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

VII. CONTINUED ACTION - DR21-76 DR21-76 KEEKAHA 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
APPEARANCES:

COMMISSIONERS PRESENT:
Jonathan Scheuer, Chair
Dan Giovanni
Lee Ohigashi
Edmund Aczon
Nancy Cabral
Gary Okuda
Arnold Wong

STAFF PRESENT:
Daniel Orodenker, Executive Officer
Scott Derrickson, Chief Planner
Riley Hakoda, Staff Planner
Natasha Quinones, Chief Clerk
Ariana Kwan, Administrative Assistant
Linda Chow, Esq. Deputy Attorney General

PETITIONER:
Douglas Codiga, Esq.
Joshua Uyehara, President, Board of Directors
Mike Faye, Manager
Thomas Schnell, Consultant, PBR & Associates
APPEARANCES (CONTINUED)

COUNTY OF KAUAÏ, DEPARTMENT OF PLANNING:
Laura K. Barzilai, Esq., Deputy County Attorney
Jodi Higuchi Sayegusa, Deputy Planning Director
Franz Kraintz, Planner

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:
Bryan Yee, Esq., Deputy Attorney General
Lorene Maki, Planner

DEPARTMENT OF AGRICULTURE:
Earl Yamamoto, Planner

AGRIBUSINESS DEVELOPMENT CORPORATION:
Delanie D. Prescott-Tate, Esq., Deputy Attorney General

BOARD OF LAND AND NATURAL RESOURCES:
Colin J. Lau, Esquire, Deputy Attorney General
CHAIRMAN SCHEUER: Aloha mai kakou. I really apologize we have some feedback. Mr. Yee?

MR. YEE: Are we done?

CHAIRMAN SCHEUER: Yeah, that's it.

MR. YEE: Okay.

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

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

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

The meeting is being recorded via Zoom because we now do our court transcripts from our Zoom recording. Because of that, for all meeting participants, I'd like to stress the importance of
speaking slowly, clearly, and directly into your
microphone. Before speaking, it is helpful if you
state your name and identify yourself for the
record.

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

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

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

Our Executive Officer, Daniel Orodenker;
our -- you can wave. Our Chief Planner, Scott
Derrickson; our Staff Planner, Riley Hakoda; our
Staff Planner, Martina Segura; our Chief Clerk,
Natasha Quinones; and our Deputy Attorney General for this meeting, Linda Chow are all present today, and Ariana Kwan is also here, who is the Empress of the Pacific. I don't know your official title.

MS. KWAN: Secretary.

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

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

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

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

Commissioner Wong?

COMMISSIONER WONG: -- Chairman, to adopt.

COMMISSIONER CABRAL: I'll second.

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

(All present said "aye.")

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

Our next agenda item is the tentative meeting schedule. Mr. Orodenker.

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

In July, our first two meetings are currently open, but we would caution the commissioners not to release those dates yet. On July 27th and 28th, we will have new commissioner's training session in Honolulu at the Aloha Tower or a location to be determined. And in August, we are currently open, and that takes us through the rest of the year. But, once again, we would caution the commissioners to hold the dates until staff has assured them that we are -- do not have hearings.
CHAIRMAN SCHEUER: Okay. You probably need to speak directly into the microphone, Dan. Thank you very much.

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

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

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

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

MR. ORODENKER: Thank you, Mr. Chair. Currently, we've had our Chair for three wonderful years. Unfortunately -- four -- four wonderful
years, oh, my gosh. Life's good.

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

CHAIRMAN SCHEUER: Thank you, Dan.

Commissioners? Commissioner Aczon?

COMMISSIONER ACZON: Thank you, Mr. Chair.

Chair, I would like to suggest to defer the election until all the new commissioners are on board and seated.

CHAIRMAN SCHEUER: (Indiscernible.)

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

CHAIRMAN SCHEUER: Commissioner Aczon, I appreciate -- I appreciate the suggestion, and we certainly don't want to be, sort of, making
decisions and binding unfairly our newest commissioners who are coming on.

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

Commissioner Ohigashi.

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

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

Commissioner Aczon? Commissioner Wong?

COMMISSIONER WONG: Chair, I have no problem.

CHAIRMAN SCHEUER: Commissioner Aczon?

COMMISSIONER ACZON: If that is the condition, I'm okay with it.
CHAIRMAN SCHEUER: Commissioners, any concerns or thoughts? Okay. We certainly won't be self-interested, so we'll solve that problem.

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

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

CHAIRMAN SCHEUER: Okay.

