

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

- I. CALL TO ORDER
- II. A89-651 HASEKO ('EWA) LNC. (O'AHU)
To consider Petitioner's 2024 Motion for Approval of Job Credits as required by the Land Use Commission ("LUC") Decision and Order issued on October 17, 1990. Files pertaining to this docket are available at:
- Parcel is identified as TMK No. 9-1-12:5 (por.), 6 (por.), and 23 (por.), approximately 403.008 acres located in Honouliuli, 'Ewa, O'ahu, State of Hawaii.
- III. APPROVAL OF MINUTES FOR JANUARY 22, 2025
- IV. TENTATIVE MEETING SCHEDULE
- V. STATUS REPORT BY THE LAND USE DEVELOPMENT COORDINATOR
- VI. DECISION ON COMMISSION'S POSITION REGARDING SB28

RELATING TO THE LAND USE COMMISSION. Specifies that a simple majority of affirmative votes of the members of the LUC present at a meeting and qualified to vote is required for any boundary amendment.

VII. DECISION ON COMMISSION'S POSITION REGARDING
SB36

RELATING TO THE LAND USE COMMISSION. Requires the LUC to reclassify lands that are designated for urban growth under a county general plan or county development plan as being in the urban district at the request of the county.

VIII. DECISION ON COMMISSION'S POSITION REGARDING
SB1079 AND HB502

RELATING TO LAND USE. Temporarily allows each county, by resolution of its county council, to petition for the redistricting of land from an agricultural district to a rural district through the LUC's declaratory ruling process. Effective 7/1/2026. Sunsets 6/30/2029.

IX. DECISION ON COMMISSION'S POSITION REGARDING
SB11L4

RELATING TO HOUSING. Authorizes large landowners to petition the LUC to allow the development of elderly housing on portions of agricultural lands.

X. DECISION ON COMMISSION'S POSITION REGARDING
 SB1157

RELATING TO LAND USE COMMISSION. Allows the counties to amend district boundaries involving land areas greater than fifteen acres without appearing before the LUC if the affected lands are included in the County General Plan or County Development Plan. Requests the LUC to update the digital state land use district maps and to encourage transit-oriented development that preserves the character of the State's rural areas.

BEFORE:

PARTICIPANTS

LUC COMMISSIONERS:

Dan Giovanni, Chairman

Michael Yamane

Mel Kahele

Brian Lee

Ken Hayashida

Bruce U'u

Myles Miyasato (via Zoom)

Nancy Carr Smith

LUC STAFF:

Daniel Orodener, Executive Officer

Arnold Wong, Land Use Development Coordinator

Scott Derrickson, Chief Planner

Martina Segura, Planner

Ariana Kwan, Chief Clerk

Miranda Steed, Esq., Deputy Attorney General

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT

("OPSD"):

Alison Kato, Esq., Deputy Attorney General

Mary Alice Evans, OPSD Director

Aaron Setogawa, Senior Planner

PARTICIPANTS CONTINUED

DEPARTMENT OF PLANNING AND PERMITTING ("DPP"), CITY
AND COUNTY OF HONOLULU:

Pono Arias, Esq., Deputy Corporation Counsel

Dina Wong, Chief Planner

Franz Kraintz, Chief Planner

A89-651 Haseko ('Ewa) Inc.:

Curtis Tabata, Esq.

Benjamin Matsubara, Esq.

Daniel Sandomire, Vice President of Development

Peter Kwan, Vice President of Site Development

Kelly Uwaine, In-House Counsel

Daniel Lum, Senior Manager of Development

PUBLIC TESTIMONY:

Healani Sonoda-Pale

Bianca Isaki

Lisa Enanoria

Steven Lee Montgomery

Wayne Tanaka

Chuck Flaherty

Tara Rojas

1 CHAIR GIOVANNI: Okay. It is 10:00. And
2 I'd like to call this meeting to order. Aloha mai
3 kakou. Good morning everyone. This is the February
4 5, 2025, Land Use Commission meeting. This is a
5 hybrid meeting, which is physically located at the
6 Leiopapa A. Kamehameha State Office Tower, 235 South
7 Beretania Street, Room 405, Honolulu, Hawaii 96813.
8 This meeting is open to the public.

9 Court reporting transcriptions are being
10 done from the Zoom recording of this meeting. For
11 all meeting participants, I'd like to stress the
12 importance of speaking slowly, clearly, and directly
13 into your microphone. And please, before speaking
14 each time state your name and identify yourself for
15 the record.

16 This is a hybrid meeting, and please be
17 aware that all meeting participants are being
18 recorded on the digital record of this Zoom meeting,
19 which will be posted on YouTube and used for court
20 reporting purposes. Your continued participation is
21 your implied consent to be part of the public record
22 of this event. If you do not wish to be part of the
23 public record, you should exit the meeting now.

24 Please note that the Q&A feature on the
25 Zoom will only be monitored for signing up for

1 public testimony. All other communications will not
2 be addressed or part of the meeting record.

3 Communications can also be emailed to our office at
4 DBEDT.luc.web@hawaii.gov

5 I will also share with all participants
6 that we'll be taking break breaks from time to time,
7 normally five minutes every hour. We'll also be
8 taking a 30 minute break for lunch today.

9 My name is Dan Giovanni, and I have the
10 pleasure to serve as the LUC chair. So we currently
11 have nine seated commissioners on the Commission.
12 Along with me today is Commissioner Michael Yamane.
13 He's from island of Kauai. Commissioner Mel Kahele,
14 Commissioner Brian Lee are from Oahu. Commissioner
15 Myles Miyasato is joining us by Zoom.

16 Mr. -- Commissioner Miyasato, would you
17 please clarify where you are and that you are alone
18 in your room, wherever that is?

19 COMMISSIONER MIYASATO: Yes. I'm at my
20 residence on the Big Island, and I am alone.

21 CHAIR GIOVANNI: Thank you so much.
22 Commissioner Carr Smith is from the Island of
23 Hawaii. Commissioner Bruce U'u is from the Island
24 of Maui. Commissioner Hayashida has recused himself
25 from the agenda item this morning, which is docket

-- doing with business with docket number A89-651,
and he'll join us later in the meeting.

Commissioner Kamakea-'Ohelo was also excused today
due to a family emergency.

So we have in attendance today by in
present and by Zoom seven of the nine commissioners,
and that will change from day to day -- hour to
hour, I say. So commissioners, I'm planning a hard
stop at today's meeting at 4:00. Does anybody have
a need to exit the meeting before 4:00?

Commissioner U'u.

COMMISSIONER U'U: Yeah. I need to leave
at 2:00.

CHAIR GIOVANNI: 2:00, thank you.

COMMISSIONER KAHELE: Chair, I -- I also
have a scheduled meeting -- another meeting at 2:00.

CHAIR GIOVANNI: Thank you.

COMMISSIONER YAMANE: Mr. Chair, I'll be
leaving sometime after lunch.

CHAIR GIOVANNI: Okay. Thank you. So it
looks like we'll be close to quorum level. Quorum
for our business after lunch will be when these
gentlemen have to depart is five people. We'll see
where we stand at that time.

I'm also for -- excuse me. This is a new

1 one. If someone over the age of 18 is in attendance
2 with a commissioner -- oh, got it. So we don't have
3 that. All right.

4 Also in attendance today are the LUC
5 Executive Officer Daniel Orodenker, LUC Land Use
6 Development Coordinator Arnold Wong, LUC Chief
7 Planner Scott Derrickson, LUC Staff Planner Martina
8 Segura, LUC Chief Clerk Ariana Kwan, and to my
9 left, LUC Deputy Attorney General Miranda Steed.
10 Again, court reporting transcriptions are being done
11 from the Zoom recording.

12 The chair is going to take one agenda item
13 out of order, and that is the adoption of minutes
14 from our meeting of January 22nd. So let us go to
15 that -- recognized as agenda item 3. That's the
16 adoption of minutes from our meeting of January 22,
17 2025.

18 Ms. Kwan, has there been any written
19 testimony submitted on the January 22nd minutes?

20 MS. KWAN: No, Mr. Chair.

21 CHAIR GIOVANNI: Are any members of the
22 public signed up to testify in the adoption of the
23 minutes from January 22nd?

24 MS. KWAN: Seeing none in the Q&A feature,
25 Mr. Chair.

1 CHAIR GIOVANNI: Thank you. And none
2 present in the room have signed up?

3 MS. KWAN: None in the room, Chair.

4 CHAIR GIOVANNI: Thank you.

5 Commissioners, are there any corrections
6 or comments on the minutes? And if not, is there a
7 motion to adopt the minutes?

8 COMMISSIONER U'U: I'll make a motion to
9 adopt the minutes.

10 CHAIR GIOVANNI: Commissioner U'u moves to
11 adopt the minutes. Do I have a second?

12 COMMISSIONER CARR SMITH: Second.

13 CHAIR GIOVANNI: Second by Commissioner
14 Carr Smith. All in favor of adoption of minutes,
15 please signify by saying aye. Any opposed? None.
16 Thank you. The minutes are adopted.

17 We'll now return to the second agenda
18 item. This -- this order of business is -- pertains
19 to docket number 8 -- pardon me -- A, letter A, 89-
20 651, Haseko ('Ewa) Incorporated. This agenda item
21 is to consider the petitioner's motion for approval
22 of job credits as required by the Land Use
23 Commission D&O issued on October 17, 1990.

24 This time, I'd like the parties to
25 identify themselves for the record, starting with

1 petitioner.

2 MR. TABATA: Thank you, Chair. Curtis
3 Tabata. Good Morning, Chair Giovanni, Vice Chair
4 Yamane, Members of the Commission, Curtis Tabata and
5 Benjamin Matsubara for the petitioner Haseko ('Ewa)
6 Inc. Also present today from Haseko at the table
7 with me is our Vice President of Development Daniel
8 Sandomire and in-house counsel Kelly Uwaine.
9 Sitting behind us is Vice President of Site
10 Development Peter Kwan and Site Manager of
11 Development Daniel Lum.

12 CHAIR GIOVANNI: Mr. Tabata, is Mr.
13 Sandomire planning to provide any testimony today?

14 MR. TABATA: We're not planning on it,
15 Chair. He's just here as a resource, as is everyone
16 else.

17 CHAIR GIOVANNI: Okay. So if we come to a
18 point where we ask to ask them questions, I'll swear
19 them in at the time.

20 MR. TABATA: Yes. Thank you.

21 CHAIR GIOVANNI: Thank you very much.
22 From the County?

23 MR. ARIAS: Morning, Chair. Good morning
24 -- good morning, Chair, and on Zoom.

25 CHAIR GIOVANNI: Very good.

1 MR. ARIAS: Good morning, Chair,
2 Commissioners. Pono Arias, Deputy Corporation
3 counsel, on behalf of the City and County of
4 Honolulu Department of Planning and Permitting.
5 Dina Wong and Franz Kraintz from the Department are
6 also online.

7 CHAIR GIOVANNI: Thank you very much. If
8 any of your colleagues are going to testify, I'll
9 swear them in at the time.

10 MR. ARIAS: Very well.

11 CHAIR GIOVANNI: From the OPSD.

12 MS. KATO: Good morning, Chair,
13 Commissioners. Alison Kato, Deputy Attorney General
14 for the Office of Planning and Sustainable
15 Development. Also here is Mary Alice Evans,
16 Director of OPSD, and Aaron Setogawa, planner at
17 OPSD. Thank you.

18 CHAIR GIOVANNI: Do Ms. Evans or -- or
19 Aaron plan to testify today?

20 MS. KATO: No, Chair.

21 CHAIR GIOVANNI: Okay. Very well.

22 So I'd like to go over the reimbursement
23 policy, Mr. Tabata. Have you reviewed HAR section
24 1515-45.1 regarding reimbursement of hearing
25 expenses?

1 MR. TABATA: Yes, we have, and we will
2 comply.

3 CHAIR GIOVANNI: Thank you. At this time,
4 I'd like to identify any potential disclosures and
5 conflicts of interest. So in accordance with HRS
6 84-14, commissioners are not allowed to take any
7 official action affecting a business in which they
8 or a member of the family has a financial interest.
9 They must therefore recuse themselves from this
10 matter if there is any benefit, monetary or
11 otherwise, to themselves or members of their family.

12 Also, in accordance with the legal ethical
13 standards, commissioners should disclose any
14 relationship -- business, social, or otherwise --
15 that they may have with the petitioner or its
16 representatives or any of the other parties in this
17 proceeding that may give rise to the allegation of
18 bias or impropriety.

19 So I have stated earlier that Commissioner
20 Hayashida has recused themselves from this agenda
21 item. So Commissioners, any of you have any other
22 disclosures or conflicts of interest you'd like to
23 make at this time? Seeing none, we will proceed.

24 Let me briefly explain the procedures for
25 today. First, I will recognize the written public

1 testimony that has been submitted on this matter.
2 Next, I will call for members of the public who wish
3 to provide oral testimony on this matter. The
4 petitioner will then be called upon to make
5 presentation in support of his motion. The
6 petitioner's presentation I will -- at the
7 petitioner's -- after the petitioner's presentation,
8 I will ask the county and their state to present
9 their comments.

10 The commissioners will have an opportunity
11 to ask questions of the parties at the conclusion of
12 each of their presentations. I will then reopen the
13 floor for public testimony and additional oral
14 testimony on this matter. The parties will be given
15 an opportunity for closing arguments. Finally, the
16 Commission will deliberate on the matter based on
17 the testimony and evidence presented.

18 Chair would like to remind everyone I will
19 be calling for short breaks, normally five minutes
20 per hour. Does anybody have a comment or an
21 objection to the procedure? Mr. Tabata.

22 MR. TABATA: No comment or objection.

23 CHAIR GIOVANNI: Thank you. City and
24 County of Honolulu, any objection?

25 MR. ARIAS: No comment or objection.

1 CHAIR GIOVANNI: Ms. Kato?

2 MS. KATO: None. Thank you.

3 CHAIR GIOVANNI: Very good. As stated on
4 today's agenda, please be informed that the relevant
5 records and documents pertaining to this matter can
6 be accessed for review on the LUC website at
7 <https://luc.hawaii.gov/a89-651>.

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

12 MS. KWAN: Yes, Mr. Chair. We received
13 two on February 3rd, one on February 4th, all posted
14 on the website.

15 CHAIR GIOVANNI: Thank you very much. Ms.
16 Kwan, is there any members of the public that wish
17 to testify on this matter?

18 MS. KWAN: If anyone on the Zoom would
19 like to provide oral testimony on this item, please
20 use the Q&A feature now. Seeing none, Chair.

21 CHAIR GIOVANNI: Thank you.

22 Mr. Tabata, will you please provide your
23 presentation?

24 MR. TABATA: Thank you, Chair. Curtis
25 Tabata for Petitioner. Haseko is here today to ask

1 the Commission to approve 374.78 job credits. Two
2 similar motions in 1994 and 2022 have been granted
3 by the Commission approving 575.22 job credits. So
4 if our motion today is approved, that will give us a
5 total of 950 job credits, which will allow Haseko to
6 build up to 950 hotel and hotel condominium units at
7 Haseko's Ocean Pointe and Hoakalei project.

8 Haseko's Ocean Pointe and Hoakalei project
9 is located at Ewa Beach, Oahu, and is comprised of
10 1,100 acres and includes residential, light
11 industrial, commercial, retail, visitor
12 accommodations, a recreational lagoon, golf course,
13 district park, childcare center, and a public
14 elementary school. I'm just providing this
15 background information, because this -- that project
16 is -- is the underlying matter that concerns our job
17 credits motion.

18 So the Ocean Pointe and Hoakalei project
19 is permitted to include up to 4,850 housing units,
20 of which approximately 82 percent have been built
21 and sold to individual homeowners. The visitor
22 accommodation component of the project includes up
23 to the 950 hotel and hotel condominium units that I
24 mentioned.

25 Now, shifting to the job credits,

1 condition 1 of our LUC decision and order requires
2 that we obtain one job credit for each hotel or
3 hotel condominium unit that we intend to build.
4 Therefore, we need 950 job credits to build the 950
5 hotel units.

6 Now, the process for obtaining job credits
7 starts with accrued job credits that results from
8 these math formulas that are applied to categories
9 that are listed in condition one that include non-
10 tourism related construction hours, facility square
11 footage, job training, and investments.

12 Okay. So these accrued job credits that
13 we keep track of are required to be reported in
14 Haseko's written annual reports to the LUC. Once
15 these -- once the reported job credits -- well,
16 reported job credits become approved job credits
17 after the Commission provides its approval in
18 motions like the one we are hearing today. And the
19 approved job credits is a precondition to obtaining
20 the building permit. So that's why we need job
21 credits that are approved by the LUC. And so far,
22 the Commission has approved 575.22 job credits.

23 Today, we are asking the Commission to
24 approve the remaining 374.78 job credits which are
25 based upon 2,372.3 investment related job credits

1 that were reported for years 2022 and 2023. These
2 reported job credits are derived from an investment
3 of \$118,615,000 in a startup business called Wai Kai
4 Commercial Development, LLC, which was used to
5 develop the commercial center called Wai Kai.

6 Wai Kai is a new concept for a commercial
7 center that is anchored by the Wai Kai Wave, the
8 first stationary deep water surf wave in Hawaii that
9 caters to all skill levels with adjustable wave
10 settings. Built around the Wai Kai Wave are
11 restaurants, retail lagoon activities, and 80,000
12 square feet of community gathering space for
13 festivals, farmers markets, and food trucks.

14 In conclusion, this annual process of
15 reporting accrued job credits based on actual
16 construction hours, built facilities, and
17 contributions and investments, together with the
18 motions to approve job credits has been an over 30
19 year journey for Haseko. With this final piece of
20 the puzzle, Haseko hopes to complete its vision for
21 Ocean Pointe and Hoakalei.

22 We would like to thank the Hawaii Regional
23 Council of Carpenters, the Pacific Resource
24 Partnership, and Ewa Beach resident Mitchell
25 Tynanes for their written testimony in support of

1 our motion. And thank you to the LUC staff, the
2 Office of Planning and Sustainable Development, and
3 the Department of Planning and Permitting for
4 reviewing and recommending approval of our motion,
5 and to the Land Use Commission for taking the time
6 to consider our request.

7 That concludes my presentation.

8 CHAIR GIOVANNI: Thank you, Mr. Tabata.
9 Commissioners, any questions for Mr. Tabata at this
10 time? Seeing none. Okay. We'll move on to OPSD.

11 MS. KATO: Thank you. Alison Kato, the
12 Office of Planning and Sustainable Development
13 supports approval of petitioner's motion for
14 approval of job credits. And you know, the
15 situation was already described by petitioner, so I
16 won't go over it again. But after review of
17 petitioner's motion and supporting documentation and
18 meeting with petitioner to discuss the same, OPSD is
19 satisfied with petitioner's representations and
20 calculation of job credits.

21 And OPSD finds that petitioner has
22 complied with all of the requirements and
23 restrictions set out in the Commission's D&O for
24 approval of the requested 374.78 job credits. Based
25 on this, OPSD recommends approval and note that if

1 -- we just want to note that if approved condition
2 one of the 1990 D&O as amended will be fully
3 satisfied and petitioner will be able to begin
4 construction of up to 950 units. We're available
5 for any questions. Thank you.

6 CHAIR GIOVANNI: Thank you, Ms. Kato.

7 Commissioners, any questions for OPSD?
8 Seeing none, thank you. City and County of
9 Honolulu, do you have any comment or presentation to
10 make at this time?

11 MR. ARIAS: Thank you, Chair. Pono Arias.
12 No presentation. The City stands on the written
13 comments it provided and has no objections to the
14 LUC granting this motion. Thank you.

15 CHAIR GIOVANNI: Thank you very much.
16 Commissioners, any questions or comments for City
17 and County of Honolulu? Commissioner U'u.

18 COMMISSIONER U'U: Good morning. And I
19 just wanted to make mention that I'm from Maui. So
20 when we -- we -- this is a great example of a good
21 developer. So I watched the video of the last
22 meetings that you guys did. I -- I've listened to
23 the testimony. I've read through almost everything
24 that was given to me.

25 And you know, for me at the time and place

1 where I'm -- I am on Maui, I always feel like we got
2 to -- we have -- we should have the ability to pick
3 and hand pick good developers that reflect --
4 reflective of when people have the bad developer
5 concept. You guys are completely the opposite of
6 that.

7 I just wanted to make that note. You guys
8 are a great example of a good developer, and at
9 times that's missing. So I applaud you for your
10 efforts. I thank you for being patient. I've never
11 seen a condition -- a condition number 1 in my life
12 until I was here. And I applaud -- applaud your
13 efforts.

14 I would love to make a motion to approve,
15 if --

16 CHAIR GIOVANNI: It's on a little bit
17 early, but I will give you the opportunity. I will
18 give you the opportunity --

19 COMMISSIONER U'U: Okay. Thank you.

20 CHAIR GIOVANNI: -- to make it at the
21 appropriate time. But I will add my personal
22 comment. Commissioner U'u, I -- I remember the
23 hearing the last time we heard them on job credits.
24 And it was an incredible attendance by community
25 people who live in that area and who had benefited

1 from this development and who spoke so favorably of
2 the -- of the work that had been done by Haseko. So
3 I echo Commissioner U'u's comments. Thank you.

4 Okay. At this time, I'd like to call on
5 the staff, the LUC staff who have reviewed the --
6 the petition and the motion and -- for their
7 recommendation to Commission on this. So Ms.
8 Segura, do you have something?

9 MS. SEGURA: Hi. This is Martina Segura
10 for the record. I prepared the staff report and got
11 it approved for submittal on January 30, 2025. So
12 that's when it was posted to the Land Use Commission
13 website for public review.

14 After review of the motion and the
15 exhibits, staff suggests approval of the -- of the
16 motion in front of us. And that's for the request
17 for 374.78 startup job credits.

18 CHAIR GIOVANNI: Thank you, Ms. Segura.
19 Commissioners, any question for staff?

20 COMMISSIONER CARR SMITH: I had one quick
21 question, please, for whoever.

22 CHAIR GIOVANNI: Commissioner Carr Smith.

23 COMMISSIONER CARR SMITH: Can you just
24 clarify for me? It's a lot of numbers involved
25 here. With approval of these credits, does that

1 completely satisfy condition 1?

2 MS. SEGURA: Yes. So according to
3 condition 1, there's a total of 950 job credits
4 needed to begin development of the hotel portion of
5 the project.

6 COMMISSIONER CARR SMITH: Thank you.

7 CHAIR GIOVANNI: Mr. Tabata, you concur
8 with that?

9 MR. TABATA: Yes, sir. I concur.

10 CHAIR GIOVANNI: This is -- so in other
11 words, this is the last time you're coming to the
12 Commission to ask for approval of job credits?

13 MR. TABATA: Well, I always want to
14 return, Chair. But I -- I believe this is it.

15 CHAIR GIOVANNI: For this purpose.

16 MS. KWAN: I think so.

17 CHAIR GIOVANNI: Okay. Great. Thank you.
18 All right. So commissioner, any questions for any
19 of the parties? If not, I'll return to public
20 testimony one more time. Ms. Kwan, do a second
21 round of public testimony? Are any members of the
22 public wish to provide new additional testimony at
23 this time?

24 MS. KWAN: Yes, Mr. Chair. We have
25 Healani Sonoda-Pale on the Zoom, who would like to

1 give oral testimony. I'll promote her now.

2 CHAIR GIOVANNI: Thank you. Let me know
3 when she's there.

4 MS. KWAN: Healani, can you give me a mic
5 check?

6 MS. SONODA-PALE: Yeah. Hi. Aloha.

7 CHAIR GIOVANNI: Ms. Pale, could you
8 please state your name and address for the record,
9 and then I'll swear you in.

10 MS. SONODA-PALE: Sure. My name is
11 Healani Sonoda-Pale. My address is 6119 Kawekiu
12 Place, Honolulu, Hawaii 96821.

