to the other.

3 Disclosure of personal relationships or
4 knowledge of those relationships ensures
5 transparency in the decision-making process.

6 This is not an ethics code. As far as the
7 ethics code is concerned, your only requirement is
8 to recuse yourself or make disclosures when you have
9 a financial interest or your family has a financial
10 interest or your organization has a financial
11 interest.

12 This stems from our requirement to be
13 transparent. And I have to say that in all the time
14 that I've been working for the Commission I have
15 never seen anybody have to recuse themselves because
16 they said, oh, well, you know, we used to go to
17 Japan with them, with the attorney for a petitioner
18 or whatever. It just adds to the transparency of
19 the Commission that you reveal all of your
20 relationships so that nobody can then come back and
21 challenge us for failing to reserve those -- to
22 reveal those relationships on the grounds of bias or
23 impropriety. So, you know, it's not something to be
24 concerned about but it's something that aids in the
25 transparency that's required of the Commission.

1 There is -- and that goes to the next
2 paragraph -- personal relationships or knowledge of
3 petitioners or party representative may create
4 conflicts of interest for board or Commission
5 members. These conflicts could compromise the
6 integrity of the decision-making process. That was
7 one I was alluding to that somebody could claim that
8 the decision-making process has been compromised.
9 And keep in mind that we're watched over closely by
10 the press, a lot of times Civil Beat and the
11 Environmental Report (inaudible) Environment Hawaii.
12 And they dig. So if, you know, you have a
13 relationship, it's better to just talk about it.
14 You know, just get it out of the way and then we can
15 move forward.

16 It's about maintaining fairness.
17 Perception of fairness to the parties. And Hawaii
18 is a small state. I mean, we all know who we know.
19 We know somebody. You know, usually somebody
20 appears before us, it's somebody you might know. So
21 it's easier to just disclose it.

22 Lines that must not be crossed. And these
23 are pretty self-evident. And Robert talked about
24 them. Must not participate in a proceeding that
25 will result in a benefit to his or her self or their

1 immediate family.

2 Not provide insider information.

3 And no monetary gain.

4 The other matter that Richard brought up
5 with me after the discussion the other day is this
6 one. And it's Ethics Commission Advisory Opinion
7 No. 2017-02. HRS section 84-14(d) prohibits a
8 Commissioner from representing an outside
9 organization on the same matter in which a
10 Commissioner participates in their official role as
11 a Commissioner.

12 In particular, this concerns legislation
13 which the Commission supports or opposes. And this
14 language was drawn directly from that opinion.

15 You may not lobby the legislature or the
16 administration on behalf of an outside entity or
17 assist in lobbying strategy for the entity, perform
18 research to submit to the legislature on the
19 entity's behalf, help to prepare written statements
20 for the entity, or testify on behalf of the entity.

21 And I know this is difficult for some of
22 you guys. That doesn't prohibit you from lobbying
23 on behalf of the Commission because you can do that.
24 But if it's a matter that concerns the Commission,
25 if the legislation is a matter that concerns the

1 Commission, you cannot lobby on behalf of the
2 organization that you represent.

3 **CHAIRMAN GIOVANNI:** Can you testify as a
4 private citizen?

5 **MR. ORODENKER:** I would suspect that
6 Robert would answer yes on that. He just referred
7 me to this case. I had to look it up. Actually,
8 Scott looked it up. And I think that there's a, as
9 a private citizen there's a, what do you call it? A
10 U.S. constitutional issue with regard to that.
11 You're entitled as a private citizen.

12 **CHAIRMAN GIOVANNI:** Let me ask a
13 clarifying -- let me ask a clarifying question.

14 When you use the word "lobby" or when we
15 are to interpret the word "lobby" in this slide, is
16 that a registered lobbyist or just a general concept
17 of --

18 **MR. ORODENKER:** Lobbying.

19 **CHAIRMAN GIOVANNI:** -- lobbying. Which is
20 it?

21 **MR. ORODENKER:** It's the general concept.

22 **CHAIRMAN GIOVANNI:** Okay.

23 **MR. ORODENKER:** Yeah.

24 LUC and the Legislature. Segueing into
25 that.

1 The legislature, we have to ask approval
2 for our budget. We deal with them on legislation.

3 **CHAIRMAN GIOVANNI:** Commissioner Carr
4 Smith?

5 **COMMISSIONER CARR SMITH:** I'm sorry but
6 can you go back?

7 Thank you.

8 So, I mean, this is saying that -- you
9 just said that we could lobby -- we could testify on
10 behalf of the Commission. And just to clarify, we
11 would only do that if we had the approval of the
12 Commission and the chair; yes?

13 **MR. ORODENKER:** Well, as a private citizen
14 you can lobby any way you want.

15 **COMMISSIONER CARR SMITH:** Well, I'm not
16 going to go lobby and say I'm here on behalf of the
17 Land Use Commission unless the Land Use Commission
18 has --

19 **MR. ORODENKER:** Yeah. If you go and say
20 --

21 **COMMISSIONER CARR SMITH:** It's like we
22 asked you to not testify on behalf of us without
23 first asking us, our opinion.

24 **MR. ORODENKER:** If you -- if you go to the
25 legislature and say I'm Commissioner Nancy Carr

1 Smith and I'm here in my official capacity as a
2 Commissioner to testify on this matter that's fine.

3 **COMMISSIONER CARR SMITH:** I would never do
4 that unless the Commission knew I was going to.

5 **MR. ORODENKER:** As long as it was
6 consistent with the Commission's position.

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

8 **MR. ORODENKER:** Yeah. But if you disagree
9 with the Commission's position you're welcome to go
10 as a private citizen and make your statement.

11 Okay. The LUC and the Legislature. Back
12 to that. They do handle our budget. The
13 legislature gives us our budget. There are two sort
14 of rounds we have to go through. One is -- since
15 we're part of the adminsitratino we have to submit
16 our proposed budget to the administration for
17 approval. But as we all know that's not the be all
18 and the end all. If the administration doesn't
19 agree with our budget, the legislators have the
20 ability to add or subtract money from our budget in
21 the end.

22 Legislation we just talked about. We are
23 instructed, the staff is instructed. I think we
24 talked about this when we had the original
25 discussion to testify on certain measures. Our

1 position we'll discuss. Those legislative matters
2 will be discussed with the Commission before we file
3 any testimony.

