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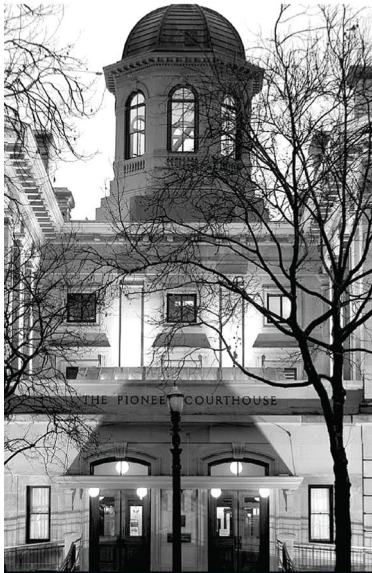
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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on Wednesday, April 3, 2024
Commencing at 9:30 a.m.

Held at

Homer A. Maxey Center Conference Room
(Foreign-Trade Zone No. 9)
521 Ala Moana Boulevard
Honolulu, HI 96813

I. CALL TO ORDER

II. APPROVAL OF MINUTES

March 7, 2024

III. TENTATIVE MEETING SCHEDULE

IV. A92-683 Halekua Development Corporation (Oahu)

Status and progress report and action (if necessary) in response to the recently submitted annual report. Approximately 503.886 Acres at Waikele and Hoae'ae, 'Ewa, Oahu, City and County of Honolulu, State of Hawaii, Tax Map Key No. 9-4-02: 01, portion of 52, 70 and 71.

V. Discussion of Election of Commission Officers for Fiscal Year 2025 and Action (If Necessary)

VI. Executive Session

Pursuant to HRS section 92-5(a)(2) the Commission may go into executive session regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

VII. Recess

BEFORE :

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PARTICIPANTS

LUC COMMISSIONERS:

- Dan Giovanni, Chairman
- Lee Ohigashi
- Gary Okuda
- George Atta
- Mel Kahele
- Michael Yamane
- Kuike Kamakea-Ohelo
- Nancy Carr Smith
- Brian Lee

LUC STAFF:

- Daniel Orodener, Executive Officer
- Scott Derrickson, LUC Chief Planner
- Martina Segura, LUC Planner
- Ariana Kwan, LUC Chief Clerk
- Daniel Morris, LUC Deputy Attorney General

PETITIONER-HASEKO DEVELOPMENT, INC.:

- Curtis Tabata, Esquire
- Peter Kwan, Vice President.

PARTICIPANTS CONTINUED

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PETITIONER-HO'OHANA SOLAR 1, LLC:

Jennifer Lim, Esquire

Larry Greene, Senior Vice President

PETITIONER-ROBINSON KUNIA LAND, LLC:

Steven Mau, Esquire

PETITIONER-RK II PARTNERS:

Terry Lee, Esquire

Derrick Kobayashi, Esquire

David Tanoë, R.M. Towill Corp.

Rick Elkind, Esquire

Mike Wright, Consultant

STATE DEPARTMENT OF AGRICULTURE:

Kelcie Nagata, Deputy Attorney General

Brian Kau, Engineering Program Administrator

Janice Fujimoto, Engineer

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PARTICIPANTS CONTINUED

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT "OPSD":

Allison Kato, Deputy Attorney General

Katia Balassiano, Land Use Development Program

Administrator

Brandon Soo, Planner

CITY AND COUNTY OF HONOLULU:

Pono I. Arias, Esquire, Corporation Counsel

Dina Wong, Department of Planning and Permitting

Patricia Sendao, Deputy Corporation Counsel

PUBLIC TESTIMONY:

Frankly Rife

Chris Delaunay

1 **CHAIR GIOVANNI:** Call to order. Aloha mai
2 kakou. Good morning, everyone. This is the April
3 3, 2024 Land Use Commission Meeting. This is an in-
4 person meeting which is being held at the Homer A.
5 Maxey Center Conference Room, which is Foreign-Trade
6 Zone No. 9 here at 521 Ala Moana Boulevard,
7 Honolulu. And this meeting is open to the public.

8 Court reporting transcriptions are being
9 done from this meeting via a Zoom recording. So
10 everything is being recorded on Zoom.

11 For all meeting participants, and I will
12 be repeating this message throughout the morning and
13 afternoon, I'd like to stress the importance of you
14 speaking slowly, clearly, and directly into your
15 microphone. Before speaking, please state your name
16 and identify yourself for the record each time you
17 prepare to speak.

18 So although this is an in-person meeting,
19 please be aware that all meeting participants are
20 being recorded on the digital record of this Zoom
21 meeting and it will be posted on YouTube. And it
22 will be used for court reporting purposes. So your
23 continued participation is your implied consent to
24 be part of the public record of this event. If you
25 do not wish to be part of the public record, you

1 should exit the meeting now.

2 And it looks like everybody's staying here
3 so that's great.

4 I will also share with all participants
5 that we'll be taking breaks from time to time,
6 including a longer break for lunch. So
7 approximately every hour we'll take a 5 to 10 minute
8 break, and then at around noontime we'll take a
9 lunch break.

10 My name is Dan Giovanni and I have the
11 pleasure to serve as the LUC Chair. We currently
12 have nine seated commissioners, eight of which are
13 here today. Along with me are Commissioner Lee
14 Ohigashi from Maui. Commissioner Gary Okuda,
15 Commissioner George Atta, Commissioner Mel Kahele
16 and Commissioner Brian Lee from Oahu. Commissioner
17 Michael Yamane from Kauai, Commissioner Nancy Carr
18 Smith from the Island of Hawaii.

19 **(Audio disruption)**

20 **MS. KWAN:** One, two, three.

21 **CHAIR GIOVANNI:** One, two, three. And I'm
22 good again.

23 I believe the last thing I said on the
24 record when I had the microphone was that with us
25 today is Commissioner Nancy Carr Smith from the

1 island of Hawaii.

2 Commissioner Ku'ike Kamakea-Ohelo is
3 excused from today's meeting.

4 Also in attendance is the LUC Executive
5 Officer, Daniel Orodener; LUC Chief Planner, Scott
6 Derrickson; LUC Staff Planner, Martina Segura.

7 It's not me.

8 LUC Chief Clerk, Ariana Kwan in the music,
9 and LUC Attorney General to my right, Mr. Dan
10 Morris.

11 Our first order of business is the
12 adoption of the March 7, 2024, minutes.

13 Ms. Kwan, has there been any written
14 testimony submitted on the minutes for March 7,
15 2024?

16 **MS. KWAN:** No, Mr. Chair.

17 **CHAIR GIOVANNI:** Are there any members of
18 the public who have signed up to testify on the
19 adoption of the minutes of March 7, 2024?

20 **MS. KWAN:** No testimony regarding the
21 minutes.

22 **CHAIR GIOVANNI:** Thank you.

23 Commissioners, are there any corrections
24 of comments on the minutes?

25 If not, is there a motion to adopt the

1 minutes for March 7, 2024?

2 **COMMISSIONER OHIGASHI:** Mr. Chair, I move
3 to adopt the minutes.

4 **CHAIR GIOVANNI:** Commissioner Ohigashi
5 moves to adopt the minutes.

6 Do I have a second?

7 **COMMISSIONER YAMANE:** Mr. Chair, second.

8 **CHAIR GIOVANNI:** Who is that?

9 Commissioner Yamane moves to second.

10 So I will recuse myself from a voice vote
11 since I was not in attendance at that meeting but
12 all in favor of adoption of the minutes please say,
13 "Aye."

14 **(All said, "Aye.")**

15 **CHAIR GIOVANNI:** And anyone opposed?

16 The minutes are adopted. Thank you.

17 The next agenda item is the tentative
18 meeting schedule. And I'll call on Mr. Orodenger to
19 present.

20 Mr. Orodenger?

21 **MR. ORODENKER:** Thank you, Mr. Chair.

22 Tomorrow we are here again at the same
23 location for the Halekua Development motion.

24 On April 17th and 18th, we have a
25 tentative meeting scheduled but nothing on the

1 agenda so far, but please wait for word from our
2 chief clerk before you release -- to release those
3 dates.

4 On May 8th --

5 **CHAIR GIOVANNI:** And please speak
6 directly.

7 **MR. ORODENKER:** On May 8th we will be on
8 Maui for the AMFAC/HHFDC status report. And on the
9 9th we tentatively have scheduled a Zoom meeting to
10 discuss the OPSD Soil Study.

11 On May 21st, we will be once again here
12 for the Waimanalo Gulch matter on the 21st and the
13 22nd. That is tentative. We are awaiting the
14 decision of the County Council today for a firm
15 date.

16 On June 5th, we will also have tentatively
17 scheduled the Waimanalo Gulch matter.

18 On June 6th, we tentatively have scheduled
19 a virtual Zoom meeting for proposed rule amendments.

20 And on the 19th and 20th of June, we have
21 meetings on Maui for the Central Maui Landfill
22 status report and the A11-792 COM/DHHC status
23 report.

24 In July, on the 10th and the 11th, we have
25 tentatively scheduled commissioner training. That

1 will be on Oahu but location is undetermined right
2 now.

3 On July 24th, we will be on Maui for the
4 Emmanuel Lutheran status report.

5 August is currently open.

6 And then in September 11, 12, and 13 is
7 the HCPO on the Big Island.

8 And that takes us through the schedule to
9 October.

10 **CHAIR GIOVANNI:** Thank you.

11 Commissioners, any questions or comments
12 on the schedule?

13 Hearing none, our fourth order of business
14 is a status report and progress report on A92-683
15 Halekua Development Corporation (Oahu). The status
16 report is being presented by petitioners in the
17 Halekua docket.

18 At this point I'd like all the parties to
19 identify themselves for the record. And I'll start
20 with the petitioners.

21 Mr. Tabata, do you want to go first and
22 then we'll go down the line. And please introduce
23 who's with you.

24 **MR. TABATA:** Good morning, Chair, members
25 of the Commissioner. Curtis Tabata, Benjamin

1 Matsubara for Haseko. Also present to my left is
2 Haseko Vice President Peter Kwan.

3 **MR. MAU:** Good morning, Mr. Chair, and
4 Commission members. Steven Mau on behalf of
5 Robinson Kunia Land LLC.

6 **CHAIR GIOVANNI:** Is anyone with you?

7 **MR. MAU:** No. No one is here with me.

8 **CHAIR GIOVANNI:** Thank you.

9 **MS. LIM:** Good morning, Chair and
10 Commissioners. This is Jennifer Lim. I'm here
11 representing Ho'ohana Solar 1 LLC, the lessee of the
12 Robinson Kunia Land parcel. And to my left is Mr.
13 Larry Greene, and he is the Senior Vice President,
14 Project Development for the Ho'ohana Solar Company.

15 **CHAIR GIOVANNI:** Thank you.

16 **MR. LEE:** Good morning, Chairman and
17 Commissioners. Terry Lee, counsel for RK II
18 Partners. Also in attendance as co-counsel is
19 Derrick Kobayashi, and in attendance in the audience
20 is David Tanoë from R.M. Towill, who is our
21 consultant, and Eric Elkind, who is also co-counsel.
22 And Mike Wright, who is a consultant and principal
23 of RK II Partners. Thank you.

24 **CHAIR GIOVANNI:** Is that everyone for
25 petitioners?

1 Let the chair thank everybody for showing
2 up today. It's nice to see in complicated matter
3 where there's a lot of different interests that they
4 all show up. So thank you for that.

5 So let me turn now to the City and County
6 of Honolulu. Introduce yourself and your team.

7 **MR. ARIAS:** Aloha, Chair and
8 Commissioners. My name is Pono Arias, Deputy
9 Corporation Counsel on behalf of the city. With me
10 I have Dina Wong from the Department of Planning and
11 Permitting, and Patricia Sendao, Deputy Corporation
12 Counsel.

13 **CHAIR GIOVANNI:** Thank you very much.
14 From OPSD?

15 **MS. KATO:** Good morning. Allison Kato,
16 Deputy Attorney General for the Office of Planning
17 and Sustainable Development. Also here is Katia
18 Balassiano and Brandon Soo, who is actually new. He
19 just started a couple of months ago. He'll likely
20 be working on LUC matters going forward and so he's
21 just here for introduction purposes. That's him
22 right there.

23 **CHAIR GIOVANNI:** Welcome, Brandon.

24 **MS. NAGATA:** Good morning. Kelcie Nagata,
25 Deputy Attorney General for the Department of

1 Agriculture. With me at the table is Brian Kau.

2 And behind in the audience is Janice Fujimoto.

3 **CHAIR GIOVANNI:** Thank you very much.

4 I'd like now to describe and explain our
5 procedures for going forward.

6 First, I will ask if there are any
7 disclosures from the commissioners. Then I will
8 update the record.

9 Then, I will recognize the written public
10 testimony that has been submitted in this matter,
11 identifying the person or organizations who have
12 submitted the testimony.

13 Next, I will call for members of the
14 public who wish to testify on the status and
15 progress report. Each member of the public will
16 have two minutes to provide their testimony and
17 should stand by after their testimony to respond to
18 any questions from the parties or the commissioners.

19 When all questions have been completed,
20 the chair will excuse the witness and call the next
21 witness to enter the box. After completion of the
22 public testimony of the proceedings, the chair would
23 like the petitioners to provide their status report
24 beginning with Haseko, then Ho'ohana, and so on.

25 The chair will then call on the parties,

1 the Department of Agriculture, OPSD, and the
2 County's Planning Department for comments regarding
3 the status report. The petitioners will then be
4 allowed to respond to comments made by the county or
5 the Department of Agriculture and OPSD.

6 The commissioners will ask questions of
7 the parties at the conclusion of each of their
8 presentations. At the conclusion of the parties'
9 testimony and commissioners' questions, the public
10 will again be granted the opportunity to provide
11 public testimony in the same manner as set forth
12 previously.

13 Once testimony concludes, the Commission
14 will enter into deliberations regarding the status
15 report and to decide if any action is necessary.

16 Again, I want to remind everyone of two
17 things. When you are speaking, please introduce
18 yourself and name your affiliation and speak
19 directly and clearly into the microphone for
20 recording purposes.

21 And I will be calling short breaks on a
22 nominal hourly basis and then also for a lunch
23 break.

24 Does anyone that's been introduced have
25 any questions on the procedures for today?

1 Do any commissioners have any disclosures
2 to make at this time?

3 Seeing none, we'll proceed.

4 Please be informed that relevant records
5 and documents pertaining to this matter can be
6 accessed for review on the LUC website. The LUC
7 website is <https://luc.hawaii.gov/A92-683>.

8 Public testimony. For members of the
9 public, again, please be reminded that the
10 Commission will not be considering the merits of
11 this petition; rather, the Commission is interested
12 in learning about the current state of activities
13 related to the docket, including compliance with
14 conditions and will consider whether action is
15 necessary.

16 I will now recognize written public
17 testimony submitted in this matter identifying the
18 person or organizations submitting the testimony.

19 Ms. Kwan, has there been any written
20 testimony received?

21 **MS. KWAN:** No, Mr. Chair.

22 **CHAIR GIOVANNI:** Thank you.

23 Now I will call on any members of the
24 public to provide testimony on this agenda item.

25 Ms. Kwan, are there any members of the

1 public present who wish to testify?

2 **MS. KWAN:** We have two members who would
3 like to testify. First, we have Franky Rife.

4 **CHAIR GIOVANNI:** Mr. Rife, will you take
5 your place?

6 I would like you to give us your name and
7 address and then I'll swear you in before you
8 testify.

9 **MR. RIFE:** Good morning, everyone. Aloha.
10 My name is Franky Rife. I live at 94-847
11 Leia Street.

12 **CHAIR GIOVANNI:** Mr. Rife, do you swear
13 that the testimony you're about to give today will
14 be the truth?

15 **MR. RIFE:** Yes, sir.

16 **CHAIR GIOVANNI:** Okay. Please proceed.
17 You have two minutes.

18 **MR. RIFE:** Thank you.

19 Once again, good morning, everyone.

20 Aloha. My name is Franky Rife and I have lived in
21 Royal Kunia site 2099 for 19 years.

22 It is a wonderful neighborhood where I've
23 raised five children and plan on staying for the
24 rest of my life. I am in favor of the long-delayed
25 Royal Kunia II project. After passing through many

1 developers, I couldn't be any happier for the
2 community that it was Haseko that purchased the land
3 with the intent to develop much needed single, two-
4 family, multi-family units and mixed affordable
5 units, and middle-income units.

6 With Haseko's purchase of Royal Kunia II,
7 the long-await Royal Kunia Elementary School will
8 come to fruition taking enormous pressure off
9 Kaleiopuu Elementary School for many years of
10 overcrowding.

11 I've had the privilege to be a
12 subcontractor to Haseko Hawaii for the last 25 years
13 working in the Ewa Plains on their projects, Ocean
14 Pointe and Hoakalei. They have built an astonishing
15 beautiful community that is thriving and maturing
16 into one of the best, coveted neighborhoods in West
17 Oahu.

18 Haseko takes pride in their communities
19 and I am very glad that Royal Kunia II has ended up
20 in capable hands. Thank you very much.

21 **CHAIR GIOVANNI:** Thank you, Mr. Rife, for
22 your testimony. Please stand by for questions.

23 Do any of the petitioners have a question
24 for Mr. Rife?

25 **MR. TABATA:** Curtis Tabata. No questions.

1 **CHAIR GIOVANNI:** Thank you.

2 **MR. MAU:** Steven Mau, no questions.

3 **MS. LIM:** Jennifer Lim. No questions.

4 Thanks.

5 **MR. LEE:** Terry Lee. No questions.

6 **CHAIR GIOVANNI:** Thank you.

7 County, any questions?

8 **MR. ARIAS:** Pono Arias. No questions.

9 **CHAIR GIOVANNI:** Thank you.

10 OPSD, any questions?

11 **MS. KATO:** Allison Kato, no questions.

12 **CHAIR GIOVANNI:** Thank you.

13 Department of Agriculture, any questions?

14 **MS. NAGATA:** Kelcie Nagata, no questions.

15 **CHAIR GIOVANNI:** Thank you.

16 Commissioners, any questions or comments?

17 Thank you, Mr. Rife. You're excused.

18 **MR. RIFE:** Thank you.

19 **MS. KWAN:** Next I have Chris Delauney.

20 Delauney.

21 **CHAIR GIOVANNI:** Mr. Delauney, would you
22 please state your name and address and then I'll
23 swear you in?

24 **MR. DELAUNEY:** Sure. Chris Delauney on
25 behalf of Pacific Research Partnership, 1100 Alakea

1 Street, Honolulu, Hawaii.

2 **CHAIR GIOVANNI:** Do you swear your
3 testimony today will be the truth?

4 **MR. DELAUNEY:** I do.

5 **CHAIR GIOVANNI:** Please proceed. You have
6 two minutes.

7 **MR. DELAUNEY:** Pacific Resource
8 Partnership is a nonprofit organization representing
9 the Hawaii Regional Council of Carpenters and
10 approximately 250 contracts in the state of Hawaii.

11 We are in strong support of the Royal
12 Kunia Phase II project. As you know, in 2019, the
13 Hawaii Housing Planning Study found that the state
14 needs more than 50,000 homes to be built between
15 2020 and 2025, including affordable housing at the
16 120 percent AMI income rate.

17 This project will help to provide more
18 housing options for Hawaii residents at various
19 price points. The project will have a total of
20 1,850 homes. At least 30 percent of these homes
21 will be set aside for affordable housing. The phase
22 of the parcel, Parcel D, consists of 324 units of
23 which 68 of these units will be affordable homes.
24 We find that this project is important to complete.
25 It will bring a lot of benefits to Hawaii residents,

1 as well as it will create construction jobs for
2 Hawaii's residents paying them a living wage with
3 benefits.

4 These other types of jobs residents need
5 and give them the opportunity to afford Hawaii's
6 high cost of living, keep residents off of welfare
7 and other government assistance programs and
8 stimulates our economy and provides economic
9 stability for workers and their families.

10 Thank you for this opportunity to testify.

11 **CHAIR GIOVANNI:** Thank you very much.

12 Please stand by.

13 Mr. Tabata, any questions?

14 **MR. TABATA:** Curtis Tabata, no questions.

15 **CHAIR GIOVANNI:** Next?

16 **MR. MAU:** Steven Mau. No questions.

17 **MS. LIM:** Jennifer Lim, no questions.

18 **MR. LEE:** Terry Lee, no questions.

19 **CHAIR GIOVANNI:** Thank you.

20 County?

21 **MR. ARIAS:** Pono Arias, no questions.

22 **CHAIR GIOVANNI:** OPSD?

23 **MS. KATO:** Allison Kato, no questions.

24 **CHAIR GIOVANNI:** Department of Ag?

25 **MS. NAGATA:** Kelcie Nagata, no questions.

1 **CHAIR GIOVANNI:** Thank you all.

2 Commissioners, any questions?

3 Commissioner Okuda?

4 **COMMISSIONER OKUDA:** Thank you very much

5 for coming to testify here today. Your

6 organization, PRP, you basically have certain

7 expertise you believe in the area of development,

8 housing, and things like that. Is that a fair

9 statement?

10 **MR. DELAUNEY:** It's partially true. We

11 believe in responsible construction. We believe in

12 creating more affordable housing. We also believe

13 in creating more jobs, advocating for more jobs that

14 pay a living wage and benefits so our residents, our

15 local residents can afford the high cost of living

16 in Hawaii.

17 **COMMISSIONER OKUDA:** This projects dates

18 back as far as I can tell to the original findings

19 of fact were filed December 9, 1993.

20 Do you agree with that statement?

21 **MR. DELAUNEY:** I don't have that

22 information in front of me right now.

23 **COMMISSIONER OKUDA:** Yeah. But this

24 project has been pending, and forgive me because I

25 haven't had math since 10th grade of high school,

1 but I think that's like 30 years.

2 **MR. DELAUNEY:** Okay.

3 **COMMISSIONER OKUDA:** Yeah. You know, and
4 I'm asking you this because you come from an
5 organization that I believe has clear expertise and
6 experience in this area. The testimony you gave,
7 which I think is very strong testimony, when I
8 reviewed the prior findings that's basically what
9 the Commission 30-plus years ago was being told. In
10 other words, we have a really good developer here
11 Herbert Horita. He has a track record of building
12 projects. These are projects where local people,
13 you know, live and raise families. This project is
14 going to create jobs. This project is going to, you
15 know, be a positive thing for the community. And
16 then here we are 30-plus years later and, you know,
17 we're kind of hearing the same thing.

18 Based on your experience and your
19 organization's experience, what can the Land Use
20 Commission do to make sure that when housing for
21 local people are being promised and when jobs for
22 local people are being promised, it's actually going
23 to take place and we're not going to be here another
24 30 years later hearing that, oh, wow, we have the
25 Gary Okuda Development Company and you know, the

1 Gary Okuda Development Company, they're really going
2 to do the job. I mean, what can we on the
3 Commission do to make sure that promises are kept?