13 CHAIR GIOVANNI: Thank you very much. Do
14 you swear the testimony you're about to give will be
15 the truth?

16 MS. SONODA-PALE: Yeah. To my
17 understanding, it is. Yes, it's public knowledge.

18 CHAIR GIOVANNI: But whatever you're going
19 to testify to, in your mind, it's the truth? Yes.
20 So please proceed.

21 MS. SONODA-PALE: Yes.

22 CHAIR GIOVANNI: You have two minutes.

23 MS. SONODA-PALE: Okay. So I -- aloha.
24 I'm actually testifying on behalf of Ka Lahui
25 Hawaii, which is a native initiative for self-

1 determination and self-governance. We are in strong
2 opposition to granting job credits or financial
3 incentives to Haseko.

4 We do not believe that we should reward
5 corporations that have repeatedly harmed our
6 environment, violated cultural protections, and
7 misled the community. Haseko has a long history of
8 failing to uphold environmental responsibility. The
9 most glaring is the -- the abandoned promise to the
10 Hoakalei Marina and the landlocked lagoon.

11 But I want to focus, since I only have two
12 minutes, on the desecration of Native Hawaiian
13 burials. Haseko's disregard for cultural heritage
14 is another reason they should not be rewarded with
15 job credits. In 2007, during excavations of over 60
16 Native Hawaiian burials -- that's 60 Native Hawaiian
17 kupuna -- were disturbed on land where their resort
18 and residential development was being built.

19 This caused immense pain to the Kanaka
20 Maoli community as the remains of the ancestors were
21 treated as obstacles, rather than sacred artifacts
22 deserving of respect. The treatment of these
23 remains violated traditional Hawaiian values, raised
24 serious concerns about whether proper consultation
25 with cultural experts had taken place before

1 construction.

2 Instead of prioritizing cultural
3 preservation, Haseko's development has repeatedly
4 forced the community to fight for protection of
5 their ancestors after damage has -- was already
6 done. This pattern of disregard shows that they are
7 not responsible stewards of our land.

8 Our taxpayer fund should not reward bad
9 corporate behavior. Granting job credits to Haseko
10 would be sending the wrong message that corporations
11 can damage the environment, desecrate cultural
12 sites, and be rewarded with taxpayer-funded
13 benefits. Haseko time and time again has
14 demonstrated -- and this is over decades of their
15 interactions with the Ewa community -- that that --
16 their priority is profit, not environmental
17 sustainability, cultural respect, or long-term
18 community well-being.

19 If the state is to grant job credits, they
20 should be reserved for companies that uphold ethical
21 development, cultural integrity, and environmental
22 responsibility, not corporations with a history of
23 deception and harm. And just -- and that's my final
24 thing on -- on Haseko.

25 We all know about their development at Wai

1 Kai. That lagoon that was created is actually --
2 has actually -- is part of the damage that they've
3 done to our -- our water table. They've actually
4 cracked the water table, and that is unacceptable to
5 me. They were instrumental in destroying multiple
6 cultural sites in that area in One'ula. And they
7 are -- have not been responsible when it comes to
8 protecting that is what -- what is most sacred to us
9 as Kanaka Maoli.

10 Thank you.

11 CHAIR GIOVANNI: Thank you very much for
12 your testimony and -- and for you taking time to
13 come to us today.

14 So commissioners, any -- well, let me go
15 to petitioner first. Do you have any comments or
16 questions on this testimony?

17 MR. TABATA: No questions, Chair.

18 CHAIR GIOVANNI: City and County of
19 Honolulu, do you have any comments or questions for
20 this witness?

21 MR. ARIAS: Hi. Pono Arias. No comments
22 or questions.

23 CHAIR GIOVANNI: Thank you. OPSD, any
24 comments or questions for this witness?

25 MS. KATO: Alison Kato. No questions.

1 Thank you.

2 CHAIR GIOVANNI: Thank you.

3 Commissioners, any comments or questions for this
4 witness? Seeing none, thank you very much for being
5 -- again, for being here today.

6 Ms. Kwan, is there anybody else that have
7 signed up to testify?

8 MS. KWAN: If anyone on the Zoom would
9 like to testify, please use the Q&A feature now. I
10 see Bianca Isaki raising her hand. I'm assuming
11 it's for testimony. I'll promote her now.

12 CHAIR GIOVANNI: Thank you.

13 MS. ISAKI: Good morning. I hope it's
14 okay. My camera's not working very well today. I'd
15 just like to testify on the first item on the Haseko
16 job credits because I understand --

17 CHAIR GIOVANNI: Yeah, one second.

18 MS. KWAN: One second.

19 CHAIR GIOVANNI: One second.

20 MS. ISAKI: Oh, sorry.

21 CHAIR GIOVANNI: So Ms. Isaki, please
22 state your name and affiliation and address for the
23 record. Then I'll swear you in, and then you can
24 testify.

25 MS. ISAKI: Oh, thank you. Sorry. Bianca

1 Isaki. I'm testifying as an individual. I live in
2 Kaneohe. My address is 46379 Kumoo Loop.

3 CHAIR GIOVANNI: So Ms. Isaki, do you
4 swear the testimony you're about to give will be the
5 truth?

6 MS. ISAKI: Yes.

7 MR. ARIAS: So please proceed. This is on
8 the agenda item for Haseko only, so please proceed.
9 You have two minutes.

10 MS. ISAKI: Yeah. Thank you. And I'll be
11 brief. I want to echo everything that the former --
12 or the last testifier presented. Also, I noticed
13 that condition 1C says that the petitioner may
14 receive one job credit for each \$50,000 invested in
15 a startup of non-tourism related businesses. And
16 then they invested, I guess, over \$118,000 in Wai
17 Kai, and they're asking for 2372.3 job credits for
18 that.

19 But I -- I mean, Wai Kai is, like, perhaps
20 locals also go there. But I'll just note that like
21 the introductory rate is \$200 for 45 minutes. I --
22 I believe a lot of tourists do go there, and I think
23 that it's splitting hairs to say it is or is not a
24 tourist -- or that it is -- I think it is a tourist
25 -- a tourist accommodation.

1 So I don't think that they should have
2 those job credits and that the job credits that
3 they're asking should not -- or they should -- their
4 motion to say that they have met all of their job
5 credits should not be granted. Thank you.

6 CHAIR GIOVANNI: Thank you, Ms. Isaki.
7 Petitioner, any questions or comments for
8 this witness?

9 MR. TABATA: No questions.

10 CHAIR GIOVANNI: City and County of
11 Honolulu, any comments or questions for Ms. Isaki?

12 MR. ARIAS: Hi. Pono Arias. No comments
13 or questions.

14 CHAIR GIOVANNI: Thank you. OPSD, any
15 comments or questions for this witness?

16 MS. KATO: Alison Kato. No -- no
17 comments. Thank you.

18 CHAIR GIOVANNI: Commissioners, any
19 comments or questions for this witness? Seeing
20 none, thank you, Ms. Isaki, for taking the time
21 today.

22 MS. ISAKI: Thank you.

23 CHAIR GIOVANNI: Ms. Kwan, is there anyone
24 else?

25 MS. KWAN: We have one more on the Zoom.

1 Her name is Lisa E. I will promote her now.

2 CHAIR GIOVANNI: Thank you.

3 MS. KWAN: Lisa, can you turn on your
4 camera and give us a mic check?

5 MS. ENANORIA: Hi, everyone. Can you hear
6 me?

7 CHAIR GIOVANNI: Good morning. We do hear
8 you. So Lisa, can you state your full name, your
9 address, and then I'll swear you in to testify?

10 MS. ENANORIA: Actually, my full name is
11 Lisa Enanoria Wirdlechner. I actually work for
12 Haseko as their community representative. So I just
13 was -- wanted to make myself available to kind of
14 clarify some of the information that was given
15 regarding some of the burials and --

16 CHAIR GIOVANNI: One second. One second.

17 MS. ENANORIA: Sorry.

18 CHAIR GIOVANNI: Before you go -- before
19 you go any farther, do you swear the testimony
20 you're about to give will be the truth?

21 MS. ENANORIA: Yes.

22 CHAIR GIOVANNI: Then please proceed. You
23 have two minutes.

24 MS. ENANORIA: Hi. So some of the
25 information that I -- I heard was not exactly what

1 occurred. We -- there was, I believe, one burial
2 that was found on the shoreline on state land. That
3 was back in the early 2000s. And we did follow
4 protocol by contacting SHPD, and we were able to
5 eventually work with them and work with Hoakalei
6 Culture Foundation.

7 We wanted to make sure that there is a
8 place for that iwi to be re-interred and follow the
9 proper procedures. And there is a spot that is in
10 one of our preservations areas that we had the iwi
11 returned with the help of Hoakalei Culture
12 Foundation, and that area is maintained.

13 There was also another burial that was
14 found that was on our property, not on state land.
15 And we decided to keep that burial in place. And we
16 -- we actually redesigned the plan so that that
17 burial would be safe and never disturbed again. We
18 actually -- I think it was in one of our Wai Kai
19 trail plans. So that's some of the information
20 regarding burials that occurred on our site.

21 We also do work with Hoakalei Culture
22 Foundation to kind of promote the Native Hawaiian
23 culture. They have programs that they do in -- that
24 they actually do in the Hoakalei Culture Foundation
25 -- during preservation, sorry. One of them is

1 Kauhale Preserve that they actually invite kids from
2 Kamehameha schools and the local Boys and Girls
3 Clubhouse and other partners that they may have in
4 the community.

5 And we have always deferred to them
6 regarding a lot of the cultural aspects regarding in
7 our project. So I just wanted to sign on and
8 clarify those. If you guys have any questions, I'm
9 here and available.

10 CHAIR GIOVANNI: Thank you. So that was a
11 little -- that was more a part of your petitioner's
12 representation.

13 MS. ENANORIA: Yes, sorry.

14 CHAIR GIOVANNI: But I do welcome the
15 comments. So Mr. Tabata, do you want to add
16 anything to this, what the witness said on behalf of
17 a Haseko?

18 MR. TABATA: No. We have no questions for
19 the witness. Thank you.

20 CHAIR GIOVANNI: Okay. City and County,
21 any questions for the witness?

22 MR. ARIAS: Hi. Pono Arias. No questions
23 or comments.

24 CHAIR GIOVANNI: OPSD, comments or
25 questions?

1 MS. KATO: Alison Kato. No questions or
2 comments. Thank you.

3 CHAIR GIOVANNI: Okay. Commissioners?
4 Mr. Yamane.

5 COMMISSIONER YAMANE: I have a question
6 for the petitioner.

7 CHAIR GIOVANNI: Go ahead.

8 COMMISSIONER YAMANE: MR. Tabata, with the
9 -- like, if the Land Use grants this order, what's
10 -- what does that enable your client to do, and is
11 there any time frame on what will happen next with
12 the granting of this motion?

13 MR. TABATA: What it does is it qualifies
14 us to seek building permits for the hotels. Timing
15 wise, you know, right now Haseko is in the process
16 of marketing the resort property, and they're
17 looking for a partner with a hotel or hotels. And
18 we don't have a -- there's no time frame. We're at
19 that stage yet in the beginning.

20 COMMISSIONER YAMANE: Okay. Thank you.
21 No more questions, Mr. Chair.

22 CHAIR GIOVANNI: Thank you. So Ms. Kwan,
23 is there anybody else who signed up for public
24 testimony?

25 MS. KWAN: Seeing none in the Q&A feature,

1 Chair.

2 CHAIR GIOVANNI: Thank you. So now, we'll
3 proceed to closing arguments. So petitioner, based
4 on what you've heard with public testimony and
5 comments from commissioners, do you have any final
6 closing statements you'd like to make?

7 MR. TABATA: Thank you, Chair. Curtis
8 Tabata for petitioner. The only additional remarks
9 I would like to make is that we believe Wai Kai is
10 non-tourism related. We have not built our hotels
11 yet. Wai Kai received its certificate of occupancy
12 back in 2023. It's been in operation, and I'm told
13 it's -- they're getting good patronage. It's busy.

14 We believe they are -- they are mostly
15 local residents. Of course, tourists are welcome
16 too. But on that basis we believe that it qualifies
17 -- Wai Kai qualifies as a non-tourism related
18 investment. Thank you.

19 CHAIR GIOVANNI: Commissioners, any
20 questions for Mr. Tabata?

21 Can you -- Mr. Tabata, can you state again
22 for us what you have already completed in terms of
23 housing on this project?

24 MR. TABATA: Right. Approximately 82
25 percent of 4,850 residential units have been built

1 and sold. So there's about 12 percent more to go.

2 CHAIR GIOVANNI: And what's the plans for
3 those?

4 MR. TABATA: We're in the process of
5 completing them. I'm not sure if we have a specific
6 time frame involved, but it's in process, I believe.

7 CHAIR GIOVANNI: Is construction ongoing?

8 MR. TABATA: Yes, it is ongoing.

9 CHAIR GIOVANNI: Okay. Thank you.
10 Commissioners, anything further for the petitioner?

11 City and County of Honolulu, any closing
12 statement?

13 MR. ARIAS: Hi. Pono Arias. Nothing to
14 add. Thank you for the -- for your time.

15 CHAIR GIOVANNI: Thank you. OPSD,
16 anything to add?

17 MS. KATO: Alison Kato. No further
18 comments. Thank you.

19 CHAIR GIOVANNI: Okay. So we'll now go
20 into deliberations. The Commission will conduct
21 formal deliberations whether to grant or deny the
22 motion for job credits.

23 I would note for the parties that the
24 public -- and the public that during the
25 commissioners' deliberations, I will not entertain

1 any additional input from the parties or the public,
2 unless those individuals or entities are
3 specifically requested to do so by the chair. If
4 called upon, I would ask that they limit their
5 comments to the question that has been asked.

6 So Commissioners, let me confirm that each
7 of you have reviewed the record and are prepared to
8 deliberate on the subject docket. After I call your
9 name, would you please signify that either aye or
10 nay, that you are prepared to deliberate?

11 Commissioner Yamane.

12 COMMISSIONER YAMANE: Aye.

13 CHAIR GIOVANNI: Commissioner Carr Smith?

14 COMMISSIONER CARR SMITH: Yes, I am.

15 CHAIR GIOVANNI: Commissioner Lee.

16 COMMISSIONER LEE: Yes.

17 CHAIR GIOVANNI: Commissioner Miyasato.

18 COMMISSIONER MIYASATO: Aye.

19 CHAIR GIOVANNI: Commissioner Kahele.

20 COMMISSIONER KAHELE: Yes.

21 CHAIR GIOVANNI: Commissioner U'u.

22 COMMISSIONER U'U: Aye.

23 CHAIR GIOVANNI: And the chair is also
24 prepared to deliberate on this matter.

25 Commissioners, the chairs will entertain a

1 motion that the LUC grant or denies this motion, the
2 petitioner's motion for approval of job credits as
3 required by the Land Use Commission decision and
4 order October 17, 2000.

5 Mr. U'u, please make your motion, if you'd
6 like to do so, and the reasons for it.

7 COMMISSIONER U'U: You know, I -- I'd
8 rather turn them over to someone from Oahu, if you
9 don't mind, to make the motion --

10 CHAIR GIOVANNI: Okay.

11 COMMISSIONER U'U: -- if they're in. I
12 just feel it's more appropriate.

13 CHAIR GIOVANNI: Okay.

14 COMMISSIONER U'U: But I do support.

15 CHAIR GIOVANNI: So do I have a motion?

16 COMMISSIONER LEE: Chair, I will make the
17 motion.

18 CHAIR GIOVANNI: Go ahead, Commissioner
19 Lee.

20 COMMISSIONER LEE: I move that we approve
21 the job credits as required by the Land Use
22 Commission decision order issued on October 17th as
23 requested by the petitioner.

24 CHAIR GIOVANNI: Thank you. Do I have a
25 second motion from Commissioner Lee?

1 COMMISSIONER U'U: I'll second it, second.

2 CHAIR GIOVANNI: Second by Commissioner
3 U'u. Commissioner Lee, would you speak in -- why
4 you support the motion?

5 COMMISSIONER LEE: I don't have much to
6 say. I think the petitioner complied with the terms
7 of the agreement, and so I approve.

8 CHAIR GIOVANNI: Very good. Commissioner
9 U'u, we heard you earlier. Do you want to add
10 anything?

11 COMMISSIONER U'U: I'd just like to add
12 what I mentioned earlier. Impressive, I think at
13 this time in the stages of what developers we need
14 to lean on and depend on, I think you guys set I
15 great example. Mahalo.

16 CHAIR GIOVANNI: Thank you.
17 Commissioners, any further questions or comments?
18 Ms. Carr Smith.

19 COMMISSIONER CARR SMITH: Thank you,
20 Chair. I just wondered if you guys would be open to
21 adding to the motion just so everything's in it from
22 the start, and that is to authorize the chairperson
23 to execute the order necessary to effectuate the
24 Commission's decision --

25 CHAIR GIOVANNI: Thank you.

1 COMMISSIONER CARR SMITH: -- subject to
2 review and approval of the AG's office.

3 CHAIR GIOVANNI: Thank you, Commissioner.
4 Commissioner Lee, would you be welcome that friendly
5 amendment?

6 COMMISSIONER LEE: I do, Chair.

7 CHAIR GIOVANNI: Commissioner U'u, do you
8 second that friendly amendment to authorize the
9 chair to execute?

10 COMMISSIONER U'U: Yes, aye.

11 CHAIR GIOVANNI: Okay. So all in favor of
12 the friendly amendment, signify by saying aye?

13 THE COMMISSION: Aye.

14 CHAIR GIOVANNI: Okay. So now we have a
15 motion to approve the motion put forth by the
16 petitioner and to authorize the chair to execute if
17 we so move it forward.

18 So Mr. Orodenger, please poll the
19 commissioners.

20 MR. ORODENER: Thank you, Mr. Chair. The
21 motion is to approve the job credits as requested by
22 the petitioner and authorize the chair to execute
23 the decision in order. Commissioner Lee.

24 COMMISSIONER LEE: Aye.

25 MR. ORODENER: Commissioner U'u.

COMMISSIONER U'U: Aye.

MR. ORODENKER: Commissioner Yamane.

COMMISSIONER YAMANE: Aye.

MR. ORODENKER: Commissioner Miyasato.

COMMISSIONER MIYASATO: Aye.

MR. ORODENKER: Commissioner Kahele.

COMMISSIONER KAHELE: Aye.

MR. ORODENKER: Commissioner Carr Smith.

COMMISSIONER CARR SMITH: Aye.

MR. ORODENKER: Chair Giovanni.

CHAIR GIOVANNI: Aye.

MR. ORODENKER: Thank you, Mr. Chair. The motion passes unanimously.

CHAIR GIOVANNI: Thank you. And thank you all for participating at this time. Mr. Tabata?

MR. TABATA: Thank you. Chair, would you -- do you want the petitioner to submit an order for LUC staff's consideration?

CHAIR GIOVANNI: Yes, I would. That would be great.

MR. ORODENKER: That would be very helpful. Thank you.

CHAIR GIOVANNI: So you are all excused.

MR. TABATA: Thank you very much.

CHAIR GIOVANNI: I'm going to take one

1 more agenda item before we take a short break, and
2 that is the presentation of our meeting schedule.
3 This is item 4 on our agenda. So Mr. Orodenger,
4 please present the schedule.

5 MR. ORODENGGER: Thank you, Mr. Chair.
6 Tomorrow, February 6th, if needed, we will be back
7 here again to talk about the legislative updates.
8 On February 19th, we will be on Maui at the Maui
9 Arts and Cultural Center to do A07-773 Emmanuel
10 Lutheran status report. On March 19th, we have a
11 status report on the -- on the Toyama S-special
12 permit, which will be in Hilo. On the 20th, we will
13 be in Kona for the Bencorp status report. And that
14 is everything we have currently agendized, Mr.
15 Chair.

16 CHAIR GIOVANNI: Okay. Thank you.

17 COMMISSIONER LEE: Chair, I have a
18 question.

19 CHAIR GIOVANNI: Commissioner Lee.

20 COMMISSIONER LEE: I'm aware that there
21 are conferences that are not on the calendar that
22 the commissioners and staff go to. So can that be
23 made -- that information be made available to
24 commissioners in the future?

25 CHAIR GIOVANNI: Certainly. So you're

1 talking about conference like the HPCO conference
2 that we attended.

3 COMMISSIONER LEE: I mean out of state
4 ones, because we know -- we all know about the local
5 one, but we're not all made aware of the out of
6 state conferences. And if there's good information
7 that can be shared, I'm sure, you know, we would all
8 like to know, you know, whatever we can from these
9 valuable conferences.

10 CHAIR GIOVANNI: Okay. So the chair would
11 like to ask the staff when it presents its regular
12 meeting schedule at our meeting if you have
13 identified any conferences, out of state
14 conferences, that will be attended by staff or
15 commissioners, just put them on the record at that
16 time.

17 MR. ORODENKER: We will do so, Mr. Chair.

18 CHAIR GIOVANNI: Are there any pending
19 currently?

20 MR. ORODENKER: Let me see. I believe
21 that the APA conference is coming up and the ULI
22 Spring conference is coming up. We also have the
23 ESRI GIS conference and the -- in August, and we'll
24 be sending at least one person to that.

25 CHAIR GIOVANNI: Okay. So at our meeting

1 on February 19th, please just give us a summary of
2 what the plans are. That'd be great.

3 MR. ORODENKER: Thank you, Mr. Chair.

4 COMMISSIONER YAMANE: Mr. Chair.

5 CHAIR GIOVANNI: Mr. Yamane.

6 COMMISSIONER YAMANE: Just I -- I let
7 staff know, but I won't be available on March 19 and
8 20. Thank you, Mr. Chair.

9 CHAIR GIOVANNI: And also the meetings
10 that were tentatively scheduled for March 5 and 6
11 will not occur. Those have been identified at a
12 previous meeting. So we have nothing on March 5 and
13 6; is that correct?

14 MR. ORODENKER: Currently we do not, Mr.
15 Chair.

16 CHAIR GIOVANNI: Yeah. I'm not available
17 for those.

18 MR. ORODENKER: Thank you.

19 CHAIR GIOVANNI: Okay. So nothing -- so
20 we -- February 19 -- we have tomorrow, February
21 19th, and then we have March -- the latter part of
22 March. Ms. Carr Smith, did you have something you
23 wanted to say?

24 COMMISSIONER CARR SMITH: I did.

25 CHAIR GIOVANNI: Okay. Please.

1 COMMISSIONER CARR SMITH: Thank you. Just
2 on the topic of conferences, I know that I've --
3 other boards and commissions that I've been on, when
4 people go to conferences, it's typical that they
5 come back to the board or commission and report what
6 they've learned, anything that may affect that board
7 or commission. So I also wanted to ask that that be
8 a part of the process.

9 CHAIR GIOVANNI: I'm good with that. But
10 let me ask staff to just provide a written summary
11 rather than agenda if staff attends.

12 MR. ORODENKER: Thank you, Mr. Chair.
13 Pursuant to DBEDT policy, we have to submit a fairly
14 significant summary of what we've -- we've learned.
15 And I will make those available to the
16 commissioners.

17 CHAIR GIOVANNI: Thank you. Commissioner
18 Lee.

19 COMMISSIONER LEE: Thank you, Chair. You
20 know, if there are important matters that come that
21 might need to be scheduled on March 5th and 6th, I
22 urge you to consider having your vice chair take
23 over if you are not available.

24 CHAIR GIOVANNI: I -- there's nothing on
25 the agenda.

1 COMMISSIONER LEE: I sent a request.

2 CHAIR GIOVANNI: Yeah. Okay. It is now
3 10:50. I'm going to take a -- going to take a 10
4 minute break, and we'll be back at 11:00 to continue
5 with our agenda.

6 (Recess taken from 10:50 to 11:00 a.m.)

7 CHAIR GIOVANNI: Okay. We're going back
8 on the record. It's 11:00, and we've completed our
9 first four agenda items. I'd also like the record
10 to show that we are now joined by Commissioner
11 Hayashida from Oahu. Thank you.