4 The Commissioner relationships with the
5 legislature are also kind of unique. In other
6 words, you have to go through advise and consent.
7 So you will get Commissioners -- you will get
8 legislators calling Commissioners and asking, you
9 said this in your, you know, but -- that's just a
10 fair warning. You know, it doesn't happen often.
11 But you can -- the legislature, there's no
12 restriction on the legislature on calling you up.
13 So just be aware of that.

14 **CHAIRMAN GIOVANNI:** So while this slide is
15 up here I want to take this opportunity for a heads
16 up to fellow Commissioners on the question of
17 budget. As you may know, or you should know, the
18 Land Use Commission is part of --

19 **MR. ORODENKER:** OPSD.

20 **CHAIRMAN GIOVANNI:** Pardon me?

21 **MR. ORODENKER:** OPSD.

22 **CHAIRMAN GIOVANNI:** Ultimately DBED;
23 right? So DBED has contacted me in the last 48
24 hours to advise that they'd like to go forward with
25 some clarification and rules and guidance on how we

1 budget for potential increases in compensation for
2 the executive director. It's a distinct line item
3 in the budget. So we're getting clarification on
4 that. The heads up is that in a future meeting
5 we're going to review that guidance and deal with it
6 as well as there might be some implications as
7 opposed to the decision we made at our last meeting.

8 **MR. ORODENKER:** Yeah. Thank you for
9 bringing that up and forwarding that on to me, that
10 advice on to me. What they're asking for is that we
11 identify the line item in the budget where the money
12 is going to come from. And I can do that. I mean,
13 that's not a problem. I don't think they're asking
14 for a total review of the decision. I think they're
15 just asking for --

16 **CHAIRMAN GIOVANNI:** They're not asking for
17 review of the decision. They want to know where the
18 money's coming from.

19 **MR. ORODENKER:** Yep. They just want --
20 they want to identify --

21 **CHAIRMAN GIOVANNI:** And they want the
22 budget to make that obvious on a going forward
23 basis; right? But there's also some -- I'm getting
24 further clarification on it. Some question about
25 our actual decision and recommendations. They're

1 not questioning that. They just want to make sure
2 that it's -- that the full commission understands it
3 in the context of this new guidance that we're
4 getting so it's not an issue. So, and they want it
5 on the record. They made that clear to me. So that
6 means it has to be part of a hearing. So I'm going
7 to agendize that going forward. It's just a heads-
8 up. I think it's bureaucratic. I don't think it's
9 controversial.

10 **MR. ORODENKER:** Yeah. And since we're on
11 the topic, the -- the budget every year contains
12 salary increases. And all of the executive
13 officers, there actually is a provision for
14 percentage increases for executive officers that we
15 haven't been utilizing. It's the same as, if not
16 more than bargaining at 13. So we can make that
17 adjustment in the contract as well and refer to that
18 provision. But the governor's -- the Department of
19 Budget and Finance, every executive officer in the
20 state programs that increase in. So the concern is
21 only if you go over that increase. And you have to
22 identify where the funds are coming from.

23 **MS. KWAN:** I think they also identified
24 they wanted a copy of the evaluations for future
25 submittals.

1 **MR. ORODENKER:** Yeah. We've already
2 forwarded -- we've already forwarded them.

3 **MS. KWAN:** Okay.

4 **MR. ORODENKER:** Okay. Anything more on
5 that? Okay.

6 I mean, it's noontime. We've just got
7 administrative stuff left to do and that's it.

8 **MR. MORRIS:** This is Dan Morris. Can I
9 follow up on the request that I was made to follow
10 up on and take care of that right now briefly?

11 **CHAIRMAN GIOVANNI:** Yes.

12 **MS. KWAN:** Go ahead, Dan.

13 **MR. MORRIS:** Thank you.

14 I had a question about whether the
15 Sunshine Law prohibition on groups of people meeting
16 about matters board business, how that applied to
17 perhaps a meeting with the governor or something.
18 So under Hawaii Revised Statute 92- 2.5, it's called
19 Permitted Interaction of Members. And under
20 Subsection (f) there's a reference to discussions
21 between the governor and one or more members of a
22 board may be conducted in private without limitation
23 or subsequent reporting provided that the discussion
24 does not relate to a matter over which a board is
25 exercising its adjudicatory function.

1 So that really narrows it. If it's a
2 matter you're going to be deciding on a boundary
3 amendment or something, well, that's your
4 adjudicatory function and it's not really something
5 that you could go meet with the governor and talk
6 with the governor about.

7 So 92-2.5 is a useful statute that talks
8 about some of those more specific situations. One
9 of them is meeting maybe with a legislative group or
10 a community group and can you go and participate in
11 discussions? And it sort of mentions that you can
12 but you have to report back to the members about
13 what was discussed and you certainly can't
14 deliberate relating to a vote on the matter or
15 something that's coming before the Commission.

16 So that's also in that same statutory
17 section where you can learn about some of those
18 specific situations that the legislature has laid
19 out for you.

20 **COMMISSIONER LEE:** Thank you, Deputy
21 Morris. I just appreciate you confirming what my
22 belief was. And so I guess we can go forward if we
23 wanted to to talk to the governor about staffing and
24 budget increases without the prohibition. And I'm
25 not going to ask you to follow up on this but there

1 are other issues, other ways that more than two
2 people can meet in the context of a permitted
3 interaction group. So just leave it at that for
4 now.

5 **MR. MORRIS:** Correct. Thank you so much.

6 **MR. ORODENKER:** Well, if anybody wants to
7 hear the story about how that whole thing came
8 about, talk to me later. It's actually a really
9 funny story.

10 Some of the provisions of that were
11 designed to allow, for instance, if this commission
12 wanted to go to a neighborhood board meeting to see
13 what the neighborhood board was doing or a bunch of
14 the Commissioners, it allows you to do that. Right?
15 Because before, the Commissioners -- only one
16 commissioners or two commissioners could go to a
17 neighborhood board meeting or a county proceeding
18 without violating Sunshine Law. Or whatever. So
19 that's where that came from. But thank you, Dan,
20 for that advice.

21 Yeah, I mean, the current issues thing is
22 a 10- minute discussion at the most depending on
23 questions and then I don't think -- Ariana's
24 presentation with regard to administrative stuff
25 should go fairly quickly.

1 **CHAIRMAN GIOVANNI:** Go.

2 **MR. ORODENKER:** Okay. Current Issues.

