

LAND USE COMMISSION

STATE OF HAWAII

May 24, 2018

Airport Conference Center

400 Rodgers Boulevard Suite 700, Room #3

Honolulu, Hawaii 96813

Commencing at 9:00 a.m.

VII. Action

DR18-61 Hartung Brothers Hawaii, LLC

For Declaratory Order to Designate Important  
Agricultural Lands for approximately 463 acres  
at Kunia, Oahu; TMK (1) 9-2-004-006(por.)-011,  
and -012(por.)

VIII. Status Report and Action (If Necessary)

A92-683 Halekua Development Corporation (Oahu)

IX. Adjournment

1 APPEARANCES:

2 COMMISSIONERS:

3 ARNOLD WONG, Chairperson  
4 NANCY CABRAL, Vice Chair  
5 JONATHAN SCHEUER, Vice Chair  
6 GARY OKUDA  
7 DAWN CHANG  
8 EDWIN ACZON

9 RANDALL YAMASHITA, ESQ., Deputy Attorney General

10 STAFF:

11 DANIEL ORODENKER, Executive Officer  
12 RILEY HAKODA, Staff Planner/Chief Clerk  
13 BERT SARUWATARI, Staff Planner  
14 SCOTT DERRICKSON, Staff Planner

15 DAWN APUNA, ESQ., Office of Planning

16 LOREEN MAKI, Office of Planning

17 RODNEY FUNAKOSHI, Planning Program Administrator

18 EARL YAMAMOTO, Department of Agriculture

19 JANICE FUJIMOTO, Department of Agriculture

20 MORRIS ATTA, Department of Agriculture

21 JOSEPH DANE, ESQ., for Hartung Brothers Hawaii, LLC

22 DAVID TANOUE, ESQ., for RP2 Ventures, LLC

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1 CHAIR WONG: Good morning. This is the May  
2 24th portion of the reconvened May 23rd, 24th, 2018  
3 Land Use Commission Meeting.

4 This is a hearing and action meeting on  
5 DR18-61, In the Matter of the Petition of Hartung  
6 Brothers Hawaii, LLC for Declaratory Order to  
7 Designate Important Agricultural Lands for  
8 approximately 463 acres at Kunia, Oahu; TMK  
9 (1)9-2-004-006 (por.) -011 and -012 (por.)

10 Will the Petitioner please identify  
11 themselves for the record?

12 MR. DANE: Good morning. Petitioner Joseph  
13 Dane --

14 CHAIR WONG: Please use the mike.

15 MR. DANE: Joseph Dane on behalf of  
16 Petitioner Hartung Brothers Hawaii. With me today  
17 I've got Josh Uyehara also with Hartung Brothers and  
18 Tom Schnell of PBR Hawaii.

19 CHAIR WONG: Thank you.

20 Okay. Let me update the record.

21 On March 21st, 2018, the Commission received  
22 Petitioner's Petition for Declaratory Order to  
23 designate Important Agricultural Lands, and Exhibits  
24 A through F with a hard copy and digital file; and  
25 \$1000 application fee. A request for comments to the

1 LUC about the Petition were mailed by Petitioner to  
2 OP, Office of Planning, the State Department of  
3 Agriculture and to the City and County of Honolulu  
4 Department of Planning and Permitting on the same  
5 day.

6 On April 3rd, 2018, the Commission received  
7 Petitioner's proposed Findings of Fact, Conclusions  
8 of Law and Decision and Order.

9 On April 24, 2018, the Commission received  
10 State Department of Agriculture's comments on the  
11 Petition.

12 On April 27, 2018, the Commission received  
13 the City and County of Honolulu Department of  
14 Planning and OP's, Office of Planning's positions  
15 state -- position statements on the Petition.

16 On May 15, 2018, the Commission mailed the  
17 LUC meeting agenda to the Parties, Statewide, Hawaii  
18 and Oahu mailing lists and received Petitioner's  
19 correspondence for LUC consideration.

20 Mr. Dane, has our staff informed you of the  
21 Commission's policy regarding the reimbursement of  
22 the hearing expense?

23 MR. DANE: Yes.

24 CHAIR WONG: If so, please state your  
25 client's position with respect to this policy.

1 MR. DANE: We will comply with the policy.

2 CHAIR WONG: Thank you.

3 So let me describe the procedures for this  
4 docket today.

5 We'll call public witnesses to the stand  
6 first. Then after completion of the public  
7 witnesses, we'll then do the Petitioner. After  
8 completion of the Petitioner, we'll receive any  
9 public comments from County, Office of Planning and  
10 Department of Ag. Thereafter, the Commission will  
11 conduct its deliberations.

12 The Chair will also note from time to time,  
13 I may call for a short break. Are there any  
14 questions?

15 MR. DANE: No questions.

16 CHAIR WONG: Ag?

17 MS. APUNA: No questions.

18 CHAIR WONG: Mr. Dane, just for your  
19 information, the Chair intends to declare that the  
20 documents submitted by the Department of Agriculture,  
21 Office of Planning, City and County of Honolulu  
22 Department of Planning and Permitting and any written  
23 public testimony and the Petitioner's response are  
24 part of the record. Do you have any objection to  
25 this?

1 MR. DANE: No objections.

2 CHAIR WONG: Thank you. So all these  
3 documents are now part of the record.

4 Is there anyone in the audience that want to  
5 testify on this matter?

6 Please, sir. Can I swear you in?

7 BRIAN MIYAMOTO: Yes, Chair.

8 CHAIR WONG: Do you swear or affirm that the  
9 testimony you're about to give is the truth?

10 BRIAN MIYAMOTO: Yes.

11 CHAIR WONG: Okay. Please state your name  
12 for the record.

13 BRIAN MIYAMOTO: My name is Brian Miyamoto,  
14 the Executive Director of the Hawaii Farm Bureau.

15 We did submit written testimony on behalf of  
16 our President Randy Cabral who unfortunately couldn't  
17 make it because of the vog and he's sick.

18 CHAIR WONG: Okay. Please continue.

19 BRIAN MIYAMOTO: Thank you, Chair. Thank  
20 you, Commissioners.

21 Again, Brian Miyamoto, Executive Director of  
22 Hawaii Farm Bureau. We did submit written testimony  
23 so I'll just summarize.

24 We're in support of Hartung's petition to  
25 designate these lands as important ag lands.

1           The Hawaii Farm Bureau is the largest  
2     agriculture or -- our general agricultural  
3     organization in the state. We've been around since  
4     1948. We just see more and more land going out of  
5     ag.

6           We were part of the effort to pass this  
7     landmark legislation in 2005. And also the  
8     incentives in 2009.

9           We're very supportive of any effort to  
10    designate land, to keep land virtually perpetuity in  
11    agriculture.

12          We believe Hartung's petition of Hartung's  
13    efforts are going to keep land not just in  
14    agriculture but in production agriculture. There's a  
15    lot of land that are in agriculture that is either  
16    got gentleman farms or are not productive.

17          The governor has a goal of doubling our food  
18    production. We believe this is a great effort to try  
19    to achieve that goal to continue to have production  
20    agriculture on ag land which is what it's intended  
21    for.

22          So again, we represent almost 2,000 members.  
23    We are happy that there's been about 100,000 acres  
24    voluntarily designated. We'd like to see more land  
25    designated.

1           We appreciate Hartung doing this  
2 voluntarily. And we wholly support their efforts and  
3 their petition and appreciate the time and  
4 opportunity to testify. Thank you.

5           CHAIR WONG: Thank you.

6           Mr. Dane, any questions?

7           MR. DANE: No questions.

8           CHAIR WONG: Commissioners, any questions?  
9 Commissioner Okuda.

10           COMMISSIONER OKUDA: Thank you for your  
11 testimony, Mr. Miyamoto. If I can ask a question.  
12 Does your organization see anything negative in this  
13 petition?

14           BRIAN MIYAMOTO: Thank you for the question,  
15 Commissioner. We don't. Again, we are supportive of  
16 any efforts to designate land or to keep land in  
17 production agriculture. We believe this petition or  
18 their request to designate these 400 plus acres is  
19 such.

20           COMMISSIONER OKUDA: Thank you.

21           CHAIR WONG: Commissioner Cabral.

22           VICE CHAIR CABRAL: For the record, I'm  
23 sorry Randy Cabral is not here. But I do not know  
24 Randy Cabral and I don't think that I'm related to  
25 him. That's all I'm going to say. Thank you.



1 CHAIR WONG: You sure? No, no.

2 VICE CHAIR CABRAL: The husband, you know.

3 CHAIR WONG: Anyone else? Commissioners,  
4 any more questions? Thank you.

5 BRIAN MIYAMOTO: Thank you, Chair. Thank  
6 you, Commissioners.

7 CHAIR WONG: Is there anyone else in the  
8 audience that want to testify? Going once, twice.  
9 Okay. Let's go.

10 Mr. Dane, can you please proceed.

11 MR. DANE: Thank you, Commissioner.

12 I want to first thank all of you  
13 Commissioners for being here this morning and taking  
14 the time to hear this petition.

15 VICE CHAIR SCHEUER: Could you put the  
16 microphone slightly closer to your mouth. Thank you.

17 MR. DANE: How's this?

18 Thank you for being here this morning and  
19 taking the time to hear this petition.

20 We have some slides to show you. I'm going  
21 to have Josh Uyehara describe the operations of the  
22 farm. And we'll have Tom Schnell of PBR walk us  
23 through the report that PBR Hawaii prepared in  
24 support of the petition.

25 So one moment while we get these slides

1 going.

2 As you know, this is a petition to designate  
3 approximately 463 acres of land as important  
4 agricultural land. Because I understand that you  
5 folks have generally done site visits to IAL lands,  
6 we're not able to do a site visit this time.

7 To start with, this is a map showing the  
8 location of the Hartung property as a whole. So I  
9 can get this pointer to work.

10 That's Kunia Road going up from the freeway.  
11 This is all of Hartung's land. This area here, the  
12 hatched area, this is the land that we're proposing  
13 to be designated as IAL today. And just because you  
14 were here, this is the Monsanto property that you  
15 previously have visited and designated as IAL just  
16 adjacent to the south.

17 So I'm going to have Josh speak more fully  
18 about Hartung. But because you may not be familiar  
19 with that company, I want to put the slides here on  
20 the few basic facts about Hartung.

21 The company actually was formerly owned by  
22 Syngenta, Syngenta Seeds until June of last year.  
23 The company was purchased by Hartung Brothers,  
24 Incorporated which is based in Wisconsin.

25 The company owns the land in Kunia that I

1 just showed, about 848 acres. That's the only land  
2 that is owned by Hartung in fee simple. And has  
3 substantial operations on Kauai as well. The  
4 company's headquarters are in Kekaha, Kauai.

5 Josh, as I say, will walk us through with  
6 this in more detail. But a few facts about the  
7 company. Generally speaking, they've inherited the  
8 seed corn production operations from Syngenta.  
9 There's 14 full-time employees at Kunia, 82 full-time  
10 overall. And they employ around a hundred seasonal  
11 employees throughout the year.

12 So with that, I'd like to ask Josh to step  
13 up and I'm going to ask him a few questions.

14 CHAIR WONG: May I swear you in?

15 JOSHUA UYEHARA: Yes, please, Chair.

16 CHAIR WONG: Okay. Do you swear or affirm  
17 that the testimony you're about to give is the truth?

18 JOSHUA UYEHARA: Yes.

19 CHAIR WONG: Please proceed. Oh, wait,  
20 sorry, what's your name?

21 JOSHUA UYEHARA: Morning, Chair and  
22 Commissioners. My name is Joshua Uyehara. I'm the  
23 vice president and general manager of Hawaii  
24 operations for Hartung Brothers, Inc.

25 CHAIR WONG: Thank you. Please proceed.

1 MR. DANE: Morning, Josh.

2 Why don't we start off and you can tell us a  
3 little bit about just yourself and your background.

4 JOSHUA UYEHARA: I grew up on West Kauai in  
5 Waimea. Actually, I grew up farming kalo with my dad  
6 who was a paniolo for Ken Robinson ranch. My dad,  
7 some of you may remember, testified actually at the  
8 GNR (sic) hearing, Randy Uyehara.

9 So I grew up generally in agriculture, went  
10 to school on the west side. Waimea Elementary,  
11 Waimea Canyon, Waimea High School.

12 I did go to Harvard University briefly, did  
13 not end up finishing my degree though unfortunately.  
14 So I came back.

15 I just got started working in the seed  
16 industry. I worked at one point for Pioneer and then  
17 Syngenta as a contract employee starting 2006.  
18 Became a full-time employee for Syngenta in 2009.

19 In Syngenta generally, as I started, was in  
20 the area of sort of land management and allocation  
21 and planning of where we would plant various crops,  
22 assessing the control lease land for viability. And  
23 actually, one of the one -- of the things that I did  
24 for Syngenta in that role at the time was assess the  
25 potential when we were assessing whether to purchase

1 the property in question here today actually.

2 Then after that, went on to become the  
3 interim station manager at Kekaha. From there, I  
4 went to Minnesota and worked in several roles in  
5 Minnesota at the North America headquarters for the  
6 company. I returned in 2014, 2015 to become the  
7 research station manager full-time at Kekaha. And  
8 then after the transition to Hartung Brothers, I was  
9 made vice president and general manager of the Hawaii  
10 operations.

11 MR. DANE: So you're quite familiar with the  
12 Kunia property then?

13 JOSHUA UYEHARA: Yes.

14 MR. DANE: Tell us a bit more about that,  
15 about what sort of -- in your job, what sort of  
16 decisions do you make? What's your involvement with  
17 planning for the use of that property?

18 JOSHUA UYEHARA: So at this point in my  
19 current role, it's looking at our overall crop land  
20 with our various customers and deciding what field  
21 should be potentially planted in that area. At a  
22 certain level of detail that's delegated to our Kunia  
23 staff as well. But overall oversight over, you know,  
24 the general magnitude of the activity that will take  
25 place there versus Kauai or on other islands in the

1 state.

2 MR. DANE: Okay. So we have a few slides.  
3 Not that this is going to substitute for a full site  
4 visit. We have a few pictures of the property that  
5 Josh can walk us through. So I'll get it going the  
6 first one here.

7 Josh, why don't you just tell me when you  
8 want me to advance the slides.

9 JOSHUA UYEHARA: Sure.

10 So this is -- I believe looking at the  
11 picture, what we would call field 5 looking back  
12 toward the Honouliuli preserve area. So just as a  
13 typical corn field in a relatively early stage of  
14 growth and advance.

15 This is another similar shot from field 5  
16 looking out toward the, I think, northeast sort of  
17 across Central Oahu from again a similar growth stage  
18 corn field. And that's typical of the kind of crop  
19 you might see on our property at this point.

20 This, I think, is field 6 looking more  
21 toward the north, northwest, back up towards  
22 Schofield Barracks area.

23 Here, you can see what we call reservoir 23  
24 which is the reservoir that's actually on our  
25 property. We keep it at anywhere between 5 to 8

1 million gallons capacity. And we can pump 1800 to  
2 2,000 gallons per minute out of this reservoir. We  
3 actually draw about 40 percent of our irrigation  
4 water out of this one reservoir on the property.

5 MR. DANE: Was this reservoir constructed by  
6 Syngenta?

7 JOSHUA UYEHARA: Yes. This is an example of  
8 pump infiltration station. And actually, this is the  
9 one that's at reservoir 23. And as I mentioned  
10 earlier, it can pump about 1800 to 2,000 gallons per  
11 minute.

12 This is a picture of our facility from the  
13 parking lot. Overall numbers, we have about 30,000  
14 square foot in warehouse equipment storage and  
15 processing sort of space. It includes conveyors to  
16 possessing green corn, husk and sort the corn,  
17 shelling it, dry it. It's about a \$20 million  
18 facility all in during construction.

19 MR. DANE: I think I sent you the last  
20 slide. Might be the last photograph that we have for  
21 you Commissioners.

22 Now, just let's talk a little bit about  
23 Hartung. So when did Hartung purchase the company?

24 JOSHUA UYEHARA: That transaction closed in  
25 June 2017.

1           MR. DANE: And just so everyone's clear in  
2 here, did they just buy just the Kunia property?

3           JOSHUA UYEHARA: No. They actually bought  
4 the entirety of the Hawaii operation which includes  
5 both the Kunia and the Kekaha operations.

6           MR. DANE: So now that you're an employee of  
7 Hartung, can you tell us a little bit about the  
8 company?

9           JOSHUA UYEHARA: All right. So it's a very  
10 interesting family farm company started in the early  
11 '70s by two brothers. Hence the name.

12           They -- currently they grow the majority of  
13 the cucumbers that go into Vlasic Pickles. And also  
14 100 percent of the green beans that go into Birds Eye  
15 frozen green beans. So you'll probably recognize  
16 some of the things that they grow across the Midwest  
17 from Texas through Canada. You can find them in the  
18 supermarket.

19           At one point, they were actually the  
20 nation's largest sweet corn producer as well. But  
21 they kind of got out of that business.

22           They were in dairy for a while as well. So  
23 they're very entrepreneurial. Very much passionate  
24 about ag and looking at all of the different  
25 potential options across all their operations.



1           MR. DANE: So currently the Kunia land is in  
2 seed corn. Would you say that there's a distinct  
3 possibility that the types of crops grown on the  
4 property might increase in the future?

5           JOSHUA UYEHARA: Yes. I mean as you can  
6 see, you know, the company's been on the property  
7 less than a year at this point. So still finding our  
8 bearings here in the Hawaii market, trying to  
9 identify potential additional crops to grow. You  
10 know, from our perspective, we have the land. We  
11 have water. We have the expertise. We have basic  
12 facilities that we can use potentially for many  
13 different types of crops. So it's something that  
14 we're actively investigating.

15           We've since expanded just sort of  
16 tentatively into sorghum. And we're looking at  
17 potentially other grain crops for feed. And then  
18 even potentially at fresh produce for food. But  
19 that's -- you know, as we look at that, our focus is  
20 on long-term economic sustainability, viability. And  
21 so the further we get from the operations today, the  
22 more investment and perhaps different expertise that  
23 would take. So that's something that we're looking  
24 at very carefully.

