

STATE OF HAWAII
LAND USE COMMISSION
Meeting held on February 5, 2025
Commencing at 10:00 a.m.
Held at
Leiopapa A Kamehameha
State Office Tower
235 S Beretania Street, Room 405
Honolulu, Hawaii 96813

XI. DECISION ON COMMISSION'S POSITION
REGARDING SB1334 AND HB1015

RELATING TO LAND USE. Authorizes county petition process for review and approval of land use district boundary amendments based on adopted county general plans or county development plans.

XII. DECISION ON COMMISSION'S POSITION REGARDING
SB740 AND H8777

RELATING TO SPECIAL PERMITS. Authorizes the LUC to designate another agency, including the Office of Planning and Sustainable Development, Department of Agriculture, or Agribusiness Development Corporation, to monitor compliance with any restrictions imposed in a special permit

XIII. DECISION ON COMMISSION'S POSITION
REGARDING H8826

RELATING TO HOUSING. Authorizes a county planning commission, by special permit, to permit land uses exclusively providing residential housing for long-term rental or affordable fee simple ownership in an agricultural district, under certain conditions. Repeals 613012035.

XIV. DECISION ON COMMISSION'S POSITION REGARDING
S81332 AND H81013

RELATING TO IMPORTANT AGRICULTURAL LANDS.
Repeals the provision authorizing farm dwellings and farm employee housing on important agricultural lands, amends the provision for priority permit processing to include farm cluster housing, and adopts a new provision establishing farm cluster housing to incentivize the designation of lands as important agricultural lands pursuant to chapter 205, HRS.

XV. DECISION ON COMMISSION'S POSITION REGARDING
SB1099

RELATING TO IMPORTANT AGRICULTURAL LANDS.
Authorizes the Land Use Commission to designate important agricultural lands and adopt maps for the designated lands in counties that fail to identify and recommend important agricultural lands by December 31, 2027.

XVI. DECISION ON COMMISSION'S POSITION REGARDING
5826 AND HB 1451

RELATING TO AFFORDABLE HOUSING. Establishes the Affordable Housing Land Inventory Task Force within the Hawaii Community Development Authority to update the Affordable Rental Housing Report and Ten-Year Plan maps, tier tables, and inventories of state lands suitable and available for affordable housing development. Requires a report to the Legislature. Appropriates moneys.

XVII. DECISION ON COMMISSION'S POSITION REGARDING
SB498 AND H81294

RELATING TO AGRICULTURAL WORKFORCE HOUSING.
Requires the Department of Agriculture to
establish an Agricultural Workforce Housing
Working Group to address the shortage and
challenges of agricultural workforce housing in
the State. Requires reports to the Legislature.
Appropriates funds.

XVIII. DECISION ON COMMISSION'S POSITION REGARDING
SB197

RELATING TO PUBLIC NOTICE. Establishes
enhanced public notice requirements for
changes in land use by the Department of
Hawaiian Home Lands, Department of Land
and Natural Resources, or University of
Hawaii and boundary changes by the LUC.
Requires approval of the project by the
community through a referendum of nearby
adult residents except for projects within
the Mauna Kea science reserve, which
require a referendum by all adult
residents of the country in which the
Mauna Kea science reserve is located.
Appropriates moneys.

XIX. ADJOURNMENT

BEFORE:

PARTICIPANTS

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LUC COMMISSIONERS:

Dan Giovanni, Chairman

Mel Kahele

Brian Lee

Ken Hayashida (via Zoom)

Bruce U'u

Myles Miyasato (via Zoom)

Nancy Carr Smith

LUC STAFF:

Daniel Orodener, Executive Officer

Scott Derrickson, Chief Planner

Martina Segura, Planner

Ariana Kwan, Chief Clerk

Miranda Steed, Esq., Deputy Attorney General

1 CHAIRMAN GIOVANNI: It's 10:00 on February
2 6th, and we're going to continue our LUC meeting
3 that started yesterday. This meeting is a hybrid
4 meeting which is physically located at Leiopapa A
5 Kamehameha State Office Tower, at 235 South
6 Beretania Street, Room 405. And it's open to the
7 public, and everything is being recorded on Zoom.

8 We've got a few changes in terms of
9 attendance from yesterday. Today -- I am Dan
10 Giovanni. I am the chair, and it's my pleasure to
11 be here. Excused from today's meeting is
12 Commissioner Michael Yamane from Kauai and
13 Commissioner Kamakea-'Ohelo from Oahu, who may or
14 may not join us from Zoom during the meeting.
15 Present with me in the room is Commissioner Mel
16 Kahele and Commissioner Brian Lee from Oahu and
17 Commissioner Nancy Carr Smith from Hawaii Island and
18 Commissioner Bruce U'u from Maui. Commissioner
19 Myles Miyasato is joining by Zoom.

20 Welcome back, Commissioner Miyasato. Are
21 you back in your home again?

22 COMMISSIONER MIYASATO: Yes, I am, and no
23 one is with me.

24 CHAIRMAN GIOVANNI: Thank you very much.
25 And I understand that Commissioner

1 Hayashida intends to join us by Zoom, but has not
2 yet been able to connect. We will not wait for
3 that. And also our Deputy -- LUC Deputy Attorney
4 General Miranda Steed is also joining us from Zoom
5 today.

6 Also in attendance are LUC Officer --
7 Executive Officer Daniel Orodener. LUC Land Use
8 Development Coordinator Arnold Wong is not in
9 attendance as he was yesterday. LUC Chief Planner
10 Scott Derrickson, LUC Staff Planner Martina Segura,
11 and LUC Chief Clerk Ariana Kwan are in attendance.

12 We are going to pick up with agenda item
13 number 11, was -- correct, or is it 12? 11. We
14 start with agenda item number 11, which is a
15 decision on commission position regarding SB1334 and
16 House Bill 1015. We'll use the same procedure as we
17 were doing yesterday afternoon, in which we will ask
18 for public testimony, and then we'll ask the staff
19 to make a presentation based on their review of the
20 bill. And then we'll -- the commission will hear
21 public testimony a second time, and then we'll
22 deliberate whether we'll want to take a position on
23 that or not.

24 So, Ms. Kwan, has there been any testimony
25 -- anybody want to do oral testimony at this time on

1 number 11?

2 THE CLERK: Nobody on the Zoom has used
3 the Q and A feature to sign up for testimony on this
4 agenda item. But I want to point out we did receive
5 18 written testimonies at the conclusion of
6 yesterday's meeting that have been posted to the
7 website.

8 CHAIRMAN GIOVANNI: I did notice that, and
9 I hope all the other commissioners did notice that
10 as well. So thank you for attending to that so
11 promptly yesterday.

12 Mr. Orodenger, can you please provide us a
13 summary and your assessment and recommendations
14 regarding SB1334 and House Bill 1015?

15 MR. ORODENKER: I'm going to ask Scott
16 Derrickson, our chief planner, to begin the
17 discussion on this bill.

18 CHAIRMAN GIOVANNI: Mr. Derrickson,
19 please.

20 MR. DERRICKSON: Yeah. Scott Derrickson,
21 planner, LUC. So Senate Bill 1334 and House Bill
22 1015 or companion bills, so they're the same. They
23 seek to amend Chapter 205, creating a new section
24 that allows county planning agencies to petition a
25 county land use authority, which in this case is the

1 planning commissions, to decide district boundary
2 amendments for lands greater than 15 acres with no
3 maximum or ceiling number of acreage when lands
4 conform with county general plan or development plan
5 or community plan.

6 Staff has identified that this legislation
7 has constitutional issues with regard to due
8 process. It is counter to the Town vs. Land Use
9 Commission Supreme Court decision that required a
10 quasi-judicial process to adjudicate or change
11 property rights. The bill is not limited to just
12 agricultural lands. It could also include rural and
13 conservation lands as well. It raises issues about
14 how public trust concerns are going to be addressed
15 or if they are required to be addressed.

16 MR. ORODENKER: Yeah. This is -- our
17 position on this is similar to SB36 and SB1157,
18 which we discussed yesterday. It's our belief that
19 given the circumstances, that it -- we should not be
20 testifying on this matter only -- or in support of
21 this matter or -- and only offering technical advice
22 if the bill is heard.

23 CHAIRMAN GIOVANNI: So the technical
24 advice would be to raise the issues that Mr.
25 Derrickson as concerns?

1 MR. ORODENKER: Yes, that is correct.

2 CHAIRMAN GIOVANNI: Okay. Commissioners,
3 any questions or suggestions?

4 Commissioner Lee, thank you.

5 COMMISSIONER LEE: Oh, yeah. Can you just
6 briefly detail what kind of concerns -- I agree with
7 your position, but I just want to hear, you know,
8 what -- what you'll be relaying to them.

9 MR. ORODENKER: Well, the due process
10 issues we discussed earlier or yesterday. The
11 problem with the -- with having the county have the
12 ability to move district boundaries based on the
13 general plans is -- is one of due process. Every --
14 every landowner under the constitution is entitled
15 to due process if their land -- if their interest in
16 land is going to be negatively impacted and -- or
17 you could argue it's positively impacted, but their
18 taxes go up. So it's our -- our belief that the
19 bill may not meet those due process requirements.

20 Second of all, as Mr. Derrickson pointed
21 out, one of the issues with this bill, in addition
22 to the other issues raised in SB36, is that it seems
23 to allow counties to do district boundary amendments
24 on conservation land as well as rural land in
25 addition to agricultural land, which is of concern.

