

STATE OF HAWAII
LAND USE COMMISSION MEETING
Meeting held on January 8, 2025
Commencing at 10:00 a.m.

Held at
Leiopapa A Kamehameha, State Office Tower,
235 South Beretania Street, Room 405
Honolulu, HI 96813

I. Call to order

II. DR24-78 RK II Partners LLC, Petition for declaratory order (Oahu) to consider a petition for declaratory ruling ("Petition") requesting the Commission's opinion on whether there has been substantial use of the petition area and any reclassification by the LUC must be done in accordance with Section 205-4, Hawaii Revised Statutes ("HRS"). The petition also seeks the Commission's opinion confirming that the parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park.

Parcel is identified as TMK No. (1)9-4-002-001, approximately 123.712 acres located in the City and county of Honolulu, State of Hawaii.

III. Approval of Minutes for November 7, 2024

IV. Tentative Meeting Schedule

V. Recess

BEFORE

1 PARTICIPANTS

2
3 LUC COMMISSIONERS:

4 Dan Giovanni, Chairman

5 Michael Yamane

6 Mel Kahele

7 Brian Lee

8 Kuike Kamakea-Ohelo (via Zoom)

9 Bruce U'u

10 Myles Miyasato

11 Nancy Carr Smith

12
13 LUC STAFF:

14 Daniel Orodenker, Executive Officer

15 Scott Derrickson, Chief Planner

16 Martina Segura, Planner

17 Ariana Kwan, Chief Clerk

18 Melissa Goldman, Esquire, Deputy Attorney General

19 (via Zoom)

20
21 REPRESENTATIVES FOR RK II PARTNERS:

22 Terry Lee, Esquire

23 Ernie Martin, Esquire

24 Mike Matsuura, Esquire

25 Ed St. Geme (via Zoom)

PARTICIPANTS CONTINUED

CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING
AND PERMITTING ("DPP"):

Pono Arias, Esquire, Deputy Corporation Counsel

Patricia Sendao, Esquire

Dina Wong

Franz Kraintz

HAWAII DEPARTMENT OF AGRICULTURE ("HDOA")

Kelcie Nagata, Esquire, Deputy Attorney General

Brian Kau, Esquire

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT

("OPSD"):

Alison Kato, Esquire, Deputy Attorney General

Ruby Edwards

Aaron Setogawa

REPRESENTATIVE FOR HASEKO, INC.:

Curtis Tabata, Esquire (via Zoom)

REPRESENTATIVE FOR HO'OHANA SOLAR 1, LLC:

Jennifer Lim, Esquire (via Zoom)

1 HAWAII LUC COMMISSION MEETING

2 HELD ON

3 JANUARY 8, 2025

4 10:00 A.M.

5
6 MR. ORODENKER: -- LUC must be done in
7 accordance with HRS Section 205-4, and a request
8 that the LUC clarify and affirm that the parcel is
9 not encumbered by the requirement to provide offsite
10 infrastructure to the 150-acre agricultural park.

11 This was an inadvertent error. The
12 remainder of the document is consistent with the
13 pleadings, and the body of the staff report reflects
14 that. The amended staff report correcting the error
15 was posted on 1/7 in the morning. The AG has
16 advised us that the correction of the error and
17 subsequent reposting satisfied disclosure
18 requirements.

19 CHAIRMAN GIOVANNI: Thank you, Mr.
20 Orodenker.

21 Ms. Kwan, I heard that the recording was
22 started midway through the --

23 MS. KWAN: Yes, Mr. Chair.

24 CHAIRMAN GIOVANNI: So I'd like to go back
25 and get Commissioner Kamakea-Ohelo on record in the

1 recording. So Kuike, could you restate your
2 location and affirm you are there along, just for
3 the record.

4 COMMISSIONER KAMAKEA-OHELO: Yes, Chair.
5 This is Commissioner Kamakea-Ohelo, and I am joining
6 this hearing via Zoom from 560 North Nimitz Highway
7 here in Honolulu. I'm in my offices here in iwilei,
8 and I'm in fact in my office alone, attending the
9 meeting. Mahalo.

10 CHAIRMAN GIOVANNI: Thank you so much.
11 Mahalo.

12 Okay. At this time I'd like the parties
13 to introduce themselves. Petitioner?

14 MR. LEE: Yes. Thank you, Chair,
15 Commissioners. Terry Lee, counsel for the
16 petitioner, RK II Partners. Also attending is my
17 colleague, Ernie Martin and Mike Matsuura. And also
18 in attendance our principals of RK II Partners, Mike
19 Wright, who is here in person, as well as Garrett
20 Beck, who's participating by Zoom, and Bo St. Geme,
21 who's participating by Zoom.

22 CHAIRMAN GIOVANNI: Mr. Lee, do any of
23 your associates plan to give testimony as part of
24 your presentation today?

25 MR. LEE: No. I will be the only speaker.

1 CHAIRMAN GIOVANNI: Okay. But if we -- if
2 we do need to call on them, we'll swear them in at
3 the time.

4 So Mr. Lee, I'd like to review the
5 reimbursement policy and get your acknowledgement.
6 Have you reviewed HAR 1515-45.1, regarding the
7 reimbursement of hearing expenses?

8 MR. LEE: Yes.

9 CHAIRMAN GIOVANNI: And you accept them?

10 MR. LEE: Yes.

11 CHAIRMAN GIOVANNI: Thank you very much.

12 At this time, we'd like to deal with any
13 potential disclosures or conflicts of interest. So
14 in accordance with HRS 84-14, Commissioners are not
15 allowed to take any official action affecting a
16 business in which they or a member of their family
17 has a financial interest. They must therefore
18 recuse themselves from this matter if there's any
19 benefit, monetary or otherwise, to themselves or
20 members of their family.

21 Also, in accordance with legal ethical
22 standards, Commissioners should disclose any
23 relationship, business, social or otherwise, that
24 they may have with the petitioner or its
25 representatives, or any other parties to this

1 proceeding that may give rise to an allegation of
2 bias or impropriety.

3 So Commissioners, do any of you have any
4 conflicts of interest or disclosures to make at this
5 time? Seeing none, we'll proceed.

6 As a reminder, this is a declaratory
7 ruling petition, so the procedure will be slightly
8 different from our standard contested case approach.

9 Here's the process we will follow for this
10 agenda item: We will begin by acknowledging any
11 written testimony that has been submitted regarding
12 this matter.

13 Next, I will open the floor to members of
14 the public who wish to provide oral testimony on the
15 matter. Once the public testimony is complete, I
16 will call upon representatives from the petitioner,
17 and they will be called upon to make their
18 presentation.

19 After the petitioner's presentation, the
20 Commissioners will have an opportunity to ask
21 questions to provide comments. I will also invite,
22 although it's not mandatory as a next step, the City
23 and County of Honolulu, if they wish to provide
24 testimony on this matter. And I will also invite
25 the Office of Planning and Sustainable Development

1 if they wish to provide public testimony on this
2 matter. Then I will reopen the floor to other new
3 and additional oral testimony on this matter.

4 And finally, the Commission will
5 deliberate on the matter, on the testimony and
6 presentations presented. The Commission will then
7 determine what action, if any, it will be taking in
8 response to the petition.

9 Okay. Please be informed that the relevant
10 records and documents pertaining to this matter can
11 be accessed for review on the LUC website. I'm
12 going to say this twice:

13 <https://luc.hawaii.gov/dr24-78>. Once again,
14 that's <https://luc.hawaii.gov/dr24-78>.

15 I will now recognize the written public
16 testimony submitted in this matter. Ms. Kwan, could
17 you tell me about the written testimony that has
18 been received.

19 MS. KWAN: Yes, Mr. Chair. We've received
20 five written testimonies on this matter. All have
21 been posted to the website. Staff was unable to
22 check this morning if any additional testimony came
23 in due to Wi-Fi connection issues.

24 CHAIRMAN GIOVANNI: Thank you. But all
25 five have been posted?

1 Are there any members of the public that
2 wish to testify on this at this time, public
3 testimony? Anybody signed up?

4 MS. KWAN: If there's anyone on the Zoom
5 who would like to provide oral testimony, please use
6 the Q and A feature now.

7 CHAIRMAN GIOVANNI: And let me reiterate
8 to the City and County of Honolulu and to the Office
9 of Planning and Sustainable Development, I will
10 invite you to provide testimony after we hear from
11 the petitioner, if you so -- are so inclined to do
12 so. I do acknowledge that you have both submitted
13 written testimony, and it's appreciated.

14 Back to you, Ms. Kwan. Anybody?

15 MS. KWAN: Still seeing none, Chair.

16 CHAIRMAN GIOVANNI: Anybody in the room
17 sign up?

18 MS. KWAN: Seeing none, Chair.

19 CHAIRMAN GIOVANNI: Thank you.

20 So, time for presentation, Mr. Lee. I
21 will turn it over to you, and you have the floor.

22 MR. LEE: Thank you, Chair.

23 For the record, I'd also like to point out
24 that a representative of the petitioner, Ed St.
25 Geme, has also logged in to Zoom.

1 CHAIRMAN GIOVANNI: Saint John?

2 MR. LEE: St. Geme. I'm not quite sure
3 how to pronounce it. Gem, I think, but --

4 CHAIRMAN GIOVANNI: Okay.

5 MR. LEE: I want to explain to the
6 Commission why we're filing this petition. And I
7 think the reasoning for filing the petition and
8 seeking these orders will help the Commissioners
9 make a policy decision as to whether to grant the
10 petition.

11 And the simple reason for it is, as
12 everyone knows, this land is slated for development.
13 My clients intend to develop very needed industrial
14 facilities to fill the scarce supply of warehouse
15 industrial properties on Oahu. There's also a later
16 phase where (audio disruption) a commercial center
17 to serve the community in that area. And as we
18 know, Haseko is planning to develop quite a few
19 housing units, of which by law it has to provide a
20 certain percentage of affordable housing.

21 So I think it is fair to say that this
22 Commission as well as all of the regulatory bodies
23 involved, OPSD, Department of Ag, DPP, would like to
24 see the development proceed. Well, for developments
25 of this magnitude the developer must be able to

1 finance the project. In order to finance the
2 project the underwriter, the lender who underwrites
3 the financing for this project, evaluates what the
4 risks to the development are.

5 One of the chief risks of this development
6 is the fact that currently it appears to be the
7 LUC's position that if any of the conditions that
8 were imposed on the original order changing the land
9 use classification from ag to urban are not
10 satisfied, then it can simply file an order to show
11 cause and change the classification because of the
12 failure of a condition. That is a serious risk to a
13 developer, and it's a serious risk that a lender
14 will look at in assessing whether to finance any
15 development of this project. And so my request is
16 to have the Commission determine that if any
17 reclassification were to occur, it has to be done
18 pursuant to the statute, and the holding in the DW
19 Aina Le'a case substantially lowers that risk.

20 The other important thing that is unique
21 to our property is the fact that in 2003, I believe,
22 the owner of our property, HRT, negotiated a deal
23 with OPSD that it would acquire the 150 acres for
24 the ag park at its cost and give it to the
25 Department of Ag. And there's no question in the

1 record, and none of the testimony that was filed
2 contest that fact. And I also know that the amount
3 that HRT paid back then, which is over 20 years ago,
4 was \$5 million. So it paid a substantial amount of
5 money to acquire this 150 acres to convey it to the
6 State, for the benefit of the State.

7 And in exchange, it provided the
8 stipulation clearly provided -- and I provided you a
9 copy of the stipulation -- that a condition of this
10 conveyance is the LUC shall enter an order,
11 essentially, holding that the 150 -- the industrial
12 property, HRT's land, would not be encumbered by the
13 requirements of condition 19 to provide offsite
14 infrastructure improvements to the ag park.

15 And I -- when you think about it, that
16 seems like a fair exchange because HRT paid for the
17 land to convey it to the State. So why should it
18 have to be concerned about contributing to the cost
19 of the infrastructure improvements to service that
20 land? Well, fast forward 20 years later, and,
21 frankly, not surprisingly, OPSD, Department of Ag,
22 even DPP, all regulatory agencies, mind you, are
23 opposing this request. Why?

24 Well, because they view this their
25 position from a very narrow lens. And that lens is

1 that of a regulator. So they naturally want to keep
2 as many restrictions on the developer as it can in
3 order to, you know, whatever regulatory objective --
4 or I guess perhaps their perception is if we hold
5 this gun to their head, it will compel them to
6 perform.

7 I don't think there's any question in that
8 they want performance. They want the developments
9 to proceed. But they view it from a regulatory lens
10 and not from the developer's perspective. And
11 that's why I feel it's so important for the
12 Commissioners to understand that, look, you need to
13 have a broader look at this thing. If you really
14 want to see the developments proceed, then you have
15 to lower the development risk so that a lender will
16 be willing to provide financing. None of these
17 developers intend to finance this out of their own
18 pocket. They have to get financing from a lender
19 and institutional lenders which would only -- which
20 are the only source of financing for projects of
21 this magnitude, dig very deep into these issues.
22 I've built my entire career over 40 years
23 representing developers, and I know this. So that
24 is why we are seeking the relief provided in the
25 petition.

