

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

LAND USE COMMISSION
STATE OF HAWAI'I

ACTION	PAGE
DR13-50 Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools (Kaua'i)	5
HEARING	
DR08-36 Ko Olina Development LLC	16

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for an Action and Public Hearing at 235 S. Beretania Street, Leiopapa A Kamehameha Bldg. Room 405. Honolulu, Hawai'i, commencing at 9:50 a.m. on January 23, 2014, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

A P P E A R A N C E S

COMMISSIONERS:

SHELDON BIGA

DENNIS ESAKI

RONALD HELLER, CHAIRMAN

LANCE M. INOUE

ERNEST MATSUMURA

CHAD McDONALD, VICE CHAIR

CAROL TORIGOE

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. DR13-50 Trustees of the Estate of Bernice

Pauahi Bishop dba Kamehameha Schools Petition for

Declaratory Order to Designate Important Agricultural

Lands

For the Petitioner:

WILLIAM MEHEULA, ESQ.

Kamehameha Schools Trustees

For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

RODNEY FUNAKOSHI

Office of Planning

A P P E A R A N C E S (cont'd)

Docket No. DR08-36 Ko Olina Development - Boat Ramp

Status Report

For the Petitioner:

WYETH MATSUBARA, ESQ.
CURTIS TABATA, ESQ.
RALPH HARRIS, Rept. Ko Olina

For the State:

BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI
Office of Planning

I N D E X

PUBLIC WITNESSES

PAGE

Warren Von Arnswaldt

18

Dan Purcell

47

1 VICE CHAIR McDONALD: I'd like to call the
2 Land Use Commission meeting to order. The first order
3 of business is the adoption of the January 8, 2014
4 minutes. Do I have a motion?

5 COMMISSIONER BIGA: So moved.

6 COMMISSIONER MATSUMURA: Second.

7 VICE CHAIR McDONALD: All those in favor?

8 COMMISSIONERS: "aye".

9 VICE CHAIR McDONALD: Any opposed?
10 (pause) Minutes are adopted.

11 This is an action meeting on DR13-50 in
12 the matter of the Petition of the Trustees of the
13 Estate of Bernice Pauahi Bishop dba Kamehameha Schools
14 for Declaratory Order to designate Important
15 Agricultural Lands for approximately 190 acres at
16 Hanalei, Kaua'i TMK5-6-003:001 portion, 5-6-004:023
17 portion thereof; TMK5-6-004:024, 5-6-04:025 parcel,
18 TMK5-7-002:001 and TMK5-7-003-001 portion therefore.

19 Parties, would you please identify
20 yourselves.

21 MR. MEHEULA: Bill Meheula for the
22 Petitioner.

23 MR. YEE: Good morning. Deputy Attorney
24 General Bryan Yee on behalf of the Office of Planning.
25 With me is Rodney Funakoshi from the Office of

1 Planning.

2 VICE CHAIR McDONALD: I note for the
3 record that the County has notified the Commission
4 that they will not be making an appearance for this
5 Petition. Another note, Dan, we'll come to that
6 tentative meeting schedule.

7 Let me update the record. On January 8,
8 2014 the Commission voted unanimously to grant
9 Petitioner's Petition for the Declaratory Order to
10 Designate Important Agricultural Lands.

11 On January 16, 2014 the Commission
12 received Kauai County Planning Department's Notice of
13 Agreement with the form and substance of the Proposed
14 Decision and Order circulated by the Petitioner and
15 advice that the Kaua'i Planning Department and Kaua'i
16 Deputy Corporation Counsel would not be attending the
17 January 23rd, 2014 meeting.

18 On January 17, 2014 the Commission
19 received OP's comments regarding the proposed Decision
20 and Order circulated by the Petitioner. Are there any
21 comments or objections? Is there anyone in the
22 audience who desires to provide public testimony on
23 this matter?

24 Seeing none, Commissioners, before you is
25 the Form of the Order granting the Petition in this

1 Docket No. DR12-48.

2 The Form of the Order is the form
3 submitted by the Petitioner with only technical,
4 non-substantive changes. The Chair will entertain a
5 Motion to Approve the Form of the Order in this
6 matter. Commissioners, what's your pleasure?

7 COMMISSIONER INOUE: May we ask the
8 parties some questions first?

9 VICE CHAIR McDONALD: Absolutely.

10 COMMISSIONER INOUE: Did you submit --
11 Bryan, did you submit a position on the Form of the
12 Order? I just didn't see a written one.

13 MR. YEE: We received a draft of the
14 proposed Findings of Facts from Petitioner. I think
15 we had a fairly minor comment, paragraph 28A. The
16 purpose of the comment really was not substantive. It
17 was -- 28(a), as you may recall, refers to the CWRM
18 request in its comment letter and refers to the 90
19 days in which the stream diversion work permit would
20 be submitted. We had only proposed some language to
21 give some context why the letter was there. And also
22 we made some stylistic changes.

23 We were proposing state agency comments,
24 were provided by CWRM in its December 16, 2006 letter
25 which explained that, and we had a quote from the

1 letter. And the Commission recommended that an
2 after-the-fact stream diversion work permit
3 application be filed with the Commission prior to
4 designating the proposed Lumahai parcels. In fact
5 that's part of the quote.

6 Therefore, based on CWRM's request we went
7 on with the existing language. But that was our only
8 -- it really was just to explain why there's a CWRM
9 comment letter being referenced and what the comment
10 said.

11 COMMISSIONER INOUE: Okay. Appreciate
12 that. Was that sent in to us? I just didn't see
13 that. You didn't send those comments into the
14 Commission.

15 MR. YEE: I have to admit. We sent it in
16 late. I mean there wasn't a particular time schedule.
17 We sent it by e-mail and I think it probably went in
18 to you too late. It went in on Friday I think.

19 COMMISSIONER INOUE: Okay. But as far as
20 the Petitioner did you have any problems with it or
21 didn't like it or what?

22 MR. MEHEULA: No. Actually we received a
23 copy of it by e-mail and immediately e-mailed everyone
24 back that we had no objection to the proposed changes
25 from OP.

1 COMMISSIONER INOUE: What's the
2 procedure? Can we look at it?

3 MR. SARUWATARI: Staff has prepared
4 similar language before we received OP's comments.
5 And they're reflected in pages 14 and 15 of the
6 proposed D&O.

7 MR. ORODENKER: The comments have been
8 incorporated.

9 MR. SARUWATARI: Similar, similar
10 language.

11 MR. ORODENKER: Similar language.

12 COMMISSIONER INOUE: Okay. Would you
13 folks review that if that's okay? Did you see that,
14 Mr. Meheula?

15 MR. MEHEULA: I haven't seen the final
16 version.

17 MR. YEE: We don't have *your* version.

18 COMMISSIONER INOUE: Okay. Yeah. I just
19 realized we don't provide that to you. Bert, is it
20 25, finding of fact 25 A&B?

21 MR. SARUWATARI: 25A.

22 COMMISSIONER INOUE: 25A.

23 MR. SARUWATARI: Yes.

24 COMMISSIONER INOUE: Let me just read it
25 into the record.

1 MR. SARUWATARI: It starts with page 14 at
2 the bottom, the very bottom, last line.

3 COMMISSIONER INOUE: The last line. Okay
4 this is 25A. The CWRM is what you're talking about?

5 MR. SARUWATARI: Yeah, yeah.

6 COMMISSIONER INOUE: Okay. And I'm just
7 reading the last line of 25A. Says, "The CWRM does not
8 have any records of existing stream diversion works,"
9 and in parentheses "(registered or permitted)" end
10 paren, "for Lumahai Stream". The Petitioner has
11 represented that Petitioner or its Lumahai licensee
12 will file small (i) in parentheses No. 1 an
13 after-the-fact stream diversion works permit
14 application with the CWRM within 90 days of the
15 issuance of this Decision and Order but reserves the
16 right to request a time extension from the CWRM if
17 necessary to file said application.

18 And 2. An amendment to the interim
19 instream flow standards for Lumahai Stream if it is
20 deemed necessary. Period.

21 MR. YEE: That's fine.

22 MR. MEHEULA: No objection.

23 COMMISSIONER INOUE: Thank you.

24 COMMISSIONER ESAKI: Mr. Chairman?

25 VICE CHAIR McDONALD: Go ahead.

1 COMMISSIONER ESAKI: Can I have
2 clarification from staff and counsel of the accuracy
3 of the line which was presented to us as being plus or
4 minus 150 to 200 feet to see if this is acceptable and
5 will not present a problem later?