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

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

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

COMMISSIONER OKUDA: Yes. I believe that the suggestion of constituting this nominating committee is a good suggestion. It has people of experience, and it's an efficient way of doing things.
I would like to just add to that. I would also be fine if at least the chair or the incoming chair would be selected ahead of time, but I -- let me suggest to the nominating committee that I would strongly urge everyone to select Commissioner Dan Giovanni as the next chair of the Land Use Commission.

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

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

CHAIRMAN SCHEUER: Thank you very much, Commissioner Okuda.

Is there further discussion on the motion?
Commissioner Aczon?

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

CHAIRMAN SCHEUER: That is also an acceptable path.

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

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

CHAIRMAN SCHEUER: Okay.

(Simultaneous speaking.)

CHAIRMAN SCHEUER: Thank you, Commissioner Wong.

The suggestion, Commissioner Okuda, and the support expressed by Aczon is certainly noted. Any further discussion on the motion before us?

Seeing none, all in favor say "aye."

(All present said "aye.")

CHAIRMAN SCHEUER: Anybody opposed? The motion passes.

I believe our next agenda has already gone out and does not have this on the agenda. Is that
correct, Mr. Orodenker? I was trying to pull up next week's agenda.

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

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

Commissioner Aczon?

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

CHAIRMAN SCHEUER: By the end of June.

COMMISSIONER ACZON: So our return is --

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

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

Do we need a motion for that, counsel?
MS. CHOW: No.

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

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

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

MR. CODIGA: Good morning, Chair, Commissioners, Commission Staff, and stakeholders, members of the public. Doug Codiga, outside counsel for Kekaha Agricultural Association, petitioner.
CHAIRMAN SCHEUER: Okay.

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

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

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

CHAIRMAN SCHEUER: Thank you very much.

OPSD?

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

CHAIRMAN SCHEUER: Okay. Thank you.

Before we continue further, let me update the record. At the conclusion of our December 23rd,
2021 hearing on this matter, the commission requested the petitioner, OPSD, and the county to provide sufficient statements regarding the following matters for deliberation by the commissioners.

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

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

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

Third item. Executive Order Number 4007, signed by Acting Governor, James Aiona, filed with
the LUC on December 17th, 2021, which delegated
various public land use for agriculture to be under
the control and management of the ADC. We asked,
what hours or authority over the land were thereby
granted to ADC.

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

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

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

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

On March 21st, we received the County of
Kauai's statement of no position. On March 29th,
the Office of Planning and Sustainable Development filed its statement of no position. On March 30th, the commission received ADC's response to the LUC's request for briefs, which included ADC testimony, testimony from Josh Uyehara, a KAA IAL authority, and Exhibits A through D.

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

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

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

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

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

The commission will have the opportunity to question any of the parties on their testimony. Following that, the petitioner will be given the opportunity to provide any additional oral testimony, and then we will act on the
commissioner's motion to withdraw.

One moment. I apologize. (Indiscernible)

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

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

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

Petitioner?

MR. CODIGA: No questions, Chair. Thank
you.

CHAIRMAN SCHEUER: County?

MS. BARZILAI: No questions, Chair.

CHAIRMAN SCHEUER: Mr. Yee?

MR. YEE: I do have one question. May I
suggest that the public testimony be given as the first item on the motion to withdraw and then be allowed to provide additional testimony depending on whether or not the motion to withdraw is (indiscernible)?

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

MR. CODIGA: We support that amendment.

CHAIRMAN SCHEUER: County?

MS. BARZILAI: We support that as well, Chair.

CHAIRMAN SCHEUER: Fellow commissioners?

COMMISSIONER OHIGASHI: I just have one concern.

CHAIRMAN SCHEUER: Commissioner Ohigashi.

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

CHAIRMAN SCHEUER: Mr. Lau, if you would come forward, actually, at this point. It's a little awkward because you're a witness, but you're
also counsel for the state. Would you state your
name and position for the record, please?

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

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

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

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

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

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

CHAIRMAN SCHEUER: In -- in just a moment,
so you can stay put. But I just want to make sure
that we didn't get to that point and then you had an
objection or concern with that. Okay. So with the
suggested amendment form OPSD, that will be our
procedures for this morning.

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

Those are the written testimony. Is there
anybody other than Mr. Lau who wishes to deliver
oral testimony today? Seeing none, I'm going to ask
for some advice from Ms. Chow.

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

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

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

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

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

   MR. LAU: It is.
CHAIRMAN SCHEUER: Let's start with the petitioner. Questions for the witness?

