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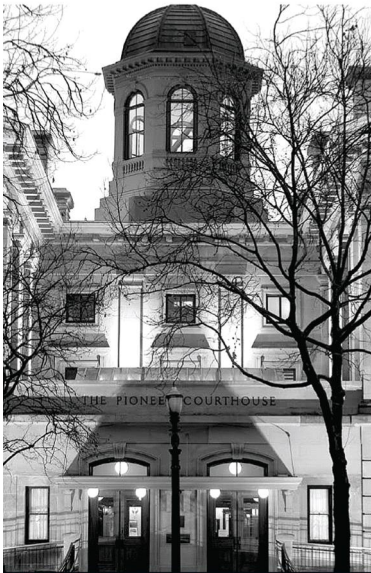
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STATE OF HAWAII

LAND USE COMMISSION

Hearing held on May 11, 2022

Commencing at 9:17 a.m.

Held at

Hilton Garden Inn Kauai Wailua Bay

Conservatory Room

3-5920 Kuhio Highway

Kapaa, Hawaii 96746

I. CALL TO ORDER

II. ADOPTION OF MINUTES

April 14, 2022

III. TENTATIVE MEETING SCHEDULE

IV. DISCUSSION AND ACTION ON ELECTION OF LUC OFFICERS

V. EXECUTIVE SESSION

Pursuant to HRS Section 92-5(a)(2) to consult with the Commissioners' Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

VI. ACTION - DR21-76 KEKAHA AGRICULTURAL ASSOCIATION (KAUAI)

To Consider Petitioner's Motion to Amend Petition for Declaratory Order to Designate Important Agrigultural Lands for approximately 12,123 acres at kekaha kauai; TMK 4-1-2-002:001 Por

VII. CONTINUED ACION - DR21-76 DR21-76 KEKAHA AGRICULTURAL ASSOCIATION (KAUAI)

To Continue Action on Petition for Declaratory Order to Designate Important Agricultural Lands at Kekaha Kauai; TMK 4-1-2-002:001 Por

VIII. RECESS

BEFORE:

1 **APPEARANCES :**

2

3 **COMMISSIONERS PRESENT :**

4 Jonathan Scheuer, Chair

5 Dan Giovanni

6 Lee Ohigashi

7 Edmund Aczon

8 Nancy Cabral

9 Gary Okuda

10 Arnold Wong

11

12 **STAFF PRESENT :**

13 Daniel Orodener, Executive Officer

14 Scott Derrickson, Chief Planner

15 Riley Hakoda, Staff Planner

16 Natasha Quinones, Chief Clerk

17 Ariana Kwan, Administrative Assistant

18 Linda Chow, Esq. Deputy Attorney General

19

20 **PETITIONER :**

21 Douglas Codiga, Esq.

22 Joshua Uyehara, President, Board of Directors

23 Mike Faye, Manager

24 Thomas Schnell, Consultant, PBR & Associates

25

1 **APPEARANCES (CONTINUED)**

2

3 **COUNTY OF KAUAI, DEPARTMENT OF PLANNING:**

4 Laura K. Barzilai, Esq., Deputy County Attorney

5 Jodi Higuchi Sayegusa, Deputy Planning Director

6 Franz Kraintz, Planner

7

8 **OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:**

9 Bryan Yee, Esq., Deputy Attorney General

10 Lorene Maki, Planner

11

12 **DEPARTMENT OF AGRICULTURE:**

13 Earl Yamamoto, Planner

14

15 **AGRIBUSINESS DEVELOPMENT CORPORATION:**

16 Delanie D. Prescott-Tate, Esq., Deputy Attorney

17 General

18

19 **BOARD OF LAND AND NATURAL RESOURCES:**

20 Colin J. Lau, Esquire, Deputy Attorney General

21

22

23

24

25

1           **CHAIRMAN SCHEUER:** Aloha mai kakou. I  
2 really apologize we have some feedback. Mr. Yee?

3           **MR. YEE:** Are we done?

4           **CHAIRMAN SCHEUER:** Yeah, that's it.

5           **MR. YEE:** Okay.

6           **CHAIRMAN SCHEUER:** On behalf of the  
7 commission but taking personal responsibility, I'd  
8 like to apologize for our late start this morning.  
9 We should have taken an earlier (indiscernible) and  
10 insisted on that. We did not. So my apologies to  
11 you all who arranged your schedules to be here on  
12 time. We'll try not to repeat that.

13           The older I get, the more I realize that  
14 time is our most precious resource, the one thing  
15 we'll all run out of. So with that, aloha mai  
16 kakou. Good morning.

17           This is the May 11th, 2022 Land Use  
18 Commission meeting, and this is our first in-person  
19 nonhybrid meeting since the Covid-19 pandemic began,  
20 and it's being held at the Hilton Garden Inn,  
21 Waialua Bay, Kauai.

22           The meeting is being recorded via Zoom  
23 because we now do our court transcripts from our  
24 Zoom recording. Because of that, for all meeting  
25 participants, I'd like to stress the importance of

1 speaking slowly, clearly, and directly into your  
2 microphone. Before speaking, it is helpful if you  
3 state your name and identify yourself for the  
4 record.

5 Your participation is your consent to be  
6 part of the public record of the event, and so if  
7 you do not wish to be part of the public record, you  
8 should be aware that you shouldn't be speaking  
9 during this meeting.

10 My name is Jonathan Likeke Scheuer. I  
11 have the pleasure and honor of serving as the Land  
12 Use Commission Chair. We currently have nine seated  
13 commissioners. First time I've said that in a  
14 while. We have nine seated commissioners, yay.

15 Along with me, Commissioner Edmund Aczon;  
16 Commissioner Nancy Cabral from Hawaii Island;  
17 Commissioner Dan Giovanni hosting us here on Kauai;  
18 Commissioner Lee Ohigashi from the Island of Maui;  
19 Commissioner Gary Okuda who also resides on Oahu;  
20 Commissioner Arnold Wong, also of Oahu; and our  
21 small but mighty and amazing staff.

22 Our Executive Officer, Daniel Orodener;  
23 our -- you can wave. Our Chief Planner, Scott  
24 Derrickson; our Staff Planner, Riley Hakoda; our  
25 Staff Planner, Martina Segura; our Chief Clerk,

1 Natasha Quinones; and our Deputy Attorney General  
2 for this meeting, Linda Chow are all present today,  
3 and Ariana Kwan is also here, who is the Empress of  
4 the Pacific. I don't know your official title.

5 **MS. KWAN:** Secretary.

6 **CHAIRMAN SCHEUER:** Commissioner Kuike  
7 Kamakea-Ohelo and Commissioner Dawn Chang are  
8 excused from today's meeting.

9 Our first order of business is adoption of  
10 the minutes for our April 14, 2022 meeting. Ms.  
11 Quinones, has there been any written testimony  
12 submitted on this matter?

13 **MS. QUINONES:** No, Chair, no testimony was  
14 received on the minutes.

15 **CHAIRMAN SCHEUER:** Are there any members  
16 of the public who wish to comment on the adoption of  
17 the minutes? If so, please indicate by raising your  
18 hand. Seeing none. Is there a motion to adopt?  
19 Commissioner Wong?

20 **COMMISSIONER WONG:** -- Chairman, to adopt.

21 **COMMISSIONER CABRAL:** I'll second.

22 **CHAIRMAN SCHEUER:** Commissioner Wong has  
23 made a motion to adopt April 14th, 2022 minutes, and  
24 Commissioner Cabral has seconded that. Since we're  
25 not virtual, we don't need a roll-call vote. All in

1 favor, say "aye."

2 **(All present said "aye.")**

3 **CHAIRMAN SCHEUER:** Anybody opposed say  
4 "nay." The minutes are adopted.

5 Our next agenda item is the tentative  
6 meeting schedule. Mr. Orodenger.

7 **MR. ORODENKER:** Thank you, Mr. Chair.  
8 Tomorrow we will be meeting once -- here once again  
9 for a presentation by our chair on public trust  
10 doctrine. On May 19th, we will be on the Big Island  
11 for the Church/Hildal matter. On May 25th, we will  
12 be on Oahu for the (indiscernible) matter. The June  
13 calendar, the first set of meetings is currently  
14 open. June 22nd, we will be taking up the  
15 (indiscernible) as necessary.

16 In July, our first two meetings are  
17 currently open, but we would caution the  
18 commissioners not to release those dates yet. On  
19 July 27th and 28th, we will have new commissioner's  
20 training session in Honolulu at the Aloha Tower or a  
21 location to be determined. And in August, we are  
22 currently open, and that takes us through the rest  
23 of the year. But, once again, we would caution the  
24 commissioners to hold the dates until staff has  
25 assured them that we are -- do not have hearings.

1           **CHAIRMAN SCHEUER:** Okay. You probably  
2 need to speak directly into the microphone, Dan.  
3 Thank you very much.

4           Are there any questions for Mr. Orodenker  
5 on our schedule? Sorry, I don't (indiscernible)  
6 among the people in the audience is one of our  
7 newest commissioners who will start on July 1st,  
8 also hailing from the Island of Kauai, so thank you  
9 for being here.