1 I -- I think that that those two issues are
2 paramount.

3 MR. DERRICKSON: Yeah. I'd like to also
4 add too that there's already a process if the
5 counties want to come to the commission or a
6 district boundary amendment covering a large area
7 that's, say, covered by their growth boundary and
8 their general plan or the development or community
9 plans, they can do that under current law. And in
10 fact, they have done that in the past.

11 COMMISSIONER LEE: Okay, yeah. Just --
12 just want some clarification because both of these
13 bills are part of the governor's package. So
14 there's no direction down the line through DBEDT and
15 to you folks to support it?

16 MR. ORODENKER: We -- when this bill was
17 being discussed, we made our concerns clear. And as
18 was pointed out yesterday, while this is an
19 administrative measure, this is an independent body
20 so that we have the ability to formulate a position.
21 As in conformance with the governor's office's
22 directions with regard to testimony, we would not be
23 testifying in opposition. We would just be pointing
24 out concerns.

25 COMMISSIONER LEE: Thank you. Thank you,

1 Chair.

2 CHAIRMAN GIOVANNI: Thank you.

3 Mr. U'u.

4 COMMISSIONER U'U: I wanted to ask, what
5 is the county's process? Because you said there is
6 a process that the county can utilize.

7 MR. ORODENKER: The counties can apply to
8 the land use commission for district boundary
9 amendments the same way an individual landowner can.

10 COMMISSIONER U'U: That might be some of
11 the issues. And so one, I'm so glad we're having
12 these discussions even though sometimes I don't want
13 to have the discussions. You can see the disconnect
14 between -- and I always saw that between the land
15 use, which is us, I'm a part of it, and the state
16 reps who introducing some of this. And -- and I
17 know our process all takes time. Every process is
18 time consuming and costly, regardless what we want
19 to say, right?

20 But if you look At UHero Stats, Hawaii is
21 the most over regulated land use in a nation.
22 Second to -- Jersey is second. But we winning by a
23 third. Like, we winning by -- we winning first
24 place by a mile. But I understand the legalities
25 sort of speak, but -- and again, I think everyone's

1 looking for a solution, and I read every testimony
2 last night. Some -- a lot of them were duplicate
3 though. I read everyone but just to get on sense of
4 where everyone's coming from. And my sense is that
5 we in a panic mode for housing. We had flight risk,
6 right?

7 And people looking at solutions for this
8 process that is lengthy, long, expensive, costly,
9 and we part of it. And again, that's why I think
10 this deliberation we have it and you guys commenting
11 on bills and we are, as a whole, as a group, with
12 state leg, with governor, hopefully you find some
13 solutions because I'm not okay with a project taking
14 eight years to 15 years to build.

15 And I heard about saving and saving land
16 and our grandchildren and children. None of them's
17 here at the same. So respectfully, I think that's
18 what we're looking at and I think we've been over
19 protected. That's my personal feeling. And that's
20 why it takes nine people to make the decisions here.
21 When 6 percent of Maui is zoned urban, that's it, 6
22 percent. We got enough -- we got enough lands in
23 ag. We hear about ag farming. We farm. I farmed
24 for years, my family, and a lot of people talk about
25 it, but don't do it. I just find it to be

1 hypocritical.

2 But it's just my frustration and my own of
3 what my intent here is to make a difference. And
4 sometimes it goes against the grain of what was here
5 prior or how it's been handled. But I really feel
6 like every step of the process, if we can mitigate
7 or expedite in the right way, I think will be
8 beneficial for all people. The people I represent.
9 Thank you.

10 MR. ORODENKER: Yeah. Oh, go ahead.

11 COMMISSIONER U'U: No, no, I'm good.

12 MR. ORODENKER: Yeah, if I -- if I can
13 share a little bit. I agree with you that some
14 changes need to be made. I think that one of the
15 problems with the -- with what's happening right now
16 is that it's not a community-based discussion.
17 About five or six years ago, was it, that Senator
18 Schatz introduced a sweeping legislation to change
19 land use in Hawaii. And it was the result of a lot
20 of community discussion. It wound its way through
21 the legislature. There were compromises made at
22 different hearings and so forth and so on. And at
23 the nth hour, it died mainly because of, believe it
24 or not, pressure from the developers. You know,
25 they -- they didn't want to change the process that

1 much.

2 And so I think that that would be
3 successful. You know, that type of a process where
4 the community was involved in making the changes and
5 they didn't feel like they were left out. When I
6 say the community, I mean the agricultural
7 community, the, you know, everybody, you know, but
8 these bills are flawed. And yeah, I mean that's --
9 that's the problem that staff has with them is that
10 they're flawed.

11 COMMISSIONER U'U: And again, hence that's
12 why I like the discussion out of all of this that we
13 can have the discussion, this round table or square
14 table discussion, and again you guys comment to the
15 appropriate people introducing the bill. So we kind
16 of -- regardless, we're kind of on the same page and
17 maybe at different perspectives. But I like this
18 part.

19 CHAIRMAN GIOVANNI: So I'd like also to
20 respond to your comments, Commissioner U'u. First
21 of all, your comments are very welcome, and it's
22 very useful to know where you're coming from. We're
23 all coming from a place where we're trying to make
24 the processes better and fairer for everyone. I
25 want to speak specifically about the housing and

1 where I'm coming from.

2 I have heard remarks similar to the ones
3 you made about being heavily regulated, and the
4 regulations are the -- that are so great in Hawaii
5 is a real impediment to moving forward on a -- on a
6 timely basis. In fact, the mayor of Honolulu last
7 night gave a speech about being the most heavily
8 regulated state in the nation, similar to the one
9 you have. I can tell you though that the citation
10 for that comment of -- that the politicians are
11 making, like the mayor of Honolulu last night, Mr.
12 Blangiardi, stems from a UHERO analysis of what are
13 the costs of housing. And the UHERO analysis
14 concludes that close to 40 to 50 percent of the
15 process for and the cost of housing is associated
16 with quote, unquote regulations.

17 So I confronted UHERO. I said, tell me
18 what's inside the box for what you call regulations?
19 Because every time somebody studies why don't we
20 have housing, including the report that was shared
21 with us at the last meeting, they say the number one
22 obstacle is always infrastructure, infrastructure.
23 Who's going to pay for the upfront infrastructure?
24 So I asked through UHERO directly, Mr. Bonham. I
25 said, where do you -- I don't see where you capture

1 the cost of infrastructure as an impediment. He
2 says, oh, I call that regulation. I said, what?
3 The dollars that are required for a developer to put
4 on -- to build a sewer, you call that regulation?

5 That's not -- that's not the way I
6 interpret it. Because you need money to build
7 infrastructure. So where's that money going to come
8 from? In Hawaii today, it's all in the back of the
9 developer. And that's the impediment. And that's
10 -- it may be that's the only way to get the project
11 done. But in my personal view, until we get the
12 money, not the regulation, but the money in the
13 hands of counties to build infrastructure, we're
14 always going to have a problem building affordable
15 housing. Yeah. So I just want to make -- that's
16 where I'm coming from.

17 Go ahead.

18 COMMISSIONER U'U: And I agree.

19 CHAIRMAN GIOVANNI: I love this
20 discussion.

21 COMMISSIONER U'U: No, no. And I 100
22 percent agree with you because it takes everything,
23 right? It takes some of the regulation.

24 CHAIRMAN GIOVANNI: Sure.

25 COMMISSIONER U'U: It takes some of the

1 infrastructure because infrastructure definitely is
2 a barrier. 100 percent, the cost of infrastructure
3 is -- is crazy. And it is put on the backs of the
4 developer, so I 100 percent agree with you on that.

5 CHAIRMAN GIOVANNI: So I think what's
6 happening is that when we approve a petition for a
7 project, we have a condition that says the developer
8 got paid for infrastructure. So that's -- UHERO's
9 picking that up like a regulation. But there's no
10 other way for the infrastructure to be built in
11 Hawaii because there's no tax money to do it.

12 Commissioner Lee.

13 COMMISSIONER LEE: Thank you. This is a
14 great discussion. I have to say though that, and
15 I've been around this for a long time too. UHERO is
16 not the only one that points to Hawaii. MIT has a
17 study where they're saying it's 58 percent of the
18 cost is regulation, and they compare this worldwide.
19 And all projects have infrastructure costs, so we're
20 still comparing the same thing. Why is Hawaii's
21 infrastructure cost higher?

22 At HCDA, they had infrastructure business
23 improvement districts where the state issued bonds
24 or community facility district type taxation to
25 provide infrastructure. And that's a lot cheaper

1 because if the state issues bonds for
2 infrastructure, it costs 5, 6 percent interest. You
3 make a developer do it, he's got to put a 30 percent
4 profit margin on that infrastructure, so there are
5 other ways.

6 But this bill that we're talking about
7 now, yes, the counties do do it, but this one says
8 that the counties alone decide. It doesn't go to
9 the state LUC. Yesterday, we couldn't even agree to
10 have more than four votes that it still goes to the
11 LUC. But instead of six votes we have five and only
12 for five years. We couldn't even agree on that to
13 -- to pass that. So how are we going to now say
14 yeah, we support something that takes the LUC out of
15 it completely with zero votes? You know?

