

LAND USE COMMISSION

STATE OF HAWAII

May 24, 2018

Airport Conference Center

400 Rodgers Boulevard Suite 700, Room #3

Honolulu, Hawaii 96813

Commencing at 9:00 a.m.

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VII. Action
DR18-61 Hartung Brothers Hawaii, LLC
For Declaratory Order to Designate Important
Agricultural Lands for approximately 463 acres
at Kunia, Oahu; TMK (1) 9-2-004-006(por.)-011,
and -012(por.)

VIII. Status Report and Action (If Necessary)
A92-683 Halekua Development Corporation (Oahu)

IX. Adjournment

1 APPEARANCES:

2 COMMISSIONERS:

3 ARNOLD WONG, Chairperson
4 NANCY CABRAL, Vice Chair
5 JONATHAN SCHEUER, Vice Chair
6 GARY OKUDA
7 DAWN CHANG
8 EDWIN ACZON

9 RANDALL YAMASHITA, ESQ., Deputy Attorney General

10 STAFF:

11 DANIEL ORODENKER, Executive Officer
12 RILEY HAKODA, Staff Planner/Chief Clerk
13 BERT SARUWATARI, Staff Planner
14 SCOTT DERRICKSON, Staff Planner

15 DAWN APUNA, ESQ., Office of Planning

16 LOREEN MAKI, Office of Planning

17 RODNEY FUNAKOSHI, Planning Program Administrator

18 EARL YAMAMOTO, Department of Agriculture

19 JANICE FUJIMOTO, Department of Agriculture

20 MORRIS ATTA, Department of Agriculture

21 JOSEPH DANE, ESQ., for Hartung Brothers Hawaii, LLC

22 DAVID TANOUE, ESQ., for RP2 Ventures, LLC

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1 conditions requested by the Office of Planning.

2 Commissioner Aczon.

3 COMMISSIONER ACZON: Mr. Chair, I'll vote
4 yes.

5 EXECUTIVE OFFICER: Commissioner Chang.

6 COMMISSIONER CHANG: Aye.

7 EXECUTIVE OFFICER: Commissioner Okuda.

8 COMMISSIONER OKUDA: Yes.

9 EXECUTIVE OFFICER: Commissioner Scheuer.

10 VICE CHAIR SCHEUER: Aye.

11 EXECUTIVE OFFICER: Commissioner Cabral.

12 VICE CHAIR CABRAL: Aye.

13 EXECUTIVE OFFICER: Commissioner Ohigashi is
14 absent. Commissioner Mahi is absent.

15 Commissioner Wong.

16 CHAIR WONG: Aye.

17 EXECUTIVE OFFICER: Thank you, Mr. Chair.

18 The motion passes with six votes.

19 CHAIR WONG: Okay. Thank you.

20 Congratulations.

21 We'll be taking a five minute recess.

22 (Recess taken.)

23 CHAIR WONG: Okay. The next agenda item is
24 the status report on Docket No. A92-683, Halekua
25 Development's Petition to Amend the Agricultural Land

1 Use District Boundaries.

2 On October 7, 2013, the Commission mailed
3 order granting First Amendment to the Amended
4 Findings of Fact, Conclusions of Law and Decision and
5 Order on Docket No. A09-0682 dated October 1st, 1996.

6 On November 14, 2014, the Commission mailed
7 Order approving Successor Petitioner to Parcel 52
8 Hoohana Solar 1 LLC's request to continue proceedings
9 till November 21st, 2014 and set date for filing of
10 any further documents by all parties prior to the
11 November 21st, 2014 date.

12 On January 28, 2015, the Commission mailed
13 Order granting Successor Petitioner to Parcel 52
14 Hoohana Solar 1 LLC's Motion for Order Amending the
15 Amended Findings of Facts, Conclusions of Law and
16 Decision and Order filed on October 1st, 1996 filed
17 August 11, 2014.

18 On October 4th, 2017, the Commission
19 received notice of ownership change from Canpartners
20 IV Royal Kunia Property, LLC to RP2 Ventures, LLC.

21 On April 9th, 2018, the Commission received
22 Department of Agriculture's request for status report
23 and mailed a Notice to Petitioner requesting that a
24 status report be provided at the May 24, 2018 LUC
25 hearing on Oahu.

1 On May 15, 2018 . . . let me see. On May
2 15, 2018, an LUC meeting agenda notice for a May
3 23rd, 24th, 2018 meeting was sent to Parties and the
4 Statewide, Hawaii, Oahu mailing lists.

5 On May 21st, 2018, Stephen Lim - Carlsmith
6 Ball advised the Commission that Stephen Mau had
7 taken over representation of Robinson Kunia Land and
8 that he would not be attending the May 24, 2018
9 hearing.

10 Okay. I just stated something wrong. This
11 is Docket No. A92-683. So let me restate October 7.

12 October 7, 2013, the Commission mailed order
13 granting First Amendment to the Amended Findings of
14 Fact, Conclusions of Law and Decision and Order on
15 Docket No. A92-683 dated October 1st, 1996. Okay.

16 For the members of the public out there,
17 please be reminded that the Commission will not be
18 considering the merit of A92-683 petition. Rather,
19 the Commission is interested in learning about the
20 current state of activities related to this docket,
21 including compliance with conditions.

22 So just let me go over the procedures for
23 today's docket.

24 We'll take public testimony first. Then
25 after public testimony, the Chair will call for a

1 status report from the Petitioner. Then we'll -- the
2 Chair will call Department of Planning and
3 Permitting. Then finally, the Chair will call OP for
4 comments.

5 Thereafter, the Commission will conduct its
6 deliberations. And Chair will also note that from
7 time to time, I may call for short breaks.

8 Is there any questions for today?

9 MS. APUNA: No questions.

10 CHAIR WONG: None?

11 Okay. Is there anyone from the public that
12 wanted to provide testimony in today's docket? Okay.
13 Going once, twice. Seeing none, let's continue.

14 COMMISSIONER OKUDA: Chair, if I may
15 disclose, I know Mr. Mau, the attorney for Petitioner
16 from practice. We do not socialize. I only know him
17 in a professional capacity as a fellow attorney.

18 CHAIR WONG: Okay. Thank you. Anyone else
19 wanted to -- any exclusions? Okay. Let's go.

20 Petitioner, please.

21 DAVID TANOUE: Aloha and good morning. My
22 name is David Tanoue. I'm here on behalf of the new
23 owner of the -- I guess what we refer to as Royal
24 Kunia Phase II.

25 CHAIR WONG: Okay. May I swear you in, sir?

1 DAVID TANOUE: Sure.

2 CHAIR WONG: Do you swear or affirm that the
3 testimony you're about to give is the truth?

4 DAVID TANOUE: Yes.

5 CHAIR WONG: Thank you. We already have
6 your name for the record?

7 DAVID TANOUE: Yes.

8 CHAIR WONG: You're representing Royal
9 Kunia, correct?

10 DAVID TANOUE: Yes. The new owners of the
11 parcel, RP2 Ventures, LLC.

12 CHAIR WONG: Thank you. Please proceed.

13 DAVID TANOUE: I just wanted to kind of
14 introduce myself and who we are at this point.

15 We took possession and closing happened in
16 October 3rd of 2017. A little over six months ago.

17 RP2 Ventures, LLC is a single person --
18 purpose entity that was put in place that . . . that
19 was put in place for the particular purchase of this
20 property from Canpartners IV.

21 We are currently employed with our
22 partners -- excuse me, R.M. Towill Corporation. I
23 got two companies mixed up. I am a vice president
24 and I'm a point of contact for RP2 Ventures, LLC
25 which is not a subsidiary but was created by R.M.

1 Towill for the purchase of -- for purchasing this
2 property.

3 Since that time of closing, we have reached
4 out to the various owners surrounding the neighboring
5 landowners and introduced ourselves to them. Many of
6 them are clients at R.M. Towill Corporation.

7 We also -- we know that this -- there's a
8 lot of conditions that were passed through this
9 property. And trying to step back a little bit and
10 give you some of the inside of how we came about to
11 step in and purchase this property.