6 MR. ORODENKER: Commissioner Esaki,
7 without going into extreme detail on this, the
8 information that was provided to us included shape
9 files that we input into our system using the
10 standards that we're required to adhere to in our GIS
11 system.

12 We have set the boundaries at a certain
13 location based on those shape files. Our
14 determination of those boundaries is within 50 feet.
15 That, once again, that determination was based on the
16 information that was provided in shape files which
17 were submitted as part of the application but not
18 necessarily presented at the hearing. So they are
19 part of the record.

20 If at a later date there is a question as
21 to where that boundary is located, the Land Use
22 Commission's maps are determinative of the issue
23 unless it can be shown through a presentation of
24 evidence that there's something wrong, that we were
25 inaccurate or whatever. But for all intents and

1 purposes we are the defining authority with regard to
2 those boundaries.

3 The only time that this would become an
4 issue in the future would be if there was an attempt
5 to amend the district boundaries for those parcels.

6 If the boundaries remain in Agriculture,
7 the issue of where the exact location of where the
8 line is is not as important as the acreages that is
9 represented in the Petition as being subject to the
10 Important Agricultural Lands designation.

11 The acreage is, in fact, what the
12 Department of Agriculture and Department of Taxation
13 would look at, not the actual boundaries.

14 COMMISSIONER ESAKI: Thanks. However, you
15 said acreage is important. Acreage is a function of
16 the distances, if it's off by 200 feet by thousands of
17 feet because you got a lotta acres being in question.

18 MR. ORODENKER: Understood. As I
19 indicated our records are a lot more accurate than
20 that 200-foot, 150 to 200 feet that was, the
21 Petitioner mentioned at the hearing. Ours are within
22 50 feet. If there is a discrepancy in the calculation
23 of acreage the boundaries aren't as key as --(Chair
24 Heller is now present. 10 o'clock) -- the
25 representation in the Petition as to how much acreage

1 they're asking to be placed into the IAL. So I mean I
2 know that that's kind of a wishy-washy statement on my
3 part. I'm having trouble expressing it clearly.

4 The Petition actually contains two
5 representations. One is the boundaries and the other
6 is the actual acreage. The actual acreage is what's
7 important for determining the benefits associated with
8 the IAL designation.

9 The boundaries are more important for
10 determining where certain activities can occur and not
11 occur and if at a later date there's a boundary
12 amendment where that would line up.

13 If it turns out that at some point that
14 the actual surveyed location of that line results in a
15 different number for the amount of acres contained in
16 the IAL designation, then we can amend the Decision
17 and Order to reflect that.

18 Chances are that that type of a
19 determination wouldn't result in significantly more or
20 significantly less acreage because, as I said, we are
21 within a 50-foot designation.

22 COMMISSIONER ESAKI: Thank you. Can I
23 have our counsel comment on that? I know you're an
24 attorney too.

25 MS. ERICKSON: I agree with the executive

1 officer's analysis.

2 COMMISSIONER ESAKI: Thank you.

3 VICE CHAIR McDONALD: Any other questions
4 from the Commissioners? Do I have a motion?

5 COMMISSIONER ESAKI: Chair?

6 VICE CHAIR McDONALD: Go ahead,
7 Commissioner Esaki.

8 COMMISSIONER ESAKI: Move for approval.

9 COMMISSIONER TORIGOE: Second.

10 VICE CHAIR McDONALD: Moved by
11 Commissioner Esaki to approve. Second by Commissioner
12 Torigoe. Executive Officer Orodenger, can you poll
13 the Commissioners, please.

14 MR. ORODENKER: Thank you, Mr. Chair.
15 Commissioner Esaki?

16 COMMISSIONER ESAKI: Yes.

17 MR. ORODENKER: Commissioner Torigoe?

18 COMMISSIONER TORIGOE: Yes.

19 MR. ORODENKER: Commissioner Inouye?

20 COMMISSIONER INOUE: Yes.

21 MR. ORODENKER: Commissioner Matsumura?

22 COMMISSIONER MATSUMURA: Yes.

23 MR. ORODENKER: Commissioner Biga?

24 COMMISSIONER BIGA: Yes.

25 MR. ORODENKER: Commissioner McDonald?

1 VICE CHAIR McDONALD: Yes.

2 MR. ORODENKER: Chair Heller?

3 CHAIR HELLER: Yes.

4 MR. ORODENKER: Mr. Vice Chair, the motion
5 passes unanimously.

6 VICE CHAIR McDONALD: Thank you. Thank
7 you, Parties, for your participation and attendance.
8 we'll take a 5 minute recess in place to get ourselves
9 resituated here. (10:05 recess in place)

10 CHAIR HELLER: Okay. Back on the record.
11 Apparently we didn't do the tentative meeting schedule
12 yet so I'm just gonna back up to that a minute and ask
13 our executive officer to brief us.

14 MR. ORODENKER: Thank you, Mr. Chair.
15 Currently the schedule is wide open. We have a number
16 of potential matters that could come before us, but
17 our next meeting is actually scheduled for February 12
18 to 13. There's nothing on the agenda so we can
19 probably waive that meeting.

20 February 26 and 27 is the next meeting
21 after that. March 27, 2014 is a Thursday. It would
22 be on O'ahu. We have tentatively scheduled Kunia Loa
23 Ridge farmland. That's the date we gave them they
24 needed to come back to us if they're going to take any
25 further action.

1 April 9th and 10th, 2014 we'll be on
2 Kaua'i. It's Kiahuna Mauka Partners, LLC Motion to
3 Delete Conditions. The schedule after that is still
4 wide open. So thank you.

5 CHAIR HELLER: Let's move on to item V on
6 the agenda, Ko Olina Development Company. This is a
7 meeting on Docket No. DR08-36 Ko Olina Development
8 Company to receive a status report from the Petitioner
9 on the progress of the development of the boat ramp
10 and adherence to other conditions in the Commission's
11 Decision and Order and to take appropriate action, if
12 any.

13 Will the Parties please identify
14 themselves for the record.

15 MR. MATSUBARA: Good morning, Chair
16 Heller, Commissioners. Wyeth Matsubara and Curtis
17 Tabata on behalf of Ko Olina Development. With us
18 today is a representative from Ko Olina, Ralph Harris.

19 MR. YEE: Deputy Attorney General Bryan
20 Yee on behalf of the Office of Planning. With me is
21 Rodney Funakoshi from the Office of Planning.

22 CHAIR HELLER: Thank you. Let me update
23 the record. On April 19, 2013 the Commission received
24 Petitioner's written and oral status report. On
25 October 18, 2013 the Commission received Petitioner's

1 16th quarterly status report. On December 2, 2013 the
2 Commission mailed its notice that a hearing in late
3 January would be scheduled for a status update report.

4 On January 14, 2014 the Commission mailed
5 the January 23, 2014 LUC agenda to the Parties and to
6 the Kaua'i, O'ahu and statewide mailing lists. On
7 January 16, 2014 the Commission received Petitioner's
8 17th quarterly status report.

9 Let me briefly describe our procedure for
10 today on this docket. First, I will call those
11 individuals desiring to provide public testimony to
12 identify themselves. All such individuals will be
13 called in turn to our witness box where they will
14 provide their testimony.

15 After completion of the public testimony
16 the Commission will ask the Petitioner to provide any
17 comments relevant to the past quarterly reports and
18 the status reports filed on October 18, 2013 and
19 January 16, 2014.

20 After Petitioner's presentation we will
21 receive any comments from the State Office of Planning
22 and the City if they wish to. Thank you and good
23 morning. Is there anyone in the audience who desires
24 to provide public testimony on this matter?

25 MR. ORODENKER: Mr. Chair, we have

1 Mr. Morioka who has deferred to Warren Von Arnswaldt
2 for testimony.

3 CHAIR HELLER: Okay. Please have a seat.
4 My name is Warren Von Arnswaldt.

5 WARREN VON ARNSWALDT
6 being first duly sworn to tell the truth, was examined
7 and testified as follows:

8 THE WITNESS: I do.

9 CHAIR HELLER: Okay. Please finish giving
10 us your address and go ahead.

11 THE WITNESS: My name is Warren Von
12 Arnswaldt. I live at 92-755 Palaelae Street in
13 Kapolei. Avid fisherman. I just wanted to get some
14 history into this thing. I notice we have some new --
15 we always seem to have new Commissioners on the board
16 who might not be aware of what's been going on.

17 Ko Olina took over the West Beach Estates
18 back in 1999. West Beach had an agreement for zoning
19 with the LUC that there would be a boat ramp situated
20 on the property of Ko Olina as it is called now.