25           MR. DANE: I'm just going to go through --

1     there's a few -- as you know, there's the IAL statute  
2     lays out a few criteria. I'm just going to go  
3     through a few. Some of these are going to be obvious  
4     questions, I think, but I'm just going to ask you  
5     anyways.

6             One of the criterias is whether or not the  
7     land is currently in agriculture production. Can you  
8     confirm that that is the case?

9             JOSHUA UYEHARA: Definitely.

10            MR. DANE: By the way, is there any other  
11     uses of the property, any ranching, any tenant  
12     farmers?

13            JOSHUA UYEHARA: No, not currently.

14            MR. DANE: Another of the criteria is  
15     whether or not the physical characteristics of the  
16     plan -- the land make it suitable for agricultural  
17     use and capable of producing sustained high yields?

18            JOSHUA UYEHARA: Yes.

19            MR. DANE: In your opinion, does it qualify?

20            JOSHUA UYEHARA: Definitely, yes.

21            MR. DANE: Another one of the objectives is  
22     to identify lands that contribute to the state's  
23     economic base. So tell us a little bit about how  
24     many employees does Hartung have locally?

25            JOSHUA UYEHARA: We have about 82 in the

1 state, 14 full-time here in Central Oahu. That  
2 fluctuates depending on the season with seasonal  
3 employees as well. So it's a fairly significant  
4 operation particularly for an agricultural operation.  
5 At least I like to think so.

6 MR. DANE: Okay. Stepping back for a  
7 moment. Let me ask you what -- why does Hartung want  
8 to designate land IAL?

9 JOSHUA UYEHARA: So it's something that we  
10 learned about very early on and looked at the -- you  
11 know, in looking at our strategic vision for the  
12 property and assessing potentially other crops, we  
13 realized early on that anything we do to expand  
14 beyond our current range of operations would require  
15 investment. So the IAL statute with the tax credit  
16 with the expected renewal which thankfully has passed  
17 during this legislative session became an interesting  
18 potential vehicle for that. And we looked at, you  
19 know, based on the statute, you know, and looking at  
20 the criteria, what we felt was long-term sustainable  
21 is suitable based on the criteria that we felt had  
22 sufficient water rights, et cetera, to sustain a high  
23 level of agricultural activity essentially in  
24 perpetuity in that. And this portion of the property  
25 that really met that criteria.

1           So really for us, you know, being proactive  
2     since we're looking at it from a business  
3     perspective, we wanted as much certainty over the  
4     process as possible, both in terms of the area  
5     designated as well as the timeline for designation.  
6     Because if we're going to make decisions on  
7     investments, we kind of need to know when these  
8     things will happen. So that's one of the reasons we  
9     decided we needed to enter into the voluntary process  
10    so that we had more control over, you know, what  
11    would be designated and the timeline around that.

12           MR. DANE: A few more questions.

13           Have you read the petition and the exhibits?

14           JOSHUA UYEHARA: Yes.

15           MR. DANE: And it's accurate as far as you  
16    know?

17           JOSHUA UYEHARA: Yes. To my knowledge,  
18    yeah.

19           MR. DANE: Let me ask you one thing about an  
20    exhibit to the petition, Exhibit E, was a  
21    conservation plan, soil conservation plan. Can you  
22    tell us what that is and what the origin of it is?

23           JOSHUA UYEHARA: Sure. So basically, you  
24    know, each county in the state has a grading grubbing  
25    ordinance. And for agricultural activity to be

1     exempted -- and there's some variation how this  
2     works. But generally, you need to have a  
3     conservation plan. The conservation plan's reviewed  
4     by the NRCS, soil water conservation districts. And  
5     it really describes, you know, our best management  
6     practices around berming or grass waterways or cover  
7     crops, et cetera, to prevent erosion and damage to  
8     the land over the course of our operation and the  
9     steps that we take to preserve the quality of the  
10    land.

11           MR. DANE: And that plan is still in effect  
12    now?

13           JOSHUA UYEHARA: Yes.

14           MR. DANE: I have no further questions,  
15    Josh. Commissioners?

16           CHAIR WONG: Thank you. Commissioners, any  
17    questions? Commissioner Chang.

18           COMMISSIONER CHANG: Good morning, Mr.  
19    Uyehara. Currently, are your -- any of your crops  
20    used for local consumption, any of the corn?

21           JOSHUA UYEHARA: We do grow sweet corn for  
22    local consumption on Kauai. Currently, our Oahu  
23    operations are quite specialized. And so local  
24    production for consumption here would require us to  
25    invest in new facilities in all likelihood. And as I

1 mentioned earlier, that's one of the reasons we're  
2 pursuing this petition is so that perhaps, you know,  
3 if we find a crop that we think would be viable, we  
4 could avail ourselves of the tax credit to help us  
5 with that investment.

6 COMMISSIONER CHANG: Okay. Do you know  
7 whether the lands on Kauai, are those also in IAL?

8 JOSHUA UYEHARA: No. Totally separate.  
9 That's something that we're actively pursuing to see.  
10 But it's a little more complicated because those are  
11 lands we lease from the state. So we're currently  
12 trying to work with the state to figure out how we  
13 could get those designated.

14 COMMISSIONER CHANG: Thank you very much.

15 CHAIR WONG: Commissioner Aczon.

16 COMMISSIONER ACZON: Just a brief question.  
17 How many percentage would you say the  
18 petition area from the overall --

19 JOSHUA UYEHARA: About 54 percent.

20 COMMISSIONER ACZON: Fifty-four percent?  
21 And what is the -- what is Hartung's plan from the  
22 remainder of the petition from the petition area?

23 JOSHUA UYEHARA: We actually haven't looked  
24 at it from that perspective. We just looked at --  
25 with the criteria, what section of the property did

1 we think really met the majority of the criteria that  
2 we felt would support -- particularly, in terms of  
3 the quantity, what we looked at, we have just a  
4 little over a half million gallons a day water  
5 allocation. And so if you look at an intensive crop  
6 plan, that's basically not quite enough water to farm  
7 the entire property at that point. So that's kind of  
8 what limited us to, you know, looking at water  
9 availability being one of the key criteria. That's  
10 kind of what helped us draw a boundary around how  
11 much active farm land we thought could be supported  
12 within that.

13 COMMISSIONER ACZON: Approximately how many  
14 acres you think that the water supply could handle?

15 JOSHUA UYEHARA: So it's really dependent on  
16 what crop you're growing and what practice you use.  
17 So we try to be fairly conservative and say 450, 500  
18 acres within -- with grass waterways and drainage  
19 included with a fairly aggressive sort of multi  
20 rotational plan.

21 So one of the benefits here in Hawaii is we  
22 could grow crops back to back year round rotating the  
23 types of crops in a given piece of property. Now, we  
24 don't currently do that because we're still looking  
25 at what are the next crops we could rotate in and

1 remain economically viable. But that's what we  
2 figured. You know, when you're looking at the  
3 long-term nature of IAL, that's the kind of scenario  
4 we wanted to plan around so.

5 COMMISSIONER ACZON: For the rest of the  
6 areas that you think that's suitable for farming or  
7 any -- the crops that you're trying to raise, you  
8 have any plans on all those remaining?

9 JOSHUA UYEHARA: We are looking at options  
10 for those properties. You know, would they be  
11 suitable maybe for solar or something like that. So  
12 some of the properties are kind of more marginal with  
13 ag land because let's say some of the fields toward  
14 the mountain range are steeper, they're higher  
15 elevation. So they require much more intensive  
16 practice around erosion management. They're much  
17 more energy intensive in terms of having to pump  
18 water to higher elevations. So while it's possible  
19 to farm that land and we do farm some of that land  
20 today, they're just not the best farmland.

21 And so when we looked at the criteria and  
22 tried to be rigorous in that application, we said  
23 okay, IAL is not necessarily all of the land you  
24 possibly could farm. It needs to be good farmland  
25 that should remain that way for a broad range of



1 crops. And so that's how we drew that.

2 COMMISSIONER ACZON: Thank you, Mr. Uyehara.  
3 Thank you, Mr. Chair.

4 CHAIR WONG: Commissioner Cabral.

5 VICE CHAIR CABRAL: You've answered several  
6 of my questions already but one is what is the source  
7 of your water that you are holding in your reservoir?

8 JOSHUA UYEHARA: The Waiahole Ditch system.  
9 So we do have access to two water systems. The  
10 primary that we actually use would be the Waiahole  
11 Ditch. And we take water under our current water  
12 permit which, as I referenced, a little -- allows us  
13 a little over half a million gallons a day on a  
14 12-month rolling average basis.

15 We also have a small allocation from the  
16 Kunia Water Association. But that for us is really  
17 just a backup water source that we very rarely use.

18 VICE CHAIR CABRAL: Since I'm from Oahu  
19 where we have plenty of water -- I mean I'm from Hilo  
20 where we have plenty of water, you guys on Oahu don't  
21 have --

22 COMMISSIONER ACZON: Just move --

23 VICE CHAIR CABRAL: No, thank you.

24 So the Waiahole, that's -- is that the water  
25 that comes from Waikane Valley on the other side? Is

1     that --

2                 JOSHUA UYEHARA:  Yes.

3                 VICE CHAIR CABRAL:  So it's pumped across  
4     from the windward side to this side, is that the  
5     source of --

6                 JOSHUA UYEHARA:  Well, it's not pumped.  
7     It's gravity flowed.

8                 VICE CHAIR CABRAL:  Gravity flowed, okay.  
9     Okay, thank you very much.

10                CHAIR WONG:  Commissioner Okuda.

11                COMMISSIONER OKUDA:  Thank you, Mr. Uyehara  
12     for your testimony.  And actually, thank you for  
13     coming back from Harvard to keep the knowledge in the  
14     state.

15                You know, kind of following up on  
16     Commissioner Aczon's question.  On the properties  
17     which are not subject to this petition, is there any  
18     consideration at all, no matter how small the  
19     consideration might be, about any urbanization or  
20     urban use for those properties or that portion?

21                JOSHUA UYEHARA:  No.  That's definitely not  
22     in our plan.  So part of what we looked at is, you  
23     know, that -- and I guess this is a broader  
24     discussion in the state currently, right, the sort of  
25     urban ag boundaries become problematic.  So that's

1 not something we're looking at now to our  
2 understanding anyway with the zoning of the property.  
3 I mean that really is not a realistic -- at least not  
4 within decades kind of a scenario. So that's not  
5 something that we're at least not considering or  
6 thinking about at this point.

7 COMMISSIONER OKUDA: Thank very much.

8 CHAIR WONG: Anyone else? Commissioner  
9 Scheuer.

10 VICE CHAIR SCHEUER: Good morning.

11 JOSHUA UYEHARA: Morning.

12 VICE CHAIR SCHEUER: In your petition, you  
13 discuss that 80 percent of the water that you draw  
14 from the Waiahole Ditch which is sourced from Kahana,  
15 Waiahole, Waikane Valleys is used on the property.  
16 Where is the other 20 percent used of your  
17 allocation?

18 MR. DANE: Could I ask for a clarification?  
19 Is it the statement that 80 percent of the water is  
20 used for crops on the property?

21 VICE CHAIR SCHEUER: Yes.

22 MR. DANE: It's all used on the property I  
23 think.

24 VICE CHAIR SCHEUER: So what is the other 20  
25 percent used for?

1 JOSHUA UYEHARA: We have -- so there's  
2 depending on how you count it, after a crop, we may  
3 water the field to germinate any -- what we call  
4 volunteer seeds that may have sprouted or to irrigate  
5 a cover crop which while we use that for soil erosion  
6 control purposes, isn't something we would harvest  
7 and sell. So it's not really considered a crop.

8 VICE CHAIR SCHEUER: Can you explain the  
9 difference, the major differences between the lands  
10 that you're proposing for designation compared to  
11 what the City and County of Honolulu originally  
12 prepared or recommended in their preliminary map for  
13 designation?

14 JOSHUA UYEHARA: So to my understanding, and  
15 I can't necessary speak on behalf of DPP, they  
16 primarily looked at three criteria and proposed to  
17 designate basically the entire property full stop.  
18 And when we looked at that, we said okay, if we read  
19 the statute correctly, there are a lot of criteria  
20 that much of our land does not meet. So within their  
21 proposed area include fields that, you know -- at one  
22 point were partly in pineapple production for  
23 example. But the underground irrigation  
24 infrastructure and the reservoirs that service those  
25 areas have since been deteriorated or destroyed over

1 time. And so there's no actual way to water those  
2 fields any more. So those fields are a good example  
3 of areas that are in the DPP petition but not in our  
4 petition because we felt they didn't meet enough of  
5 the criteria.

6 VICE CHAIR SCHEUER: Do all the criteria  
7 need to be met for us to take action?

8 JOSHUA UYEHARA: I don't believe so. So  
9 it's sort of a -- I believe a judgment call on your  
10 part as far as how many, to what extent.

11 VICE CHAIR SCHEUER: I believe the statute  
12 says that even if one of the criteria are met, we're  
13 allowed to designate the lands.

14 So I guess I'm just a little confused by the  
15 testimony. I understand that benefits of IAL  
16 designation to your investment plans, your crop  
17 planting plans. I don't understand the resistance to  
18 designating a greater portion of the property since  
19 you have a stated long-term commitment to agriculture  
20 and an opposition to urbanization of any of the other  
21 parts of the property.

22 JOSHUA UYEHARA: So I guess the --

23 VICE CHAIR SCHEUER: So it seems to me.

24 JOSHUA UYEHARA: I guess part of it is we're  
25 not exactly sure long-term what will happen with IAL

1 designated lands. So we wanted to be certain that  
2 the lands we designate meet the majority of the  
3 criteria that we feel we can support the statement  
4 that they are prime lands that should be in  
5 agriculture production in the long-term and not just  
6 under certain specific circumstances.

7           So as I mentioned previously, you know, the  
8 fields -- some of the fields that we do farm, we're  
9 taking a second look at whether we should continue  
10 because, in fact, they're relatively steep. And so  
11 there is a greater risk of significant erosion if we  
12 have a heavy rain at an inopportune time. So those  
13 are some of the areas where we decided while  
14 possible, it's really not the best idea maybe in the  
15 long-term. And so that's something that we're  
16 reconsidering.

17           VICE CHAIR SCHEUER: And I guess I don't  
18 understand given the stated commitment of the  
19 company, which I do not doubt, to long-term  
20 agriculture and your stated commitment of the company  
21 to not seek urbanization of these lands. I don't see  
22 a downside to IAL designation of the entirety of the  
23 property. If you had plans to urbanize it or you had  
24 plans to do some non-agricultural use, I would  
25 understand why designation of the entirety of the

1 property as IAL would be disadvantageous to the  
2 landowner's interests.

3 JOSHUA UYEHARA: I think for us, we're  
4 trying to keep our -- you know, without understanding  
5 necessarily the full implications, for us, we feel  
6 that further designation of additional parts of the  
7 property is always going to be an option to us in the  
8 future. So we would rather designate the areas we  
9 feel comfortable today so we have enough certainty of  
10 the timeline and we can take advantage of some of the  
11 tax credit benefits, et cetera, or at least have the  
12 option to do that. And if in the future we decide we  
13 understand the situation well and want to come back,  
14 we can.

15 On the other hand, if we designate  
16 everything today, then we don't have any options in  
17 the future. So I mean that's basically our view of  
18 it.

19 VICE CHAIR SCHEUER: Thank you.

20 CHAIR WONG: Anyone else?

21 Just one question. I note -- heard that  
22 you -- or you just stated that the company just  
23 were -- recently acquired the land, correct?

24 JOSHUA UYEHARA: Correct.

25 CHAIR WONG: So I just wanted to reaffirm

1     that any conditions, even the IAL issues, will stay  
2     with the land and not with the company?

3             JOSHUA UYEHARA: Correct.

4             CHAIR WONG: Okay. That's all I needed to  
5     know. Thank you.

6             JOSHUA UYEHARA: And if I might add, I mean  
7     that's because of that very long-term view  
8     potentially including beyond our tenure of ownership  
9     of the land. That's why we decided to be very  
10    stringent in our application and decide if we're --  
11    I mean we don't know what the next hundred years  
12    looks like. So we decided we wanted to stick to what  
13    we felt met the majority of the criteria very, very  
14    strongly. We thought that would be the most  
15    appropriate thing to do.

16            CHAIR WONG: Okay. Thank you.

17            Commissioner Okuda.

18            COMMISSIONER OKUDA: Yes. If you can  
19    indulge just one question.

20            You know, Mr. Uyehara, I understand that the  
21    condition runs with the land and your employment  
22    doesn't run with the land. But do you have any --  
23    and I'm not trying to pin you or cause you to, you  
24    know, agree to involuntary servitude with Hartung  
25    Brothers or anything like that but do you have any



1 present plans to leave the company.

2 JOSHUA UYEHARA: No, no. Actually, so -- so  
3 just on a personal note. When I was in Minnesota  
4 with Syngenta, they gave me the option to potentially  
5 go to Europe or go to North Carolina, stay in  
6 Minnesota or come back. And I decided -- you know,  
7 my wife and I at the time were thinking of starting  
8 our family and we wanted to raise our family here in  
9 Hawaii. So that's why we elected to come back. And  
10 so I'm hoping we, you know, are successful here in  
11 the long-term. And then if that's the case, I don't  
12 plan to go anywhere.

13 COMMISSIONER OKUDA: Thank you very much.

14 CHAIR WONG: Commissioner Chang.

15 COMMISSIONER CHANG: Thank you. Thank you  
16 very much, Mr. Uyehara for your testimony.

17 I just had one question about Hartung  
18 Brothers 'cause I'm not familiar with the company.  
19 Do they do any other production or do they have any  
20 other business other than crop productions?

21 JOSHUA UYEHARA: One time -- at one time,  
22 they had a fertilizer business but they've since  
23 divested that.

24 They do have a trucking and logistics  
25 company but that company basically serves their crop

1 production. So it's almost an internal company. But  
2 other than that, no, they're a hundred percent  
3 focused on farming.