16 CHAIRMAN GIOVANNI: I agree.

17 COMMISSIONER LEE: Thanks.

18 CHAIRMAN GIOVANNI: So I think any -- so I
19 -- I'm going to try to move this thing along with a
20 -- my assessment of the general feeling of -- of the
21 commissioners is to follow the guidance of or
22 recommendation of the director and his staff, which
23 says this bill has some problems. We can't support
24 it as written, but we -- and we'll show up and
25 answer questions and -- about our concerns.

1 Commissioner Carr Smith.

2 COMMISSIONER CARR SMITH: Thank you. It
3 seems to me that this is what OPSD talked about when
4 they came and gave us a presentation, and they
5 talked about perhaps the county doing exactly this,
6 and it was limited to certain areas. They were very
7 specific about that and I -- I thought that that's
8 what this was, but I could be wrong. Am I wrong?

9 COMMISSIONER LEE: I think that was the
10 1.6 percent, and they were supposed to come back to
11 us because Commissioner Miyasato asked could you
12 give a breakdown by island where that was -- it's
13 only regarding 1.6 percent of the land that's also
14 in the county growth district. So it's not a, like,
15 fling the doors open, you know, and do whatever you
16 guys want at the county. But I -- I want to be
17 clear though, that I -- I think that, yeah, Dan
18 should provide comments, but just want to clarify
19 that that doesn't mean he's going to say that we're
20 opposed to it, right?

21 CHAIRMAN GIOVANNI: No, we're not opposed
22 to it.

23 COMMISSIONER LEE: Okay. Thank you.

24 MR. ORODENKER: Yeah, to answer your
25 question, Commissioner Carr Smith, this bill doesn't

1 say what I think Mary Alice thought it said or it
2 changed when -- after she made her presentation
3 because she was talking about specific land areas.
4 And this is a broad --

5 COMMISSIONER CARR SMITH: This is a broad,
6 yeah, broad stroke. Okay. I -- I -- again, I think
7 the intention is good. I agree that the
8 conservation land and important ag lands shouldn't
9 be a part of it and that it should be more confined
10 to certain areas, so I hope that you will address
11 that. And then the other thing is, you know, we
12 keep saying how the county doesn't have due process,
13 but they do. I mean, they have almost as equally
14 complex process as we do, and so I just don't want
15 to discount that.

16 MR. ORODENKER: I don't disagree with you,
17 but the difficulty with these bills is that they --
18 they don't -- they allow the counties to bypass that
19 due process procedure. And that's where we have the
20 concerns. I mean, if this bill -- and we talked. I
21 just mentioned the Schatz bill that laid out in
22 detail how the county was supposed to handle DBAs.
23 If that language was in this bill --

24 COMMISSIONER CARR SMITH: Got it. Okay.
25 So a suggestion that more definition be put in the

1 process would be helpful.

2 MR. ORODENKER: Yeah. Yeah.

3 COMMISSIONER CARR SMITH: Thank you.

4 THE CLERK: Chair.

5 CHAIRMAN GIOVANNI: Commissioner Miyasato.

6 COMMISSIONER MIYASATO: Yeah. Real quick.

7 I know you want to move along, but just to clarify,
8 when I asked Mary Alice about that 1.6, which it
9 does mention in section 1 of this bill, I asked if
10 that was grandfathered just for that specific lands
11 that were already within that urban design, and she
12 said no. So it's a wide open, as our executive
13 director had pointed out this -- it's wide open and
14 open for the future that the county will have
15 jurisdiction over all of the -- everything mentioned
16 in this bill.

17 And I guess just the other concern to keep
18 in mind is if it goes to the county, usually goes to
19 the council after the planning commission. And then
20 that's where I -- I guess I have a little bit more
21 concern because then it becomes political rather
22 than -- sometimes it becomes political rather than
23 just being based on a really good presentation where
24 I've seen good presentations come out and it passed.
25 The planning commission goes before the council, 200

1 people show up in opposition, and council reverses
2 their decision at the final hearing because they
3 want to get re-elected. So just a couple of more
4 concerns with turning things over to the county.
5 Thank you.

6 CHAIRMAN GIOVANNI: Thank you,
7 Commissioner. That was very welcome comments and
8 very enlightening, and I think we're on board.
9 Thank you.

10 So, Commissioners, I think we got a clear
11 direction on this one. If -- if anyone feels
12 differently, let me know. We'll move forward.

13 Okay. Next bill is item agenda -- pardon
14 me. Any more -- anybody want to do public testimony
15 on this one?

16 THE CLERK: Seeing none in the Q and A
17 feature, Chair.

18 CHAIRMAN GIOVANNI: Okay. Then we'll move
19 forward. So agenda item number 12 decision on SB740
20 and companion bill HB777. Any public -- anybody
21 wanting to do public testimony on these?

22 THE CLERK: Seeing none in the Q and A
23 feature, Chair.

24 CHAIRMAN GIOVANNI: Thank you.

25 Mr. Orodener, will you and your staff

1 please summarize this bill and express your concerns
2 and recommendations?

3 THE CLERK: Chair, do we want to put on
4 the record that Ken Hayashida joined us at 10:15
5 a.m.?

6 CHAIRMAN GIOVANNI: Oh, great.

7 Welcome, Ken. I didn't -- I have to
8 apologize. I didn't notice. The screen is very
9 small here.

10 COMMISSIONER HAYASHIDA: Sorry about that.
11 I'm in my office with nobody else in here with me.

12 CHAIRMAN GIOVANNI: Okay. Thank you for
13 clarifying and welcome.

14 So just for the record, we now have all
15 but two commissioners in attendance, so a super
16 quorum.

17 So back to item number 12, Mr. Orodenger.

18 MR. ORODENKER: Thank you, Mr. Chair.
19 These bills, these two bills, are actually fairly
20 simple and to a certain extent welcome. It
21 authorizes us, the Land Use Commission, to designate
22 another agency, including but not limited to the
23 Office of Planning and the Department of Agriculture
24 or Agribusiness Development Corp to monitor
25 compliance with any restrictions imposed on a

1 special permit. We don't have any problem with this
2 bill. We welcome it.

3 I think that what we may hear OPSD and the
4 Agribusiness Development Corp say is that they don't
5 have the staff to do this, but the intent of the
6 bill we're fine with. It doesn't impact us really.
7 It just gives us the ability to have somebody else
8 watch over the special permits. My advice on this
9 would -- would be to testify that we support the
10 intent, but we defer it to the other agencies with
11 regard to their ability to conform their operations
12 to do this.

13 CHAIRMAN GIOVANNI: Okay. So you
14 recommend we support the intent of the bill but we
15 defer to other agencies that would be called upon to
16 implement the measures in the bill?

17 MR. ORODENKER: That is correct.

18 CHAIRMAN GIOVANNI: Okay. Commissioners,
19 comments?

20 Commissioner Carr Smith.

21 COMMISSIONER CARR SMITH: Was LUC involved
22 at all in -- in this bill?

23 MR. ORODENKER: No, we are not.

24 COMMISSIONER CARR SMITH: Okay. And how
25 is it done now? How is the enforcement taken care

1 of?

2 CHAIRMAN GIOVANNI: This is monitoring,
3 not enforcement.

4 COMMISSIONER CARR SMITH: Monitoring.

5 MR. ORODENKER: Monitoring. We don't have
6 the staff to monitor. And so what happens is that
7 we rely on either the counties who are there or
8 neighboring landowners are interested parties to
9 tell us when there's been a violation.

10 COMMISSIONER CARR SMITH: Thank you.

11 COMMISSIONER U'U: I just wanted to
12 mention, I know on counties, the planning commission
13 on Maui monitors the special use permits, so.

14 CHAIRMAN GIOVANNI: And a lot of times
15 it's that they provide -- this is Chair. A lot of
16 times it, you know, the -- it comes from a complaint
17 by a neighbor or somebody that might be affected by
18 -- or someone who has a personal interest in a
19 condition, and they'll bring it to our -- to the
20 attention of either the county or the state Land use
21 Commission. And that's what raises the -- the flag,
22 so to speak. But there's no proactive monitoring.
23 It's always been -- that's -- that's not 100
24 percent.

25 COMMISSIONER U'U: Sure.

1 CHAIRMAN GIOVANNI: Commissioner Lee.

2 COMMISSIONER LEE: Thank you. Yeah. Just
3 to clarify, this bill doesn't do enforcement. It's
4 just to monitor compliance, right? So let's say the
5 pharma ag tells us, hey, these guys are not in
6 compliance, what would the next step be?

7 MR. ORODENKER: The next step would be for
8 us to schedule a hearing to -- well, special permits
9 don't technically have the order to show cause
10 provision in them, but what we can do is we can
11 revoke the special permit.

12 CHAIRMAN GIOVANNI: Could you ask for a
13 status?

14 MR. ORODENKER: Yeah, we -- we would ask
15 for a status conference and then give the
16 petitioners the opportunity or the landowner the
17 opportunity to explain to us why or -- why or why
18 they are not in compliance with the decision and
19 order. Since special permits are -- have -- have a
20 limited time frame anyway, I mean, we have the
21 ability to shorten that time based on the evidence
22 that's presented to us. So this is an area that is
23 sort of in the twilight zone of land use. And in
24 Hawaii, most of the time in the past when special
25 permits have been violated, this resulted in a

1 lawsuit, and we weren't even involved, so.