21 The ramp was open in 2002 at which time
22 they were already in negotiations with the Department
23 of Planning to have that ramp moved from Ko Olina to
24 the Phoenician boat ramp which is across the deep
25 draft harbor there in Kalaeloa.

1 LUC was not informed of this change in
2 their agreement with West Beach Properties, which
3 originally planned that area in which Ko Olina was
4 subject to uphold.

5 The Phoenician ramp was closed in 2005
6 without anyone's being notified of that. Letters were
7 sent out 2 weeks later saying that they would have to
8 go to the Phoenician boat ramp. Phoenician boat ramp
9 is owned by Marisco. They had an agreement with
10 Marisco for the use of the Phoenician dry-dock ramp.

11 The matter was brought to the attention of
12 the LUC during that interim from 2005 to 2008 when
13 they were trying to get approval for that modification
14 of the boat ramp at which time they were found not in
15 compliance.

16 So in July of 2009 was deemed that they
17 would have to build a boat ramp on Ko Olina. They
18 would not open the old boat ramp saying that they had
19 other plans for that area.

20 Since then there have been no other plans.
21 Nothing has been built there either. They set up a
22 schedule for that boat ramp which would take about 3
23 years, 3 and-a-half years through their calculations.
24 Right now we're going on to 5 years. No construction
25 has started yet so we can look at another year of

1 inactivity there, or they might be able to get their
2 construction started.

3 There seems to be everywhere along the way
4 where things are holding up this Project. I first
5 learned in September of 2012 that the Department of
6 Army Corps of Engineers was not getting anywhere with
7 the permitting. I myself called them to get the
8 answers to that. Ko Olina didn't want to do that.
9 When I talked to them they said they don't wanna rock
10 the boat. They said it's up to their engineers and
11 everything to look into it.

12 I took a step to go and find out what is
13 happening with the Corps of Engineers permitting. I
14 found out that they weren't doing anything about it.
15 They say they were waiting on NOAA and everything
16 else, pile drivings and whatnot.

17 I contacted NOAA. They don't know
18 anything -- they didn't know anything about it that
19 time either. Everything was stuck at the Corps of
20 Engineers and nothing was moving.

21 Finally, with the help of Representative
22 Colleen Hanabusa's office we got to get Corps of
23 Engineers back on the track again. It didn't take 'em
24 2 months to bid out their public hearing notice for
25 anybody that had anything to say about the permit.

1 The only thing that came out was NOAA for
2 their endangered species and the State Historic
3 Preservation. NOAA said had no problem. They signed
4 off on that in no time.

5 The State, however, took a while. They
6 changed heads in their Department of Historic sites.
7 That took another year just to get their approval.
8 Now we got their approval we come up with another one
9 now. Now we have -- with the NPDES Pollution
10 Disbursement -- gotta do with the soil runoff from
11 their construction area.

12 Now, this thing I dunno why it takes so
13 long for them to do anything and why this thing
14 couldn't have been done prior to that.

15 It seems that everything's going down the
16 line, down the line. It goes to permitting. Now
17 Permitting comes up with this. I think this was
18 something that could have been done. It's something
19 that the State and the City just doesn't work together
20 on that.

21 In the meantime we've been out of the ramp
22 for 9 years. Something could have been done with a
23 temporary ramp, but they didn't want no part of that.
24 The LUC didn't push it. But I didn't know whose fault
25 this is gonna be, whether it's on the state side or

1 whether it's poor planning on their engineers or what
2 getting all those permitting done. I leave that up to
3 the witness to elaborate on.

4 But I myself have put in efforts to get
5 this thing moving. Ko Olina did not want to do
6 anything about it until it was just in front of them.
7 So that is all I have to say. It's -- we're at a
8 waiting period. It's 9 years already. I'm not
9 getting any younger. I probably won't go fishing
10 anymore in the future. But I've been pushing for this
11 boat ramp all this time. That's all I have to say.

12 You do elaborate on what this new outcome
13 has come up, which isn't closed until the end of this
14 week. We don't know if there's any other waiting
15 period as far as this decision goes.

16 (Witness getting up to leave)

17 CHAIR HELLER: Wait for a moment, please.
18 Parties, any questions for this witness?

19 MR. MATSUBARA: Couple quick questions.
20 Good morning, Mr. Arnswaldt. You've been present for
21 all our status hearings and waiting. You were present
22 at a status hearing sometime last year in which there
23 were some issues or questions raised as to Ko Olina's
24 participation in the permitting process. You were
25 present at that Land Use Commission hearing, correct?

1 THE WITNESS: You're talking about the
2 time we had it at the --

3 MR. MATSUBARA: At the airport location.

4 THE WITNESS: -- at the airport?

5 MR. MATSUBARA: Yes.

6 THE WITNESS: Had to do with the
7 Department of Army permitting not going through?

8 MR. MATSUBARA: Correct. You were there
9 present, correct?

10 THE WITNESS: Mm-hmm.

11 MR. MATSUBARA: At that time Ko Olina
12 presented evidence and documentation that at least
13 over 40 e-mails have been sent to DOAP, Department of
14 Army, to request follow up status and to kind of, as
15 best as possible, push the permitting along. You were
16 there and you saw that evidence presented to the Land
17 Use Commission, correct?

18 THE WITNESS: I saw that, yeah.

19 MR. MATSUBARA: So I think it's an unfair
20 mischaracterizing saying that we did not do anything,
21 just sat on the side while the Department of Army did
22 the permitting?

23 THE WITNESS: Did you get answers to your
24 e-mail?

25 MR. MATSUBARA: Yes we did. We provided

1 all the e-mail responses from the Army per the Land
2 Use Commission, were submitted to the Land Use
3 Commission. We've been honestly pushing as hard as we
4 can. I completely understand the frustration. But
5 you can understand the frustration on my side as well.

6 THE WITNESS: I can understand your
7 frustration. But like I said, did you get answers
8 from your e-mails? Was there any, ah, anything that
9 Corps of Engineers said was holding up the permitting?

10 MR. MATSUBARA: Like I said, Mr. Von
11 Arnswaldt, all that evidence was presented a little
12 over a year ago as to what Ko Olina had been doing in
13 trying to accomplish to get this result. And all the
14 answers are in.

15 THE WITNESS: I know you said Ko Olina did
16 everything. But I got more done in one month time
17 than Ko Olina got in a year prior to that. I don't
18 know where we would be if I didn't start harassing
19 Department of Corps of Engineers and getting
20 untruthful answers from them as far as what was
21 holding them up. You may have gotten answers but were
22 they truthful or not?

23 I followed up on those things. And I
24 found out that what he was telling me he didn't even
25 do. It was something he was saying on and nobody else

1 knew about. NOAA didn't know about it. So where were
2 they gonna go from there? They're gonna keep harping
3 on the same thing that, "Oh, we're waiting on NOAA.
4 We're waiting for their decision on pile driving?"

5 The Aulani Hotel, I'm sure they had more
6 pile driving done over there than you expect to do in
7 the harbor. There's only 3 pile drives gonna be done
8 in the harbor. How many did they do on the Ala Kai?
9 They musta' done about a hundred of 'em or so ovah
10 there. What puts them in a different category as the
11 boat harbor as far as the pile driving? It still
12 affects whatever is out there.

13 So their answers don't jive with me. As
14 far as I'm concerned, their man Watanabe lied about
15 what was holding up everything. So he lied to me. We
16 contacted Hanabusa's office. They sent an
17 investigator out there. The very next day they come
18 out with a thing: Okay. Everybody bring in. Anybody
19 has anything to say about this permitting and
20 everything send in their answers to it.

21 So far as I know we had the state, the
22 historic thing that came up, that we had no control
23 over. The state went through their thing. They did
24 away with the head of that department. They had new
25 people come in. Now, that backtracked everything.

1 That's another year that was wasted just for that.
2 Now we got this pollution disposals to deal with.
3 That's another thing. I say why is the waiting so
4 long to get these things done?

5 You say building permits cannot go ahead
6 until the Corps of Engineers get their thing. Corps
7 of Engineers are saying, "Oh, now you can go ahead put
8 up a notice of the disposal thing." Where does all
9 this come up with? These are things if they want this
10 why don't they have it done prior to that?

11 Now we have another waiting period which
12 is doesn't end until the end of this week. Who knows?
13 Is there anybody that is against it? So now it's
14 another waiting period we're putting up with. That's
15 all I'm saying.