4 COMMISSIONER CHANG: They don't do any  
5 development of pharmaceutical pesticides or --

6 JOSHUA UYEHARA: No, nothing like that.  
7 Yeah.

8 COMMISSIONER CHANG: And they don't do any  
9 . . . okay. No. That satisfies me. Thank you very  
10 much.

11 CHAIR WONG: Okay. Commissioners, last  
12 call. Okay. Thank you, Mr. Uyehara.

13 Mr. Dane.

14 MR. DANE: Thanks, Josh.

15 So next up, I got Tom Schnell of PBR Hawaii.  
16 PBR prepared the agricultural land assessment that we  
17 included with the petition.

18 CHAIR WONG: May I swear you in, sir?

19 TOM SCHNELL: Yes. Good morning, Commission  
20 Members. My name is Tom Schnell.

21 CHAIR WONG: Wait. Let me swear you in,  
22 then take a quick recess. Okay?

23 TOM SCHNELL: Sure.

24 CHAIR WONG: Do you swear or affirm that the  
25 testimony you're about to give is the truth?

1 TOM SCHNELL: I do.

2 CHAIR WONG: Okay. You just stated your  
3 name but please state it one more time for the  
4 record.

5 TOM SCHNELL: My name is Tom Schnell. I'm  
6 with PBR Hawaii.

7 CHAIR WONG: Okay. We're going to take a  
8 quick recess.

9 (Recess taken.)

10 CHAIR WONG: We're back.

11 Mr. Dane, you can proceed.

12 MR. DANE: Thank you, Chair.

13 Okay. Tom, why don't you tell us a bit  
14 about your background.

15 TOM SCHNELL: Sure. So I'm with the  
16 planning and landscape architecture firm named PBR  
17 Hawaii.

18 A little bit about me is I have a master's  
19 of urban and regional planning from the University of  
20 Hawaii. I'm a member of the American Institute of  
21 Certified Planners since 1998. I'm also a principal  
22 with PBR Hawaii. And I've been with PBR Hawaii since  
23 1999. So coming up on 20 years.

24 MR. DANE: Have you been involved in any  
25 other LUC proceedings?

1           TOM SCHNELL: I have. I've been involved in  
2 the Monsanto IAL proceedings. And actually, our firm  
3 has been involved in many other IAL proceedings. For  
4 example, Parker Ranch, Alexander & Baldwin on Maui  
5 and Kauai, Grow Farm, Kamehameha Schools on Oahu and  
6 Kauai, Robinson Family Partners and also Monsanto.

7           You haven't seen me. Tom Witten in our firm  
8 has been kind of the face of the proceedings but I  
9 have helped him with reports in the past. I just  
10 haven't been testifying recently or until the last  
11 couple years. Last year.

12           MR. DANE: So were you involved in the  
13 preparation of the agricultural land assessment that  
14 we submitted with the petition?

15           TOM SCHNELL: I was. I was actively  
16 involved and I was the author of the report.

17           MR. DANE: With that, I'd like to request  
18 that Tom Schnell be accepted as an expert witness in  
19 this proceeding.

20           CHAIR WONG: Any oppositions, Commissioners?  
21 Opposition, AG, OP?

22           MS. APUNA: No.

23           CHAIR WONG: Okay. So be it.

24           MR. DANE: Okay. Tom, you want to show us  
25 some slides?

1           TOM SCHNELL: So I'm going to go through  
2 basically all of the exhibits that PBR Hawaii  
3 prepared for ag assessment report that's an exhibit  
4 to the petition.

5           And I'll just summarize a little bit.  
6 You've heard some of this before but Hartung owns  
7 approximately 849 acres in Kunia. We are proposing  
8 to designate 463 acres of this land as IAL. That's  
9 54.6 of their total land holdings.

10           And if you notice the -- on the slide here,  
11 the land in yellow is the Monsanto IAL. And it is  
12 contiguous to the Hartung IAL.

13           And the note I have down at the bottom  
14 standards in criteria. I'll refer to this going  
15 through the presentation. But these are the  
16 standards and criteria in HRS for designation of IAL.  
17 And one of them is land that contributes in  
18 maintaining a critical land mass important to  
19 agricultural productivity.

20           It's not on? Can you hear me better now?  
21 Okay, sorry about that.

22           So Josh spoke extensively about this. But  
23 the property to be designated IAL is in agriculture  
24 use. About 65 percent of the property is in crop  
25 production. The other 35 percent is used for ag

1 infrastructure. As you can see, the reservoir that  
2 we had a picture of, there's detention basins, berms,  
3 filter strips, roads, pumps. There's also soil  
4 conservation areas. And there is a portion of  
5 gulches. But all of this land is important to the  
6 total agricultural operations.

7 In this slide, you can see the fields are  
8 shown in yellow. And that's the 65 percent of the  
9 property that's in ag production. And the green part  
10 is the other areas. So one of the standards and  
11 criteria under HRS is land that's currently in  
12 agriculture production.

13 Turn now to the Land Study Bureau, LSB. If  
14 you look at the property that we're proposing to  
15 designate as LSB, the colors are pretty faded on here  
16 but the green and yellow areas are the A and B rated  
17 lands. And the -- sorry, the yellow areas are the C  
18 rated lands.

19 Seventy-five percent of the property though  
20 is either in -- rated A or B. And if you consider A  
21 -- or if you consider the C lands also, a total of 87  
22 percent of the property is designated A, B or C.

23 And one of the standards and criteria for  
24 designating an IAL is land with soil qualities that  
25 support agricultural production. And with the high

1     LSB ratings, these are good soils for agricultural  
2     production.

3             Another rating system is the agricultural  
4     lands of importance to the State of Hawaii, the ALISH  
5     system which you're probably familiar with.

6     Sixty-eight point 6 -- 66.8 percent of the IAL area  
7     is designated as prime. That's the green area you  
8     see on the map. Twenty-nine percent is designated as  
9     other ALISH. Those are the yellow areas on the map  
10    or the more, I guess, look orange on this projection.  
11    So in total, 96.3 percent of the area is designated  
12    under the ALISH system. And one of the standards of  
13    criteria for designation of IAL is lands classified  
14    under ag productivity rating system such as ALISH.

15            This is a map of a solar radiation that the  
16    property receives. The property receives a mean  
17    annual solar radiation of 186 to a 188 watts per  
18    square meter. This is a lot of sunlight. It's more  
19    than sufficient to support agricultural activity or  
20    production. Again, one of the standards and criteria  
21    is lands with growing conditions that support  
22    agriculture.

23            This map shows some of the water resources  
24    and agricultural infrastructure. Josh talked pretty  
25    extensively about the water sources of primarily

1 Waiahole Ditch. There's also a reservoir on the  
2 property that Syngenta had built previously that's  
3 owned and operated by Hartung now.

4 Also they have a backup water source from  
5 the Kunia Water Association. They have a small  
6 allocation from this source. I think it's 3.82  
7 percent but it's really used as a backup source. And  
8 their primary source of water is Waiahole Ditch and  
9 also rainwater. The rainfall in this area is about  
10 30 to 40 inches per year.

11 Back to the standards and criteria for ag  
12 designation. One of the standards is land with  
13 sufficient water to support agricultural  
14 productivity.

15 Shifting gears a little bit more. As far as  
16 City and County designations, the land straddles both  
17 the Central Oahu Sustainable Community Plan and the  
18 Ewa Development Plan. And on this map, you could see  
19 the Ewa Development Plan area. It's shown in white  
20 here but it actually looks green in the report. But  
21 a small portion in the Ewa DP, most of this is in the  
22 Central Oahu Sustainable Community Plan area.

23 Significant that these black lines here.  
24 These are the -- what they call urban growth  
25 boundaries for these areas. So urban growth is



1     allowed in this area. These areas outside of the  
2     urban growth boundaries are designated for ag. And  
3     so significantly to -- I guess, if you were  
4     considering urbanizing any of this, you -- one of the  
5     steps you need to take would be to have the city  
6     amend it's boundary.

7             Going back to standards and criteria, one of  
8     standards and criteria is lands whose IAL designation  
9     is consistent with community and development plans of  
10    the county.

11            This is a city and county zoning. It's all  
12    zoned ag. It's AG-1. And I just want to reiterate  
13    although this zoning is not a community or  
14    development plan with the county, it certainly  
15    reflects the county's desire for the land use of the  
16    land. Incidentally, I don't have a slide for it but  
17    we're all in the state -- all of the land is in the  
18    state agricultural district too.

19            Another thing I wanted to point out. I  
20    don't have a specific slide but one of the criteria  
21    and standards for IAL designation is also land near  
22    infrastructure or transportation to markets. So Josh  
23    maybe touched upon a little bit but we do have ag  
24    infrastructure. We have water infrastructure,  
25    irrigation. There's power to the property. And

1 Kunia Road is the main road here that provides direct  
2 access to markets for the finished crops.

3 So I'm just going to wrap up and summarize  
4 by going over the criteria briefly again. But I'll  
5 try to do this quickly. But the land is in  
6 agriculture production. The property has soil  
7 qualities in growing conditions to support  
8 agriculture.

9 LSB 89 -- or 87 percent of the land is  
10 classified LSB, either A, B or C lands. We have good  
11 growing conditions. Good solar conditions.

12 The property is identified under ALISH  
13 system. Ninety-six percent of the property is  
14 identified under the ALISH system.

15 The property has sufficient water to support  
16 agriculture. The property is consistent with the --  
17 or IAL designation is consistent with the sustainable  
18 community plan and the Ewa DP. The property does  
19 contribute to a critical mass of important ag land  
20 especially since it's adjacent to the Monsanto  
21 properties to the south. And the property has  
22 infrastructure to support ag production and has  
23 access to transportation to markets.

24 MR. DANE: Thank you, Tom. Just a couple  
25 questions for you.

1           Are you familiar with the statutory  
2       provision that provides for an incentive for  
3       voluntary designation of 50 percent of a landowner's  
4       land?

5           TOM SCHNELL: I am familiar with that, yes.

6           MR. DANE: Would you say in your experience  
7       that other landowners have taken advantage of that  
8       incentive?

9           TOM SCHNELL: Definitely. I do not know of  
10      any previous petitioner landowner who has voluntarily  
11      designated a hundred percent of their land as IAL.

12          MR. DANE: Thank you.

13          So just to wrap up your -- I can restate  
14      what you had in your last -- it's your view that this  
15      land does satisfy most of the statutory criteria?

16          TOM SCHNELL: There's eight criteria. And  
17      we need seven of the eight criteria. So I would say  
18      it's highly consistent with the criteria. It doesn't  
19      meet just one.

20          There is one criteria that I think has to do  
21      with -- it's criteria number 4. It has to do with  
22      land types associated with traditional native  
23      agricultural uses. I would say we do not meet that  
24      criteria.

25          MR. DANE: Thank you, Tom. No further

1 questions.

2 CHAIR WONG: Thank you.

3 Commissioners, any questions? Commissioner  
4 Cabral.

5 VICE CHAIR CABRAL: The fact that you're  
6 contiguous with the Monsanto land that's been  
7 designated already, I just want to kind of get a  
8 little information. I understand -- again,  
9 clarification. I'm from the Big Island so we don't  
10 have these big problem like this kind of land. But  
11 we have others. Big other problems right now.

12 But poison and the -- I understand there's a  
13 lot of concern in the community about poisons being  
14 used on land that may blow from one property to  
15 another property and that type of thing. So what do  
16 you do -- so I'm assuming that that's good because  
17 you and Monsanto, if you poison each other's crops,  
18 well, that's your problem with each other. But what  
19 do you do in the community with your property lines  
20 that are adjacent to other people, particularly  
21 potentially if they were to not be in some type of  
22 agriculture? And of course, agriculture, you know,  
23 overspray would be terrible too 'cause if somebody  
24 else didn't want that spray but. So how do you  
25 handle that or what is the advantage of this or

1 potential disadvantage of these contiguous and  
2 adjacent properties?

3 TOM SCHNELL: I don't think I'm the person  
4 to ask that -- answer that. Josh could probably  
5 answer that more accurately.

6 It's my understanding that Hartung and  
7 Monsanto comply with all laws regarding storage and  
8 application of pesticides and herbicides and other  
9 things so. But beyond that, it's a little beyond my  
10 scope of how they apply it.

11 VICE CHAIR CABRAL: All right. Thank you.

12 CHAIR WONG: Commissioner Chang.

13 COMMISSIONER CHANG: Thank you, Tom. You've  
14 been qualified as an expert. I'm assuming the expert  
15 in IAL? What was his expertise in?

16 TOM SCHNELL: Well, I think my general  
17 expertise is in land use planning and land use  
18 knowledge.

19 COMMISSIONER CHANG: Okay. And I'm sorry,  
20 'cause I don't think the expertise was really  
21 qualified. So, okay, land use planning.

22 So, Tom, as an expert, could you tell us  
23 what is the difference between an IAL designation  
24 versus just regular ag designation, ag zone lands?  
25 What is the -- 'cause there's a incentive and we have

1    seen landowners voluntarily coming in. But so could  
2    you tell me as an expert what is the difference  
3    between IAL designation versus just ag designation?

4           TOM SCHNELL: So I might not have the  
5    statutory numbers right but my -- or citations right  
6    but my understanding was this goes back to the state  
7    constitution where there's a mandate for the state to  
8    protect important agriculture lands. And it took  
9    many years to get to the process where there was  
10   actually an amendment to Chapter 205 to go through a  
11   process to help landowners voluntarily designate  
12   their lands and provide incentives to actually  
13   realize this constitutional mandate. And so that's  
14   at the process we're at now.

15           There's also Chapter 205 does allow for the  
16   county to also go through an IAL designation process  
17   also. But I think the idea is to designate the State  
18   of Hawaii's statewide what are the critical, what are  
19   the most important agricultural lands that should be  
20   designated as important lands and protected from  
21   further development?

22           COMMISSIONER CHANG: So is -- because  
23   whether they're zoned IAL or whether they're zoned  
24   ag, that is all in fulfillment of this constitutional  
25   mandate to promote ag. But are there -- are non IAL

1 designated lands, so, for example, in this particular  
2 case, 54 percent is being designated -- is being  
3 petitioned to be an IAL and 46 will remain just ag  
4 zone. So are the incentives that apply to IAL, what  
5 is it, a tax credit?

6 TOM SCHNELL: There's several -- there's a  
7 tax credit.

8 COMMISSIONER CHANG: Okay. So does the tax  
9 credit only apply to IAL lands and not the ag zone  
10 lands?

11 TOM SCHNELL: I would have to ask Joe about  
12 that if that's okay.

13 MR. DANE: The tax credit applies to costs  
14 for agricultural infrastructure. And there's certain  
15 tests where it depends on the particular type of cost  
16 you're talking about. But generally speaking, there  
17 has to be like a majority of the -- whatever it is  
18 going to benefit IAL. It's not an all or nothing but  
19 it needs to be IAL involved for sure.

20 COMMISSIONER CHANG: So -- 'cause I'm just  
21 trying to understand the distinction and what is the  
22 benefit or why the difference between IAL. So  
23 potentially a tax credit? What is the other  
24 incentive?

25 TOM SCHNELL: There is what's called the

1 majority incentive. And the -- it's if a landowner  
2 voluntarily designates a majority of their land as  
3 IAL. Later on in the process, the part that's not  
4 designated IAL is -- could be done by the landowner  
5 but could not be done by the state or county later is  
6 my understanding.

7 COMMISSIONER CHANG: So I know Josh talked  
8 about certainty. So to a certain extent having it  
9 designated an IAL through a voluntary process, that  
10 46 percent of the land -- the other land owned by  
11 Hartung could not be placed by the city into IAL?

12 TOM SCHNELL: That's my understanding, yes.

13 COMMISSIONER CHANG: Okay. So --

14 TOM SCHNELL: Just as a clarification too on  
15 the IAL. So the IAL, if your land is designated IAL,  
16 it's held to a higher standard. For example, if a  
17 petitioner had their land or landowner had their land  
18 in IAL and later on in the process, they decided --  
19 maybe 20 years or 30 years from now, they decided  
20 they wanted to urbanize those lands, I believe it's a  
21 higher -- it's a three-quarter majority of the Land  
22 Use Commission needs to approve that re-designation  
23 versus just a majority with the standard.

24 COMMISSIONER CHANG: So -- and that's by  
25 statute?



1 TOM SCHNELL: Right.

2 COMMISSIONER CHANG: So if it's designated  
3 IAL and the landowner wants to take it out of IAL,  
4 put it into urban, LUC would -- there would have to  
5 be a three-fourths -- what did you say?

6 TOM SCHNELL: I believe it's three-fourths  
7 of two-thirds.

8 COMMISSIONER CHANG: Two-thirds?

9 TOM SCHNELL: Two-thirds? Okay.

10 COMMISSIONER CHANG: Two-thirds. Are there  
11 additional regulatory advantages? For example, if  
12 the land is in IAL, does it -- does it go through --  
13 for example, if the landowner -- let's say when they  
14 want to do the solar project, more than 15 -- more  
15 than 15 acres, they need to get a special use permit.  
16 Would the fact that it's in just regular ag  
17 designated, does it make a difference with respect to  
18 the regulations?

19 TOM SCHNELL: I believe it does. I believe  
20 if it's under 15 acres and a landowner's applying for  
21 special permit under Chapter 205, the county has the  
22 ability to process that special permit. But if the  
23 land is in IAL, then it also has to come before the  
24 Land Use Commission.

25 COMMISSIONER CHANG: So even if it's less

1     than 15 acres, if it's designated IAL, it would --  
2     LUC still has jurisdiction over that?

3             TOM SCHNELL: That's my understanding, yes.

4             COMMISSIONER CHANG: Versus if we -- LUC  
5     would only have jurisdiction if it's over 15 acres in  
6     a non IAL designation?

7             TOM SCHNELL: That's my understanding, yes.

8             COMMISSIONER CHANG: Can you think of -- are  
9     there any other differences between IAL designation  
10    versus an ag designation?

11            TOM SCHNELL: Not that I know of. I mean I  
12    think the IAL designation does not change the state  
13    land use district boundary. It's still ag. It does  
14    not change the county zoning which is in this case is  
15    still ag. So it's an overlay but it holds a  
16    landowner to a higher standard if they were going to  
17    urbanize the property is my understanding.

18            COMMISSIONER CHANG: Thank you. 'Cause I  
19    mean I think we greatly appreciate the fact that  
20    Hartung has come here and seeking to put their land  
21    in IAL. So thank you very much. You've answered my  
22    questions.