12 We were asked by one of our clients if we
13 will consider assisting them in the purchase of this
14 property. As you know, that the previous owners was
15 a real estate development trust. And whether or not
16 they had true intentions of development and
17 completing the project and developing the parcel was
18 another question. But it's been -- we know that the
19 other landowners around the area that relied on
20 their -- some of the conditions that needed to be
21 done have been waiting for a long time. And they
22 were behind a lot of the deadlines.

23 The other landowners -- and it's, you know,
24 funny is because of -- and who were people interested
25 in the property are our clients. R.M. Towill, we've

1 been around since 1930. We're primarily an
2 engineering firm but we also provide surveying,
3 planning, waste management, construction management.
4 So we -- many of the clients on this island, all the
5 large developers are, we've worked with them. And we
6 knew where this project was struggling because of
7 the -- I guess the -- how the -- that the project was
8 divided during the bankruptcy and the subsequent
9 sales and things like that and where the
10 responsibility lies.

11 And I recall talking to one of the
12 neighboring property owners and saying, you know, the
13 only way this -- that we're waiting for things to
14 happen, the infrastructure be put in is the only way
15 this project will proceed, if it comes back locally
16 and if it's done somehow under a single ownership or
17 the people got to work together but was real
18 difficulty. And the funny thing is the common
19 denominator among a lot of the clients was R.M.
20 Towill. And then when one of the clients asked us,
21 you know, there's this opportunity. They couldn't
22 pull the trigger. If we would step in. So we took
23 the risk and we stepped in to try to bring this
24 project back locally and try to be able to move it
25 forward.

1 From our previous role with the city at DPP,
2 you know, we've always supported this project 'cause
3 it was always intended for the housing, you know, to
4 provide more housing stock for that area. And that
5 was evidenced by the support of the city back then
6 when they extended the deadlines. It was also
7 supported by the city back then when they approved
8 the PDH permit for 2,000 housing units for that phase
9 II. And again, in recent times, you notice in the
10 handout I had that the city again granted an
11 extension once we took possession. Extended the
12 deadline for the PDH. So that's still an option out
13 there.

14 So that -- but since that time, we've been
15 trying to get a handle on what's the requirement.
16 You know, we jumped into this, the hot seat at this
17 point. And since we're local, then we got a lot of
18 phone calls from people. You know what, they're
19 supposed to do this for us, they're supposed to do
20 that for us.

21 So Department of Ag is also one of our
22 clients and we helped them on their projects. And we
23 know -- we knew that what was the infrastructure was
24 needed for their projects. So since that time, we've
25 been working on the infrastructure, the design.

1 This is what we do at R.M. Towill, what we
2 do. We do infrastructure. We do the sewer, water,
3 drainage and stuff like that. So these things we can
4 do. And we're doing in the meantime -- until a time
5 where we can turn the property over to a local
6 developer to take it on. Get things under control.
7 So we been trying to move the Department of Ag's
8 utility and infrastructure needs forward. It will
9 take some time.

10 We also met with Castle & Cooke because come
11 to find out there's also a connection agreement
12 regarding drainage that drains into the Waikele
13 Valley or Waikele Gulch storage facility that needs
14 improvements. And the prior owner agreed to do the
15 improvements. So we're working with Castle & Cooke.

16 And we met with Savio Associates because
17 they're the owners of the Waikele Gulch. So we're
18 going through this process and we're trying to move
19 everything forward as best we can.

20 And now as a local contact, I know some of
21 you might recognize me and I know some of you. And
22 we're just here to try and assist this project moving
23 forward.

24 We anticipate that ultimately, the land will
25 be transferred to one of our clients, you know. And

1 I think the opportunity here for it moving forward is
2 probably the best it has been because of the -- at
3 one point, the purchase price numbers that were being
4 thrown out there, really outrageous and very
5 expensive to make things happen. But, you know, the
6 price that we got it for, the fact that we're
7 probably going to be dealing with one of our clients
8 moving forward, I think it really bodes well for this
9 project to finally move forward. But in the
10 meantime, we're trying to make sure that we continue
11 with trying to meet some of the conditions that are
12 in place. In particular, what the Department of Ag
13 needs at this point.

14 If you have any questions, I'm available.
15 And I appreciate all the opportunity to be here
16 today.

17 CHAIR WONG: Commissioner Okuda.

18 COMMISSIONER OKUDA: Chair, based on the
19 testimony, I'd like to make one additional
20 disclosure. I'd like to disclose that I periodically
21 socialize with an engineer at R.M. Towill, Mr. James
22 Yamamoto. But since my appointment to the Land Use
23 Commission, we either pay our own bill or he makes me
24 or -- he doesn't make me. Or I pay whatever he
25 orders off the menu.

1 CHAIR WONG: Okay. Just wanted to make a
2 disclosure. I know Mr. Tanoue there but he never
3 bought me anything so -- other than coffee. But I
4 just wanted to say that for the record since
5 Commissioner Okuda said also.

6 Anyone else since we have R.M. Towill on
7 board? Okay.

8 COMMISSIONER CHANG: Oh, I should make a
9 disclosure. I'm sorry. I do -- I have -- I do some
10 work with R.M. Towill but no -- nothing in
11 relationship to this particular project. And I do
12 know David from the past.

13 CHAIR WONG: Any questions for Mr. Tanoue
14 regarding this issue?

15 Just one thing. Again, just wanted to
16 reiterate. So you do -- you stated and I want to
17 reiterate that you know that the conditions are on
18 there already and will continue with the land?

19 DAVID TANOUE: Yes. We knew -- we're aware
20 of the situation. Some things popped up after but,
21 you know, we knew there was a lot of tails attached
22 to this property.

23 CHAIR WONG: Okay. Thank you. Anything
24 else? Commissioner Okuda.

25 COMMISSIONER OKUDA: Yes. Mr. Tanoue, even

1 though people know you from your reputation and your
2 work in the city, just so the record is clear, can
3 you give us a little bit of background about your
4 education, experience and maybe a very short summary
5 of your work history.

6 DAVID TANOUE: Okay. Yes. Thank you.

7 Maui boy, graduated from Baldwin High
8 School. Went to UH. Got my degree in biology.
9 Continued on to the UH Law School. After that, went
10 in private practice, large firm first. Case & Lynch
11 at that time. Spent a few years there. Then went to
12 a smaller firm, Law Office of Michael McCarthy. Did
13 some roll up your sleeve, get in the trenches kind of
14 work which was fun. Then following that, I was at
15 the -- went in-house with a large architectural firm
16 AM Partners. And that's why I got the two names, RM
17 Partners confused with AM Partners. I spent a few
18 years there. And then I had the opportunity of being
19 part of the Department of Corporation Counsel and
20 focused in the land use area. And I spent my time
21 there representing the Department of Planning and
22 Permitting as well as other commissions and boards
23 related to land use for the City, on behalf of the
24 City. From that point on under Mayor Mufi Hannemann,
25 I was appointed the deputy director for the

1 Department of Planning and Permitting. I spent four
2 years of that and continued on as the director for an
3 additional four years under the Hannemann
4 administration and the Carlisle administration. I
5 left the city in October of 2012 and moved to R.M.
6 Towill Corporation where I'm currently the vice
7 president there. I oversee their -- and manage their
8 survey departments and the planning departments and
9 also provide some in-house counsel services but
10 that's not my official title.

11 COMMISSIONER OKUDA: Thank you very much
12 for that background.

13 DAVID TANOUE: You're welcome.

14 CHAIR WONG: I just -- Commissioner Cabral.

15 VICE CHAIR CABRAL: I really like maps. Can
16 I bring you a map and you can tell me the
17 relationship to the map from our prior discussion
18 where you're located?

19 DAVID TANOUE: Sure.

20 VICE CHAIR CABRAL: Theirs is an aerial. I
21 think I found you but since I'm not familiar with the
22 neighborhood . . . this is theirs. So you're right
23 here, yeah? You're like right here. Sorry, sorry.

24 CHAIR WONG: Hold on. Hold on. Please.
25 Yes?

1 MS. APUNA: Chair, I have -- we have a map
2 that we can put up for you. But we're going to -- we
3 were going to provide some location background but we
4 can put it up there now.