10           Okay. Moving on, our next order of  
11 business is a discussion on the action of -- on -- a  
12 discussion of action on the election of Land Use  
13 Commission officers for the period beginning July  
14 1st.

15           Ms. Quinones, any written testimony on  
16 this matter?

17           **MS. QUINONES:** No, Chair, no testimony was  
18 received on this matter.

19           **CHAIRMAN SCHEUER:** Any members of the  
20 public who wish to testify? Seeing none, Mr.  
21 Orodenker, would you please provide the commission  
22 with an explanation of this action item?

23           **MR. ORODENKER:** Thank you, Mr. Chair.  
24 Currently, we've had our Chair for three wonderful  
25 years. Unfortunately -- four -- four wonderful



1 years, oh, my gosh. Life's good.

2 As we all know, Chair Scheuer is terming  
3 out on his participation. It is usually done at  
4 time that a nominating committee has assembled to  
5 nominate officers for the next fiscal year -- sorry,  
6 on July 1. That includes a chair and two vice-  
7 chairs. So it is up to the commission at this point  
8 to nominate a committee and then have the committee  
9 present its slate of officers -- whole slate of  
10 officers to the commission at a later date.

11 **CHAIRMAN SCHEUER:** Thank you, Dan.

12 Commissioners? Commissioner Aczon?

13 **COMMISSIONER ACZON:** Thank you, Mr. Chair.  
14 Chair, I would like to suggest to defer the election  
15 until all the new commissioners are on board and  
16 seated.

17 **CHAIRMAN SCHEUER:** (Indiscernible.)

18 **MR. ORODENKER:** Mr. Chair, with regard to  
19 that, traditionally, the outgoing commission has  
20 nominated the officers, in particular, because the  
21 outgoing commission has the experience, and the  
22 incoming commissioners do not.

23 **CHAIRMAN SCHEUER:** Commissioner Aczon, I  
24 appreciate -- I appreciate the suggestion, and we  
25 certainly don't want to be, sort of, making

1 decisions and binding unfairly our newest  
2 commissioners who are coming on.

3           However, while it is tradition and it is  
4 stipulated in the rules that every year we should  
5 take a vote, it doesn't have to be at this meeting,  
6 and I think there's -- there's nothing that would  
7 prohibit, you know, the new commissioners coming on  
8 saying, hey, we don't like the choices you made. We  
9 want to redo this process. So at least there's that  
10 protection.

11           Commissioner Ohigashi.

12           **COMMISSIONER OHIGASHI:** I just want to  
13 make a suggestion that the existing chair head up  
14 the nomination committee since he's (indiscernible)  
15 Aczon, Mr. Wong -- Commissioner Wong (indiscernible)  
16 consulted to (indiscernible).

17           **CHAIRMAN SCHEUER:** Commissioner Ohigashi  
18 has suggested that the three outgoing commissioners,  
19 myself, Aczon, and Wong serve as the committee.

20           Commissioner Aczon? Commissioner Wong?

21           **COMMISSIONER WONG:** Chair, I have no  
22 problem.

23           **CHAIRMAN SCHEUER:** Commissioner Aczon?

24           **COMMISSIONER ACZON:** If that is the  
25 condition, I'm okay with it.

1           **CHAIRMAN SCHEUER:** Commissioners, any  
2 concerns or thoughts? Okay. We certainly won't be  
3 self-interested, so we'll solve that problem.

4           Can somebody make a motion -- oh,  
5 Commissioner Okuda?

6           **COMMISSIONER OKUDA:** Yeah. I'll make a  
7 motion that the three named individuals be part of  
8 or constitute the nominating committee, and after  
9 that, I would just like to make a statement or a  
10 suggestion.

11          **CHAIRMAN SCHEUER:** Okay.

12          **COMMISSIONER CABRAL:** I'll second that  
13 motion or statement as --

14          **CHAIRMAN SCHEUER:** Okay. Commissioner  
15 Okuda has made a motion to have the three member --  
16 outgoing members of the commission serve on the  
17 nominating committee for officers, and Commissioner  
18 Cabral has seconded it.

19          Commissioner Okuda, do you wish to speak  
20 to the motion?

21          **COMMISSIONER OKUDA:** Yes. I believe that  
22 the suggestion of constituting this nominating  
23 committee is a good suggestion. It has people of  
24 experience, and it's an efficient way of doing  
25 things.

1 I would like to just add to that. I would  
2 also be fine if at least the chair or the incoming  
3 chair would be selected ahead of time, but I -- let  
4 me suggest to the nominating committee that I would  
5 strongly urge everyone to select Commissioner Dan  
6 Giovanni as the next chair of the Land Use  
7 Commission.

8 And the reason for that is I believe his  
9 record shows extensive experience in the community  
10 as the former Executive Vice-President for  
11 Operations at Hawaii Electric. He's had all these  
12 years of experience on the commission, including as  
13 vice-chair.

14 So just so that the public and everybody  
15 else doesn't think that any of these suggestions are  
16 being done in secret, I'd like to just put that  
17 upfront that I think the state, especially, would be  
18 well served if Commissioner Giovanni is the next  
19 chair of the Land Use Commission. And so that would  
20 be my suggestion and request that the committee  
21 consider Commissioner Giovanni as the incoming chair  
22 of the Land Use Commission. Thank you.

23 **CHAIRMAN SCHEUER:** Thank you very much,  
24 Commissioner Okuda.

25 Is there further discussion on the motion?

1 Commissioner Aczon?

2 **COMMISSIONER ACZON:** Mr. Chair, maybe we  
3 don't need a nominating committee.

4 **CHAIRMAN SCHEUER:** That is also an  
5 acceptable path.

6 We have a motion -- hold it. Commissioner  
7 Wong?

8 **COMMISSIONER WONG:** Well, I -- if we can  
9 do that action here, I would withdraw my motion. We  
10 still have a second and first chair and vice-chair  
11 we still have to work out, so I think we still  
12 should have a meeting on that.

13 **CHAIRMAN SCHEUER:** Okay.

14 **(Simultaneous speaking.)**

15 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
16 Wong.

17 The suggestion, Commissioner Okuda, and  
18 the support expressed by Aczon is certainly noted.

19 Any further discussion on the motion before us?

20 Seeing none, all in favor say "aye."

21 **(All present said "aye.")**

22 **CHAIRMAN SCHEUER:** Anybody opposed? The  
23 motion passes.

24 I believe our next agenda has already gone  
25 out and does not have this on the agenda. Is that

1 correct, Mr. Orodenger? I was trying to pull up  
2 next week's agenda.

3 **MR. ORODENKER:** Yes, that is correct. We  
4 weren't anticipating this.

5 **CHAIRMAN SCHEUER:** Okay. So we will  
6 report back at the subsequent meeting of the Land  
7 Use Commission.

8 Commissioner Aczon?

9 **COMMISSIONER ACZON:** (Indiscernible)  
10 qualifications. So the nominating committee has to  
11 finish their work by the end of the month? But  
12 we're going to be (indiscernible).

13 **CHAIRMAN SCHEUER:** By the end of June.

14 **COMMISSIONER ACZON:** So our return is --

15 **CHAIRMAN SCHEUER:** We still have you for  
16 the entire month of June, Commissioner Aczon. You  
17 have to cancel that Disneyland plan. Tell your wife  
18 I apologize, but it's the law.

19 Okay. Our next agenda item is an  
20 executive session matter with our counsel. I'm  
21 going to suggest that we could take this out of  
22 order and actually put this to the end of the  
23 agenda, and instead move onto the main substantive  
24 matter before us in respect for all the people here.

25 Do we need a motion for that, counsel?

1           **MS. CHOW:** No.

2           **CHAIRMAN SCHEUER:** Is anybody concerned or  
3 object to that? Okay. So let's take this out of  
4 order and let's move instead to action item number  
5 four, DR21-76 Kekaha Agricultural Association,  
6 Kauai.

7           Our main agenda item is this action item  
8 for docket number DR21-76, Kakaha Agricultural  
9 Association, Kauai, to -- one, to consider the  
10 petitioner's motion to amend petition for  
11 declaratory order to designate important  
12 agricultural lands for approximately 12,123 acres at  
13 Kekaha Kauai; TMK 4-1-2-002, lot 1, a portion  
14 thereof, and to continue action on the petition for  
15 declaratory order to designate important  
16 agricultural lands at Kekaha on the same TMK.

17           As these two matters are related, we will  
18 take public testimony on both agenda items at the  
19 same time. Will the parties please identify  
20 yourselves for the record, beginning with the  
21 petitioner?

22           **MR. CODIGA:** Good morning, Chair,  
23 Commissioners, Commission Staff, and stakeholders,  
24 members of the public. Doug Codiga, outside counsel  
25 for Kekaha Agricultural Association, petitioner.

1           **CHAIRMAN SCHEUER:** Okay.