16 I don't say you didn't do anything, but I
17 got more done than you did in those years that you're
18 waiting for your permitting. Whether they answered
19 you truly -- truthfully or not, I don't know. As far
20 as I'm concerned they weren't.

21 CHAIR HELLER: Thank you. Anything
22 further?

23 MR. MATSUBARA: No further questions.

24 CHAIR HELLER: Mr. Yee?

25 MR. YEE: Nothing further, thank you.

1 CHAIR HELLER: Commissioners, any
2 questions? (no response) Thank you. Is there
3 anybody else present who wishes to provide public
4 testimony? Okay. Seeing none, are you ready to
5 proceed?

6 MR. MATSUBARA: Sure. Thank you, Chair.
7 Real brief. I believe most of the updates have been
8 provided. At the close of our last status hearing the
9 Commission requested that we provide a further status
10 hearing update today to answer any follow-up
11 questions. So we're here to answer any follow-up
12 questions you may have.

13 And I'll just briefly go through where we
14 are. As you know we have the Department of Army
15 permit that was issued February 6, 2013. With that
16 they provided two follow up conditions prior to any
17 work to be done. Those two conditions were involved
18 and NOAA and with SHPD.

19 We addressed NOAA's condition or issues
20 fairly quickly by February 21, 2013. Then we just
21 finally addressed -- or SHPD finally was able to
22 address our concerns on November 12, 2013.

23 Unfortunately the SHPD action is
24 consistent with our request that no further action be
25 done. So we're done with them, obviously unless we

1 find something. But they're not requiring us to do a
2 further Archaeological Assessment which could take
3 another year out.

4 The building permit, like I said, we
5 submitted it early. We're still waiting on it. I
6 don't see any issues that should be issued. The
7 reason why they cannot approve the building permit is
8 because if the Department of Army permit or NOAA or
9 SHPD requires us to do further things that involved
10 changes to our building plan, they would have to go
11 and redo the permit. So they're not gonna issue a
12 building permit to finalize the building permit,
13 whereas prior to getting all the other preliminary
14 permits.

15 So unfortunately we're trying to do it as
16 continuous as possible, but there's still some leeway
17 we need things itemized or approved first. The NPDES
18 that was just brought, the National Pollutant
19 Discharge Elimination System, that is another item
20 that cannot go forward until the Department of Army
21 approves our building. These are things that are
22 holding us back. It's not like we want to drag this
23 out any further.

24 As soon as the Army Corps finalized with
25 SHPD we went ahead and scheduled with Department of

1 Health to get this NPDES permit published. It was
2 published December 26. There's a 30-day wait period
3 that vests in 2 days. We tried contacting the
4 Department of Health Water Quality to find out if
5 there's any issues updates. They said they will let
6 us know after the 30 day lapses unfortunately. I
7 didn't want to push them for that. That's why I'm
8 hoping -- I don't expect any issues, but that's
9 something that's out of my hand.

10 It won't be a regulatory agency asking for
11 any issues. This will be a member of the public
12 asking for either a follow up or for public hearing.
13 But our hope is that on the 25th, in 2 days, that
14 there's no further issues and the NPDES permit can be
15 issued sometime after that. In our experience it's
16 been within 3 weeks after the 30th day.

17 So going forward on that our engineers are
18 already doing their bit finalizing their bid. We
19 already have pre-approved lists of contractors that
20 we're looking at. So it's not something we're
21 starting from scratch at the end of the day. These
22 are things going concurrently.

23 We're not going to wait until the NPDES
24 permit is approved. We're already going to the bid.
25 If the NPDES permit requires us to change something or

1 do something, we have to add that to the bid. So we
2 can't bid out the construction work at this time.
3 These are things, unfortunately, that prolong the
4 process.

5 But we're working as quickly as possible,
6 as concurrently as possible to assure that we should
7 have a bid out, hopefully, within a couple weeks after
8 getting approval in NPDES provided that there's no
9 further changes that are required upon us. That's the
10 update at this time. We'll be happy to answer any
11 questions.

12 CHAIR HELLER: Commissioners, any
13 questions? Mr. Yee, do you have any comments from OP?

14 MR. YEE: From the Office of Planning's
15 viewpoint just wanted to note for the Commission
16 regarding SHPD's supposed one year delay. It was in
17 December of 2012 that the Corps of Engineers, Army
18 Corps of Engineers, first noted the need for a SHPD
19 review. An Archaeological Assessment had to then be
20 submitted to SHPD. SHPD responded to that
21 Archaeological Assessment noting certain issues that
22 had to be resolved.

23 A revised Archaeological Assessment was
24 submitted in October of 2013 and SHPD's concurrence
25 then was in November of 2013. So while I understand

1 certainly the frustration people will have, certainly
2 it's fine to express that frustration. I just wanted
3 to note that SHPD did not wait for a year before
4 issuing its concurrence. There were activities that
5 were occurring during that year.

6 Our understanding of the current status
7 now is that the Army Corps of Engineers issue has been
8 resolved. The Department of Health, NPDES, is to be
9 resolved shortly and that the building permits can be
10 issued after the Department of Health's NPDES permit
11 is granted.

12 If so, then we anticipate or we expect the
13 start of construction soon thereafter as we understand
14 that the Petitioner has already -- I think has an
15 understanding of who's going to be doing the
16 construction. So the negotiation for bids should not
17 take as long as indicated in their previous GANTT
18 chart.

19 It would be good to know -- I suppose or
20 we would like to know after that building permit is
21 issued when they expect construction to begin and the
22 length then of that construction.

23 We note that the GANTT chart indicated
24 approximately 9 months for construction. So it looks
25 like we're getting to the end of the tunnel. It would

1 be nice to just have a path moving forward about
2 what's going to happen.

3 CHAIR HELLER: Thank you. Commissioners,
4 any questions?

5 COMMISSIONER ESAKI: I guess would be to
6 the developer. So the NPDES permit is being worked on
7 right now?

8 MR. MATSUBARA: It's already been finally
9 submitted. DOH has approved it. Now they're in their
10 30-day process for public comment.

11 COMMISSIONER ESAKI: Don't you have to put
12 a schedule, construction schedule in there?

13 MR. MATSUBARA: Yes.

14 COMMISSIONER ESAKI: So it should be in
15 there.

16 MR. MATSUBARA: That's correct.

17 COMMISSIONER INOUE: Thank you,
18 Mr. Chair. First of all I want to comment on your
19 completeness of your folks' reports and the effort
20 you're putting. And I appreciate the public comments
21 in trying to help in other ways, for want of a better
22 word, politically trying to get it going forward. So
23 my only question is: When was the application for the
24 permit sent?

25 MR. MATSUBARA: Which permit?

1 COMMISSIONER INOUE: The building permit.
2 Was the permit you were referring to.

3 MR. MATSUBARA: The building permit?

4 COMMISSIONER INOUE: Yeah.

5 MR. MATSUBARA: The building permit was
6 submitted May 6, 2011.

7 COMMISSIONER INOUE: Oh.

8 MR. MATSUBARA: We submitted it way ahead
9 of time.

10 COMMISSIONER INOUE: I see.

11 MR. MATSUBARA: Yeah.

12 COMMISSIONER INOUE: Good.

13 MR. MATSUBARA: Because we had a
14 Conditional Use Permit as well to go in. So we
15 submitted everything. We kinda generally knew what we
16 wanted to do by the time we submitted the DOA permit.
17 It's the Department of Army permit that took the long
18 time.

19 COMMISSIONER INOUE: I understand. I'm
20 trying to see 'cause building permits take a while.
21 It goes through several departments. I'm not familiar
22 with boat ramps. Maybe less. But has it gone through
23 all the departments except for what department that
24 needs to sign off?

25 MR. MATSUBARA: So basically my

1 understanding is it's basically been fully vetted.
2 Like you said it has to go through all the various
3 departments: Traffic, everything else. There isn't
4 any issues that were told to me that are being raised.
5 It's just a matter of they'll finalize it.

6 And as you know you can start
7 construction, everything, before you have a finalized
8 building permit. I mean that's a normal process. As
9 long as both parties understand that it's gonna be --
10 the final product's gonna be what's been submitted.

11 COMMISSIONER INOUE: Good. Is there any
12 consideration of -- well, first of all, have the plans
13 been pretty much finalized pending potential comments
14 for NPDES public comments?