5 CHAIR WONG: Can you please do that.
6 Commissioner Cabral.

7 VICE CHAIR CABRAL: I think I found it. We
8 got it.

9 COMMISSIONER CHANG: It will be helpful for
10 all of us though.

11 VICE CHAIR CABRAL: You guys live here.

12 CHAIR WONG: Okay. Any other -- thank you.
13 Any other questions?

14 VICE CHAIR CABRAL: Well, see, I have that
15 one too but the other one is an aerial view so it's
16 different. But I figured out on the aerial with --
17 you know, where it's at. So thank you. Kind of
18 across the street from the Monsanto lands.

19 DAVID TANOUE: Yes.

20 VICE CHAIR CABRAL: Okay. The big street.

21 CHAIR WONG: Okay. Any other questions?
22 Commissioner Chang.

23 COMMISSIONER CHANG: Thank you, David.

24 So I just -- today is just status conference
25 so -- so we're not here to hear any request to

1 changing any of the conditions. It's really you --
2 when you purchased the property, it was with the full
3 understanding -- it was what -- as Chair Wong says,
4 it was with the full understanding that these
5 conditions ran with that land?

6 DAVID TANOUE: That's correct. And many of
7 the conditions were -- have already lapsed and that
8 was part of the struggle with the property.

9 COMMISSIONER CHANG: Okay. Okay.

10 CHAIR WONG: Okay. Commissioner Aczon.

11 COMMISSIONER ACZON: I just want to know if
12 what you're doing on -- trying to -- is that -- some
13 of the conditions are already lapsed. And what are
14 you doing to kind of get it to the -- up to par?

15 DAVID TANOUE: You know, part of the big --
16 I guess, the encumbrance on the property was related
17 to the infrastructure agreement that the landowner
18 had with the adjoining property owner, HRT Realty.
19 And the requirements of putting in infrastructure and
20 also infrastructure relating to the Department of
21 Ag's project. So unless this landowner move forward,
22 yeah, all the other projects will just -- were
23 stalled. And it's been stalled for years.

24 We -- you know, we, meaning R.M. Towill, we
25 actually know the background of a lot of this because

1 we've involved with the other property owners. And
2 we've seen the -- knowing that it's -- nothing is
3 going to happen until something happens. This
4 property owner moves it forward or takes the steps of
5 resolving the deadline -- coming up the real estate
6 deadlines too. And managing everybody's
7 expectations. And that's part of what we're trying
8 to do now.

9 We know that it's been delayed five, six,
10 seven years already. And it's behind the eight ball.
11 But moving forward, we can provide at least
12 reasonable expectations of what we can do in the
13 coming months until the land is, I guess, transferred
14 over to the ultimate developer to take over.

15 CHAIR WONG: Okay. Commissioner Scheuer.

16 VICE CHAIR SCHEUER: I understand that our
17 normal procedure is to hear from the petitioner and
18 then from other entities. But we're really here
19 today because the Department of Agriculture has
20 requested the status conference. If it's okay with
21 Mr. Tanoue and you, I'd prefer to like hear from DOA,
22 hear from OP and then have the chance to talk more
23 with the Petitioner's representative.

24 CHAIR WONG: Okay. The Commissioners don't
25 mind.

1 COMMISSIONER CHANG: That was my -- thank
2 you.

3 CHAIR WONG: Okay. Thank you, Mr. Tanoue.
4 OP, go ahead.

5 MS. APUNA: Thank you, Chair. Deputy
6 Attorney General Dawn Apuna on behalf of the Office
7 of Planning and the Department of Agriculture. Here
8 with me is Loreen Maki from Office of Planning and
9 Janice Fujimoto and Morris Atta from the Department
10 of Agriculture.

11 First, we would like to say that thank you
12 to Mr. Tanoue for coming to this status conference
13 and providing an update and giving a little more
14 background.

15 So we kind of have a blended presentation
16 of -- I'm going to go first and then let DOA provide
17 some further information.

18 So the status conference is at the request
19 of the Department of Agriculture asking this
20 Commission to compel the Petitioner to comply with
21 Condition 19 of the decision and order to provide
22 infrastructure for the adjacent state ag park.
23 Specifically, DOA request the LUC to require the
24 following and the petitioner.

25 One, an infrastructure design and

1 implementation schedule within 30 days of an action
2 made by this Commission.

3 Two, construction of the non-potable
4 irrigation line by the end of this calendar year.

5 Three, amendment to the existing decision
6 and order to include petitioner deadline and
7 compliance deadline with regard to the ag park
8 infrastructure.

9 And four, alternating status reports and
10 status conferences every six months for the next
11 three years.

12 Here is a map of the petition area. The
13 purple or the pink and the yellow is the original
14 petition area. The purple or the pink, the yellow
15 and the green was originally owned by -- was
16 originally owned by the Robinson Estate. But the
17 green area which is the 150 acre parcel for the state
18 ag park is not actually part of the petition area.

19 Locationally, this is Kunia Road and then
20 Hartung and Monsanto are somewhere in this area on
21 this side of the road. Mililani is up here and
22 Kunia -- Royal Kunia Phase I is this orange area.

23 So currently, the ownership -- so this is
24 the -- the state does -- was able to receive this 153
25 acre parcel. The yellow parcel is still owned by the

1 Robinson Estate. And then this pink parcel -- well,
2 it's divided but this area that I'm outlining is
3 owned by the petitioner or this is -- I'm sorry,
4 Halekua. It was originally owned by Halekua
5 Development Corporation and is now RP2's property.
6 And then these other parts of the pink are owned by
7 the various other landowners including HRT and RKES.

8 VICE CHAIR SCHEUER: Sorry. Can you just
9 repeat last showing where the ownerships are.

10 MS. APUNA: Okay. So I think this part
11 right here is like -- that is RP2 that Mr. Tanoue is
12 here representing. And then this bigger rectangle
13 and the smaller ones are owned by HRT. And this is
14 RKES. And then the yellow is Robinson Estate.

15 So while this Docket No. A92-683 has had a
16 long and complicated history since the 1993 decision
17 and order made 25 years ago, the one constant
18 throughout that time has been this condition 19
19 requiring petitioner to design and construct offsite
20 infrastructure permits for the ag park. There's been
21 a bankruptcy filing, various changes in ownership, a
22 proposed solar farm. But always the condition
23 requiring transfer of the 150 acre parcel to the
24 state which was fulfilled in 2004 and the design and
25 construction of offsite infrastructure by the

1 petitioner which remains unfulfilled.

2 So here's a timeline of the relevant
3 actions, agreements and events over the past 25
4 years.

5 On March 30th, 1993, DOA and Halekua entered
6 into the MOU, a memorandum of understanding that
7 required petitioner to convey the 150 acre site for
8 the ag park and to initiate infrastructure
9 improvements within one year of conveyance and
10 completion of improvements by June 30th, 2001.

11 On December 9th, 1993, the LUC entered the
12 district boundary amendment decision and order that
13 adopted the MOU ag park requirement as condition 22.

14 On October 1st, 1996, the D&O was amended to
15 correct the metes and bounds and reaffirm the
16 condition 22 ag park requirements but renumbered it
17 as condition 19.

18 On February 26, 2003, OP filed an order to
19 show cause to compel the conveyance of that 150 acre
20 parcel to the state. This order to show cause was
21 dismissed in 2007.

22 In April 2003, Halekua filed for bankruptcy.
23 And on February 27, 2004, HRT conveyed the
24 150 acre site to the state for the ag park.

25 On February 23rd, 2007, ownership of parcel

1 71 transferred from Halekua to Halekua Kunia.

2 On March 2nd, 2007, the MOU was amended
3 confirming the 150 acre site conveyance and requiring
4 that the site plan or the infrastructure be completed
5 by December 31st, 2008 and construction of the
6 infrastructure be completed by January 1st, 2011.

7 On March 12, 2007, Canpartners acquired
8 parcel 71 from Halekua Kunia.

9 On February 19th, 2009, a first amendment to
10 the MOU extended the deadline for petitioner site
11 plan to December 31st, 2009, a construction of
12 offsite infrastructure to be completed by January
13 1st, 2011.