1 Now, does the LUC -- do you have the
2 authority to grant such a relief? Clearly, yes.

3 None of the opposing testimony by OPSD,
4 nor the staff report, indicates otherwise. So why
5 should you grant it? Well, pure and simple, because
6 it's the right thing to do.

7 HRT bargained for a certain benefit. It
8 performed it. And here we are over 20 years later
9 and it still hasn't realized the benefit it
10 bargained for. So that's why I'm here. I'm asking
11 this Commission to give us that benefit.

12 The other reason is because, as a policy
13 matter, as I just explained, you will help enable
14 development to go forward because you reduce risk.
15 You're not eliminating all risk. No development is
16 risk-free. But by reducing the risk, you make the
17 land and the project more financeable.

18 Now, this is something I feel compelled to
19 make the Commission and the rest of the state
20 agencies involved aware of, and it's certainly
21 something I do not want to ever have to deal with.
22 But if the Commission does not rule that my client's
23 industrial land is not encumbered by the condition
24 19 obligation to provide offsite infrastructure
25 improvements to the ag park, then the condition upon

1 which HRT agreed to convey the land to the State
2 would have failed.

3 And any lawyer who's taken first-year real
4 property law and contracts cannot dispute the fact
5 that that failed condition would entitle the party
6 to rescind the conveyance. How is that of benefit
7 to the State? It's not. It's -- and so for --
8 that's another compelling reason why I think the
9 Commission should grant the petition.

10 Now, the staff is recommending that this
11 matter be converted into a contested case
12 proceeding. And as best I can understand its
13 rationale, it feels like there needs to be a factual
14 record for the development and more legal authority
15 provided to support our position. With all due
16 respect to the staff, I disagree on the issue of
17 whether there has been substantial commencement of
18 use of the land, the petition area.

19 I think the record is full of facts that
20 confirm that. Ho'ohana's expenditure of \$200
21 million to develop the solar farm, in and of itself,
22 I would submit, constitutes substantial commencement
23 of use. But then you factor in all the money that
24 Haseko has spent in the planning and development of
25 infrastructure for their project. You know, we're

1 talking easily 10 million plus. This is just in
2 soft costs, not hard construction costs, soft costs,
3 payments to engineers, consultants, and the like,
4 and my client, who has spent considerable amount of
5 money obtaining tentative subdivision approval
6 before the DPP for their industrial development, as
7 well as all of the engineering that goes into
8 planning for the onsite infrastructure improvements
9 that are required.

10 So I think it's fair to say that if you
11 were to tally up all the money that the parties have
12 spent, it's easily, you know, in the magnitude of
13 225-plus million dollars. That's substantial
14 commencement of use.

15 So having said all that, I would encourage
16 the Commission to not turn this into a contested
17 case proceeding and to grant the relief that we've
18 requested in the petition. Thank you.

19 CHAIRMAN GIOVANNI: Thank you, Mr. Lee.
20 Commissioners, any questions on the -- to the
21 petitioner? One more time: Any questions from a
22 Commissioner?

23 So I got a note from the Deputy Attorney
24 General. She asked me to read this for the record.
25 If we lose internet connectivity today, we will

1 continue any unfinished business from today during
2 the continued meeting, which is tomorrow, January
3 9th, 2025, starting at 9 a.m., as noted on the
4 agenda, reconvening at the time, which is 9 a.m.
5 tomorrow. So if we lose the internet and we lose
6 our Zoom connection, sorry, but we'll have to --
7 we'll try to fix it on the spot, but if we are
8 unable to do that, we'll see you tomorrow morning.
9 Okay. But we're good for now.

10 Commissioner Lee?

11 COMMISSIONER LEE: Thank you, Chair.

12 For the petitioner, what is your response
13 to several claims that the work that was commenced
14 did not apply to your specific parcel?

15 MR. LEE: So that is the testimony that
16 was filed by Jennifer Lim on behalf of Ho'ohana. And
17 I apologize. You know, it was not clear to me that
18 the work that it did for the ag park was not
19 pursuant to the Condition 19 requirement but,
20 rather, a separate set of conditions that related to
21 the Commission's approval of the subleasing of that
22 land -- I mean, the leasing of that land to Ho'ohana
23 by Robinson Estate for purposes of developing the --
24 the solar farm.

25 So in that regard, you know, I -- as the

1 Commission knows, this record is quite voluminous,
2 and it feels like, to me, who's the new kid on the
3 block, like drinking from a firehose. And so I
4 simply, you know, overlook that fact and
5 misunderstood what that was for.

6 CHAIRMAN GIOVANNI: Okay. Commissioners,
7 anything further? Thank you very much.

8 So at this time I'd like to invite public
9 testimony from the City and County of Honolulu
10 Department of Planning and Permitting, if they so
11 choose. You have no public testimony at this time?
12 I presume you stand on your written testimony, but
13 please -- please state for the record, if you would.

14 MR. ARIAS: Aloha mai kakou, Chair,
15 Commissioners. Pono Arias, Deputy Corporation
16 Counsel on behalf of the City and County of Honolulu
17 Department of Planning and Permitting. The City
18 rests on its written testimony but is available for
19 questions if any Commissioners have.

20 CHAIRMAN GIOVANNI: Would you like those
21 questions now if we have them?

22 MR. ARIAS: Yes, that's fine.

23 CHAIRMAN GIOVANNI: Commissioners, do you
24 have any questions on the written testimony that's
25 been provided by the City and County of Honolulu? I

1 see none.

2 Thank you very much.

3 MR. ARIAS: Thank you.

4 CHAIRMAN GIOVANNI: Also, at this time I'd
5 like to invite the Office of Planning and
6 Sustainable Development, who have provided written
7 testimony, as to whether you'd like to provide any
8 oral testimony at this time? Ms. Kato, please state
9 your name and -- for the record.

10 MS. KATO: Sorry. Good morning. Alison
11 Kato, Deputy Attorney General for the Office of
12 Planning and Sustainable Development. I mean, we
13 did submit written testimony so all our reasons are
14 in there. So we're also going to just stand on our
15 written testimony.

16 But I do want to comment that, no, OPSD is
17 not commenting on what the order should say. We're
18 just commenting on what it does say. We're stating
19 what it currently says. To the extent argue
20 otherwise, we don't believe that this declaratory
21 order is the correct vehicle. I'm available for
22 questions.

23 CHAIRMAN GIOVANNI: Thank you, Ms. Kato.

24 Any questions for Ms. Kato representing
25 OPSD, from Commissioners?

1 COMMISSIONER KAHELE: I've got a question,
2 Chair.

3 MS. KWAN: Mic.

4 CHAIRMAN GIOVANNI: Commissioner Kahele,
5 turn on your mic, state your name, and --

6 COMMISSIONER KAHELE: I got a -- I got a
7 question. So OPSD's recommendation is to deny the
8 petition into January 6th, I believe. Letter that
9 was sent to Dan Orodener.

10 MS. KATO: That's correct.

11 COMMISSIONER KAHELE: So what does the
12 petitioner need to do to fix it?

13 MS. KATO: Well, amends declaratory --

14 COMMISSIONER KAHELE: Working on this
15 project for years.

16 MS. KATO: Yes. I mean, this docket is 33
17 years old, I believe, 33, 34 since it was
18 reclassified. I mean, we did mention a few
19 different reasons. It's just procedurally, you
20 know, we considered this to be speculative because
21 there is no order to show cause. No one's made a
22 motion to seek to revert this property. No one's
23 asking for an order to show cause. It's petitioner
24 that has raised this issue.

25 So we just don't think that this is a

1 situation where substantial commencement is in
2 question unless there is an indication that an order
3 to show cause is likely occurring in the future,
4 which we don't see. But you know, even considering
5 the substantive question, I -- OPSD views, you know,
6 the petition area, yes, at one time is -- was all
7 one owner, one project, but currently it is now
8 different projects, different owners.

9 So I guess, pointing to the other
10 landowners on their projects on different parcels of
11 land, we don't believe is sufficient to the
12 substantial commencement of petitioner's property.
13 And so we believe there's a lack of evidence put
14 forward for that finding.

15 COMMISSIONER KAHELE: So I'm sorry, so --
16 so we're talking specifically on R II K (sic)
17 petition, right?

18 MS. KATO: Yes.

19 COMMISSIONER KAHELE: On their property,
20 the hundred -- I believe 123 acres.

21 MS. KATO: Mm-hmm.

22 COMMISSIONER KAHELE: So that's not
23 including the solar farm or the other stuff?

24 MS. KATO: No. That's --

25 COMMISSIONER KAHELE: So it's specifically

1 their project. All right.

2 MS. KATO: So I mean, yes, they've
3 indicated in their petition that there has been
4 considerable cost and tentative subdivision approval
5 and no further. OPSD feels that there should be
6 evidence of use of land, not just conceptual plans.

7 And regarding petitioner's second question
8 -- second issue regarding the offsite
9 infrastructure, again, we're looking at the past
10 documents and what actually occurred. Yes, OPSD did
11 make an agreement with petitioner that we would
12 support an arrangement where they were released from
13 certain conditions if they transferred the ag park.
14 So we -- OPSD did put forward a motion to request
15 that.

16 The LUC at the time, the Commission at the
17 time disagreed, and so they changed that
18 arrangement, and the petitioner at that time agreed
19 at the hearing. So we're really just saying what we
20 see in the documents as what the order currently
21 says. As far as changing the conditions, we believe
22 there will be a motion to amend if their intent is
23 to change that condition or they should have clearly
24 stated that at the time that that was the intent,
25 but the documents don't show that.

1 COMMISSIONER KAHELE: All right. Thank
2 you.

3 CHAIRMAN GIOVANNI: Commissioner Lee?

4 COMMISSIONER LEE: Thank you, Chair.

5 I guess I'm kind of -- seems like there's
6 some gray area because while on the one hand, Ms.
7 Kato, you stated that no one's questioning reversion
8 or anything or pushing forward, so it's speculative,
9 but on the other hand you mention that you still
10 don't feel that -- or OPSD still doesn't feel that
11 any work has commenced. So it's like because no one
12 has asked the question yet, but if the question were
13 asked, they would not have been commenced, right, is
14 what they're trying to say. So just wondering if
15 you could elaborate a little bit on that?

16 MS. KATO: By us saying that no one is
17 seeking order to show cause, we mean that no one has
18 made a motion to seek an order to show cause. There
19 is no order to show cause currently in existence. We
20 don't intend to file one or -- we don't know what
21 the intent of the Commission is, but so far no one
22 has raised that question.

23 COMMISSIONER LEE: So -- Commissioner Lee.
24 So if someone were urged to make that question, then
25 it would be ripe, and then now you would say, well,

1 in our opinion, no work has commenced.

2 MS. KATO: We would need to see what
3 evidence -- if that question were raised, then the
4 petitioner would need to provide sufficient
5 evidence, and we would need to look at it at that
6 time to evaluate whether there has or has not been.

7 COMMISSIONER LEE: Okay. Thank you.

8 CHAIRMAN GIOVANNI: Thank you.

9 Commissioners, anything further?

10 Thank you, Ms. Kato.

11 Once again, we will give members of the
12 public an opportunity for a second round of public
13 testimony based on what they've heard today on this
14 matter at this hearing.

15 Ms. Kwan, are there any members of the
16 public who now wish to provide new testimony on this
17 matter?

18 MS. KWAN: Yes, Mr. Chair. We have
19 Jennifer Lim on Zoom who would like to add to her
20 testimony.

21 CHAIRMAN GIOVANNI: Thank you.

22 MS. KWAN: I'm going to promote her now.

23 Ms. Lim, can you hear me?

24 MS. LIM: I can. But can you hear me?

25 MS. KWAN: Yes, we can.

1 MS. LIM: Thank you very much. I'll make
2 this brief. Thank you, Commissioners, and thanks
3 for having this hybrid meeting. It's extremely
4 useful for those of us who weren't able to get into
5 town today.

6 I submitted -- on behalf of my client,
7 which is Ho'ohana Solar 1, LLC, I submitted
8 testimony yesterday. I hope that the Commissioners
9 have had a chance to look at that testimony and,
10 most particularly, at the photograph evidence that
11 was attached to that testimony. And I feel
12 compelled to speak because I want to make sure that
13 the question and answer that I just heard from, I
14 believe it was, Commissioner Lee, and petitioner's
15 counsel, Terry Lee, that there's not some confusion.

16 Ho'ohana Solar 1, just to be clear, we are
17 a lessee. We are not a landowner. We are a lessee
18 of about 30 percent of this entire petition area. My
19 client, Ho'ohana Solar, has built a massive solar
20 farm, and it is not substantial commencement. It is
21 done. That project is built out. And that's why
22 I'm hoping, and perhaps Ariana could confirm this,
23 the Commissioners are able to access the photographs
24 that I submitted with that testimony.

25 The reason being that when we last

1 appeared before the Commission in, I think it was,
2 March of 2024, this Commission had already at that
3 time determined that there had been substantial
4 commencement on the use of the land, all right?

5 Remember, we're a portion of the petition
6 area, but it's all the petition area in that time,
7 so the photographs I submitted yesterday had some of
8 the photos that we had shown the Commission in
9 April. The photographs that I submitted yesterday
10 as Exhibit B show the status of the project now, and
11 it's absolutely gorgeous. I mean, all the pieces
12 are in. All the panels are in. All the batteries
13 in. You know, things are being commissioned as we
14 speak.