23            CHAIR WONG: Commissioner Scheuer.

24            VICE CHAIR SCHEUER: Hi, Tom.

25            TOM SCHNELL: Hello.

1           VICE CHAIR SCHEUER: You stated with  
2 clarification from counsel that under IAL, you needed  
3 two-thirds vote of this body if you were going to  
4 move the IAL lands into the urban district, is that  
5 correct?

6           TOM SCHNELL: That's what I believe is  
7 correct. I don't know the exact citation but I think  
8 that's correct, yes.

9           VICE CHAIR SCHEUER: Do you know, since  
10 you're an expert in land use planning, if the land  
11 was not IAL, how many votes you would need from this  
12 Commission to move land from the agricultural  
13 district to the urban district?

14          TOM SCHNELL: I believe it's majority.

15          VICE CHAIR SCHEUER: Is it not six actually  
16 after supreme court rulings?

17          TOM SCHNELL: Well, okay. So majority plus  
18 one --

19          VICE CHAIR SCHEUER: So it's two-thirds.  
20 Six of nine is two-thirds. So it actually doesn't  
21 change the voting at all, does it?

22          TOM SCHNELL: I don't have the statute in  
23 front of me but I will take that which -- what you're  
24 saying, yes.

25          VICE CHAIR SCHEUER: The second set of

1 questions I have have to do with the TMK along Kunia  
2 Road owned by Hartung which you are not petitioning  
3 to include in IAL. I think it's about 91 acres in  
4 size, maybe 93. I'm not sure exactly.

5 TOM SCHNELL: Correct.

6 VICE CHAIR SCHEUER: Can you please tell me  
7 which criteria for designation as important  
8 agricultural lands that that land does not have that  
9 the lands that you're proposing for designation does  
10 have?

11 TOM SCHNELL: I think this is more of a  
12 decision on the department on the part of --

13 VICE CHAIR SCHEUER: I'm not asking for the  
14 reasoning. I'm asking for your response as an expert  
15 having prepared this study. You looked at the way  
16 the criteria and statute apply to this line, is that  
17 correct?

18 TOM SCHNELL: We looked at the way the  
19 criteria and the statute or the criteria applies to  
20 the land as we've defined the IAL area to propose to  
21 be designated. So our report focuses on the petition  
22 area, the IAL proposed designated area in  
23 consultation with the landowner that we decided this  
24 is their critical land.

25 VICE CHAIR SCHEUER: Does your petition not

1 look at the entirety of the property and gives reason  
2 why some of it might not be the best agricultural  
3 land?

4 TOM SCHNELL: As a first cut, we did look at  
5 the entire property --

6 VICE CHAIR SCHEUER: So my question is you  
7 recommended some land for IAL designation in your  
8 report. There's this 90 -- around 90 acre parcel  
9 along Kunia Road. What difference, if any, is there  
10 of the designation criteria for that land that -- is  
11 there any designation criteria that doesn't exist for  
12 that 90 acre parcel that exists for all the other  
13 ones?

14 TOM SCHNELL: My analysis did not take that  
15 under consideration specifically the way you're  
16 asking it. It is -- it is an agriculture use  
17 although I understand that it's not their primary  
18 core agricultural crop area. I don't know what the  
19 LSB rating is right off the top of my head or the  
20 ALISH rating. It is probably likely to be rated  
21 under those systems.

22 Also, I believe and maybe Josh can clarify  
23 this about the irrigation water situation may be  
24 different. So in coordination with Hartung, this is  
25 not their core area that they are farming right now.

1           VICE CHAIR SCHEUER: Just the criteria under  
2 the statute, right? There's criteria for designation  
3 of IAL. You looked at Hartung's lines at least on  
4 the first -- all of their lands on a first broad  
5 brush to determine which was -- is there some  
6 criteria from those 90 acres that's missing of the  
7 listed criteria in the statute?

8           TOM SCHNELL: I can't recall any at this  
9 time.

10          VICE CHAIR SCHEUER: Thank you.

11          CHAIR WONG: Commissioner Okuda.

12          COMMISSIONER OKUDA: Thank you, Chair.

13                 If I can just preface my question just so  
14 that you understand, Mr. Schnell, I'm not prejudging  
15 anything. You know, I recognize that in many times  
16 to have agriculture, the farmer, big or small, has to  
17 be financially viable. I'm not sure if we ever had  
18 successful agriculture when a farmer went broke. But  
19 with that in mind, just so that we have some time  
20 frame here, when were you or your company first  
21 involved with this parcel of property even if you  
22 might not have been formally retained to perform  
23 services?

24                 TOM SCHNELL: You mean Hartung Properties  
25 specifically?

1 COMMISSIONER OKUDA: Yes.

2 TOM SCHNELL: We started -- I think we  
3 started talking to Hartung Brothers and also Joe  
4 Dane, their attorney, probably in December of last  
5 year.

6 COMMISSIONER OKUDA: Prior to that time, did  
7 you have -- you or your company have any involvement  
8 with this parcel of property or the petition area?

9 TOM SCHNELL: Not that I know of. But PBR's  
10 been in business for 45 years. So there's  
11 possibility that we have done previous work on  
12 this -- in this area at least or for this property.

13 COMMISSIONER OKUDA: Well, for the period of  
14 time that you know about, was there any discussion  
15 from Hartung or anyone else with respect to the  
16 property about urban use or urbanization of the  
17 portion of the property which is not being petitioned  
18 for IAL designation?

19 TOM SCHNELL: No, we did not have that  
20 discussion with Hartung.

21 COMMISSIONER OKUDA: And did you see or hear  
22 any conversations about that or see or read any  
23 e-mails or any other type of communications where  
24 that was even mentioned even tangentially or as a  
25 smaller manini issue?

1           TOM SCHNELL: No. I can't recall anything.  
2       No.

3           COMMISSIONER OKUDA: So there was no  
4       discussion of that as far as an option or possible  
5       option for the portions of the property which is not  
6       subject to this petition, is that correct?

7           TOM SCHNELL: My understanding that Hartung  
8       intends to continue farming those areas that are not  
9       being designated as IAL. I think Josh stated in his  
10      testimony that their long-term plan includes  
11      continued ag use. But they don't know what the  
12      future may be in 20, 30, 40 years.

13          COMMISSIONER OKUDA: Yeah. I'm just  
14      asking -- my question goes to whether or not there  
15      were -- there's the existence of such communications.  
16      And, again, I'm not saying the existence of such  
17      communications would indicate anything good or bad or  
18      otherwise. I'm just asking whether or not you're  
19      aware of the existence of any such communications or  
20      discussions, either orally or in writing?

21          TOM SCHNELL: I'm not aware of that, no.

22          COMMISSIONER OKUDA: Thank you very much.  
23      No further questions.

24          CHAIR WONG: Any other questions,  
25      Commissioners? Okay. Thank you. Mr. Dane.



1 MR. DANE: Just a few follow-up questions.

2 When we -- when Hartung retained PBR to  
3 prepare the report, did we ask you to analyze the  
4 petition -- the area outside of the petition area?  
5 In other words, the area that is not included in the  
6 petition. The area along Kunia Road, the mauka  
7 areas. Did we ask to you do an analysis of those and  
8 whether or not these also met statutory criteria?

9 TOM SCHNELL: I do not know. What happened  
10 was we worked with Hartung and we worked with our  
11 internal staff to develop maps of the area that  
12 Hartung felt was the most critical land.

13 MR. DANE: So Hartung had decided on -- with  
14 your help, with PBR's help on a particular area that  
15 they were going to seek designation, voluntarily seek  
16 designation as IAL, is that right?

17 TOM SCHNELL: That's correct.

18 MR. DANE: And then you prepared a report  
19 focusing on that land that had been decided to be  
20 petitioned voluntarily as IAL, is that right?

21 TOM SCHNELL: Correct.

22 MR. DANE: Okay. That's it. I have no  
23 further questions.

24 CHAIR WONG: Commissioner Chang.

25 COMMISSIONER CHANG: One follow-up.

1           Mr. Schnell, based upon sort of also the  
2 line of questioning by your counsel and then the  
3 previous questions that I asked about the difference.  
4 You are currently aware that the city is going  
5 through their IAL process right now?

6           TOM SCHNELL: I'm aware of that, yes.

7           COMMISSIONER CHANG: So if the city -- if  
8 the city designated -- 'cause right now the city's  
9 map shows all of Hartung's properties as for IAL, is  
10 that correct?

11          TOM SCHNELL: There's one little sliver that  
12 they have excluded for some reason, right.

13          COMMISSIONER CHANG: But for the most part,  
14 most of this land is under the city's map IAL?

15          TOM SCHNELL: Yes.

16          COMMISSIONER CHANG: So if the city had  
17 completed their process before you came in  
18 voluntarily, Hartung's land would have been placed  
19 most of it except for that sliver in the IAL?

20          TOM SCHNELL: I think that's a little bit  
21 speculative considering the city's process that they  
22 need to go through. So my understanding for the  
23 city's process is that they've -- they've done two  
24 drafts of their maps. They've had meetings with  
25 landowners. That some landowners had questioned

1 whether some of their property should be IAL and also  
2 the process for the city. The city will first take  
3 their maps to the planning commission and that will  
4 be debated at the planning commission. Also then  
5 after the planning commission passes that out, it  
6 goes to the council. And I'm sure that there will be  
7 much political debate at the council regarding what's  
8 in and what's out of the IAL. And then ultimately,  
9 it comes to the Land Use Commission for that Land Use  
10 Commission's decision. So I -- to say the city's  
11 maps are set, I think, is not accurate at this point.

12 COMMISSIONER CHANG: And that's fair because  
13 I think the city has had an opportunity to initiate  
14 the IAL process for quite some time, would you agree  
15 with that?

16 TOM SCHNELL: Yes.

17 COMMISSIONER CHANG: But -- so this -- and  
18 the statute only says that the landowner, if they  
19 voluntarily place in over 50 percent, it could be 51  
20 percent.

21 TOM SCHNELL: Correct.

22 COMMISSIONER CHANG: That that would  
23 preclude the city from putting -- putting any  
24 additional land in IAL without the landowner's  
25 permission?

1           TOM SCHNELL: Correct. That's my  
2 understanding.

3           COMMISSIONER CHANG: So to a certain extent,  
4 this is -- this is Hartung's desire to have some  
5 certainty over, you know, their regulatory process as  
6 well by placing this -- voluntarily coming forward  
7 and seeking a petition to place the approximately 54  
8 percent in IAL by LUC?

9           TOM SCHNELL: Yes.

10          COMMISSIONER CHANG: And the statute permits  
11 you to do that?

12          TOM SCHNELL: It permits you to do this.  
13 And I think that was actually an incentive that the  
14 legislature envisioned to be able to get landowners  
15 to voluntarily move forward with the IAL process and  
16 not have to wait for the city or the county process.

17          COMMISSIONER CHANG: Do you know whether  
18 Hartung has written a letter to the city asking them  
19 seeking -- you know, asking them not to place all  
20 their lands in IAL and perhaps just this amount? Do  
21 you know whether there's been any correspondence?

22          TOM SCHNELL: I have to check with Josh.  
23 Josh, previously, have you?

24          JOSHUA UYEHARA: No, I don't think we have.

25          COMMISSIONER CHANG: Okay. Okay. Thank you

1 very much.

2 CHAIR WONG: Commissioner Aczon.

3 COMMISSIONER ACZON: Just a follow-up on  
4 that. If you were granted this petition, this  
5 designation, is there anything that precludes the  
6 owner to designate additional IAL voluntarily after?

7 TOM SCHNELL: Is there anything that would  
8 prevent them from coming back and asking for  
9 additional IAL, is that --

10 COMMISSIONER ACZON: No. Voluntarily by the  
11 owner.

12 TOM SCHNELL: I believe, yes, the landowner  
13 could voluntarily come back with another petition to  
14 designate their other land that's not IAL as IAL,  
15 yes.

16 COMMISSIONER ACZON: Thank you.

17 CHAIR WONG: Okay. Anyone else? Okay.  
18 Thank you.

19 Mr. Dane, how many more witnesses will you  
20 have?

21 MR. DANE: That's it, Mr. Chair.

22 CHAIR WONG: We're going to take a recess.  
23 (Recess taken.)

24 CHAIR WONG: Okay. We're back in.

25 Mr. Dane, is there anyone else?

1 MR. DANE: There's no one else.

2 CHAIR WONG: So you're pau?

3 MR. DANE: We are finished with our  
4 presentation, yes.

5 CHAIR WONG: Okay. Is there anyone from the  
6 county going to speak on this docket? Going once,  
7 twice. Okay, no one.

8 COMMISSIONER CHANG: There's no one?

9 CHAIR WONG: From the county?

10 COMMISSIONER CHANG: There's no one from  
11 Department of Planning and Permitting?

12 CHAIR WONG: That want to speak on this --

13 COMMISSIONER OKUDA: Yes. Chair, can I  
14 ask -- just so the record is clear. Can the staff  
15 confirm that the City and County of Honolulu's  
16 appropriate agency received notice of today's  
17 hearing?

18 RILEY HAKODA: Yes.

19 CHAIR WONG: Okay. So let the record show  
20 that they have received notice.

21 COMMISSIONER CHANG: And let the record  
22 reflect that they're not here today.

23 CHAIR WONG: Okay. Please do.

24 Okay. Next up, Office of Planning. You  
25 have anything to state for this issue?

1 MS. APUNA: Yes, Chair. I'll let Rodney  
2 Funakoshi provide OP's position.

3 CHAIR WONG: Okay. Mr. Funakoshi, may I  
4 please swear you in. I'm not going to swear at you  
5 but just swear you in.

6 RODNEY FUNAKOSHI: Thank you.

7 CHAIR WONG: Do you swear or affirm that the  
8 testimony you are about to give is the truth?

9 RODNEY FUNAKOSHI: Yes.

10 CHAIR WONG: Okay. Please state your name  
11 for the record.

12 RODNEY FUNAKOSHI: Rodney Funakoshi, State  
13 Office of Planning.

14 CHAIR WONG: Please proceed.

15 RODNEY FUNAKOSHI: Thank you.

16 OP has done its analysis relative to the  
17 proposed IAL designation. And I won't go through the  
18 criteria. That's been very well done by the  
19 Petitioner.

20 Essentially, you know, we find that in  
21 reviewing the IAL criteria, Petitioner has met seven  
22 of the eight criteria. And we, therefore, recommend  
23 that the Commission approve the Petitioner's proposed  
24 IAL in its entirety.

25 We further recommend the condition of

1 approval. We impose waiving any and all rights under  
2 HRS 205-45h as represented by the Petitioner.

3 The petition area encompasses 54.6 percent  
4 of all the lands owned on Oahu that lies within the  
5 state's agricultural land use district. Thus under  
6 HRS 205-49 a3, commission in part from designated in  
7 additional lands owned by the Petitioner that may be  
8 identified for designation as IAL under Section  
9 205-49 HRS.

10 So pretty much that summarizes our  
11 testimony. We do want to make a few more comments.  
12 First of all, appreciation for the Petitioner in  
13 voluntary designation of a good portion of its lands.

14 I guess we want to note and yeah, we are  
15 aware of the city's position in this matter. A  
16 similar sentiment expressed with Monsanto, a proposal  
17 as well.

18 But the voluntary designation by landowners  
19 is a major incentive of IAL and so far, has resulted  
20 in major landowners coming forth in the past eight or  
21 ten years and has resulted in 133,000 acres of  
22 agricultural land being placed voluntarily in the IAL  
23 district. And this, of course, counties and state  
24 for that matter, none of the counties have as yet  
25 come forth since enactment of the statute over ten



1 years ago.

2 The other thing I want to point out is that  
3 the Land Use Commission has always never looked at  
4 beyond lands owned by the Petitioner to be designated  
5 as IAL. So I also wanted to point that out also.

6 So, again, we fully support the proposed  
7 designation. That's all.

8 CHAIR WONG: Thank you. Mr. Dane,  
9 questions?

10 MR. DANE: I have no questions.

11 CHAIR WONG: No questions?

12 MR. DANE: No questions.

13 CHAIR WONG: Okay. Commissioners, any  
14 questions for OP? Okay. None. Thank you.

15 Next up. Department of Ag? May I swear you  
16 in, sir?

17 EARL YAMAMOTO: Yes.

18 CHAIR WONG: Do you swear and affirm -- or  
19 affirm that the testimony you're about to give is the  
20 truth?

21 EARL YAMAMOTO: Yes.

22 CHAIR WONG: Okay. Please state your name  
23 for the record.

24 EARL YAMAMOTO: My name is Earl Yamamoto,  
25 Planner for the State Department of Agriculture

1 Honolulu.

2 CHAIR WONG: Thank you. Please proceed.

3 EARL YAMAMOTO: The Department of  
4 Agriculture stands on its letter in support of the  
5 petition for agricultural lands designation for  
6 the -- by the Hartung Brothers for its lands along  
7 Kunia Road.

8 The -- we also -- there's really nothing  
9 that I can add to the information that you have  
10 received previously by the petitioner and by Office  
11 of Planning. So we -- again, we stand in strong  
12 support. I'll be happy to answer any questions.

13 CHAIR WONG: Thank you. Mr. Dane?

14 MR. DANE: Thank you. No questions.

15 CHAIR WONG: OP?

16 MS. APUNA: No questions.

17 CHAIR WONG: Commissioners, any questions  
18 for Ag, Department of Agriculture, sorry. Okay.  
19 Thank you.

20 Commissioner Scheuer?

21 VICE CHAIR SCHEUER: Mr. Chair, I'd like to  
22 make a motion to go into executive session  
23 specifically to consult with our attorney on  
24 questions and issues pertaining to the Board's powers  
25 to these privileges, immunities and liabilities.

1 CHAIR WONG: Do I have a second?

2 COMMISSIONER ACZON: Second it.

3 CHAIR WONG: Commissioner Aczon seconded.

4 Okay. All in favor, say aye.

5 COMMISSIONERS: Aye.

6 CHAIR WONG: Any opposition? Okay, we're in  
7 executive session.

8 (Executive session.)

9 CHAIR WONG: Okay. We're back in session.

10 Commissioners, do you -- oh, Petitioner, do  
11 you want make any final arguments closing -- final  
12 closing argument? Sorry.

