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STATE OF HAWAII

LAND USE COMMISSION MEETING

HYBRID MEETING

AGENDA

DATE: April 23, 2025

TIME: 9:30 a.m.

LOCATION: Virtual and The Arc of Hilo

1099 Waianuenue Avenue, Hilo, HI 96720

1. Call to order
2. Status Update and Possible Action on Docket No. SP73- 159 Toyama Gardens dba Nani Mau Gardens (Hawaii) Discussion and action (if necessary) on the status and progress report concerning compliance with the 10th Amendment to the Land Use Commission Special Use Permit Decision and Order issued on December 4, 2009.

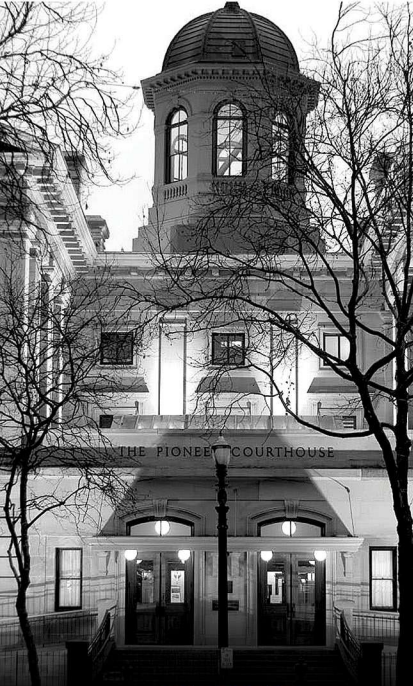
Files pertaining to this docket are available at <https://luc.hawaii.gov/sp73-159>.

Parcel information: TMK No. 2-2-048:013,  
Approximately 23.793 acres located in Waiakea,  
South Hilo, Hawaii.

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3. Report on Ninth Circuit Court Final Decision on  
DW Aina Le'a Development, LLC v. State of Hawaii  
Land Use Commission

The United States Court of Appeals for the  
Ninth Circuit Court issued a memorandum  
(<https://files.hawaii.gov/luc/docs/Memorandum.pdf>)

on February 19, 2025, affirming the district  
court's Ruling in favor of the State of Hawaii Land  
Use Commission in the case brought by DW Aina Le'a  
Development, LLC.

Pursuant to Section 92-4 and Section 92-5, HRS,  
the Commission may go into Executive Session in  
order to consult with its attorney(s) on questions  
and issues pertaining to the Commission's powers,  
duties, privileges, immunities, and liabilities.

4. Approval of Minutes for February 19, 2025

Meeting Minutes are available at:

<https://luc.hawaii.gov/meetings/2020s>

5. Tentative Meeting Schedule

6. Adjournment

BEFORE

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PARTICIPANTS

LUC COMMISSIONERS:

Dan Giovanni, Chair (via Zoom)

Michael Yamane, Vice Chair (via Zoom)

Brian Lee

Bruce U'u

Mel Kahele

Myles Miyasato

Nancy Carr Smith

LUC STAFF:

Daniel Orodener, Executive Officer

Martina Segura, Planner

Ariana Kwan, Chief Clerk

Miranda Steed, Esquire, Deputy Attorney General

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT

("OPSD"):

Alison Kato, Esquire, Deputy Attorney General

Mary Alice Evans, OPSD Director

Aaron Setogawa, Senior Planner

PARTICIPANTS (CONT'D)

COUNTY OF HAWAII PLANNING DEPARTMENT:

Jean Campbell, Corporation Counsel

Jeff Darrow, Planning Director

Michelle Ahn

Christian Kay

NANI MAU GARDENS:

Sidney Fuke

Thomas Yeh

Susan Osborne

Cindy Cui

PUBLIC TESTIMONY:

Tierney McClary

Esther Cazimero

HAWAII LUC COMMISSION MEETING

APRIL 23, 2025

9:30 A.M.

VICE CHAIR YAMANE: Thank you. Welcome.

Good morning, everyone. This is the April 23rd, 2025 Land Use Commission Meeting. This is a hybrid meeting which is being physically held at the Arc of Hilo, 1099 Waianuenue Avenue, Hilo, Hawaii 96720.

This meeting is open to the public.

Court reporting transcriptions are being done from this Zoom recording. For all meeting participants, I would like to stress the importance of speaking slowly, clearly, and directly into your microphone. Before speaking, please state your name and identify yourself for the record.

Please be aware that all meeting participants are being recorded on the digital record of this Zoom meeting, which will be posted to YouTube and used for court reporting purposes. Your continued participation is your implied consent to be part of the public record of this event. If you do not wish to be part of the public record, you should exit this meeting now. I will also share with all participants that we'll take breaks from

1 time to time.

2 My name is Mike Yamane, and I have the  
3 pleasure of serving as the LUC Vice Chair. We  
4 currently have nine seated commissioners. Along  
5 with me today are Commissioners Dan Giovanni from  
6 Kauai via Zoom. We also have Brian Lee and Mel  
7 Kahele from Oahu; Bruce U'u from Maui; Commissioner  
8 Nancy Carr Smith from Hawaii Island; and  
9 Commissioner Myles Miyasato also from Hawaii Island.

10 For Commissioners participating via Zoom,  
11 please indicate where you are attending this meeting  
12 and if there are anyone else over the age of 18  
13 present with you, and I'll go ahead and start for  
14 myself. I am participating from my home in Kapa'a,  
15 Hawaii 96746, and there is no one else in this room  
16 with me.

17 Commissioner Giovanni?

18 CHAIR GIOVANNI: This is Commissioner  
19 Giovanni. I am participating from my home in  
20 Kalaheo, Kauai 96741, and I'm operating from my  
21 personal home office, and there's nobody else in the  
22 office with me.

23 VICE CHAIR YAMANE: Thank you,  
24 Commissioner Giovanni.

25 Absent today are Commissioners Ken

1 Hayashida and Commissioners Kuike Kamakea-Ohelo.

2 Also in attendance we have LUC Executive  
3 Officer Daniel Orodener, LUC Staff Planner Martina  
4 Segura, LUC Chief Clerk Ariana Kwan, and LUC  
5 Attorney General Miranda Steed.

6 Again, court reporting transcriptions are  
7 being done from this Zoom recording.

8 Our next order of business is a status  
9 report from Docket Number SP73-159 Toyama Gardens  
10 dba Nani Mau Gardens. There will be discussion and  
11 action, if necessary, on status and progress report  
12 concerning compliance with the 10th Amendment to the  
13 Land Use Commission's Special Use Permit Decision  
14 and Order issued on December 4th, 2009.

15 Will the parties please identify  
16 themselves for the record. Petitioner, will you  
17 please identify yourself.

18 COMMISSIONER LEE: Vice Chair Yamane,  
19 before you guys start, why are you running the  
20 meeting when the Chair is here? Just wanted to find  
21 out.

22 VICE CHAIR YAMANE: Go ahead, Commissioner  
23 Giovanni.

24 CHAIR GIOVANNI: Thank you, Commissioner  
25 Yamane.

1 I had eye surgery yesterday morning, and  
2 my eyes are still heavily dilated, and I am not able  
3 to do -- to read or see adequately, so I personally  
4 requested to hand the gavel for today's meeting to  
5 the Vice Chair for the efficient operation of the  
6 meeting. I am able to listen and hear, and I think  
7 I can participate if and when necessary. For  
8 example, if a vote is necessary.

9 COMMISSIONER LEE: Thank you for the  
10 explanation.

11 CHAIR GIOVANNI: You're welcome.

12 VICE CHAIR YAMANE: Thank you for the  
13 question, Commissioner Lee.

14 All right. Getting back to our next order  
15 of business, this is a status report. Docket Number  
16 SP73-159 Toyama Gardens dba Nani Mau Gardens.

17 There will be discussion and action, if  
18 necessary, on the status and progress report  
19 concerning compliance with the 10th Amendment to the  
20 Land Use Commission's Special Use Permit Decision  
21 and Order issued December 4, 2009.

22 Will the petitioner please identify  
23 yourself for the record.

24 MR. FUKU: Good morning. Good morning,  
25 Vice Chair Yamane, Members of this Commission.



1 Welcome to Hilo. For the record, my name is Sidney  
2 Fuke. I'm a land use planning consultant, and I'm  
3 here assisting the petitioner, Nani Mau Gardens.  
4 With me are two other individuals who are part and  
5 parcel of the master permit, the charter school, and  
6 I'd like to have them introduce themselves.

7 MR. YEH: Good morning, Members of the  
8 Commission. My name is Thomas Yeh. I'm counsel for  
9 Kua O Ka La, which is the charter school that  
10 operates under the umbrella of this special permit.  
11 And so we're here today just to kind of answer  
12 questions and provide our perspective on the status  
13 report that's been scheduled.

14 MS. KWAN: I would like to remind everyone  
15 to talk clearly into the microphone.

16 MS. OSBORNE: Aloha mai kakou. Welcome,  
17 Commissioners. My name is Susi Osborne, and I'm the  
18 Cofounder and Development Director for Kua O Ka La  
19 Charter School. And as stated, we're under the  
20 umbrella of this use permit, so we're here to  
21 provide a status update. Mahalo.

22 VICE CHAIR YAMANE: Thank you.

23 For the County?

24 MS. CAMPBELL: Good morning. This is  
25 Deputy Corporation Counsel Jean Campbell. With me

1 today is deputy -- I'm sorry --

2           You're not deputy anymore. Apologies.

3           Planning Director Jeffrey Darrow. Also,  
4 Deputy Director Michelle Ahn and Planner Christian  
5 Kay. And like the Applicant, we're happy to answer  
6 any questions that the Commissioners may have.

7 Thank you.

8           VICE CHAIR YAMANE: Thank you.

9 OPSD?

10           MS. KATO: Good morning. Alison Kato,  
11 Deputy Attorney General for Office of Planning and  
12 Sustainable Development. Also here is Mary Alice  
13 Evans, Director, and Aaron Setogawa, Planner from  
14 OPSD. Thank you.

15           VICE CHAIR YAMANE: Thank you.

16           Disclosures and conflicts of interest. In  
17 accordance with HRS 84-14, Commissioners are not  
18 allowed to take any actions affecting a business in  
19 which they're a member of or their family has  
20 financial interest. They must therefore recuse  
21 themselves from this matter if there is any benefit,  
22 monetary or otherwise, to themselves or members of  
23 their family.

24           Also in accordance with legal ethical  
25 standards, Commissioners should disclose any

1 relationship, business and social or otherwise, that  
2 they may have with the petitioner or its  
3 representatives or any other parties to this  
4 proceeding that may give rise to an allegation of  
5 bias or impropriety.

6 Do any Commissioners have any conflicts of  
7 interest or disclosures to make?

8 MS. KWAN: Commissioner Yamane,  
9 Commissioner Carr Smith has raised her hand.

10 VICE CHAIR YAMANE: Go ahead, Commissioner  
11 Carr Smith.

12 COMMISSIONER CARR SMITH: Thank you. Just  
13 disclosing that I know many of the people in this  
14 room. We're a big island, but we have a small  
15 population and we all know each other. I have no  
16 financial ties to any of these folks, and I can be  
17 fair in making any decisions that we make today.  
18 Thank you.

19 VICE CHAIR YAMANE: Thank you,  
20 Commissioner Carr Smith.

21 Does -- do any of the parties have any  
22 objections to this continued participation?

23 Petitioner?

24 MS. KWAN: None, Chair.

25 VICE CHAIR YAMANE: Thank you.

1 Any other disclosures or conflicts of  
2 interest by our Commissioners?

3 MS. KWAN: Commissioner Miyasato has his  
4 hand raised.

5 VICE CHAIR YAMANE: Commissioner Miyasato,  
6 go ahead.

7 COMMISSIONER MIYASATO: Yeah, Chair. Same  
8 situation as Commissioner Smith.

9 VICE CHAIR YAMANE: Thank you.

10 Does any of the petitioners have any  
11 objection to continued participation by Commissioner  
12 Miyasato?

13 MS. KWAN: Seeing none, Chair.

14 VICE CHAIR YAMANE: Seeing none. Thank  
15 you.

16 All right. Let's -- let me briefly  
17 explain the procedure. First, I'll recognize  
18 written public testimony that has been submitted on  
19 this matter. Next, I will call for members of the  
20 public who wish to provide oral testimony on this  
21 matter. The petitioners will be then called upon to  
22 provide their status report. After the petitioner's  
23 presentation, I'll ask the County and then the State  
24 OPSD to present their comments regarding the status  
25 report.