3 Let me do current issues.

4 That's part of current issues. Or it
5 should be. Did we skip over the slide? No? Okay.

6 Yeah. Okay.

7 Okay, so affordable housing is, of course,
8 a big, huge problem. And it's something that we've
9 been trying to help alleviate. I mean, our goal is
10 to help alleviate this problem. I know a lot of the
11 discussion that we've had over the past two days
12 concern the restrictions that the board is under or
13 that the Commission is under but that doesn't have
14 anything to do with what our goals are. Those are
15 just out there for the Commissioners to understand
16 how they need to think about making these decisions.

17 It takes 10 years to obtain a permit.
18 Outside of the EIS process, only six months, at the
19 most a year, is our contribution to those 10 years.
20 The rest of the time is at the county. And if you
21 talk to developers, you'll hear that they're just
22 boxed up at the county. I mean, we talked with
23 Keiki-Pua Dancil the other day from Lanai and she
24 was just pulling out her hair at how long it was
25 taking the county to get things done and issue their

1 permits.

2 One of the issues, of course, is sprawl.
3 That's something that whether or not how we want to
4 deal with that has gone up and down throughout the
5 years and there is -- some of the legislators
6 believe that the (inaudible) Commission should knock
7 down boundaries and that we should develop inside
8 the urban boundaries before we allow any new sprawl.
9 And then there are others who don't think that
10 that's practicable. I don't think it's practicable
11 either. So that's the conflict there.

12 One of the things that we have discussions
13 with the counties about is what is affordable
14 housing? Under the state's definition it's all the
15 way up to 140 percent of median. I don't believe
16 that that's really affordable housing. It does
17 serve a purpose. I mean, we have gap housing that
18 we need to fill in but when we talk about affordable
19 housing that's not it.

20 And I don't actually like the term
21 "affordable housing." I think that what we really
22 want to talk about is (inaudible). Because when you
23 talk about below the poverty line that's a whole
24 different set of bananas and that's, you know, the
25 feds and the state have programs to deal with that.

1 How can Maui (inaudible) affordable
2 housing and that's how we got to hiring (inaudible).
3 We are trying to stimulate affordable housing
4 directly at this point by actually getting in the
5 weeds and trying to work with developers to get
6 these things done.

7 Conflicting uses. That's always been a
8 problem. You will hear time and again about how we
9 need to figure out how much land we need to preserve
10 agriculture for food sustainability. How much land
11 we need to preserve for energy production. And how
12 much land we need for housing. Those are just the
13 three conflicting uses that are year after year out
14 there.

15 We've already talked about natural
16 resources and the public trust limitations.

17 We have an initiative which Scott has
18 actually been handling and now with (inaudible) help
19 to identify housing that is not being built using
20 the GIS program so we have a map of it.

21 I would refer you to a Civil Beat article
22 that Dr. Scheuer wrote some time ago. I think it's
23 a good discussion of what the Commission is trying
24 to accomplish and what the problems are. Take it
25 for what it's worth.

1 Next slide.

2 Enforcement has become increasingly
3 problematic. Counties enforce based on local policy
4 concerns. This results sometimes in inconsistent
5 decisions. What a condition actually means is left
6 up to the counties to interpret it after it leaves
7 us.

8 We are struggling in each decision to
9 bring modern issues, such as housing, food
10 sustainability, controlling urbanization and climate
11 change into the process.

12 And that's it on current issues.

13 **CHAIRMAN GIOVANNI:** What do you mean
14 controlling urbanization? In today's context, what
15 does that mean?

16 **MR. ORODENKER:** Well, it goes back to the
17 competing use discussion. You know, if you're going
18 to preserve land for food sustainability, how much
19 land do you need? How far out from the urban cord
20 do you want to go with housing? Because once the
21 housing is there it's never coming off. You know.
22 And so you'll hear the agriculture community
23 complain about that.

24 **CHAIRMAN GIOVANNI:** Yeah. Well, my
25 position is that's an old -- my personal position is

1 that that's an old argument and it's out of date.
2 In the context of preserving agricultural land for
3 say it could have an impact to the constitution, I
4 mean, the housing crisis today in the state is real.
5 And urban sprawl is not real today. It was real at
6 some point.

7 **MR. ORODENKER:** Yeah. If you talk to
8 Brian Miyamoto from the agricultural -- he
9 represents the agricultural -- the Farm Bureau.
10 Thank you.

11 **CHAIRMAN GIOVANNI:** Yeah.

12 **MR. ORODENKER:** You know, what he'll tell
13 you is that, yeah, sure, we --

14 **CHAIRMAN GIOVANNI:** He'll say it to
15 disagree with me. He's not going to tell me.

16 **MR. ORODENKER:** Well, what he'll tell you
17 is that their position is that, you know, they're
18 not opposed to more housing but they believe that it
19 should be controlled in the urban core. I mean,
20 this is, like I said, I'm just bringing forward
21 these issues so that the Commission understands that
22 they're out there. It's up to you what position you
23 want to take on them. But these are the things that
24 you will hear at hearings.

25 **CHAIRMAN GIOVANNI:** Fair enough.

1 Commissioner U'u?

2 **COMMISSIONER U'U:** Yeah, I just wanted to
3 add, because I know you said you talked to the
4 developers and they said it's the county and, you
5 know, Maui is small so I talk to them, too. And I
6 think everybody has a responsibility to say that
7 land use is not a problem would be kind of blind.
8 Question me personally because everybody is a part
9 of the process and just for clarity, we get more
10 state land use regulations in the nation than any
11 state to my understanding. And I think we have a
12 third more than second place. I think we're all
13 part of that problem, the land use regulation
14 issues, the whole process of housing. And I saw you
15 -- I read the article by Jonathan Scheuer by the
16 way. And my question to you, how much houses has he
17 built? That's my question.

18 So when I go back and look at people who
19 read and discuss and kind of give you guidance, I've
20 got to make sure he did it before. So here's an
21 engineer. Like you've got an engineering problem or
22 issue, I talk to an engineer. I'm a carpenter. You
23 need help? I can help you go vertical. He's an
24 operator. But to have some, and I don't know if he
25 didn't, if he built housing or not. I see someone

1 who did it, not write something about it. So this
2 is my preference because I read every article. Just
3 about it should be on housing for anywhere; right?
4 State, any state. I'm just saying. So I give you a
5 reference to a guy who tells me it's a good read,
6 don't get me wrong, but I read about people who
7 actually built homes.

