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**STATE OF HAWAII
LAND USE COMMISSION**

Meeting held on Wednesday, October 9, 2024

Commencing at 9:00 a.m.

Held at

Hawaiian Airlines Terminal Building

Airport Conference Center

400 Rodgers Boulevard

7th Flr, Suite 700, Room #3

Honolulu, HI 96819

I. CALL TO ORDER

II. APPROVAL OF MINUTES

September 5, 2024

III. TENTATIVE MEETING SCHEDULE

**IV. DR24-77 RK II Partners LLC, Petition for
Declaratory Order (Oahu)**

To consider a petition for declaratory ruling requesting the Commission's opinion on whether the land classification for TMK No. (1) 9-4-002-001, Approximately 123.712 acres located in the City and County of Honolulu, State of Hawaii, can remain within The State Land Use Urban District in perpetuity.

V. Recess

BEFORE:

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PARTICIPANTS

LUC Commissioners :

- Dan Giovanni
- Ku'ike Kamakea-Ohelo
- Mel Kahele
- Michael Yamane
- Nancy Carr Smith
- Brian Lee
- Bruce U'u

LUC Staff:

- Daniel Orodener, Executive Officer
- Scott Derrickson, Chief Planner
- Martina Segura, Planner (Zoom)
- Ariana Kwan, Chief Clerk
- Melissa Goldman, Esquire, Deputy Attorney General (Zoom)

Counsel for RK II Partners LLC:

- Terrence Lee, Esquire
- Ernest Martin, Esquire
- Mike Matsuura, Esquire

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PARTICIPANTS CONTINUED

Office of Planning and Sustainable Development (OPSD):

Alison Kato, Esquire, Deputy Attorney General

Katia Balassiano, Planning Program Administrator

1 **CHAIR GIOVANNI:** Aloha mai kakou. This is
2 the October 9, 2024 Land Use Commission meeting.
3 This is an in-person meeting which is physically
4 located at Airport Conference Center in Hawaiian
5 Airline Terminal Building, 400 Rodgers Boulevard, at
6 the seventh floor, Suite 700, Room No. 3, Honolulu,
7 Hawaii 96819.

8 And this meeting is open to the public.
9 Court reporting transcriptions are being done from
10 this Zoom recording.

11 All meeting participants, I would like to
12 stress the importance of speaking slowly, clearly,
13 and directly into your microphone. And before
14 speaking each time please state your name and
15 identify yourself for the record.

16 This is an in-person meeting. Please be
17 aware that all meeting participants are being
18 recorded on the digital record of this Zoom meeting,
19 which will be posted to YouTube -- excuse me -- to
20 YouTube and used for court recording purposes.

21 Your continued participation is your
22 implied consent to be part of the public record of
23 this event. And if you do not wish to be part of
24 the public record you should exit the meeting now.

25 I'll also share with all participants and

1 attendees that we will be taking breaks from time to
2 time, normally five minutes, every hour. And, if
3 necessary and the meeting continues through the
4 lunch period, we'll take a longer break for lunch.

5 We currently have nine seated
6 commissioners. And all of them are here today.

7 Along with me are Commissioner Michael Yamane from
8 Kauai, Commissioner Kamakea-Ohelo, Commissioner
9 Kahele, Commissioner Brian Lee from the Island of
10 Oahu.

11 Commissioner Nancy Carr Smith is from the
12 Island of Hawaii. Commissioner Bruce U'u is from
13 the Island of Maui. Let me correct myself. Two
14 commissioners are excused from today's meeting --
15 Commissioner Hayashida and Commissioner Miyasato.

16 Also in attendance are the LUC Executive
17 Officer Daniel Orodener, LUC Chief Planner Scott
18 Derrickson, LUC Chief Planner -- pardon me, Staff
19 Planner Martina Segura, and LUC Chief Clerk Ariana
20 Kwan. To my right, LUC Attorney General Melissa
21 Goldman is in attendance.

22 Again, court reporting transcriptions are
23 being done from the Zoom recording. Our first order
24 of business is the adoption of the September 5, 2024
25 minutes.

1 Ms. Kwan, has there been any written
2 testimony submitted on the September 5, 2024
3 minutes?

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

5 **CHAIR GIOVANNI:** Has any members of the
6 public signed up to testify on the adoption of
7 minutes?

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

9 **CHAIR GIOVANNI:** Commissioners, are there
10 any corrections or comments on the minutes?

11 **COMMISSIONER CARR SMITH:** Chair?

12 **CHAIR GIOVANNI:** Commissioner Carr Smith?

13 **COMMISSIONER CARR SMITH:** At the last
14 meeting and at a previous meeting I had requested
15 that a new item be put on the agenda as staff
16 updates or general information. It can be called
17 whatever the Commission decides.

18 But I think it's important that we have an
19 agenda item that can be a placeholder for any kind
20 of updates from the staff or anything else that
21 might fall into that category. So I please ask you
22 if we could make that an agenda item going forward.

23 **CHAIR GIOVANNI:** Okay. So let me get a --
24 so that's not relative to the specific minutes of
25 the --

1 **COMMISSIONER CARR SMITH:** It is because
2 it's not there.

3 **CHAIR GIOVANNI:** Oh, because it's not
4 there?

5 **COMMISSIONER CARR SMITH:** Yeah.

6 **CHAIR GIOVANNI:** Okay. So would you like
7 to make a motion to amend those minutes to include
8 your recommendation for a standing agenda item for
9 updates of the Commission by staff?

10 **COMMISSIONER CARR SMITH:** If that's how
11 you'd like to handle it that's fine.

12 **CHAIR GIOVANNI:** Is that correct?

13 **COMMISSIONER CARR SMITH:** Yes. So I move
14 that we add an agenda item going forward in --

15 **CHAIR GIOVANNI:** You move to amend the
16 minutes to recognize that prior recommendation?

17 **COMMISSIONER CARR SMITH:** Yes.

18 **CHAIR GIOVANNI:** Okay. So let me restate
19 it one more time for clarity. So Commissioner Carr
20 Smith is recommending that we amend the minutes from
21 our September 5, 2024 meeting to recognize her
22 suggestion at that meeting that we have a regular
23 standing agenda item at future meetings for the --
24 that would enable the staff to provide updates to
25 Commissioners as necessary.

1 **COMMISSIONER CARR SMITH:** Yes, thank you.

2 **CHAIR GIOVANNI:** Do I have a second to
3 that motion?

4 **COMMISSIONER U'U:** I'll second it.