4 **MR. DELAUNEY:** Well, that's up to the
5 Commission really. It's not my position to kind of
6 dictate what the Commission should do. I think they
7 should listen to the petitioners and, yeah.

8 **COMMISSIONER OKUDA:** Do you think this is
9 a problem for the community where promises are made
10 and time shows that these promises aren't kept?

11 **MR. DELAUNEY:** Well, I'm just here
12 supporting the project and they're here today to
13 kind of explain their position. And it's a great
14 project and I think we need to build more housing
15 and this is what this project does. So I see this
16 project as a benefit. That's all I can speak to
17 right now.

18 **COMMISSIONER OKUDA:** Do you think it might
19 make sense that in the appropriate case -- I'm not
20 saying this is the appropriate case -- but in an
21 appropriate case that government agencies add as a
22 requirement the pulsing of a completion bond or a
23 bond so that if promises aren't kept the bonding
24 company will step in and complete the project as
25 promised to the community?

1 **MR. DELAUNEY:** I can't comment on that.

2 **COMMISSIONER OKUDA:** Oh, okay.

3 **MR. DELAUNEY:** Yeah.

4 **COMMISSIONER OKUDA:** I thought based on
5 your background you might be able to. But thank you
6 very much for coming and taking your time. I
7 appreciate it.

8 **MR. DELAUNEY:** Thank you.

9 **CHAIR GIOVANNI:** Thank you.
10 Commissioners, any other comments,
11 questions?

12 **CHAIR GIOVANNI:** Thank you, sir.

13 Any other public testimony sign up?

14 Okay. Now we'll proceed to the status
15 report. We're going to go in the following order:
16 Haseko, Ho'ohana, RK II Partners, and RKES.

17 So we'll start with Haseko. So Haseko,
18 will you please provide your status report?

19 **MR. TABATA:** Thank you, Chair. Curtis
20 Tabata for Haseko. We're going to start with our
21 first witness, Peter Kwan, who is sitting right here
22 to my left.

23 **CHAIR GIOVANNI:** Mr. Kwan, I'll need to
24 swear you in.

25 Will you please state your name and

1 address and affiliation?

2 **MR. KWAN:** Peter Kwan. Address 91-1001
3 Kaimalie Street, Suite 205, Ewa Beach, Hawaii 96706.
4 I am the vice president of site development for
5 Haseko.

6 **CHAIR GIOVANNI:** Do you swear your
7 testimony today will be the truth?

8 **MR. KWAN:** I do.

9 **CHAIR GIOVANNI:** Please proceed.

10 **MR. KWAN:** I do.

11 **CHAIR GIOVANNI:** Please proceed.

12 **MR. TABATA:** Peter, let's go over your
13 background real quick. What is your educational
14 background?

15 **MR. KWAN:** I have a Bachelor of Science
16 degree in Mechanical Engineering from the University
17 of Washington.

18 **MR. TABATA:** And do you hold any
19 professional licenses?

20 **MR. KWAN:** I do. I have a contractor's
21 license, classifications A, B, and C. And I am the
22 RME for all of Haseko's construction entities.

23 **MR. TABATA:** And could you briefly go over
24 your employment history prior to Haseko?

25 **MR. KWAN:** Sure. I started my career

1 working the first 25 years from 1988 to 2013 for
2 Hawaiian Dredging and Construction Company in their
3 heavy division working on a number of projects
4 across the state on all of the major islands. In
5 2013, I moved to Delta Construction where I started
6 off as director of operations and business
7 development, eventually becoming senior vice
8 president of operations. I left Delta in 2017 to
9 join Haseko. And I currently work in the site
10 development department, which basically we cover all
11 of the civil construction on all of our properties.

12 **MR. TABATA:** Thanks, Peter.

13 Let's go over Haseko's background real
14 quick. How long has Haseko been a developer in
15 Hawaii?

16 **MR. KWAN:** We have been a developer in
17 Hawaii since 1973.

18 **MR. TABATA:** And how many homes has Haseko
19 built and sold in Hawaii?

20 **MR. KWAN:** At last count it's
21 approximately 7,022 units.

22 **MR. TABATA:** And how many square feet of
23 commercial property has Haseko developed in Hawaii?

24 **MR. KWAN:** We have developed over 564,000
25 square feet of commercial space.

1 **MR. TABATA:** How many employees does
2 Haseko have in Hawaii?

3 **MR. KWAN:** We have 43 employees.

4 **MR. TABATA:** Thanks.

5 Let's turn to Royal Kunia II. Now, Haseko
6 acquired approximately 211 acres at Royal Kunia II
7 in 2020; is that correct?

8 **MR. KWAN:** That is correct.

9 **MR. TABATA:** Can you please describe for
10 us how Haseko came to the decision to acquire that
11 land at Royal Kunia II?

12 **MR. KWAN:** At our current project in Ocean
13 Pointe and Hoakalei we have about 800 to 900 more
14 residential units to go, as well as some other areas
15 of our property. We looked at the Royal Kunia II
16 project as a project that we could move on to and
17 continue to do what we do best, which is to build
18 residential housing for Hawaii.

19 **MR. TABATA:** Thank you, Peter.

20 Chair, is it okay if we share screen on
21 Zoom to show one of our exhibits?

22 **CHAIR GIOVANNI:** Yes. Please do.

23 **MR. TABATA:** Thank you.

24 This is Exhibit 6 from our motion which is
25 scheduled for tomorrow but we'd like to show it

1 today.

2 And Peter, could you share screen for us,
3 please?

4 And for the record, this is Exhibit 6 to
5 our motion scheduled for tomorrow. This is our --
6 it's called the Royal Kunia II Master Plan Phasing
7 showing our Master Plan.

8 Thank you, Peter.

9 Peter, could you please describe for us
10 how you came up -- how Haseko came up with this
11 Master Plan?

12 **MR. KWAN:** In our initial planning we
13 designated five different parcels of residential
14 homes, a mixture -- what was going to be a mixture
15 of single family and multi-family house-type units.
16 The first phase that we are going to do is what we
17 call our parcel D, which is in yellow in the lower
18 right-hand corner of the map. The reason it was
19 selected to be the first area is because of its
20 proximity to the existing Royal Kunia I subdivision
21 and existing streets and utility connections on
22 Anonui Street and Anoiki and also the surrounding
23 infrastructure around parcel D which hopefully you
24 can read the map, includes road Y, phase 1, which is
25 the extension of Anoiki Street to the north. Road

1 X, which is the east-west section just above parcel
2 D. And on the left of parcel D is what we call road
3 3, which is a north-south section that will also
4 provide the first connection to the industrial
5 parcel to our north.

6 In addition to this -- after this first
7 parcel here which will include 324 units, 260 single
8 family, 64 multi-family, there's a second component
9 to it just above called phase 1B. Those are 36
10 units of multi-family. These two phase combined, 1
11 and 1B, comprise our first 360 units which will
12 comprise our first phase of residential development
13 plus the roadways that support them.

14 The other phases -- we actually have other
15 parcels. We have parcels A, B, C, and E. But what
16 we did was, as you can see, those are actually
17 running north-south but what we did was we decided
18 to combine sections of these various phases so that
19 we can offer a variety of product in each of our
20 phases as we build them and sell the homes.

21 Phase 2 is the green section just above
22 and to the right of parcel D. That includes a
23 mixture of our parcels A, B, and C from left to
24 right and also the first section of what we call
25 road Z in green, which will ultimately go up to the

1 northern boundary of our property and provide a
2 future roadway connection to Robinson Kunia Land's
3 residential developments in the future.

4 The third phase is in orange, which is the
5 next section north of that. Again, a mixture of
6 parcels A, B, and C from left to right. From there
7 the plan was to move out towards Kunia Road into the
8 blue section which we call our parcel E and would
9 also include the development of the park which is
10 under note 16. That is about a 5-1/2 acre park that
11 would be located immediately north of the school lot
12 that's currently owned by RKES.

13 The final phase is in pink up in the upper
14 right-hand corner of the development, phase 5, which
15 will be the final units. Again, this will be a
16 mixture across parcels B and C at the top and it
17 will complete our roadway connection and utility
18 provisions to Robinson's lands for the future.

19 **MR. TABATA:** Thank you, Peter.

20 Peter, let's talk about our MOU with the
21 Department of Agriculture.

22 Chair, we would like to now share a
23 screen, Exhibit 9 from our motion which is the Fifth
24 Amendment to Amendment of Restatement of Memorandum
25 of Understanding dated January 10, 2024, between

1 Haseko and Department of Agriculture, which I shall
2 refer to as DOA.

3 Is that okay, Chair?

4 **CHAIR GIOVANNI:** Please proceed.

5 **MR. TABATA:** Thank you.

6 Yes, please bring up -- no.

7 **CHAIR GIOVANNI:** Exhibit 9?

8 **MR. TABATA:** Exhibit 9. Yes.

9 Actually, Peter, can you just describe for
10 us -- we'll actually need to share a screen on a
11 different exhibit later, Exhibit 1. But could you
12 describe for us --

13 **CHAIR GIOVANNI:** Mr. Tabata, so we're not
14 going to put up Exhibit 9 at this time?

15 **MR. TABATA:** Correct. It's -- just before
16 we do it that the exhibit that we're talking about
17 right now.

18 **CHAIR GIOVANNI:** Very well.

19 **MR. TABATA:** So Peter, could you describe
20 for us your understanding or the purpose of the MOU?

21 **MR. KWAN:** Peter Kwan. Our MOU with the
22 Department of Agriculture covers our obligations to
23 provide irrigation infrastructure, temporary
24 infrastructure, an interim infrastructure, and a
25 permanent infrastructure for the Department of

1 Agriculture's property. The irrigation
2 infrastructure includes a non-potable water line
3 that is coming down from the 665-foot reservoir. I
4 think it's also called Reservoir 225 if I'm not
5 mistaken, which is further north, just south of the
6 Hawaii Country Club Golf course. A 12-inch non-
7 potable irrigation line has been installed. It will
8 include a mechanical pump with electrical power.
9 That is still part of the project to be installed
10 that will carry --

11 **MR. TABATA:** Excuse me, Peter.

12 Chair, actually, we need -- we would like
13 to share a screen, Exhibit 1 from our motion which
14 is our Petition Area Map. And that will help show
15 where these infrastructure are located on the
16 project.

17 **CHAIR GIOVANNI:** Very well. So we'll put
18 up Exhibit on the screen. And Mr. Kwan, you'll be
19 speaking -- since we're just putting it up now would
20 you identify where the items 1 and 2 are located?

21 **MR. TABATA:** Thank you.

22 Peter, could you again describe for us the
23 location of the irrigation infrastructure?

24 **MR. KWAN:** Peter Kwan.

25 On the left side of the map we have a call

1 out for the irrigation lines originating at
2 Reservoir 225. It is represented by the blue line
3 that is running down along the east side of Kunia
4 Road from north to south. And it runs down to the
5 northwest corner of the Department of Agriculture's
6 agricultural park. A 12-inch line is being run to
7 that point from which the Department of Agriculture
8 will be able to draw non-potable water for
9 irrigation purposes for their property.

10 **CHAIR GIOVANNI:** I mean, is Ag Park shown
11 on this?

12 **MR. KWAN:** Yes. Excuse me.

13 The first property on the upper left-hand
14 corner in blue is the DOA Agricultural Park TMK 9-4-
15 002-080.

16 **CHAIR GIOVANNI:** Thank you for that
17 clarification.

18 **MR. TABATA:** And Peter, looking at the
19 same map, if you could scroll down just a little bit
20 and describe the location of the Haseko properties.

21 **MR. KWAN:** Peter Kwan. Haseko's property
22 is in orange on this map. It runs all the way from
23 Kunia Road on the west side up to -- it's bordered
24 by RK II Partners' property in yellow who is on our
25 north, and we run all the way to the east in the

1 orange. And we abut Robinson Kunia Land's parcel 52
2 which is in green wrapped around the upper boundary
3 of our property.

4 **MR. TABATA:** Thank you.

5 And in the MOU there is a permanent
6 infrastructure described; correct?

7 **MR. KWAN:** That's correct.

8 **MR. TABATA:** And could you describe for
9 the Commission the location of the permanent
10 infrastructure line?

11 **CHAIR GIOVANNI:** Mr. Tabata, Mr. Kwan,
12 just to clarify. Originally, Mr. Kwan, you said
13 there were three parts to the MOU. You described
14 two of them but not the third. Is this the third
15 coming forward now or --

16 **MR. KWAN:** This is the second.

17 **CHAIR GIOVANNI:** The second was the pump.

18 **MR. KWAN:** No. The first was the
19 irrigation infrastructure. And that's comprised of
20 the 12-inch pipe, the water line and the pump.

21 **CHAIR GIOVANNI:** That's number one?

22 **MR. TABATA:** That's number one.

23 And so the pump is located next to the
24 reservoir. I believe it's 225. And that's the
25 source. And then the pump then sends the water down

1 the pipe to the ag part. So the irrigation
2 infrastructure is number one.

3 Number two is the permanent
4 infrastructure, which is required to be built by
5 September of 2028, September 30th.

6 And Mr. Kwan can show the Commission the
7 location of the permanent infrastructure.

8 And Peter, it might be more helpful to
9 show Exhibit 6 again because that shows the location
10 of road Y.

11 Thank you, Peter. If you could, use your
12 cursor and show the location of road Y, which is the
13 location of the permanent infrastructure line.

14 **MR. KWAN:** Hopefully, you folks can see it
15 on the screen. I have my pointer currently at the
16 top of the existing Anonui Street at the lower
17 right-hand corner of the yellow. I'm trying to
18 wiggle it here so we can see.

19 The permanent infrastructure for the
20 Department of Agriculture that as Curtis mentioned
21 is due on September 30, 2028, will go up what we
22 call our road Y, which is basically the extension of
23 Anonui Street to the north. It'll run through our
24 major intersection in our residential development
25 here and continue on north up the yellow path that

1 you see, all the way to this point here where we
2 have a side access road that will go up to the,
3 actually what's the Robinson property across a short
4 easement to the boundary of the department of
5 agriculture's property. This road Y will be a paved
6 access. It will be a public roadway and it will
7 include potable water, gravity sewer, electrical
8 lines, and communication lines for the Department of
9 Agriculture.

10 **MR. TABATA:** Thank you, Peter.

11 Chair, were you able to see where road Y
12 is located?

13 **CHAIR GIOVANNI:** Yes, I was.

14 Commissioners, anybody else want further
15 clarification? My only question, the permanent
16 infrastructure is underground?

17 **MR. TABATA:** Yes, Commissioner. Yes,
18 Chair, that's correct.

19 **CHAIR GIOVANNI:** Thanks. Please proceed.

20 **COMMISSIONER OHIGASHI:** Yeah, I just -- I
21 just wanted to know --

22 **CHAIR GIOVANNI:** Commissioner Ohigashi.

23 **COMMISSIONER OHIGASHI:** Yeah. I just
24 wanted to know if using Exhibit 1 and 6, if you can
25 give me an idea which -- where this -- where Exhibit

1 6 is located within Exhibit 1.

2 **MR. TABATA:** Okay. Thank you.

3 **COMMISSIONER OHIGASHI:** It's on the orange
4 section I know but I'm just trying to --

5 **CHAIR GIOVANNI:** So let's put up Exhibit
6 1. And when it comes up, please describe what
7 portion of that is represented by Exhibit 6.

8 **COMMISSIONER OHIGASHI:** Just to get the
9 idea of where that road Y is going to go to.

10 **MR. TABATA:** Understood. Thank you.

11 **COMMISSIONER OHIGASHI:** Is it the pink or
12 is it the --

13 **CHAIR GIOVANNI:** Thank you, Commissioner.
14 That's an excellent point.

15 **MR. TABATA:** Let me go up there and just
16 point on it.

17 Peter, if you could bring up Exhibit 1 and
18 let me know if I'm pointing at the correct area.

19 The road goes up to the green property.
20 Around the Robinson Kunia Land LLC. Is that what
21 you're saying?

22 **MR. KWAN:** Mr. Vice Chair, it goes up to
23 the like right-hand corner and that angled section
24 of the Department of Agriculture's property in the
25 blue, which is the blue section. That is road Y

1 more or less. Yes. And it goes up along and it
2 cuts over and connects to the Department of
3 Agriculture's property along that angled corner
4 there.

5 **CHAIR GIOVANNI:** We're good. So when Mr.
6 Tabata gets back to his seat you may resume.

7 **MR. TABATA:** Thank you, Peter.

8 The third category of infrastructure is
9 the temporary infrastructure. So as we were
10 negotiating with DOA, we were informed that 2028 was
11 too late for what they needed. And what they needed
12 first was functional electrical power and potable
13 water for agriculture. I believe washing tools but
14 for agriculture. And they needed that by 2025. So
15 we have until the end of 2025 to provide those two
16 temporary infrastructure. So we're going to have to
17 build a new line. Road Y is not going to be built
18 by 2025 so there's going to be a totally separate
19 line for electricity and potable water. And I
20 believe the location of that line has not yet been
21 determined. We need to work with Hawaii Electric,
22 Board of Water Supply, so we're working on it.

23 Peter, is there anything else to add about
24 the temporary infrastructure?

25 **MR. KWAN:** No. That's correct.

1 **CHAIR GIOVANNI:** Would that be above
2 ground?

3 **MR. KWAN:** The temporary infrastructure
4 will most likely be above ground.

5 **CHAIR GIOVANNI:** Thank you.

6 **MR. TABATA:** I believe that's it. Mr.
7 Kwan is available for questions.

8 **CHAIR GIOVANNI:** Thank you.
9 Commissioners, any questions for Mr.
10 Tabata or Mr. Kwan?

11 **COMMISSIONER YAMANE:** Mr. Chair?

12 **CHAIR GIOVANNI:** Mr. -- Commissioner
13 Yamane?

14 **COMMISSIONER YAMANE:** Thank you.
15 Just a question of the temporary
16 infrastructure. Do you know where the nearest
17 location of permanent electrical infrastructure and
18 water to the site?

19 **MR. KWAN:** Peter Kwan. Yes. We currently
20 have options for power. And again, our electrical
21 consultants are working directly with HECO on this
22 matter. I guess we have a couple of options.

23 There is existing power stubbed out on
24 Anonui Street. It's also available along Anoiki
25 Street which runs along the southern boundary of our

1 property. But they have also mentioned that they
2 want to bring it in directly from Kunia Road. We're
3 not sure what that would entail on how to get across
4 Kunia Road but I guess we'll be working on those
5 details if that becomes a viable option.

6 For water, there is, at least for now for
7 a temporary lead, there is a temporary meter on an
8 existing fire hydrant at the end of the existing
9 Anonui Street that can be utilized and connected to
10 take water up to hopefully the nearest point on the
11 Department of Agriculture's property to provide the
12 potable water.

13 **COMMISSIONER YAMANE:** Thank you. No more
14 questions, Mr. Chair.

15 **MR. TABATA:** Thank you.

16 **CHAIR GIOVANNI:** Thank you.

17 Commissioner Ohigashi?

18 **COMMISSIONER OHIGASHI:** I'm not sure if
19 this is for the DOA or yourself. My question is
20 really why 2025?

21 And the second part is what if you don't
22 meet the 2025 deadline? What things will happen or
23 what consequences will happen? I'm not talking
24 about between you and DOA but what are the
25 consequences if you don't meet the 2025 deadline?

1 Should it be through the DOA?

2 **CHAIR GIOVANNI:** Well, I'd like to hear it
3 from both parties. So when we get to DOA why don't
4 you ask that question again?

5 **COMMISSIONER OHIGASHI:** Okay.

6 **CHAIR GIOVANNI:** I'll remember for you if
7 you forget.

8 **MR. TABATA:** 2025 is -- DOA determined
9 that so they can speak to, you know, why 2025.

10 As far as what happens if we don't meet
11 the deadline, we have an agreement. That's all I
12 can, I mean, I don't want to lay out their complaint
13 at Circuit Court against us. But we have an
14 agreement. I believe it's enforceable. And
15 there's, you know, and there's bonding, too. But I
16 believe the bonding is tied to the permanent
17 infrastructure but, you know, I mean, I believe it's
18 an enforceable agreement so, you know, I'll leave it
19 -- I'll leave it at that.

20 **CHAIR GIOVANNI:** So I think you kind of
21 spoke to the potential consequences in a legal sense
22 or financial sense. But when we hear from DOA, we'd
23 like to know -- I'd like to know what if they don't
24 get the water and electricity? What happens at the
25 Ag part? So I would like to hear that so that's

1 kind of an upfront question to DOA when it's their
2 turn. Okay?

3 So my question following on Commissioner
4 Yamane, do you have clarification on the quantity of
5 power and water that would be needed on a temporary
6 basis or is that still under negotiation as well?

7 **MR. TABATA:** No, they did provide that for
8 us.

9 **CHAIR GIOVANNI:** So you have it.

10 **MR. TABATA:** Peter, can you speak to that?

11 **MR. KWAN:** Yes. The Department of
12 Agriculture has provided the loads that they need to
13 service.

14 **CHAIR GIOVANNI:** Great.
15 Commissioners, anything further?
16 Commissioner Okuda?

17 **COMMISSIONER OKUDA:** Thank you very much,
18 Mr. Chair.

19 Mr. Tabata or Mr. Matsubara, if you
20 believe you're better suited to answer these
21 questions you can do so also.

22 Just to frame my question, the question
23 I'm going to be asking now goes to the issue of
24 whether or not there's been substantial commencement
25 of the use of the property as that term has been

1 defined in the Bridge Analia case. I'm not saying
2 that there's going to be an attempt to revert the
3 land or the property back to prior boundary
4 designations but I'm just trying to see where we
5 are.

6 The amended findings of fact and
7 conclusions of the law and the decision and order
8 which was filed October 1, 1996, at paragraph 25
9 laid out what the intended use ultimately of the
10 property is. And just so that we're clear about the
11 property, Haseko owns only now a portion of the
12 overall property or parcel which was subject to this
13 boundary amendment and docket; correct?

14 **MR. TAKATA:** Yes.

15 **COMMISSIONER OKUDA:** Okay. And the
16 decision and orders which spell out or set forth
17 certain conditions and the findings of fact and
18 conclusions of law which document the
19 representations that were made to the Land Use
20 Commission, do you agree that the decision and
21 order, the findings of fact, the conclusions of law
22 are encumbrances on title?

23 **MR. TABATA:** It runs with the land. Yes.

24 **COMMISSIONER OKUDA:** Okay. And the term
25 "runs with the land" that we lawyers use means that

1 whoever goes and obtains an interest in the
2 property, unless those encumbrances or items are
3 released, are subject to and have to follow those
4 encumbrances; correct?