15 So I wanted to make sure that the
16 Commission and Mr. Lee understood that, although
17 we're not taking a position on his petition for
18 declaratory order, we believe very strongly that
19 we've provided ample evidence to show the Commission
20 that there has been more than substantial
21 commencement. But in terms of the solar farm, which
22 is about 30 percent of the entire petition area, the
23 project is essentially complete. And I see that
24 Ariana has pulled up those photographs. Thanks very
25 much.

1 So that's all I wanted to say, and I'm
2 here for questions, but I won't take up any more
3 Commissioner time unless you have anything further
4 for me.

5 CHAIRMAN GIOVANNI: Thank you, Ms. Lim.
6 Thanks for joining us today.

7 So Commissioners, any questions on Ms.
8 Lim's comments or her photographs?

9 Commissioner Lee.

10 COMMISSIONER LEE: Thank you, Chair. And
11 maybe this question should be towards LUC staff, but
12 I'm still not clear on whether completion, as well
13 as commencement of this solar farm, counts for the
14 property that RK II is talking about.

15 CHAIRMAN GIOVANNI: Mr. Orodenger?

16 MR. ORODENKER: Thank you, Mr. Lee. That's
17 a very good question. And to be honest with you,
18 staff is uncertain, which is why in the staff report
19 we suggested an evidentiary hearing so that all the
20 parties could present their evidence with regard to
21 various issues and brief some of those issues. We
22 just don't know the answer because it's never been
23 presented to us in this manner before.

24 CHAIRMAN GIOVANNI: So Mr. Orodenger, just
25 to clarify for the record, originally the property

1 -- the petition area was several hundred acres. It
2 has since been divided among different owners of
3 which RK II is one. Ms. Lim is leasing from a
4 different owner of a different section of that
5 original 500, and they have built a solar farm on
6 that parcel, to which the current instant petitioner
7 has no rights to. It is separate. So it's the
8 first time you've ever seen this situation?

9 MR. ORODENKER: That is correct. Chapter
10 205 provides that we can issue an order to show
11 cause and revert all or part of the property or part
12 of the petition area, which, in this case, is
13 divided up into several different parcels. So we
14 are actually looking -- we would be looking forward
15 to hearing the various parties brief that and to
16 provide us with argument as well as evidence as to
17 whether or not, assuming -- I mean, there's a
18 question as to whether or not the construction of
19 the solar farm is in fact substantial commencement,
20 given that it's a temporary use.

21 But that issue aside, assuming for the
22 minute that it is substantial commencement, does
23 that apply just to that parcel, or does it apply to
24 all the parcels? We just don't know the answer.

25 CHAIRMAN GIOVANNI: Okay.

1 Commissioner Miyasato.

2 COMMISSIONER MIYASATO: Thank you, Chair.

3 You know, I guess with that said in
4 regards to the second portion of the declaratory
5 ruling, would that also be true for offsite
6 infrastructure obligation that it was a condition
7 for the entire property? All owners, five owners?

8 MR. ORODENKER: That is correct. And once
9 again, that is why we're suggesting an evidentiary
10 hearing. Because we're not sure how those
11 requirements have been broken up and who is
12 responsible for what.

13 COMMISSIONER MIYASOTO: Okay. Thank you.

14 COMMISSIONER KAHELE: Chair, I got a
15 question.

16 CHAIRMAN GIOVANNI: Commissioner Kahele.

17 COMMISSIONER KAHELE: And I'm kind of
18 confused here. So if we deny the petition that's
19 currently being requested, the other projects are
20 going to be impacted?

21 CHAIRMAN GIOVANNI: Who are you asking?

22 COMMISSIONER KAHELE: Mr. Orodenker.

23 CHAIRMAN GIOVANNI: Mr. Orodenker.

24 MR. ORODENKER: Again, you know, that's an
25 evidentiary question that we don't know the answer

1 to.

2 COMMISSIONER KAHELE: So is this the only
3 project that's currently holding up the entire
4 project, Mr. Orodenger?

5 MR. ORODENER: Holding --

6 COMMISSIONER KAHELE: Yeah.

7 MR. ORODENER: Holding up?

8 COMMISSIONER KAHELE: Yeah, because
9 apparently wouldn't grant this petition, everyone
10 else is kind of like held in limbo, huh?

11 MR. ORODENER: I don't believe that
12 that's the case. The project continues to move
13 forward under the existing decision and order. This
14 is an attempt by the petitioner, RK II Partners, to
15 remove the enforcement provisions from their portion
16 of the property.

17 And it's understandable. I mean, I heard
18 the argument, and it's understandable. However,
19 we're not sure that the evidence supports that.
20 We've gotten testimony from Department of
21 Agriculture and OPSD that there is some question
22 here, and that's why we're suggesting the
23 evidentiary hearing.

24 COMMISSIONER KAHELE: All right. Thank
25 you, Dan.

1 COMMISSIONER U'U: Chair?

2 CHAIRMAN GIOVANNI: Who's that?

3 COMMISSIONER U'U: Bruce.

4 CHAIRMAN GIOVANNI: Commissioner U'u.

5 COMMISSIONER U'U: A question for the

6 petitioner kinda of what Commissioner Kahele said.

7 What would be the outcome if we deny the petition?

8 What will be the different scenarios, the potential

9 scenarios that we might face, or you guys might

10 face, or I guess the community might face or your

11 partners would face. Could you give us some

12 scenarios?

13 MR. LEE: Sure. Thank you for that

14 question.

15 CHAIRMAN GIOVANNI: Mr. Lee?

16 MR. LEE: Oh, I'm sorry.

17 CHAIRMAN GIOVANNI: So Commissioner U'u

18 asked that specifically if we denied it. But I'd

19 like to expand that -- your response. So if we deny

20 it, what will be the expected consequence? And if

21 we decide to approve it, what would be the

22 consequence? And if we decide to request a

23 contested case, what would be the consequence? Give

24 us all three scenarios.

25 COMMISSIONER U'U: I just wanted to add

1 one more. As I read through the process of -- from
2 start to beginning (sic), you would need a road map
3 to follow this process of what's happening among the
4 Commissioners prior to us and hopefully ends here.
5 That's what I'm hoping. I'm hoping not to prolong
6 this process that's been prolonged for years, and
7 hopefully we can find some type of solution. It's
8 my goal to not pass it.

9 This is my first year on the Commission.
10 I've noticed we have a lot of redundancy from prior
11 years, so hopefully we can nip it. But thank you.

12 And thank you, Chair, for the
13 clarification of --

14 CHAIRMAN GIOVANNI: The three scenarios.

15 COMMISSIONER U'U: -- what is it -- yes,
16 the three scenarios. Mahalo.

17 MR. LEE: So let me start by responding to
18 something that OPSD testified to and -- and the
19 questions raised by Commissioner Kahele and Lee. I
20 think the simplest way to look at it is OPSD would
21 like to have their cake and eat it, too.

22 And what I mean by that is, on the one
23 hand, their position is the conditions originally
24 imposed by the Land Use Commission to reclassify the
25 land from agriculture to urban encumbers all of the

1 properties irrespective of who owns it.

2 Okay. I accept that. But then when we
3 seek to present to the Commission that, look, the
4 \$200-plus million and the completion of the solar
5 farm that Ho'ohana has done doesn't apply to us.
6 Well, why not? It's 30 percent of the petition
7 area, as Ms. Lim indicated. Isn't that substantial
8 commencement of use? It's more than that. It's
9 substantial use of the petition area.

10 So you can't on the one hand say: Oh, all
11 those conditions encumber everybody's land, but when
12 it comes to determining whether there's been
13 substantial commencement of use: Oh, no, no, no,
14 no. Now we're going to separate ownership and each
15 individual owner has to demonstrate substantial
16 commencement of use.

17 That's not -- that's not the law. If the
18 Commission is going to go in that direction, then --

19 CHAIRMAN GIOVANNI: One second.

20 MR. LEE: Yes.

21 CHAIRMAN GIOVANNI: That was public
22 testimony by OPSD. That was not the Commission
23 speaking.

24 MR. LEE: Oh, no. Yes. No. Absolutely.
25 And that's what I'm -- I'm sorry if I was not clear.

1 That is what I'm arguing against as a matter of law.
2 There's no factual evidence you need for that
3 determination. This is a matter of law, okay?

4 So what happens if you deny our petition?
5 The reason why I'm trying on behalf of my client to
6 reduce the risk factors that a lender would look at
7 in determining whether to finance our client's
8 project is because we are already addressing a
9 substantial risk factor vis a vis Haseko. Haseko --
10 we have an agreement with Haseko. We call it the
11 second amended and restated infrastructure
12 agreement.

13 Where Haseko has committed just between us
14 parties, okay -- it's nothing necessarily involving
15 any other party -- where they're going to do certain
16 roadway improvements. And we need those roadway
17 improvements to have access to our property. And so
18 we're dealing with Haseko in good faith and to try
19 to get them to move along with that aspect of the --
20 of their work in order for us to move forward with
21 our work. Okay?

22 Well, that's something a lender's going to
23 look at very hard. To the extent that I can
24 indicate that, hey, in addition, that is a risk, and
25 we're working with Haseko to ameliorate that risk.

1 But to the extent I can also indicate that we don't
2 have to worry about the Land Use Commission filing
3 an order to show cause to revert some or all of the
4 petition area back to ag is going to be a very
5 significant consideration for the underwriting
6 lender. Right?

7 And so -- and so by being able to improve
8 the financeability of my client's land, that helps
9 facilitate its ability to move forward with
10 development. If you deny that, you're going to
11 frustrate my client's ability to finance the
12 project, as well as finance -- Haseko's ability to
13 finance the project.

14 Ho'ohana is done. They don't need any
15 more financing. They spent all the money. They're
16 done. But you know, you still got the other
17 developers that need to minimize the underwriting
18 risk that a lender would look at.

19 I'm sorry, Chair --

20 CHAIRMAN GIOVANNI: The second scenario is
21 we approve the petition.

22 MR. LEE: If you approve the petition, it
23 enhances the financeability of the land, my client's
24 project, as well as Haseko's, as well as the Robin
25 Estate, to the extent they have any other land that

1 they might be looking to develop. By enhancing the
2 financeability of the land, you're encouraging and
3 facilitating the development of the land, which is
4 what the Commission is hoping to achieve.

5 CHAIRMAN GIOVANNI: And the third scenario
6 is if we request a contested case for evidentiary
7 hearings on your --

8 MR. LEE: You're just basically kicking
9 the can down the road, because -- I get it. LUC
10 staff is a bit challenged in trying to figure out,
11 okay, now that the ownership has been split up,
12 who's responsible to do what and how does it impact
13 the satisfaction of the conditions and so on.

14 I've been in this situation in another
15 development project on Kauai, involving Grove Farm,
16 and my client was Safeway. The same thing, the Land
17 Use Commission imposed all these conditions, but
18 then the ownership split up. And so who is
19 responsible for what?

20 The way the parties resolved it is the way
21 HRT and Haseko resolved it, is they get together and
22 they privately negotiate who's responsible for what,
23 because it's not the Land Use Commission's
24 responsibility to make that allocation. And if you
25 try to bifurcate these obligations, you're going to

1 be in these hearings for years, and I don't think
2 it's necessary. I think you should allow the
3 parties to make those determinations, which, in
4 certain circumstances, you know, my client and
5 Haseko have done.

6 CHAIRMAN GIOVANNI: So I think you
7 confused me a little bit with that last comment. So
8 let me ask you to back up with the following: So
9 what would be the consequence that you see if we
10 proceed with a request for a contested case on the
11 issue of substantial commencement?

12 Separately, what would be the consequence
13 if we ask for a contested case on the issue of
14 Condition 19?

15 MR. LEE: Okay. So on the first one, the
16 issue of substantial commencement of use, the
17 question of who's responsible for what is an
18 inevitable issue. Do you bifurcate those
19 obligations among the different --

20 CHAIRMAN GIOVANNI: No, no. No. We're
21 just saying that yes or no, has substantial
22 commencement has occurred?

23 MR. LEE: Yes.

24 CHAIRMAN GIOVANNI: Not a bifurcation. The
25 bifurcation is on, if I understand it correctly,

1 that you're worried about is can we say Condition 19
2 applies to this party and not that party or all
3 parties or --

4 MR. LEE: No, no, no --

5 CHAIRMAN GIOVANNI: Am I misreading you?

6 MR. LEE: So OPSD's position is that
7 substantial commencement of use must be demonstrated
8 by each individual property owner.

9 CHAIRMAN GIOVANNI: Yeah, that's their
10 public testimony.

11 MR. LEE: Right. So if that's going to be
12 an issue, and I think if I heard Mr. Orodenker
13 correctly, that's something that the staff is
14 struggling with. They don't know what the answer to
15 that is.

16 CHAIRMAN GIOVANNI: I think what I heard
17 from Mr. Orodenker is we'd like a little more
18 evidence on the record one way or the other before
19 we -- so we can inform the Commission so it can make
20 the best decision possible on that question.

21 MR. LEE: Well -- and I guess my -- my
22 retort to that would be if Ho'ohana has provided
23 evidence that it spent \$200 million, it's shown you
24 pictures, that's 30 percent of the petition area,
25 what additional evidence do you need to demonstrate

1 not just substantial commencement of use but
2 substantial use of the petition area? I mean, if
3 that's not enough, then I don't know what is.

