STATE OF HAWAII
LAND USE COMMISSION

Hearing held on April 14, 2022

Commencing at 9:14 a.m.
Held at
Airport Conference Center
400 Rodgers Blvd., Suite 700, Room IIT, No. 1
Honolulu, HI  96818
and
via Zoom Interactive Conference Technology

I. CALL TO ORDER

II. ADOPTION OF MINUTES
March 23, 2022

III. TENTATIVE MEETING SCHEDULE

IV. CONTINUED ACTION—A87-610 KS WAIWA (Oahu)
To Consider Petitioner's Motion for Modification, Time Extension, and Release and Modification of Conditions of Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order issued by the Commission on February 11, 2020 to allow for modification of the Phase 1 and Phase 2 of the solar farm and to modify and release various conditions under the Commission's 2014 and 2020 Decisions and Orders concerning requirements of the submission of a Master Plan, archaeological sites and plans, burial plans, historic resources, aircraft hazards, traffic, development plans and schedules, and decommissioning of the solar farm phases.

V. ADJOURNMENT

BEFORE:
APPEARANCES BY VIDEOCONFERENCE:

COMMISSIONERS PRESENT:
Jonathan Scheuer, Chair
Dawn N.S. Chang
Dan Giovanni
Lee Ohigashi
Nancy Cabral
Arnold Wong
Gary Okuda

COMMISSIONERS EXCUSED:
Edmund Aczon

STAFF PRESENT:
Daniel Orodenker, Executive Officer
Scott Derrickson, Chief Planner
Riley Hakoda, Planner
Natasha Quinones, Chief Clerk
Dan Morris, Esq. Deputy Attorney General
APPEARANCES BY VIDEOCONFERENCE

PETITIONER:
Jennifer Lim, Esq.
Derek Simon, Esq.
Onaona Thoene, Esq.

CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND PERMITTING:
Brianna Weaver, Esq., Corporation Counsel
Dina Wong, Acting Planning Division Chief
Franz Kraintz, Planner

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:
Bryan Yee, Esq., Deputy Attorney General
Rodney Funakoshi, Land Use Administrator
Lorene Maki, Planner

PETITIONER'S WITNESSES
Jason Jeremiah, Kamehameha Schools
Michelle W. Swartman, Kamehameha Schools
CHAIR SCHEUER: Aloha mai kakou. This is the April 14th, 2022, Land Use Commission Meeting. This is our first hybrid meeting, which is being held at a physical meeting location open to the public here at Honolulu International Airport and also by interactive conference technology, which links -- I cannot put people on mute next to me -- which links videoconference participants and other interested individuals of the public via the Zoom webinar platform in order to comply with state law. Members of the public are able to attend this in-person or view the meeting via the Zoom webinar platform.

For all meeting participants, I'd like to still emphasize the importance of speaking slowly and clearly and directly into your microphone. We do the recordings of this meeting from the Zoom -- we do the transcripts of this meeting from the Zoom recording, so it's very important to have a clear audiovisual signal.

If you are tuned into this, your participation in the Zoom meeting is your implied consent to be part of the recording of this meeting. If you do not wish to be part of the recording, you should exit the meeting now.
This meeting allows the conference -- this Zoom conferencing technology allows the meeting participants and other participating members access to this meeting via their own digital devices and Internet access.

For reasons that are beyond any of our individual control, occasional disruptions to connectivity may occur from time to time. If this happens, please let us know, and it's going to be especially important during this hybrid work, because we're going to be trying to pay attention to people physically with us as well as virtually. So let us know if you're having problems accessing the meeting, and please be patient in the process as we try to restore audiovisual signals.

Public testimony during this meeting. The only item which is open for public oral testimony is the adoption of the minutes. We closed public testimony on this docket item at the last hearing on this matter, and we have received some written testimony.

If anybody wishes to testify during the public testimony that's available on adoption of the minutes, if you are calling in by phone, press *9 to raise your hand virtually. If you are here in the
room, there is a sign-up sheet in front of you.

We will take breaks from time to time, approximately 10 minutes every hour. In addition, due to schedule constraints from Commissioner Okuda, we will be taking a break at one point so that he can attend a court hearing.

Commissioner Okuda, that will be at approximately what time, do you believe?

COMMISSIONER OKUDA: Mr. Chair, that would be five minutes to 10:00, probably for about half an hour, depending on when the court calls our case.

Thank you.

CHAIR SCHEUER: Thank you, commissioner.

So my name is Jonathan Likeke Scheuer. I have the pleasure and honor of serving as the Land Use Commission chair. We currently have eight seated commissioners of a possible nine, but we did actually get four more commissioners replacing vacancies as well as existing commissioners who are attending this meeting, as I understand, virtually. Commissioner-to-be Mike Yamane from Kauai is attending, I believe.