8 **MR. ORODENKER:** Yeah, I don't -- I don't
9 disagree with you that building homes makes a
10 difference actually doing it. I think that one of
11 the things that we have to be cognizant of is all
12 the things that we've been trying to do so far have
13 not resulted in an increase in housing. And I've
14 had this conversation with legislators. We have to
15 think of something different because just pointing
16 the finger and saying, oh, it's the county's fault.
17 Oh, it's the Land Use Commission's fault, that's not
18 really where the issues are. The issues are with
19 other things.

20 **COMMISSIONER U'U:** But you just did. You
21 said it's not Land Use --

22 **MR. ORODENKER:** No. The --

23 **COMMISSIONER U'U:** I'm just saying.
24 Everybody is part of the problem. If we piecemeal
25 every segment of the process and everybody says it's

1 not a problem, that's why we have a problem. My two
2 cents. Thank you.

3 **CHAIRMAN GIOVANNI:** Sure. Myles?

4 **COMMISSIONER MIYASATO:** You know, must
5 looking at the title Current Issues and, you know,
6 we have food sustainability and you reference the
7 Farm Bureau in the argument of keeping urban --
8 housing strictly in urban. So my question is do
9 they have any data on lands that are dedicated, I
10 guess a surplus or people waiting? Is there a need?
11 Is there people waiting to be -- to use land or
12 agricultural food growth? Is there a waiting list?

13 **MR. ORODENKER:** That's a very big
14 discussion. And there's a whole bunch of factors
15 associated with that. It's kind of -- you go in a
16 loop in that in that discussion because I've had it
17 with Brian. And part of -- there's a recognition
18 that not enough people are asking to be farmers.
19 You know, and -- or want to be farmers. They have
20 trouble getting people who want to be farmers. Or
21 they used to have trouble getting people who want to
22 be farmers. But on the other hand there's not a lot
23 of available land to farm because a lot of the large
24 landowners have taken it out of production and are
25 not leasing it.

1 **CHAIRMAN GIOVANNI:** There we go.

2 **MR. ORODENKER:** Yeah. So it goes around
3 in a circle.

4 **CHAIRMAN GIOVANNI:** Yeah. So Commissioner
5 Miyasato I think makes this a very important
6 question. Obviously, I think my personal sentiments
7 have come across the last two days. It's out of
8 balance. A lot of this agricultural land is being
9 preserved and they're just letting wild grass grow
10 on it. We've had four fires in the last week on
11 Kauai, brush fires that almost threaten us in the
12 same way that Lahaina was burned down. It's crazy.
13 And so --

14 **MR. ORODENKER:** Yeah. And --

15 **CHAIRMAN GIOVANNI:** Let me finish.

16 **MR. ORODENKER:** Okay.

17 **CHAIRMAN GIOVANNI:** And so I think that
18 it's out of balance. These are to me in my mind old
19 arguments about preserving the agricultural land
20 where we don't have a backlog of people clamoring to
21 get access to that land to produce food because we
22 don't see it. Instead, we see grass growing wild.

23 **MR. ORODENKER:** I'm not trying to come up
24 with an answer for this or to try and propose a
25 policy. These are just a list of issues that have

1 been before the Commission for some time that I was
2 just trying to -- we're just trying to make the
3 Commission aware of that these will come up in
4 public testimony. They may come up in testimony
5 from the Department of Agriculture and things like
6 that.

7 In my mind, without a major paradigm
8 shift, these are unsolvable problems. If we
9 continue to act the way we've been acting as a state
10 and as a community --

11 **CHAIRMAN GIOVANNI:** No. I think it boils
12 down to us, the Land Use Commission. If we get a
13 project that's proposed to us on agricultural land,
14 a DBA to convert it to urban and the Farm Bureau
15 comes in and says, no, we need to preserve this for
16 food production down the road, that's an argument
17 they can make before us. We have to make a judgment
18 call on the validity of that and our decision
19 making. That's how it comes down to us.

20 **MR. ORODENKER:** Yeah, and that's exactly
21 my point. Is that these issues are going to come
22 up. You make the best decision that you can based
23 on the evidence they've presented as to what the
24 priorities are because you are charged with doing
25 that balancing. But this was more really just

1 intended to educate you on what the issues are that
2 are up there.

3 **CHAIRMAN GIOVANNI:** Commissioner Carr
4 Smith?

5 **COMMISSIONER CARR SMITH:** Just briefly.
6 Sorry, this Affordable Housing slide just
7 --

8 **CHAIRMAN GIOVANNI:** Let's go back one
9 slide.

10 **COMMISSIONER CARR SMITH:** And no
11 disrespect to whoever made this slide or anything
12 like that but you know, practically each bullet
13 point is kind of hard for me.

14 Is LUC the problem? Maybe it's turned
15 down some projects that should have been approved.
16 So I don't -- I think we have to take some
17 responsibility. We can't just say, no, it's not us.
18 Okay?

19 Ten years to obtain permitting. I mean,
20 who says that? And which county is that? And how
21 do we know that's true? We shouldn't be putting
22 things up here like this in front of us unless this
23 is true.

24 **MR. ORODENKER:** It is true. I mean --

25 **COMMISSIONER CARR SMITH:** Each county told

1 you it takes 10 years?

2 **MR. ORODENKER:** No. The legislature did
3 an analysis. They brought in developers and all of
4 the county planning departments to talk about the
5 process. And this is the conclusion that the
6 legislature reached is that after all of that
7 analysis is that it takes 10 years.

8 **COMMISSIONER CARR SMITH:** But at the same
9 time, commissioners come before us, generally
10 speaking and we give them grief because they're
11 taking so long. And this is proof that, yeah, each
12 step takes a long time and it's expensive. I'm just
13 saying, you know, we're kind of doing a double-edge
14 sword here. Yeah. I think that this current
15 commission is probably going to be more interested
16 in actually getting affordable housing and other
17 housing built than maybe previous ones did.

18 **MR. ORODENKER:** Another thing here is that
19 it is totally false to say that the Land Use
20 Commission denies projects. In all the time that
21 I've been here the only project that we've denied is
22 Olowalu. Every other project has been approved. I
23 can't think of another project in my time that's
24 been denied.

25 **COMMISSIONER CARR SMITH:** If you want to

1 go there, the project, the Wa'io project in Kona,
2 because the Commission decided to not reconsider,
3 not grant the reconsideration, whatever the terms
4 are for that.

5 **MR. ORODENKER:** That's an approved
6 project. They just never --

7 **COMMISSIONER CARR SMITH:** For five acre
8 parcels. Yeah. Which is not appropriate per the
9 CDP, per the general plan. That's not the place for
10 five acre parcels.

11 **MR. ORODENKER:** That's an approved
12 project.

