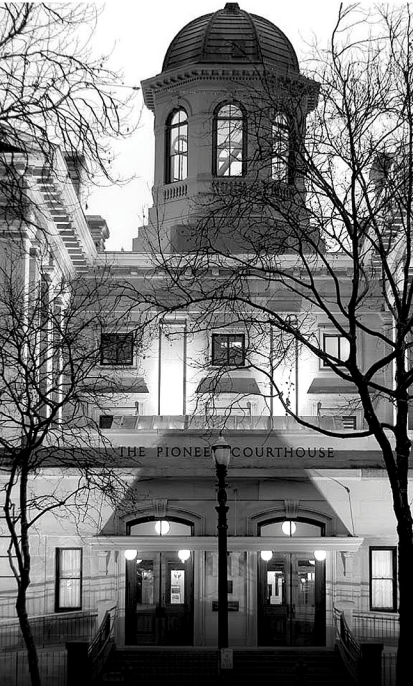




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STATE OF HAWAII
LAND USE COMMISSION
Meeting held on June 24, 2026
Commencing at 9:30 a.m.

Held at
VIRTUAL: <https://us02web.zoom.us/j/89448666708>
King Kamehameha's Kana Beach Resort, Conference Room 4
75-5660 Palani Road, Kailua-Kona, HI 96740
FINAL

I. CALL TO ORDER

II. DR21-73 Honoipu Hideway, LLC, Petition for Declaratory Order (Hawai'i)

To Consider the Remanded Petition for a Declaratory Order for Boundary Interpretation under Hawai'i Administrative Rules ("HAR") §15-15-22 for certain land consisting of approximately 17.5470 acres situated at 56-102 Old Coast Guard Road. The matter is before the Land Use Commission on remand following the opinion of the Hawai'i Supreme Court in Hono'ipu Hideaway, LLC v. Land Use Commission (Civil Case 3CCV-22-00000008), which vacated the Commission's Decision and Order and remanded the matter for further proceedings. The remand hearing is conducted pursuant to HAR §15-15-100(a)(3).

Files pertaining to this docket are available at: <https://luc.hawaii.gov/dr21-73>

Parcel information: Tax Map Key: (3) 5-6-001:074. Approximately 17.547 acres located in Kapa'a-Upolu, North Kohala, County of Hawai'i, State of Hawai'i.

III. Approval of Meeting Minutes for May 13, 2026 and May 14, 2026

Meeting Minutes are available at:

<https://files.hawaii.gov/luc/meetings/minutes/2026/2026-05-13.pdf>

<https://files.hawaii.gov/luc/meetings/minutes/2026/2026-05-14.pdf>

IV. Election of Commission Officers for Fiscal Year 2027 (July 2026 -- June 2027)

The Commission will discuss and take action on the election of Commissions officers for Fiscal Year 2027.

V. Discussion on Protocol for Executive Officer's Annual Performance Evaluation

for Fiscal Year 2026 (July 2025 -- June 2026)

The Commission will discuss the process and protocol for conducting the Executive Officer's annual performance evaluation for Fiscal Year 2026.

VI. Tentative Meeting Schedule

VII. Adjournment

BEFORE:

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PARTICIPANTS

JUNE 24, 2026

LUC COMMISSIONERS

Brian Lee

Bruce U'u

Ken Hayashida

Ku'ike Kamakea-'Ohelo

Mel Kahele

Michael Yamane

Myles Miyasato

LUC STAFF

Daniel Orodenker, Executive Officer

Scott Derrickson, Chief Planner

Martina Segura, Staff Planner

Ariana Kwan, Chief Clerk

Miranda Steed, Esq. Deputy Attorney General

PETITIONER COUNSEL: HONO'IPU HIDEAWAY, LLC

Calvert Chipchase, Esq.

Christopher Goodin, Esq.

PARTICIPANTS CONTINUED

JUNE 24, 2026

STATE OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT
("STATE" or "OPSD")

Alison Kato, Deputy Attorney General

Leo Asuncion, LUD Program Administrator

PUBLIC TESTIMONY

Linda Halbritter

Jeff Halbritter

Cindy Freitas

HAWAII LAND USE COMMISSION MEETING

JUNE 24, 2026

9:45 A.M.

CHAIR LEE: All right. Aloha mai kakou, and good morning, everybody. It is now 9:45 a.m., and we're going to call to order the June 24th, 2026 Land Use Commission meeting. This is a hybrid meeting being held in person at the King Kamehameha Kona Beach Resort, Conference Room 4, at 75-5660 Palani Road, Kailua-Kona, Hawai'i 96740, and with virtual participation via Zoom.

This meeting is open to the public. Please be advised that this meeting is being recorded via Zoom as well, and the recording will be posted to YouTube and used for court reporting purposes. Your continued participation is your implied consent to be part of the public record of this event.

So if you do not wish to be part of the public record, you should exit this meeting now. For those attending via Zoom, please note that the question and answer feature will only be used for signing up for public testimony, and all other communications through Zoom will not be monitored

1 nor made part of the meeting record.

2 Written communications can be emailed to
3 the Land Use Commission office at
4 dbedt.luc.web@hawaii.gov. And for all meeting
5 participants, please speak slowly, clearly, and
6 directly into your microphone. And before speaking,
7 please state your name to identify yourself for the
8 record. We will also share with all participants
9 that we are going to take breaks from time to time,
10 about every hour.

11 Okay. So, for everyone, my name is Brian
12 Lee, and I will be serving as the Land Use
13 Commission Chair today. There are seven seated
14 commissioners. Joining with me today in person is
15 Commissioner Ken Hayashida from Oahu; Commissioner
16 Mel Kahele from Oahu; Commissioner Ku'ike Kamakea-
17 'Ohelo from Oahu; Commissioner Bruce U'u from Maui;
18 Commissioner Mike -- Michael -- Michael Yamane from
19 Kaua'i; Commissioner Myles Miyasato from Hawai'i,
20 the Big Island.

21 Also in attendance today is the LUC
22 Executive Officer Daniel Orodenker; the LUC Chief
23 Planner Scott Derrickson; the LUC Staff Planner
24 Martina Segura; the LUC Chief Clerk Ariana Kwan; the
25 LUC Attorney General Miranda Steed. And, again,

1 court reporting transcriptions are being done from
2 this Zoom recording.

3 All right. Agenda Item 2 is to Consider
4 the Remanded Petition for a Declaratory Order for
5 Boundary Interpretation under Hawai'i Administrative
6 Rules ("HAR") Section 15-15-22 for certain land
7 consisting of approximately 17.5470 acres situated
8 at 56-102 Old Coast Guard Road.

9 This matter is before the Land Use
10 Commission on remand following the opinion of the
11 Hawai'i Supreme Court in Hono'ipu Hideaway, LLC v.
12 Land Use Commission (Civil Case SCOT-240000498)
13 (sic), which vacated the Commission's Decision and
14 Order and remanded the matter for further
15 proceedings. The remand hearing is conducted
16 pursuant to HAR Section 15-15-100(a)(3).

17 Will the party now -- the petitioners
18 please identify yourself for the record.

19 CALVERT CHIPCHASE: Yes. Good morning,
20 Chair, good morning, Members, Mr. Orodenker, and to
21 everyone. I'm Cal Chipchase. Next to me is Chris
22 Goodin. We represent the petitioner.

23 CHAIR LEE: Thank you. Good morning, Mr.
24 Chipchase, Mr. Goodin. Have you reviewed HAR
25 Section 15-15-45.1 regarding reimbursement of

1 hearing expenses?

2 CALVERT CHIPCHASE: Yes, Chair.

3 CHAIR LEE: Thank you. All right. In
4 accordance with HRS Section 84-14, commissioners are
5 not allowed to take any official action affecting a
6 business in which they or a member of their family
7 has a financial interest. They must therefore
8 recuse themselves from this matter if there's any
9 benefit, monetary or otherwise, to themselves or
10 members of their family.

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

18 Do any of the commissioners have any
19 conflicts of interest or disclosures to make? Okay.
20 Seeing none, as a reminder, commissioners are
21 prohibited from engaging in ex parte communications
22 regarding pending or future docket matters pursuant
23 to HAR Section 15-15-62. This includes off-the-
24 record discussions with parties, attorneys,
25 applicants, or interested persons during recesses or

1 breaks in the proceedings.

2 To ensure transparency, fairness, and
3 public trust in the Commission's process, all
4 discussions relating to docket matters must occur on
5 the record. During the public meeting,
6 commissioners and parties are respectfully asked to
7 avoid any off-the-record communication concerning
8 matters before the Commission.

9 Okay. Let me briefly explain our
10 procedures for today. First, we will acknowledge
11 any written testimony that may have been submitted
12 for the record. We will then open the floor to
13 members of the public who wish to provide oral
14 testimony. After public testimony, we will invite
15 representatives from the county and the state to
16 offer testimony in their capacity as interested
17 governmental entities, not as formal parties to the
18 petition.

19 Next, the staff planner will give a
20 briefing on the staff report that has been posted
21 for this docket. Then the petitioner will be called
22 upon to make their presentation. Following the
23 presentation, commissioners will have the
24 opportunity to ask questions and provide comments.

25 We will then reopen the floor for any

1 additional or new public testimony. Finally, the
2 Commission will deliberate on this matter and
3 determine what action to take on this petition. The
4 Chair would like to once again remind all
5 participants to speak slowly, clearly, and directly
6 into their microphones.

7 And before speaking, please state your
8 name and identify yourself for the record. This
9 ensures that our transcriber can produce an accurate
10 transcript of these proceedings. Are there any
11 questions now about our procedures for today? Okay.
12 Seeing none, as stated on today's agenda, please be
13 informed that the relevant records and documents
14 pertaining to this matter can be accessed for review
15 on the LUC website at [luc.hawaii.glov](http://luc.hawaii.gov) -- .gov -- I'm
16 sorry -- luc.hawaii.gov/DR21-73.

17 Before proceeding further, the Commission
18 should address the supplemental filings received in
19 2026 in this matter following the remand from the
20 Hawai'i Supreme Court. Mr. Chipchase, the
21 Commission will consider whether the supplemental
22 filings received in 2026 may be admitted into the
23 record for purposes of these remand proceedings.

24 And as a threshold matter, please address
25 two things: first, why each supplemental filing is

1 relevant to the issues remanded by the Hawai'i
2 Supreme Court, and second, why this material was not
3 presented at the original December 22nd, 2021
4 hearing. Is there any -- oh, yes, Ms. -- Madam
5 Deputy?

6 MIRANDA STEED: Let him respond.

7 CHAIR LEE: Yes. Please go ahead, Mr.
8 Chipchase.

9 CALVERT CHIPCHASE: Happy to, Chair. So
10 the -- the opportunity to rehear this following
11 remand gives us an opportunity to make sure that we
12 have a complete record, to make sure that you get
13 things right, that the Commission reaches the
14 correct decision based on the evidence.

15 Given the time that everyone has invested
16 in this proceeding so far, I think it's going on
17 about seven years, when we get to the timeline
18 portion and there's a timeline set out in the staff
19 report, it makes sense to have all the available
20 information and -- and to make sure we get it right.
21 Some of that information we identified after the
22 remand and -- and filed it with the Commission.

23 The specific exhibits that we believe are
24 -- are relevant to the Commission's consideration
25 that weren't part of the original record include the

1 Supreme Court's opinion in this case, which set the
2 standard of review for the Commission. That's
3 Exhibit 40.

4 Exhibits 41, 42, and 52 are public
5 testimony from the last hearing. Exhibits 43
6 through 48 and 51 are boundary interpretations by
7 this Commission in adjacent or nearby properties in
8 the area following the rule that we suggest is the
9 rule that the Commission should follow for this
10 boundary interpretation, and so directly on point.

11 Exhibit 49 is a GIS map from the County of
12 Hawai'i's Real Property Tax website. Exhibit 50 is
13 the 1974 Commission map for Hawi, North Kohala,
14 which relates to boundary interpretation that
15 followed the same rule that we suggest the
16 Commission should follow in this case.

17 Exhibits 4A, 5B, 8A, 8B, 11A, and 13A2 are
18 existing exhibits, but we did TMK overlays so that
19 the properties we're referring to are easier to see
20 on those maps. Those overlays were done with R.M.
21 Towill, and so we're confident in their accuracy,
22 and we -- we would have a witness testify today if
23 there were any questions as to how those were
24 prepared.

25 So given the -- the nature of the

1 additional exhibits and then the related filings are
2 all just briefings, we -- we believe there's ample
3 reason to accept them and ensure that we have a
4 complete record and an accurate decision today.
5 Thank you, Chair.

6 CHAIR LEE: Is there any discussion from
7 commissioners regarding acceptance of the
8 supplemental filings into the record? Okay. Seeing
9 there's no -- oh -- all right. No discussions.
10 Okay. So let's see. If there's no further
11 discussion, the Chair will entertain a motion
12 regarding whether the supplemental filings received
13 in 2026 shall be admitted into the record for
14 purposes of the remand proceedings.

15 COMMISSIONER HAYASHIDA: Commissioner
16 Hayashida, motion to admit.

17 CHAIR LEE: Okay. It's been moved by
18 Commissioner Hayashida. Is there a second?

19 COMMISSIONER U'U: Second.

20 CHAIR LEE: Seconded by Commissioner U'u
21 to accept. All right. Is there any discussion?
22 Okay. No -- seeing no discussion, I'm going to ask
23 the executive director to conduct a roll call vote
24 for accepting the supplemental filings into the
25 record for purposes of the remand proceedings.

DANIEL ORODENKER: Thank you, Mr. Chair.
The motion is to accept -- admit the additional
filings into the record.

Commissioner Hayashida?

COMMISSIONER HAYASHIDA: Aye.

DANIEL ORODENKER: Commissioner U'u?

COMMISSIONER U'U: Aye.

DANIEL ORODENKER: Commissioner Miyasato?

COMMISSIONER MIYASATO: Aye.

DANIEL ORODENKER: Commissioner Kahele?

COMMISSIONER KAHELE: Aye.

DANIEL ORODENKER: Commissioner Kamakea-
'Ohele?

COMMISSIONER KAMAKEA-'OHELO: Aye.

DANIEL ORODENKER: Commissioner Yamane?

COMMISSIONER YAMANE: Aye.

DANIEL ORODENKER: Chair Lee?

CHAIR LEE: Aye.

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

CHAIR LEE: Okay. Thank you, Mr.
Orodenker. All right. So now, at this time, the
Commission will consider entering into executive
session pursuant to HRS Section 92-5(a)(4), for the
purpose of consulting with its legal counsel on

1 questions and issues pertaining to the Commission's
2 powers, duties, privileges, immunities, and
3 liabilities arising from the Hawai'i Supreme Court's
4 remand of this matter.

5 This Commission seeks legal advice
6 regarding the scope of the remand proceedings, the
7 Commission's authority and obligations under the
8 court's opinion, and procedural matters necessary
9 for the conduct of this proceeding. Is there a
10 motion now to enter into executive session and to
11 permit the executive officer, planners, and chief
12 clerk to remain during executive session?

13 DANIEL ORODENKER: Chair, just a quick
14 question.

15 CHAIR LEE: Sure.

16 DANIEL ORODENKER: Do you want to have
17 public testimony first in case they need to go
18 somewhere, or you want to move right into it? Your
19 call.

20 CHAIR LEE: Okay. Yeah, let's -- is there
21 a public testimony before we go into executive
22 session? It looks like there is. All right. Yes,
23 why don't we take it so that we have as much
24 information to consider as possible. Please go
25 ahead. I'm going to swear you in before you

1 testify.

2 Okay. Will you please raise your hand.

3 All right. Will you please swear or affirm that the
4 testimony you're about to give is the truth?

5 LINDA HALBRITTER: Yes.

6 CHAIR LEE: Okay. Thank you very much.
7 Please proceed.

8 LINDA HALBRITTER: Yes. My name is Linda
9 Halbritter. Aloha Chair Lee and members of the Land
10 Use Committee. Thank you for taking the time to
11 hear my testimony. I have lived in North Kohala for
12 45 years. My home is at 56-105 Old Coast Guard
13 Road, right above the Coast Guard Station.

14 I look down on the pastures between my
15 home and the Old Coast Guard housing. I have lived
16 with my family for decades, and I can remember when
17 the radio antenna in the pasture stood 650 feet
18 tall. I used that red light to -- as a beacon
19 driving home from working at the Mauna Kea Beach
20 Hotel.

21 After the Coast Guard left, things got a
22 little run-down. The pasture wasn't grazed anymore,
23 so it got taller and overgrown. The road got bad.
24 It was a complete eyesore. Since Adrian and
25 Nathan's family have owned the property, the Coast

1 Guard has been much better.

2 They worked with the county right away to
3 create the shoreline trail and the public parking
4 for the -- for the public. They fixed up all the
5 problems down there, and they helped improve the
6 area too. They helped my son fix the road because
7 it was almost impassable. Even the ambulance didn't
8 want to come down. The potholes hurt my back every
9 day, and I wrote and called the county government to
10 fix it and -- the road for decades. But together,
11 we made a huge improvement for the public.

