

LAND USE COMMISSION  
STATE OF HAWAI'I  
Hearing held on June 10, 2021  
Commencing at 9:00 a.m

Held via ZOOM by Interactive Conference Technology

VIII. Call to Order

IX. Continued action (If Necessary)  
SP21-411 AES West O'ahu Solar, LLC

X. CONTINUED HEARING AND ACTION  
A11-791 Kaua'i Joint Venture LLC-Hokua Place  
(Kaua'i)  
Amended Petition to Amend the Land Use District  
Boundary of Certain Lands Situated at Kapa'a,  
Island f Kaua'i, State of Hawai'i, Consisting  
of 97 Acres from the Agriculture District to  
the Urban District, Tax May Key No. (4)  
4-3-003: POR 001  
\* To Consider Petitioner's Motion to Withdraw  
\* To Consider Motions to Dismiss

XI. Adjournment

Before: Jean Marie McManus, Hawaii CSR #156

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APPEARANCES:

JONATHAN LIKEKE SCHEUER, Chair (Oahu)  
NANCY CABRAL, Vice Chair (Big Island)  
EDMUND ACZON, Vice Chair (Oahu)  
LEE OHIGASHI (Maui)  
ARNOLD WONG (Oahu)  
DAWN CHANG (Oahu)  
DAN GIOVANNI (Kauai)  
GARY OKUDA (Oahu)

STAFF:

DAN MORRIS, ESQ.  
Deputy Attorneys General

DANIEL ORODENKER, Executive Officer  
RILEY K. HAKODA, Chief Clerk  
SCOTT DERRICKSON, Chief Planner  
NATASHA A. QUINONES, Program Specialist

ALISON KATO, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI, Planning Program Administrator  
AARON SETOGAWA, Planner  
State Office of Planning  
State of Hawaii

DUANE PANG, ESQ.  
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Department of Planning and Permitting  
City and County of Honolulu

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For AES West Oahu Solar, Petitioner

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JODI HIGUCHI SAYEGUSA, Kaua'i Planning Dept.  
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WILLIAM YUEN, ESQ.  
JANNA AHU, ESQ.  
For Petitioner A11-791  
HG Kaua'i Joint Venture, LLC

BIANCA ISAKI, ESQ.  
Liko Martin  
For Intervenor

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1                   CHAIRPERSON SCHEUER: Aloha mai kakou.  
2 Good morning.

3                   This is the June 10th, 2021 Land Use  
4 Commission, which is being held, of course, as you  
5 can tell if you're here, via ZOOM, linking  
6 videoconferencing participants and other interested  
7 individuals of the public in order to comply with  
8 State and County official operational directives  
9 during the still ongoing COVID-19 pandemic. Members  
10 of the public are able to view the meeting via the  
11 ZOOM webinar platform.

12                   For all meeting participants, I would like  
13 to stress the importance of speaking slowly, clearly  
14 and directly into your microphone. It is also  
15 helpful if you identify yourself prior to speaking.

16                   Also please be aware that this meeting is  
17 being recorded. Your continued participation is your  
18 implied consent to be part of the official record of  
19 this meeting. If you do not so consent, you should  
20 be leaving this meeting now.

21                   This technology allows all of the meeting  
22 participants and each individual Commissioner access  
23 to the meeting via our own individual personal  
24 digital devices. Because of that, due to matters  
25 entirely outside of our control, from time to time

1 occasional disruptions to connectivity may occur. If  
2 this happens, please be patient. Please let us know  
3 as we will try to restore audio/visual signals so  
4 that we can conduct our business during the pandemic.

5 For any members of the public who wish to  
6 testify during our meeting during any matter to which  
7 public testimony will be accepted, you can indicate  
8 your desire to be raised to a participant in the  
9 meeting and testify rather than simply be attendee by  
10 using the raise-your-hand function. If you are  
11 accessing the meeting during the ZOOM webinar either  
12 on your laptop, desktop or smart phone; or if you are  
13 calling in by telephone, by pressing \*9.

14 I'll repeat these instructions as well as  
15 my indication that I will try to take a break  
16 approximately ten minutes every hour.

17 My name is Jonathan Likeke Scheuer, and I  
18 have the pleasure and honor of serving, along with my  
19 seven co-volunteers, as the Chair of the Land Use  
20 Commission.

21 Along with me Commissioner Edmund Aczon,  
22 Dawn Chang, Gary Okuda, Arnold Wong, our Executive  
23 Officer Daniel Orodener, our Chief Planner Scott  
24 Derrickson, our Program Specialist, Natasha Quinones,  
25 Our chief Clerk Riley Hakoda, our Deputy Attorney

1 General, and our Court Reporter, Jean McManus, are  
2 all on the Island of O'ahu.

3 Commissioner Lee Ohigashi is on the Island  
4 of Maui, Commissioner Dan Giovanni is on the Island  
5 of Kaua'i, and Commissioner Nancy Cabral is on Hawaii  
6 Island.

7 We currently have eight seated  
8 Commissioners of a possible nine.

9 I'm going to briefly describe some of the  
10 schedule hick-ups we have for today. Commissioner  
11 Dan Giovanni I believe needs to be absent between  
12 9:30 and 10:15 A.M.; is that correct?

13 You're muted, Commissioner Giovanni.

14 COMMISSIONER GIOVANNI: Thank you, Chair.  
15 I have adjusted my schedule. I'm fully available  
16 today.

17 CHAIRPERSON SCHEUER: Excellent, thanks you  
18 so much.

19 Commissioner Lee Ohigashi needs to leave  
20 about 1:30, as does Commissioner Aczon; and  
21 Commissioner Wong can only stay until 3:00 P.M.

22 Our matters yesterday took much longer than  
23 was initially anticipated. Our hope is that we can  
24 get through all of our business by 1:30 P.M., at  
25 least that's my individual hope.

1                   SP21-411 AES WEST O'AHU SOLAR, LLC

2                   With that said, our next Agenda item is  
3 Docket SP21-411 AES West Solar, LLC To Consider a  
4 Special Use Permit Application 2020/SUP-6 AES West  
5 O'ahu Solar, LLC for Construction and Operation of a  
6 12.5 Megawatt Solar Photovoltaic and 50-Megawatt hour  
7 Battery Energy Storage System on Land Owned by the  
8 University of Hawaii, TMK (1)9-2-002, Lot 007 and;

9                   To Consider the Proposed Findings of Fact,  
10 Conclusions of Law and Decision and Order related to  
11 (CUP 2006/0001).

12                   Will the parties, beginning with the  
13 Applicant, please identify yourselves for the record?

14                   MR. TABATA: Good morning, Chair and  
15 Members of the Commission, Curtis Tabata for AES,  
16 Petitioner.

17                   CHAIRPERSON SCHEUER: And are any of your  
18 clients with you, Mr. Tabata?

19                   MR. TABATA: Yes, also present is Nick  
20 Molinari, the project manager.

21                   CHAIRPERSON SCHEUER: Thank you very much.  
22 City and County of Honolulu.

23                   MR. PANG: Good morning, Your Honor, good  
24 morning Commissioners. Duane Pang on behalf of  
25 Department of Planning and Permitting. Also with me

1 is Dina Wong, Planner, representing Department of  
2 Planning and Permitting. Thank you.

3 CHAIRPERSON SCHEUER: Thank you very much,  
4 Mr. Pang. May I assume that on the ZOOM window that  
5 the second entrance of Duane Pang is actually Dina  
6 Wong?

7 MR. PANG: No, I think I just was mistaken.  
8 That's probably me making a very big mistake.

9 CHAIRPERSON SCHEUER: No, no. There's two.  
10 The staff can check and rename. There's two entries  
11 for you. Thank you very much.

12 Office of Planning, Ms. Kato.

13 MS. KATO: Good morning, Chair. Deputy  
14 Attorney General, Alison Kato for Office of Planning.  
15 Also here with me is Rodney Funakoshi and attendees  
16 Lorene Make from the Office of Planning.

17 CHAIRPERSON SCHEUER: Thank you very much.

18 Now, let me first update the record.

19 On March 3rd, 2021 we received public  
20 testimony from Senator Kurt Favella.

21 On April 27, 2021, the Commission received  
22 Special Use Permit Application for AES West Oahu  
23 Solar.

24 On May 5th the Commission received Planning  
25 Commission's index of records containing Exhibits



1 17-A through 17-H.

2 On May 13th the Commission received the  
3 Applicant's proposed Findings of Facts, Conclusions  
4 of Law and Decision and Order, Exhibit A, and as well  
5 as a Certificate of Service and an Amended  
6 Certificate of Service.

7 On June 4th, the Commission mailed the  
8 Meeting Agenda for today's meeting to the Parties in  
9 this docket, Statewide and County Lists.

10 On June 7th, the Commission received Office  
11 of Planning's Comments on this Special Use Permit  
12 Application.

13 Also on that day, the Commission received  
14 additional Public Testimony.

15 On June 8th the Commission received email  
16 from the Applicant stating AES had no objections to  
17 Office of Planning's Proposed Conditions stated in  
18 the June 7th letter.

19 Now, for the parties and public, let me  
20 describe our procedures for today.

21 First, I will acknowledge all written  
22 testimony received to this point on this matter.

23 After the completion of noting that, I will  
24 offer the opportunity for individuals of the public  
25 to offer oral testimony on this matter. I will do so

1 by asking them to raise their hand using the  
2 raise-your-hand function in the attendee room. I  
3 will then enter you into the meeting room one by one,  
4 offer three minutes to provide testimony, following  
5 your being sworn in. Following the testimony, you  
6 will be available for questions by the parties and  
7 the Commissioners.

8 After the completion of all public  
9 testimony, I will call for the Applicant to make  
10 their presentation and Commissioners to ask questions  
11 of the Applicant.

12 I will then provide opportunity for the  
13 County and Office of Planning to offer comments on  
14 this docket.

15 Following that, the Commission will ask any  
16 final questions and then the Commission will move  
17 into deliberation.

18 As I stated before, from time to time,  
19 approximately ten minutes every hour, we will take  
20 breaks.

21 Any questions with our procedures for  
22 today?

23 MR. TABATA: No questions.

24 CHAIRPERSON SCHEUER: Mr. Pang?

25 MR. PANG: This is Duane Pang. No

1 questions. Thank you, Your Honor.

2 CHAIRPERSON SCHEUER: Ms. Kato?

3 MS. KATO: No questions. Thank you.

4 CHAIRPERSON SCHEUER: I'm now going to note  
5 the written testimony that we have received as I  
6 previously stated, March 22nd we received testimony  
7 in opposition from Senator Kurt Favella.

8 On June 7th we received testimony from  
9 Hawaii Operating Engineers Industry Stabilization  
10 Fund.

11 On the 7th, also from Pacific Resources  
12 Partnership, from Scott Enright and Rebecca Dayhuff  
13 Matsushima on behalf of Hawaiian Electric Company,  
14 Incorporated.

15 And this morning we received testimony from  
16 Damon Kim of the International Brotherhood of  
17 Electrical Workers.

18 I'm now going to call on any individuals  
19 who wish to provide public this testimony on this  
20 docket.

21 I'm going to first let in Pane Meatoga,  
22 III, followed by Michael Pacheco.

23 Again, if you wish to testify, use the  
24 raise-your-hand function; or if calling in by phone,  
25 \*9. When you come into the meeting room, please, you

1 will now be able to enable your audio and video, so  
2 please do so.

3 And then I will swear you in; ask you to  
4 state your name, address and any affiliation for the  
5 record, and have three minutes to testify.

6 Mr. Meatoga, would you please enable your  
7 audio and video?

8 Aloha, good morning.

9 THE WITNESS: Good morning, aloha.

10 CHAIRPERSON SCHEUER: Do you swear or  
11 affirm that the testimony you're about to give is the  
12 truth?

13 THE WITNESS: I do.

14 PANE MEATOGA, III

15 Was called as a witness by and on behalf of the  
16 Public, was sworn to tell the truth, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 CHAIRPERSON SCHEUER: State your name,  
20 address and affiliation for the record, please.

21 THE WITNESS: Pane Meatoga, III, address is  
22 2180 Lauwiliwili Street, Kapolei, Hawaii 96707. I  
23 represent the Operating Engineers Industry  
24 Stabilization Fund. That is a labor management fund  
25 comprised of our 3,000 local 3 union members, and our

1 600 signatory contractors.

2           So I just wanted to submit -- you have my  
3 written, but also to give some oral testimony regards  
4 to supporting of this project.

5           As you know, in my oral testimony -- and  
6 I'll just quickly summarize really quick regards to  
7 the State's renewable energy goals.

8           I've worked on many projects. My area that  
9 I live in is out on the North Shore in Kahuku, so  
10 obviously, I am very well aware of what goes on there  
11 with the winter runs and such. That was a very  
12 controversial project, but when I see projects like  
13 this that make sense and combine both agricultural  
14 and renewable energy goals that we have for the  
15 State, to me that's a big "no brainer" and makes more  
16 sense, you know, PV as opposed to wind, so I'm really  
17 happy to see a project that makes sense and works for  
18 everyone in the community.

19           Obviously, there is an economic aspect to  
20 it in regards to job creation, as well as, you know,  
21 having more workforce shift over to renewable energy  
22 type of job.

23           We still have high unemployment. In my  
24 former life, I worked as tourism executive. So a lot  
25 of my friends are still out of work. And so having

1 an opportunity for, you know, people from tourism  
2 sector to come into other sectors I think is a great  
3 thing, and obviously diversification of the economy  
4 and getting more industries, especially growth  
5 industries makes a lot of sense.

6 So in summary, I just wanted to submit my  
7 oral testimony in support of this project. Thank  
8 you.

9 CHAIRPERSON SCHEUER: Mahalo nui.

10 Are there questions for the witness from  
11 the Petitioner?

12 MR. TABATA: No questions.

13 CHAIRPERSON SCHEUER: County?

14 MR. PANG: No questions from the County.

15 CHAIRPERSON SCHEUER: Office of Planning?

16 MS. KATO: No questions, thank you.

17 CHAIRPERSON SCHEUER: Commissioners, any  
18 questions?

19 Seeing none. Thank you very much for your  
20 testimony, both written and oral. We very much  
21 appreciate it. Mahalo nui.

22 I'm going to make you an attendee again,  
23 then let in our next testifier.

24 Michael Pacheco. Again, when you're  
25 admitted to become a panelist, please enable your

1 audio and video.

2 Aloha.

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

5 THE WITNESS: Yes, I do.

6 CHAIRPERSON SCHEUER: Thank you. So if you  
7 could state your name and address and affiliation for  
8 the record, then proceed.

9 MICHAEL PACHECO

10 Was called as a witness by and on behalf of the  
11 Public, was sworn to tell the truth, was examined and  
12 testified as follows

13 DIRECT EXAMINATION

14 THE WITNESS: Good morning. My name is  
15 Michael Pacheco. My address is 1550 Alancaster  
16 Street. Zip code is 96816. I live in the Kaimuki  
17 area. I am giving testimony on behalf IBEW 1186,  
18 International Brotherhood of Electrical Workers.

19 Our membership comprises of about 3500  
20 members ranging from electrical construction,  
21 telecommunication, Spectrum, AT&T, Civil Service  
22 Workers, Motor & Marine, and a recent Kamehameha and  
23 Private School Teachers as well. I thank you for  
24 giving me the time to testify.

25 And if I may, just to start off. This is

1 my first opportunity in a LUC meeting, and if I may  
2 give your thanks for your diligence.

3 Yesterday as I sat through, I saw the hard  
4 work that everybody puts in. Thank you, Chair  
5 Scheuer, Vice Chair Aczon and the rest of the  
6 Commissioners.

7 And once again, you know, we are in strong  
8 support and in respect of your time, I just want to  
9 be nice and brief and to the point.

10 Here at the IBEW on behalf (indecipherable)  
11 our eyes and our perspective in targeting the big  
12 thing is our State school of being 100 percent  
13 renewal by 2045, and projects like this move us  
14 forward, helping us to better serve our community and  
15 our members.

16 I just want to bring up three solid points.

17 First off, you know, to kind of reiterate  
18 brother Pane's sentiment. You know, we definitely at  
19 this point of the game with the pandemic need to be  
20 really smart about what project we choose to push  
21 forward. In this sense, I definitely think that this  
22 is one of those.

23 And the reasons are this. You know, one,  
24 their track record. You can see that with AES, their  
25 track record is solid, and that's definitely



1 something else.

2 But more importantly, I think, in my third  
3 and final point is the relationship that we've built  
4 with them. We have had those eye to eye kind of  
5 conversations about making sure that not only is this  
6 project done at the hands of capable people, but more  
7 importantly, it being safe. You know, we can go on  
8 about some of the other points, but for us here at  
9 IBEW we really feel that these are some of the three  
10 highlight points of why we're in strong support of  
11 this Special Use Permit.

12 So with that being said, I thank you for  
13 your time, and leave it in your capable and hands.  
14 Thank you.

15 CHAIRPERSON SCHEUER: Thank you very much,  
16 Mr. Pacheco. We appreciate it.

17 Questions for the witness?

18 MR. TABATA: No questions.

19 MR. PANG: No questions from the County.

20 MS. KATO: No questions, thank you.

21 CHAIRPERSON SCHEUER: Commissioner Okuda?

22 COMMISSIONER OKUDA: Yes. Thank you, Mr.  
23 Chair.

24 Mr. Pacheco, just a real fast question.  
25 You talked about the track record of AES, and also it

1 seems like the relationship between the union and  
2 AES,

3 Can you comment a little bit about that  
4 because in my view sometimes relationships are  
5 important too.

6 So can you comment from about the track  
7 record and the relationship between the union and the  
8 company, briefly anyway? Thank you.