15 MR. MATSUBARA: I believe so.

16 COMMISSIONER INOUE: It has. So it's
17 ready to be put out to bid except for maybe public
18 comments?

19 MR. MATSUBARA: That is my understanding.
20 It's pretty much ready to go.

21 COMMISSIONER INOUE: So is there any
22 consideration to go ahead and put it out to bid as is?
23 And if there are any comments to be added as a --
24 sometimes they call it post-contract drawing -- in
25 order to get the parallel paths going to get it as

1 soon as possible for the public?

2 MR. MATSUBARA: I can ask. I can ask.
3 We're two days away. So I think we'll have a good --
4 hopefully good feeling by Monday. We're going to
5 follow up with them on Monday again. But like I said,
6 from what my understanding is they've been working on
7 the bid for the last few months already, the bid
8 package.

9 COMMISSIONER INOUE: And the Department
10 of Health won't tell you if there are any public
11 comments? That's kind of strange.

12 MR. MATSUBARA: I know. I was just
13 telling Ralph yesterday that I'm just gonna file a
14 Sunshine thing. But like I said I don't wanna harass
15 the guy that's gonna give me the permit. So I
16 refrained. We'll wait the two days and go from there.

17 COMMISSIONER INOUE: Okay. Thank you.
18 That's all I have, thank you.

19 CHAIR HELLER: Commissioner McDonald.

20 COMMISSIONER McDONALD: This is a follow
21 up to OP's question. Rather than everybody searching
22 in the NPDES permit for the construction schedule, can
23 you identify the anticipated construction date having
24 a little more clarity with the milestones?

25 MR. MATSUBARA: From my GANTT chart it was

1 3 months after the NPDES permit was finalized. The 3
2 months was for the bid negotiation and then finalizing
3 the details with whatever contractor or contractors
4 that are gonna do the job. Because we have a land
5 development and a sea development, there could be
6 either two separate developers or one or two, two
7 separate contractors or one contractor that could do
8 both.

9 The only item that's outside our control
10 would be once we award the bid to whatever contractor
11 or contractors are, that they would then have to
12 assimilate their NPDES BMP's, their Best Management
13 Practices, and submit that to DOH. And DOH has to
14 approve that. We don't expect that to be long.
15 That's just putting it out there that is something out
16 of our control.

17 So we're hopeful to speed up at least that
18 bid permit process. And then the construction process
19 we said it was nine months. We estimate nine months
20 out. As soon as we award a bid to a contractor or
21 contractors, we'll have a better idea what their
22 estimate is for the actual construction. I don't have
23 any specific dates today. But the next status in four
24 months we should be -- a lot more information should
25 be available at that time.

1 COMMISSIONER McDONALD: I'd prefer -- I
2 really don't want to put you on the spot. But it
3 seems as if, you know, the Corps permit is there, the
4 NPDES is submitted. We kind of understand the
5 timelines that fall with your approvals of the NPDES
6 permit. The building permit application submitted
7 back in 2011.

8 So based on these permit processes, I
9 would suspect that the developer would have a little
10 better idea as far as an anticipated start
11 construction date.

12 MR. MATSUBARA: Best case scenario for us
13 would be two months from today. That's if everything
14 optimally goes forward.

15 COMMISSIONER McDONALD: Right, right,
16 right.

17 MR. MATSUBARA: That's what our hope would
18 be, less than two months, at least two months out
19 instead of three months. Start of construction would
20 be two months from, I'd say let's say Monday, two
21 months from Monday.

22 COMMISSIONER McDONALD: So let's call it
23 February. So February, March, end of March.

24 MR. MATSUBARA: So start of construction
25 would be March, the end of March.

1 COMMISSIONER McDONALD: Fair enough.
2 Appreciate it.

3 MR. MATSUBARA: Thank you.

4 CHAIR HELLER: Commissioners, anything
5 else? You mentioned that by hopefully Monday you'll
6 know more about the NPDES. Would the Petitioner be
7 willing to just informally send us a letter with a
8 brief update next week?

9 MR. MATSUBARA: Absolutely. No problem.

10 CHAIR HELLER: Okay. Not a formal status
11 report, just a short letter, a paragraph or so just
12 saying whatever turns out to be the case.

13 MR. MATSUBARA: No problem. I wanna make
14 sure that we call and follow up on Monday. And as
15 soon as we get some kind of feedback I will provide a
16 written letter per your request.

17 CHAIR HELLER: Thank you. Commissioners,
18 anything further?

19 COMMISSIONER BIGA: Also with that I feel
20 the frustration of the public waiting ten years for
21 something that maybe should have been done in half the
22 time. Can they also be notified just to the process?

23 MR. MATSUBARA: No problem. Along with
24 submitting a letter to the Chair, I also speak with at
25 least one of the boaters. I always tell them they're

1 free to call me, e-mail me, talk to me. And I spoke
2 to Warren, Mr. Von Arnswaldt, on prior occasions.
3 More recently I've been in discussion with Roy
4 Morioka. And we have good, candid discussions. My
5 feeling we're in a good place.

6 Obviously I understand the frustration.
7 But I'm trying to give them as much information I can
8 as when I get it. So I'll be happy to call Roy, at
9 least, let Roy know, Mr. Morioka, let him know as
10 well.

11 COMMISSIONER BIGA: Thank you.

12 CHAIR HELLER: And then the updates can be
13 posted on our website. Those are public records.
14 Commissioners, any other action on this item? We
15 decided we don't need to do the amendment to LUC
16 Administrative Rules. Okay.

17 We'll move briefly then to item VI on the
18 agenda, Amendment to LUC Administrative Rules.

19 MR. MATSUBARA: Mr. Chair, as far as the
20 Ko Olina item we're finished?

21 CHAIR HELLER: Yes. We're not taking any
22 further action today.

23 MR. MATSUBARA: Thank you, Chair.

24 CHAIR HELLER: Thank you.

25 xxxx

1 MR. ORODENKER: Thank you, Mr. Chair.
2 This item on the agenda stems from the decision that
3 was recently handed down by the Supreme Court with
4 regard to Koa Ridge, what we refer to as Koa Ridge 2.
5 And without going into extreme detail on that
6 decision, the implications for the Land Use Commission
7 are that we have been treating the adoption of an
8 order as an administrative action. The Supreme Court
9 has given us their opinion that it is not.

10 At least with regard to a District
11 Boundary Amendment it is, in fact, part of the
12 District Boundary Amendment process. As a result 6
13 votes are required rather than 5 to adopt an order.

14 Unfortunately in our recent rule amendment
15 section 15-15-13, sections A and B we have
16 specifically laid out that the adoption of an order
17 either to affirm or deny a District Boundary Amendment
18 only requires 5 votes, which is the Supreme Court has
19 now told us is wrong.

20 So we have a couple of options with what
21 to do with that. We can either go in and amend the
22 section 15-15-13 to conform to the Supreme Court
23 decision. Diane, our attorney general, has advised us
24 that there is an option to simply delete 15-15-13
25 without having to go through the process again.

1 At this stage -- I mean with deletion we
2 would then just simply be subject to what the law is
3 regardless of what's contained in our rules. So there
4 would be no actual procedural change as far as how we
5 operated.

6 At this point after thinking about this
7 for some time I think staff's recommendation that we
8 actually should just go in and change the rules rather
9 than just leaving it blank at this point. We have a
10 period of time where our agenda is light. It's a lot
11 of paperwork but we think we can get there.

12 CHAIR HELLER: Commissioners, any comments
13 or questions?

14 COMMISSIONER INOUE: Yeah. My concern
15 about that is that the Supreme Court might have
16 different interpretation based on different factual
17 situations. Then we may have to change it back again
18 is what I'm saying. I'm not sure we want to do that
19 and go through it, you know, all the hassles. But we
20 could do that. We could change it back.

21 MR. ORODENKER: I think that there is some
22 risk. However, I think that what we need to do is
23 craft our rules to adhere or to conform to the Supreme
24 Court decision on Koa Ridge 2 as best we can. If
25 there is a change again we'll have to deal with that

1 as well. To a certain extent all of our rules are
2 subject to reinterpretation by the Supreme Court. All
3 of chapter 15-15 is wide open.

4 COMMISSIONER ESAKI: So if we change
5 15-15-13 and we revisit the Project, we gotta revote
6 on it?

7 MR. ORODENKER: Well, the revisiting the
8 Project we really don't have to do that at this point.
9 The Supreme Court decision overturned our decision in
10 Koa Ridge 2. There was a subsequent case, Koa Ridge
11 3, as we call it, where Castle & Cooke went forward
12 and asked for another DBA. And that's already been
13 forwarded on. It's on appeal as well. We don't need
14 to take any action on that if and when the Supreme
15 Court -- until the Supreme Court makes a decision. It
16 may revert that. It may uphold the decision. We
17 don't know yet.