12 Besides our home is right next door, I
13 looked at the maps and the pictures of the -- quite
14 a while. It was clear that the -- the road on the
15 map does not match the actual road that has been
16 there in front of the Coast Guard housing. And it
17 also is clear to me that the whole coastline from
18 the road to the ocean remains protected no matter
19 what you decide today.

20 I really don't see any reason this map
21 shouldn't be fixed. It is not a risk to the
22 neighborhood or the coast. These folks do
23 everything the right way, and they are trying to get
24 this problem fixed by following the rules. I
25 support this request and hope that you can fix this

1 error. Thank you.

2 CHAIR LEE: Okay. Thank you. Are there
3 any questions for the testifier? Okay. Seeing
4 none, thank you very much for your testimony today.

5 LINDA HALBRITTER: You're welcome.

6 CHAIR LEE: Okay. All right. Yeah,
7 that's it. Thank you. Okay.

8 All right. So, now, I think on the advice
9 of our counsel, we should go into executive session,
10 but we need a motion for that, and it's just to
11 permit the executive officer and -- and our deputy
12 attorney general and the commissioners to go into
13 executive session. Is there such a motion?

14 COMMISSIONER MIYASATO: To -- just
15 procedurally, sorry --

16 CHAIR LEE: Yes.

17 COMMISSIONER MIYASATO: -- no -- no
18 testimony -- do we close testimony?

19 ARIANA KWAN: I see none in the Q&A
20 feature on Zoom indicating they want to give
21 additional testimony.

22 CHAIR LEE: Oh, okay. Let's do that then.
23 Sorry about that. Thank you.

24 COMMISSIONER MIYASATO: No, just close --
25 yeah, just close public testimony.

1 CHAIR LEE: Yes, let's take public
2 testimony.

3 ARIANA KWAN: I have a -- oh, they stopped
4 raising their hand now.

5 If you want to give public testimony on
6 the Zoom, can you use the Q&A feature, please?

7 CHAIR LEE: Okay. Captain Handyman,
8 you're on. Please offer your testimony.

9 JEFF HALBRITTER: Thank you, guys.

10 CHAIR LEE: Okay. Let me swear you in.
11 Please raise your hand. Do you swear or affirm that
12 the testimony you're about to give is the truth?

13 JEFF HALBRITTER: Yes, I do.

14 CHAIR LEE: Okay. Please proceed. You
15 have two minutes.

16 JEFF HALBRITTER: Aloha to everyone. For
17 those of you who -- who don't know me, my name is
18 Jeff Halbritter. My mom just gave her testimony.
19 My family's home is mauka of the property, and we've
20 lived in this area since the days the Coast Guard
21 Station was still active. I grew up in a working
22 class family, but was fortunate to be raised in this
23 community that I love and have always been proud to
24 call home.

25 When my family had the opportunity, we

1 purchased land here because we wanted to be part of
2 this community for generations to come. We have now
3 called this area home for nearly 50 years, and this
4 is where I intend to spend the rest of my life.

5 Throughout my career, I have worked as a tugboat
6 operator, a marine surveyor specializing in hull and
7 machinery, ship, and cargo damage investigations.

8 Much of my work involved serving as an
9 independent third-party surveyor, evaluating claims
10 objectively and identifying facts in the gray areas
11 to help mitigate and resolve disputes. With that
12 said, because of my background, I understand and
13 respect the concerns being raised about conservation
14 lands.

15 My family has opposed inappropriate
16 shoreline development in places such as Hapuna
17 Beach, Mahukona, and Pololu. And I strongly believe
18 conservation land should be protected. At the same
19 time, I believe it is important to look carefully at
20 the gray areas and facts of this particular
21 situation. The structures at Hono'ipu are not --
22 not newly developed. They have existed for decades,
23 even before I was born.

24 From my understanding, the current owners
25 are not seeking to expand, but are asking that their

1 existing home be located outside the conservation
2 line, consistent with the majority of the existing
3 structures in the area. Since purchasing the
4 property, they have restored long abandoned
5 buildings that had been -- become an eyesore along
6 the coastline. They have taken care to preserve the
7 character of the area, including landscaping with
8 native Hawaiian plants.

9 They have also worked alongside me to
10 helping maintain the Old Coast Guard Road improving
11 that benefit fishermen, divers, surfers, and all
12 others who access the shoreline when the county and
13 state would do nothing. What deserves careful
14 consideration is the inconsistency between the two
15 maps. One map places the conservation line in front
16 of all of the homes along the road, while the other
17 places the line throughout a portion of existing
18 homes.

19 That discrepancy creates uncertainty and a
20 gray area that needs to be addressed by this
21 committee. The map placing the line in front of the
22 home appears more consistent with what exists on the
23 ground today. The alternative map appears to emit
24 certain buildings and veers off the existing road.

25 As a surveyor, I understand that old maps

1 were often created with limited information and were
2 never intended to address the regulatory questions
3 being asked today. Historical photographs from 1960
4 show that the road and buildings are substantially
5 the same as they were now -- as they are now,
6 suggesting that portions of the map may not
7 accurately reflect actual conditions on the ground.

8 My understanding, correcting this to run
9 along the road would not affect the shoreline,
10 public access, or conservation resources. The area
11 has already been developed, and any future changes
12 would still require extensive review, community
13 input, and major permitting.

14 I understand why residents are protective
15 of conservation lands, and those concerns are mine
16 and are all valued. I respectfully ask the
17 Committee to acknowledge the gray areas and consider
18 placing all existing structures along the coastline
19 outside of the conservation area to support and
20 protect of the shoreline we all value. Thank you
21 for your time and consideration and service to our
22 community. Thank you.

23 CHAIR LEE: Thank you very much,
24 Testifier. Is there a question? Okay. Mr. --
25 Commissioner U'u?

1 COMMISSIONER U'U: Aloha. Thank you for
2 testifying. The question I have: is any other
3 housing structure or structures that would affect
4 like how it's affecting this specific housing or
5 place or lot? Like you said, the roads -- the roads
6 were moved -- the -- the gray area between the
7 lines, is there any houses that fall into that
8 category like this one?

9 JEFF HALBRITTER: Yes, I believe the last
10 two structures, the line veers behind them, maybe
11 even a few more of them. But it makes perfect sense
12 to keep those homes out of the conservation area as
13 the rest of them are. So that gray area is
14 basically a line running behind the homes and
15 crossing the road and going behind some of the
16 homes, while another map shows it running
17 consistently in front of all the homes along the
18 existing road.

19 COMMISSIONER U'U: Thank you.

20 CHAIR LEE: Okay. Thank you. Any other
21 questions for the testifier? Okay. Seeing none,
22 thank you very much for your testimony.

23 JEFF HALBRITTER: Thank you, and good luck
24 to all.

25 CHAIR LEE: Is there one more -- is there

1 one more question? Oh, there's one more testifier.
2 Okay. Okay. So we don't have anything else.

3 ARIANA KWAN: If anyone on the Zoom wants
4 to give testimony, this is your last chance, please
5 raise your hand or use the Q&A feature.

6 CHAIR LEE: Okay. I don't -- okay.

7 ARIANA KWAN: Seeing none on the Zoom,
8 Chair.

9 CHAIR LEE: Okay. And we did have written
10 testimony about this agenda item?

11 ARIANA KWAN: Yes, Mr. Chair, we had 12
12 written testimonies that have been posted onto the
13 website.

14 CHAIR LEE: Okay. From the testimony, the
15 County of Hawai'i is not here today. They did,
16 however, submit a written statement of no position
17 on February 27th, 2026.

18 State Office of Planning and Sustainable
19 Development, would you like to offer any testimony?

20 ALISON KATO: Sure. Alison Kato, Deputy
21 Attorney -- it does not bend. Sorry. It doesn't
22 bend. Alison Kato, Deputy Attorney General for the
23 Office of Planning and Sustainable Development.
24 Yes, we submitted written comments back in 2021, but
25 since that time, there has been no change in

1 evidence, and the clarification of the standard of
2 review does not have an effect on the facts and
3 statements in OPSD's written statement.

4 So we submitted nothing further as we have
5 no additional information. Just briefly, based on
6 OPSD's review of the available information, the
7 original intent of the LUC in setting the boundary
8 for this particular property is unclear. There are
9 multiple potential reasons for the LUC's choice at
10 that time, such as preservation of artifacts or
11 conditions, vegetation line, a road at the edge of
12 agricultural use, or general 300-foot setback.

13 As OPSD understands it, petitioner
14 believes that if the paved road had been correctly
15 shown on the map, then the LUC would have chosen
16 that paved road as the boundary instead of where the
17 LUC actually situated the boundary at that time.
18 But for the reasons stated in our written comments,
19 OPSD is not convinced that the unmapped road is
20 particularly relevant or that the LUC's reasons for
21 situating the boundary where it did were somehow
22 incorrect.

23 The current boundary on the 1969 LUC map
24 was a result of various sources of input and the
25 official action of the LUC. And so far, OPSD has

1 not seen enough to say that it is incorrect as it
2 was officially adopted. We have no further
3 comments. Thank you.

4 CHAIR LEE: Commissioners, do you have any
5 questions for the Office of Planning and Sustainable
6 Development? Any questions, Commissioners? Okay.
7 Seeing none. Okay. All right We've been advised
8 that we should have an executive session without
9 staff. So is there someone that will please make
10 that motion?

11 COMMISSIONER U'U: I'll make a motion to
12 go into executive order.

13 CHAIR LEE: Okay. It's been moved by
14 Commissioner U'u. Is there a second?

15 COMMISSIONER MIYASATO: Second.

16 CHAIR LEE: Seconded by Commissioner
17 Miyasato to enter into executive session with our
18 Madam Deputy Attorney General alone. All right.

19 MIRANDA STEED: Oh, sorry, and chief
20 clerk.

21 CHAIR LEE: And the chief clerk is
22 included. Sorry.

23 MIRANDA STEED: For minutes.

24 CHAIR LEE: For minutes. So, Executive
25 Officer, will you please conduct a vote? Oh, okay.

1 All right. Is there any discussion, objections?

2 Okay. Let's just have a roll call vote to enter
3 into executive session. All in favor say aye.

4 (All said, "Aye.")

5 CHAIR LEE: Any opposed? Hearing none.

6 Okay. We will turn to executive --

7 MIRANDA STEED: Oh, sorry. Yes. Go
8 ahead.

9 CHAIR LEE: Okay. So we will enter into
10 executive session.

11 (WHEREUPON, a recess was taken.)

12 CHAIR LEE: All right. Thank you,
13 everybody. We're back in session, and we're going
14 to call now on Mr. Scott Derrickson to summarize the
15 staff report for us and any staff concerns.

16 SCOTT DERRICKSON: Okay. Aloha kakou,
17 Chair, Commissioners. I want to start off by
18 saying, you all know that I'm the chief planner in
19 the State Land Use Commission. What you should know
20 is that I have over 40 years of professional
21 planning practice and experience. Most of that has
22 been with the State of Hawai'i. I'm one of the few
23 people still working for the state that was involved
24 in at least one of the State Land Use District
25 Boundary Reviews. The other person is also sitting

1 in this room, now with OPSD.

2 I'm a nationally certified planner. I've
3 testified and been considered an expert witness in
4 court here in Hawai'i before state agencies, county
5 agencies. And I was consulted as one of the staff
6 planners for this specific boundary interpretation.

7 Okay. For the record, the basis for our
8 position that the existing Conservation District
9 boundary on the petitioner's parcel was correctly
10 established during the 1969 statewide boundary
11 review and reaffirmed on the 1974 official map are
12 conclusions based on evidence in the Commission's
13 own records as required under Hawai'i Administrative
14 Rules Section 15-15-22.

15 And it reflects the staff's obligation to
16 rely on the official materials that govern the Land
17 Use Commission when the boundaries were officially
18 established. When the state receives a boundary
19 interpretation request, our process begins with the
20 Tax Map Key parcel information that's provided by
21 the requester.

22 We then identify the official State Land
23 Use District boundary maps that were applicable to
24 that parcel, whether it was in 1964, 1969, and 1974,
25 along with any later commission-approved amendments

1 that might have impacted that parcel.

2 After determining when the boundaries
3 affecting the parcel were set, staff consults with
4 the Commission's record, which can include prior
5 boundary interpretations for the specific area;
6 official docket files; hearing transcripts and
7 minutes; historical Tax Map Key parcel books; the
8 Commission's administrative rules that were in
9 effect at the time the lines were drawn; and the
10 boundary review reports from consultants, including
11 the 1969, 1974, and the 1990 boundary reviews.

12 These documents form the only evidence
13 that the staff may properly rely upon. We don't
14 reconstruct what should have been done, and we do
15 not base interpretations on new materials that were
16 not before the Commission. So I'll talk about some
17 of our central conclusions, the first of which is
18 that the 300-foot setback is more probable than the
19 road-based theory.

20 The Commission's 1969 boundary review
21 established four conditions in the report for
22 determining Conservation District boundaries. One
23 of these, Condition 4, provides that where no
24 clearly identifiable physical landmarks exist, the
25 boundary shall be 300 feet inland of the line of

1 wave action. Based on the Commission's official
2 maps and the 1969 review, staff concluded at the
3 petitioner's location, no suitable shoreline-
4 proximate road existed in 1969.

5 The unimproved Jeep trail shown on the
6 1957 USGS base map, which the Commission used for
7 the 1964 and 1969 maps, turned mauka or eastward
8 before and just about when it reached the petition
9 area -- this parcel that's under consideration.

10 Accordingly, Condition 1, using a road as a
11 landmark, did not apply here.

12 The 1969 and 1974 maps show a smooth
13 setback-like alignment along this portion of the
14 coast. The pattern is consistent with Condition 4,
15 the approximately 300-foot inland line, especially
16 on remote areas where no road paralleled the
17 shoreline. This pattern is consistent along the
18 coastline. Where a shoreline-proximate road
19 actually existed, the Commission used it.

20 Where the road veered inland, as it did
21 here on the map, the Commission applied the setback.
22 This consistent pattern is visible on the official
23 maps and is supported by the 1969 review, which
24 explicitly contemplates mixed use of the four
25 conditions depending on physical geography. The

1 Hawai'i Supreme Court has clarified that the
2 preponderance of evidence standard applies here.

3 Staff's position is not merely that the
4 petitioner has not proven its case, rather, staff
5 concludes that based on the evidence in the
6 Commission's record, it is more likely than not that
7 the boundary of the petition area was intentionally
8 drawn using the approximate 300-foot setback.

9 That conclusion's grounded in the 1969 and
10 1974 official Land Use Commission maps, the 1969
11 four-condition framework found in the 1969 boundary
12 review report, and the actual location of the road
13 on the maps used at the time by the Commission to
14 set the boundaries, and the absence of any
15 contemporaneous Commission documentation indicating
16 that the drafters intended to follow the 1961
17 realigned road.

18 The petitioner relies heavily on non-
19 contemporaneous evidence such as a 1961 Coast Guard
20 construction photos, a 1965 aerial image, and a 1982
21 USGS quad map. These documents were not part of the
22 Commission's record when the boundaries were
23 established and, therefore, cannot override the
24 official maps.

25 By contrast, the 1969 and 1974 LUC maps

1 were legally adopted by the Commission. Hawai'i
2 Administrative Rules 15-15-17(b), as in bravo, and
3 Hawai'i Revised Statutes Section 205-3 require staff
4 and the Commission to treat these maps as
5 controlling. And there is no contemporaneous
6 documents from 1969 stating that the Commission
7 intended to follow the road at this parcel.

8 Petitioner's theory is therefore not
9 supported by the evidentiary requirements of Hawai'i
10 -- Hawai'i Administrative Rules 15-15-22. Staff has
11 found no evidence that the 1969 drafters made an
12 error in depicting the Conservation District
13 boundary. To the contrary, the boundary matches the
14 setback-based pattern shown statewide where no road
15 aligns with the shoreline.

16 The Commission had multiple opportunities
17 in 1969, 1974, and in 1990 to correct any mapping
18 errors, yet no correction was requested or
19 identified for over 50 years to the present. The
20 Coast Guard and the county also raised no objections
21 to the boundaries at any time prior to this
22 petition.

23 The staff concludes that there is no basis
24 to determine that the official maps contain a
25 mapping error requiring interpretation under Hawai'i

1 Administrative Rules 15-15-22(f). Based on the
2 official Commission record, the governing statutes,
3 and administrative rules, and the 1969 boundary
4 review framework, staff concludes by a preponderance
5 of the evidence that the Conservation District
6 boundary at the petition area was intentionally
7 drawn using an approximate 300-foot setback from the
8 shoreline, not a road landmark.

9 Staff, therefore, recommends that the
10 Commission affirm the existing boundary and the
11 boundary interpretation done by the Commission's
12 staff and deny the petition for declaratory order.
13 Mahalo, Chair and Commissioners. Staff is available
14 for questions.