12 So the next agenda item is a status report
13 by the Land Use Development coordinator. So Ms.
14 Kwan, has there been any public testimony, written
15 public testimony submitted on this matter?

16 MS. KWAN: No, Mr. Chair.

17 CHAIR GIOVANNI: Has been anybody signed
18 up to provide oral testimony on this matter?

19 MS. KWAN: No, Mr. Chair.

20 CHAIR GIOVANNI: Okay. So as soon as
21 Commissioner U'u seats, we'll all be in our
22 positions, and I can call on Mr. Wong. Please
23 proceed with your update.

24 MR. WONG: Thank you Chair and thank you
25 commissioners for allowing me the time to provide an

1 update on my work. Again, I'll keep this
2 information at a high level due to the fact that
3 this body is quasi-judicial, and any information
4 that may come to you in the near future, I don't
5 want you to be excluded from proceedings due to ex
6 parte communications. So that's -- I just wanted to
7 say it's a high level.

8 To date, after communication with the
9 owners, developers, and/or their representatives,
10 several projects have started to get back on track.
11 I am happy to announce that we have been informed by
12 that by the end of this fiscal year, 2025, so that
13 will end June 30th, we will have started to break
14 ground on approximately 1,000 units throughout the
15 state of Hawaii.

16 This includes obtaining construction
17 permits for -- sorry -- got to use my old -- this is
18 old term, my terminology from when I used to work
19 somewhere -- grubbing, which means groundbreaking
20 and digging up the dirt to vertical construction,
21 meaning they start the build process. This includes
22 400 units on Maui, 250 units on Oahu, and
23 approximately 500 units on Kauai.

24 Big Island, we're still working on it,
25 Chair -- Commissioners Carr Smith. There has been

1 some issues, such as infrastructure that I brought
2 up previously and the cost factors and change of
3 ownership. So we're still working on those. So
4 just FYI, we haven't forgotten the Big Island or
5 Island of Hawaii.

6 Additionally, we're continually contacting
7 and meeting with existing dockets and looking at
8 other projects. This is done by looking at the
9 county projects, the listing that was given --
10 provided to me by the Commission. And I want to
11 thank them because I didn't know about these permits
12 and projects that are listed by counties. So thank
13 you for giving me that opportunity to even look at
14 that, to marry it up with our own dockets.

15 Also looking at GCA's list of permits and
16 also building industry magazines, so they just
17 brought out a new magazine saying what construction
18 projects are ongoing and see if they are dealing
19 with our dockets and marrying it up. That's taking
20 a little time, but it is being worked on. So I just
21 wanted to thank you on that.

22 If -- and that's about it for now. If
23 there's any questions, I'm here to answer them.
24 Thank you.

25 CHAIR GIOVANNI: Thank you, Mr. Wong.

1 Commissioners, questions for Mr. Wong? Commissioner
2 Lee.

3 COMMISSIONER LEE: Thank you, Chair. Mr.
4 Wong, how many of those projects that you mentioned
5 would you say was a result of your intervention?

6 MR. WONG: I'm going to say all.

7 COMMISSIONER LEE: Thank you.

8 MR. WONG: And to expound on that, we have
9 couple projects that are from the same developer
10 that has contacted us because they have other
11 projects in the pipeline that have problems.

12 COMMISSIONER LEE: Can you give us just an
13 example of some of the things that you did that
14 helped unblock some of this? You know, you don't
15 have to go into detail, but you know, you talked to
16 the -- the permit department or you -- you had got
17 people to meet and resolve things, you know,
18 something like that.

19 MR. WONG: So working with Mr. Orodener
20 and asking for his assistance, we looked at, let's
21 say, for example, those issues with road work
22 issues, you know, DOT. So we contacted DOT and, you
23 know, got that roadblock done, you know, cleared
24 out. Another was, for example, HI-EMA. This is a
25 -- just a basic example where the developer, you

1 know, said how -- where they're going to put the
2 units, the housing units and all that, but they
3 forget the condition about putting that HI-EMA
4 siren.

5 And so HI-EMA says: Wait, wait, where are
6 you going to put our siren? And then it somehow
7 they go like this, where it's -- one says: You go
8 here. No, we cannot go there. And so that's when
9 we meet with HI-EMA and the developer to work out
10 the details and get that passed. So that's one of
11 the projects that has been done too.

12 COMMISSIONER LEE: Thank you, Mr. Wong.
13 Thank you, Chair.

14 COMMISSIONER KAHELE: Chair, I've got a
15 question.

16 CHAIR GIOVANNI: One second. Just on this
17 HI-EMA. So in this example, the -- the development
18 could not go forward without a HI-EMA approval?

19 MR. WONG: Well, in the conditions itself,
20 if you see that the Land Use Commission has said
21 that they have to meet with HI-EMA and, if needed,
22 either put a siren or pay for a siren or give land.

23 MR. ORODENKER: Mr. Chair --

24 CHAIR GIOVANNI: Please.

25 MR. ORODENKER: -- if I may, it was

1 actually a little more complex than that. It's not
2 that the developers don't recognize that they have
3 to do something for HI-EMA, because it's in the
4 decision and order. But sometimes HI-EMA doesn't
5 respond to their notifications that this is where
6 they want to put it, you know. And then there's
7 silence from HI-EMA because HI-EMA is not designed
8 to respond to those type of things.

9 And then there's recurring issues with
10 several of the projects over, well, are we
11 dedicating the land to HI-EMA, or are we just giving
12 them a license or -- I mean, HI-EMA --

13 CHAIR GIOVANNI: For the siren?

14 MR. ORODENKER: Yeah, for the siren. HI-
15 EMA's not set up to handle those types of issues.
16 So we usually -- we've been getting involved in
17 negotiating settlements or agreements with regard to
18 those type of things.

19 CHAIR GIOVANNI: Commissioner Kahele.

20 COMMISSIONER KAHELE: Thank you, Chair.
21 So Mr. Wong, how long have these -- these projects
22 been sitting on the shelf?

23 MR. WONG: Somewhere from 1970s. So we've
24 -- when it first started, I didn't know what to
25 start. I'm going to tell you the truth. So I would

1 started from when we first did DBAs and move
2 forward. But thankfully, I had Mr. Orodenger and
3 the Commission to say: Hey, let's speed it up.
4 Let's look for the -- start to see the low-hanging
5 fruit that is almost ready to be built. And that's
6 how we started -- I mean, got the ball moving.

7 COMMISSIONER KAHELE: Thank you.

8 MR. ORODENER: Yeah. If -- if I can
9 expound on that a little bit. And this is one of
10 the reasons that Arnold is here. Before the late
11 '80s, early '90s, we did not put time frames on the
12 development of projects. There -- it was left to
13 the developer to just do it whenever they felt like
14 it. And so now we have a bunch of projects that
15 were approved in the '70s and '80s that have just
16 been languishing, and there's -- there's nothing
17 that we can do because we didn't put a time frame on
18 them.

19 So those projects very often languish for
20 reasons that are a little more difficult to handle.
21 There may be financing. The banks may have taken
22 them back or whatever, and those are more difficult
23 to navigate through. So we made the decision to
24 attack projects that were just tied up for
25 bureaucratic reasons, so to speak, and to attack

1 those first so that we could have as much of an
2 impact as quickly as possible.

3 CHAIR GIOVANNI: Thank you. Mr. Yamane.

4 COMMISSIONER YAMANE: Mr. Wong, you
5 mentioned your first statement about the thousand
6 units as of fiscal year 2025 in June will at least
7 start grading, grubbing, breaking ground vertical.

8 MR. WONG: Yes, Commissioner.

9 COMMISSIONER YAMANE: And then Mr. Lee
10 mentioned, is this because of you? Was that -- are
11 you talking about the thousand units, or was that
12 just a report?

13 MR. WONG: The thousand units, sir.
14 Because, you know, there's other units out there
15 that we have no say on. For example, let's say
16 HHFDC or, you know, these small 10 -- 10 acres that
17 we don't touch at all or even in, you know -- in
18 house land -- local landfills that we cannot touch,
19 because it's already urbanized. Land Use never even
20 touch them. So these are thousand that Land Use has
21 touched.

22 COMMISSIONER YAMANE: Okay. And then what
23 -- can you say where the 500 are in Kauai? Or
24 they're in -- I mean if they're in construction, are
25 they still going to be in front of the Land Use?

1 MR. WONG: No.

2 COMMISSIONER YAMANE: So can you speak
3 more detail for them then.

4 MR. WONG: So for example, one on Kauai
5 that's -- is Waihee Ridge, and that's -- sorry, I'm
6 not a Kauai person, but you know where Safeway
7 Costco is?

8 MR. YEMANE: Yeah.

9 MR. WONG: Above that highway, there's a
10 parcel there that has a school or church. It's
11 right next door. And it's going to be 100 percent
12 affordable.

13 MR. YEMANE: Okay. Thanks. And what does
14 GCA stand for?

15 MR. WONG: General Contractors
16 Association, sorry.

17 MR. YEMANE: Thank you. No more
18 questions, Mr. Chair.

19 CHAIR GIOVANNI: Commissioners.

20 COMMISSIONER CARR SMITH: Chair.

21 CHAIR GIOVANNI: Commissioner Carr Smith.

22 COMMISSIONER CARR SMITH: Thank you. I
23 wanted to know what GCA was, as well. And then you
24 also mentioned a -- a document that has all the
25 permits listed per county?

1 MR. WONG: Yeah. What happened was
2 there's a list in the county that shows all these
3 projects that they're -- they're working on and --
4 in the permit process and/or what they've been, you
5 know, like planning and permitting. What I'm doing
6 is try to cross-reference those and see where it
7 matches with our land use projects.

8 COMMISSIONER CARR SMITH: So you're
9 picking land use projects -- or you're picking
10 projects that did have time frames --

11 MR. WONG: Well, some of them are --

12 COMMISSIONER CARR SMITH: -- and you're
13 checking to see whether they're within their time
14 frames? Is that -- is that how you're picking these
15 particular projects?

16 MR. WONG: Yes. And then some of them
17 we're doing just because -- for example, we hear it
18 in the news, they're going to -- it's in the news
19 for something. So we say: Hey, let's look into
20 this project to make sure if it's a LUC or non-LUC.

21 MR. ORODENKER: Okay. So before Arnold
22 starts to work on a project, we discuss it. And
23 what Arnold has actually done is taken projects that
24 -- from those lists that are projects that we have
25 approved. And once we've -- we've distilled those

1 out, then it -- it's not so much that we're looking
2 for projects with time frames. We're looking for
3 projects that we can't explain why they're not
4 moving.

5 And then Arnold then goes and talks to the
6 developers to find out whether there's something
7 that we can help them with. We don't -- we're not
8 looking for projects that are violated their time
9 frames and to bring them back here for, you know,
10 scoldings. We're looking for projects that might be
11 held up for a year or two beyond -- beyond what
12 you'd expect just because of things like HI-EMA or
13 DOT or things like that. We're just trying to break
14 log jams.

15 COMMISSIONER CARR SMITH: And can you
16 speak more to what did you run into on Hawaii Island
17 that made it so that nothing was able to be produced
18 there that -- at this time?

19 MR. WONG: One -- one project that -- that
20 is interesting and I'm still trying to find out
21 something is -- there's one that's change of
22 ownership three times. And I'm still trying to find
23 out who's that final owner. So I'm -- you know,
24 have to go through DCCA and all that and see who's
25 the owners, you know. So it -- it's not like it's

1 going to be their Google, you have to, you know,
2 search down. So that's one thing.

3 And another thing is cost of
4 infrastructure. Like everyone else talks about,
5 infrastructure is what has been going up like crazy.

6 CHAIR GIOVANNI: Commissioner Lee.

7 COMMISSIONER LEE: Thank you, Chair. For
8 the executive officer, maybe it's not the primary
9 activity of this, but when you do find projects that
10 are behind and, you know, would that show up on
11 their status reports if they do them?

12 MR. ORODENKER: Theoretically, yes. I
13 mean, if we get a status report that basically says
14 we haven't done anything -- and this is actually not
15 Arnold's area, this is Martina's area -- and the
16 deadlines are coming up, you know, we -- we usually
17 schedule them for a status review so that the
18 Commission can decide how they want to handle it.

19 COMMISSIONER LEE: Okay. Thanks. Yeah.
20 If -- if projects are behind and, you know -- and
21 you find that out as a byproduct of Arnold's
22 activity, you know, it would be good to follow up on
23 that as your course of business.

24 MR. ORODENKER: Yeah. That -- that's a
25 regular course of business for us, and that's why we

1 schedule status reports is when we find one of those
2 projects that's just not making any headway and not
3 meeting its deadlines to find out whether they
4 intend to meet them so this Commission can decide
5 whether or not they want to continue to cut them
6 slack or whatever.

7 COMMISSIONER LEE: Okay. Thank you.

8 CHAIR GIOVANNI: Thank you. I just have
9 one, I don't know if it's a rhetorical question or
10 whatever, but it -- my sense is that when we have a
11 decision and order for a project, we -- we learn
12 that the enforcement of those conditions in large
13 part is that of the county. So I just want to
14 clarify that you're not doing enforcement, you're
15 doing facilitation --

16 MR. WONG: Yes.

17 CHAIR GIOVANNI: -- which is different.

18 MR. WONG: That is correct.

19 CHAIR GIOVANNI: So you're -- so you're
20 not looking for -- for or where they have either
21 violated or in some way ignored a condition. You're
22 trying to find out -- and I'm putting words in your
23 mouth, but are you trying to find out what you can
24 do to facilitate so that they can move forward,
25 which is different than enforcement? Is that

1 correct?

2 MR. WONG: That is correct, sir. And
3 we're -- we're trying to be the assistance, not a --
4 a policeman, but someone to say: Hey, let us help
5 you. Let's assist and facilitate.

6 COMMISSIONER KAHELE: I got a comment.

7 CHAIR GIOVANNI: Mr. Kahele.

8 COMMISSIONER KAHELE: 55 years this
9 project's been out there on the shelf, and -- and
10 how many other projects that we have out there
11 that's -- they're sitting in a cabinet, so on a
12 shelf, that potentially has an opportunity to move
13 forward and finally, you know, hopefully bring to
14 closure?

15 MR. WONG: Commissioner, that's a good
16 question. Right now, we've looked -- there's
17 approximately 40- to 65,000 units, in general, that
18 hasn't been built throughout the years. And we're
19 just -- you know, it's like a big iceberg. We're
20 just trying to chip away and get as much as we can
21 just for the people of Hawaii.

22 COMMISSIONER KAHELE: Thank you, Arnold.
23 Good job.

24 MR. WONG: Thank you, Chair --
25 Commissioner. Sorry.

1 CHAIR GIOVANNI: Commissioner Lee.

2 COMMISSIONER LEE: Thank you, Chair. So
3 Arnold, since you're providing such a valuable
4 service to these developers, we hope you don't get
5 hired away. And I know you can't get paid a
6 finder's fee, but, you know, maybe that's some way
7 of encouraging them. And I don't know why these
8 guys aren't doing this themselves. But, you know,
9 if you're doing all this, then it sounds like a
10 valuable service.

11 MR. WONG: Thank you, Commissioner. And
12 it -- to me, it's -- it's a helpful service that --
13 it's for the people of Hawaii. It's for my sons and
14 our grandkids so -- and our friends. So it's a
15 worthwhile endeavor.

16 CHAIR GIOVANNI: So I have a question that
17 follows on what Commissioner Lee brought up. So in
18 general, not -- don't speak to any specific
19 developer, but in general, if a developer is
20 delayed, you're -- you're unclogging the log jams,
21 right, to get a project going forward? What -- what
22 does the -- why aren't the developers trying to
23 unclog their own projects? What are you finding
24 that causes a developer to just put it on the shelf
25 instead of trying to work a solution to the problem?

1 MR. ORODENKER: Mr. Chair, if I can -- if
2 I can speak to that, having been a consultant for
3 developers, is that developers very often take a
4 shotgun approach. They put five projects out there
5 and hope that one of them is going to move. If a
6 project gets delayed and the other projects are
7 moving, they just walk away from the one and start
8 to work on the other one. They always take the path
9 of least resistance.

10 And one of the reasons that we felt Arnold
11 was important is because Arnold creates a path of
12 least resistance so that developers will look back
13 in a project and say: Oh, that problem's gone, why
14 don't we just build it, instead of focusing on the
15 other projects that they're working on.

16 CHAIR GIOVANNI: Yeah. Okay.
17 Commissioner Carr Smith.

18 COMMISSIONER CARR SMITH: Thank you. Just
19 one last question. Arnold's job is obviously
20 different than the rest of the staff. And so I'm
21 just curious how -- what's the plan forward? What
22 -- what are your goals, and how do you -- at what
23 point are you going to have figured out any -- how
24 to -- to assist any of these developers? And then
25 what's next? What -- what else do you plan to do?

1 MR. WONG: Well, because of my age, I -- I
2 was hoping this will be my last job and retire and
3 have fun golfing. The other thing is --

4 COMMISSIONER CARR SMITH: Not the answer I
5 was looking for.

6 MR. ORODENKER: I can answer that,
7 Commissioner. There's a lot of work to do. I mean,
8 as we mentioned, there's 65,000 units out there. It
9 will take years for us to get -- move through all of
10 those projects and make a determination on whether
11 or not we can be of any value to the developer.

12 And as Arnold has stated, he is -- he's
13 not the youngest guy in the whole world. But once
14 we've completed that analysis and we've determined
15 that there's nothing else that we can do, then we'll
16 probably let the position go. But that's going to
17 be years. I mean, we've got a lot of projects that
18 aren't moving.

19 COMMISSIONER CARR SMITH: Sorry. I lied.
20 One more. And it's not necessarily for Arnold, but
21 I'm starting to understand what everybody does here.
22 So am I to understand that Martina does the status
23 reports and annual filings as well as staff reports?
24 Or it's not that simple, but it -- I think it's good
25 for us --

1 MR. ORODENKER: Yeah, no.

2 COMMISSIONER CARR SMITH: -- to know who
3 does what.

4 MR. ORODENKER: Right now, we're all doing
5 everything, except for Arnold, because we're one
6 planner short. So Martina is doing two jobs.
7 Ariana is doing two jobs. Scott's doing two jobs.
8 You know, we -- we spread out the workload so that
9 the planner who has the most time can handle the
10 staff reports.

11 And Martina was originally tasked with
12 looking at the annual report, so they kind of
13 default to her. But she's also doing planner 5
14 work, and we've temporarily assigned her into the
15 planner 5 position. But we are short a planner, so
16 we're -- we're just kind of -- trying to handle the
17 workload as best we can.

18 CHAIR GIOVANNI: Okay. Thank you. Thank
19 you, Mr. Wong.

20 MR. WONG: Thank you, Chair. Thank you.
21 Commissioners.

22 CHAIR GIOVANNI: Hang on a second, we
23 might have more public testimony. Ms. Kwan, is
24 there anybody who wants to testify here, this?

25 MS. KWAN: Seeing none for this agenda

1 item.

2 CHAIR GIOVANNI: Okay. So thank you, Mr.
3 Wong.

4 MR. WONG: Thank you.

5 CHAIR GIOVANNI: And thank you for the
6 work you do.

7 MR. WONG: Thank you.

8 CHAIR GIOVANNI: So the next agenda items,
9 first of 14, has to do with proposed bills before
10 the 2025 legislature. So I'm going to go back half
11 a step to our last meeting in which we decided upon
12 how we were going to proceed with testimony from the
13 staff and the commission in this current legislative
14 session.

15 So -- so this is the way I'd like to
16 proceed, but I would welcome any comments or
17 questions on it. So we have 14 separate agenda
18 items, and we'll take them one at a time. But on
19 the first one, we're going to spend a little more
20 time because I'm going to do two things. First of
21 all, the executive staff has received a memo from
22 DBEDT director guiding them on testimony.

23 So I want -- just in terms of full
24 disclosure, I'd like the Commission to be fully
25 informed of what that direction is. And so I'll be

1 asking the executive director to read that memo for
2 the record for all commissioners, and commissioners
3 could ask questions about it. But that memo will
4 apply to, not only the next agenda item, but all the
5 next 14 agenda items.

6 And then secondly, I'd like to just review
7 for everybody what -- what our decision and order
8 was -- what our decision was at our last meeting.
9 So Commissioner Miyasato had moved to adopt the
10 Office of Information Practices Sunshine Law options
11 to address the legislative issues and measures.

12 And we chose what we refer to as option
13 1A, which was a delegation to the staff and the
14 executive officer to prepare and provide testimony
15 on behalf of the Commission, with the caveat that
16 the staff does not have to take a position but
17 provide comments in regards to the -- how the bill
18 affects the Commission, unless the commission adopts
19 a specific position on a specific bill.

20 Commissioner Hayashida seconded the motion, and the
21 motion passed with six ayes and three nays.

22 So in effect, we will be reviewing. This
23 is the process that I want to go forward with on a
24 bill-by-bill basis. So first of all, the -- the
25 staff identified a number of bills for our

1 consideration, and some of the commissioners added
2 to that list and so that's why we ended up with 14
3 separate bills that perhaps have some relevance to
4 the Land Use Commission that are active in the
5 current legislature.

6 For each of these, we will ask if there's
7 any public testimony on these bills. Secondly, we
8 will ask staff to provide a brief summary of the
9 bill for the Commission and their recommendations
10 regarding whether there's concerns or whether they
11 recommend that we provide any testimony or that we
12 take any specific position. After we understand
13 where the staff is coming from, the Commission can
14 then decide whether it wants to take a position or
15 not.

16 If it takes no position, I think that
17 means, the way I interpret it, that we're going to
18 provide no testimony. So if we take a position, an
19 executive officer can prepare testimony consistent
20 with that and present it on our behalf. If we do
21 not take a position, there'll be no testimony. And
22 as you'll hear from the directive from the DBEDT
23 director, we will only consider when we do testify
24 offering comments or offering support. We will not
25 be offering opposition to -- to two bills.

1 So before we go forward with the reading
2 of the -- those two -- that memo, does anybody have
3 any questions on the process that I just described?
4 Commissioner Lee.

5 COMMISSIONER LEE: Thank you, Chair. So
6 just to clarify, the directive is not to offer
7 opposition on any bills?

8 CHAIR GIOVANNI: Right.

9 COMMISSIONER LEE: Okay. Thank you.

10 CHAIR GIOVANNI: I think we'll hear more
11 about that. Okay.

12 MS. KWAN: Testing you.

13 CHAIR GIOVANNI: Testing me. Okay. So
14 this is agenda item regarding the 2025 legislative
15 session and proposed bills. So I will also be
16 taking -- if there is public testimony, it's going
17 to be on a bill-by-bill basis. I don't want to take
18 testimony on the first bill that might apply to
19 something we're going to consider even tomorrow.
20 Right, Ms. Kwan? So when we ask for public
21 testimony, it'll be specific to a bill that's before
22 us, right?

23 So the first one is a decision by the
24 Commission's position regarding --

25 MS. KWAN: Chair, do we want to recognize

1 written testimony on all of them first?

2 CHAIR GIOVANNI: Yep. Well, no, not all
3 of them. One by one.

4 MS. KWAN: The written one.

5 CHAIR GIOVANNI: So we'll cross that
6 bridge as -- I'll show you how I'm doing.

7 So the first order of business on this
8 legislative session has to do with our position on
9 Senate Bill 28. Okay. So now I will recognize if
10 there's any written testimony on Senate Bill 28.
11 Then I'll ask for public testimony. Then I'll ask
12 for staff to summarize. Then I'll ask for
13 commissioners' comments. Then we'll open the door
14 for public comment again. And then finally, the
15 Commission will make a motion or not for a position
16 on that bill.

17 MS. KWAN: For written testimony, I'm
18 going to need a recess to review it all because all
19 the bills are different testimony, and I got to
20 tally up.

21 MR. ORODENKER: Yeah. Mr. Chair, I -- I
22 would suggest with regard to the written testimony,
23 after having reviewed it all, that we just recognize
24 it because most of the written testimony covers more
25 than one bill.