14 On September 20th, 2013, a second amendment
15 to the MOU extended the site plan deadline to
16 December 31st, 2013.

17 And on October 13th, 2013, the D&O was
18 amended reaffirming the ag park condition.

19 On January 28, 2015, the D&O was amended to
20 allow for a solar project on parcel 52.

21 On July 28th, 2015, a third amendment to the
22 MOU extended the design plan's deadline to December
23 31st, 2015 and substantial construction of offsite
24 infrastructure by December 31st, 2016.

25 On October 3rd, 2017, Canpartners

1 transferred parcel 71 to RP2.

2 Through this 25 year history, DOA has been
3 patient and diligent and has made its best efforts to
4 get this ag park project moving. Based on the
5 timeline, it can see that there have been many
6 restatements and reminders to petitioner of condition
7 19. However, no infrastructure has been constructed
8 by the original deadline of June 30th, 2001, the
9 first extension deadline of January 1st, 2011 and a
10 second extension of December 31st, 2016.

11 At this point, DOA looks to the Commission
12 to provide its backing and authority to require the
13 petitioner to move forward with the design and
14 construction of the ag park infrastructure by
15 providing a schedule adhering to an end of year
16 construction deadline and status updates.

17 So now DOA is here to explain more fully the
18 importance of this state ag park, why the
19 infrastructure is critical and the events since the
20 last ownership changed to RP2 in 2017.

21 MORRIS ATTA: Good morning, Chair.

22 CHAIR WONG: May I swear you in please?

23 Do you swear or affirm that the testimony
24 you're about to give is the truth?

25 MORRIS ATTA: I do.

1 CHAIR WONG: State your name for the record.

2 MORRIS ATTA: My name is Morris Atta. I am
3 the agricultural land program manager for the
4 Department of Agriculture.

5 CHAIR WONG: Please proceed.

6 MORRIS ATTA: Good morning, Chair and
7 members of the Commission. Thank you for the
8 opportunity to speak on -- regarding this matter.

9 This map is just to show what the Kunia --
10 the Royal Kunia Master Plan contemplated and why the
11 ag park is where it is and what purpose that it
12 serves and why it's important for this particular
13 area. Basically, this diagram illustrates the extent
14 of the -- you know, the boundary between ag and urban
15 development. And the ag park in the corner was
16 intended and planned to serve as a transition and
17 buffer between the two areas. So that strategically
18 designed to serve that purpose.

19 The ag park itself was -- serves an
20 important purpose for Department of Agriculture in
21 fulfilling its mission to promote and support
22 diversified and sustainable agriculture. It's
23 situated in a particularly in an ideal location for
24 this purpose in that there's prime soil quality.
25 There's access to irrigation water. Moderate weather

1 conditions that are very suitable to ag. And also,
2 it's centrally located for, you know, easy product
3 distribution within the Honolulu urban community.

4 The initial concept behind the ag park was
5 that there would be 24 five to seven acre lots that
6 would be put into immediate productive agriculture.
7 And eventually, the hope was that the -- to make it
8 attractive and convenient for the farmers to possibly
9 have farm dwellings located in that bottom area of
10 that ag park. It was also going to serve as a
11 transition and a barrier from the suburban, you know,
12 homes in the Royal Kunia area into the ag districts.

13 This next slide goes into the recent efforts
14 that we have -- the HDOA has some -- made to get this
15 project off the ground once again. And between
16 January and August of 2017, DOA was seeking the
17 compliance with the last deadline for construction of
18 the infrastructure. So it was about a lot of
19 discussions.

20 On October 11th, we were informed that the
21 prospective buyer was -- interest was being purchased
22 by RP2. And we were actually in the process of
23 requesting status conference with the LUC at that
24 time but decided to hold off to give the new
25 purchaser time to regroup and possibly give us --

1 provide us better information and show some evidence
2 of progress.

3 In October 23rd, we met with RP2 and
4 basically, you know, confirmed, you know, RP2's
5 acquisition of the development interest and that
6 we'll be willing to hold off for a little while
7 before actually requesting a status conference.

8 And on March 24, there was a follow-up
9 meeting between HDOA, RP2, R.M. Towill and the
10 Robinson Estate to kind of flesh out what was going
11 on and where everyone stood and how we can proceed.
12 And at that point, we thought that it would be a good
13 idea to bring this matter back to the LUC in the form
14 of a status conference to have everybody on the same
15 page and possibly get some movement on this matter.

16 So RP2 has been, you know, in constant
17 contact with HDOA since they acquired the interest.
18 They've been very good trying to keep us informed of
19 what's going on. And from our understanding, design,
20 you know, plans for the irrigation line had been
21 initiated. We were subsequently informed also that
22 design plans for the utilities have started as of
23 March and that RP2 is in discussions about the --
24 with, you know, a potential buyer for their interest.
25 But our concern was that we had not received any firm

1 scheduling commitment or timelines. And that's the
2 reason why we're before the Commission at this time.

3 So as Dawn had previously stated that our
4 request to RP2 and the Commission is that in order
5 for us to develop the ag park, at least initially to
6 get productive agriculture going on the 24 production
7 lots is that we have the irrigation line for
8 non-potable irrigation water to be completed by
9 December of 2018 which is this year.

10 The other priority is important but we felt
11 that a second deadline of 2020 would be a more
12 reasonable request. And so that's -- we ask that we
13 have before you.

14 So basically the importance of the ag park
15 is that, you know, it's going to support farms. But
16 the main reason why we're here is the bottom line is
17 we don't have the infrastructure for the ag park. We
18 really have no ag park and can't grow anything. And
19 that's why we're here. It -- lack of the irrigation
20 infrastructure is undermining our ability to obtain
21 firm commitments from the legislature to -- the
22 legislature to fund the additional monies that are
23 needed to develop the ag park. And it impedes our
24 ability to the plan and forecast our agricultural
25 options for farmers since we don't have a timeline on

1 when it will be viable as units for productive
2 agriculture. But delays in the implementation of the
3 plans and approvals just delays the project
4 indefinitely. And bottom line is delays will
5 increase costs for everyone. And that's a major
6 concern of ours.

7 And, you know, as it's been stated before,
8 you know, it's -- the ag part is important. It's
9 important, you know, for the area, for our mission as
10 a department. And we have concerns about the fact
11 that the conditions for infrastructure have passed
12 and remain unfulfilled.

13 So, again, we are just seeking commitment
14 with the deadlines and some progress towards getting
15 the infrastructure completed. So again, I'm not sure
16 if I need to repeat the -- what Dawn had said but
17 basically that's why we're here. Thank you.

18 CHAIR WONG: Thank you.

19 Commissioners, any questions or comments
20 for -- Commissioner Okuda.

21 COMMISSIONER OKUDA: Thank you.

22 Mr. Atta, even though some of us may know
23 your background, just so that we have for the record,
24 can you give us a short summary of your education,
25 experience. Thank you.

1 MORRIS ATTA: Yeah.

2 Born and raised Pauoa Valley. Roosevelt
3 grad. I went to Yale and got my undergraduate degree
4 there. And I got my degree at NYU. And back here I
5 was in private practice for a while. Started with a
6 mid sized firm Bays Deaver. Went in-house with
7 Bishop and American Trust. Eventually went to the
8 government sector. I was a research attorney with
9 the senate majority for about six years. And the
10 senior staff attorney for the judiciary committee for
11 the senate for a year. Then went into the executive
12 branch. I went over to DLNR and I was a state land
13 administrator for about six years. And I was also a
14 special projects coordinator for DLNR. I then went
15 to HART as a deputy director for right-of-way
16 acquisitions. And just recently moved over to
17 Department of Ag, Agriculture as the agriculture land
18 program manager to develop and organize the land,
19 agricultural lands management program.

20 COMMISSIONER OKUDA: Thank you for the
21 background.

22 CHAIR WONG: Commissioners, any questions
23 for Department of Ag or -- Commissioner Chang.

24 COMMISSIONER CHANG: Thank you very much,
25 Mr. Atta. Just a couple questions.

1 One, Department of Ag has been extremely
2 patient all these years. Do you have a list 'cause
3 it sounds like, you know, this needs to be -- you
4 talked about delays, delays costs. So do you have a
5 list of potential tenants for the ag park?

6 MORRIS ATTA: I don't believe we have
7 because we can't even advertise it because we don't
8 have a product to advertise or to seek interested
9 applicants for.