1           The Commissioners will have an opportunity  
2 to ask questions of the parties at the conclusion of  
3 each of their presentations. I will then reopen the  
4 floor for any new and additional oral testimony on  
5 this matter. Finally, the Commission will enter  
6 deliberations regarding the status report and decide  
7 if any actions are necessary.

8           The Chair would like to remind everyone  
9 I'll be calling for short breaks from time to time.  
10 Are there any questions about the procedure for  
11 today?

12           MS. KWAN: Seeing none, Chair.

13           VICE CHAIR YAMANE: Thank you.

14           As stated on today's agenda, please be  
15 informed that the relevant records and the documents  
16 pertaining to this matter can be accessed for review  
17 on the LUC website at [https://luc.hawaii.gov/sp73-](https://luc.hawaii.gov/sp73-159)  
18 159.

19           For the members of the public, again,  
20 please be reminded that the Commission will not be  
21 making any changes to the special permit that has  
22 already been issued. Rather, the Commission is  
23 interested in learning about the current state of  
24 activities related to the docket, including  
25 compliance with conditions, and will consider

1 whether action is necessary.

2 I will now recognize written public  
3 testimony submitted in this matter.

4 Ms. Kwan, has there been any written  
5 testimony submitted on this matter?

6 MS. KWAN: Yes, Mr. Chair. We received  
7 three anonymous testimonies that have been posted to  
8 the website on April 21st, and then April 22nd we  
9 received one additional testimony from Susan that  
10 was also posted to the website.

11 VICE CHAIR YAMANE: Thank you, Ms. Kwan.  
12 Are there any members of the public that  
13 wish to testify on this matter?

14 MS. KWAN: Yes. We have two signed up for  
15 public testimony.

16 VICE CHAIR YAMANE: Are they Zoom or  
17 physical?

18 MS. KWAN: They're in person. And if  
19 anybody on the Zoom would like to provide -- to be  
20 added to the queue, please use the Q/A feature on  
21 the Zoom.

22 For now we'll call Tierney McClary for the  
23 first testimony.

24 VICE CHAIR YAMANE: Good morning. Please  
25 state your name, ZIP code for the record, and then

1 you may proceed with your testimony.

2 TIERNEY MCCLARY: Good morning. My name  
3 is Tierney McClary. My ZIP code is 96720, and I am  
4 a resident of Makalika Street.

5 VICE CHAIR YAMANE: Thank you. May I  
6 swear you in.

7 TIERNEY MCCLARY: Yes.

8 VICE CHAIR YAMANE: Do you swear or affirm  
9 that the testimony that you're about to give is the  
10 truth?

11 TIERNEY MCCLARY: Yes.

12 VICE CHAIR YAMANE: Thank you. You have  
13 two minutes.

14 TIERNEY MCCLARY: I would just like to say  
15 that as a resident of Makalika Street -- oh, first,  
16 I would like to confirm and let everybody know that  
17 I was Ken Fujiyama's Chief Financial Officer when he  
18 owned the Naniloa, Nani Mau, and the Volcano House,  
19 as well as I was the chairman of the board of  
20 Connections Public Charter School when it changed  
21 its high school location to the Nani Mau location.

22 I have spoken with Cindy, who now owns the  
23 Nani Mau, and her mission is to make the Nani Mau a  
24 community place that is going to be beneficial to  
25 all residents within Hilo, Hawaii, and the Big

1 Island. Cindy has worked very hard over the years  
2 to provide a place that people can meet at, both for  
3 community meetings, for community functions, as well  
4 as state and County functions and political  
5 functions can take place.

6 She really has a vision to recreate the  
7 Nani Mau into a place that is going to provide help  
8 for both our citizens, specifically for our children  
9 and teenagers, to look at offering them ways to make  
10 a better future and to stay on island, as well as  
11 helping the female population of our islands, create  
12 new business opportunities, and new ways to flourish  
13 within the islands.

14 These missions are consistent with our  
15 County. I think they are consistent with the  
16 neighborhood. And we are actually very appreciative  
17 to have the school in the neighborhood. It's a  
18 great use of the land, and we love to hear the  
19 children playing outside, and we're very  
20 appreciative what Cindy has done for our community.

21 VICE CHAIR YAMANE: Thank you for your  
22 testimony.

23 Any questions for the testifier?

24 Seeing none.

25 Thank you.



1 TIERNEY MCCLARY: Thank you.

2 VICE CHAIR YAMANE: I believe we have a  
3 second testifier, Ms. Kwan.

4 MS. KWAN: Next I have Esther Cazimero.  
5 I'm seeing none on the Zoom.

6 VICE CHAIR YAMANE: Thank you.

7 Please state your name and ZIP code for  
8 the record.

9 ESTHER CAZIMERO: Aloha. My name is  
10 Esther Cazimero. I'm a volunteer currently at Nani  
11 Mau Gardens, but I also work full-time in the  
12 hospitality industry. My ZIP code is 96720.

13 VICE CHAIR YAMANE: Thank you. May I  
14 swear you in at this time?

15 ESTHER CAZIMERO: I'm sorry?

16 VICE CHAIR YAMANE: May I swear you in  
17 before your testimony? Do you swear or affirm that  
18 the testimony that you're about to give us is the  
19 truth?

20 ESTHER CAZIMERO: Yes.

21 VICE CHAIR YAMANE: Thank you. You have  
22 two minutes.

23 ESTHER CAZIMERO: Okay. So I've known  
24 Cindy really nearly three years. And I really am  
25 appreciative of her vision, and it's as Tierney

1 stated, that it is for the community. Her vision is  
2 to be a part of the community, serve the community.

3 And I've done events with her, and it's  
4 always the focus is on how it can be a good  
5 experience, good service, and food, of course, to  
6 the community, and really getting involved, you  
7 know, with rotary groups and all our civic groups,  
8 Japanese Chamber, and then, of course, schools.  
9 That's another -- the young people is her focus, you  
10 know, so that we can let our children grow and  
11 thrive here.

12 We're looking to -- Cindy is looking to  
13 always create opportunities, work with the schools,  
14 and I'm in full support of her vision and what she  
15 has tried to do for our community. We need this.  
16 We need this in Hilo, a business like Cindy that  
17 uplifts the children, our future, yeah?

18 VICE CHAIR YAMANE: Thank you.

19 Commissioners, any questions?

20 MS. KWAN: Seeing none, Chair.

21 VICE CHAIR YAMANE: Thank you.

22 Thank you so much.

23 All right. At this time I would like to  
24 call Ms. Segura to summarize the staff report for us  
25 and any staff concerns.

1 MS. SEGURA: Hello. For the record, this  
2 is Martina Segura, Staff Planner. I'm presenting  
3 the staff report that was posted online April 18th.  
4 The status report was scheduled because the Land Use  
5 Commission had no history or record of annual report  
6 since 2011. The Land Use Commission office received  
7 calls from County planning staff and members of the  
8 public regarding concerns and changes in use to the  
9 special permit.

10 There was a series of communications  
11 between Land Use Commission staff regarding annual  
12 reports and the petitioner that were posted and made  
13 available to the Land Use Commission website for  
14 review. In one of the responses we reminded the  
15 petitioner of the duty and processes for amendments  
16 to conditions regarding annual reports and any other  
17 conditions that need to be amended for current uses.

18 In conclusion, the status report was  
19 scheduled to update the Commission, County, the  
20 Office of Planning, and the public on the current  
21 uses and possible future plans relating to the  
22 special permit. That's it.

23 VICE CHAIR YAMANE: Thank you, Ms. Segura.  
24 Questions, Commissioners?

25 MS. KWAN: Seeing none, Chair.

VICE CHAIR YAMANE: Thank you, Ms. Kwan.

All right. I guess we'll start with the petitioner. Could you please provide us with your status report?

MR. FUKU: Okay. Thank you again, Vice Chair Yamane. I was kind of nervous in the beginning, and I kind of overlooked my ZIP code, which is 96720, and also failed to acknowledge the owner, Ms. Cindy Cui, who is seated to my left.

VICE CHAIR YAMANE: Thank you.

MR. FUKU: In terms of the presentation, I kind of want to just indicate there are basically two special permits that's covered by what I would consider the parent special permit. One is operation of the Nani Mau Gardens, which is a commercial arboretum with special event function, and the other significant component is a charter school.

That was the 10th Amendment. It was approved back in December of 2009. Now, Cindy and her company's got Nani Mau Gardens Group. They acquired the property in 2022, and they continue to operate the Nani Mau Gardens and continue to allow the charter school to operate as it is today.

We would like to apologize for not

1 submitting any annual report since 2011, largely  
2 because back in 2011, the County Planning Department  
3 Director, who had -- was given -- was delegated the  
4 authority to deem whether subsequent annual reports  
5 would be required, basically wrote the letter to  
6 them, and Fujiyama said thank you very much. No  
7 further annual reports were required.

8           So as a result, the annual reports were  
9 submitted. Ms. Cui secured the property in 2022,  
10 wasn't informed that any annual reports were  
11 required until she received the letter from the  
12 State Land Use Commission Staff in January, stating  
13 that you guys are doing annual reports.

14           So at that point in time, I immediately  
15 submitted one. We went on an item-by-item basis and  
16 submitted a letter to the Land Use Commission Staff,  
17 a copy of which is already in your folder. I would  
18 be prepared to kind of like go item by item, but  
19 since it's already in your folder and if you have  
20 questions related to that, we'd be more than happy  
21 to answer.

22           Subsequent to the filing of that, I'd like  
23 to kind of indicate like two other things that have  
24 happened. One is that there were like two  
25 violations that have occurred, which we did not

1 formally -- I did not formally kind of like  
2 acknowledge or put in that February response letter.

3 One was that there was an official notice  
4 of violation that was cited by the County Planning  
5 Department, saying that you had some other  
6 activities and it's not allowed because you had it  
7 in the parking lot. And in September of 2024, last  
8 year, the Planning Department had written a letter  
9 to then the Nani Mau Gardens Group, basically saying  
10 that you have complied, and they closed file on  
11 that.

12 The other one which I distributed this  
13 morning is a copy of a letter dated April 17th, and  
14 that was kind of a self-reporting violation because  
15 all these years, periodically, a church operated on  
16 a portion of the property, and so Ms. Cui took steps  
17 to kindly and regrettably inform them that the  
18 church use was not allowed. And so that letter that  
19 you have before you dated April 17, it summarizes  
20 the termination of the church use.

21 I'd like to also kind of -- related to  
22 that particular activity, since the special events  
23 is allowed on the premise, we had informed the  
24 church that you could possibly qualify as a special  
25 event, no different than any cultural, political,

1 social events that currently occur on the property,  
2 but they would have to stand in line, like everybody  
3 else, so that's kind of like where it is right now  
4 relative to the church. But the church use and a  
5 separate building has officially been given the word  
6 to terminate the cease and desist.

7           The other thing I kind of wanted to  
8 acknowledge is that the -- and as was pointed out by  
9 the two public testifiers, the owner is very  
10 supportive of the school. They want to see it.  
11 It's an important component within the community.  
12 The school right now is in the process of trying to  
13 secure their own entitlement as well as their own  
14 so-called land under which the school currently  
15 operates on.

16           So back in January, we submitted a -- two  
17 special permit applications to the County of Hawaii,  
18 one specifically earmarking the school and the other  
19 one specifically earmarking the operations of Nani  
20 Mau Gardens. The hope was that they bifurcate the  
21 two significant activities that's currently covered  
22 under the same special permit umbrella. So it was  
23 felt that by having two separate special permits,  
24 enforcement becomes a little bit easier rather than  
25 having two distinct uses all covered by the same

1 special permit.

2 At the same time, knowing that you still  
3 had the parent special permit, we submitted a  
4 concurrent request calling for the nullification of  
5 the primary special permit. So we submitted three  
6 applications to the County. The County responded,  
7 basically saying: Can you provide us additional  
8 information in terms of what's going on, on the  
9 property, and show how what's going on relates to  
10 all of the approved conditions of the 10th  
11 Amendment.

12 So that we did, and we have yet to receive  
13 a response from the County on that, but pending its  
14 receipt from the County to our response letter, then  
15 our intent is to adjust as may be needed whatever  
16 was submitted and have the Planning Department  
17 consider what was originally submitted back in  
18 January.

19 I would now like to turn it over to Mr.  
20 Tom Yeh and Susi Osborne. They're the responsible  
21 gatekeepers of the other component of this special  
22 permit, the school.