15 CHAIR LEE: Thank you, Mr. Derrickson.

16 Commissioners, are there any questions for
17 Mr. Derrickson?

18 COMMISSIONER HAYASHIDA: Commissioner
19 Hayashida. You said that there's no record that the
20 1961 road was acknowledged by the Land Use
21 Commission in making the boundary?

22 SCOTT DERRICKSON: That's correct.

23 COMMISSIONER HAYASHIDA: And is it likely
24 that when the Land Use Commission makes these
25 boundaries, that they are aware that there's houses

1 on Conservation District that they're conflicting?
2 Because, as I understand, there's a house there.

3 SCOTT DERRICKSON: There's nothing in the
4 Commission records that supports that.

5 COMMISSIONER HAYASHIDA: But there -- when
6 was this -- was -- is there a house on that property
7 that we're talking about?

8 SCOTT DERRICKSON: There is now.

9 COMMISSIONER HAYASHIDA: But it was not in
10 1969. Wasn't built until before -- it wasn't built
11 -- well, the house was built after 1969?

12 SCOTT DERRICKSON: So -- so the question
13 you're asking is: there does appear to be
14 information that those homes -- they're not homes.
15 They were built as barracks for staff. They were
16 built back in that timeframe. There's nothing in
17 the record, the Commission's record, that they used
18 to draw the lines that told them that there were
19 structures there, that there was a road there.

20 COMMISSIONER HAYASHIDA: Whose -- whose
21 fault is that?

22 SCOTT DERRICKSON: It's no one's fault.
23 The Commission used specific maps, USGS maps, at
24 that time, that they had in front of them, depicting
25 the geography of the area. Nobody on the record

1 questioned the validity of those maps and pointed
2 out any errors in the maps. The Coast Guard itself,
3 the owners of that property at the time did not
4 appear on the record anywhere to make any
5 corrections.

6 COMMISSIONER HAYASHIDA: Throughout your
7 career, has you -- have you come across this
8 condition where there are structures that we -- that
9 the Commission drew boundaries that made these
10 structures kind of illegal in preservation --
11 Conservation Districts?

12 SCOTT DERRICKSON: Okay. The answer to
13 your specific question is yes. They don't make
14 those structures illegal; they make them non-
15 conforming.

16 COMMISSIONER HAYASHIDA: Non-conforming.

17 SCOTT DERRICKSON: Okay. And --

18 COMMISSIONER HAYASHIDA: So that's common?

19 SCOTT DERRICKSON: -- and there is a
20 process to correct these things, and it's not
21 through a boundary interpretation to move a line.
22 It's a district boundary amendment. If you want to
23 -- if you want to change the district
24 classification, that's the appropriate and correct
25 way to proceed in changing the boundary.

1 CHAIR LEE: Any other questions for Mr.
2 Derrickson? Okay. Hearing none, thank you very
3 much. Appreciate it.

4 All right. We're now going to ask the
5 petitioner to provide your presentation.

6 CALVERT CHIPCHASE: Thank you, Chair. And
7 we have slides to accompany most of the
8 presentation. I -- I -- I'll step back for a moment
9 and -- and acknowledge that the petitioner is titled
10 "Hono'ipu Hideaway." It's an LLC. But what is not
11 evident from the name is that it's a family LLC, and
12 that family is the Eggen family. They own the LLC,
13 and the LLC owns the property, and they live there.

14 And -- and Nathan and his wife, Adrian,
15 are here today. That's -- they are the petitioners.
16 They are the -- the folks that we're talking about,
17 not some, you know, distant company or some entity
18 that resides on the mainland. They reside in those
19 units -- those Coast Guard units. The scale of the
20 discrepancy, the error that we believe is 1.3 acres.
21 That is the totality of the area that we believe was
22 incorrectly mapped in 1969, and the 1960 -- 1974 map
23 simply followed '69. It's not as if it was
24 reevaluated.

25 So we're really talking about an error in

1 1969 involving 1.3 acres. And the error stated
2 quite simply is that a road existed through the
3 property at that time, and the Commission did not
4 pick it up because it used a map that did not depict
5 it. But it's quite clear as we go through this,
6 certainly more likely than not, that they were
7 following a road in the area.

8 And despite the small area and the -- the
9 personal nature of this, that it's -- it's a family,
10 this has been an incredibly long saga. This is our
11 seventh year working on this petition. That's the
12 process that we've gone through. And it's a -- it
13 -- it's odd to me because as you heard from the
14 public testimony and you saw in this county
15 statement of no position, there's really no one
16 against it except staff.

17 The only opponent we've ever really had is
18 arguing against staff that this is an appropriate
19 correction of a map that was drawn using the wrong
20 landmarks, landmarks that they simply made a mistake
21 on in -- in 1969. And I have deep respect for
22 Scott; worked with him for my entire career before
23 the Land Use Commission.

24 And so I -- everything he said about his
25 credentials and -- and his experience, I -- I echo.

1 And the rest of the staff, I feel the same way
2 about. But -- but this is an odd one. And so we
3 end up with -- with questions, as Commissioner
4 Hayashida asked, did those homes exist?
5 Unequivocally, they did.

6 I mean, that's deeply in the record that
7 they were built in 1961. There's zero doubt about
8 that. And there's -- there's no reason to -- to
9 hedge on it. Staff pointed out the 300-foot
10 boundary they believe more likely as -- as we've
11 shown in a -- in an overlay, and we've shown it for
12 seven years now. It's unequivocal that the boundary
13 line drawn today does not match 300 feet.

14 It simply doesn't. And -- and we'll see
15 that illustrated on the screen, and yet that still
16 remains staff's position. So it's one that has been
17 very difficult for me to understand. And we're
18 asking you today, after this long saga, to finally
19 end it and correct the boundary for this 1.3 acres.

20 So where I'll start is orienting us
21 geographically. And if -- if you look at the map we
22 have on the screen, we're in North -- North Kohala,
23 the Eggens' property is the one highlighted in blue.
24 As we -- we go through today, I'll talk about the
25 standard, and then we'll discuss the different

1 options that -- that staff articulated as being the
2 possible boundaries that -- that should have been
3 set -- that were meant to be set in 1969.

4 And I'll start by looking at the portion
5 of the land use boundary maps in question. Well,
6 we're all familiar with the land use boundaries: the
7 Urban, Rural, and Agriculture, and Conservation.
8 The lines between those districts are the
9 boundaries. The state land use law was enacted in
10 '61 and boundaries began to be established in '64.

11 The Land Use Commission set the
12 conservation boundary for this area in 1969. And it
13 used to review those things every five years to make
14 sure they're correct; should things be moved in,
15 should things be moved out? They haven't done that
16 in -- in a very, very long time But in -- in
17 setting lines for massive areas, right, you're doing
18 the whole state in these reviews, mistakes happen,
19 right?

20 Everybody makes mistakes. Mr. Goodin next
21 to me points out my mistakes all the time way more
22 often than I think he should, but they happen. And
23 the question is: can we fix them? Is there a
24 method to correct them that doesn't involve a
25 district boundary amendment? Talk about a process,

1 we've been seven years on this. A district boundary
2 amendment, where we do a full 343 review and then a
3 full petition process before the Commission for 1.6
4 acres, is that the only method to correct mistakes?
5 No, it isn't.

6 The -- the Commission recognized that in
7 mapping these massive areas, mistakes may happen.
8 And the boundary interpretation is the method
9 through which those mistakes are corrected. So how
10 do we describe an interpretation? Well, the -- the
11 Supreme Court has described it for us, and it says
12 this process -- this process of district boundary
13 interpretations "Functions to resolve uncertainties
14 about the spatial relationship between the LUC map
15 and the land the map represents." It's exactly what
16 we have here.

17 When we last appeared before the
18 Commission on this question, five years ago, we
19 ultimately lost the petition. And we lost the
20 petition because the Commission concluded that our
21 evidence was not, in the Commission's words,
22 compelling. That was the standard that Commission
23 applied at the time.

24 And -- and so we appealed the decision,
25 and the Supreme Court made clear that compelling is

1 not the right standard. It's a much lower standard.
2 It's called preponderance of the evidence. And so
3 if you're like me, I mean, I grew up watching Law &
4 Order, right? So you -- the standard in criminal
5 cases: beyond a reasonable doubt, the highest
6 standard that we have at law, right? No reasonable
7 doubt.

8 We're left with just metaphysical doubt,
9 okay, we convict the guy. Below that is a clear and
10 convincing evidence or compelling standard that we
11 use in fraud cases, right? So if you're going to
12 accuse somebody of committing fraud, you need to
13 prove that to a higher standard because that's a
14 pretty serious charge.

15 The rest of the time we use a
16 preponderance of the evidence standard. That just
17 means is it more likely than not? Do we tip the
18 scale, in the Supreme Court's words, just slightly?
19 That's all it takes for something to be more likely
20 than not. It's 51 percent. The court made clear
21 that that's the standard that should apply in a --
22 in a case like this.

23 Okay. Let's come back to the property.
24 And so we've zoomed in on it. This is the -- the
25 property that the Eggens own and have lived in since

1 2018. The homes, as I said, were built in 1961 when
2 they were part of the Coast Guard LORAN Station.
3 And they've been in continuous residential use ever
4 since 1961. The petition area only concerns the
5 houses and a small portion of the backyard, just
6 mauka of them.

7 So you can see that area that Mr. Goodin
8 is tracing with the cursor. That's the entirety of
9 the area that we think should have been located or
10 was meant to be located in the Agricultural
11 District, not the Conservation District. If we look
12 makai of that, next to the coastline, that dark area
13 right along the coast, that is a -- a public access
14 trail.

15 And when Nathan and his family bought the
16 property, that trail was fenced off and in
17 disrepair. They removed the fencing, they improved
18 the trail, and they now maintain it. They maintain
19 a 10-foot wide trail by regularly mowing the area,
20 which in the -- this area does get overgrown.

21 And they have worked since 2018, as part
22 of their condition in their -- in their county
23 permit and otherwise, to improve that trail and
24 improve public access, including by installing
25 public access signs. If we look just down the map a

1 little bit from that to that brown area, that's a
2 public parking area. It's maintained on Nathan's
3 property. It accommodates about 30 stalls.

4 And when the surf is -- is cranking,
5 they're full. I mean, people are there and they're
6 using it. And -- and all of this area that -- that
7 Chris or Mr. Goodin just went over, that all stays
8 in Conservation. That all stays in public access;
9 that all stays with the public parking; that all
10 stays maintained by the Eggens at no cost to the
11 public, to the county, to anybody, for the benefit
12 of the public.

13 And so nothing is proposed there, going
14 there, changes there. It's all part of the
15 Conservation District. We'll come back to the map.
16 And if -- if you look at -- at this map area, you
17 can see that for this quadrangle, it was based on
18 the 1957 USGS map. And that -- that map itself was
19 based on the 1954 aerial and the field check in
20 1957. If you look at the -- the thick black line,
21 that's the district boundary separating Agriculture
22 and Conservation.

23 And if you look at what the line goes
24 over, you can clearly see that it follows the
25 coastal road -- road that existed as depicted on

1 that map at that time in 1957. Those double-dashed
2 lines are dirt roads, and that's the boundary along
3 the coast that the LUC in 1969 followed.

4 When we zoom in on Nathan's property and
5 put the green border on there so that we can clearly
6 see it, we can clearly see that the road doesn't
7 turn mauka before his property. It actually enters
8 his property. And they drew the line along the road
9 as it entered his property. At -- at the time in --
10 in 1957 before the road was realigned, it did turn
11 mauka after entering Nathan's property.

12 But if we look at the course that the LUC
13 followed from there, and we connect it on the larger
14 map, as Chris is tracing it down the coast, they
15 simply drew it in a way that connects with the next
16 point where there was a visible road mapped.
17 There's no cutouts, as we'll see on other maps,
18 where they clearly used a different means other than
19 following the road.

20 There's no deviation in the contour or the
21 course. It simply tracks from road-to-road those
22 properties, including Nathan's. That road that was
23 shown in 1957, by 1961 had been realigned. This is
24 an aerial photograph from 1961 clearly depicting the
25 realigned road and the existing structures just

1 mauka of it.

2 Nathan's property is outlined in green.

3 And as you can see, in 1961, eight years before they
4 drew land use maps, the road did not turn mauka just
5 after entering the property. It turned mauka at the
6 end of Nathan's property. And so the road had been
7 completely realigned. Sorry, it's a 1965 aerial.

8 We put all of this information together on
9 a composite map. And so you can see the Eggens'
10 property in green. You can see the yellow dashed
11 line represents the current boundary as interpreted
12 or as applied in 1969. And as you trace that
13 yellow, you see that it follows the road, the entire
14 course of the coastline, except for notable
15 exceptions that the LUC cited, which we'll see on --
16 on other maps. But everywhere else -- we see in
17 this area -- it follows the road line.

18 And it follows that road line right into
19 the Eggens' property. And instead of dipping in or
20 following some other method, it just crosses it
21 naturally. As we saw in the earlier map, it
22 continues that pattern down the coastline until it
23 adjoins with another road. As I noted at the
24 beginning, the total area in between what we see as
25 the yellow dashed line, the existing boundary, and

1 what we believe is the -- the correct line, or
2 would've been the Commission's correct line if it
3 had followed the existing physical structures in
4 1969, is just that small area between the yellow
5 line and the mauka edge of the road that existed.
6 It's 1.3 acres.

7 There's -- there's a note in the staff
8 report that suggests it's the full 5.3 that
9 represents the whole Conservation District of
10 Nathan's property, but it's not. It's just the --
11 just the 1.3 acres. And then there's a figure in
12 the staff report that tries to depict the area that
13 is -- is the subject of the petition, but it puts
14 the edge of the request at the makai edge of the
15 road.

16 And so includes more area than we're
17 requesting, and makes a different shape than we have
18 requested. And -- and as I said in the beginning,
19 mistakes happen. And -- and so I understand this
20 was just a mistake, but the actual area is just from
21 the mauka edge of the property. And if you look at
22 the way the line follows from that mauka edge to
23 where it would adjoin the existing boundary line at
24 the end of Nathan's property right there, it -- it
25 forms a perfectly natural curve.

1 There's nothing unusual about that mapping
2 or difficult about the shape that it would create.
3 Okay. So we -- we come to the -- the question. As
4 -- as staff and -- and OPSD ably laid out, there are
5 really three possible options to consider: the
6 first is that the Commission intended in 1969 to
7 follow the direction of the road on the -- on the
8 map, and it would've set it at that location even if
9 the -- it knew, and -- and had the correct map
10 before it, that the road had been realigned.

11 That doesn't make sense that the
12 Commission would follow the actual road features, as
13 -- as -- as Scott set out, looking for the features
14 on the ground. In 1969, if it had followed the
15 correct map and knew that the road had been
16 realigned by then, followed actual roadways
17 everywhere else, there's no reason and no indication
18 in the evidence that it would have followed an
19 imaginary road just because it happened to be on the
20 map.

21 These other documents, there's no question
22 that the road had been realigned by the time the
23 Commission was drawing a map. We've seen the aerial
24 photographs; it's a newspaper article announcing its
25 opening. We actually have a ground-level photograph

1 from the road depicting it eight years before the
2 Commission drew the line.

3 So it -- it -- it doesn't seem more likely
4 than not that the Commission, apart from a mistake,
5 would have maintained a line following (audio
6 disruption) district boundary homes -- barracks, as
7 -- as Mr. Derrickson said, existed at the time. And
8 -- and I'll pause there and make -- make one note
9 about the Coast Guard: the Coast Guard, of course,
10 would have no reason to object or comment or say
11 anything else about the LUC's map because the
12 federal government doesn't care what we set down as
13 state land use laws. They're not bound by them.

14 So they can do anything they want. They
15 could have drawn the entire thing in Conservation,
16 and it wouldn't have affected the Coast Guard's use
17 in any way whatsoever. And so there'd have been no
18 reason for the Coast Guard to object, participate,
19 or otherwise comment on on the maps when they were
20 done.

21 It brings us to the second option. This
22 is the option that staff has proposed, and -- and
23 staff says that the -- the 300-foot setback from the
24 shoreline consistently and neatly portrays the
25 boundary, promotes section of coastline that would

1 have been difficult and costly to remap otherwise.

2 Well, we -- we mapped that 300-foot mark,
3 and as you can see, the current re-drawn boundary is
4 in yellow, and the 300-foot line is in blue. That's
5 what the map would have looked like if the
6 Commission was following a 300-foot distance from
7 the coastline. It wouldn't have entered the
8 property in the place that it did, wouldn't have
9 been following the road. Remember the road actually
10 enters the property and is in yellow at the
11 beginning of it.

12 So it would have entered a different spot,
13 and would have curved toward the coast, and then
14 bisected an existing building before meandering back
15 down the property. With respect, no zoning body
16 would set a line -- a boundary line between district
17 and ag through an existing structure, not
18 intentionally, not without making a mistake.

19 And so it -- it seems implausible, not
20 nearly less likely than not, that the Commission did
21 not intend to use a 300-foot setback line. The
22 other note on that is that in all the places in this
23 area where the Commission deviated from a road, or a
24 pali, or some feature like that to set the boundary
25 when it used 300 feet, it noted it as sort of an

1 exceptional thing, right?