9 THE WITNESS: And not a problem at all.  
10 Thank you for the question.

11 You know, I've been lucky enough where  
12 Damon Kim, our business manager and secretary, has  
13 spearheaded these conversations.

14 You know, I definitely know if he was here,  
15 he could probably give a little bit stronger point of  
16 view. I was more of in the background listening as  
17 we went to it.

18 Just to be able to have that open door back  
19 and forth where, hey, you know, and much to the point  
20 of even their redesign and making sure that we have  
21 more agricultural opportunities there as well is some  
22 of the topics that kind of came up as we dealt with  
23 them.

24 Unfortunately, for me personally, this is  
25 our first, you know, for my boss because he has more

1 experience, he has more, I guess granular details  
2 about exact projects, this and that. But I was there  
3 to witness that back and forth banter. And to me,  
4 that is super important, because lot of people can  
5 say one thing, and then down the road things change.  
6 And so far from what we have seen, it's always been  
7 that straight line.

8 So I hope that answers your questions,  
9 Commissioner.

10 COMMISSIONER OKUDA: It does. Thank you  
11 very much. I'm glad to hear cooperative nature,  
12 because we all in Hawaii have to work together no  
13 matter what sectors we come from, because I guess, as  
14 the old saying says, we're all in the same boat or  
15 the same canoe trying to paddle in the same  
16 direction. So thank you for taking time and your  
17 testimony.

18 THE WITNESS: Thank you.

19 CHAIRPERSON SCHEUER: Are there any  
20 furthers questions, Commissioners? Seeing none.

21 Thank you very much, Mr. Pacheco, for your  
22 testimony. I'm going to move you to an attendee  
23 again, and call on Nathaniel Kinney, followed by  
24 Christopher Delaunay, Cam Black and Jan Gouveia in  
25 that order.

1 Aloha. Good morning, Mr. Kinney.

2 THE WITNESS: Good morning.

3 CHAIRPERSON SCHEUER: Do you swear or  
4 affirm that the testimony you're about to give is the  
5 truth?

6 THE WITNESS: I do.

7 NATHANIEL KINNEY

8 Was called as a witness by and on behalf of the  
9 Public, was sworn to tell the truth, was examined and  
10 testified as follows:

11 DIRECT EXAMINATION

12 THE WITNESS: I am here representing Hawaii  
13 Regional Council of Carpenters, and we wanted to  
14 support the Applicant in their project.

15 We believe the project will help Hawaii  
16 meet its 100 percent renewable goal by 2045, reduces  
17 the need for fossil fuels.

18 The project would produce jobs and economic  
19 activity in a time when we need it most. The project  
20 also to us meaningfully incorporates agriculture  
21 through honey and bee production, and provides badly  
22 needed revenue to the State and the University of  
23 Hawaii, specifically right now with these budget  
24 shortfalls, especially with the University.

25 And we believe that the LUC should move

1       swiftly to approve this project. I believe there's  
2       the coal-fired electrical plant that's going to be  
3       ending in 2022, so I believe solar energy is the much  
4       better fit for Hawaii, and getting this online as  
5       quickly as possible so that we can shutdown the  
6       fossil fuel site would be best.

7                   And to the point of one of the other  
8       Commissioner's questions, we do believe AES is a  
9       reputable company. They have shown a desire to pay  
10      living wages.

11                   I mean, in this move from fossil fuel to  
12      clean energy, I think it's important that we support  
13      developers who come in and want to pay a meaningful  
14      living wage to workers in Hawaii; and there's no  
15      reason why we can't kill two birds with one stone,  
16      transition to green energy while paying a living wage  
17      to our local workers. Thank you.

18                   CHAIRPERSON SCHEUER: Thank you, Mr.  
19      Kinney. Can you also -- thank you for stating your  
20      name and your affiliation. Can you state your  
21      address for the record?

22                   THE WITNESS: Oh, I'm sorry. 1311  
23      Houghtailing Street, Honolulu, Hawaii 96817.

24                   CHAIRPERSON SCHEUER: Questions for the  
25      witness.

1 MR. TABATA: No questions, thank you.

2 MR. PANG: No questions.

3 MS. KATO: No questions, thank you.

4 CHAIRPERSON SCHEUER: Commissioners?

5 Commissioner Aczon.

6 VICE CHAIR ACZON: Thank you, Mr. Chair.

7 I'm not sure if it's --

8 CHAIRPERSON SCHEUER: You can disclose if  
9 you would like to.

10 VICE CHAIR ACZON: Yes, thank you.

11 I just want to disclose that I have prior  
12 working relationship with Nathaniel Kinney on his  
13 prior positions. I didn't know that he's working for  
14 the Regional Council of Carpenters.

15 Having said that, my office, my capacity is  
16 training carpenters, apprenticeship. But my office  
17 and the Regional Council of Carpenters, the two are  
18 different entities independent of each other.

19 And I can assure you that, you know, I'll  
20 be virtual on this. I don't have any financial  
21 obligation or from the carpenters. So I just want to  
22 kind of disclose that.

23 CHAIRPERSON SCHEUER: Thank you very much  
24 for disclosing your relationship with a witness  
25 stated just in abundance of caution.

1           I will check to see if any of the parties  
2 have any objection to Commissioner Aczon's  
3 participation.

4           MR. TABATA: No objections.

5           MR. PANG: No objections from the City.

6           MS. KATO: No objections, thank you.

7           CHAIRPERSON SCHEUER: Commissioner  
8 Giovanni.

9           COMMISSIONER GIOVANNI: Thanks, Chair.  
10 Just a point of clarification. I want to make sure  
11 that the remarks by Mr. Kinney are not  
12 misinterpreted.

13           You spoke to the transition in two part  
14 from fossil fuel to renewable energy, also to better  
15 wage structure. But isn't it true that the loss of  
16 jobs from the AES coal plant, those were good paying  
17 jobs as well?

18           THE WITNESS: That's a really good point.  
19 In my previous capacity actually we had some issues  
20 with the coal-fired power plant. They did some  
21 refracting work, and they brought in guys from the  
22 mainland to do it. So I just can't -- I understand  
23 that it's a sister company of AES, and that they're  
24 all under the same umbrella, but that just really  
25 rubbed me the wrong way when they brought in the guys

1 from the mainland to do -- from I believe Texas -- to  
2 do their maintenance on their refractory work,  
3 whereas the AES Solar plant is going to be hiring  
4 guys locally from here to put the panels, to clear  
5 the land, to tie into the grid.

6 I guess I would have only, actually having  
7 dealings with AES the coal-fired power plant -- and  
8 then when we want down there to talk to them about  
9 using guys from the mainland, they were just kind of  
10 like, well, you guys don't have any specialty in  
11 this. And we're like we do have. There are  
12 contractors that have specifically -- and local guys  
13 that are on the bench right now that need this work.

14 So, again, I just see that as this  
15 comparison to the solar power plant, which is like,  
16 hey, green energy, and we're willing to take local  
17 guys and take them off the bench and put them to  
18 work.

19 That was just a personal experience of mine  
20 from previous capacity. But I do think there are  
21 some jobs in there, but again, I think the State has  
22 made it clear that they want to transition away from  
23 this fossil fuel and the need to change our ways, you  
24 know, and trying to get to a better greener  
25 production of power.



1           COMMISSIONER GIOVANNI: I'm not going to  
2 take issue with your personal perspective, but I do  
3 believe that the full-time employees of AES coal  
4 plant or IBW union workers and those jobs will be  
5 lost.

6           CHAIRPERSON SCHEUER: Thank you very much,  
7 Commissioner Giovanni.

8           Are there further questions for the  
9 witness?

10           I just observe, rather than since we are  
11 trying to protect the environment, rather than  
12 killing two birds with one stone, we might be saving  
13 two birds with one action.

14           THE WITNESS: I stand in deference with the  
15 Chair on that one.

16           CHAIRPERSON SCHEUER: Thank you very much  
17 for your testimony today. We appreciate it.

18           I'm going to move you to be an attendee.  
19 I'm going to admit Cam Black.

20           Again, please enable your audio and video.  
21 I will swear you in, state your name, address and  
22 affiliation for the record.

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

25           THE WITNESS: I do.

1 CHAIRPERSON SCHEUER: Thank you.

2 CAMERON BLACK

3 Was called as a witness by and on behalf of the  
4 Public, was sworn to tell the truth, was examined and  
5 testified as follows:

6 DIRECT EXAMINATION

7 THE WITNESS: Thank you, Chair.

8 Good morning, Chair, Commissioners,  
9 everybody else out there. My name is Cameron Black,  
10 Renewal Energy Project Program Manager at the Hawaii  
11 State Energy Office. Our office address is 235 South  
12 Beretania Street in downtown Honolulu.

13 And my apologies. We did not submit  
14 written testimony to the LUC on this SUP, but I'll  
15 provide you my oral testimony within three minutes.

16 In 2010 about 17 percent of the Oahu's  
17 electricity came from renewable energy.

18 In 2020 about 31 percent of Oahu's  
19 electricity came from renewable energy. And  
20 collectively, the State's electric utility surpassed  
21 the state mandate of 30 percent renewable energy by  
22 2020.

23 However, we still have to replace over 60  
24 percent of Oahu's fossil fuel electricity in the next  
25 23 years for Oahu to reach 100 percent renewable

1 energy by 2045.

2           According to the U.S. Department of Energy,  
3 in 2019 Hawaii's imported fuel of foreign crude oil  
4 came primarily from Libya and Russia, with other  
5 refined products, including jet fuel, propane,  
6 sulfur, diesel fuel oil imported primarily from Asia,  
7 the Caribbean and South America.

8           Why is crude oil off-loaded in offshore,  
9 more important off Campbell Industrial Park, moved  
10 inland via a pipeline refined and then redistributed  
11 via barge throughout the State with other refined  
12 petroleum products.

13           As was mentioned earlier, Oahu's only coal  
14 plant, 180 megawatt coal plant at Campbell Industrial  
15 Park, which provides between 12 to 16 percent of  
16 Oahu's electricity, but is the second highest  
17 stationary source of greenhouse gasses behind the  
18 Kahe Power Plant, generating 19 percent of the GHG  
19 admitted by Hawaii's power plants.

20           This coal plant is scheduled to be retired  
21 on September 1st, 2022, and is prohibited by State  
22 law from operating after December 2020.

23           We believe the West Oahu Solar project is a  
24 critical project for our energy transformation, given  
25 its rural related to the ending the use of coal in

1 Hawaii.

2 Of the nine new utility skills solar plus  
3 solar projects now being proposed on Oahu, the West  
4 Oahu solar project has the earliest guaranteed  
5 operations date of September 7, 2022 -- did I say  
6 that number right? I think I did -- which is a week  
7 after the scheduled retirement of the coal plant.

8 We hope this project receives your  
9 approval, and we request that the LUC at least make  
10 timely decision so all involved can integrate a  
11 decision as to how we as an island move forward on  
12 the coal plant and other projects involved.

13 I'm happy to answer any questions you have.  
14 Thank you.

15 CHAIRPERSON SCHEUER: Thank you very much,  
16 Mr. Black, for your testimony.

17 Questions for the witness?

18 MR. TABATA: No questions.

19 MR. PANG: No questions.

20 MS. KATO: No questions, thank you.

21 CHAIRPERSON SCHEUER: Commissioners?

22 If not, we very much appreciate your taking  
23 the time to give us oral testimony. Thank you very  
24 much.

25 THE WITNESS: Thank you very much. I look

1 forward to listening to the rest of it.

2 CHAIRPERSON SCHEUER: I'm going to move you  
3 to be attendee, and admit Christopher Delaunay.

4 If you can enable your audio and video upon  
5 being admitted to be a panelist.

6 Good morning. We can't hear you. Try to  
7 say something. We're not getting audio. There might  
8 be a microphone issue. If you have a head set, you  
9 can plug in, that might assist.

10 If it's okay, Mr. Delaunay, I'm going to  
11 move to Jan Gouveia while you try to work this out.  
12 I'm going to move you back to being an attendee for a  
13 brief period. I'm going to admit Jan Gouveia.

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

16 THE WITNESS: Yes, I do.

17 CHAIRPERSON SCHEUER: You know the drill.

18 JAN GOUVEIA

19 Was called as a witness by and on behalf of the  
20 Public, was sworn to tell the truth, was examined and  
21 testified as follows:

22 DIRECT EXAMINATION

23 THE WITNESS: All righty.

24 Good morning, Chair Scheuer, Vice Chair  
25 Aczon, and Members of the Commission.

1 I am Jan Gouveia, Vice President  
2 Administration at the University of Hawaii, address  
3 for the record is 2444 Dole Street, Honolulu, Hawaii  
4 96822.

5 We are the landowner of the property at  
6 issue. We want to thank you for the opportunity to  
7 testify in support of the Application before you  
8 today. We thought we actually submitted written  
9 testimony on Monday the 7th, but it appears that we  
10 were not successful in uploading our testimony. I do  
11 apologize for that.

12 In brief, I would like to share that the  
13 University is very excited about working with AES to  
14 develop solar PV and storage on our West Oahu  
15 property.

16 This project hits a lot of our strategic  
17 goals and objectives, like a sustainability mandate  
18 to achieve net zero by 2035, by increasing the  
19 productivity of our underutilized land, as well as  
20 doing our part to help the State and public decrease  
21 its reliance and demand for fossil fuels.

22 We have been working with AES and HECO for  
23 almost five years now on this particular development;  
24 and we are finally beginning to see light at the end  
25 of a very long tunnel.

1           We are excited to have reached this  
2 particular milestone, and we want to thank you, the  
3 Commission, for your hopefully favorable  
4 consideration of the application before you today.

5           So I'm available to address any questions  
6 or concerns.

7           CHAIRPERSON SCHEUER: Thank you very much,  
8 Ms. Gouveia.

9           Are there questions for the witness?

10          MR. TABATA: No questions.

11          MR. PANG: No questions.

12          MS. KATO: No questions, thank you.

13          CHAIRPERSON SCHEUER: Commissioners?

14                 Commissioner Okuda followed by Ohigashi.

15          COMMISSIONER OKUDA: Thank you very much,  
16 Mr. Chair; and thank you Ms. Gouveia.

17                 Since we normally don't have to disclose  
18 conflicts with witnesses, I'll just mention that I've  
19 worked with your father Jerry Sekiya, very fine  
20 lawyer on other matters.

21                 But I have a specific question about this  
22 project on West Oahu, or land which was designated  
23 part of the University of Hawaii, West Oahu.

24                 I know from my a very good friend, Dr. Jan  
25 Javinar, who I think still might be the Vice

1 Chancellor for Student Affairs, West Oahu does a lot  
2 of outreach on the west side, and tries to extend  
3 college education towards nontraditional students.

4 Just for my own information, is West Oahu  
5 going to benefit financially in a special way from  
6 this project, or this just goes into the big, you  
7 know, UH system pot where some people think money  
8 goes unfairly to the Manoa campus and not shared with  
9 the teaching institutions?

10 Do you have a comment or response to that?

11 THE WITNESS: It will absolutely, probably  
12 a large portion of it will go to the West Oahu  
13 campus. They will be the primary beneficiary of the  
14 proceeds, but internally we are working out a  
15 formula, but, yeah, the campus will be the primary  
16 beneficiary.

17 COMMISSIONER OKUDA: Let me just say that I  
18 think University does a really -- is a real gem  
19 resource, and people like Dr. Javinar should be  
20 especially recognized.

21 I mean, it goes back to his roots at  
22 Farrington High School graduate coming out of Walter  
23 Lane in Kalihi, and he's never forgotten his roots,  
24 and whatever support the system can give to educators  
25 like him and campuses, I'm sure we will all



1 appreciate it very much. Thank you very much for  
2 your testimony.

3 Thank you, Mr. Chair.

4 CHAIRPERSON SCHEUER: Commissioner  
5 Ohigashi.

6 COMMISSIONER OHIGASHI: Concern was brought  
7 up at the last hearing, not on this matter, but the  
8 hearing that we just did that the owner of the  
9 property is not a party to these proceedings. And,  
10 therefore, the conditions and the requirements may  
11 not apply to the owner of the property.

12 So my question to you is: As the owner of  
13 the property, will the University of Hawaii agree at  
14 this point to be part, or be subject to the  
15 conditions if this matter is passed?

16 THE WITNESS: Well, let me try to respond  
17 this way.

18 We will absolutely do whatever the law  
19 requires us to do. And to the extent any orders have  
20 any responsibility of the University of Hawaii, we  
21 will absolutely do that.

22 I will share with you that I think many of  
23 the conditions that are placed as part of your order  
24 are shared concerns by the University as well. We  
25 actually have, I think, very similar concerns about

1 what happens with the land during the project and  
2 even after the project.

3 So I don't think our interests are in  
4 conflict, and I think they are actually in more of an  
5 alignment in terms of how the land ultimately is  
6 treated, again, during and after the project.

7 COMMISSIONER OHIGASHI: I'm not sure that  
8 answered my question. However, I will take it as  
9 that is the limit of our your authority.