1 CHAIR GIOVANNI: Okay. And it's all been
2 published on the website?

3 MR. ORODENKER: Yes, it has.

4 CHAIR GIOVANNI: Okay. So we'll take the
5 written testimony as an aggregate. Commissioners,
6 are you okay with that? Commissioner Lee.

7 COMMISSIONER LEE: Chair, I'm kind of
8 confused because in other -- in past meetings -- and
9 by the way, thank you for providing these last
10 minute testimonies. Whenever possible, we should
11 get as many -- much testimony as possible. I know
12 in the past though, if it was one day before, you --
13 you didn't even have time to check them. So I'm
14 glad you're providing them. So in the future, if we
15 can have as much testimony, even if late, as
16 possible.

17 But I don't understand -- I mean, the
18 written testimony is written testimony. We just
19 read it, you know, if we can. If we can't, we
20 can't. But I don't know why we have to have staff
21 summarize it.

22 CHAIR GIOVANNI: No, we're not asking
23 staff to summarize it. They're going to summarize
24 their position on the matter. The written -- I'm
25 just asking if there is written testimony.

1 COMMISSIONER LEE: Right. But that's why
2 I'm glad you clarified that, because it sounded like
3 staff was being asked to --

4 CHAIR GIOVANNI: Summarize written?

5 COMMISSIONER LEE: Yeah.

6 CHAIR GIOVANNI: No.

7 COMMISSIONER LEE: Okay. Thanks.

8 CHAIR GIOVANNI: So if there's written
9 testimony that's been received, I want to verify
10 it's been -- been posted so we can read it, if we
11 still choose. That's consistent, right? And I'm
12 going to acknowledge all the written testimony for
13 all of the bills. Right. But if there's oral
14 testimony, it will be on a bill-by-bill basis.

15 COMMISSIONER YAMANE: Mr. Chair, I just
16 had a point clarification.

17 CHAIR GIOVANNI: Sure. Commissioner
18 Yamane.

19 COMMISSIONER YAMANE: I just want to
20 clarify between written testimony for an agenda item
21 and written testimony for bills, what are we talking
22 about? We're not talking about --

23 MR. ORODENKER: Well, we received -- okay.
24 To be precise, received a -- we received a -- should
25 I use the word plethora of written testimony with

1 regard to our proposed agenda or our agenda items
2 that reference specific bills. Most of that
3 testimony was either -- well, there was some of it
4 that was -- a couple in support or recommending that
5 we support certain bills. And there was a lot of
6 testimony recommending that we do not support
7 certain bills.

8 Most of that testimony was all jumbled up.
9 It didn't talk just about one bill that they wanted
10 us to support or to not support. They -- they
11 weren't submitting testimony on the bill
12 specifically as they would to the legislature.
13 They're submitting testimony urging us not to
14 support or to support certain measures.

15 COMMISSIONER YAMANE: Thank you. That --
16 just wanted to clear that up. Thanks.

17 CHAIR GIOVANNI: I'm sure it's very clear
18 everybody's mind now.

19 COMMISSIONER CARR SMITH: Chair.

20 CHAIR GIOVANNI: Where is this coming
21 from? Commissioner Carr Smith.

22 COMMISSIONER CARR SMITH: Thank you. You
23 mentioned a letter from the director, DBEDT
24 director. And I thought you said you were going to
25 read that.

1 CHAIR GIOVANNI: We are.

2 COMMISSIONER CARR SMITH: When does that
3 happen?

4 CHAIR GIOVANNI: Next.

5 COMMISSIONER CARR SMITH: Okay.

6 CHAIR GIOVANNI: So yeah, it's come to my
7 attention -- but first of all, I want to get the
8 public testimony out of the way. So is there
9 anybody that has indicated they want to present oral
10 testimony on Senate Bill 28?

11 MS. KWAN: Well, first I'm going to
12 acknowledge the written testimony for the agenda
13 items. We received one on February 3rd, one on
14 February 4th, and 44 this morning as of 9:00 a.m.
15 After 9:00 a.m., I was unavailable to check if we
16 received additional written testimony.

17 CHAIR GIOVANNI: So these 46 testimonies
18 have been posted?

19 MS. KWAN: All 46 before 9:00 a.m. have
20 been posted to the website site on the agenda and
21 minutes page.

22 CHAIR GIOVANNI: Thank you so much. Okay.
23 Now, is there any oral -- anybody wishing to do oral
24 testimony on Senate Bill 28?

25 MS. KWAN: Yes, Mr. Chair. I have three

1 written up through the Q&A feature. The first one
2 who would like to speak on agenda item 6 is Steven
3 Lee Montgomery. I will promote him now.

4 Mr. Montgomery, can you do a mic check and
5 a video check? Mr. Montgomery, can you hear me?

6 CHAIR GIOVANNI: Ms. Kwan, let's go to
7 number 2.

8 MS. KWAN: Okay. I'm going to move on to
9 number 2, which is Wayne Tanaka, and we'll come back
10 to Steven Montgomery after.

11 CHAIR GIOVANNI: Who's that? Let's go
12 with Mr. Montgomery.

13 Mr. Montgomery, can you please state your
14 name and your address?

15 MS. KWAN: Sir, you're muted.

16 UNIDENTIFIED SPEAKER: Okay. I think we
17 did it.

18 CHAIR GIOVANNI: Been a long day. What
19 are you going to do?

20 UNIDENTIFIED SPEAKER: We're trying.
21 We're trying.

22 MS. KWAN: Okay. We can see and hear you.

23 MR. MONTGOMERY: Yes. I -- I hear you.
24 Are you able to -- to hear me now?

25 CHAIR GIOVANNI: Yes, we hear you now, Mr.

1 Montgomery. Please state your full name and your
2 address.

3 MR. MONTGOMERY: Thank you. I'm Steven
4 Lee Montgomery, and I live at 94 (audio disruption).

5 I've had the privilege to serve five busy
6 years as a member of the Land Use Commission after
7 an appointment by Governor Cayetano, well before
8 Zoom tech allowed these hybrid meetings.

9 CHAIR GIOVANNI: Hold up. Hold up. Just
10 -- all I want's your name right now. So do you
11 swear that the testimony you're about to give will
12 be the truth?

13 MR. MONTGOMERY: Yes, I do.

14 CHAIR GIOVANNI: So please proceed. You
15 have two minutes.

16 MR. MONTGOMERY: Thank you. I served
17 years as a member of the Commission, well before
18 Zoom, and having lived since 1988 on a former Oahu
19 ag land in an affordable home built by the Horita
20 Company in upper Waipahu.

21 I have an urgent response to the veiled
22 proposal in SB28, because it could permit as few as
23 three of the Commission's nine members to approve a
24 redistricting. I cannot recall any housing docket a
25 component of affordable housing that failed to earn

1 six votes and approval. In fact, when Alexander and
2 Baldwin asked to urbanize ag land for shops near the
3 Maui's airport, the chairman, Clarence Ng, convinced
4 the applicant to add an affordable housing section.

5 In Kohala, we on the Commission voted to
6 extend by many years the time and amount of -- for
7 the Aina Lea LLC to finish building 385 affordable
8 housing units agreed upon. This bill implies that
9 the LUC has disapproved affordable housing dockets,
10 but gives no evidence in its preamble.

11 Please defend the Landing Commission's
12 record of diligent and strong work to support
13 housing. Please continue to ask questions for the
14 record to ensure land use changes protect Hawaiian
15 cultural practitioners and citizens nearby.

16 The county general plan process is no
17 substitute for LUC and finding the best balance
18 between varied public interests. I can recall sad
19 cases of neighbors with a provincial so-called NIMBY
20 view having intimidated elected county council
21 members who blocked vital affordable housing plans
22 for Kailua.

23 As you consider the positions on this and
24 the other 11 bills, please do protect food security,
25 public trust resources, climate resilience, and

1 affordable housing, and the LUC fact finding that
2 entails rigorous, detailed, and objective balance
3 between public interest. In conclusion, please
4 oppose this bill in particular. Thank you.

5 CHAIR GIOVANNI: Thank you, Mr.
6 Montgomery. Please stand by for questions from the
7 commissioners.

8 Commissioners, any questions for Mr.
9 Montgomery? Seeing none, Mr. Montgomery, thank you
10 for your time today. We appreciate your testimony.

11 MR. MONTGOMERY: You're welcome.

12 CHAIR GIOVANNI: Ms. Kwan, who is next.

13 MS. KWAN: I'm going to promote Wayne
14 Tanaka.

15 CHAIR GIOVANNI: Thank you. Mr. Tanaka,
16 can you give me a mic check?

17 MR. TANAKA: Testing.

18 CHAIR GIOVANNI: Thank you, Mr. Tanaka.
19 Please state your name and address, and then I'll
20 swear you in.

21 MR. TANAKA: Wayne Tanaka, 46271 Kahuhipa
22 Street, Kaneohe 96744.

23 CHAIR GIOVANNI: Thank you. Do you swear
24 the testimony you're about to give will be the
25 truth?

1 MR. TANAKA: Yes, I do.

2 CHAIR GIOVANNI: Please proceed. You have
3 two minutes.

4 MR. TANAKA: Okay. Thank you. Thank you,
5 Chair. And you know, thank you everyone on the
6 Commission for having this conversation. I also
7 want to give staff a ton of credit, sounds like they
8 had a lot of last minute scrambling to do with all
9 the testimonies they've received.

10 So I'm speaking to agenda item 6, but also
11 generally about your positions on some of the
12 measures before you today. I just want to, you
13 know, note that, you know, you've all agreed to
14 administer land use laws to uphold our constitution.
15 I believe you've all taken training courses by
16 commission staff, by the law school regarding some
17 of your obligations and the ways in which you
18 fulfill them as the Land Use Commission.

19 But I -- I do want to express a bit of
20 concern about comments in previous meetings
21 suggesting that the Land Use Commission try to, you
22 know, say, modify basic Supreme Court precedent with
23 respect to Native Hawaiian constitutional rights.

24 You know, there have been comments made
25 that's in your favor reducing your very critical

1 responsibility to make sure that we make the best
2 use of our limited lands, right, and not just for,
3 you know, folks here today, but for our kids and
4 grandkids. And just like Land Use decisions from
5 30/40 years ago continues to impact us for better or
6 worse, the decisions you make will impact our
7 landscape and our community and ability really to
8 survive here in islands for decades into the future.

9 And so housing is important, but so is
10 food security, you know, so are native climate
11 rights, so is climate resilience, affordable housing
12 for all income levels, for job -- you know, job
13 creation. And that's what you're here to do, and
14 that's what we really depend on you to do.

15 And so to be honest, you know, just to
16 summarize, I think it'd be inappropriate to walk
17 back on some of the commitments you've made by
18 supporting measures, you know, like this measure,
19 like other bills on the agenda that would -- you
20 know, like the previous testifier mentioned, like,
21 try to substitute your rigorous fact finding process
22 and balancing of interest with that of the colonies,
23 which, you know, as I understand in practice is much
24 less rigorous, is much less transparent and clear
25 about how the decisions are being made.

1 And so happy to answer any -- any
2 questions. Otherwise, you know, I just urge a lot
3 of caution and reflection before you endorse, you
4 know, the measure under this agenda item and in
5 agenda items 7 through 11 and 13. And thank you so
6 much.

7 CHAIR GIOVANNI: Thank you for your
8 testimony. I have to ask you to remain for any
9 questions from commissioners. Thank you, Mr.
10 Tanaka. Appreciate you taking the time today.

11 MR. TANAKA: Thank you.

12 CHAIR GIOVANNI: Who's the next one? Ms.
13 Kwan?

14 MS. KWAN: The next one signed up is
15 Healani. I will promote her now. Healani, can I
16 get a mic check and video?

17 MS. SONODA-PALE: Sure. Aloha. My name
18 is Healani Sonoda-Pale.

19 CHAIR GIOVANNI: Ms. Sonoda-Kale (sic),
20 could you -- just to remind you, you're still under
21 oath from your previous testimony earlier today. So
22 we're -- agenda item now is Senate Bill 28. So
23 please proceed with any comments you have. You have
24 two minutes.

25 MS. SONODA-PALE: Sure. So aloha. Ka

1 Lahui is deeply concerned with the future of our
2 aina and the well-being of our people in generations
3 to come. We urge you to uphold your statutory
4 responsibilities and maintain your critical role in
5 safeguarding the public interests in major land use
6 decisions. Now more than ever, the Land Use
7 Commission must stand firm in its kuleana and ensure
8 that Hawaii's lands are stewarded with care,
9 foresight, and respect for the needs of its own
10 people.

11 The Land Use Commission's founding purpose
12 -- so the Land Use Commission was established in
13 1961 in response to growing concerns over unchecked
14 development, loss of agricultural lands, and
15 haphazard urban sprawl. Before its creation, land
16 use decisions were left solely to individual
17 counties, which often prioritize short-term economic
18 gains over long-term environmental and cultural
19 sustainability.

20 Your purpose, you were created to prevent
21 uncontrolled development that threatens Hawaii's
22 natural cultural resources, ensure responsible land
23 management by classifying lands in the four
24 districts, upholding public trust responsibilities,
25 including water resources, preserving Kanaka Maoli

1 traditional and customary rights, and safeguarding
2 food security and hold large scale development
3 accountable by requiring rigorous review processes
4 before district boundary changes.

5 For over six decades, the LUC has served
6 as a critical safeguard against reckless land use
7 decision, standing as a check against speculative
8 development and ensuring that Hawaii's precious land
9 is being used wisely. The LC -- LUC support of the
10 -- the bills that are listed, including the bill
11 that we're currently on, I think it's HB 2.8 (sic),
12 directly it contradicts its founding -- your
13 founding purpose and mission.

14 Instead of fulfilling your kuleana to
15 protect land and people, the Commission is now
16 entertaining legislation that prioritizes
17 developers, weakens your own public -- your own
18 powers, and weakens public oversight and threatens
19 the long-term sustainability of our islands. And I
20 just want to remind you we are in a water crisis,
21 that we are in a climate crisis, and we're in
22 unprecedented times. Look at what happened with the
23 Lahaina fires.

24 CHAIR GIOVANNI: Thank you. I have to ask
25 you -- I have to ask you to conclude your remarks.

1 MS. SONODA-PALE: Yes. So we strongly
2 oppose Senate Bill 28 and all the -- the other bills
3 following this bill. But we will testify on the
4 other bills, as well. Thank you.

5 CHAIR GIOVANNI: Thank you very much.

6 Any questions for this witness?

7 Thank you very much for coming forward.

8 Ms. Kwan, do we have anything else on the
9 Zoom?

10 MS. KWAN: Seeing none in the Q&A feature,
11 Chair.

12 CHAIR GIOVANNI: Do we have anybody in the
13 room that wants to testify?

14 MS. KWAN: No, Mr. Chair.

15 CHAIR GIOVANNI: Okay. So I'm now going
16 to call on staff who has reviewed this bill and ask
17 for the staff to summarize it and offer any
18 recommendations. Before I do that, I'd like you to
19 read, for our fellow commissioners, the memo you
20 received from the deputy -- from the director of
21 DBEDT.

22 MR. ORODENKER: Thank you, Mr. Chair. We
23 received -- we received a reminder on the guidance
24 and parameters for testifying on non-administrative
25 measures from the director's office. It is -- it

1 states that it is important that our testimony
2 aligns with DBEDT's framework, avoids conflicting or
3 duplicating positions, and reflects fiscal
4 restraints.

5 Key areas of focus. Informational
6 briefings provide updates as needed, ensuring
7 consistency with DBEDT's strategic priorities.

8 Administrative bills. (Inaudible) support
9 for key DBEDT initiatives as outlined in the
10 Economic Landscape Presentation, which this
11 Commission was not privy to.

12 Non-administrative bills. Generally,
13 testimony should be comments only, unless
14 specifically requested by the committee chair or
15 introducer.

16 Preparing testimony. Align with DBEDT's
17 framework, testimony should not duplicate or
18 conflict with DBEDT's strategic priorities.

19 Focus on program priorities. Testimony
20 should emphasize the impact on existing DBEDT
21 programs and resources.

22 Reorganization bills. These measures may
23 delay progress due to administrative restructuring.
24 Testimony should reflect the potential impacts.

25 New programs. Consider whether the

1 proposed changes improve service delivery and
2 effectiveness.

3 Not administrative appropriations. Use
4 boilerplate language stating that funding requests
5 do not impact administrative budget priorities.

6 Bills assigning DBEDT implementation.
7 Some measures may not be well defined and could
8 assign responsibility for DBEDT without clear
9 alignment. The agency or program best suited to
10 lead will be determined based on the bill's purpose.

11 Please ensure that testimony is reviewed
12 for alignment and consistency before submission. If
13 there are any questions regarding DBEDT's position,
14 reach out before finalizing testimony.

15 CHAIR GIOVANNI: What does that mean?

16 MR. ORODENKER: In a nutshell, we don't
17 know. What -- what it means is that with regard for
18 informational briefings, which the Commission is not
19 concerned with, we're just supposed to provide the
20 information as needed.

21 With regard to administrative bills that
22 support DBEDT's initiatives, we're supposed to
23 provide support. For non-administrative bills, we
24 can't oppose a bill, but we can provide comments.
25 So if there is something in the bill that is fixable

1 or inherently wrong, we can provide comments on
2 that. But we're not supposed to submit testimony
3 that says we oppose HB number or SB number whatever.

4 CHAIR GIOVANNI: Okay. Commissioners, any
5 questions or comments on this directive?
6 Commissioner Carr Smith.

7 COMMISSIONER CARR SMITH: May we have a
8 copy of that please?

9 MR. ORODENKER: Yes. We -- we can post
10 that to the -- to the website.

11 COMMISSIONER CARR SMITH: Okay.

12 CHAIR GIOVANNI: Commissioner Lee.

13 COMMISSIONER LEE: Yeah. Thank you for
14 expounding on that. So this is -- is this different
15 from previous guidance?

16 MR. ORODENKER: No, this is consistent
17 with this administration's guidance with regard to
18 testimony.

19 COMMISSIONER LEE: Sounds like --

20 CHAIR GIOVANNI: What do you mean by
21 previous, Commissioner Lee? You mean previous this
22 --

23 COMMISSIONER LEE: Well, because I -- I
24 recall that last year and previous years, there was
25 testimony in opposition to bill, so I'm just asking

1 for clarification. And it sounds like madam
2 director has some comment.

3 CHAIR GIOVANNI: One second. I got swear
4 you in, Mary Alice. Mary Alice, please state your
5 name and affiliation.

6 MS. EVANS: Mary Alice Evans, Director of
7 the Office of Planning and Sustainable Development.

8 CHAIR GIOVANNI: Do you swear your
9 testimony will be the truth?

10 MS. EVANS: I do.

11 CHAIR GIOVANNI: Can you add clarification
12 in response to Commissioner Lee's question?

13 MS. EVANS: Yes. Those directives apply
14 to DBEDT staff and to DBEDT attached agencies where
15 staff is delegated to provide testimony. Chapter
16 2635 gives boards and commissions the ability to
17 have policy autonomy outside of the directives --
18 policy directives of a head of a department to which
19 the board or commission is administratively
20 attached.

21 So I'm not an attorney, and you should
22 confer with your own DAG. But it is my
23 understanding over many decades that boards and
24 commissions can take positions if it's a policy
25 matter that is germane to your enabling statute.

1 CHAIR GIOVANNI: Thank you. Any question
2 or comment on that, Mr. Orodenger?

3 MR. ORODENER: Yeah. To answer
4 Commissioner Lee's question directly, yes, there
5 have been times when agencies have submitted
6 testimony in opposition, but that has to be cleared
7 through the director first before we can do that.

8 CHAIR GIOVANNI: What do you mean by
9 cleared?

10 MR. ORODENER: In other words, we have to
11 make our case to the director as to why we need to
12 -- to oppose a measure rather than just submit
13 comments.

14 CHAIR GIOVANNI: And you -- you need a
15 formal approval from the --

16 MR. ORODENER: Yes.

17 COMMISSIONER LEE: I'd like to make a
18 motion to understand our powers, duties, privileges,
19 immunities, and liabilities. I believe that's
20 section HRS 92-5(a)(4).

21 COMMISSIONER CARR SMITH: Second.

22 CHAIR GIOVANNI: Certainly. So moved by
23 Commissioner Lee to go in executive session,
24 seconded by Commissioner Carr Smith to confer with
25 our Deputy Attorney General. In favor, signify by

1 saying aye.

2 THE COMMISSION: Aye.

3 CHAIR GIOVANNI: Any opposed? No.

4 Ms. Kwan, can you arrange for executive
5 session? We'll take a recess while you do that, and
6 you let me know when you're ready. Thank you.

7 (Recess taken.)

8 CHAIR GIOVANNI: Okay. It's 12:20. We're
9 back on the record in regular session. So we had
10 adjourned for executive session for questions of the
11 legal nature with our Deputy Attorney General. And
12 they pertain to guidance we received in terms of the
13 positions that the Commission independently can
14 make, both whether they be in favor or in opposition
15 or questions we are independent of -- and basically,
16 we're an independent commission, and we can take
17 such.

18 Ms. Steed, did I represent that correctly?
19 Thank you. So now we'll proceed -- I will get to
20 that. Mr. Miyasato, do you have any question?

21 COMMISSIONER MIYASATO: Yeah, I do, Chair.
22 Thank you. Yeah. I received a phone call during
23 the break. Yeah. The reason I'm not there is I'm
24 covering for some friends that went to a convention,
25 and I got a phone call that there's a broken water

1 line. I'm trying to get someone else to address it,
2 but if they don't get back to me, I may have to
3 leave in an hour.

4 CHAIR GIOVANNI: Thank you very much.
5 Appreciate the -- just give us a heads up, and we'll
6 proceed accordingly.

7 COMMISSIONER MIYASATO: Okay. Thank you.

8 CHAIR GIOVANNI: We've also learned that
9 Commissioner U'u will be able to stay with us till
10 4:00, so I think we'll have a full quorum in any
11 event, even if you have to leave. And Commissioner
12 Yemane decides to leave and Commissioner Kamakea-
13 'Ohelo is not present, so we have seven or six under
14 all circumstances. So thank you.

15 Okay. At this time, I'd like to call on
16 the commission staff. Mr. Orodenger, would you
17 please provide us a brief summary of SB28, your --
18 any analysis that you want to share, and also any
19 recommendations you have regarding testimony.

20 MR. ORODENKER: Thank you, Mr. Chair.
21 SB28 amends chapter 205 to provide that a simple
22 majority of affirmative votes of the members present
23 and qualified to vote on the Land Use Commission
24 shall be necessary for any boundary amendment up
25 until -- or presently, it takes six affirmative

1 votes.

2 Staff has concerns consistent with some of
3 the public testimony that we heard that it would
4 result in some situations where only three
5 commissioners could approve a district boundary
6 amendment. District boundary amendments and chapter
7 205 was originally promulgated or considered to be
8 significant. And that is why a super majority was
9 authorized or was required for a district boundary
10 amendment to occur.

11 I would note that it's never been in a
12 situation where there's been a 3-2 or 3-3 vote on
13 the district boundary amendment. But the other
14 concern that staff has is that important
15 agricultural lands applied to this change in the
16 provision. Important agricultural lands would still
17 require six affirmative votes. And it's not
18 uncommon for us to get district boundary amendments
19 where we have a mix of regular agricultural land and
20 important agricultural lands.

21 Our recommendation is that we could
22 provide testimony is simply stating that we don't
23 feel that this is necessary but is the Commission's
24 prerogative.

25 CHAIR GIOVANNI: So you're recommending

1 testimony that's -- that is not necessary why? I
2 mean, does it go back to these concerns about a
3 super (audio disruption) that only three votes might
4 result in a DBA?

5 MR. ORODENKER: Well, yeah. And you know,
6 it was pointed out by one of the public testifiers
7 that there -- it doesn't seem to be any basis for
8 this. I mean, there's nothing -- no evidence or any
9 experience that would suggest that this would result
10 in more DBAs being granted.