23 Tom?

24 MR. YEH: We'll let Susi go first.

25 MS. OSBORNE: Aloha again. And I also



1 failed to give you my ZIP code. So Susan Osborne is  
2 my official name, and my ZIP code is 96720. So  
3 mahalo, Commissioners, for allowing this time to  
4 present a status update on Kua O Ka La Charter  
5 School, which falls under Amendment 10, charter  
6 school use.

7 I want to just give you a little bit of  
8 history for those of you that aren't familiar, and  
9 I'm probably going to read most of this because,  
10 kalamai, we're coming in a few days on the seventh  
11 year anniversary of the Kilauea eruption when we  
12 lost our campus, so it tends to be a little  
13 emotional for me, so excuse me up front for that.

14 But the history is in 2000, Kua O Ka La  
15 Charter School was granted its charter contract with  
16 the state. The school actually emerged as a result  
17 of the cultural education programs developed and  
18 delivered by the now over-30-year-old 501c3  
19 nonprofit Ho'oulu Lahui. Like all charters, our  
20 supporting nonprofit developed and managed the  
21 schools facilities and built our beautiful campus  
22 with greenhouses on our 600-acre coastal site in  
23 Puna. We were the first totally solar-powered  
24 school in the state of Hawaii.

25 Kua O Ka La is a Hawaiian-focused charter

1 school that has become known for our farm to table  
2 programs, hosting Ulu festivals with over thousands  
3 of attendees, cultivating and distributing over  
4 12,000 native trees for free to the community,  
5 developing local-only cookbooks, and managing  
6 student-led productive greenhouses and mala  
7 infrastructure to support the students' academics.  
8 We teach agricultural practices and integrate these  
9 concepts with our core academic programs. What a  
10 wonderful learning laboratory we had.

11           So in 2018, we lost our campus and our  
12 aina to the Kilauea eruption, and my home. Charter  
13 schools are overseen by the charter commission,  
14 which has comprehensive compliance oversight of our  
15 schools, including facilities compliance with all  
16 regulatory agencies. As such, when I was looking to  
17 relocate our school, I met and discussed with the  
18 Connections charter school principal about the  
19 facilities' compliance conditions of the Nani Mau  
20 Gardens, which they previously occupied. They  
21 hadn't been there for several years. In  
22 consideration of relocating the school there, it is  
23 pretty hard to find a spot for the school that's  
24 compliant.

25           So we were informed that all the special

1 use permits were in place and we proceeded with the  
2 relocation. It was beyond tragic to lose our  
3 beloved school and nonprofit site, but we are  
4 grateful to successfully relocate to the Nani Mau  
5 Gardens.

6 So in 2019, Director Michael Yee of the  
7 County Planning Department issued final plan  
8 approval, PLA-19-001691 for Kua O Ka La and the  
9 extensive work we did resulted in the attainment of  
10 an E occupancy classification. You have that in  
11 your little packets before you.

12 The school administration team also  
13 reviewed the condition of the special use permit  
14 SP73-159 before you today. The Commission  
15 recommended that the applicant and charter school  
16 operator shall periodically remind parents and staff  
17 to use Railroad Avenue rather than State 11, Hawaii  
18 Belt Highway, for access to Makalika Street.

19 In response to the access recommendation,  
20 the school included the following language in our  
21 student and parent handbook, which states the same:  
22 When possible, please use Railroad Avenue rather  
23 than State Route 11, Highway Belt Access for access  
24 to Makalika. I've also provided you with a cover of  
25 our handbook and page 11 that has the language. And

1 this is provided annually to our parents, and they  
2 have to sign off on this document that they have  
3 read and understand, so we feel that we've  
4 adequately addressed this.

5           So we're so grateful to have the  
6 opportunity, as Sid said, to secure a permanent home  
7 at Nani Mau, and we're in the process of rezoning  
8 from ag 10 to ag 5. We're almost through that. And  
9 then subdividing and acquiring the currently  
10 occupied school space at Nani Mau. It is safe,  
11 accessible, and while not our prior 600 acres, we  
12 have two large greenhouses, a beautiful mala, or  
13 garden, with bunnies and chickens, which our  
14 students love.

15           The ag zone is appropriate for our  
16 academically spaced and cultural school focus. The  
17 location is perfect, surrounded by Hawaiian  
18 homelands. We are well established there now for  
19 over six years, with no complaints. And as you see  
20 from the over 30 letters of support provided to you,  
21 we are well supported in this location.

22           I'm sorry I just uploaded those kind of  
23 late in the day yesterday, but they range from  
24 Senator Tokuda, Senator Inouye -- Representative  
25 Tokuda, I mean -- our mayor, the kumiai president,

1 and lots of community members, so -- and we -- we  
2 secured those letters as we were going through the  
3 rezone process and all the outreach we were doing  
4 with the community, so I share those with you in  
5 that light.

6 I truly value the use permit process. And  
7 while we are required to have a use permit for our  
8 school and ag zone, I believe it is an appropriate  
9 use for our school focus and location, and we are in  
10 full compliance, and we are fully committed to  
11 staying in full compliance with the use permit.

12 And it's not really my place to speak on  
13 behalf of Nani Mau, but having worked closely with  
14 Cindy and with her new ownership for the last  
15 several years, she truly has poured her heart and  
16 soul and a lot of money into this facility to make  
17 this a really successful community place. She's  
18 really balanced that with incoming visitors. The  
19 place was really neglected for a long time, and it  
20 has taken a lot for her to get it to where it is  
21 now.

22 So I really hope that we can all recognize  
23 the value that this facility holds for our  
24 community, and that we work together to do whatever  
25 we can to support her success, which then results in

1 our communities' success. So thank you for your  
2 time today, and I'll pass to Tom for follow-up  
3 comments. Mahalo.

4 MR. YEH: I'll try to be brief. Well,  
5 basically, you know, as you can -- as you've heard  
6 and you can see from the letters of support, that  
7 from the school's standpoint what it's got going on  
8 in this five-acre site is really an appropriate use  
9 that matches curriculum for our charter school as  
10 well as agricultural learning and hands-on cultural  
11 traditions, so their place in the community has also  
12 been supported by the Kumiai, the poni of the  
13 farmer's association.

14 Looking forward, the plan is, and the  
15 County Council just recently through its zoning  
16 committee approved, the five-acre zoning that we're  
17 looking towards doing, and so it really makes a lot  
18 of sense to have this separate ownership, from the  
19 school's perspective, and to seek a special permit,  
20 basically using the same kind of conditions and the  
21 same uses that currently exist and move it over to a  
22 five-acre special permit that's particularly  
23 appropriate for this school.

24 In terms of the status report, the school  
25 has no problems with providing annual status reports

1 on its own or through the Nani Mau Gardens Group.  
2 But in speaking to the conditions that were  
3 applicable to the school itself, it got final plan  
4 approval in 2019. It got its occupancy permit. Its  
5 charter school hours remained as required from 7  
6 a.m. to 4 p.m., with the exception of special events  
7 such as PTA conferences and school activities.

8 The main access continues to be from  
9 Makalika, as required, through Railroad Avenue, as  
10 was also a part of the condition. Traffic has not  
11 really been an issue for surrounding residents. So  
12 you know, looking forward, we're happy to answer any  
13 questions, any issues that might come up, and  
14 provide our perspective on some of the issues that  
15 may be discussed later on, and that's all I have.

16 Thank you.

17 MR. FUKU: Thank you very much, Vice  
18 Chair. So that concludes our presentation, so we're  
19 open, available to answer any questions that you or  
20 the Commissioners may have on this matter.

21 VICE CHAIR YAMANE: Thank you.

22 MS. KWAN: Staff would like to remind the  
23 petitioner that you have to submit the three  
24 attachments that were given today via email so we  
25 can post it to the website so everyone else can have

1 the information.

2 MR. FUKU: Confirmed, yes.

3 VICE CHAIR YAMANE: Thank you for your  
4 status report.

5 Commissioners, questions?

6 MS. KWAN: Commissioner Lee has a  
7 question.

8 VICE CHAIR YAMANE: Commissioner Lee?

9 COMMISSIONER LEE: Thank you. For the  
10 petitioner, you talked a little bit about the  
11 conditions. Are there certain conditions that you  
12 find difficult to meet?

13 MR. FUKU: No. The conditions were all  
14 articulated in the 10th Amendment, and they've all  
15 been complied with. Some is kind of like ongoing.  
16 For example, if they have any new structures  
17 associated with the special permit, they would have  
18 -- one of the conditions would state that you have  
19 to comply with all applicable health rules or  
20 drainage rules, so those are standard. So the  
21 specific answer to your question is that no, none of  
22 the conditions are troublesome. Thank you.

23 COMMISSIONER LEE: Thank you, Chair.

24 VICE CHAIR YAMANE: Thank you,  
25 Commissioner Lee.



1 MS. KWAN: Commissioner Carr Smith has a  
2 question.

3 VICE CHAIR YAMANE: Commissioner Carr  
4 Smith.

5 COMMISSIONER CARR SMITH: Can you just  
6 review again, Mr. Fuke, the status of the complaints  
7 and the violations. I wasn't quite clear how that  
8 got wrapped up.

9 MR. FUKU: Sure. During -- I think in  
10 2024, last year, there were like two special events  
11 that occurred within the parking lot area, and those  
12 were obviously outside of the so-called authorized  
13 area for special events. The 4th Amendment was  
14 granted to allow for the special event activity to  
15 occur within the primary retail commercial  
16 structure, plus an additional 25,000 square feet  
17 within the arboretum area. That's kind of like  
18 where most of the -- almost all of the activities  
19 occur right now, whether it's a baby luau, a  
20 wedding, political fundraiser, so on and so forth.

21 But in 2024, they -- I guess, Ms. Cui, the  
22 owner, was not aware when the operator wanted to  
23 utilize the parking lot, and so that was clearly an  
24 out of bounds kind of use, so they received a  
25 citation from the Planning Department, and

1 subsequently to that, she had paid a fine, and that  
2 violation was cured. So that was the first, you  
3 know, notice of violation since she acquired the  
4 property. The other one was a self-reporting  
5 violation which was like the establishment of the  
6 church, and so that's been kind of terminated.

7 Just as an added measure, you know, like  
8 right now you have Merrie Monarch facility  
9 activities going all over town. And you know,  
10 you've had pop-up vendors operating in parking lots  
11 and all that. And Manono Mini Mart, for example.  
12 Ms. Cui was asked by the -- you know, they have  
13 activities currently ongoing right now at the Nani  
14 Mau Gardens, and one of the operators wanted to have  
15 activities within the -- expand, you know, their  
16 operation in the parking lot area. Sadly, she had  
17 to tell them, no, it's kind of out of bounds. You  
18 have to kind of like stay within that arena of  
19 permitted area. So that's how she's been responsive  
20 to any potential complaints. And you know, she  
21 definitely wants to stay within the guardrails.

22 COMMISSIONER CARR SMITH: Thank you.

23 VICE CHAIR YAMANE: Thank you,  
24 Commissioner Carr Smith.

25 Any other questions, Commissioners?

1 MS. KWAN: Seeing -- oh, Myles Miyasato  
2 would like to give a question.

3 VICE CHAIR YAMANE: Commissioner Miyasato.

4 COMMISSIONER MIYASATO: Thank you, Vice  
5 Chair. For the charter school special permit that's  
6 currently active, is there a deadline termination  
7 date on that special permit?

8 MR. YEH: No, there are not.

9 COMMISSIONER MIYASATO: Okay.

10 MR. YEH: And for this particular use, we  
11 don't see deadlines as being -- we're talking about  
12 deadlines to get what they needed for permits or  
13 deadlines for operation?

14 COMMISSIONER MIYASATO: On the special  
15 permit use.

16 MR. YEH: Yeah. No, no deadlines.

17 COMMISSIONER MIYASATO: Okay. So it's not  
18 a ten-year term on the special permit?

19 MR. YEH: No, no. And under this  
20 circumstance, we don't really see that as being an  
21 appropriate issue, because you've got a school  
22 there. You have kids going to school. You're  
23 operating. You're making substantial investments in  
24 terms of the improvements to make it school-worthy.  
25 Yeah. Under this circumstance, that's the

1 situation.