5 **CHAIR GIOVANNI:** And it's seconded by
6 Commissioner U'u. All in favor -- I'll just do a
7 voice vote of amending the minutes accordingly with
8 that motion signify by saying "aye." Aye. Any
9 opposed? No. So noted.

10 Okay. With that amendment -- okay. On
11 advice of Attorney General we're going to go back
12 and do a voice vote of that because it's the first
13 vote of the day.

14 So, Mr. Orodenger, could you do a roll-
15 call vote of the motion to amend the minutes?

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

17 The motion is to amend the minutes. I'm
18 sorry. I don't know who seconded the --

19 **CHAIR GIOVANNI:** Seconded by Commissioner
20 U'u.

21 **MR. ORODENKER:** Commissioner Carr Smith?

22 **COMMISSIONER CARR SMITH:** Oh, I'm sorry.
23 You were asking -- aye. Thank you.

24 **MR. ORODENKER:** Commissioner U'u?

25 **COMMISSIONER U'U:** Aye.

1 MR. ORODENKER: Commissioner Lee?

2 COMMISSIONER LEE: Aye.

3 MR. ORODENKER: Commissioner Kahele?

4 COMMISSIONER KAHELE: Aye.

5 MR. ORODENKER: Commissioner Kamakea-

6 Ohelo?

7 COMMISSIONER KAMAKEA-OHELO: Aye.

8 MR. ORODENKER: Commissioner Yamane?

9 COMMISSIONER YAMANE: Aye.

10 MR. ORODENKER: Chair, do you aye?

11 CHAIR GIOVANNI: Aye.

12 MR. ORODENKER: Thank you, Mr. Chair.

13 The vote passes unanimously.

14 CHAIR GIOVANNI: Okay. So now we have an

15 amended minutes for consideration. Do I have a

16 motion -- are there further amendments or do I have

17 a motion to accept the minutes as amended?

18 COMMISSIONER U'U: I'll make a motion to

19 accept.

20 CHAIR GIOVANNI: So Commissioner U'u makes

21 a motion to accept the minutes of September 5, 2024

22 as amended by the previous motion. Do I have a

23 second?

24 COMMISSIONER LEE: Sure. Commissioner

25 Lee. I will second.

1 **CHAIR GIOVANNI:** Commissioner Lee seconds.
2 Should it be a voice vote on this one? No.
3 So we're going to do a roll-call vote on
4 this one as well.

5 Oh, I can? All right. Just the first of
6 the day should be a roll-call vote. All right.

7 All in favor of adoption of the minutes as
8 amended signify by saying "aye." Aye. Is anyone
9 opposed? The minutes are adopted as amended. Thank
10 you very much.

11 And I will leave it to staff to follow
12 through with the amendment. And I'll leave it to
13 staff to follow through with agendizing at all
14 future meetings of the LUC a standing agenda item
15 for updates.

16 **MR. ORODENKER:** Mr. Chair, Dan Orodenker,
17 Executive Officer. We'd like to discuss that with
18 our attorney general as to whether or not we can
19 have a general agenda item like that without any
20 specifics. I think there may be a Sunshine Law
21 (inaudible) that.

22 **CHAIR GIOVANNI:** No? (Inaudible).

23 **MS. GOLDMAN:** I think that can happen off
24 of the record between staff and the Deputy AG and
25 staff can report back to the Commission accordingly.

1 **CHAIR GIOVANNI:** Okay. So we have a
2 request by the Commission to staff to have a
3 standing agenda item on all our future meetings
4 which would enable the staff to update to the
5 Commission on relevant matters.

6 However, a staff has noted for the record
7 that there may be some concerns in doing such
8 procedurally and wishes to discuss the matter off
9 the record with the Attorney General as such.

10 Is that correct?

11 **MR. ORODENKER:** That is.

12 **CHAIR GIOVANNI:** And so at our next
13 meeting you will report -- you will either report
14 the -- you will both report the substance and
15 consequence of your discussions with the Attorney
16 General.

17 **MR. ORODENKER:** Well, our next meeting is
18 tomorrow. So I think it's going to take us a little
19 bit of time to have a meeting (inaudible).

20 **CHAIR GIOVANNI:** The next meeting which
21 has not been agendized. How's that?

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

23 **CHAIR GIOVANNI:** All right. Okay.

24 Are we good?

25 Okay. We're good. You get the reason --

1 you get what we want. And you're going to see if
2 you can work it out.

3 The next agenda item is the tentative
4 meeting schedule.

5 Mr. Orodenger?

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

7 Tomorrow we are again here for the Maui
8 Solar matter. On October 24th we will be adopting
9 the order for the RK II Partners matter, which we're
10 hearing today. On November 7th we will be having
11 the OPSD presentation on (inaudible) at the end of
12 November.

13 **CHAIR GIOVANNI:** What time? What day?

14 **MR. ORODENKER:** The OPSD presentation is
15 November 7.

16 **CHAIR GIOVANNI:** Could be a problem. I
17 won't be here.

18 **MR. ORODENKER:** Okay. Well, we've got a
19 couple of open --

20 **CHAIR GIOVANNI:** Okay. Will that be a
21 Zoom meeting?

22 **MR. ORODENKER:** Yes, it can.

23 **MS. GOLDMAN:** Staff can hold it hybrid and
24 whoever wants to participate in person can and
25 whoever needs to participate online can. We can

1 hold it hybrid.

2 **CHAIR GIOVANNI:** Okay.

3 **MR. ORODENKER:** There are no -- currently
4 no meetings scheduled for December. January 23rd we
5 have scheduled a quarterly update and legislative
6 session update. And February 19th we will be on
7 Maui for SP97 390. And on --

8 **CHAIR GIOVANNI:** What is that one?

9 **MR. ORODENKER:** (Inaudible).

10 **MS. GOLDMAN:** Add/remove AIL.

11 **MR. ORODENKER:** That's the add/remove of
12 the AIL designation. That was supposed to have been
13 done this year but they did not make their filing on
14 time. On the 20th we'll be on Maui as well for the
15 A&B Properties Inc. motion and Emanuel Lutheran
16 status report.

17 **CHAIR GIOVANNI:** What's that date?

18 **MR. ORODENKER:** February 20th.

19 **CHAIR GIOVANNI:** Okay. Is that it?

20 **MR. ORODENKER:** Yeah, that's it.

21 **CHAIR GIOVANNI:** Commissioners, any
22 questions or comments on the tentative agenda
23 calendar?

24 So I have one of note. For the January
25 23rd legislative update -- is that where we will

1 hear staff's recommendations to Commission on
2 prospective bills that are being submitted to the
3 next legislature?