11 CHAIR GIOVANNI: So basically, you're
12 recommending comment, not support or opposition; is
13 that correct?

14 MR. ORODENKER: I think our comment would
15 be that it's not necessary.

16 CHAIR GIOVANNI: Comment is it's not
17 necessary. Okay. Commissioners. Commissioner Lee.

18 COMMISSIONER LEE: Sure. Thank you. I
19 want to note that this bill has been introduced
20 before, and it's introduced now by the chair and the
21 vice chair of the House -- Senate Housing Committee,
22 and the -- the vice chair used to be the chair of
23 the House side as well.

24 And I'm not sure I agree that it's not
25 necessary. I mean, I don't agree that it should be

1 three people making this decision when deck rulings
2 and other decisions by this body are done by a
3 simple majority of five. So I guess I want to hear
4 why the DBA should be six when other decisions are
5 five from the executive officer.

6 MR. ORODENKER: Well, as -- as I
7 previously mentioned, it's always been the position
8 of the legislature prior to this, because things can
9 change, that district boundary amendments are
10 significant and they require a large amount of
11 discussion.

12 And there are many issues that are of
13 concern whenever there's a district boundary
14 amendment presented and that they should be
15 contemplated fully, and there should be a majority
16 -- a super majority of the Commission rendering that
17 decision when it's going to have such a large impact
18 on cultural gathering rights, the environment, state
19 expenditures, and all the other factors that are in
20 our rules that we were -- expressed as were -- as
21 issues that were of concern to us.

22 COMMISSIONER LEE: Okay. Thanks. When
23 you stated earlier that there hasn't been a case
24 where there's been five, so -- and that it didn't
25 make a difference. So why not five then?

1 MR. ORODENKER: I don't have an answer to
2 that. As -- like I said, I don't think this is
3 necessary. We've never had a problem, and it's
4 never slowed down anything.

5 CHAIR GIOVANNI: So just to -- point of
6 clarification, please, on the bill as -- as drafted.
7 Does it state a simple majority of the quorum, or
8 does it state five?

9 MR. ORODENKER: It says a simple majority
10 of the members present. So quorum would be five, so
11 three could theoretically grant the DBA.

12 CHAIR GIOVANNI: Right. So now the
13 question moving six to five is not articulated in
14 the draft?

15 MR. ORODENKER: No, it is not. So if we
16 were going to submit testimony, we would -- our
17 testimony would say: Well, our comments are that a
18 simple majority of the members present is excessive.
19 We would be okay if it was five.

20 COMMISSIONER LEE: Chair, I'd like to
21 follow up.

22 CHAIR GIOVANNI: Commissioner Lee.

23 COMMISSIONER LEE: Yeah, I think as
24 written, I would be opposed to three people voting,
25 because that's even less than, you know, any -- any

1 other decision. But --

2 CHAIR GIOVANNI: You agree that's the way
3 it's drafted?

4 COMMISSIONER LEE: Yes, that's the way
5 it's drafted. That's how I read it. But I -- I
6 want to see how everyone else feels about providing
7 input that five might be more acceptable. I mean, I
8 don't know how everyone else feels. I'm -- I would
9 be okay with five, but I'd be interested to see if
10 we could provide testimony that no, three is too
11 little, but five might be more acceptable, versus
12 just opposing this bill altogether.

13 So I mean, I don't -- I'm not ready to
14 make a motion yet, but, you know, I'd like to hear
15 what everyone else's thoughts are on five.

16 CHAIR GIOVANNI: Anybody else have a
17 thought?

18 COMMISSIONER KAHELE: You know, I want to
19 make a comment.

20 CHAIR GIOVANNI: Commissioner Kahele.

21 COMMISSIONER KAHELE: Yeah. So right now,
22 there's no scheduled hearing, right, for this bill.

23 MR. ORODENKER: No, there is not. No.

24 COMMISSIONER KAHELE: Yeah, there's no
25 scheduled hearing. So we're going to take the

1 position as -- you know, it's not necessary. Why
2 don't we take the position, as -- as commissioners
3 or as the head of land use, and either we're up or
4 down. I -- I don't believe we should be taking a
5 vote with just a majority of the people that's
6 present at the -- at the meeting. Because like
7 Brian just mentioned and Dan just mentioned, we had
8 three people here at the meeting that they going to
9 decide whether they're going to be approving a
10 district boundary amendment.

11 So anyway, Brian is recommending that we,
12 instead of six affirmative votes, make an amendment
13 to the current bill for five. Whatever the decision
14 is going to be made, I think we should make the
15 decision and just -- just stay somewhat neutral.
16 Anyway, that's -- that's my take.

17 CHAIR GIOVANNI: So Commissioner Kahele,
18 if I understand you correctly, you're recommending
19 that we consider taking a position on the bill as
20 drafted as opposed to getting into word smithing the
21 bill itself?

22 COMMISSIONER KAHELE: Yes.

23 CHAIR GIOVANNI: Okay. I agree with that
24 personally, but commissioners. Commissioner U'u.

25 COMMISSIONER U'U: Yeah. I'd like to

1 share my manao. I -- I heard that the position
2 could be worst -- in a worst case scenario that
3 three people could vote to decide on approval of a
4 DBA, but at the same time three people could deny
5 it. So, you know, this is how I look at it. I look
6 at it as -- you know, as Hawaii. I don't -- I don't
7 need to go out there and state the obvious
8 sometimes. Like food security, Hawaiian traditional
9 practices, I don't need to. It's ingrained in us at
10 birth.

11 But people try to say it all the time at
12 times, like I don't know why. And I get it. But
13 the part is it's instilled at a young age. It's
14 instilled way before my time. So when people
15 misstate me and say: Are you not for the
16 environment? I'm like: Dude, I was ingrained. I
17 was embedded. I was embedded. We came here by
18 canoe.

19 And so the part is -- the issue is when 6
20 percent of land on Maui is designated urban, now we
21 got a problem. That's the issue. That's the
22 biggest issue right here. I mean, we protected it
23 so good, right? We -- I don't know what the
24 percentage is ag. I think 55 percent is ag and 40
25 percent is what -- what have you.

1 What I'm saying is it seems to me when it
2 will keep these bills that we pay, there is a
3 breakdown somewhere for housing. If you just take
4 all this we're looking at, the breakdown is there's
5 not enough. There's out migration of all people --
6 my people.

7 If this helps move the needle to keep all
8 people home, I think -- more importantly bring them
9 back, because people always coming, but not
10 necessarily coming back. And my goal is to have
11 them to come back. So -- and when I hear people say
12 like, you know, it's -- it's not proving that it's
13 needed. Well, it's not proving it's not needed also
14 though.

15 So I'm okay with this as proposed. And I
16 always look at it this way. If it move the needle,
17 if we all look at (inaudible), I think some of the
18 decisions made over the course of the years who have
19 a lack of homes statewide, I think some -- everyone
20 got to take some responsibility on it, right. And
21 as we say laulima, many hands. And I know some
22 people see it as it's not our kuleana, and maybe
23 it's not. I think it's mine.

24 So I will support the bill as written.
25 That's my two cents. But again, I will support

1 whatever the body decides to support. And that's
2 why I always like to see the grin. Like, I like
3 when they hear people say certain things, because it
4 makes me think about what my thought process would
5 be. But that's why we collaborate with the nine
6 members. But just have -- have this one say at the
7 end.

8 I suppose I leave her because of other
9 obligations. Mr. Yamane has other obligations. Mel
10 has to go, and we just heard that Myles might have
11 to leave. I have faith if I left that people could
12 do a good job without me. I have absolute faith in
13 that. It's not my -- you know I just say it's hard
14 to find people to serve -- Maui County, we have 70-
15 something vacancies on boards and commissions, and
16 it holds up a lot of things.

17 So the part is, like I'm not -- I wouldn't
18 use the word arrogant, but I would say I'll be okay
19 that I trust in people who make decisions if I'm not
20 there. So that's my manao. I would support it as
21 written, but then again this mine, one of nine.
22 Thank you.

23 CHAIR GIOVANNI: Thank you, Commissioner.

24 COMMISSIONER KAHELE: You know, if I may,
25 Chair.

1 CHAIR GIOVANNI: Commissioner Kahele.

2 COMMISSIONER KAHELE: You know, I agree
3 with Mr. U'u, not in agreement of how the bill is
4 written. We've got a problem with jobs. We've got
5 a problem with the cost of living. We got a problem
6 with housing, affordable housing. We average 15,000
7 of our Native Hawaiians or citizens that live in
8 Hawaii that's moving up to the mainland. Why? We
9 priced out of paradise.

10 If we agree to allow three people on this
11 board to make a decision on who's going to be coming
12 in and -- and requesting for a district boundary
13 amendment that's not looking at building affordable
14 homes, yeah, we might be in trouble because
15 everybody's looking at money.

16 All these developers coming here, except
17 for the people that's requesting for 201 -- 201H
18 status in building affordable homes, we might be in
19 big trouble if we get the wrong people sitting on
20 this commission. And right now, we got good -- got
21 good people here. We get the wrong people sitting
22 here making decisions on who's going to be able to
23 get this district boundary amendments and building
24 pricey homes, it's going to push more of our
25 families up to the mainland.

1 And I got grandsons, I got granddaughters
2 that moved up to the mainland because they not going
3 to survive here. So anyway, you know, I just wanted
4 to make that comment. I -- I am not for this bill,
5 and I think we should just keep the status quo and
6 only for the best interest of our Native Hawaiians
7 and the people that's currently living here with
8 Hawaiians, Orientals, Caucasians. This is our
9 island. This is our state. We've been priced out
10 of it. Thank you.

11 CHAIR GIOVANNI: Thank you, Commissioner.
12 I just got one clarifying question for -- for staff.
13 Do you recall a DBA that failed because it didn't
14 get six votes, it only got five, in history?

15 MR. ORODENKER: We had one or two, but it
16 was before my time. So I don't know. Maybe Scott
17 can recall.

18 CHAIR GIOVANNI: Scott.

19 MS. KWAN: Staff needs a recess. The
20 audio is muffled. I need to unplug and replug.

21 CHAIR GIOVANNI: Okay. Let's take a very
22 brief three minute recess. It's 12:37.

23 MS. KWAN: Thank you.

24 (Recess taken from 12:37 to 12:39 p.m.)

25 CHAIR GIOVANNI: So I had a question on

1 the table. We're going to come back in session.
2 It's -- I've got 12:39, back in session. Is
3 recording working now? Thank you.

4 So the question on the table to staff was
5 any history you can share with us where 3, 4, 5, 6
6 votes were of significance in consideration of a DBA
7 in recent history? I mean, what's driving this
8 thing?

9 MR. DERRICKSON: This is Scott Derrickson,
10 chief planner. I -- I can't tell you what's driving
11 this bill, because I don't think that it's supported
12 by any evidence. It's not solving a problem. But
13 in -- to answer your question specifically, I
14 believe in the last 15 years there have -- there has
15 been at least one incidence where something hasn't
16 been approved because of five votes.

17 But again, it's rare. And usually what
18 happens is a petitioner reads the room and
19 recognizes that a project doesn't appear to have
20 garnered enough votes to -- to approve. And in some
21 cases they've withdrawn the petition. In some cases
22 they've asked to -- more time to go back, make some
23 changes, and come back in.

24 The approval rate of the Commission
25 historically is 95-plus percent. There's been

1 hardly any times when the Commission has denied a
2 petition.

3 CHAIR GIOVANNI: Thank you.
4 Commissioners, any other questions? Commissioner
5 Carr Smith.

6 COMMISSIONER CARR SMITH: Thank you. I
7 think we should keep that in perspective. Because I
8 know for Hawaii Island, it's been a good 10 years
9 since there was a DBA at all. So I mean, I think
10 we're also looking at this bill and with the worst
11 case scenario, and I'm not sure that -- who knows
12 what the intention was, but I'm not sure that we
13 should necessarily look at it that way.

14 Maybe members present should not be in
15 there. Maybe it should be quorum, but then that's
16 still a low amount. And I understand the concern
17 about the low amount, but yet we need to be able to
18 get things done. And if we look at all these bills
19 on our list, several of them speak to DBAs. And I
20 think there's a reason why counties are wanting to
21 take more control over DBAs, and that may be because
22 it's challenging for people to get through us.

23 So I think that the six votes goes back a
24 long ways. I think that times have changed, and I
25 think it's reasonable for us to consider taking the

1 opportunity to say maybe it should be five now,
2 along with everything else.

3 COMMISSIONER U'U: Chair.

4 CHAIR GIOVANNI: Commissioner U'U.

5 COMMISSIONER U'U: And, you know, my
6 belief is that, you know, if there's ever a point in
7 time when we get too much affordable housing to stop
8 it, but it's not going to be during my lifetime.
9 But I would agree with -- with Commissioner Carr
10 Smith that, you know, I think most people here
11 served on boards prior. So even though we can go
12 back in your history books and look at any time
13 where -- where the votes was that close.

14 I sat on commission -- planning
15 commission, I think that's kind of important within
16 the SMA area. We -- we 5-to-4 a few times that I
17 can think off the top of my head. And so I'll be
18 okay with that. It's the majority, not the super
19 majority. I'll be fine with that in implementing
20 something like that. So that would work for me.

21 CHAIR GIOVANNI: Commissioner Lee.

22 COMMISSIONER LEE: Thank you, Chair. I
23 just like to say that if you look at some of the
24 other bills that we're going to consider today, they
25 want to take the State LUC completely out of any

1 vote whatsoever. So it'd be like zero votes to
2 approve a project. It would just be decided on the
3 county level.

4 I'm -- I'm okay with doing something
5 different and bold, you know. I don't think three
6 is right, but I think five votes consistent with
7 dec rulings and other votes that we might have,
8 I'm good with that. So I'll -- I'll make a motion
9 that --

10 CHAIR GIOVANNI: Not yet. I'm still in
11 discussion phase before -- I'll give you the
12 opportunity to make a motion.

13 COMMISSIONER LEE: Yeah. See now this is
14 an example of why we're not following Sunshine Law.
15 Because if we were -- I mean, Robert's Rules of
16 Orders. Because if we were, I could make a motion
17 anytime.

18 CHAIR GIOVANNI: Okay. Make a motion.

19 COMMISSIONER LEE: So I motion that we --
20 we -- that the executive officer testifies that this
21 Commission would support DBA approval with five
22 votes. Because I think the legislature wants to
23 hear from us. We're the people who have been given
24 the responsibility to look at these things. And I
25 -- I don't think five goes that far, because some of

1 the other proposals are that we have zero votes.

2 And if people are self-censoring
3 themselves like Mr. Derrickson said then I think
4 that's a problem, if people are saying that I'm not
5 even going to go, because I -- I don't think I can
6 get six votes. Five might be an easier hurdle, so
7 --

8 CHAIR GIOVANNI: Can I -- can I ask if you
9 would accept a -- a friendly amendment that you
10 would -- this Commission support a DBA approval of
11 five votes, provided it doesn't include IAL?

12 COMMISSIONER LEE: Oh, absolutely.
13 Absolutely. And for those who might even have
14 heartburn with that, we could even put a sunset date
15 on it, say five years. You know, this is -- it's up
16 for consideration. I'll add that in just to give
17 everyone extra caution that this is not something
18 that we -- you know, we feel so strongly about, that
19 we're just going to throw everything to the wind,
20 but that there should be a window where we try this
21 out and see what happens, so --

22 CHAIR GIOVANNI: Well, isn't it up to the
23 legislature to bring a bill back to us -- in front
24 of us.

25 COMMISSIONER LEE: No, you can -- you can

1 amend the bill so that there's a sunset date. In
2 fact, some of the other bills --

3 CHAIR GIOVANNI: Yeah, but we're not the
4 legislature.

5 COMMISSIONER LEE: No.

6 CHAIR GIOVANNI: We're just offering
7 comment.

8 COMMISSIONER LEE: Right. But that would
9 be my recommendation is that this is what we would
10 support, five votes with a five year sunset date.
11 So I made that motion, and I'm open to hearing if
12 anyone will second or have any other comment or
13 maybe even amending my motion. Thank you.

14 COMMISSIONER KAHELE: And you know, Brian,
15 we can live with that. I believe we can live with
16 the majority of five. I -- I just wasn't okay with
17 the language that's currently written in the bill.
18 And Ms. Carr brought up a good point. We got
19 planning projects out there that's kind of like
20 stalled. We need to move them. But you know, we --
21 we're just hoping -- keep our fingers crossed that
22 Waterland (phonetic) will schedule a hearing for --
23 for the director to be able to make an amendment to
24 the current bill.

25 And with that -- no, Brian, I support your

1 -- your motion. I'll second it.

2 CHAIR GIOVANNI: So let me offer us
3 another friendly amendment. Would you accept a
4 friendly amendment that says that we are not in
5 support as written. We're under circumstances that
6 three could carry?

7 COMMISSIONER LEE: Yes, I would support
8 that.

9 CHAIR GIOVANNI: Okay. Do I have a second
10 to that --

11 COMMISSIONER KAHELE: Second.

12 CHAIR GIOVANNI: -- friendly, okay. So
13 the motion as I --

14 COMMISSIONER CARR SMITH: Chair. Go
15 ahead.

16 CHAIR GIOVANNI: Do you have a amendment
17 to?

18 COMMISSIONER CARR SMITH: No. I just -- I
19 don't know why we're adding in the important ag
20 lands because it's not in here.

21 CHAIR GIOVANNI: Because the -- the
22 executive director stated that some DBAs come forth
23 where a portion of the parcel that's under
24 consideration includes IAL and IAL require six
25 explicitly.

1 COMMISSIONER CARR SMITH: Okay. Okay. I
2 got you. Thank you.

3 CHAIR GIOVANNI: Correct. Okay. So the
4 motion on the floor, if I understand correctly, is
5 the following: This Commission's position is one
6 that is in opposition to the bill as drafted, where
7 under some circumstances, three votes of this
8 commission could carry an approval of a DBA.
9 However, we would support amendment that requires
10 five votes at a minimum of the -- for an approval of
11 a DBA, provided the petition did not include any
12 portion of which IAL land.

13 COMMISSIONER LEE: And -- and the five
14 year sunset.

15 CHAIR GIOVANNI: And if it does include
16 IAL land, it would still require six votes, and
17 furthermore it would sunset in five years.

18 COMMISSIONER LEE: Well stated.

19 CHAIR GIOVANNI: Thank you. Okay.
20 Commissioners, comments, concerns on this motion.

21 COMMISSIONER YAMANE: Mr. Chair.

22 CHAIR GIOVANNI: Mr. Yamane.

23 COMMISSIONER YAMANE: Thank you, Mr.
24 Chair. For the record, I'll be abstaining from any
25 voting on any legislative matters. And I just want

1 to -- and this is my perspective, understand the
2 Commission can choose to do something, cannot choose
3 to do something. And I think I stated this in our
4 previous meeting that this is something that I -- I
5 personally don't want to be doing is reviewing every
6 bills and voting on what we should be putting on the
7 bills.

8 And like -- with all due respect to my
9 commissioners, this is just my perspective, being in
10 the legislature for 20 years and knowing how it
11 operates, I -- I came into this position as a
12 volunteer knowing that this entity is a regulatory
13 body that abides by whatever laws and statutes are
14 created.

15 And for example, this specific bill, let's
16 say I am a commissioner -- let's say,
17 hypothetically, this bill passes as is this session,
18 and I came in as a commissioner next year. I just
19 have to abide by that law. So I'm not here as a
20 commissioner to make policy changes on whether LUC
21 should exist or not. That's for the policymakers.

22 What I volunteered for was to listen to
23 petitioners come in with their proposals on boundary
24 amendments and make decisions based on the laws and
25 rules that govern that process. That was why I came

1 into this position. And -- and I think I said this
2 the last time, it's just -- I -- I think it's
3 outside of this Commission to be doing that. Of
4 course, that's just my perspective, with all due
5 respect to the rest of commissioners.

6 And like -- like a law, if this law passes
7 against us, we just need to abide by it. If this
8 Commission chooses to go on this path where you're
9 reviewing 14 bills on every meeting, then that --
10 that's the way it is. I'll live by it. But I won't
11 be voting for that. I'll be abstaining from any
12 votes regarding any legislative matters going
13 forward.

14 So thank you, Mr. Chair. And with that,
15 I'd like to be excused. I need to run.

16 CHAIR GIOVANNI: Well, we're -- when we
17 have a roll call vote, you want to stick around to
18 abstain or -- okay. It's coming up pretty shortly.

19 CHAIR GIOVANNI: Commissioner Miyasato.

20 COMMISSIONER MIYASATO: Thank you, Chair.
21 Yeah. I somewhat agree with Commissioner Yamane in
22 a sense, where I was sort of prepared to hear and
23 make, I guess, a -- hear what the staff had to say
24 about the written bills.

25 You know, for my work, I've actually

1 authored legislation, and I'm retired now. So I
2 feel the same way about kind of not getting -- not
3 really wanting to have to think about amending and
4 writing and lobbying. And I have no problem
5 reviewing what's -- you know, things that impact
6 land use, if it's detrimental, if it's helpful, and
7 if staff feels, you know, we -- we really should
8 give our opinion on the effects of it, whether
9 positive or negative.

10 I don't mind that. But I wasn't prepared
11 to consider amending and authoring amendments, and
12 so I'm kind of having a hard time supporting that.
13 I -- I would just rather have an opinion that this
14 is going to impact -- could impact us negatively,
15 and just not really support or oppose, but just the
16 negative effects of this bill. So that's just my
17 opinion. Thank you, Chair.

18 CHAIR GIOVANNI: Thank you, Commissioner.
19 Commissioners, any further? Commissioner Kahele.

20 COMMISSIONER KAHELE: Can I ask a
21 question?

22 CHAIR GIOVANNI: Of course.

23 COMMISSIONER KAHELE: How would one vote
24 -- now it's six. And -- and we're going to -- we're
25 going to ask the director to go up there and make an

1 amendment to the bill, if it gets heard, if it -- if
2 it gets heard by Waterland and -- and I believe the
3 Judiciary Committee. How would one vote affect any
4 of the decisions that we've made in the past by
5 changing it from five -- from six to five votes?

6 CHAIR GIOVANNI: I think that's the
7 question I asked, and Mr. Derrickson said it might
8 have affected one decision in the last 15 years.

9 COMMISSIONER KAHELE: Very good. Thank
10 you.

11 CHAIR GIOVANNI: Is that correct, Mr.
12 Derrickson?

13 MR. DERRICKSON: Yes, that's correct.

14 CHAIR GIOVANNI: Thank you. Commissioner
15 U'u.

16 COMMISSIONER U'U: Just a comment. You
17 know, prior to not being on the LUC, I heard people
18 saying that they don't want to even come before the
19 LUC. And so -- so with the potential of, I guess,
20 giving a manao on changing the six to five, maybe
21 it'll be more inviting to people to put in the
22 application words that LUC again for potential homes
23 for people. So that's -- that's how I see it.

24 CHAIR GIOVANNI: Thank you.

25 MR. ORODENKER: Chair, if I could comment.

1 CHAIR GIOVANNI: Please. Mr. Orodenker.

2 MR. ORODENKER: I mean, staff will

3 obviously do whatever this Commission decides. But

4 I need to make the point that we could submit

5 testimony, and the chairs of the various committees

6 could just ignore it, and we wouldn't get anywhere.

7 It could also amount to them just not wanting to

8 deal with it and not moving forward. So I -- I

9 think we have to be aware of that.

10 CHAIR GIOVANNI: Thank you. Commissioner

11 Lee.

12 COMMISSIONER LEE: Thank you, Chair. I

13 respect what Commissioner Yamane said. For me, I

14 don't -- I don't want to keep blinders on. I think

15 I'm want to stay my lane, but if I see cars coming,

16 I'm going to change my lane, you know. And so

17 that's my personal opinion, and --

18 CHAIR GIOVANNI: I don't know what you

19 mean about changing lanes. Could you be more

20 explicit?