2           **MS. BARZILAI:** Good morning Chair and  
3 Commissioners. Laura Barzilai --

4           **CHAIRMAN SCHEUER:** You want to almost be  
5 kissing the microphone so it can be picked up.

6           **MS. BARZILAI:** Thank you, Chair. Good  
7 morning, Chair and Commissioners. Laura Barzilai,  
8 Deputy County Attorney for the County of Kauai, on  
9 behalf of the County of Kauai Department of  
10 Planning. With me today is Jodi Higuchi Sayegusa,  
11 who is our Deputy Director of Planning.

12           **CHAIRMAN SCHEUER:** Thank you very much.  
13 OPSD?

14           **MR. YEE:** Good morning. Deputy Attorney  
15 General, Bryan Yee, on behalf of the Office of  
16 Planning. With me is Lorene Maki from the Office of  
17 Planning. Also with me is Earl Yamamoto from the  
18 Department of Agriculture. I'd also like to note  
19 for the commission that in addition to my presence,  
20 we do have Deputy Attorney General, Delanie  
21 Prescott-Tate, who's here for ADC as well as Colin  
22 Lau, who is here for BLNR, (indiscernible).

23           **CHAIRMAN SCHEUER:** Okay. Thank you.

24           Before we continue further, let me update  
25 the record. At the conclusion of our December 23rd,



1 2021 hearing on this matter, the commission  
2 requested the petitioner, OPSD, and the county to  
3 provide sufficient statements regarding the  
4 following matters for deliberation by the  
5 commissioners.

6 One, who the appropriate applicant in this  
7 matter was, ADC or KAA or another organization.

8 Two, in the ADC's supplemental testimony  
9 and references, the ADC January 31st, 2018 board  
10 minutes filed with the LUC on December 17th, 2021,  
11 it was stated, "Although the ADC manages these  
12 lands, the fee simple interest in and to the lands  
13 remains in the state of Hawaii through its Board of  
14 Land and Natural Resources; therefore, simultaneous  
15 with this request that the ADC has requested that  
16 the land board also approve the KAA's proposed  
17 action."

18 By regarding that quote, we asked for  
19 briefings on two matters. A, since BLNR holds the  
20 fee interest in the land, is it required that BLNR  
21 provide written approval of the IAL petition, and,  
22 B, is the characterization of the fee interest  
23 contained in the paragraph still accurate.

24 Third item. Executive Order Number 4007,  
25 signed by Acting Governor, James Aiona, filed with

1 the LUC on December 17th, 2021, which delegated  
2 various public land use for agriculture to be under  
3 the control and management of the ADC. We asked,  
4 what hours or authority over the land were thereby  
5 granted to ADC.

6 Fourth. What is the distinction between  
7 management authority granted on state lands versus  
8 fee simple ownership?

9 Fifth. Does the state have an obligation  
10 to designate its lands that qualify as important  
11 agricultural lands all at once, or can they be done  
12 in a piecemeal manner?

13 And sixth. Is there a right to  
14 intervention in IAL proceedings for individual  
15 parcels and/or for state designation of its lands as  
16 IAL?

17 On February 2nd, the LUC mailed letters to  
18 the petitioner, the county, and the OPSD, setting  
19 forth the questions to be answered as requested at  
20 the December 23rd meeting. On February 28th, we  
21 mailed and emailed a letter to the Department of  
22 Agriculture, requesting the LUC briefs requested at  
23 the December 23rd hearing.

24 On March 21st, we received the County of  
25 Kauai's statement of no position. On March 29th,

1 the Office of Planning and Sustainable Development  
2 filed its statement of no position. On March 30th,  
3 the commission received ADC's response to the LUC's  
4 request for briefs, which included ADC testimony,  
5 testimony from Josh Uyehara, a KAA IAL authority,  
6 and Exhibits A through D.

7 On March 30th, 2022, the DOA filed a  
8 position statement. Also on that day, the  
9 petitioner KAA filed its brief in response to the  
10 commission's February 2nd letter and Exhibits A  
11 through C. On April 27th, the commission received  
12 the petitioner's motion to amend the petition for  
13 declaratory order to designate IAL, the memorandum  
14 in support of the motion, declaration of Joshua  
15 Uyehara, a certificate of service, and Exhibits 1  
16 and Exhibits A and B.

17 On May 2nd, the staff emailed and mailed  
18 the meeting agendas for our May 11th and 12th  
19 meetings to the parties and to our statewide and  
20 county lists. On May 4th, the Board of Land and  
21 Natural Resources filed a memorandum regarding KAA's  
22 petition for declaratory order. On May 6th, we  
23 received the petitioner's letter regarding plans to  
24 file a motion to withdraw. And from May 2nd through  
25 May 5th, we received public testimony from a number

1 of parties.

2 Having updated the record since December,  
3 I'll first recognize any written testimony in terms  
4 of our procedures. I will recognize any written  
5 testimony that's been preceded -- been provided. I  
6 will then ask for any public testimony from the  
7 audience.

8 Is there -- just a temperature check, is  
9 there anybody who's going to be providing public  
10 testimony on this matter today? I will call again  
11 -- you -- Mr. Lau, okay. I will call you. I'm just  
12 going over procedures.

13 After public testimony, we will then  
14 address the petitioner's letter regarding their  
15 intent to withdraw. As to the matter -- following  
16 that. As to the matters contained in the  
17 commission's letter of February 2nd, we will receive  
18 oral testimony from the county, OPSD, and the  
19 Department of Agriculture with regard to their  
20 answers contained in the commission's letter.

21 The commission will have the opportunity  
22 to question any of the parties on their testimony.  
23 Following that, the petitioner will be given the  
24 opportunity to provide any additional oral  
25 testimony, and then we will act on the

1 commissioner's motion to withdraw.

2 One moment. I apologize. (Indiscernible)  
3 procedures again because I think I skipped a key  
4 step. I'm going to take up with testimony. Then  
5 we're going to take up the motion to withdraw. If  
6 the motion to withdraw fails, we'll go through all  
7 those other things. I apologize for that. It  
8 didn't make sense to me as I was reading it but  
9 couldn't figure out why.

10 Our procedures, I'll recognize written  
11 testimony first. I will then call on any oral  
12 testimony. Following that, we'll take up the motion  
13 to withdraw. If the motion to withdraw is accepted  
14 by the commission, we will be done. If the motion to  
15 withdraw is not accepted by the commission, we will  
16 then move forward.

17 I will ask each of the parties in order if  
18 there's any questions on our procedures.

19 Petitioner?

20 **MR. CODIGA:** No questions, Chair. Thank  
21 you.

22 **CHAIRMAN SCHEUER:** County?

23 **MS. BARZILAI:** No questions, Chair.

24 **CHAIRMAN SCHEUER:** Mr. Yee?

25 **MR. YEE:** I do have one question. May I

1 suggest that the public testimony be given as the  
2 first item on the motion to withdraw and then be  
3 allowed to provide additional testimony depending on  
4 whether or not the motion to withdraw is  
5 (indiscernible)?

6 **CHAIRMAN SCHEUER:** The request -- to  
7 restate the request from the counsel for the Office  
8 of Planning and Sustainable Development, it would be  
9 to limit testimony simply to the motion to withdraw.  
10 To me, that makes procedural sense. Is there any  
11 concerns from the petitioner?

12 **MR. CODIGA:** We support that amendment.

13 **CHAIRMAN SCHEUER:** County?

14 **MS. BARZILAI:** We support that as well,  
15 Chair.

16 **CHAIRMAN SCHEUER:** Fellow commissioners?

17 **COMMISSIONER OHIGASHI:** I just have one  
18 concern.

19 **CHAIRMAN SCHEUER:** Commissioner Ohigashi.

20 **COMMISSIONER OHIGASHI:** Mr. Lau in the  
21 back, is he going to testify to the motion to  
22 (indiscernible) or has he decided not to?

23 **CHAIRMAN SCHEUER:** Mr. Lau, if you would  
24 come forward, actually, at this point. It's a  
25 little awkward because you're a witness, but you're

1 also counsel for the state. Would you state your  
2 name and position for the record, please?

3 **MR. LAU:** Good morning, Chair Scheuer and  
4 members of the Land Use Commission. I'm Deputy  
5 Attorney General Colin Lau on behalf -- on behalf of  
6 the Department of Land and Natural Resources and  
7 also for Chair Suzanne Kades (phonetic). With me is  
8 Andrew Tellio, who's also from the Land Division,  
9 he's at the back in the audience.

10 Our position is -- is -- I think what the  
11 question that was posed to me -- I --

12 **CHAIRMAN SCHEUER:** Let me restate the  
13 question that I have for you at this time before you  
14 give any further oral comment. I'm proposing to the  
15 parties on this record that we request that  
16 testimony from the public, which at this point  
17 includes only you, be limited, at first, only to  
18 commenting on the motion to withdraw from ADC.

19 **MR. LAU:** Okay. So you're -- you're  
20 asking if I have --

21 **CHAIRMAN SCHEUER:** Do you have -- starting  
22 with our limiting your testimony to that matter.