2 CHAIRMAN GIOVANNI: Commissioner Lee.

3 COMMISSIONER LEE: Thank you for the
4 explanation. I'm wondering, why don't we just
5 support the bill? Why just support the intent?

6 MR. ORODENKER: Well, because we don't
7 want to step on the other agency's toes. You know,
8 if Mary Alice, for instance, of Office of Planning
9 and Sustainable Development is going to come in and
10 say, you know, we just don't have the staff to do
11 this, or ADC is going to say the same thing. That's
12 not our call.

13 COMMISSIONER LEE: Okay. Thank you.

14 MR. ORODENKER: Yeah.

15 COMMISSIONER KAHELE: I got a question,
16 Chair.

17 CHAIRMAN GIOVANNI: Sure. Commissioner
18 Kahele.

19 COMMISSIONER KAHELE: Yeah, so which
20 agency would they be looking at in -- in accomplish
21 this -- this goal? Are we looking at funding this
22 agency or funding the agency is going to be
23 monitoring?

24 MR. ORODENKER: That's up to the
25 legislature.

1 COMMISSIONER KAHELE: So we're looking at
2 monies. We need monies.

3 MR. ORODENKER: Yeah. I mean, if -- if I
4 were Mary Alice, for instance, or ADC, and I was --
5 and the bill was moving, I would tell the
6 legislature that I couldn't do it unless they gave
7 me some money.

8 COMMISSIONER KAHELE: Thank you.

9 CHAIRMAN GIOVANNI: Mr. Derrickson.

10 MR. DERRICKSON: If I might maybe just a
11 little bit more context. Remember that special
12 permits that are more than 15 acres go through the
13 county first, and the county generally puts
14 conditions on that special permit. One of those
15 conditions often is a -- a condition that if things
16 are not being done consistent with the special
17 permit, that the county can revert the special
18 permit. Also, chapter 205-12 puts the enforcement
19 authority for things that are going on in the
20 agricultural district on the counties. So that's --
21 that's where usually the action, as Dan was
22 indicating, takes place. Oftentimes, there would
23 have to be a lawsuit to enforce.

24 CHAIRMAN GIOVANNI: So it's not explicitly
25 monitoring, but it -- isn't it often the provision

1 to stay abreast of the progress by a condition
2 requiring annual reports?

3 MR. DERRICKSON: Yes, exactly, right. And
4 again, the annual reports are on the petitioner, the
5 applicant, to -- to do, to give to the counties, to
6 give to Office of Planning and the -- and the Land
7 Use Commission. But then the responsibility for
8 doing, you know, any fact checking of what's put in
9 those annual reports, that's kind of the the
10 question mark. And that -- that goes to the
11 monitoring.

12 CHAIRMAN GIOVANNI: But if the annual
13 reports are delinquent, that's a red flag that --
14 there's probably something not going forward and,
15 and that would come to our attention and we could
16 ask for a -- a hearing to show progress or a status
17 report. Is that right?

18 MR. DERRICKSON: Right, that's correct.

19 CHAIRMAN GIOVANNI: And the county could
20 do the same?

21 MR. DERRICKSON: The county could do the
22 same. Yeah.

23 CHAIRMAN GIOVANNI: Thank you.

24 Anything further on this one before I try
25 to summarize?

1 Okay. So we agree with the intent of this
2 -- our position is we agree with the intent. We're
3 not going to specifically say that we are in support
4 or in opposition in part because it -- it does
5 require other agencies to actually put -- to
6 implement the provisions, and it's up to them to
7 make their own case or if they're able to do that.
8 But increased monitoring of the -- of a decision and
9 order's requirements is something that we would
10 welcome, and we empower the -- we authorize the
11 executive director to make that case.

12 MR. ORODENKER: Thank you, Chair.

13 CHAIRMAN GIOVANNI: Okay, fair enough.
14 Okay. So I didn't mention that we will be taking
15 about a five-minute break on an hourly basis just
16 for biomedical reasons, but we're going to lose some
17 commissioners here in the early afternoon. So even
18 though we've arranged for lunch, we're going to try
19 power through, okay? See if we can --

20 So I know that Commissioner Carr Smith,
21 your -- your stop is at 1:30. Is that correct?
22 1:45.

23 Anybody have a stop before 1:45 today?
24 Hearing none, we'll. We'll shoot for 1:30 and --
25 and see if we can do that. Thank you.

1 Okay. Next one is item number 13, which
2 is House Bill 826. Ms. Kwan, does anybody want to
3 testify on that one?

4 THE CLERK: Seeing none in the Q and A
5 feature, Chair.

6 CHAIRMAN GIOVANNI: Thank you.

7 Mr. Orodenger, please give us a summary of
8 this bill and your recommendations on testimony, if
9 any.

10 MR. ORODENER: This is an Amendment to
11 Chapter 201H but it references Chapter 205, and it
12 authorizes HHFDC to work on projects. It doesn't
13 talk about funding, so I don't -- I don't know what
14 the interconnection is here -- to develop
15 residential housing for long-term rental or
16 workforce fee simple ownership, and they may be
17 permitted by a county planning commission under this
18 section provided that the project area is no larger
19 than 100 acres immediately adjacent to the urban
20 district on lands with soil classified CDERU and
21 identified on maps for only residential use in a
22 county comprehensive general plan.

23 And it says that all applications to the
24 county planning commission shall include written
25 concurrence from the executive director. I'm not

1 sure whether that references the executive director
2 of the Land Use Commission or the executive director
3 of HHFDC has reviewed the project and his agreement
4 that the proposal is solely inclusive of residential
5 housing for long-term rental or workforce fee simple
6 ownership. And then it says that applicants shall
7 be -- applications shall be reviewed pursuant to the
8 process set forth in section 205-6, which is our
9 special use permit process, and that section 91-9
10 which requires a contested case hearing shall only
11 apply at the point of county planning commission
12 review.

13 This is another one of those bills where I
14 -- I don't know what to make of it. It's kind of a
15 chop suey bill. It impacts a lot of different areas
16 without specifying how it's going to work. My -- my
17 feeling on this measure is that until it moves on
18 and there may be some amendments that we should stay
19 out of it. I don't think that allowing special use
20 permits for -- my main problem with the bill is that
21 allowing SUPs to be used for permanent housing is
22 inconsistent with chapter 205. But, you know, I --
23 I don't -- I can't get my arms around this bill
24 because it doesn't make a lot of sense.

25 CHAIRMAN GIOVANNI: So you adequately

1 confused me.

2 MR. ORODENKER: Yeah. My suggestion on
3 testimony is that we testify that -- the way I would
4 testify on this bill, if the commission agrees, is
5 that we're very supportive of any efforts to
6 increase the amount of workforce housing and senior
7 housing. However, there are some serious flaws with
8 this bill that would need to be ironed out before we
9 were comfortable with it.

10 CHAIRMAN GIOVANNI: Okay. And give me a
11 -- so --

12 MR. ORODENKER: Well, it's unclear as to
13 --

14 CHAIRMAN GIOVANNI: Give me an example of
15 a flaw.

16 MR. ORODENKER: Okay. It's unclear as
17 whether -- as to whether the executive director is
18 -- refers to the executive director of HHFDC or the
19 Land Use Commission, number one.

20 CHAIRMAN GIOVANNI: Okay. Give me another
21 flaw.

22 MR. ORODENKER: Okay. No, it doesn't.
23 So, yeah, that's -- that's why it's unclear. It's
24 also unclear whether this is intended to result in a
25 district boundary amendment using the SUP process or

1 it's whether it's going to result in a special use
2 permit for residential housing. I'm not sure
3 whether or not the legislature intends either one of
4 those things. It's unclear.

5 CHAIRMAN GIOVANNI: Okay. Commissioners,
6 questions? Suggestions?

7 COMMISSIONER U'U: I like most of what you
8 said, but I would, I would err the side of we have
9 issues or concerns instead of saying major concerns.
10 I just -- minus the one prior to concerns, I think
11 we find.

12 MR. ORODENKER: Yeah, I don't actually --
13 I -- I shouldn't have used the word major. We never
14 -- we never use the word major when we draft
15 testimony. We just say we have concerns.

16 CHAIRMAN GIOVANNI: Commissioner Carr
17 Smith.

18 COMMISSIONER CARR SMITH: I echo that, and
19 I just encourage you to lead with the support part.

20 MR. ORODENKER: Yeah, we always do.

21 COMMISSIONER CARR SMITH: Okay.

22 MR. ORODENKER: I mean, the --

23 CHAIRMAN GIOVANNI: Support, the intent.

24 MR. ORODENKER: Yes. Yeah. The -- the
25 difficulty with some of these bills is that they are

1 works in progress and without being clear on what
2 the intent is, you know, by the drafter of the bill,
3 I don't know how to tell them to fix it, you know,
4 or how to assist them in fixing it, so.

5 CHAIRMAN GIOVANNI: So, commissioners,
6 anything further? So what I'm hearing is that, and
7 I'll attempt to summarize, that we ask you to
8 testify saying that we appreciate and support the
9 intent of the bill to the extent that we can
10 understand it and that operationally, we have a
11 number of concerns the way it is written, and that
12 has to be cleaned up before it -- it could put -- it
13 be put into effect.