4 **MR. ORODENKER:** Yeah. Yes, that's
5 correct, Mr. Chair.

6 **CHAIR GIOVANNI:** Okay. Thank you.

7 The fourth order of business today is
8 DR24-77 RK II Partners LLC petition for declaratory
9 ruling. This agenda item is to consider a petition
10 for declaratory ruling requesting the Commission's
11 opinion on whether the land classification can
12 remain within the State Land Use Urban District in
13 perpetuity. At this time I'd like the parties to
14 identify themselves for the record.

15 Petitioner, please state your name and
16 also introduce who's with you today.

17 **MR. LEE:** (Inaudible) Terry Lee
18 (inaudible). Good morning, Commissioners. Terry
19 Lee appearing as counsel for RK II Partners LLC. To
20 my left is Ernie Martin, my law partner. And to his
21 left is Mike Matsuura, our associate.

22 **CHAIR GIOVANNI:** Can I ask are all three
23 gentlemen attorneys?

24 **MR. LEE:** Yes, all three are attorneys.

25 **CHAIR GIOVANNI:** Thank you. Okay. Thank

1 you very much, Mr. Lee.

2 Now I'd like to proceed with a statement
3 regarding disclosures and conflicts of interest. So
4 in accordance with HRS Section 84-14, Commissioners
5 are not allowed to take any official action
6 affecting a business in which they or a member of
7 their family have a financial interest.

8 They must therefore recuse themselves from
9 this matter if there is any benefit, monetary or
10 otherwise, to themselves or members of their family.

11 Also in accordance with legal ethical
12 standards, Commissioners should disclose any
13 relationship -- business, social, or otherwise --
14 that they may have with the petitioner or
15 representatives or any other parties to this
16 proceeding that may give rise to an allegation of
17 bias or impropriety.

18 Do any of the Commissioners have any
19 conflicts of interest or disclosures to make at this
20 time? Seeing none, we'll proceed and all
21 Commissioners are welcome to continue.

22 As a reminder, this is a declaratory
23 ruling petition so the procedure will differ
24 slightly from our standard approach. Here's the
25 process we will follow for this agenda item.

1 We will begin by acknowledging any written
 2 testimony that has been submitted regarding this
 3 matter. Next I will open the floor to members of
 4 the public who wish to provide oral testimony on
 5 this matter.

6 Once public testimony is complete I will
 7 call upon representatives from the County and State
 8 to provide testimony in their capacity as interested
 9 governmental entities but not as formal parties to
 10 the petition.

11 The petitioner will then be called upon to
 12 make their presentation. After the petitioner's
 13 presentation, the Commissioners will have an
 14 opportunity to ask questions or provide comments.
 15 Then I will reopen the floor to the general public
 16 for any new and additional oral testimony on this
 17 matter.

18 And then finally the Commission will
 19 deliberate on the matter based on the testimony and
 20 presentations presented. The Commission will then
 21 determine what action if any will be taken in
 22 response to this petition.

23 For the record, please be informed that
 24 all relevant records and documents pertaining to
 25 this matter can be accessed for review on the LUC

1 website at and I'll say this twice --

2 <https://luc.hawaii.gov/dr24-77>. That's

3 <https://luc.hawaii.gov/dr24-77>.

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

5 **CHAIR GIOVANNI:** Commissioner Yamane?

6 **COMMISSIONER YAMANE:** Mr. Chair, I'd like
7 to make a motion that we move into the executive
8 session to consult with our AG concerning the
9 Commissioner's powers, duties, immunities,
10 privileges, and liabilities.

11 **CHAIR GIOVANNI:** So recognized. Do I have
12 a second to that motion?

13 **COMMISSIONER KAMAKEA-OHELO:** Chair,
14 second.

15 **CHAIR GIOVANNI:** Motion to go into
16 executive session has been made by Commissioner
17 Yamane and seconded by Commissioner Kamakea-Ohelo.
18 And I take it we're -- all in favor of going into
19 executive session signify by saying "aye."

20 **MULTIPLE SPEAKERS:** Aye.

21 **CHAIR GIOVANNI:** Any opposed? So moved.

22 So we will go into executive session,
23 which will be the Commissioners and the Attorney
24 General only. So we ask you to -- hopefully this
25 won't be a long session and we ask you to stay on --

1 nearby. Thank you.

2 **(WHEREUPON, a recess was taken.)**

3 **MS. KWAN:** We'll go back on the record.

4 **CHAIR GIOVANNI:** So it is 9:41 and we're
5 back on the record. And let me start by summarizing
6 the -- what we discussed and agreed and understood
7 in executive session.

8 So as you may be familiar if you've read
9 the staff report for this matter, there was a
10 question about whether or not the Commission has
11 authority to even grant such a motion for -- to put
12 something in perpetuity.

13 So we wanted to discuss that with our
14 attorney general -- whether or not we even had that
15 authority or whether there were limits to that
16 authority. So that was part of it.

17 And we'll hear I'm going to ask the
18 Attorney General to put on the record her position
19 on that, which generally says -- you'll hear -- that
20 we don't have the authority.

21 Nonetheless, we would like to, in the
22 interest of full -- of due process give you an
23 opportunity to present your position and to hear
24 from other interested members of the community and
25 the county and the state on this matter.

1 So we want to hear about it even though we
2 expect that we don't -- we understand we don't have
3 the authority. That's fair.

4 And then there was a second question that
5 -- related but not specific to the one that's before
6 us today on the question of substantial commencement
7 of work on this parcel.

8 And that question, which is a very good
9 question, is we're not able to address that
10 specifically today because it's not agendized as
11 such. But if the party wants to proceed it's -- we
12 would welcome a separate request for a declaratory
13 ruling on that question alone. But we can't take
14 that up today.

15 So, Mr. Lee, is that clear?

16 **COMMISSIONER LEE:** Yes, that's very clear.

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

18 So let me turn to Attorney General Goldman
19 and ask her to elaborate on the question of our
20 authority to hear this motion.

21 **MS. GOLDMAN:** (Inaudible). On that
22 question I will just direct everyone's attention to
23 Page 11 of the staff report for this item in which
24 staff noted that there they have not identified any
25 specific statutory authority or court ruling or

1 previous practice that would grant the Commission
2 that ability to affirm state use state land use
3 district boundaries in perpetuity and that also
4 staff believes that Petitioner has not shown good
5 cause or provided any legal authority for that.

6 **CHAIR GIOVANNI:** Okay. So we're still
7 going to go forward with your presentation. And let
8 me welcome you to do that at this time.