2 COMMISSIONER MIYASATO: Okay. Yeah.  
3 Because I can appreciate that, being that you're  
4 going to obtain ownership. That would be hard to  
5 invest on a --

6 MR. YEH: Correct.

7 COMMISSIONER MIYASATO: -- on a term, so  
8 that's good to hear.

9 MR. YEH: Thank you.

10 COMMISSIONER MIYASATO: As far as the  
11 gardens itself, you know, thank you for the update.  
12 You know, I'm going to say in reviewing this, it's  
13 of no one's fault, how I see it, that reports  
14 weren't filed. I believe no one here was present  
15 when all this took place. This was a whole  
16 different administration, different representatives,  
17 different owners. At the time when it was issued by  
18 the County's director, that everything had been  
19 satisfied, it was a different executive, the  
20 previous director or previous previous director.  
21 And so I just appreciate your cooperation and  
22 response to finding out that, yeah, you still are  
23 obligated.

24 And, you know, for the Big Island,  
25 especially Hilo, venues are limited, and I can

1 really appreciate how an owner needs to diversify to  
2 stay alive in business. You know, to have a -- even  
3 a graduation party, you need to reserve one year  
4 ahead of time on the Big Island. You got Nani Mau.  
5 You got Aunty Sally's and Sangha Hall. That's about  
6 it.

7 And so you know, I'd like to see this  
8 place stay in business, so thank you for being open  
9 to the community. And other than that, I think the  
10 update was sufficient, and there was no intent of  
11 trying to hide complaints or unpermitted uses, and  
12 it's all been dealt with. I can appreciate that, so  
13 thank you.

14 VICE CHAIR YAMANE: Thank you,  
15 Commissioner Miyasato.

16 Commissioners, any other questions for the  
17 petitioner?

18 Commissioner Giovanni.

19 CHAIR GIOVANNI: Thank you, Chair. We  
20 heard reference to the vision of the new owner. I  
21 think her name is Cindy. If she's present, I would  
22 appreciate if she could share with the Commission in  
23 her own words what her vision is looking forward for  
24 not the school but the remainder of the property and  
25 what she -- what her vision is for that property.

1 MR. FUKU: Fair question, Mr. Chair, so  
2 I'd like to call Ms. Cui up.

3 Cindy?

4 VICE CHAIR YAMANE: Thank you. Could you  
5 please state your name and ZIP code for the record?

6 MS. CUI: Aloha. My name is Cindy Cui,  
7 the owner of Nani Mau Garden. The ZIP code is  
8 96720.

9 VICE CHAIR YAMANE: Thank you. Ms. Kwan,  
10 do I need to swear this testimony in or --

11 MS. KWAN: Yes.

12 VICE CHAIR YAMANE: All right. May I  
13 swear you in. Do you swear or affirm that the  
14 testimony that you're about to give us is the truth?

15 MS. CUI: Yeah.

16 VICE CHAIR YAMANE: Thank you. Go ahead,  
17 you have two minutes.

18 MS. CUI: I'm so happy to be here.  
19 Actually, it's the first time for me to join this  
20 meeting. So it's three years ago, I don't know why,  
21 but I say it's led by God to the garden. And the  
22 first day when I was there I got the chicken skin.  
23 I saw it's a beautiful place. So -- but at that  
24 time, because of COVID, it's closed. It's all where  
25 the grass, you know?

1           So I was aware of the peace, but I feel  
2 something there, so I immediately contact with the  
3 owner at the time. And I told her the local  
4 community have so beautiful place. Why just let it  
5 go like this? And the -- I talk to several local  
6 people. They told me a lot of a good story on the  
7 unforgettable moments they had in the garden. So  
8 that's why I said, oh, let's see if we can make that  
9 happen again and bring back to the community.

10           Then, only waited couple months. We make  
11 a deal. Then I move all my family here. Even I  
12 came from San Francisco. Even a lot of my partner,  
13 my family member, my friends, they saw that, Cindy,  
14 are you crazy? You quit everything San Francisco,  
15 move to the Big Islands. I said, I don't know why.  
16 Because I love all this weather, all the, you know,  
17 foods, and all the local people. They are really  
18 show the big ohana to me. You know, it's spread of  
19 aloha. I love it. I'm touched.

20           So even I went through so many tough  
21 period, but I know it's a short period. And after I  
22 stay down with the local people, tells them my  
23 reason; I said: I own the garden, but this garden  
24 belong to the local. So that's why I invest a lot  
25 of money into the garden, and the -- I put a outer

1 fence for a school since the first day.

2 I saw all the kids around the garden, and  
3 I said, oh, because we -- I came from San Francisco.  
4 It's a lot of us unhappy seeing it happen on campus.  
5 I said, oh, I cannot leave kids mixed up with all  
6 the visitors. So the first thing I talk to the Susi  
7 at that time. I said I must build up the fence  
8 there. So the fence right now for school, it's -- I  
9 built it for that. So I want to give all the kids  
10 safety.

11 And as -- after the more I know Susi, we  
12 talk about it, and I said, oh, because tragedy  
13 happened to the school in 2018, right, because of  
14 the volcano. I teared. I said, oh, kids should  
15 deserve a better campus. That's why I go further.  
16 I say, oh, why wait? Better to give the kids a  
17 permanent campus. Gave them a security, safety  
18 campus. That stuff from there we go further.

19 And at the same time I joined the Nani Mau  
20 Garden, I saw a lot of people love it. So that's  
21 why I told my husband, I said, no matter what, the  
22 rest of my life will be in the garden. I will --  
23 probably I cannot fulfill my dream here, but I think  
24 in my lifetime I really will try my best to show  
25 local people the beautiful garden.



1           So I think that's pretty simple of Hilo of  
2 Big Island. I have a lot of ideas and need a lot of  
3 money. But I said, you know, I can get part of my  
4 dream fulfilled there and benefit the local people a  
5 lot. So no matter what, I don't want to violate any  
6 laws, any rules, so you guys please just let me know  
7 what I can do, what I cannot. I 100 percent to  
8 follow that. Thank you so much.

9           CHAIR GIOVANNI: Thank you very much. I  
10 appreciate it.

11           VICE CHAIR YAMANE: Any more questions,  
12 Commissioners, for the petitioner?

13           MS. KWAN: Seeing none, Chair.

14           VICE CHAIR YAMANE: Seeing none. Thank  
15 you.

16           Okay. Thank you for your status report.

17           MR. FUKU: You're very welcome, Mr. Chair.

18           VICE CHAIR YAMANE: All right.

19           County, comments from the County?

20           MS. CAMPBELL: Good morning. Deputy  
21 Corporation Counsel Jean Campbell again. I don't  
22 have any comments.

23           Director?

24           MR. DARROW: Aloha. My name is Jeff  
25 Darrow with the County Planning Department. Aloha,

1 Chair Giovanni, Vice Chair Yamane, Members of the  
2 Land Use Commission, Executive Officer Daniel  
3 Orodenker. Thank you for having us today.

4 I don't have a lot to add. Within the  
5 last 15 years, as mentioned, we've only had really  
6 one complaint that resolved pretty quickly, and it  
7 appeared to be more of a misunderstanding than  
8 really a violation. Once it was made clear as to  
9 the boundaries of the permit, there's been no more  
10 issues. I -- you know, not being the person that  
11 actually was involved in the annual progress  
12 reports, I -- and looking at the information, I kind  
13 of understand what happened.

14 Normally, when special permits come  
15 through the Planning Department and then through the  
16 Planning Commission, up to the Land Use Commission,  
17 the Planning Department will prepare those  
18 conditions. And the annual progress report  
19 condition is very similar to our County annual  
20 progress report conditions in the sense that it says  
21 if the director feels that no further reports are  
22 needed, they can, you know, put a pause on that.  
23 And we do that quite often, especially when annual  
24 progress reports just start becoming a formality.  
25 They're the same thing every year that come in. So

1 we apologize for that.

2           We did -- I do see the letter that the  
3 Land Use Commission -- actually from our Executive  
4 Officer here, sent to us in 2012, reminding us that  
5 if we wanted to modify the condition, we needed to  
6 bring that back to the Land Use Commission and end  
7 up here as that didn't happen. At this point, we --  
8 I think moving forward, we're all on the same page.  
9 The applicants appeared to have no problem  
10 submitting updated annual progress reports, and  
11 we'll continue to work with them.

12           This is an exceptional venue, as mentioned  
13 by Commissioner Miyasato. There's not very many  
14 options in Hilo for these types of special events.  
15 And again, the charter school is such a blessing.  
16 This was one -- this was the charter school that was  
17 taken away during the lava -- Kilauea lava event,  
18 and so this is their new home, and we're extremely  
19 excited for them and supportive of them being able  
20 to move forward.

21           The last amendment looks like it was in  
22 2009, that was the 10th Amendment. I remember back  
23 then going, oh, wow, there's been ten amendments to  
24 this special permit. And so you can see the  
25 reluctance whenever we say, well, why don't you go

1 in for an amendment. But anyway, we'll continue to  
2 work with them with whatever they need. Thank you.

3 VICE CHAIR YAMANE: Thank you.

4 Questions for the County, Commissioners?

5 MS. KWAN: Commissioner U'u has a  
6 question.

7 VICE CHAIR YAMANE: Commissioner U'u?

8 COMMISSIONER U'U: Good morning. Good  
9 morning. I just wanted to ask a few -- well, make  
10 one quick statement, rather. You know, for us, I'm  
11 from Maui, and I always make that known. And when I  
12 come, I'm a guest in your house. I normally -- how  
13 I see is I take the lead from the County, and we add  
14 in or shore up, or whatever we need to do on our  
15 part. That's my part as being a Commissioner.

16 A couple questions. I seen on the  
17 testimony that was given there were -- there was a  
18 Merrie Monarch Bash with Kapena. Sounds like a good  
19 bash by the way, April 24th. Is that being done in  
20 the permitted area? Just for clarification.

21 MR. FUKU: To answer your question, yes.

22 COMMISSIONER U'U: Okay.

23 MR. FUKU: And within the time limit as  
24 well, yes.

25 COMMISSIONER U'U: Thank you.

1 MS. KWAN: Commissioner Carr Smith has a  
2 question.

3 VICE CHAIR YAMANE: Commissioner Carr  
4 Smith?

5 COMMISSIONER CARR SMITH: Thank you.

6 Mr. Darrow, could you speak to your  
7 understanding of the status of their rezone that's  
8 taking place and also the application for the  
9 changing to two special permits? And that was  
10 perhaps denied for more information. Can you speak  
11 to those two things, please?

12 MR. DARROW: Sure. Thank you,  
13 Commissioner Carr Smith.

14 So we're currently at council. We've just  
15 made it through committee for the change of zone.  
16 What this is, is there's a portion of the property  
17 that's zoned agricultural ten acres, and the  
18 applicant is requesting to change the zoning to  
19 agricultural five acres to be able to separate the  
20 school ownership from the portion owned by Nani Mau  
21 Gardens.

22 As far as the special permit for the  
23 charter school and Nani Mau, the thought was that  
24 because these are two separate owners and entities  
25 that they may want to consider coming in for County

1 special permits to operate separately, and they both  
2 take care of their own permitting to that process.

3 We're still trying to get direction and  
4 clarification on that. We'll continue to work with  
5 the Land Use Commission in regards to the process on  
6 moving forward and to possibly revoke the Land Use  
7 Commission special permit and then come before the  
8 Planning Commission for the two special permits.

9 COMMISSIONER CARR SMITH: Is that  
10 dependent on the rezone?

11 MR. DARROW: It is. That's why we're  
12 waiting for that to be completed, but that looks --  
13 it's been extremely favorable moving forward. I  
14 don't see any issues there.

15 COMMISSIONER CARR SMITH: Okay. What was  
16 the vote in committee?

17 MR. DARROW: It was all of them, yes.

18 COMMISSIONER CARR SMITH: Unanimous?

19 MR. DARROW: That was their --

20 COMMISSIONER CARR SMITH: And in support?

21 MR. DARROW: Yeah.

22 COMMISSIONER CARR SMITH: Okay. Thank  
23 you.

24 MR. DARROW: Thank you.

25 VICE CHAIR YAMANE: Thank you.

1 Any other questions, Commissioners?

2 Commissioner Giovanni?

3 CHAIR GIOVANNI: Yeah, just to follow up.

4 Mr. Darrow, if you know, or if we have to go back to  
5 the petitioner, but isn't the intent of the current  
6 owner and the school to actually do a transaction by  
7 which the school property would be sold to the  
8 school, and they would then become the owner of that  
9 land?