10 COMMISSIONER CHANG: But are you aware --
11 are there interest for this size of five to seven
12 acres?

13 MORRIS ATTA: I can refer to Jan.

14 JANICE FUJIMOTO: Hi, I'm Janice Fujimoto.

15 CHAIR WONG: May I swear you in please?

16 JANICE FUJIMOTO: Oh, sure.

17 CHAIR WONG: Do you swear or affirm that the
18 testimony you're about to give is the truth?

19 JANICE FUJIMOTO: Yes.

20 CHAIR WONG: Okay. Please state your name.

21 JANICE FUJIMOTO: My name is Janice
22 Fujimoto. I'm with the Department of Agriculture,
23 engineering section.

24 CHAIR WONG: Please continue.

25 JANICE FUJIMOTO: Can you repeat the

1 question?

2 COMMISSIONER CHANG: Yeah. I was wondering
3 'cause you're saying time is of the essence. You
4 know, delay -- the infrastructures necessary and the
5 delay will be costly. So I was just wondering is
6 there -- do you have a list of interested tenants for
7 five to seven acres?

8 JANICE FUJIMOTO: As Mark said, you know, it
9 would be premature because when we do have lands
10 available for lease, it would be on a specific parcel
11 that they know that they're bidding on. And for us,
12 it's early in the process because we're here to talk
13 about the infrastructure that's required by the LUC
14 order where the developer's required to bring
15 infrastructure to our property boundary. The DOA, in
16 turn, has the requirement to actually provide the
17 infrastructure within our property itself. And we
18 have not been able to do so. And that's part of what
19 Morris was saying about the inability to get
20 legislative funding. It kind of hampers our ability
21 to do so if we don't have the sources coming to the
22 property. The part that we would then need to do is
23 to develop the roads as well as the irrigation line
24 within the property so they can service the farmers.

25 COMMISSIONER CHANG: Totally make sense to

1 me. My -- and maybe this is not even relevant for
2 this particular proceedings. But having this
3 infrastructure makes this ag part extremely
4 attractive, marketable and valuable.

5 JANICE FUJIMOTO: That's exactly the point
6 of what we're trying to do.

7 COMMISSIONER CHANG: How do we ensure that
8 these tenants are legitimate farmers and not similar
9 to the development down in Kunia where there was no
10 infrastructure? So how do -- what assurances do we
11 have that this is going be legitimate farmers and
12 not, you know, a gentleman estate where you put a
13 temple?

14 MORRIS ATTA: I'll answer the question.

15 Because this is in our ag park, it falls
16 within our ag park program which is governed, you
17 know, under our administrative rules and HR 166 I
18 believe. We are required to qualify all of the
19 applicants for these parcels. And we have specific
20 standards that define eligible applicants as being
21 bonafide farmers. And they have to meet very strict
22 guidelines to qualify for that. And basically, our
23 selection process and our rules dictate that we
24 cannot deviate from that. And so it eliminates the
25 possibility of the gentleman farmer controversy that

1 I know everyone seeks to avoid because of that.

2 CHAIR WONG: Commissioners --

3 COMMISSIONER CHANG: Did you answer it?

4 Okay. Anything else you want to add?

5 MORRIS ATTA: No. Just that from going
6 beyond the selection process, we -- the nature of
7 my -- the program that I'm overseeing, the land
8 management program, is to oversee actual use of the
9 property and to enforce, you know, actual
10 agricultural use through property inspections. And
11 property managers that are assigned to those specific
12 ag parks and non-ag park lands to ensure that
13 agriculture is actually happening on our state
14 agriculture leases.

15 COMMISSIONER CHANG: Just one other
16 question. Apparently on March 24th of this year,
17 HDOA, RP2, R.M. Towill and Robinson met and you seem
18 to have some progress. But right after that, you're
19 requesting a status conference. Is it -- did you
20 feel that there was not sufficient commitment by RP2
21 to your schedule that you're requesting a status
22 conference -- 'cause it seems as if you tried to work
23 it out outside of the LUC.

24 MORRIS ATTA: The reason why -- what
25 actually went in was in our letter to RP2, we had

1 specifically asked for a concrete timeline and some
2 form of, you know, written commitment that
3 demonstrated that some things were going to happen.
4 We did not actually receive, you know, a commitment
5 for a timeline. So we thought that -- you know, and
6 we had placed a specific deadline for that. And that
7 had passed and we thought okay, we're being
8 reasonable but let's make sure by bringing it to this
9 forum. And that's the reason why you see what you
10 see.

11 COMMISSIONER CHANG: Okay. Thank you.

12 CHAIR WONG: Commissioner Scheuer.

13 VICE CHAIR SCHEUER: Hi Mark.

14 I guess I have a series of questions which
15 go to where are the limits of your patience and the
16 department's patience? 'Cause, you know -- I mean
17 hey, all right, the Land Use Commission, every
18 legislative session, we get cracks for supposedly we
19 are the barrier to affordable housing in this state.
20 Though I look at maps of Oahu and I see all this land
21 that we put in urban district that is not developed.

22 We are sometimes, you know, also blamed for
23 causing things to move slowly. And this is a great
24 example. There is a strong demand and the governor's
25 mandate that we produce more of our own food. We

1 have recently -- actually as recently as the first
2 part of this hearing yesterday on Hawaii Island,
3 passed a motion for an order to show cause hearing,
4 on a development where people didn't come close to
5 meeting their deadlines. Our last meeting on Maui,
6 we passed a motion for an order to show cause. Why
7 are you not coming in front of us with a motion for
8 an order to show cause but instead with great faith
9 and the latest landowner that somehow this is
10 actually going to happen this time?

11 MORRIS ATTA: Well, we are -- as I said
12 previously in very constant and close communication
13 with RP2. And we are aware that they have had
14 progress towards the actual design of the irrigation
15 land which is our immediate priority. Because once
16 we have that in, at least we can get the ag lots into
17 productive agriculture with the basic need of water.
18 Because we've seen that progress, we haven't been
19 quite as militant in or, you know, urgent in our
20 request to get things moving. We are aware that they
21 have been the -- you know, involved in this matter
22 for a long time. They know what the requirements
23 are.

24 Again, that meeting with RP2 and Robinson
25 and R.M. Towill was reassuring to the extent that

1 we -- our impression was that the Robinson Estate was
2 at least understanding our situation and seemed
3 amenable to assisting us as well. So the pieces look
4 like they're in place. And that's the reason why
5 the -- for the completion of at least irrigation line
6 by the end of this year 'cause that's going to meet
7 our very immediate needs to at least begin to move on
8 our part. And have the remainder be monitored
9 closely to our schedule of status conferences.

10 That's kind of where we are. We're
11 reassured by the fact that at least everyone's
12 talking and it looks like something is moving.

13 VICE CHAIR SCHEUER: And you believe that if
14 that deadline -- well, first of all, you believe that
15 the irrigation deadline can be met by the end of this
16 year?

17 MORRIS ATTA: I think maybe Janice can speak
18 to that.

19 JANICE FUJIMOTO: So, you know, we have had
20 a lot of conversations with David. He's been good
21 about trying to keep us updated. And although we
22 haven't been able to agree on a schedule that we both
23 agree to on paper, it sounds like that might be a
24 proposal that could work. Because, you know, we do
25 know that they're newcomers into it. Although they

1 knew what they were inheriting, we also know the
2 limitations of inheriting it late in the game. So we
3 are anxious to get it done but not at the point of
4 being unreasonable which is part of our reason for
5 going for the status conference request rather than,
6 you know, taking a stronger stance on it.

7 We are expecting to see it done though. And
8 we do want to come to a scheduling and time frames so
9 we can plan better and know that all of the
10 outstanding requirements will be met.

11 VICE CHAIR SCHEUER: Thank you.

12 CHAIR WONG: Commissioner Aczon.

13 COMMISSIONER ACZON: Are there any deadlines
14 set by the Land Use Commission that are not being met
15 right now?

16 JANICE FUJIMOTO: Yes. So specifically,
17 the -- there was a deadline for submission of design
18 plans by the end of 2015 and completion of all
19 infrastructure by the end of 2016.