21 COMMISSIONER LEE: Well, I think

22 Commission in the past has said that: What is our

23 lane? Should we stay in our lane and not get

24 involved in other things like policy? And we've

25 been clearly told by multiple people that that's

1 within our purview. I don't think when I serve
2 here, for me personally, that now I can't opine on
3 other things, especially when it's already been
4 clearly stated to us that it's in our purview to do
5 so, to express our view.

6 And I think the legislators would be happy
7 to hear what we think, since we do this, you know,
8 on a regular basis, what we think are some of the
9 impediments or some of the good things about the
10 Land Use Commission and its -- and its rules. So
11 definitely the legislators can do whatever they
12 want, but I think they would be interested to hear
13 what the majority of this board thinks or advises.

14 So I agree with Commissioner U'u that, you
15 know, we should -- we should express it, and if the
16 legislators throw it away, that's fine. We've
17 expressed our view, if we do have a united view on
18 anything.

19 CHAIR GIOVANNI: Commissioner Carr Smith.

20 COMMISSIONER CARR SMITH: I agree. It's
21 an opportunity, in my opinion, and I personally feel
22 that it is our responsibility to weigh in on these
23 things. I came here to hopefully make a difference
24 with some of the changing landscape, and I think
25 it's totally our responsibility to weigh in. And

1 since the director is asked to weigh in on these
2 things, I think even more so that we need to do
3 this, so I support the idea.

4 CHAIR GIOVANNI: So anybody else?
5 Commissioner U'u, you got your light on. Did you
6 have anything further?

7 COMMISSIONER KAHELE: You know, I just --
8 I just want something clarified here. So whatever
9 motion that was made, we're not going to go up there
10 until Waterland schedules a hearing. We're not
11 going to go up there prior to that and say: Hey,
12 you know what? This is what we want you to change
13 in the current bill, right? I mean, is that what
14 we're doing?

15 CHAIR GIOVANNI: That's my understanding.
16 This testimony --

17 COMMISSIONER KAHELE: Okay. So if there's
18 no hearing, there's no issue?

19 CHAIR GIOVANNI: Well, I think that's the
20 way it works.

21 COMMISSIONER KAHELE: Okay. All right.
22 Thank you.

23 CHAIR GIOVANNI: So I come to this
24 position, you know, serving on this board very much
25 in the same vein as Commissioner Yamane. I want to

1 make meaningful decisions about land use consistent
2 with the statute and laws of Hawaii. I'm not
3 interested in making laws. I'm interested in
4 implementing them fairly and legally.

5 I'm very concerned that going down this
6 road, just like we've got, I'm -- I'm not even -- I
7 have no confidence that two days is going to enable
8 us to cover 14 bills sitting here in this room. And
9 I have no interest personally in becoming a party to
10 a -- what looks to me to be a lobbying exercise.

11 So I -- I will agendize these bills,
12 because it has been requested, and -- and that's why
13 you -- you see all 14 of these bills of interest and
14 relevance agendized. But I don't think it's the
15 best and highest use of -- of the Land Use
16 Commission to do what we're doing presently.

17 So I -- I could consider and would -- and
18 would support a motion that's consistent with the
19 recommendations of staff or a recommendation to go
20 an up or down vote on a bill as written. But I
21 don't think it's within our -- I cannot support time
22 and energy in our province to rewrite legislation as
23 -- as a lobbyist might do. So that's where I'm
24 coming from.

25 So I haven't decided if I will abstain or

1 if I will vote in opposition. But I don't want to
2 get into this -- this kind of business. So anything
3 further, anybody?

4 Mr. Orodenger, please take a roll call
5 vote on the -- on the motion.

6 MR. ORODENGHER: The motion is as stated by
7 the chair, and if I can paraphrase it, testify that
8 this -- on Senate Bill 28 that this Commission would
9 support a situation where five votes could approve a
10 DBA, provided it doesn't include IAL lands for five
11 years. But we're not in support -- the Commission
12 is not in support of the bill as written.

13 Commissioner Lee?

14 COMMISSIONER LEE: Yeah. I think that if
15 we don't do anything, testimony will be given
16 anyway, and questions will be asked. So I'm going
17 to say aye on this, that they should hear it from
18 us.

19 MR. ORODENGHER: Commissioner Kahele.

20 COMMISSIONER KAHELE: You know -- you
21 know, Chair, it's -- you somewhat to a point, right,
22 about, you know, we shouldn't be getting involved
23 in. But, you know, this is pertaining to the land
24 use, and -- and I seconded the motion. And you
25 know, hopefully we review the rest of the list of

1 bills --

2 CHAIR GIOVANNI: Yeah, we're going to --
3 we will.

4 COMMISSIONER KAHELE: -- that's going to
5 be heard. And if -- you know, hopefully we can
6 leave it up to the director and to the staff in
7 deciding which way we should go on any other bills.
8 But since I seconded the motion, aye.

9 MR. ORODENKER: Commissioner Carr Smith.

10 COMMISSIONER CARR SMITH: Aye.

11 MR. ORODENKER: Commissioner Hiyashida.

12 MR. HIYASHIDA: I'm going to abstain.

13 MR. ORODENKER: Abstain. Commissioner
14 Kamakea-'Ohelo is excused. Commissioner U'u.

15 COMMISSIONER U'U: Aye.

16 MR. ORODENKER: Commissioner Miyasato.

17 COMMISSIONER MIYASATO: Abstain.

18 MR. ORODENKER: Commissioner Yamane.

19 COMMISSIONER YAMANE: Abstain.

20 MR. ORODENKER: Chair Giovanni.

21 CHAIR GIOVANNI: Abstain.

22 MR. ORODENKER: Mr. Chair, we have a 4-4
23 vote.

24 CHAIR GIOVANNI: We have four affirmative

25 --

1 MR. ORODENKER: Four abstain.

2 CHAIR GIOVANNI: Four abstain. What does
3 that mean, 4-0?

4 MR. DERRICKSON: By operation of law, it
5 fails.

6 CHAIR GIOVANNI: Say again.

7 MR. ORODENKER: You need a majority.

8 MR. DERRICKSON: Scott Derrickson, Chief
9 Planner. By operation of law, you don't receive
10 five -- at least five affirmative votes, the -- the
11 motion fails.

12 CHAIR GIOVANNI: Is that correct? Okay.
13 Motion failed.

14 COMMISSIONER CARR SMITH: So what are the
15 director's comments going to be on this bill?

16 CHAIR GIOVANNI: It's still alive. So --

17 MR. ORODENKER: If the bill is heard, we
18 will submit testimony that the Commission has not
19 taken a position on this matter. But we are always
20 present for technical -- if they have technical
21 questions with regard to the impacts of a bill.

22 MR. HIYASHIDA: Commissioner Hiyashida. I
23 mean, you've heard -- you've heard testimony from
24 our members. And I think -- I think like how Myles
25 said, our responsibility is to tell the impacts to

1 the Commission of what this legislation may do. And
2 I think you should be able to say what those impacts
3 are. And you can see from the Commission that there
4 is movement to lessen the degree, but not to the
5 extent that they want to do.

6 And I think that's reasonable to respond,
7 right. It's not -- we're not telling them what to
8 do. We're just telling them what our opinion is.
9 And I think you've heard it from our discussions.

10 CHAIR GIOVANNI: Yeah. I -- I agree with
11 what I think you intend to say there. You know, we
12 had a recommendation from Mr. Orodenker and staff
13 that there are issues with this bill as written, and
14 I'm comfortable giving him the latitude to express
15 those if -- you know, during legislative hearing on
16 -- from his perspective. I don't think that's in
17 opposition to any position this -- this board has
18 taken, this Commission has taken.

19 But before I close this agenda item, I
20 would -- I would still, if -- if the commissioner
21 wants to make a different or a new motion, I would
22 entertain that. Commissioner Lee.

23 COMMISSIONER LEE: Chair, I agree with
24 everything that's been said. I'm okay. And I don't
25 know if this -- I would -- maybe I'll make a motion

1 that we oppose the three, but we support -- we
2 oppose the three as written, but we support efforts
3 to make it less difficult to approve. I don't know
4 if that's how -- I don't know if anyone else would
5 support that.

6 But that might be something that maybe
7 just the executive officer can just testify as being
8 factual that, you know, we -- I don't think there
9 was that much support.

10 MR. ORODENKER: Whenever we submit
11 testimony, we always say we appreciate -- or we
12 recognize the intent of this bill as streamlining
13 the process. However, we take no position, but
14 we're here for comments. That was -- that would be
15 the way I would write the testimony.

16 CHAIR GIOVANNI: I thought we opposed the
17 three.

18 MR. ORODENKER: Yeah, yeah.

19 COMMISSIONER KAHELE: No, I think that's
20 fair.

21 MR. ORODENKER: No. I mean -- I mean, it
22 wouldn't be quite that short. But you know, the --
23 the idea is we -- we have never testified without
24 saying we recognize the efforts of the legislature
25 to streamline the process, or whatever the proposal

1 is there.

2 COMMISSIONER LEE: Let me correct myself.
3 I think Commissioner U'u did support the three, so I
4 don't think you can say we all oppose the three.
5 But maybe if you -- if you did say that there was
6 some robust discussion about it and, you know, we --
7 we hear the concerns and that there's -- there's
8 thoughts about streamlining that some might support.
9 Yeah, I'm sure you -- you'll be able to word it
10 correctly.

11 CHAIR GIOVANNI: So that -- so let me
12 state this for commissioners' benefit and see if
13 you're comfortable with this guidance to executive
14 director.

15 I would like to give the executive
16 director the authority, freedom, whatever, to
17 testify on this bill representing the LUC based on
18 his understanding of the discussions that occurred
19 here today and the concerns that were raised about
20 this bill, recognizing that the intent is for
21 improved efficiency and effectiveness of the -- of
22 the Land Use decision making process. But as
23 written, we have issues with the bill, something to
24 that nature.

25 Are you consistent with giving that

1 guidance to the executive director, as I just stated
2 it, and leaving it at that? Commissioner Kahele.

3 COMMISSIONER KAHELE: You know -- you
4 know, Chair, I'm assuming, and -- and the short time
5 that I've been here as a commissioner, the director
6 basically went up there and did what he had to do at
7 the ledge, whether it was supporting bills, not
8 taking a position on any other bills, opposing
9 bills.

10 So I think with -- with his now response
11 to this bill that he stated earlier, you know -- and
12 -- and we do a lot of work at the state capitol. I
13 spend 70 percent of my time up here with -- with
14 some of you, maybe with Brian. And, you know, I'm
15 not sure how many of you up there, but I spent a lot
16 of time up there. We got to be careful in what we
17 say up there, because there may be feelings that may
18 be hurt. And -- and that's basically, you know,
19 people just being human.

20 We go up there and we make a statement
21 that people may not -- well, these powerful
22 legislators up there may not want to hear, you know,
23 we might kind of like add more wood to the fire. So
24 with -- with Dan's statement and -- and what he's
25 stated earlier, you know, I -- I think we can live

1 with that. I think we can live with that statement
2 and instead of complicating things more.

3 And you know, my opinion with Senate Bill
4 28, with the -- with the -- the current referral, I
5 don't think this bill's going to go anywhere. But
6 anyway, you know, that's -- that's me just believing
7 what I think -- I think Dan should be doing.

8 CHAIR GIOVANNI: Anybody else?

9 COMMISSIONER U'U: Yeah. Quick one.

10 CHAIR GIOVANNI: Commissioner U'u.

11 COMMISSIONER U'U: And I'm okay. I don't
12 want to over-analyze or micromanage people. That's
13 not in my wheelhouse. And -- and I threw out that I
14 will be supportive of three bills, mainly three
15 people voting. And I wanted to see what the
16 reaction was at times, right. I mean, if you would
17 throw out the higher, you got to throw in the higher
18 and the low for see what you come up with. But
19 that's how we vet stuff, I feel. Like, you got to
20 throw it out there. So this was me throwing it out
21 there, yeah.

22 CHAIR GIOVANNI: Okay. Thank you.

23 COMMISSIONER KAHELE: And you know, Mr.
24 U'u, you know me and you come from the same yoke,
25 construction workers. We worry about the people out

1 there. We worry about our community. We worry
2 about the working class out there struggling. We
3 worry about the Hawaiians out there, no matter where
4 it is, Oahu, Maui, Kauai.

5 And -- and that's the reason why you and I
6 and most of us can relate, is because we tired of
7 seeing our families, our friends, our co-workers
8 moving up to the mainland because they cannot live
9 here. So anyway, I just wanted to share that,
10 Brother. Everything's cool.

11 CHAIR GIOVANNI: Okay. If there's no
12 further specific motion on this, I will bring this
13 agenda item to a close. Okay. Oh, yeah, second
14 public testimony. Is there anybody online still
15 wishing to testify on this motion?

16 MS. KWAN: Seeing none on the Q&A, Chair.

17 CHAIR GIOVANNI: Okay. We will close this
18 agenda item and move to the next one.

19 Okay. Senate Bill 36. Any public
20 testimony written, received on this one that we
21 haven't already heard about?

22 MS. KWAN: I have Chuck Flaherty on the
23 Zoom who would like to testify on this agenda item.
24 I will promote him now.

25 CHAIR GIOVANNI: Thank you. Yeah, this is

1 public testimony.

2 MS. KWAN: Can I get a mic check and a
3 video? Can you hear us?

4 MR. FLAHERTY: Yes, I can. I'm sorry. I
5 just got signed on here.

6 CHAIR GIOVANNI: Sir, would you please
7 state your name and address, and then I'll swear you
8 in.

9 MR. FLAHERTY: Chuck Flaherty, 81-950
10 Makahiki Lane, Captain Cook 96704.

11 CHAIR GIOVANNI: Thank you, Mr. Flaherty.
12 Do you swear your testimony you're about to give
13 will be the truth?

14 MR. FLAHERTY: I do. Thank you very much,
15 Mr. Chair.

16 CHAIR GIOVANNI: So we're specific to
17 Senate Bill 36 and our position on that senate bill.
18 You have two minutes. Please go ahead.

19 MR. FLAHERTY: Yes, sir. I'm testifying
20 on behalf of the Hawaii Island Group of the Sierra
21 Club of Hawaii on this particular agenda item. I --
22 we apologize for submitting late testimony to the
23 Land Use Commission. You will have received it
24 during this meeting.

25 This proposed legislation is a red

1 herring. Affordable housing developments can
2 already receive expedited approval under HRS 201H.
3 Not all land in the urban expansion area is
4 appropriate for urban development. A perfect
5 example is the recent county rezoning applicant
6 seeking to extend the time for a development
7 originally granted LUC and county approvals in the
8 1980s. It may be the property that was referred to
9 earlier, which had three changes of ownership.

10 Because of the profound changes that
11 occurred over the past 40 years, the original
12 conditions for redistricting by the LUC were no
13 longer appropriate. The two FEMA floodways that run
14 through the property had several flooding events
15 over the past two decades, which was one of the
16 primary reasons that the extension was denied. In
17 addition, the development had been allowed to
18 proceed with the first phase without fulfilling the
19 affordable housing requirement. As a result, the
20 county council denied the rezoning extension.

21 The Hawaii Island Group urges the LUC not
22 to relinquish its authority to approve applications
23 proposing to reclassify lands designated as urban
24 growth in county general plans and other community
25 development plans. In particular -- and I'll

1 provide testimony to this more extensively later
2 with the other legislation -- but in particular, the
3 county general plan currently under review, there's
4 a lot of controversy and is not necessarily
5 reflecting the public's desires. So thank you very
6 much.

7 CHAIR GIOVANNI: Thank you, Mr. Flaherty.
8 Commissioners, any questions for this witness?
9 Thank you for your time and effort to come forward.
10 Appreciate it.

11 Mr. Orodenker, would you please give us a
12 --

13 MS. KWAN: We have another testifier.

14 CHAIR GIOVANNI: Oh, I'm sorry.

15 MS. KWAN: Yes. Sorry, one more. Wayne
16 Tanaka. I'll promote him now.

17 CHAIR GIOVANNI: Thank you. Mr. Tanaka,
18 you're still under oath. You've got two minutes to
19 testify on SB36. Please proceed.

20 MR. TANAKA: Thank you, Chair. Sorry, I
21 didn't -- I didn't intend to testify again. But I
22 just wanted to maybe share a reality check about our
23 housing challenges. Because, you know, the reality
24 is that just building, it's not going to necessarily
25 keep people here and could even drive people away,

1 you know, not when we have a global demand for land
2 in Hawaii, when our largest landowners are, you
3 know, legally obligated to maximize their
4 shareholders' revenues, when land and material costs
5 just keep going up and up and up, and yet more
6 outside buyers are coming in and using up, you know,
7 what little water and sewer infrastructure we have.

8 And so really the reality is -- which we
9 have ample evidence of, is that if we don't have
10 questions, if we don't have institutions like the
11 Land Use Commission to set safeguards, then just
12 streamlining construction to build housing could
13 make the situation for us local folks worse, right.

14 And there's questions that you can ask,
15 right? Who benefits from development proposals?
16 Will it be local residents? Will it be people in
17 need of affordable housing? What happens, you know,
18 as I mentioned, if our water and sewer
19 infrastructure gets used up by expedited high-end
20 developments, like where does that leave, you know
21 -- by outside investors, like, where does that leave
22 us in the future, right, our kids?

23 You know, are developers, you know, real
24 estate investment trusts, are they private equity
25 firms? Do they know what Native Hawaiian

1 traditional custom practices are? Like, are they
2 even legally allowed to care about our food security
3 or -- or our public trust? And if not, then, you
4 know, who can make them care, right?

5 And if our children do stay here, will
6 they be dependent on imported processed foods? You
7 know, will they be able to maintain their
8 connections to their island, to their ocean icebox,
9 you know, when streams are dried up, our estuaries,
10 you know, continually polluted by local land uses?
11 Will they even have access to fresh water?

12 And so some of these questions, you know,
13 I know you can't help with, but many of these you
14 can. You can make sure that development is
15 responsible and is sustainable and serves the
16 public's interest and does not drive people away
17 from these islands. And I know the pressure on you
18 to abdicate this responsibility is huge. You know,
19 that's why we're seeing all these bills.

20 And it's a heavy kuleana to say, you know,
21 to some of the most powerful entities in the
22 islands. You know, try wait, let's -- let's think
23 about this, and let's -- let's make sure this helps
24 everybody. But really that's what you agreed to do,
25 and that's, again, what we need you to do and what

1 our kids need you to do.

2 So you know, just generally speaking, you
3 know, if we're going to push --

4 CHAIR GIOVANNI: I need you to conclude,
5 please.

6 MR. TANAKA: Yeah, concluding. We just
7 need to be very mindful about what we're actually
8 promoting in our, you know, desire to -- to move the
9 needle in terms of our housing challenges. Happy to
10 answer any questions. Thank you so much for your
11 time.

12 CHAIR GIOVANNI: Thank you, Mr. Tanaka.
13 Commissioners, any questions, comments? Thank you.
14 Thanks for making the time again.

15 Ms. Kwan, anybody else?

16 MS. KWAN: That is all, Chair.

17 CHAIR GIOVANNI: Thank you. Mr.
18 Orodénker, please summarize this bill and your
19 concerns or recommendations for testimony.

20 MR. ORODENKER: I'm going to have Mr.
21 Derrickson start out on this measure.

22 CHAIR GIOVANNI: Mr. Derrickson, please
23 proceed.

24 MR. DERRICKSON: Okay. Aloha. Scott
25 Derrickson, State Land Use Commission Chief Planner.

1 Senate Bill 36 relating to the Land Use Commission
2 would create a new section under chapter 205 to
3 allow the reclassification of lands that are not
4 currently in the urban district but are in
5 designated -- designated for urban growth in a
6 county general plan or development plan or community
7 plan, provided that the requisite analysis are
8 completed before request is submitted to the LUC.

9 It would require metes and bounds
10 descriptions and a map. And the LUC would have 90
11 days then to update the boundary on an official LUC
12 maps and notify the county. And it requires the
13 Land Use Commission to adopt new rules to effectuate
14 this new process.

15 Should I go ahead and talk about some of
16 the issues?

17 CHAIR GIOVANNI: Yeah.

18 MR. DERRICKSON: Okay. The process that's
19 laid out here appears to mandate that the LUC would
20 reclassify strictly based on a county's request and
21 only needing a provision of metes and bounds
22 description and a map of whatever the county has
23 provided.

24 The term requisite analysis are completed,
25 and these would be requisite analysis completed by

1 the county, it's unclear what that means. There's
2 no definition of what -- what that would entail and
3 who determines that it if it's occurred, if that
4 requisite analysis has been actually conducted.
5 Since it says that it's to happen before the request
6 is submitted to the LUC, it would follow that the
7 county would be the body to make that call. But
8 it's not clear.

9 There are no requirements to address
10 public trust issues. State issues, such as concerns
11 with -- the DOT might have, the Department of
12 Transportation, the Department of Education, DLNR,
13 Department of Land and Natural Resources, it does
14 not anywhere say that they are to address
15 infrastructure adequacy.

16 Presumably, some of these things might be
17 and probably are discussed during the years long
18 process of county general plan amendments or
19 development plan and community plan updates. But my
20 experience in participating in those processes is
21 that while infrastructure is discussed, sometimes
22 Native Hawaiian rights are discussed, water is
23 discussed, the details of how to address those
24 issues is not laid out in the general plan,
25 development plan, community plan updates. It's left

1 for another time at another stage of the process.

2 This would also require significant
3 increase in Office of Planning and Sustainable
4 Development representation by the state during each
5 of the county's general plan and community plan and
6 development plan processes in order to make sure
7 that state issues, public trust issues are discussed
8 and addressed.

9 MR. ORODENKER: Thank you, Scott. I -- I
10 would add some concerns there. I -- it's my belief,
11 as I stated previously when these -- bills like this
12 were discussed at our last hearing, considering that
13 there are serious due process issues with -- with
14 this type of a proposal.

15 I also believe that there's the very real
16 possibility that small farmers will not be able to
17 continue their activity. I mean, it -- it must be
18 made clear that once land is urbanized, then a lot
19 of the farming activities that are currently
20 performed on small farmlands, like raising pigs or
21 things like that, will become a violation of the
22 zoning laws.

23 I also believe that if the -- going back
24 to the Ka Pa'akai analysis that every decision made
25 by any agency is now required to adhere to Ka

1 Pa'akai analysis to be done because of the word
2 shall. I believe that the Land Use Commission
3 cannot do a Ka Pa'akai analysis if it was presented
4 with this matter, because you cannot delegate the Ka
5 Pa'akai analysis to another organization.

6 All that being said, it is my belief that
7 SB36 and a couple of the other bills that we're
8 going to talk about are essentially elimination of
9 the Land Use Commission, except for special permits.

10 CHAIR GIOVANNI: Illumination?

11 MR. ORODENKER: Elimination.

12 CHAIR GIOVANNI: Oh, elimination.

13 MR. ORODENKER: Elimination. I -- I think
14 that it -- from staff standpoint, it would be
15 disingenuous for us to prepare -- appear before the
16 legislature and advocate for our own demise. I -- I
17 have a real problem with that.

18 My ultimate suggestion on the -- on this
19 bill and the other bills that do something similar
20 is that we just take no position.

21 COMMISSIONER CARR SMITH: Chair, can I ask
22 a clarifying question?

23 CHAIR GIOVANNI: Yeah, that's where we're
24 at, so please do.

25 COMMISSIONER CARR SMITH: Yeah. I'm a

1 little confused, because you were talking about
2 farms and the demise of farms and pig ranches and
3 such. But this says for areas that are already in
4 the urban areas of the county, the specific county.

5 MR. ORODENKER: That's not quite accurate.
6 The -- the bill proposes that the counties be given
7 authority to redistrict lands inside the urban
8 growth boundaries that may currently be ag to urban.
9 So that -- that's the concern.

10 COMMISSIONER CARR SMITH: So if the county
11 determines that this area is part of the urban
12 growth, then you don't think they should have the
13 right to -- to do that?