10 MR. FUKU: To answer your question, Mr.  
11 Chairman, the concept is along those lines to have  
12 the school have their own so-called real estate and  
13 their own special permit. So subsequent to the  
14 favorable -- favorable action on the part of the  
15 County Council to approve the zone change, the next  
16 step, which we anticipate occurring next month, by  
17 the end of next month -- the next step is to go in  
18 to have the land officially subdivided.

19 Once it gets subdivided, then the school  
20 would be in a position to either acquire the  
21 property in fee or possibly go on a long-term lease,  
22 or whatever the case might be. That is still kind  
23 of like under negotiation right now between the  
24 school and the landowner, but at this point in time,  
25 the idea is to create opportunities for the

1 conveyance to occur.

2 MR. YEH: If I may. Thank you,  
3 Commissioner Giovanni. The school actually has a  
4 development agreement with Nani Mau under which once  
5 the subdivision is approved, then there will  
6 actually have been acquisition of this five-acre  
7 parcel.

8 So I just wanted to clarify what Mr. Fuke  
9 said, because he wasn't involved in that part of the  
10 process of the negotiation. And it's actually the  
11 nonprofit, Ho'oulu Lahui, that is going to acquire,  
12 and then there's an arrangement between it and the  
13 charter school. Thank you.

14 CHAIR GIOVANNI: So Mr. Darrow -- just to  
15 follow up, Mr. Darrow. In the testimony by the  
16 petitioner and the group of petitioners the word  
17 "permanent" came up in their own testimony. Is it  
18 the view of the County that this would be a  
19 permanent use under the special permits?

20 MR. DARROW: That would be probably the  
21 best question for the petitioner to answer. I mean,  
22 again, I think the understanding is that they are  
23 putting a lot of resources, money, effort into this  
24 facility, especially the school, separately from  
25 Nani Mau. These are long-standing uses.



1           This -- there's been discussion,  
2 especially in the staff report, regarding, you know,  
3 is the special permit the proper venue to maintain  
4 permanent type uses. In this particular case, the  
5 difficulty that we run across is that if we were to  
6 go through a boundary amendment and change the  
7 zoning, this area would not allow for the uses that  
8 are currently allowed under the special permit, so  
9 that would not actually be an option available.

10           Even if we were to change the land use to  
11 urban, this would not allow for the arboretum to  
12 continue under low density urban zoning. It would  
13 not allow for the commercial uses. It could allow  
14 for it, but again, right now as the school  
15 mentioned, their curriculum involves agricultural  
16 type uses. And so it would be more appropriate for  
17 this particular use to continue in this manner.

18           MR. FUKU: Chair Giovanni, just to  
19 supplement what the Director stated. The intent in  
20 having like special -- two special permits for the  
21 school and also for Nani Mau Gardens is to have  
22 those uses occur, quote, unquote, "in perpetuities."  
23 So for example, if Kua O Ka La, the current  
24 operators of the charter school, decides to forego  
25 its operation, then the hope is to find a similar

1 type of use on the property. Likewise, with the  
2 Nani Mau Gardens.

3 So I don't know how you can say whether  
4 it's going to be in perpetuity, but until that --  
5 the use -- the operator of the use decides to  
6 terminate the use on its own, then the use would  
7 continue vis-a-vis the special permits.

8 CHAIR GIOVANNI: Yeah, that's my  
9 understanding as well. But I did hear testimony on  
10 the record from -- from Cindy, saying that she wants  
11 to do this for the rest of her life. And I heard  
12 testimony from the school that it was permanent in  
13 their mind, a great permanent site.

14 So my question was really to County  
15 Planning. If, under the hypothetical that they end  
16 up with two separate properties, each under 15  
17 acres, each subject to County permitting and zoning,  
18 whether they view any problem with the intent of  
19 these properties continuing in their current uses in  
20 perpetuity. That's the question to Mr. Darrow.

21 I just don't want this thing to get -- I  
22 mean, I'm very supportive of what's going on, just  
23 like Commissioner Miyasato. I feel the same way.  
24 But I don't want this thing to get angled up in some  
25 nuance from some planning concern.

1 MR. DARROW: Thank you, Chair Giovanni.  
2 Just to answer your question, we would be supportive  
3 of that direction, both properties coming in for a  
4 County special permit and continuing their uses.  
5 Thank you.

6 CHAIR GIOVANNI: Okay. I'm good for now.  
7 Thank you, Chair.

8 VICE CHAIR YAMANE: Thank you,  
9 Commissioner Giovanni.

10 Commissioners, any other questions?

11 MS. KWAN: Commissioner U'u has a  
12 question.

13 VICE CHAIR YAMANE: Commissioner U'u?

14 COMMISSIONER U'U: Just for clarity, for  
15 my understanding. So are you saying if you guys  
16 were to utilize or go through a BBA, that the uses  
17 would not be permitted as existing? Is that true?

18 MR. DARROW: Aloha, Commissioner U'u.  
19 Yes, that would be true. This particular area is  
20 currently within our general plan for low density  
21 type uses. It's currently in the proposed general  
22 plan that we're going to right now, through a  
23 comprehensive plan change, is reverting to rural  
24 residential agricultural, so it's actually backing  
25 away from low density to more rural type activities.

1 So this would be more consistent even with that land  
2 use guide map.

3 The -- we've also heard from the community  
4 that even though there's been, you know, talk in the  
5 past about this area transitioning to low density  
6 urban, they don't want to see it, and that's why  
7 we're seeing the general plan changing back to a  
8 more rural type designation. So this particular use  
9 would be more appropriate remaining in its current  
10 type zoning.

11 COMMISSIONER U'U: Well, I support you  
12 guys on that, so it doesn't come back to the Land  
13 Use Commission and for both of the reasons why you  
14 guys take your stuff in-house, and it's one less for  
15 us to chase, so I wish you success in your  
16 direction.

17 VICE CHAIR YAMANE: Thank you,  
18 Commissioner U'u.

19 MS. KWAN: Commissioner Carr Smith has a  
20 question.

21 VICE CHAIR YAMANE: Commissioner Carr  
22 Smith?

23 COMMISSIONER CARR SMITH: Thank you,  
24 Ariana.

25 So that sort of prompts another question

1 for me. So if this is proposed to be in perpetuity,  
2 then -- but you're also acknowledging that making an  
3 annual report is okay, at what point is that not  
4 reasonable to have to make an annual report?

5 MR. FUKU: So if you kind of like fast-  
6 forward and let's assume, you know, next year this  
7 time there are two separate special permits, one for  
8 the school and one for Nani Mau Gardens, they're  
9 each going to be assigned their own conditions, and  
10 at that time -- well, you know, the conditions are  
11 going to be distinct to the specific use, school use  
12 and Nani Mau Gardens use. And there may be a  
13 condition calling for annual reports, and I wouldn't  
14 be surprised there would be a condition because  
15 there may be new conditions for which I think the  
16 Department would want to know like how you comply or  
17 not comply with these additional conditions.

18 But at some point in time, once it gets  
19 fully laid out and operating, then any annual  
20 reports would probably be as what the Director  
21 indicated, becomes just wasting paper, you know,  
22 just making the submittal for the sake of submittal.

23 I kind of also want to address the issue  
24 about if we change the zone, you know, to  
25 commercial. I think part of the problem is that for

1 the Nani Mau Gardens operation you need to have like  
2 a commercial zoning, and so for Nani Mau Gardens to  
3 operate as such, that's fine.

4 But we know that since you have like a  
5 commercial neighborhood, a village commercial zone,  
6 or whatever have you, that once that use terminates,  
7 you could have like other uses that's allowed in  
8 that area such as like a service station, a major  
9 supermarket, all of those things which may have a  
10 different kind of impact that the community was not  
11 anticipating.

12 So unlike the special permit where a  
13 specific, like, this is what you see and this is  
14 what you get, I think you have a better means of  
15 controlling.

16 COMMISSIONER CARR SMITH: Thank you.

17 MR. YEH: If I may. Thank you. On this  
18 issue, when we use the term "perpetuity," it kind of  
19 leads you down this track about permanency, but the  
20 regs that the Land Use Commission has basically says  
21 you can have a special permit that calls for  
22 duration, a limited duration if it's appropriate  
23 under the circumstances.

24 So in the school's perspective, talking  
25 about a duration doesn't really make sense. It's

1 really going to be is the school here? Is it  
2 operating? Why would we limit it to five years?  
3 Why would we limit it to ten years? That doesn't  
4 make sense from an investment standpoint.

5           When we talk about boundary amendment from  
6 the school's perspective, do we jump through the  
7 hoops of doing a boundary amendment and then a  
8 zoning change and/or getting another use permit?  
9 It's just, from a practical perspective, that's what  
10 we're looking at. And I think it also fits from a  
11 zoning perspective, because when we look at the  
12 special permit criteria, have there been unusual  
13 trends and needs that have arisen? Yes, there have  
14 because we had the 2018 lava flow that displaced the  
15 school and put it where it is.

16           Is it in character with the neighborhood?  
17 The neighborhood, the surrounding areas are A5, A10,  
18 A1. This is also a combined use for agricultural  
19 purposes as well as school purposes. It fits this  
20 property.

21           The special permit that was issued in the  
22 10th Amendment didn't have a duration with the  
23 school, and rightfully so. So when we talk about  
24 these issues, we got to really look at the context  
25 with this school and what it's doing here. Thank

1 you.

2 COMMISSIONER CARR SMITH: Thank you.  
3 That's helpful, Tom. And I understand also that the  
4 permit holder can -- has the option to change things  
5 down the road, yeah. So perpetuity was probably not  
6 the right choice of word.

7 MR. FUKU: I'm sorry. I apologize for the  
8 use of that term. But you know, there is certain  
9 special permits, I think, that could warrant like a  
10 specific timetable, and I'm just kind of reminded  
11 about there was a special permit that was issued for  
12 a heliport up in the Hapuna Estates on the mauka  
13 area. And I think they have like a ten-year shelf  
14 life.

15 And part of the reason why is that, well,  
16 there's nothing happening over there right now. So  
17 if you have this heliport today coming in for an  
18 extension, for example, we know that, you know, in  
19 the upper side of the Hapuna Estates you have  
20 development over there, so now it becomes  
21 incongruous, you know. So certain uses I think you  
22 can kind of justify having time limits. In this  
23 situation you have, probably not.

24 VICE CHAIR YAMANE: Thank you.

25 Commissioners, any more questions?



1 MS. KWAN: Seeing none, Chair.

2 VICE CHAIR YAMANE: So we've been over an  
3 hour, but I'm inclined, if the Commission doesn't  
4 mind, maybe we wrap up with OPSD and then take a  
5 short break after that? Everybody okay with that?

6 MS. KWAN: Everyone is nodding.

7 VICE CHAIR YAMANE: All right.

8 Okay. OPSD -- County, thank you for your  
9 comments.

10 OPSD, you're up.

11 MS. KATO: Alison Kato, Deputy Attorney  
12 General for the Office of Planning and Sustainable  
13 Development. I'm going to turn the mic over to Mary  
14 Alice Evans, Director of OPSD. Please refer her in.

15 MS. EVANS: Good morning, Chair, Vice  
16 Chair, Members, I'm Mary Alice Evans, the Director  
17 of the Office of Planning and Sustainable  
18 Development. We'd like to support the County and  
19 the applicant in their plans, but I also want to  
20 note that we believe, as Planner Sidney Fuke has  
21 noted, that some special permits are appropriate  
22 with termination dates, and others are for uses that  
23 -- where a termination is not appropriate. And so  
24 we don't believe that should be -- that's our  
25 suggestion is it should not be -- it should be on a

1 case-by-case basis and not on a general rule. But  
2 we respect the Land Use Commission's determination  
3 on that.

4 I'd like to take the opportunity to note  
5 that in review of district boundaries we published  
6 in January 2022, we noted that there have been  
7 changes in areas around -- surrounding urban areas,  
8 and this one seems to fall into that case. It  
9 certainly looks more like a rural low density  
10 pattern of settlement, with family, farm, and  
11 agriculture, and associated uses.

12 Should the applicant and the County be  
13 inclined to consider a district boundary amendment  
14 to the rural district, it would certainly not be in  
15 contradiction of our report to the Commission and to  
16 the Legislature and the Governor. So thank you for  
17 the opportunity to provide the comments.

18 VICE CHAIR YAMANE: Thank you.

19 Commissioners, questions for OPSD?

20 MS. KWAN: Seeing none, Chair.

21 VICE CHAIR YAMANE: Seeing none. Any  
22 questions for any of the parties, Commissioners?  
23 Are we ready for our short recess or break?