20 COMMISSIONER ACZON: And there's no
21 amendment to extend those deadlines?

22 JANICE FUJIMOTO: No. We were actually in
23 the process of negotiating a new MOU with Canpartners
24 prior to the sale to RP2. We were negotiating with
25 them. We knew they weren't going to hit the

1 deadlines so we were already discussing what new
2 scheduling could occur. However, they sold the
3 property to somebody else. And also we realized that
4 the existing LUC order has hard dates in it as well
5 as a reference to an MOU. So we didn't feel that we
6 could enter a new MOU without -- to the existing
7 order.

8 CHAIR WONG: Commissioner Okuda.

9 COMMISSIONER OKUDA: Thank you, Mr. Chair.
10 You know, there's one concern that I think,
11 I and maybe some others may have with the fact that
12 conditions that are set by the Commission aren't
13 followed. If we don't take a strict compliance view
14 regarding these conditions, the Hawaii Supreme Court
15 has held that, you know, there might be a waiver of
16 the condition or we can't enforce the condition or if
17 we try to enforce the condition, there might be a
18 constitutional taking violation. And so -- and so
19 the quandary -- or not the quandary but one of the
20 issues that I think the parties have to address is,
21 you know, while we like to see things worked out to
22 be done in a business -- business like standpoint or
23 business like way and we respect the personal
24 reputations of all of you here, especially Mr.
25 Tanoue, you, Mr. Atta, 'cause I think people are

1 familiar with your service to the community. At the
2 same time we're governed by the standards which are
3 being imposed by the Hawaii Supreme Court. And if
4 conditions aren't met and I think if we don't see
5 admissible evidence showing concrete steps of
6 conditions being satisfied, then we're being forced
7 by the supreme court to go down the road of the order
8 to show cause and probably asking or taking action
9 based on whatever proper motion is brought and
10 evidence adduced to possibly seeking or rendering a
11 decision reverting the classification of the land.
12 And it may not be what we all really want to do from
13 a business standpoint but it's something that's going
14 to be mandated or has been mandated by the Hawaii
15 Supreme Court. So that really is a concern that
16 conditions really mean something.

17 And there's a -- I think a public policy
18 concern where boundary amendments are given,
19 conditions are placed and instead of conditions being
20 met, the properties are being transacted. And I
21 understand there's a bankruptcy so we're not
22 necessarily saying anyone made money off of the
23 transaction. But that's the public policy concern.
24 That people flip property without meeting the
25 representations and assurances to the community.

1 Thank you.

2 CHAIR WONG: Mr. Tanoue, why don't you come
3 on back.

4 COMMISSIONER CHANG: Chair, could I just ask
5 Dawn Apuna one question?

6 CHAIR WONG: Okay.

7 COMMISSIONER CHANG: Before we have -- OP
8 does -- we're focusing just on condition 19 today?

9 MS. APUNA: Yes.

10 COMMISSIONER CHANG: And that deals with
11 Department of Ag. Are there other conditions that
12 the LUC approved that have not been satisfied beyond
13 condition number 19?

14 MS. APUNA: I believe there are. But can I
15 speak to the path of order to show cause? It's
16 definitely not the path that either of these parties,
17 DOA, OP and Mr. Tanoue, RP2, would like to go down.

18 We recognize that, Mr. Tanoue as he
19 explained, they're kind of cleaning up a mess.
20 They're trying to take the reins and make this work.
21 And DOA wants it to work too.

22 And an order to show cause would actually
23 through the baby out with the bath water for DOA. We
24 need them and I think that they need us too. So we
25 can't make promises but this is our best effort to

1 get things going and make this project work. So we
2 hope that an order to show cause is not really a
3 consideration for today.

4 CHAIR WONG: Okay. I'm going to ask a
5 question, then I'll give it to Mr. Scheuer --
6 Commissioner Scheuer.

7 First up, Mr. Tanoue, the Department of Ag
8 presented to us that their proposed deadline for
9 December 31st, 2018 for non-potable waterline. In
10 your experience, vast experience with the county and
11 now with R.M. Towill, is it possible?

12 DAVID TANOUE: From my perspective, no. But
13 then that's why, you know, when the Department of Ag,
14 they've been very -- as you can see, from the
15 PowerPoint, they've been very patient this whole
16 time. And then more recently, when they were trying
17 to get some deadlines from us, we didn't want to set
18 deadlines that we couldn't meet or we didn't want to
19 be going on the same path of extending of missing
20 deadlines. And at that point, the -- for meeting
21 their needs, what they felt were their needs, we
22 couldn't meet those dates in there. So that's why,
23 you know, I mentioned to Department of -- you know,
24 you guys should do what you guys need to do which is
25 we need to go in front of the Land Use Commission.

1 You know, we have this relationship together. As a
2 client, you know, they're our clients. If you
3 notice on the sheet that show their layout for the ag
4 park, it was an R.M. Towill stamp on top there. So,
5 you know, we've worked together. We have this
6 relationship. But I wanted to make sure that as a
7 property owner, they feel okay to do whatever you
8 need to do. And if you need to go in front of the
9 board, the Commission, that's fine with us. We knew
10 there's a lot of deadlines that came and went. But
11 we weren't able to commit to the deadlines that
12 they're hoping for in their letters.

13 Looking at what they're proposing for the
14 irrigation line, I'm thinking first, you know, we're
15 almost complete. In my handout, we put down maybe
16 August, September to finish all the design work and
17 submit it to the city and county for approval on
18 construction plans.

19 By the end of the year, we should be able to
20 get construction plans approved. But having the
21 construction completed and the line in place in use
22 by the end of the year, that will be -- I don't think
23 that can happen.

24 CHAIR WONG: So let's take a guess. When do
25 you think construction will be completed, just a

1 rough, you know, conservative number?

2 DAVID TANOUE: You know, actually, the
3 engineer said, you know, it might take up to a year
4 for the construction plans to get approved. Then I
5 said no. Well, that's being, you know, conservative.
6 I said well, we got to move faster. But the -- and
7 hopefully that we can -- I have confidence in DPP
8 that we can move it forward. But so -- that's why
9 I'm shooting for the end of the year as having
10 construction plans approved. And then, you know, we
11 do the bidding and get construction and construction
12 done. But that's why it's hard for me to commit for
13 that.

14 But I have no problem coming in regularly
15 with updates to the board or submitting updates,
16 written updates to all the parties involved. We can
17 set a deadline to, you know, construction plan
18 approval at the end of the year. Maybe one for sure
19 deadline that we can -- we should be able to obtain
20 without anything popping up.

21 CHAIR WONG: Mr. Atta, do you have any
22 problems if -- that last statement?

23 MARK ATTA: I don't know that we have a
24 problem with that. If we -- in addition to knowing
25 that the construction plans would be done, that we

1 have a better idea of when actual construction will
2 be completed because that will assist us in our --
3 you know, the things that we need to do on our end.
4 As long as it's pretty reasonable. I think we could
5 possibly live with that. But we need certainty.
6 That's the key to our issues is that right now we
7 lack certainty in anything. And --

8 CHAIR WONG: So -- go ahead.

9 JANICE FUJIMOTO: And if I may, I think, you
10 know, it's one thing and we're grateful to see that
11 there are plans being developed and a commitment to
12 getting plans approved by the City. But our main
13 concern is construction. We need the lines in the
14 ground.

15 CHAIR WONG: Right. And so I'm assuming
16 that R.M. Towill will go out for bids for this. And
17 takes some time because of RFIs and all that other
18 issues before the bid is awarded because this is a
19 private venture. It's not a state or county so it
20 will be a little faster.

21 DAVID TANOUE: A little faster, yes.

22 CHAIR WONG: But there's an assumption here
23 right now on the table that it will be done by 2019?
24 At least break ground?

25 DAVID TANOUE: I hope so. Yes, yes. It's

1 hard for a commitment but, you know, I'm thinking it
2 needs to be done.

3 You know, the Department of Ag is also our
4 client and then, you know, when designing their ag
5 park, a lot of assumptions we had to make
6 anticipating where, you know, where the canyon we'll
7 put in these lines and all that kind of stuff. Now,
8 we're in the place of canyon so we know where things
9 should be going. So that's why I think it should be
10 moving smoother. No need to hire another consulting
11 firm to do the design. We're already doing it.
12 We're familiar with the area. Going out to bid for
13 construction and just going forward.