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

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

MR. CODIGA: Thank you --

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

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

CHAIRMAN SCHEUER: You may question the witness.

MR. CODIGA: As a preface to the question, Mr. Lau, would you acknowledge that there is a material disagreement between BLNR and ADC with regard to the scope and effect of the executive order 4007, and that that would support the motion to withdraw because of this material issue that the
agencies are not in agreement on; that it's not
prudent or reasonable to expect a petitioner to
continue to maintain the petition under these
particular circumstances where there's a fundamental
disagreement between the agencies and the intention
is to actually allow additional time for dialogue?

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

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

MR. CODIGA: If I may, Mr. Lau, I
understand. If you could please just clarify,
though, the last statement you made about the merits
of the petition, the Kekaha -- the petitioner's
intention right now is to actually not have
additional time and efforts spent by this commission
or by the parties necessarily on getting into the
merits or evaluating and weighing the merits of the
petition.

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

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

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

CHAIRMAN SCHEUER: One year.

MR. LAU: One year. Thank you.

So there are these consequences. And just
because of the concerns that were stated in our
written testimony, we are at this point saying,
well, just on the existing record, yes, we oppose
Should -- back to this -- to Mr. Codiga's original question, which is, should there be further dialogue between ADC and BLNR? Yes, I think that is a good thing. So is withdrawal in that sense something that we would support to that extent, that BLNR's input could be solicited? The answer would be yes, but I cannot speak for the entire board because the entire board was not consulted in this particular existing record.

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

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

MR. CODIGA: I guess I would ask Mr. Lau to once again -- I'm hearing Mr. Lau discuss the merits, but we don't want to get into the merits. So I just want to make sure there's a shared understanding, Mr. Lau, that the intention is to
withdraw the petition so that there is no risk of --
if -- from BLNR's position --

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

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

CHAIRMAN SCHEUER: What is the question?

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

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

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

CHAIRMAN SCHEUER: Okay. Anything
further, Mr. Codiga?

    MR. CODIGA: No further questions. Thank you.

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

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

    CHAIRMAN SCHEUER: Thank you. OPSD?

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

    MR. LAU: Correct.

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

    MR. LAU: That's correct.

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

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

    MR. LAU: (Indiscernible.) If my
understanding is mistaken, I would appreciate being (indiscernible). But (indiscernible).

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

    MR. LAU: (Indiscernible.)

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

    MR. LAU: (Indiscernible.) There are many objections.

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

    MR. LAU: Correct.

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

    MR. LAU: Correct.

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

    MR. LAU: I think our position was stated
within the written testimony and only if we go
further into this procedurally would I be able to
(indiscernible), so if your only question is, with
consultation -- if ADC (indiscernible) office, I
believe the answer would be (indiscernible).

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

MR. LAU: (Indiscernible.)

MR. YEE: Thank you. Nothing further.

CHAIRMAN SCHEUER: Thank you, Mr. Yee.

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

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

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

COMMISSIONER OKUDA: Yes. All I'm
focusing on is just the applicant's request to
withdraw. What is the standard that we have to
apply in making that decision? Maybe more specific,
 isn't it -- is it an abuse of discretion standard?
MR. LAU: I think we don't know.

COMMISSIONER OKUDA: I'm sorry?

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

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

MR. LAU: No, sir.

COMMISSIONER OKUDA: What is your understanding of what meets the abuse of discretion standard?

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

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

MR. LAU: Okay. I do not know.

COMMISSIONER OKUDA: Yeah, but I'm willing to respond to your comment because, you know, we -- again, we should have everything on the table. It's because that if the department or any other party in
the room believes we should be using a higher
standard on what I view as a procedural request,
then, you know, I'd like to be informed, and we
should look at a higher standard in making the
decision.

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

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

MR. LAU: I -- I don't believe that the --
what is in the existing record would -- would be
supportive or against withdrawal, frankly, because
as you stated, it is a discretionary standard for
the -- for the commission, and I don't know what in
the existing record would constitute an abuse of
discretion.
COMMISSIONER OKUDA: Okay. And let me ask this question, then. What is the legal prejudice -- I'm using that specific term, "legal prejudice" -- to the board or the Department of Land and Natural Resources if the Land Use Commission agrees with the request to withdraw the petition? What is the legal prejudice that the department or the board would suffer?

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

COMMISSIONER OKUDA: Okay. Thank you very much.

Thank you, Mr. Chair. No further questions.

CHAIRMAN SCHEUER: Thank you, Commissioner Okuda.

Commissioners, further questions for the witness?

Commissioner Wong?