9 **MR. LEE:** Thank you, Chair.

10 First and foremost I would like to
11 apologize to the Commission and staff and other
12 interested parties --

13 **CHAIR GIOVANNI:** Excuse me. I got to do
14 the public testimony first.

15 **MR. LEE:** Oh, okay.

16 **CHAIR GIOVANNI:** Please hold.

17 Ms. Kwan, please identify any written
18 testimony that's been put forth on this matter?

19 **MS. KWAN:** We've received seven written
20 testimonies -- all from landowners, state and
21 county.

22 **CHAIR GIOVANNI:** And they are all posted
23 on our website?

24 **MS. KWAN:** Correct.

25 **CHAIR GIOVANNI:** Thank you very much. Has

1 any members of the public signed up to testify
2 orally before us today?

3 **MS. KWAN:** Seeing none, Chair.

4 **CHAIR GIOVANNI:** Thank you.

5 Now, Mr. Lee, please proceed.

6 **MR. LEE:** Thank you.

7 In my overzealousness in advocating for my
8 client I overreached in requesting the order that
9 the -- my client's property would remain urban in
10 perpetuity. It's clear that -- and I agree with the
11 Attorney General's Office that this body does not
12 have that authority. It's not provided for by law.

13 Having said that, I do want to address
14 some other issues -- sub-issues that have been
15 raised both in connection with the petition that was
16 filed as well as some of the testimony that has come
17 in.

18 And so in order to do that I sort of want
19 to distill the relevant facts, historical facts. So
20 we have, as everyone knows, this Memorandum of
21 Understanding dated March 30, 1993.

22 And the parties are the Department of Ag
23 and Halekua Development Corporation, which was at
24 the time the original petitioner in this -- seeking
25 the reclassification and the owner of all of the 500

1 plus acres.

2 And the Memorandum of Understanding made
3 it clear that there was an obligation to convey 150
4 acres to the Department of Agriculture. And it's
5 also clear that there are certain offsite
6 infrastructure improvements that need to be done.
7 No question.

8 And then you have the LUC's order which
9 imposed what we call Condition 19, which simply
10 states Petitioner, being Halekua, "shall convey the
11 agricultural park to the State of Hawaii and provide
12 offsite infrastructure to the agricultural park
13 pursuant to the terms of the Memorandum of
14 Understanding dated March 30, 1993." Okay. Again
15 indisputable facts.

16 Move forward a little bit more in time. As
17 we all know, Halekua ran into all sorts of trouble
18 trying to move forward with this development
19 project. And so, you know, HRT comes along, wants
20 to acquire some of the land, including the
21 industrial land that my clients now own.

22 And as part of an agreement -- and it's
23 called a stipulation -- between the Office of
24 Planning, which is now the Office of Planning and
25 Sustainable Development, and HRT, it states in

1 Paragraph 2 of that stipulation that the Office of
 2 Planning "hereby agrees that should HRT" -- and I
 3 just want to make this point. It's not HRT's
 4 obligated to acquire the agricultural park -- the
 5 150 acres. It has an option of acquiring it. Okay.

6 So should HRT acquire said 150-acre
 7 agricultural park site from the Robinson owners and
 8 convey the same to the State of Hawaii, then such
 9 conveyance by HRT shall satisfy -- and I'm just
 10 going to paraphrase -- Condition 19. At least that
 11 portion that obligated Halekua to convey the
 12 agricultural park to the Department of Ag.

13 Paragraph 3 of the agreement or
 14 stipulation states that as a condition to the
 15 conveyance by HRT Limited the Land Use Commission
 16 shall enter an order providing that, one, the HRT
 17 land shall not be reclassified for any use other
 18 than the presently designated uses of such HRT lands
 19 unless such reclassification is made at the request
 20 of HRT.

21 Two, that Halekua's failure to fulfill any
 22 of the terms and conditions of the 1996 LUC order
 23 shall have no adverse effect upon the HRT lands.
 24 This was a condition to HRT conveying the 150 acres
 25 to the Department of Agriculture.

1 And then Paragraph 6 of the agreement
 2 states that with respect to Condition No. 19 set
 3 forth in the 1996 LUC order that upon conveyance of
 4 the 150-acre agricultural park site that's herein
 5 set forth the portion of said Condition 19 dealing
 6 with the conveyance of the 150-acre agricultural
 7 park site to the State of Hawaii shall be deemed to
 8 be fully satisfied -- provided, however, that the
 9 portion of Condition No. 19 dealing with providing
 10 offsite infrastructure shall continue to apply to
 11 and encumber lands other than the HRT land.

12 So there has been testimony submitted by
 13 OPSD as well as the Department of Ag that my client
 14 is still bound by those infrastructure obligations
 15 contrary to the stipulation that was entered into.

16 And so what I would like this Commission
 17 to do is to clarify and to enforce this condition
 18 that was provided for in the stipulation.

19 I believe -- and Osako is here and they
 20 can testify -- that they have made commitments to
 21 provide these offsite infrastructure improvements to
 22 the ag park. Ohana is here. They've made certain
 23 improvements and completed them relating to the non-
 24 potable water requirements.

25 And so all I am seeking from this body is

1 to enforce the terms of the stipulation that the
2 State of Hawaii through its Office of Planning
3 committed to.

4 Now what is the repercussions if that is
5 not accomplished? Well, it's clear that HRT was
6 induced into acquiring the 150 acres and conveying
7 it to the Department of Ag based on this stipulation
8 and the understanding that the HRT lands would not
9 be encumbered by the Condition 19 obligation to
10 provide those offsite infrastructure improvements to
11 the ag park.

12 And really that ultimately is all I'm
13 seeking for purposes of this petition. As I've
14 stated, we were overzealous in asking for the
15 reclassification to remain urban in perpetuity.
16 Clearly that's not permissible.

17 Further, I acknowledge, you know, that,
18 you know, it's a separate issue whether there's
19 substantial commencement of the project for purposes
20 of your ability to use an order to show cause
21 proceeding to declassify the land.

22 That's for a later determination if the
23 Commission ever sought to do that. We would
24 obviously reserve all of our arguments and defenses
25 as to substantial commencement of the project.

1 I think other parties here, you know,
2 would testify that substantial commencement has
3 occurred. And so if this body were to seek a
4 declassification it couldn't use the order to show
5 cause proceeding. You'd have to go through an
6 entire reclassification process.

7 But again that's not an issue here. What
8 I'm focused on is just having a determination that
9 my client's industrial lot is not encumbered by the
10 obligation to provide those offsite infrastructure
11 improvements to the ag park. Thank you.