14 MR. ORODENKER: No, I don't. I think that
15 the -- the due process, constitutional due process,
16 requires that each and every landowner within that
17 county be given a hearing.

18 COMMISSIONER CARR SMITH: Do you not agree
19 that the county provides that hearing?

20 MR. ORODENKER: No, I do not.

21 COMMISSIONER CARR SMITH: Well, I know for
22 a fact that the counties --

23 MR. ORODENKER: Not after the general plan
24 process, no.

25 COMMISSIONER CARR SMITH: Well, I know

1 that the counties do the Ka Pa'akai analysis.

2 CHAIR GIOVANNI: I think -- I think the
3 point is they do the Ka Pa'akai analysis for
4 specific request or petition, but not as part of the
5 general plan. Whereas this bill, if I understand it
6 correctly, says you would redistrict at the county
7 level based on the general plan, which is not the --
8 which does not include some of the -- those
9 considerations.

10 COMMISSIONER CARR SMITH: Thank you.

11 CHAIR GIOVANNI: Is that correct?

12 MR. ORODENKER: That's correct.

13 COMMISSIONER U'U: Chair.

14 CHAIR GIOVANNI: Commissioner U'u.

15 COMMISSIONER U'U: Yeah, just my manao. I
16 -- I've been to -- I've been through the community
17 plan process. Within that process of the community
18 plan, it -- it goes from the general plan -- well, I
19 think community plan, it goes back to the planning
20 commission, and it goes back to the county council.
21 And trust me when I tell you this, you have way
22 more, a lot more testimony at the community plans
23 than we're having currently. It's not close.

24 So what I'm saying is a vetting process --
25 and remind you now that within the community plan,

1 most of the people within the specific community
2 come down. So it's more hyper-focused and
3 hypersensitive within the community. So I disagree.
4 A lot was being said here. It's been vetted through
5 a process that's -- at times, there's 100 people,
6 times there's 20 people.

7 But there's more than two, I can assure
8 you of that. And that two, if you're going to ask
9 them what the zip code is, it's within the
10 community. So it's just my manao. I've been a part
11 of that process, and I think we should have that
12 right, the counties, not the state oversight.

13 I -- I think there's a lot of duplicated
14 processes within the community. I think the reason
15 why it's here -- and definitely I could be wrong.
16 But Lahaina got burned, and some of the community
17 plans within that area was urbanized, but it's
18 different from the state.

19 And when we -- when we have magnitudes
20 that affect residents to that degree, we must take
21 stances that hopefully can create the housing before
22 we get lost in the shuffle. It just is my manao.
23 And I think part of that power goes back to the
24 county. I could be naive, but it seems like it is
25 asking for it.

1 In fact, there's a lot of duplicating
2 bills like this. And again, I could be wrong -- but
3 again, some of those community meetings, a lot more
4 testimony than we have here today, for sure. Thank
5 you.

6 CHAIR GIOVANNI: Thank you, Commissioner
7 U'u. Can I ask you, you know, to -- to expand about
8 -- since you said you've participated directly in
9 the -- in the county level processes? The issue has
10 been raised about the -- the small landowner that is
11 on agricultural land and whether or not he gets "due
12 process" when the county is doing its general
13 planning to redistrict or put his land that's in
14 agriculture into urban.

15 What -- what say does he have in that
16 process? I'm not a lawyer.

17 COMMISSIONER U'U: I think that's a very
18 good question. And -- and again, for some reason --
19 I guess, what I would say that the first time I
20 participated in the community community plan change
21 or the processes when I was on the planning
22 commission, I say 20 plus years ago, yeah. So at
23 that time, that was prior to social media, prior to
24 the news coming on your phone, I mean.

25 So I think at that time, I -- I think was

1 the opposite. I think we -- we -- it was lands was
2 zoned different, but wasn't by way of ag, but it was
3 by ways where people maybe wasn't notified. But I
4 think the last one we had where we were Lahaina, it
5 was a lot of people that showed up.

6 I say, I think that the -- the process now
7 with the social media really gains that traction.
8 And I'll be hard pressed to -- and I could be wrong.
9 It could definitely happen. I'm not saying it's not
10 what -- it's never going to happen. It could
11 happen. But the participation is pretty much --
12 impressed. I'm impressed with the participation.

13 So I'm not saying it can't happen. I'm
14 just saying the participation is great. And -- and
15 for that reason, there's a possibility that, may or
16 may not, but err on the side of that person who --
17 just to let you know, you guys know, my family was
18 in pig farming for 100 years. So you know, when you
19 guys talk about pig farming, I understand pig
20 farming, and I'm not saying it as a speech.

21 I'm just saying, my house, Paia, 100
22 years, we had a big farm. That's what I saying.
23 The slop came from Paia schools. When you have
24 people talk about it, it's pretty cool. But we did
25 it for a living, some of my family, so that's my

1 manao.

2 CHAIR GIOVANNI: Okay. Commissioners.
3 Commissioner Lee.

4 COMMISSIONER LEE: Thank you, Chair.
5 Yeah, I think this bill is really flawed. I'm good
6 with the executive officer just making comments on
7 it when asked. But I agree with Commissioner U'u
8 that there's five of us here who've been county
9 planning commissioners, and that process is very
10 extensive. It's much more extensive than the 45
11 days or whatever that we have to make decisions.
12 They not only have appointed county planning
13 commissioners, they also have elected council
14 members. And yeah, it's in the hundreds, you know,
15 and -- and the county councils have two to three
16 hearings minimum on stuff.

17 So I think this bill is flawed. I'm --
18 I'm okay with Dan just giving expert commentary, but
19 I -- I don't know that I have any position or want
20 to take any position on this. Thank you.

21 CHAIR GIOVANNI: Thank you. Others.
22 Commissioner Carr Smith.

23 COMMISSIONER CARR SMITH: Yeah. I just
24 wanted to note that Hawaii County Planning
25 Department weighed in on this, and they agree with

1 this bill. I'm guessing most counties do. I think
2 it's good to also keep in perspective the fact that
3 Hawaii Island, for example, has something like 2
4 percent of the land is urban.

5 I mean, if you -- if you think about that,
6 do we really want to push back so hard on some of
7 these opportunities for a little bit more land to
8 become urban so that there can be more housing
9 built? Each island is really low, and I'm not sure
10 whether everybody is aware of that or not. But I
11 think it's a good thing to keep in mind. And yeah.
12 So I support my county.

13 CHAIR GIOVANNI: Commissioner Lee.

14 COMMISSIONER LEE: Thank you, Chair.
15 Yeah. I want to acknowledge that it is different on
16 the Big Island, and the testimony that the executive
17 officer may provide, I mean, you know, the
18 legislators can ignore it or not. They're going to
19 do what they want to do, you know. Sometimes,
20 they'll use our reasoning as the excuse, or they
21 could just ignore it altogether. It's up to them.

22 But, you know, I -- I think that if the
23 executive officer testifies factually, then at least
24 the legislators can take that information that, yes,
25 if there are errors and things they haven't

1 considered and they still want to do this, because
2 they want to listen to what the Big Island wants or
3 what other people want, then at least it gives them
4 the basis to fix some of the things that might be
5 wrong. Thank you.

6 CHAIR GIOVANNI: Fair enough.
7 Commissioner U'u.

8 COMMISSIONER U'U: Yeah. Again, thank
9 you. Maui's at 6 percent. You at 2 percent. I
10 just saying it's -- and I get it, you know -- or I
11 don't. At times, I do, but that's why we have the
12 discussions. And -- and I wouldn't say this. I
13 respect everyone's opinion and viewpoint, and I love
14 that discussion. Seems like at home talking to my
15 wife, so brings back -- brings back memories, guys.
16 So just FYI, mahalo.

17 MR. ORODENKER: You have -- you have
18 talks. I get orders.

19 CHAIR GIOVANNI: So my takeaway from the
20 discussion so far, and in the absence of any
21 specific motion otherwise, is to provide a green
22 light, so to speak, to the executive director to
23 provide clarifying testimony to the -- if asked or
24 if -- if at hearings as -- as appropriate with the
25 issues that you see.

1 But I don't want to go away from the other
2 recommendation that was made by the executive
3 officer, because I think it's appropriate. And that
4 is that for -- for bills which in effect -- what was
5 your word -- eliminate the LUC, we should not be up
6 there testifying one way or another. Correct?

7 Correct?

8 MR. ORODENKER: Correct.

9 CHAIR GIOVANNI: Yeah. Okay. So if
10 there's nothing further, I'm going to move on to the
11 next testimony, public testimony on SB 36, if any.
12 And if not, we'll move on.

13 COMMISSIONER MIYASATO: Chair, what's
14 that?

15 CHAIR GIOVANNI: Oh, Commissioner
16 Miyasato, my apologies. I didn't see your hand up.
17 Please proceed.

18 COMMISSIONER MIYASATO: Thank you, Chair.
19 Yeah. I need to address the issue that I spoke of
20 earlier, so I'll be excusing myself.

21 CHAIR GIOVANNI: Okay. We're going to
22 take a -- it's 1:37. I'm going to recess to 1:45.
23 And maybe you'll be back, maybe not. Thank you for
24 the heads up.

25 COMMISSIONER MIYASATO: Okay. Thank you.

1 CHAIR GIOVANNI: Take a recess to 1:45.

2 (Recess taken from 1:37 to 1:45 p.m.)

3 CHAIR GIOVANNI: So Ms. Kwan, do we have
4 somebody who wants to testify on SB36?

5 MS. KWAN: Yes, I have two on the Zoom. I
6 will promote Wayne Tanaka now.

7 CHAIR GIOVANNI: Okay. We're back in
8 session. Wayne Tanaka testified before the
9 discussion. Now he's going to testify after. So I
10 will admonish him to keep his testifier -- his
11 testimony fresh.

12 Mr. Tanaka, welcome back. You will be
13 given an additional two minutes to testify on
14 anything new that you want to say, not repetitive.
15 Please proceed.

16 MR. TANAKA: Thank you so much. And yeah,
17 last time, I promise. I just wanted to make a quick
18 comment, though, since we mentioned Lahaina and Maui
19 kumuhana. Just want to, you know, think about and
20 reflect on who was using up all the water in West
21 Maui, right? Who turned Lahaina into a tinderbox?

22 And if you look at the PUC dockets for
23 (inaudible) irrigation, look at the water commission
24 reports of who's been using water for what, it's
25 these multi-million dollar gentlemen farms and ag

1 lands that have been using 1 percent of the water
2 they're taking for actual agriculture. And
3 otherwise, millions of gallons of water every single
4 day were being used to water green lawns, put into
5 swimming pools, or leave an unlined reservoirs that
6 just seep that water into the ground, you know,
7 creating those conditions for the wildfire and the
8 destruction of Lahaina.

9 And who's responsible for this, right?
10 Who's been letting -- who never used their authority
11 to enforce the ag zoning laws in West Maui? And --
12 and which not only led to the destruction of
13 Lahaina, but also drives up costs for bona fide
14 farmers, for land and housing costs across the board
15 for everyone. It was the county, right, the county
16 planning department.

17 So, you know, our land laws -- use laws
18 aren't duplicative. The counties have their own
19 authorities -- it's their limited authorities of
20 limited capacity, limited line of sight to the
21 bigger picture. And they don't produce the kinds of
22 findings of fact and, you know, the record that you
23 folks do that can show how their land use decisions
24 are -- are made, whose testimony got more weight,
25 and so forth.

1 And on the other hand, the Land Use
2 Commission can make these -- you do make these
3 findings of fact. You can place enforceable
4 conditions on district boundary amendments and those
5 kinds of changes. And so -- and you can protect the
6 public right to address climate destabilization, to
7 protect bona fide farms, to protect the public from,
8 you know, avoidable impacts.

9 And so just wanted to add that as
10 something to reflect on.

11 CHAIR GIOVANNI: Thank you very much.

12 MR. TANAKA: Thank you.

13 CHAIR GIOVANNI: That was new.
14 Commissioners, any comment or question? Thank you,
15 Mr. Tanako.

16 Next testifier.

17 MS. KWAN: Next, I have Tara Rojas. I
18 will promote her now.

19 CHAIR GIOVANNI: She's not testified
20 already today, right? She's new?

21 MS. KWAN: Yeah.

22 MS. ROJAS: Aloha. Can you hear me?

23 MS. KWAN: Are you able to turn on your
24 camera?

25 MS. ROJAS: Yeah. One second.

1 CHAIR GIOVANNI: Ms. Rojas, you're coming
2 on -- there you are. I see you.

3 MS. ROJAS: Aloha. Tara Rojas.

4 CHAIR GIOVANNI: Thank you. Could you
5 please state your name and address?

6 MS. ROJAS: Tara Rojas. So I wanted to
7 say that -- SB36, yes?

8 CHAIR GIOVANNI: Wait, wait, wait, wait.
9 I need your name and address, then I'll swear you
10 in. Then you can say what you want.

11 MS. ROJAS: Tara Rojas and Ewa Beach.

12 CHAIR GIOVANNI: And do you swear your
13 testimony will be the truth?

14 MS. ROJAS: Yes.

15 CHAIR GIOVANNI: Then you have two
16 minutes. Please proceed.

17 MS. ROJAS: Okay. So Tara Rojas and SB36,
18 so I just want to say, you know, again that I -- I
19 strongly oppose SB36, because I just came, you know,
20 for example, from the HCDA meetings and, you know,
21 planning commission, county council meetings. And
22 basically, you know, it's just stripping the Land
23 Use Commission of your critical oversight role.

24 And it forces, you know, the automatic
25 reclassification of lands to urban at county's

1 request and prioritizing, as we notice in the whole
2 state of Hawaii, developers over community voices
3 and environmental responsibilities and concerns.

4 So, you know, counties have a history of
5 approving urban growth without fully considering the
6 infrastructure capacity, we're in a water crisis,
7 the environmental impact, and community needs. And
8 so this bill is an open invitation to unchecked --
9 in addition to what already has been happening
10 throughout the 132 years of this illegal occupation
11 -- of unchecked urban sprawl and land speculation.

12 So we need more safeguards, not less. And
13 so we need to ensure that the land decisions, you
14 know, serve the people and not just private
15 interest. And with that, I also want to just really
16 quickly state that the previous decision that
17 happened about Haseko having a history of
18 controversial land uses and, you know, the bait and
19 switch on the plan, marina changed to lagoon, crack
20 in the water table.

21 So I just want to say disappointment
22 because when a developer shows it to the whole team,
23 does that automatically guarantee a unanimous yes?
24 Where's that same level of urgency when it comes to
25 protecting our land and resources?

1 CHAIR GIOVANNI: Ms. Rojas, I need you to
2 confine your remarks to SB36 at this time, if you
3 don't mind.

4 MS. ROJAS: Yeah. So just avoid rubber
5 stamping developers and realize that your -- your
6 role is really just to protect the aina and the
7 people, not developers, not profit people. Mahalo.

8 CHAIR GIOVANNI: Mahalo. Commissioners,
9 questions, comments from Ms. Rojas? Thank you, Ms.
10 Rojas, for coming forward and making the time today.
11 Thank you.

12 MS. ROJAS: Mahalo.

13 CHAIR GIOVANNI: Okay. So that brings
14 SB36 to --

15 MS. KWAN: I have one more testifier.
16 Chuck Flaherty would like to add additional
17 comments. I will promote him again.

18 CHAIR GIOVANNI: Thank you.

19 MR. FLAHERTY: Mahalo, Mr. Chair. I just
20 wanted to respond to some comments that I made
21 during the discussion. I -- I'm speaking now
22 personally. I participated in the comprehensive
23 review process for the general plan back in the
24 early 2000s for the County of Hawaii, the
25 development of the Kona Community Development Plan,

1 which is the first community development plan on the
2 Island of Hawaii -- there have been five subsequent
3 to that -- as well as participating in the current
4 county general plan comprehensive review process.

5 I want to be clear that the Land Use
6 Commission operates under the state constitution and
7 Hawaii revised statutes. The county general plans
8 operate under the county charters and county code.
9 So we're comparing apples and oranges. The urban
10 expansion areas to which this bill refers are very
11 broad strokes that were put in place primarily
12 around Kailua-Kona, quite frankly, that were put
13 into place as a concept, not with any specific input
14 as to the -- the -- any of the constitutionally
15 protected resources or state laws that may be
16 impacted by that designation.

17 So it really is a very dangerous move to
18 pass this bill because urban expansion area was a
19 broad -- broad brush concept done on a county level
20 without regard to necessarily state laws. Thank you
21 very much.

22 CHAIR GIOVANNI: Thank you, Mr. Flaherty.
23 Commissioners, any further questions for Mr.
24 Flaherty? Thank you, Mr. Flaherty, for coming
25 forward.

1 So that brings SB36 to a close. We have
2 empowered our -- our executive officer to provide
3 testimony along with lines that he recommended,
4 pointing out the concerns about this bill, also to
5 take no position on a bill that would virtually
6 eliminate the LUC. Got that, Mr. Executive
7 Director?

8 MR. ORODENKER: I got it.

9 CHAIR GIOVANNI: Okay. So we'll now move
10 on to the eighth agenda item, decision on
11 commissioner's position regarding SB1079 and HB 502,
12 which are basically the same, one a senate bill, one
13 a house bill. Ms. Kwan, any written testimony was
14 considered earlier, so is there any oral testimony
15 that people have signed up for on these bills?

16 MS. KWAN: Yes, Mr. Chair. I have Chuck
17 Flaherty, who would like to testify on this item.

18 CHAIR GIOVANNI: Oh, Mr. Flaherty. Is he
19 still on?

20 MS. KWAN: Yes.

21 CHAIR GIOVANNI: Very good. Mr. Flaherty,
22 you have two minutes. Please proceed.

23 MR. FLAHERTY: I won't take that long.
24 Thank you, Mr. Chair.

25 With regard to this proposed legislation,

1 the state legislature passed legislation last year
2 that allowed for a minimum of two accessory dwelling
3 units and properties within the state land use urban
4 district. Y'all may have been familiar with that.
5 It was very controversial.

6 Shortly thereafter, though, the County of
7 Hawaii approved a revision of its code that allows
8 up to three accessory dwelling units on land, not
9 just in the state urban district, but also for
10 properties in the state rural district.

11 If the county were to be allowed to submit
12 petitions for declaratory rulings to redesignate
13 agricultural subdivisions into the rural district,
14 then property owners would be able to build up to
15 three additional accessory dwelling units.

16 Given the public infrastructure on the
17 Island of Hawaii is already beyond capacity and the
18 current county general plan comprehensive review
19 process has not in any way taken into consideration
20 the impact of the increased densities that would
21 result from these accessory dwelling units, these --
22 this legislation could have disastrous unintended
23 consequences.

24 And so Hawaii Island Group urges the Land
25 Use Commission to give this an unfavorable

1 recommendation. Thank you very much.

2 CHAIR GIOVANNI: Thank you, Mr. Flaherty.
3 Any questions, comments for Mr. Flaherty? Hearing
4 none, anybody else, Ms. Kwan, on this bill?

5 MS. KWAN: Seeing none in the Q&A feature,
6 chair.

7 CHAIR GIOVANNI: Thank you very much.
8 Mr. Orodenker, will you and staff please provide a
9 brief summary of this proposed legislation and your
10 concerns and recommendations?

11 MR. ORODENKER: Thank you, Mr. Chair.
12 This is -- what -- in what it attempts to accomplish
13 a fairly simple bill, unintended consequences aside.

14 It gives the counties three years by
15 resolution of its county council to submit a
16 petition to the LUC for the redistricting of land
17 from an agricultural district to a rural district if
18 the land has been developed for single family
19 residences that are currently in the agricultural
20 district and subdivided into lots that are no larger
21 than one acre in size, the land is a part of an
22 existing agricultural subdivision, a single family
23 residence is constructed on each lot, and any
24 requirements for chapter 343 are met, and it won't
25 affect neighboring agriculture.

1 It's supported by the county plan, and the
2 county council provides notice, and OPSD has made a
3 recommendation. It gives us the ability to -- gives
4 the Land Use Commission the ability to process those
5 petitions as a declaratory order.

6 This is a cleanup bill. This has been
7 talked about with me at the legislature for some
8 time, going on maybe seven or eight years. Hawaii
9 County in particular has a problem with a bunch of
10 agricultural residential developments that are in
11 the agricultural district and not in the urban
12 district. I understand -- or the rural district,
13 and they have a desire to clean up the problem.

14 I believe that the intent of this bill is
15 good, but I -- I do have concerns, as was mentioned
16 by the testifiers, of unintended consequences. My
17 recommendation is that we submit testimony with
18 concerns, not that we oppose it or support it, but
19 that we just express concerns.

20 CHAIR GIOVANNI: The urban sprawl concern?

21 MR. ORODENKER: No. I think our concern
22 is it mirrors what was -- was just -- just
23 mentioned, and that is that we don't overburden the
24 infrastructure by all of a sudden allowing three
25 homes per one-acre lot.

1 I think that -- you know, that if the
2 legislature so finds, it could amend the bill to
3 ensure that there's not an overburdening of
4 infrastructure. But I mean, from the standpoint of
5 cleaning up the districts, I don't think it's a bad
6 idea.

7 CHAIR GIOVANNI: Okay. Commissioners.
8 Commissioner Carr Smith.

9 COMMISSIONER CARR SMITH: Yeah. Hawaii
10 County has a process for that. I mean, you cannot
11 just add three ADUs without having the
12 infrastructure to support it. So I don't think that
13 that should be an issue from us, because that's
14 already part of their process.

15 MR. ORODENKER: I -- I think that the way
16 I would testify on that would be that -- provided
17 that the infrastructure is in place for whatever,
18 for additional homes. But that's the only comment
19 that I would make on this bill.

20 COMMISSIONER CARR SMITH: Okay. Well, you
21 had said just a minute ago the you would address
22 your concerns. I -- I like it more when you say the
23 things that you like about it.

24 MR. ORODENKER: Oh, okay. Okay. Yeah.

25 COMMISSIONER CARR SMITH: Personally.

1 MR. ORODENKER: Yeah. I mean, I -- I
2 think there are a lot of things to like about this
3 bill. It cleans up the -- the districts. I mean,
4 right now there's a lot of sham districts, you know,
5 agriculture, but, oh, well this is really single
6 family residents. And a lot of the problems that
7 the county is having are related to infrastructure.

8 Because Paradise Park, for instance, in
9 places like that, there's no fire hydrants because
10 it's ag, and they don't want to put it fire hydrants
11 in ag land. There's -- they don't take over the
12 roads, all the rest of those things. So I -- I
13 don't think that the counties are going to submit
14 requests haphazardly and just do it blanket. I
15 think they're going to make decisions on what they
16 can handle. But the intent is good.

17 COMMISSIONER CARR SMITH: Good. Thank
18 you.

19 CHAIR GIOVANNI: Commissioner Lee.

20 COMMISSIONER LEE: Thank you, Chair.
21 Yeah, I note that the senate bill is from Senator
22 Inouye who's from the Big Island. And in Honolulu
23 also, you have to have the infrastructure before you
24 can build the ADUs. But I think that one of the
25 problems has always been promoting local farming and

1 local produce.

2 And -- and one of the big problems is
3 people don't have a place to live if they want to
4 farm. Farming is very difficult, and this might be
5 something that helps that effort. So yeah, anything
6 positive and -- with the cautions, of course, I
7 think it would be a good idea.

8 CHAIR GIOVANNI: So it sounds like we
9 concur with the recommendation to express support
10 for the intent of the bill, provided the
11 infrastructure type issues are dealt with on a case-
12 by-case basis. Is that right?

13 COMMISSIONER CARR SMITH: I think so.

14 CHAIR GIOVANNI: Yeah. Okay.

15 COMMISSIONER CARR SMITH: Yeah. I think
16 this bill originated from Heather Kimball, who was
17 the chair of the county council, an d--

18 CHAIR GIOVANNI: Okay. Okay. Any -- who
19 is it?

20 MS. KWAN: Tara Rojas again.

21 CHAIR GIOVANNI: Okay. Let's hear from
22 Ms. Rojas.

23 MS. KWAN: Ms. Rojas, I'm going to promote
24 you to panelists so you can give your testimony.

25 MS. ROJAS: Okay. Aloha. Rojas. And so,

1 you know, I'm listening to this, and this is my
2 first time in the Land Use Commission. Been to the
3 other meetings and I hear what your discussion
4 about, you know, farmers, mahiai. You want to make
5 it easier for them to farm and then to live.