5 **MR. TABATA:** That's correct.

6 **COMMISSIONER OKUDA:** And we don't have to
7 get into the details of what the legal effect is of
8 encumbrances that run with the land but one of the
9 cases that lay out these rules which again we don't
10 have to go over is the Waikiki Malia Hotel, Inc. vs.
11 Kinkai, K-I-N-K-A-I Properties' case. That's the
12 1993 Hawaii Supreme Court Case. I think it's found
13 at 75 Hawaii reports 370.

14 Does that case ring a bell to your mind?

15 **MR. TABATA:** That is not one of the cases
16 I briefed for the hearings.

17 **COMMISSIONER OKUDA:** Okay. Okay. Well,
18 anyway, so going to, you know, what, for example,
19 the amended findings of fact stated, there was a
20 list at paragraph 25 of what the Land Use Plan
21 consisted over the petitioner's revised Land Use
22 Plan was. And it provided for the construction of
23 1,250 single family residential units occupying
24 290.8 acres.

25 How many of those single family units have

1 been built as of today?

2 **MR. TABATA:** The residential units, none
3 of them have been built yet.

4 **COMMISSIONER OKUDA:** Okay. And then at
5 paragraph 25 there's a statement that there would be
6 750 low-density apartment units built covering 70.3
7 acres.

8 How many of those low-density apartment
9 units have been built as of today?

10 **MR. TABATA:** None. But I think I can cut
11 to the chase and answer your question about
12 substantial commencement.

13 **COMMISSIONER OKUDA:** Okay. Just bear with
14 me because I'm only going to ask three more
15 questions. I just want to confirm that the acreage
16 designated for light industrial use, which was 123.7
17 acres, none of that has been used for light
18 industrial at this point in time. Is that correct?

19 **MR. TABATA:** I cannot speak for the
20 industrial property but I don't think so.

21 **COMMISSIONER OKUDA:** Okay. And we don't
22 have 8 acres of school or 11.1 acres for a public
23 park; correct?

24 **MR. TABATA:** That's my understanding.
25 What we do have, Commissioner, is all the effort and

1 money that we've spent, Haseko has spent after they
2 acquired the land in 2020. And I know there's maybe
3 a disagreement about what constitutes substantial
4 commencement. Some people may believe it only
5 relates to vertical construction, okay, but I don't
6 agree with that. I believe it includes soft costs,
7 like engineering and planning and design and
8 permitting. If you add them all up for a project of
9 this magnitude it's significant. We're talking tens
10 of millions of dollars since 2020 after we bought
11 the property. So if you're looking at the Bridge
12 Aina Le'a case and the wording in that case about
13 what is substantial commencement, and they talk
14 about the legislative history about what the purpose
15 of 2054G was, will allow for the town's owning of
16 land, it was basically to prevent land speculation.
17 Okay? They don't want land banking. And that's not
18 what we're doing here. That's why we went over
19 Haseko and how many employees they have, how long
20 they've been here. They're developers. They're not
21 land bankers. They don't speculate. They have too
22 much overhead to just be sitting on land. They need
23 to develop, build, and sell. And that's what
24 they're doing.

25 So to answer your question, yes, we have

1 substantially commenced and it's because we've spent
2 a lot of money since we've bought the land and we're
3 proceeding. We're not speculating. And you know,
4 that's our response.

5 **COMMISSIONER OKUDA:** Do you believe that
6 whether or not substantial commencement as that term
7 is used in the Bridge Aina Le'a case has taken place
8 or not taken place is a factual determination to be
9 made by the Land Use Commission as the designated
10 government agency? In other words, it's a finding
11 or fact, or it would be factual finding, whether it
12 took place or did not take place?

13 **MR. TABATA:** I think it may be a
14 conclusion of law or a mixed question of fact and
15 law. It's a statutory term and it's based upon
16 facts relating to a developer's efforts to actually
17 build a project. So what would clearly be facts
18 would be the amount of money that they spent
19 designing, engineering, constructing, permitting,
20 everything expended, including time and effort to
21 develop the project. So I'm not sure. I'm thinking
22 it's a question of law, conclusion of law.

23 **COMMISSIONER OKUDA:** Do you know any case
24 that says that determination which seems to be a
25 factual determination, is in fact a conclusion of

1 law, not a finding of fact which the Land Use
2 Commission using its discretion would make?

3 **MR. TABATA:** You know, the reason why I
4 think it's a conclusion of law is that, you know,
5 just as I had to explain that there's differences of
6 opinions of what may constitute substantial
7 commencement. Okay? And that requires a person
8 like you and me to go read the Bridge Aina Le'a
9 case, dissect it, try to understand it, and make
10 sense of it. And that requires basically lawyer
11 work. Okay? And that's why I think it's legal, a
12 legal question. So if you ask the witness did you
13 substantially commence, I figure I would have to
14 object that it calls for a legal conclusion because
15 how would he know? I know he hasn't gone through
16 the Bridge Analia case and dissected it and given it
17 a legal analysis.

18 So I mean, I don't know if Bridge actually
19 said it's a conclusion of law or a legal question
20 but I believe -- I believe it may be a legal
21 question.

22 **COMMISSIONER OKUDA:** Okay. Let me shift
23 gears a bit. And my next question is not intended
24 to be a criticism of any agency or anything like
25 that. And let me state for the record that I think

1 our dear friend Dawn Takeuchi Apuna appeared for
2 many, many years as deputy attorney general
3 representing the Office of Planning has really tried
4 to do an outstanding job down at DPP. So my next
5 question is not intended to be a criticism of anyone
6 at DPP or anything like that.

7 But if you could have just as a
8 suggestion, and this is again not pointing fingers
9 or anything, if there are one, two, or three things
10 which you could have the DPP do, and again, not
11 saying anybody's going to ignore the law, cut
12 corners or do anything illegally, okay, that's not
13 the purpose of this question. But if there are one,
14 two, or three suggestions you would have to maybe
15 ease the burden if Haseko is going forward with this
16 project what would be the suggestions that you would
17 make to maybe kind of assist the compliance with
18 law, for example, with DPP?

19 **MR. TABATA:** To be honest, I don't know.
20 I mean, I have full confidence in Dawn. I've known
21 her for years. I think she's doing a great job over
22 there. She's got a difficult job at DPP. So I
23 trust her that she's going to run her department as
24 efficiently as possible.

25 **COMMISSIONER OKUDA:** Okay. And my final

1 question, and this is maybe -- and if you don't want
2 to comment because we have your hearing tomorrow,
3 but if you had any suggestions, again, not to
4 subvert the law or do any backdoor deals or anything
5 like that, on how the Land Use Commission could be
6 more responsive to people like Haseko. Do you have
7 any one, two, or three suggestions?

8 **MR. TABATA:** Again, I mean, I think the
9 commissioners, everybody here, I think, you know,
10 with all of our experience we understand how
11 difficult it is to do one of these projects. I
12 mean, this project has been, you know, it's taken a
13 while to get to this point. Everybody is doing
14 their best I think. I'm thoroughly impressed with
15 the people in this room and how they do their work
16 so I don't have any specific recommendations. No.

17 **COMMISSIONER OKUDA:** Okay. And just a
18 technical point so that maybe we don't have to re-
19 ask the same questions tomorrow. Do you believe
20 that what's stated and what's testified in this room
21 here today, not only from Haseko but from everyone
22 else forms part of the record which can be
23 considered with any further proceedings including
24 what takes place tomorrow?

25 **MR. TABATA:** I believe so. Yes.

1 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

2 I have no further questions.

3 **CHAIR GIOVANNI:** Thank you, Commissioner

4 Okuda.

5 Commissioner Ohigashi?

6 **COMMISSIONER OHIGASHI:** Mr. Tabata, this

7 project is a very difficult project to follow.

8 Right? The problem is that we have one boundary

9 amendment, findings of fact, conclusions of law that

10 deals with, what is it, six different areas under

11 different ownerships of -- was it five or six

12 different areas? Anyway, different ownership. And

13 each project has been doing things on either their

14 particular parcel or -- and has plans for the future

15 for that.

16 The question that I have for you is that

17 essentially a future maybe question or maybe

18 regarding this question, is it -- should petitions

19 or land use petitions be such of a large magnitude

20 in the petition? Or should they try to limit or be

21 bifurcated at the time of filing to make sure that

22 this type of multilevel projects which makes it

23 difficult for everybody to follow and what standards

24 that we have to meet. I notice in some of the

25 filings that were made there are certain conditions

1 that it's not their responsibility so they're not
2 required to report on that. And there's certain
3 that the other people are required to report on
4 that. So my question to you is, essentially, is
5 this just too big a boundary amendment to really
6 understand, to grapple, and to get a hold of and to
7 really manage?

8 **MR. TABATA:** Well, you know, if a project
9 like this were to come at you in pieces then you may
10 have questions about what is this landowner going to
11 do? Or what is, you know, what are their
12 obligations and how -- and if they're interacted and
13 they're connected I can imagine a lot of questions
14 will come. And you know, one landowner bringing a
15 petition with just that landowner's portion just may
16 not be able to answer all your questions.

17 The EIS for example probably need to
18 include everything; right? So you know, since
19 they're -- so when they bring the EIS, the proposed
20 filing EIS or EA to you for consideration, you're
21 going to have questions about everything. And then
22 they're going to need to be able to answer your
23 questions and so forth. So I see the attractiveness
24 in just bringing a portion. I would like to do
25 that. That'll be easier, I think, but I can see the

1 practical difficulties in trying to do it piecemeal.

2 **COMMISSIONER OHIGASHI:** So would it be a
3 good idea or something to consider bifurcating this
4 particular matter?

5 **MR. TABATA:** You know, that would be, you
6 know, that would be like divorcing after decades of
7 marriage. I mean, there's so many issues. And you
8 have multiple landowners. We've got four different
9 landowners. I mean, I don't want to come here and
10 then they're fighting. You know, we file a motion
11 to bifurcate and they fight us; right? I mean,
12 that's going to be a mess. So I mean, I understand
13 the idea and, you know, we'd have to think about it
14 internally and then discuss it with the other
15 landowners if that's something they're interested
16 in. It's definitely going to cost more in
17 attorneys' fees. Nobody likes to pay those; right?
18 So it's to be determined I think if that's a good
19 idea or something that's even agreeable to the
20 landowners.

21 **COMMISSIONER OHIGASHI:** Thank you, Mr.
22 Tabata. I just was -- these are the things that
23 come to mind when I was reading all the different
24 documents in this matter.

25 And the other thing, too, is that I don't

1 mind attorneys' fees being paid to you by somebody
2 else.

3 **MR. TABATA:** Understood. Thank you.

4 **CHAIR GIOVANNI:** Commissioners?

5 I have one question. It's a hypothetical.
6 It's a very general question. It's not specific to
7 the particular project and it's for Mr. Kwan.

8 Mr. Kwan, everybody, and I mean the
9 residents, citizens, policymakers, et cetera, are
10 looking for where's the vertical construction. I
11 understand that. And I presume that you get asked
12 that all the time in your business. When are we
13 going vertical? But I'm also struck by the
14 incredible challenge that developers like Haseko
15 have with all the upfront work that needs to be done
16 on infrastructure and permitting and coordination.
17 If somehow that challenge could be relieved or
18 softened, can you envision a way that that can be
19 done in such that it would make your part of the job
20 in getting these things going vertical sooner,
21 faster, better?

22 **MR. KWAN:** Peter Kwan. Since we purchased
23 the property through today, you know, we've been
24 working on a number of things that have to be done
25 before we can get to the commencement of vertical

1 construction. And actually, one of the precedents
2 to that is even the infrastructure construction.
3 You know, even mass grading before that in building
4 the roadways and extending the existing utility
5 system up into our development. You know, all those
6 things have to take place first before we start
7 doing the site work for the areas that we will
8 actually be building homes for.

9 And again, probably kind of repeating
10 Commissioner Okuda's comments, you know, it's not
11 meant to point a finger at anybody or put any blame
12 anywhere. You know, we have a system. You know, we
13 try our best to work within it. We know we have to
14 do a lot of planning. You know, we do a lot of
15 conceptual planning. We try to lay out our site,
16 lay out where the roadways are going to be, how
17 we're going to distribute the homes within the
18 residential areas. And even how we're going to do a
19 mix of various types of homes within those areas.
20 It takes a lot of planning. Once we can come to
21 decisions on that, obviously we will get into design
22 and have our, you know, civil consultants doing,
23 designing our roadways and utilities and
24 infrastructure. Our architects designing the
25 various types of models and units that we will be

1 building to be homes. You know, part of that --
2 that takes time. And then we also know there's also
3 subdivision actions that have to take place. And
4 then obviously, the permitting aspect of it where we
5 try to make sure we get all of our grading,
6 trenching, building permits approved and in place
7 before we start construction. You know, I can go on
8 and on about those steps but most of you are
9 probably familiar with that.

10 You know, what we've been trying to do is
11 try to get our plans in place and set as soon as
12 possible so that we can direct our consultants to
13 start actual design work which we have been doing.
14 For the purpose of getting permit plan sets in for
15 permitting with DPP and whatever other agencies need
16 to review them as quickly as possible, and also
17 trying to insert enough time in our master schedule
18 to account for a reasonable amount of permit review
19 and approval time to try and hit the dates that
20 we're setting in the future where we're going to
21 commence with vertical construction, build the
22 homes, and then go ahead and plan for, you know,
23 certificates of occupancy and ultimately closings on
24 our homes and have people start moving in.

25 So I don't know if that really answers

1 your question, Mr. Chair, but we've been trying to
2 work within, you know, what we're very experienced
3 with in terms of how long things take doing the best
4 we can. We have a well laid out and detailed
5 schedule for our development. Actually, for all of
6 our properties, and we try to incorporate, utilize
7 all of our experience to hit our deadlines so we can
8 start delivering homes as soon as is practically
9 possible.

10 **CHAIR GIOVANNI:** I want to thank you for
11 that because I'm not sure everyone in the world
12 appreciates all the work and the time and the cost
13 that goes in upfront before you can go vertical.
14 But you've described part of it.

15 I don't know how to remedy that situation.
16 We have a system in Hawaii and we try to do the best
17 we can. And Haseko has formed in its own way very
18 well.

19 My question related -- last question
20 related to that is everything you describe has a
21 cost. Is it true that that cost somehow has to be
22 recovered through the pricing of the residential
23 properties that are for sale?

24 **MR. TABATA:** Yes. That is correct.

25 **CHAIR GIOVANNI:** And doesn't that put a

1 greater challenge on actually delivering homes on an
2 affordable basis?

3 **MR. TABATA:** It does. But I think that's
4 why it's important that we have a mixture of, you
5 know, market priced homes. You know, I guess what
6 you call workforce housing homes. And also the
7 required percentage of affordable homes mixed in as
8 well so that hopefully overall, you know, once at
9 the end when everything's been sold we manage to
10 cover our costs and make enough money to stay in
11 business so we can continue to produce homes for
12 Hawaii.

13 **CHAIR GIOVANNI:** Fair enough. Thank you.
14 Anything further, Commissioners?
15 Commissioner Lee?

16 **COMMISSIONER LEE:** Thank you, Chair.
17 Since you brought it up, there is, as you
18 all know, an alternative method which is that the
19 government provide the infrastructure instead of the
20 marginal developer being required to assume the cost
21 of all of that. If there's state planning, if
22 there's county planning - Kakaako is one example of
23 that. They spent \$250 million for infrastructure
24 and then look at it now. You know, it still took a
25 lot of time but it took a lot of the cost and

1 uncertainty off of the developer. So I just wanted
2 to share that. Thank you.

3 **CHAIR GIOVANNI:** Thank you, Commissioner
4 Lee. That's exactly where my mind was going for
5 those who couldn't read my mind.

6 I'm going to take a break at this time.
7 It is 10:44. We'll come back at 10:55, 11 minutes.

8 **(Recess taken from 10:44 a.m. to 10:55**
9 **a.m.)**

10 **CHAIR GIOVANNI:** It's 10:55. We're back
11 on the record.

12 Let's go to Ho'ohana Solar.

13 Ms. Lim?

14 **MS. LIM:** Thank you, Chair.

15 Good morning once again, Commissioners. I
16 am Jennifer Lim representing Ho'ohana Solar 1 LLC.
17 I assume that you've seen it but I'll just mention
18 it for the record. We did submit a voluntary status
19 report in anticipation of this hearing, and that was
20 on March 18, 2024. And in that status report we've
21 tried to provide the Commission updates on --

22 **CHAIR GIOVANNI:** Please speak directly
23 into the mic.

24 **MS. LIM:** I'm going to move it closer.

25 **CHAIR GIOVANNI:** Yeah. Please do.

1 **MS. LIM:** Updates on our compliance with
2 the B conditions. As the Commission is familiar,
3 when the decision and order came out in November of
4 2021, it set forth two separate sets of conditions.
5 The A conditions apply to the landowners. We are
6 not a landowner. We are a lessee. And the B
7 conditions apply to the solar farm developer, who is
8 the lessee on parcel 52. So that's why the status
9 report that we submitted addresses the B conditions.

10 So I want to be respectful of everybody's
11 time. I'm not going to obviously read through the
12 status report that you've all had a chance to look
13 at but I'll touch on some highlights. I also want
14 to remind the Commission that I have Mr. Greene here
15 with me who's been working on this project for
16 years, and certainly there will be times where you
17 may have detailed questions about project
18 development and I think Mr. Greene would be better
19 suited to answer some of those questions.

20 **CHAIR GIOVANNI:** Well, let's take this
21 moment to introduce -- reintroduce Mr. Greene and
22 let me swear you in.

23 **MR. GREENE:** Hello. This is Lawrence
24 Greene.

25 **CHAIR GIOVANNI:** And your affiliation?

1 **MR. GREENE:** I am senior vice president
2 with 174 Power Global, which is the owner of the
3 Ho'ohana Solar 1 Company.

4 **CHAIR GIOVANNI:** And do you swear your
5 testimony today will be the truth?

6 **MR. GREENE:** Yes, I do.

7 **CHAIR GIOVANNI:** Okay. Ms. Lim, please
8 proceed.

9 **MS. LIM:** Thanks, Chair.

10 So let me just, like I said, touch on some
11 of the highlights on Ho'ohana's satisfaction of
12 conditions. And I'm not going to follow them in
13 number sequence because I think probably condition 1
14 and condition 5 would be of most interest to the
15 Commission, but of course, we can go over all of the
16 conditions.

17 So when I say condition 1, I'm talking
18 about condition B1. And condition B1 required that
19 if the solar farm were to go forward that the solar
20 farm developer, concurrent with construction of the
21 solar farm, would provide a non-potable water line
22 that ran from Reservoir 225 down to the top of the
23 Department of Agricultural -- excuse me, Department
24 of Agriculture property that we saw from Mr.
25 Tabata's exhibits earlier today. Condition B1 also

1 required that Ho'ohana as a solar farm developer
2 obtain from our lessor, Robinson Kunia Land, a
3 nonexclusive easement in favor of the Department of
4 Agriculture for that water line.

5 So I'm happy to report that the water line
6 was completed. The water line runs from the
7 reservoir down to the boundary of the Department of
8 Agricultural property. And as we filed this exhibit
9 I called them H1, H2 for Ho'ohana. Exhibit H1 is
10 the Non-exclusive Easement that was granted from
11 Robinson Kunia Land as the landowner to Department
12 of Ag.

13 And just so that the Commission is not
14 confused, the Robinson Kunia land that's burdened by
15 that grant of easement is not the same Robinson
16 Kunia Land that's within this petition area. So you
17 saw that there's the petition area that Curtis was
18 showing. Excuse me, Mr. Tabata was showing earlier.
19 But north of the petition area is also a large
20 parcel owned by Robinson Kunia Land. So the
21 easement runs along there. The water line goes
22 Kunia Road until it gets to the Department of Ag.
23 So that's condition B1.

24 I'm also now going to flip to condition B5
25 I believe it is, and that's because I think that

1 this would be of most interest to the Commission.
2 And that's that the solar farm had to be
3 substantially completed within two years of the date
4 of the decision and order.

5 So as you know, the decision and order was
6 issued November 1, 2021. This Commission, I mean,
7 if we think back to what it was like in 2020, 2021,
8 even 2022, with COVID, it was a pretty crazy time.
9 This Commission got together when we approached and
10 asked for permission to pursue that solar farm and
11 gave a good hard look. And you know, thankfully,
12 authorized the project to go forward. So in the two
13 years since the order was issued in 2023, the
14 project, the solar farm --

15 **CHAIR GIOVANNI:** 2021.

16 **MS. LIM:** I'm sorry. Thank you. Since
17 2021, the project has been I would say more than
18 substantially completed. It is not yet providing
19 power to the HECO grid. And Mr. Greene will be able
20 to speak to, you know, specifics if you have on
21 that. But at this point just because I think a
22 picture speaks 1,000 words, probably than I do, I'd
23 like to go onto the Zoom link and share screen just
24 so that some of the photographs that we filed as
25 Exhibit H5 can be looked at. Is that all right?

1 **CHAIR GIOVANNI:** Yes. These are the same
2 photographs that were in your testimony?

3 **MS. LIM:** They're the same -- same
4 photographs that were in the status report.

5 **CHAIR GIOVANNI:** Yeah.

6 **MS. LIM:** Mr. Greene just reminded me
7 those photographs were from a month ago. So that's
8 because you get -- you, Mr. Greene, there are drone
9 shots taken of the site approximately the first week
10 of every month. Yeah. So those were the most
11 recent photographs we could get at that time.

12 Yep. I'm just waiting for it to launch.

13 And to remind the Commission, this is a
14 52-megawatt solar farm. So I don't believe it is
15 the single largest solar farm in the state of Hawaii
16 but it may be the largest or certainly one of the
17 largest on the island of Oahu.

18 I'm just waiting for it to connect again.

19 And what I'm pulling up -- let me put mute
20 on the computer; otherwise, you're all going to hate
21 me. Okay.

22 What I'm pulling up here -- let's get -- I
23 have to get this to share and it wants to share
24 something else.

25 Okay. Here we go. Sorry for that delay.

1 So what you see here is the Ho'ohana Solar
2 Farm, the 52-megawatt solar farm with battery
3 energy, storage station. So this is -- well, if you
4 can see where I'm moving over here, this is Kunia
5 Road up along here. You can see that the panels,
6 all of the panels here are in place. All of the
7 equipment is in place. Over here, and again, can
8 commissioners see where I'm wiggling the cursor?
9 Over here is where the solar farm connects to the
10 HECO KV line. Let me move down.