4 Now, so that's why I think -- I -- and
5 maybe I'm being presumptuous here. If the
6 Commissioners feel that that 30 percent use of the
7 petition area is not sufficient to satisfy the
8 standard of substantial commencement of use, okay,
9 well, then I guess you need more -- you need more.
10 But I would submit as a matter of law that you have
11 the facts. That's enough as a matter of law.

12 If you think that substantial commencement
13 of use has to be demonstrated by RK II for its 123
14 acres, well, that's a whole separate issue, right?
15 That's a bifurcation issue. And that's going to be
16 a morass for the Commission because then you're
17 going to have to decide, okay, well, what is RK II
18 responsible for. Which conditions? And how much --
19 you know, how -- because you're bifurcating the
20 obligation now. You're saying that in order for us
21 to show substantial commencement of use, it has to
22 be unique to our property, not the entire petition
23 area.

24 Well, if you say that, well, that means,
25 then, the conditions that are encumbering all of our

1 respective properties, all the different landowners,
2 it should be bifurcated. And I don't think that's a
3 road you want to go down because it will be years to
4 resolve that.

5 CHAIRMAN GIOVANNI: Okay. The last point
6 was if we have a contested -- request a contested
7 case on the second item that you're requesting,
8 which is relief from Condition 19, what would be the
9 -- what do you view to be the consequence of us
10 making that request?

11 MR. LEE: See, a contested case proceeding
12 is really a proceeding in order to receive evidence
13 and resolve factual issues that are relevant. I
14 would submit there are no factual issues that need
15 to be adjudicated. The fact is -- and no one has
16 contested this fact -- is HRT and OPSD reached an
17 agreement that if HRT acquired the 150 acres and
18 conveyed it to the Department of Ag, that its 123
19 acres would not be encumbered by the obligations of
20 Condition 19 to build the offsite infrastructure
21 improvements for the ag park. That's the only
22 relevant fact.

23 I am not sitting here arguing that this
24 Commission is bound by that. What I'm arguing is
25 that this Commission should grant that relief

1 because that was what was bargained for over 20
2 years ago. And HRT performed its part.

3 CHAIRMAN GIOVANNI: So in your
4 understanding of that agreement, your client would
5 be relieved from that condition --

6 MR. LEE: Just that condition.

7 CHAIRMAN GIOVANNI: Yeah. Who -- just
8 that one?

9 MR. LEE: Just that obligation, that's
10 right.

11 CHAIRMAN GIOVANNI: Then who would be
12 responsible for that condition under your
13 understanding?

14 MR. LEE: Haseko. And in fact, under the
15 second area, it's agreed to take on that
16 responsibility. So we've already allocated that
17 between ourselves as a private contractual matter.
18 I'm just trying to get my client's name
19 unencumbered. Again, not to beat a dead horse, but
20 to make the land more financeable.

21 CHAIRMAN GIOVANNI: But you agree that it
22 would be helpful if Haseko was here putting that on
23 the record?

24 MR. LEE: I think Mr. Tabata -- I saw him
25 here at one point. Yeah, he's here.

1 (Inaudible.)

2 CHAIRMAN GIOVANNI: No. He can offer to
3 speak. I'm just saying that petitioner has
4 represented that some third party, Haseko, is
5 willing to step forward and fully be responsible for
6 Condition 19. That's not on the record. In an
7 evidentiary hearing a contested case would clearly
8 put something like that on the record, and that's
9 where staff is coming from.

10 MR. LEE: Well, I mean, to the extent the
11 Commission thinks that's a relevant consideration, I
12 don't think so because I think, as a matter of law,
13 what's relevant is that a condition of HRT conveying
14 the 150 acres to the state is that the LUC issues an
15 order relieving the 123 acres from that obligation
16 --

17 CHAIRMAN GIOVANNI: The LUC was not party
18 to that stipulation.

19 MR. LEE: No, no. No, I understand. All
20 I'm saying is that if that condition fails, then it
21 creates a whole potential downside problem in terms
22 of whether we decide what is our remedy for that
23 failure and do we take back the 150 acres? Do we
24 sue the State and argue that, you know, we're
25 entitled to get that land back or money damages? You

1 know, which is 10, 15, \$20 million. Who knows? I
2 mean, it just seems like what we're requesting is
3 not an unreasonable ask under the circumstances.

4 CHAIRMAN GIOVANNI: Thank you.

5 Mr. U'u -- Commissioner U'u, are you
6 satisfied with the response, or do you want any
7 follow-up?

8 COMMISSIONER U'U: I'm satisfied with the
9 response, absolutely. Thank you.

10 CHAIRMAN GIOVANNI: Thank you.

11 Commissioner Carr Smith.

12 COMMISSIONER CARR SMITH: Thank you.

13 While we're waiting for Mr. Tabata, is the
14 -- this agreement that you have with Haseko, is that
15 something that happened since you were before us
16 last time since then and now?

17 MR. LEE: No, no. That agreement -- I
18 don't have the exact date. You know, I'll have to
19 -- no, it's -- it far predates these proceedings.

20 COMMISSIONER CARR SMITH: Okay. So if
21 there's an agreement somewhere that says that you're
22 not obligated for Condition 19, where can we find
23 that?

24 MR. LEE: I can submit it after the
25 hearing for -- if the Commission decides to take

1 this under advisement, I can submit it.

2 CHAIRMAN GIOVANNI: So I'm going to take a
3 five-minute break. Let me suggest that during that
4 break it would be really helpful if you and the
5 representatives from Haseko might be able to put
6 something on the record here today regarding
7 Condition 19 and who would be responsible.

8 MR. LEE: Okay. I'll try to reach Mr.
9 Tabata.

10 MS. KWAN: Hello. This is Ariana. We
11 have Curtis Tabata on the Zoom, and we'll bring him
12 up after the recess.

13 CHAIRMAN GIOVANNI: Yeah. So I'm going to
14 take a recess now until 10:15.

15 (A recess was taken.)

16 CHAIRMAN GIOVANNI: Commissioner Kamakea
17 Ohelo, you're back with us?

18 COMMISSIONER KAMAKEA-OHELO: Yes, Chair.

19 CHAIRMAN GIOVANNI: And everybody else is
20 here in person, so we will proceed.

21 So we -- when we took the recess, Ms.
22 Kwan, you indicated that we had public testimony
23 from the Zoom from Mr. Tabata, is that correct?

24 MS. KWAN: Curtis Tabata has been promoted
25 to panelist to speak.

1 CHAIRMAN GIOVANNI: So Mr. Tabata, please
2 state your name and who you represent, and then
3 proceed with your testimony.

4 MR. TABATA: Thank you. Curtis Tabata,
5 attorney for Haseko. I didn't -- I wasn't planning
6 on testifying. I don't have anything to add to our
7 written statement. But if there's any questions,
8 you know, I'll be willing to answer. I'll try to
9 answer.

10 CHAIRMAN GIOVANNI: So Mr. Tabata, this is
11 the Chair. Reference was made at the end just
12 before we recessed that there is an offsite
13 agreement that's not in evidence before this
14 Commission between Haseko and the petitioner by
15 which Haseko has agreed to be responsible for the
16 offsite infrastructure associated with the 150-acre
17 agricultural parcel thereby relieving the petitioner
18 of the responsibility.

19 Did I state that correctly, Mr. Lee?

20 MR. LEE: Yes.

21 CHAIRMAN GIOVANNI: So Mr. Tabata, can you
22 speak to that?

23 MR. TABATA: Yes. Haseko's responsibility
24 for the offsite agricultural infrastructure, that's
25 pursuant to the fifth amended memorandum of

1 understanding that we, Haseko, executed with the
2 Department of Agriculture. And that was the -- that
3 MOU was the basis for our motion to extend the time
4 period to perform those offsite infrastructure. We
5 filed that in early 2024, and the Commission issued
6 its order, I believe, in October of 2024, granting
7 our motion and recognizing our obligation.

8 What the order also did was it amended
9 Condition A1, which requires Haseko to perform that
10 offsite infrastructure. So it may not be in the
11 record in this DR, but it's the Commission's own
12 order, and I don't see why -- I think you can, you
13 know, take that into consideration and rely on it.
14 It's the Commission's own order.

15 CHAIRMAN GIOVANNI: So Mr. Tabata, would
16 Haseko be responsible for 100 percent of the offsite
17 infrastructure expected by the Department of
18 Agriculture for that parcel?

19 MR. TABATA: I believe that's what it says
20 in the fifth amended MOU, you know, that we're
21 responsible. We're the only ones who signed it
22 along with the Department of Agriculture, and it
23 sets forth the irrigation infrastructure, the
24 temporary infrastructure, and the permanent
25 infrastructure. So we're the only, you know,

1 landowner who's signed off on that. So I think you
2 could make that conclusion.

3 I think what the RK II Partners is
4 concerned about is if for some reason Haseko were to
5 cease to exist, for example, then the other
6 landowners are potentially responsible in that case.
7 So I think that's the risk that they're trying to
8 avoid.

9 CHAIRMAN GIOVANNI: Thank you.

10 Commissioners, any questions for Mr.
11 Tabata?

12 Petitioner, any questions for Mr. Tabata?

13 MR. LEE: No. The only other fact that --
14 if you know, Curtis, is one of my -- the principals
15 of my client inform us that Haseko has actually
16 bonded some of those improvements. Are you aware of
17 that?

18 MR. TABATA: No, I'm not aware of that. I
19 have no information to dispute that, though, so.

20 MR. LEE: Okay. All right.

21 CHAIRMAN GIOVANNI: So, for the record,
22 that was Mr. Lee and Mr. Tabata talking to each
23 other without naming themselves, yeah.

24 MR. TABATA: I'm sorry. Curtis Tabata.
25 Chair, if I could add one more thing to

1 the discussion?

2 CHAIRMAN GIOVANNI: Please.

3 MR. TABATA: You know, there's been
4 discussion about the different landowners and how
5 that may affect responsibility to fulfill conditions
6 or to be subject to an order to show cause. You
7 know, currently the petition area has not been
8 bifurcated. It is whole. So if -- so (audio
9 disruption) to be brought because one of the owners
10 committed a violation of some kind, the risk of
11 reversion would apply to everyone, okay? All
12 landowners. Because the petition area is not
13 bifurcated, okay?

14 If that were to happen, I'm sure the other
15 landowners who are not responsible would seek --
16 would file a motion to amend the D and O to seek
17 bifurcation so that they don't get penalized, okay?
18 But that's what would need to take place in order
19 for you to, say, (inaudible) one parcel, one
20 landowner and not another, okay? It's a single --
21 it's a single petition area. It is. And I believe
22 it would require a motion to amend the D and O in
23 order to bifurcate the petition area into different
24 landowners.

25 And that's -- and a motion to amend the D

1 and 0 can only be filed by a party, okay? That's my
2 reading of the rules. So the Land Use Commission
3 itself, I don't believe it has the authority to
4 bifurcate the petition area unilaterally. That's my
5 reading of the rules, at least. So that's -- I just
6 wanted to add that to the discussion.

7 CHAIRMAN GIOVANNI: Yeah. Thank you.
8 That's helpful.

9 Commissioners?

10 Commissioner Yamane.

11 COMMISSIONER YAMANE: Mr. Chair, I had a
12 question for the petitioner if that's okay.

13 CHAIRMAN GIOVANNI: Yes.

14 COMMISSIONER YAMANE: Thank you, Mr. Lee.
15 Appreciate you going over and kind of reminding us
16 what we're here for, because that was really
17 helpful.

18 I just wanted to, like, in my mind, kind
19 of start out. So your dec ruling was for two
20 things. One for to determine if there's substantial
21 commencement of work done. And the second one was,
22 separately, that you guys -- this 150 -- I'm looking
23 at the -- 123 acres is not encumbered by the
24 requirements to provide offsite infrastructure. Is
25 that correct?

1 MR. LEE: Offsite infrastructure for the
2 ag park, that's correct.

3 COMMISSIONER YAMANE: So -- and way back
4 when, the Land Use did this boundary amendment to
5 convert from ag to urban as a property in whole,
6 correct?

7 MR. LEE: Correct.

8 COMMISSIONER YAMANE: And since then, many
9 years have passed, and now it's all split up in
10 different properties. Ho'ohana did the solar farm,
11 and you know, that's 30 percent of the entire
12 property. So you're worried that a show cause or
13 the obligation for this infrastructure will cause
14 your lenders to have this risk, like not lend money,
15 basically, to develop? That's your concern?

16 MR. LEE: Correct.

17 COMMISSIONER YAMANE: What -- like, if
18 nothing happened, like what prompted you to worry
19 about it? What brought it up to you to say: Hey,
20 we need to -- was it like lawyers telling lawyers
21 this could happen, so we should do it or -- like,
22 because that just brings attention to it. Whereas,
23 if everything just went through and the Land Use
24 issued its order, and you did what you needed to do.
25 I'm curious what triggered it.