2 Other -- other than the -- the set
3 standards that it had, its default standards, it
4 didn't note when it used a default standard because
5 that's a physical feature in some way, so it's
6 pretty easy to understand. But when it deviated
7 from them, used 300 feet, so not a physical feature.

8 Uniformly, in every example we've looked
9 at, the Commission noted that it was deviating from
10 that standard. There's no notation here, and
11 there's no notation as we go further down the map
12 until it joins with the other existing roadway that
13 the Commission was deviating and using 300 feet for
14 this entire area. With respect, it -- it's -- it's
15 not more likely than not the Commission intended to
16 use 300 feet.

17 So it brings us to option 3. Option 3 is
18 the one that -- that we've presented. We know from
19 the mapping itself that the Commission was following
20 the roadways in this area. It -- it did it all the
21 way up the coast, as we can see on that map. We
22 know to a certainty that by the time the Commission
23 was drawing these lines, the road had been
24 realigned, and it's unequivocal.

25 And so the only question is: is it more

1 likely than not the Commission, drawing a boundary
2 that's following roads, would have used the correct
3 location of the road if there had not been a mapping
4 error, if it had used an updated map depicting the
5 road in this location?

6 In every other interpretation in this area
7 that we have looked at, the Commission has answered
8 that question, yes, the Commission would have and
9 meant to use the mauka edge of an existing road when
10 mapping the boundary between conservation and land
11 use.

12 And so as we look up the coast, we see all
13 those properties that we've -- we've circled, all of
14 those properties were interpreted by the Commission
15 as having a boundary that "follows the mauka side of
16 the dirt road." The only exceptions to that are
17 those two carveouts for areas of historical
18 significance where the Commission expressly deviated
19 from the roadway to make a different boundary.

20 And we can see how pronounced that becomes
21 when the Commission intends to draw something other
22 than following the roadway or another natural
23 feature. Well, this property, which is -- is just
24 up the coast from the Eggens. We're just very close
25 to their property now. This boundary was

1 interpreted not generations ago, but in 1998, so 30
2 years ago or so.

3 And when the Commission interpreted this
4 boundary, the Commission said, "We interpret this
5 boundary as following 'the mauka side of the road as
6 it existed in 1969.'" So not as it might have been
7 mapped in error, not as it might have fallen some
8 300 foot that we have remarked that we have no
9 evidence of, but follow the road as it existed in
10 1969.

11 It's a clear, defined physical feature
12 that makes a very clear record for this Commission
13 and every Commission going forward. 30 years later
14 now, we know exactly where that road is because we
15 can know exactly where it was in 1969. We'll look
16 at one more boundary interpretation, this is the
17 east of us, one quadrangle over in Hawi. And this
18 is from 2008, so less than 20 years ago now.

19 The -- the work on this boundary involved
20 an interior line, but as the Commission described
21 the Conservation District boundary for the area, the
22 Commission again described it as following the mauka
23 side of the dirt road as it existed on August 4th,
24 1969 when the Commission was drawing these maps.

25 And so, throughout this history, '78, '98,

1 2008, Commission is consistently focused on this
2 area, on the mauka edge of the dirt road and in the
3 recent interpretations expressly noted as it existed
4 in 1969. It makes no sense, not just a
5 preponderance of sense, but no sense that in all of
6 these other interpretations, boundary follows the
7 mauka edge of the road -- the mauka edge of the road
8 as it existed in 1969 -- except for the Eggens'
9 property.

10 This one property, 1.3 acres, is the one
11 property, when it comes in for an interpretation, is
12 not interpreted consistently with the mauka edge of
13 the road as it existed in 1969. Principle one of
14 the guidelines the LUC set out was to follow
15 existing roads (audio disruption) Agriculture and
16 Conservation.

17 That's what it did, seen from the mapping
18 up and down the coast. And when subsequent
19 commissions have looked back at what that Commission
20 did and interpreted where the boundary should fall,
21 they've uniformly set it at the mauka edge of the
22 existing road. So we come back to the standard and
23 our three options. What is more likely than not --
24 what tips the scale ever so slightly?

25 Option one: that the Commission intended

1 to follow or to set the boundary on the road that
2 didn't exist, didn't exist as it entered into the
3 Eggens' property. It's just coincidental that they
4 then drew it and connected with the road down the
5 way. That's what they intended.

6 That they intended to follow, in option
7 two, a 300-foot setback, even though they didn't say
8 so, and they uniformly said so in every other case
9 when they're setting it at 300 feet. And it turns
10 out they set a boundary that didn't follow 300 feet.
11 It doesn't resemble that, really, at all, except for
12 a small portion of it. That's option two.

13 Or option three, that they intended to
14 follow roads, as was their guiding principle number
15 one, which they did as it entered the property, but
16 because they used a '57 map and the road had been
17 realigned in 1961, they made a mistake and didn't
18 draw that line along the existing road through the
19 Eggens' property.

20 I -- I submit that that third option is
21 not only the one that is more likely, but the only
22 one that makes sense. I put up on the screen, as I
23 -- I've mentioned a couple of times and -- and the
24 staff report ably sets out, this has been a long
25 journey to get here.

1 Along the way, there's been no convenient
2 assumptions, I think was a -- a notation in staff's
3 report, that it -- if we didn't have the
4 circumstance of a road that had been realigned
5 before the map was drawn eight years before it was
6 drawn and clear evidence that the Commission was
7 following roads in the area when it drew the
8 boundaries, we might've taken a different path.

9 But because that is the situation, those
10 are the facts, the boundary interpretation is the
11 appropriate means to -- to make that correction
12 rather than going through the boundary amendment
13 process. But it's been a long journey nonetheless.
14 And why -- why have the Eggens embarked on this --
15 this seven-year odyssey that took us from here to
16 the Hawai'i Supreme Court and then back down here?
17 Because this interpretation matters to them because
18 it -- it makes a difference.

19 Owning a home within the Conservation
20 District comes with certain challenges, and the
21 Supreme Court thought enough of those challenges to
22 quote them in its decision, and it corrected the
23 standard that had been applied in the earlier
24 proceeding. And so we put some of that quotation up
25 on screen.

1 It -- it affects everything from -- from
2 landscaping to re-roofing to -- to all these other
3 things, just having that boundary line, that 1.3
4 acres in the wrong spot, bringing his homes into it.
5 The correction doesn't have any negative effect on
6 the environment, on the people, or on anyone else.

7 As we've set out, all of the areas that
8 should be Conservation remain Conservation from the
9 mauka edge of the road or the coastline, the public
10 trail, the public parking lot, that open space --
11 all of that stays in Conservation as it should, and
12 -- and stays protected.

13 Interpreting the boundary doesn't
14 authorize new development, doesn't let Nathan expand
15 his house, doesn't take his property out of the SMA,
16 doesn't do anything except correct a mistake that is
17 now 50 years in the making, and allow him to operate
18 under the -- or his home -- under the agricultural
19 standards.

20 And -- and as, you know, we've set out, he
21 does grow and sell fruits and -- and flowers, and
22 that's it. It doesn't do anything else or have any
23 negative impact. And -- and I would say that one of
24 the most telling ways we know it doesn't have any
25 negative impact is the testimony that we received

1 and the testimony that we didn't receive.

2 No one came here today saying that Nathan
3 is doing something bad. There's some written
4 testimony, but none of them showed up. None of --
5 no one showed up to express any concerns except his
6 -- his neighbors, neighbors who don't benefit from
7 the interpretation in any way.

8 Talk about what he's done on the property
9 since he moved in and the fact that this doesn't
10 have any harm. The other thing we didn't hear is we
11 didn't hear an adverse position from the county,
12 county of Hawai'i, that the local government for
13 this area who has the most interest in the land use
14 regulation for this area and ensuring that its
15 coastlines are protected, ensuring that its
16 standards are followed, took no position on the
17 petition, didn't even come today.

18 If it had any concerns, you know they
19 would have expressed it, right? Director Darrow is
20 an -- is an excellent planning director. We would
21 hear from them, and we would hear why this doesn't
22 align with their planning, why they think we're
23 wrong, why -- whatever it is -- but they're not here
24 today because they recognize that there's -- there's
25 no harm in moving this boundary to align with where

1 it should have been set in 1969.

2 So we come at the end here to the request:
3 we're asking the Commission to adopt a motion to
4 grant the petition and interpret the boundary as it
5 existed in 1969. This is shown on Exhibit 19. As
6 you can see from -- from that exhibit, there's
7 nothing awkward or strange about the boundary that
8 we set -- we set. There's nothing unclear or
9 uncertain. It resolves it not only today but -- but
10 for all future commissions.

11 It keeps the homes in the Agricultural
12 District and keeps all of the coastal area in
13 Conservation, and it's entirely consistent with the
14 same phrase and the same interpretive terms the
15 Commission has used in previous matters. All -- all
16 we're asking is be consistent with those matters and
17 interpret the road -- and interpret the boundary to
18 follow the road that actually existed when the
19 boundary was drawn. Thank you.

20 CHAIR LEE: Thank you, Petitioner.

21 Yes, two-minute recess, please.

22 (WHEREUPON, a recess was taken.)

23 CHAIR LEE: All right. We're coming back
24 into session, and what we're going to do is we're
25 going to take public testimony. I think there's one

1 public testimony, and then we're going to break for
2 lunch, and then we'll come back, and we'll have
3 questions for the petitioner.

4 Okay. Let's have the public testifier
5 come forward, and I'm going to ask you to raise your
6 hand and swear you in. Okay. Please raise your
7 hand. Yeah. Oh, you can sit down. Okay. Do you
8 swear or affirm that the testimony you're about to
9 give is the truth?

10 CINDY FREITAS: 'Ae.

11 CHAIR LEE: All right. Thank you. Please
12 proceed, yeah, with two minutes testimony.

13 CINDY FREITAS: He Mele komo a he mele
14 aloha no na kupuna o ke au i hala. Aloha mai kakou.
15 Aloha. My name is Cindy Freitas. I'm a native
16 descendant of this land prior to 1776. The
17 Commissioners' duty extend beyond the survey of the
18 map dispute.

19 While the petition is presenting as a
20 boundary interpretation matter, the Commissioners'
21 obligation do not end with determining whether the
22 historical maps support one boundary location over
23 another. The Hawai'i Supreme Court has consistently
24 held that the state agency must independently
25 protect Native Hawaiian rights, public trust

1 resources, and cultural practices whenever
2 government actions may affect the land and natural
3 resources under Article XII, Section 7.

4 The Commissioner has a constitutional duty
5 to protect all Native Hawaiian rights. Article 1 --
6 Article 1 (sic), Section 1 and 7 -- and 7 of the
7 constitution of laws; the Ka Pa'akai analysis, which
8 is the Ka Pa'akai O Ka 'Aina versus Land Use
9 Commission; PASH versus Hawai'i County Planning
10 Commission; the Water Use Permit Application
11 (Waiahole Ditch); Kaua'i Spring, Inc. versus
12 Planning Commission of Kaua'i; Ching versus Case;
13 and Pele Defense versus Paty.

14 For this reason, I respectfully request
15 that the Commissioner deny the petition unless and
16 until it can make specific findings demonstrating
17 protection of Native Hawaiian rights, public trust
18 resources, culture practices, and conservation
19 values the District was created to preserve.
20 Mahalo.

21 CHAIR LEE: Thank you.

22 Any questions for the testifier? Okay.
23 Seeing none. All right. Thank you very much for
24 your testimony. So now we are going to take a break
25 for our lunch, and then -- how's -- let's see, it's

1 11:45 -- 12:30? Is that enough time? Is that
2 enough time? Okay. 12:30 it is.

3 (WHEREUPON, a lunch recess was taken.)

4 CHAIR LEE: Okay, everybody, we're back in
5 session. I think at this point we're to clear up
6 some of the issues. I have a bunch of questions I'm
7 going to ask of staff, as well as the petitioner for
8 everybody's -- so, for staff, is there anything
9 about the 1974 map itself -- the scale, conflicting
10 lines -- that's actually ambiguous or -- which is
11 independent of Hono'ipu's historical argument?

12 SCOTT DERRICKSON: Sorry. Can -- could
13 you ask that question again, please?

14 CHAIR LEE: Is there anything about the
15 1974 map itself -- scale, conflicting lines --
16 that's actually ambiguous here independent of
17 Hono'ipu's historical argument?

18 SCOTT DERRICKSON: No. From the staff's
19 standpoint, no. That -- that map is -- was
20 accurate, and that -- that is what the Commission at
21 the time used -- used to reiterate the official
22 boundaries.

23 CHAIR LEE: Okay. Was the 1969 report's
24 four-condition framework applied consistently along
25 this whole stretch of coastline as in figure 3 or

1 only in the isolated spots?

2 SCOTT DERRICKSON: The -- the staff
3 believes that it was consistently applied. The
4 isolated spots, I'm not sure what you're
5 specifically referring to there.

6 CHAIR LEE: Okay. Is there any nearby
7 parcel where road was used as the boundary landmark?
8 And if so, what distinguishes that location from
9 this one?

10 SCOTT DERRICKSON: So the 1969 boundary
11 maps did follow the roadway as it was portrayed on
12 the map. Where the road deviated on the map, the
13 Commission used another standard. They did not have
14 a roadway to follow on the map. That's the evidence
15 that's on the record. That's what the Commission
16 used.

17 CHAIR LEE: Okay. Is there any
18 contemporaneous documentary evidence, not staff
19 inference, of why the 1969 drafters chose a setback
20 over the road here?

21 SCOTT DERRICKSON: No. Staff looked at,
22 again, as I alluded to previously, the -- the
23 methodology that we utilized when we're trying to do
24 the historical research. We looked at transcripts;
25 we looked at meeting minutes; we looked at the maps

1 themselves that were voted in by the Commission in
2 '69, 1974.

3 And there is nothing on the record to
4 specifically indicate why the Commission chose to
5 place the boundary exactly where they did, but the
6 evidence on the record -- the fact that they
7 approved the map with that line is what's on the
8 record.

9 CHAIR LEE: Okay.

10 SCOTT DERRICKSON: They did not follow the
11 -- a road that was not on the map at that time,
12 1969.

13 CHAIR LEE: Okay. How does the case --
14 how does this case differ from Stengle, Castle
15 Foundation, and Honolulu where the LUC found actual
16 documented evidence of a manifest drafting error
17 before granting?

18 SCOTT DERRICKSON: So in each of those
19 cases, there was, again, historical research done.
20 And at least in the Stengle case, there was
21 reference to following a top of pali. And in that
22 case, the line deviated from the top of pali. So in
23 that -- in that instance, there was the ability to
24 make an adjustment based on facts on the record.

25 CHAIR LEE: Okay. Mr. Derrickson, did the

1 Coast Guard, as the facility operator, ever show
2 awareness of the boundary's location in any record
3 from 1969, 1974, or 1992?

4 SCOTT DERRICKSON: No. Again, there's
5 nothing on the record, nothing -- no evidence in --
6 on the record that the Coast Guard ever had any
7 concerns, brought up any issues, or attempted to
8 provide information to the Commission, putting it on
9 the record that there was a -- something incorrect,
10 that there was a roadway that the Commission hadn't
11 known about.

12 CHAIR LEE: Okay. Just a couple more:
13 for the burden of proof, is it the staff's position
14 that Hono'ipu's theory is merely not proven or that
15 staff's setback theory is affirmatively more
16 probable?

17 SCOTT DERRICKSON: I think the staff's
18 position is that -- our position is affirmatively
19 more probable based on the actual map that the
20 Commission at the time approved using the features
21 on the map as depicted.

22 CHAIR LEE: Okay. Is -- and is that more
23 likely setback for efficiency explanation based on
24 contemporaneous records or is it staff's own
25 plausible historical narrative now?

1 SCOTT DERRICKSON: I guess I'll -- I'll go
2 back to the -- there's nothing on the record that
3 explains the specific line that was drawn across the
4 property there and slightly to the south, because at
5 that -- the -- the map that they were using in 1969
6 did not show a roadway that they would've been
7 following. So they followed an approximate, not an
8 exact, but approximate 300-foot setback from the
9 shoreline.

10 CHAIR LEE: Okay. And, finally, does
11 anything in the late filed exhibits today change the
12 staff's analysis or is it cumulative?

13 SCOTT DERRICKSON: Staff thinks that the
14 additional information, those late filings, is
15 primarily cumulative, but there's also information
16 there that, again, is not contemporaneous, meaning
17 it wasn't of the record before the Commission in
18 order for them to make the decision in 1969 or to
19 reaffirm it in 1974.

20 So the fact that there's evidence on the
21 record, it was put onto the record by the petitioner
22 in this case. It wasn't before the Commission
23 previously, and the Commission did not have it when
24 they set the boundaries in 1969, and again,
25 reaffirming them in 1974.