13 **COMMISSIONER CARR SMITH:** So to me, that's
14 how I look at it, that that was not approved to go
15 forward in the next steps in order to --

16 **MR. ORODENKER:** That was an approved
17 project. The difficulty that they were having was
18 that they wanted to modify the project and they
19 hadn't done background work necessary to have us
20 approve that modification. It's an approved
21 project. And just like any other petitioner who
22 comes in and doesn't do a proper analysis of the
23 impacts of the project, that project didn't go
24 forward. But it's not -- that project is not over.
25 They just have to do what they need to do.

1 **CHAIRMAN GIOVANNI:** Commissioner Lee?

2 **COMMISSIONER LEE:** I'm going to have to
3 kind of disagree with that and agree with
4 Commissioner Carr Smith because that was a judgment
5 call, you know, whether to give them more time. The
6 county was okay with it. OPSD was okay with it.
7 But the Commission itself voted against it seven to
8 two. So it's not necessarily just because approving
9 or not approving DBAs. There's all kinds of steps,
10 motions to amend, conditions, all those things add
11 up that can either help or hinder. And I think
12 that's where Commissioner Carr Smith was coming from
13 is that every little decision inspires or degrades
14 confidence in a project and in financing. So I just
15 think that, you know, those things all play as
16 factors or things that we can consider and have some
17 influence in.

18 **CHAIRMAN GIOVANNI:** Let's go forward.

19 **MR. ORODENKER:** Okay. And this is pretty
20 much self-explanatory.

21 We operate under an extremely open process
22 that requires us to consider a set of defined public
23 policy concerns in making and well-supported
24 decisions to support economic growth and protection
25 of the state's most important assets.

1 We are, in this limited venue, tasked with
2 effectuating policy surrounding all of these things:
3 infrastructure, open space and
4 agricultural land, protecting cultural assets and
5 rights, protecting the environment, supporting
6 economic growth by encouraging sustainable
7 development, promoting job growth, protecting
8 watersheds, encouraging deliberate and sustainable
9 growth.

10 We're finished with that section.

11 The only section that we have left is the
12 Administrative section.

13 And if you want to continue on we can do
14 that or we can stop for lunch.

15 **CHAIRMAN GIOVANNI:** Keep going. No, let's
16 go.

17 **MR. ORODENKER:** Okay. Ariana, you're on.

18 **CHAIRMAN GIOVANNI:** Sorry, commissioners.
19 I'll take if anybody has an objection to continuing?

20 **MS. KWAN:** Okay. So hi. I'm the one who
21 emails everyone. All the time.

22 So you'll know which emails are most
23 important because I will usually always put response
24 requested in the subject line, and those are usually
25 the emails I'm trying to ensure quorum and try to

1 coordinate everyone's travel. And these emails are
2 really important to get back to me as soon as you
3 can so that way we can figure out meeting venues,
4 meeting costs, all meeting-related issues. And if
5 we have to move meetings, unfortunately, which we
6 hate doing -- trust me, I hate moving meetings if I
7 don't have to. But sometimes we have to. And
8 canceling last minute, especially if you are the
9 Commissioner traveling that day can be very costly
10 for the department. Because if you cancel that day
11 we don't always get reimbursed from the airline or
12 there might be other costs that might not get
13 reimbursed like the hotel. They might have already
14 charged your card before I get a chance to cancel.
15 So communicating with me if there are any changes in
16 your schedule is very important. So that way I can
17 make the necessary arrangements.

18 Speaking of travel. So rule of thumb,
19 just hang on to everything. If you don't know if
20 you need it, just hang on to it, send it to me, I'll
21 throw it away if I don't need it.

22 The way the state works is for travel
23 reimbursements, they want the original form of the
24 receipt. So the original form is electronic, you can
25 send it to me electronically via email. If you get

1 a paper receipt, whether it's a boarding pass, taxi
2 receipt, hotel receipt, I need that actual paper
3 receipt and proof of hotel, bags, boarding passes.
4 So just mail that to me in the self- stamped
5 envelope that I always provide. I try to provide
6 all commissioners that envelope before every
7 meeting. If you want a stack of them on the side
8 I'd be happy to mail you some so that way you never
9 have to pay for your own postage to mail us our
10 documents.

11 And as a friendly reminder, when you do
12 use taxis, tips are not reimbursed. The state will
13 deduct it. So if it shows a tip on your receipt you
14 will not get reimbursed. They'll deduct the amount
15 and you'll only get reimbursed for the taxi fare. I
16 think that's the only place you might tip.
17 Everything else shouldn't really have tips. But
18 yeah, rule of thumb, state won't reimburse your
19 tips. Sorry.

20 **COMMISSIONER U'U:** Quick question.

21 **MS. KWAN:** Yes?

22 **COMMISSIONER U'U:** So if I do it on a
23 phone which I just did I can send it to you?

24 **MS. KWAN:** Screenshot it.

25 **COMMISSIONER U'U:** Screenshot it?

1 **MS. KWAN:** Yeah. Screenshot it. Send me
2 the JPG, email it to me. Screenshot it before it
3 disappears because after you board the flight and
4 you arrive at your destination, usually by then it's
5 gone. So while you're waiting at the gate, board,
6 you know, just screenshot it.

7 **COMMISSIONER U'U:** Thank you.

8 **MS. KWAN:** All right. Any other questions
9 regarding travel reimbursements? I know it's very
10 complicated sometimes. Okay.

11 LUC Equipment. So the LUC does provide
12 iPads. I do apologize. They are a little out of
13 date. They may not be updating to the most current
14 IOS system. We will try to upgrade our equipment
15 maybe in April if budget permits but I won't know
16 until April. But basically, all commissioners must
17 be able to access the LUC website. That is our key
18 communication. We no longer print out paper copies
19 of petitions for every meeting. We rely on the
20 Commission to see our website, access the
21 information. If we have a hybrid meeting you need
22 to be able to access the Zoom hearing and that's why
23 we provide the iPad so that way you have that
24 equipment needed. You don't need an iPad. If you
25 have your own personal equipment you're welcome to

1 use but we do provide what we have available.

2 Any questions?

3 **CHAIRMAN GIOVANNI:** Yeah. How come you
4 haven't given this whole briefing. We could have
5 done it in one day.

6 **MS. KWAN:** Are we going to do it in one
7 day? Okay.

8 **CHAIRMAN GIOVANNI:** I said that as a joke.

9 **MS. KWAN:** I know.