12 **CHAIR GIOVANNI:** Chairs, any questions for
13 the petitioner?

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

15 **CHAIR GIOVANNI:** Commissioner Yamane?

16 **COMMISSIONER YAMANE:** Thank you, Mr. Lee.
17 Just had one question. I think regarding the
18 stipulation that's referring to the MOU; is that
19 correct?

20 **MR. LEE:** No, no.

21 **COMMISSIONER YAMANE:** Oh.

22 **MR. LEE:** It's a separate document. And
23 it's actually attached as an exhibit to the filing
24 by the Office of Planning and Sustainable
25 Development. And if you have that in front of you

1 it's identified as -- well, at the bottom as Exhibit
 2 10.

3 But it was dated December 29, 2003. And
 4 so that stipulation is what induced HRT to acquire
 5 the 150-acre parcel because Halekua was unable to
 6 perform then. It was its obligation to do.

7 But HRT stepped in and said, "Look, if we
 8 satisfy that requirement and all we're asking in
 9 return is that it satisfies the Condition 19
 10 requirement for the 150 acres to be transferred to
 11 Department of Ag and our property, our industrial
 12 lot, is not going to be encumbered by the obligation
 13 to provide the offsite infrastructure improvements
 14 to that park."

15 **COMMISSIONER YAMANE:** Okay. And that
 16 stipulation is in what document? Is that in a land
 17 use order or is that in a separate document or --

18 **MR. LEE:** It's filed. It was filed before
 19 the Land Use Commission on December 30 of 2003. So
 20 it should be part of the official record.

21 **COMMISSIONER YAMANE:** Okay. And then what
 22 is that MOU you were referring to earlier? Between
 23 what parties were the --

24 **MR. LEE:** So the MOU is dated March 30,
 25 1993. And the parties are the Department of

1 Agriculture and Halekua Development.

2 **COMMISSIONER YAMANE:** Okay. Would you
3 know if the Commission at the time adopted that MOU
4 in its entirety at all?

5 **MR. LEE:** Yes. Because in the
6 Commission's order, which is Condition 19, it
7 expressly references that MOU.

8 **COMMISSIONER YAMANE:** Okay. Thank you.

9 **CHAIR GIOVANNI:** Commissioners, I don't
10 have any further questions at this time. But I
11 would like to invite public testimony at this time.

12 And I do note that in some of the written
13 testimony that was put forth by certain entities
14 that it -- the question that you raised was
15 identified. And I would welcome parties, if they're
16 so inclined, to come forth at this time and offer
17 testimony for clarification.

18 **MS. KWAN:** Is anyone interested in
19 testifying?

20 **COMMISSIONER CARR SMITH:** Chair, while
21 they're discussing what they want to do can staff
22 please tell us exactly where the stipulation is
23 located?

24 **MR. ORODENKER:** Thank you, Commissioner
25 Carr Smith. Dan Orodenker, Executive Officer. It

1 is attached to OPSD's testimony.

2 **COMMISSIONER CARR SMITH:** Okay. That's
3 what I thought but -- and so when Mr. Lee was
4 referring to Paragraph 2 and 3 --

5 **CHAIR GIOVANNI:** Yeah, I'm hoping OPSD
6 will come forward and offer testimony to clarify.

7 **COMMISSIONER CARR SMITH:** Just wondering
8 if that's Condition 19 and then Paragraph 2 and 3 or
9 -- okay.

10 **MR. ORODENKER:** Commissioner Carr Smith,
11 the reference to Condition 19 is at the end of the
12 document. It's Paragraph 6 on Page 5.

13 And it reads that with respect to
14 Condition No. 19 "set forth in the 1996 LUC order,
15 upon conveyance of the 150-acre agricultural park
16 site as set forth herein, as set forth a portion of
17 said Condition No. 19 dealing with the conveyance of
18 the 150-acre agricultural park site to the State of
19 Hawaii shall be deemed to be fully satisfied
20 provided, however, that the portion of Condition No.
21 19 dealing with providing offsite infrastructure
22 shall continue to apply to and encumber lands other
23 than the HRT lands."

24 **CHAIR GIOVANNI:** Could you restate that
25 last part clearly and loudly?

1 MR. ORODENKER: The condition --

2 CHAIR GIOVANNI: -- in the (inaudible).

3 MR. ORODENKER: "The portion of Condition
4 19 dealing with providing offsite infrastructure
5 shall continue to apply to and encumber lands other
6 than the HRT lands."

7 MR. LEE: Commissioner, Mr. Chair, I
8 wanted to make one further legal point. And I want
9 to stress that this is purely lawyer speak. Okay?
10 It is nothing that my client has indicated any
11 interest in doing whatsoever.

12 But I would suggest to this body that
13 because the conveyance of the 150 acres was a
14 condition -- I mean, a condition of the conveyance
15 of the 150 acres to the Department of Agriculture
16 was that the HRT land, the industrial lot, my
17 client's property, would not be subject to those
18 offsite infrastructure improvement requirements.

19 A failure of that condition draws into
20 question whether that deed is valid and whether it's
21 revocable. And I don't think that's something my
22 client's interested in pursuing. I don't think the
23 State of Hawaii Department of Ag or this body would
24 want to see that happen. But it is a legal risk.

25 CHAIR GIOVANNI: I'm not a lawyer but I

1 think I understand your position.

2 Does OPSD want to offer any testimony?

3 **MS. KWAN:** Chair, we have OPSD coming up
4 for testimony.

5 **CHAIR GIOVANNI:** Okay. Please identify
6 yourself and I will also swear in Katia.

7 **MS. KATO:** Is it working?

8 **MS. KWAN:** Careful. Don't break it. Don't
9 break it. (Inaudible).

10 **MS. KATO:** Hi, good morning. Alison Kato,
11 Deputy Attorney General for the Office of Planning
12 and Sustainable Development. Also here is Katia
13 Balassiano from OPSD.

14 And did you want to swear her in now?

15 **CHAIR GIOVANNI:** Ms. Balassiano, please
16 state your name and affiliation for the record and
17 I'll swear you in.

18 **MS. BALASSIANO:** Kata Balassiano, Office
19 of Planning and Sustainable Development, Land Use
20 Administrator.

21 **CHAIR GIOVANNI:** Do you swear the
22 testimony you're about to give today will be the
23 truth?

24 **MS. BALASSIANO:** I do.

25 **CHAIR GIOVANNI:** Okay. Ms. Kato, please

1 proceed.

2 **MS. KATO:** Thank you, Chair.