23 **MR. LAU:** No, Chair. I can give the  
24 testimony now if you would like.

25 **CHAIRMAN SCHEUER:** In -- in just a moment,

1 so you can stay put. But I just want to make sure  
2 that we didn't get to that point and then you had an  
3 objection or concern with that. Okay. So with the  
4 suggested amendment form OPSD, that will be our  
5 procedures for this morning.

6 I will recognize written public testimony  
7 that we have received, and then we will take oral  
8 testimony. We have received testimony in May 2022  
9 from Richard Loero of Kokee Farms, LLC; Anthony K.  
10 Pajela of Garden Island Security, Incorporated; Dan  
11 Lord of Lords Electric, LLC; Harold Edwards of ITC  
12 Water Management, Incorporated; Matt Andros of  
13 Andros Engineering Corporation; Kalaniumi H. Martin  
14 from Umi's Farm; Maurice A. Munechika of Wines of  
15 Kauai, LLC; Alec Sou of Aloun Farms, Incorporated;  
16 Lafe Young of Wai Engineering, Incorporated; Wallace  
17 Johnson of Hawaii Labor Solutions; and Mark  
18 Stoutemyer of Corteva Agriscience and the Hawaii  
19 Research Center, which, for the latter name, I will  
20 disclose I knew Mark Stoutemyer in high school and  
21 have not seen him nor heard of his name since then,  
22 but I was pleased to see what he was doing.

23 Those are the written testimony. Is there  
24 anybody other than Mr. Lau who wishes to deliver  
25 oral testimony today? Seeing none, I'm going to ask



1 for some advice from Ms. Chow.

2 Ms. Chow, normally we swear in witnesses,  
3 but not typically counsel.

4 **MS. CHOW:** Yeah, I don't think he needs to  
5 be sworn.

6 **CHAIRMAN SCHEUER:** Okay. So if you would  
7 again, Mr. Lau, probably with mask off, state your  
8 name and position and your testimony, limiting your  
9 testimony at this point to the motion to withdraw.  
10 Should the motion to withdraw fail, we will allow  
11 additional testimony.

12 **MR. LAU:** Yes, Chair. Thank you. I'm  
13 Deputy Attorney General Colin Lau on behalf of the  
14 Board of Land and Natural Resources. And our  
15 position is because of our written opposition to the  
16 declaration of state public lands as important  
17 agricultural lands, we would oppose the motion to  
18 withdraw, just because we are -- want to -- we --  
19 because of the procedure that is being taken in this  
20 particular matter to designate to the -- by  
21 declaratory action.

22 **CHAIRMAN SCHEUER:** I'm sure there will be  
23 questions, if that's the conclusion of your oral  
24 testimony.

25 **MR. LAU:** It is.

1           **CHAIRMAN SCHEUER:** Let's start with the  
2 petitioner. Questions for the witness?

3           **MR. CODIGA:** Thank you, Chair and  
4 Commissioners. Am I understanding correctly the  
5 Chair would like for me to direct my questions  
6 directly to this witness or to Mr. Lau?

7           **CHAIRMAN SCHEUER:** Yes. So procedurally  
8 and typically, some other state agency, but a  
9 witness comes, and every party in a proceeding has  
10 the opportunity to question the witness.

11           **MR. CODIGA:** Thank you --

12           **CHAIRMAN SCHEUER:** You don't have to  
13 exercise that, but --

14           **MR. CODIGA:** Thank you for clarifying. So  
15 I would like to just provide a little bit of  
16 background with regard to the Kekaha Agricultural  
17 Association --

18           **CHAIRMAN SCHEUER:** You may question the  
19 witness.

20           **MR. CODIGA:** As a preface to the question,  
21 Mr. Lau, would you acknowledge that there is a  
22 material disagreement between BLNR and ADC with  
23 regard to the scope and effect of the executive  
24 order 4007, and that that would support the motion  
25 to withdraw because of this material issue that the

1 agencies are not in agreement on; that it's not  
2 prudent or reasonable to expect a petitioner to  
3 continue to maintain the petition under these  
4 particular circumstances where there's a fundamental  
5 disagreement between the agencies and the intention  
6 is to actually allow additional time for dialogue?

7 **MR. LAU:** That was a long question, so  
8 from what I understand, your -- the question is  
9 whether additional time for dialogue between ADC and  
10 BLNR would benefit this process. It may, but I'm  
11 just basing my position on the existing record or  
12 maybe the lack thereof, so to the extent that Mr.  
13 Codiga is suggesting that there be further  
14 development of the record by consulting with the  
15 Board of Land and Natural Resources, that would be  
16 beneficial in our humble opinion.

17 However, the process, to date -- just  
18 based on the process to date and the record to date,  
19 we are opposed to the designation of those public  
20 lands by this particular method.

21 **MR. CODIGA:** If I may, Mr. Lau, I  
22 understand. If you could please just clarify,  
23 though, the last statement you made about the merits  
24 of the petition, the Kekaha -- the petitioner's  
25 intention right now is to actually not have

1 additional time and efforts spent by this commission  
2 or by the parties necessarily on getting into the  
3 merits or evaluating and weighing the merits of the  
4 petition.

5           Rather, we seek to withdraw the petition  
6 for the reasons you just explained. Could you  
7 please clarify that?

8           **MR. LAU:** It's a difficult question to  
9 answer just because there are considerations, both  
10 consequences and ramifications of the withdrawal to  
11 the extent that should this petition go forward,  
12 it's a two-edged sword. On one hand, it could be  
13 designated, in which case my client would not -- is  
14 opposed to that designation, so to that extent, that  
15 would be bad.

16           On the other hand, should it be denied, my  
17 understanding of the consequence is that the  
18 applicant may not be able to come back to the  
19 commission for a given period of time --

20           **CHAIRMAN SCHEUER:** One year.

21           **MR. LAU:** One year. Thank you.

22           So there are these consequences. And just  
23 because of the concerns that were stated in our  
24 written testimony, we are at this point saying,  
25 well, just on the existing record, yes, we oppose

1 designation.

2           Should -- back to this -- to Mr. Codiga's  
3 original question, which is, should there be further  
4 dialogue between ADC and BLNR? Yes, I think that is  
5 a good thing. So is withdrawal in that sense  
6 something that we would support to that extent, that  
7 BLNR's input could be solicited? The answer would  
8 be yes, but I cannot speak for the entire board  
9 because the entire board was not consulted in this  
10 particular existing record.

11           **MR. CODIGA:** Thank you, Mr. Lau. Again,  
12 just to make sure that we're understanding  
13 correctly, I'm hearing two things. One is that  
14 we're discussing a motion to withdraw, which is  
15 pretty straightforward, relatively straightforward  
16 procedural motion, which would take this petition  
17 off the table, that's the intention --

18           **CHAIRMAN SCHEUER:** Mr. Codiga, if you have  
19 questions for the witness, please focus on  
20 questioning the witness.

21           **MR. CODIGA:** I guess I would ask Mr. Lau  
22 to once again -- I'm hearing Mr. Lau discuss the  
23 merits, but we don't want to get into the merits.  
24 So I just want to make sure there's a shared  
25 understanding, Mr. Lau, that the intention is to

1 withdraw the petition so that there is no risk of --  
2 if -- from BLNR's position --

3 **CHAIRMAN SCHEUER:** Mr. Codiga, do you have  
4 a question for the witness?

5 **MR. CODIGA:** That is the question. I'd  
6 ask him to please --

7 **CHAIRMAN SCHEUER:** What is the question?

8 **MR. CODIGA:** Whether BLNR supports  
9 withdrawal on the understanding that it would remove  
10 any possibility of there being a decision on the  
11 merits in support of the petition.

12 **MR. LAU:** I don't think I can give an  
13 answer to that, frankly, because it just -- I don't  
14 know what the consequences are for my client. If  
15 they withdraw, and this is subject to their ability  
16 to resubmit, then to that extent, just to be honest  
17 to the commission, we're opposed to this particular  
18 process in this particular manner just based on the  
19 facts that were presented to us.

20 We don't -- we do not think that the facts  
21 as regards to Mr. Codiga's client will change  
22 dramatically, even after consultation with BLNR. So  
23 to that extent, it's not a clear answer, but I'm  
24 sorry for that.

25 **CHAIRMAN SCHEUER:** Okay. Anything

1 further, Mr. Codiga?

2 **MR. CODIGA:** No further questions. Thank  
3 you.

4 **CHAIRMAN SCHEUER:** Okay. Does the county  
5 wish to dive into this particular bond?

6 **MS. BARZILAI:** Chair, the county has no  
7 questions for this witness.

8 **CHAIRMAN SCHEUER:** Thank you. OPSD?

9 **MR. YEE:** Thank you, Mr. Lau. So the  
10 concern you've expressed on the withdrawal is that  
11 if they withdraw, you're concerned that they could  
12 file again in less than a year, is that right?

13 **MR. LAU:** Correct.