13 MR. DANE: No, thank you, Chair. We're  
14 ready to hear from the Commission.

15 CHAIR WONG: Commissioners, do you have any  
16 final comments or questions for the Petitioner, OP or  
17 Ag? Commissioner Aczon.

18 COMMISSIONER ACZON: I want to make a  
19 motion. Is it --

20 CHAIR WONG: Yeah. Go ahead please.

21 COMMISSIONER ACZON: Mr. Chair, I want to  
22 make a motion to grant the Petitioner to designate  
23 463 acres at Kunia, Oahu as important agricultural  
24 lands.

25 COMMISSIONER CHANG: I second.

1 CHAIR WONG: Okay, discussion?

2 COMMISSIONER OKUDA: Point of clarification.

3 CHAIR WONG: Commissioner Okuda.

4 COMMISSIONER OKUDA: Can I ask a point of  
5 clarification on the motion and the second? Is that  
6 motion to include the conditions that OP had stated  
7 on the record?

8 COMMISSIONER ACZON: That's correct. That's  
9 automatic.

10 CHAIR WONG: Okay. So that's included in  
11 the motion.

12 Okay. Any discussions, Commissioners on  
13 this motion? Commissioner Scheuer.

14 VICE CHAIR SCHEUER: Yeah. I will be voting  
15 for the motion. But I just want to clarify, be on  
16 the record. I don't think the way our IAL statute  
17 works actually does anything meaningful to help  
18 agriculture in Hawaii or protect agricultural land.  
19 Clearly, and I think DPP's comments on the record in  
20 this matter show that, you know, because of the  
21 leeway that is given to landowners through the  
22 voluntary designation process, there's lands that --  
23 if you ask a person on the street who is unfamiliar  
24 with the IAL statute, say hey, is that important  
25 agriculture land, they go like yeah. It's growing

1 crops. It's important. It should be protected. The  
2 statute doesn't allow for that. There's nothing we  
3 have in front of us, I believe, as a basis for  
4 denying this petition even though to me, it clearly  
5 does not protect the most -- all the important  
6 agricultural land that's under the landowner's  
7 control. It's not a good use, I believe, of our  
8 time, the landowner's time or everybody else here.

9 CHAIR WONG: Thank you. Any other  
10 Commissioners? Commissioner Aczon.

11 COMMISSIONER ACZON: I'll be voting for the  
12 motion. I felt that the Petitioner satisfy most of  
13 the conditions. And based on the testimony by Office  
14 of Planning and Department of Agriculture, I am kind  
15 of satisfied voting yes for this.

16 As much as I wanted Petitioner to have more  
17 lands designated as IAL, as a Commission, I don't  
18 think we have capability of adding more to -- from  
19 the petition. So that's my dilemma.

20 CHAIR WONG: Thank you. Commissioner Okuda.

21 COMMISSIONER OKUDA: I would urge that this  
22 petition be granted with the conditions stated by the  
23 Office of Planning. I believe the evidence that's  
24 been presented before us satisfies the statutory  
25 standards. Having observed the witnesses that

1 testified, particularly Mr. Uyehara, I found him  
2 especially credible as far as his testimony.

3 I understand certain concerns about what  
4 might or might happen with other non-designated lands  
5 about things which may or may not happen in the  
6 future. But we are limited to the record before us.  
7 And I believe the record before us satisfies the  
8 statute. And I'm not sure if a position against the  
9 petition would be supported by the record. So for  
10 those reasons and other good reasons in the record, I  
11 would be voting in favor of the petition with the  
12 conditions set forth by the Office of Planning.

13 Oh, and one final point. If the City and  
14 County of Honolulu had concerns about the scope of  
15 the designation, notwithstanding the fact that they  
16 submitted written testimony or written  
17 communications, I think it would behoove the city to  
18 be physically present here to state their position  
19 and answer questions and -- answer questions  
20 especially to clarify their positions. And so the  
21 fact that city is not present, I believe that that's  
22 a -- it may not be a total waiver but it's a factor  
23 that affects what information is provided in the  
24 admissible record. Thank you.

25 CHAIR WONG: Thank you. Commissioner

1 Cabral.

2 VICE CHAIR CABRAL: Yes. I will be  
3 supporting the motion to approve. And as interesting  
4 as it is that we have Commissioners with so many  
5 different perspectives and I think that's good  
6 because I think that those lands that may not meet  
7 all of the criteria are -- significant number of the  
8 criteria with the slope and the availability of water  
9 and more up on the hillside. I think though that as  
10 much as I think there's a lot of energy and a lot of  
11 intention towards making everything agriculture,  
12 'cause you folks realize oh, my God, you know, you're  
13 losing your ag land. But you also have a huge  
14 population to house. And sometimes I don't know what  
15 the future for this land is going to be at all. And  
16 I'm not making an opinion on what its specific future  
17 may hold. But in 30 to 40 years, that might be a  
18 place where houses on the hillside on one acre  
19 parcels because of the slope and the terrain might be  
20 something that would help relieve some of your  
21 housing demands and shortages because every time you  
22 guys build a house, maybe you'll have, you know,  
23 somebody else. It doesn't have to be all affordable  
24 housing in the world, are super expensive. But --  
25 and again, I don't know what it's going to hold but I

1 think we need to work really hard to preserve the  
2 best ag land so that housing and other types of  
3 things go elsewhere. Thank you.

4 CHAIR WONG: Commissioner Chang.

5 COMMISSIONER CHANG: A final comment.

6 I too have greatly appreciated the testimony  
7 by Mr. Uyehara. I find you to be genuine. I think a  
8 lot of burden falls upon you because you are local  
9 and that you're going to take care of this land and  
10 be good stewards.

11 I have a dear friend who's a farmer, Richard  
12 Ha, who said if a farmer cannot make money, they not  
13 gonna farm. And my concern is I think under the IAL,  
14 there was great legislative intent when it first  
15 started to put these important lands, important ag  
16 lands with the special designation to incentivize  
17 farmers. It also provided an opportunity for the  
18 counties to timely establish their own maps and they  
19 didn't. So in the absence, we have landowners coming  
20 to the LUC to voluntarily place lands in IAL. I do  
21 understand with that designation, there is going to  
22 be an additional regulatory process where you come to  
23 LUC.

24 The more regulatory processes that we have,  
25 it makes it harder for farmers to farm. So I think



1     that if we really want to support farmers, it's also  
2     making regulations that encourage and that don't make  
3     it harder for you because all these lands are in ag  
4     anyway. I mean I think while there may be some  
5     different incentives, different -- differences  
6     between IAL ag, fundamentally, they are all in ag.  
7     You change that designated out of ag, you're going to  
8     have to come before us. And we will remember that  
9     you came before us and that you weren't willing to  
10    put those lands. And that we told you the difficulty  
11    you would have trying to change that designation. So  
12    we may not all be here in the future but I have --  
13    you know, when we had -- when was it -- I guess it  
14    was maybe Rodney mentioned 133,000 acres in IAL  
15    throughout the state. I think that's something that  
16    we should feel very proud about. Sure, we'd like to  
17    have more. But I think we have to -- the way that  
18    the statute is established, landowners can come  
19    voluntarily before us first.

20               So I too will be voting in favor of this  
21    motion.

22               CHAIR WONG: Okay. Thank you. Mr.  
23    Orodenker, if you please.

24               EXECUTIVE OFFICER: Thank you, Mr. Chair.

25               The motion is to grant the petition with the

1 conditions requested by the Office of Planning.

2 Commissioner Aczon.

3 COMMISSIONER ACZON: Mr. Chair, I'll vote  
4 yes.

5 EXECUTIVE OFFICER: Commissioner Chang.

6 COMMISSIONER CHANG: Aye.

7 EXECUTIVE OFFICER: Commissioner Okuda.

8 COMMISSIONER OKUDA: Yes.

9 EXECUTIVE OFFICER: Commissioner Scheuer.

10 VICE CHAIR SCHEUER: Aye.

11 EXECUTIVE OFFICER: Commissioner Cabral.

12 VICE CHAIR CABRAL: Aye.

13 EXECUTIVE OFFICER: Commissioner Ohigashi is  
14 absent. Commissioner Mahi is absent.

15 Commissioner Wong.

16 CHAIR WONG: Aye.

17 EXECUTIVE OFFICER: Thank you, Mr. Chair.

18 The motion passes with six votes.

19 CHAIR WONG: Okay. Thank you.

20 Congratulations.

21 We'll be taking a five minute recess.

22 (Recess taken.)

23 CHAIR WONG: Okay. The next agenda item is  
24 the status report on Docket No. A92-683, Halekua  
25 Development's Petition to Amend the Agricultural Land

1 Use District Boundaries.

2 On October 7, 2013, the Commission mailed  
3 order granting First Amendment to the Amended  
4 Findings of Fact, Conclusions of Law and Decision and  
5 Order on Docket No. A09-0682 dated October 1st, 1996.

6 On November 14, 2014, the Commission mailed  
7 Order approving Successor Petitioner to Parcel 52  
8 Hoohana Solar 1 LLC's request to continue proceedings  
9 till November 21st, 2014 and set date for filing of  
10 any further documents by all parties prior to the  
11 November 21st, 2014 date.

12 On January 28, 2015, the Commission mailed  
13 Order granting Successor Petitioner to Parcel 52  
14 Hoohana Solar 1 LLC's Motion for Order Amending the  
15 Amended Findings of Facts, Conclusions of Law and  
16 Decision and Order filed on October 1st, 1996 filed  
17 August 11, 2014.

18 On October 4th, 2017, the Commission  
19 received notice of ownership change from Canpartners  
20 IV Royal Kunia Property, LLC to RP2 Ventures, LLC.

21 On April 9th, 2018, the Commission received  
22 Department of Agriculture's request for status report  
23 and mailed a Notice to Petitioner requesting that a  
24 status report be provided at the May 24, 2018 LUC  
25 hearing on Oahu.

1           On May 15, 2018 . . . let me see. On May  
2   15, 2018, an LUC meeting agenda notice for a May  
3   23rd, 24th, 2018 meeting was sent to Parties and the  
4   Statewide, Hawaii, Oahu mailing lists.

5           On May 21st, 2018, Stephen Lim - Carlsmith  
6   Ball advised the Commission that Stephen Mau had  
7   taken over representation of Robinson Kunia Land and  
8   that he would not be attending the May 24, 2018  
9   hearing.

10          Okay. I just stated something wrong. This  
11   is Docket No. A92-683. So let me restate October 7.

12          October 7, 2013, the Commission mailed order  
13   granting First Amendment to the Amended Findings of  
14   Fact, Conclusions of Law and Decision and Order on  
15   Docket No. A92-683 dated October 1st, 1996. Okay.

16          For the members of the public out there,  
17   please be reminded that the Commission will not be  
18   considering the merit of A92-683 petition. Rather,  
19   the Commission is interested in learning about the  
20   current state of activities related to this docket,  
21   including compliance with conditions.

22          So just let me go over the procedures for  
23   today's docket.

24          We'll take public testimony first. Then  
25   after public testimony, the Chair will call for a

1 status report from the Petitioner. Then we'll -- the  
2 Chair will call Department of Planning and  
3 Permitting. Then finally, the Chair will call OP for  
4 comments.

5 Thereafter, the Commission will conduct its  
6 deliberations. And Chair will also note that from  
7 time to time, I may call for short breaks.

8 Is there any questions for today?

9 MS. APUNA: No questions.

10 CHAIR WONG: None?

11 Okay. Is there anyone from the public that  
12 wanted to provide testimony in today's docket? Okay.  
13 Going once, twice. Seeing none, let's continue.

14 COMMISSIONER OKUDA: Chair, if I may  
15 disclose, I know Mr. Mau, the attorney for Petitioner  
16 from practice. We do not socialize. I only know him  
17 in a professional capacity as a fellow attorney.

18 CHAIR WONG: Okay. Thank you. Anyone else  
19 wanted to -- any exclusions? Okay. Let's go.

20 Petitioner, please.

21 DAVID TANOUE: Aloha and good morning. My  
22 name is David Tanoue. I'm here on behalf of the new  
23 owner of the -- I guess what we refer to as Royal  
24 Kunia Phase II.

25 CHAIR WONG: Okay. May I swear you in, sir?

1           DAVID TANOUE: Sure.

2           CHAIR WONG: Do you swear or affirm that the  
3 testimony you're about to give is the truth?

4           DAVID TANOUE: Yes.

5           CHAIR WONG: Thank you. We already have  
6 your name for the record?

7           DAVID TANOUE: Yes.

8           CHAIR WONG: You're representing Royal  
9 Kunia, correct?

10          DAVID TANOUE: Yes. The new owners of the  
11 parcel, RP2 Ventures, LLC.

12          CHAIR WONG: Thank you. Please proceed.

13          DAVID TANOUE: I just wanted to kind of  
14 introduce myself and who we are at this point.

15               We took possession and closing happened in  
16 October 3rd of 2017. A little over six months ago.

17               RP2 Ventures, LLC is a single person --  
18 purpose entity that was put in place that . . . that  
19 was put in place for the particular purchase of this  
20 property from Canpartners IV.

21               We are currently employed with our  
22 partners -- excuse me, R.M. Towill Corporation. I  
23 got two companies mixed up. I am a vice president  
24 and I'm a point of contact for RP2 Ventures, LLC  
25 which is not a subsidiary but was created by R.M.

1     Towill for the purchase of -- for purchasing this  
2     property.

3             Since that time of closing, we have reached  
4     out to the various owners surrounding the neighboring  
5     landowners and introduced ourselves to them. Many of  
6     them are clients at R.M. Towill Corporation.

7             We also -- we know that this -- there's a  
8     lot of conditions that were passed through this  
9     property. And trying to step back a little bit and  
10    give you some of the inside of how we came about to  
11    step in and purchase this property.

12            We were asked by one of our clients if we  
13    will consider assisting them in the purchase of this  
14    property. As you know, that the previous owners was  
15    a real estate development trust. And whether or not  
16    they had true intentions of development and  
17    completing the project and developing the parcel was  
18    another question. But it's been -- we know that the  
19    other landowners around the area that relied on  
20    their -- some of the conditions that needed to be  
21    done have been waiting for a long time. And they  
22    were behind a lot of the deadlines.

23            The other landowners -- and it's, you know,  
24    funny is because of -- and who were people interested  
25    in the property are our clients. R.M. Towill, we've

1     been around since 1930. We're primarily an  
2     engineering firm but we also provide surveying,  
3     planning, waste management, construction management.  
4     So we -- many of the clients on this island, all the  
5     large developers are, we've worked with them. And we  
6     knew where this project was struggling because of  
7     the -- I guess the -- how the -- that the project was  
8     divided during the bankruptcy and the subsequent  
9     sales and things like that and where the  
10    responsibility lies.

11           And I recall talking to one of the  
12    neighboring property owners and saying, you know, the  
13    only way this -- that we're waiting for things to  
14    happen, the infrastructure be put in is the only way  
15    this project will proceed, if it comes back locally  
16    and if it's done somehow under a single ownership or  
17    the people got to work together but was real  
18    difficulty. And the funny thing is the common  
19    denominator among a lot of the clients was R.M.  
20    Towill. And then when one of the clients asked us,  
21    you know, there's this opportunity. They couldn't  
22    pull the trigger. If we would step in. So we took  
23    the risk and we stepped in to try to bring this  
24    project back locally and try to be able to move it  
25    forward.



1           From our previous role with the city at DPP,  
2   you know, we've always supported this project 'cause  
3   it was always intended for the housing, you know, to  
4   provide more housing stock for that area. And that  
5   was evidenced by the support of the city back then  
6   when they extended the deadlines. It was also  
7   supported by the city back then when they approved  
8   the PDH permit for 2,000 housing units for that phase  
9   II. And again, in recent times, you notice in the  
10   handout I had that the city again granted an  
11   extension once we took possession. Extended the  
12   deadline for the PDH. So that's still an option out  
13   there.

14           So that -- but since that time, we've been  
15   trying to get a handle on what's the requirement.  
16   You know, we jumped into this, the hot seat at this  
17   point. And since we're local, then we got a lot of  
18   phone calls from people. You know what, they're  
19   supposed to do this for us, they're supposed to do  
20   that for us.

21           So Department of Ag is also one of our  
22   clients and we helped them on their projects. And we  
23   know -- we knew that what was the infrastructure was  
24   needed for their projects. So since that time, we've  
25   been working on the infrastructure, the design.

1           This is what we do at R.M. Towill, what we  
2   do. We do infrastructure. We do the sewer, water,  
3   drainage and stuff like that. So these things we can  
4   do. And we're doing in the meantime -- until a time  
5   where we can turn the property over to a local  
6   developer to take it on. Get things under control.  
7   So we been trying to move the Department of Ag's  
8   utility and infrastructure needs forward. It will  
9   take some time.

10           We also met with Castle & Cooke because come  
11   to find out there's also a connection agreement  
12   regarding drainage that drains into the Waikele  
13   Valley or Waikele Gulch storage facility that needs  
14   improvements. And the prior owner agreed to do the  
15   improvements. So we're working with Castle & Cooke.

16           And we met with Savio Associates because  
17   they're the owners of the Waikele Gulch. So we're  
18   going through this process and we're trying to move  
19   everything forward as best we can.

20           And now as a local contact, I know some of  
21   you might recognize me and I know some of you. And  
22   we're just here to try and assist this project moving  
23   forward.

24           We anticipate that ultimately, the land will  
25   be transferred to one of our clients, you know. And

1 I think the opportunity here for it moving forward is  
2 probably the best it has been because of the -- at  
3 one point, the purchase price numbers that were being  
4 thrown out there, really outrageous and very  
5 expensive to make things happen. But, you know, the  
6 price that we got it for, the fact that we're  
7 probably going to be dealing with one of our clients  
8 moving forward, I think it really bodes well for this  
9 project to finally move forward. But in the  
10 meantime, we're trying to make sure that we continue  
11 with trying to meet some of the conditions that are  
12 in place. In particular, what the Department of Ag  
13 needs at this point.