1 MR. LEE: So what triggered this is Dale
2 Wong, who is Reuben Wong's associate,
3 colleague, whatever, called me one day and told me:
4 Hey, Terry, did you know that there was an agreement
5 with

6 OPSD and HRT where HRT acquired the 150 acres
7 for the ag park and conveyed it in exchange for
8 being released from the obligation to do the offsite
9 infrastructure improvements. And I said: No, I
10 didn't know that. Because you know, as I testified
11 earlier, it's like drinking from a fire hose.
12 There's so much documents in this proceeding.

13 And so when he made me aware of that, it
14 -- you know, I filed an earlier petition, and it
15 occurred to me that, look, one of the issues is that
16 our land, our 123 acres, should be protected from
17 being reclassified. And correctly, the staff
18 pointed out that, hey, you -- the Commission doesn't
19 have that authority. You can't say something stays
20 a certain land use classification in perpetuity. I
21 got it.

22 So that's why I filed the subsequent
23 petition, because -- well, if -- at a minimum, I
24 would like a ruling that if there's going to be a
25 reclassification, then you've got to follow the full

1 bore requirements of the statute for reclassifying
2 land, not just using an order to show cause and say,
3 hey, you -- somebody didn't perform a condition;
4 therefore, we're going to revert it back to ag,
5 okay? So that was the genesis for that. And then,
6 of course, I want the benefit of the bargain that
7 HRT negotiated 20 years ago and relieve our 123
8 acres from the obligation to provide that offsite
9 infrastructure for the ag park.

10 MR. TABATA: So backing up to your first
11 thing about Dale Wong -- and old Dale, by the way,
12 how is he doing?

13 MR. LEE: He's good. What -- like, you
14 mentioned that there was agreement, but that
15 agreement wasn't with Land Use Commission. It was
16 between who again? OPSD and --

17 MR. TABATA: HRT.

18 MR. LEE: -- and HRT, which was our
19 predecessor that owned the 123 acres --
20 But how would they be able to take off the
21 requirement of something that was issued by the Land
22 Use? Why would that worry Dale that when it's the
23 Land Use that issued that condition that -- so
24 agreement is -- now I got to worry about this
25 agreement. So -- so -- and you know, I'm just

1 surmising that this is the case because, clearly,
2 Reuben Wong, you know, knows what the rules and
3 procedures and so on are for the Land Use
4 Commission.

5 The understanding was that OPSD would
6 support the effort by HRT to have its 123 acres
7 relieved of that obligation. And you know, the
8 stipulation, which you have a copy of, actually
9 states that that is a condition for the transfer of
10 the land, that the LUC shall issue such an order.
11 Okay?

12 And so all I'm -- all I'm arguing before
13 the Commission is that the Commission should issue
14 such an order. I'm not saying it's obligated. It's
15 clearly not obligated. I'm just saying it should
16 recognize and issue that order because that was the
17 bargain that was worked out between OPSD and HRT.

18 And I would also point out that, look,
19 OPSD's function is to determine what is the best use
20 of State land and to advise the Commission
21 accordingly. OPSD 20 years ago decided, yeah,
22 that's a good deal for the State. Get HRT to buy
23 the 150 acres and convey it to the State in exchange
24 for releasing HRT's land from that obligation for
25 offsite infrastructure improvements for the ag park.

1 Perfectly reasonable right before the Commission on
2 an order to show cause because the Commission then,
3 you know, issued an order to show cause as to why
4 they shouldn't revert the land back to ag, because
5 they didn't see enough progress being made on the
6 development.

7 And you know, I mean, I'm old enough to
8 remember the trials and tribulations that Herb
9 Pervida had with his development projects. You
10 know, not just this one but Ko'olina as well, you
11 know. I mean, he just overextended himself. And so
12 the Commissioners back then were frustrated because
13 they didn't see progress, so they filed an order to
14 show cause. And that's when this whole issue came
15 up about, you know --

16 And so for purpose of that order to show
17 cause, I agree. The Commission just held that for
18 purposes of this order to show cause, we're going to
19 recognize that benefit and HRT's land, its 123 acres
20 aren't subject to any reclassification risk, but
21 only for that order to show cause.

22 Now, what I'm doing is trying to get the
23 Commission to go: Hey, you know what? That was the
24 deal. We will recognize that deal. Right?

25 COMMISSIONER YAMANE: And then the timing-

1 wise, that initial indication for show cause versus
2 the obligation in that agreement that kind of
3 obligated to say: We'll give you this, but the Land
4 Use gotta give you this amendment in perpetuity,
5 that agreement. Where was that? Did the show cause
6 come first and then the agreement between the two
7 parties?

8 MR. LEE: No, no. The stipulation was in
9 existence, and then the order to show cause
10 followed.

11 COMMISSIONER YAMANE: Oh, okay. Okay.

12 CHAIRMAN GIOVANNI: Just let --

13 COMMISSIONER YAMANE: Oh, the other way
14 around?

15 MR. LEE: Yeah.

16 COMMISSIONER YAMANE: Oh, sorry. So what
17 it was it's -- it's the -- what came first, that
18 indication to show cause and then the agreement to
19 say the Land Use shall not revert this, if that's --

20 CHAIRMAN GIOVANNI: Ms. Kato, do you want
21 to come on record or just from the peanut gallery?

22 MS. KATO: And just if you need
23 clarification, I believe OPSD --

24 CHAIRMAN GIOVANNI: State your name.

25 MS. KATO: Oh, Alison Kato, Deputy

1 Attorney General for the Office of Planning and
2 Sustainable Development. Sorry. I only partially
3 heard. It seems there's some confusion about the
4 order of things.

5 CHAIRMAN GIOVANNI: Sequence.

6 MR. ORODENKER: The sequence, yeah.

7 MS. KATO: Yeah, I believe OPSD filed a
8 motion for order to show cause, and then there was
9 an order to show cause. And then the stipulation
10 happened in order to excuse them from the HRT at the
11 time from the order to show cause they agreed to --

12 MR. LEE: Yes. Yep, yep.

13 COMMISSIONER YAMANE: Do you agree, Mr.
14 Lee?

15 MS. KATO: -- stipulation.

16 MR. LEE: So to clarify --

17 CHAIRMAN GIOVANNI: Yeah, thank you.

18 MR. LEE: -- based on your staff report on
19 February 26, 2023, the LUC issued an order to show
20 cause and set hearing dates for April 24-25, 2003.
21 And then on December 29, 2003, HRT entered into the
22 stipulation with OPSD.

23 COMMISSIONER YAMANE: Okay. So they were
24 -- they had indication that the existing Commission
25 was going to show cause on the entire property

1 because at that time Ho'ohana Solar wasn't developed
2 yet, right? It was pretty much --

3 So because of that, they kind of put in a
4 scare to say, hey, let's -- we'll give you this, but
5 because the Land Use Commission at the time already
6 said they might do a show cause, you gotta ensure
7 that they don't revert that portion of the property
8 back to ag.

9 MR. LEE: Correct.

10 COMMISSIONER YAMANE: Thank you, Mr.
11 Chair.

12 CHAIRMAN GIOVANNI: Just to follow up to
13 Commissioner Yamane. Since the December 29, 2003
14 stipulation, have your client or its predecessor
15 owner ever made a motion to amend the original order
16 that required Condition 19?

17 MR. LEE: Not to my knowledge, no.

18 CHAIRMAN GIOVANNI: So how did -- can you
19 speculate on what the expectation is of how this LUC
20 was going to, in effect, follow through and --

21 MR. LEE: I couldn't. And I asked Dale if
22 Reuben was available to chat, and unfortunately
23 because of his age and his health, he was not.

24 CHAIRMAN GIOVANNI: Okay. Commissioners,
25 anything further for the public witness or the

1 petitioner?

2 Thank you, Mr. Tabata. Appreciate it.

3 So petitioner, I'm going to give you one
4 final opportunity, before we go into deliberation,
5 to say what you want to say.

6 MR. LEE: I just want to thank the
7 Commissioners for their patience. Oh --

8 CHAIRMAN GIOVANNI: Pardon me? Oh. You
9 don't mind?

10 So this would be part of the public
11 testimony. Would you please come forward. Are you
12 an attorney? So please state your name and
13 affiliation and who you're representing and then
14 proceed.

15 MS. NAGATA: Hi. Good morning. Deputy
16 Attorney General Kelcie Nagata on behalf of the
17 Department of Agriculture.

18 Just wanted to make a quick comment based
19 off of everything that has been said today that, you
20 know, we recognize RK II's argument is that
21 substantial commencement has occurred due to
22 Ho'ohana's representation of the entire parcel. This
23 argument also hinges on consideration that the
24 entire parcel is the 500 acres and which is what Mr.
25 Tabata had mentioned earlier. That same D and O

1 applies to that 500 acres. Nevertheless, the HDOA's
2 main concern is similar, is if Haseko is unable to
3 perform, who will supply the infrastructure for the
4 ag park, you know, to benefitting the Department of
5 Agriculture.

6 And just as an aside, a comment to what I
7 think Mr. Lee and Mr. Tabata were asking about the
8 bonding requirements: There is an agreement in the
9 fifth amended MOU between Haseko and the Department
10 of Agriculture to bond a portion of the project to
11 ensure completion of the infrastructure; however,
12 Department of Agriculture has not been in receipt of
13 any of that bond that was agreed to yet. We are
14 still waiting and we anticipate -- and we are
15 working with Haseko to get that in place. Thank
16 you. I'm available for any additional questions.

17 CHAIRMAN GIOVANNI: Thank you.

18 Commissioners, any questions? Thank you
19 very much -- wait. Who was that?

20 Commissioner Carr Smith.

21 COMMISSIONER CARR SMITH: Thank you. So
22 is it your understanding that Haseko has -- bears
23 the responsibility of providing the infrastructure
24 to the ag park?

25 MS. NAGATA: I will represent that there

1 is an agreement with Haseko and the Department of
2 Agriculture that Haseko will provide the
3 infrastructure. I am not going to commit to say
4 that it is solely Haseko's responsibility under
5 Condition 19 of the D and O.

6 COMMISSIONER CARR SMITH: Okay. Well, I
7 think that somebody needs to provide us something in
8 writing that shows that this is a real agreement.
9 And if I saw that, I'd be happy.

10 CHAIRMAN GIOVANNI: Yeah. I think that's
11 kind of what staff is recommending in terms of an
12 evidentiary hearing. Bring the paperwork forward so
13 we can see it in some form.

14 COMMISSIONER CARR SMITH: Whenever we take
15 a lunch break and you go get the document.

16 CHAIRMAN GIOVANNI: That's another way. So
17 -- wait, wait.

18 COMMISSIONER CARR SMITH: Oh, you have it?
19 Oh.

20 CHAIRMAN GIOVANNI: What do you have?

21 MR. LEE: I have a copy of the fifth
22 amendment to the amended restatement of memorandum
23 of understanding between Haseko and the Department
24 of Ag, which provides for that obligation.

25 CHAIRMAN GIOVANNI: And you're wanting to

1 put that evidence in -- on the record in the matter
2 of the declaratory ruling at this time?

3 MR. LEE: I think if it will help things
4 move along, yes.

5 COMMISSIONER CARR SMITH: Was there
6 something previously in writing that made your
7 client responsible and then this was subsequent? I
8 mean, is there anything that shows release of --

9 CHAIRMAN GIOVANNI: I don't know how we on
10 the fly accept it, review it. That's what a
11 contested case is all about. That's why the staff
12 was coming from that perspective originally. But
13 before I make a decision or ask further questions on
14 that document, Commissioner Lee, you had some
15 questions.

16 COMMISSIONER LEE: Thank you, Chair.

17 Madam Deputy, what are your thoughts on
18 how long you wait to get the bond documents?

19 MS. NAGATA: I cannot answer that at this
20 time. We have been in -- sorry, my client has been
21 in conversations with Haseko in terms of the status
22 update and what has been occurring, and so we can
23 work -- are willing and continue to work with Haseko
24 to ensure that the bonding requirements, per the
25 fifth amended MOU, is complied with.

1 COMMISSIONER LEE: Would you wait a year?

2 MS. NAGATA: I cannot commit to that at
3 this time.

4 COMMISSIONER LEE: Okay. Thank you.

5 Follow-up questions for Mr. Lee. If these
6 proceedings were to go to an evidentiary hearing, a
7 contested case, what would be the ramifications and
8 what would be your objections to that?

9 MR. LEE: You know, it's really just the
10 dragging out of this issue longer, because I don't
11 think it's necessary. I don't, frankly, think it's
12 necessary based on the testimony that you've
13 received, which confirms both by Haseko and
14 Department of Ag that there's an agreement. An
15 agreement exists between them where Haseko's going
16 to perform these obligations. So seeing the
17 agreement is just going to verify what they've
18 testified to, but the testimony in my mind is
19 sufficient.

20 COMMISSIONER LEE: I'm not sure if this
21 question goes to staff or anyone else, but if --
22 let's say the bond is not executed, what's the next
23 step then?

24 MR. ORODENKER: Thank you, Commissioner
25 Lee. Dan Orodenker, Executive Officer. One of the

1 disconnects that we're having here is that from the
2 Commission's standpoint, this condition is out
3 there. We don't care who satisfies it. So these
4 agreements are between the private parties, and I
5 don't -- unless this Commission deems it proper.

6 The difficulty is why -- why would we want
7 to release one party just because they've agreed to
8 it amongst themselves? And I think that's the
9 disconnect that's going on here.