14 **MR. YEE:** But BLNR has not engaged in --  
15 one of the reasons you're concerned is -- about the  
16 petition is that BLNR has not engaged -- or the ADC  
17 has not engaged in discussion with BLNR about this,  
18 is that right?

19 **MR. LAU:** That's correct.

20 **CHAIRMAN SCHEUER:** Mr. Lau, could you make  
21 sure to speak directly into the microphone?

22 **MR. YEE:** Wouldn't the withdrawal allow  
23 ADC and BLNR then to have a consultation to resolve  
24 that concern?

25 **MR. LAU:** (Indiscernible.) If my

1 understanding is mistaken, I would appreciate being  
2 (indiscernible). But (indiscernible).

3 **MR. YEE:** Regardless of whether the  
4 applicant is KAA or ADC or both, wouldn't the  
5 withdrawal allow BLNR and KAA and ADC to have a  
6 discussion?

7 **MR. LAU:** (Indiscernible.)

8 **MR. YEE:** And wouldn't that resolve one of  
9 the objections you have to this petition?

10 **MR. LAU:** (Indiscernible.) There are many  
11 objections.

12 **MR. YEE:** And BLNR's ultimate position is  
13 -- at this time is that they did -- they are opposed  
14 to the IAL petition from being granted, correct?

15 **MR. LAU:** Correct.

16 **MR. YEE:** And the withdrawal of the  
17 petition would mean that no IAL will be granted for  
18 this property, correct?

19 **MR. LAU:** Correct.

20 **MR. YEE:** So the only objection you have  
21 is that BLNR would prefer to prevent either KAA or  
22 ADC from filing another petition within one year,  
23 and that you don't then want further consultation  
24 with KAA or ADC for at least a year.

25 **MR. LAU:** I think our position was stated



1 within the written testimony and only if we go  
2 further into this procedurally would I be able to  
3 (indiscernible), so if your only question is, with  
4 consultation -- if ADC (indiscernible) office, I  
5 believe the answer would be (indiscernible).

6 **MR. YEE:** And you know that without having  
7 engaged in a consultation with either KAA or ADC?

8 **MR. LAU:** (Indiscernible.)

9 **MR. YEE:** Thank you. Nothing further.

10 **CHAIRMAN SCHEUER:** Thank you, Mr. Yee.  
11 Commissioners? Commissioner Okuda?

12 **COMMISSIONER OKUDA:** Thank you very much,  
13 Mr. Chair.

14 Mr. Lau, what is the applicable standard  
15 overview that the Land Use Commission must apply in  
16 making this decision of whether or not to allow the  
17 applicant to withdraw the petition? What is the  
18 applicable standard?

19 **MR. LAU:** Is this a question that has to  
20 do with the withdrawal?

21 **COMMISSIONER OKUDA:** Yes. All I'm  
22 focusing on is just the applicant's request to  
23 withdraw. What is the standard that we have to  
24 apply in making that decision? Maybe more specific,  
25 isn't it -- is it an abuse of discretion standard?

1           **MR. LAU:** I think we don't know.

2           **COMMISSIONER OKUDA:** I'm sorry?

3           **MR. LAU:** I -- I can -- I could consult my  
4 notes, but I don't think that would actually help  
5 that, frankly.

6           **COMMISSIONER OKUDA:** Do you have any legal  
7 authority that indicates it would not be an abuse of  
8 discretion standard?

9           **MR. LAU:** No, sir.

10          **COMMISSIONER OKUDA:** What is your  
11 understanding of what meets the abuse of discretion  
12 standard?

13          **MR. LAU:** I'm -- I'm not sure this is an  
14 appropriate question for BLNR given our testimony.  
15 I don't -- you can consult with your attorney about  
16 that specifically, but I -- I frankly don't know,  
17 and I'm not sure why this is relevant to your motion  
18 to withdraw.

19          **CHAIRMAN SCHEUER:** You can -- the witness  
20 can just answer that you don't know.

21          **MR. LAU:** Okay. I do not know.

22          **COMMISSIONER OKUDA:** Yeah, but I'm willing  
23 to respond to your comment because, you know, we --  
24 again, we should have everything on the table. It's  
25 because that if the department or any other party in

1 the room believes we should be using a higher  
2 standard on what I view as a procedural request,  
3 then, you know, I'd like to be informed, and we  
4 should look at a higher standard in making the  
5 decision.

6 Let me ask you this. If an abuse of  
7 discretion standard is the standard to be used here,  
8 do you believe that based on the -- the facts that  
9 have been submitted -- let me be more specific.

10 Based on the statements that have been  
11 made and the letter requesting withdrawal that  
12 there's enough evidence in the record at this point  
13 to meet an abuse of discretion standard if we  
14 decided either to refuse to allow the withdrawal or  
15 allow the withdrawal. In other words, there's  
16 enough information in the record to support the Land  
17 Use Commission exercising its discretion either one  
18 way or the other.

19 **MR. LAU:** I -- I don't believe that the --  
20 what is in the existing record would -- would be  
21 supportive or against withdrawal, frankly, because  
22 as you stated, it is a discretionary standard for  
23 the -- for the commission, and I don't know what in  
24 the existing record would constitute an abuse of  
25 discretion.

1           **COMMISSIONER OKUDA:** Okay. And let me ask  
2 this question, then. What is the legal prejudice --  
3 I'm using that specific term, "legal prejudice" --  
4 to the board or the Department of Land and Natural  
5 Resources if the Land Use Commission agrees with the  
6 request to withdraw the petition? What is the legal  
7 prejudice that the department or the board would  
8 suffer?

9           **MR. LAU:** I don't believe there is a legal  
10 prejudice in that sense, in answer to your question.

11           **COMMISSIONER OKUDA:** Okay. Thank you very  
12 much.

13           Thank you, Mr. Chair. No further  
14 questions.

15           **CHAIRMAN SCHEUER:** Thank you, Commissioner  
16 Okuda.

17           Commissioners, further questions for the  
18 witness?

19           Commissioner Wong?

20           **COMMISSIONER WONG:** Thank you, Chair.

21           Mr. Lau, sorry, just not -- non-attorney  
22 here that just wanted plain and simple, you know,  
23 okay. So if they withdraw the petition -- they're  
24 withdrawing, right? They may not bring it back to  
25 us. But if we -- if we go through this process, we

1 either deny or approve. Let's say we deny, that's  
2 an assumption again, they cannot come back anyway,  
3 right?

4 So the question is, if they withdraw and  
5 not come back, isn't that the same thing?

6 **MR. LAU:** Yes. It's difficult for me to  
7 answer yes or no to that because, as I noted in my  
8 testimony, there are consequences one way or another  
9 and ramifications, depending on what happens.

10 I cannot help considering that it's sort  
11 of a yes-or-no decision tree that happens as a  
12 result of that withdrawal. So to simply answer your  
13 question, if they never come back, then there is no  
14 prejudice. It's fine.

15 **COMMISSIONER WONG:** Yeah. It's just that  
16 I'm thinking like just a regular guy, not an  
17 attorney, that says, okay, they're withdrawing.  
18 They're not going to come back. And if they do come  
19 back, you guys get time to work with all the state  
20 agencies to figure out what to do, and then make it  
21 a cleaner case to either approve or disapprove,  
22 okay?

23 But right now, let's say we deny this  
24 withdrawal. We're going through the process. You  
25 know, you guys present your case. The petitioner

1 presents their case. County -- you know, all the  
2 parties present their cases.

3 And then we're going through another  
4 process to say, okay, if we approve, we approve. If  
5 we deny, we deny. But if we deny, it's again  
6 wasting our time because, you know, I'm not getting  
7 paid for sitting here, so no make sense.

8 I mean, the local (indiscernible) doesn't  
9 make sense that we're wasting every -- that guy's a  
10 billable guy. He making more money than me just  
11 sitting there, a petitioner, right now. Right? I  
12 mean, it doesn't make sense. Sorry. Sorry about  
13 that, petitioner.

14 But I mean, he could be -- you know, I  
15 don't want to get the -- the guys pay more money for  
16 him. Sorry, I can't put two plus two together. And  
17 if -- so I think, you know, for non-attorney, it  
18 don't make sense, if you think of it in long run,  
19 okay? Because you still say, oh, we still like this  
20 petition. So it doesn't add up for me. So that's  
21 my statement, okay?

22 I mean, if you want to answer that, that's  
23 fine. If you don't want to answer, that's fine.  
24 But it's just a statement, okay? Thank you.

25 **CHAIRMAN SCHEUER:** Thank you,

1 Commissioner.

2 Commissioners?

3 Chair has a question for Mr. Lau. And Mr.  
4 Lau, I -- I want to thank you for your written brief  
5 on your testimony -- your written testimony to deny  
6 the petition. That was very clear.

7 Your oral testimony this morning has  
8 confused the heck out of me, so -- and I think that  
9 my fellow commissioners have gotten me part of the  
10 way there, but I want to work with you to try and  
11 understand.