24 MS. KWAN: Seeing no questions, Chair.

25 VICE CHAIR YAMANE: All right. Let's

1 recess 10 minutes and reconvene back at 11:02.

2 Thank you.

3 (WHEREUPON, a recess was taken.)

4 VICE CHAIR YAMANE: All right. Thank you.  
5 Let's start our -- continue our agenda item. I  
6 think we are on public testimony number two. Is  
7 that correct, Ms. Kwan?

8 MS. KWAN: Correct.

9 VICE CHAIR YAMANE: All right. So are  
10 there any members of the public who wish to provide  
11 new or additional testimony on this matter? If so,  
12 please let the Chief Clerk know.

13 Ms. Kwan?

14 MS. KWAN: Seeing none in the room, Chair.  
15 And nobody on Zoom has used the Q/A feature to give  
16 additional testimony.

17 VICE CHAIR YAMANE: Thank you, Ms. Kwan.  
18 All right. Further discussion.

19 Commissioners, as this is a status report,  
20 we're not required to take any action at this time.  
21 If no action is taken, the requirement of continued  
22 annual status reports will remain. However, if the  
23 Commission feels that its concerns have not been  
24 addressed based on the comments and responses  
25 provided by the Petitioner, the Chair will entertain

1 the motion that either Petitioner's status report  
2 has not sufficiently addressed the Commission's  
3 concern, and that further meetings or status report  
4 updates are necessary to provide the opportunity to  
5 do so at future dates to be determined by the Land  
6 Use Commission Staff or that there is reason to  
7 believe that the Petitioner will not adhere to the  
8 conditions set forth in the Decision and Order and  
9 the request that the Staff will forward with formal  
10 order to show cause proceeding.

11 Is there any further discussion? Seeing  
12 none. Thank you.

13 Let's move on to deliberations.  
14 Commissioners, the Chair will entertain a motion  
15 regarding how the Commission should proceed in this  
16 matter. Commissioners, what's your pleasure?

17 MS. KWAN: Commissioner Carr Smith has her  
18 hand raised.

19 VICE CHAIR YAMANE: Commissioner Carr  
20 Smith?

21 COMMISSIONER CARR SMITH: Thank you, Mr.  
22 Yamane.

23 I feel that the status update is  
24 sufficient, what we've heard today. There's been  
25 progress made. They're working out the best uses

1 and adjusting where they need to, proposing  
2 solutions that will make it better for the on-the-  
3 ground situation. I appreciate that.

4 And I think, you know, with some hiccups  
5 here and there, they've been in compliance with the  
6 10th Amendment, and they've admitted to the fact  
7 that they will continue to do so until such time as  
8 something else changes, so I'm good with the status  
9 update as-is.

10 VICE CHAIR YAMANE: Thank you,  
11 Commissioner Carr Smith.

12 MS. KWAN: Bruce U'u has his hand raised.

13 VICE CHAIR YAMANE: Commissioner U'u?

14 COMMISSIONER U'U: Ditto on my part.

15 VICE CHAIR YAMANE: Thank you,  
16 Commissioner U'u.

17 Commissioners? Commissioner Giovanni?

18 CHAIR GIOVANNI: Yeah. I concur. I'm  
19 fully supportive of the current activities at the  
20 place, at the property. I think that the dual uses  
21 that are ongoing and the commitment of the  
22 management teams of each is appropriate.

23 There is uncertainty about how this will  
24 unfold at the County level with rezoning and the  
25 possibility of bifurcation; therefore, I think it is

1 appropriate that the annual reports continue and be  
2 -- that requirement be adhered to. So as long as  
3 the current owners and managers of the property  
4 commit to us, to the Land Use Commission, to provide  
5 those annual reports, I don't see any need for any  
6 additional actions on our part.

7 VICE CHAIR YAMANE: Thank you,  
8 Commissioner Giovanni.

9 Any other Commissioner comments,  
10 questions? Seeing none.

11 So I guess, as I stated, there is no  
12 action required, and if there's no action required  
13 there will still be continued annual status reports  
14 remaining. And if that is the case, I don't see --  
15 I am fine with what has been provided. Appreciate  
16 Commissioner Miyasato and Commissioner U'u's -- you  
17 know, I defer to their -- what they think is good  
18 for Hilo, and it sounds like this a good thing, and  
19 this should continue going on.

20 So with that, if there are no motions,  
21 since we don't need any, I think we are done here.  
22 I'd like to thank all the parties and public for  
23 their presentations. Thank you.

24 COMMISSIONER CARR SMITH: Thank you all,  
25 and best of luck.

1 VICE CHAIR YAMANE: Next agenda item is  
2 report on DW Aina Le'a Development versus State of  
3 Hawaii Land Use Commission Final Decision.

4 The United States Court of Appeals for the  
5 Ninth Circuit Court issued a memorandum on February  
6 19, 2025, affirming the district court's ruling in  
7 favor of the State of Hawaii Land Use Commission in  
8 the case brought by DW Aina Le'a Development, LLC.

9 Public testimony. I'll recognize written  
10 public testimony submitted in this matter. Ms.  
11 Kwan, has there been any written testimony submitted  
12 on this matter?

13 MS. KWAN: No, Mr. Chair.

14 VICE CHAIR YAMANE: Has there been any  
15 members of the public that wish to testify in this  
16 matter?

17 MS. KWAN: Seeing none in the room, and no  
18 one used the Q/A feature on the Zoom, Chair.

19 VICE CHAIR YAMANE: Thank you, Ms. Kwan.

20 Pursuant to Section 92-4, 92-5 HRS, the  
21 Commission may go into Executive Session in order to  
22 consult with its attorneys on questions and issues  
23 pertaining to the Commission's powers, duties,  
24 privileges, immunities, and liabilities.

25 MS. KWAN: Commissioner Carr Smith.

1 COMMISSIONER CARR SMITH: So moved. Is  
2 that what you were looking for? Sorry. Yes.

3 VICE CHAIR YAMANE: Looking -- we have a  
4 motion by Commissioner Carr Smith to go into  
5 Executive Session.

6 COMMISSIONER LEE: Chair Yamane, this is  
7 Commissioner Lee. I will second that motion.

8 VICE CHAIR YAMANE: Second by Commissioner  
9 Lee.

10 If this is our first full, do I need to  
11 take a whole vote for this one?

12 MS. KWAN: Yes.

13 VICE CHAIR YAMANE: All right. Executive  
14 Director Orodénker, could you please take the roll  
15 call vote.

16 MR. ORODENKER: Thank you, Mr. Chair, Vice  
17 Chair. The motion is to go into Executive Session.  
18 Commissioner Carr Smith?

19 COMMISSIONER CARR SMITH: Aye.

20 MR. ORODENKER: Commissioner Lee?

21 COMMISSIONER LEE: Yes, aye.

22 MR. ORODENKER: Commissioner Hayashida is  
23 excused.

24 Commissioner Kahele?

25 COMMISSIONER KAHELE: Aye.



1 MR. ORODENKER: Commissioner Kamakea-Ohelo  
2 is excused.

3 Commissioner U'u?

4 COMMISSIONER U'U: Aye.

5 MR. ORODENKER: Commissioner Miyasato?

6 COMMISSIONER MIYASATO: Aye.

7 MR. ORODENKER: Commissioner Giovanni?

8 CHAIR GIOVANNI: Aye.

9 MR. ORODENKER: Vice Chair Yamane?

10 VICE CHAIR YAMANE: Aye.

11 MR. ORODENKER: Thank you, Mr. Chair. The  
12 vote passes unanimously.

13 VICE CHAIR YAMANE: Thank you. I believe  
14 we will go into a short recess, so both -- and we'll  
15 sign off and use the other link.

16 MS. KWAN: Correct. Please jump on the  
17 Executive Session Zoom link.

18 VICE CHAIR YAMANE: Okay. We'll sign off  
19 of this one and join the other one. See you in a  
20 bit.

21 (WHEREUPON, the Commission entered  
22 Executive Session.)

23 VICE CHAIR YAMANE: Thank you, everybody.  
24 We're back from our Executive Session where we  
25 discussed legal implications of the court ruling

1 regarding the State of Hawaii Land Use Commission in  
2 the case brought by DW Aina Le'a Development, LLC.

3 At this time, we'll be taking second round  
4 of public testimony. If so, please let the Chief  
5 Clerk know.

6 Ms. Kwan, do we have any members of the  
7 public who wish to provide new testimony on this  
8 matter?

9 MS. KWAN: Seeing none in the room, Chair,  
10 and none have used the Q/A feature on the Zoom to  
11 indicate they want to provide testimony.

12 VICE CHAIR YAMANE: Thank you, Ms. Kwan.

13 Next on the agenda is our adoption of the  
14 February 19 minutes, 2025. Ms. Kwan, has there been  
15 any written testimony submitted on the February 19,  
16 2025 minutes?

17 MS. KWAN: No, Mr. Chair.

18 VICE CHAIR YAMANE: Any members of the  
19 public who signed up to testify on the adoption of  
20 our minutes for February 19th?

21 MS. KWAN: Seeing none, Chair.

22 VICE CHAIR YAMANE: Commissioners, are  
23 there any corrections or comments on the minutes?  
24 If not, is there a motion to adopt the minutes for  
25 February 19th?

1 COMMISSIONER KAHELE: Chair, I'm going to  
2 have to recuse. I wasn't present at the meeting, so  
3 I'm going to recuse. Thank you.

4 VICE CHAIR YAMANE: Thank you,  
5 Commissioner.

6 COMMISSIONER MIYASATO: I make a motion to  
7 approve the minutes as written.

8 VICE CHAIR YAMANE: Thank you,  
9 Commissioner Miyasato.

10 COMMISSIONER CARR SMITH: I second.

11 VICE CHAIR YAMANE: Second by Commissioner  
12 Carr Smith.

13 All in favor of the adoption of the  
14 minutes, please say, "aye."

15 (All said, "aye.")

16 VICE CHAIR YAMANE: Any opposed?

17 (No response.)

18 VICE CHAIR YAMANE: The minutes are  
19 adopted. Thank you.

20 The next agenda item is our tentative  
21 meeting schedule. Mr. Orodenger.

22 MR. ORODENER: Thank you, Mr. Vice Chair.

23 On May 7th, we will be on Oahu for an  
24 update on the KS Waiawa project. This is a  
25 nonaction, meaning it's just so they can give us the

1 latest plans that they have for the project as  
2 required at the last status hearing.

3 On June 4th, we will be on Maui for the  
4 AMFAC status report, A92-686. And on June 18th, we  
5 will be at the -- on Oahu at the airport, for the  
6 Hawaiian Memorial status report. And on July 9th,  
7 we have a pending FEIS from U of N Bancorp. If that  
8 is filed, we will be holding the hearing on that in  
9 Kona, on the 9th. That completes the calendar.

10 VICE CHAIR YAMANE: Thank you --

11 COMMISSIONER LEE: I --

12 VICE CHAIR YAMANE: Go ahead.

13 COMMISSIONER LEE: This is Commissioner  
14 Lee.

15 VICE CHAIR YAMANE: Commissioner Lee?

16 COMMISSIONER LEE: You know, we haven't  
17 had an election of officers, and at, I think, the  
18 January meeting, our Deputy AG mentioned that annual  
19 means 12 months exactly. And the last election was  
20 April 3rd, 2024. So I make a motion that we hold  
21 our election, so that we're not in violation, at the  
22 next meeting which is May 7th in -- on Oahu. I make  
23 that motion.

24 VICE CHAIR YAMANE: Commissioner Giovanni?

25 CHAIR GIOVANNI: I second that motion.

1 VICE CHAIR YAMANE: We have a motion to  
2 have our next election on May 7th, right,  
3 Commissioner Lee? Is that what you said?

4 COMMISSIONER LEE: Correct.

5 VICE CHAIR YAMANE: And then seconded by  
6 Commissioner Giovanni.

7 Any discussion? All those in favor say,  
8 "aye."

9 MS. KWAN: There is a discussion, Chair.

10 VICE CHAIR YAMANE: Oh, there's a  
11 discussion. Go ahead. Sorry.

12 COMMISSIONER U'U: Just a minor  
13 discussion. I will be recusing myself. KS is my  
14 employer, but I can participate in the part of the  
15 meetings that don't require that I can be at a  
16 meeting. So I'll be joining by Zoom, and then I'll  
17 recuse myself when the KS matter comes up. Does  
18 that suffice?