14 If you have any questions, I'm available.  
15 And I appreciate all the opportunity to be here  
16 today.

17 CHAIR WONG: Commissioner Okuda.

18 COMMISSIONER OKUDA: Chair, based on the  
19 testimony, I'd like to make one additional  
20 disclosure. I'd like to disclose that I periodically  
21 socialize with an engineer at R.M. Towill, Mr. James  
22 Yamamoto. But since my appointment to the Land Use  
23 Commission, we either pay our own bill or he makes me  
24 or -- he doesn't make me. Or I pay whatever he  
25 orders off the menu.

1           CHAIR WONG: Okay. Just wanted to make a  
2 disclosure. I know Mr. Tanoue there but he never  
3 bought me anything so -- other than coffee. But I  
4 just wanted to say that for the record since  
5 Commissioner Okuda said also.

6           Anyone else since we have R.M. Towill on  
7 board? Okay.

8           COMMISSIONER CHANG: Oh, I should make a  
9 disclosure. I'm sorry. I do -- I have -- I do some  
10 work with R.M. Towill but no -- nothing in  
11 relationship to this particular project. And I do  
12 know David from the past.

13          CHAIR WONG: Any questions for Mr. Tanoue  
14 regarding this issue?

15          Just one thing. Again, just wanted to  
16 reiterate. So you do -- you stated and I want to  
17 reiterate that you know that the conditions are on  
18 there already and will continue with the land?

19          DAVID TANOUE: Yes. We knew -- we're aware  
20 of the situation. Some things popped up after but,  
21 you know, we knew there was a lot of tails attached  
22 to this property.

23          CHAIR WONG: Okay. Thank you. Anything  
24 else? Commissioner Okuda.

25          COMMISSIONER OKUDA: Yes. Mr. Tanoue, even

1     though people know you from your reputation and your  
2     work in the city, just so the record is clear, can  
3     you give us a little bit of background about your  
4     education, experience and maybe a very short summary  
5     of your work history.

6             DAVID TANOUE:   Okay.   Yes.   Thank you.

7             Maui boy, graduated from Baldwin High  
8     School.   Went to UH.   Got my degree in biology.  
9     Continued on to the UH Law School.   After that, went  
10    in private practice, large firm first.   Case & Lynch  
11    at that time.   Spent a few years there.   Then went to  
12    a smaller firm, Law Office of Michael McCarthy.   Did  
13    some roll up your sleeve, get in the trenches kind of  
14    work which was fun.   Then following that, I was at  
15    the -- went in-house with a large architectural firm  
16    AM Partners.   And that's why I got the two names, RM  
17    Partners confused with AM Partners.   I spent a few  
18    years there.   And then I had the opportunity of being  
19    part of the Department of Corporation Counsel and  
20    focused in the land use area.   And I spent my time  
21    there representing the Department of Planning and  
22    Permitting as well as other commissions and boards  
23    related to land use for the City, on behalf of the  
24    City.   From that point on under Mayor Mufi Hannemann,  
25    I was appointed the deputy director for the

1 Department of Planning and Permitting. I spent four  
2 years of that and continued on as the director for an  
3 additional four years under the Hannemann  
4 administration and the Carlisle administration. I  
5 left the city in October of 2012 and moved to R.M.  
6 Towill Corporation where I'm currently the vice  
7 president there. I oversee their -- and manage their  
8 survey departments and the planning departments and  
9 also provide some in-house counsel services but  
10 that's not my official title.

11 COMMISSIONER OKUDA: Thank you very much  
12 for that background.

13 DAVID TANOUE: You're welcome.

14 CHAIR WONG: I just -- Commissioner Cabral.

15 VICE CHAIR CABRAL: I really like maps. Can  
16 I bring you a map and you can tell me the  
17 relationship to the map from our prior discussion  
18 where you're located?

19 DAVID TANOUE: Sure.

20 VICE CHAIR CABRAL: Theirs is an aerial. I  
21 think I found you but since I'm not familiar with the  
22 neighborhood . . . this is theirs. So you're right  
23 here, yeah? You're like right here. Sorry, sorry.

24 CHAIR WONG: Hold on. Hold on. Please.  
25 Yes?

1 MS. APUNA: Chair, I have -- we have a map  
2 that we can put up for you. But we're going to -- we  
3 were going to provide some location background but we  
4 can put it up there now.

5 CHAIR WONG: Can you please do that.  
6 Commissioner Cabral.

7 VICE CHAIR CABRAL: I think I found it. We  
8 got it.

9 COMMISSIONER CHANG: It will be helpful for  
10 all of us though.

11 VICE CHAIR CABRAL: You guys live here.

12 CHAIR WONG: Okay. Any other -- thank you.  
13 Any other questions?

14 VICE CHAIR CABRAL: Well, see, I have that  
15 one too but the other one is an aerial view so it's  
16 different. But I figured out on the aerial with --  
17 you know, where it's at. So thank you. Kind of  
18 across the street from the Monsanto lands.

19 DAVID TANOUE: Yes.

20 VICE CHAIR CABRAL: Okay. The big street.

21 CHAIR WONG: Okay. Any other questions?  
22 Commissioner Chang.

23 COMMISSIONER CHANG: Thank you, David.

24 So I just -- today is just status conference  
25 so -- so we're not here to hear any request to

1 changing any of the conditions. It's really you --  
2 when you purchased the property, it was with the full  
3 understanding -- it was what -- as Chair Wong says,  
4 it was with the full understanding that these  
5 conditions ran with that land?

6 DAVID TANOUE: That's correct. And many of  
7 the conditions were -- have already lapsed and that  
8 was part of the struggle with the property.

9 COMMISSIONER CHANG: Okay. Okay.

10 CHAIR WONG: Okay. Commissioner Aczon.

11 COMMISSIONER ACZON: I just want to know if  
12 what you're doing on -- trying to -- is that -- some  
13 of the conditions are already lapsed. And what are  
14 you doing to kind of get it to the -- up to par?

15 DAVID TANOUE: You know, part of the big --  
16 I guess, the encumbrance on the property was related  
17 to the infrastructure agreement that the landowner  
18 had with the adjoining property owner, HRT Realty.  
19 And the requirements of putting in infrastructure and  
20 also infrastructure relating to the Department of  
21 Ag's project. So unless this landowner move forward,  
22 yeah, all the other projects will just -- were  
23 stalled. And it's been stalled for years.

24 We -- you know, we, meaning R.M. Towill, we  
25 actually know the background of a lot of this because



1 we've involved with the other property owners. And  
2 we've seen the -- knowing that it's -- nothing is  
3 going to happen until something happens. This  
4 property owner moves it forward or takes the steps of  
5 resolving the deadline -- coming up the real estate  
6 deadlines too. And managing everybody's  
7 expectations. And that's part of what we're trying  
8 to do now.

9 We know that it's been delayed five, six,  
10 seven years already. And it's behind the eight ball.  
11 But moving forward, we can provide at least  
12 reasonable expectations of what we can do in the  
13 coming months until the land is, I guess, transferred  
14 over to the ultimate developer to take over.

15 CHAIR WONG: Okay. Commissioner Scheuer.

16 VICE CHAIR SCHEUER: I understand that our  
17 normal procedure is to hear from the petitioner and  
18 then from other entities. But we're really here  
19 today because the Department of Agriculture has  
20 requested the status conference. If it's okay with  
21 Mr. Tanoue and you, I'd prefer to like hear from DOA,  
22 hear from OP and then have the chance to talk more  
23 with the Petitioner's representative.

24 CHAIR WONG: Okay. The Commissioners don't  
25 mind.

1           COMMISSIONER CHANG: That was my -- thank  
2     you.

3           CHAIR WONG: Okay. Thank you, Mr. Tanoue.  
4     OP, go ahead.

5           MS. APUNA: Thank you, Chair. Deputy  
6     Attorney General Dawn Apuna on behalf of the Office  
7     of Planning and the Department of Agriculture. Here  
8     with me is Loreen Maki from Office of Planning and  
9     Janice Fujimoto and Morris Atta from the Department  
10    of Agriculture.

11           First, we would like to say that thank you  
12    to Mr. Tanoue for coming to this status conference  
13    and providing an update and giving a little more  
14    background.

15           So we kind of have a blended presentation  
16    of -- I'm going to go first and then let DOA provide  
17    some further information.

18           So the status conference is at the request  
19    of the Department of Agriculture asking this  
20    Commission to compel the Petitioner to comply with  
21    Condition 19 of the decision and order to provide  
22    infrastructure for the adjacent state ag park.  
23    Specifically, DOA request the LUC to require the  
24    following and the petitioner.

25           One, an infrastructure design and

1 implementation schedule within 30 days of an action  
2 made by this Commission.

3 Two, construction of the non-potable  
4 irrigation line by the end of this calendar year.

5 Three, amendment to the existing decision  
6 and order to include petitioner deadline and  
7 compliance deadline with regard to the ag park  
8 infrastructure.

9 And four, alternating status reports and  
10 status conferences every six months for the next  
11 three years.

12 Here is a map of the petition area. The  
13 purple or the pink and the yellow is the original  
14 petition area. The purple or the pink, the yellow  
15 and the green was originally owned by -- was  
16 originally owned by the Robinson Estate. But the  
17 green area which is the 150 acre parcel for the state  
18 ag park is not actually part of the petition area.

19 Locationally, this is Kunia Road and then  
20 Hartung and Monsanto are somewhere in this area on  
21 this side of the road. Mililani is up here and  
22 Kunia -- Royal Kunia Phase I is this orange area.

23 So currently, the ownership -- so this is  
24 the -- the state does -- was able to receive this 153  
25 acre parcel. The yellow parcel is still owned by the

1 Robinson Estate. And then this pink parcel -- well,  
2 it's divided but this area that I'm outlining is  
3 owned by the petitioner or this is -- I'm sorry,  
4 Halekua. It was originally owned by Halekua  
5 Development Corporation and is now RP2's property.  
6 And then these other parts of the pink are owned by  
7 the various other landowners including HRT and RKES.

8 VICE CHAIR SCHEUER: Sorry. Can you just  
9 repeat last showing where the ownerships are.

10 MS. APUNA: Okay. So I think this part  
11 right here is like -- that is RP2 that Mr. Tanoue is  
12 here representing. And then this bigger rectangle  
13 and the smaller ones are owned by HRT. And this is  
14 RKES. And then the yellow is Robinson Estate.

15 So while this Docket No. A92-683 has had a  
16 long and complicated history since the 1993 decision  
17 and order made 25 years ago, the one constant  
18 throughout that time has been this condition 19  
19 requiring petitioner to design and construct offsite  
20 infrastructure permits for the ag park. There's been  
21 a bankruptcy filing, various changes in ownership, a  
22 proposed solar farm. But always the condition  
23 requiring transfer of the 150 acre parcel to the  
24 state which was fulfilled in 2004 and the design and  
25 construction of offsite infrastructure by the

1 petitioner which remains unfulfilled.

2 So here's a timeline of the relevant  
3 actions, agreements and events over the past 25  
4 years.

5 On March 30th, 1993, DOA and Halekua entered  
6 into the MOU, a memorandum of understanding that  
7 required petitioner to convey the 150 acre site for  
8 the ag park and to initiate infrastructure  
9 improvements within one year of conveyance and  
10 completion of improvements by June 30th, 2001.

11 On December 9th, 1993, the LUC entered the  
12 district boundary amendment decision and order that  
13 adopted the MOU ag park requirement as condition 22.

14 On October 1st, 1996, the D&O was amended to  
15 correct the metes and bounds and reaffirm the  
16 condition 22 ag park requirements but renumbered it  
17 as condition 19.

18 On February 26, 2003, OP filed an order to  
19 show cause to compel the conveyance of that 150 acre  
20 parcel to the state. This order to show cause was  
21 dismissed in 2007.

22 In April 2003, Halekua filed for bankruptcy.

23 And on February 27, 2004, HRT conveyed the  
24 150 acre site to the state for the ag park.

25 On February 23rd, 2007, ownership of parcel

1 71 transferred from Halekua to Halekua Kunia.

2 On March 2nd, 2007, the MOU was amended  
3 confirming the 150 acre site conveyance and requiring  
4 that the site plan or the infrastructure be completed  
5 by December 31st, 2008 and construction of the  
6 infrastructure be completed by January 1st, 2011.

7 On March 12, 2007, Canpartners acquired  
8 parcel 71 from Halekua Kunia.

9 On February 19th, 2009, a first amendment to  
10 the MOU extended the deadline for petitioner site  
11 plan to December 31st, 2009, a construction of  
12 offsite infrastructure to be completed by January  
13 1st, 2011.

14 On September 20th, 2013, a second amendment  
15 to the MOU extended the site plan deadline to  
16 December 31st, 2013.

17 And on October 13th, 2013, the D&O was  
18 amended reaffirming the ag park condition.

19 On January 28, 2015, the D&O was amended to  
20 allow for a solar project on parcel 52.

21 On July 28th, 2015, a third amendment to the  
22 MOU extended the design plan's deadline to December  
23 31st, 2015 and substantial construction of offsite  
24 infrastructure by December 31st, 2016.

25 On October 3rd, 2017, Canpartners

1 transferred parcel 71 to RP2.

2 Through this 25 year history, DOA has been  
3 patient and diligent and has made its best efforts to  
4 get this ag park project moving. Based on the  
5 timeline, it can see that there have been many  
6 restatements and reminders to petitioner of condition  
7 19. However, no infrastructure has been constructed  
8 by the original deadline of June 30th, 2001, the  
9 first extension deadline of January 1st, 2011 and a  
10 second extension of December 31st, 2016.

11 At this point, DOA looks to the Commission  
12 to provide its backing and authority to require the  
13 petitioner to move forward with the design and  
14 construction of the ag park infrastructure by  
15 providing a schedule adhering to an end of year  
16 construction deadline and status updates.

17 So now DOA is here to explain more fully the  
18 importance of this state ag park, why the  
19 infrastructure is critical and the events since the  
20 last ownership changed to RP2 in 2017.

21 MORRIS ATTA: Good morning, Chair.

22 CHAIR WONG: May I swear you in please?

23 Do you swear or affirm that the testimony  
24 you're about to give is the truth?

25 MORRIS ATTA: I do.

1 CHAIR WONG: State your name for the record.

2 MORRIS ATTA: My name is Morris Atta. I am  
3 the agricultural land program manager for the  
4 Department of Agriculture.

5 CHAIR WONG: Please proceed.

6 MORRIS ATTA: Good morning, Chair and  
7 members of the Commission. Thank you for the  
8 opportunity to speak on -- regarding this matter.

9 This map is just to show what the Kunia --  
10 the Royal Kunia Master Plan contemplated and why the  
11 ag park is where it is and what purpose that it  
12 serves and why it's important for this particular  
13 area. Basically, this diagram illustrates the extent  
14 of the -- you know, the boundary between ag and urban  
15 development. And the ag park in the corner was  
16 intended and planned to serve as a transition and  
17 buffer between the two areas. So that strategically  
18 designed to serve that purpose.

19 The ag park itself was -- serves an  
20 important purpose for Department of Agriculture in  
21 fulfilling its mission to promote and support  
22 diversified and sustainable agriculture. It's  
23 situated in a particularly in an ideal location for  
24 this purpose in that there's prime soil quality.  
25 There's access to irrigation water. Moderate weather



1 conditions that are very suitable to ag. And also,  
2 it's centrally located for, you know, easy product  
3 distribution within the Honolulu urban community.

4 The initial concept behind the ag park was  
5 that there would be 24 five to seven acre lots that  
6 would be put into immediate productive agriculture.  
7 And eventually, the hope was that the -- to make it  
8 attractive and convenient for the farmers to possibly  
9 have farm dwellings located in that bottom area of  
10 that ag park. It was also going to serve as a  
11 transition and a barrier from the suburban, you know,  
12 homes in the Royal Kunia area into the ag districts.

13 This next slide goes into the recent efforts  
14 that we have -- the HDOA has some -- made to get this  
15 project off the ground once again. And between  
16 January and August of 2017, DOA was seeking the  
17 compliance with the last deadline for construction of  
18 the infrastructure. So it was about a lot of  
19 discussions.

20 On October 11th, we were informed that the  
21 prospective buyer was -- interest was being purchased  
22 by RP2. And we were actually in the process of  
23 requesting status conference with the LUC at that  
24 time but decided to hold off to give the new  
25 purchaser time to regroup and possibly give us --

1 provide us better information and show some evidence  
2 of progress.

3 In October 23rd, we met with RP2 and  
4 basically, you know, confirmed, you know, RP2's  
5 acquisition of the development interest and that  
6 we'll be willing to hold off for a little while  
7 before actually requesting a status conference.

8 And on March 24, there was a follow-up  
9 meeting between HD0A, RP2, R.M. Towill and the  
10 Robinson Estate to kind of flesh out what was going  
11 on and where everyone stood and how we can proceed.  
12 And at that point, we thought that it would be a good  
13 idea to bring this matter back to the LUC in the form  
14 of a status conference to have everybody on the same  
15 page and possibly get some movement on this matter.

16 So RP2 has been, you know, in constant  
17 contact with HD0A since they acquired the interest.  
18 They've been very good trying to keep us informed of  
19 what's going on. And from our understanding, design,  
20 you know, plans for the irrigation line had been  
21 initiated. We were subsequently informed also that  
22 design plans for the utilities have started as of  
23 March and that RP2 is in discussions about the --  
24 with, you know, a potential buyer for their interest.  
25 But our concern was that we had not received any firm

1 scheduling commitment or timelines. And that's the  
2 reason why we're before the Commission at this time.

3 So as Dawn had previously stated that our  
4 request to RP2 and the Commission is that in order  
5 for us to develop the ag park, at least initially to  
6 get productive agriculture going on the 24 production  
7 lots is that we have the irrigation line for  
8 non-potable irrigation water to be completed by  
9 December of 2018 which is this year.

10 The other priority is important but we felt  
11 that a second deadline of 2020 would be a more  
12 reasonable request. And so that's -- we ask that we  
13 have before you.