10 COMMISSIONER LEE: Okay. So maybe the
11 question should be for Department of Agriculture
12 then. What would you do if the bond fails to be
13 executed?

14 MS. NAGATA: I think similar to what Mr.
15 Orodanker was saying, it's between the parties to
16 determine next steps to ensure that the condition is
17 met and -- which is why HDOA has concerns regarding
18 if Haseko is unable to perform, then who. And I
19 understand it's kind of a circular argument here and
20 we're kind of running around in circles.

21 But that being said, procedurally, HDOA
22 would have to consider options. And one of those
23 options may be for an order to show cause. However,
24 we have not reached that point, nor are we implying
25 that that is necessary at this point. And again,

1 HDOA needs this addition -- would need additional
2 time to consider those options available to it when
3 that situation arises.

4 COMMISSIONER LEE: Okay. Thank you. So
5 if Haseko were to fail to provide you the bond, then
6 you would have to go to the remaining parties -- or
7 if Haseko went bankrupt, you'd have to go to the
8 remaining parties and try to get them to comply with
9 their -- the obligation, is that correct?

10 MS. NAGATA: Under the LUC order, that is
11 what HDOA understands should occur.

12 COMMISSIONER LEE: So it's your position,
13 then, that there is an agreement. It's just that
14 you want proof that it will be complied with.

15 MS. NAGATA: HDOA is not arguing for
16 compliance with -- or from Haseko at this point.
17 HDOA's main concern, again, is should Haseko fail,
18 which has just been raised, then under the
19 condition, who -- which landowner, if any, will
20 abide by the D and O Condition 19.

21 COMMISSIONER LEE: So it sounds like this
22 is like an insurance policy for you because in case
23 you don't know who to go after, you have this
24 leverage on them, but somebody has to do it.

25 MS. NAGATA: HDOA's position is that the

1 -- that's what the condition says, and that's what
2 should apply.

3 COMMISSIONER LEE: Okay. Thank you.

4 MS. NAGATA: Yeah.

5 CHAIRMAN GIOVANNI: Commissioner Yamane.

6 COMMISSIONER YAMANE: Thanks, Chair.

7 For the petitioner again. So
8 hypothetically speaking -- if there was an agreement
9 between the two parties that required the parties to
10 go and get the land classification in perpetuity
11 originally, if that wasn't there and the existing
12 Commission gave no indication of show cause,
13 hypothetically speaking, would you say you would not
14 be here asking for a dec ruling for both of those
15 issues? Or you'd still be here?

16 MR. LEE: I think I would still be here
17 because, again, my primary motivation for this
18 petition is to remove underwriting risks from a
19 lender that would evaluate whether to finance my
20 client's project. So I think I would still be here,
21 given the stipulation.

22 And you know, I want to --

23 COMMISSIONER YAMANE: -- the last
24 stipulation?

25 MR. LEE: The December --

1 COMMISSIONER YAMANE: Well, one of my
2 hypotheticals is that condition didn't exist.

3 MR. LEE: Oh, the stipulation didn't
4 exist?

5 COMMISSIONER YAMANE: Yeah.

6 MR. LEE: Oh, no, no. I wouldn't be here.

7 COMMISSIONER YAMANE: Okay. Thank you.

8 MR. LEE: Yeah.

9 COMMISSIONER YAMANE: Thank you, Mr.
10 Chair.

11 MR. LEE: Yeah.

12 CHAIRMAN GIOVANNI: Thank you.

13 Commissioners, anything further? Okay.

14 Now, final comments from you, sir.

15 MR. LEE: Thank you, Chair.

16 Mr. Orodener made the comment why should
17 the LUC interject itself in relieving -- in granting
18 the order that we're seeking. And the simple answer
19 is because that is what my client's predecessor in
20 interest bargained for in exchange for acquiring the
21 150 acres and conveying it to Department of Ag. Pure
22 and Simple. Now, that condition in the stipulation
23 is that the LUC shall issue such an order. All
24 right. The LUC is not obligated to do it. I'm here
25 today seeking that.

1 If the LUC denies it, then that condition
2 fails. And, as I testified earlier, that enables us
3 to seek recovery of that 150 acres from the
4 Department of Ag. The offsite infrastructure to the
5 ag park is moot if we prevail on that claim. And I
6 feel pretty strongly that we have such a claim. I
7 don't want to pursue that. I want the ag park. I'm
8 a supporter of ag. I live in Waimanalo.

9 All I'm asking is for something that was
10 negotiated and agreed upon and -- and RK II
11 Partners' predecessor in interest, HRT, performed.
12 So just do the right thing. Thank you.

13 CHAIRMAN GIOVANNI: Thank you.

14 Just doing a time check here. So we'll
15 now enter into deliberations. So given that the
16 matter in front of the Commission is a declaratory
17 ruling pursuant to HAR 15-15-100. There are a few
18 different ways that the Commission may choose to
19 proceed. One, we can deny the petition; that the
20 question is speculative, lacks standing, adversely
21 impacts the State, Commission, officers or employees
22 in litigation which is pending or expected to arise
23 or lacks jurisdiction. Two, we can issue a decision
24 on the matter contained in the declaratory order. Or
25 third, we can set the petition for hearing before

1 the Commission.

2 So the Commission will now consider the
3 request for declaratory ruling as presented by the
4 petitioners. And I asked for the Commission for
5 discussion at this time. And the Chair will
6 entertain any motion by the Commissioners. So what
7 is your pleasure, Commissioners?

8 Commissioner Miyasato.

9 COMMISSIONER MIYASATO: Thank you, Chair.
10 Yeah. I just have a comment for discussion. You
11 know, I'm not saying if I agree or disagree with any
12 of the positions from anyone at this -- within my
13 comments. I guess my biggest thing is we set
14 precedence. This is going to set a precedence for
15 future hearings. And like one of the Commissioners
16 alluded to, we need pretty much a road map to follow
17 this 30 years of deals, conditions, and everything
18 that was done prior.

19 Being that it sets precedence, you know,
20 one of our obligations is to have a full and, you
21 know, complete record upon which we can make and
22 base all the decisions. And I kind of feel like
23 today we kind of went kind of all over the place and
24 not a clear enough picture, some assumption, some
25 verbals, and so I would just caution. And I'm more

1 in favor of moving forward with our contested case
2 hearing.

3 CHAIRMAN GIOVANNI: Thank you,
4 Commissioner. Appreciate your comments.

5 Commissioners, I'll give an opportunity to
6 comment in advance of any -- or make a specific
7 motion if you wish.

8 Commissioner Kahele.

9 COMMISSIONER KAHELE: Yeah, I got a -- I
10 got a question. Can you read off the three options
11 that we have? We have, you know, one of them was to
12 deny.

13 CHAIRMAN GIOVANNI: Second is to decide to
14 grant one or both, deny one or both, or request a
15 hearing for more information consistent with what
16 Commissioner Miyasato was saying.

17 COMMISSIONER KAHELE: Thank you.

18 Who's down there? Is there a light on?

19 COMMISSIONER CARR SMITH: Are we in
20 discussion or --

21 CHAIRMAN GIOVANNI: Yeah. I -- I will
22 invite --

23 COMMISSIONER CARR SMITH: -- discussing as
24 opposed to waiting for a motion?

25 CHAIRMAN GIOVANNI: -- I will invite

1 commentary if you wish, Commissioner. And you do
2 not have to make a motion.

3 COMMISSIONER YAMANE: Mr. Chair.

4 CHAIRMAN GIOVANNI: Yes.

5 COMMISSIONER YAMANE: So just making a
6 statement. It seems to me the best outcome would
7 have been, and hindsight 20/20, is that it seems
8 like all this could be resolved without involving
9 the Land Use Commission with all your third-party
10 agreements, two-party agreements, but -- and it
11 would seem to me that would have been easier to get
12 them to amend agreement on the requirement that the
13 Land Use, you know, give this land in perpetuity
14 instead of saying that's what's in the agreement, so
15 now we gotta come to the Land Use to get that.

16 Because now you're in front of the
17 Commission, which is a regulating body that needs to
18 go about its business following existing rules and
19 regulations, which is a lot stricter than having a
20 two-way or three-way agreement that, you know,
21 different entities sit in a room that could have
22 maybe eliminated that agreement that would give your
23 lenders a little bit more breathing room to say,
24 hey, we want to make sure that agreement is met, so
25 let's come to the Land Use to get that.

1 But now you're in our world of the
2 regulatory environment, and now the options is
3 approve the dec ruling because you asked for --
4 because you feel like you need to meet the
5 obligations of this agreement or deny the dec ruling
6 or go contested case, or kind of put us in a process
7 where we kind of now prolonging this thing even more
8 because, either way, if we're in it, it's going to
9 be lengthy versus if it was settled off to the side
10 with different parties instead of involving the Land
11 Use.

12 In my mind, that would have been the best
13 way. Then you wouldn't be here in front of us. We
14 kind of had the discussion, and you could have just
15 resolved it amongst the parties. So I'm kind of
16 like -- I'm going to have to make my decisions based
17 on our regulatory decision making here, which, to
18 me, an easy way is not that -- you're going to want.
19 So that's all I had to say, Mr. Chair. Thank you.

20 CHAIRMAN GIOVANNI: Thank you,
21 Commissioner Yamane.

22 Commissioner Carr Smith, did you -- I
23 didn't know if you were requesting an opportunity to
24 speak.

25 COMMISSIONER CARR SMITH: Yeah. I feel a

1 little odd providing my opinions about things at
2 this point, but if that's the way we're doing it.

3 CHAIRMAN GIOVANNI: Oh, you can withhold
4 and take it under -- after a motion is made one way
5 or another. We could --

6 COMMISSIONER CARR SMITH: I'll wait for a
7 motion.

8 CHAIRMAN GIOVANNI: Yeah? Okay.

9 So Commissioners, somebody want to make a
10 motion on how to proceed?

11 COMMISSIONER YAMANE: Those three options
12 again, Mr. Chair?

13 COMMISSIONER KAHELE: Well -- well, it's
14 -- Chair? Mel Kahele.

15 CHAIRMAN GIOVANNI: Commissioner Kahele.

16 COMMISSIONER KAHELE: You know, after all
17 these years, all the parties been affected, we get
18 some problems going on with OPSD claiming that, hey,
19 you never meet the substantial commencement use, all
20 this excuses that's being used now by both parties,
21 I -- I think it's about time that we stop kicking
22 the can down the road and finally make a decision.

23 My position is not we deny the request
24 that's currently -- that's the petitioner's filing.
25 I think we should actually accept and approve the

1 request that the petitioner's filing. And if the
2 other Commissioners disagree, I think that that
3 would be my motion. It's been long overdue.

4 I live right up the street. Many of you
5 don't live next to that district that -- that these
6 people are currently looking at putting up this
7 solar farms and Haseko looking at putting up homes
8 and R II K (sic) putting up their businesses over
9 there. So you know, my opinion, I want this project
10 completed, and I'm not sure how long it's going to
11 take if we go through all these other, you know,
12 motions and prolong this project another five years,
13 ten years. Let's get it done. So my motion is that
14 we grant the petitioner's request. Thank you.

15 CHAIRMAN GIOVANNI: So just allow me to
16 try to restate that, Commissioner Kahele. So if I
17 understand what your intent is, and I'm going to say
18 it and then you can affirm or change it, you are --
19 you would like to move that the petitioner's request
20 for this Commission to affirm that it has directly
21 or indirectly achieved substantial commencement of
22 the project. And secondly, that it's relieved from
23 Condition 19 specific to its portion of the parcel.

24 COMMISSIONER KAHELE: That's my motion.

25 CHAIRMAN GIOVANNI: Do I have a second to

1 that motion?

2 COMMISSIONER U'U: I'll second that.

3 CHAIRMAN GIOVANNI: Commissioner U'u
4 seconds that motion.

5 So I think you just spoke to your motion,
6 but do you want to add anything to it, Commissioner
7 Kahele?

8 COMMISSIONER KAHELE: No. You know, it --
9 I think this project needs to be completed. Like I
10 said, I live right up the street. I look at the
11 solar farm every day. I look at the project sitting
12 there. It's about time that we make a decision and
13 get this project completed so everybody can move on
14 and kind of end the nightmare for all of the parties
15 that's involved. Thank you.

16 CHAIRMAN GIOVANNI: Thank you.

17 Commissioner U'u, do you want to speak to
18 your second?

19 COMMISSIONER U'U: Yeah. And maybe I'm
20 naive, but I believe there is an agreement made by
21 two parties prior, and I -- I understand Department
22 of Ag in hopes of having someone, I guess, come
23 through with the conditions that was made or the
24 offsite infrastructure or the infrastructure in
25 itself, but the agreement wasn't made by the

1 petitioner, and that's how I view it.

2 And I see substantial evidence that things
3 happened within the acreage of the land, so --
4 again, I don't want to kick the can any further down
5 the road, and I do believe there is an agreement
6 made by two parties and not you guys, and I think
7 that agreement should be held by the people that
8 agreed upon it and not the people who didn't. And
9 again, the -- this process is new to me, and it is
10 lengthy, but we -- I don't think we need to make it
11 any longer than it needs to be, so that's my mana'o.