18 That really has no impact on the rule.
19 The rules are somewhat different. The Supreme Court's
20 decision -- the portion of the Supreme Court's
21 decision that we're concerned about is the decision
22 that one of the Commissioners at the time was not
23 properly sitting on the Commission because he'd been
24 rejected by the Senate. That impacted -- that brought
25 up the question of whether or not the vote to adopt

1 the order was -- met the requirements of Chapter 205.

2 Since that Commissioner was deemed to be
3 sitting improperly his vote was negated. And as a
4 result there were only 5 votes to adopt the order
5 which is how the Supreme Court got to the issue of how
6 many votes do you need to adopt an order for a DBA.

7 COMMISSIONER ESAKI: Yes, thanks. I
8 understand that part. But just it probably is moot if
9 the subsequent action covers the Project which was my
10 point.

11 CHAIR HELLER: Fixing this rule is a
12 separate question from what happens to Ko Olin. The
13 rule covers the general situation where we may have
14 six votes to grant a petition or to deny a petition.
15 Then there's an order that comes along a few weeks
16 later. And at the time the order was being entered do
17 we need six votes to do that or do we only need five?

18 Right now we have a rule that says we only
19 need five. And the Supreme Court says, "But you have
20 to have six." So I think we ought to have a rule that
21 matches what the Supreme Court says is actually
22 required.

23 COMMISSIONER ESAKI: Makes sense.

24 CHAIR HELLER: So I guess what we're
25 looking for at this point is a motion to start the

1 process of amending the rule so that we would be in
2 conformity with the Supreme Court's interpretation.

3 MR. ORODENKER: That's correct.

4 CHAIR HELLER: Does anybody have a motion
5 they'd like to make?

6 COMMISSIONER ESAKI: So moved.

7 COMMISSIONER BIGA: Second.

8 CHAIR HELLER: Any discussion? Okay.
9 We're voting on getting the process started because
10 that are multiple steps we have to go through for rule
11 amendment. We'll call the roll and see if everybody's
12 in favor of starting the process.

13 MR. ORODENKER: The motion is to approve
14 staff making amendments to section 15-15-13 of our
15 rules to conform with the Koa Ridge decision.
16 Commissioner Esaki?

17 COMMISSIONER ESAKI: Yes.

18 MR. ORODENKER: Commissioner Biga?

19 COMMISSIONER BIGA: Yes.

20 MR. ORODENKER: Commissioner McDonald?

21 VICE CHAIR McDONALD: Yes.

22 MR. ORODENKER: Commissioner Torigoe?

23 COMMISSIONER TORIGOE: Yes.

24 MR. ORODENKER: Commissioner Matsumura?

25 COMMISSIONER MATSUMURA: Yes.

1 MR. ORODENKER: Commissioner Inouye?

2 COMMISSIONER INOUE: Yes.

3 MR. ORODENKER: Chair Heller?

4 CHAIR HELLER: Yes.

5 MR. ORODENKER: Thank you, Mr. Chair. The
6 motion carries unanimously.

7 CHAIR HELLER: Okay. Any further
8 discussion on this item?

9 MR. MATSUBARA: Would the public be able
10 to make a comment on this?

11 CHAIR HELLER: Sure.

12 MR. MATSUBARA: We had some interest on
13 this on a prior occasion. In light of the decision by
14 this Commission to take a look and change the language
15 of 15-15-13, I also wanted to maybe, for your thoughts
16 to consider, also increasing the quorum that's
17 required for a DBA to be six.

18 On a reconsideration motion in light of
19 what the Supreme Court said is that you needed six
20 members at the time you did the adoption, and we had
21 five. If the quorum requirement by law, by rule was
22 six, that would have been a possibility that they
23 would have been a non-action and still be sent back
24 down to do a revote.

25 Increasing the quorum to six then requires

1 you have six valid members voting on a DBA. So in
2 case there's another situation in which a Commissioner
3 who after the fact is deemed to be invalid, then at
4 least everyone might be covered as a misapplication or
5 misunderstanding.

6 It doesn't harm the purpose if you just --
7 I mean if you're going to have six anyway required to
8 do the vote. Maybe think about also requiring a
9 quorum for the DBA to be six. Because right now all
10 it takes is five members to do an action.

11 But you wouldn't be able -- that's what
12 the quorum says in 15-15-13. Five members or a
13 majority of the members shall be necessary which is
14 five. But it doesn't make sense. You wouldn't have a
15 vote for a DBA with only five members present. I
16 don't think you would. Just for your consideration.

17 CHAIR HELLER: I'm just making sure I
18 understand. You're saying if there are actually six
19 people present and all six voted, and then
20 subsequently it was determined that one of them should
21 not have been counted, that the result would be to
22 retroactively determine that there wasn't a quorum and
23 therefore that negative vote wouldn't count at all.

24 MR. MATSUBARA: Correct. And it wouldn't
25 be a rejection of the Petition. Then it would be a no

1 action. And the decision would then -- the position
2 we would take would be that you need to send it back
3 down for a vote because the Commission did not act
4 because they didn't have a quorum. That's what we
5 tried to do on a reconsideration.

6 CHAIR HELLER: I think it's an interesting
7 question. Maybe we can ask our legal advisor to look
8 at that and get back to us. Another comment from the
9 public?

10 PUBLIC SPEAKER: Well, I wonder if the
11 public comment session's properly handled. I know you
12 had the motion.

13 THE REPORTER: Sir, would you come up to
14 the microphone.

15 CHAIR HELLER: Please come forward and
16 identify yourself.

17 PUBLIC SPEAKER: Dan Purcell, member of
18 the public. I question whether the public comment
19 session was properly handled. I think you heard the
20 motion. And that would have been the time to, I
21 think, open it up to public testimony. And the
22 comments that were provided by the last public speaker
23 weren't necessarily sounded like they were something a
24 little slightly off-topic of the agendized item.

25 So I wonder whether how much discussion

1 you already had. I guess you can. But again with
2 that in the proper point for public comments. I know
3 you as the Chair have the discretion to hear those.
4 But in the future it would be nice if there are any
5 public comments, to hear them at the appropriate time.
6 Thank you.

7 CHAIR HELLER: Yes. Your point is well
8 taken. Thank you, sir. Is there anyone else who
9 wishes to make a comment while we're on this agenda
10 item? Commissioner Esaki.

11 COMMISSIONER ESAKI: I just kinda caution
12 about doing something just in case there's an
13 ineligible person. The rule is do we have all
14 eligible people here? I mean, again, you don't want
15 to do something in case one is ineligible.

16 CHAIR HELLER: Right. Well, at this point
17 that was simply a comment. And I've asked our legal
18 advisor to get back to us if she has any thoughts on
19 it. That's all we've done with respect to that issue.

20 MR. ORODENKER: Mr. Chair, if I may. I
21 just want to point out that all we did today was ask
22 for authority for the staff to craft an amendment to
23 the rules. We'll be coming back for the Commission's
24 approval before we go out to the public with it. And
25 the public will have an opportunity to testify on it

1 at that point and make whatever comments are
2 necessary. So this was just for the public's benefit,
3 just the first step in the process. There will be
4 opportunity for a lot of discussion on this going
5 forward.

6 CHAIR HELLER: Okay. We will go through
7 the public notice process. Anything further on this
8 item? Do we have anything else anybody wishes to
9 bring up at this meeting? Oh, the legislative update.
10 Dan, that's you.

11 MR. ORODENKER: Thank you, Mr. Chair. I
12 just wanted to take the opportunity. Today is the
13 last day to submit bills. We still might get a
14 couple. I wanted to quickly run through what was
15 happening at the Legislature with the Commission just
16 so that they're aware of what's happening.

17 We did not submit any bills to the
18 Legislature this year. We do have one bill that is
19 still alive and stuck in committee. That was the bill
20 from last year, 1016, to give us more power to craft
21 remedies in the case of 1026 -- excuse me -- in the
22 case of a Motion for Order to Show Cause. This year
23 we're hoping that bill can move. If it does not we
24 don't have anything of our own initiative. And the
25 Administration does not have any bills except for one

1 that impact on Chapter 205. And that is only with
2 regard to agricultural lands.

3 I'll talk to some of the bills that affect
4 Chapter 205 directly. But many of the bills that have
5 been submitted this session impact commissions, boards
6 and commissions generally, or the Sunshine Law
7 generally. I'll just breeze over those quickly.