11 The picture here is another angle of the
12 solar farm again. You can see that it is certainly
13 substantially completed and I would say more than
14 substantially completed. Another angle of the solar
15 farm, again, different perspectives but all showing
16 the same thing. All photographs taken around the
17 same date, which was March. I think early March
18 3rd, something like that. March 5th.

19 And this picture here, you know, if I
20 could, I'm going to turn the microphone to Mr.
21 Greene and maybe you can walk the commissioners
22 through what they're seeing in this particular
23 picture.

24 **MR. GREENE:** Certainly. Lawrence Greene.
25 What you're looking at on the left of the

1 photograph is the Ho'ohana Solar 1 project
2 substation. This is the facility where all of the
3 electricity from all of the panels comes together
4 and is stepped up from 34 KV 34,000 volts to 138,000
5 volts, which is the voltage of the Hawaiian Electric
6 system.

7 To the right, the larger rectangle area,
8 that is the Hawaiian Electric switch yard. And so
9 that is the area that is directly connected into the
10 Hawaiian Electric grid, 138 backbone grid on the
11 island of Oahu. And so our electrons from the solar
12 facility will run from our substation, across the
13 fence, into the Hawaiian Electric switch yard. And
14 from that point will serve the Hawaiian Electric
15 grid.

16 In the background you see an area that is
17 right now, actually this was a month ago so now it's
18 actually under construction with the batteries. As
19 we mentioned, this project includes both solar
20 panels and batteries. So the construction is now
21 ongoing just adjacent to these two facilities. And
22 then, of course, the previous photographs were
23 further away zoomed out and that shows the location
24 of the solar panels at the facility.

25 **MS. LIM:** So the solar farm has been

1 substantially completed and it was within two years
2 of when the Commission issued that decision and
3 order November 1, 2021.

4 Now, the Commission had authorized this
5 project to be in place. There's sort of two
6 options; okay? The project can be in place for 43
7 years from the date of the decision and order. So
8 that would be until November 1, 2064. And that's
9 certainly Ho'ohana's intention is to keep it in
10 place. It's taken roughly \$200 million to get
11 what's built there right now there, and a lot of
12 permitting and a lot of work as I think many of the
13 commissioners are familiar with all the hoops and
14 the difficulties in getting something constructed.
15 So, and the materials have useful life that
16 certainly would survive until that termination date.

17 However, when the Commission authorized
18 that 43-year term, the Commission also said, okay,
19 you can have it there for those 43 years. But,
20 initial C and I think it's condition B7, but if
21 Ho'ohana doesn't have a power purchase agreement,
22 whether it's a new power purchase agreement, an
23 amended power purchase agreement, something of that
24 sort that extends the current power purchase
25 agreement, then Ho'ohana would have to decommission

1 the project by December 31, 2047. So our deadline
2 for entering into that new power purchase agreement
3 is December 31, 2045.

4 So what that means is the project is in
5 place. The commercial operation date is right
6 around the corner. And again, Mr. Greene can
7 address that more fully if you'd like. But that's a
8 20-year power purchase agreement. And so that's for
9 sure guaranteed.

10 And then again, before that 20-year term
11 is up, Mr. Greene or his successor, you know, at the
12 company will be pursuing an extension through --
13 with HECO, and if the PUC were to approve that then
14 the project -- there's every reason to believe that
15 the project would remain in place and then be fully
16 decommissioned by November 1, 2064.

17 So that's a summary on what I believe
18 would be the Commission's highlights, the things
19 that I think you would be most interested in. But I
20 can also touch on the satisfaction of certain other
21 conditions. And I'll do that very, very briefly,
22 again, wanting to be respectful of everybody's time.

23 But in approving the project in 2021, the
24 Commission, in addition to the condition that we
25 talked about regarding the non-potable water line

1 also imposed a condition regarding fish and
2 wildlife. Basically, a biological condition. And
3 it's several parts, and it was actually a condition
4 that I believe OPSD had a great deal of input on.
5 As reported in the status report, and again, I can
6 pull up their relevant exhibits if that's of any
7 interest, but all of that has been satisfied. A
8 pueo survey has been done. Most -- I would say at
9 least as important if not even more important is
10 that the contractors were given a full briefing from
11 the biological environmental consultant, AECOS, on
12 what to do, what to look for, what to do if you see
13 them. You know, don't disturb nests. Don't have
14 lights at night. All of that's provided. I believe
15 it's our Exhibit H2. So that was a training that
16 the contractor and staff had to go through before
17 they could start doing stuff on the property.
18 Start, you know, doing the grading and doing the
19 groundwork.

20 I'll move quickly now to condition B3.
21 Now, B3, there's not much to say there. It's an
22 important condition which said that no ground
23 disturbance could happen until SHPD -- that's State
24 Historic Preservation Division -- had given its
25 clearance. SHPD has given its clearance. Again,

1 that's in the record with the status report at
2 Exhibit H3. So no ground disturbance took place
3 without SHPD's blessing.

4 Condition B4 was the condition to address
5 the risk of there being any flight hazards. And so
6 again, there's a few details in there, but
7 essentially, a glint and glare study had to be done.
8 And if there were any issues with glint and glare
9 affecting air traffic control towers or affecting
10 the airplanes then Ho'ohana would have to address
11 that. In fact, and you'll see this filed as Exhibit
12 H4, the FAA -- Ho'ohana did the glint and glare
13 study. The analysis was done within the FAA and the
14 FAA confirmed that there was no interference arising
15 from this project.

16 Going now to Exhibit -- excuse me,
17 condition B7. We already spoke about B5, which is
18 the two-year substantial development.

19 Condition B6 I feel is a bit redundant
20 because it's the compliance with representations,
21 and it specifically mentions not potable water line.
22 And that has been built.

23 I just realized there is one statement
24 that I want to make about that. It's built and the
25 easement has been granted. But there's a further

1 part to that condition which is that Ho'ohana has to
2 maintain that water line for the duration of the
3 solar farm. And again, Mr. Greene will confirm, but
4 Ho'ohana will be maintaining that water line.

5 Is that correct?

6 **MR. GREENE:** Yes. Lawrence Greene. I
7 confirm that we will maintain the water line for the
8 duration of the solar farm.

9 **MS. LIM:** And with that I'll just move to
10 condition B7, which is the last of the conditions
11 applicable to the solar farm, and that's primarily
12 about decommissioning. And that's where you also
13 have that timeframe that I mentioned earlier about
14 if the PUC doesn't grant approval of a further or
15 extended PPA, then the term of the solar farm would
16 be shortened from what the Commission had originally
17 authorized which was 43 years.

18 So with that, again, we're both here and
19 we're very prepared to answer any questions that you
20 may have. But I'd like to be quiet now and see if
21 there's information that you specifically would like
22 to hear from us.

23 **CHAIR GIOVANNI:** I'm going to turn it over
24 to commissioners' questions.

25 But you've mentioned COD or commercial

1 operation date. What's the current forecast for
2 that?

3 **MR. GREENE:** We're currently scheduled to
4 reach commercial operation on October 31st of this
5 year.

6 **CHAIR GIOVANNI:** October 31?

7 **MR. GREENE:** Correct.

8 **CHAIR GIOVANNI:** That's with the BESS?

9 **MR. GREENE:** Correct.

10 **CHAIR GIOVANNI:** And the capacity of the
11 BESS?

12 **MR. GREENE:** Fifty-two megawatts, 208
13 megawatt hours.

14 **CHAIR GIOVANNI:** Thank you.

15 Commissioners, further questions?

16 I don't see any questions. We're good.
17 Thank you.

18 **MS. LIM:** Thank you, Commissioners.

19 **CHAIR GIOVANNI:** Okay. Let's turn to RK
20 II Partners for your report.

21 **MR. LEE:** Thank you, Chair, Commissioners,
22 Terry Lee, co-counsel for RK II partners to my left,
23 Derrick Kobayashi. Also, we have David Tanoë from
24 R.M. Towill, who is the engineering and planning
25 consultant for the client, as well as Eric Elkind,

1 who is co-counsel. And Ernie Martin, who is also
2 co-counsel.

3 **CHAIR GIOVANNI:** So should we -- do you
4 plan to use Mr. Tanoë to represent?

5 **MR. LEE:** Not unless the commissioners
6 have questions.

7 **CHAIR GIOVANNI:** Okay. Proceed.

8 **MR. LEE:** We were recently engaged, and so
9 I've spent a considerable amount of time reviewing a
10 lot of the past filings in this petition and trying
11 to understand the history of it.

12 And I want to start by apologizing to the
13 Commission and the staff for being delinquent in
14 filing our 2023 status report. It was filed
15 yesterday, and I suspect because of the late filing,
16 many of you may not have had a chance to review it.

17 Essentially, because our project is just
18 the industrial piece which involves some light
19 industrial use and some commercial uses, much of the
20 conditions in the 96 order and the subsequent
21 amendments to that order, really fall on Haseko --
22 affordable housing, a lot of the infrastructure
23 improvements, roadways, utilities, drainage. We
24 have some obligations relative to designing drainage
25 through our property for the benefit of the

1 Department of Ag.

2 And the other area that, again, we owe an
3 apology to the Commission is we're supposed to have
4 filed a revised Master Plan for our project. And we
5 have not done that yet. We know how we want to
6 develop our roughly 124 acres. The problem we have
7 is the timing. And the reason is because -- and
8 I'll give you a perfect example. We have pending
9 with DPP a subdivision application for 37 acres,
10 which is phase one of our development.

11 Unfortunately, as part of that application, we're
12 piggybacking on a subdivision application by Haseko
13 which -- Haseko in its earlier presentation
14 described as road Y phase 1, which they indicate is
15 going to be done by 2026. Well, DPP needs to first
16 approve that subdivision application before it can
17 continue processing our subdivision application.

18 And so my point is, our ability to develop
19 our project is heavily dependent on you know, Haseko
20 completing certain things. And we are in
21 discussions with Haseko as I understand it. We may
22 not necessarily be in agreement on the timing of
23 when they're supposed to perform certain things. We
24 do have what we call a Second Amended and Restated
25 Infrastructure Agreement, 2nd ARIA is the

1 abbreviation for it -- that has certain deadlines
2 for these roadway and utility improvements that
3 Haseko committee to perform.

4 You know, I don't want to get into the
5 nitty-gritties of, you know, our contractual
6 disagreements necessarily but suffice to say that
7 we're engaging in earnest negotiations with Haseko.
8 We want them to move quicker so that we can then
9 move forward with our development. And we're
10 hopeful that, you know, we'll work something out
11 with them.

12 So having said all that, you know, we're
13 available for any questions the commissioners may
14 have but I think -- oh, I'm sorry. One other
15 housekeeping matter. And it relates to a December
16 23, 2004, order that the Commission entered
17 concerning a motion by the office of planning to
18 accept certain terms that were stipulated between
19 our predecessor and interest, which is HRT and the
20 Wineburg Foundation entities where in order for --
21 the VIN owner of the property that Haseko now owns
22 had an obligation to acquire 150 acres and to convey
23 it to the Department of Ag. They ran into financial
24 trouble so HRT committed to acquire that 150 acres
25 on its own dime and convey it to the state.

1 As I understand it, in exchange for that
2 they negotiated an understanding with the state that
3 if they do that, that in any future proceedings,
4 unless HRT itself violated or didn't satisfy
5 conditions relevant to its industrial, the roughly
6 124 acres, absent that, failure of other parties to
7 satisfy conditions of the reclassification would not
8 cause HRT to lose its designation. Its urban
9 designation. In other words, it's sort of protected
10 from that downside risk.

11 And the ultimate order that came out of
12 the Commission is somewhat vague in terms of whether
13 the protection granted only relates to the
14 particular order to show cause that was issued back
15 then or whether it has longer legs and grows out
16 indefinitely into the future.

17 And it relates to your questions about
18 bifurcation and all of that. So for us, it would be
19 helpful if the Commission and perhaps, you know, Mr.
20 Morris is counsel to the Commission, can, you know,
21 clarify for us exactly what is the legal affect of
22 that order. Because it will then help inform us
23 moving forward on exactly how we file our future
24 status reports, how we deal with the issue of
25 whether we support or oppose bifurcation. And also,

1 whether, you know, how we negotiate with our fellow
2 landowners on how certain conditions get satisfied.
3 Because obviously, if we're not at risk of losing
4 the urban classification, if Haseko, for instance
5 fails to satisfy a certain condition, then we're
6 less -- we're less -- we have less at stake, if you
7 will, other than the fact that we need them to
8 perform certain things so that we can move forward
9 with our development. But at least we're not going
10 to lose the fundamental urban classification we need
11 for our project.

12 And so, you know, that's a request I'm
13 asking of the Commission.

14 **CHAIR GIOVANNI:** Understood. One second.

15 A bit more than a housekeeping matter I
16 may say in response. But on that last what you
17 termed a housekeeping thing and a request of this
18 commission, that's beyond the scope of what this
19 commission can do at today's hearing.

20 If you specifically want clarification on
21 that you need to file a petition for a declaratory
22 ruling with our commission. We will take that under
23 consideration, agendaize it, and proceed. But that's
24 the proper way to resolve that.

25 **MR. GREENE:** Thank you. I appreciate

1 that.

2 And you know, I wanted to explain this
3 situation because, you know, it is relevant to, you
4 know, our status report and exactly what we report
5 to the Commission and the scope of it. So having
6 said all that, you know, we have filed a status
7 report. You know, most of the conditions that we
8 addressed basically pass the buck to Haseko, if you
9 will. And to the extent we have obligations which
10 as far as I can tell really only relate to, you
11 know, drainage improvements within our property for
12 the benefit of the Department of Ag, I don't think
13 we have any other specific requirements that we need
14 to meet beyond that. Thank you.

15 **CHAIR GIOVANNI:** Thank you.

16 Quick question for staff. Has this status
17 report been posted yet?

18 **MS. KWAN:** Staff did not receive the
19 status report because we were setting up this venue
20 about 2 o'clock. Was it sent after 2:00 p.m.?

21 **CHAIR GIOVANNI:** Anyway, it's not posted
22 yet.

23 **MS. KWAN:** Not posted yet.

24 **CHAIR GIOVANNI:** Okay.

25 **MR. LEE:** I believe it was electronically

1 filed sometime after 2 o'clock yesterday. Yeah.

2 **CHAIR GIOVANNI:** Yeah. So thank you.

3 Obviously, we strongly encourage you to be
4 more timely in your filings and not miss deadlines
5 as we go forward. So appreciate your following
6 through on that.

7 Can I have your commitment you will follow
8 through in a more timely basis?

9 **MR. LEE:** Yes. Absolutely.

10 **CHAIR GIOVANNI:** Thank you very much.

11 Commissioners, questions?

12 Commissioner Okuda, I see you leaning
13 forward to the microphone so I'll call on you first.

14 **COMMISSIONER OKUDA:** Thank you very much.

15 Good to see you again, Mr. Lee.

16 This goes to your comment that the buck is
17 passed to Haseko, yeah? And I'd just like to kind
18 of inquire a few things, ask a few questions
19 regarding that. Much of this may be taken up in a
20 petition or motion for declaratory relief in the
21 future but if I can raise these questions anyway
22 since these were raised in this status report.

23 Do you agree that the findings of fact,
24 conclusions of law, decisions and orders, and
25 amendments regarding those items filed in this

1 docket became and are encumbrances on title?

2 **MR. LEE:** Yes.

3 **COMMISSIONER OKUDA:** And of course, your
4 client, before it purchased or acquired its interest
5 in the property did a certain amount of due
6 diligence; correct?

7 **MR. LEE:** Correct.

8 **COMMISSIONER OKUDA:** And part of that due
9 diligence is ordering up a title search to determine
10 what encumbrances are on title?

11 **MR. LEE:** That would be my assumption,
12 although I didn't represent them in the acquisition.

13 **COMMISSIONER OKUDA:** Okay.

14 **MR. LEE:** But I would assume that was the
15 case.

16 **COMMISSIONER OKUDA:** Yeah. Anyway, you
17 know of no evidence that indicates that wasn't done.
18 That the normal due diligence didn't take place
19 meaning order up a preliminary title report. Look
20 at the encumbrances. And in fact, order up copies
21 of those encumbrances and read the document so that
22 before the purchase was made your client would
23 understand everything that it would be subject to
24 regarding the property when they purchase whatever
25 they purchase; correct?

1 **MR. LEE:** That would be a usual and
2 customary due diligence process.

3 **COMMISSIONER OKUDA:** Okay. And do you
4 agree that the Land Use Commission orders that have
5 been recorded are encumbrances which as we in the
6 law say, and I quote this phrase, "Run with the
7 land"?

8 **MR. LEE:** Yes. I would agree with that.

9 **COMMISSIONER OKUDA:** And what is the
10 effect in your understanding of when an encumbrances
11 "runs with the land"?

12 **MR. LEE:** Well, basically, to the extent,
13 you know, it's a recorded encumbrance, it runs with
14 the land, it means that it binds successor
15 landowners.

16 **COMMISSIONER OKUDA:** Okay. And let me
17 read this one sentence from the Waikiki Malia Hotel,
18 Inc. vs. Kinkai Properties Limited Partnership case.
19 Again, I had mentioned earlier that's found at 75
20 Hawaii 370. This is specifically from pages 382 to
21 383. And after I read it my question to you is
22 whether what I read is an accurate statement of the
23 law. Okay?

24 "A covenant is viewed as real in nature or
25 one that runs with the land where either the

1 liability to perform the duties therein enumerated
2 or the right to take advantage thereof passes to the
3 vendee or other assignee of the land."

4 Is that an accurate statement of the law
5 as I've read it?

6 **MR. LEE:** Yes. If it's a recorded
7 covenant that's correct.

8 **COMMISSIONER OKUDA:** So in other words,
9 the duties that were enumerated in the original Land
10 Use Commission orders, these were duties that were
11 imposed and frankly agreed to by the owner of the
12 entire parcel; correct?

13 **MR. LEE:** Correct. The entire 500-plus
14 acres. That's right.

15 **COMMISSIONER OKUDA:** And your client
16 exceeded to a portion of the property; correct?

17 **MR. LEE:** Correct.

18 **COMMISSIONER OKUDA:** So in other words, if
19 for some reason, and I don't really foresee this
20 but, you know, as just a question to flush this out,
21 if for some reason Haseko doesn't perform its
22 obligations then there's a reasonable argument that
23 can be made that under the Waikiki Malia case your
24 client might have to satisfy those obligations.

25 **MR. LEE:** That is a legal risk subject to

1 the petition for declaratory relief that we will
2 file.

3 **COMMISSIONER OKUDA:** Yeah. That's
4 correct. But as things stand right now, as things
5 stand right now on the record we have before us
6 right now because that's all we have, I wouldn't be
7 violating as they say Rule 11 which, you know, would
8 sanction me as a lawyer if I filed you know,
9 frivolous bogus kind of lawsuit or petition. It
10 wouldn't be a Rule 11 violation to basically make
11 the argument that your client would be responsible
12 to carry out the obligations of Haseko. If Haseko
13 doesn't perform, or any of the other obligations
14 which are set forth in the various Land Use
15 Commission orders; correct?

16 **MR. LEE:** I would agree with that. Yes.

17 **COMMISSIONER OKUDA:** Yeah. So it actually
18 -- and I'm not saying you folks aren't cooperating
19 with Haseko or something like that but, you know,
20 it's not simply passing the buck to them. It might
21 be, you know, if you see somebody about to drop the
22 ball, a cooperative effort might help move this
23 entire development along; correct?

24 **MR. LEE:** That's a fair statement.

25 **COMMISSIONER OKUDA:** Okay. Okay.

1 Thank you, Mr. Chair. I have no further
2 questions.

3 **CHAIR GIOVANNI:** Thank you, Commissioner
4 Okuda.

5 Commissioner Ohigashi?

6 **COMMISSIONER OHIGASHI:** Mr. Lee, you
7 mentioned that you haven't filed a Master Plan but
8 you kind of get an idea of what -- know what you
9 want to do. According to your statements, you have
10 filed a 37-lot sub acre subdivision. And is that
11 part of your Master Plan that hasn't been filed yet
12 but you kind of know what you're going to do?

13 **MR. LEE:** Yes. Again, you know, forgive
14 me because I was just recently engaged so I'm
15 absorbing a lot of information from the client. But
16 based on what I've learned so far, the phase one of
17 their development is to subdivide 37 acres of the
18 124 acres. And I have a copy of the proposed
19 subdivision map that was submitted to DPP, and it
20 looks like they're creating roughly 11 industrial
21 lots along with some roadway lots and so on. But,
22 you know, 11 industrial lots that they could then
23 sell or lease or what have you.

24 **COMMISSIONER OHIGASHI:** My question is
25 this: Do you have then --

1 **CHAIR GIOVANNI:** Mic.

2 **COMMISSIONER OHIGASHI:** Oh, excuse me.

3 Do you have then a Master Plan just not
4 filed with us or are you just piecemealing the
5 project as you go along when one of the conditions I
6 believe was that you file a Master Plan with this
7 commission?

8 **MR. LEE:** You know, I'm sorry I can't
9 answer that question because I'm not involved in the
10 planning. Maybe, you know, David Tanoe, if he's
11 still here, he may know. What I understand is
12 conceptually the client has a plan of how they want
13 to develop the 124 acres in phases. And again, the
14 first stage is this 37 acres, but beyond that I
15 don't know how specific their planning has been done
16 to date. But we recognize the need to create a
17 revised Master Plan and submit it.

18 **COMMISSIONER OHIGASHI:** Could you give us
19 a timetable when that will be done?

20 **MR. LEE:** I could not. I'd have to confer
21 with my client and R.M. Towill.

22 **COMMISSIONER OHIGASHI:** Do you know when
23 the revised Master Plan was due?

24 **MR. LEE:** If my memory serves me correct
25 in reviewing the amended orders I think it was

1 several years ago.

2 **COMMISSIONER OHIGASHI:** And so I would
3 generally comment that when has Royal -- or is it RK
4 II Partners, when has that -- when did they acquire
5 the property?

6 **MR. LEE:** They acquired it in November of
7 2021.

8 **COMMISSIONER OHIGASHI:** Okay. So my only
9 comment is that it would appear that part of your
10 request to this commission in the future would be to
11 modify the date that the Master Plan would be
12 submitted. Wouldn't that be a fair amendment to a
13 condition?

14 **MR. LEE:** Yes. I think that's a fair
15 observation.

16 **COMMISSIONER OHIGASHI:** And the second
17 thing, too, is that before any party involved in
18 this matter given that it's so complicated and so
19 many owners, perhaps the comment about not meeting
20 conditions should be looked up individually before
21 speculating what might happen in the future. In
22 other words, if you're going to say that you don't
23 want to be subject to your conditions, they're
24 subject to your conditions. So technically, the
25 rest of these people here are in breach because

1 failure to meet that condition. Would that be a
2 fair statement?