12 CHAIRMAN GIOVANNI: Thank you,
13 Commissioner.

14 Let me say at this point that I'm a little
15 concerned that we are lumping the two requests as
16 one in your motion, Commissioner Kahele. Would you
17 be willing to amend your motion so that we take them
18 one at a time? Basically, the question of
19 commencement -- substantial commencement on its own
20 and the question of whether or not they're relieved
21 of Condition 19 on its own.

22 COMMISSIONER KAHELE: So you want me to
23 make two motions?

24 CHAIRMAN GIOVANNI: Yeah. Can we divide
25 it into two motions?

1 COMMISSIONER KAHELE: Yes, yes. I'm
2 sorry. Yes, sure. We can make two motions, yes.

3 CHAIRMAN GIOVANNI: So Mr. U'u --
4 Commissioner U'u, would you be willing to
5 take them one at a time?

6 COMMISSIONER U'U: Yes.

7 CHAIRMAN GIOVANNI: Okay.

8 Commissioners, further -- so as it stands
9 now, we're going to deal with the first motion,
10 motion, I'll call it, 1A, which is to approve the
11 petitioner's request for a declaratory ruling that
12 substantial commencement -- that commencement has
13 substantially commenced on, for all intents and
14 purposes, the property they own.

15 So I'm asking the Commissioners if they
16 want to make comment on that particular motion.

17 COMMISSIONER YAMANE: Mr. Chair, I had a
18 clarifying question for either petition or staff. On
19 the dec ruling on the 1A, is that referring to the
20 entire parcel that was originally amended for ag to
21 urban? And then on 1B, is that specifically only
22 for RK II? I just wanted to clarify that with
23 anybody in this room.

24 CHAIRMAN GIOVANNI: Well, before they
25 answer, let me say that is the reason I asked for it

1 to be separated.

2 COMMISSIONER YAMANE: Get someone to
3 clarify --

4 MR. ORODENKER: Mr. Chair, Daniel
5 Orodenker, Executive Officer. I mean, to a certain
6 extent, I would rely on the Deputy Attorney General
7 to comment on this, but from the standpoint of the
8 request that's being made by RK II Partners, and I
9 do not believe that we can make a decision with
10 regard to parties that are not -- in regard to
11 landowners who are not a party to the petition.

12 CHAIRMAN GIOVANNI: So what do you --

13 MR. ORODENKER: In other words, this would
14 apply just to RK II Partners.

15 CHAIRMAN GIOVANNI: Both motions?

16 MR. ORODENKER: Yes.

17 CHAIRMAN GIOVANNI: So --

18 COMMISSIONER CARR SMITH: Chair?

19 CHAIRMAN GIOVANNI: -- Attorney General? I
20 just want to get a clarification.

21 COMMISSIONER CARR SMITH: Yeah. I was
22 going to ask if we could go into Executive Session,
23 please, pursuant to 92-5(a)(4).

24 CHAIRMAN GIOVANNI: Do I have a second to
25 the motion to go into Executive Session?

1 COMMISSIONER LEE: I'll second.

2 Commissioner Lee.

3 MS. GOLDMAN: This is the Attorney
4 General.

5 Can you please specify the purpose of the
6 Executive Session, so pursuant to 92-5(a)(4), in
7 order to consult with your Deputy Attorney General,
8 blah, blah, blah, please.

9 COMMISSIONER CARR SMITH: Yes. I
10 mentioned the HRS. And yes, it's in order to
11 consult with the Attorney General regarding
12 Commission's powers, duties, privileges, immunities,
13 and liabilities.

14 CHAIRMAN GIOVANNI: Are you good, Attorney
15 General, with that?

16 MS. GOLDMAN: Yes.

17 CHAIRMAN GIOVANNI: Okay.

18 So since this is the first vote of the
19 day, it will be a roll call vote on the motion to go
20 in Executive Session.

21 MR. ORODENKER: The motion is to go into
22 Executive Session.

23 Commissioner Carr Smith?

24 COMMISSIONER CARR SMITH: Aye.

25 MR. ORODENKER: Commissioner Lee?

1 COMMISSIONER LEE: Aye.
2 MR. ORODENKER: Commissioner Kamakea-
3 Ohelo?
4 COMMISSIONER KAMAKEA-OHELO: Aye.
5 MR. ORODENKER: Commissioner U'u?
6 COMMISSIONER U'U: Aye.
7 MR. ORODENKER: Commissioner Yamane?
8 COMMISSIONER YAMANE: Aye.
9 MR. ORODENKER: Commissioner Miyasato?
10 COMMISSIONER MIYASATO: Aye.
11 MR. ORODENKER: Commissioner Kahele?
12 COMMISSIONER KAHELE: Aye.
13 MR. ORODENKER: Commissioner Hayashida is
14 absent.
15 Chair Giovanni?
16 CHAIRMAN GIOVANNI: Aye.
17 MR. ORODENKER: Thank you, Mr. Chair. The
18 motion passes unanimously.
19 CHAIRMAN GIOVANNI: Okay. Let me invite
20 the Deputy Attorney General and also our Executive
21 Director to join us in Exec Session.
22 And for everybody, appreciate your
23 patience. Hopefully, this will not take too long.
24 So we'll be recessing the primary session and go
25 into Exec Session. It's now 11:03.

1 (Executive Session occurred.)

2 CHAIRMAN GIOVANNI: Back in session at
3 12:36. Just let me note for the record that my
4 clock had been off. So when I said it was 10
5 o'clock earlier, it was 11. And when I said it was
6 11, it was 12. And I apologize because there's
7 probably some hungry people in this room. I didn't
8 realize.

9 Also, let me note for the record that
10 we're going to lose one Commissioner at 1 p.m.
11 today, which is 24 minutes from now. But we'll
12 still be able to conduct business because we have a
13 quorum.

14 With that, we did have an Exec Session. I
15 would like to give you just a brief summary. We
16 talked about really what our roles and
17 responsibilities were and in generic declaratory
18 rulings and what we might be able to do and not do,
19 and to establish precedent in a matter such as this.
20 We did not deliberate on the merits of the petition
21 or any of the arguments for or against it or the
22 motions that are before us. So it was just simply
23 to interact with our Attorney General and get
24 clarification on what we can and cannot do and how
25 we do it.

1 With that, I'd like to ask for the
2 Commissioners' preferences, since we are running so
3 late, if they'd like to take a lunch break at this
4 time?

5 No thank you from Bruce. We're going to
6 plow through.

7 MR. U'U: Let's plow through, Mr. Chair.

8 CHAIRMAN GIOVANNI: We're going to plow
9 through. Is that okay with petitioner? All right.

10 So we're back in deliberations.

11 Commissioner Kahele, it was your motion that is
12 before the table and we had bifurcated it into a 1A
13 and a 1B. Did you want to ask -- I understand you
14 may want to make the following --

15 COMMISSIONER KAHELE: Yeah. You know, I
16 made a motion to accept the petitioner's request,
17 and that's currently right now on the table.

18 CHAIRMAN GIOVANNI: That's what you did,
19 yeah?

20 COMMISSIONER KAHELE: Yes.

21 CHAIRMAN GIOVANNI: Do you want to stand
22 with that?

23 COMMISSIONER KAHELE: Yes.

24 CHAIRMAN GIOVANNI: Okay. So
25 Commissioners, the motion is on 1A, which is on the

1 portion of the declaratory ruling that has been in
2 the petition, whether or not substantial
3 commencement has occurred, and that's only the part
4 that we're talking about now. So Commissioners, any
5 further comment on the motion?

6 Commissioner Lee?

7 COMMISSIONER LEE: Can I clarify whether
8 motion 1A also includes the request that it be
9 reclassification by the LUC must be done in
10 accordance with Section 205-4. Is that part of --
11 because that was part of the first request. And so
12 is that also part of the motion that is --

13 CHAIRMAN GIOVANNI: Executive Director?

14 MR. ORODENKER: Yes, it is. And it would
15 be even if it wasn't stated, by default.

16 COMMISSIONER LEE: Okay. Thank you.

17 CHAIRMAN GIOVANNI: Thank you.

18 Commissioner Carr Smith?

19 COMMISSIONER CARR SMITH: Chair, I have a
20 couple of comments. I know that we're bound by this
21 agenda. And this agenda states that we are dealing
22 with TMK (1)9-4-002-001, so with that, it makes it
23 more challenging to accept in my mind. I agree that
24 the petition area is what we're talking about, but
25 that's not what the agenda says.

1 And my other comment is that if you came
2 here to seek relief from the second item, I really
3 wish you would have brought more evidence of those
4 agreements, whether it's the agreement between you
5 and OPSD or OPSD, or Department of Ag and Haseko, or
6 you and Haseko, or the many options. I think it
7 would have been much cleaner if you would have
8 provided proof of those for us. Those are my
9 comments.

10 CHAIRMAN GIOVANNI: Thank you.

11 Anybody else? Mr. Lee, your light's on.
12 Does that mean you want to talk?

13 MR. LEE: No.

14 CHAIRMAN GIOVANNI: Anybody else?

15 So I'm going to speak to the motion and
16 then its two parts in commentary, but I'll be
17 willing to vote on them individually. My sense is
18 that when I look at the petition area as a whole,
19 that there has been clear evidence of substantial
20 commencement. And that it would be afforded to all
21 the landowners. So I'm inclined to vote in support
22 of 1A. I will reserve my vote on 1B because I don't
23 feel similarly on that one. But we'll discuss that
24 when that comes up.

25 Anybody else? Let's have a roll call vote

1 on the motion. So please restate the motion for
2 clarification.

3 MR. ORODENKER: Thank you, Mr. Chair.
4 Motion 1A is to approve the declaratory ruling
5 request for affirmation that there has been
6 substantial commencement on the parcel.

7 Commissioner Kahele?

8 COMMISSIONER KAHELE: Aye.

9 MR. ORODENKER: Commissioner U'u?

10 COMMISSIONER U'U: Aye.

11 MR. ORODENKER: Commissioner Kamakea-
12 Ohelo?

13 COMMISSIONER KAMAKEA-OHELO: Aye.

14 MR. ORODENKER: Commissioner Carr Smith?

15 COMMISSIONER CARR SMITH: Aye.

16 MR. ORODENKER: Commissioner Yamane?

17 COMMISSIONER YAMANE: Aye.

18 MR. ORODENKER: Commissioner Miyamoto --
19 Miyasato?

20 COMMISSIONER MIYASATO: Aye.

21 MR. ORODENKER: Commissioner Lee?

22 COMMISSIONER LEE: Aye.

23 MR. ORODENKER: Commissioner Hayashida is
24 absent.

25 Chair Giovanni?

1 CHAIRMAN GIOVANNI: Aye.

2 MR. ORODENKER: Thank you, Mr. Chair. The
3 motion passes unanimously.

4 CHAIRMAN GIOVANNI: So now let's talk to
5 the second motion, which is whether this petitioner
6 -- whether the owner of this parcel, which is a --
7 only a portion of the total petition area, should be
8 relieved of Condition 19, based on the evidence
9 that's before us in the record now.

10 Do you want to speak to that, Commissioner
11 Kahele, your motion?

12 COMMISSIONER KAHELE: You know, I'm
13 basically explaining why and I believe the
14 petitioner submitted all the information it did
15 include to (inaudible) the request. And this
16 property is -- it's only pertaining to RK II
17 property. It's not pertaining to the other
18 properties that's involved. So yeah. So that's
19 basically it, you know. I figure just Commissioners
20 and the Commission has heard enough of what's been
21 going on out there at this location, and it's about
22 time we get these projects going.

23 CHAIRMAN GIOVANNI: Okay.

24 Commissioner U'u, do you want to speak to
25 your second?

1 COMMISSIONER U'U: (Inaudible). I'm
2 sorry. I'll just stand on my second.

3 CHAIRMAN GIOVANNI: Very good.

4 Commissioners, any further comment?

5 Commissioner Miyasato.

6 COMMISSIONER MIYASATO: Yeah. Again, I
7 stated previous. You know, I would have appreciated
8 if some of those documents would have been provided.
9 But I guess due to the fact that we had confirmation
10 from the department that Haseko is taking the
11 obligation, you know, I somewhat gotta agree with
12 Commissioner Kahele that sometimes things just --
13 it's kind of a private matter that you folks need to
14 work out. The obligation is still there no matter
15 what. So I'm hoping everything work -- you know,
16 will be honored. Sometimes that's the best we can
17 do, yeah, and move forward and get things done for
18 people, for the residents. So yeah.

19 CHAIRMAN GIOVANNI: Thank you. Anybody
20 else?

21 COMMISSIONER YAMANE: Mr. Chair?

22 CHAIRMAN GIOVANNI: Commissioner Yamane.

23 COMMISSIONER YAMANE: Thank you, Mr.
24 Chair. I respect my fellow Commissioners,
25 especially Brian and Mel there at the end. But for

1 this one, I'm kind of having a hard time issuing a
2 vote yes. I just feel like this decision should be
3 settled outside of Land Use, but obviously it's
4 presented us in the form of a dec ruling, so now
5 we've got to make a decision specifically on whether
6 RK II should not be, you know, obligated for offsite
7 infrastructure.

8 In that case, I can't see myself voting
9 yes for this, Mr. Chair, so I'll be voting no on
10 this. I think this should be -- should not have
11 been brought to the Land Use and should be taken
12 care of outside the Land Use, so I'll be voting no.
13 Thank you.