10 I'm going to say that, because special use  
11 permits some day will end, and removal of the  
12 fixtures on the property, which in this case not a  
13 hole in the ground, but it is aboveground  
14 construction, will have some kind of -- will need  
15 some kind of remedial action. And if we cannot hold  
16 the owner responsible for that kind of remedial  
17 action, my question is this:

18 How do we know that the developer here -- I  
19 guess, has some kind of easement or lease on the  
20 property -- will be able to fulfill the conditions  
21 25 years hence?

22 We know the University of Hawaii should be  
23 here 25 years.

24 That's all I have. Just a comment.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Ohigashi.

2           Commissioners, are there further questions  
3 for Ms. Gouveia?

4           If I may, can you share what exercises or  
5 planning was done, if any, to look at the integration  
6 of this and the surrounding parcel both during the  
7 period of the special permit and afterwards into the  
8 teaching and research mission of the University of  
9 Hawaii at West Oahu?

10           THE WITNESS: Yeah, that's a great  
11 question. I think one of the topics that we have  
12 been in discussion with AES on is seeing where we can  
13 have overlapping programs with what they do and with  
14 any kind of either trade or engineering, scientific  
15 type of programs at West Oahu, or any of our  
16 campuses. We have not fleshed those out in a lot of  
17 detail, but it absolutely is a topic of conversation  
18 that we are going to probably start to hone in on as  
19 the project gets closer to development and operation.

20           CHAIRPERSON SCHEUER: Thank you.

21           Commissioner Okuda followed by Chang.

22           COMMISSIONER OKUDA: Ms. Gouveia, this is a  
23 follow-up question following up on what Commissioner  
24 Ohigashi raised.

25           Along that line, what assurances would the

1 Land Use Commission have that at the end of this  
2 project, when decommissioning is required, that we're  
3 not going to end up with like a Mauna Kea situation  
4 where there will be things that should have been  
5 decommissioned and removed, and the things that  
6 should have been decommissioned and removed aren't  
7 removed, and now it becomes a community issue?

8           What assurances would we have that, you  
9 know, at the end of this, even though most of us  
10 probably going to be dead, that we are not going to  
11 be again in a Mauna Kea situation?

12           Thank you, Mr. Chair.

13           THE WITNESS: Well, what happens at the end  
14 of the lease has been one of our biggest concerns,  
15 and when we were working with AES on our documents --  
16 now you're going to test my memory, and I may have to  
17 ask somebody from the AES team to help me out here if  
18 I get it wrong -- but I believe they will be setting  
19 up an escrow-type account where there is enough  
20 funding in there to complete the demolition and  
21 restoration of the site back to basically original  
22 conditions if in the event the AES or the developer  
23 does not meet their contractual obligation to do so.

24           So number one, it is an obligation of the  
25 lease of our contractual documents with AES for them

1 to demolish and remove and restore the site, but  
2 because of our same concern, we wanted to make sure  
3 that there was actually funding set up.

4 So if I recall correctly, I believe we set  
5 up an escrow type of an account where money would be  
6 placed for that.

7 CHAIRPERSON SCHEUER: Commissioner Okuda.

8 COMMISSIONER OKUDA: Yes, very briefly.  
9 You know, along the same lines of the concern that  
10 Commissioner Ohigashi was raising, do you think it's  
11 important for the community that, notwithstanding  
12 these types of lease arrangement, there's a specific  
13 commitment made by the University of Hawaii which  
14 would be binding on the University of Hawaii that if  
15 in fact the decommissioning actions do not take place  
16 as required by the lease or the contract, for  
17 whatever reason, the University of Hawaii will do  
18 that?

19 And I only raise that question because, you  
20 know, there was a Mauna Kea issue that was brought  
21 before the Land Use Commission here, and it seemed  
22 like commitment from the University are very  
23 important to developing, maintaining and extending  
24 trust towards the community.

25 I mean, is it possible for University to

1 deal with commitment that itself will be committed to  
2 whatever decommissioning is required?

3 THE WITNESS: I will probably have to run  
4 this past the leadership team, to be very honest. I  
5 don't -- I understand what the concern is, and I do  
6 think that we have set up a mechanism with the  
7 developer to make sure that particular concern is in  
8 fact funded and executed by the developer.

9 And so I'll just have to look at that  
10 arrangement to see what kind of risk will be taken on  
11 by the University in the event the developer does not  
12 do their part, because I think ultimately we will be  
13 expecting the developer to complete that  
14 responsibility.

15 COMMISSIONER OKUDA: Thank you, Ms.  
16 Gouveia. You answered the question.

17 Thank you, Mr. Chair.

18 CHAIRPERSON SCHEUER: Thank you.

19 Commissioner Chang.

20 COMMISSIONER CHANG: Good morning, Jan.

21 Nice to see you. I'm going to followup on  
22 Commissioner Okuda's comment.

23 I'll tell you, I've got a -- lack of a  
24 better word -- "hard-on" for ensuring that developers  
25 are complying with their commitment, so I have been

1 really pushing for like a performance bond. So I'm  
2 pleased to hear that you have an escrow account, and  
3 you seem to be somewhat confident, but not sure.

4 Is there any objection if we require, as a  
5 condition, a performance bond to ensure that there is  
6 adequate funds available by the AES to decommission  
7 and, you know, decommission and remove all of the  
8 equipment that they put on the site?

9 THE WITNESS: So I think what this has been  
10 a subject of a lot of discussion with the AES team.  
11 And in fairness to them, I really would like to see  
12 if they can have an opportunity to comment on the  
13 arrangement that they would feel the most comfortable  
14 with.

15 We went back and forth on different  
16 scenarios and we were trying to see what is the best  
17 way to have that financial guarantee without tying up  
18 cash, so to speak.

19 I should also point out that  
20 decommissioning is required under State statute as  
21 part of any, I think, PV development. So -- but I do  
22 want to defer to the AES team as the primary, and  
23 then the University can weigh in on what it can do to  
24 augment or supplement that.

25 COMMISSIONER CHANG: I appreciate that, and

1 I would definitely be asking the developer, because  
2 we have seen too often -- I mean, there are windmills  
3 still standing in Ka'u. There are -- so  
4 notwithstanding requirements to decommission or  
5 restore sites, especially on State land, that doesn't  
6 always occur. So I'll ask the developer as well.

7 My final question is more like it's a  
8 community benefit, and this is sort of following up  
9 with Chair Scheuer's comments about, you know, when  
10 we're using State land there should be some community  
11 benefit, and I understand financial, they will be  
12 paying for use of the land.

13 But even as an educational institution, the  
14 thought of having at least an internship or some kind  
15 of an educational opportunity that is set aside to a  
16 University student, you know, to get experience here,  
17 this is an emerging industry.

18 So I'm not too sure what kind of  
19 arrangements have been made, but I think that that's  
20 an important community benefit, especially given its  
21 educational institution.

22 So, again, I will leave that up to you, but  
23 that is, I think, something for consideration.

24 THE WITNESS: Thank you.

25 COMMISSIONER CHANG: Mahalo.



1                   CHAIRPERSON SCHEUER: Anything further,  
2 Commissioners?

3                   While I'm concerned about time, I'm going  
4 to use this opportunity, maybe 45 seconds.

5                   I'm grateful to the University. I owe my  
6 existence in Hawaii to the fact that my father became  
7 a professor in the territory in 1950 at Manoa.

8                   But I do feel the University of Hawaii  
9 process system often uses and used lands as merely  
10 sites to place buildings on, rather than things  
11 integral to its academic mission, and part of the  
12 core identity of the institution.

13                  So I would look forward to the day when the  
14 University approaches the land which it occupies with  
15 perhaps more contemporary and culturally grounded  
16 sense about it.

17                  Thank you very much for your testimony  
18 today. I'm going to try and move you back to being  
19 an attendee, and Mr. Delaunay has, I believe, called  
20 in by phone to address the audio issues also.

21                  This is a first. I'm going to press  
22 "allowed to talk". You are not going to see him as a  
23 panelist, but I'm allowed to -- for somebody calling  
24 in by phone -- allow them to talk.

25                  Mr. Delaunay, are you able to say

1 something? You might need to press \*6 to unmute  
2 yourself.

3 THE WITNESS: Hello.

4 CHAIRPERSON SCHEUER: Yes.

5 THE WITNESS: Okay, great. Sorry for the  
6 delays.

7 CHAIRPERSON SCHEUER: This is, again, is  
8 this Chris?

9 THE WITNESS: Yes, this is Christopher  
10 Delaunay with Pacific Resource Partnership. Our  
11 address is 1100 Alakea Street, fourth floor,  
12 Honolulu, Hawaii 96813.

13 CHRISTOPHER DELAUNAY  
14 Was called as a witness by and on behalf of the  
15 Public, was not sworn to tell the truth, was examined  
16 and testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: And I'm the government  
19 relations manager for Pacific Resource Partnership,  
20 and we would like to express our strong support of  
21 the AES West Oahu Solar project.

22 The AES West Oahu project provides a  
23 valuable opportunity to stimulate our economy, both  
24 by creating new jobs and by creating infrastructure  
25 which can help lower energy cost to consumers and

1 businesses.

2 Construction of this project will support  
3 approximately 1800 jobs in the State of Hawaii, and  
4 approximately 11.3 million in labor income, with  
5 total economic output of 20.2 million.

6 In addition, the project will generate and  
7 store electricity derived from solar resources  
8 providing clean renewable energy for Oahu. It will  
9 reduce the need for fossil fuel burning power plants  
10 in the region.

11 When completed, this newly proposed solar  
12 project will be capable of generating enough energy  
13 to power approximately 4,600 homes, which will  
14 advance the State closer towards achieving its goals  
15 to generate 100 percent clean energy by 2045.

16 I would also like to add that the project  
17 incorporates agriculture in a meaningful way by  
18 incorporating honey and bee production.

19 Again, we would respectfully request your  
20 favorable decision on this application.

21 Thank you.

22 CHAIRPERSON SCHEUER: Thank you, because we  
23 couldn't hear the audio of it when you raised your  
24 hand, I just want to affirm that the testimony you  
25 just gave you affirm to be the truth?

1 THE WITNESS: Oh, yes, it is.

2 CHAIRPERSON SCHEUER: Any questions for Mr.  
3 Delaunay?

4 MR. TABATA: No questions.

5 MR. PANG: No questions.

6 MS. KATO: No questions.

7 CHAIRPERSON SCHEUER: Commissioners?  
8 Commissioner Aczon.

9 VICE CHAIR ACZON: Again, Mr. Chair, I  
10 would, over an abundance of caution, I have the same  
11 disclosure as before, Pacific Resource Partnership  
12 represents contractors signatory to the Hawaii  
13 Regional Council of Carpenters, but like I said, we  
14 are different organizations, independent from each  
15 other. I don't have any financial interest or  
16 benefits from this organization, and I can assure the  
17 public that I can be fair and impartial in  
18 deliberating this regarding this docket. Thank you.

19 CHAIRPERSON SCHEUER: Thank you very much,  
20 Commissioner Aczon.

21 Any further questions? If not, thank you  
22 for your persistence in letting us hear your oral  
23 testimony in addition to your written testimony. We  
24 appreciate it. I'm going to disable talking now.

25 And finally, Scott Enright has his hand

1 raised and is going to be promoted as a panelist.

2 Mr. Delaunay, you can press \*9 and lower  
3 you hand now, I believe.

4 Good morning, Scott. Aloha.

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

7 THE WITNESS: Yes, it will be. Thank you,  
8 Chair.

9 SCOTT ENRIGHT

10 Was called as a witness by and on behalf of the  
11 Public, was sworn to tell the truth, was examined and  
12 testified as follows:

13 DIRECT EXAMINATION

14 THE WITNESS: Good morning, Chair,  
15 Commissioners.

16 Scott Enright, 64-735 Mamalahoa Highway,  
17 Waimea 96743.

18 I am an agricultural consultant that's been  
19 working with AES on their agricultural plan. I just  
20 wanted to reemphasize what I put in my written  
21 testimony to the Commission, and that is, you know,  
22 in the time that I worked for the Department of  
23 Agriculture in both the Abercrombie and Ige  
24 administration, I reviewed every application for  
25 solar on ag land, and this is the first one that I'm

1 aware of that the original agricultural pursuit,  
2 which is in this case ranching with Buddy Gibson,  
3 will be continued with improved infrastructure. I  
4 thought that significant.

5 There are limitations to the agricultural  
6 pursuits that can be done on this particular site, so  
7 keeping the existing agricultural enterprise that has  
8 been there since sugar went out almost 40 years ago,  
9 I think is significant.

10 With that, Chair, I'm open to questions.  
11 Thank you.

12 CHAIRPERSON SCHEUER: Thank you very much.  
13 Questions for the witness.

14 MR. TABATA: No questions, thank you.

15 MR. PANG: No questions.

16 MS. KATO: No questions, thank you.

17 CHAIRPERSON SCHEUER: Commissioners?

18 Questions for former Director Enright?

19 Seeing none, thank you very much for your written and  
20 your oral testimony. We really value it.

21 THE WITNESS: Thank you, Chair. Stay well.

22 CHAIRPERSON SCHEUER: You as well.

23 Last call. Is there anyone who is  
24 attending this meeting who wishes to provide oral  
25 testimony? If so, either use the

1 raise-the-hand function or \*9 if you're calling into  
2 this meeting.

3           Seeing none, I'm going to close public  
4 testimony on this matter. It is 9:54. I will call a  
5 recess until 10:05, at which time we will proceed  
6 with the presentation from the Petitioner. We're in  
7 recess.

8           (Recess taken.)

9           CHAIRPERSON SCHEUER: We are back on the  
10 record.

11           Mr. Tabata.

12           MR. TABATA: Thank you, Chair.

13           AES West Oahu Solar, LLC is requesting  
14 approval of its application for special permit to  
15 allow the construction and operation of a 12.5  
16 megawatt photovoltaic system, plus a 50 megawatt hour  
17 battery energy storage system.

18           The location of the project is in Leeward,  
19 Oahu, and is situated mauka of H-1 Freeway, and  
20 approximately two miles from Village Park in Waipahu,  
21 three miles from the West Loch of Pearl Harbor, and  
22 about a half mile from the northeastern edge of  
23 Makakilo.

24           The project area, the portion of a 861-acre  
25 parcel owned by UH West Oahu, and our project area is

1 96.353 acres. The project area is comprised of  
2 Agricultural District lands that are partially  
3 classified B under the LSB ratings. As such, there  
4 is the requirement under HRS Chapter 205 that the  
5 project area be made available to compatible  
6 agricultural uses at rent no more than 50 percent  
7 fair market value.

8 AES is mindful of the goal to promote  
9 agriculture and food self-sufficiency in Hawaii and  
10 is prepared to go beyond just making the land  
11 available at 50 percent rent.

12 AES has collaborated with Aloha Bee, LLC  
13 for honey production and Rocker G Livestock for  
14 cattle grazing in the project area rent free to  
15 ensure that there will be food production on the  
16 project site.

17 If approved, the agricultural operations  
18 will become a legal requirement pursuant to the  
19 Planning Commission's Condition No. 2 which requires  
20 notification to the Planning Commission if AES fails  
21 to have agricultural operations for a six-month  
22 period.

23 If that happens, the Planning Commission  
24 will then have the option to re-evaluate the special  
25 permit.



1           The life of the project is 25 years  
2 pursuant to the power purchase agreement and we are  
3 asking for a 29-year term for this special permit to  
4 allow additional time for permitting and  
5 construction.

6           Pursuant to the PPA, the project needs to  
7 be operational by September 2022, and construction is  
8 expected to take up to a year, and permitting  
9 following the special permit will require  
10 approximately four months.

11           The project is expected to generate a clean  
12 electricity that will power 4,600 homes, replace  
13 545,000 barrels of oil, 100,000 barrels of oil,  
14 create 118 jobs, and 20 million dollars of economic  
15 activity, and provide revenue to the University of  
16 Hawaii and further our State's goal to reach  
17 100 percent renewable energy.

18           Our Archeology Inventory Survey was  
19 accepted by the State Historic Preservation Division  
20 by letter dated January 4th, 2021, just two days  
21 before our Planning Commission's action hearing on  
22 January 6, 2021, which gave us enough time to file  
23 the letter as an exhibit.

24           This critical requirement of the project  
25 was accomplished because of the extraordinary efforts

1 of Dr. Susan Lebo at SHPD and David Shideler at  
2 Cultural Surveys Hawaii.

3 Our Cultural Impact Assessment includes a  
4 contribution of Cultural Practitioner Lynette  
5 Paglinawan who informed the Petitioner on the need to  
6 cultivate native Hawaiian plants in order to make  
7 restitution to the wandering spirits for the benefit  
8 of both the land and the people.

9 AES has continued its discussions with Ms.  
10 Paglinawan and with her guidance have taken steps to  
11 promote native Hawaiian plants in the ahupua'a and in  
12 forming our landscape plan in the Project Area.

13 Our obligation to follow her  
14 recommendations are memorialized in the Planning  
15 Commission's Condition No. 5.

16 No endangered or threatened species of  
17 flora or fauna were observed on the property, but the  
18 Hawaiian hoary bat, pueo and Hawaiian seabirds are  
19 known to travel in the area.

20 In order to mitigate against potential  
21 impacts, mitigation measures have been identified in  
22 the Application, which the Office of Planning is  
23 proposing to include as conditions of approval for  
24 wildlife and historical resource mitigation.

25 AES, as mentioned by the Chair, has no

1 objections to OP's proposed conditions.