Here in the room, I have Commissioner Dawn Chang from Oahu; Commissioner Nancy Cabral, who represents Hawaii Island; Lee Ohigashi from Maui;
Commissioner Arnold Wong from Oahu. Virtually, we have Commissioner Dan Giovanni from Kauai and Commissioner Gary Okuda, who I mentioned already, from the island of Oahu as well.

With us in the room, we have our small but mighty staff, our Land Use Executive Officer Dan Orodenker, our Chief Planner Scott Derrickson, our Staff Planner Riley Hakoda, our Chief Clerk Natasha Quinones. Our deputy attorney general is tuning in virtually, Dan Morris. And we are all on the roll.

As I said, transcriptions are being done from the Zoom recording.

Commissioner Aczon is excused from today's meeting, and Commissioner Okuda will take a break as previously noted.

For the commissioners who are participating in this meeting via Zoom, I'd like you to confirm whether you are alone in the room or if there are any other people present. If so, who is present?

Commissioner Okuda?

**COMMISSIONER OKUDA:** Mr. Chair, I am in the public area of the First Circuit Court courtroom. There is no one else, however, observing or participating with me. But it is a public area.
Thank you.

CHAIR SCHEUER: Thank you, commissioner.

Commissioner Giovanni?

COMMISSIONER GIOVANNI: Similarly, Chair, I am sitting in a public area, in the lobby area of a hotel, the Hilton Hotel in San Diego, but there's no other person within earshot or participating directly in this hearing.

CHAIR SCHEUER: Thank you very much.

Are there any members of the public -- sorry. Our next -- our first order of business, having made it through that, is the adoption of the March 23rd, 2022, minutes.

Ms. Quinones, has there been any written testimony submitted on the adoption of the minutes?

MS. QUINONES: No, Chair. No written testimony has been received.

CHAIR SCHEUER: Okay. No written testimony.

Are there any members of the public who are tuning in virtually who wish to testify on adoption of the minutes? If you are calling in, press *9. If you are accessing via the Zoom webinar platform, please use the Raise Your Hand function. Are there any?
Seeing none, are there any members of the public who are attending physically who wish to testify? Seeing none.

Commissioners, are there any comments or question on the adoption of the minutes?

COMMISSIONER CABRAL: I move for the adoption of the minutes of the March 23rd, 2022, meeting.

CHAIR SCHEUER: Is there a second?

COMMISSIONER WONG: Chair?

CHAIR SCHEUER: Commissioner Wong?

COMMISSIONER WONG: This is Commissioner Wong. I second.

CHAIR SCHEUER: A motion has been made by Commissioner Cabral and seconded by Commissioner Wong to adopt the minutes. Is there any discussion?

Seeing none, Mr. Orodenker, would you please poll the commission?

MR. ORODENKER: Thank you, Mr. Chair. The motion is to adopt the minutes.

Commissioner Cabral?

COMMISSIONER CABRAL: Yes.

MR. ORODENKER: Commissioner Wong?

COMMISSIONER WONG: Yes.
MR. ORODENKER: Commissioner Aczon is excused.

Commissioner Chang?

COMMISSIONER CHANG: Aye.

MR. ORODENKER: Commissioner Okuda?

COMMISSIONER OKUDA: Yes.

MR. ORODENKER: Commissioner Giovanni?

COMMISSIONER GIOVANNI: Aye.

MR. ORODENKER: Commissioner Ohigashi?

COMMISSIONER OHIGASHI: Yes.

MR. ORODENKER: Chair Scheuer?

CHAIR SCHEUER: Aye.

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

CHAIR SCHEUER: Thank you. Mr. Orodenker, would you now please go over our next meeting agenda item, the tentative meeting schedule?

MR. ORODENKER: Thank you, Mr. Chair. Our next meeting will be on April 27th at Hilo for the Church-Hildal motion for reconsideration. We will also begin discussion on the election of officers for the upcoming year and staff performance reviews.

We will be on Kauai on May 11th for a continuation of the Kekaha Ag matter. We will also be on Kauai on May 12th, where we will be honored by
Chair Scheuer's presentation on the public trust doctrine.

On May 25th, we will be on Oahu, if necessary, for this, a continuation of this matter. And if we conclude today, that would be the adoption of the order.

June currently is open; however, we are anticipating those dates to be filled in the near future, so we would ask the commissioners to keep those dates open.

July, we have the 13th and 14th scheduled for tentative meetings, although the dockets have not been determined as yet. On July 27th and 28th, we are anticipating a training session for the new commissioners. And that's all we have on the calendar so far.