3 **MR. LEE:** You know, I'd have to think
4 about that a little more because of the --

5 **COMMISSIONER OHIGASHI:** Well, just for
6 thought.

7 **MR. LEE:** Yeah. It's a pretty heavy
8 question.

9 **COMMISSIONER OHIGASHI:** Thank you so much.

10 **MR. LEE:** Yeah. Thank you.

11 **CHAIR GIOVANNI:** Thank you, Commissioners.

12 Two things. Can I ask that you confer
13 with your consultants during the break and when we
14 come back that you give us a commitment, at least an
15 estimate of when we'll see a Master Plan from you?

16 **MR. LEE:** Yes, I will do that. Again,
17 however, you know, part of what --

18 **CHAIR GIOVANNI:** I said estimate.

19 **MR. LEE:** Yes. But I was just going to
20 clarify that part of the revised Master Plan, you
21 know, requires us to have certain deadlines as to
22 when things will be done. And so we could estimate
23 deadlines but we'd have to have a footnote that it's
24 dependent upon, you know, the efforts of others such
25 as Haseko.

1 **CHAIR GIOVANNI:** Sure. That would be
2 clarifying assumptions that would be incorporated in
3 your plan.

4 **MR. LEE:** Yes.

5 **CHAIR GIOVANNI:** And then I had a question
6 back to Mr. Tabata. There were representations in
7 the testimony about an ongoing negotiation between
8 Haseko and RK II Partners where RK II partners
9 saying to us, to the Commission today that they are
10 dependent upon certain things proceeding in a timely
11 manner or in an understood manner. Could you give
12 us from your perspective an update on the ongoing
13 relationship and this so-called or referenced
14 negotiation?

15 **MR. TABATA:** My understanding is that
16 they're in negotiations. There's an ongoing
17 discussion which I'm not involved in so I can't give
18 you the details. But I did read Mr. Kobayashi's
19 filing and, you know, I don't have anything to
20 dispute the fact that they are currently
21 negotiating.

22 **CHAIR GIOVANNI:** Mr. Kwan, do you know
23 anything more about this?

24 **MR. KWAN:** Peter Kwan. Yes. We have been
25 in discussions and meetings with the RK II Partners

1 team since early last year, sharing information,
2 schedules, trying to provide updates on progress
3 made on each of our respective developments.

4 **CHAIR GIOVANNI:** Is it your understanding
5 that their subdivision application with DPP cannot
6 proceed until yours is complete?

7 **MR. KWAN:** I believe the one that he's
8 referencing is actually not dependent upon road Y,
9 phase one, which is what I think Mr. Lee mentioned.
10 It's actually -- it abuts our road X, phase one,
11 along that northern boundary. It runs from east to
12 west between our properties. That subdivision map
13 of ours is in process and it'll be submitted
14 probably sometime this month along with the road 3,
15 which is that other road that runs north-south on
16 the west side of our parcel.

17 **CHAIR GIOVANNI:** Thank you.

18 Okay. Back to you, Mr. Lee.

19 **MR. LEE:** I stand corrected.

20 **CHAIR GIOVANNI:** So will you restate your
21 corrected independence on Haseko subdivision?

22 **MR. LEE:** Well, we're still dependent but
23 rather than road Y it's road X.

24 **CHAIR GIOVANNI:** Very good.

25 **MR. LEE:** I just had the designation

1 wrong.

2 **CHAIR GIOVANNI:** Yeah. And your Master
3 Plan will represent that.

4 **MR. LEE:** Yes.

5 **CHAIR GIOVANNI:** Okay. Great.

6 I don't have anything further.

7 Commissioners?

8 Thank you very much.

9 I will now go to RKES for your report.

10 **MR. MAU:** Thank you, Mr. Chair,
11 Commissioners.

12 As far as our status report, I think all
13 of the information that has been provided to you by
14 Ho'ohana and Haseko pretty much cover really the
15 status of our report.

16 **CHAIR GIOVANNI:** One question. Are you
17 counsel for --

18 **MR. MAU:** Yes. Yes. Steven Mau, counsel
19 for Robinson Kunia Land LLC.

20 And basically, we have been working with
21 Haseko. We think we have all agreements necessary
22 for Haseko project to proceed. And we have for the
23 next 20 to 40 years committed the property so we
24 have no revised Master Plan. Sometimes when the
25 future use has to be considered I think the

1 commissioner -- the Commission has already requested
2 a rule that we need to come back with a revised
3 Master Plan at that time. And we will do that.

4 But I have nothing further to report other
5 than what was mentioned in the Ho'ohana report as
6 well as the Haseko report. And we concur with the
7 report as filed.

8 **CHAIR GIOVANNI:** Commissioners, any
9 questions for Mr. -- excuse me, Commissioner Carr
10 Smith?

11 **COMMISSIONER CARR SMITH:** Thank you.

12 Just trying to understand. So Robinson
13 Kunia Land LLC is the owner of the parcel where the
14 solar farm is; correct?

15 **MR. MAU:** Yes. That's correct. We
16 sometimes refer to that as to the increment three
17 parcel, but we do have a lease with Ho'ohana to
18 lease the property for solar purposes.

19 **COMMISSIONER CARR SMITH:** And are you also
20 RKES or no?

21 **MR. MAU:** Not RKES. The technical -- the
22 owner of the land is Robinson Kunia Land LLC.

23 **COMMISSIONER CARR SMITH:** All right.
24 Thank you.

25 Chair, I was just trying to understand who

1 RKES is.

2 **CHAIR GIOVANNI:** So am I.

3 **COMMISSIONER CARR SMITH:** Okay. Thank
4 you.

5 **CHAIR GIOVANNI:** Let me ask staff. Who is
6 RKES?

7 **MR. MAU:** Is that the school site?

8 **MR. ORODENKER:** Thank you, Chair.

9 That was one of the purposes of this
10 hearing because staff is unclear from what's on
11 record who the owners are and who the participants
12 are.

13 **CHAIR GIOVANNI:** So Robinson, could you
14 please state for the record your legal name as owner
15 of what property and what is the current state of
16 that property?

17 **MR. MAU:** Yes. Steven Mau. I am the
18 counsel for Robinson Kunia Land LLC. Robinson Kunia
19 Land LLC is the owner of what I'll refer to as
20 increment three. The entire increment three parcel
21 is leased to Ho'ohana for solar purposes. Robinson
22 Kunia Land LLC also happens to own the property
23 that's north of the petitioned area and the ag park.
24 And they also own the Reservoir 225. And we did
25 give an easement over the Robinson Kunia Land in

1 order to put in the borderline from the reservoir,
2 Waiahole Reservoir 225 to the ag park.

3 **CHAIR GIOVANNI:** Thank you. I think I
4 understand.

5 How about you, Commissioner?

6 **COMMISSIONER CARR SMITH:** Not really. Do
7 any of the petitioners know who RKES LLC is? I
8 believe based on your exhibit which I like, Exhibit
9 1, that's the school parcel; right? Who is that?

10 **MR. KWAN:** Peter Kwan. Yes, Commissioner.
11 RKES as we understand it is the owner of the school
12 lot. I believe they are an entity under the
13 Kobayashi group.

14 **COMMISSIONER CARR SMITH:** Thank you.

15 **CHAIR GIOVANNI:** Are they represented here
16 today?

17 **MR. KWAN:** I'm not sure.

18 **CHAIR GIOVANNI:** Is anyone here, either
19 the owner or counsel representing RKES which is we
20 believe under the Kobayashi Group and is related to
21 the property associated with the school?

22 **MR. KWAN:** That's correct.

23 **CHAIR GIOVANNI:** Okay. So let me ask
24 staff to follow up with them independently.

25 Thank you for that. I think we figured it

1 out.

2 Thank you, Commissioner Carr Smith for
3 bringing that up.

4 **CHAIR GIOVANNI:** Commissioners, further
5 questions?

6 Commissioner Okuda?

7 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

8 Mr. Mau, this is a similar question or
9 same question I was asking the other attorneys and
10 parties. Given the fact that the various parties
11 here are successors in interest through the original
12 applicant and there has been no bifurcation or
13 separation as to the original application, do you
14 agree that first of all, the conditions and
15 provisions of the various Land Use Commission
16 orders, the findings of fact, conclusions of law,
17 decision and orders as they may have been amended
18 are encumbrances which run with the land?

19 **MR. MAU:** That's correct, Commissioner
20 Okuda. I would point out, however, the original
21 petition and memorandum that was filed encumbered
22 the Robinson land in a very limited manner.

23 **COMMISSIONER OKUDA:** Okay. But would you
24 agree that unless and until there is a clear
25 bifurcation, and just so that we're clear about the

1 language or the meaning of it where responsibilities
2 are clearly separated and divided among the parties,
3 unless you see a clear separation or release from
4 the Land Use Commission of these responsibilities or
5 obligations, the responsibilities and obligations
6 are joint and several?

7 **MR. MAU:** I would agree that they're
8 conditions. In terms of obligations, I'm not sure I
9 would agree with that.

10 **COMMISSIONER OKUDA:** Okay. What legal
11 authority do you have which would support your
12 statement right now?

13 **MR. MAU:** That the encumbrances that were
14 filed against the property were conditions.

15 **COMMISSIONER OKUDA:** Okay. Well, let me
16 clarify it. I'm sorry if I misstated something.

17 Would you agree that the obligations to do
18 certain things, like for example, the obligation to
19 the Department of Agriculture to perform or do the
20 things required with respect to the creation and
21 support for lack of a better term of the
22 agricultural part, those obligations are joint and
23 several?

24 **MR. MAU:** Those are conditions that
25 encumber all the properties. That's correct.

1 **COMMISSIONER OKUDA:** So, for example, if
2 the condition required construction of certain
3 infrastructure and let's say Haseko did not complete
4 the required infrastructure, would you agree that
5 the other landowners would also be responsible to
6 complete that infrastructure?

7 **MR. MAU:** I would agree that those are
8 conditions and that you probably would have an order
9 to show cause. And you would probably take whatever
10 action you thought was appropriate.

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

13 No further questions, Mr. Chair.

14 **CHAIR GIOVANNI:** Thank you, Commissioner
15 Okuda.

16 Commissioners, anything else?

17 Thank you very much.

18 **MR. MAU:** Thank you.

19 **CHAIR GIOVANNI:** So I'm going to shift the
20 order now to the Department of Agriculture. Can you
21 give me an indication of approximately how long your
22 commentary or presentation will be?

23 **MS. NAGATA:** I don't think very long on my
24 end. However, if the commissioners have questions
25 which I anticipate you all do that might be longer.

1 **CHAIR GIOVANNI:** Okay. Please proceed.

2 **MS. NAGATA:** Kelcie Nagata, Deputy
3 Attorney General for the Department of Agriculture.
4 I also have with me Brian Kau.

5 **CHAIR GIOVANNI:** Should I swear him in?

6 **MS. NAGATA:** He is available to help me
7 answer any questions or if he a better answer for
8 the actuals. Yeah.

9 **CHAIR GIOVANNI:** Mr. Lau, would you -- is
10 it Lau?

11 **MS. NAGATA:** Kau.

12 **CHAIR GIOVANNI:** Mr. Kau, would you please
13 introduce yourself, your affiliation, and then I'll
14 swear you in?

15 **MR. KAU:** Brian Kau, Department of
16 Agriculture.

17 **CHAIR GIOVANNI:** Do you swear that the
18 testimony that you may give today will be the truth?

19 **MR. KAU:** I do.

20 **CHAIR GIOVANNI:** Please proceed.

21 **MS. NAGATA:** Just for some brief
22 background, I'm sure many of the commissioners
23 already know the department and the department's
24 goals, but the department has 150 acres in this area
25 of prime land in Kunia that's slated for the

1 development of an agricultural park. The
2 department's plans for this parcel will result in 24
3 farming lots, each about 5 to 7.5 acres in size for
4 farmers to enter into long-term leases with the
5 state. The importance of this land cannot be
6 understated. It's ideal for diversified agriculture
7 with highest classification of soil for farming.

8 The site will also have access to reliable
9 irrigation water, moderate weather conditions, and
10 strategically located for product distribution.
11 This is very important for the state and the self-
12 sufficiency of agriculture.

13 Just for context. On Oahu, there are four
14 subdivided agricultural parks not including the
15 Royal Kunia Agricultural Park right now which are
16 Waimanalo, Kahuku, Kalaeloa and Waianae. They are
17 all presently leased out in long-term leases to
18 farmers, and when the leases do in fact go back out
19 for bid there are always many, many applicants who
20 apply for the lots. The only other way for farmers
21 to get on the land in one of these agricultural
22 parks is to buy out the current tenant and the
23 current lease which often precludes new farmers who
24 may not be established financially and this would --
25 therefore, the addition of the new individual lots

1 in the Royal Kunia park would greatly benefit the
2 department and the farming community.

3 So presently, the department has been
4 unable to prepare the land for development and
5 subdivision because we were waiting for a past
6 obligation to be fulfilled. It's the department's
7 responsibility to develop the infrastructure within
8 the agricultural park which we are willing and able
9 to do so.

10 The new amended MOU between Department of
11 Agriculture and Haseko is what we believe is a
12 really good step in the right direction. For those
13 who haven't read it yet or who have read it, it is
14 Exhibit 9 of Haseko's motion.

15 Notably, Haseko and Ho'ohana are the only
16 developers who have broken ground and installed the
17 water line and is substantially completed in the
18 past years that this project has been pending.

19 Under Haseko's watch, additionally, the
20 department has seen additional meaningful changes to
21 develop that demonstrate Haseko and other
22 petitioners' commitment to honoring their
23 obligations and the conditions under the Land Use
24 Commission's order. Specifically, as I stated, the
25 irrigation pipeline has already -- sorry.

1 Installation has commenced and is substantially
2 completed. Haseko has also bonded the offsite
3 infrastructure in favor of the department. It is
4 subsection F of the new MOU.

5 And lastly, to I guess answer one of the
6 questions that was raised previously towards Haseko
7 is why 2025, it was the date that was agreed upon
8 between Haseko and the department as which would be
9 reasonable for the department to receive
10 infrastructure, the basic infrastructure to start
11 subdividing and developing the agricultural park so
12 the state could start leasing out lands for new
13 farmers.

14 And I understand that the Commission had a
15 question of whether the department has applied for
16 its CWRM permit application -- sorry, permit
17 application for CWRM for water allocation, and the
18 department has applied and is currently working with
19 the Commission to get its water allocation.

20 The other question I believe that Chair
21 posed was the consequences of no water or no
22 electrical is simply that there will be no
23 agricultural park. We again stress that the
24 department needs this agricultural park to help
25 develop and sustain agriculture in the state. And

1 without that infrastructure for the water for the
2 farmers and electrical for operations there is no
3 way for the farmers to farm.

4 And I'm available for any questions.

5 **CHAIR GIOVANNI:** Thank you very much.

6 Commissioners?

7 **COMMISSIONER OHIGASHI:** Have leases been
8 given out yet?

9 **MS. NAGATA:** Leases have not been put out
10 for bid yet.

11 **COMMISSIONER OHIGASHI:** And if you
12 anticipate the completion of the water and
13 electrical to the area, what was it --

14 **MS. NAGATA:** 2025.

15 **COMMISSIONER OHIGASHI:** Yeah. December?
16 What was the date?

17 **MS. NAGATA:** The permanent infrastructure
18 according to the MOU is December -- September 2028.
19 The temporary -- the temporary is December 2025.

20 **COMMISSIONER OHIGASHI:** Okay. So if you
21 get that, how long till you advertise for leases, go
22 out for leases?

23 **MS. NAGATA:** It really, you know, the
24 typical lawyer answer, it depends. Of course, the
25 agriculture -- the department will need to continue

1 to grade the land first and then subdivide the land
2 and then make sure that our infrastructure is able
3 to be installed to allow for the farmers to get the
4 water.

5 **COMMISSIONER OHIGASHI:** Are you able to do
6 all of this during the time prior to the issuance or
7 obtaining of temporary utilities and temporary
8 water?

9 **MS. NAGATA:** We -- the department is able
10 to begin what is in their control barring any funds
11 from legislature including capital improvement.

12 **COMMISSIONER OHIGASHI:** So what does that
13 mean? What is in your control? Your control is you
14 said grading and things like that. Are you guys
15 going to do grading things like that prior to the
16 water? I'm just curious. It seems to me -- it
17 seems to me there's a deadline put on. Haseko
18 didn't seem to know why it was important. It seems
19 to me that you have an important goal to try and get
20 these leases out and try and do that and temporary
21 water and temporary utilities will help you do that.
22 So I'm just trying to focus in on DOA, when will
23 that occur on some kind of meaningful basis? We're
24 pressing all of these other guys for getting a
25 Master Plan. You know, making sure that the solar

1 is completed. You know, making sure Haseko gets all
2 its ducks in order. We're just wondering as a state
3 agency when can we expect leases to be issued?

4 **MS. NAGATA:** I cannot commit to an
5 estimate on when we can issue leases. But I can --

6 **COMMISSIONER OHIGASHI:** You can't give an
7 estimate even?

8 **MS. NAGATA:** The reason for the inability
9 to estimate is because as the Commission knows, the
10 Department of Agriculture needs funding from the
11 state legislature to complete similar capital
12 improvement, which includes agricultural parks. We,
13 the department has been asking for many, many years
14 for funding from the state legislature and, you
15 know, doing our due diligence each session to ensure
16 that we receive funding for the agricultural park.
17 As I'm sure the Commission knows, this year money is
18 a little tight on the legislative side on the budget
19 but we still continue to ask every year for the
20 money necessary to develop and operate the
21 agricultural park, including agricultural parks
22 within the rest of the state.

23 **COMMISSIONER OHIGASHI:** My comment is just
24 that we're placing a lot of emphasis on developers
25 spending money and trying to create this thing. And

1 from what I understand you're telling me that we
2 haven't even gotten the legislature to buy in for
3 the funding and that's what your statement is. That
4 the legislature hasn't bought into the funding. Is
5 that right?

6 **MS. NAGATA:** We -- I don't want to
7 speculate as to whether or not the legislature has
8 bought in because we have again done our due
9 diligence --

10 **COMMISSIONER OHIGASHI:** Has the
11 Agricultural -- Department of Agriculture received
12 at least initial funding for this project?

13 **MR. KAU:** Several years -- Brian Kau,
14 Department of Ag.

15 Several years ago, and I apologize I can't
16 identify the exact session, we did receive initial
17 funding to start -- to do the design work necessary
18 to develop the ag park. So --

19 **COMMISSIONER OHIGASHI:** Has that been
20 done?

21 **MR. KAU:** I'm sorry?

22 **COMMISSIONER OHIGASHI:** Has that been
23 done?

24 **MR. KAU:** Yeah.

25 **COMMISSIONER OHIGASHI:** So the next step

1 is -- what I'm trying to get at is that we're
2 putting a lot of pressure, a lot of money on
3 developers to do these things. It would seem to me
4 that the state, it would be beneficial for them as
5 partners in this area in this DBA to expedite their
6 portion of the conditions. And as Mr. Okuda would
7 say, as Commissioner Okuda would say, all these
8 conditions run with the land. And if you own the
9 land the state is part of the conditions. So you
10 may want to consider making sure that these leases
11 take place.

12 **MS. NAGATA:** We understand. And we
13 appreciate the Commission and, you know, putting
14 pressure on everyone equally, including us, to get
15 the project moving forward.

16 **CHAIR GIOVANNI:** Mr. Okuda?

17 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

18 This is follow-up questions to
19 Commissioner Ohigashi's.

20 So has the design for the agricultural
21 park been completed 100 percent?

22 **MR. KAU:** I believe -- I believe it has
23 been. I can't verify that it's 100 percent. We
24 have seen final plans that we've signed off on. We
25 do have the final layout of how we designed the

1 interior of the ag park. I do believe that the
2 project is shovel ready.

3 **COMMISSIONER OKUDA:** Okay. If the project
4 is shovel ready, what is the next step that you have
5 to do to put the shovel in the ground?

6 **MR. KAU:** As soon as we receive funding we
7 can just bid out the project and start the grading
8 process.

9 **COMMISSIONER OKUDA:** Okay. So let me
10 stop. So the next step is you have to get the
11 funding, and that's funding from the legislature;
12 correct?

13 **MR. KAU:** Yes.

14 **COMMISSIONER OKUDA:** Has, at any time was
15 there a request made to the legislature that you
16 know of, not guessing, but that you know of that has
17 been made to get the shovel in the ground? You said
18 you already had the funding to do the design. You
19 have the design done. So was there a request made
20 to the legislature to get the money to put the
21 shovel in the ground?

22 **MR. KAU:** Yes.

23 **COMMISSIONER OKUDA:** When was that made?

24 **MR. KAU:** I believe the last request that
25 made it to the legislature in the executive budget

1 was the year before last. It was not in this year's
2 budget.

3 **CHAIR GIOVANNI:** Mr. Okuda, may I --

4 **COMMISSIONER OKUDA:** Yes.

5 **CHAIR GIOVANNI:** -- quickly just clarify?

6 Our understanding based on other reviews of a very
7 similar nature is that the department's put in a
8 request to the Governor's Office. The governor then
9 will put together an executive budget and that's
10 what's submitted. So you may or may not have been
11 included in the governor's request. So it could
12 lose out there. And then it could be forwarded by
13 the governor and then it could win or lose at the
14 legislature. Is that the way the process works?

15 **MR. KAU:** That is correct.

16 **CHAIR GIOVANNI:** Okay.

17 **MR. KAU:** We do submit it to the
18 Governor's Office every year. It's one of the
19 department's top priorities.

20 **CHAIR GIOVANNI:** Thank you.

21 Commissioner Okuda, please resume.

22 **COMMISSIONER OKUDA:** Okay. Thank you for
23 that clarification. That speeds things up.

24 So as things stand right now you don't
25 have the funding for this agricultural park?

1 **MR. KAU:** Not to start construction. NO.

2 **COMMISSIONER OKUDA:** So following up what
3 Commissioner Ohigashi asked, why should we put
4 pressure on all the landowners here to hurry up and
5 spend money and do all these things if we might end
6 up with the Department of Agriculatural's version of
7 the Hale Noelani dorms?

8 **MR. KAU:** I'm sorry; I'm not familiar with
9 the project you're referring to.

10 **COMMISSIONER OKUDA:** Yeah. That's the one
11 the University of Hawaii's left the Hale Noelani
12 dorms vacant for seven years because apparently
13 nobody knew that it was being left vacant.

14 You know, I'm not just being facetious
15 here. My question is, why should we then, and this
16 is relevant to possibly tomorrow's hearing, why
17 should we as Commissioner Ohigashi said, we put all
18 this pressure on these landowners or private parties
19 to spend good money to get things put together when
20 you don't even have funding for this agricultural
21 park. What's the justification for us to take that
22 action if that's the action that's taken?