14 I think initially, maybe some apprehension
15 from the Department of Ag 'cause as noted in their
16 PowerPoint, we didn't expect to be holding on to the
17 property this long. We thought it would have been
18 transferred over to the ultimate developer sooner.
19 But, you know, be that as it may, we're just told
20 this is going to cost more when the time comes
21 because whatever we're putting into the -- what needs
22 to be put into the ground is going to be just added
23 on. So the I think that's why moving forward early
24 on, the hesitation might have been because seeing who
25 the -- who they will be dealing with ultimately but

1 now it's still going to be us and we're moving
2 forward. RP2 is moving forward, the design and
3 implementation of the infrastructure and potable
4 water.

5 CHAIR WONG: Commissioner Scheuer.

6 VICE CHAIR SCHEUER: Yes. First, I want to
7 make a clarification. I'm not suggesting that an
8 order to show cause is the best way to go. But, you
9 know, building on the comments from Commissioner
10 Okuda, you know, there's legal reasons why we want to
11 move forward. And just, you know, we don't want to
12 keep looking stupid, you know. We just start to look
13 stupid that, you know, and it's -- you know, this
14 is -- RP2, if it's really essentially R.M. Towill,
15 it's very different than a Delaware corporation who's
16 coming in here, right? So it's not a statement about
17 R.M. Towill or your esteemed history in the
18 community. It's a statement about how many
19 landowners have come forward to us and said no, just
20 change this, change this, change that. Oh, and then,
21 you know, we'll take care of it. And so at some
22 point, we look really stupid. Right?

23 So tell me. You talk about a future
24 developer. Are you in the process of like -- or do
25 you identify the potential buyer? Where are we in

1 that so that we know when the next person might be
2 showing up in front of us?

3 DAVID TANOUE: The thing is once we took
4 possession and it became known that local developers
5 came knocking more. But we already had a -- you
6 know, we had in mind going in, the possible local
7 developer that was going to be the ultimate owner.
8 But there's still some technicalities that we'll work
9 out with the adjoining property owners. But like I
10 said, it -- more than likely, it will be one of
11 the -- one of our clients. And I think that puts us
12 in a particular situation 'cause one, like I
13 mentioned earlier, that the purchase price was
14 actually more realistic than initially what the
15 investment trust was trying to get out of the whole
16 stuff. And the fact that, you know, it will be
17 probably one of our clients. Is that all the
18 infrastructure, all the -- you know, from a company
19 perspective, we look at the long-term. So we're
20 looking at the engineering fees that we can
21 accumulate over time dealing with our clients. So
22 that's why on the transfer and more like a transfer
23 with one of our clients is it makes the -- everything
24 more palatable. 'Cause you can -- you know, when
25 they look at the purchase price as well as the

1 development cost, it's almost like one and the same
2 for them because we will continue to do the work.
3 And as R.M. Towill, we look at the long-term
4 consulting fees that we'll get for engineering
5 planning and certainly for the project. So we can
6 work -- it will be a much more workable project at
7 the end for the developer.

8 VICE CHAIR SCHEUER: So just to clarify.
9 RP2 is wholly -- the sole member is R.M. Towill or
10 there's other investors?

11 DAVID TANOUE: Just us.

12 VICE CHAIR SCHEUER: Okay. So you are
13 sitting here with the RP2 hat on?

14 DAVID TANOUE: Yes.

15 VICE CHAIR SCHEUER: Representing? Okay.
16 Thank you.

17 CHAIR WONG: Commissioner Okuda.

18 COMMISSIONER OKUDA: Thank you, Chair.

19 If I can then ask the parties what -- maybe
20 start with Office of Planning and Department of
21 Agriculture first. What do you want the Land Use
22 Commission or what can the Land Use Commission do
23 either with a specific order, action, scheduling,
24 what have you, to assist this process to get at least
25 the condition we're talking about here met? What

1 would you like us to do?

2 MS. APUNA: I think we would still want what
3 we had asked as far as deadlines. I know Mr. Tanoue
4 says they can't make the construction deadline but we
5 would -- I'm sure we would like something before
6 2019. We want status updates or conferences every
7 six months. I think we still want what we asked
8 originally but we also want it to work. So if
9 there's some room -- wiggle room but not too far off
10 as far as deadline.

11 CHAIR WONG: Commissioner Aczon.

12 COMMISSIONER ACZON: So am I hearing
13 correctly that the December 31st, 2018 deadline is
14 off the table? And if not -- and not that, what
15 would be your next step?

16 MS. APUNA: Could we take a short break so
17 we -- I can speak to my client and get back to you.

18 (Recess taken.)

19 CHAIR WONG: Okay. We're back on. OP.

20 MS. APUNA: Thank you for allowing us to
21 talk it over.

22 So what we would request is that the
23 design -- the complete design and construction plans
24 be delivered by December 31st, 2018 as Mr. Tanoue
25 said they were able to do. And then completion of

1 construction of non-potable line by March 31st, 2019.
2 And regular updates of their progress as well as that
3 they come in and amend the D&O for condition 19
4 'cause I think there are some hard deadlines that
5 would need to be amended.

6 CHAIR WONG: Okay.

7 MS. APUNA: We think, speaking to my client,
8 that once the plans are finalized by the end of this
9 year, that it shouldn't be too much of a problem to
10 actually get the line in there. That shouldn't take
11 as long as was discussed. Like three months, we
12 think, is a reasonable amount of time.

13 CHAIR WONG: Commissioner Scheuer.

14 VICE CHAIR SCHEUER: So March 19th, 2019?

15 MS. APUNA: I'm sorry, March 31st.

16 VICE CHAIR SCHEUER: 2019 for the actual
17 construction as opposed to December 31st of this
18 year?

19 MS. APUNA: Yes.

20 VICE CHAIR SCHEUER: Okay. And have you
21 talked about what happens if that's not met?

22 MS. APUNA: No, we haven't but --

23 VICE CHAIR SCHEUER: Have you explored ideas
24 within your discussions with the landowner,
25 petitioner about any kind of performance bonds or

1 construction bonds to ensure that this would actually
2 get constructed?

3 MS. APUNA: No.

4 CHAIR WONG: Just wanted to check. I think
5 there's more than just RP2 involved in this issue.
6 Is that correct, Mr. Tanoue?

7 DAVID TANOUE: I mean we're working with the
8 Robinson Trust because we require an easement going
9 through their property.

10 CHAIR WONG: So you need more than just
11 yourself to involve in all this?

12 DAVID TANOUE: That was part of the
13 discussions with Robinson which we don't think it's
14 going to be a problem obtaining -- the location of
15 the easement might be still under the discussion,
16 what the City's going to allow us along Kunia Road,
17 how close to Kunia Road we can go. It's just part of
18 the plans review. And concurrently with the plans
19 review, we will be continuing with the discussion
20 regarding the easement.

21 CHAIR WONG: From -- I gather from Office of
22 Planning, that they wanted to also amend the
23 conditions if I was correct in their statement, is
24 that correct?

25 MS. APUNA: Condition 19. The -- there's a

1 deadline there for the full construction of the . . .

2 CHAIR WONG: I think more than just RP2 can
3 deal with that, isn't that -- has to be --

4 MS. APUNA: No, I don't think so actually.
5 I think is strictly between RP2 and -- because the
6 condition 19 is based on the MOU with -- and parties
7 to the MOU are RP2 or the successor to Halekua and
8 Canpartners and DOA.

9 DAVID TANOUE: Can the MOU be amended if
10 that's the case without touching the condition? I
11 don't have the condition in front of me.

12 CHAIR WONG: If --

13 DAVID TANOUE: To reflect that new
14 arrangement.

15 CHAIR WONG: I think you should work out --
16 work it out with all the parties involved and come
17 back to us. So let me -- you want to go before I --
18 go ahead, Commissioner Aczon.

19 COMMISSIONER ACZON: I just want
20 clarification on March 2019 date you have. Is that
21 for construction? Is that start or completion?