**CHAIR SCHEUER:** Thank you, Mr. Orodenker.

Commissioners, are there any questions for Dan about our meeting schedule?

The next agenda item is a continued action for Docket No. A87-610, Kamehameha Schools Waiawa Oahu to consider Petitioner's Motion for Modification, Time Extension, and Release and Modification of Conditions of an Order Granting a Motion for an Order Amending the Findings of Fact,
Conclusions of Law, and Decision and Order issued by the Commission on February 11th, 2020, to allow for modification of Phase 1 and Phase 2 of the solar farm and to modify and release various conditions under the Commission's 2014 and 2020 Decisions and Orders concerning requirements of the submission of a Master Plan, archaeological sites and plans, burial plans, historic resources, aircraft hazards, traffic, development plans and schedules, and decommissioning of the solar farm phases.

Will the parties please identify yourselves for the record, starting with the petitioner?

**MS. LIM:** Good morning, chair and commissioners. Am I loud enough?

**CHAIR SCHEUER:** Maybe a little louder, if you could.

**MS. LIM:** Start again. Good morning, chair and commissioners, other parties. Jennifer Lim representing petitioner Kamehameha Schools.

**MS. THOENE:** Good morning, chair and commissioners. Onaona Thoene, co-counsel for the petitioner Kamehameha Schools. With me today is Derek Simon. Thank you.

**CHAIR SCHEUER:** So you press the button
until it's lit, and then you don't have to hold it down. It should stay lit. And speak directly into the microphone.

MS. WEAVER: Good morning. Deputy Corporation Counsel Briana Weaver appearing on behalf of the Department of Planning and Permitting.

CHAIR SCHEUER: I'm going to say I'm in the same room and having a hard time hearing you.

MS. WEAVER: Should the light be green, or is it supposed to be red?

CHAIR SCHEUER: It should be orange. Did you press the bottom button?

MS. LIM: Yes.

CHAIR SCHEUER: Okay.

MS. LIM: Okay. How's that?

COMMISSIONER WONG: A bit louder.

MS. LIM: Okay.

CHAIR SCHEUER: Among the artifacts that I'll just note for everybody that we're having is that we actually have a number of participants who've only participated virtually in our meetings and never actually participated physically, so there's going to be that aspect of things going on as well.

MS. WEAVER: Good morning. Briana Weaver
appearing on behalf of the Department of Planning and Permitting. With me are Franz Kraintz and Dina Wong. Thank you.

CHAIR SCHEUER: Thank you.

Office of Planning and Sustainable Development?

MR. YEE: Good morning. Deputy Attorney General Brian Yee on behalf of the Office of Planning and Sustainable Development. With me is Lorene Maki and Rodney Funakoshi from the Office of Planning and Sustainable Development.

CHAIR SCHEUER: Thank you. I will note that I think it will work better for our hybrid meetings in the future if we all have access to laptops physically so that we can see your beautiful smiling faces.

I will now update the record. On April 4th, 2022, the LUC mailed and emailed the meeting agenda for this meeting to the parties in this docket to our citywide and county mailing lists. On April 7th, petitioner filed a second list of witnesses, a second list of exhibits, a certificate of service, and Exhibits 42 through 47.

On April 12th, the Department of Planning and Permitting filed its Notice of Appearance of
Counsel Briana Weaver. Also on that date, the commission received additional public testimony.

Let me go over our procedures for today. First, I will ask the commissioners if there's any additional disclosures to make. Next, I will recognize any written public testimony. As I mentioned before, I did close oral testimony on this matter in the last hearing, so there will be no further oral testimony on this matter at the time.

After the notification of written testimony, the petitioner will continue their presentation from where they left off.

Oh, excuse me, before that, we will accept the new exhibits into the record as proposed -- or consider the acceptance of new exhibits into the record as proposed by petitioner.

Then we will hear from the petitioner continuing their presentation, followed by DPP and then OPSD to make their presentations with questions and comments from the commissioners.

The petitioner will be given the opportunity to provide any rebuttal, and after all parties have presented their arguments, presuming we make it through all of that, the commission will conduct formal deliberations and issue a decision on
the motion.

As noted, from time to time, we will be taking breaks, one approximately at five minutes to 10. We will lose one of our commissioners at 3 p.m., so we will hopefully make it through our proceedings by 3. If not, then we will have to continue this yet again. We will also take a longer break for lunch.

Are there any questions on the procedures today, beginning with the petitioner?

MS. LIM: No questions from petitioner.

Thank you.

CHAIR SCHEUER: DPP?