8 I'm only going to highlight the bills that
9 really affect the Commissioners directly or concern
10 Chapter 205. In the Senate there has been a bill
11 submitted, 2242, relating to agricultural lands. This
12 bill adds taro lands -- it protects taro lands and
13 infrastructure on public lands and amends 205-3.5 to
14 not allow any restriction on taro cultivation on Ag
15 lands. It amends 205-4.5 to include taro lands along
16 A and B lands permissible uses.

17 Basically the attempt there is to add taro
18 lands to a higher level of protection similar to
19 Agriculture, General Agriculture. Senate Bill 2078
20 relating to condominiums, it actually discusses CPRs
21 on Ag lands. That bill can't restrict -- provides you
22 can't restrict Ag uses on CPR'd Ag lands. We're not
23 testifying on that measure as we're not testifying on
24 the other one.

25 Generally we take the position that with

1 regard to uses and activities in the various
2 districts, that those are policy calls to be made by
3 the Legislature and the Office of Planning.

4 Senate Bill 2389 relating to agricultural
5 lands requires counties to conduct IAL assessments
6 prior to any final subdivision approval or
7 registration of condominium property regime on
8 25 acres or greater of Ag lands.

9 This is actually a non-monetary
10 disincentive to counties to get their IAL maps done.
11 If it passes it would lock up the counties until they
12 completed their IAL work. We're not testifying on
13 that one as well. Once again we believe that's a
14 policy call.

15 Senate Bill 2390 relating to agricultural
16 land requires that prior to any public land
17 disposition of 25 or more acres of agricultural land
18 an IAL assessment is required. It amends Chapter 205
19 to require an IAL assessment for any District Boundary
20 Amendment that involves 25 or more acres of
21 agricultural lands, and allows the Land Use Commission
22 to deny the Petition based on that assessment.

23 This is a new requirement or would be a
24 new requirement in information processing for staff
25 and for the Commission with regard to District

1 Boundary Amendment applications.

2 We're simply monitoring that bill. There
3 are benefits to it. But it's a policy call once again
4 on the part of the Legislature.

5 There are a number of bills regarding
6 solar energy. Senate Bill 2658 is one of them.
7 Without going into detail on all of these, basically
8 what they're trying to do is either allow solar --
9 commercial solar PV on A lands, which they're
10 currently not allowed, or to allow a larger portion of
11 the property on B and C lands to be utilized for solar
12 PV.

13 Once again this is a policy call both on
14 the part of the administration and on the part of the
15 Legislature. So we're not actively involved in those.
16 We won't testify in those, on any of those, unless
17 they move, unless we get other direction from the
18 Commission.

19 The reason that we would testify on the
20 them if they move in committee is because most of them
21 are so poorly written I don't really understand what
22 they're trying to accomplish or how we would
23 effectuate them. But hopefully when they do move we
24 can get them corrected.

25 Senate Bill 2407 would prohibit District

1 Boundary Amendments on taro lands which are public
2 lands. And there's also some discussion there of
3 amending Chapter 205-3.5 to prohibit any interference
4 to irrigation ditches and to put taro lands on equal
5 footing with A and B lands. Once again we're not
6 testifying on that bill.

7 Senate Bill 2775 is another one relating
8 to renewable energy. I've already discussed that.

9 Senate Bill 2777 relating to agriculture.
10 We're still analyzing that particular measure. My
11 initial analysis on it was that it amends Chapter
12 205-5 to be more precise in what is allowed on Ag
13 lands and what is not allowed on Ag lands by taking
14 away some of the discretion with regard to compatible
15 activities.

16 In other words, the way the statute would
17 be rewritten is to say these are the things that are
18 allowed, not compatible activities, but only these
19 activities. But although it does give the additional
20 leeway that if those -- if a particular activity is
21 designated as allowable on Ag lands, the use is
22 permitted without restriction or limitation.

23 Moving over to the House bills. We have
24 House Bill 1560. This was actually heard yesterday.
25 We did not testify on it. It requires an LUC

1 condition for Order to Show Cause -- back up a second.
2 Basically what it does, it provides that we have to
3 put as a condition of our District Boundary Amendments
4 a drop dead date or a requirement to require an Order
5 to Show Cause hearing absent substantial commencement
6 of the development.

7 We did not testify on this because it's
8 something that we can easily implement. However,
9 there may be implications to the developers on
10 financing and obtaining other entitlements. But we
11 didn't feel they we were in a position to make those
12 representations to the Legislature, that the
13 developers and the Office of Planning needed to
14 actually testify as to what occurs. We didn't want to
15 be put in a position of making representations that
16 were perhaps not actually true.

17 There was another bill heard yesterday,
18 House Bill 1120, which requires the Office of Planning
19 to redo the LSB classifications beginning in 2014. As
20 it turns out after attending that hearing the House
21 Committee was confused as to what the LSB
22 classifications actually do and what they're used for.
23 So I'm not sure that one's going to move. It would
24 also be quite expensive to do that.

25 House Bill 1908 relating to the Land Use

1 Commission. It requires the LUC to amend its rules
2 regarding conflicts of interest, disclosures and
3 processes for determining conflict issues. In other
4 words, it would require us to actually have a separate
5 section in our rules on how to handle conflicts,
6 identify conflicts and so forth and so on.

7 That bill has not been scheduled for
8 hearing yet. We would be opposing that bill on the
9 grounds that those issues are already covered by
10 Chapters 91 and 84 which the Commission is already
11 subject to. And it would be duplicative.

12 House Bill 1915 relating to Agriculture
13 would exempt agricultural employee housing from all
14 statutes, ordinances and rules. Once again this is a
15 policy call. It's very poorly crafted. If it moves
16 along we'll ask for clarity.

17 House Bill 1918 relating to Agriculture.
18 This basically allows educational retreats in ag
19 districts provided that the County drafts rules. Once
20 again we're monitoring that one. There were also a
21 number of companion bills to the solar energy bills
22 that were submitted in the Senate. And I won't go
23 through those at this time.

24 There is one bill that may be of concern
25 to the Commissioners. I would request that if any of

1 the Commissioners have an issue with this bill that
2 they contact us and we can discuss it further. It's
3 House Bill 2197 relating to the Code of Ethics. It
4 amends Section 14-17 to require financial disclosure
5 statements by Commissioners to be made public record.

6 That's pretty much everything that's going
7 on right now. Could change tomorrow. But that's a
8 quick update of everything that's happening in the
9 Legislature.

10 CHAIR HELLER: I have a question on the
11 one that would make financial disclosures public
12 record. Does it say anything specific about what kind
13 of disclosure? Is it that that form we have to send
14 in to the Ethics Commission would just be made
15 public? Or is it some more limited disclosure? Or
16 does the bill not say?

17 MR. ORODENKER: I think that's part of the
18 problem with the bill. On its face it would appear to
19 be just the documents that are already submitted. I
20 don't know if that would allow for additional sunshine
21 or request to allow the public to probe into
22 individual Commissioner's disclosures. I don't know.

23 CHAIR HELLER: Obviously the more detail
24 is required the more intrusive it is, the more
25 potential issue it is. It may be a significant

1 disincentive to serve on the Commission if you have to
2 make your personal finances public. I recognize there
3 is a legitimate public right to know about
4 Commissioners' financial interests; if somebody's in a
5 position where they might be affected personally by a
6 matter that's coming before us.

7 But as you mentioned we already have some
8 conflict of interest rules. I think that's something
9 we should at least keep a close eye on. And if it
10 looks like it's moving talk some more about how
11 detailed those disclosures would have to be and how
12 specific, and things like that.

13 MR. ORODENKER: Thank you, Mr. Chair.
14 We'll continue to monitor.

15 CHAIR HELLER: Commissioner Esaki.

16 COMMISSIONER ESAKI: Dan, you mentioned
17 we're not going to comment on the CPR bill. Could you
18 go back to one of the beginning Senate bills on CPR Ag
19 land?

20 MR. ORODENKER: Basically that bill --
21 your question is regard to what the bill is asking?

22 COMMISSIONER ESAKI: Yeah, what is the
23 bill?

24 MR. ORODENKER: Well, right now you can
25 CPR Ag lands.

1 COMMISSIONER ESAKI: Right.

2 MR. ORODENKER: Theoretically for Ag
3 purposes. However, this bill would be a little bit
4 more proactive and require that if you do CPR Ag lands
5 your documents could not prohibit in any way
6 agricultural activities on those CPR'd Ag lands. In
7 other words, it's to protect the right of the farmers
8 to continue to farm in any manner in which they
9 desire.