14 So basically the importance of the ag park  
15 is that, you know, it's going to support farms. But  
16 the main reason why we're here is the bottom line is  
17 we don't have the infrastructure for the ag park. We  
18 really have no ag park and can't grow anything. And  
19 that's why we're here. It -- lack of the irrigation  
20 infrastructure is undermining our ability to obtain  
21 firm commitments from the legislature to -- the  
22 legislature to fund the additional monies that are  
23 needed to develop the ag park. And it impedes our  
24 ability to the plan and forecast our agricultural  
25 options for farmers since we don't have a timeline on

1 when it will be viable as units for productive  
2 agriculture. But delays in the implementation of the  
3 plans and approvals just delays the project  
4 indefinitely. And bottom line is delays will  
5 increase costs for everyone. And that's a major  
6 concern of ours.

7 And, you know, as it's been stated before,  
8 you know, it's -- the ag part is important. It's  
9 important, you know, for the area, for our mission as  
10 a department. And we have concerns about the fact  
11 that the conditions for infrastructure have passed  
12 and remain unfulfilled.

13 So, again, we are just seeking commitment  
14 with the deadlines and some progress towards getting  
15 the infrastructure completed. So again, I'm not sure  
16 if I need to repeat the -- what Dawn had said but  
17 basically that's why we're here. Thank you.

18 CHAIR WONG: Thank you.

19 Commissioners, any questions or comments  
20 for -- Commissioner Okuda.

21 COMMISSIONER OKUDA: Thank you.

22 Mr. Atta, even though some of us may know  
23 your background, just so that we have for the record,  
24 can you give us a short summary of your education,  
25 experience. Thank you.

1 MORRIS ATTA: Yeah.

2 Born and raised Pauoa Valley. Roosevelt  
3 grad. I went to Yale and got my undergraduate degree  
4 there. And I got my degree at NYU. And back here I  
5 was in private practice for a while. Started with a  
6 mid sized firm Bays Deaver. Went in-house with  
7 Bishop and American Trust. Eventually went to the  
8 government sector. I was a research attorney with  
9 the senate majority for about six years. And the  
10 senior staff attorney for the judiciary committee for  
11 the senate for a year. Then went into the executive  
12 branch. I went over to DLNR and I was a state land  
13 administrator for about six years. And I was also a  
14 special projects coordinator for DLNR. I then went  
15 to HART as a deputy director for right-of-way  
16 acquisitions. And just recently moved over to  
17 Department of Ag, Agriculture as the agriculture land  
18 program manager to develop and organize the land,  
19 agricultural lands management program.

20 COMMISSIONER OKUDA: Thank you for the  
21 background.

22 CHAIR WONG: Commissioners, any questions  
23 for Department of Ag or -- Commissioner Chang.

24 COMMISSIONER CHANG: Thank you very much,  
25 Mr. Atta. Just a couple questions.

1           One, Department of Ag has been extremely  
2     patient all these years. Do you have a list 'cause  
3     it sounds like, you know, this needs to be -- you  
4     talked about delays, delays costs. So do you have a  
5     list of potential tenants for the ag park?

6           MORRIS ATTA: I don't believe we have  
7     because we can't even advertise it because we don't  
8     have a product to advertise or to seek interested  
9     applicants for.

10          COMMISSIONER CHANG: But are you aware --  
11     are there interest for this size of five to seven  
12     acres?

13          MORRIS ATTA: I can refer to Jan.

14          JANICE FUJIMOTO: Hi, I'm Janice Fujimoto.

15          CHAIR WONG: May I swear you in please?

16          JANICE FUJIMOTO: Oh, sure.

17          CHAIR WONG: Do you swear or affirm that the  
18     testimony you're about to give is the truth?

19          JANICE FUJIMOTO: Yes.

20          CHAIR WONG: Okay. Please state your name.

21          JANICE FUJIMOTO: My name is Janice  
22     Fujimoto. I'm with the Department of Agriculture,  
23     engineering section.

24          CHAIR WONG: Please continue.

25          JANICE FUJIMOTO: Can you repeat the

1 question?

2 COMMISSIONER CHANG: Yeah. I was wondering  
3 'cause you're saying time is of the essence. You  
4 know, delay -- the infrastructures necessary and the  
5 delay will be costly. So I was just wondering is  
6 there -- do you have a list of interested tenants for  
7 five to seven acres?

8 JANICE FUJIMOTO: As Mark said, you know, it  
9 would be premature because when we do have lands  
10 available for lease, it would be on a specific parcel  
11 that they know that they're bidding on. And for us,  
12 it's early in the process because we're here to talk  
13 about the infrastructure that's required by the LUC  
14 order where the developer's required to bring  
15 infrastructure to our property boundary. The DOA, in  
16 turn, has the requirement to actually provide the  
17 infrastructure within our property itself. And we  
18 have not been able to do so. And that's part of what  
19 Morris was saying about the inability to get  
20 legislative funding. It kind of hampers our ability  
21 to do so if we don't have the sources coming to the  
22 property. The part that we would then need to do is  
23 to develop the roads as well as the irrigation line  
24 within the property so they can service the farmers.

25 COMMISSIONER CHANG: Totally make sense to

1 me. My -- and maybe this is not even relevant for  
2 this particular proceedings. But having this  
3 infrastructure makes this ag part extremely  
4 attractive, marketable and valuable.

5 JANICE FUJIMOTO: That's exactly the point  
6 of what we're trying to do.

7 COMMISSIONER CHANG: How do we ensure that  
8 these tenants are legitimate farmers and not similar  
9 to the development down in Kunia where there was no  
10 infrastructure? So how do -- what assurances do we  
11 have that this is going be legitimate farmers and  
12 not, you know, a gentleman estate where you put a  
13 temple?

14 MORRIS ATTA: I'll answer the question.

15 Because this is in our ag park, it falls  
16 within our ag park program which is governed, you  
17 know, under our administrative rules and HR 166 I  
18 believe. We are required to qualify all of the  
19 applicants for these parcels. And we have specific  
20 standards that define eligible applicants as being  
21 bonafide farmers. And they have to meet very strict  
22 guidelines to qualify for that. And basically, our  
23 selection process and our rules dictate that we  
24 cannot deviate from that. And so it eliminates the  
25 possibility of the gentleman farmer controversy that



1 I know everyone seeks to avoid because of that.

2 CHAIR WONG: Commissioners --

3 COMMISSIONER CHANG: Did you answer it?

4 Okay. Anything else you want to add?

5 MORRIS ATTA: No. Just that from going  
6 beyond the selection process, we -- the nature of  
7 my -- the program that I'm overseeing, the land  
8 management program, is to oversee actual use of the  
9 property and to enforce, you know, actual  
10 agricultural use through property inspections. And  
11 property managers that are assigned to those specific  
12 ag parks and non-ag park lands to ensure that  
13 agriculture is actually happening on our state  
14 agriculture leases.

15 COMMISSIONER CHANG: Just one other  
16 question. Apparently on March 24th of this year,  
17 HDOA, RP2, R.M. Towill and Robinson met and you seem  
18 to have some progress. But right after that, you're  
19 requesting a status conference. Is it -- did you  
20 feel that there was not sufficient commitment by RP2  
21 to your schedule that you're requesting a status  
22 conference -- 'cause it seems as if you tried to work  
23 it out outside of the LUC.

24 MORRIS ATTA: The reason why -- what  
25 actually went in was in our letter to RP2, we had

1 specifically asked for a concrete timeline and some  
2 form of, you know, written commitment that  
3 demonstrated that some things were going to happen.  
4 We did not actually receive, you know, a commitment  
5 for a timeline. So we thought that -- you know, and  
6 we had placed a specific deadline for that. And that  
7 had passed and we thought okay, we're being  
8 reasonable but let's make sure by bringing it to this  
9 forum. And that's the reason why you see what you  
10 see.

11 COMMISSIONER CHANG: Okay. Thank you.

12 CHAIR WONG: Commissioner Scheuer.

13 VICE CHAIR SCHEUER: Hi Mark.

14 I guess I have a series of questions which  
15 go to where are the limits of your patience and the  
16 department's patience? 'Cause, you know -- I mean  
17 hey, all right, the Land Use Commission, every  
18 legislative session, we get cracks for supposedly we  
19 are the barrier to affordable housing in this state.  
20 Though I look at maps of Oahu and I see all this land  
21 that we put in urban district that is not developed.

22 We are sometimes, you know, also blamed for  
23 causing things to move slowly. And this is a great  
24 example. There is a strong demand and the governor's  
25 mandate that we produce more of our own food. We

1 have recently -- actually as recently as the first  
2 part of this hearing yesterday on Hawaii Island,  
3 passed a motion for an order to show cause hearing,  
4 on a development where people didn't come close to  
5 meeting their deadlines. Our last meeting on Maui,  
6 we passed a motion for an order to show cause. Why  
7 are you not coming in front of us with a motion for  
8 an order to show cause but instead with great faith  
9 and the latest landowner that somehow this is  
10 actually going to happen this time?

11 MORRIS ATTA: Well, we are -- as I said  
12 previously in very constant and close communication  
13 with RP2. And we are aware that they have had  
14 progress towards the actual design of the irrigation  
15 land which is our immediate priority. Because once  
16 we have that in, at least we can get the ag lots into  
17 productive agriculture with the basic need of water.  
18 Because we've seen that progress, we haven't been  
19 quite as militant in or, you know, urgent in our  
20 request to get things moving. We are aware that they  
21 have been the -- you know, involved in this matter  
22 for a long time. They know what the requirements  
23 are.

24 Again, that meeting with RP2 and Robinson  
25 and R.M. Towill was reassuring to the extent that

1 we -- our impression was that the Robinson Estate was  
2 at least understanding our situation and seemed  
3 amenable to assisting us as well. So the pieces look  
4 like they're in place. And that's the reason why  
5 the -- for the completion of at least irrigation line  
6 by the end of this year 'cause that's going to meet  
7 our very immediate needs to at least begin to move on  
8 our part. And have the remainder be monitored  
9 closely to our schedule of status conferences.

10 That's kind of where we are. We're  
11 reassured by the fact that at least everyone's  
12 talking and it looks like something is moving.

13 VICE CHAIR SCHEUER: And you believe that if  
14 that deadline -- well, first of all, you believe that  
15 the irrigation deadline can be met by the end of this  
16 year?

17 MORRIS ATTA: I think maybe Janice can speak  
18 to that.

19 JANICE FUJIMOTO: So, you know, we have had  
20 a lot of conversations with David. He's been good  
21 about trying to keep us updated. And although we  
22 haven't been able to agree on a schedule that we both  
23 agree to on paper, it sounds like that might be a  
24 proposal that could work. Because, you know, we do  
25 know that they're newcomers into it. Although they

1 knew what they were inheriting, we also know the  
2 limitations of inheriting it late in the game. So we  
3 are anxious to get it done but not at the point of  
4 being unreasonable which is part of our reason for  
5 going for the status conference request rather than,  
6 you know, taking a stronger stance on it.

7 We are expecting to see it done though. And  
8 we do want to come to a scheduling and time frames so  
9 we can plan better and know that all of the  
10 outstanding requirements will be met.

11 VICE CHAIR SCHEUER: Thank you.

12 CHAIR WONG: Commissioner Aczon.

13 COMMISSIONER ACZON: Are there any deadlines  
14 set by the Land Use Commission that are not being met  
15 right now?

16 JANICE FUJIMOTO: Yes. So specifically,  
17 the -- there was a deadline for submission of design  
18 plans by the end of 2015 and completion of all  
19 infrastructure by the end of 2016.

20 COMMISSIONER ACZON: And there's no  
21 amendment to extend those deadlines?

22 JANICE FUJIMOTO: No. We were actually in  
23 the process of negotiating a new MOU with Canpartners  
24 prior to the sale to RP2. We were negotiating with  
25 them. We knew they weren't going to hit the

1 deadlines so we were already discussing what new  
2 scheduling could occur. However, they sold the  
3 property to somebody else. And also we realized that  
4 the existing LUC order has hard dates in it as well  
5 as a reference to an MOU. So we didn't feel that we  
6 could enter a new MOU without -- to the existing  
7 order.

8 CHAIR WONG: Commissioner Okuda.

9 COMMISSIONER OKUDA: Thank you, Mr. Chair.

10 You know, there's one concern that I think,  
11 I and maybe some others may have with the fact that  
12 conditions that are set by the Commission aren't  
13 followed. If we don't take a strict compliance view  
14 regarding these conditions, the Hawaii Supreme Court  
15 has held that, you know, there might be a waiver of  
16 the condition or we can't enforce the condition or if  
17 we try to enforce the condition, there might be a  
18 constitutional taking violation. And so -- and so  
19 the quandary -- or not the quandary but one of the  
20 issues that I think the parties have to address is,  
21 you know, while we like to see things worked out to  
22 be done in a business -- business like standpoint or  
23 business like way and we respect the personal  
24 reputations of all of you here, especially Mr.  
25 Tanoue, you, Mr. Atta, 'cause I think people are

1 familiar with your service to the community. At the  
2 same time we're governed by the standards which are  
3 being imposed by the Hawaii Supreme Court. And if  
4 conditions aren't met and I think if we don't see  
5 admissible evidence showing concrete steps of  
6 conditions being satisfied, then we're being forced  
7 by the supreme court to go down the road of the order  
8 to show cause and probably asking or taking action  
9 based on whatever proper motion is brought and  
10 evidence adduced to possibly seeking or rendering a  
11 decision reverting the classification of the land.  
12 And it may not be what we all really want to do from  
13 a business standpoint but it's something that's going  
14 to be mandated or has been mandated by the Hawaii  
15 Supreme Court. So that really is a concern that  
16 conditions really mean something.

17           And there's a -- I think a public policy  
18 concern where boundary amendments are given,  
19 conditions are placed and instead of conditions being  
20 met, the properties are being transacted. And I  
21 understand there's a bankruptcy so we're not  
22 necessarily saying anyone made money off of the  
23 transaction. But that's the public policy concern.  
24 That people flip property without meeting the  
25 representations and assurances to the community.

1 Thank you.

2 CHAIR WONG: Mr. Tanoue, why don't you come  
3 on back.

4 COMMISSIONER CHANG: Chair, could I just ask  
5 Dawn Apuna one question?

6 CHAIR WONG: Okay.

7 COMMISSIONER CHANG: Before we have -- OP  
8 does -- we're focusing just on condition 19 today?

9 MS. APUNA: Yes.

10 COMMISSIONER CHANG: And that deals with  
11 Department of Ag. Are there other conditions that  
12 the LUC approved that have not been satisfied beyond  
13 condition number 19?

14 MS. APUNA: I believe there are. But can I  
15 speak to the path of order to show cause? It's  
16 definitely not the path that either of these parties,  
17 DOA, OP and Mr. Tanoue, RP2, would like to go down.

18 We recognize that, Mr. Tanoue as he  
19 explained, they're kind of cleaning up a mess.  
20 They're trying to take the reins and make this work.  
21 And DOA wants it to work too.

22 And an order to show cause would actually  
23 through the baby out with the bath water for DOA. We  
24 need them and I think that they need us too. So we  
25 can't make promises but this is our best effort to



1 get things going and make this project work. So we  
2 hope that an order to show cause is not really a  
3 consideration for today.

4 CHAIR WONG: Okay. I'm going to ask a  
5 question, then I'll give it to Mr. Scheuer --  
6 Commissioner Scheuer.

7 First up, Mr. Tanoue, the Department of Ag  
8 presented to us that their proposed deadline for  
9 December 31st, 2018 for non-potable waterline. In  
10 your experience, vast experience with the county and  
11 now with R.M. Towill, is it possible?

12 DAVID TANOUÉ: From my perspective, no. But  
13 then that's why, you know, when the Department of Ag,  
14 they've been very -- as you can see, from the  
15 PowerPoint, they've been very patient this whole  
16 time. And then more recently, when they were trying  
17 to get some deadlines from us, we didn't want to set  
18 deadlines that we couldn't meet or we didn't want to  
19 be going on the same path of extending of missing  
20 deadlines. And at that point, the -- for meeting  
21 their needs, what they felt were their needs, we  
22 couldn't meet those dates in there. So that's why,  
23 you know, I mentioned to Department of -- you know,  
24 you guys should do what you guys need to do which is  
25 we need to go in front of the Land Use Commission.

1 You know, we have this relationship together. As a  
2 client, you know, they're our clients. If you  
3 notice on the sheet that show their layout for the ag  
4 park, it was an R.M. Towill stamp on top there. So,  
5 you know, we've worked together. We have this  
6 relationship. But I wanted to make sure that as a  
7 property owner, they feel okay to do whatever you  
8 need to do. And if you need to go in front of the  
9 board, the Commission, that's fine with us. We knew  
10 there's a lot of deadlines that came and went. But  
11 we weren't able to commit to the deadlines that  
12 they're hoping for in their letters.

13 Looking at what they're proposing for the  
14 irrigation line, I'm thinking first, you know, we're  
15 almost complete. In my handout, we put down maybe  
16 August, September to finish all the design work and  
17 submit it to the city and county for approval on  
18 construction plans.

19 By the end of the year, we should be able to  
20 get construction plans approved. But having the  
21 construction completed and the line in place in use  
22 by the end of the year, that will be -- I don't think  
23 that can happen.

24 CHAIR WONG: So let's take a guess. When do  
25 you think construction will be completed, just a

1 rough, you know, conservative number?

2 DAVID TANOUE: You know, actually, the  
3 engineer said, you know, it might take up to a year  
4 for the construction plans to get approved. Then I  
5 said no. Well, that's being, you know, conservative.  
6 I said well, we got to move faster. But the -- and  
7 hopefully that we can -- I have confidence in DPP  
8 that we can move it forward. But so -- that's why  
9 I'm shooting for the end of the year as having  
10 construction plans approved. And then, you know, we  
11 do the bidding and get construction and construction  
12 done. But that's why it's hard for me to commit for  
13 that.

14 But I have no problem coming in regularly  
15 with updates to the board or submitting updates,  
16 written updates to all the parties involved. We can  
17 set a deadline to, you know, construction plan  
18 approval at the end of the year. Maybe one for sure  
19 deadline that we can -- we should be able to obtain  
20 without anything popping up.