1 CHAIR LEE: Okay. Commissioners, any
2 questions or concerns for Mr. Derrickson?

3 Commissioner Hayashida?

4 COMMISSIONER HAYASHIDA: How -- the
5 counsel brought up two boundary interpretations,
6 1998 and 2008, I believe. How is that similar or
7 different than the condition we're discussing today?

8 SCOTT DERRICKSON: Okay. Both those
9 boundary interpretations were -- precede my time at
10 the Commission. At that time, I was with the Office
11 of Planning as a planner. As those -- my
12 understanding, and I can be corrected, but neither
13 of those boundary interpretations came before the
14 Land Use Commission. Those were both determinations
15 made by staff and approved by the executive officer
16 at that time. So the language in there came from
17 the staff.

18 COMMISSIONER HAYASHIDA: Is it -- it's my
19 understanding of what was presented that they moved
20 the line back to the roadway. Is that what you
21 understand?

22 SCOTT DERRICKSON: What I understand is
23 that the staff did a boundary interpretation, and
24 they identified, based on looking at the 1969 map
25 and the 1974 maps, that the boundary in those --

1 across those parcels was intended to follow the
2 roadway as depicted on the map in 1969.

3 COMMISSIONER HAYASHIDA: One last
4 question: counsel also provided a interpretation of
5 the 300-foot setback from the coastline on their
6 map. Do you agree with that? Because that doesn't
7 -- I mean, our -- the line they drew is way outside
8 of that line.

9 SCOTT DERRICKSON: So I believe what
10 petitioner's counsel was showing us was a -- a 300-
11 foot delineation from the coastline that was
12 identified in their shoreline -- certified shoreline
13 metes and bounds description. And as you saw, it
14 was an irregular line. It wasn't a smooth line, and
15 it was intended to follow 300 feet from different
16 portions of the shoreline itself.

17 When the Commission did their maps, and we
18 can see it across all the islands in the state, in
19 the areas where they were following a 300-foot
20 setback, it wasn't an exact setback. They're doing
21 this on these large USGS maps, and it does follow
22 the coastline, but it doesn't exactly follow the
23 coastline, and it's not exactly 300 feet from the
24 coastline at any point.

25 The Commission at 1969 did grapple with

1 the concept of where is the coastline? And they did
2 not have a definitive answer at that point in time.

3 CHAIR LEE: Thank you. Any other -- any
4 other questions for Mr. Derrickson?

5 Yes, go ahead, Mr. --

6 COMMISSIONER KAMAKEA-'OHELO: Mahalo,
7 Chair. I just have a follow-up question: the 300-
8 foot setback, that's just the minimum setback, or is
9 that a hard line that delineates the Conservation
10 and Agricultural zones?

11 SCOTT DERRICKSON: Because this is already
12 -- because this is already in the record, and it's
13 referenced multiple times, this is the 1969 State
14 Land Use District Boundary Review report by
15 consultants hired by the Commission. Okay. They
16 didn't approve this report like they approved the
17 maps, but they utilized the information in these
18 reports to guide them.

19 So that 300-foot setback is one of the
20 four guidelines to utilize in setting the map
21 boundaries. So as guidelines, they normally would
22 try to look for specific geographic features to lock
23 in the line. Where they didn't have that, they
24 usually defaulted to either a top of pali, which was
25 not a perfect delineation, and an approximate 300-

1 foot setback.

2 So it wasn't a hard-and-fast line exactly
3 300 feet. And we see that in the maps. So you
4 can't infer that the Commission meant exactly 300
5 feet when they were setting these boundaries. They
6 utilized an approximate 300 feet offset from the
7 shoreline. And -- and what we can see in the maps
8 themselves that they approved is that that line does
9 not always exactly follow the ins and outs of the
10 coastline. It's a -- it's a general line.

11 COMMISSIONER KAMAKEA-'OHELO: Mahalo,
12 Chair.

13 CHAIR LEE: Thank you.

14 Any further questions for Mr. Derrickson?
15 Okay. If not, thank you very much.

16 I do also have some questions for the
17 petitioner, so, Counsel, just for clarity on the
18 acreage, is it 0.525 of the original 5.319 acres
19 carved out as an erosion area in 2021 and isn't part
20 of this petition? Can you confirm everyone's
21 working from the same current figures so new
22 findings aren't ambiguous about what's actually
23 being decided?

24 CALVERT CHIPCHASE: Yeah, I -- I can
25 confirm it's 1.3 acres. It's -- it's simply from

1 the existing currently depicted line, I should say,
2 to the makai edge of the roadway, which is surveyed
3 to be 1.3 acres.

4 CHAIR LEE: Okay. All right. And then
5 setting timing aside, is there anything in the 1974
6 map itself that's ambiguous or that's entirely a map
7 reflects the wrong place argument?

8 CALVERT CHIPCHASE: Well, I -- I don't
9 know if there's anything else in the 1974 map that's
10 ambiguous. I've been focused on this one portion of
11 property. It's certainly possible that there's
12 other mistakes that were made along the way, and
13 we've seen other corrections, right, up and down
14 this coastline.

15 And -- and on that point, it -- it wasn't,
16 you know, is the colloquy with Mr. Derrickson, just
17 to be clear, the '98 and -- and '08 interpretations
18 were not as depicted on the map. That's not the
19 determination that was made. It was as existed in
20 1969. And so they interpreted to align with the
21 physical existence of a roadway. And -- and we -- I
22 think we're consistent with that.

23 So if you mean a 1974 map that depicted
24 those areas that were later corrected, yeah, there
25 are other errors that are part of it. But it's

1 important to remember that that '74 map just
2 duplicated the '69 map. So what we're really
3 dealing with is the '69 map, because that's when the
4 boundaries were drawn. And as we've seen up and
5 down the coast, yeah, there were areas that needed
6 to be corrected.

7 Whether they're corrected by staff or
8 they're corrected by the Commission, doesn't make a
9 difference. This could have been corrected by
10 staff; staff disagreed, and so that's why we're
11 before the Commission. But the error's the same.

12 CHAIR LEE: Okay. What contemporaneous
13 evidence, not inference, shows the 1969 drafters
14 intended to follow the road at this specific
15 location?

16 CALVERT CHIPCHASE: Yeah, absolutely,
17 Commissioner -- Chair. Pull up the one with the --
18 we'll go back to some of the maps that we -- we
19 looked at earlier. So this is in 1969.

20 I think, Chris, you'd have to get
21 permission to put it up again.

22 DANIEL ORODENKER: Counsel, we have
23 distributed the PowerPoint to everybody, so you can
24 just reference the page. Yeah.

25 CALVERT CHIPCHASE: Chris, what page is

1 this?

2 Exhibit 4A, and it's page 4 of the
3 PowerPoint. So, Mr. Chair, if you look at the --
4 the map that we put up on the screen, right? So we
5 looked at this earlier. You see that the Commission
6 in 1969 is specifically following a roadway in
7 delineating the boundary. And it follows that
8 roadway all the way into the property.

9 So we know, unequivocally, the Commission
10 in 1969 was following the roadway that it thought
11 existed in that location into the property, not --
12 not north of it, but into the property. So there
13 are no inferences required. We know that to a
14 certainty. They were following the roadway.

15 And we know, equally certainly, that the
16 roadway they were following had been relocated eight
17 years earlier. And so they were simply following
18 the wrong location of the roadway. We put those two
19 things together, no inference is required, they
20 literally are showing us they're following a
21 roadway. And we literally know they were following
22 the wrong one into the property. That's a mapping
23 error. And that's what these -- this -- this
24 process exists to correct.

25 CHAIR LEE: Okay. If the boundary went

1 unchallenged for over 50 years through three
2 reviews, including by the Coast Guard, what explains
3 the silence?

4 CALVERT CHIPCHASE: Yeah. Absolutely. So
5 -- so let's come back to a couple of things: one,
6 it's not three reviews. It's 1969, and they just
7 duplicated on the '74 map, and then the Commission
8 itself stopped reviewing the boundaries, right? The
9 law changed. Later went to OPSD, has the
10 responsibility to advise if there are any map
11 corrections. But you don't do your five-year
12 reviews anymore, which is why these boundaries have
13 been static for so long. That's -- that's one.

14 Two, the Coast Guard owns it. We know,
15 not only from this proceeding, but you just read the
16 news about the leased lands or anything else, the
17 federal government is not bound by state land use
18 laws. They don't care where you set the boundary.
19 And so there's no reason for them to say anything
20 about where the boundary is set. They can continue
21 to do it wherever they want. The whole thing could
22 have been a Conservation and it wouldn't matter to
23 them.

24 Why would they get involved in it? No
25 reason. It matters now -- matters now to the Eggens

1 a lot. And the Eggens have been working on this
2 since -- since 2019. And they -- that -- that's --
3 that's a long time to work on 1.3 acres.

4 CHAIR LEE: Okay. Mr. Chipchase, if the
5 Commission concludes that this is a boundary
6 amendment question, what is your position on
7 pursuing relief under HRS 205-4?

8 CALVERT CHIPCHASE: I -- I -- I guess my
9 -- my position would be why? So in everything that
10 we heard from -- from staff, from OPSD, from the
11 county, which was silent, no one has said this area
12 should be in Conservation, right? Nobody has said,
13 "This is an area that we want to preserve in
14 Conservation because it meets all those values, and
15 we can't make it appropriate to be moved."

16 None of that has happened in this
17 proceeding or any other proceeding over the last
18 seven years. Everybody acknowledges that this
19 doesn't need to be in conservation. The question --
20 the seven-year fight has become about process.
21 Somehow the process has been interpreted not to
22 serve the people to whom the substance affects, the
23 Eggens.

24 So we've elevated this process over
25 anything practical because no one believes this

1 needs to remain in conservation. It's nothing that
2 anybody's ever said before the Commission in any
3 form whatsoever. So my position would be this
4 process, the one the Eggens have followed, exists to
5 correct these boundaries.

6 We've seen it up and down this very
7 coastline. Why on earth would you make them go
8 through an entirely different process -- a process
9 that exists to move big areas into different
10 districts for development purposes -- why would you
11 make them go through that process, correct an error,
12 follow the wrong road that's been corrected
13 elsewhere in the same coastline for 1.3 acres when
14 they don't intend to develop or do anything
15 different from it? Why make them follow that
16 process? Why elevate that process over people?

17 CHAIR LEE: Okay. And just a few more
18 final questions: why would the drafters have used
19 the road as a landmark here specifically, given that
20 it veers away from the shoreline just north of the
21 parcel?

22 CALVERT CHIPCHASE: We can -- we could
23 pull that back up, but to correct that, it doesn't
24 veer north of the parcel, it enters the parcel. And
25 so they follow the road into the parcel, literally,

1 into the parcel. At that point, as we saw from the
2 bigger map, they just draw a line that roughly
3 tracks to the next road so that there's a neat
4 alignment.

5 That's what they did. Since they were
6 following a road, we know that, into the property --
7 we know they were following a road into the
8 property. We know that if they had been aware they
9 were following the wrong location, that they
10 would've put it in the right location because we
11 know they were following a road.

12 Why would they follow the wrong location
13 -- knowingly follow the wrong location of the road
14 and connect it up with a road down -- down the coast
15 from there when they intended to use something other
16 than a physical landmark for 300 feet, as -- as
17 Scott explained? They said so -- they said so, so
18 that everyone would know we're doing something
19 different here. "You won't find this line on the
20 ground. We're doing something different." They
21 said so. They did not say so here.

22 CHAIR LEE: Okay. How can the 1982 USGS
23 map establish 1969, 1974 intent when it postdates
24 both maps by years?

25 CALVERT CHIPCHASE: Oh, it -- we've never

1 ever said the 1982 map shows the intent of 1969. I
2 mean, that would -- that would be silly. We've --
3 we've never said that. We've illustrated -- right
4 -- the 1982 map illustrates the location of the
5 road. It depicts it.

6 It's just showing you for visual purposes
7 where it is. But as you saw in our presentation
8 today, all of the evidence that -- that we did was
9 contemporaneous, right? It all predated 1969. It
10 existed prior to 1969. That -- that's
11 contemporaneous evidence.

12 CHAIR LEE: Okay. And then, finally, if
13 the error is as apparent as claimed, why did no one,
14 including the Coast Guard, raise it for over 50
15 years?

16 CALVERT CHIPCHASE: Yeah. No. I -- I
17 understand, Chair. And this goes back a little bit
18 to my discussion earlier in our -- our colloquy a
19 moment ago. There was no reason to raise it when it
20 was owned by the Coast Guard. I mean, they -- like
21 I said, the Coast Guard doesn't care. The -- the
22 Coast Guard simply doesn't care. And the Land Use
23 Commission stopped reviewing its boundaries, right?
24 You guys just, by statute, stopped doing it.

25 And so there was no reason anyone would

1 identify or catch the error until you had a private
2 party identified. And -- and, you know, I was -- I
3 had the wonderful opportunity to talk to -- to one
4 of the -- the public participants here, not one of
5 the witnesses but -- or testifiers, but one of the
6 participants on a break.

7 And -- and the -- the -- if we were here
8 in a situation where you didn't have clear map
9 evidence that they were following a road, and you
10 didn't have a clear historical evidence that they
11 just followed it in the wrong location, this
12 wouldn't be the right process, right?

13 There'd be a different process for this,
14 and it might be more time-consuming. Hard to
15 imagine anything more time-consuming than this has
16 been, but it might be, right? It might be even more
17 difficult than we've gone through on this. But we
18 do have those things, and that's why this process
19 exists. And whether the Coast Guard didn't care
20 doesn't matter.

21 The owners today found it, followed the
22 process to correct it, and it does meaningfully
23 impact their use and enjoyment of the property --
24 this mistake all these years ago. It -- it's --
25 it's never too late to fix a mistake, right? We

1 have a chance to fix it today.

2 CHAIR LEE: Okay. Thank you.

3 Folks, any final questions for either
4 staff or the petitioner?

5 COMMISSIONER KAHELE: Chair, I got -- I
6 got two questions.

7 CHAIR LEE: Please proceed.

8 COMMISSIONER KAHELE: I got two questions
9 for the petitioner. You decided on -- on -- on
10 doing a boundary interpretation instead of a
11 boundary amendment. What -- I mean, would --
12 wouldn't have that resolved your problem in whatever
13 you're planning on doing with your property? You
14 know, and I'm just going to go -- I think you were
15 asked the question --

16 CALVERT CHIPCHASE: 100 percent,
17 Commissioner. I totally understand where you're
18 coming from. And -- and if -- if the Eggens had a
19 crystal ball and they knew that seven years ago when
20 they asked staff to correct this -- this location,
21 as staff had done up and down the coastline for
22 decades, if they had known that it was going to take
23 seven years and a trip to the Supreme Court, maybe
24 that would've been a better path for them.

25 But they set out on the path that had been

1 well-worn up and down this coast. And having come
2 this far in it, I -- I think we should see it to the
3 end rather than start a new one.

4 COMMISSIONER KAHELE: No, in -- in -- in
5 my opinion, the petitioner is being well-represented
6 by an excellent attorney here. One more question:
7 when the purchase of the property that included 4.7
8 acres, I believe, of Conservation, was he aware that
9 there was all these restrictions? "Conservation,
10 this is what I need to do: Ka Pa'akai analysis,
11 probably environmental impact statement."

12 So now after years have gone by after the
13 purchase has been made, I guess, there's something
14 that he wants to do with the property? He wants to
15 avoid going through this whole process of going to
16 the Ka Pa'akai and then EIS?

17 CALVERT CHIPCHASE: No. So, I mean,
18 excellent question. My no is not there. Good --
19 good question. When the Coast Guard abandoned the
20 property, there was a historic review done, and we
21 -- we have that in evidence -- and we could -- we
22 could pull up the slides if we need to -- it was
23 determined that no historic properties mauka of the
24 roadway would be impacted.

25 And that's really the area we're -- we're

1 dealing with is an existing structure, so fully --
2 what the law would call fully developed property.
3 And in evaluation, there's no cultural, historic
4 concerns in that area, this limited area of the
5 petition area. So it's -- it's not to avoid or get
6 out of that or -- or avoid any cultural impacts or
7 -- or concerns.

8 The -- the cultural, especially access for
9 fishing, hiking, gathering, any of that would occur
10 makai of that, in the area that is and would remain
11 Conservation. The -- the second part is to the idea
12 of -- of an intent to do anything with the property,
13 absolutely not, right? If -- in order to develop
14 the property, you'd have to move it into an Urban
15 District here.

16 You'd need community plan, and general
17 plan, and zoning, and all of those things. Nobody
18 has asked for any of that. This isn't an adjustment
19 or an amendment to move it from Conservation to
20 Urban. It's Agriculture. It's agricultural land,
21 and it's agriculture mauka of that, and they're
22 engaged in agriculture.

23 And so there's no intent to do anything
24 different or to develop the property in any way that
25 this would make it different or easier to get there.

1 What this deals with is -- is the -- the day-to-day
2 obligations and -- and requirements of -- of living
3 on a property. You live on a Conservation property,
4 any trees with a diameter over six inches, you need
5 state approval.