2 The proposed Findings of Fact, Conclusions  
3 of Law and Decision and Order that we filed is  
4 identical to the Planning Commission's Findings of  
5 Fact, Conclusions of Law, and Decision and Order,  
6 except for one additional procedural paragraph and  
7 other changes specific to the Land Use Commission,  
8 versus the Planning Commission.

9 The conditions in the Planning Commission's  
10 D&O are identical to the conditions recommended in  
11 the Director's Report.

12 Therefore, we respectfully request that the  
13 Commission approve the Planning Commission's Findings  
14 of Fact, Conclusions of Law, and Decisions and Order  
15 with modifications to accommodate OP's new proposed  
16 conditions, and approve our proposed D&O with the  
17 addition of OP's proposed conditions.

18 Thank you.

19 CHAIRPERSON SCHEUER: Thank you very much,  
20 Mr. Tabata.

21 Are there questions for the Petitioner?

22 MR. PANG: City has no questions.

23 CHAIRPERSON SCHEUER: Thank you.

24 OP?

25 MS. KATO: No questions, thank you.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Commissioner Cabral.

3 VICE CHAIR CABRAL: Yes, thank you, Chair  
4 and Mr. Tabata.

5 Questions that came up, I heard it a little  
6 bit earlier, and was trying to save time. They're  
7 saying they're going to put cattle on that land  
8 around the solar panels. That came up when we were  
9 looking for the solar project I think for the  
10 Robinson land on Kaua'i.

11 And I questioned it then, and they said,  
12 oh, no, we changed that to sheep. I raise cattle,  
13 and they're very large, and they rub against things.

14 I would think that you may, unless they're  
15 going to have some kind of fencing to isolate from  
16 being under and around the panels, you may want to  
17 reconsider cattle raising.

18 I don't know what bees would do to what  
19 they'll do on top of your -- you know, they all  
20 cluster up there or something -- but I would highly  
21 ask you to investigate -- you know, you said cattle.  
22 I should make a question, but anyway, my question is:  
23 Are they sure they want to do cattle?

24 MR. TABATA: Yes. Thank you for the  
25 question.

1           The size of the cattle in relation to the  
2 panels is an issue that has come up, and working with  
3 Rocker G Livestock, what we determined was that they  
4 can graze smaller cattle in the area. That's what  
5 they believe. And, of course, we will continue  
6 working with them to make sure that there is  
7 compatibility.

8           If fencing is required, or other devices,  
9 then that will be explored. But, yes, we do. We are  
10 aware of the issue of the size of the cattle, and we  
11 have a plan. And we're still working on it.

12           Thank you.

13           VICE CHAIR CABRAL: Thank you very much. I  
14 just want to not have a problem for you.

15           Thank you.

16           CHAIRPERSON SCHEUER: Thank you,  
17 Commissioner Cabral.

18           Any other questions for the Petitioner at  
19 this time?

20           Commissioner Dawn Chang.

21           COMMISSIONER CHANG: Maybe, Mr. Chair, I  
22 should ask you.

23           Is the Petitioner going to put on evidence  
24 and witnesses, or is this our opportunity to ask  
25 about specific, for example, the Cultural Impact

1 Assessment, or do we wait?

2 CHAIRPERSON SCHEUER: Mr. Tabata.

3 MR. TABATA: My understanding is that we  
4 are working off the record here. And I am prepared  
5 to attempt to answer your questions. And if cannot,  
6 if I'm unable to do so, then I believe our expert  
7 witnesses, some of them may be available, and they  
8 may be able to answer questions.

9 But if you have any questions for me, I  
10 will do my best to try to answer them.

11 COMMISSIONER CHANG: Very good, thank you  
12 for clarifying that.

13 I appreciated the actual Cultural Impact  
14 Assessment. I thought they did a good job. However,  
15 I disagree with the Ka Pa'akai analysis. I believe  
16 they've identified resources. But with respect to  
17 the impact of the project, in reviewing Ms. Lynette  
18 Paglinawan's, her comments as part of the Cultural  
19 Impact Assessment, she does talk about the uhane and  
20 the spirits who do continue to traverse the trails.

21 And she expressed concerns about  
22 psychological trauma or harm that that may cause.  
23 And she shared experiences, that she's heard stories  
24 about with respect to what was West Oahu, as well as  
25 her own family's personal experiences, not

1 necessarily in this area.

2           So -- and I know she recommends for  
3 ho'oponopono, the planting of the wall of trees.  
4 However, I would -- I think as additional mitigation,  
5 you have this valuable resource of Lynette  
6 Paglinawan, who is at West O'ahu, and you do seem to  
7 be working -- AES seems to be working with her.

8           It really may be something to consider as  
9 mitigation for the spiritual harm, that there be some  
10 kind of cultural orientation for all of the workers  
11 at AIS, that they go through a cultural orientation  
12 if Ms. Paglinawan is willing to do so with respect to  
13 those resources, and what they should do, or just so  
14 that they are aware of, because I don't think the  
15 analysis in Ka Pa'akai, you can just say that there  
16 are no cultural resources.

17           I think the spiritual is as significant as  
18 something you can touch. So I would -- that's my  
19 comments about the CIA. I thought they reached out  
20 to a lot of people, good comments. You had a lot of  
21 the people that I think who know that area, but I  
22 found Lynette's comments to be particularly  
23 significant.

24           So I would have you consider that, any  
25 comments to that, if we included something like that

1 cultural orientation for all the AIS? Anyone who  
2 works on this project, they work in coordination with  
3 West O'ahu and Ms. Paglinawan on some kind of  
4 cultural orientation.

5 MR. TABATA: I think that's an excellent  
6 suggestion, Commissioner. We appreciate those  
7 thoughts. Yes.

8 COMMISSIONER CHANG: Very good. I'm glad  
9 you're open to that, because you seem to -- I mean, I  
10 thought this was a well-done documentation.

11 The other thing, and you know, Mr. Tabata,  
12 I've got this real issue with performance bonds and  
13 ensuring that the developer is going to adhere by  
14 their commitment. And this developer does seem to be  
15 willing to do that. And even the proposed D&O, the  
16 proof of financial security to decommission.

17 But let me first ask you. What is the  
18 estimated cost for decommissioning?

19 MR. TABATA: I don't believe we have  
20 calculated that yet. We may have. I have people  
21 more knowledgeable than me feeding me information,  
22 2.5 million is the initial estimate, which will be  
23 updated.

24 COMMISSIONER CHANG: That's probably at  
25 today's value not necessarily at year 25 or 26?



1 MR. TABATA: Right.

2 I believe they would factor that in to  
3 their calculations. That would be reasonable, I  
4 think.

5 COMMISSIONER CHANG: So it does say that  
6 they are going to show proof of their commitment.  
7 What does that mean?

8 MR. TABATA: They're going to need to  
9 satisfy the City basically, according to statute,  
10 with a form of financial security. So performance  
11 bond you mentioned is, I think that is one option.  
12 And if that could be included in a condition as an  
13 option for the City to continue.

14 What we don't want to do is hinder the  
15 City's ability to manage this responsibility. I  
16 think your excellent suggestion of including a  
17 performance bond, if that could be included as an  
18 option for the City to consider, then I think that  
19 may facilitate their responsibility to ensure  
20 financial security is provided.

21 COMMISSIONER CHANG: And I appreciate you  
22 being open to that. And I think maybe as we continue  
23 on, you might suggest the appropriate place to insert  
24 that in the proposed D&O.

25 Let me also ask you. In your Condition 2,

1 if at any time during the term of the SUP, no  
2 compatible agricultural operations exist on the  
3 usable lands of the Petition Area for six months  
4 after the initial six months, then the Applicant  
5 shall notify Planning Commission.

6 Does that mean year 25 or year 24, they  
7 don't have -- you know, there's no ag use, so  
8 Planning Commission reopens this?

9 How does that work as a practical matter  
10 with such an open-ended term?

11 MR. TABATA: The way I read Condition 2 is  
12 if at any time there are six months where there's no  
13 active ag operating, we have to report that to the  
14 Planning Commission. At any time.

15 So and then once, if that happens, and once  
16 that is done, if it's done, if there is a six-month  
17 period of inactivity, then the Planning Commission  
18 will then have the power to call us back in front of  
19 them and conduct an inquiry.

20 And the language of the condition provides  
21 for the Planning Commission to re-evaluate the SUP.  
22 Re-evaluate, it's a broad term. We want to avoid  
23 that at all cost. So the way we're looking at  
24 Condition 2 is a requirement. We have active  
25 agricultural operations on our property, and that's

1 what we're striving for.

2 COMMISSIONER CHANG: So as you explain it  
3 and reading it, I guess it's reasonable to assume  
4 that the Planning Commission has a discretion to take  
5 into consideration at what point in time during the  
6 lease or during the operations does that occur, what  
7 may be reasonable appropriate actions, but  
8 essentially that's being left up to the Planning  
9 Commission to determine an appropriate course of  
10 action should for six months there be no agricultural  
11 activity. Is that correct?

12 MR. TABATA: That's correct.

13 Again, our reading of Condition 2 is that,  
14 having active -- having agricultural operations on  
15 the property, actually having it, is a requirement  
16 which the Planning Commission will have the power to  
17 enforce, and this goes beyond the statute which only  
18 requires that we just make it available at 50 percent  
19 rent.

20 So we said we're going to have active  
21 agricultural operations in the form of honey and  
22 cattle, and the Planning Commission took that and is  
23 now making us live up to our words. And we're  
24 prepared to do that, yes.

25 COMMISSIONER CHANG: All right, okay. I

1 understand the intention, and the intentional  
2 drafting of the language to get the Planning  
3 Commission that discretion.

4 Mr. Chair, I have no other questions at  
5 this time. Thank you.

6 CHAIRPERSON SCHEUER: Thank you very much,  
7 Commissioner Chang.

8 Commissioner Ohigashi.

9 COMMISSIONER OHIGASHI: Good morning,  
10 Curtis. I wanted to ask you about page 49. I gather  
11 that the decommission, for financial security, is the  
12 sole province of the Planning Commission; is that  
13 correct?

14 MR. TABATA: I'm flipping to the page.

15 COMMISSIONER OHIGASHI: Also 205A-45.

16 COMMISSIONER GIOVANNI: Could you repeat  
17 the question? I could not understand the question.

18 COMMISSIONER OHIGASHI: The question was,  
19 proof of financial security to decommission the  
20 facility is prior to the satisfaction of appropriate  
21 County Planning Commission, so I'm just asking that  
22 proof of satisfaction of appropriate -- proof of  
23 financial security is the sole province of the  
24 Planning Commission?

25 MR. TABATA: Well, it may be DPP.

1           COMMISSIONER OHIGASHI: I'm just wondering  
2 who.

3           MR. TABATA: We are required to submit that  
4 proof to DPP, proof of financial security. I believe  
5 it's their discretion.

6           I think the way it works is we provide it  
7 to DPP, and they approve it. And if they don't  
8 approve it, and for some reason there's an issue,  
9 they can call haul us back in front of the Planning  
10 Commission, and I think that's -- that may be the  
11 mechanism.

12           COMMISSIONER OHIGASHI: I'll ask the County  
13 about that mechanism if that comes up. I just wanted  
14 to make sure that it is in the County Planning  
15 Commission's jurisdiction to deal with financial.

16           MR. TABATA: I believe the Planning  
17 Commission has authority to enforce its conditions.

18           COMMISSIONER OHIGASHI: The second thing I  
19 wanted to ask you --

20           CHAIRPERSON SCHEUER: Commissioner  
21 Ohigashi, when you turn away to read your screen,  
22 it's hard to hear you.

23           COMMISSIONER OHIGASHI: Under C (i) it says  
24 that:

25           Removal of all equipment within 12 months

1 of the conclusion of operation or useful life.

2 The useful life is 25 years. Does that  
3 mean it's 25 years whether or not it has concluded  
4 operation, or would that conclusion have to be  
5 somewhat modified so that it's clear or less clear?

6 MR. TABATA: Commissioner, I'm sorry, I'm  
7 not sure I caught all of that question.

8 COMMISSIONER OHIGASHI: It just says that  
9 you're going to stop, remove all the equipment within  
10 12 months, conclusion of operation, or useful life.

11 The useful life, according to your  
12 presentation is 25 years. Does that mean  
13 irrespective of conclusion of operation, that the  
14 useful life, 25 years is a drop-dead clause?

15 MR. TABATA: You know, if there's -- I'm  
16 getting a text. It's whichever comes first.

17 COMMISSIONER OHIGASHI: So you want to  
18 modify that proposed conclusion to say whichever  
19 comes first?

20 MR. TABATA: That would be helpful, I  
21 think.

22 COMMISSIONER OHIGASHI: I was just curious  
23 when I read it. I'll let you let us know before the  
24 end.

25 MR. TABATA: We don't have an objection to

1 that.

2 COMMISSIONER OHIGASHI: I'm just trying to  
3 clarify what you mean by that, because it can be read  
4 that, hey, if you're still operating, but the life  
5 expectancy has been reached, then you got to stop  
6 anyway, or it could be read that whichever is first,  
7 that means if you finish before the 24 years, then be  
8 stopped. To me I'm just curious how it works on  
9 that.

10 MR. TABATA: I think -- so I think the way  
11 the language works is the conclusion of the project  
12 is based on the 25 years, right? But the useful  
13 life, if for some reason the useful life is shortened  
14 for some reason, then we would need to decommission  
15 earlier.

16 COMMISSIONER OHIGASHI: This project is no  
17 longer than 25 years?

18 MR. TABATA: As of right now, that's the  
19 limits of our PPA. Maybe in the future we might seek  
20 an extension of the PPA, but then I guess we will  
21 have to come back to you, or to this body. If  
22 that's, you know, in the cards.

23 But right now, I believe that's the intent  
24 of this language is to ensure that we decommission at  
25 the appropriate time, you know, which that useful

1 life, I believe, is a catchall, which makes sure that  
2 we decommission at the appropriate time.

3 COMMISSIONER OHIGASHI: I just want to  
4 avoid the confusion, 25 years from now you.

5 MR. TABATA: Absolutely. Thank you,  
6 Commissioner, appreciate it.

7 CHAIRPERSON SCHEUER: Thank you,  
8 Commissioner Ohigashi.

9 Commissioner Giovanni.

10 COMMISSIONER GIOVANNI: Thank you, Chair.

11 I want to followup on a number of items  
12 that Commissioner Ohigashi has brought before us, and  
13 let me start by my concurrence with his view that  
14 it's very troublesome to have these permits come  
15 before us represented by petitioners that are lessees  
16 and not the landowner. That just gives me trouble.  
17 That's just a comment.

18 Mr. Tabata, we heard from Ms. Gouveia at UH  
19 about a so-called escrow fund that would accumulate  
20 funds to assure that could be used for remediation  
21 and restoration of the land at the conclusion of the  
22 lease.

23 Could you explain what that is all about  
24 for us from your point of view, please?

25 MR. TABATA: Right. I think an escrow



1 account would be an option, that that could be one  
2 way of providing financial security. I don't believe  
3 that the exact method has been determined yet. I  
4 think that's, you know, in the works.

5 I know they've already calculated  
6 \$2.5 million that will be required, which includes  
7 its been factored in for inflation. So I think an  
8 escrow account is an option, and along with  
9 Commissioner Chang's suggestion about the performance  
10 bond, my only caution is this, is that I don't think  
11 we want to limit the City's ability to manage this  
12 responsibility that it has by statute.

13 They may suggest or require an escrow  
14 account or performance bond. I think they're all  
15 excellent suggestions. It's just I would hope that  
16 we don't handcuff the City in being able to exercise  
17 their discretion and manage their responsibility  
18 effectively.

19 COMMISSIONER GIOVANNI: I think I have a  
20 "yes" or "no" question for you.

21 My take away from Ms. Gouveia's testimony  
22 was that there was an agreement between the lessee  
23 and the landowner that you would establish an escrow  
24 account. Is that true, "yes" or "no"?

25 MR. TABATA: I don't have the answer to

1 that right now, but the people who may have an answer  
2 to that is listening, and they can get it to me.

3 But what I will say is this, even if we did  
4 have an agreement with the landowner that we are  
5 going to set up an escrow account, and that's going  
6 to suffice for financial security, we believe it will  
7 suffice for financial security of decommissioning of  
8 project. The final say is with the City, with the  
9 Planning Commission, whether or not that's sufficient  
10 or whether that's acceptable.

11 So if there is such an agreement, I hope to  
12 get you an answer soon, whether or not there is an  
13 agreement between AES and UH to set up that escrow  
14 account. If so, then I should have that answer to  
15 you shortly.

16 COMMISSIONER GIOVANNI: I appreciate that.  
17 I think it's a simple question, "yes" or "no" whether  
18 it already exists.

19 Hypothetically -- and I do not expect this,  
20 I'm very familiar with AES as a company -- but  
21 hypothetically, if they were in distress, and there  
22 was a breach in the lease, and they disappeared  
23 midway through this, or towards the end of this term  
24 of the permit, what assurances does this Commission  
25 have that the owner would do the remediation?

1           MR. TABATA: Could you repeat that question  
2 again, please?

3           COMMISSIONER GIOVANNI: In the event that  
4 AES -- and I'm not suggesting they will, just purely  
5 hypothetical -- breach the lease, and they disappear  
6 and they walk away, what assurances does this  
7 Commission have that the landowner will remediate the  
8 land to its preexisting condition?