21 CHAIR WONG: Mr. Atta, do you have any  
22 problems if -- that last statement?

23 MARK ATTA: I don't know that we have a  
24 problem with that. If we -- in addition to knowing  
25 that the construction plans would be done, that we

1 have a better idea of when actual construction will  
2 be completed because that will assist us in our --  
3 you know, the things that we need to do on our end.  
4 As long as it's pretty reasonable. I think we could  
5 possibly live with that. But we need certainty.  
6 That's the key to our issues is that right now we  
7 lack certainty in anything. And --

8 CHAIR WONG: So -- go ahead.

9 JANICE FUJIMOTO: And if I may, I think, you  
10 know, it's one thing and we're grateful to see that  
11 there are plans being developed and a commitment to  
12 getting plans approved by the City. But our main  
13 concern is construction. We need the lines in the  
14 ground.

15 CHAIR WONG: Right. And so I'm assuming  
16 that R.M. Towill will go out for bids for this. And  
17 takes some time because of RFIs and all that other  
18 issues before the bid is awarded because this is a  
19 private venture. It's not a state or county so it  
20 will be a little faster.

21 DAVID TANOUE: A little faster, yes.

22 CHAIR WONG: But there's an assumption here  
23 right now on the table that it will be done by 2019?  
24 At least break ground?

25 DAVID TANOUE: I hope so. Yes, yes. It's

1 hard for a commitment but, you know, I'm thinking it  
2 needs to be done.

3           You know, the Department of Ag is also our  
4 client and then, you know, when designing their ag  
5 park, a lot of assumptions we had to make  
6 anticipating where, you know, where the canyon we'll  
7 put in these lines and all that kind of stuff. Now,  
8 we're in the place of canyon so we know where things  
9 should be going. So that's why I think it should be  
10 moving smoother. No need to hire another consulting  
11 firm to do the design. We're already doing it.  
12 We're familiar with the area. Going out to bid for  
13 construction and just going forward.

14           I think initially, maybe some apprehension  
15 from the Department of Ag 'cause as noted in their  
16 PowerPoint, we didn't expect to be holding on to the  
17 property this long. We thought it would have been  
18 transferred over to the ultimate developer sooner.  
19 But, you know, be that as it may, we're just told  
20 this is going to cost more when the time comes  
21 because whatever we're putting into the -- what needs  
22 to be put into the ground is going to be just added  
23 on. So the I think that's why moving forward early  
24 on, the hesitation might have been because seeing who  
25 the -- who they will be dealing with ultimately but

1 now it's still going to be us and we're moving  
2 forward. RP2 is moving forward, the design and  
3 implementation of the infrastructure and potable  
4 water.

5 CHAIR WONG: Commissioner Scheuer.

6 VICE CHAIR SCHEUER: Yes. First, I want to  
7 make a clarification. I'm not suggesting that an  
8 order to show cause is the best way to go. But, you  
9 know, building on the comments from Commissioner  
10 Okuda, you know, there's legal reasons why we want to  
11 move forward. And just, you know, we don't want to  
12 keep looking stupid, you know. We just start to look  
13 stupid that, you know, and it's -- you know, this  
14 is -- RP2, if it's really essentially R.M. Towill,  
15 it's very different than a Delaware corporation who's  
16 coming in here, right? So it's not a statement about  
17 R.M. Towill or your esteemed history in the  
18 community. It's a statement about how many  
19 landowners have come forward to us and said no, just  
20 change this, change this, change that. Oh, and then,  
21 you know, we'll take care of it. And so at some  
22 point, we look really stupid. Right?

23 So tell me. You talk about a future  
24 developer. Are you in the process of like -- or do  
25 you identify the potential buyer? Where are we in

1     that so that we know when the next person might be  
2     showing up in front of us?

3             DAVID TANOUE: The thing is once we took  
4     possession and it became known that local developers  
5     came knocking more. But we already had a -- you  
6     know, we had in mind going in, the possible local  
7     developer that was going to be the ultimate owner.  
8     But there's still some technicalities that we'll work  
9     out with the adjoining property owners. But like I  
10    said, it -- more than likely, it will be one of  
11    the -- one of our clients. And I think that puts us  
12    in a particular situation 'cause one, like I  
13    mentioned earlier, that the purchase price was  
14    actually more realistic than initially what the  
15    investment trust was trying to get out of the whole  
16    stuff. And the fact that, you know, it will be  
17    probably one of our clients. Is that all the  
18    infrastructure, all the -- you know, from a company  
19    perspective, we look at the long-term. So we're  
20    looking at the engineering fees that we can  
21    accumulate over time dealing with our clients. So  
22    that's why on the transfer and more like a transfer  
23    with one of our clients is it makes the -- everything  
24    more palatable. 'Cause you can -- you know, when  
25    they look at the purchase price as well as the

1 development cost, it's almost like one and the same  
2 for them because we will continue to do the work.  
3 And as R.M. Towill, we look at the long-term  
4 consulting fees that we'll get for engineering  
5 planning and certainly for the project. So we can  
6 work -- it will be a much more workable project at  
7 the end for the developer.

8 VICE CHAIR SCHEUER: So just to clarify.  
9 RP2 is wholly -- the sole member is R.M. Towill or  
10 there's other investors?

11 DAVID TANOUE: Just us.

12 VICE CHAIR SCHEUER: Okay. So you are  
13 sitting here with the RP2 hat on?

14 DAVID TANOUE: Yes.

15 VICE CHAIR SCHEUER: Representing? Okay.  
16 Thank you.

17 CHAIR WONG: Commissioner Okuda.

18 COMMISSIONER OKUDA: Thank you, Chair.

19 If I can then ask the parties what -- maybe  
20 start with Office of Planning and Department of  
21 Agriculture first. What do you want the Land Use  
22 Commission or what can the Land Use Commission do  
23 either with a specific order, action, scheduling,  
24 what have you, to assist this process to get at least  
25 the condition we're talking about here met? What



1 would you like us to do?

2 MS. APUNA: I think we would still want what  
3 we had asked as far as deadlines. I know Mr. Tanoue  
4 says they can't make the construction deadline but we  
5 would -- I'm sure we would like something before  
6 2019. We want status updates or conferences every  
7 six months. I think we still want what we asked  
8 originally but we also want it to work. So if  
9 there's some room -- wiggle room but not too far off  
10 as far as deadline.

11 CHAIR WONG: Commissioner Aczon.

12 COMMISSIONER ACZON: So am I hearing  
13 correctly that the December 31st, 2018 deadline is  
14 off the table? And if not -- and not that, what  
15 would be your next step?

16 MS. APUNA: Could we take a short break so  
17 we -- I can speak to my client and get back to you.

18 (Recess taken.)

19 CHAIR WONG: Okay. We're back on. OP.

20 MS. APUNA: Thank you for allowing us to  
21 talk it over.

22 So what we would request is that the  
23 design -- the complete design and construction plans  
24 be delivered by December 31st, 2018 as Mr. Tanoue  
25 said they were able to do. And then completion of

1 construction of non-potable line by March 31st, 2019.  
2 And regular updates of their progress as well as that  
3 they come in and amend the D&O for condition 19  
4 'cause I think there are some hard deadlines that  
5 would need to be amended.

6 CHAIR WONG: Okay.

7 MS. APUNA: We think, speaking to my client,  
8 that once the plans are finalized by the end of this  
9 year, that it shouldn't be too much of a problem to  
10 actually get the line in there. That shouldn't take  
11 as long as was discussed. Like three months, we  
12 think, is a reasonable amount of time.

13 CHAIR WONG: Commissioner Scheuer.

14 VICE CHAIR SCHEUER: So March 19th, 2019?

15 MS. APUNA: I'm sorry, March 31st.

16 VICE CHAIR SCHEUER: 2019 for the actual  
17 construction as opposed to December 31st of this  
18 year?

19 MS. APUNA: Yes.

20 VICE CHAIR SCHEUER: Okay. And have you  
21 talked about what happens if that's not met?

22 MS. APUNA: No, we haven't but --

23 VICE CHAIR SCHEUER: Have you explored ideas  
24 within your discussions with the landowner,  
25 petitioner about any kind of performance bonds or

1 construction bonds to ensure that this would actually  
2 get constructed?

3 MS. APUNA: No.

4 CHAIR WONG: Just wanted to check. I think  
5 there's more than just RP2 involved in this issue.  
6 Is that correct, Mr. Tanoue?

7 DAVID TANOUE: I mean we're working with the  
8 Robinson Trust because we require an easement going  
9 through their property.

10 CHAIR WONG: So you need more than just  
11 yourself to involve in all this?

12 DAVID TANOUE: That was part of the  
13 discussions with Robinson which we don't think it's  
14 going to be a problem obtaining -- the location of  
15 the easement might be still under the discussion,  
16 what the City's going to allow us along Kunia Road,  
17 how close to Kunia Road we can go. It's just part of  
18 the plans review. And concurrently with the plans  
19 review, we will be continuing with the discussion  
20 regarding the easement.

21 CHAIR WONG: From -- I gather from Office of  
22 Planning, that they wanted to also amend the  
23 conditions if I was correct in their statement, is  
24 that correct?

25 MS. APUNA: Condition 19. The -- there's a

1 deadline there for the full construction of the . . .

2 CHAIR WONG: I think more than just RP2 can  
3 deal with that, isn't that -- has to be --

4 MS. APUNA: No, I don't think so actually.  
5 I think is strictly between RP2 and -- because the  
6 condition 19 is based on the MOU with -- and parties  
7 to the MOU are RP2 or the successor to Halekua and  
8 Canpartners and DOA.

9 DAVID TANOUE: Can the MOU be amended if  
10 that's the case without touching the condition? I  
11 don't have the condition in front of me.

12 CHAIR WONG: If --

13 DAVID TANOUE: To reflect that new  
14 arrangement.

15 CHAIR WONG: I think you should work out --  
16 work it out with all the parties involved and come  
17 back to us. So let me -- you want to go before I --  
18 go ahead, Commissioner Aczon.

19 COMMISSIONER ACZON: I just want  
20 clarification on March 2019 date you have. Is that  
21 for construction? Is that start or completion?

22 MS. APUNA: Completion.

23 COMMISSIONER ACZON: Completion?

24 CHAIR WONG: Commissioner Okuda, you have a  
25 question?

1           COMMISSIONER ACZON: And that permit's going  
2 to take one year?

3           DAVID TANOUE: Maybe one suggestion 'cause  
4 it just may be a time frame from the -- once the  
5 permits get approved by the City and there's a time  
6 frame that construction begins. Then if it takes --  
7 if the permit approval comes quicker than  
8 anticipated, we can start the -- we're required to  
9 start construction sooner. But if it, for whatever  
10 reason, whether that's the issue with the easement or  
11 something that the permit approval drags on a little  
12 longer, we don't have to come back 'cause we're not  
13 going to meet the construction deadline. But maybe  
14 we have a start date for construction instead based  
15 on the permit approval.

16           COMMISSIONER ACZON: Just a follow-up. How  
17 long do you think the construction's going to take?

18           DAVID TANOUE: If -- you know, it shouldn't  
19 take too long. But just the -- you know, once we  
20 award the contract and the contractor gets his  
21 trenching permit, then he can start moving dirt and  
22 trenching the pipeline.

23           COMMISSIONER ACZON: A month, two months?

24           DAVID TANOUE: I would think you would  
25 probably know more Commissioner on the construction

1 side.

2 COMMISSIONER ACZON: Just trying to connect  
3 the dates so --

4 CHAIR WONG: Commissioner Okuda.

5 COMMISSIONER ACZON: Thank you.

6 COMMISSIONER OKUDA: Yeah, Chair. I'm just  
7 trying to get a clarification.

8 Number one, is there then an agreement  
9 between RP2 and Department of Agriculture and Office  
10 of Planning about certain dates including dates  
11 regarding deadlines? And just so that the record is  
12 clear, can we have a clear statement of what the  
13 agreement or commitment is that the parties are going  
14 to engage in? Even if the Land Use Commission might  
15 not be party to that agreement but just so that we  
16 don't have confusion which might inadvertently lead  
17 to unnecessary things in the future.

18 CHAIR WONG: You know what, instead of --  
19 can you hold that thought please. Instead of that,  
20 because I think the parties still need to discuss all  
21 these issues, I rather just finish this discussion  
22 today and let you guys all talk and work out some  
23 sort of detail. And let's work with our staff to set  
24 up another status conference. Come back in six to  
25 eight months. You know, work with our staff for the

1 date. Is that okay with all parties instead because  
2 then we have a clearer understanding with everything.

3 Mr. Scheuer.

4 VICE CHAIR SCHEUER: I personally have to --  
5 I'm fine with them coming back when you've come to  
6 some agreement. I think if we're looking at a March  
7 2019 deadline, six months is too late if things fall  
8 apart. I would like to see it much earlier. And I  
9 would just like to see personally DOA, OP and the  
10 landowner work out some sort of self enforcing  
11 mechanism on the MOA side. Clearly, we have to  
12 change things on -- if I understand the record  
13 correctly, on the condition side. But I'd rather --  
14 I'd rather the LUC be the enforcer of last resort,  
15 not the only enforcer in this situation and see  
16 something that if things are -- deadlines are missed,  
17 here's payment made or something done to ensure that  
18 this park actually gets built and we actually get  
19 farmers in there. 'Cause unlike IAL, this would  
20 actually support agriculture in Hawaii.

21 CHAIR WONG: Commissioner Chang.

22 COMMISSIONER CHANG: Thank you so much.

23 I understand RP2's -- I mean you're  
24 providing us your best estimate based upon things you  
25 control. So things that are out of your control, for

1     example, DPP permit approval . . . well, we'd like to  
2     believe you may have some influence here like all the  
3     rest of us, stand in line. And so those things that  
4     are in your control, your planning, submission of the  
5     permits and procurement and getting construction.  
6     Once you have the permit approvals, you are confident  
7     that you can complete the construction in a timely  
8     fashion. That's what I'm hearing.

9             DAVID TANOUE: That's -- I think -- that's  
10     why -- you know, once we get the approvals, we can  
11     commit to we'll get the construction started within X  
12     amount of days, something like that.

13             COMMISSIONER CHANG: Okay.

14             DAVID TANOUE: I'm not sure how long it's  
15     going to take sitting here. But yeah, at least we  
16     get it going.

17             COMMISSIONER CHANG: And maybe seeing  
18     progress might be sufficient.

19             I have a different -- a fundamental  
20     question. I appreciate the fact that RP2 has stepped  
21     in. Local firm, many of these are your clients. We  
22     know where you work. We know where you live so we  
23     trust you. Is there any circumstances upon which RP2  
24     would walk away from this if there is any -- any  
25     additional -- I don't want to call them burdens



1     because they are already conditions. But is there  
2     anything upon which RP2 -- 'cause I think OP had a  
3     hesitancy about doing an order to show cause 'cause  
4     there's -- you guys are all kind of working together.  
5     So is there any circumstance upon which RP2 would  
6     step out and say we're not going to do this?

7             VICE CHAIR CABRAL: Lava flow.

8             COMMISSIONER CHANG: If that happens here in  
9     Hawaii --

10            VICE CHAIR CABRAL: You got it --

11            COMMISSIONER CHANG: There's a lot of things  
12     that won't happen. But is there anything, David,  
13     that RP2 would walk away from this?

14            DAVID TANOUE: Not that I can see.

15            COMMISSIONER CHANG: Okay.

16            DAVID TANOUE: 'Cause we put in -- you know,  
17     we put in our money. It's our money up front. It  
18     wasn't the potential developer's money. It was our  
19     money. So we -- we took the responsibility.

20            Like I mentioned earlier, we talked what was  
21     going to be there a bit quicker so that we could get  
22     underway with the project itself. And then we looked  
23     at it as from a long-term stuff that we're going to  
24     be involved. Part of the purchase agreement that  
25     we're going to be doing the work for us. So that's

1     why the price can be cheaper. You know, stuff like  
2     that 'cause it's the long time -- long-term stuff.  
3     So we don't -- we see ourselves committed to taking  
4     on the responsibility. We do have the resources to  
5     move toward.

6             But we're not developers. Ultimately, we're  
7     not the developer. We're not going to build a house  
8     or houses. We're not expecting to do that. But our  
9     clients are developers.

10            COMMISSIONER CHANG: Thank you.

11            DAVID TANOUE: And again, Department of Ag  
12     is also our clients and we want to make sure that we  
13     don't upset them. And we want to make sure that we  
14     can provide what we need to provide to them the best  
15     we can.

16            COMMISSIONER CHANG: Thank you.

17            CHAIR WONG: Okay. I think we're going off  
18     topic. So -- yes, Commissioner Cabral.

19            VICE CHAIR CABRAL: I know this is going  
20     round and round. But I actually would recommend  
21     that, you know, we're here at the end of May. And  
22     instead of having such tight timelines because things  
23     do happen that you don't plan on, is that we really  
24     look at maybe having that be one year from now that  
25     they would come back with hopefully a completion or

1 at least commence by the construction. You know,  
2 given a little more time in case Edwin's crew can't  
3 get in there in time or what have you. But -- and  
4 then maybe six months for a status update and  
5 whatever manner our staff needs it. And then one  
6 year from now, hopefully completion or at least  
7 commencement of construction or an explanation as to  
8 why you're not completed. That would be my  
9 recommendation.

10 CHAIR WONG: Okay. So for all parties and  
11 staff -- for the parties especially, work together,  
12 try to figure out something and then come to the  
13 staff. If we have to do another status conference,  
14 please set it up.

15 But I think that's all for today and I'm  
16 going to call this meeting adjourned.

17 (Concluded at 12:45 p.m.)

18 --oo0oo--  
19  
20  
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23  
24  
25

## 1 CERTIFICATE

2 STATE OF HAWAII                    )  
3 COUNTY OF HONOLULU                ) SS.

4 I, PRISCILLA GONZAGA, CSR #127, do hereby  
5 certify:

6 That on May 24, 2018, the proceedings  
7 contained herein was taken down by me in machine  
8 shorthand and thereafter reduced to typewriting under  
9 my supervision; that the foregoing represents, to the  
10 best of my ability, a true and correct copy of the  
11 proceedings had in the foregoing matter.

12 I further certify that I am not of counsel  
13 for any of the parties hereto, nor in any way  
14 interested in the outcome of the cause named in this  
15 caption.

16 Dated this 9th day of June, 2018 in  
17 Honolulu, Hawaii.

18  
19  
20 /s/ Priscilla Gonzaga

21 Priscilla Gonzaga, CSR #127  
22  
23  
24  
25