COMMISSIONER WONG: Thank you, Chair.

Mr. Lau, sorry, just not -- non-attorney here that just wanted plain and simple, you know, okay. So if they withdraw the petition -- they're withdrawing, right? They may not bring it back to us. But if we -- if we go through this process, we
either deny or approve. Let's say we deny, that's
an assumption again, they cannot come back anyway,
right?

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

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

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

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

But right now, let's say we deny this
withdrawal. We're going through the process. You
know, you guys present your case. The petitioner
presents their case. County -- you know, all the parties present their cases.

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

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

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

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

CHAIRMAN SCHEUER: Thank you,
Commissioner.

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

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

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

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

**CHAIRMAN SCHEUER:** Correct.
MR. LAU: -- and you know, whether -- BLNR is not even a party in this.

CHAIRMAN SCHEUER: We understand that.

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

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

MR. LAU: No.

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

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

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

MR. LAU: Sorry. I appreciate that.

CHAIRMAN SCHEUER: So -- so work with me here. I'm going to ask you some questions. Your client opposes the motion to withdraw because the client opposes the designation.
MR. LAU: Of public lands -- of state public lands through the declaratory action process, yes.

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

Do you share that understanding?

MR. LAU: I do.

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

MR. LAU: I believe so.

CHAIRMAN SCHEUER: Okay. So this is stated as a personal opinion intended to give some assurance. I don't want to speak and prejudice for the commission, but I will observe, at the conclusion of eight years, that we do get irritated significantly, and I think it's fair to say this petition, because of some of the very issues that
you are bringing up in your testimony, has irritated this commission.

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

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

Does that make sense?

MR. LAU: It does.

CHAIRMAN SCHEUER: Thank you.

Commissioners, anything further?

Commissioner Ohigashi?

COMMISSIONER OHIGASHI: (Inaudible.)

CHAIRMAN SCHEUER: Anything further, Commissioners?

COMMISSIONER CABRAL: I wanted to say that
this is somewhat unusual. We've had a number of
these cases come before us, and we resolved -- we've
gone forward with some, denied some, and had some
withdrawn. And it's -- it's always rather confusing
because it -- there's always a variety of reasons
why one wants to put their property in this position
or not.

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

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

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

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

With that, before we proceed any further,
the petitioner desires to withdraw their petition as
contained in their filing of May 6, 2022.
Mr. Codiga, please present your request.

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

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

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

We note the record also reflects that ADC spent some extensive effort reauthorizing the petition. So a lot of effort has gone into this, but frankly, beyond our memorandum that was submitted about five business days ago, has called
all of that into question. And so we -- it's fairly straightforward with regard to the motion to withdraw in the sense that obviously more time is needed to resolve this issue.

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

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

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

We are aware that the ADC board may consider on its next meeting on May 18th whether to
request a formal attorney general opinion letter on this issue. When I mention that only as an indication of how there are other nonlitigation methods or ways for us to proceed to kind of address this issue in addition to the dialogue that Mr. Lau just mentioned and which we strongly support.

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

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

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

And I just want to -- and by mentioned that, you know, we -- we certainly respect the BNLR's position on these issues, including on the motion to withdraw. Our intention is, really, we're laser-focused on IAL designation more than other
procedural or sort of larger -- potentially larger
issues between agencies.

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

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

So we certainly have done our best to
respect the process and respect the commission's
work, and also, I want to emphasize again, we
respect BLNR's contribution. We just seek an
opportunity to further dialogue and then consider
whether we come back or another party comes back
with a petition in the future.

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

CHAIRMAN SCHEUER: Thank you very much, Mr. Codiga.

Commissioners, questions for the petitioner?

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

Comments from the county related to this matter?

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

CHAIRMAN SCHEUER: Commissioners,
questions for the county? Sorry? Commissioners, (inaudible).

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

Commissioner Okuda, questions for the county?

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

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

COMMISSIONER OKUDA: So do you believe the record is sufficient for us to exercise discretion either in granting the request to withdraw or denying the request to withdraw? In other words, there's a sufficient record to meet an abuse of
discretion standard, whatever we decide.

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

   COMMISSIONER OKUDA: Thank you very much.

No further questions, Mr. Chair.

   CHAIRMAN SCHEUER: Thank you, Commissioner
Okuda.

   Further questions for the county?

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

   OPSD?