9           MR. TABATA: I can't speak for the  
10 landowner, but I'm sure University of Hawaii will  
11 continue to be good stewards of its land, and do what  
12 is necessary to maintain its lands.

13           And as far as their ability to do so, the  
14 requirement that we provide financial security for  
15 the decommissioning of this property, which  
16 decommissioning is to restore it to its original  
17 state, that is the purpose for decommissioning,  
18 that's what it is.

19           So there will be monies available for that  
20 work regardless of the fate of AES. And as far as  
21 AES itself, just, you know, just for your  
22 information, it is a large company.

23           It's publicly held. It has \$32 billion in  
24 assets. It operates in 14 different companies, and  
25 has over 8000 employees. So we are hopeful that they

1 will be around to do what they're responsible to do.  
2 And if not, there will be funds available. There  
3 will be financial security provided to ensure that  
4 decommissioning takes place as promised.

5 COMMISSIONER GIOVANNI: Is it not true that  
6 within that \$32 billion portfolio that it, from time  
7 to time, that AES will sell and acquire other assets,  
8 as such that this particular project might be owned  
9 by somebody else by the end of the term of the  
10 special permit?

11 MR. TABATA: That may be a possibility.  
12 But all of these responsibilities will run with the  
13 project, run with the land, so successors and assigns  
14 will be bound by all obligations.

15 If that were to happen, if that's a  
16 possibility, that would be the case.

17 COMMISSIONER GIOVANNI: Let me shift gears  
18 on you a little bit and go to the second point that  
19 Commissioner Ohigashi brought up, which is about the  
20 term of the project and its useful life.

21 As you can imagine there have been a number  
22 of different utility scale solar projects that have  
23 come before this Commission for approval for permits.

24 And the testimony on record is that a  
25 25-year term in many cases is inadequate to secure

1 the long-term profitability of a project. So these  
2 things are operated in a manner in which they  
3 continue to invest and replace components of the  
4 project, and do seek an extension of the PPA for an  
5 order to make the overall project profitable and to  
6 be able to win the competitive bids that awarded this  
7 project from HECO.

8           What that really means, what I'm really  
9 saying is it's very common that you would be coming  
10 back -- or somebody would be coming back before  
11 Commission in 20 to 25 years and asking for an  
12 extension of this project or extension of the permit  
13 for this project.

14           So I caution you to be very careful about  
15 your useful life language that you would accept  
16 for -- that might trigger immediate decommissioning  
17 of this project.

18           MR. TABATA: Excellent point, Commissioner,  
19 and I would hope to be around and still retained by  
20 AES to bring that extension later, and hopefully also  
21 that the useful life of this project would be  
22 extended beyond the 25 years to justify a future  
23 request for an extension, if the Public Utilities  
24 Commission were to grant such an extension of the  
25 PPA, but, yes, that's an excellent observation, and I

1 believe people may be thinking about that.

2 COMMISSIONER GIOVANNI: This Commission has  
3 actually put in some of its permits, a condition by  
4 which the term of the permit is automatically  
5 extended, if and when HECO executes a new PPA and  
6 it's approved by the PUC. So it might be a vehicle  
7 that would allow you to not have to come back and go  
8 through the full process again. Just something to  
9 look at.

10 MR. TABATA: That sounds very attractive,  
11 although, I would love to come back to you later --

12 COMMISSIONER GIOVANNI: That's okay.

13 MR. TABATA: -- but I'm sure the client  
14 would appreciate having a condition like that. Maybe  
15 we can offer a draft of that language.

16 CHAIRPERSON SCHEUER: You only say that,  
17 Mr. Tabata.

18 COMMISSIONER GIOVANNI: Just making an  
19 observation.

20 Thank you.

21 No other questions or comments, Chair.

22 CHAIRPERSON SCHEUER: Thank you very much,  
23 Commissioner Giovanni.

24 You're only happy to come back in 25 years  
25 knowing that none of these Commissioners will be

1 here, I'm sure, Mr. Tabata.

2 Commissioner Aczon.

3 VICE CHAIR ACZON: Thank you, Mr. Chair.

4 Good morning, Mr. Tabata.

5 Just to followup on the discussion about  
6 the decommissioning, also who's responsible.

7 Condition 4, it says the Applicant,  
8 assignees, or the landowner is responsible.

9 So whether -- so then the order is part of  
10 the condition, correct?

11 MR. TABATA: I believe you're right,  
12 Commissioner.

13 VICE CHAIR ACZON: So if Applicant or  
14 assigns didn't do it, then the landowner end up  
15 responsible, correct?

16 MR. TABATA: Correct. Thank you.

17 VICE CHAIR ACZON: Condition 3, it's valid,  
18 the permit is 29 years. Within that 29 years, is the  
19 decommissioning timelines embedded to these 29 years?

20 MR. TABATA: I believe so.

21 VICE CHAIR ACZON: Within the 29 years,  
22 then the decommissioning, restoration, everything is  
23 done by the 29 years?

24 MR. TABATA: That's correct.

25 VICE CHAIR ACZON: Let me just -- the

1 project operation and useful life. I can understand  
2 with the project operation, it's done, it's done. So  
3 just trying to figure out what is the legal  
4 expiration of 29 years or useful life.

5 MR. TABATA: The 25 years is the  
6 operational period for the project generating  
7 electricity. The 29 years includes the 25 years of  
8 generating electricity, and also additional time of  
9 four more years to decommissioning, that you point  
10 out, along with additional permitting yet to be done,  
11 and the construction of the project.

12 VICE CHAIR ACZON: Regardless, 29 years is  
13 the drop-dead unless it's extended?

14 MR. TABATA: That's correct, Commissioner.

15 VICE CHAIR ACZON: Then with all these  
16 conditions -- I don't know if you can answer -- all  
17 these conditions are enforced by the County or the  
18 Planning Commission?

19 MR. TABATA: Yes.

20 VICE CHAIR ACZON: But they have the  
21 enforcement powers for all these conditions?

22 MR. TABATA: That's my understanding, yes.

23 VICE CHAIR ACZON: Change the subject.

24 What is the current activity for this land  
25 right now?



1           MR. TABATA: They're raising they're  
2 cattle.

3           VICE CHAIR ACZON: So my understanding is  
4 now currently raising cattle, and with this project  
5 solar is going to be continued, right?

6           MR. TABATA: Yes, the existing use will be  
7 continued, yes.

8           VICE CHAIR ACZON: So whether this permit  
9 is approved or not, it's going to be continuing with  
10 the raising of cattle, right?

11          MR. TABATA: That's correct.

12          VICE CHAIR ACZON: So there's no really  
13 loss on that portion, right, on the production of  
14 cattle or raising cattle?

15          MR. TABATA: There will be equipment and  
16 facilities constructed which will displace all the  
17 land, but the remaining land will be made available  
18 for cattle, continue to be made available for cattle.

19          VICE CHAIR ACZON: You've seen Senator  
20 Favella's testimony and also other testimony opposing  
21 the project. One is lack of community outreach and  
22 loss of production.

23                 What can you say about those?

24          MR. TABATA: As far as public outreach,  
25 there was an Environmental Assessment that was

1 accepted by the City, and in that process there was  
2 consultation and outreach with all federal, state  
3 county agencies, stakeholders, organizations, the  
4 normal course in complying with Chapter 343. So  
5 numerous meetings, numerous communications. Comments  
6 were received, and that all took place during the EA  
7 process.

8           And then a public notice was issued, when  
9 the Application was filed in August of 2020. The  
10 City issued a Notice of Application for Special Use  
11 Permit, which was mailed to everybody as far as  
12 federal, state and county government. And then there  
13 was a hearing, and again, notice was published.

14           So I believe there was adequate  
15 consultation, community outreach extensively done,  
16 and, you know, I believe that that took care of it.

17           I regret having the Senator feel otherwise.  
18 Perhaps if he were to contact AES we could have some  
19 discussions, perhaps alleviate some of his concerns.

20           As far as food production, we believe we  
21 have an agricultural project. Our project is  
22 agricultural. And we're going to make food  
23 production. We're going to enhance it and make it  
24 possible.

25           Honey production is not currently on the

1 property. We've gone out and had discussions and are  
2 working with the honey producer, Steve Montgomery, as  
3 you folks know, and we will make the land free rent,  
4 subsidize the operations in that respect, along with  
5 cattle, free rent, and make the land more productive  
6 for food production.

7 So, you know, we do take exception to any  
8 accusation that we are decreasing the food production  
9 on the land. We believe we will be increasing it and  
10 we're proud of it.

11 VICE CHAIR ACZON: Thank you, Mr. Tabata,  
12 for those clarification.

13 Also addressing the community concerns, I  
14 just wanted to kind of have you the opportunity to  
15 address those concerns.

16 Thank you, Mr. Chair. I don't have any  
17 more questions.

18 CHAIRPERSON SCHEUER: Thank you  
19 Commissioner Aczon.

20 Commissioner Okuda.

21 COMMISSIONER OKUDA: Thank you very much,  
22 Mr. Chair. I had two questions, but Commissioner  
23 Aczon's question took care of question number one.

24 Mr. Tabata, if I can ask you regarding  
25 question No. 2, and the reason why I'm asking this is

1 just so that, even though -- and it's not to prejudge  
2 anything, even though your presentation has clearly  
3 addressed Article XI, Section 1 of the Constitution  
4 regarding the direction that we seek  
5 self-sufficiency.

6 Can I ask you this question. I notice in  
7 your presentation, and including the Planning  
8 Commission's findings, that the cost of generation of  
9 electricity is actually going to be less costly to  
10 the consumer with this project as compared with a  
11 traditional oil burning fossil fuel power plant.

12 What is the cost savings, and percentage or  
13 however you want to describe it, would be fine, just  
14 so that we get some idea of that.

15 MR. TABATA: Thank you, Commissioner.  
16 There was an excellent presentation prepared by the  
17 AES team in front of the Planning Commission. I have  
18 their outline.

19 So it says here there will be .106 kilowatt  
20 hour low and stable cost in dollars.

21 I'm not sure how that translates to dollar  
22 amount like per rate there, or for the island in  
23 total. Perhaps somebody will provide me that  
24 information from the team.

25 But my understanding is this. As was

1 discussed during public testimony, our solar project  
2 in West O'ahu will be one of the first Stage 1  
3 projects that is intended to replace the coal-fired  
4 plant in September 2022, and the alternative or the  
5 risk of our solar plant and also other solar  
6 facilities, if they don't come online in time, my  
7 understanding is that Hawaiian Electric may be  
8 required to generate electricity at its other  
9 oil-fueled power plants.

10 And we don't know what the price of oil  
11 will be at that time, but I believe there is a  
12 possibility that may be considerably higher than the  
13 cost of solar.

14 COMMISSIONER OKUDA: Well, if we look at  
15 current pricing, is it true or not true that the cost  
16 of production from solar, even taking into the  
17 infrastructure cost, however you amortize it over  
18 time, is cheaper or lower to the consumer compared  
19 with the consumer being charged for electricity being  
20 generated by fossil-fuel types of plants here in  
21 Hawaii?

22 MR. TABATA: I believe that's correct,  
23 Commissioner.

24 COMMISSIONER OKUDA: I understand that  
25 corporations have a right to make a profit and take

1 money out of State and, you know, there's nothing  
2 intrinsically wrong with that. But is it true or not  
3 true that by generating electricity using solar, it's  
4 one way of stopping the export of our local money,  
5 which would otherwise be exported to pay for oil or  
6 fossil fuels being imported into the State?

7 MR. TABATA: Yes, I believe that's true.

8 COMMISSIONER OKUDA: It kind of goes along  
9 with the agricultural idea that to the extent we can  
10 grow more food locally, it would mean that we would  
11 keep the money within the community and not export it  
12 out, for example, to buy items which we could  
13 actually grow here, kind of consistent with that,  
14 right?

15 MR. TABATA: Correct, that's what we're  
16 hoping for.

17 COMMISSIONER OKUDA: Thank you very much.  
18 My usual tag line, I'm not hypnotized necessarily by  
19 your presence or anything like that. I think two  
20 dockets ago I was a sole vote against what you were  
21 advocating, so these are -- I'm not trying to ask  
22 questions just to give you a pass or anything, but I  
23 thought it's important that we bring out the cost  
24 structure and the fact that there's nothing wrong  
25 with having an environmentally conscious project that

1 actually can make money or savings for the local  
2 community.

3 Okay, thank you very much, Mr. Chair. No  
4 further questions.

5 CHAIRPERSON SCHEUER: Thank you.

6 Commissioner Giovanni, followed by  
7 Commissioner Chang. My hope is we might be able to  
8 get through the questioning of the presenter before  
9 our next -- with the Petitioner before our next  
10 break.

11 COMMISSIONER GIOVANNI: Quickly. I just  
12 want to share my perspective on the financial issue  
13 that Commissioner Okuda brought up in an attempt to  
14 avoid, mitigate any confusion on this matter.

15 As the evidence in this case already shows,  
16 the existing coal-fired power plant, its power  
17 purchase agreement is going to terminate in  
18 September, and it's going to go away.

19 In the absence of any projects like the  
20 West O'ahu Solar, AES Solar project, that power will  
21 have to be replaced by oil-fired, just as Mr. Tabata  
22 said. And that's much more expensive than the coal,  
23 because coal is the cheapest.

24 Now, whether or not the solar is less  
25 expensive than the coal that's going away, that

1 depends on the price of coal at the time, and some  
2 projects are, and some solar projects are, and some  
3 are not, but the key is that the coal is going away,  
4 and you've got to replace it with something, and the  
5 solar project is far preferred option as compared to  
6 using existing oil plants and importing oil to do  
7 that.

8           Is that consistent with your understanding,  
9 Mr. Tabata?

10           MR. TABATA: Yes, it is, Commissioner.

11           COMMISSIONER GIOVANNI: Thank you. Nothing  
12 further.

13           CHAIRPERSON SCHEUER: Thank you very much,  
14 Commissioner Giovanni.

15           Commissioner Chang.

16           COMMISSIONER CHANG: One question.

17           Mr. Tabata, did AES present this to the  
18 neighborhood board, this project? And if so, what  
19 was the neighborhood board's -- did they take any  
20 action?

21           MR. TABATA: You know, I believe they  
22 attempted to. You know, when this -- we filed the  
23 Application in August 2020. And I believe a few  
24 months later COVID hit. And it was -- so at the  
25 beginning of the process, after the Application was



1 accepted for processing by DPP, COVID was in full  
2 swing. And I don't think we were successful in  
3 actually having a presentation before the  
4 neighborhood board.

5 I believe there were no neighborhood board  
6 meetings at the time, you know, prior to our action  
7 meeting in front of the Planning Commission.

8 But there were contacts made with the Chair  
9 of the neighborhood board, who was briefed and  
10 informed and kept up-to-date. So that was the best  
11 we could do. That's my understanding.

12 COMMISSIONER CHANG: Because during COVID  
13 I've done presentations to various neighborhood  
14 boards. So even after the -- or prior to the  
15 Planning Commission, AES did not go before, try again  
16 to go before the neighborhood board; is that what  
17 you're saying?

18 MR. TABATA: I believe they were planning  
19 to, but by the time the pandemic hit, it just wasn't  
20 possible. And so they did the best they could,  
21 because the alternative was to make contact and have  
22 discussions with the chair.

23 But to answer your question, no, there was  
24 no presentation made to the neighborhood board.

25 COMMISSIONER CHANG: Are they planning to

1 go before the neighborhood board to do any kind of  
2 presentation to the community, even though it's  
3 already been approved by the Planning Commission?

4 MR. TABATA: I'm not sure.

5 COMMISSIONER CHANG: Because this community  
6 is really actively involved, so I was just wondering.  
7 Because the consultation under the EA is not as -- I  
8 mean, there are proscribed agencies that you consult  
9 with? There is not --

10 MR. TABATA: Commissioner, I need to  
11 correct myself. There was a presentation made in  
12 August of 2020 to the neighborhood board. Yes, there  
13 was a presentation made.

14 COMMISSIONER CHANG: Was any action taken  
15 by the neighborhood board?

16 MR. TABATA: No action was taken.

17 COMMISSIONER CHANG: All right.

18 What neighborhood board was that?

19 MR. TABATA: No. 34.

20 COMMISSIONER CHANG: Which is -- is that  
21 the Kapolei --

22 MR. TABATA: Makakilo/Kapolei.

23 COMMISSIONER CHANG: Thank you, very much.

24 I have no other questions.

25 CHAIRPERSON SCHEUER: Thank you very much,

1 Commissioner Chang.

2 Commissioner Wong.

3 COMMISSIONER WONG: Thank you, Chair.

4 Thank you, Mr. Tabata for coming up -- I  
5 just have a couple questions regarding this issues.

6 The first one is more because Makakilo is  
7 kind of hilly in terms of, you know, when it rains  
8 there wasn't any erosion or anything to stop this  
9 erosion.

10 MR. TABATA: The level of ground  
11 disturbance that will be required for the project is  
12 not expected to increase any runoff. There will be  
13 an increase in impermeable surface, so there will be  
14 trenching. Trenching will be done to capture the  
15 runoff. And that is anticipated to be sufficient for  
16 management of water runoff.

17 COMMISSIONER WONG: I guess, just because,  
18 you know, not during this period, but previously we  
19 have been having some heavy rain. And I have some  
20 friends that live up there, they said the area, the  
21 rain was so bad in Makakilo area that there was  
22 runoff from neighbors up the hill coming down the  
23 street.