22 MS. APUNA: Completion.

23 COMMISSIONER ACZON: Completion?

24 CHAIR WONG: Commissioner Okuda, you have a
25 question?

1 COMMISSIONER ACZON: And that permit's going
2 to take one year?

3 DAVID TANOUE: Maybe one suggestion 'cause
4 it just may be a time frame from the -- once the
5 permits get approved by the City and there's a time
6 frame that construction begins. Then if it takes --
7 if the permit approval comes quicker than
8 anticipated, we can start the -- we're required to
9 start construction sooner. But if it, for whatever
10 reason, whether that's the issue with the easement or
11 something that the permit approval drags on a little
12 longer, we don't have to come back 'cause we're not
13 going to meet the construction deadline. But maybe
14 we have a start date for construction instead based
15 on the permit approval.

16 COMMISSIONER ACZON: Just a follow-up. How
17 long do you think the construction's going to take?

18 DAVID TANOUE: If -- you know, it shouldn't
19 take too long. But just the -- you know, once we
20 award the contract and the contractor gets his
21 trenching permit, then he can start moving dirt and
22 trenching the pipeline.

23 COMMISSIONER ACZON: A month, two months?

24 DAVID TANOUE: I would think you would
25 probably know more Commissioner on the construction

1 side.

2 COMMISSIONER ACZON: Just trying to connect
3 the dates so --

4 CHAIR WONG: Commissioner Okuda.

5 COMMISSIONER ACZON: Thank you.

6 COMMISSIONER OKUDA: Yeah, Chair. I'm just
7 trying to get a clarification.

8 Number one, is there then an agreement
9 between RP2 and Department of Agriculture and Office
10 of Planning about certain dates including dates
11 regarding deadlines? And just so that the record is
12 clear, can we have a clear statement of what the
13 agreement or commitment is that the parties are going
14 to engage in? Even if the Land Use Commission might
15 not be party to that agreement but just so that we
16 don't have confusion which might inadvertently lead
17 to unnecessary things in the future.

18 CHAIR WONG: You know what, instead of --
19 can you hold that thought please. Instead of that,
20 because I think the parties still need to discuss all
21 these issues, I rather just finish this discussion
22 today and let you guys all talk and work out some
23 sort of detail. And let's work with our staff to set
24 up another status conference. Come back in six to
25 eight months. You know, work with our staff for the

1 date. Is that okay with all parties instead because
2 then we have a clearer understanding with everything.

3 Mr. Scheuer.

4 VICE CHAIR SCHEUER: I personally have to --
5 I'm fine with them coming back when you've come to
6 some agreement. I think if we're looking at a March
7 2019 deadline, six months is too late if things fall
8 apart. I would like to see it much earlier. And I
9 would just like to see personally DOA, OP and the
10 landowner work out some sort of self enforcing
11 mechanism on the MOA side. Clearly, we have to
12 change things on -- if I understand the record
13 correctly, on the condition side. But I'd rather --
14 I'd rather the LUC be the enforcer of last resort,
15 not the only enforcer in this situation and see
16 something that if things are -- deadlines are missed,
17 here's payment made or something done to ensure that
18 this park actually gets built and we actually get
19 farmers in there. 'Cause unlike IAL, this would
20 actually support agriculture in Hawaii.

21 CHAIR WONG: Commissioner Chang.

22 COMMISSIONER CHANG: Thank you so much.

23 I understand RP2's -- I mean you're
24 providing us your best estimate based upon things you
25 control. So things that are out of your control, for

1 example, DPP permit approval . . . well, we'd like to
2 believe you may have some influence here like all the
3 rest of us, stand in line. And so those things that
4 are in your control, your planning, submission of the
5 permits and procurement and getting construction.
6 Once you have the permit approvals, you are confident
7 that you can complete the construction in a timely
8 fashion. That's what I'm hearing.

9 DAVID TANOUE: That's -- I think -- that's
10 why -- you know, once we get the approvals, we can
11 commit to we'll get the construction started within X
12 amount of days, something like that.

13 COMMISSIONER CHANG: Okay.

14 DAVID TANOUE: I'm not sure how long it's
15 going to take sitting here. But yeah, at least we
16 get it going.

17 COMMISSIONER CHANG: And maybe seeing
18 progress might be sufficient.

19 I have a different -- a fundamental
20 question. I appreciate the fact that RP2 has stepped
21 in. Local firm, many of these are your clients. We
22 know where you work. We know where you live so we
23 trust you. Is there any circumstances upon which RP2
24 would walk away from this if there is any -- any
25 additional -- I don't want to call them burdens

1 because they are already conditions. But is there
2 anything upon which RP2 -- 'cause I think OP had a
3 hesitancy about doing an order to show cause 'cause
4 there's -- you guys are all kind of working together.
5 So is there any circumstance upon which RP2 would
6 step out and say we're not going to do this?

7 VICE CHAIR CABRAL: Lava flow.

8 COMMISSIONER CHANG: If that happens here in
9 Hawaii --

10 VICE CHAIR CABRAL: You got it --

11 COMMISSIONER CHANG: There's a lot of things
12 that won't happen. But is there anything, David,
13 that RP2 would walk away from this?

14 DAVID TANOUE: Not that I can see.

15 COMMISSIONER CHANG: Okay.

16 DAVID TANOUE: 'Cause we put in -- you know,
17 we put in our money. It's our money up front. It
18 wasn't the potential developer's money. It was our
19 money. So we -- we took the responsibility.

20 Like I mentioned earlier, we talked what was
21 going to be there a bit quicker so that we could get
22 underway with the project itself. And then we looked
23 at it as from a long-term stuff that we're going to
24 be involved. Part of the purchase agreement that
25 we're going to be doing the work for us. So that's

1 why the price can be cheaper. You know, stuff like
2 that 'cause it's the long time -- long-term stuff.
3 So we don't -- we see ourselves committed to taking
4 on the responsibility. We do have the resources to
5 move toward.

6 But we're not developers. Ultimately, we're
7 not the developer. We're not going to build a house
8 or houses. We're not expecting to do that. But our
9 clients are developers.

10 COMMISSIONER CHANG: Thank you.

11 DAVID TANOUE: And again, Department of Ag
12 is also our clients and we want to make sure that we
13 don't upset them. And we want to make sure that we
14 can provide what we need to provide to them the best
15 we can.

16 COMMISSIONER CHANG: Thank you.

17 CHAIR WONG: Okay. I think we're going off
18 topic. So -- yes, Commissioner Cabral.

19 VICE CHAIR CABRAL: I know this is going
20 round and round. But I actually would recommend
21 that, you know, we're here at the end of May. And
22 instead of having such tight timelines because things
23 do happen that you don't plan on, is that we really
24 look at maybe having that be one year from now that
25 they would come back with hopefully a completion or

1 at least commence by the construction. You know,
2 given a little more time in case Edwin's crew can't
3 get in there in time or what have you. But -- and
4 then maybe six months for a status update and
5 whatever manner our staff needs it. And then one
6 year from now, hopefully completion or at least
7 commencement of construction or an explanation as to
8 why you're not completed. That would be my
9 recommendation.

10 CHAIR WONG: Okay. So for all parties and
11 staff -- for the parties especially, work together,
12 try to figure out something and then come to the
13 staff. If we have to do another status conference,
14 please set it up.

15 But I think that's all for today and I'm
16 going to call this meeting adjourned.

17 (Concluded at 12:45 p.m.)

18 --oo0oo--

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1 CERTIFICATE

2 STATE OF HAWAII)
3 COUNTY OF HONOLULU) SS.

4 I, PRISCILLA GONZAGA, CSR #127, do hereby
5 certify:

6 That on May 24, 2018, the proceedings
7 contained herein was taken down by me in machine
8 shorthand and thereafter reduced to typewriting under
9 my supervision; that the foregoing represents, to the
10 best of my ability, a true and correct copy of the
11 proceedings had in the foregoing matter.

12 I further certify that I am not of counsel
13 for any of the parties hereto, nor in any way
14 interested in the outcome of the cause named in this
15 caption.

16 Dated this 9th day of June, 2018 in
17 Honolulu, Hawaii.

18
19
20 /s/ Priscilla Gonzaga

21 Priscilla Gonzaga, CSR #127
22
23
24
25