MS. WEAVER: No questions. Thank you.

CHAIR SCHEUER: OPSD?

MR. YEE: No questions. Thank you.

CHAIR SCHEUER: Thank you.

Commissioners, are there any further disclosures to make regarding this docket?

I believe the additional witness added to the Kamehameha Schools witness list is the wife of a high school classmate of mine, but not one of the high school classmates who bullied me, so I can continue to be fair and impartial in these proceedings. But I just want to throw that out
there.

If there's any concerns from the parties, I can hand it over to Vice Chair Giovanni to proceed. Any objections? I'm getting plenty of feedback from OPSD. Commissioner Giovanni personally must have helped them. Any objections or concerns with my disclosure, starting with the petitioner?

MS. LIM: No concerns. Thank you.

CHAIR SCHEUER: DPP?

MS. WEAVER: No concerns. Thank you.

CHAIR SCHEUER: OPSD?

MR. YEE: No concerns. Thank you.

CHAIR SCHEUER: Of course, the difference between Brian and I is that he went there when there was only boys.

COMMISSIONER WONG: Mr. Chair?

CHAIR SCHEUER: Commissioner Wong?

COMMISSIONER WONG: A question about the witness. Was -- is it on our list or was she --

CHAIR SCHEUER: She is on the list, which we have not yet accepted.

COMMISSIONER WONG: Thank you. Just wanted to make sure.

CHAIR SCHEUER: I acted preemptively.
COMMISSIONER WONG: Thank you, chair.

CHAIR SCHEUER: Anything else, commissioners? Any disclosures?

If not, Ms. Quinones, written testimony?

MS. QUINONES: Good morning, chair.

CHAIR SCHEUER: If you can speak directly into the microphone, Ms. Quinones.

MS. QUINONES: Good morning, chair. This is Natasha. We received two additional testimonies. One is Garret Matsunami from Castle & Cooke Hawaii, and the second one is Stanford Carr for Stanford Carr Development LLC.

CHAIR SCHEUER: Thank you. Those have been posted?

MS. QUINONES: They have been posted to the website.

CHAIR SCHEUER: Thank you very much. And I'll deal with the petitioner's exhibits. Ms. Lim, you have additional exhibits you wish to enter into the record?

MS. LIM: That's correct, chair. Jennifer Lim speaking, Kamehameha Schools, and we submitted Exhibits 42 through 47 as you noted earlier. Some of these materials are materials that have previously been submitted in this docket, but we
provided them again in light of some of the questions that came up last week.

Some of the materials are newspaper articles that came out after the last master plan hearing that we had in, I believe, this very room, and then an updated master plan PowerPoint presentation and an updated Gantt chart, again, all in response to questions from commissioners.

So we would ask for those to please be admitted into the record.

CHAIR SCHEUER: Thank you, Ms. Lim. Any objections to these admissions to the record?

County?

MS. WEAVER: No objections. Thank you.

CHAIR SCHEUER: OPSD?

MR. YEE: No objections.

CHAIR SCHEUER: Commissioners, starting with the ones physically here?

Commissioners Giovanni or Okuda, any objections?

Seeing none, petitioner's additional exhibits are entered into the record.

County, any additional exhibits?

MS. WEAVER: We don't have any.

CHAIR SCHEUER: I can no longer hear you.
I don't know what has happened.

MS. WEAVER: No additional exhibits.

CHAIR SCHEUER: Thank you. OPSD?

MR. YEE: No additional exhibits.

CHAIR SCHEUER: Okay. With that, we can continue, Ms. Lim, with your presentation.

MS. LIM: Thank you, chair. So when we broke from the last meeting, my recollection is that Mr. Jason Jeremiah, our expert in traditional and customary Hawaiian practices, had gone through direct examination, and I don't believe the other parties had questions for him.

But commissioners had questions, and there might be the possibility for redirect, so therefore, I would ask that Mr. Jeremiah would continue in questioning from commissioners.

CHAIR SCHEUER: Thank you, Ms. Lim. And my recollection jives with yours.

Mr. Jeremiah? Even though we could say that you are still under oath, I'm just going to swear you in again. Do you swear or affirm the testimony you're about to give is the truth?

MR. JEREMIAH: Yes.

CHAIR SCHEUER: Okay. Let's see whether we can get the mic -- you and the mic closer
together. Let's just -- please, Mr. Jeremiah, if you could just do a test. You're almost kissing it. There you go. That's better. Okay.

Are there questions for the witness, starting with DPP?

**MS. WEAVER:** We have no questions for him.

Thank you.