14 MR. ORODENKER: That is correct.

15 CHAIRMAN GIOVANNI: Okay. Good with that.
16 Okay. Anybody want to testify, Ms. Kwan?

17 THE CLERK: Nobody has used the Q and A
18 feature for testimony.

19 CHAIRMAN GIOVANNI: Okay, great. So we'll
20 move on to agenda item number 14, which is a
21 decision on the Commission's position regarding SB
22 1332 and Companion Bill HB 103.

23 Ms. Kwan, does anybody want to testify on
24 these two?

25 THE CLERK: Nobody on the Zoom has used

1 the Q and A feature to testify.

2 CHAIRMAN GIOVANNI: Mr. Orodenger, will
3 you give us a summary of this bill and your
4 recommendations, how to testify, if any?

5 MR. ORODENKER: The summary that's
6 contained on the -- on the agenda is pretty
7 accurate. This is an attempt to circumvent the
8 lawsuit that is currently up at the Supreme Court
9 with regard to important agricultural lands. I
10 understand what they're trying to do, and I -- I
11 actually agree with it.

12 CHAIRMAN GIOVANNI: Explain it to us.

13 MR. ORODENKER: Okay. So when the City
14 and County of Honolulu came in with their important
15 agricultural land designation proposal, there were a
16 number of issues that were raised during the course
17 of that hearing, one of them being notice because it
18 took eight years for them to complete it. And --
19 but another big issue that was raised -- I'm not
20 sure if it was legitimate, and that's why we're
21 waiting for the -- to hear from the Supreme Court,
22 is that the land -- designating land IAL changes the
23 landowner's interest in their land because the IAL
24 statute could be read to say that only people
25 associated with farming the land could live on the

1 property. I think that was an inaccurate
2 interpretation, but the courts are going to tell us
3 whether that's correct or not.

4 So what this bill does is it tries to
5 clarify that -- actually, it removes the -- the
6 language in the IAL section of our statutes. And
7 the implication would be that the designation of IAL
8 lands does not change the provisions of Chapter 205
9 with regard to regular agricultural land that would
10 allow housing and people to live on the property.
11 We're kind of dancing around on the head of a pin
12 here. This is an attempt to fix that. I don't
13 think we have a problem with the intent, but most of
14 the legislators are aware that this is up at the
15 Supreme Court, so I'm not sure this bill is going to
16 have any legs. My proposal on testimony is that
17 we're just -- we support the intent, but we're there
18 to answer questions.

19 CHAIRMAN GIOVANNI: So I'd like to just
20 take a moment and share with my fellow commissioners
21 my recollection of this hearing that we had on IAL
22 land that was brought forward by City and County
23 Honolulu. I understood at the time that the
24 counties independently could do, through a planning
25 study, and designate IAL lands in their county and

1 then bring that to the Land Use Commission that
2 says, we've done this study, these maps, this
3 analysis, and we're going to make these lands IAL.

4 The Land Use Commission denied or rejected
5 their plan. After -- and they worked really hard on
6 it. It took years. They didn't meet the deadlines,
7 they'd come in late, all that stuff, and the other
8 counties haven't even done it. They've been letting
9 Honolulu go first. It was rejected on the base --
10 on two bases that I recall. One was that the
11 affected landowners on Honolulu did not get proper
12 notification. There were -- there was an attorney
13 that represented a thousand landowners that said my
14 thousand people didn't -- never got noticed that
15 this was even going on, so we couldn't interact with
16 the -- with the City and County Honolulu to make our
17 case, number one.

18 And number two, it was rejected because it
19 appeared, based on the criteria that was used, that
20 it was very much in favor of large landowners. But
21 the small landowners, the small farms were, like,
22 being forced to kind of go along, and they weren't
23 getting adequate hearing, so it was out of -- out of
24 balance. So it was rejected with the -- with the
25 suggestion go fix those problems and come back to us

1 and -- and then maybe we can, you know, make sure
2 everybody gets a notice, make sure everybody gets an
3 opportunity to say what they want about their land.

4 And then there was these other items like
5 this one about, could you live on the land if it's
6 designated. It was very confusing to all of us,
7 right? But it was rejected, and nothing's come
8 forth since then. Now you got this lawsuit. Is
9 that correct?

10 MR. ORODENKER: That's correct. I mean,
11 this is type of thing that attorneys just love, you
12 know, because it's --

13 CHAIRMAN GIOVANNI: Lawsuits.

14 MR. ORODENKER: Yeah. It's the issue with
15 whether or not you could live on the property was
16 directly connected to the constitution and -- the
17 U.S. Constitution and rights and property. And so
18 the argument was that this is a due process issue
19 and that landowners are entitled to a due process
20 hearing before they can -- things can be designated
21 IAL. The difficulty that the county had, and I
22 happen to agree with the county on this one, is
23 that, you know, the IAL statute -- and -- and I was
24 actually involved at the legislature when this was
25 being promulgated.

1 The IAL statute was an attempt by the
2 legislature to deal with the Supreme Court's
3 continual reprimanding of -- of the legislature
4 because they didn't implicate --implement Article 11
5 of the Constitution, which requires important
6 agricultural lands to be protected, so they came up
7 with this process. It was recognized at the time
8 that it was voted on on the floor that it was flawed
9 and that it needed -- it was going to need further
10 review. The legislature never took it up again.
11 And so we're stuck with something that really
12 doesn't work all that well.

13 CHAIRMAN GIOVANNI: My personal sense was
14 that if we -- at the time, if the Land Use
15 Commission would have accepted the Honolulu City and
16 County Honolulu plan, it would have been a thousand
17 lawsuits.

18 MR. ORODENKER: Yeah, yeah.

19 CHAIRMAN GIOVANNI: To follow. And
20 nothing would happen. It was a mess.

21 MR. ORODENKER: In my personal opinion,
22 the IAL statute would have been much better --
23 because the IAL -- what the IAL statute was really
24 intended to do was to be a planning tool. It was
25 supposed to give the counties the ability to

1 designate where the most important agricultural
2 lands were in the state so they could be preserved
3 in compliance with the Constitution. It wasn't
4 intended to change anybody's interest in land.

5 And so the County and Land Use Commission
6 staff were taken aback by this argument that, well,
7 you know, if you -- if you change what the criteria
8 for living on the land, then it's a due process
9 issue. The statute would have been much better, and
10 this is kind of what this bill intends to do, if
11 they hadn't mentioned the residential issue at all
12 and just left it as part of 205-4.5 with regard to
13 general agricultural land, then it wouldn't have
14 been an issue at all. But because the statute
15 contains that provision, there was an argument that
16 there was a due process.

17 COMMISSIONER CARR SMITH: This one?

18 MR. ORODENKER: Yeah. No, no. This bill.
19 Yeah, yeah. This bill would take out that separate
20 section in the IAL statute on housing so that it
21 would go back to 205-4.5, which would solve -- maybe
22 solve one of the problems with the IAL statute. But
23 I mean, personally, I believe that we should wait
24 until the Supreme Court renders the decision. But I
25 mean, I -- I don't -- what, what this bill is

1 attempting to do, we don't have a problem with, and
2 we actually support.

3 CHAIRMAN GIOVANNI: So you are
4 recommending that you would testify --

5 MR. ORODENKER: In support.

6 CHAIRMAN GIOVANNI: -- in support?

7 MR. ORODENKER: In support with concerns.

8 CHAIRMAN GIOVANNI: In support with
9 concerns.

10 MR. ORODENKER: And the concern would be
11 that the matter is up in front of the Supreme Court,
12 and anything that the legislature does may get
13 undone.

14 CHAIRMAN GIOVANNI: So the cart before the
15 horse argument?

16 MR. ORODENKER: Yes.

17 CHAIRMAN GIOVANNI: Commissioners,
18 anything further?

19 COMMISSIONER KAHELE: I've got a question.

20 CHAIRMAN GIOVANNI: Go ahead, Commissioner
21 Kahele.

22 COMMISSIONER KAHELE: When you refer to
23 farm cluster housing and there's going to be an
24 incentive, is the incentive going to be for the
25 actual worker or it's going to be for the owner of

1 the farm?

2 MR. ORODENKER: For the landowner?

3 COMMISSIONER KAHELE: The landowner.

4 Thank you.

5 CHAIRMAN GIOVANNI: Commissioner Carr
6 Smith.

7 COMMISSIONER CARR SMITH: Yeah. Just for
8 the record, I -- I like most of what I read here. I
9 think it sounds great and addresses housing issues.
10 Sustainability in terms of our food production,
11 might make that easier. I just think there's a lot
12 of things about this that are good.

13 MR. ORODENKER: In a vacuum, we would just
14 support this bill flat out.

15 COMMISSIONER CARR SMITH: Yeah.

16 MR. ORODENKER: But because of the Supreme
17 -- because it's up at the Supreme Court.

18 CHAIRMAN GIOVANNI: It's a cart and horse.
19 Cart and horse.

20 MR. ORODENKER: We have to warn the
21 legislature that, hey, look, you know --

22 COMMISSIONER CARR SMITH: That's out of
23 our control, the Supreme Court. But we can --

24 MR. ORODENKER: Yeah.

25 COMMISSIONER CARR SMITH: We can support

1 this.

2 MR. ORODENKER: Yeah.

3 CHAIRMAN GIOVANNI: Okay. So our position
4 is that we would support this bill. However, it's
5 complicated because there's an active Supreme Court
6 case that could render it moot, and we should wait.
7 Our position is wait till that clarifies, and then
8 the bill might be considered at that time. That
9 makes sense.