23 **MR. KAU:** One of the questions that we get
24 whenever we submit the request, and whether it stops
25 at the Governor's Office or the legislature is that

1 exact question but in reverse. So essentially what
2 they're saying is why should we fund you since you
3 don't have the ability to get farmers on the land?
4 Your infrastructure is not at your border. So
5 unfortunately, what seems to be happening is it's
6 kind of a chicken and the egg thing. Somebody keeps
7 waiting for the other party to step up and do the
8 first thing. And that's kind of what we're seeing.

9 **COMMISSIONER OKUDA:** Can you name anyone
10 who has told you that funding for the Department of
11 Agriculture to build or create this agricultural
12 park is being held up because of the actions or
13 inactions of Haseko or any of the other landowners
14 with respect to this parcel of property?

15 **MR. KAU:** I'm not able to respond to that.

16 **COMMISSIONER OKUDA:** Okay. Thank you, Mr.
17 Chairman. No further questions.

18 **CHAIR GIOVANNI:** Thank you.

19 Mr. Yamane?

20 **COMMISSIONER YAMANE:** Thank you, Mr.
21 Chair. Thank you for the update.

22 Just wanted to clarify that without the
23 temporary infrastructure you aren't able to lease
24 out the land; is that correct?

25 **MS. NAGATA:** Yes.

1 **COMMISSIONER YAMANE:** And I'm assuming
2 that I think it was 2025 that you're in some sort of
3 communication where you're getting updates from the
4 land developers as part of the statuses of the
5 temporary infrastructure. How is that process to be
6 informed on where the developers are on the
7 temporary infrastructure?

8 **MS. NAGATA:** My understanding is that the
9 department regularly meets with the developers to
10 get status updates.

11 **COMMISSIONER YAMANE:** Is that like a
12 monthly, quarterly meeting?

13 **MS. NAGATA:** It's periodically.

14 **COMMISSIONER YAMANE:** Okay.

15 **MS. NAGATA:** Yeah.

16 **COMMISSIONER YAMANE:** Fair to say that you
17 guys are meeting regularly to get updates from the
18 developer as far as the temporary infrastructure?

19 **MS. NAGATA:** Yes.

20 **COMMISSIONER YAMANE:** Once that temporary
21 infrastructure is there then pretty much the
22 legislature's questions and answers as far as now
23 you're able to support farmers on the lot; correct?

24 **MS. NAGATA:** Yes.

25 **COMMISSIONER YAMANE:** Okay. Thank you,

1 Mr. Chairman. No questions.

2 **CHAIR GIOVANNI:** Thank you, Commissioner.

3 Ms. Carr Smith?

4 **COMMISSIONER CARR SMITH:** Thank you,

5 Chair.

6 I'm trying to get some clarity about the
7 water. So the developer, Haseko was required to
8 provide temporary power and water, right, to the ag
9 park? Is that the way I understand it?

10 **CHAIR GIOVANNI:** That's a question for
11 Haseko.

12 **COMMISSIONER CARR SMITH:** Yes. And let me
13 just say a little bit broader, I'm trying to
14 understand how Robinson Kunia Land LLC owns the
15 reservoir that is next to the ag park but then
16 Haseko is required to bring the water down. It
17 seems like a long meandering way to get back to the
18 ag park. But then there was also the solar farm
19 that had a requirement for water. So I'm a little
20 confused. If you can just clarify.

21 **MR. MAU:** Excuse me. Steven Mau.

22 The water and the water line that was put
23 into the Waiahole reservoir, that's for non-potable
24 water. And the water I think they're talking about
25 to provide to the ag park is potable water but I'll

1 let Haseko respond more directly.

2 **MR. KWAN:** Peter Kwan. Yes, Mr. Mau is
3 correct. So there are two different lines. The
4 non-potable is being drawn from the open reservoir
5 and that will deliver non-potable water to the
6 Department of Agriculture's northern boundary that
7 they're going to use for agricultural purposes. The
8 other -- the temporary infrastructure that we have
9 mentioned includes potable water and functional
10 power that they would like us to provide to them at
11 their property line by December 31, 2025, that they
12 told us they intend to use for the agricultural
13 lots.

14 **COMMISSIONER CARR SMITH:** So is the
15 potable water and the power needed for processing
16 the crops? Is that --

17 **MS. NAGATA:** Yes.

18 **COMMISSIONER CARR SMITH:** Yes. Okay. So
19 it almost seems like the farm could proceed and have
20 water to start the crops with the idea that potable
21 water would be available in 2025.

22 **MS. NAGATA:** It is possible depending on
23 which crops the farmers grow. Lettuce often uses
24 potable water just because of health and safety
25 standards. So it is possible but it really just

1 depends.

2 **COMMISSIONER CARR SMITH:** Thank you all
3 for clarifying.

4 **CHAIR GIOVANNI:** Commissioner Lee?

5 **COMMISSIONER LEE:** Thank you, Chair.

6 For the Department of Agriculture, could
7 you clarify that even if the governor doesn't
8 include money in the budget, legislators themselves
9 can add that to the budget, and subsequently, the
10 governor may even -- and if it -- if it passes the
11 legislature, the governor could then also decide not
12 to release the funds. Is that correct?

13 **MR. KAU:** Yes.

14 **COMMISSIONER LEE:** Okay. Thank you,
15 Chair.

16 **CHAIR GIOVANNI:** Thank you.

17 Commissioners? A couple of clarifications
18 to follow up.

19 So the governor submitted his budget to
20 the legislature. I presume that's for fiscal year
21 25?

22 **MS. NAGATA:** Yes.

23 **CHAIR GIOVANNI:** So that's July '24
24 through June '25?

25 **MS. NAGATA:** Yes.

1 **CHAIR GIOVANNI:** Did that budget include
2 any money for this ag park?

3 **MS. NAGATA:** No.

4 **CHAIR GIOVANNI:** So if -- unless something
5 happens along the lines that Commissioner Lee just
6 described, it would be fiscal year 26, which would
7 be July '25 through June '24, '26. Excuse me, June
8 '26 before you get any clarification or money to
9 develop the ag park if they're released?

10 **MR. KAU:** If it does not make it into the
11 budget that is before the legislature today then
12 yes. However, the department does continue to work
13 with the legislature to try and convince them to put
14 it into this year's budget.

15 **CHAIR GIOVANNI:** How much money are we
16 talking about? Since you clarified it in your
17 request to the governor, how much did you ask him
18 for?

19 **MR. KAU:** I believe this year's request
20 was for \$10 million.

21 **CHAIR GIOVANNI:** So we've got \$10 million
22 that we need to develop this ag park at your
23 expense?

24 **MR. KAU:** That would be a phase one
25 request for us. The development of the park does

1 require substantial -- just like Haseko was saying,
2 before you go vertical there's a lot of stuff that
3 does need to be done on the ground in order to get
4 lessees on the ag park. One of the things that
5 needs to be done is some mass grading. And then, of
6 course, we have to deal with our own interior
7 utility installations. So the \$10 million is
8 intended to get that part or a majority of that park
9 done. Potentially and hope that we could get maybe
10 about half of the tenants on the land with that
11 initial 10 million but we're not sure.

12 **CHAIR GIOVANNI:** So you need \$20?

13 **MR. KAU:** That was the estimate that we
14 had come up with.

15 **CHAIR GIOVANNI:** Why don't you ask for \$20
16 million, get it done?

17 **MR. KAU:** We've done that before in the
18 past and the figure is large enough that it causes
19 some eyebrows to go up. And in an attempt to try
20 and get it started we, with some comment back from
21 the legislature, we decided to try and go with a
22 smaller request to try and just get it started and
23 then request in subsequent years additional funding
24 on the subsequent years to finish it off.

25 **CHAIR GIOVANNI:** Okay. I'm going to shift

1 gears.

2 Is it fair for me to characterize the
3 Department of Agriculture that it's been -- had some
4 frustration with the developers since the 1990s in
5 fulfilling their obligations under the terms of the
6 district boundary amendment prior to Haseko, and
7 that since Haseko has taken over that frustration
8 has been somewhat relieved? Can you describe how
9 the official -- or your perspective from DOA?

10 **MS. NAGATA:** I believe that's a fair
11 statement. There have been some frustrations over
12 the years but with, again, as I had stated with
13 Haseko and Ho'ohana's movement in the construction
14 of the water line, we feel that this is a step in
15 the really, really good direction. And we are
16 really grateful.

17 **CHAIR GIOVANNI:** So I can see why DOA and
18 the legislature itself and the Governor's Office
19 would be hesitant to commit, you know, funds when
20 nothing was happening on the developer's side.
21 We've got a clear indication there's something
22 substantial happening now with the lessee, the solar
23 farm, and with Haseko taking over the development of
24 the housing. That should inspire DOA to move
25 forward more aggressively and convince those in the

1 state it needs to fulfill your part of it.
2 Otherwise, I see the frustration going 180 degrees
3 to hear these developers have been asked to spend
4 all this money to do all this upfront work and
5 they're finally getting it done and now the DOA is
6 not following through. So that's the frustration
7 you're hearing in the last 15 minutes here from the
8 Commission.

9 **MS. NAGATA:** We understand. And we
10 respect that. And since the start of the
11 construction the department has been working very
12 diligently to try and work with the legislature to
13 get funding, including with the Governor's Office to
14 help move the agricultural park forward and towards
15 the overall agricultural self-sufficiency of the
16 state.

17 **CHAIR GIOVANNI:** Okay. Do you have, Mr.
18 Kau, do you have the equivalent of a Master Plan
19 with a timeline for this development?

20 **MR. KAU:** I'm not sure how to answer that
21 question. Could you -- we have, as stated earlier,
22 our design is complete and provided we have adequate
23 funding we could get started as soon as we could get
24 the construction contract --

25 **CHAIR GIOVANNI:** So the earliest you can

1 get the dollars I think is somewhere around the end
2 of 2025. Real dollars. Unless you get something
3 magical happens at the leg in the next 30 days, 15
4 days, whatever it is.

5 **MR. KAU:** Yeah. If it is included in this
6 year's budget which, you know, it's a challenge,
7 then typically, CIP funds become available to the
8 department around September or October. So that
9 would be on a year on yearend basis; right? So if
10 we didn't get it this year then next year is when it
11 would be available.

12 **CHAIR GIOVANNI:** So assuming that's the
13 case, how soon could a potential lessee be expected
14 to put his shovel in the ground? If you get
15 dollars, you're shovel ready and you get dollars in
16 September of '25?

17 **MR. KAU:** I would say it would probably
18 take about 10 to 12 months.

19 **CHAIR GIOVANNI:** Okay. Thank you.
20 Commissioner Lee?

21 **COMMISSIONER LEE:** Thank you, Chair.

22 For Department of Agriculture, are you
23 able to shift any of your own funds or funds from
24 any other sources to get this work done?

25 **MR. KAU:** If the question is do we have

1 excess funds somewhere else, unfortunately, the
2 answer is no. The way at least my programs work
3 they are all special or revolving funded which means
4 that the source of money that goes into the funds
5 that we use for operational expenses is actually
6 paid by users. So in the case of our ag park
7 program it's paid by the lessees who lease the
8 state's land. In the case of the water usage it's
9 the people who use the irrigation water. There's
10 nowhere near enough income generated to begin a
11 project of that size based on user fees. What we do
12 is we try and balance as much as possible to keep
13 the rates as low as possible for both land leasing
14 and water use so that we do not run a surplus. And
15 that's kind of what our mission is to help farming.

16 **COMMISSIONER LEE:** Commissioner Lee.

17 Local food is supposed to be a priority.
18 Why is it so difficult for your department to
19 convince the Governor's Office or whatever to fund
20 this initiative?

21 **MR. KAU:** I don't think I can answer that
22 question. I unfortunately don't have the insight
23 into the Governor's Office. Discussions with the
24 governor and his staff have always yielded the
25 recognition of the importance of agriculture.

1 Weighing it against, especially this year, what the
2 other needs are of the state I unfortunately am not
3 privy to.

4 **COMMISSIONER LEE:** Okay. Thank you,
5 Chair.

6 **CHAIR GIOVANNI:** Thank you, Commissioner.

7 So you have no discretionary CIP funds?
8 Like some state departments like DOT can move \$10
9 million one way or another. You have zero
10 discretion?

11 **MR. KAU:** No, we don't. We're not even a
12 rounding error in comparison to DOT.

13 **CHAIR GIOVANNI:** Okay. Thanks.

14 They have that and they still didn't build
15 a pedestrian bridge.

16 Okay. I think it's -- Commissioners,
17 anything further?

18 Let's take a break for lunch. It's 12:23.
19 If I give everybody till 1 o'clock, that's 37
20 minutes, is that sufficient? Or is it 47? No, it's
21 42 minutes. What's that? It's 37. Yeah. One
22 o'clock. We'll resume at 1 o'clock. Thank you very
23 much.

24 **(Recess taken from 12:23 p.m. to 1:01**
25 **p.m.)**

1 **CHAIR GIOVANNI:** We're back on the record.

2 It's 1:01 p.m.

3 And I'd like now to call on the city and
4 county of Honolulu to make your comments or
5 presentation.

6 **MR. ARIAS:** Hi. Pono Arias on behalf of
7 the city. The city has no comments or questions at
8 this time.

9 **CHAIR GIOVANNI:** Thank you.

10 Commissioners, any questions or comments
11 on the no comments by the city?

12 Commissioner Okuda?

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

15 It's kind of like the reverse of my
16 questions to the other applicants or other
17 landowners. Is there anything that landowners or
18 applicants for permits could do to make your life
19 down at DPP a little bit easier?

20 **MR. ARIAS:** I think it would just go on a
21 case by case basis. We do our best to work with the
22 landowners to kind of expedite the process as best
23 we can.

24 **COMMISSIONER OKUDA:** So nothing really
25 comes to your mind as, you know, something in

1 flashing neon lights that you would say, hey, if
2 people kind of focused on this that would be, you
3 know, very helpful to the DPP in moving things
4 along?

5 **MR. ARIAS:** That's correct. Not at this
6 time.

7 **COMMISSIONER OKUDA:** Okay. Thank you very
8 much. No further questions, Mr. Chair.

9 **CHAIR GIOVANNI:** Thank you. Thank you
10 very much.

11 OPSD?

12 **MS. KATO:** Thank you. Allison Kato,
13 Deputy Attorney General for OPSD.

14 Regarding Commissioner Haseko's housing
15 project, OPSD continues to support this project
16 which will provide necessary infrastructure to
17 support the Kunia ag park and much needed housing in
18 light of the housing crisis. Agriculture self-
19 sufficiency and increased housing are important
20 goals of the state.

21 As discussed by others and in our
22 testimony, an agreement was reached between DOA and
23 Haseko to extend the deadline for the permit
24 infrastructure to the Kunia ag park but it's on the
25 condition that temporary utilities will be provided

1 at an earlier time with a bond requirement to allow
2 the ag park to try and secure funding and begin
3 constructing the ag park. OPSD supports this
4 compromise and would like to see this project move
5 forward in providing housing and infrastructure.

6 Besides working with DOA, OPSD has also
7 reached out to various sister agencies to request
8 any comments or concerns relating to any relevant
9 conditions on this matter. Specifically, OPSD
10 contacted DOE, DOT, DOH, HIEMA and the State
11 Sustainability coordinator. DOA -- sorry, DOE, DOH,
12 DOT and HIEMA all responded that they have no
13 outstanding concerns with the relevant conditions.
14 DOT noted that they are working on finalizing a MOU
15 with Haseko regarding the timing of transportation
16 improvements needed to accommodate the project. DOH
17 noted that HRS Chapter 342G applies to state and
18 county government, not private entities such as
19 Haseko, so they have no coordination activities or
20 planned submittals required from their perspective,
21 though coordination with the city may be required
22 for proper planning of both public facilities and
23 services. OPSD did not receive comments from the
24 state sustainability coordinator and assumes they
25 have no concerns.

1 So we understand that the length of time
2 this has taken to reach this point is frustrating
3 but OPSD believes that Haseko, since acquiring the
4 property in 2020 has made substantial efforts to
5 move this project forward and they've gotten further
6 than anyone else has before. And DOA and Haseko
7 have agreed on a mutually beneficial path forward,
8 and OPSD would like to see efforts focused on
9 getting that infrastructure in and constructing the
10 housing as soon as possible.

11 Regarding Ho'ohana's obligations, OPSD
12 finds that the update on their progress is
13 satisfactory and notes the state's interest in
14 achieving clean energy goals. Ho'ohana provided
15 evidence that they are in compliance with their
16 conditions. They constructed the non-potable water
17 lines to Kunia ag park as they were required to do
18 and they appear to have made substantial efforts
19 with respect to the solar farm. And it sounds like
20 they are nearing completion pretty soon.

21 Sorry I have to keep clearing my throat.
22 I was sick a few weeks ago.

23 The OPSD looks forward to the completion
24 of the solar farm.

25 And this is just speculation but as the

1 chair said, one of the reasons why it might be
2 difficult for the legislature to commit money is
3 that the ag park does not currently have basic
4 utilities necessary to operate an ag park so we feel
5 that completion -- evidence that there is completion
6 of basic utilities to the ag park may help DOA in
7 securing funding for it.

8 That's all the comments that I have. I'm
9 available for questions. Thank you.

10 **CHAIR GIOVANNI:** Thank you very much, Ms.
11 Kato.

12 So Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** Yeah. I forgot
14 about that -- about this aspect of bonding.

15 According to the agreement, are the temporary
16 utilities subject to being bonded by Haseko?

17 **MS. NAGATA:** DOA is more familiar with the
18 details of that. Can I have her respond?

19 **COMMISSIONER OHIGASHI:** Yes, please.

20 **MS. NAGATA:** There are current -- pursuant
21 to the MOU, there are two bonds that are set to be
22 issued. One is what is designated as the interim
23 infrastructure, that is the paper infrastructure
24 currently going through DPP that both DOA and Haseko
25 needed to -- for the infrastructure. And then the

1 second bond is the permanent infrastructure.

2 **COMMISSIONER OHIGASHI:** Okay. So with the
3 bonding that guarantees completion of these
4 utilities, wouldn't that be a good justification to
5 the legislation to say that, hey, this is not --
6 this is a project that's bonded and ready to go.
7 And if we can time it right we can get --

8 **MS. NAGATA:** We agree with that and that
9 is something that we --

10 **COMMISSIONER OHIGASHI:** Has that been
11 explored by the Department of Agriculture?

12 **MS. NAGATA:** Yeah. The timing of the
13 bonding agreement and the internal deadlines for
14 providing budgets to the governor didn't exactly
15 coincide to the department's benefit. But now that
16 we do have this it is significant leverage that the
17 department has for the next fiscal year and the
18 budget with the governor.

19 **CHAIR GIOVANNI:** Thank you.
20 Commissioners, anything further?
21 Mr. Okuda?

22 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
23 Following up on Commissioner Ohigashi, is
24 it true or not true from a planning perspective
25 which Office of Planning and Sustainable

1 Development, you know, since it's Planning and
2 Sustainable Development, I mean, is it true or is it
3 a fair statement to say the two things we export
4 from Hawaii is cash that we spend to buy energy and
5 cash that we spend to buy food? I mean, that's what
6 we're doing; right? We're exporting our cash to get
7 food and energy, but especially food. Fair
8 statement?

9 **MS. KATO:** It sounds like there are other
10 things that are considerations but unclear. Sure.

11 **COMMISSIONER OKUDA:** And during COVID, a
12 big deal was being made across the board about what
13 was called food security; correct?

14 **MS. KATO:** I mean, food security is a
15 prominent issue currently.

16 **COMMISSIONER OKUDA:** If you had to rate
17 this agricultural park on a scale from 0 to 10, 10
18 being the most important and 0 meaning the Land Use
19 Commission, we shouldn't have taken up all this time
20 to talk about something that's really a zero, where
21 does this ag park fit on the scale from 0 to 10 in
22 the eyes of the Office of Planning and Sustainable
23 Development?

24 **MS. KATO:** In comparison to what,
25 everything or --

1 **COMMISSIONER OKUDA:** Yeah. In comparison
2 to everything. Because if in comparison to
3 everything that we're looking at this is a zero
4 then, you know, I'll make sure tomorrow I don't pay
5 too much attention to the petition --

6 **MS. KATO:** It's definitely not a zero.

7 **COMMISSIONER OKUDA:** Well, what number
8 would you assign to it?

9 **MS. KATO:** I mean, I think it's difficult
10 to assign a number. OPSD tries to consider a
11 balanced view of competing interests.

12 Sorry, could my client respond?

13 **COMMISSIONER OKUDA:** Yes, please.

14 **MS. KATO:** Can you swear her in?

15 **CHAIR GIOVANNI:** Katia, I need to swear
16 you in. Please state your name, affiliation, and
17 address.

18 **MS. BALASSIANO:** Hello. Katia Balassiano,
19 Land Use Administrator for OPSD.

20 **CHAIR GIOVANNI:** Do you swear your
21 testimony today will be the truth?

22 **MS. BALASSIANO:** I do.

23 **CHAIR GIOVANNI:** Please proceed.

24 **MS. BALASSIANO:** I think food security is
25 very important from the state's perspective.

1 However, I respectfully say that the matter before
2 you has to do with this particular petition and a
3 condition associated with this particular condition.
4 So we're not here to suggest that this ag park is
5 more or less important than what's happening in Maui
6 right now. I don't think that we want to weigh in
7 on this ag park in comparison to all of the other
8 competing needs that exist but rather we want to
9 speak to the condition associated with this petition
10 in particular.

11 **COMMISSIONER OKUDA:** So the estimate to
12 get this ag park going as far as what the state
13 needs, did I hear \$20 million or \$40 million?

14 **MS. BALASSIANO:** I think DOA is \$20
15 million.

16 **COMMISSIONER OKUDA:** Okay. But let's say
17 it's 40 million. What percentage of the state
18 budget does \$40 million reflect or represent?

19 **MS. BALASSIANO:** Again, I'm not sure that
20 I'm here to answer that question and put that into
21 that kind of context. We're here to answer
22 questions about the particular petition. And the
23 petition calls for the condition of the ag park and
24 the infrastructure that's necessary. So from that
25 perspective, it is important.

1 **COMMISSIONER OKUDA:** Well, I'm trying not
2 to do what I've been accused of doing a lot, being
3 too theoretical and not practical. And I think the
4 practical thing is we all would like to see this ag
5 park in operation, and especially if it's going to
6 take, you know, longer and shorter to get it in
7 operation I would hate to see all these other
8 entities spend a lot more money to get stuff going
9 quickly just so that they have to wait in the end.