24 Just wondering if you're going to use best  
25 management practices for this issue?

1           MR. TABATA: Best management practices will  
2 be used, that's correct.

3           COMMISSIONER WONG: I just wanted to make  
4 sure that it will be used.

5           Thank you, Chair.

6           CHAIRPERSON SCHEUER: Thank you very much,  
7 Commissioner.

8           Commissioners, anything further for Mr.  
9 Tabata? If not, I would like to suggest -- it's  
10 11:01 -- we take a nine-minute recess until 11:10,  
11 hear any comments from the County and the Office of  
12 Planning, any final comments from any of the parties,  
13 and move on to deliberation following that.

14           Is that acceptable? Okay, it's 11:01,  
15 recess until 11:10.

16           (Recess taken.)

17           CHAIRPERSON SCHEUER: We are back on the  
18 record. It's 11:10 A.M.

19           During the break I was forwarded -- our  
20 Executive Officer was contacted by the Intervenor's  
21 counsel for the subsequent docket, who believes that  
22 the closure of the HoKua Place matter, being that  
23 there's unobjected to Motion to Withdraw might be a  
24 quick formality, and the Intervenor's concerned about  
25 the impact on his client, by the Intervenor's

1 counsel, having to sit through this docket.

2 That said, I don't also have the impression  
3 that this particular proceeding, which is going to go  
4 into presentations from the County and the Office of  
5 Planning, is going to take particularly long in  
6 deliberation.

7 So I have a few questions related to that.  
8 First of all, County and OP, how long do you intend  
9 to take for your presentations on this matter?

10 MR. PANG: Duane Pang for County. We just  
11 have a statement of support regarding the proposed  
12 Findings of Facts, Conclusions of Law, and will be  
13 available for any questions.

14 CHAIRPERSON SCHEUER: Okay.

15 Ms. Kato?

16 MS. KATO: I expect only about five minutes  
17 or so.

18 CHAIRPERSON SCHEUER: Do the  
19 Commissioners -- maybe show of hands. Do you  
20 participate significant questions for either the  
21 County or Office of Planning?

22 My preference for the -- it is an inexact  
23 art at best to be the Chair of this Commission, and I  
24 often am horribly wrong at guessing how long things  
25 will take. I do my best to prioritize really the

1 time of the public, and then our Commissioners who  
2 are volunteers, as well as unpaid Intervenors.  
3 Unfortunately, sometimes there is just an impact. We  
4 have a number of things in our dockets.

5 I would like to proceed with continuing  
6 matters before our next break and taking up the final  
7 matter on our agenda.

8 With that, let's hear from the County.

9 MR. PANG: Thank you, Mr. Chair,  
10 Commissioners.

11 Again, Duane Pang, Deputy Corporation  
12 Counsel on behalf of City and County of Honolulu.

13 As you know, this matter when presented to  
14 the City's Planning Commission, they made -- adopted  
15 some proposed Findings of Fact, Conclusions of Law.  
16 They are very consistent with Applicant's proposed  
17 Findings of Fact, Conclusions of Law that are before  
18 you. We support those.

19 We also support the State Office of  
20 Planning's additional conditions with respect to  
21 revisions of Condition 7, and the addition of  
22 Conditions 13, 14 and 15.

23 As the Commissioners had inquired, the  
24 Planning Commission, more specifically Department of  
25 Planning and Permitting, will continue jurisdiction

1 over the enforcement of this permit, and we are open  
2 to any questions that the Commissioners have.

3 CHAIRPERSON SCHEUER: Thank you very much,  
4 Mr. Pang.

5 Are there questions for the County?  
6 Commissioner Chang.

7 COMMISSIONER CHANG: Thank you, Mr. Pang.  
8 Do you have any objections to amending  
9 Condition No. 6 to add "performance bond" as an  
10 option?

11 MR. PANG: We have no objections with  
12 respect to an option. As Mr. Tabata said, we don't  
13 want to interfere with the agreements between his  
14 client and UH, and I guess the Department of Planning  
15 and Permitting. If that's one of the options, yes,  
16 we would be glad to look into that.

17 COMMISSIONER CHANG: I appreciate that, Mr.  
18 Pang, because ultimately, should the University be  
19 held holding the bag, it's not the University, it's  
20 on the taxpayers. So I just want to make sure that  
21 there's some kind of source of funds for the  
22 decommissioning and the removal.

23 But if you have no objections, I'll  
24 appreciate that and note that. So no other  
25 questions.

1                   CHAIRPERSON SCHEUER: Thank you,  
2 Commissioner Chang.

3                   Other questions for the City and County of  
4 Honolulu? Seeing none.

5                   Ms. Kato.

6                   MS. KATO: Thank you, Chair.

7                   The Office of Planning recommends approval  
8 of the State Special Use Permit for this project  
9 subject to the additional conditions as described in  
10 our statement.

11                  That will address the State's concerns with  
12 respect to impacts to wildlife, archeological and  
13 historic resources.

14                  The Office of Planning agrees that the  
15 proposed project meets the criteria for unusual and  
16 reasonable use within the State Agricultural Land Use  
17 District. And based on the Land Use State  
18 classification, solar facilities are allowed outright  
19 on half of the project site, and allowed with the  
20 special permit on the other half, subject to certain  
21 requirements related to decommissioning and used in  
22 conjunction with compatible agricultural uses.

23                  The proposed project meets those  
24 requirements as described.

25                  Any adverse impacts from proposed project



1 can be mitigated with appropriate conditions.

2           Additionally, the Office of Planning  
3 recognizes the important State interest in reducing  
4 dependence on fossil fuels.

5           With respect to the conditions that we  
6 proposed, our written submission contains the  
7 specific language of the conditions recommended.

8           The first revision is original Condition 7  
9 of the D&O to include the Petitioner's proposed  
10 mitigation measures indicated in the Application on  
11 pages 45 and 46, and those incorporate, I think I  
12 mentioned, those recommendations provided by the U.S.  
13 Fish and Wildlife Service, and the Division of  
14 Forestry and Wildlife through communications that are  
15 in Attachment O to the Application.

16           These mitigation measures are to adjust the  
17 finding that several certain and endangered wildlife  
18 species could occur in the Project Area such as the  
19 Hawaiian hoary bat, the Hawaiian short-eared owl, and  
20 Hawaiian shorebird and waterbird species.

21           The other recommended conditions are  
22 conditions to address the State Historic Division's  
23 concerns and recommended mitigation measures that are  
24 included in the letter date the January 4th, 2021  
25 with SHPD's review and approval of the revised

1 archeological inventory survey.

2 The mitigation measures are intended to  
3 mitigate adverse impacts to identify historic  
4 properties in the project area.

5 These mitigation measures were not included  
6 as conditions in the Planning Commission's D&O,  
7 Findings of Fact, Conclusions of Law and Decision and  
8 Order, and that's why Office of Planning is  
9 recommending that these mitigation measures be added  
10 as new Conditions 13 through 15.

11 Again, the Office of Planning recommends  
12 approval of the Special Use Permit for this project  
13 provided that the additional conditions cited in OP's  
14 memorandum of June 7th, 2021, are included as  
15 conditions of LUC approval.

16 Thank you. No further questions.

17 CHAIRPERSON SCHEUER: Thank you, Ms. Kato.

18 Questions for the Office of Planning?

19 Commissioners? Seeing none.

20 Mr. Tabata, final statements, if any?

21 We cannot hear you for some reason.

22 MR. TABATA: I'm sorry, I had my microphone  
23 on off.

24 We do have additional language for the  
25 conditions to address the Commissioners' statements.

1           CHAIRPERSON SCHEUER:  Would you be able to  
2 go over those?

3           MR. TABATA:  Yes, I am.

4           With respect to the performance bond, we  
5 can make a change to proposed Condition No. 6, and  
6 looking at the second sentence, it reads:

7           Such's proof may include, but not be  
8 limited to, a posted letter of credit's, and then  
9 insert, comma, "letter of credit", insert  
10 "performance bond".  And then continue on, "or  
11 similar mechanism from a credit-worthy financial  
12 institution."

13           So there would be, "performance bond" would  
14 be inserted as an option after the letter of credit.  
15 That's one proposed change.

16           CHAIRPERSON SCHEUER:  I'm just going to  
17 pause right there.  Just want -- Commissioner Chang,  
18 does that address your --

19           COMMISSIONER CHANG:  That's perfect.  
20 That's exactly where I would have inserted that as  
21 well.  Thank you.

22           CHAIRPERSON SCHEUER:  Please continue, Mr.  
23 Tabata.

24           MR. TABATA:  Also with respect to the  
25 cultural orientation and education suggested by

1 Commissioner Chang, a new condition can be included  
2 which would read:

3 "Petitioner shall ensure project staff and  
4 crew undergo a cultural orientation and training  
5 prior to the start of the construction. Cultural  
6 orientation shall be conducted by practitioners, such  
7 as Ms. Lynette Paglinawan or other recognized  
8 cultural petitioners from the area."

9 And I believe those are the two additional  
10 changes that was suggested by the Commissioners. If  
11 I missed something, please correct me.

12 CHAIRPERSON SCHEUER: Commissioner  
13 Ohigashi.

14 COMMISSIONER OHIGASHI: Did we get a  
15 response about the issue of whether an escrow account  
16 had been negotiated?

17 MR. TABATA: I don't believe there was an  
18 escrow account agreed upon or negotiated.

19 CHAIRPERSON SCHEUER: Did you have anything  
20 further, Mr. Tabata?

21 MR. TABATA: No, just those two proposed  
22 changes.

23 CHAIRPERSON SCHEUER: Commissioner  
24 Giovanni.

25 COMMISSIONER GIOVANNI: In the absence of a

1 preexisting agreement for an escrow account, would it  
2 be agreeable to add to that condition where you  
3 inserted "performance bond" to insert another option  
4 for an escrow account?

5 MR. TABATA: We could, yes.

6 So the insertion in that part of the second  
7 sentence of Condition 6 would read comma:

8 "Performance bond, escrow account", and  
9 then go onto read "or similar mechanism".

10 That way we would have the two as options.

11 CHAIRPERSON SCHEUER: Commissioner  
12 Giovanni?

13 COMMISSIONER GIOVANNI: That's about as  
14 good as we can do today, I think.

15 CHAIRPERSON SCHEUER: Commissioner Chang.

16 COMMISSIONER CHANG: Thank you, Mr. Tabata.

17 I would just ask you consider -- and I  
18 appreciate the cultural orientation and education --  
19 I had drafted this language. Think about it.

20 As mitigation for impacts to cultural  
21 resources, Petitioner shall coordinate with West  
22 O'ahu University to provide cultural orientation and  
23 education to AES and its contractors associated with  
24 this project prior to construction.

25 Did you have a construction -- because I

1 want -- I mean, who are going to be the cultural  
2 practitioners? So I think it is easier for AES, if  
3 they're dealing with West O'ahu University. There  
4 are many, many cultural practitioners, but I think  
5 West O'ahu is where Lynette is from. In my view, I  
6 think it's important to acknowledge that this  
7 mitigation is really for purposes -- is for  
8 mitigation to the impacts to cultural resources.

9 MR. TABATA: Yes, I think your language is  
10 better. We agree to that absolutely.

11 COMMISSIONER CHANG: Thank you very much.

12 CHAIRPERSON SCHEUER: I would note at this  
13 time, I believe the proper name for the institution  
14 is UH West O'ahu, but the intention being we're  
15 trying to refer to that institution, even if it's  
16 not -- Commissioner Aczon.

17 VICE CHAIR ACZON: Mr. Chair, I'm not sure  
18 if it was covered earlier on the Condition No. 3, if  
19 we can insert:

20 "Approval of time extension shall be  
21 required from the Land Use Commission."

22 I don't think it was addressed.

23 CHAIRPERSON SCHEUER: I don't believe it  
24 was. I'm familiar with this.

25 Commissioner Aczon, is your request to the

1 Applicant that it be clarified in Condition 3 that  
2 the Land Use Commission is the authority that has to  
3 approve any time extension?

4 VICE CHAIR ACZON: Yes, Mr. Chair.

5 CHAIRPERSON SCHEUER: Mr. Tabata.

6 MR. TABATA: Yes, I believe that is the  
7 case, and we would be agreeable to changing it to  
8 reflect that.

9 CHAIRPERSON SCHEUER: Thank you. Anything  
10 further, Commissioner Aczon?

11 Commissioner Wong.

12 COMMISSIONER WONG: Thank you, Chair.

13 First, I don't know, we just changed two  
14 conditions. Is the City agreeable and also OP  
15 agreeable about these two conditions?

16 MR. PANG: Thank you, Commissioner Chang.  
17 The City does not have any opposition to the proposed  
18 changes from Commissioner Chang or anything else that  
19 was submitted by Mr. Tabata.

20 COMMISSIONER WONG: Does OP have any  
21 comment?

22 MR. PANG: Excuse me, I did not hear the --

23 CHAIRPERSON SCHEUER: We thank you for your  
24 response, Mr. Pang, and the question was then posed  
25 to Ms. Kato.

1 MS. KATO: The Office of Planning has no  
2 objection to the conditions. Thank you.

3 COMMISSIONER WONG: The other thing I  
4 wanted to add is this, add several other  
5 conditions -- one more condition.

6 CHAIRPERSON SCHEUER: Please proceed.

7 COMMISSIONER WONG: Mr. Tabata, as you  
8 know, my question was about, you know, erosion and  
9 water runoff. So I wrote something down that says  
10 this:

11 "The Applicant shall develop and operate  
12 the facility, including the implementation of  
13 measures to mitigate potential impacts of the project  
14 in substantial compliance with representations made  
15 to the Planning Commission and the LUC, as reflected  
16 in the Decision and Order. Such mitigation measures  
17 include, but not limited to, the use of temporary  
18 permit, best management practices to ensure the  
19 development and operation of the facility does not  
20 result in increase in stormwater runoff that  
21 expressly impacts downstream properties. Failure to  
22 so develop the Petition Area may result in the  
23 revocation of the SUP, special permit."

24 CHAIRPERSON SCHEUER: Mr. Tabata?

25 MR. TABATA: That sounds acceptable.



1           CHAIRPERSON SCHEUER: Let me check. Any  
2 objections from the County or OP?

3           MR. PANG: No objections from the County.

4           MS. KATO: No objections from OP. Thank  
5 you.

6           CHAIRPERSON SCHEUER: Anything further,  
7 Commissioner Wong?

8           COMMISSIONER WONG: Yeah.

9           So, you know, I was reviewing the  
10 conditions that was drafted, so, you know, Condition  
11 1, I was wondering. There is a question in there  
12 that says:

13           "Extension to this deadline may be granted  
14 to the Director of the Department of Planning and  
15 Permitting from unforeseen extenuating  
16 circumstances."

17           Can we take out the word "for unforeseen  
18 extenuating circumstances" and replace it with: "Due  
19 to unforeseen circumstances that were beyond the  
20 control of the Applicant"?

21           CHAIRPERSON SCHEUER: Mr. Tabata.

22           MR. TABATA: That sounds okay.

23           CHAIRPERSON SCHEUER: County, OP?

24           MR. PANG: No objections from the County.

25           MS. KATO: No objections.

1           COMMISSIONER WONG: I'll continue on if you  
2 don't mind.

3           CHAIRPERSON SCHEUER: Please proceed.

4           COMMISSIONER WONG: Thank you.

5           Looking at Condition 8 regarding the  
6 project due to the to unforeseen circumstances that  
7 were beyond the control of the Applicant"?

8           So there is a sentence in there says:

9           "Planning Commission may grant an extension  
10 to the deadline to establish the Project due to  
11 unforeseen circumstances."

12           Can I put -- I'm still debating. I wanted  
13 to put the Land Use Commission in there also, so --  
14 because this -- so can we say, Planning Commission  
15 and Land Use Commission, or just Land Use Commission?

16           I'm not sure on this one, Chair, so I need  
17 your --

18           CHAIRPERSON SCHEUER: I believe, since it's  
19 a condition on the Special Permit from the LUC, that  
20 the LUC is approving, it would be the LUC.

21           Mr. Tabata, do you have, I guess, reaction  
22 to the overall concept as well as any preferred  
23 language?

24           MR. TABATA: We have no objection to  
25 Commissioner Wong's suggestion.

1                   CHAIRPERSON SCHEUER: Do you have a  
2 suggestion as to whether it should simply replace the  
3 reference?

4                   Right now the sentence reads:

5                   "Planning Commission may grant extension to  
6 the deadline to establish the Project due to  
7 unforeseen circumstances that were beyond the control  
8 of the Applicant."

9                   It would now read:

10                  "The Land Use Commission may grant an  
11 extension to the deadline."

12                  MR. TABATA: That's okay with us, but Mr.  
13 Pang should give an opportunity to comment.

14                  MR. PANG: This is Duane Pang from the  
15 City. I just want to clarify.

16                  The extension, if requested, would go  
17 directly to the Land Use Commission rather than to  
18 the Department of Planning and Permitting, Planning  
19 Commission, and then to the Land Use Commission?

20                  I just wanted to clarify because if there  
21 is an extension, you know --

22                  CHAIRPERSON SCHEUER: What the process  
23 would be?

24                  MR. PANG: Yeah, what the process would be.

25                  CHAIRPERSON SCHEUER: Commissioner Wong.

1           COMMISSIONER WONG: Chair, as you said that  
2 this is a LUC, so I wanted to make sure that the LUC  
3 is also in the loop somehow, because this is coming  
4 back -- let's say there is an extension.