10 MR. ORODENKER: That's correct, yes.

11 CHAIRMAN GIOVANNI: Okay.

12 MR. ORODENKER: That's what I'm
13 suggesting.

14 CHAIRMAN GIOVANNI: Ms. Kwan, any further
15 public testimony on this item?

16 THE CLERK: Seeing none in the Q and A
17 feature, Chair.

18 CHAIRMAN GIOVANNI: Okay, great. We'll
19 move forward to our next item. We'll take this one,
20 and then we'll take a break. This is decision on
21 commission planning SB, Senate Bill 1099. Anybody
22 sign up for testimony on 1099?

23 THE CLERK: Nobody's used the Q and A
24 feature, Chair.

25 CHAIRMAN GIOVANNI: Okay. Mr. Orodenker,

1 would you give us a summary of Senate Bill 1099 and
2 your recommendations?

3 MR. ORODENKER: We would strongly support
4 this measure except for the fact that there's no
5 money with it. The counties haven't been able to --
6 or have not -- chosen not to undertake the IAL
7 designation process, and that's a concern.

8 CHAIRMAN GIOVANNI: What is the bill.

9 MR. ORODENKER: Oh, I'm sorry. The bill
10 is to --authorizes the Land Use Commission -- it's
11 very simple. It authorizes the Land Use Commission
12 to designate the lands as important agricultural
13 lands. If the county fails to identify IAL lands by
14 December 31, 2027. Like I say, the counties haven't
15 done it. They view it as an unfunded mandate, and
16 to a certain extent they're correct. It takes a lot
17 of staff and effort to do this. We welcome the
18 opportunity to undertake it. But I would point out
19 to the legislature that we currently don't have the
20 staff to undertake it and that we would need funding
21 and positions to do it.

22 CHAIRMAN GIOVANNI: So basically it's not
23 being done. The deadline will likely be approached,
24 but this bill would then shift the responsibility to
25 Land Use Commission. Land Use Commission would

1 welcome it provided that it is funded to do so.

2 MR. ORODENKER: And there's a two-year
3 time frame for the counties to come forward. So, I
4 mean, one of the things about this bill is that if
5 it does pass, we have two years to work the
6 legislature for funding. If the counties don't --

7 CHAIRMAN GIOVANNI: Then you should raise
8 that issue now anyway.

9 MR. ORODENKER: Yes, we'll start now. It
10 takes at least two or three cycles before we get
11 money, so.

12 CHAIRMAN GIOVANNI: Okay. Commissioners,
13 questions, comments? Hearing none, then we would
14 concur with your recommended approach, which is to
15 support the intent of the bill because the IAL is
16 not being done by the counties and they may not make
17 that deadline. If they don't, it would shift to us,
18 but we wouldn't have the resources to do it. So
19 there needs to be some companion legislation to
20 provide dollars, correct?

21 MR. ORODENKER: That is correct.

22 CHAIRMAN GIOVANNI: Okay.

23 COMMISSIONER KAHELE: I got a question,
24 Chair. So we are actually -- Dan is actually going
25 to go up and support the bill?

1 CHAIRMAN GIOVANNI: The intent. Yeah.

2 COMMISSIONER KAHELE: The intent of the
3 bill.

4 CHAIRMAN GIOVANNI: Correct? Or would you
5 want to be stronger than that?

6 MR. ORODENKER: I think it amounts to the
7 same thing. You know, I mean, we're supporting the
8 bill, but we're saying we'll do it, but give us
9 money, so.

10 CHAIRMAN GIOVANNI: Ms. Kwan, anybody want
11 to testify on this?

12 THE CLERK: Seeing none in the Q and A
13 feature, Chair.

14 CHAIRMAN GIOVANNI: Okay. So we've got --
15 I think we've got four left. Let's take a five-
16 minute break, and we'll come back at 11:01 or 11:02.
17 Take a recess.

18 (Recess taken from 10:56 to 11:02 a.m.)

19 CHAIRMAN GIOVANNI: Okay. We'll go back
20 in session. It is 11:02. So the next order of
21 business is item 16 in our agenda, which is a
22 decision on Commission position regarding SB 26 and
23 HB 1451.

24 Ms. Kwan, has there been anybody that
25 signed up for oral testimony on this one?

1 THE CLERK: Seeing none in the Q and A
2 feature, Chair.

3 CHAIRMAN GIOVANNI: Thank you.

4 Mr. Orodenger, will you give us a summary
5 of this bill and your suggested approach to
6 testimony for this bill?

7 MR. ORODENKER: Thank you, Mr. Chair. We
8 -- the only reason we're involved in this bill is
9 that the executive director of the LUC is one of the
10 named members of this task force. Absolutely no
11 problem what this task force is attempting to
12 accomplish, and we would testify in support.

13 CHAIRMAN GIOVANNI: Do you see any
14 concerns in the details?

15 MR. ORODENKER: Well, studies are studies.
16 All right. I don't see any, any difficulty. I
17 mean, there are -- it doesn't lay a lot of costs on
18 us and OPSD because we both already have GIS
19 programs, and it also appropriates a million dollars
20 to fund staff positions and for contractual
21 services. I mean, we would support this -- this
22 measure. I -- I think that that fact that it has a
23 million dollars attached to it is going to make it
24 problematic at the legislature.

25 CHAIRMAN GIOVANNI: Who would lead this

1 study? What agency would lead it?

2 MR. ORODENKER: Excuse me?

3 CHAIRMAN GIOVANNI: What agency would lead
4 it?

5 MR. ORODENKER: The agency is -- that is
6 designated as the lead is HCDA, but it's an attached
7 task force.

8 CHAIRMAN GIOVANNI: Task force within the
9 HCDA?

10 MR. ORODENKER: No, it's -- it's only
11 attached to the HCDA for administrative purposes.
12 The chair is the -- the head of OPSD.

13 CHAIRMAN GIOVANNI: I'm confused. So the
14 summary says a task force within HCDA.

15 MR. ORODENKER: That's kind of inaccurate.
16 Because if section 1 of the bill provides there is
17 -- says there is -- established the Affordable
18 Housing Land Inventory Task Force to be placed in
19 the Hawaii Community -- Community Development
20 Authority party for administrative purposes.

21 CHAIRMAN GIOVANNI: But for --

22 MR. ORODENKER: Similar to the way we're
23 attached to --

24 CHAIRMAN GIOVANNI: Okay. But for
25 execution, it's OPSD?

1 MR. ORODENKER: Yes, that's correct.

2 CHAIRMAN GIOVANNI: Okay.

3 MR. ORODENKER: I mean, I --

4 CHAIRMAN GIOVANNI: That should be cleaned
5 up, right?

6 MR. ORODENKER: Yeah. Yeah. And I expect
7 OPSD to testify to that effect.

8 CHAIRMAN GIOVANNI: Okay. Commissioners,
9 questions, concerns, suggestions?

10 Hearing none -- Carr Smith.

11 COMMISSIONER CARR SMITH: Yeah, it looks
12 like there's a hearing on this tomorrow.

13 MR. ORODENKER: I haven't -- I've been
14 here, so I haven't been checking.

15 COMMISSIONER CARR SMITH: Yeah, yeah.
16 Yes. So just pointing that out in case you didn't
17 see that.

18 MR. ORODENKER: Yeah. I mean, our
19 testimony would be irrelevant to this because all we
20 were going to say would be, "We support."

21 COMMISSIONER CARR SMITH: Yeah,
22 understood.

23 MR. ORODENKER: You know, and OPSD is the
24 one we would expect to take the lead on this.

25 COMMISSIONER CARR SMITH: Yeah. Thank

1 you.

2 CHAIRMAN GIOVANNI: Okay. So the guidance
3 is that our position is we would support it, ask you
4 to support it, subject to -- and attend the hearing
5 if you can.

6 MR. ORODENKER: Yes, that's correct. What
7 we would -- our testimony would -- if we -- I don't
8 think we have time to get it in. But if the bill --
9 if the bill moves forward, our next -- at the next
10 hearing, our testimony would be that we support the
11 measure, and we defer it to OPSD with regard to any
12 technical issues.

13 CHAIRMAN GIOVANNI: Okay. Good with me.
14 Anybody else? Yeah, we'll go forward with as -- as
15 you suggest.

16 Ms. Kwan, has anybody signed up to testify
17 on this?

18 THE CLERK: Seeing none in the Q and A
19 feature, Chair.

20 CHAIRMAN GIOVANNI: Okay, great, 16. Next
21 one is 17. 17 is a decision on Commission's
22 position regarding SB 498 and House Bill 1294.

23 Ms. Kwan, anybody want to testify on this
24 one?

25 THE CLERK: Seeing none in the Q and A

1 feature Chair.

2 CHAIRMAN GIOVANNI: Thank you.

3 Mr. Orodenger, please summarize this bill,
4 these bills, and your recommendation.

5 MR. ORODENKER: This again is establish a
6 workforce housing group. This one attached to the
7 Agricultural ADC, The Agricultural Development
8 Corporation. Once again, the reason that we're
9 involved is the -- we're named -- the executive
10 director is named -- or the chairperson, actually in
11 this case, so would be -- of the Land Use Commission
12 is directed as a member of the task force, the
13 mayors, the County Planning Department, the Hawaii
14 Farm Bureau, the Hawaii Ag Foundation, Hawaii -- I
15 mean, the intent of this bill is very good, but its
16 -- its implementation will be near impossible
17 because it's so unwieldy. And it also appropriates
18 \$100,000 for the task force, and the task force is
19 located within the -- I think it's -- am I -- am I
20 reading this, correctly, Scott, within ADC? Oh, no,
21 the Department of Agriculture. Yeah, yeah.