10 My question is this. Is it a waste of the
11 Office of State Planning's time for somebody to go
12 along with the Department of Agriculture
13 representatives and try to lobby to get the money
14 from whatever decisionmakers have their fingers or
15 the ability to get this money, whether it's
16 legislators, Governor's Office, you know, Santa
17 Claus, the Easter Bunny? I mean, is it possible to
18 get out of our silos and work together for a common
19 goal or is that beyond what the state does nowadays?

20 **MS. BALASSIANO:** DOA and OPSD work
21 together on many, a variety of issues, shared
22 interests, and will continue to do so.

23 **COMMISSIONER OKUDA:** So then tell me,
24 please, what is OPSD doing to work with the
25 Department of Agriculture to get the DOA the money

1 that it needs to get this agricultural park going?

2 What specifically is being done?

3 **MS. BALASSIANO:** We will occasionally
4 support the DOA with legislation but right now we're
5 here to ask that the LUC accept the status report
6 provided by Haseko and allow this project to go
7 forward and tomorrow, to extend the condition and
8 accept the memorandum of agreement that DOA and
9 Haseko have signed.

10 **COMMISSIONER OKUDA:** Well, let me just ask
11 this one last question just to be more precise.

12 What has the Office of State Planning done
13 in the last 12 months to assist the Department of
14 Agriculture to get the money it needs to get this
15 agricultural park going? Last 12 months. Just name
16 one thing.

17 **MS. BALASSIANO:** We're working on
18 infrastructure financing. We have multiple bills in
19 front of the legislature to assist with
20 infrastructure funding and financing. We're working
21 on a soils report and study to better understand how
22 soils play a regulatory role in decision-making.
23 We've met with DOA on a number of occasions
24 associated with this project. We contact them
25 regularly when we're reviewing special permits that

1 go before the counties.

2 **COMMISSIONER OKUDA:** Has the Office of
3 State Planning asked anyone in the Governor's Office
4 to support funding of this agricultural park?

5 **MS. BALASSIANO:** No.

6 **COMMISSIONER OKUDA:** Has the --

7 **MS. BALASSIANO:** That's not something that
8 we do. We don't lobby on behalf of our sister
9 agencies for the funding that they request
10 themselves.

11 **COMMISSIONER OKUDA:** I understand many
12 things we don't do. Sometimes we might have to do
13 things to move the state forward.

14 My last question. I promise you the last
15 question. Has the Office of State Planning spoken
16 with any legislator about getting funds for the
17 Department of Agriculture for this agricultural
18 park?

19 **MS. BALASSIANO:** Not that I'm aware of.

20 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
21 No further questions.

22 **CHAIR GIOVANNI:** Commissioner Ohigashi?

23 **COMMISSIONER OHIGASHI:** I just -- I'm just
24 a little concerned. The other day I was watching
25 television and Governor Green came on and projected

1 \$900 million surplus for this next fiscal year. Or
2 it could be this fiscal year, but next fiscal year.
3 A \$900 million surplus. So I did a calculation and
4 based it on \$10 million to the Department of
5 Agriculture. That's .01 percent. And my concern is
6 that I don't -- as a resident of Maui, I don't
7 believe that state funds should be in a competition
8 mode and it should be ranked upon what is necessary
9 and what is available. And if you're going to
10 project a \$900 million project and not include a \$10
11 million surplus and not include a \$10 million
12 request to increase food security when you have
13 improvements bonded that is a concern to me. So I'm
14 just going to be a regular citizen next year and I
15 hope that perspectives can be looked at on a
16 question of need and what we have to do to protect
17 all aspects of our economy. And that's just a
18 comment. You don't have to answer that.

19 **CHAIR GIOVANNI:** Thank you.

20 Commissioners? Nothing there.

21 Just one question I have. Did OPSD play
22 any role, even a monitoring role in the negotiation
23 of the MOU?

24 **MS. KATO:** Did you say monetary role?

25 **CHAIR GIOVANNI:** Monitoring.

1 **MS. KATO:** Oh.

2 **CHAIR GIOVANNI:** Were you aware of what
3 was going on? Did you participate in any of the
4 discussions?

5 **MS. KATO:** Yes. I mean, we were very
6 aware. My office is right by Kelcie's. We talk all
7 the time about it. We've discussed the history. We
8 did that joint letter which we worked on together.
9 And it took a long time to understand the history of
10 this complex matter, including the owners, et
11 cetera, and how things have changed over time and
12 the conditions. And we did have a meeting with
13 Haseko and DOA to discuss all of this, which is where
14 the idea for to bury infrastructure sooner came up.
15 And then they had to go and do calculations or
16 whatever to determine exactly what they would find
17 acceptable, what level of temporary utilities. And
18 that is more of a technical negotiation, so the
19 actual negotiation of the MOU, Kelcie and Curtis and
20 their clients handled that.

21 **CHAIR GIOVANNI:** Thank you. I mean, I for
22 one think the MOU is an important step forward and I
23 commend you for -- all of you that were involved in
24 that at the state level as well as Haseko. We'll
25 obviously dig deeper into that again tomorrow.

1 Thank you for that. I have nothing further.

2 Anybody else?

3 Thank you very much.

4 Petitioners, you have an opportunity based
5 on what we've heard from the others to offer any
6 rebuttal comments that you may have. So we'll start
7 with you, Mr. Tabata.

8 **MR. TABATA:** Thank you, Chair.

9 I don't have anything. We're done. Thank
10 you.

11 **CHAIR GIOVANNI:** Thank you.

12 Ms. Pim, anything further you want to put
13 on the record?

14 **MS. LIM:** Lim.

15 **CHAIR GIOVANNI:** Wow.

16 **MS. LIM:** Ms. Lim, excuse me.

17 **CHAIR GIOVANNI:** Was that no?

18 **MS. LIM:** Thank you for the opportunity.

19 Just one comment. Counsel for OPSD mentioned that
20 it appears that we're approaching completion. And
21 we are. As I said, I believe we are more than
22 substantially complete, but as you know, commercial
23 operation isn't until the end of the year. And I'm
24 going to use that comment as a launching pad to
25 respond to something that was actually in the staff

1 report. The LUC Staff Report suggesting that maybe
2 regular monitoring reports from Ho'ohana could be
3 appropriate. And I'd like to pose this as an idea
4 because once this project is built, it's just smooth
5 sailing for decades. It's either smooth sailing for
6 20 decades -- excuse me, for two decades or for four
7 decades. So rather than annual reports that were
8 never required before, we would be amenable if the
9 Commission thought that this was a value to them, to
10 provide you written notice once commercial operation
11 starts, and then also written notice, you know, as
12 we're approaching the end of the PPA term. Again,
13 so that the Commission is always aware of what's
14 happening and when it's happening. And obviously,
15 if anything material were to happen between
16 commercial operation and the end of that PPA term we
17 would keep the Commission informed as well.

18 That's all I have to say, Chair.

19 **CHAIR GIOVANNI:** Okay. Thank you.

20 Mr. Lee?

21 **MR. LEE:** Chair, Commissioners, we --
22 Terry Lee. We don't have anything to rebut based on
23 the other presentations. However, I did consult
24 with my client regarding the timing for submitting
25 the revised Master Plan, and if the Commission would

1 grant us 60 days we feel we can comfortably submit
2 it within that timeframe.

3 **CHAIR GIOVANNI:** We will welcome it within
4 60 days if you can meet that deadline.

5 **MR. LEE:** Thank you.

6 **CHAIR GIOVANNI:** Okay. Where are we
7 going? Mr. Mau?

8 **MR. MAU:** Thank you, Mr. Chair.

9 We have no comments or questions.

10 **CHAIR GIOVANNI:** Okay. Thank you.

11 Commissioners, do you have any final
12 questions or comments to the parties before we go
13 back to public testimony?

14 Commissioner Carr Smith?

15 **COMMISSIONER CARR SMITH:** I just have a
16 quick question for OPSD.

17 I didn't hear you weigh in on the
18 industrial parcel.

19 **MS. KATO:** RK II's property?

20 **COMMISSIONER CARR SMITH:** Yes.

21 **MS. KATO:** On what issue in particular?

22 **COMMISSIONER CARR SMITH:** You were going
23 down the line and I didn't hear that addressed so I
24 was just curious. You just don't have any comments
25 on what they're doing at this point?

1 **MS. KATO:** Not at this time because we
2 have not seen their status report. It hasn't been
3 posted yet so we're not clear what exactly is
4 happening.

5 **COMMISSIONER CARR SMITH:** Understood.

6 **MS. KATO:** So we would like to see that
7 before we'd have any comments.

8 **COMMISSIONER CARR SMITH:** Yeah.
9 Understood. Thank you.

10 **CHAIR GIOVANNI:** In fact, why don't you
11 hold them until you get this Master Plan in 60 days
12 and then you can comment on both. That would be
13 great.

14 Anything further, Commissioners? No?

15 Okay. Public testimony.

16 Ms. Kwan, do any members of the public
17 wish to testify again or new?

18 **MS. KWAN:** No, Mr. Chair.

19 **CHAIR GIOVANNI:** Thank you.

20 Let me -- I'll ask the audience. Does any
21 member in the audience want to testify publicly that
22 did not have an opportunity to sign up? Just raise
23 your hand.

24 Okay. Seeing none.

25 Okay. Commissioners, this is a status

1 report. We're not required to take any action at
2 this time. And if no action is taken, the
3 requirement of continued annual status reports will
4 remain. We also have received a commitment to
5 receive an update on the Master Plan from the party
6 of Mr. Lee.

7 However, if the Commission feels that its
8 concerns have not been addressed based on the
9 comments and responses provided by the petitioners,
10 the chair will entertain a motion that the
11 petitioners' status report has not sufficiently
12 addressed the Commission's concerns and that further
13 meetings or status updates are necessary to provide
14 the opportunity to do so at future dates to be
15 determined by LUC staff. Or that there is reason to
16 believe that the petitioner will not adhere to the
17 conditions set forth in the D&O and request that the
18 staff move forward with a formal order to show cause
19 proceedings. I ask for your comments and discussion
20 and potential any motions you want to make.

21 Mr. Lee?

22 **COMMISSIONER LEE:** This has been a long
23 project but I'm satisfied that the parties involved
24 have been born again and especially Haseko. I agree
25 with their position that they're here not as a bank

1 -- not to bank entitlements. They're here to build
2 homes and I find that has a lot of weight. I think
3 a lot of the relationships were clarified today and
4 people will be following up.

5 I also agree with Ho'ohana not having to
6 do annual or six-month reports once the project is
7 in operation. And so for me, I don't have any
8 problem with moving forward and following, as long
9 as everyone is following up with what their
10 commitments are. Thank you.

11 **CHAIR GIOVANNI:** Anybody else?
12 Commissioner Carr Smith?

13 **COMMISSIONER CARR SMITH:** Yeah. I think
14 that petitioner has demonstrated substantial efforts
15 made pretty much across the board. Certainly Haseko
16 and the solar farm. Yeah, I'm comfortable with what
17 I've heard today. Thank you.

18 **CHAIR GIOVANNI:** Thank you.
19 Anybody else?
20 Mr. Atta?

21 **COMMISSIONER ATTA:** Yeah. I just wanted
22 to say that, you know, my experience with Haseko has
23 been very good over the years. And I think you can
24 trust as a developer to do the things that meet the
25 requirements and I'm okay with that.

1 **CHAIR GIOVANNI:** Thank you.

2 Commissioner Ohigashi?

3 **COMMISSIONER OHIGASHI:** I have a couple
4 comments. I believe that everybody satisfied who
5 are here, who satisfied the status report
6 requirement. They met the requirement that we put
7 on for status reports. It's essentially to inform
8 us where you're going, what's been happening, and
9 what's the path forward.

10 RK II Partners, although late, it appears
11 that they're coming towards and putting up deadlines
12 for themselves to meet the requirements. Ho'ohana
13 Solar did essentially prove that they have
14 substantially completed the project. And although I
15 don't know how it will work in the future as to
16 whether or not you can separate them out because as
17 Commissioner Okuda has pointed out many times is
18 that this is one DBA and the conditions seem to
19 apply to all parties. And we're not sure whether
20 they're going to separate out but if it's the will
21 of this body I would suggest that once they come on
22 line they'll file an annual report for 2025 and then
23 the board can decide whether or not they can
24 separate them out and give them a separate condition
25 specifically for that. Or you can decide now that

1 we can put in a condition for that.

2 For Robinson Kunia Land, I hope in the
3 future that you'll be able to tell us generally what
4 your future plans are. I won't be here but I hope
5 that happens in the future.

6 And the last thing is that we have to find
7 out who is RKES. And that's incumbent upon the
8 staff to find out who that is.

9 And my final comment is this, is that, you
10 know, we gave the state a hard time, the DOA and
11 OPSD. But the reason why we do it is because we
12 give a hard time to the developers. You know, we
13 tell them, hey, you've got to pay, you've got to do
14 this. You know, they come up with bonds to
15 guarantee their improvements. And I think that
16 everything is there for us to perform on our side.
17 This is a state body, state board, so I think -- and
18 a state board. And that's all I can tell you.
19 Sauce for the goose. I mean. Okay. That's all.

20 **CHAIR GIOVANNI:** Commissioner Okuda?

21 **COMMISSIONER OKUDA:** Yeah, Chair, I'd like
22 to just disagree a little bit with my dear friend or
23 colleague, Mr. Ohigashi. Okay, yeah, don't worry.
24 It's not that I view we give people a hard time even
25 though sometimes it might be interpreted that way.

1 In my view, it's the standard laid out by the rule
2 of law. And the standard applies across the board.
3 And I don't believe it's appropriate that we have
4 one standard, you know, holding certain people or
5 institutions or entities stricter than other
6 entities or institutions. The rules should apply
7 equally across the board. And I think why people
8 don't like us in government is because, you know,
9 many times we in government, we're not willing to
10 live up to our own rules and people think that we in
11 government will make excuses when it's convenient
12 for us. And in some cases we've seen government
13 officials end up in front of this commission where
14 they admit that they've made misstatements to other
15 government agencies and somehow there's a belief
16 that we in government find that okay. So all I'm
17 suggesting is if we expect, you know, certain
18 entities or persons to act a certain way or behave a
19 certain way consistent with the rules, you know, the
20 rule of law, the statutes and the administrative
21 rules, we do the same thing.

22 I do agree with Commissioner Ohigashi that
23 if the state of Hawaii is publicly bragging about
24 the fact there's a \$900 million surplus or a
25 significant amount of surplus then, you know, it's

1 rather inconsistent not to be able to spend the
2 money to get this 30-year-old agricultural park
3 going forward especially when now we see a developer
4 with their development team actually moving rather
5 quickly forward and effectively regarding it. So
6 all I'm asking is that across the board we all
7 follow the same set of rules.

8 But I do agree with my other commissioners
9 that based on the evidence presented and evaluating
10 the demeanor of the witnesses, I do not believe that
11 any further action needs to be taken besides what's
12 already on the table, which is the regular required
13 status reports. Thank you.

14 **CHAIR GIOVANNI:** Thank you.

15 Commissioners, anything further?

16 Okay. I'll offer my commentary.

17 I agree with my fellow commissioners and I
18 think I speak for the consensus that your status
19 report today showed evidence of great progress
20 finally in this effort. We commend you for that.
21 We are very happy with the development of the solar
22 farm. Those things are not easy or inexpensive.
23 And especially in this regulatory environment and
24 COVID, et cetera. So congratulations on the
25 progress to date. Hopefully, your COD will come

1 through, your BESS will go vertical and everything
2 will work out for you. I do think personally that
3 once you do go commercial that we can simplify your
4 reporting requirements but we would want to know
5 obviously if anything unexpected or catastrophic
6 might happen during the course of the term.

7 And of course, if you have any success in
8 renewing or extending your BPA or getting a new BPA,
9 we would want to hear about that and deal with that
10 condition that does exist.

11 We're very pleased that Haseko has taken
12 over the development of the housing element and is
13 following through. And you guys have a proven track
14 record for this type of development in Hawaii and on
15 Oahu, and I appreciate your comments off the record
16 on the hypotheticals about all that upfront work
17 that you have to do before you can go vertical.
18 It's just an incredible challenge. But keep it
19 going and get that agreement with Mr. Lee done on
20 the subdividing. Get that. I'm really pleased with
21 the MOU that you put in place with DOA and I have
22 every confidence that you're going to keep going
23 forward. I look forward to your additional reports
24 that you'll be giving us on a regular basis.

25 I want to offer a few comments to DOA

1 because you heard some frustration today. I can
2 tell you that if I was in the legislature or the
3 Governor's Office over the last 30 years I wouldn't
4 have given you any money either because these guys
5 weren't doing their -- you couldn't, you know, why
6 spend money when you couldn't -- didn't have any
7 water, et cetera; right? But now you've got it.
8 And so I'd like you to interpret a lot of the
9 feedback you got today. How can I turn this into
10 leverage that I can get the money I need to do my
11 part of the program? But I totally understand why
12 you don't have any money yet. But if you come here
13 a year from now and you don't have any money then
14 it's just not understandable whatsoever. And I
15 agree that, you know, I heard Governor Green last
16 night talk about his \$900 million surplus. And I
17 can't understand why 1 percent of that wouldn't come
18 over to the Department of Agriculture.

19 **COMMISSIONER:** Point 01.

20 **CHAIR GIOVANNI:** Point 01. No, I think
21 it's .1. Is it .1, 10 million out of -- I don't
22 know. You do the math. It's a small percentage.
23 So hopefully you can get it.

24 But unless I hear a motion to the contrary
25 by my fellow commissioners, we're going to accept

1 this status report as being adequate and not request
2 any further action.

3 So Commissioners, do any of you want to
4 make a motion contrary to that?

5 Hearing none then that's the end of the
6 deal. So you guys, we appreciate you coming
7 forward, taking the time to bring us up to date, and
8 we wish you well as you go forward. We look forward
9 to it. Thank you very much.

10 Okay. We're going to take a short recess.
11 It's 1:37. We'll be back at 1:45.

12 **COMMISSIONER OKUDA:** Chair, before you take
13 the recess can I just say something very quickly
14 just to give -- if it's appropriate to give Mr.
15 Tabata and Mr. Matsubara a heads up. At tomorrow's
16 hearing, if you can be ready to comment or discuss
17 two issues. So it's not an ambush I'll tell you
18 what I was going to ask about.

19 Number one, whether or not under the Enos
20 vs. -- the Enos Mouna Kea case, whether or not --
21 what you're asking the Commission to do is an act or
22 action which requires a ka pa'akai analysis and
23 whether in fact the ka pa'akai analysis has already
24 been done is limited only to the parcel that was the
25 subject of that analysis.

1 And number two, whether or not the Unite
2 Here! Local 5 versus City and County case, better
3 known as the Kuilima case requires an updated
4 environmental assessment or EIS.

5 Thank you, Mr. Chair.

6 **CHAIR GIOVANNI:** Thank you. We're
7 adjourned temporarily. We're recessed, not
8 adjourned.

9 **(Recess taken from 1:39 p.m. to 1:53 p.m.)**

10 **CHAIR GIOVANNI:** Back on the record. It's
11 1:53.

12 Our fifth order of business is the
13 discussion on the election of Commission officers
14 for fiscal year 2025 and action if necessary.

15 Ms. Kwan, has there been any written
16 testimony submitted on this matter?

17 **MS. KWAN:** No, Mr. Chair.

18 **CHAIR GIOVANNI:** There's no -- is there
19 anybody here that wants to testify?

20 **MS. KWAN:** No, Mr. Chair.

21 **CHAIR GIOVANNI:** Okay. So during this
22 meeting the chair will entertain discussions and/or
23 motions regarding election of officers. This would
24 be for officers that would start on July 1, 2025.

25 And our current slate of officers, including myself,

1 is termed out on June 30. At the end of June 30,
2 2024. So this would be beginning in July 1, 2024.

3 Is that right?

4 **COMMISSIONER OHIGASHI:** Mr. Chair?

5 **CHAIR GIOVANNI:** Commissioner Ohigashi?

6 **COMMISSIONER OHIGASHI:** I'd like to
7 nominate Dan Giovanni to remain as chair and
8 nominate Michael Yamane to be first vice chair. And
9 nominate Ku'ike Kamakea-Ohelo to be second vice
10 chair for the next term.

11 **CHAIR GIOVANNI:** Is that in the form of a
12 motion?

13 **COMMISSIONER OHIGASHI:** Yes.

14 **CHAIR GIOVANNI:** Do I have a second to
15 that motion?

16 Okay. So I have a motion, a nomination
17 from Commissioner Ohigashi for Commissioner
18 Giovanni, that's me, to be chair in the next
19 session, next year. That would be fiscal year --
20 next fiscal year starting July 1. I believe you
21 said Commissioner Yamane to be first vice chair.
22 Where are you going? Oh, you're retiring. That's
23 right. You're termed out. And Commissioner Ku'ike
24 Kamakea-Ohelo to be second vice chair. Is that
25 correct?

1 **COMMISSIONER OHIGASHI:** That's correct.

2 In a happy way I'm leaving.

3 **CHAIR GIOVANNI:** In a happy way.

4 **COMMISSIONER OHIGASHI:** Do you want me to
5 comment?

6 **CHAIR GIOVANNI:** Well, I just want to put
7 in the record that we got a second on the motion
8 from Commissioner Mel Kahele. So yeah, I would like
9 you to, and invite comments from all commissioners.

10 **COMMISSIONER OHIGASHI:** One of the things
11 I notice is that Chairman has been open to a lot of
12 input from various different people and he's
13 conducted the meetings correctly. Most people think
14 that the job of the chair is to make policy, I think
15 more in terms of herding us cats around to try and
16 make sure that everybody has a chance to be heard
17 and everybody has a chance. Everybody in the
18 audience has a chance to be here. You know, I think
19 Dan has done that, Dan G has done that well. I
20 chose Mike Yamane because I think he has the second
21 most time in this body. And there is -- there is
22 need for people with time and experience to take,
23 who's been involved in the meetings, to take the
24 position of chair because that's what you really
25 are. You're first vice chair, you just take the

1 position of chair. You don't need to do policy or
2 anything else. Well, speaking from experience I
3 wasn't. And Ku'ike Kamakea-Ohelo is probably the
4 second-most longest serving commissioner. So I
5 think -- that I think justifies my experience. And
6 Ku'ike is -- if he were to take and sit and run the
7 meeting I think he has the compassion and the
8 patience to handle that matter. I'm just making --
9 I'm making this motion because I think that it's
10 necessary to leave something that everybody can
11 build on in the future.

12 **CHAIR GIOVANNI:** Thank you, Commissioner.
13 And thank you for your kind words. I'll save my
14 comments for the end but Commissioner Kahele, do you
15 want to speak to your second?