19 MS. KWAN: Yeah. We'll probably have you  
20 off the Zoom at that time during it, and then I'll  
21 invite you in when we're on the next agenda item.

22 COMMISSIONER U'U: Absolutely.

23 MR. ORODENKER: Actually, I --

24 VICE CHAIR YAMANE: Perhaps we can have  
25 the election in the beginning, so that Bruce can be

1 excused?

2 MR. ORODENKER: Given that it's a  
3 nonaction item, the advice from -- I just received  
4 from the Attorney General is, Bruce, you don't have  
5 to recuse yourself because there's not going to be a  
6 vote.

7 COMMISSIONER U'U: Okay. So I'll take  
8 that into consideration. The only thing I will have  
9 to pass them back to KS and let them know it's a  
10 nonaction item, and I will have to abide by what  
11 they say also. But thank you for that. I'll get  
12 back to you.

13 VICE CHAIR YAMANE: Any more discussion?

14 MS. KWAN: Is there any further discussion  
15 on this?

16 VICE CHAIR YAMANE: No?

17 CHAIR GIOVANNI: So -- so I just have a  
18 question with what Dan Orodenker said. So if we  
19 agendize election of officers for May 7th, how can  
20 there not be a vote for election at that meeting?  
21 What's the sequence or the process that's used.

22 MR. ORODENKER: I'm sorry. I was  
23 referring to the KS matter.

24 CHAIR GIOVANNI: Okay.

25 MR. ORODENKER: Commissioner U'u was going

1 to recuse himself.

2 CHAIR GIOVANNI: Okay. So basically, the  
3 -- we'll agendize the election of officers for --  
4 and actually, attempt to elect them for the next  
5 operational year of the Commission. Is that  
6 correct?

7 MS. KWAN: Yes, Mr. Chair.

8 CHAIR GIOVANNI: Okay. That's what I  
9 seconded.

10 VICE CHAIR YAMANE: We have a motion and  
11 second. All in favor say, "aye."

12 (All said, "aye.")

13 VICE CHAIR YAMANE: All right. Motion  
14 passes. I'll leave that up to the Staff.

15 I'm assuming you're going to be able to  
16 chair that meeting, Chair Giovanni?

17 CHAIR GIOVANNI: I will be there.

18 VICE CHAIR YAMANE: All right. I think  
19 that's it.

20 COMMISSIONER LEE: I have another item.

21 VICE CHAIR YAMANE: Okay. Go ahead.

22 COMMISSIONER LEE: This is Commissioner  
23 Lee.

24 You know, similarly, we haven't had an  
25 evaluation of the Executive Director as well in over

1 a year, so I would ask that that be placed on the  
2 agenda.

3 CHAIR GIOVANNI: So I don't know if we  
4 need a motion to that effect, but I agree, and it  
5 will be on the agenda. Basically, what I envision  
6 is the Commission coming to a discussion and an  
7 agreement on the process of performance evaluation  
8 that needs to be conducted imminently following that  
9 meeting.

10 The one open area that I have in my mind,  
11 just full disclosure, is that I had expected to  
12 receive by now direction from the -- from DBEDT  
13 Director and Deputy Director on the process, if any,  
14 things specific. They are on record saying that  
15 what we did last year process-wise was acceptable,  
16 but they also said that they're trying to get  
17 consistency among all the boards and commissions  
18 that relate to DBEDT on the process, but I haven't  
19 seen anything.

20 So before the May 7th meeting, I will  
21 reach out to DBEDT records office and see if there's  
22 anything forthcoming in terms of direction from  
23 them. And then ask the staff to share that any  
24 direction we receive with everybody in advance of  
25 the May 7th meeting.



1 VICE CHAIR YAMANE: Commissioner Lee --

2 COMMISSIONER CARR SMITH: Was that a  
3 motion to start the process on May 7th?

4 CHAIR GIOVANNI: The motion that I  
5 seconded is to agendize the performance evaluation  
6 process on the -- at the May 7th meeting.

7 MS. STEED: So we really shouldn't be  
8 having motions and voting because these weren't  
9 agendized. The Chair sets the agenda, so it's fine  
10 that you're discussing this right for the future  
11 meeting and saying to put this on the agenda, and  
12 the Chair is agreeing, but it really wouldn't be  
13 proper to be voting. And just the Chair says the  
14 agenda. You don't need to. You told him to put it  
15 on the agenda. That's sufficient. We can't be  
16 taking votes on this.

17 CHAIR GIOVANNI: Okay. Absent any votes,  
18 it is the Chair's intent to put both those items on  
19 the agenda for the May 7th meeting. Both agenda  
20 items would be the process for performance  
21 evaluation and the election of officers for the  
22 forthcoming year.

23 COMMISSIONER LEE: Chair, didn't -- didn't  
24 the Deputy AG also say that annual election means 12  
25 months exactly, so we're kind of bound to that,

1 isn't that right?

2 CHAIR GIOVANNI: My understanding is that  
3 the rules by which actually says, "annual." It  
4 doesn't say 12 months. It says, "annual election"  
5 or "election for an annual" --

6 COMMISSIONER LEE: But we had this  
7 discussion in January where our present Deputy AG  
8 said annual means exactly 12 months, and she made  
9 that an important point. So I want to ask the  
10 Deputy AG about that.

11 CHAIR GIOVANNI: That's my take, but you  
12 can ask her.

13 MS. STEED: Yep, so you're at your 12-  
14 month period for election, so that's -- your Chair  
15 said he's going to agendize it for your next  
16 meeting.

17 MR. ORODENKER: I have a clarification. I  
18 understand your concern, Commissioner Lee, that we  
19 may be in limbo here somewhat; however, in the past,  
20 the election of officers has been for a term to  
21 start on July 1.

22 COMMISSIONER LEE: Well, yeah, it's going  
23 to start July 1. Just that the election itself has  
24 to be held 12 months --

25 MR. ORODENKER: Yes, yes.

1 COMMISSIONER LEE: -- and we're already  
2 past 12 months.

3 MR. ORODENKER: Yeah, yeah.

4 MS. STEED: Oh, no. That wasn't my  
5 previous advice. My previous advice was that your  
6 terms are annual, so you can do the election really  
7 any time prior to when the term would start, which  
8 your terms are starting on July 1st.

9 COMMISSIONER LEE: You -- we wanted to do  
10 it in January, and you said it has to be 12 months  
11 last time, is my understanding.

12 MS. STEED: The request last time was to  
13 hold an election and appoint new officers prior to  
14 July 1st. It doesn't really matter if you hold the  
15 election now or next month or two months ago. It's  
16 that the --

17 COMMISSIONER LEE: That's not --

18 MS. STEED: -- term starts --

19 COMMISSIONER LEE: That's -- that's --

20 MS. STEED: -- in July.

21 COMMISSIONER LEE: I'm sorry, but that's  
22 not my understanding because it was always  
23 understood the term would start July 1st, but we  
24 actually asked that the election be held earlier,  
25 not that the term would be earlier. And I can defer

1 to Commissioner Miyasato on what his intent was.

2 MS. STEED: Well, that was not the request  
3 that the Attorney General understood to be made, so  
4 I apologize if there is a misunderstanding. But our  
5 advice is that the term is the one year July 1st,  
6 not that you have to hold an election on a specific  
7 date in the lead-up to that beginning of the term --

8 COMMISSIONER LEE: So -- so just to  
9 clarify, what you're saying is that as long as the  
10 term is one year, you can hold election six months  
11 before that term ends for the following term.

12 MS. STEED: Yeah. As long as the term's  
13 to start on July 1st, but, again, it's up to the  
14 Chair to set the agenda, so that's his discretion on  
15 when he puts the election within that --

16 COMMISSIONER LEE: Okay.

17 MS. STEED: -- period of time.

18 COMMISSIONER LEE: I'm glad we clarified  
19 that because that was not, I don't think, what we  
20 all understood, but appreciate the clarification.

21 COMMISSIONER MIYASATO: Chair, I just have  
22 a question. You know, it was mentioned by  
23 Commissioners that it would be favorable for  
24 incoming commissioners to be able to participate and  
25 to elect their slate of officers on the incoming

1 term, which I see no problem with. So is it a  
2 problem if this upcoming term be extended to July  
3 31st and beyond the 12 month? Is that a problem, or  
4 is it 12 months deadlock, that that's it?

5 CHAIR GIOVANNI: Ms. Steed, I think, you  
6 know, my term -- the current term started July 1 for  
7 an annual term. The question is: Can the  
8 Commission decide to change it for more than 12  
9 months.

10 MS. STEED: I think you need to clarify  
11 your rules if you wanted to do that. Right now, you  
12 have it set to begin with the fiscal year, and you  
13 have a current term expiring on July 1, so you do  
14 need to elect your new Chairperson by then. I think  
15 your questions go more to if you want there to be a  
16 different point in time where elections are held,  
17 considering the incoming new members, I think you  
18 need to revisit your rules.

19 COMMISSIONER LEE: Yeah. Also, I want to  
20 remind everyone that you had mentioned that in the  
21 previous case, that the officers would have to  
22 resign and then there could be an earlier election.  
23 Was that your recollection?

24 MS. STEED: My recollection was that the  
25 request made was to have elections to put a new

1 Chairperson in beginning, I believe, in January and  
2 not on July 1st. So if you wanted to hold an  
3 election to have a term starting before the  
4 termination of the current term, then yes, the  
5 current Chairperson and Vice Chairperson would have  
6 to resign.

7 COMMISSIONER LEE: Thank you.

8 VICE CHAIR YAMANE: Any more discussion?

9 CHAIR GIOVANNI: Yeah. I think also it's  
10 a question for Miranda. Maybe you need to review  
11 the rules in advance of our May 7th meeting, but I  
12 think somebody used the word "slate" of officers  
13 versus election of individual officers. Are we --  
14 by the rules, do we put forth a slate of officers,  
15 or can we elect Chair and Vice Chair and Second Vice  
16 Chair separately?

17 MS. STEED: Yeah. I'll let my colleague,  
18 who's going to be staffing that meeting know to  
19 check that because I'm not sure if your rules --

20 CHAIR GIOVANNI: Yeah. Just let me know,  
21 if you can, in advance of May 7.

22 MS. STEED: All right. I'll let him know  
23 to get back to you on that.

24 COMMISSIONER LEE: Could you let everyone  
25 else know, too?

1 MS. STEED: He can tell you at the  
2 meeting, but no, because if I communicate with all  
3 of you, I'm committing a Sunshine violation.

4 COMMISSIONER LEE: I think you're just  
5 giving us separately but I'll defer to your  
6 expertise.

7 MS. STEED: Yeah. So that's called a  
8 serial communication, so --

9 COMMISSIONER LEE: But you're not a board  
10 member. Because if Orodenger gives us the same  
11 advice separately he says that was okay.

12 MS. STEED: He's giving you more just  
13 information. The problem is that if I start sending  
14 you advice and then you respond to me, and we start  
15 having a conversation, and then I start having the  
16 same conversation with someone else, and someone  
17 else, which is what is typically apt to happen if  
18 I'm emailing all of you.

19 COMMISSIONER LEE: Well, we can promise  
20 not to discuss --

21 MS. STEED: Yeah.

22 COMMISSIONER LEE: -- but that's the same  
23 thing as what our Executive Officer tells us, you  
24 know. He shares the same thing with all of us, and  
25 we're trusted not to converse with each other or

1 back serially.

2 MS. STEED: How about -- how about you  
3 just ask my colleague at the next meeting to explain  
4 the rules in Executive Session. I think that's --

5 COMMISSIONER LEE: I don't want to wait  
6 until the next meeting. I want to know --

7 MS. KWAN: Staff has a comment. Hi, it's  
8 Ariana. Per HRS 26-34, it does say clearly in the  
9 rules that the term shall commence on July 1 and  
10 expire on June 30th unless on the Board of  
11 Agriculture, Board of Land and Natural Resources and  
12 Hawaiian Homes.

13 COMMISSIONER LEE: Yeah. I'm fine with  
14 that, but I still want to know the answer. So I  
15 could call you separately and you can tell me.

16 MS. STEED: Well, I'm actually going to be  
17 out of the country pretty soon, so, no, please don't  
18 call me. I'll pass this along to my colleague to  
19 handle.

20 COMMISSIONER LEE: Who's your colleague?

21 MS. STEED: John Dubiel. We're the only  
22 two Deputy AGs that currently advise you.

23 COMMISSIONER LEE: Okay. Because if your  
24 determination is that you can't tell us the same  
25 information individually, then that's something that



1 would apply to the Executive Director as well,  
2 correct?