22 We don't have a problem with this, and
23 we're more than happy to participate. I think my
24 testimony would be to suggest that with regard to
25 the section that calls for the chairperson, the Land

1 Use Commission, to -- to participate, I would just
2 add the words "or his designee." So the chairperson
3 isn't overburdened with this.

4 CHAIRMAN GIOVANNI: Commissioners, any
5 comments, questions?

6 Hearing none, I think there is agreement
7 to support the intent of the bill, but to clarify
8 the respective role of the EO to be himself or his
9 designee, although you might comment that it looks a
10 bit unwieldy as it's currently drafted. Yeah.

11 Okay. Ms. Kwan, anybody want to testify
12 on that?

13 THE CLERK: Seeing none in the Q and A
14 feature, Chair.

15 CHAIRMAN GIOVANNI: Excellent. So we'll
16 move on to item number 18, which is a decision --
17 our decision -- our position regarding SB197.

18 Ms. Kwan, anybody want to testify on 197?

19 THE CLERK: Seeing none in the Q and A
20 feature, Chair.

21 CHAIRMAN GIOVANNI: Mr. Orodener, please
22 give us your summary of this bill and
23 recommendations on testimony.

24 MR. ORODENKER: This bill would require
25 enhanced notice if we were going to do it -- as it

1 applies to us, if we're going to do a district
2 boundary amendment. Within 30 days of filing of a
3 permit application we have -- we would have to
4 provide public notice. And within four months of
5 the filing
6 of a permit application, we would have to conduct no
7 fewer than three public meetings or hearings. This
8 is where I think it -- it kind of comes off the
9 rails,
10 and that's Section 3. Before proceeding with the
11 project, obtain the community's approval of the
12 project through our referendum. Notice of the -- I
13 mean, I -- I don't think I need to read much more of
14 this. I mean, this would bring development to a
15 screeching halt.

16 CHAIRMAN GIOVANNI: This -- this sounds
17 like something that will upset Commissioner U'u and
18 me.

19 MR. ORODENKER: Yeah.

20 CHAIRMAN GIOVANNI: This is going in the
21 opposite direction of making progress and -- and
22 streamlining the process.

23 MR. ORODENKER: I -- I cannot in good
24 faith support this bill because I think it'll have a
25 very negative impact on the amount of time it takes

1 to process permits and applications. I mean, this
2 doesn't just apply to us. It applies to UH, and it
3 applies to -- what's the other agency that it
4 applies to? DHHL, yeah.

5 CHAIRMAN GIOVANNI: So who's sponsoring
6 this bill? Who -- where'd it come from?

7 MR. ORODENKER: Kurt Fevella.

8 COMMISSIONER U'U: Fevella had submitted
9 it before.

10 MR. ORODENKER: Yeah. This -- yeah. I
11 mean, I'm -- yeah, it's -- it's -- the chances of
12 this having to testify on this bill are very low.

13 CHAIRMAN GIOVANNI: But assuming you -- it
14 does make it to hearing, are you recommending we
15 testify in opposition?

16 MR. ORODENKER: We're not -- if this
17 commission authorizes me to do so, I will draft
18 testimony in opposition. But absent that, what I
19 would do is I would express that we are -- the
20 testimony will read that we are in favor of measures
21 that increase transparency. However, this bill is
22 -- has significant flaws and make reference to that
23 specific section and would say this would result in
24 projects being delayed for many years.

25 COMMISSIONER LEE: Chair, I'd like to send

1 a stronger message than that. I'll make the motion
2 to oppose this bill.

3 CHAIRMAN GIOVANNI: So I'm -- we're in
4 discussion right now. I'm not calling for motions,
5 but I think your point is well taken, Commissioner
6 Lee. I think we have a choice. Choice is to
7 proceed with raising red flags and cautions about it
8 as being something. But we also have the option to
9 send a stronger message, which is to explicitly
10 oppose it. I want all commissioners to understand
11 those options. And now I'll call for a motion.

12 So, Mr. Lee, would you like to make a
13 motion?

14 COMMISSIONER LEE: Yes, Chair, I move that
15 we oppose SB197 and/or authorize the executive
16 director to submit testimony opposing SB197.

17 CHAIRMAN GIOVANNI: Do I have a second to
18 that?

19 COMMISSIONER KAHELE: I have a couple of
20 questions.

21 CHAIRMAN GIOVANNI: You'll have
22 opportunity, but I need a second first before we
23 even get there.

24 Does anybody second the motion to formally
25 authorize executive officer to oppose?

1 COMMISSIONER CARR SMITH: I'll second it
2 for discussion.

3 CHAIRMAN GIOVANNI: Okay. Now we have
4 discussion. So first, maybe answer your question,
5 Mr. Lee. Why do you want to send a stronger
6 message?

7 COMMISSIONER LEE: I think just to be
8 consistent with all our discussions up to this date,
9 that if we just get a little bit weaselly about it,
10 then it doesn't send the right message on our intent
11 and our feelings about this. I think this is just
12 -- just an outrageous bill. It would just shut down
13 development completely, as was mentioned earlier.
14 And I don't think we -- that's the position that we
15 should take. I think we should send a strong
16 message if this gets heard to the legislature that
17 we oppose something like this and make it clear so
18 that it shows where -- or if that's our position.

19 CHAIRMAN GIOVANNI: And the -- if I hear
20 you correctly, I'm just trying to get clarity here.
21 It would add more bureaucracy to the process and
22 string out the approval process.

23 COMMISSIONER LEE: Yeah, I can't think of
24 any project that would be approved if this was to
25 pass.

1 CHAIRMAN GIOVANNI: Commissioner Kahele,
2 you had questions?

3 COMMISSIONER KAHELE: Yes, I got a
4 question. You know, we -- well, according to all of
5 the bills and many of the bills that's already been
6 addressed by the -- whether the state or the -- or
7 by the the senators or to the House, we've always
8 taken a position to stay neutral. So in this bill,
9 Senate Bill 197, if the vote is taken, and it's --
10 and the motion's passed, what would be the
11 director's testimony when he goes out there or
12 submit testimony that he was -- he was given the --
13 the authority by the commissioners to oppose the
14 bill, or is he going to be speaking on behalf of
15 just the department?

16 CHAIRMAN GIOVANNI: Speaking on behalf of
17 the commission.

18 MR. ORODENKER: Yeah. Our testimony would
19 be that the Land Use Commissioners -- the Land Use
20 Commission has voted to oppose this measure so long
21 as it contains -- I mean, it would be longer than
22 this, but in a nutshell, so long as it contains
23 Provision 3.

24 COMMISSIONER KAHELE: All right, thanks.

25 COMMISSIONER CARR SMITH: Provision 3?

1 MR. ORODENKER: Yeah, that's the one that
2 requires the referendum.

3 COMMISSIONER CARR SMITH: Okay. Got it,
4 got it. I don't know. I -- we haven't said an
5 absolute no to anything. I'm not sure that I feel
6 that we need to. That's kind of my feeling about
7 the matter. I think we can make comments without
8 necessarily being super strong on this, but I -- I
9 hear where you're coming from, Brian, but I'm not
10 sure that we need to.

11 CHAIRMAN GIOVANNI: Okay. Mr. U'u?

12 COMMISSIONER U'U: Same -- same thought
13 process. I think we can be diplomatic about this.
14 You know, I -- I don't know if it can grow legs or
15 not, but we can see what happens. I agree with
16 Brian, and I agree with Nancy that I think we don't
17 need to put ourselves out there to -- to oppose
18 something that potentially might not have any legs
19 to crawl on, so -- and it's kind of being respectful
20 at the same time, while not being blunt, so.

21 CHAIRMAN GIOVANNI: I like that. So
22 anybody on -- or anything from them? I don't see
23 it.

24 COMMISSIONER KAHELE: I got a comment.

25 CHAIRMAN GIOVANNI: Mr. Kahele.

1 COMMISSIONER KAHELE: You know, and -- and
2 most of the bills that's on the list and I got to
3 agree with -- with Commissioner Carr. I don't think
4 we should be getting involved and -- and now making
5 one strong position. I understand where Brian's
6 coming from. You know, he wants to send a strong
7 message and -- which is great. But, you know, I got
8 to agree with Mr. U'u, Commissioner U'u. You know,
9 might grow legs. We don't know. You know, we're
10 dealing with some people here that strongly feels
11 that -- that we should go through this process that
12 that's in this bill. But if it's -- if this bill is
13 passed, which I don't think it's going to go
14 anywhere, I mean, we ain't going to get no projects
15 completed because everybody's got this -- this
16 belief that it shouldn't be in my backyard. You
17 know, we're getting problems down in -- in my
18 hometown, you know, with the development going over
19 there with --

20 CHAIRMAN GIOVANNI: Yeah.

21 COMMISSIONER KAHELE: You know, I just
22 want to leave it at that. And I just wanted to add
23 that comment. Thank you.