6 If you need state approval to change your
7 landscaping, your total coverage, including paving
8 stones, are regulated by OCCL. All of those things
9 add an -- a layer of -- of challenge when you're a
10 homeowner, particularly a homeowner on the coast.
11 And -- and -- and if it were merely that it's
12 challenging, that -- that's -- that's not a good
13 reason in and of itself to do this. Absolutely.

14 That just explains why they've gone
15 through this process, why it matters to them. The
16 good reason for doing it is because a mistake was
17 made. And -- and we should correct that. And if
18 that mistake makes their life easier, is -- is
19 great, but that's not the reason for doing it. The
20 reason is to fix the mistake.

21 COMMISSIONER KAHELE: Thank you.

22 CALVERT CHIPCHASE: Thank you.

23 COMMISSIONER YAMANE: Mr. Chair?

24 Thank you, Mr. Chipchase. Just wanted to
25 kind of follow up on that question.

1 CALVERT CHIPCHASE: Totally.

2 COMMISSIONER YAMANE: Like this line has
3 been there for 50 years at -- like you said, it's a
4 small sliver, about an acre total. And, I guess,
5 your client is here wanting to move that line, but
6 you're saying because it's a mistake, but -- I mean,
7 still what -- what -- what -- what -- what -- what
8 -- what instigated that?

9 You didn't just go over and say, "There's
10 a mistake." Obviously, there's some benefit of what
11 you want to do, trying to do, continue to do that's
12 going to make things easier if this line is moved.

13 CALVERT CHIPCHASE: Oh, oh, absolutely,
14 Commissioner. And -- and I've -- I've tried to be
15 clear about that. So I think if we take a step
16 back. So the -- the Eggens got an SMA approval to
17 renovate the historic structures, remediate the
18 asbestos, and all of those things in 2018. Enormous
19 cost.

20 As -- as part of their process in -- in
21 doing that, they identified this mistake, this
22 mapping error, that they -- they'd clearly intended
23 to follow a road, but the -- the road existed in a
24 different location at the time they did it. And
25 that started them on this journey in 2019. The --

1 the why -- well, and I'll take one more step back.

2 Recognizing that the boundary should have
3 included the existing structures up to the mauka
4 edge of the roadway in the Agricultural District
5 doesn't let you do anything different with the
6 property. You're still subject to Chapter 205, in
7 particular 205-2, I think it would be. I don't
8 think this is -- well, some parts of 4 or 5 might
9 apply.

10 But it's still a highly regulated
11 property. It doesn't allow for development of
12 additional structures or uses other than a farm
13 dwelling for -- for residential. All of those
14 limitations still apply to the -- the property. So
15 it isn't to do any of those development-related
16 things. It -- it -- it is what I said that -- that
17 -- that day-to-day, "Do I need to re-roof my
18 property?"

19 If I have to -- if my property is in
20 Conservation, and I have to re-roof it, I not only
21 need the county's permission, I got to go to OCCL
22 and get permission to do that kind of work on my
23 property. If I want to change my landscaping in
24 certain ways, I got to go to OCL to get permission
25 to do those things. You don't have to do that in

1 agriculture.

2 In the Agricultural District, you can use
3 your property -- still subject to county laws, still
4 subject to state use requirements. Absolutely. But
5 in -- in easier ways is probably the best way for me
6 to put it.

7 COMMISSIONER YAMANE: Is there like
8 associated cost to do those additional items that
9 you mentioned going through the -- like a process --
10 additional process costs?

11 CALVERT CHIPCHASE: Absolutely. Every
12 time.

13 COMMISSIONER YAMANE: Thank you, Mr.
14 Chair.

15 CHAIR LEE: Thank you.

16 Any other questions for the petitioner or
17 for staff? Yes, go ahead.

18 COMMISSIONER KAMAKEA-'OHELO: Mahalo,
19 Chair. This question is -- is -- is for the -- the
20 petitioner. And it's a simple question: did the
21 Land Use Commission of 1969 draw the maps and the
22 lines based on the information and evidence that
23 they had at the time?

24 CALVERT CHIPCHASE: It -- it -- they did
25 it based on the -- the information it appears that

1 was before them, not based on the information that
2 existed at the time. And that's the mistake.

3 COMMISSIONER KAMAKEA-'OHELO: So you
4 claim, right? So I have -- I have a follow-up
5 question, Chair, if you may.

6 CHAIR LEE: Yes.

7 COMMISSIONER KAMAKEA-'OHELO: On the map
8 that you showed, and the southern property where you
9 claim that the intent of the LUC was to connect both
10 roads, is that road within the 300-foot setback?

11 CALVERT CHIPCHASE: I don't know. We
12 haven't mapped it down there. But --

13 COMMISSIONER KAMAKEA-'OHELO: So could the
14 intent of the LUC also be to follow the 300-foot
15 setback in that southern property?

16 CALVERT CHIPCHASE: No, Commissioner, with
17 respect, that would be a very difficult conclusion
18 to assume. They followed one or the other
19 guidelines, not all of them. So 300 wasn't a
20 minimum that they followed, it was an alternative.
21 When they didn't have a physical feature, they
22 defaulted to 300 feet, so not as a minimum, but as
23 an alternative. And that might be closer or farther
24 than the physical features they followed in lots of
25 places.

1 The second thing is: when they did follow
2 300 -- everything we've looked at says, when they
3 did follow 300, they said so. Because you couldn't
4 find 300 as a physical feature on the ground, they
5 took the extra step of telling us that's what
6 they're doing.

7 They didn't always do that when they
8 followed a physical feature because you could -- you
9 could find the physical feature. And so there's no
10 evidence anywhere that they were setting it
11 according to both. That would be contrary to their
12 guidelines, or in those locations, they were
13 following 300 feet.

14 COMMISSIONER KAMAKEA-'OHELO: So is there
15 any evidence, you know, that the LUC did not follow
16 the 300-foot setback within the petitioner's parcel
17 --

18 CALVERT CHIPCHASE: Yeah, absolutely.
19 Absolutely, Commissioner. As we've shown on the
20 map, they literally followed what they believe to be
21 the correct location of the road into petitioner's
22 parcel. So that's one piece of evidence. We know
23 they were following that as their default. They did
24 it up and down the coast.

25 Two, we know where 300 feet would be from

1 the coastline, and we know that the boundary, even
2 at the entry point, doesn't follow what would be 300
3 feet. And, three, they didn't tell us they were
4 following 300 feet. And, again, everywhere they
5 did, they told us.

6 COMMISSIONER KAMAKEA-'OHELO: Okay. So,
7 particularly in this parcel, did they -- did the LUC
8 show any evidence of them telling us that they're
9 following the road within this parcel of discussion?

10 CALVERT CHIPCHASE: On the map itself,
11 Commissioner, as it literally follows the road as
12 they thought it existed into the property.

13 COMMISSIONER KAMAKEA-'OHELO: Through the
14 property -- is there any evidence that indicates
15 that the LUC intended to follow the road through the
16 property?

17 CALVERT CHIPCHASE: Well, they -- they
18 follow the same course where the road starts to the
19 end, and then as we've shown, down at the bottom.
20 So you can see physically on the map what they were
21 following and what they connected to. In between
22 those two points, if they're going to deviate and do
23 -- follow some other rule, in all the other
24 instances that we've looked at, they say so, and
25 say, "We're no longer following physical features."

1 We're going to follow 300 feet."

2 This would be anomalistic to be the one
3 place where they followed one line, the road, into
4 the property, and then they just suddenly changed
5 and said, "We are going to follow something else
6 now, but we are not going to tell you what that is.
7 We're going to leave it for 60 years for somebody to
8 figure it out." That doesn't seem likely.

9 COMMISSIONER KAMAKEA-'OHELO: I have a few
10 more questions, but I'll -- I'll yield back the time
11 because I want to make sure that we can conclude.

12 CHAIR LEE: Does anyone else have any
13 questions? If not, then we're going to let
14 Commissioner -- Vice Chair proceed and finish up.
15 Okay. I don't see any other questions.

16 COMMISSIONER KAMAKEA-'OHELO: Mahalo.
17 Again, this is for -- for the petitioner. Is it
18 possible that the LUC could have been following the
19 vegetation line?

20 CALVERT CHIPCHASE: No, Commissioner, it's
21 not possible.

22 COMMISSIONER KAMAKEA-'OHELO: How -- and
23 how do you know that for a fact?

24 CALVERT CHIPCHASE: Because that is not
25 one of their standards set out as their guidelines

1 for setting the boundaries. And, secondly, the
2 vegetation line would be much farther makai because
3 it would represent the high wash of the waves. And
4 we know that this shoreline -- the -- the vegetation
5 line and the high wash of the waves are
6 substantially more makai than any line that they
7 drew or we've suggested they should have followed.

8 COMMISSIONER KAMAKEA- 'OHELO: Okay. You
9 know, you -- you -- you made quite a bit of
10 conclusions in your presentation earlier. One of
11 them that the potential changing of this zoning will
12 not have any environmental impacts. But how can you
13 make that determination without any 343?

14 CALVERT CHIPCHASE: Absolutely,
15 Commissioner. Absolutely. And -- and so I -- I
16 think that there's two -- two points to it if I --
17 if I can. The first is affirmatively, right, we
18 know the structures exist. They've existed since
19 1961, the roadway too, although the roadway would
20 stay in Conservation. The structures would be part
21 of Agriculture.

22 Those aren't changing. They were
23 renovated and following an SMA permit in 2018 with
24 all the SMA considerations that we review, which
25 substantially do concern the same environmental and

1 ecological impacts that we look at through 343. So
2 we know that full review was done in 2018, and we
3 know that it was approved and that the structures
4 were -- were renovated.

5 We know that use will continue. So
6 there's no development associated with correcting
7 the line, and there's no new use associated with
8 correcting the line. So there's no change in any
9 existing condition, which is what we would look at
10 for a 343. Is there a trigger that we're doing
11 something different that might substantially or have
12 a substantial adverse effect on the environment,
13 including all the considerations that make up our
14 human and -- and natural environment?

15 Nothing is changing. So we know
16 affirmatively that there won't be any impact because
17 it's the same today as it will be tomorrow. The
18 second, in -- in all these long proceedings, seven
19 years of proceedings, no one has ever come forward
20 -- staff, otherwise -- suggesting that there's some
21 environmental risk in correcting this line for 1.3
22 acres.

23 So we know affirmatively nothing's
24 changing, and we know on the negative side, nobody
25 has ever suggested otherwise.

1 COMMISSIONER KAMAKEA-'OHELO: So, Chair,
2 how much time do we have? Just a time check.
3 Sorry.

4 CHAIR LEE: Probably 15 minutes. You can
5 ask more.

6 COMMISSIONER KAMAKEA-'OHELO: Yeah.

7 CHAIR LEE: How much time do you want for
8 deliberation?

9 COMMISSIONER KAMAKEA-'OHELO: Probably a
10 half hour.

11 CHAIR LEE: Okay.

12 COMMISSIONER KAMAKEA-'OHELO: And you know
13 what, I -- mahalo for responding.

14 CALVERT CHIPCHASE: Anytime, Commissioner.

15 COMMISSIONER KAMAKEA-'OHELO: Chair, I'll
16 just yield back the time, that way we can make sure
17 that we hit the other points on our agenda as well.

18 CHAIR LEE: Okay. Thank you. All right.
19 Well, the -- I'm sorry? Yes, that is true. Okay.
20 We can -- so this Commission will now conduct formal
21 deliberations to consider the remanded petition for
22 a declaratory order. I will note for the parties
23 and the public that during the Commission's
24 deliberations, we will not entertain additional
25 input from the parties or the public, unless those

1 individuals or entities are specifically requested
2 to do so by the Chair.

3 If called upon, I will ask that any
4 comments be limited to the question at hand.
5 Commissioners, let me confirm that each of you has
6 reviewed the record, including the transcript and
7 exhibits from the December 22nd, 2021 hearing, as
8 well as any materials properly admitted into the
9 record as part of these remand proceedings and are
10 prepared to deliberate on this matter.

11 After I call your name, will you please
12 signify with either an "aye" or a "nay" that you are
13 prepared to deliberate on this matter.

14 Commissioner Hayashida?

15 COMMISSIONER HAYASHIDA: Aye.

16 CHAIR LEE: Commissioner Kahele?

17 COMMISSIONER KAHELE: Aye.

18 CHAIR LEE: Commissioner Kamakea-'Ohelo?

19 COMMISSIONER KAMAKEA-'OHELO: Aye.

20 CHAIR LEE: Commissioner Miyasato?

21 COMMISSIONER MIYASATO: Aye.

22 CHAIR LEE: Commissioner U'u?

23 COMMISSIONER U'U: Aye.

24 CHAIR LEE: Commissioner Yamane?

25 COMMISSIONER YAMANE: Aye.

1 CHAIR LEE: And I, Brian Lee, am also
2 prepared to deliberate on this matter.

3 All right. Commissioners, the Chair will
4 now entertain a motion. And then, after that, we
5 can have more discussion, if there is a second.
6 Does anyone have a motion?

7 COMMISSIONER U'U: I'll make a motion.

8 CHAIR LEE: Okay.

9 COMMISSIONER U'U: You know, and I -- I
10 will -- I'll make the motion and, I guess, we can
11 discuss it later. I request the motion to grant the
12 petition and interpret the boundary as following the
13 road as it existed in 1969.

14 CHAIR LEE: Okay. Is there a second?

15 COMMISSIONER HAYASHIDA: Commissioner
16 Hayashida, second.

17 CHAIR LEE: Okay. It's been moved and
18 seconded. Discussion, please. Go ahead,
19 Commissioner U'u.

20 COMMISSIONER U'U: Yeah. And to be fair,
21 I kept an open mind in -- in listening and kept an
22 open mind what staff had to say, what everyone had
23 to say, really. What I come to conclude that humans
24 make errors. Just it's that simple. I've been on
25 part -- on both sides of the discussions.

1 I've been on a planning commission where
2 we changed the community plans, general plans. I've
3 been on the private side where they mistakenly
4 rezoned properties, and properties that people owned
5 for 130 years but did not know it was rezoned. And
6 part of this huge process to -- to zone lands or --
7 or -- or make-up of lands in creating these
8 boundaries, you set by guidelines and you set by
9 timelines.

10 And I -- I only can give you the example
11 based on -- on GPAC, General Plan. It -- it goes
12 before the GPAC committee, then it goes to the
13 Planning Commission, then it goes to the County
14 Council. Although it might be separate what you
15 guys do, the process is the same. It's humans
16 making decisions for a vast majority of land that
17 encompasses everyone on the island, and not everyone
18 pays attention.

19 But within that large project or large job
20 that you have in front of you, there is timelines
21 set. And I never was happy with the information
22 being given to our community to make a better
23 decision or to have the residents who's been
24 affected involved. So when you say, "How come the
25 Coast Guard didn't know?" I think Cal answered that

1 pretty good.

2 But I want to tell you something, people
3 who owned the land for 130 years had no idea they
4 were zoned incorrectly or zoned without them knowing
5 until they went about doing their normal everyday
6 business. So it doesn't matter if you bought it or
7 not, I believe the interpretation and what you guys
8 doing is the remedy to -- to handle the stuff that
9 falls through the cracks, because it will.

10 I'm an example -- my family land was an
11 example of that. So when we say at the beginning of
12 this process -- and -- and if this had anything to
13 do with Hawaiian rights, I am Hawaiian. But it does
14 not affect the shoreline. In fact, not only do you
15 guys have shoreline access, you guys get beach
16 parking, which is what I cannot say for a lot of the
17 shorelines I -- I -- I attend to.

18 I forgot -- I lost my train of thought,
19 but the people affected, we -- we found it out on
20 Maui, was Hasegawa's and Mantokuji church in Pa'ia.
21 They got affected by things happening to them
22 without them knowing. And -- and I -- I just felt
23 like even though we follow this process that was
24 created by humans, people -- things will fall
25 through the cracks. This is the how for fix it.

1 Right?

2 We're not looking at fixing the entire
3 process because I'd say 95 percent of the process is
4 correct. But you can get that 5 percent, like our
5 family and our neighbors, that fell through the
6 cracks.

7 And we're the ones suffered the process --
8 in dealing with this process. And I thought it was
9 an unfair process, to be fair. But for the 95
10 percent, you great. I mean, if this is not your
11 property, we all can agree it's pretty good, right?
12 Like, we good, right? And then we can believe in
13 the process because it didn't affect us.

14 But it doesn't matter who owns the
15 property, right? Until you're a property owner,
16 like myself, or like my neighbors in Pa'ia who got
17 affected by that. So -- and -- and -- and, again,
18 go back to the beginning -- I kind of remember my
19 chain of thought -- 51 percent we got to believe,
20 right? There's 51 -- preponderance is what we're
21 looking at.

22 I don't know if -- I don't know who got --
23 who on what, but the -- it's a 50-50 going in on a
24 balance, but after hearing to -- what I heard from
25 both sides, I would say the 51 goes higher, 51 on my

1 part. That's my two cents with 51 percent. Thank
2 you.