10 COMMISSIONER ESAKI: It goes with Ag lands
11 anyway.

12 MR. ORODENKER: Well, theoretically -- I
13 think the concern is that theoretically in your
14 documents that are associated with the CPR you could
15 restrict to certain types of agriculture activity. In
16 other words, you could restrict the owners to, you
17 know, growing trees or to coffee farming or to
18 something and prohibit taro or prohibit corn or
19 whatever.

20 So I think the idea is to protect the
21 ability of the farmers to grow whatever they want.

22 COMMISSIONER ESAKI: But CPR is basically
23 a method of land ownership, is not like a real
24 subdivision. But then they separate the lot, a lot so
25 they could sell and not increasing density or

1 anything. So, yeah, I think we don't have to do
2 anything on that.

3 CHAIR HELLER: I think Dan indicated that
4 at least the staff's recommendation is we not take
5 any position. We should be clear that these are
6 recommendations from the staff. If we as a Commission
7 feel that we should take a position on a bill we can
8 direct the staff to do that.

9 But because things happen fast at the
10 Legislature, they have to kind of keep track and come
11 to us if there's something they think we should look
12 that.

13 MR. ORODENKER: Just to reiterate. That
14 was the purpose of this little item on the agenda is
15 to make sure everybody knows what's happening so that
16 if something comes up later on the Commissioners don't
17 say, "Why didn't you testify on this?"

18 So this is full disclosure. We can, if
19 the Commission decides that it's warranted, testify on
20 any of these measures or against any of these
21 measures.

22 COMMISSIONER INOUE: I have a question.
23 You know, on the Ethics Bill, Conflict of Interest
24 Bill, what we send in to the Ethics Commission
25 annually, is that public record? Do you know?

1 CHAIR HELLER: I don't think it is
2 currently. I think you have to send it in and they
3 keep it on record.

4 COMMISSIONER INOUE: On record. Okay.
5 The other thing is is it House Bill -- I was going to
6 look it up -- House Bill 1120 which affects OP? There
7 is a bill -- I don't know if that's the one -- that
8 requires them to do something about IAL? And maybe
9 it's a question for Bryan or Rodney. Do you know that
10 bill? I think it's a carryover. I think you folks
11 testified.

12 It's sort of like you guys gotta plan the
13 whole state's IAL. (laughter)

14 MR. FUNAKOSHI: That 1120 wanted us to
15 kinda do the LSB because right now it's only
16 University of Hawai'i's old study that was done. And
17 there's no process to update it. So I was -- so the
18 intent to put OP in charge of doing that but they did
19 not give us any money. So we testified that we don't
20 support that primarily. That plus, you know, there's
21 a lot of problems with the LSB. It's not that simple.

22 It was a multiyear millions of dollars
23 effort. You have to do ground studies and everything,
24 agronomists. Certainly OP is not currently qualified,
25 equipped or funded to do that. So that was sort of

1 out of the question.

2 COMMISSIONER INOUE: LSB means?

3 MR. FUNAKOSHI: I'm sorry. Land Study
4 Bureau. So those are the ratings of productivity from
5 A to D which is excellent to poor. We, for IAL
6 purposes we look at that. That's one of the criteria
7 the Land Study Bureau soil rating. The better lands,
8 of course, are more agriculturally productive. So a
9 lot of -- some of the restrictions in the statute, for
10 example, it hones in on the A&B.

11 The solar people in particular have --
12 there's clear restrictions on A -- use of A lands for
13 PV and you are more limited on B and C lands,
14 10 percent or 20 acres to do photovoltaic. So those
15 are some of the things that, you know, the LSB
16 addresses.

17 MR. ORODENKER: Commissioner Inouye, if I
18 may, I attended that hearing yesterday. A couple
19 things: First of all, there's nothing moving at the
20 moment with regard to OP doing IAL. I know there were
21 a couple of proposals. There's been nothing
22 submitted this year. Last year there were. Those
23 have died in committee. I don't know if they will be
24 resurrected. I think OP hopes not.

25 But with regard to this particular matter,

1 the LSB, it became clear at the hearing that the Board
2 of Land committee members were confused as to what
3 LSB was, how it impacted IAL and what they were really
4 trying to get to. I think what they were really
5 trying to get to is this LSB rating is 25 years old.
6 And it may have not be relevant anymore. It doesn't
7 make any sense.

8 What they were actually trying to get to
9 was we need some other system other than LSB, but that
10 wasn't the way the bill was drafted. Because, as OP
11 pointed out at the hearing, if we were to redo LSB
12 right now using the same criteria it would come out
13 exactly the same. There wouldn't be any changes. The
14 land would still be the same.

15 What the committee was really trying to
16 get to was maybe we need some other way to classify
17 what our Important Agricultural Lands are, not IAL,
18 but valuable agricultural lands based on modern
19 agricultural techniques. So I think that the
20 confusion on the bill is going to end up having it --
21 resulting it being held.

22 COMMISSIONER INOUE: Actually what I was
23 curious about, if there's any bill out there -- the
24 way I read the IAL law the counties are supposed to
25 start to do that. Kaua'i has done a good job. I wish

1 I had said that to the Petitioner for sending us the
2 study that they did.

3 The way I read that IAL statute is that
4 given the money counties are supposed to have come up
5 long ago already. But nobody's -- nobody's come up as
6 far as Kaua'i. Has the money -- gotta give them
7 money. Is there any bill to give them money so they
8 can get that started? No bill?

9 MR. FUNAKOSHI: No money bill for that
10 purpose. The city has sought the city council for it.
11 I believe initially there was an offer that Kaua'i
12 took advantage of, that they got funded. But the
13 other counties didn't take advantage of that offer.

14 But we have not extended that since. But
15 that's certainly...

16 MR. YEE: I just wanted to note that under
17 the original IAL law there's a provision in the
18 original act, although I don't know that it's
19 codified, but in the original act it said that the
20 counties must finish the IAL within five years after
21 receiving funding. Kaua'i is the only one that
22 received funding. So no one else has a deadline.

23 COMMISSIONER INOUE: That's exactly what
24 I'm driving at. Go ahead.

25 MR. YEE: I'm not aware of any bill that's

1 at least separately proposed that would do that. Now,
2 whether that gets inserted somehow in the budget
3 process that's a whole different issue. I'm not aware
4 of a particular bill that allocates money for that
5 purpose.

6 COMMISSIONER INOUE: The bills -- Dan,
7 the bills that were last year, nothing came up this
8 year new, but that designated some of work on the IAL
9 issue? Can that be the vehicle to do something like
10 that?

11 MR. ORODENKER: Theoretically, but I will
12 relate to you I had a conversation with the House
13 Finance Chair yesterday where she indicated that none
14 of the mayors are asking for any money.

15 COMMISSIONER INOUE: I can understand
16 that because if you get a little bit of money then
17 they got a deadline.

18 MR. ORODENKER: I guess the point is that
19 she said, "Well, if they're not asking for it I'm not
20 going to put it in the budget."

21 COMMISSIONER INOUE: Maybe I'm addressing
22 this to OP. Unless you guys get thrown with -- maybe
23 you want to do the work, given the money. (Laughter).
24 But it really helps at least me as a Commissioner in
25 these IAL decisions to know what the county is

1 thinking about it rather than just off the cuff, you
2 know, just case-by-case there's a plan. So anyway
3 that's my wish somehow that the study get started and
4 done.

5 Meanwhile we're getting case after case.
6 We have to make decisions on IAL with hardly anything
7 to go by, any planning stuff to go by. So that's my
8 concern.

9 MR. FUNAKOSHI: We'll take it back,
10 consider that. We had not considered submitting
11 appropriations for the counties. We know it was
12 offered a while ago. Only Kaua'i took it up. City on
13 their own subsequently did. But Maui and Big Island
14 did not. But we can certainly revisit that.

15 COMMISSIONER INOUE: I would appreciate
16 that if you guys maybe can take the lead. 'Cause I
17 can understand the counties not wanting it. Nothing
18 is going to happen. The law is there but it's not
19 being done. Thank you.

20 CHAIR HELLER: Commissioners, anything
21 else? Okay. Thank you. Any other items anybody
22 wants to raise at this meeting? If not we are
23 adjourned.

24 (The proceedings were adjourned at 11:15 a.m.)

25 --oo00oo--

C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matters on the 23rd day of January, 2014;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matters.

DATED: This _____ day of _____ 2014

HOLLY M. HACKETT, HI CSR #130, RPR #5910
Certified Shorthand Reporter