10 All right. Moving on to the LUC website.

11 So there's a screenshot of the LUC
12 website. Everyone should be very familiar of it.

13 This is our homepage. However, depending on what
14 device you're using to access the website, it might
15 look slightly different.

16 So this is a screenshot of a web browser
17 if you're on a monitor or computer. However, if
18 you're on your iPad or an iPhone, Samsung phone,
19 sometimes the layout alters depending on your screen
20 size. But it will have all this information. It
21 just might look slightly different.

22 The one main thing I want to point out on
23 the home page is every time an agenda goes out, when
24 I email you that agenda distribution it is updated
25 on our website. And right on our home page in a

1 yellow like Post-it like box it says Next Meeting.
2 It'll have the date, agenda, doc minutes, docket
3 page, and how to submit testimony. This is for all
4 public. Everyone will be able to see this once the
5 agenda is distributed. And we try to make it as
6 user friendly as possible so when someone from the
7 public comes to our website they know our meeting is
8 that day.

9 Okay. Now, I know there's a lot of
10 questions about Commissioner Checkpoint. Here is a
11 basic screenshot of what it currently looks like.
12 Here in Commissioner Checkpoint you will have the
13 same information on the meeting that was on the
14 homepage. You will have the agenda, the minutes,
15 the docket page, and the only thing different is you
16 have a specific meeting recap on the bottom of that
17 meeting and that will show any transcripts, YouTube,
18 and minutes. However, that information is also
19 available on the main website under Agenda and
20 Minutes. So it's a little separate. Yours is all
21 packaged together. Essentially, most of the
22 information is the same. The only time we post
23 different information in the Commissioner Checkpoint
24 is if it's an attorney-client privileged document.
25 Something that the AGs might have gave us as

1 guidance for strictly you, not for public. Other
2 than that, all our information is public
3 information. All the document information everyone
4 can access. It's not like hidden, privy
5 information. Our staff reports are posted on the
6 docket page. Petitioners, public are welcome to
7 read it. Yeah. I think that's a summary. Yes.

8 **CHAIRMAN GIOVANNI:** Commissioner U'u?

9 **COMMISSIONER U'U:** It said I needed a
10 username and a password.

11 **MS. KWAN:** I thought I provided that to
12 you but I will send it again because, yes, okay. I
13 will verify that. We'll get it to you. Thank you.

14 Okay. So moving on to docket filings.

15 So all document related filings are
16 stamped with the LUC stamp which is I guess poorly
17 positioned in the right-hand corner right now where
18 the sign is blocking it. But typically, every
19 document received at the LUC will receive this
20 electronic stamp. We ask everyone who files with
21 the LUC to submit their electronic filing first and
22 then submit their paper filing. So every document
23 should have that exact stamp. If it does not have
24 that stamp it was not received by the Commission.

25 Any questions about docket filings?

1 **CHAIRMAN GIOVANNI:** Yeah. What's the
2 typical amount of time you need from the time you
3 receive a document to the time it kind of shows up?

4 **MS. KWAN:** So it depends. Examples like
5 annual reports are rather quick. When I receive it,
6 I check it for ADA compliance. If there is issues,
7 I usually kick it back to the person who submitted
8 it. Ask them to address the changes. And then once
9 they resubmit the filing I double check it again,
10 stamp it, log it into our log, and then post it to
11 the website. So that turnaround could be anywhere
12 from 24 hours with receiving it if the filing was
13 perfect, or depending on how long it takes them to
14 get it back to me it might be another week.

15 **CHAIRMAN GIOVANNI:** How about written
16 testimony in an evidentiary docket?

17 **MS. KWAN:** Written testimony, as soon as I
18 get it I fix the compliance because public testimony
19 isn't the public's responsibility for ADA
20 compliance. So as soon as I receive it, I fix it, I
21 stamp it, and post it. So that'll be -- if I --
22 once I receive it, it'll be up in like half an hour.

23 **CHAIRMAN GIOVANNI:** All right. Thank you.
24 Commissioner Lee?

25 **COMMISSIONER LEE:** Ariana, thanks. You do

1 so much work. I don't know how you keep track of
2 it. And keeping track of us is very difficult, too.

3 But is it now the official policy that
4 whenever anything is posted on the website that you
5 alert us and you send us an email to say, hey,
6 something new has been posted; is that correct?

7 **MS. KWAN:** So the way I do it is I do it
8 at the end of the month. I keep track of everything
9 that was filed and then I send you guys a list of
10 everything that was filed that month. Because in
11 between everything else I don't have time to email
12 every single filing because I get filings, what
13 feels like almost daily depending on what it is.
14 But in that list, I don't include the public
15 testimony because that's separate. That should be
16 reviewed on the docket page. So that's why I kind
17 of separate that notification to you guys. But I do
18 it on a monthly basis. And I have a log. So every
19 time I receive it I update my log.

20 **COMMISSIONER LEE:** Okay. But if something
21 comes in a week or days before the meeting,
22 sometimes at the last minute, you'll let us know;
23 right?

24 **MS. KWAN:** Yes.

25 **COMMISSIONER LEE:** You won't wait till the

1 end of the month for that?

2 **MS. KWAN:** Right. No. so the things that
3 I log are like annual reports, letters that we send
4 out about delinquency. If it's a docket related
5 filing that is for an upcoming meeting, I will email
6 you guys as soon as I can.

7 **COMMISSIONER LEE:** Okay.

8 **MS. KWAN:** So even Waimanalo Gulch, I
9 already emailed everybody about the exhibits are
10 ready for review. It is a little beefy. Please
11 review it ahead of time. You know.

12 **COMMISSIONER LEE:** Fortunately, some of us
13 from the county have already reviewed that whether -
14 -

15 **MS. KWAN:** Well, not everyone.

16 **COMMISSIONER LEE:** Also, I think that
17 legislation or there was a clarification that if
18 someone submits testimony that day of the hearing
19 we're supposed to or we're allowed to look at it or
20 something like that. Is that correct?

21 **MS. KWAN:** Yes. So usually -- well, it's
22 a little tricky because I'm busy running a meeting
23 or setting up a meeting so I don't have the
24 opportunity to check the general email box right
25 before a meeting. But as soon as I see that

1 testimony I review it, stamp it, post it. But I do
2 usually try to check it the night before in case
3 there's any last minute filings but I can't promise
4 to always check it the morning of as I'm setting up,
5 running tech issues, trying to figure out why the
6 mic's not working or the internet's not connecting.
7 But I do my best.

8 **COMMISSIONER LEE:** Thank you.