3 Sorry for the delay. We just wanted to
4 clarify a few things. And we understand that the
5 Commission does not -- is not going to be able to --
6 does not have the authority to act on this petition
7 to approve it or anything.

8 But I just wanted to clarify a couple of
9 things that -- regarding the stipulation that
10 Petitioner mentioned. So the stipulation was --
11 we're not disagreeing with his characterization of
12 the stipulation. That was between OPSD and HRT at
13 the time -- their predecessor in interest.

14 But the thing is the -- OPSD does not have
15 authority to release Petitioners from any
16 conditions. So at the time those conditions all ran
17 with the land so that it was a requirement that they
18 were obligated as together with Halekua Development
19 Corporation.

20 And, you know, the ag park was --
21 condition was very important to OPSD support at the
22 time because these are high-quality and cultural
23 lands.

24 So OPSD did request to the LUC the things
25 that were in that stipulation, but the LUC was not

1 obligated to accept that and they did not. And HRT
2 was present at the hearing on this matter. And they
3 agreed to take out much of that stipulation.

4 And so what eventually came out of the LUC
5 is a 2004 order. So the 2004 order is what stands.
6 And there's no mention of excusing HRT's property
7 from all of the other conditions.

8 In fact, there was a lot of discussion at
9 the hearing as to concern over fulfillment of these
10 other conditions. And the plain -- we think that
11 the language of the order is clear.

12 It clearly states the exemption from the
13 OSC was limited to the LUC's order to show cause
14 proceedings, that all other conditions continue to
15 run with the land, and that HRT's lands may be
16 reverted if HRT violates those other conditions.

17 And so based on that and everything that
18 occurred and the documents that exist, OPSD doesn't
19 believe that there's anything that supports, you
20 know, their interpretation.

21 And just a note about the MOU that was
22 mentioned. So Petitioner mentioned the 1993 MOU.
23 And I'm just pointing out that that MOU was restated
24 several times.

25 And I believe the last one was the fifth

1 restatement, which was included in the status report
2 that occurred last status report on this -- on the
3 Halekua Development Corporation matter. So just
4 noting that for clarification. And that's all.
5 Thank you.

6 **CHAIR GIOVANNI:** Okay. Thank you. So let
7 me see if I understand what you said. So I'm going
8 to summarize in lay terms my understanding and ask
9 you to correct me as necessary.

10 So originally the land -- 500 plus acres
11 -- was owned by somebody else. And there was an
12 obligation or a condition that 150 acres would be
13 given to the Department of Agriculture for ag park
14 along with infrastructure to go with it?

15 **MS. KATO:** That's correct.

16 **CHAIR GIOVANNI:** Then that land was -- had
17 one owner. But then it ended up with multiple
18 owners and it was divided up.

19 And this party, RK II, now owns -- what is
20 it -- 120 acres or so?

21 **MR. LEE:** A little more than that, yeah.

22 **CHAIR GIOVANNI:** Yeah, just more than 120
23 acres. And with that was an obligation to convey
24 the 150 acres of ag land.

25 And there was a stipulation that went

1 along with that agreement that the petitioner has
2 put forth, which said that they'd have to give that
3 150 acres but they would be released from the
4 requirement to provide the infrastructure to go
5 along with it.

6 However, that -- even though that was in
7 the stipulation between the party and OPSD, it was
8 never approved by the Land Use Commission; is that
9 correct?

10 **MS. KATO:** That's about correct, yes.

11 **CHAIR GIOVANNI:** About? What's not
12 correct?

13 **MS. KATO:** Oh, I mean, that's the
14 simplified version, yes.

15 **CHAIR GIOVANNI:** Simplified version. I
16 didn't say anything incorrect?

17 **MS. KATO:** No.

18 **CHAIR GIOVANNI:** Okay. So as such, since
19 it was not -- since that condition removing the
20 infrastructure requirement from the obligation of
21 this particular party was not approved by the LUC at
22 the time your understanding is that that requirement
23 runs with the land and is still an obligation of
24 this party?

25 **MS. KATO:** That's correct.

1 **CHAIR GIOVANNI:** Okay. Thank you. And so
2 you disagree with the petitioner?

3 **MS. KATO:** That's correct.

4 **CHAIR GIOVANNI:** Very good. Commissioners,
5 further questions or comments on this matter? I
6 have an open question whether or not we could even
7 deal with this issue today.

8 Is that something that I need to ask you
9 or go into -- yeah.

10 The question -- yeah. So my position, and
11 I'm open to others -- to listen to others -- is that
12 this particular question, which is pretty narrow,
13 was not agendized as such.

14 And if the petitioner wants to pursue it
15 directly again I would invite you to petition the
16 Commission for a declaratory order on this question.
17 But I'm not sure we can address it today.

18 Yeah, you're looking to amend an order.
19 You basically want to revisit 2004, in which it was
20 put forth to that Commission at the time and it was
21 not approved.

22 **MR. LEE:** Well, I think -- and I wasn't
23 there. I don't think any of us were there.

24 **CHAIR GIOVANNI:** No (inaudible) remember
25 --

1 **MR. LEE:** It was over 20 years ago. But
 2 as I understand the 2004 order, which was really out
 3 of an order to show cause proceeding to declassify
 4 the entire 500 plus acres, okay, and so HRT was --
 5 you know, the then Office of Planning was, you know,
 6 submitted that stipulation for approval by or as
 7 support to -- for HRT to be excluded from that order
 8 to show cause. Okay?

9 So it wasn't about, you know, whether
 10 HRT's land continued to be encumbered by the
 11 obligation in Condition 19 to provide the offsite
 12 infrastructure improvement. It was whether HRT was
 13 going to be excluded from the scope of the order to
 14 show cause because of the stipulation.

15 And so the issue of whether this body was
 16 approving the stipulation or not wasn't at issue. It
 17 was really evidence of why HRT should be excluded
 18 from the order to show cause and what the scope of
 19 that order should be.

20 And the stipulation suggested that the
 21 order should be beyond just the order to show cause
 22 proceeding. And it appears that in the
 23 deliberations of this body they determined that, no,
 24 we're just going to address it for purposes of this
 25 order to show cause.

1 So it has no precedential value going
2 forward. And so the issue that I am presenting to
3 you -- and if I need to submit a separate petition
4 for declaratory order that's fine. I will do so.
5 But I don't think it -- the Land Use Commission back
6 in 2003 or 2004 rejected the terms of the
7 stipulation.

8 **CHAIR GIOVANNI:** But it didn't approve it
9 either.