3 CHAIR LEE: Okay. Thank you. Who
4 seconded? Was it Myles? Oh. Ken -- Commissioner
5 Hayashida, do you have any comments?

6 COMMISSIONER HAYASHIDA: I support Bruce
7 on his, you know, there are -- we have -- we --
8 we're going to have shortfalls in our process, and
9 it seems to me that this is one of the shortfalls,
10 and that the roadway was the intended line. So...

11 CHAIR LEE: Okay. Yes, Commissioner?

12 COMMISSIONER U'U: I'd like to add one
13 more thing, that I absolutely respect everyone's
14 decision, including our staff's decision to do and
15 propose whatever you have to do. This is -- this is
16 just my mana'o sharing with everyone else with
17 respect to everyone's mana'o.

18 CHAIR LEE: Thank you. Any other
19 discussion? Commissioner Kamakea-'Ohelo? Or --

20 COMMISSIONER YAMANE: Go -- go ahead.
21 I'll let you finish.

22 Okay, Mr. Chair. Yeah, so what -- what
23 I'm hearing is a line that I didn't think was a
24 mistake. I think it was the process was used to
25 determine at the time to develop that boundary. And

1 even though the petitioner says it's a mistake, but
2 it was only brought up to benefit the client. So if
3 there was no client to benefit from it, this line
4 would still go on being the line that was used based
5 on the process, whether it's a combination, hybrid,
6 whatever the thought was, that was the line.

7 And to move it because someone benefits,
8 individual benefit, I think that sets a dangerous
9 precedent going forward that anybody can go, "Oh,
10 you know, if we move this line 100 feet, we -- we
11 don't need to do this. We save this much money. We
12 don't have to do that." So, you know, my -- I -- I
13 -- I'll -- I'll be opposing this motion based on
14 that thought. Thank you, Mr. Chair.

15 CHAIR LEE: Okay. Thank you.

16 Commissioner Kamakea-'Oheho?

17 COMMISSIONER KAMAKEA-'OHELO: Mahalo,
18 Chair.

19 You know, in the petitioner's exhibit,
20 Exhibit 1, page 7, if you go all the way down to the
21 four major conditions that have been recognized in
22 recommendations based upon these conditions, the --
23 the LUC has determined the Conservation District
24 boundary.

25 The petitioner assumes, yeah, that the LUC

1 followed the physical demarcations under 1, and it's
2 highlighted within the exhibit. But my question
3 earlier about could the LUC of 1969 follow the
4 vegetation line? If we look just under, in number
5 two, it says right here, "Where a vegetation line
6 such as a windbreak or a row of trees more clearly
7 marks the edge of the agricultural practice, this
8 was used."

9 That's where I hold my line because I'm
10 ma'a to that area. Just a stone's throw away at the
11 Botelho's property, I was raised. I am ma'a to the
12 coastline. As a cultural practitioner sitting here
13 on this board, I must say, yeah, that kilo and
14 observation matters as well. So, therefore, I will
15 be voting against the motion. Mahalo, Chair.

16 CHAIR LEE: Thank you, Commissioner. Any
17 other comments or questions?

18 COMMISSIONER KAHELE: I've got a comment
19 --

20 CHAIR LEE: Yes, go ahead.

21 COMMISSIONER KAHELE: -- Chair. You know,
22 we -- we -- we put in -- we put faith in our staff,
23 the LUC staff, and, hopefully, they've done a great
24 -- and I believe they've done a great research and
25 -- and -- and going back and -- and presenting all

1 of the evidence. I kind of agree with the -- my
2 fellow commissioners here: they knew -- the
3 landowner knew that they were buying Conservation
4 land.

5 They knew that there was going to be
6 restrictions. If there was no improvement planned,
7 I don't believe they'd be here at the Land Use
8 Commission. They should have gone and -- and -- and
9 did a boundary amendment. And I know it's probably
10 pricey, probably costs more than 80, 90,000 to do an
11 EIS, but I think that's a venue that they should
12 have taken. With that being said, you know, I -- I
13 cannot support the -- the motion. Thank you.

14 CHAIR LEE: Okay. Thank you very much.
15 Any other final comments?

16 COMMISSIONER KAMAKEA-'OHELO: I have a
17 final comment.

18 CHAIR LEE: Yes. Go ahead.

19 COMMISSIONER KAMAKEA-'OHELO: Mahalo,
20 Chair, for the opportunity to share again. I want
21 to commend the petitioner. Seven years is a long
22 time. And I understand, you know, the harm and the
23 'eha that may cause you folks. And this is nothing
24 personal against you folks. So, really, you know,
25 if there's a better process, then I'm 100 percent

1 willing to hear you again.

2 Mr. Chipchase, you -- you argue a great
3 case.

4 COMMISSIONER KAHELE: Excellent.

5 COMMISSIONER KAMAKEA-'OHELO: Excellent.

6 So, you know, I really want to commend you folks.

7 Again, seven years is, for some folks, a lifetime.

8 So, hopefully, we can find some resolution for this
9 'ohana.

10 CHAIR LEE: Okay. Well, if there's no
11 further discussion then, Mr. Orodenger, will you
12 please conduct the roll call vote?

13 DANIEL ORODENKER: Thank you, Mr. Chair.
14 The motion in front of the Commission is to grant
15 the petitioner's request and follow the road as it
16 was delineated in 1969.

17 Commissioner U'u?

18 COMMISSIONER U'U: Aye.

19 DANIEL ORODENKER: Commissioner --

20 COMMISSIONER U'U: Aye.

21 DANIEL ORODENKER: Oh, sorry.

22 Commissioner Hayashida?

23 COMMISSIONER HAYASHIDA: Aye.

24 DANIEL ORODENKER: Commissioner Miyasato?

25 COMMISSIONER MIYASATO: No.

1 DANIEL ORODENKER: Commissioner Kahele?

2 COMMISSIONER KAHELE: No.

3 DANIEL ORODENKER: Commissioner Kamakea-
4 'Ohelo?

5 COMMISSIONER KAMAKEA-'OHELO: A'ole.

6 DANIEL ORODENKER: Commissioner Yamane?

7 COMMISSIONER YAMANE: No.

8 CHAIR LEE: Okay. It's moot then --

9 DANIEL ORODENKER: Chair?

10 CHAIR LEE: I'm not going to -- I'm not
11 going to vote since it's moot, so...

12 DANIEL ORODENKER: Okay. What?

13 MIRANDA STEED: What's the vote count?

14 DANIEL ORODENKER: The vote count right
15 now is four nos and two yeses.

16 MIRANDA STEED: Four nos and --

17 DANIEL ORODENKER: Two yeses.

18 MIRANDA STEED: You have to vote. We need
19 five. Either way, you can vote however you want,
20 but you need to vote.

21 CHAIR LEE: Okay. Because it's not going
22 to pass, right?

23 MIRANDA STEED: No, it will -- well, it
24 depends how you vote. Depends how you vote.

25 CHAIR LEE: Okay. But it's -- it's five

1 against, right? It's four --

2 MIRANDA STEED: No, four.

3 DANIEL ORODENKER: Four against.

4 CHAIR LEE: Four against. Well, it
5 doesn't matter how I vote, you know, if...

6 MIRANDA STEED: It does.

7 UNIDENTIFIED FEMALE SPEAKER: The AG's
8 telling you to vote.

9 CHAIR LEE: Okay. I'm going to say no.

10 DANIEL ORODENKER: Thank you, Mr. Chair.
11 The motion does not pass with five nos and two
12 yeses.

13 CHAIR LEE: What other motion can there
14 be?

15 DANIEL ORODENKER: To deny.

16 CHAIR LEE: Oh. Okay. Is there anyone
17 who wishes to make a motion to deny?

18 COMMISSIONER KAMAKEA-'OHELO: Chair? This
19 is Ku'ike.

20 CHAIR LEE: Yes.

21 COMMISSIONER KAMAKEA-'OHELO: I move to
22 make a motion.

23 CHAIR LEE: Okay. Is there a second?

24 COMMISSIONER KAHELE: Chair, I second.

25 CHAIR LEE: Okay. It's been moved and

1 seconded. Is there a discussion on denying?

2 Okay. Hearing none, please conduct a roll
3 call vote.

4 DANIEL ORODENKER: Thank you, Mr. Chair.
5 The motion is to deny the petition.

6 Commissioner Kamakea-'Ohele?

7 COMMISSIONER KAMAKEA-'OHELO: A'ole --
8 aye. Aye.

9 DANIEL ORODENKER: Aye.

10 COMMISSIONER KAMAKEA-'OHELO: Hey, you
11 know, and -- and, Chair, if I may, I just want to
12 make one small comment. You know, this is really no
13 laughing matter, and out of respect for our
14 petitioner, yeah, if -- if we can just minimize or
15 limit, you know, our chuckles on this end of the
16 line. Just -- and let's conduct ourselves with
17 aloha.

18 CHAIR LEE: Yes, this is a difficult
19 thing.

20 DANIEL ORODENKER: Commissioner Kahele?

21 COMMISSIONER KAHELE: Aye.

22 DANIEL ORODENKER: Commissioner Hayashida?

23 COMMISSIONER HAYASHIDA: Nay.

24 DANIEL ORODENKER: I'm sorry, I'm
25 correcting my math here.

1 Commissioner Miyasato?
2 COMMISSIONER MIYASATO: Aye.
3 DANIEL ORODENKER: Commissioner Yamane?
4 COMMISSIONER YAMANE: Aye.
5 DANIEL ORODENKER: Chair Lee?
6 CHAIR LEE: Aye.
7 DANIEL ORODENKER: Who did I miss? Oh,
8 Commissioner U'u. Yeah, got it.
9 COMMISSIONER U'U: Nay.
10 DANIEL ORODENKER: Okay. Thank you, Mr.
11 Chair. The motion carries with five affirmative
12 votes.
13 CHAIR LEE: Okay. Thank you. I'm -- I'm
14 sorry. Thank you. Appreciate it.
15 DANIEL ORODENKER: Yeah.
16 CHAIR LEE: Yeah. Thanks. Yeah, let's
17 take a short five-minute recess.
18 (WHEREUPON, a recess was taken.)
19 CHAIR LEE: All right. If there's anybody
20 from the public that would like to make any
21 additional testimony on this next agenda item.
22 Okay.
23 UNIDENTIFIED FEMALE SPEAKER: Are you sure
24 you're on page 8?
25 CHAIR LEE: I'm on page 10.

1 UNIDENTIFIED FEMALE SPEAKER: We -- we
2 already did testimony. We're -- we're on adoption
3 of minutes.

4 CHAIR LEE: Oh, okay. Sorry about that.

5 UNIDENTIFIED FEMALE SPEAKER: Yeah.

6 CHAIR LEE: All right. Thank you
7 everybody for your patience. The next order of
8 business, Agenda Item 3 is the adoption of the
9 minutes and approval of the May 13th, 2026 and May
10 14th, 2026 meeting minutes.

11 Ms. Kwan, has there been any written
12 testimony as received on those minutes?

13 ARIANA KWAN: No, Mr. Chair.

14 CHAIR LEE: Okay. Are there any members
15 of the public wishing to testify on this item?

16 ARIANA KWAN: Nobody on Zoom used the Q&A
17 feature to indicate they would like to provide
18 testimony on this item.

19 CHAIR LEE: Thank you.

20 Commissioners, are there any corrections
21 or comments to those minutes?

22 COMMISSIONER KAMAKEA-'OHELO: Chair? This
23 is Ku'ike.

24 CHAIR LEE: Yes. Go ahead.

25 COMMISSIONER KAMAKEA-'OHELO: I will

1 kanalua and not participate in the vote.

2 CHAIR LEE: Okay. Thank you.

3 Yes?

4 COMMISSIONER YAMANE: Mr. Chair, I also
5 recused myself from that meeting. So I won't be
6 voting on the approval of this minutes.

7 CHAIR LEE: Okay. Thank you. All right.

8 No --

9 COMMISSIONER U'U: Voting to approve.

10 CHAIR LEE: Yes.

11 COMMISSIONER KAHELE: Second.

12 CHAIR LEE: Yes. Motion has been moved by
13 Commissioner Miyasato, seconded by --

14 COMMISSIONER U'U: U'u.

15 CHAIR LEE: Oh, Commissioner U'u --

16 CHAIR LEE: Yes, we have to defer them.
17 Someone has to review them before the next meeting
18 then.

19 ARIANA KWAN: So if not everyone had a
20 chance to watch the YouTube or review the
21 transcripts to confirm the minutes are accurate,
22 we'll have to defer the item.

23 COMMISSIONER KAMAKEA-'OHELO: Chair?

24 CHAIR LEE: Yes.

25 COMMISSIONER KAMAKEA-'OHELO: This is

1 Ku'ike. My reasoning for kanalua is because I
2 wasn't present, but I did review the record.

3 CHAIR LEE: Oh. Okay.

4 COMMISSIONER KAMAKEA-'OHELO: So if -- if
5 you would allow -- if I could withdraw --

6 CHAIR LEE: Yes.

7 COMMISSIONER KAMAKEA-'OHELO: -- my
8 kanalua, that way we can get to the business at the
9 moment.

10 CHAIR LEE: Yes, sounds good. All right.
11 So you withdraw and then will someone make the
12 motion to approve the minutes?

13 COMMISSIONER KAMAKEA-'OHELO: I -- I
14 believe the motion's gone through already.

15 CHAIR LEE: Okay.

16 COMMISSIONER KAMAKEA-'OHELO: It was U'u
17 and --

18 COMMISSIONER KAHELE: I seconded it.

19 COMMISSIONER KAMAKEA-'OHELO: -- Kahele
20 seconded.

21 CHAIR LEE: Okay. Moved by Commissioner
22 U'u, seconded by Commissioner Kahele. Can you
23 conduct -- okay. Any objections? Hearing none, by
24 acclamation, the minutes are approved by voice.

25 Okay. Next Agenda Item 4 -- the next

1 agenda item is the election of the Commission
2 officers for fiscal year 2027, covering the period
3 of July 1st, 2026 through June 30th, 2027. At this
4 time, the Commission will consider the election of
5 officers for the upcoming fiscal year. The
6 positions include Chair, Vice Chair, and Second Vice
7 Chair. We'll now recognize any written public
8 testimony submitted in this matter.

9 Ms. Kwan, has there been any written
10 testimony submitted on this matter?

11 ARIANA KWAN: No, Mr. Chair.

12 CHAIR LEE: Ms. Kwan, are there members of
13 the public that wish to testify in this matter?

14 ARIANA KWAN: Nobody on Zoom used the Q&A
15 feature, Chair.

16 CHAIR LEE: Okay. We'll now open the
17 floor for nominations for Chair.

18 COMMISSIONER MIYASATO: Chair, I nominate
19 Commissioner Lee.

20 CHAIR LEE: Okay. Thank you. Are there
21 any additional nominations for Chair? Okay.
22 Hearing no further nominations, nominations for
23 Chair are closed.

24 COMMISSIONER YAMANE: Mr. Chair -- oh,
25 sorry, Mr. Chair. I'd like to nominate Ku'ike for

1 Chair.

2 CHAIR LEE: Ku'ike, do you accept?

3 COMMISSIONER KAMAKEA-'OHELO: Chair, I
4 accept a nomination.

5 CHAIR LEE: Okay. It's been moved. So we
6 have two nominations then. Okay. So we just
7 conduct a roll call vote? Okay. Is there -- is
8 there a second for Ku'ike?

9 COMMISSIONER KAHELE: Chair, I will second
10 this motion.

11 CHAIR LEE: Okay. It's been moved and
12 seconded. All right. Okay. So will you conduct
13 the roll call vote, Mr. Orodenger?

14 DANIEL ORODENKER: Thank you, Mr. Chair.
15 The motion is to elect Ku'ike Kamakea-'Ohelo as
16 Chair for the upcoming fiscal year.

17 COMMISSIONER MIYASATO: We have two
18 nominations, huh?

19 DANIEL ORODENKER: Yeah, we have.

20 MIRANDA STEED: Are we doing one person
21 then the other?

22 DANIEL ORODENKER: Yeah. We should call a
23 -- call a name?

24 MIRANDA STEED: Yeah. Can someone --

25 CHAIR LEE: Can he just call the

1 commissioners and have them take a name?

2 MIRANDA STEED: I guess, can someone just
3 move for one above it?

4 DANIEL ORODENKER: Oh, that's -- we have
5 Ku'ike's been moved forward.

6 MIRANDA STEED: Yeah. Okay. Then let's
7 just do it that way.

8 DANIEL ORODENKER: Okay.

9 CHAIR LEE: We have one for earlier too,
10 right?

11 DANIEL ORODENKER: Yup.

12 MIRANDA STEED: You have a nomination?

13 DANIEL ORODENKER: Yeah, two nominations.

14 MIRANDA STEED: Okay. So we have two
15 nominations. Did one of the nominations get a
16 second? Who -- who seconded? Second for Brian Lee?