9 **MS. KWAN:** Any other questions about
10 filings? Okay.

11 Where am I? Okay.

12 So I want to share, for the new
13 commissioners, a little website shortcut. I'm not
14 sure if all the Commissioners are aware of this
15 website shortcut. But basically, if you know that
16 docket number of what you're interested in learning
17 more or if we have an upcoming meeting and you just
18 want to type it in real quick, it's the LUC
19 website/docket number. So if you put
20 LUC.hawaii.gov/A92-683, you're there. It'll give
21 you -- it'll give you the main docket landing page.
22 However, this doesn't work for every single docket
23 because some are very old and they're not digitized
24 yet. And I don't have webpages up for them yet.
25 The dream is to have them all up on the website one

1 day but we are understaffed and I don't have time to
2 scan.

3 So yeah, that's a fun little shortcut for
4 anyone. And even if you're doing your own research
5 on an old docket maybe that's not before us and you
6 just want to look something up, if you know the
7 docket number, that's the quickest way to find it on
8 our website.

9 Any questions?

10 Now, let's just go through a quick
11 breakdown of how the website docket page is. And I
12 want to thank Scott for templating this and
13 designing it and making it so much more user
14 friendly than what it used to be because in the past
15 it used to be like a blog style and you would just
16 have to keep scrolling until you found OPSD's
17 information or annual reports or anything. So this
18 template has really made things user friendly and
19 easy to find.

20 So I'm going to just use this example.
21 All-794. This is the Department of Education docket
22 page. So this is just -- there's two different
23 templates for the website. This is what the main
24 landing page would look like. And then when you go
25 into individual petitions and motions that template

1 is slightly different or the tabs are different.

2 So for the main landing page you're going
3 to have the first post-decision actions which is
4 right here if you can see that. So right here
5 you'll see all the breakdowns of the different years
6 or motions that they had. So we have the 2011
7 Petition for DBA. That was the original filing.
8 2019, they've had another filing. 2020 they had
9 another motion. And then 2023 we called them in a
10 status report. So you could see all the different
11 years we've worked with them on this docket.

12 The next tab is LUC Notices and Orders.
13 Here you'll see all the orders issued for this
14 docket. From the beginning to current. And we also
15 have the agenda and minutes. So if you need to
16 review something that was done in 2013, you want to
17 review the minutes why the Commission voted the way
18 they did? It's right there for you.

19 And then the next tab is Correspondence.
20 So any non-motion or docket-related correspondence,
21 just general correspondence on this docket would be
22 placed here. Otherwise, if it's specific to that
23 2019 motion to amend it would be in that folder
24 instead if that makes sense.

25 And the last tab would usually be annual

1 reports. And this will show all the annual reports
2 we received for this docket from I think this one
3 says 2014 to present.

4 So that's the first main docket landing
5 page.

6 Is there any questions on this layout or
7 how to navigate it? Okay.

8 So here's the second docket page template.
9 This is what you guys are probably more used to
10 seeing because this is the motion specific, status
11 report specific layout.

12 So here we tried to put a little bit of a
13 background so the public knows where we are on this
14 docket. And then on the first tab is all the
15 petitioner filings. So here's everything received
16 related to the 2023 status report. You're not going
17 to see anything from the motion to amend, the motion
18 to reconsider, or the original petition. This is
19 only information from the 2023 status report that
20 was filed by the petitioner.

21 The next tab is LUC filings. So as you
22 can see, our staff report is posted for anyone in
23 the public to read, any petitioners to read, OPSD to
24 read. Any other LUC filings that we might post
25 would be here as well.

1 The next tab is OPSD filings. Sometimes
2 they don't file anything before a meeting so I'll
3 just indicate no filings received at this time. If
4 they did file something then I would keep the link
5 and I always date it when we received it which would
6 show the date stamped in the right corner.

7 The next tab is for county of the island
8 filing. So this one is Maui. Otherwise, it might
9 say County of Hawaii, City and County of Honolulu,
10 depending on which island the docket resides on.

11 And then this is our public comments tab.
12 So here we usually, depending on the years it might
13 vary on how it was formatted. But the way we do it
14 now is we put the date and how many public comments
15 we received that day. And I date it by the date I
16 receive it. So if they emailed me on a Saturday at
17 9:00 p.m. when I'm not checking emails, I'm not
18 going to date it until Monday just to be clear. I
19 don't date it the day they sent it. I date it the
20 day I receive it. Just in case anyone in the public
21 had concerns about that.

22 **CHAIRMAN GIOVANNI:** So a quick question.

23 **MS. KWAN:** Yeah.

24 **CHAIRMAN GIOVANNI:** And I'm not -- I'm
25 really not trying to create more work for you.

1 **MS. KWAN:** Uh-huh.

2 **CHAIRMAN GIOVANNI:** But Waimanalo Gulch --

3 **MS. KWAN:** Mm-hmm.

4 **CHAIRMAN GIOVANNI:** I think their filing
5 had 56 exhibits.

6 **MS. KWAN:** Something like that. Yep.

7 **CHAIRMAN GIOVANNI:** But I don't think that
8 -- I mean, what was a little bit troubling for me is
9 I didn't know what was what. So is there a way that
10 we can get the people filing the exhibits to name
11 their exhibits?

12 **MS. KWAN:** So the file right above the
13 exhibits is the exhibit list. And that has the
14 title and the description.

15 **CHAIRMAN GIOVANNI:** Of each exhibit?

16 **MS. KWAN:** Of each exhibit.

17 **CHAIRMAN GIOVANNI:** Okay.

18 **MS. KWAN:** Yeah. It is right above. I
19 could pull it up later, too, to help explain it out.

20 Yep. Yep. Right there.

21 Any other questions on that?

22 Okay. So the last tab would be LUC
23 Notices and Orders. This tab actually moves to the
24 top if an order was issued after we kind of close
25 out this docket or this motion or status report. If

1 no order was issued then I usually leave it on the
2 bottom. But usually, people are always looking for
3 the decision order from the Commission so that's why
4 we move it to the top if one was issued.

5 But here I'll also post the agenda minutes
6 and YouTube link. So now everything is also on
7 YouTube.

8 I think that's it. Any questions?

9 **CHAIRMAN GIOVANNI:** Yeah. Is any aspect
10 of this information that we as commissioners are
11 being asked to hold as confidential?

12 **MS. SEGURA:** If it is it's on Commissioner
13 Checkpoint marked as Attorney-Client privilege.

14 **MS. KWAN:** Yeah.