5           I mean, I'm not -- I just wanted to put  
6 that the Land Use Commission also has a bite at this  
7 apple.

8           CHAIRPERSON SCHEUER: I'm going to  
9 recognize Commissioner Giovanni.

10          COMMISSIONER GIOVANNI: The keyword in that  
11 condition is "establishment" which means  
12 "commencement" or the commissioning or construction  
13 of activities, not the extension of the term of the  
14 use permit. I think that's the province of DPP, not  
15 the Land Use Commission.

16          CHAIRPERSON SCHEUER: So, Commissioner  
17 Giovanni, you're speaking against having the LUC  
18 having an approving role?

19          COMMISSIONER GIOVANNI: If there is a delay  
20 in the establishment, I don't want it coming back to  
21 us. Our role is to give a permit of 29 years to do  
22 their permitting, their construction, their operation  
23 and their decommissioning, and not get involved in  
24 between each of the steps.

25          CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Giovanni. The concern might be -- I'm  
2 just guessing here -- is that if there is a delay,  
3 how would it affect the 29-year year timeframe?

4 Would it be acceptable that the concept  
5 here is that the LUC has some role in the approval  
6 extension of deadlines, and that staff would be  
7 authorized to develop acceptable language work?

8 COMMISSIONER GIOVANNI: For me, if there's  
9 a consequential unforeseen element that threatens or  
10 otherwise requires extension of the 29 years, then I  
11 think it comes backs to the LUC, but projects of this  
12 sort have a lot -- always unfold differently than  
13 originally planned. And I don't want changes in the  
14 timeline to always require the developer to come back  
15 to the LUC. That's a nightmare that's unnecessary,  
16 in my view.

17 If (indecipherable) -- and they know that  
18 they're going to need more than 29 years, for  
19 whatever reason, then they have to come back to us.

20 CHAIRPERSON SCHEUER: So I believe -- first  
21 clarify Commissioner Wong. Is that generally the  
22 intent of the language you were proposing?

23 COMMISSIONER WONG: Yes, Chair.

24 CHAIRPERSON SCHEUER: So I recognize that  
25 Commissioner Aczon has had his hand up patiently, and

1 Commissioner Okuda.

2 Are you trying to speak on this particular  
3 issue?

4 Commissioner Aczon followed by Commissioner  
5 Okuda.

6 VICE CHAIR ACZON: Yeah, I agree with  
7 Commissioner Wong. I would prefer striking the word  
8 "planning" and insert "Land Use Commission". The  
9 reason why is this will be consistent with Condition  
10 No. 3, which I believe the Petitioner agreed to  
11 insert "approval of time extension shall be required  
12 from the Land Use Commission", so it will kind of  
13 pretty much be in line with the Condition No. 3.

14 CHAIRPERSON SCHEUER: Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you, very much,  
16 Mr. Chair.

17 I would ask that the condition actually be  
18 left as-is. This is the reason why.

19 If it's a really serious type of breach of  
20 representations or a serious breach or significant  
21 breach of timeline, then it would be a violation of  
22 the representations made by the Petitioner, and an  
23 order to show cause could be issued at that point in  
24 time.

25 On the other hand, if it's something that a

1 breach, which probably can be quickly satisfied or  
2 fixed, I'm not sure if it's really worth using up the  
3 resources of the Land Use Commission, and so in that  
4 case, an Order to Show Cause doesn't have to be  
5 issued.

6           So I would just ask that we kind of kick  
7 this can down the road, and use the Order to Show  
8 Cause procedure, so that if it's an important thing,  
9 we can raise it through an Order to Show Cause. If  
10 it's not, then we don't.

11           So I urge we just leave the condition  
12 as-is. Thank you.

13           CHAIRPERSON SCHEUER: Commissioner  
14 Ohigashi.

15           COMMISSIONER OHIGASHI: However, I would  
16 urge that -- I would also include into that  
17 condition, Condition A, requirement of informing the  
18 Land Use Commission of any type of delay in the  
19 establishment.

20           The other thing too is I'm not even sure  
21 about what "established" means. Does it mean start?  
22 That's what I'm -- I think we should at least be  
23 notified if there is any delay in the start of the  
24 construction.

25           CHAIRPERSON SCHEUER: Thank you.

1 Commissioner Giovanni.

2 COMMISSIONER GIOVANNI: I agree with the  
3 point that Commissioner Okuda suggested that we leave  
4 it as-is, although I do think that Commissioner  
5 Ohigashi raises a good point, and I would like to be  
6 informed. So if a modification to that condition is  
7 done, I would limit it to just informing us that we  
8 can take action if necessary.

9 CHAIRPERSON SCHEUER: Let me assess where I  
10 think we are at.

11 The Petitioner has agreed to proposed  
12 conditions originating from comments from  
13 Commissioner Chang regarding the use of a performance  
14 bond is one objection; and Commissioner Giovanni  
15 regarding the use of an escrow account as one option  
16 for project infrastructure removal and restoration of  
17 the lands.

18 Petitioner has accepted a condition related  
19 to cultural impact mitigation and training for  
20 personnel offered by Commissioner Chang.

21 I believe the Petitioner has agreed, at  
22 least in concept, to the proposed conditions from  
23 Office of Planning, and I think they affirmatively  
24 agreed to the findings.

25 There is not an agreement or consensus on



1 this particular condition, so I want to put it aside  
2 for the moment.

3 Are there any further conditions that the  
4 Commission is concerned with, and I would urge my  
5 fellow Commissioners to run the specific language off  
6 of concepts that we can agree on and authorize the  
7 staff in the motion to draft language that is  
8 appropriate.

9 Are there any further conditions?

10 Commissioner Wong.

11 COMMISSIONER WONG: Just two more. The one  
12 just talking about, I just would retract that and say  
13 just inform us.

14 CHAIRPERSON SCHEUER: Okay.

15 COMMISSIONER WONG: And then there's two  
16 more issues, sorry.

17 Just to ensure that we get reports on this  
18 issue, like all other projects we have.

19 CHAIRPERSON SCHEUER: Okay.

20 COMMISSIONER WONG: And the only other  
21 thing that I know -- sorry, Commissioner Chang, I  
22 might be going into your area -- but just to me  
23 somehow talking about just anything, any cultural  
24 issues that are following or taken up in  
25 construction, that there is something in there to

1 say, should be, or burial council will be informed.

2 CHAIRPERSON SCHEUER: Standard language  
3 about inadvertent discovery of remains?

4 COMMISSIONER WONG: That's about it.

5 CHAIRPERSON SCHEUER: I'm going to go  
6 through Mr. Tabata, County, and the Office of  
7 Planning.

8 There are three proposed changes, one,  
9 which would change the earlier discussed condition  
10 simply require informing Land Use Commission of any  
11 delays that would be approved by the County Planning  
12 Commission.

13 The second would be to include a provision  
14 just mentioned regarding the discovery of inadvertent  
15 remains.

16 And the final one would be the requirement  
17 of annual reports as is common on these dockets.

18 Are there any concerns with these three  
19 proposed changes to the Decision and Order, in  
20 addition to all of the other ones that I have  
21 summarized to this point?

22 MR. TABATA: AES has no objection, Chair.

23 CHAIRPERSON SCHEUER: Thank you.

24 Mr. Pang?

25 MR. PANG: The City doesn't have objections

1 to those conditions. I just want to point out that  
2 one of the proposed condition is in No. 10. Says:

3 "Any major modification which, including  
4 establishing the project, which may push the 29 years  
5 further down, does have to be approved by the Land  
6 Use Commission.

7 So all of that major modifications should  
8 be going to the Land Use Commission. Minor  
9 modifications, maybe a tweak in the establishment  
10 within a month or two which may not affect the  
11 29 years that would be approved by DPP and the  
12 Planning Commission.

13 But otherwise, we don't have any further  
14 objections to the additional conditions.

15 CHAIRPERSON SCHEUER: Thank you very much,  
16 Mr. Pang.

17 Ms. Kato?

18 MS. KATO: Sorry, I think one of those  
19 conditions is already in our proposed -- Office of  
20 Planning's proposed conditions.

21 CHAIRPERSON SCHEUER: Okay, so it was  
22 duplicative?

23 MS. KATO: Yes, Condition 13 related to  
24 inadvertent finds.

25 CHAIRPERSON SCHEUER: So you don't object

1 to it?

2 MS. KATO: I don't object to it or the  
3 others.

4 CHAIRPERSON SCHEUER: Mr. Orodenger.

5 EXECUTIVE OFFICER: Thank you, Mr. Chair.

6 I just wanted to find out, kind of a point  
7 of order, the kind of -- are we in deliberations with  
8 that motion?

9 CHAIRPERSON SCHEUER: Yeah, I was  
10 recognizing that myself. I decided to let it go  
11 because it required some discussion with the parties,  
12 but I think we are close to being done.

13 Commissioner Wong.

14 COMMISSIONER WONG: Chair, I apologize, I  
15 should have done that. I would like to make that  
16 motion so we can start on --

17 CHAIRPERSON SCHEUER: Let me just see if  
18 there is any further questions for any of the parties  
19 from any of the Commissioners. Seeing none, is there  
20 a motion that somebody wishes to make?

21 Commissioner Wong.

22 COMMISSIONER WONG: Chair, I'll make that  
23 motion. And I don't know how to state it, because we  
24 went through all these conditions, so I just want to  
25 say everything that we talked about, put in that

1 motion, the one with Mr. Tabata, Commissioner Chang  
2 and myself and staff work on it.

3 CHAIRPERSON SCHEUER: Let me suggest or  
4 perhaps memorialize slightly better for the  
5 transcript.

6 It would be to approve the project with the  
7 conditions proposed in the Decision and Order by the  
8 Applicant with the following modifications:

9 Modification to cultural impact, as  
10 suggested by Commissioner Chang.

11 Modifications to guarantees of funding as  
12 suggested by Commissioner Chang and Giovanni.

13 Modifications to require substantial  
14 compliance, and including specifically compliance  
15 with best management practices, as suggested by  
16 Commissioner Wong.

17 Notification of major changes that would  
18 delay the project, as suggested by Commissioner Wong.

19 The changes suggested by the Office of  
20 Planning.

21 And the change -- there's one last one,  
22 second to last one from Commissioner Wong.

23 COMMISSIONER WONG: Annual report, Chair.

24 CHAIRPERSON SCHEUER: Annual report, is  
25 that your motion?

1           COMMISSIONER WONG: Thank you for saying it  
2 so succinctly.

3           CHAIRPERSON SCHEUER: Commissioner Aczon.

4           VICE CHAIR ACZON: Mr. Chair, I believe I  
5 made some changes on the Condition No. 3, which was  
6 okay'd by the Petitioner.

7           CHAIRPERSON SCHEUER: Thank you. And  
8 specifically --

9           VICE CHAIR ACZON: Approval of time  
10 extension be required from the Land Use Commission.

11          CHAIRPERSON SCHEUER: Including those  
12 changes as well. Is that included in your motion,  
13 Commissioner Wong?

14          COMMISSIONER WONG: Yes, Chair.

15          CHAIRPERSON SCHEUER: We have a motion  
16 before us. Is there a second? Commissioner Cabral.

17          VICE CHAIR CABRAL: I'll support my fellow  
18 Commissioner Wong in his motion, and appreciate our  
19 Chair for clarifying it.

20          I'll make a second to that motion.

21          CHAIRPERSON SCHEUER: We are -- I would  
22 also sort of suggest that based on the discussion,  
23 the motion includes the stipulation that the staff  
24 are empowered to do the specific wordsmithing of  
25 these conditions where that wordsmithing wasn't fully

1 determined.

2 COMMISSIONER WONG: Chair, can I ask to add  
3 one more statement, to have the Chair sign the  
4 motion.

5 CHAIRPERSON SCHEUER: That the Chair be  
6 authorized to execute. Okay.

7 COMMISSIONER WONG: Yes, thank you.

8 CHAIRPERSON SCHEUER: Are you okay with  
9 that clarification, Commissioner Cabral?

10 Sorry to everyone for witnessing this  
11 sausage making. We do now have a motion in front of  
12 us. Since we have, in many ways discussed the merits  
13 of all these various amendments, does anyone wish to  
14 speak to the motion?

15 Commissioner Ohigashi.

16 COMMISSIONER OHIGASHI: I'm going to  
17 support the motion, and the reason why is this.

18 I believe that with the deliberations, that  
19 we have made it a better project. However, I'm still  
20 in concern about the fact that we do not have the  
21 owner online.

22 I know that, and I read that part of the  
23 proposed Decision and Order number, which is No. 4,  
24 that identifies the landowner. That's why I asked  
25 the landowner if they agreed to the conditions, and

1 they said they cannot agree essentially.

2 So I just took it at that, and figured that  
3 we're going to have to move on from there.

4 The issue here though is that, the blessing  
5 here is that the landowner is the State of Hawaii.  
6 The person -- if the person doesn't do the required  
7 condition, required work on the property, then it  
8 will be up to us as taxpayers, since we own the land.  
9 And if it was a private ownership of land, I may have  
10 voted differently. But since we know that we can  
11 beat ourselves up and require ourselves to pay for  
12 it.

13 CHAIRPERSON SCHEUER: Thank you,  
14 Commissioner Ohigashi.

15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you, Mr. Chair.  
17 I will be voting in favor of this motion, but I join  
18 in the concern raised by Commissioner Ohigashi, also  
19 for a slightly different reason.

20 I believe that not only in this case, but  
21 other matters, the University of Hawaii should  
22 affirmatively demonstrate to the community that it  
23 stands behind good stewardship of its land.

24 Now, I'm not saying that as a matter of  
25 fact sometimes stewardship might not be good or bad,



1 but whenever there is a perception, a perception that  
2 stewardship is not being properly done by the  
3 University, it starts becoming its own reality in the  
4 community.

5 So I hope that there would be affirmative  
6 actions taken by the University to start chipping  
7 away at the perception by those in the community that  
8 believe that the University is not necessarily being  
9 a good steward of certain of its resources.

10 Very quickly, Chair, this project satisfies  
11 Article XI, Section 1 of the Hawaii State  
12 Constitution, which requires us -- and let me quote  
13 this:

14 "To promote" -- and that's a quote -- "the  
15 development and utilization of these resources in a  
16 manner consistent with their conservation, and in  
17 furtherance of the self-sufficiency of the State"  
18 close quote.

19 The constitution directs us to seek  
20 self-sufficiency, and I believe that this project  
21 satisfies that directive.

22 Finally, I would like to thank Mr. Tabata  
23 for a comprehensive and very good legal presentation  
24 which actually shortens a lot of the time we have to  
25 spend on this.

1           So thank you, Mr. Chair.

2           CHAIRPERSON SCHEUER: Thank you very much,  
3 Commissioner Okuda.

4           Commissioner Aczon followed by Giovanni.

5           VICE CHAIR ACZON: I believe Commissioner  
6 Giovanni raised his hand first. I can go after.

7           CHAIRPERSON SCHEUER: Commissioner  
8 Giovanni.

9           COMMISSIONER GIOVANNI: Am I to proceed?  
10 I'm happy to let Commissioner Aczon go first.

11          CHAIRPERSON SCHEUER: Please go ahead.

12          COMMISSIONER GIOVANNI: I'm going to be  
13 voting in favor of this motion. I think it's a very  
14 important and timely project. I think the developer  
15 that will be executing the project is credible and  
16 has demonstrated in the industry that it's capable of  
17 doing so.

18                 And I have -- it's consistent with the  
19 energy policy of the State, and the needs of the  
20 electric power industry. And everything is going in  
21 the right direction.

22                 So I'm going to be supporting it, and I  
23 appreciate the willingness of the parties to accept  
24 the conditions as revised by the suggestion of the  
25 Commissioners.

1           However, I am very disturbed, as my fellow  
2 Commissioners are, Ohigashi and Okuda, with the role  
3 that's being played by the landowner in this process.

4           I thought it was remarkable in a negative  
5 way that an officer of the University of Hawaii  
6 couldn't commit to abide by a condition to remediate  
7 the land back to agriculture under any circumstance.  
8 They had to go refer it to some legal review or such.

9           I am very disturbed by that, and I just  
10 wanted to put that on the record. But I'll be  
11 supporting the motion.

12           CHAIRPERSON SCHEUER: Thank you very much,  
13 Commissioner Giovanni.

14           Commissioner Aczon.

15           VICE CHAIR ACZON: Thank you, Mr. Chair.

16           With my fellow Commissioners, I will be  
17 happy to support the motion, and hopefully this is a  
18 good project which will enable the State of Hawaii to  
19 reach its goal on renewable energy, and also  
20 continuing the current operation of grazing, you  
21 know, agricultural use of the project. And hoping --  
22 and I'm hoping it will help also UH West O'ahu with  
23 their self-sufficiency.

24           Also with all the conditions that  
25 Commissioners and the Petitioner agree upon, I'm very

1 comfortable that, you know, all those conditions  
2 addresses the Commissioners' and also the public's  
3 concern.

4 So I will be voting "yes" for this motion.

5 Thank you, Mr. Chair.

6 CHAIRPERSON SCHEUER: Thank you.

7 Commissioner Cabral.

8 VICE CHAIR CABRAL: Sorry, if I was unmuted  
9 earlier.

10 I'm going to support this. I've been  
11 trying to stay quiet, but obviously the project and  
12 the need for the project -- I mean, of the other  
13 power plants going down in like 14, 16 months, there  
14 is critical need, and I've overseen six large, for  
15 the Big Island, large solar projects, and it takes a  
16 long time to get them -- not just up, takes longer to  
17 get HECO to finally turn them on, so God willing, you  
18 can meet deadlines.