12 Your oral testimony today is that you are  
13 in opposition to the motion to deny -- or to accept  
14 the motion for withdrawal because you would prefer  
15 that we go through the process and instead deny it.  
16 Is that a fair statement of your oral testimony  
17 today?

18 **MR. LAU:** It's a fairly good summary, but  
19 all the little details that I think were discussed  
20 by questioning with Mr. Codiga and myself have kind  
21 of on the wayside. So frankly, this is just public  
22 testimony before the commission. The commission has  
23 the discretion to decide the motion as they would  
24 like to --

25 **CHAIRMAN SCHEUER:** Correct.

1           **MR. LAU:** -- and you know, whether -- BLNR  
2 is not even a party in this.

3           **CHAIRMAN SCHEUER:** We understand that.

4           **MR. LAU:** And so all I'm presenting is  
5 public testimony.

6           **CHAIRMAN SCHEUER:** And your public  
7 testimony is the desire of the Chairperson of the  
8 Board of Land and Natural Resources is opposed to  
9 the acceptance of a motion to withdraw because the  
10 preference is to go through the procedure and deny?

11           **MR. LAU:** No.

12           **CHAIRMAN SCHEUER:** So please clarify for  
13 me what your testimony is.

14           **MR. LAU:** I think my -- my testimony --  
15 I've stated the testimony, which is we are opposed  
16 to the designation, and only in that sense would we  
17 oppose the motion to withdraw. I'm only trying to  
18 relay what my client has said to me --

19           **CHAIRMAN SCHEUER:** I -- I will try not to  
20 kill the messenger.

21           **MR. LAU:** Sorry. I appreciate that.

22           **CHAIRMAN SCHEUER:** So -- so work with me  
23 here. I'm going to ask you some questions. Your  
24 client opposes the motion to withdraw because the  
25 client opposes the designation.



1           **MR. LAU:** Of public lands -- of state  
2 public lands through the declaratory action process,  
3 yes.

4           **CHAIRMAN SCHEUER:** Okay. The practical  
5 consequence under our statute is that if we accept a  
6 motion to withdraw, the applicant or presumably  
7 another applicant for the same lands would have the  
8 opportunity to come in immediately thereafter with a  
9 new petition. The consequence of denial would be  
10 they would be barred for one year.

11           Do you share that understanding?

12           **MR. LAU:** I do.

13           **CHAIRMAN SCHEUER:** Okay. So the only  
14 practical difference of your client is whether or  
15 not a petition may be filed between now and 365 days  
16 from now, presuming we acted on a denial today, is  
17 that correct?

18           **MR. LAU:** I believe so.

19           **CHAIRMAN SCHEUER:** Okay. So this is  
20 stated as a personal opinion intended to give some  
21 assurance. I don't want to speak and prejudge for  
22 the commission, but I will observe, at the  
23 conclusion of eight years, that we do get irritated  
24 significantly, and I think it's fair to say this  
25 petition, because of some of the very issues that

1 you are bringing up in your testimony, has irritated  
2 this commission.

3 And should, without any meaningful  
4 consultation with the Board of Land and Natural  
5 Resources, this petition be refiled, at least if  
6 it's refiled while I'm here, we wouldn't look  
7 favorably on it because these outstanding questions  
8 were still to be considered.

9 So on a practical level -- while I  
10 understand that legally they have this window to  
11 come in within a year, on a practical level, the  
12 operative question, at least for me, if it comes in  
13 while I'm still here, is have you guys worked this  
14 out or not. If you haven't worked it out or not,  
15 we're going to get to the exact same place. And I  
16 don't think that your client is going to be harmed.

17 Does that make sense?

18 **MR. LAU:** It does.

19 **CHAIRMAN SCHEUER:** Thank you.

20 Commissioners, anything further?

21 Commissioner Ohigashi?

22 **COMMISSIONER OHIGASHI:** (Inaudible.)

23 **CHAIRMAN SCHEUER:** Anything further,  
24 Commissioners?

25 **COMMISSIONER CABRAL:** I wanted to say that

1 this is somewhat unusual. We've had a number of  
2 these cases come before us, and we resolved -- we've  
3 gone forward with some, denied some, and had some  
4 withdrawn. And it's -- it's always rather confusing  
5 because it -- there's always a variety of reasons  
6 why one wants to put their property in this position  
7 or not.

8           And so I think the underlying elements is  
9 something that would be good to be heard, but at the  
10 same time, if the petitioner's not ready, I have to  
11 -- I think I'm going to have to support their  
12 decision to want to withdraw, and then they can be  
13 getting ready rather than have to be put off for a  
14 whole year, potentially, until they can be -- come  
15 before us again.

16           Thank you, though, for the input and the  
17 information.

18           **CHAIRMAN SCHEUER:** Thank you, Commissioner  
19 Cabral.

20           Are there any further questions for this  
21 witness? Seeing none, thank you very much, Mr. Lau,  
22 for your testimony.

23           With that, before we proceed any further,  
24 the petitioner desires to withdraw their petition as  
25 contained in their filing of May 6, 2022.

1 Mr. Codiga, please present your request.

2 **MR. CODIGA:** Thank you, Chair. We  
3 appreciate the participation of BLNR in shedding  
4 light on these issues.

5 With regard to the motion to withdraw,  
6 just to provide a bit of additional background for  
7 the benefit of the Chair and Commissioners, it's  
8 fairly straightforward in the sense that the  
9 petitioner was proceeding on a certain assumption  
10 about the legal effect of executive order 4007 and  
11 also which of the two agencies, meaning ADC and  
12 BLNR, could provide the necessary authorization as  
13 the landowner.

14 As the Commission is well aware, the  
15 petition is required under statute and the  
16 commission's rules to obtain -- present the  
17 authorization of the landowner. These are  
18 fundamental and critically important issues. This  
19 is why the commission in its wisdom asked us to  
20 brief these issues, and we did extensively.

21 We note the record also reflects that ADC  
22 spent some extensive effort reauthorizing the  
23 petition. So a lot of effort has gone into this,  
24 but frankly, beyond our memorandum that was  
25 submitted about five business days ago, has called

1 all of that into question. And so we -- it's fairly  
2 straightforward with regard to the motion to  
3 withdraw in the sense that obviously more time is  
4 needed to resolve this issue.

5 As the petitioner, not a state agency, a  
6 farmer, we simply lack the necessary resolution of  
7 this critically important issue at this time, and we  
8 -- we simply need more time to address this. And we  
9 certainly prefer, echoing some of the comments we  
10 heard a moment ago, to do that in as efficient of a  
11 manner as possible.

12 We don't want to be using time and  
13 resources, our own or those of other parties,  
14 unnecessarily through a litigated process if we --  
15 if we believe that we can find other, more efficient  
16 ways of going forward with this, which we believe  
17 are possible.

18 With regard to the memo itself, we -- I  
19 would just note that it does raise a number of  
20 issues that we would like an opportunity to address,  
21 but we simply have not had time, frankly, to fully  
22 evaluate and have not had time to review and go  
23 through it with my client.

24 We are aware that the ADC board may  
25 consider on its next meeting on May 18th whether to

1 request a formal attorney general opinion letter on  
2 this issue. When I mention that only as an  
3 indication of how there are other nonlitigation  
4 methods or ways for us to proceed to kind of address  
5 this issue in addition to the dialogue that Mr. Lau  
6 just mentioned and which we strongly support.

7 Overall, this would promote administrative  
8 efficiency, conserve the commission's resources. We  
9 note also that there are proceedings -- IAL  
10 proceedings, and district boundary men are  
11 proceeding as well.

12 In the record in which it appears that  
13 withdrawals have been accepted by this -- by the LUC  
14 under similar situations, or even in some -- one  
15 instance, it appears after a vote was taken by the  
16 commission.

17 So the point there being that we believe  
18 there is -- that granting the motion to withdraw  
19 would be consistent with how this commission tends  
20 to approach these types of matters.

21 And I just want to -- and by mentioned  
22 that, you know, we -- we certainly respect the  
23 BNL's position on these issues, including on the  
24 motion to withdraw. Our intention is, really, we're  
25 laser-focused on IAL designation more than other

1 procedural or sort of larger -- potentially larger  
2 issues between agencies.

3           We just want to -- my client's really  
4 laser-focused on trying to obtain the benefits of  
5 the designation because of the benefits to the  
6 farmers, which is all about agriculture and  
7 supporting agriculture. So we did move, you know,  
8 as quickly as we could when we received the BLNR  
9 memo, which was about midday.

10           And by the end of the day, I had consulted  
11 with my client, and we said, look, we need to  
12 withdraw this and step back and talk about it,  
13 engage in dialogue, find a way forward because we  
14 don't have resolution between the agencies. And we  
15 did communicate that to the commission as promptly  
16 as we could, and we did receive guidance that it was  
17 appropriate to pursue a motion, an oral motion  
18 pursuant to Rule 17(a) -- 15-15-17(a), which is the  
19 rule upon which this motion to withdraw is brought.