3 MS. STEED: No. My concern is that if I  
4 start providing legal advice to an email that you're  
5 all bcc'd on, we're going to end up in a situation  
6 where a serial communication occurs. You are  
7 correct that if none of you respond to me, we  
8 wouldn't have that risk. But it's not something  
9 that we can guarantee, so our stance is that we  
10 don't do that, and we provide you legal advice in  
11 Executive Session at Sunshine meetings to avoid any  
12 legal issues occurring.

13 COMMISSIONER LEE: So -- so again, how is  
14 that different when the Executive Director does the  
15 same thing?

16 MR. ORODENKER: Commissioner Lee, I think  
17 I can clarify this. The AG has policies with regard  
18 how it handles its clients. This is their decision.  
19 But myself as the Executive Officer, I have trust in  
20 my Commissioners that they won't enter into a serial  
21 conversation, so I send out the information.

22 COMMISSIONER LEE: That's a good answer.

23 COMMISSIONER CARR SMITH: Do I understand  
24 correctly that we still have the motion on the floor  
25 that we haven't voted on? There was a motion and

1 Giovanni seconded it. That was for elections to be  
2 on the agenda.

3 MS. STEED: Yeah, and I interjected  
4 because you shouldn't be having --

5 COMMISSIONER CARR SMITH: Oh, okay.

6 MS. STEED: -- agenda item. It's a  
7 violation of Sunshine law if you do that, but you --  
8 it's fine that you told him you want that. That's  
9 fine because it's within the context of the future  
10 meetings.

11 COMMISSIONER LEE: But we already voted,  
12 so --

13 COMMISSIONER CARR SMITH: No, we didn't  
14 vote. No.

15 COMMISSIONER LEE: But -- but --

16 COMMISSIONER CARR SMITH: So my confusion,  
17 I thought we were on to the next topic of starting  
18 the evaluation, and I thought that that's what you  
19 were saying we couldn't make a motion. So I was  
20 confused, but -- so my only concern is there was a  
21 meeting prior that Myles made a suggestion to have  
22 the elections on the agenda. And then I was told  
23 after that it wouldn't be because it wasn't a  
24 motion. So that's why I'm confused.

25 MS. STEED: Okay. So it's the discretion

1 of the Chairperson to set the agenda, so you've  
2 informed the Chairperson you want May 7 to have it  
3 -- he's confirmed now on the record that he's going  
4 to include it.

5 COMMISSIONER LEE: Well, I think we're  
6 also bound by the 12 months that you had stated  
7 before, right?

8 MS. STEED: Again, that's to the terms of  
9 the Chairperson. I think there was a -- I think we  
10 have a misunderstanding of what you asked me and the  
11 question I answered last time, because the question  
12 I thought I was answering was the Chairperson's  
13 term, when does it start and end, and it's a 12-  
14 month period.

15 To the question of when you hold your  
16 elections, you could hold them kind of any time  
17 before that. It's just that they wouldn't take  
18 effect until the current term ends.

19 COMMISSIONER LEE: Okay. So I'm just  
20 going to ask Chair Giovanni, then. Is it his  
21 commitment that we're going to have the election on  
22 May 7th?

23 CHAIR GIOVANNI: Yes, that is my  
24 commitment. And also, we will have an agenda item  
25 on the process for performance evaluation of the

1 Executive Officer, but I'm still waiting for  
2 clarification from the AG whether we can elect  
3 officers individually or as a slate.

4 COMMISSIONER LEE: Okay. That's good  
5 enough for me.

6 MR. ORODENKER: Before we adjourn, I was  
7 -- I neglected to bring something up when I was  
8 talking about scheduling. I want to note for the  
9 Commissioners that we're in a very strange time  
10 right now. Our phones are not ringing. Our emails  
11 are not happening with regard to new projects since  
12 January, since our current President took office.  
13 We have never seen this before.

14 Even during COVID, we had a lot of  
15 activity. I just wanted to forewarn the  
16 Commissioners that the agenda might be quite -- or  
17 our schedule might be quite sparse for a while  
18 because my understanding is that nobody is lending,  
19 so nobody is doing anything.

20 COMMISSIONER LEE: One other thing, Chair  
21 Yamane, before we adjourn. It was brought up at a  
22 previous meeting that we would have a discussion on  
23 out-of-state conferences. And I notice on the  
24 calendar there are three upcoming out-of-state  
25 conferences. And if the Chair is the one that

1 decides who goes to the conferences, I would like to  
2 ask that -- you know, there's always been mention  
3 about how the new commissioners don't know that  
4 much, then, you know, to let us know when the  
5 conferences are, and that the newer commissioners  
6 should go. Not the same commissioners going all the  
7 time because that just looks like they're doing it  
8 for personal gain.

9           So these personal -- these trips that are  
10 coming up, I think that should be open to the new  
11 members. And especially since the Chair himself is  
12 technically termed out, you know, you should take  
13 that into consideration before going on your trips  
14 yourselves.

15           VICE CHAIR YAMANE: Any other thing before  
16 we move on to our adjournment?

17           COMMISSIONER LEE: Yeah, so has it been  
18 decided who's going to these three conferences yet  
19 that are not staff, Mr. Orodenger?

20           MR. ORODENKER: There's only two  
21 conferences that I'm -- I mean HCPO is -- everybody  
22 goes. But there's ULI --

23           COMMISSIONER LEE: There's ULI. There is  
24 CNU and then there's ESRI.

25           MR. ORODENKER: Oh. Well, ESRI is a very

1 technical conference. We usually just send staff to  
2 that because it's all about how to utilize the GIS  
3 technology --

4 COMMISSIONER LEE: So has ULI and CNU  
5 conferences been decided who's going to go among  
6 commissioners?

7 MR. ORODENKER: ULI, there are no  
8 commissioners attending. CNU, we have Kuike  
9 Kamakea-Ohelo is attending.

10 COMMISSIONER LEE: Okay. So -- see, none  
11 of us were consulted on that, and that was supposed  
12 to have been brought up, and you agreed to that at  
13 the previous meetings that it was -- be open for  
14 discussion. So I would urge that to be a more  
15 public and transparent process.

16 MS. KWAN: I believe the discussion was we  
17 would put it on the calendar so the Commissioners  
18 are aware. I don't believe we said we would discuss  
19 it because it is the Chair's delegation.

20 MR. ORODENKER: Yeah. My advice from the  
21 Director of the Department of Business and Economic  
22 Development was that it's based on seniority, and  
23 that's the way we've been operating. If this  
24 Commission would like to change that, I'd be more  
25 than open to doing that.

1 CHAIR GIOVANNI: So I have also -- I have  
2 also conferred with the Director of DBEDT on the  
3 protocol for who gets to go to what conferences, and  
4 his simplistic response was that it is based on  
5 seniority.

6 But having said that, I'd like to know who  
7 would like to go to what conference. So if you're  
8 aware of a conference and you have interest -- if  
9 any Commissioner has interest in going, please make  
10 that known to Mr. Orodenker, and then we'll take it  
11 under consideration.

12 COMMISSIONER LEE: Yeah, so if I wasn't  
13 clear last time, I think this kind of stuff should  
14 be brought up and discussed in the meeting and not,  
15 you know, in private because we need to be  
16 transparent. And I think that -- I've served on  
17 boards before where I was the chair, and I had to  
18 nominate people to go on trips. And it's not always  
19 seniority. Sometimes it's who's interested in going  
20 --

21 CHAIR GIOVANNI: I understand your  
22 position. My position is if you're interested in  
23 going to a conference, let Mr. Orodenker know, and  
24 we'll follow DBEDT guidelines, and those with the  
25 most seniority and who haven't recently gone to a

1 conference will be at the top of the list. It's  
2 pretty simple. Let's not make it complicated.

3 COMMISSIONER U'U: I agree, will be good  
4 to everyone to know and just, you know, same thing,  
5 same body. But for myself, I probably couldn't go  
6 anywhere. I'm busy enough as it is. But it's just  
7 good to know what's upcoming, and I would love to  
8 have feedback from maybe what someone learned or  
9 give us some insight for our manao and for what we  
10 can utilize that maybe we missed because we couldn't  
11 attend the meeting, so like one briefing. That's  
12 it.

13 MR. ORODENKER: Staff has made a  
14 commitment to put our detailed staff reports on what  
15 we learned at the various conferences on the website  
16 for everybody to view.

17 COMMISSIONER CARR SMITH: I have one more  
18 topic if you don't mind, Chair.

19 CHAIR GIOVANNI: Sure.

20 COMMISSIONER CARR SMITH: And all of this  
21 conversation speaks to it. So I remember that --

22 (Cell phone interruption)

23 COMMISSIONER CARR SMITH: -- a standing  
24 agenda item for updates or anything that might be of  
25 interest to us. We talked about putting that on the



1 agenda, and it never happened, and I (audio  
2 disruption) conversation now is making me wonder why  
3 -- what happened. Did we decide not to do that?  
4 Because this type of conversation could fall under  
5 any of that. So Dan, what do you --

6 MR. ORODENKER: Yeah. We discussed that  
7 with the Attorney General, and the advice that we  
8 were given was that we couldn't put a general item  
9 on the agenda, that we had to have a specific item  
10 that was going to be discussed.  
11 The obligation of the Commission under the Sunshine  
12 law is to produce agendas that are sufficiently  
13 specific, so that the public knows what's being  
14 discussed.

15 COMMISSIONER CARR SMITH: I understand  
16 that. And I recall that we talked about this, and  
17 we emailed about it. And there were several  
18 examples of other boards and commissions that have a  
19 standing agenda item that is only activated and then  
20 made specific if there's something to be reported.

21 MS. STEED: So the advice we gave was that  
22 if you had specific things you wanted updates on, to  
23 give it to the Chair to be agendized, so that we  
24 wouldn't have Sunshine issues, but that's for the  
25 Chair to answer if he's been getting requests or

1 not. But the agreement that (audio disruption) AG's  
2 advice was that the Chair would agendize based on  
3 requests he received from individual Commissioners.

4 COMMISSIONER CARR SMITH: So we have to  
5 ask each meeting if we want something else  
6 discussed.

7 MS. STEED: No. You need to email the  
8 Chair and no one else in your emails so that you  
9 don't commit a Sunshine violation.

10 COMMISSIONER CARR SMITH: Sorry, I lied.  
11 I have one more comment. It's nothing personal at  
12 all, but I really feel like whoever is running the  
13 meeting should be in the room. I think Mr. Yamane  
14 did a fine job from Zoom, and it works okay with us.  
15 But in fairness to all the other people that were  
16 here in person for the petitioner, the state and the  
17 County, I feel that somebody should run the meeting  
18 that's in the room. It also puts more kuleana on  
19 Ariana, who's already doing many other things. And  
20 that's just my mana'o on that.

21 VICE CHAIR YAMANE: Thank you.

22 Any other comments, questions before we  
23 adjourn?

24 COMMISSIONER U'U: One last comment.

25 VICE CHAIR YAMANE: Go ahead.

1 COMMISSIONER U'U: Chair Giovanni,  
2 hopefully healing good, so I wish you the best in  
3 healing.

4 VICE CHAIR YAMANE: He'll be back.

5 CHAIR GIOVANNI: Commissioner U'u, I'm  
6 healing so well that I'm coming to Maui on Friday.

7 COMMISSIONER U'U: I'm making and  
8 operating the plane, and we'll be okay, buddy.

9 CHAIR GIOVANNI: Thank you very much. I  
10 appreciate it. But I'm feeling -- I'm feeling  
11 pretty good. If this dilation will go back to  
12 normal, I can be in a room that's not dark. I know  
13 it looks like I'm in a bright room, but I'm not.

14 VICE CHAIR YAMANE: All right. I think  
15 we're about to adjourn this meeting. Any further  
16 business to discuss? Seems like we've done a lot.  
17 If not, I declare this meeting adjourned. Thank  
18 you, everybody. Have a safe trip back.

19 (WHEREUPON, the Hawaii Land Use Commission  
20 Meeting adjourned at 11:04 a.m.)  
21  
22  
23  
24  
25

CERTIFICATE

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

IN WITNESS HEREOF, I have hereunto set my hand this 9th day of May, 2025.

A handwritten signature in black ink, appearing to read 'Jodi Dean', with a long horizontal flourish extending to the right.

Jodi Dean