10 **MR. LEE:** No, it didn't. It simply used
11 that as evidence to exclude HRT from the scope of
12 that order to show cause proceeding.

13 **CHAIR GIOVANNI:** Understood. Yeah, I
14 think the way forward is for you to proceed with a
15 separate request for declaratory order on this
16 question. We're not in a position to deal with it
17 today.

18 **MR. LEE:** I understand.

19 **CHAIR GIOVANNI:** Okay.

20 **COMMISSIONER CARR SMITH:** Chair?

21 **CHAIR GIOVANNI:** Commissioner Carr Smith?

22 **COMMISSIONER CARR SMITH:** I have a general
23 question.

24 Mr. Lee, can you help me understand what
25 may or may not have happened since the status report

1 that you gave us on April 3rd of this year? I'm
 2 kind of confused about why this is circling back.
 3 Thank you.

4 **MR. LEE:** Commissioner Carr Smith, I'm
 5 glad you raised that question because,
 6 notwithstanding this tortured history of this
 7 project, I think it's fair to say that, you know,
 8 the new owners are making, you know, significant
 9 progress in going forward.

10 You know, Haseko, you know, expended a lot
 11 of money and effort. Ohana has spent, you know,
 12 hundred you know, what, I don't know, a hundred plus
 13 million in its, you know, PV solar farm. My clients
 14 have spent millions of dollars.

15 It's got tentative subdivision approval on
 16 the first phase of its industrial project that's
 17 going to bring sorely needed industrial warehouse
 18 inventory on the market because -- I think because
 19 we -- I hope you know -- but I will inform you that
 20 that is the most challenging area of commercial real
 21 estate in terms of supply.

22 I think the vacancy is somewhere, like, 1
 23 percent. Okay? So, you know, this city needs more
 24 warehouses. And so my clients are moving very
 25 quickly to try to accomplish that.

1 However they are in ongoing discussions
2 with Haseko because in order for my client to
3 proceed with its development -- and I think this was
4 in its most recent annual report -- it needs certain
5 infrastructure improvements that Haseko has
6 committed to do specifically certain road
7 improvements that will provide access to my client's
8 property.

9 And, unfortunately, Haseko has, you know,
10 had some challenges and delays in getting there.
11 But, you know, I think we're hopeful -- we're
12 optimistic that they're going to be able to meet the
13 timelines that they've recently announced or
14 indicated so that we can move forward with our
15 project.

16 Now Haseko's also, you know, committed in
17 the MOU, the fifth amended and restated MOU, to
18 provide those, you know, offsite infrastructure
19 improvements to the ag park.

20 And so, you know, I think, you know,
21 whether it's this morning or at another hearing in
22 my next petition for declaratory order, you know,
23 those are issues that, you know, perhaps can be
24 addressed to help inform this Commission on how to
25 move forward.

1 **COMMISSIONER CARR SMITH:** So that's
2 helpful. So is your concern that Haseko may not be
3 able to provide what your client needs and then that
4 will cause your client to be delayed in their
5 responsibilities? Is that --

6 **MR. LEE:** Yes.

7 **COMMISSIONER CARR SMITH:** Okay. And have
8 there been any other reasons that -- or things
9 happen that make you be concerned about reversion
10 and so you're asking for perpetuity? Which we can't
11 do. But did something happen? No?

12 **MR. LEE:** No. This --

13 **COMMISSIONER CARR SMITH:** Okay.

14 **MR. LEE:** Again this is the lawyer in me;
15 right? To the extent I can close my client's
16 ownership with more legal protections than it
17 removes certain risks and uncertainties.

18 So it helps them with their lenders. It
19 helps them with, you know, purchasers of lots or
20 lessees or what have you. You know, the threat of a
21 declassification through an order to show cause
22 proceeding is a substantial one and diminishes the
23 market value of the property and the viability of
24 the development.

25 So to the extent that we can remove that

1 risk then it obviously benefits not just my client
2 but, you know, all the other parties.

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

4 **CHAIR GIOVANNI:** Mr. Lee, you know,
5 infrastructure means different things to different
6 people. Can you describe in your own words, non-
7 legally if you can, what the offsite infrastructure
8 associated with ag park what it looks like?

9 **MR. LEE:** Sure. Yeah. Actually I can
10 read it from the Fifth Amendment to the Amended and
11 Restatement of Memorandum of Understanding.

12 **CHAIR GIOVANNI:** Yeah, please do. I'd
13 like it on the record.

14 **MR. LEE:** Yes. So it's Paragraph E at
15 Page 3 of this document and it's -- the title is
16 "Haseko to Design and Construct Certain Offsite
17 Infrastructure to the State Agricultural Park.
18 "Subject to receipt of DOA's approval, which
19 approval shall not be unreasonably withheld,
20 conditioned, or delayed, Haseko shall design and
21 construct the permanent infrastructure improvements
22 for the State Agricultural Park to include a
23 roadway, potable water exclusive of the irrigation
24 infrastructure (and any associated water
25 commitment), electrical, and communications and

1 gravity sewer up to the property boundary of the
2 State Agricultural Park at no cost to the DOA."

3 **CHAIR GIOVANNI:** Thank you. I mean, I
4 think that further supports the notion that a
5 separate declaratory request for declaratory
6 ruling on that specific question involving all
7 appropriate parties would be the way to proceed for
8 clarification as opposed to today.

9 **MR. LEE:** I understand.

10 **CHAIR GIOVANNI:** Understand?

11 **MR. LEE:** Thank you, Chair.

12 **CHAIR GIOVANNI:** Okay. Commissioners,
13 anything further for Petitioner? Okay.

14 We were in public testimony. And I will
15 continue in public testimony.

16 OPSD, did you have anything further to
17 offer at this time?

18 **MS. KATO:** No, Chair.

19 **CHAIR GIOVANNI:** Okay. Any questions for
20 OPSD from Commissioners?

21 Thank you. And thank you for your written
22 testimony as well.

23 Public? Ms. Kwan, anybody else from the
24 public want to testify?

25 **MS. KWAN:** Seeing none, Chair.

1 **CHAIR GIOVANNI:** Okay. So we will enter
2 into deliberations at this time. It is 10:19.

3 Commissioners, you want a break or shall
4 we go for it? Let's go.

5 So given that the matter in front of the
6 Commission is a declaratory ruling pursuant to HAR
7 1515 100, there are a few ways that the Commission
8 can proceed.

9 It can deny the petition being that the
10 question is speculative, lacks standing, adversely
11 impacts the State Commission or officers or
12 employees, and any litigation which is pending or
13 expected to arise or lacks jurisdiction.