6 However, it's super easy -- we see it
7 happening always -- you know, when you reclassify
8 agricultural land into rural land, and it's a well-
9 documented, you know, gateway to urbanization. And
10 so this is not a -- like a harmless administrative
11 change. You know, it sets a -- a precedent,
12 possibly dangerous precedent, that weakens long
13 standing land protections.

14 And so agricultural lands, you know, once
15 they're lost, they're lost. They're nearly
16 impossible to restore. And you know, once
17 somebody's on it, are they going to want to, you
18 know, give it up? So just glancing again at --
19 like, just looking at all the bills, was looking at
20 many other bills trying to keep up with too.

21 But basically, like I said, I'm going to
22 bring it in here because they were there, that the
23 privatization, just kind of rubber stamping, you
24 know, always given to developers. Legislation, as
25 we've seen throughout these 132 years, ultimately

1 benefits private developers and not local
2 communities, puts our island's food security at
3 risk, sustainable agriculture, and future self-
4 sufficiency.

5 So instead of fast tracking rezoning, you
6 should be strengthening your protection for
7 agricultural lands to ensure they remain a viable
8 resource for future generations. And so not a
9 speculative development opportunity again, because
10 we know how things work in Hawaii with this whole
11 legislative process.

12 There's just very few bills that really
13 protect the environment and have people's best
14 interests, because people that know this system know
15 how to find the loopholes around it. And I -- I
16 really -- I don't know. I don't have -- my first
17 time again with you all, and just by hearing you say
18 that you -- you back up the concerns that we're
19 mentioning is a good sign.

20 But like I said again, when these
21 developers know the loopholes and like if Haseko can
22 go to the whole team and get it passed, knowing that
23 their history is not for the environment nor the
24 people, rather their profits, that's a huge concern.

25 CHAIR GIOVANNI: Thank you. I need you to

1 conclude.

2 MS. ROJAS: Mahalo.

3 CHAIR GIOVANNI: Mahalo. Commissioners,
4 any question or comments for Ms. Rojas? Thank you,
5 Ms. Rojas, for coming forward again. Appreciate it.

6 Very good. Who is it?

7 MS. KWAN: I have Chuck Flaherty who would
8 like to provide additional testimony.

9 CHAIR GIOVANNI: Mr. Flaherty, nice to
10 meet you again. Please proceed. Oh, you're not on
11 yet. Yes, keep Mr. Flaherty on.

12 Mr. Flaherty, please proceed.

13 MR. FLAHERTY: I'm sorry, Mr. Chair. My
14 computer has a delay when I'm joined as a panelist.
15 So yes, just to follow up, I -- I hear the comments.
16 But just to be clear, when we're -- when we're
17 talking about moving an agricultural subdivision
18 into rural on the Big Island, we're -- we're talking
19 about the potential for up to three accessory
20 dwelling units to be added to each lot.

21 There's no way -- and obviously there's
22 going to be an impact on infrastructure. I really
23 don't understand how the impact on infrastructure
24 can be addressed when there's no way to know what
25 each individual property owner is going to do, how

1 many they're going to add.

2 So if that were to happen, you would have
3 to assume the maximum number of ADUs on the -- on
4 each of the properties in order to assure that the
5 infrastructure would be sufficient. And given that
6 we're already facing the challenge with cesspools,
7 with power brownouts, wastewater issues on the Big
8 Island, I just don't see how -- how this legislation
9 is pragmatically -- works out in the real world.

10 Thank you very much.

11 CHAIR GIOVANNI: Thank you very much.
12 Questions, comments, commissioners? Thank you, Mr.
13 Flaherty.

14 Anybody else, Ms. Kwan?

15 MS. KWAN: Seeing none in the Q&A feature,
16 Chair.

17 CHAIR GIOVANNI: Okay. So Executive
18 Director, are you clear on how to proceed on this
19 one?

20 MR. ORODENKER: Yes, I am, Mr. Chair.

21 CHAIR GIOVANNI: Okay.

22 MR. ORODENKER: I'm reviewing the next
23 bill. Sorry.

24 CHAIR GIOVANNI: So we're down to five
25 commissioners, and we're going to lose Commissioner

1 Hiyashida at 2:30. So if Commissioner Miyasato does
2 not return by 2:30, we will lose a quorum, and we
3 will adjourn the meeting. Heads up.

4 So let's try to do at least one more
5 before Commissioner Hiyashida has to leave at 2:30.
6 Is that correct, 2:30? That's SB114. Has there
7 been anybody wishing to do public testimony on 114,
8 senate bill?

9 MS. KWAN: Nobody used the Q&A feature to
10 testify on agenda item 9.

11 CHAIR GIOVANNI: Thank you. Mr.
12 Orodenker, please give us a summary of this bill and
13 your concerns and recommended testimony.

14 MR. ORODENKER: Thank you, Mr. Chair.
15 This bill creates a process whereby the landowner of
16 a 30 acre parcel could construct senior housing
17 facilities or elderly housing facilities on portions
18 of their land no more than 15 acres.

19 Personally, I -- I'm very conflicted by
20 this measure. I'm not sure what it's attempting to
21 accomplish because it -- it lays out a process
22 that's pretty similar to a 201H process. So I'm not
23 sure why it's necessary, but the intent is a good
24 one. I -- I am concerned that they have -- there
25 are some real long-term problems if the land is not

1 eventually urbanized. But I think this bill lays
2 out a -- somewhat of a process to urbanize land.

3 I honestly don't know what I would say on
4 this measure if it was heard. I think that I would
5 just be there to answer questions, because I'm not
6 -- I mean I have -- I'm not sure what it's -- what
7 the difference is between a 201H process or a -- an
8 elderly housing DBA and what this is proposing. So
9 that's my comment.

10 CHAIR GIOVANNI: Okay. So if I understand
11 you correctly, the intent seems to be favorable, but
12 it's uncertain what it's really intended to -- to
13 do.

14 MR. ORODENKER: Yeah.

15 CHAIR GIOVANNI: And so you're not
16 prepared to offer specific testimony. So you're
17 saying you would not testify on this bill, but be
18 available for Q&A?

19 MR. ORODENKER: Yeah. That -- that's the
20 way I would handle the first hearing of this bill.
21 And if it moved, we would have to see how it was
22 amended before I would make a decision.

23 CHAIR GIOVANNI: Commissioners, any
24 comments or questions on this bill? Commissioner
25 Carr Smith.

1 COMMISSIONER CARR SMITH: Thank you. So
2 Dan, is elderly housing facilities or long-term care
3 a part of the 201H system? It's not, right?

4 MR. ORODENKER: Not necessarily, but if --
5 if a developer of -- I'm speaking from personal
6 experience because one of my previous lives I was a
7 consultant for -- for an association that was doing
8 elderly housing. If you phrase it properly, you
9 know, you can get 201H funding for a project like
10 this and go through the 201H process. If it's
11 artfully done, you fall within 201H.

12 COMMISSIONER CARR SMITH: But if that was
13 as easy as that, don't you think they would have not
14 put this forward?

15 MR. ORODENKER: I'm not sure why this bill
16 was put forward. I -- like I said when I started
17 out, I -- I'm conflicted by this. I'm not -- I'm
18 not sure what they were trying to accomplish. I
19 think that if the aim was really to develop a 201H
20 process for this type of housing, they should have
21 amended 201H.

22 So I mean, that's why I'm saying I support
23 the intent of this bill vehemently because I used to
24 do elderly housing, but I'm not really sure from a
25 procedural standpoint what they're trying to

1 accomplish here.

2 COMMISSIONER CARR SMITH: So I would -- I
3 would appreciate you stating that you support the
4 intention.

5 MR. ORODENKER: I can do that.

6 CHAIR GIOVANNI: Commissioner Lee.

7 COMMISSIONER LEE: Yeah. I'm a little
8 confused too. I didn't realize that with 201H you
9 can do district boundary amendments.

10 MR. ORODENKER: 201H provides a process
11 for a truncated district boundary amendment
12 proceeding. Once the county council has made a
13 determination on what it is willing to waive, we
14 have 45 days to do a DBA, which really means --

15 CHAIR GIOVANNI: Do it.

16 MR. ORODENKER: Yeah, what we're just
17 doing.

18 COMMISSIONER LEE: Okay. Thank you.

19 CHAIR GIOVANNI: Okay. Commissioner U'u,
20 did you --

21 COMMISSIONER U'U: I'm good what director
22 said earlier.

23 MR. ORODENKER: Thank you.

24 CHAIR GIOVANNI: Yeah, me too. It's like
25 you appreciate the intent, not sure why it's

1 necessary, here to answer questions. Okay. Pardon
2 me?

3 MS. KWAN: There's testimony.

4 CHAIR GIOVANNI: Okay. So let's return to
5 the second round of public testimony. Is anybody
6 there?

7 MS. KWAN: Yes. I'm going to call for
8 Tara Rojas.

9 CHAIR GIOVANNI: Okay. We'll leave her on
10 too.

11 MS. ROJAS: Aloha. So, you know, just
12 again, looking at it. Majority of them, they're --
13 they're so - it seems so, like, repetitive and just
14 opposing a lot of them. There's just a few I
15 support, like couple support with reservations. And
16 like from 14 on, it's, like, support because it's
17 for mahiai.

18 Again, as you all were discussing right
19 now, love our kupuna, and yes, you know, we need
20 elderly housing. However, permitting development on
21 agricultural land, again, sets a concerning, you
22 know, precedent and so can lead to further
23 encroachment and on lands, you know, vital for
24 agriculture and so potentially, you know,
25 compromising again food security, that's ag land,

1 right, and sustainable farming practices.

2 So it's essential, you know, to explore
3 alternative solutions that do not involve converting
4 agricultural spaces. So just -- just for a heads
5 up, the next one, like, you know, the SB1157, like a
6 --

7 CHAIR GIOVANNI: Don't go there. Just
8 stay --

9 MS. ROJAS: Yeah, okay. Because it just
10 seems so repetitive and it's like, oh, my gosh --

11 CHAIR GIOVANNI: I'm sorry. But that's
12 the process we have.

13 MS. ROJAS: I know.

14 CHAIR GIOVANNI: One by one, we're taking
15 them. We're not doing --

16 MS. ROJAS: Yeah. So that's my comment
17 that these bills try in so many different ways to do
18 the same thing. And it just takes a lot of time
19 when -- yeah. You just have to have the right
20 mindset, decolonized mindset, to be able to make the
21 right decisions for Hawaii --

22 CHAIR GIOVANNI: Fair enough.

23 MS. ROJAS: -- not in favor of developers,
24 yeah, of for-profit. It's for --

25 CHAIR GIOVANNI: Okay. Thank you. Thank

1 you.

2 MS. ROJAS: Mahalo.

3 CHAIR GIOVANNI: We understand where
4 you're coming from.

5 MS. ROJAS: Mahalo.

6 CHAIR GIOVANNI: Commissioners, anything
7 for Ms. Rojas? No. Okay. Is Mr. Flaherty signed
8 up?

9 MS. KWAN: For the next agenda.

10 CHAIR GIOVANNI: Okay. So you're good to
11 go on this one?

12 MR. ORODENKER: Yes, I am, Mr. Chair.

13 CHAIR GIOVANNI: Okay. So we're going to
14 -- we got 10/12 minutes left. We're making headway.
15 Senate Bill 1117.

16 MR. ORODENKER: 1157.

17 CHAIR GIOVANNI: Oh, my eyes. Put my
18 glasses on. 1157. My apologies. So Mr. Flaherty
19 is available to testify on this bill?

20 MS. KWAN: Yes. Mr. Flaherty has signed
21 up for oral testimony. Go ahead and turn your mic
22 and camera on.

23 CHAIR GIOVANNI: Mr. Flaherty, please
24 proceed.

25 MR. FLAHERTY: Hello, Mr. Chair. Yes. On

1 bill -- and actually, it sounded -- it's related to
2 the next agenda item, too, but I'll testify on this
3 one. The County of Hawaii is currently conducting a
4 comprehensive review of its general plan. Since the
5 county -- Hawaii Planning Director issued the
6 current draft general plan, referred to as General
7 Plan 2045, there have been common themes in public
8 testimony.

9 One theme is related to the fact that the
10 planning department engaged a private contractor to
11 place the general plan to --

12 CHAIR GIOVANNI: Mr. Flaherty -- Mr.
13 Flaherty, could you clarify?

14 MR. FLAHERTY: Yes.

15 CHAIR GIOVANNI: Did you say Kauai or
16 Island of Hawaii?

17 MR. FLAHERTY: The Island of Hawaii. I'm
18 sorry, yes.

19 CHAIR GIOVANNI: Thank you. Okay.

20 MR. FLAHERTY: I'm speaking -- I'm
21 basically speaking about issues with -- these state
22 issues from the -- from the perspective of the
23 County of Hawaii. I apologize, yes.

24 CHAIR GIOVANNI: Thank you. Please
25 proceed.

1 MR. FLAHERTY: So one theme is related to
2 the fact that the planning department engaged a
3 private contractor to place the General Plan 2045 on
4 an online platform that required a software -- the
5 public to learn a software to provide comments on
6 the written text and to learn another software
7 program in order to review and comment on the land
8 use maps.

9 This immediately disenfranchised a large
10 portion of the county's legal residents. The County
11 Windward Planning Commission is conducting a special
12 meeting to review the draft general plan 2045 at
13 this very moment. If the commissioners were to
14 watch public testimony being submitted at this
15 meeting, as well as the prior meetings of the
16 Leeward and Windward Planning Commissions of the
17 Island of Hawaii on YouTube, you would see that the
18 draft general plan is not only opposed, but that the
19 public has only been recently learning of the
20 comprehensive review process because of increased
21 attention by social media influencers.

22 Therefore, the Hawaii Island Group urges
23 the Land Use Commission to not relinquish --
24 relinquish its authority to county general plans
25 and/or community development plans and to give this

1 an unfavorable recommendation.

2 And I apologize, I have to leave. But
3 this testimony also relates to the -- the next
4 agenda item as well. Thank you very much.

5 CHAIR GIOVANNI: We're going to adjourn
6 after this, Mr. Flaherty, after consideration of
7 this agenda item. So if you want to participate in
8 the next agenda item, we'll see you at 10:00 in the
9 morning.

10 MR. FLAHERTY: Thank you very much.

11 CHAIR GIOVANNI: Okay. Mr. Orodener --
12 oh, you got one more. I'm sorry.

13 MS. KWAN: Yeah. Tara Rojas said she
14 would like to testify on this item, as well.

15 CHAIR GIOVANNI: Okay. Very well. Ms.
16 Rojas, please proceed when you're ready.

17 MS. ROJAS: Oh, didn't realize I was still
18 on. Okay. Aloha. So this bill, you know, really
19 reduces the state level oversight, like the previous
20 testifier just said, you know, to permit counties to
21 reclassify without, you know, the Land Use
22 Commission involvement and so potentially leading to
23 inconsistent land use decisions and, again,
24 increased urbanization of rural areas.

25 And so maintaining your LUC oversight

1 ensures a balanced approach to development and again
2 just preserving the integrity of rural communities.
3 We got to keep Hawaii Hawaii. There's no reason to
4 see an undeveloped plot of land and like: Oh, my
5 gosh, I got to develop it. You know, that's what it
6 is.

7 You got to leave the land as is. You got
8 to restore ahupua'a mindset and practice. You got
9 to restore and -- you know, for food systems, not
10 for development. But how the system is -- is rigged
11 or worked or made or started, it's all a foreign,
12 not-of-here mindset. And it's in bylaws. And the
13 bylaws state that we have to develop, and the bylaws
14 say that we have to do this.

15 And it's like when is common sense going
16 to come back to, one, realize don't build on the
17 coastline, first of all. You see that Maui
18 apartment building, the base foundation
19 destabilized, you know, because it was built on
20 marshland. And you see all the mud cleanup. It's
21 like when is this illegally occupying state going to
22 learn to decolonize their mindset?

23 You -- you just ask the kanaka that know
24 and have kiloed (phonetic) that area, listen to them
25 when it says no, not to build. But because you got

1 county planning commissions' bylaws and HCDA
2 agencies built, and they're all just going to build
3 and build and build till there's like no land left.

4 I saw it in Kalaeloa here in Oahu where
5 they said: Oh, you know what, there was supposed to
6 be different zoning levels. Really quick, there's
7 different zoning levels. One is like --

8 CHAIR GIOVANNI: Again, you need -- we
9 need for you to conclude.

10 MS. ROJAS: Okay. I'll conclude. That
11 they had zero zoning level, just like the mauna.
12 Oh, but because it got disturbed, now there is no
13 pure nature, just only area. So that's this
14 mindset. That's what you got to protect, the pure -
15 - just leave the land as is, you know, rural and/or
16 for agriculture, for traditional ahupua'a mindset
17 and agriculture practices.

18 CHAIR GIOVANNI: Thank you.

19 MS. ROJAS: Mahalo.

20 CHAIR GIOVANNI: Commissioners, any
21 comments or questions for Ms. Rojas? Hearing none,
22 Dan Orodenker, please give us a summary of this bill
23 and your recommendations on and concerns.

24 MR. ORODENKER: Thank you, Mr. Chair.
25 This bill is similar to SB36, which we already

1 discussed as agenda item 7. It authorizes the
2 counties to undertake district boundary amendments
3 consistent with the general plan.

4 However, I think this bill is even more
5 flawed, because it allows the counties to
6 consolidate proceedings to amend state and land use
7 boundaries with the county proceedings to amend the
8 general plans and development plans. Once again, I
9 would take the same position that I did with SB36
10 and that is that we should only provide comments.

11 CHAIR GIOVANNI: What comments?

12 MR. ORODENKER: My comments would be that
13 the -- the bill, I have concerns about the
14 appropriateness of consolidating proceedings and the
15 due process involved with this type of proposal.

16 CHAIR GIOVANNI: So just to remind, on
17 SB36, our position was to take no position
18 explicitly, but to enable you to address questions
19 and share concerns.

20 MR. ORODENKER: That is correct.

21 CHAIR GIOVANNI: And you want the same --
22 you're recommending same for SB1157; is that
23 correct?

24 MR. ORODENKER: That's correct.

25 CHAIR GIOVANNI: Okay. Commissioners, you

1 good with that?

2 COMMISSIONER U'U: I'd just like to make a
3 note. I -- I know a lot have been talk is about --
4 it's about giving the powers to the county and maybe
5 the state should have the oversight. I just wanted
6 to point out that the -- the recommendations and the
7 bills that's being proposed or vetted today is made
8 by the state representatives who wants to give some
9 power back to the county.

10 So we hear we don't want to give county
11 and well -- and I hear people testify and say the
12 state should have the oversight. But I just wanted
13 to make mention that again the bills we're being
14 heard today by state representatives that wants to
15 give it back to the county, it seems like. And
16 again, it's something they can bet on their own. We
17 can share our manao with that also.

18 CHAIR GIOVANNI: Yeah. I think that's a
19 great observation, Commissioner U'u. But at the
20 same time, I think that we're getting a small dose
21 today of what the legislature is going to be
22 experiencing in terms of public comments and
23 concerns.

24 And I -- like I said earlier, I think
25 that's in -- more in their wheelhouse of what they

1 do day to day, as opposed to what we do as
2 regulators that are here to enforce existing laws
3 rather than worry too much about what might happen.
4 That's my position. But thank you for that comment.
5 That was interesting and observant.

6 Other comments? Commissioner Carr Smith,
7 are you winding up for a comment?

8 COMMISSIONER CARR SMITH: I guess. Yeah,
9 I hear what you're saying, but I -- I also feel like
10 the counties are asking for this over and over on
11 different levels for a reason. And I don't think we
12 should just be disregarding them. It's obvious that
13 -- that they wish that the process was different so
14 that they could weigh in more. And I think they
15 know their -- their county, their island better than
16 we do.

17 So I tend to give more weight to what the
18 counties feel about these bills. I don't think we
19 need to do this push and pull and ego thing or power
20 that we need to maintain the power over these
21 things. If it's best for the county to perhaps have
22 more voice, then I think that's appropriate.

23 CHAIR GIOVANNI: Well, that's what the
24 legislature and the governor will decide at the end
25 of the day. And the counties will -- my expectation

1 is they'll represent their point of view. And I
2 expect there are -- there are entities within the
3 state, as Commissioner U'u said, that are
4 sympathetic to those views and agree technically
5 with those views.

6 COMMISSIONER CARR SMITH: Well, that's the
7 reason we're having this conversation so that we can
8 all weigh in, right?

9 CHAIR GIOVANNI: Yeah.

10 COMMISSIONER CARR SMITH: Yeah. So that's
11 --

12 CHAIR GIOVANNI: Hopefully, we hear you.

13 COMMISSIONER CARR SMITH: Yeah.

14 CHAIR GIOVANNI: Yeah. And I want -- I
15 want our executive director to hear you, as well, as
16 he goes forward to represent. So anything else on
17 this bill?

18 MS. KWAN: We have one testifiers.

19 CHAIR GIOVANNI: Okay. Let's hear that
20 testifier.

21 MS. KWAN: Tara Rojas.

22 CHAIR GIOVANNI: Mr. Miyashida (sic),
23 please hang on -- Hiyashida, hang on for one minute.
24 Can you hang on for one? Huh? We're not voting,
25 but we -- I'm going to lose a quorum, and I can't

1 even hear this. I need a quorum to hear this
2 testimony.

3 MS. ROJAS: It's a really quick one.

4 CHAIR GIOVANNI: Huh? Oh, okay. Go. Go.
5 Thank you very much.

6 MS. ROJAS: Okay.

7 CHAIR GIOVANNI: Who -- who wants to speak
8 out?

9 MS. ROJAS: Yeah. So I just want to just
10 say one really quick thing. I hear what you said
11 and I -- yeah, I'm usually just also for the -- the
12 county too. And that's just the whole thing about
13 this. It just depends. Like, do the people sitting
14 in the county seats making the decision have the
15 right mindset?

16 And it's basically -- even at this, it's
17 like that the people -- the people actually have the
18 answers. Even technically I'm going to say this not
19 even like the Land Use Commission or even like the
20 county, it's like the people who just allow your
21 pono and you have the right mindset, then that's the
22 right decision.

23 So whether you're the state, which
24 actually I'm not for -- but you know, the county,
25 but you have actually people that are not fully pono

1 in the county because they're of the profit mindset,
2 greed mindset, so again, whatever your position, you
3 just have to be pono, decolonize your mind, and with
4 that make your decision.

5 CHAIR GIOVANNI: Thank you very much.

6 MS. ROJAS: Mahalo.

7 CHAIR GIOVANNI: Any questions for Ms.
8 Rojas? Hearing none, thank you.

9 So again, in summary, you -- you are to
10 express a comment similar to --

11 MR. ORODENKER: SB36

12 CHAIR GIOVANNI: -- 36 and take no formal
13 position one way or the other.

14 MR. ORODENKER: Understood, Chair.

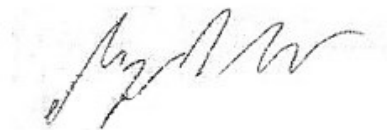
15 CHAIR GIOVANNI: With that, I'm going to
16 recess today's meeting and ask you to come back at
17 10:00 tomorrow morning and we'll begin with matter
18 number 11. Is that correct, Ms. Kwan, number 11 is
19 next? We will see you tomorrow. Thank you very
20 much. We are adjourned for today -- recessed for
21 today.

22 (Meeting recessed at 2:32 p.m.)
23
24
25

CERTIFICATE

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

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

A handwritten signature in cursive script, appearing to read 'Abigail Bockholt', is centered on the page.

Abigail Bockholt