20           So we certainly have done our best to  
21 respect the process and respect the commission's  
22 work, and also, I want to emphasize again, we  
23 respect BLNR's contribution. We just seek an  
24 opportunity to further dialogue and then consider  
25 whether we come back or another party comes back

1 with a petition in the future.

2 So you know, we don't know -- we can't  
3 say, sitting here today, exactly how that will play  
4 out. Chair, thank you for the opportunity to  
5 present that background on the motion to withdraw.  
6 I have no -- nothing further on that.

7 **CHAIRMAN SCHEUER:** Thank you very much,  
8 Mr. Codiga.

9 Commissioners, questions for the  
10 petitioner?

11 I'd like to thank the petitioner for  
12 (inaudible) despite the procedural morass we're in  
13 (inaudible) focus our minds onto helping  
14 agricultural succeed, which really would be a much  
15 more fun discussion.

16 Comments from the county related to this  
17 matter?

18 **MS. BARZILAI:** Thank you, Mr. Chair. The  
19 county does not oppose petitioner's motion to  
20 withdraw the petition. County views this as a  
21 matter -- excuse me. County views this matter as a  
22 necessary discussion between two state agencies, ADC  
23 and BLNR, which must be resolved outside of this  
24 forum. Thank you.

25 **CHAIRMAN SCHEUER:** Commissioners,



1 questions for the county? Sorry? Commissioners,  
2 (inaudible).

3 Mr. Yee of OPSD is next. I'm sure that  
4 none of the commissioners have questions.

5 Commissioner Okuda, questions for the  
6 county?

7 **COMMISSIONER OKUDA:** Yes. Similar  
8 questions that I asked the attorney for Department  
9 of Land and Natural Resources on the board. Are we  
10 to follow an abuse of discretion standard in making  
11 the decision whether to allow the withdrawal or not  
12 allow the withdrawal? It's an abuse of discretion  
13 standard, is that correct?

14 **MS. BARZILAI:** Commissioner, of course it  
15 would be my preference to check into that further in  
16 research, but in listening to your questioning  
17 earlier, I would agree. And I would also agree that  
18 beyond our statement is in the record, which  
19 supports the motion to withdraw and allows you to  
20 make that decision.

21 **COMMISSIONER OKUDA:** So do you believe the  
22 record is sufficient for us to exercise discretion  
23 either in granting the request to withdraw or  
24 denying the request to withdraw? In other words,  
25 there's a sufficient record to meet an abuse of

1 discretion standard, whatever we decide.

2 **MS. BARZILAI:** Based upon the last meeting  
3 and the filings to date, I would agree with that  
4 statement.

5 **COMMISSIONER OKUDA:** Thank you very much.  
6 No further questions, Mr. Chair.

7 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
8 Okuda.

9 Further questions for the county?

10 I will ask OPSD and then DOA if there's  
11 any comments?

12 OPSD?

13 **MR. YEE:** Thank you. The Office of  
14 Planning and Sustainable Development supports the  
15 motion to withdraw. We -- I mean, I will say that I  
16 think the petitioner should have engaged in a  
17 consultation with BLNR before this. That was a  
18 mistake.

19 But we are here where we are now, and I  
20 think KAA also made the correct decision to withdraw  
21 their motion when they saw BLNR's objection in order  
22 to engage in that discussion between KAA, ADC, and  
23 BLNR. And I think the Office of Planning and  
24 Sustainable Development is also willing to be part  
25 of the conversation if that would be helpful.

1 I -- I just want to take a few minutes to  
2 take a larger look at where we are and what this is.  
3 The IAL process is an imperfect one but is the only  
4 one we have in order to achieve the constitutional  
5 obligation to conserve and protect agricultural  
6 lands in the state.

7 Part of that process required BLNR and  
8 Department of Agriculture to get together and  
9 identify those public lands that should have been  
10 designated as IAL by 2010. It has been so long  
11 since then, and they haven't done it.

12 I understand BLNR has concerns, and those  
13 concerns are legitimate. They should be considered.  
14 They should be worked out. That discussion  
15 absolutely needs to happen. But the effort to delay  
16 the consideration further for no particular reason,  
17 as far as I can tell, other than it's going to delay  
18 -- the objection to withdraw for no reason other  
19 than it would delay another petition is just a  
20 further delay on an important obligation. The state  
21 has to identify those lands which should be  
22 designated as important agricultural lands.

23 This particular piece of property was,  
24 frankly, perhaps not considered when we originally  
25 looked at or conceived of the process because of the

1 -- because of this, frankly, somewhat unique  
2 circumstance in which the ADC lands are not, quote,  
3 unquote, "public lands," as defined in statute when  
4 that's the term that's used in Chapter 205.

5 I think Chapter 205 was really intended to  
6 provide its state lands be done through consultation  
7 between DOA and BLNR, and it would just  
8 (indiscernible) that there was a small sliver of  
9 land, small, a number of acres that are actually  
10 held by other agencies that are not -- that are not  
11 defined as public lands, and this happened to be one  
12 of them.

13 And so then, when this exception or  
14 loophole was -- was discovered, the Office of  
15 Planning was not opposed to considering a petition  
16 by a farmer or collective to do something that --  
17 that the state should, frankly, have done much, much  
18 earlier. That's in general. It doesn't address  
19 whether these particular lands should be designated  
20 as IAL, and that requires a discussion between ADC,  
21 KAA, and BLNR.

22 So while we certainly believe that this --  
23 this conversation needs to happen -- and, as was  
24 admitted by BLNR, they don't know the outcome of  
25 those discussions -- there's no reason we think that

1 the LUC should deliberately prevent its petitioner  
2 from coming back if these substantive matters can be  
3 resolved.

4 There's no reason to put an artificial  
5 delay in moving forward and getting lands designated  
6 as IAL. And so for these reasons, the Office of  
7 Planning supports the motion to withdraw.

8 **CHAIRMAN SCHEUER:** Thank you, Mr. Yee.

9 Commissioners, questions for the Office of  
10 Planning and Sustainable Development?

11 Commissioner Ohigashi?

12 **COMMISSIONER OHIGASHI:** Mr. Yee, there was  
13 discussions by counsel for the petitioner that  
14 indicated they will be seeking attorney general  
15 opinion between (indiscernible) -- ADC had more land  
16 natural resources (indiscernible).

17 Assuming that opinion falls in my  
18 (indiscernible) that the petitioner and -- existing  
19 petitioner?

20 **MR. YEE:** I'm going to rephrase it a  
21 little bit because of the way you worded it. I  
22 mean, because KAA can be the petitioner, that's --  
23 because they're a farmer, they can be a petitioner.

24 The question whether they -- whose  
25 approval did they need in order to bring the

1 petition? Was it only ADC, or did they also need  
2 BLNR's approval? So I believe that deals with the  
3 question of (indiscernible) Chapter 205 and how  
4 (indiscernible) the somewhat esoteric questions of  
5 state ownership and who speaks on behalf of the  
6 state.

7 If they determine that BLNR's approval is  
8 needed for that, then I fully suspect and expect  
9 that OPSD will agree with or comply with the  
10 attorney general opinion. Well, would you like me  
11 to answer Commissioner Okuda's question?

12 **COMMISSIONER OHIGASHI:** (Indiscernible.)

13 **MR. YEE:** Oh, okay. Then I -- then I will  
14 not (indiscernible).

15 **CHAIRMAN SCHEUER:** Commissioners?

16 Commissioner Wong?

17 **COMMISSIONER WONG:** Please answer

18 Commissioner Okuda's question.

19 **(Inaudible.)**

20 **MR. YEE:** I think you were asking what is  
21 the standard by which the LUC should or should not  
22 grant withdrawal.

23 I think it is not clear in the -- the  
24 rules just don't say, so you can't really look to  
25 the rules. Also, because there's nothing in the

1 rules, my best answer for you is it is probably a  
2 good cause standard which is reviewable by the  
3 appellate courts on an abuse of discretion standard.

4 So that would be my best guess because  
5 it's a procedural matter dealing with the conduct of  
6 your hearing, and generally appellate courts will  
7 defer to the trial court in decisions on the conduct  
8 of the hearing and the process in which the hearing  
9 is held.

10 **CHAIRMAN SCHEUER:** Further questions for  
11 OPSP, Commissioners? Seeing none.

12 Mr. Yamamoto, does the Department of  
13 Agriculture have any position they wish to share on  
14 this matter?

15 **MR. YAMAMOTO:** Earl Yamamoto, Department  
16 of Agriculture. The department takes no position  
17 regarding the petitioner's request to withdraw.

18 **CHAIRMAN SCHEUER:** Okay. Any questions  
19 for Mr. Yamamoto? Seeing none.

20 The commission will now enter into  
21 deliberations, whether or not to grant or deny the  
22 petitioner's request to withdraw their petition for  
23 declaratory order.

24 Commissioners, what is your pleasure?

25 Commissioner Wong?

1           **COMMISSIONER WONG:** I move to accept their  
2 motion to withdraw.

3           **CHAIRMAN SCHEUER:** And is there a second?