19 I'm in favor of the project and I  
20 appreciate my fellow Commissioners, because it feels  
21 like we, due to historically bad problems, with  
22 particularly energy projects leaving the citizens  
23 around to clean up the mess. I appreciate the  
24 enormous amount of evidence to try and put in  
25 safeguards, and God willing, and we can, you know,

1 save problems down the road.

2 So appreciate that. And support the  
3 project and appreciate all the conditions that have  
4 been developed to do that. I feel like we have had  
5 to write-up a prenup or something before we get  
6 married.

7 Thank you very much.

8 CHAIRPERSON SCHEUER: Thank you,  
9 Commissioner Cabral.

10 Commissioner Ohigashi.

11 COMMISSIONER OHIGASHI: I'm willing to  
12 write-up the prenup.

13 CHAIRPERSON SCHEUER: Are there other  
14 comments from the Commissioners?

15 I'm going to join in stating my support for  
16 the project. My appreciation for counsel for the  
17 Petitioner. The work of the City and Office of  
18 Planning, and particularly the comments of  
19 reservation regarding the landowner's statements  
20 assured by Commissioner Giovanni and the concern over  
21 the exit from special permit conditions as expressed  
22 by Commissioners Ohigashi and Okuda.

23 Is there anything further? If not, Mr.  
24 Orodanker, please poll the Commission.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair.

1           The Motion is to (indecipherable) --  
2       special permit all the conditions as set forth in and  
3       proposed by the Petitioner, the conditions suggested  
4       by Office Planning, as suggested by the  
5       Commissioners, including Petitioner, performance  
6       bond, that's an option, Condition 6 for the County,  
7       add a new condition of agricultural orientation and  
8       training requirements as suggested by Commissioner  
9       Chang. Add a condition to amend condition regarding  
10      approvals of extension to Land Use Commission; add  
11      additional condition regarding erosion for  
12      Commissioner Wong, add clarification setting forth  
13      circumstances as proposed by Commissioner Wong; add a  
14      condition regarding inadvertent discovery of remains  
15      of archaeological sites per Commissioner Wong;  
16      Commissioner Aczon's change regarding extensions, and  
17      have the staff be empowered to draft specific  
18      language with regard to those conditions, and that  
19      the Chair be authorized to sign.

20           I believe that covered everything.

21           Commissioner Wong?

22           COMMISSIONER WONG: Aye.

23           EXECUTIVE OFFICER: Commissioner Cabral?

24           VICE CHAIR CABRAL: Yes.

25           EXECUTIVE OFFICER: Commissioner Okuda?

1 COMMISSIONER OKUDA: Yes.

2 EXECUTIVE OFFICER: Commissioner Ohigashi?

3 COMMISSIONER OHIGASHI: Yes.

4 EXECUTIVE OFFICER: Commissioner Giovanni?

5 COMMISSIONER GIOVANNI: Aye.

6 EXECUTIVE OFFICER: Commissioner Chang?

7 COMMISSIONER CHANG: Aye.

8 EXECUTIVE OFFICER: Commissioner Aczon?

9 VICE CHAIR ACZON: Yes.

10 EXECUTIVE OFFICER: Chair Scheuer?

11 CHAIRPERSON SCHEUER: Aye.

12 EXECUTIVE OFFICER: Thank you, Mr. Chair.

13 The motion passes unanimously.

14 CHAIRPERSON SCHEUER: Thank you very much.

15 Thank you very much, Mr. Tabata.

16 MR. TABATA: Chair, if I may, am I correct  
17 in understanding that an additional adoption hearing  
18 will not be required for this docket, since the  
19 Commission has all the language necessary to complete  
20 the Decision and Order, and that the Chair has been  
21 authorized to sign the document?

22 I ask this point of clarification only  
23 because our back's to the wall.

24 CHAIRPERSON SCHEUER: I believe that is the  
25 case.

1 Mr. Orodenker.

2 EXECUTIVE OFFICER: Mr. Chair, I believe we  
3 can do that authorization for the Chair to sign.

4 MR. TABATA: Thank you.

5 CHAIRPERSON SCHEUER: Yes. Thank you, Mr.  
6 Tabata.

7 I would like to, in the interest of time,  
8 and in the hopes that unlike our previous two docket  
9 items, the Kaua'i docket would go quickly, take a  
10 one-minute recess, allow the parties who are on the  
11 current docket to leave the meeting, and we will  
12 begin with HoKua Place.

13 It's 11:58. We will begin at noon. Brief  
14 recess.

15 (Recess taken.)

16 A11-791 HG Kaua'i Joint Venture, LLC

17 CHAIRPERSON SCHEUER: It is 12:00. We are  
18 going to proceed (indecipherable).

19 This is Continued Action on Docket A11-791,  
20 HG Kaua'i Joint Venture Kaua'i Petition to Amend the  
21 Land Use District Boundary of Certain Lands Situated  
22 at Kapa'a, Island of Kaua'i, State of Hawai'i,  
23 Consisting of 97 Acres from the Agricultural District  
24 to the Urban District, Tax Map Key No. (4) 4-3-003:  
25 a Portion of Lot 1.



1           On our agenda is To Consider Petitioner's  
2 Motion to Withdraw, and To Consider a Motion to  
3 Dismiss.

4           The first of which will be dipositive  
5 potentially on the second.

6           Will the parties please identify yourselves  
7 for the record, beginning with Petitioner.

8           MR. YUEN: Good morning, Mr. Chair, William  
9 Yuen and Janna Ahu on behalf of Petitioner HG Kaua'i  
10 Joint Venture, LLC.

11           CHAIRPERSON SCHEUER: Thank you, Mr. Yuen.

12           MR. DONOHOE: Good morning, Mr. Chair and  
13 Commission -- or, good afternoon actually.

14           Deputy County Attorney Chris Donohoe on  
15 behalf of County of Kauai. Also present is Deputy  
16 Director of Planning, Jodi Higuchi-Sayegushi.

17           CHAIRPERSON SCHEUER: Thank you very much.

18           Ms. Kato.

19           MS. KATO: Deputy Attorney General Alison  
20 Kato for the Office of Planning. Also here with me  
21 is Rodney Funakoshi from Office of Planning.

22           MS. ISAKI: Good afternoon, Bianca Isaki,  
23 joined here with Liko Martin, and I believe Lance had  
24 another engagement, so I'll be representing  
25 Intervenor.

1           CHAIRPERSON SCHEUER: Let me briefly update  
2 the record.

3           On May 12th and 13th, the Commission met  
4 via ZOOM virtual conference technology to hear  
5 continued action on this matter.

6           On May 27th, the Commission received  
7 Petitioner's Motion to Withdraw Amended Petition for  
8 DBA.

9           Also on the 27th the Commission received an  
10 email from the Intervenor stating that they were not  
11 filing their own motion nor a brief responsive to the  
12 Commission's oral motion in light of the Petitioner's  
13 Motion to Withdraw.

14           On May 28, the Commission received the  
15 County of Kauai's Statement of No Opposition to  
16 Petitioner's Motion for Withdrawal of Amended  
17 Petition for Land Use District Boundary Amendment.

18           On June 1st, the Commission mailed and  
19 emailed the LUC Agenda to the Parties in this docket,  
20 and to the Statewide and County mailing lists.

21           On June 3rd, the Commission received Office  
22 of Planning's Statement of No Objection to the  
23 Petitioner's Motion to Withdraw.

24           On June 4th, the Commission received  
25 Intervenor's Statement of No Position to the

1 Petitioner's Motion to Withdraw.

2           There has been no additional written  
3 testimony that I have record of that's been submitted  
4 on this docket. Am I correct in that, Mr. Hakoda?

5           CHIEF CLERK: That is correct, Mr. Chair.

6           CHAIRPERSON SCHEUER: We are actually still  
7 in the evidentiary portion of this docket considering  
8 a Motion to Withdraw, therefore, I will not be  
9 considering any additional oral testimony at this  
10 time from the public. We will simply be moving onto  
11 presentation from the Petitioner, if any, on their  
12 Motion to Withdraw, any further comments from the  
13 County, Office of Planning and the Intervenor with  
14 questions from the Commission.

15           Following that the Commission may take up  
16 the Petitioner's Motion to Withdraw. If so, the  
17 matter will be dismissed, and we will not take up the  
18 Commission's motion that had been considered at the  
19 end of the last meeting.

20           Mr. Yuen.

21           MR. YUEN: I believe our Motion to Withdraw  
22 speaks for itself. We desire to withdraw the Motion,  
23 withdraw the Petition to request by the property and  
24 re-evaluate what the Petition.

25           CHAIRPERSON SCHEUER: Thank you.

1           Are there any responses or statements from  
2 the County of Kauai?

3           MR. DONOHOE: Chair, the County will stand  
4 by its submitted statement May 28th of No Opposition.

5           Thank you.

6           CHAIRPERSON SCHEUER: Ms. Kato for Office  
7 of Planning.

8           MS. KATO: Office of Planning has no  
9 objection to this Motion to Withdraw.

10          CHAIRPERSON SCHEUER: Intervenor, Ms.  
11 Isaki.

12          MS. ISAKI: Thank you.

13          No more comments and no objections to the  
14 motion. Thank you.

15          CHAIRPERSON SCHEUER: Commissioners, are  
16 there questions for any of the parties on this  
17 motion? Seeing none, it's time for us to enter  
18 deliberation, as we do on these dockets.

19                I would note for the parties and public,  
20 during the Commission's deliberation we will not  
21 entertain any additional input from the parties or  
22 the public unless specifically requested to do so by  
23 me.

24                If called upon, I will ask any comments be  
25 limited to the question at hand.

1           Before we entertain a motion, let me confer  
2 with each Commissioner that you have reviewed the  
3 record, and are prepared to deliberate on the subject  
4 docket.

5           Please signify with either "aye" or "nay"  
6 that you are prepared to deliberate on this matter.

7           Commissioner Chang?

8           COMMISSIONER CHANG: Aye.

9           CHAIRPERSON SCHEUER: Cabral?

10          VICE CHAIR CABRAL: Yes.

11          CHAIRPERSON SCHEUER: Giovanni?

12          COMMISSIONER GIOVANNI: Aye.

13          CHAIRPERSON SCHEUER: Commissioner  
14 Ohigashi?

15          COMMISSIONER OHIGASHI: Yes.

16          CHAIRPERSON SCHEUER: Okuda?

17          COMMISSIONER OKUDA: Yes.

18          CHAIRPERSON SCHEUER: Wong?

19          COMMISSIONER WONG: Aye.

20          CHAIRPERSON SCHEUER: Aczon?

21          VICE CHAIR ACZON: Aye.

22          CHAIRPERSON SCHEUER: The Chair is also  
23 prepared to deliberate on the matter.

24                 Commissioners, I will entertain a motion  
25 that the LUC accepts or does not accept the Motion

1 for Withdrawal. The motion should state the reasons  
2 for acceptance or nonacceptance, and be clear as to  
3 those reasons.

4 Commissioner Giovanni.

5 COMMISSIONER GIOVANNI: Thank you, Chair.

6 I move that we accept the Petitioner's  
7 Motion to Withdraw.

8 CHAIRPERSON SCHEUER: Is there a second?

9 COMMISSIONER WONG: Chair, I second.

10 CHAIRPERSON SCHEUER: Commissioner  
11 Giovanni, can I ask you to speak to your motion?

12 COMMISSIONER GIOVANNI: As stated in my  
13 remarks with the second to the motion that was made  
14 by Commissioner Okuda at the last hearing on this  
15 docket, I did not feel that the Petitioner met the  
16 burden of proof to support the original intent of the  
17 intent of the Petition to redistrict this area, the  
18 subject property.

19 Therefore, I think it's a wise and a  
20 considered move, and I appreciate it very much that  
21 the Petitioner is willing to withdraw his Application  
22 for redistricting.

23 CHAIRPERSON SCHEUER: I'm going to call on  
24 each of the Commissioners to offer comments,  
25 beginning now with Commissioner Wong as seconder.

1           COMMISSIONER WONG: I concur with  
2 Commissioner Giovanni, Chair.

3           CHAIRPERSON SCHEUER: Commissioner Aczon.

4           VICE CHAIR ACZON: No further comment.

5           CHAIRPERSON SCHEUER: Commissioner Chang.

6           COMMISSIONER CHANG: Thank you, Mr. Chair.

7           The only thing I would have is I appreciate  
8 the Petitioner's Motion, and their wisdom in  
9 withdrawing, in light of Commissioners' comments.

10           I would urge them to work with the  
11 community and the government agencies if they are  
12 interested in pursuing this.

13           Thank you. I have no other comments.

14           CHAIRPERSON SCHEUER: Commissioner Okuda.

15           COMMISSIONER OKUDA: Nothing to add. Thank  
16 you.

17           CHAIRPERSON SCHEUER: Commissioner  
18 Ohigashi.

19           COMMISSIONER OHIGASHI: Nothing to add.

20           CHAIRPERSON SCHEUER: Commissioner Cabral.

21           VICE CHAIR CABRAL: Thank you. I agree  
22 with the motion, and I would want to just concur with  
23 Commissioner Chang.

24           I'm very much into housing, I make a living  
25 with housing, and I see how desperately that Kaua'i

1 community needs housing, and I would really urge them  
2 to work with the community, work with the government,  
3 and perhaps additional developers of some sort in  
4 order to package this in such a way that they could  
5 do this in perhaps incremental method or something in  
6 order to, in a proper manner, provide housing.

7 I think no longer everybody is going to be  
8 able to rubber stamp things that might cause horrible  
9 problems for traffic and for sewer and water, all  
10 those considerations have to be really seriously and  
11 completely addressed before any agency can move  
12 forward.

13 So I appreciate their withdrawal at this  
14 time, and hope they can repackage this in some manner  
15 to satisfy all the needs of the community.

16 CHAIRPERSON SCHEUER: Thank you.

17 I would like to echo my fellow  
18 Commissioners. Thanks to Mr. Yuen and Ms. Ahu, and  
19 also like to thank the really thoughtful  
20 cross-examinations that were offered by Mr. Donahoe,  
21 Ms. Kato, Mr. Yee, Mr. Collins, and Ms. Isaki that I  
22 believe contributed to this point, and also thank the  
23 Intervenor who, of course, alone except with the  
24 Commissioners is unpaid in these matters, but is  
25 participating for what he believes is the best for



1 Hawaii, and I believe the action of withdrawal is  
2 done in the best interest of the Island of Kaua'i by  
3 the Petitioner, so we're very grateful.

4 Anything further, Commissioners? Seeing  
5 none, Mr. Orodener, will you please poll the  
6 Commission?

7 EXECUTIVE OFFICER: The motion is to accept  
8 Petitioner's Motion to Withdraw.

9 Commissioner Giovanni?

10 COMMISSIONER GIOVANNI: Aye.

11 EXECUTIVE OFFICER: Commissioner Wong?

12 COMMISSIONER WONG: Aye.

13 EXECUTIVE OFFICER: Commissioner Aczon?

14 VICE CHAIR ACZON: Aye.

15 EXECUTIVE OFFICER: Commissioner Cabral?

16 VICE CHAIR CABRAL: Yes.

17 EXECUTIVE OFFICER: Commissioner Chang?

18 COMMISSIONER CHANG: Aye.

19 EXECUTIVE OFFICER: Commissioner Ohigashi?

20 COMMISSIONER OHIGASHI: Yes.

21 EXECUTIVE OFFICER: Commissioner Okuda?

22 COMMISSIONER OKUDA: Yes.

23 EXECUTIVE OFFICER: Chair Scheuer?

24 CHAIRPERSON SCHEUER: Aye.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair.

1 The motion passes unanimously.

2 CHAIRPERSON SCHEUER: Thank you to all the  
3 parties. I also neglected to thank the many public  
4 testifiers, including I think the first time someone  
5 has testified while trimming a tree from the Island  
6 of Kaua'i. The public testimony was also very  
7 helpful to this Commission.

8 With that, is there any further business,  
9 Commissioners?

10 Commissioner Chang.

11 COMMISSIONER CHANG: So, Mr. Chair, Mr.  
12 Orodenker, I just want to confirm in light of Mr.  
13 Tabata's clarification, is the hearing scheduled for  
14 the 22nd, is that no longer necessary?

15 EXECUTIVE OFFICER: Actually, we do have to  
16 adopt the order on the other matter that was  
17 discussed yesterday.

18 COMMISSIONER CHANG: I see.

19 CHAIRPERSON SCHEUER: Thank you.

20 Further clarifications or questions?

21 Seeing none.

22 Thank you to everyone, and I declare this  
23 meeting adjourned.

24 (The proceedings adjourned at 12:12 p.m.)

25

## CERTIFICATE

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

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on June 10th, 2012, at 9:00 a.m., the  
6 proceedings contained herein was taken down by me in  
7 machine shorthand and was thereafter reduced to  
8 typewriting under my supervision; that the foregoing  
9 represents, to the best of my ability, a true and  
10 correct copy of the proceedings had in the foregoing  
11 matter.

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

15 Dated this 10th day of June, 2021, in Honolulu,  
16 Hawaii.

17  
18  
19 /s/ Jean Marie McManus  
20 JEAN MARIE McMANUS, CSR #156  
21  
22  
23  
24  
25