15 **CHAIRMAN GIOVANNI:** Okay. So that's where
16 --

17 **MS. KWAN:** Yeah. I put --

18 **CHAIRMAN GIOVANNI:** So if on the
19 checkpoint we see attorney-client privilege,
20 confidential, or proprietary --

21 **MS. KWAN:** Yeah.

22 **CHAIRMAN GIOVANNI:** Otherwise, we don't
23 have to worry about it?

24 **MS. KWAN:** Yes. No. All our information
25 is pretty much public record.

1 I hope I didn't go too fast.

2 **COMMISSIONER GIOVANNI:** All right, Ariana.

3 Thanks.

4 Questions?

5 **UNIDENTIFIABLE SPEAKER:** Going back on the
6 calendar, I notice like some are dark bold and some
7 are gray. Does that have significance as far as --

8 **MS. KWAN:** So the gray fonts usually
9 indicate tentative. Black is pretty much confirmed
10 in my eyes but, you know, sometimes the black things
11 do move.

12 **UNIDENTIFIABLE SPEAKER:** That's what I
13 thought. I just wanted to confirm that. Hopefully,
14 that's why.

15 **MS. KWAN:** Yeah. Yeah. Black is when I
16 assume it's confirmed but, you know, sometimes I get
17 surprises.

18 **UNIDENTIFIABLE SPEAKER:** When do we know,
19 like I know you were asking about August 9th, but
20 right now looking it's August 7th and 8th. When you
21 ask availability when do we know that, okay, it's --
22 forget about the 9th, it's still the 7th and 8th?
23 How do we figure that out?

24 **MS. KWAN:** For that meeting in particular
25 I'm going to let you know I think Thursday or Friday

1 because staff has to discuss internally to verify
2 and find a venue if we do move it to that date.

3 **UNIDENTIFIABLE SPEAKER:** Okay.

4 **MS. KWAN:** Usually, we have more time but
5 because that went so quick that's why I'll get back
6 to you sooner. But I would usually send an email or
7 you could always just check the calendar and see
8 what's been updated. Because I update it, it feels
9 like every week, but maybe it's every other week.

10 **UNIDENTIFIABLE SPEAKER:** And the last one,
11 on like the ones that just have tentative, they have
12 no meetings, I think I asked you this before but
13 just for everybody's education, when do I know --
14 because I block my calendar for the year because
15 I've got other board meetings going on. When do I
16 know that that tentative one I can just take it off
17 my own personal calendar? One week, two weeks or --

18 **MS. KWAN:** So the agenda for that meeting
19 would go out the Monday before. And if you're an
20 Outer Island commissioner, depending what island
21 we'd be meeting on I would have to make flight
22 arrangements usually two to three weeks before a
23 meeting. So if I haven't booked you a flight, more
24 than likely it might be getting removed. But the
25 Monday before would be the telltale because that's

1 when the agenda goes out. If it doesn't go out on
2 that Monday then it's, yeah, it's not happening.

3 **CHAIRMAN GIOVANNI:** Thank you for booking
4 the flights.

5 So if we need to change the flights, the
6 only two people that can change them are you and the
7 passenger; is that correct?

8 **MS. KWAN:** So for standby or like you need
9 to change the entire flight?

10 **CHAIRMAN GIOVANNI:** No. No. Before we
11 even go.

12 **MS. KWAN:** Okay. So before even going
13 authorized callers is myself, Dan, Martina. I don't
14 think Scott's on there. I'd have to check.

15 **CHAIRMAN GIOVANNI:** And the passenger?

16 **MS. KWAN:** And the passenger.

17 **CHAIRMAN GIOVANNI:** Okay.

18 **MS. KWAN:** That would be much appreciated.

19 I'm just kidding.

20 **CHAIRMAN GIOVANNI:** Whenever it is.

21 **MS. KWAN:** Or I could do it.

22 **CHAIRMAN GIOVANNI:** Okay. Any other
23 questions, Commissioners?

24 Thank you very much, Ariana.

25 **MS. KWAN:** Yay.

1 UNIDENTIFIABLE SPEAKER: Thank you.

2 MR. ORODENKER: I think we're pretty much
3 done unless anybody else has any more questions or
4 wants to discuss anything else. You're good?

5 CHAIRMAN GIOVANNI: Are there any members
6 of the public that wish to testify on the training?

7 UNIDENTIFIABLE SPEAKER: No, Mr. Chair.

8 CHAIRMAN GIOVANNI: Thank you.

9 Is there any further business to discuss
10 today, Commissioners?

11 Hearing none, do I have a motion for
12 adjournment?

13 UNIDENTIFIABLE SPEAKER: Move for
14 adjournment.

15 CHAIRMAN GIOVANNI: Wait, wait, wait.

16 UNIDENTIFIABLE SPEAKER: There's --

17 CHAIRMAN GIOVANNI: Well, thank you very
18 much for the reminder. I didn't see it. Wasn't it
19 in the script?

20 No, we'll do it but I don't see it in my
21 thing.

22 I'd like to give this honorary gavel to
23 Martina as our August 7th and 8th meetings will be
24 held at the Airport, limited access to restaurants
25 and the Commission intends to work through lunch,

1 I'd like to request that the staff arrange for lunch
2 to be provided to the Commission to facilitate the
3 meeting.

4 **MR. ORODENKER:** We will make those
5 arrangements, Mr. Chair.

6 **CHAIRMAN GIOVANNI:** Thank you very much.

7 **UNIDENTIFIABLE SPEAKER:** Does that cover
8 the 9th in case it gets rearranged, too?

9 **CHAIRMAN GIOVANNI:** Correct.

10 This concludes our meeting if I have a
11 motion to adjourn.

12 **COMMISSIONER YAMANE:** Motion to adjourn.

13 **CHAIRMAN GIOVANNI:** Second?

14 **COMMISSIONER LEE:** Second.

15 **CHAIRMAN GIOVANNI:** Moved by Commissioner
16 Yamane and seconded by Commissioner Lee.

17 All in favor say aye.

18 The meeting is adjourned. Thank you very
19 much for the training.

20 **(The meeting concluded at 12:40 p.m.)**

21

22

23

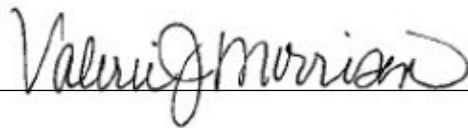
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CERTIFICATE

I, Valerie J. Morrison, 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 9th day of August, 2024.



Valerie J. Morrison