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

   But we are here where we are now, and I
think KAA also made the correct decision to withdraw
their motion when they saw BLNR's objection in order
to engage in that discussion between KAA, ADC, and
BLNR. And I think the Office of Planning and
Sustainable Development is also willing to be part
of the conversation if that would be helpful.
I -- I just want to take a few minutes to take a larger look at where we are and what this is. The IAL process is an imperfect one but is the only one we have in order to achieve the constitutional obligation to conserve and protect agricultural lands in the state.

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

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

This particular piece of property was, frankly, perhaps not considered when we originally looked at or conceived of the process because of the
-- because of this, frankly, somewhat unique circumstance in which the ADC lands are not, quote, "public lands," as defined in statute when that's the term that's used in Chapter 205.

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

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

So while we certainly believe that this -- this conversation needs to happen -- and, as was admitted by BLNR, they don't know the outcome of those discussions -- there's no reason we think that
the LUC should deliberately prevent its petitioner from coming back if these substantive matters can be resolved.

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

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

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

Commissioner Ohigashi?

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

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

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

The question whether they -- whose approval did they need in order to bring the
petition? Was it only ADC, or did they also need BLNR's approval? So I believe that deals with the question of (indiscernible) Chapter 205 and how (indiscernible) the somewhat esoteric questions of state ownership and who speaks on behalf of the state.

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

COMMISSIONER OHIGASHI: (Indiscernible.)

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

CHAIRMAN SCHEUER: Commissioners? Commissioner Wong?

COMMISSIONER WONG: Please answer Commissioner Okuda's question.

(Inaudible.)

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

I think it is not clear in the -- the rules just don't say, so you can't really look to the rules. Also, because there's nothing in the
rules, my best answer for you is it is probably a good cause standard which is reviewable by the appellate courts on an abuse of discretion standard. So that would be my best guess because it's a procedural matter dealing with the conduct of your hearing, and generally appellate courts will defer to the trial court in decisions on the conduct of the hearing and the process in which the hearing is held.

CHAIRMAN SCHEUER: Further questions for OPSD, Commissioners? Seeing none.

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

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

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

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

Commissioners, what is your pleasure?
COMMISSIONER WONG: I move to accept their motion to withdraw.

CHAIRMAN SCHEUER: And is there a second?

COMMISSIONER CABRAL: I'll second that.

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

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

CHAIRMAN SCHEUER: Commissioner Cabral?

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

CHAIRMAN SCHEUER: Commissioners, we are in deliberation.
Commissioner Ohigashi?

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

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

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

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

Commissioner Giovanni.

COMMISSIONER GIOVANNI: I'm going to support the motion. I concur with the comments of
Commissioner Ohigashi, and I want to add to them just briefly that at the former hearing on this matter, it was evident that the petitioner had not fully consulted other parties that were -- had an interest in the petition going forward, namely KIUC and the Department of Hawaiian Homelands.

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

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

Commissioners, further deliberation?

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

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

I do share Mr. Yee's gently but clearly worded frustration with the lack of consultation that occurred. This has not been a productive
necessary use of many of our time. And it has
distracted us from what counsel for KAA has said
should be our focus on improving agriculture in this
state.

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

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

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

It has been tough. This has been a tough
area that has caused some really, really harsh
division on this island. And we have a couple -- we
have three major state agencies involved in the area, DHHL, BLNR, and DOA, and ADC as part of that.

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

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

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

Commissioner Okuda.

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

CHAIRMAN SCHEUER: Thank you, Commissioner Okuda.

Further comments from the commission? Seeing none, Mr. Orodenker, would you please poll the commission on the motion to withdraw.

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

Commissioner Wong?

COMMISSIONER WONG: Aye.

MR. ORODENKER: Commissioner Cabral?

COMMISSIONER CABRAL: Yes.

MR. ORODENKER: Commissioner Giovanni?

COMMISSIONER GIOVANNI: Aye.
MR. ORODENKER: Commissioner Ohigashi?

COMMISSIONER OHIGASHI: Aye.

MR. ORODENKER: Commissioner Okuda?

COMMISSIONER OKUDA: Yes.

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

Chair Scheuer?

CHAIRMAN SCHEUER: Aye.

UNIDENTIFIED SPEAKER: Any opposed?

MR. ORODENKER: Oh, I'm sorry.

(Simultaneous speaking.)

MR. ORODENKER: Commissioner Aczon?

COMMISSIONER ACZON: Aye.

MR. ORODENKER: Sorry. My apologies,

Commissioner.

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

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

It is 10:34. The commission will take a 16-minute recess until 10:50, when we will reconvene with the deferred agenda item regarding consultation.
with our attorney general in executive session.

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

Thank you very much to all the parties.

We're in recess.

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

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

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

Jodi Dean