14 CHAIRMAN GIOVANNI: Thank you,
15 Commissioner.

16 Anybody else?

17 So the Chair feels similarly. I think
18 that -- I think it is a private matter, and it
19 should be settled privately among the landowners of
20 how they're going to fulfill the requirements of
21 Condition 19. And I think there's a plan in place,
22 and I think it's a good plan. And I think we've
23 heard today that, for all intents and purposes, the
24 parties that are the owners -- that represent the
25 owners intend to follow through with that.

1 I don't think it's appropriate for the
2 Land Use Commission to set precedent and get in the
3 middle of that by relieving one of the parties at
4 this stage of the game. I think the more
5 appropriate vehicle, if you really wanted to pursue
6 it, for the petitioner, would be a motion to amend
7 the order in the first place. And I think that that
8 could be accommodated in a relatively straight-
9 forward amount of time. It wouldn't be kicking the
10 can another 23 years. It would be kicking the can
11 about 180 days. So I'm going to vote no on this
12 second part.

13 CHAIRMAN GIOVANNI: Anybody else? Okay.
14 Let's take a roll call vote.

15 MR. ORODENKER: Thank you, Mr. Chair. The
16 motion is to release the petitioner of its
17 obligations under Condition 19.

18 Commissioner Kahele?

19 COMMISSIONER KAHELE: Aye.

20 MR. ORODENKER: Commissioner U'u?

21 COMMISSIONER U'U: Aye.

22 MR. ORODENKER: Commissioner Kamakea-
23 Ohelo?

24 COMMISSIONER KAMAKEA-OHELO: A'ole.

25 MR. ORODENKER: Commissioner Carr Smith?

1 COMMISSIONER CARR SMITH: No.
2 MR. ORODENKER: Commissioner Yamane?
3 COMMISSIONER YAMANE: No.
4 MR. ORODENKER: Commissioner Miyasato?
5 COMMISSIONER MIYASATO: Aye.
6 MR. ORODENKER: Commissioner Lee?
7 COMMISSIONER LEE: Aye.
8 MR. ORODENKER: Commissioner Hayashida is
9 absent.
10 Chair Giovanni?
11 CHAIRMAN GIOVANNI: No.
12 MR. ORODENKER: Mr. Chair, we have four
13 votes for and four votes against. We do not have a
14 decision.
15 CHAIRMAN GIOVANNI: So we have no decision
16 on 1B. So what are our options?
17 MR. ORODENKER: Well, someone can make
18 another motion.
19 CHAIRMAN GIOVANNI: So the motion doesn't
20 pass.
21 MR. ORODENKER: The motion does not pass.
22 COMMISSIONER CARR SMITH: Chair?
23 CHAIRMAN GIOVANNI: Commissioner Carr
24 Smith?
25 COMMISSIONER CARR SMITH: I would be

1 willing to change my vote to yes.

2 CHAIRMAN GIOVANNI: With respect to that,
3 I'll allow that to happen. So let's -- just to make
4 it clean, I'm going to do it a little differently.

5 So I think -- I don't want to get tied up
6 in too many motions here, but can I --

7 Attorney General, can I call for a second
8 roll call vote for the motion, based on the comments
9 that I just received from Commissioner Carr Smith?

10 MS. NAGATA: Yes, Chair.

11 CHAIRMAN GIOVANNI: Okay. So let's have a
12 second -- let me ask you to do the roll call vote
13 again.

14 MR. ORODENKER: Okay. The motion is to
15 release the petitioner of its obligations under
16 Condition 19 of the decision and order.

17 Commissioner Kahele?

18 COMMISSIONER KAHELE: Aye.

19 MR. ORODENKER: Commissioner Lee?

20 COMMISSIONER LEE: Aye.

21 MR. ORODENKER: Commissioner Miyasato?

22 COMMISSIONER MIYASATO: Aye.

23 MR. ORODENKER: Commissioner U'u?

24 COMMISSIONER U'U: Aye.

25 MR. ORODENKER: Commissioner Carr Smith?

1 COMMISSIONER CARR SMITH: Aye.

2 MR. ORODENKER: Commissioner Kamakea-
3 Ohelo?

4 COMMISSIONER KAMAKEA-OHELO: A'ole.

5 MR. ORODENKER: Commissioner Yamane?

6 COMMISSIONER YAMANE: No.

7 MR. ORODENKER: Chair Giovanni?

8 CHAIRMAN GIOVANNI: No.

9 MR. ORODENKER: Thank you, Mr. Chair. The
10 motion passes with the vote of five in support,
11 three noes.

12 CHAIRMAN GIOVANNI: Okay. Thank you.

13 MS. GOLDMAN: Chair, Deputy Attorney
14 General Goldman.

15 CHAIRMAN GIOVANNI: Oh.

16 MS. GOLDMAN: I just want to make one more
17 comment before you move on from this particular
18 agenda item. Something I forgot to flag earlier,
19 which is that the fourth recommendation in the staff
20 submittal, if somebody would like to make a motion
21 regarding that recommendation, it might be helpful.
22 The recommendation was whether to authorize the
23 Chairperson to execute the declaratory order
24 necessary to effectuate the decision, subject to
25 review and approval by the Department of the

1 Attorney General.

2 CHAIRMAN GIOVANNI: Basically, that's the
3 formality of getting a written order. I can do it
4 as Chair as opposed to involving the whole
5 Commission. So do I need a motion on that?

6 COMMISSIONER KAHELE: Chair, Mel Kahele. I
7 make a motion.

8 CHAIRMAN GIOVANNI: Wait, wait, wait. Let
9 me see what we need.

10 MS. GOLDMAN: I apologize. If someone
11 wants to make a motion, they can. You also don't
12 have to vote on it, and then it would not -- it
13 would not be something that would attach to the
14 votes you just took.

15 CHAIRMAN GIOVANNI: My preference is let's
16 do it formally.

17 Mel, make your motion.

18 COMMISSIONER KAHELE: Chair, I make a
19 motion.

20 CHAIRMAN GIOVANNI: That motion that I can
21 execute the order?

22 COMMISSIONER KAHELE: Absolutely.

23 CHAIRMAN GIOVANNI: Yeah. Do I have a
24 second?

25 COMMISSIONER MIYASATO: Second.

1 CHAIRMAN GIOVANNI: Miyasato second.
2 All in favor, indicate by saying, "aye."
3 (All said, "aye.")

4 CHAIRMAN GIOVANNI: Any opposed? So be
5 it.

6 Thank you, Melissa.
7 So that concludes this agenda item. Thank
8 you very much for your time and patience.

9 MR. LEE: Thank you, Commissioner.
10 Appreciate your time.

11 CHAIRMAN GIOVANNI: So Commissioners, I'm
12 going to give you a second chance to take lunch. Do
13 you want lunch now or do you want to just plow
14 through the rest of this?

15 (Inaudible.)

16 CHAIRMAN GIOVANNI: I think we can do the
17 rest of the agenda in 20 minutes or less, so let's
18 -- can we do it? Yeah, okay. No lunch.

19 Kuike, thank you for joining us.

20 COMMISSIONER KAMAKEA-OHELO: Mahalo,
21 Chair. I'll hang on until 1.

22 CHAIRMAN GIOVANNI: Yeah. We might be
23 finished by then even, so hang on.

24 COMMISSIONER KAMAKEA-OHELO: Yeah.

25 CHAIRMAN GIOVANNI: Okay. Next agenda

1 item is the tentative meeting schedule. Mr.
2 Orodanker.

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

4 Tomorrow we will again be here for various
5 updates as --

6 COMMISSIONER LEE: Chair, I think we're
7 supposed to do the --

8 CHAIRMAN GIOVANNI: Amendments from
9 November 7, right?

10 MR. ORODENKER: Okay.

11 CHAIRMAN GIOVANNI: Is that it? Yeah.

12 Sorry, Mr. Orodanker. I'm going to go
13 backwards before I go forwards. I skipped over that
14 inadvertently.

15 Ms. Kwan, we're going to consider our
16 third order of business as the adoption of the
17 November 7, 2024 minutes. Ms. Kwan, has there been
18 any written testimony on the minutes?

19 MS. KWAN: No, Mr. Chair.

20 CHAIRMAN GIOVANNI: Have any members of
21 the public signed up to testify on the minutes?

22 MS. KWAN: Seeing none, Mr. Chair.

23 CHAIRMAN GIOVANNI: Commissioners, are
24 there any corrections or comments on the minutes? If
25 not, is there a motion to adopt the minutes from our

1 meeting of November 7, 2024?

2 COMMISSIONER YAMANE: Moved by
3 Commissioner Yamane.

4 COMMISSIONER KAHELE: Second.

5 CHAIRMAN GIOVANNI: Second by Commissioner
6 Kahele.

7 All in favor, indicate by saying, "aye."
8 (All said, "aye.")

9 CHAIRMAN GIOVANNI: Any opposed? No. The
10 minutes are adopted from November 7, 2024.

11 The next agenda item is the tentative
12 meeting schedule. Mr. Orodenger.

13 MR. ORODENKER: Thank you, Mr. Chair.
14 Tomorrow we will be, once again, here at the State
15 Office Tower for various updates and a discussion
16 with the Attorney General pursuant to the posted
17 agenda. On the 22nd and 23rd, we currently do not
18 have anything scheduled, but we would ask the
19 Commissioners to hold those dates open.

20 February 5th, we will be here again for
21 Haseko updates and updates from Arnold Wong and
22 legislative updates. On November 6th, we currently
23 have an open day. On -- not November. February. On
24 February 19th, we will be on Maui at the MACC for
25 the Emmanuel Lutheran status report. The 20th is

1 currently open.

2 March 5th and 6th and 19th and 20th are
3 currently vacant, as is April 9th, 10th, and 23rd,
4 and 24th.

5 CHAIRMAN GIOVANNI: Commissioners, any
6 questions?

7 COMMISSIONER MIYASATO: Chair?

8 CHAIRMAN GIOVANNI: Yes, Commissioner
9 Miyasato?

10 COMMISSIONER MIYASATO: I'd like to
11 address January 22nd. Being that this is the new
12 year, Chair, I'd like to ask if we could agendize an
13 election of officers to start off the new year on
14 the 22nd, and if that could be a hybrid.

15 CHAIRMAN GIOVANNI: So is that an ask or a
16 motion or what?

17 COMMISSIONER MIYASATO: An ask.

18 MR. ORODENKER: It's a request. It's a
19 request.

20 Are you referring to January 20th,
21 Commissioner?

22 COMMISSIONER MIYASATO: The second --

23 MR. ORODENKER: 20th? 22nd is Saturday.
24 Oh, no. I'm looking at February. I'm sorry. We
25 are in January. Okay. Yeah, 22nd. Yeah.

1 COMMISSIONER MIYASATO: What are my
2 options?

3 MR. ORODENKER: You can ask me to agendize
4 it or not.

5 COMMISSIONER MIYASATO: Yes.

6 CHAIRMAN GIOVANNI: I mean, the protocol
7 through the years has been to do the election at the
8 end of the fiscal year for the next fiscal year --

9 COMMISSIONER MIYASATO: But that -- that
10 wasn't done last year.

11 CHAIRMAN GIOVANNI: It was.

12 COMMISSIONER MIYASATO: No. It was done
13 in April.

14 CHAIRMAN GIOVANNI: So April --

15 COMMISSIONER MIYASATO: I wanted it to be
16 in the fiscal year.

17 MS. KWAN: Sorry. This is Ms. Kwan. Last
18 year we did hold the election in April, but it was
19 to be effective July 1st election of officers. They
20 didn't take office April or May.

21 COMMISSIONER MIYASATO: But there's
22 nothing --

23 CHAIRMAN GIOVANNI: Either way, I've got
24 no problem agendizing this item for January 22nd. So
25 let me ask staff to put on the agenda -- let me ask

1 Commissioner Miyasato to work with staff to get the
2 wording clearly exactly what you want, and then
3 he'll draft it. He'll submit it to the AG, and then
4 it will come to me for final approval to put on the
5 agenda, but I have no problem with it.

6 COMMISSIONER MIYASATO: Okay. Thank you.

7 CHAIRMAN GIOVANNI: Okay. Anything else?

8 COMMISSIONER CARR SMITH: Is that an in-
9 person meeting or a virtual meeting? Okay.

10 UNIDENTIFIED SPEAKER: Hybrid.

11 MS. KWAN: I don't know yet. I will get
12 back to staff and Commission if we're going to do it
13 in person or hybrid. Thank you.

14 CHAIRMAN GIOVANNI: Okay. Anything else?
15 Any other questions? Okay. Then we will recess
16 today until tomorrow at 9 a.m., here in the same
17 place. Do I have a motion to recess?

18 UNIDENTIFIED COMMISSIONER: I move.

19 CHAIRMAN GIOVANNI: Second?

20 UNIDENTIFIED COMMISSIONER: Second.

21 CHAIRMAN GIOVANNI: All in favor?

22 (Inaudible.)

23 CHAIRMAN GIOVANNI: We are at recess.

24 (The LUC Meeting recessed.)
25

CERTIFICATE

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

IN WITNESS HEREOF, I have hereunto set my hand this 23rd day of January, 2025.



Jodi Dean