4           **COMMISSIONER CABRAL:** I'll second that.

5           **CHAIRMAN SCHEUER:** A motion has been made  
6 to accept the petitioner's motion to withdraw by  
7 Commissioner Wong and seconded by Commissioner  
8 Cabral. I will allow the movant and the secondary  
9 to speak to their motions.

10           **COMMISSIONER WONG:** There's nothing really  
11 -- to me, it's plain and simple common sense. They  
12 want to withdraw their motion. They withdraw it. I  
13 mean -- sorry, that's just common sense.

14           **CHAIRMAN SCHEUER:** Commissioner Cabral?

15           **COMMISSIONER CABRAL:** I'll speak to it  
16 also to the point that, hopefully, this gives the  
17 opportunity for all of the parties involved to move  
18 this forward to have time to get together to  
19 understand their points and to come back to the LUC  
20 with a package that everyone can support, hopefully,  
21 and therefore comply with our state requirements to  
22 have more lands set aside for agriculture in the  
23 future. Thank you.

24           **CHAIRMAN SCHEUER:** Commissioners, we are  
25 in deliberation.



1 Commissioner Ohigashi?

2 **COMMISSIONER OHIGASHI:** Yeah, I'm going to  
3 support the motion; however, I would like to make a  
4 statement that I think that -- I agree with Mr. Yee.  
5 KAA was -- failed to adequately consult with the  
6 Department of Land and Natural Resources and to make  
7 sure that they have their ducks in line before this.

8 These issues were brought up at the last  
9 hearing. And decisions were brought up by  
10 commissioners who were very concerned that the Board  
11 of Land and Natural Resources was not involved. And  
12 for a commissioner who is not here, I think, today,  
13 I think she was very concerned. So I'm -- I'm -- I  
14 don't understand, and I don't like the idea that the  
15 petitioner failed to do that.

16 And I think that going forward with any  
17 petition, try to (indiscernible) would consult the  
18 actual orders, or at least the people who are  
19 designated in the section, so - - (indiscernible)  
20 Department of Agriculture (indiscernible).

21 **CHAIRMAN SCHEUER:** Commissioners, any  
22 further deliberation on the matter?

23 Commissioner Giovanni.

24 **COMMISSIONER GIOVANNI:** I'm going to  
25 support the motion. I concur with the comments of

1 Commissioner Ohigashi, and I want to add to them  
2 just briefly that at the former hearing on this  
3 matter, it was evident that the petitioner had not  
4 fully consulted other parties that were -- had an  
5 interest in the petition going forward, namely KIUC  
6 and the Department of Hawaiian Homelands.

7           Hopefully, all of that can be resolved  
8 ahead of time with better consultation of the  
9 affected parties, including BLNR, if you decide to  
10 come back.

11           **CHAIRMAN SCHEUER:** Thank you, Commissioner  
12 Giovanni.

13           Commissioners, further deliberation?

14           (Indiscernible) inclined to grant the  
15 motion as well, and I thought the counsel for the  
16 county of Kauai summary of the good cause that  
17 exists in the record was convincing.

18           I believe we have good cause both for the  
19 common- sense reason that it is hard to move a  
20 petition forward if a petitioner no longer wants to  
21 do it as well as for the substantive issues around  
22 who actually has the legal authority to do this.

23           I do share Mr. Yee's gently but clearly  
24 worded frustration with the lack of consultation  
25 that occurred. This has not been a productive

1 necessary use of many of our time. And it has  
2 distracted us from what counsel for KAA has said  
3 should be our focus on improving agriculture in this  
4 state.

5 It -- it is frustrating for a number of  
6 reasons, including the fact that I recognize and  
7 know some of the individuals who are deeply involved  
8 with KAA. These are people who want to farm and  
9 farm successfully and produce food and jobs and  
10 agricultural economy in Hawaii.

11 But I just want to -- before I call for  
12 the vote or any further questions, I want to just  
13 pull out the lens a little bit further. In her  
14 collected Olelo No'eau, Mary Kawena Pukui actually  
15 has a number of collected statements about how the  
16 Mana plain is a land of mirages, and it's sort of  
17 like we're seeing another version of this.

18 And really the -- this is not the first --  
19 and, you know, those from Kauai will chuckle. This  
20 is not the first controversial issue around the  
21 future of agriculture in the Mana plain that has  
22 roiled this community, right?

23 It has been tough. This has been a tough  
24 area that has caused some really, really harsh  
25 division on this island. And we have a couple -- we

1 have three major state agencies involved in the  
2 area, DHHL, BLNR, and DOA, and ADC as part of that.

3 No one, I believe, has stepped back and  
4 tried to stop thinking about these lands from the  
5 plantation era and gone beyond and really started to  
6 have a conversation about what should this whole  
7 part of Kauai be. We're acting within our narrow,  
8 individual institutional interests and not actually  
9 asking the land and the people from this land what  
10 should be going on here.

11 And I think non-fighting, cooperative,  
12 collaborative, and forward-thinking solutions for  
13 West Kauai will come if we stop thinking about what  
14 is ADC's, what is BLNR's, what is DHHL's but instead  
15 talk about what was once, you know -- among other  
16 things, not just the incredibly productive  
17 agricultural reason but also one of the key wetlands  
18 in the entire Pacific.

19 We're thinking about this area through all  
20 these narrow laws and narrow things and missing the  
21 big picture of what this area should be. And to me,  
22 that's -- when I think about why do we get involved  
23 in these long and arcane and confusing and, you  
24 know, frustrating conversations, because we haven't  
25 actually started with those fundamentals.

1 Commissioners?

2 Commissioner Okuda.

3 **COMMISSIONER OKUDA:** Chair, I'd like to  
4 join in your comments. I really think -- just two  
5 things. Number one, all of us, including us here on  
6 the commission, we got to get out of our silos. And  
7 what we really got to ask ourselves is, "Where is  
8 Hawaii or where should Hawaii be 30 to 50 years from  
9 now, and how are we going to get there  
10 collectively?" Because if we don't do that, our  
11 kids aren't going to be here in Hawaii. Thank you.

12 **CHAIRMAN SCHEUER:** Thank you, Commissioner  
13 Okuda.

14 Further comments from the commission?  
15 Seeing none, Mr. Orodenger, would you please poll  
16 the commission on the motion to withdraw.

17 **MR. ORODENKER:** Thank you, Mr. Chair. The  
18 motion is to accept the petitioner's motion to  
19 withdraw.

20 Commissioner Wong?

21 **COMMISSIONER WONG:** Aye.

22 **MR. ORODENKER:** Commissioner Cabral?

23 **COMMISSIONER CABRAL:** Yes.

24 **MR. ORODENKER:** Commissioner Giovanni?

25 **COMMISSIONER GIOVANNI:** Aye.

1           **MR. ORODENKER:** Commissioner Ohigashi?

2           **COMMISSIONER OHIGASHI:** Aye.

3           **MR. ORODENKER:** Commissioner Okuda?

4           **COMMISSIONER OKUDA:** Yes.

5           **MR. ORODENKER:** Commissioners Chang and  
6 Commissioner Kamakea-Ohelo are absent.

7           Chair Scheuer?

8           **CHAIRMAN SCHEUER:** Aye.

9           **UNIDENTIFIED SPEAKER:** Any opposed?

10          **MR. ORODENKER:** Oh, I'm sorry.

11          **(Simultaneous speaking.)**

12          **MR. ORODENKER:** Commissioner Aczon?

13          **COMMISSIONER ACZON:** Aye.

14          **MR. ORODENKER:** Sorry. My apologies,  
15 Commissioner.

16                 Thank you, Mr. Chair. The motion passes  
17 unanimously.

18          **CHAIRMAN SCHEUER:** Thank you, Mr.  
19 Orodenker. This motion has prevailed. The other  
20 agendized matters on this docket, the motion to  
21 amend and the petition for declaratory order for  
22 designation, are rendered moot.

23                 It is 10:34. The commission will take a  
24 16-minute recess until 10:50, when we will reconvene  
25 with the deferred agenda item regarding consultation

1 with our attorney general in executive session.

2           And so should there be any -- thank you,  
3 counsel. Should there be any fear that we will  
4 secretly take up other business, the intention is to  
5 exit executive session and then immediately publicly  
6 adjourn the meeting for the day and resume our  
7 meeting tomorrow.

8           Thank you very much to all the parties.  
9 We're in recess.

10                   **(Meeting recessed at 10:34 a.m.)**

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1 CERTIFICATE

2  
3 I, Jodi Dean, do hereby certify that the  
4 proceeding named herein was professionally transcribed on  
5 the date set forth in the certificate herein; that I  
6 transcribed all testimony adduced and other oral  
7 proceedings had in the foregoing matter; and that the  
8 foregoing transcript pages constitute a full, true, and  
9 correct record of such testimony adduced and oral  
10 proceeding had and of the whole thereof.

11  
12 IN WITNESS HEREOF, I have hereunto set my  
13 hand this 1st day of June, 2022.

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20 Jodi Dean  
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