24 MR. ORODENKER: Sure. I --

25 CHAIRMAN GIOVANNI: One second.

1 Commissioner?

2 MR. ORODENKER: I just want to point out
3 that this bill is actually aimed at Mauna Kea.

4 CHAIRMAN GIOVANNI: It's what?

5 MR. ORODENKER: It's actually aimed at
6 Mauna Kea. We just got swept up in it.

7 CHAIRMAN GIOVANNI: The mountain?

8 MR. ORODENKER: Yeah. TMT.

9 COMMISSIONER CARR SMITH: Chair, I think
10 Myles has his hand up.

11 CHAIRMAN GIOVANNI: Okay. I'm going to go
12 first the Commissioner Lee, and then, Myles, calling
13 on you.

14 Commissioner Lee.

15 COMMISSIONER LEE: Thank you, Chair.
16 Yeah, I hear what the folks are saying, and -- and
17 you guys might be surprised, but I can be diplomatic
18 sometimes. Everyone's laughing, but, yeah, I mean,
19 if it would help, I could amend the motion to say
20 just we authorize to oppose Section 3, but, you
21 know, if -- the language that all nearby residents
22 would do a referendum is just insane, you know. Not
23 all residents of the county, but just the nearby
24 neighbors. I mean, that's the definition of YIMBY,
25 you know, so. But, you know, if it -- if it helps,

1 I'd be open to amending it and -- and just saying to
2 oppose Section three, but I'll defer to everyone
3 else's opinion.

4 CHAIRMAN GIOVANNI: Okay, Mr. Miyasato.

5 COMMISSIONER MIYASATO: Thank you, Chair.

6 Yeah. You know, this definitely has concerns, and I
7 think -- well, I know that there's going to be a lot
8 of entities to point out the flaws, and I think
9 it'll be a great number of entities that are going
10 to come forward, if this is ever heard, to point out
11 the flaws in this. And with that said, I believe
12 that would send a strong enough message and us not
13 having to take a hard position. Thank you.

14 CHAIRMAN GIOVANNI: Thank you,
15 Commissioner.

16 I concur with the -- the consensus I'm
17 hearing from the preponderance of commissioners. We
18 can send a very strong message without, and we can
19 authorize Dan to -- to send a stronger message
20 without taking a formal position of opposition to
21 the bill. That would be my vote. So I will be
22 voting against the motion.

23 Commissioner Carr Smith.

24 COMMISSIONER CARR SMITH: I would actually
25 encourage you to just withdraw it. I mean, we

1 haven't --

2 COMMISSIONER LEE: I was just going to get
3 to that. So I withdraw my motion.

4 CHAIRMAN GIOVANNI: Thank you,
5 Commissioner Carr Smith.

6 Thank you, Commissioner Lee.

7 So the consensus is, Mr. Orodenger, of
8 this commission, that we don't like this bill as
9 drafted. We're not going to stand in formal
10 opposition to it, but we encourage you to very
11 strongly point out its flaws. And I would earmark
12 this bill that if it does get legs, you bring it
13 back to the commission for another discussion and
14 agenda.

15 MR. ORODENER: Most certainly will,
16 Chair.

17 CHAIRMAN GIOVANNI: Is that -- is that
18 fair, everyone?

19 UNIDENTIFIED: Yeah.

20 CHAIRMAN GIOVANNI: Okay. So, Ms. Kwan,
21 anything further in terms of public testimony on
22 this bill?

23 THE CLERK: Seeing none on the Q and A
24 feature.

25 CHAIRMAN GIOVANNI: Okay, great. Wow.

1 It's -- it's -- we're getting to the point where
2 we're going to adjourn this meeting, but I want to
3 speak about our next meeting which is February 19th
4 in Maui. So this is a status report. We expect it
5 to last only a couple of hours. So we've made
6 arrangements to schedule the meeting at 9:30 to
7 start, which is -- gives all the neighbor island
8 folks a time to connect and get there and -- by 8:45
9 and 45 minutes to then relocate to the meeting
10 location. We're going to continue that meeting.
11 We're going to bomb through because there are a
12 number of commissioners that have hard stops about
13 1:30. So we're going to go four hours with breaks,
14 but we're going to try to adjourn the meeting at
15 1:30 or sooner, which we think we'll be able to do.
16 So please make personal plans accordingly. And I
17 will not be making a lunch request for this meeting.
18 And if all goes well, we'll get to the airport a
19 little early. We can have lunch on our own time at
20 the airport to go home.

21 Is that -- is that okay with everybody?

22 COMMISSIONER KAHELE: Sure. I just want
23 to make an announcement. I know I made a commitment
24 to attend these meetings we apparently had
25 scheduled,

1 which I wasn't aware of. I got some trust fund
2 meetings I need to attend, so I may not be able to
3 come out to these meetings for the 20 and the 21st
4 or 19 and the 20th.

5 CHAIRMAN GIOVANNI: It's only -- only 19.

6 COMMISSIONER KAHELE: Yeah. Oh, it's only
7 the 19th. Yeah. I'm going to be --

8 CHAIRMAN GIOVANNI: Let us know.

9 COMMISSIONER KAHELE: Yes, I will let you
10 know.

11 CHAIRMAN GIOVANNI: Is it a hybrid
12 meeting, Ms. Kwan?

13 THE CLERK: It's an in-person meeting.

14 CHAIRMAN GIOVANNI: It's an in-person
15 meeting. So let us know. We'll have a quorum.

16 COMMISSIONER KAHELE: Yeah, I'll let --
17 I'll confirm with Ariana.

18 CHAIRMAN GIOVANNI: It's a status meeting.
19 You could review the -- the Zoom recording after if
20 you cannot make it.

21 COMMISSIONER KAHELE: Yes. Thank you,
22 Chair.

23 CHAIRMAN GIOVANNI: Okay. So we will not
24 ask for lunch at that meeting, and we'll ask for a
25 9:30 start. And let me encourage all -- everybody

1 to make travel arrangements to be there by 8:45 and
2 assuming a 1:30 or sooner.

3 Commissioner Lee, you had your hand up.

4 COMMISSIONER LEE: Yeah. You kind of
5 answered my question. I was wondering why this
6 can't be a hybrid meeting.

7 CHAIRMAN GIOVANNI: Why can it not be a
8 hybrid meeting?

9 COMMISSIONER LEE: Just equipment issues
10 or?

11 THE CLERK: It can. It's just I'm not
12 sure if the MACC Internet will go in and out at all,
13 and it's just to prevent less technical difficulty.

14 CHAIRMAN GIOVANNI: We have had
15 difficulties there.

16 THE CLERK: Yeah. So that's why I prefer
17 in person. But if the commission wishes, I can do
18 it hybrid, and we'll just have to adapt as we go.

19 COMMISSIONER LEE: Understood. I'll make
20 -- I'll try to make it in person. Thank you.

21 CHAIRMAN GIOVANNI: Yeah, so will I. So,
22 yeah, we did check flight schedules from all
23 neighbor islands, and you can get there. And if we
24 adjourn at 1:30, you might even be able to get a
25 direct flight home, depending what island you're

1 going to, so. And, of course, Mr. U'u will be
2 driving down the road. Yeah. So okay.

3 COMMISSIONER CARR SMITH: Chair, can I
4 make a comment or two?

5 CHAIRMAN GIOVANNI: Absolutely.

6 COMMISSIONER CARR SMITH: I just wanted to
7 say that I really appreciate the conversation over
8 these bills the last two days. I know that there
9 was some pushback about whether to even do this, but
10 I think it was really beneficial for all of us to go
11 through the process and learn more about things. It
12 brought up a variety of things that I think were
13 good for us.

14 CHAIRMAN GIOVANNI: Well, good. Good to
15 hear that. You know, it wasn't easy. You heard my
16 comments at the outset that I really don't want to
17 turn this into a lobbying organization or anything
18 close to it. But I do think it's helpful to have an
19 understanding of what's going on and to have the
20 dialogue that we did among us. I, for one, am not a
21 proponent of the provisions of the Sunshine Law that
22 doesn't let us talk with each other on common issues
23 except in parties of two or less. I understand it,
24 but it just really hamstrings --

25 COMMISSIONER CARR SMITH: Understood.

1 CHAIRMAN GIOVANNI: -- our ability to make
2 progress. So in that basis, I felt it was very
3 worthwhile.

4 COMMISSIONER CARR SMITH: Yeah, yeah.

5 MR. ORODENKER: Yeah, I -- I would also
6 like to take a moment to thank the commissioners for
7 the discussion. I think that it was very healthy,
8 and staff appreciates it.

9 CHAIRMAN GIOVANNI: Well, good. Thank
10 you.

11 COMMISSIONER CARR SMITH: My other comment
12 was that I appreciate the staff. I know that the
13 whole testimony thing is a bit bizarre.

14 CHAIRMAN GIOVANNI: Very bizarre.

15 COMMISSIONER CARR SMITH: And a lot. And
16 I wanted to wish Miranda Steed a happy birthday.

17 CHAIRMAN GIOVANNI: Oh, happy birthday,
18 Miranda.

19 UNIDENTIFIED: Happy birthday.

20 CHAIRMAN GIOVANNI: I'm not singing
21 though. I can't sing. Okay. Anybody have any
22 last-minute comments or questions? If not, I'm
23 going to move -- I'm going to adjourn. Okay. This
24 meeting is adjourned.

25 (Meeting concluded at 11:27 a.m.)

CERTIFICATE

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

IN WITNESS HEREOF, I have hereunto set my hand this 20th day of February, 2025.



Leslie Gordon