14 It can issue a decision on the matters
15 contained in the declaratory order petition or it
16 can set the hearing before the Commission.

17 Commission will now consider the request
18 for declaratory ruling as presented by the
19 petitioner. But let me also note that we have, on
20 the advice of the Attorney General, that we don't
21 have the authority. And that has been incurred by
22 the petitioner as well.

23 **MR. LEE:** Mr. Chair, perhaps to help
24 simplify these proceedings and given how the hearing
25 has gone I would like to make a motion to withdraw

1 my petition and so make it easier for the Commission

2 --

3 **CHAIR GIOVANNI:** I think it's going to be
4 easy either way.

5 **MR. LEE:** Yeah.

6 **CHAIR GIOVANNI:** But --

7 **MR. LEE:** And, you know, we will prepare a
8 second petition that's more on-point.

9 **CHAIR GIOVANNI:** Okay. One second. Yeah,
10 I think we'll just proceed with the deliberations if
11 you don't mind. I appreciate the offer.

12 And I think it's kind of a common-sense
13 offer at this point in time so I appreciate it. But
14 we'll proceed with deliberations and a decision on
15 the motion -- on the petition that's before us.

16 Commissions, any discussion? If not, a
17 motion to how to proceed?

18 Commissioner Lee?

19 **COMMISSIONER LEE:** Yeah, I think I know
20 what the petitioner's trying to get, which is
21 confidence that the property will not revert.

22 And so because we're -- we've been advised
23 that we can't do it the way that was proposed, it
24 was discussed that there could be another
25 declaratory ruling proposal. And I'm not sure if

1 we're all on the same page on this.

2 But one suggestion we had was that if
 3 that's the confidence that you want -- some of the
 4 filings today, some of the testimony, but also the
 5 fact that substantial commencement would preclude
 6 any reversion perhaps -- I'm not sure if that's what
 7 you guys have in mind for your future proposal.

8 But perhaps requesting a declaratory
 9 ruling that substantial commencement has taken place
 10 would address the concerns of your client. So I
 11 just wanted to be a little bit more explicit on what
 12 we are thinking.

13 Thank you, Chair.

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

15 Yeah, I think there are two parts. This
 16 is part one. Part two is whether or not they have
 17 an obligation with the infrastructure associated
 18 with the ag park.

19 And that might be another separate
 20 consideration you put forth before us. But neither
 21 of those we can consider today. Simply said, it's
 22 just whether or not we can put this into urban on an
 23 -- in perpetuity. And we think we cannot.

24 So do I have a motion from the Commission?

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

1 **CHAIR GIOVANNI:** Commissioner Yamane?

2 **COMMISSIONER YAMANE:** Well, first of all,
3 I want to -- I appreciate the petitioner's position,
4 understanding what you're trying to get at. But
5 based on what is submitted I'd like to move that
6 this Commission deny the petitioner's request for a
7 clarification in its entirety.

8 **CHAIR GIOVANNI:** Thank you.

9 Do I have a second to that motion?
10 Commission Kamakea-Ohelo, was that a second?

11 **COMMISSIONER KAMAKEA-OHELO:** Yes.

12 **CHAIR GIOVANNI:** Motion was seconded by
13 Commissioner Kamakea-Ohelo.

14 Commissioner Yamane, I think you already
15 spoke to your motion. Did you want to add anything
16 to that?

17 **COMMISSIONER YAMANE:** Oh, no. That was
18 pretty much --

19 **CHAIR GIOVANNI:** Okay. Kamakea-Ohelo, did
20 you want to add anything?

21 **COMMISSIONER KAMAKEA-OHELO:** No, Chair.

22 Nothing to add.

23 **CHAIR GIOVANNI:** Thank you.

24 Any other Commissioners? Hearing none,
25 the Chair concurs with the position of the movant.

1 And, Mr. Orodenger, will you take a roll-
2 call vote, please?

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

4 The motion is to deny the petition in its
5 entirety. Commissioner Yamane?

6 **COMMISSIONER YAMANE:** Aye.

7 **MR. ORODENKER:** Commissioner Kamakea-
8 Ohelo?

9 **COMMISSIONER KAMAKEA-OHELO:** Aye.

10 **MR. ORODENKER:** Commissioner Carr Smith?

11 **COMMISSIONER CARR SMITH:** Aye.

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

13 Commissioner Lee?

14 **COMMISSIONER LEE:** Aye.

15 **MR. ORODENKER:** Commissioner U'u?

16 **COMMISSIONER U'U:** Aye.

17 **MR. ORODENKER:** Commissioners Hayashida
18 and Miyasato are excused. Chair Giovanni?

19 **CHAIR GIOVANNI:** Aye.

20 **MR. ORODENKER:** Thank you, Mr. Chair. The
21 motion passes unanimously.

22 **CHAIR GIOVANNI:** Thank you. And we look
23 forward to seeing you again, Mr. Lee.

24 **MR. LEE:** And, Chair, just a point of
25 clarification.

1 **CHAIR GIOVANNI:** Yep?

2 **MR. LEE:** Because our petition did address
3 the substantial commencement of the project as an
4 issue I want to be -- I want a point of
5 clarification that this denial is without prejudice
6 as to raising that issue in our subsequent petition?

7 **CHAIR GIOVANNI:** That is my understanding
8 as well.

9 **MR. LEE:** Thank you very much.

10 **CHAIR GIOVANNI:** With no further business
11 to discuss on today's agenda, I declare this meeting
12 recessed until tomorrow at 9:00 a.m. here also at
13 the Airport Conference Center in Hawaiian Airlines
14 Terminal Room No. 3. Thank you very much for your
15 time.

16 **COMMISSIONER LEE:** Point of clarification.
17 It's not recess. It's adjourned; right?

18 **CHAIR GIOVANNI:** It says recessed.

19 **COMMISSIONER LEE:** It should be -- yeah,
20 but it's a separate issue tomorrow; right?

21 **CHAIR GIOVANNI:** Separate issue. But it's
22 same meeting.

23 **COMMISSIONER LEE:** Okay. Thank you.

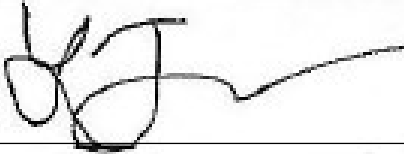
24 **CHAIR GIOVANNI:** Yeah. Okay. Thank you.

25 **(WHEREUPON, the meeting concluded.)**

CERTIFICATE

I, LeAnn Trumble, 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 14th day of October, 2024.



LeAnn Trumble