17 DANIEL ORODENKER: Okay.

18 MIRANDA STEED: Okay. So vote on -- vote
19 on Lee -- vote on Lee first? Yes.

20 DANIEL ORODENKER: Okay.

21 MIRANDA STEED: And then if we pass it,
22 it's okay, if he doesn't pass --

23 DANIEL ORODENKER: Okay.

24 MIRANDA STEED: Yeah. Got you.

25 DANIEL ORODENKER: Okay. Was moved by

1 Commissioner U'u and seconded by -- oh, no. Who
2 moved -- who -- Miyasato and -- Miyasato. Okay.
3 The motion is for Commissioner Lee to be elected to
4 a term as Chair for the upcoming fiscal year.

5 Commissioner Miyasato?

6 COMMISSIONER MIYASATO: Aye.

7 DANIEL ORODENKER: Commissioner U'u?

8 COMMISSIONER U'U: Aye.

9 DANIEL ORODENKER: Commissioner Hayashida?

10 COMMISSIONER HAYASHIDA: Aye.

11 DANIEL ORODENKER: Commissioner Kahele?

12 COMMISSIONER KAHELE: Already have the
13 votes. Nay.

14 DANIEL ORODENKER: Commissioner Kamakea-
15 'Ohelo?

16 COMMISSIONER KAMAKEA-'OHELO: Mahalo for
17 your leadership, Brian. And let's take a chance at
18 this. A'ole.

19 DANIEL ORODENKER: Okay. Okay.
20 Commissioner Yamane?

21 COMMISSIONER YAMANE: Nay.

22 DANIEL ORODENKER: Chair Lee?

23 CHAIR LEE: Aye.

24 DANIEL ORODENKER: We have a four-three
25 vote.

1 MIRANDA STEED: Okay. So it doesn't pass
2 then.

3 DANIEL ORODENKER: Okay.

4 MIRANDA STEED: So now to the second
5 motion.

6 DANIEL ORODENKER: Thank you. The motion
7 is to nominate or to elect -- thank you -- elect
8 Ku'ike Kamakea-'Ohelo as Chair for the upcoming
9 fiscal year. It was -- let me see who was --
10 Commissioner Yamane?

11 COMMISSIONER YAMANE: Aye.

12 DANIEL ORODENKER: Commissioner Kahele?

13 COMMISSIONER KAHELE: Aye.

14 DANIEL ORODENKER: Commissioner Miyasato?

15 COMMISSIONER MIYASATO: Aye.

16 DANIEL ORODENKER: Commissioner Hayashida?

17 COMMISSIONER HAYASHIDA: Nay.

18 DANIEL ORODENKER: Commissioner Kamakea-
19 'Ohelo?

20 COMMISSIONER KAMAKEA-'OHELO: Aye.

21 DANIEL ORODENKER: Commissioner U'u?

22 COMMISSIONER U'U: No disrespect, nay.

23 DANIEL ORODENKER: Chair Lee?

24 CHAIR LEE: Again, no -- no disrespect,
25 nay.

1 DANIEL ORODENKER: Still four-three.

2 CHAIR LEE: Okay.

3 MIRANDA STEED: Okay. Debate each other,
4 I guess.

5 COMMISSIONER KAMAKEA-'OHELO: Wow.

6 CHAIR LEE: I -- I know that Commissioner
7 Kamakea-'Ohelo would do a good job, but I think I'll
8 be here, and I would love if you could serve as Vice
9 Chair and continue on. And I would want Mel Kahele
10 for Second Vice Chair, unless someone else wants to
11 be, but we'll defer to the wishes of the Commission.

12 COMMISSIONER MIYASATO: Chair, I feel both
13 of you would do an excellent job. So I vote -- I
14 did vote for -- vote for both of you I just -- for
15 me, I think -- no disrespect to nobody -- I like
16 seniority to take precedence. So that's where I
17 stand.

18 COMMISSIONER KAMAKEA-'OHELO: Mahalo for
19 the opportunity to share, fellow commissioners.
20 Chair Lee, just, you know, you've driven us this
21 fiscal year through a lot of turmoil and maybe, you
22 know, some super controversial topics, items, you
23 know, things. And I just mahalo you for your
24 leadership. You know, I -- initially, I -- I was on
25 the fence to serve again a second term on the LUC --

1 the LUC. And the reason why I'm here is to ensure
2 that the voices and -- of our kupuna and our
3 kupuna'aina are represented.

4 And with that being said, as long as I'm
5 on the Commission, I can ensure that I'll -- I'll be
6 here to malama that role. So whether or not, you
7 know, I take the chairmanship, I deeply respect and
8 honor each and every one of you colleagues here on
9 the LUC Commission. And what Commissioner Miyasato
10 said, you know, about seniority, I respect that. So
11 mahalo nui for sharing your mana'o.

12 And while I hold no degrees, I hear -- I'm
13 here representing the pedigree of my 'ohana and my
14 kupuna and all of the practitioners that have
15 invested and instilled within me and all of my lived
16 and life experiences. So mahalo again for the
17 opportunity to share. Whether or not I'm chairman,
18 I will be here to serve. You can count on that.

19 COMMISSIONER YAMANE: Mr. Chair?

20 CHAIR LEE: Yes?

21 COMMISSIONER YAMANE: I just wanted to
22 kind of voice my reasoning for nominating Ku'ike.
23 You know, on our QAC board, I got two former Land
24 Use Commissioners. Leo knows them well. They're
25 senior people that I respect. And one of them

1 always told me the Commission is here to be the
2 safety net because everybody has access to
3 developers, to money, to people building houses.
4 But when you get down to the people, the community,
5 they have nowhere else to turn, and they turn to the
6 Land Use Commission.

7 And Ku'ike in tough situations, like
8 today, that's where he's grounded. And that's why I
9 think, you know, all due respect to Chair Lee, but
10 just I think going forward for the next four years,
11 that's the kind of leadership you want: facing
12 tough decisions, making sure that the people, the
13 community have access, and have their voices heard
14 versus just high-paid lawyers, people can afford
15 these people, consultants that can talk fast and
16 talk good, and, you know, we kind of get like, "Oh
17 wow, yeah, that's the right thing to say."

18 But like Ku'ike has shown the leadership
19 he's going to listen to the people. I think that's
20 what this Commission is about, is a safety net for
21 the community to be heard. Thank you, Mr. Chair.

22 CHAIR LEE: Thank you. Any other
23 thoughts?

24 COMMISSIONER KAHELE: Chair, I just want
25 to make a statement.

1 CHAIR LEE: Sure.

2 COMMISSIONER KAHELE: You know, you and I
3 go back, I don't know, 30 -- 30 years, you know,
4 we've always represented the blue collar, the
5 working class. And no disrespect, but -- but 'Oheho
6 and I have become, you know, close allies in
7 representing the -- the Native Hawaiians. And I --
8 I think you would do a good job in -- in taking us
9 through the next several years as Chair.

10 As far as seniority, I kind of put age
11 before knowledge, and I think Ku'ike would do a
12 better job as being the First Chair. Thank you.

13 COMMISSIONER KAMAHEA-'OHELO: Chair, if I
14 may, I just want to clarify, this is only for a
15 single fiscal year, correct? And then this time
16 next year --

17 COMMISSIONER KAHELE: Okay --

18 COMMISSIONER KAMAHEA-'OHELO: -- you know,
19 we will be deciding again, right? If we got to
20 change course or not.

21 COMMISSIONER KAHELE: Okay. Sorry.

22 COMMISSIONER KAMAHEA-'OHELO: So, you
23 know, it's not for the next several years, and --
24 and that in itself is a huge commitment. But just
25 for -- to clarify for the record, this is only for

1 the next 12 months.

2 CHAIR LEE: Yes.

3 COMMISSIONER KAHELE: Oh, my error.

4 Sorry.

5 CHAIR LEE: Yes. Okay. So that would be
6 so you're accepting for Second Vice Chair then
7 Commissioner Kahele?

8 COMMISSIONER KAHELE: Well, no, only if
9 Mr. 'Ohelo decides on taking First.

10 CHAIR LEE: Yeah, I think that's a
11 conditional yes. So...

12 COMMISSIONER KAHELE: Yes. And there's no
13 term limits, right? Or one year?

14 CHAIR LEE: Oh, you could be -- you could
15 be forever. No, I think everyone here is capable of
16 doing a good job, and we all bring different
17 perspectives from our different islands as well as
18 our -- from our past history and what's brought us
19 to this point. And so I think we have a good
20 balance with our staff.

21 I think we're always learning, and we
22 learn from each other, and we learn from our
23 executive director as well as our deputy attorney
24 general to do things the right way. And I think we
25 all see that sometimes it's -- the decisions can be

1 very tough, but I appreciate everyone's commitment.

2 And so we're going to try and keep
3 everyone's time and commitment in mind, including
4 staff, as we go ahead in this year. And thank you
5 to OPSD as well and members of the public. So, I
6 guess, do we -- do we -- do we vote again?

7 DANIEL ORODENKER: Yes.

8 CHAIR LEE: Okay.

9 DANIEL ORODENKER: We need a motion.

10 CHAIR LEE: Okay. So we need another
11 motion then for Chair.

12 Yes? I think that --

13 COMMISSIONER HAYASHIDA: Commissioner
14 Hayashida, make a motion for Chair Brian Lee.

15 CHAIR LEE: Okay. Okay. It's been moved
16 by Commissioner Hayashida. Is there a second?

17 COMMISSIONER U'U: I'll second.

18 CHAIR LEE: Okay. It's been moved and
19 seconded. Hopefully, no discussion, so let's
20 conduct the roll call vote. Mr. Orodenker?

21 DANIEL ORODENKER: Thank you, Mr. Chair.
22 The motion is to elect Commissioner Lee to a -- to a
23 -- to the -- the chairmanship for the next fiscal
24 year.

25 Commissioner Hayashida?

1 COMMISSIONER HAYASHIDA: Aye.
2 DANIEL ORODENKER: Oops. U'u -- okay.
3 Commissioner U'u?
4 COMMISSIONER U'U: Aye.
5 DANIEL ORODENKER: Commissioner Yamane?
6 COMMISSIONER YAMANE: No.
7 DANIEL ORODENKER: Commissioner Kahele?
8 COMMISSIONER KAHELE: Aye.
9 DANIEL ORODENKER: Commissioner Kamakea-
10 'Ohelo?
11 COMMISSIONER KAMAKEA-'OHELO: A'ole.
12 DANIEL ORODENKER: Who am I missing?
13 Commissioner Miyasato?
14 COMMISSIONER MIYASATO: Aye.
15 DANIEL ORODENKER: Chair Lee?
16 CHAIR LEE: Aye.
17 DANIEL ORODENKER: Did I miss somebody?
18 One, two -- oh, that's seven. Okay. One, two --
19 Commissioner Kahele, your vote was?
20 COMMISSIONER KAHELE: I'm sorry?
21 DANIEL ORODENKER: What -- what was your
22 vote again? I'm sorry.
23 COMMISSIONER KAHELE: My vote was aye.
24 DANIEL ORODENKER: Okay. So the motion
25 carries with five affirmative votes.

1 CHAIR LEE: Okay. And then now I would
2 like to make a motion for First Vice Chair for
3 Commissioner Kamakea-'Ohelo.

4 COMMISSIONER U'U: Second.

5 CHAIR LEE: It's been moved and seconded
6 by Commissioner U'u. Is there, hopefully, no
7 discussion or acceptance from Commissioner Kamakea-
8 'Ohelo?

9 COMMISSIONER KAMAKEA-'OHELO: I -- I
10 gladly accept.

11 CHAIR LEE: Thank you. Okay. No further
12 discussion. Let's conduct a roll call vote for
13 First Vice Chair.

14 DANIEL ORODENKER: Commissioner -- the
15 motion is for Ku'ike Kamakea-'Ohelo to be the First
16 Vice Chair for the upcoming fiscal year.

17 Commissioner Lee?

18 CHAIR LEE: Aye.

19 DANIEL ORODENKER: Who was the second?
20 Commissioner U'u?

21 COMMISSIONER U'U: Aye.

22 DANIEL ORODENKER: Commissioner Yamane?

23 COMMISSIONER YAMANE: Aye.

24 DANIEL ORODENKER: Commissioner Kamakea-
25 'Ohelo?

1 COMMISSIONER KAMAKEA- 'OHELO: Aye.
2 DANIEL ORODENKER: Commissioner Kahele?
3 COMMISSIONER KAHELE: Aye.
4 DANIEL ORODENKER: Commissioner Hayashida?
5 COMMISSIONER HAYASHIDA: Aye.
6 DANIEL ORODENKER: Commissioner Miyasato?
7 COMMISSIONER MIYASATO: Aye.
8 DANIEL ORODENKER: Thank you, Mr. Chair.
9 The motion passes unanimously.
10 CHAIR LEE: Okay. And then for Second
11 Vice Chair, I make a motion for Commissioner Mel
12 Kahele.
13 COMMISSIONER U'U: I second.
14 COMMISSIONER KAHELE: I accept.
15 CHAIR LEE: Okay. It's been moved and
16 seconded by Commissioner U'u and accepted by
17 Commissioner Kahele. Please conduct the roll call
18 vote.
19 DANIEL ORODENKER: Thank you, Mr. Chair.
20 The motion is for Commissioner Kahele to be the
21 Second Vice Chair for the upcoming fiscal -- fiscal
22 year.
23 Commissioner Lee?
24 CHAIR LEE: Aye.
25 DANIEL ORODENKER: Commissioner U'u?

1 COMMISSIONER U'U: Aye.
2 DANIEL ORODENKER: Commissioner Miyasato?
3 COMMISSIONER MIYASATO: Aye.
4 DANIEL ORODENKER: Commissioner Hayashida?
5 COMMISSIONER HAYASHIDA: Aye.
6 DANIEL ORODENKER: Commissioner Kahele?
7 COMMISSIONER KAHELE: Aye.
8 DANIEL ORODENKER: Commissioner Kamakea-
9 'Ohelo?
10 COMMISSIONER KAMAKEA-'OHELO: Aye.
11 DANIEL ORODENKER: And Commissioner
12 Yamane?
13 COMMISSIONER YAMANE: Aye.
14 CHAIR LEE: Okay.
15 DANIEL ORODENKER: Thank you, Mr. Chair.
16 Motion passes unanimously.
17 CHAIR LEE: Thank you. Great. Once
18 again, is there any member of the public who wishes
19 to provide any new or additional testimony on this
20 matter? If not, then are there -- Ms. Kwan, are
21 there any members of the public who wish to provide
22 new testimony in this matter?
23 ARIANA KWAN: Seeing none in the Q&A
24 feature, Chair.
25 CHAIR LEE: Okay. Thank you. Item 5, the

1 next agenda item is the protocol for executive
2 officer's performance evaluation for fiscal year
3 2026. This next agenda item is a discussion
4 regarding the protocol for conducting the executive
5 officer's annual performance evaluation for fiscal
6 year 2026, covering the period of July 1st, 2025
7 through June 20th -- I mean, June 30th, 2026.
8 Commissioners, do you have any questions?

9 Okay. Seeing none, I have the Excel form
10 that the staff updated, and I'm going to ask
11 Commissioner Kamakea-'Ohelo if he will be the one to
12 collect the commissioner evaluations. So they'll be
13 sent by Ariana to all the commissioners, and then
14 we'll have until the next meeting -- prior to the
15 next meeting to send everyone's evaluation to the
16 First Vice Chair for him to collect and average out
17 the different scores, and we'll review that.

18 And I'll be in discussions with
19 Commissioner Kamakea-'Ohelo on how that will
20 proceed.

21 ARIANA KWAN: Can you provide a deadline
22 when they're due?

23 CHAIR LEE: Okay. I guess the next one is
24 July 15th, right? So, let's see, that's not that
25 much time. So just a couple of weeks? Yeah, July

1 10th.

2 DANIEL ORODENKER: Okay. Mr. Chair, I
3 would note that we will have a new commissioner on
4 -- on board at -- by that date who may --

5 CHAIR LEE: He may not yet decide to
6 participate.

7 DANIEL ORODENKER: But he -- he should --
8 he should be contacted.

9 CHAIR LEE: Okay. Okay. Sounds good.
10 All right. Okay. The next Land Use Commission
11 meeting is scheduled for July 15th and will be held
12 in Maui. So due to the demanding schedule required
13 to complete LUC business, I would like to request
14 that meals be provided as a working lunch as an
15 integral part of that meeting. Mr. Orodenker, will
16 the LUC staff please make the necessary arrangements
17 for this working lunch?

18 DANIEL ORODENKER: We will be sure to do
19 so, Mr. Chair.

20 CHAIR LEE: Great. This concludes our
21 meeting. Is there any further business to discuss?
22 If not, we declare this meeting adjourned. Thank
23 you, everybody.

24 (WHEREUPON, the meeting of LAND USE
25 COMMISSION was adjourned at 1:58 p.m.)

CERTIFICATE

I, Lorraine Adoyo 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 16th day of July, 2026.

A handwritten signature in black ink, appearing to be 'L. Adoyo', enclosed within a hand-drawn oval.

Lorraine Adoyo