16 **COMMISSIONER KAHELE:** Yes, Chair. I just
17 wanted to speak, you know, basically, you know, I
18 sit on quite a bit of funds. Trust funds. I've sat
19 on several committees, HHFDC and, you know, a number
20 of other committees. And I find the chair, Dan, you
21 know, you've been very professional in conducting
22 yourself. You've been very stern when people were
23 rude in several of our hearings and, you know, I
24 believe, you know, you're the most qualified person
25 here to be -- to continue to be the chair. You know,

1 Mike is, you know, I kind of like Mike. He's quiet.
2 You know, like, you know, Governor Ariyoshi. He's
3 quiet and effective, yeah? But he's effective. And
4 of course, Brother Ohelo, you know, he's very
5 knowledgeable about all of the Hawaiian affairs, all
6 of the Hawaiian issues out there. So that's
7 basically my reason for supporting these three
8 candidates to be the chair, first vice chair, and
9 second vice chair. Thank you.

10 **CHAIR GIOVANNI:** Thank you, Commissioner.
11 Thank you again for your kind words.

12 Anybody else?
13 Commissioner Lee?

14 **COMMISSIONER LEE:** Yeah. Commissioner
15 Lee. I have no problems with anyone here and this
16 by no means am I speaking out of disrespect, and I'm
17 sorry if my comments, you know, might be
18 uncomfortable for some. And I know that the vote
19 will go through. But my observation is that on the
20 agenda it says election if necessary. And I don't
21 think it's necessarily necessary. In the past, the
22 election of officers has been skipped for years.
23 And the fiscal year does start July 1st. There will
24 be three new people and it would be to me a gesture
25 of inclusiveness to wait till then. But I know that

1 those are only my observations and I respect the
2 views of everyone else. Thank you, Chair.

3 **CHAIR GIOVANNI:** Thank you, Commissioner.
4 Others? You're deferring?
5 Commissioner Carr Smith.

6 **COMMISSIONER CARR SMITH:** Thank you.
7 I do agree with what Brian said. It makes
8 more sense to me to have the new commissioners come
9 in and vote on new leadership or same leadership.
10 It just makes more sense to me than having outgoing
11 commissioners vote. But having said that I
12 appreciate your leadership and I've enjoyed getting
13 to know you and working with you. I'm speaking to
14 you, Chair. Obviously, I will support you.

15 **CHAIR GIOVANNI:** Thank you very much.
16 Mr. Atta?

17 **COMMISSIONER ATTA:** Yeah. I'm going to be
18 going off in July but I just wanted to say it's been
19 a good experience being a part of this commission.
20 And so I just want to thank everybody. And I think
21 the new officers will be good to follow, too. And
22 Dan, I just thank you. You've been a good leader to
23 keep everybody together I guess.

24 **CHAIR GIOVANNI:** Thank you, Commissioner.
25 Mr. Yamane?

1 **COMMISSIONER YAMANE:** Thank you, Chair.

2 **CHAIR GIOVANNI:** I should say Commissioner
3 Ayoshi.

4 **COMMISSIONER YAMANE:** First of all, thank
5 you for the nomination. Do I have a choice to
6 accept the nomination? I fully support our current
7 chair to be our chair in the future. He's
8 demonstrated a fully collaborate Commission and
9 inclusive of all the petitioners in front of us.
10 And also, I support Commissioner Ohelo as second
11 vice chair.

12 I just wanted to speak on the
13 inclusiveness part of other commissioners. I think
14 every year it's possible we could go through this.
15 So next year when you do have a new slate of
16 commissioners there's always a possibility that that
17 happens so it's not like that's not going to happen.
18 And again, I'm supportive of all the nominations.
19 Thank you, Commissioner Ohigashi, for this
20 nomination.

21 **CHAIR GIOVANNI:** Thank you, Commissioner.
22 Commissioner Okuda?

23 **COMMISSIONER OKUDA:** Yeah, thank you,
24 Chair. Since tomorrow I guess is my last day, or
25 last meeting, but it's basically the last day.

1 There's no other meetings. I am going to support
2 the motion, and this is the reason why. I think,
3 number one, the chair, just like a judge in a
4 courtroom, one of the most important things is
5 demeanor. Anyone can have intelligence but not
6 everyone can have demeanor. And the importance
7 about demeanor is that when the public comes in
8 front of the Commission or watches the Commission on
9 YouTube or anything like that, the public really has
10 to leave with a feeling that they might not have
11 gotten everything that they wanted but they have to
12 leave with a feeling that they were being treated
13 fairly. I think that's the reason why people don't
14 trust us and don't like us in government is the
15 feeling of unfairness. I can think of many hearings
16 where you've demonstrated communicating the fairness
17 of the process. But let me just point out one which
18 I think highlights it.

19 It was the Mauna Kea case. If there was
20 ever a case where people should have left pissed
21 off, angry, ready to throw stones or do other things
22 it was the Kanahale petition. And you know, it was
23 -- I can't even say it was contentious because the
24 way you ran the meeting, everyone, whether it was
25 the University of Hawaii or the anti -- oh, yeah.

1 I'm sorry. Yeah, Jonathan was running the meeting
2 but I talk about that because of the fact that, you
3 know, you and Jonathan were the dissenting voices
4 there. And the dissent that you explained at that
5 meeting, you know, communicated fairness to everyone
6 in the room. And in fact, if you look at the
7 Supreme Court decision, which was a 3-to-2 decision
8 upholding the Land Use Commission, but the two
9 dissenters pointed out the dissent that you and
10 Jonathan raised at that hearing and we all know that
11 actually it was the anti-TMT people who came and
12 shook our hands at the end and thanked us for
13 actually listening to them.

14 I think you've shown the same type of
15 demeanor in the way you've handled all these
16 hearings, even in the hearings where I disagreed
17 with what the ultimate vote was that you voted for.
18 So you know, you being chair communicates fairness,
19 and I think that's really, really important, you
20 know, for credibility not only of the Commission but
21 for the government in general. So that's the reason
22 why I'm thankful that you're willing to continue to
23 serve. And you know, that's the reason why I'm
24 supporting the motion.

25 **CHAIR GIOVANNI:** Thank you, Commissioner.

1 I think that's everybody that's here
2 today.

3 I am humbled by the support you have all
4 expressed for this group of us to continue in a
5 leadership role on this commission. This
6 commission, as it's been pointed out, is going to
7 undergo a significant transformation. I mean, here
8 I sit, the senior person on this commission and
9 three years ago I could hardly spell LUC I was so
10 new to the game. So it's going to be a very -- a
11 board that is not a very long tenured board among
12 its nine commissioners with five basically
13 commissioners out of the nine having served no time
14 or less than a year.

15 So from that point of view I really
16 believe that for the reasons of continuity and
17 consistency, it is important to lean on those of us
18 that are -- have been around a little while. Not a
19 long time but a little while. And so I think it's
20 -- I support the move and I welcome Commissioner
21 Yamane and Commissioner Ohelo in leadership roles as
22 well. So I will vote in favor of the mission and I
23 appreciate the nomination. So thank you very much.

24 Any further comment before we take a roll?

25 So Mr. Orodener, will you take a roll

1 call vote, please?

2 **MR. ORODENKER:** Thank you, Mr. Chair.

3 The motion is to elect Dan Giovanni,
4 chair; Mike Yamane, first vice chair; and Ku'ike
5 Kamakea-Ohelo for second vice chair for a term
6 starting on July 1.

7 Commissioner Ohigashi?

8 **COMMISSIONER OHIGASHI:** Aye.

9 **MR. ORODENKER:** Commissioner Kahele?

10 **COMMISSIONER KAHELE:** Aye.

11 **MR. ORODENKER:** Commissioner Yamane?

12 **COMMISSIONER YAMANE:** Aye.

13 **MR. ORODENKER:** Commissioner Carr Smith?

14 **COMMISSIONER CARR SMITH:** Aye.

15 **MR. ORODENKER:** Commissioner Atta?

16 **COMMISSIONER ATTA:** Aye.

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

18 Oh, that's right. I got you twice. Yeah,

19 I got you twice.

20 **CHAIR GIOVANNI:** You get only one vote.

21 **MR. ORODENKER:** You only get one vote.

22 No, you get two.

23 **COMMISSIONER LEE:** I also vote aye.

24 **MR. ORODENKER:** Okay. Commissioner Okuda?

25 **COMMISSIONER OKUDA:** Aye.

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

2 **CHAIR GIOVANNI:** He said aye.

3 **MR. ORODENKER:** Okay.

4 Commissioner Kamakea-Ohelo is absent.

5 Did I miss anybody?

6 Oh, Commissioner Giovanni. Yeah, well,
7 besides you.

8 Commissioner Giovanni?

9 **CHAIR GIOVANNI:** Aye.

10 **MR. ORODENKER:** Thank you, Mr. Chair. The
11 motion carries unanimously.

12 **CHAIR GIOVANNI:** Very good. Thank you
13 very much. And staff, put that into effect I guess
14 in terms of our records on the go.

15 So I appreciate the continuity and the
16 support. And I look to work with each of you and
17 give each of you a full opportunity to express your
18 voice and your concerns and your positions as we go
19 forward. If ever you feel that is not the case I
20 expect to hear from you personally.

21 Okay. Our sixth order of business is the
22 potential for an executive session pursuant to HRS
23 Section 95-5(a)(2) to consider personnel matters.

24 **MR. MORRIS:** 92-5.

25 **CHAIR GIOVANNI:** Thank you, Mr. Morris.

1 Section 92-5(a)(2). To consider personnel
2 matters where considerations of matters affecting
3 privacy will be involved.

4 Before we get into testimony and
5 commentary and even a motion to go into executive
6 session, I'd like to call upon Mr. Morris to express
7 a position if he would, an opinion, of the procedure
8 that we are looking possibly to embark into
9 executive session where basically in private the
10 full commission will have discussions on this
11 personnel matter.

12 Now, let me also further clarify that this
13 is not an order of business to actually perform any
14 evaluation at this time. It's really potentially to
15 discuss the process by which we may do an
16 evaluation.

17 Mr. Morris?

18 **MR. MORRIS:** Thank you.

19 First, I want to thank Commissioner Lee
20 for directing my attention to a relatively recent
21 Hawaii Supreme Court case from 2019, the Civil Beat
22 vs. the City and County of Honolulu, the Police
23 Chief Commission case where there was a -- the
24 Supreme Court addressed the issue of whether an
25 executive session to address personnel issues was

1 something that was automatic or required. And the
2 extent to which there should be some other approach
3 to that. And, you know, the case is instructive,
4 and I think what I gleaned from the case was that
5 it's not an automatic executive session matter.
6 There first has to be some statutory criteria that
7 are met, and it's a discretionary call. So in that
8 sense, Chair's suggestion that there be a motion to
9 go into executive session would be appropriate and
10 it would be within the discretion of the Commission
11 as to whether that takes place based on the extent
12 to which personal, private information might come
13 out or would come out in that discussion.

14 And you know, the case does give some
15 guidance in terms of when that type of privacy
16 interest would be affected. There's no -- it's a
17 case by case analysis. There's no bright line
18 rules. The case mentions that highly personal and
19 intimate information may include medical, financial,
20 educational, or employment records. I think that
21 the court recognized that the bell can't be unrung,
22 and so it's appropriate to go into executive session
23 at the very beginning if there's an anticipation
24 that those matters will come up so as not to, again,
25 have something in the public record that would be an

1 intrusion on privacy.

2 So, you know, there's no clear answer as
3 to when that is or isn't involved. I will note that
4 in that particular case there was a discussion about
5 high ranking public officials having some diminished
6 level of privacy in certain aspects of their affairs
7 because of the strong public interest. And I don't
8 necessarily think with respect to our executive
9 officer that that is not a position, a high top
10 ranked position. It's not the example used in the
11 case of the president of the University of Hawaii or
12 in that particular instance the police chief of the
13 City and County of Honolulu.

14 So I don't think that there is the same
15 diminished level of privacy interest at least in the
16 financial records. I do know that to the extent
17 that a salary number will be determined, those
18 salary numbers are a matter of public record but
19 matters contained in the personnel file of a state
20 employee are subject to privacy. And to the extent
21 there's an evaluation of personnel performance or to
22 the extent that medical issues or other financial,
23 ancillary financial issues might be part of that
24 discussion, that certainly would constitute a
25 privacy interest that would I think support the

1 discretion of this commission to handle those
2 matters in executive session.

3 So I think with that background, I wanted
4 to make sure and again, thank Commissioner Lee for
5 pointing that out to me and make sure that when this
6 board considers a motion to go into executive
7 session they understand it's not an automatic
8 process and their decision in exercising that
9 discretion depends on the extent to which personal
10 or private information would come up in that
11 discussion.

12 **COMMISSIONER OKUDA:** Can I ask a question?

13 **CHAIR GIOVANNI:** Commissioner Okuda?

14 **COMMISSIONER OKUDA:** Mr. Chair, if this
15 motion is going to involve our executive officer, I
16 wish to be or ask to be excused from this
17 discussion. And if necessary, Mr. Orodenker can
18 explain the reasons why.

19 **CHAIR GIOVANNI:** May I comment?

20 **COMMISSIONER OKUDA:** Yes.

21 **CHAIR GIOVANNI:** So a year ago you took
22 that same position and it was respected.

23 **COMMISSIONER OKUDA:** Yes.

24 **CHAIR GIOVANNI:** And you may choose -- if
25 the motion is made to go into executive session you

1 could abstain from voting on that at your pleasure.

2 And then if we go in executive session you can
3 recuse yourself if you so wish.

4 **COMMISSIONER OKUDA:** Yeah. I would rather
5 just recuse myself on all of that.

6 **CHAIR GIOVANNI:** Okay.

7 **COMMISSIONER OKUDA:** By the way, I wasn't
8 representing the executive officer in a criminal
9 case or anything like that. It's a routine thing
10 but I just believe it's more appropriate in this
11 case that, you know, just so that it's absolutely
12 clear I not be involved in anything dealing with Mr.
13 Orodenker.

14 **CHAIR GIOVANNI:** The chair accepts that.

15 **COMMISSIONER OKUDA:** Thank you.

16 **CHAIR GIOVANNI:** And respects it. Thank
17 you.

18 Commissioner Ohigashi?

19 **COMMISSIONER OHIGASHI:** My question to Mr.
20 Morris is whether or not if we do go into executive
21 session is it proper, is it okay to have the deputy
22 attorney general there, yourself there, in order to
23 guide us, to tell us whether or not -- whether or
24 discussions actually should be made in public or not
25 or on a safe side. And if so, we would keep good

1 notes for the purposes of stating what was said or
2 what was done in the executive session?

3 **MR. MORRIS:** Yes. I'm certainly happy to
4 attend, and I think it would be appropriate to do
5 so. Some of the parameters of executive session is
6 you're really not supposed to stray from the reason
7 that you went into executive session. Minutes of
8 the executive session are important to be
9 maintained. And at the conclusion of the executive
10 session there should be a brief summary in open
11 session summarizing the action taken or summarizing
12 what was done during the executive session in a way
13 that doesn't sort of defeat the purpose of it in the
14 initial instance. And so I'm happy to participate,
15 and I believe that's appropriate.

16 **COMMISSIONER OHIGASHI:** And it's
17 appropriate for the second vice chair to do -- the
18 mic is not on. I'm sorry.

19 **CHAIR GIOVANNI:** Would you want to go on
20 record?

21 **COMMISSIONER OHIGASHI:** No.

22 **CHAIR GIOVANNI:** Okay. I just want to
23 confirm. Have we had any public testimony on this?
24 Okay, no.

25 So any other comment before the chair

1 entertains a motion?

2 Commissioner Lee, since your name was
3 mentioned a few times, please.

4 **COMMISSIONER LEE:** Thank you. Thank you.

5 I think it's appropriate for Deputy AG
6 Morris to be with us in executive session. That's
7 usually the practice but we would I guess have to
8 declare that we want him in there just to make it
9 official.

10 Do you want to say something? Sidebar?

11 **COMMISSIONER OHIGASHI:** I just wanted to
12 see if you would volunteer to do the minutes.

13 **COMMISSIONER LEE:** No, no, no, no, no.
14 No. And I appreciate Mr. Morris's attention to my
15 question regarding the case that I cited and, you
16 know, him looking into that.

17 I do have a comment though. It's a
18 judgment matter what is an important board or what
19 is an important position. You know, that's a
20 judgment call. I will point out though that our
21 board is important enough that we all have to file
22 public financial disclosures and it's not a blanket
23 thing.

24 Yes, Mr. Ohigashi?

25 **COMMISSIONER LEE:** I'm not sure what that

1 was about but -- so I appreciate that it was
2 clarified I think that this executive session is for
3 just discussion of the process.

4 **CHAIR GIOVANNI:** So I will give guidance
5 on that.

6 **COMMISSIONER LEE:** Yes. Because to me
7 this wording is not clear enough for the layman to
8 understand what this was about, if it was to be the
9 actual evaluation. You know, it should be worded
10 enough so that a member of the public could read
11 this and say, oh, I want to testify on the
12 evaluation of Dan Orodener. But if I just read
13 this I don't get that. Clear message. And
14 actually, I think Dan would fare pretty well if
15 there was public input. And so it would help give a
16 message to people from the public that we're
17 reviewing things in a transparent way and that he
18 has the support of the Commission. And so I would
19 urge that in the future when there is an actual
20 evaluation that it be more clearly stated in the
21 agenda and that it would give the public an
22 opportunity to weigh in if they so desired. I know
23 that last year no one even knew that there was an
24 evaluation going on of the executive director, nor
25 that any pay adjustment was done or anything like

1 that. So that's all I have to say. Thank you.

2 **CHAIR GIOVANNI:** Thank you. Any further
3 comment?

4 So yeah, the chair's expectation is that
5 we will follow a process similar to or something, it
6 might be amended from what we've done in previous
7 times. But in my three previous years on this
8 commission it was all done pretty similarly. And
9 that was that a commissioner would take the lead in
10 distributing evaluation forms. It's a pretty
11 standard form. And each commissioner would be given
12 the opportunity to do an independent, quantitative,
13 personal evaluation on several different categories
14 of the job. And then to offer commentary if they so
15 choose, voluntary commentary on any aspects in those
16 same categories. And then the evaluation forms
17 would be compiled and totaled and average the
18 quantitative part. And comments would be
19 summarized. Then that information would be brought
20 back to a working meeting of the Commission to do
21 the actual evaluation and form some position on the
22 performance and any recommendation they want to make
23 about salary. That's the process that has occurred
24 before. So it's a process such as that that I think
25 makes sense for us to discuss in executive session

1 today but not to do the evaluation today. That we
2 do differently. Okay?

3 With that clarification, I would entertain
4 a motion to go into executive session.

5 **COMMISSIONER OHIGASHI:** So moved in
6 accordance with the request done by the chair.

7 **CHAIR GIOVANNI:** Do I have a second?

8 **COMMISSIONER YAMANE:** Second.

9 **CHAIR GIOVANNI:** Commissioner Yamane
10 seconds the motion made by Commissioner Ohigashi.

11 All those in favor signify by saying aye
12 and raising your hands.

13 **COMMISSIONERS:** Aye.

14 **CHAIR GIOVANNI:** Any opposed?

15 The Commission will now enter executive
16 session.

17 **(The Commission entered into Executive**
18 **Session from 2:21 p.m. to 2:47 p.m.)**

19 **CHAIR GIOVANNI:** Back on the record. It's
20 2:47 p.m. We're just exiting from Executive
21 Session.

22 So just for the record I'd like to speak
23 to what we have decided. What we were doing.

24 So in Executive Session we focused on
25 going forward with the performance evaluation of our

1 executive officer. And we dealt with both the
2 privacy aspects that would be evaluated and
3 discussed in the context of that performance
4 evaluation and how they should be managed, as well
5 as the process by which we choose to go forward.

6 So what we are requesting and have agreed
7 to as a commission is the following:

8 Similar to how we've done it in prior
9 years, we have a form, a performance evaluation form
10 that will be specific to the performance of our
11 executive officer during the current fiscal year.
12 And we ask each commissioner to complete that form.
13 Commissioner Okuda has recused himself so he will
14 not be included. To complete that form. It will be
15 issued -- that form will be issued by early next
16 week by Commissioner Ohigashi who will facilitate
17 the completion of those forms and the compilation of
18 the results from those forms. The form will be sent
19 to each commissioner independently and then returned
20 to Commissioner Ohigashi independently.

21 In addition, a copy of that same form will
22 be sent to Executive Officer Orodener and he will
23 be asked to do a self-evaluation on that form and
24 send it to Commissioner Ohigashi. Okay?

25 In erlo (phonetic) with that, we ask that

1 the executive officer or his staff make a copy of
2 his current employment contract available for each
3 commissioner. So he can send a copy of that. Let
4 me ask the executive officer to do that, again, next
5 week. And then we have a desire to see the budget,
6 the current year budget and the proposed fiscal year
7 '25 overall budget for the LUC.

8 Is that correct? Yeah.

9 So if you have that in any form we'd like
10 to see that as well.

11 Then, we'd ask that all those forms be
12 completed and returned to Commissioner Ohigashi by
13 the end of April or the end of -- yeah, the end of
14 April and we will shoot to have an executive session
15 or a meeting on I believe it's May 8th. And we will
16 have a discussion on the results from the
17 independent evaluations and we'll move forward from
18 there.

19 **MR. ORODENKER:** Question, Mr. Chair. The
20 budget. Do you want the entire budget or just the
21 personnel budget?

22 **CHAIR GIOVANNI:** I think the entire budget
23 if it's available. Yeah. Yeah, I think the entire
24 budget. You should have that so it's not making new
25 work; right?

1 **MR. ORODENKER:** No, yeah, no. It's just
2 two different pieces of paper.

3 **CHAIR GIOVANNI:** Yeah. That would be
4 great. But the entire budget has a personnel part
5 in it; right?

6 **MR. ORODENKER:** Yes.

7 **CHAIR GIOVANNI:** Yeah. Okay.
8 Did I miss anything, Commissioners?
9 That's it.

10 Okay. Do I have a motion to adjourn?

11 **COMMISSIONER:** So moved.

12 **COMMISSIONER:** Second.

13 **CHAIR GIOVANNI:** All in favor?

14 **(All said, "Aye.")**

15 We're adjourned.

16 **(The Hawaii LUC meeting concluded at 2:51**
17 **p.m.)**

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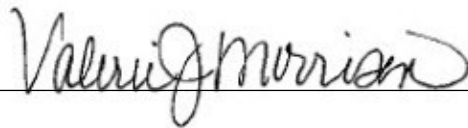
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CERTIFICATE

I, Valerie J. Morrison, 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 29th day of April, 2024.

A handwritten signature in cursive script, reading "Valerie J. Morrison", is written over a horizontal line.

Valerie J. Morrison