**CHAIR SCHEUER:** OPSD?

**MR. YEE:** No questions. Thank you.

**CHAIR SCHEUER:** Commissioners, questions for Mr. Jeremiah?

Commissioner Chang?

**COMMISSIONER CHANG:** Good morning, Mr. Jeremiah. Good to see you this morning.

**MR. JEREMIAH:** Good morning.

**COMMISSIONER CHANG:** I just have just a few questions. And I appreciated the work that was done. There was a lot of good work, a lot of reaching out to the kupuna. (Unintelligible.)

These questions deal with if you could describe for me the use of the property prior to the plantations as far back as pre-contact, if you could describe that, because I did not see a lot of descriptions about that.

I know there was a lot of discussion there
as we turn to the plantations. A lot of the resources may have been as far as -- there was no evidence of -- if you could describe the activities on the property prior to western contact.

MR. JEREMIAH: Thank you, Commissioner Chang. You know, when you look into the written record, the oral record from our kupuna through various archival sources, and just understanding traditional land uses of Waiawa, especially in the Ewa moku, the area of the proposed project, this middle area of Waiawa, was not an area that was heavily inhabited. It wasn't heavily used.

There was traditional, like, trails that were documented by John Papa Ii in some of his work that they have been pretty close to the area, but they were trails that kind of where the present-day Kamehameha Highway would have been, and kind of there would have been a thoroughfare that went up to the North Shore, another royal center at the mauna areas, so roughly the areas.

But then we looked into the land commission's awards that were awarded and claimed during the mahele in the 1850s. We see the concentration of the habitation, the use of the ahupua'a, the lower area below the current Leeward
Community College. There were lokoi'a, loi kalo, loko wai in those areas. And you didn't see any claimants in the area of this, of the area we're talking about in this petition.

So that's generally my understanding through my research of the area, that there, you know, through our archaeological work, we haven't, you know, uncovered any significant Hawaiian sites in this area.

We've gone through there. We've talked to archaeologists about plantation. But I would say that we wouldn't suspect a lot of traditional Hawaiian sites the area of the petition area.

COMMISSIONER CHANG: Thank you for that description. In many instances, traditional and customary practices is the right to access. It may not be, like you say, a place where there was habitation or where there may have been actual use. But it may have been -- especially with your mention of trails, it may have been access with porters running mauka to makai so that people could get access from where they live, perhaps a compound.

Could you elaborate further on this trail system? You said there was one that is currently present, Kamehameha Highway. Any other trails
within this property?

MR. JEREMIAH: Within the property, I haven't seen any documented trails specifically in the property. And, you know, there have been trails more north of the ahupua'a Waiawa that are where a lot of the kind of the public hunting area is located. But within the specific ahupua'a, I haven't seen any documented trails in those areas.

COMMISSIONER CHANG: My final question is within this area, are there known to be any resources that may have been used for gathering, whether they're for medicinal purposes or subsistence? Are you aware of any kinds of resources that may have at one time been located in this area?

MR. JEREMIAH: I'm not aware of any of those traditional resources, whether it be plants and so forth, in this area. It's -- and as you've kind of mentioned as well -- the plantation came in, and there's been a lot of impact, and we haven't seen any Hawaiian plants in this area.

COMMISSIONER CHANG: And this is just to confirm that Kamehameha Schools has not received requests by, you know, Hawaiian practitioners or families to access the area since the time that --
as far as that you're aware of?

MR. JEREMIAH: As far as I'm aware of, you know, we took back more control and management of this property area around 2010, 2011, and we haven't to my knowledge received any requests of that nature.

COMMISSIONER CHANG: I'm notorious for asking my last question, kind of, but I think this is my last one. And I have greatly appreciated just your ability to respond to the questions I've asked. So clearly you have a good understanding of this property.

However, in the future, if a family member comes forth and asks Kamehameha Schools to have access or can demonstrate that they have a relationship to the property, would Kamehameha Schools be adverse to meeting with the family to discuss reasonable access to the property?

MR. JEREMIAH: No. We would not be adverse to that. You know, I think we want to support our Native Hawaiian communities and families and individuals and practitioners. And, yeah, we would kind of discuss that with them, if they would come forward.

COMMISSIONER CHANG: And I appreciate that
as well, because as land stewards, especially Kamehameha Schools, where you have such a special kuleana to always keep that door open in the event that there is a family member who can demonstrate activities on the property. So mahalo for that. And I have no further questions. Thank you so much, Mr. Jeremiah.

MR. JEREMIAH: Thank you, Commissioner Chang.

CHAIR SCHEUER: Thank you, commissioner. Commissioners, any further questions for Mr. Jeremiah?

Seeing none at this time, any redirect, Ms. Lim?

MS. LIM: No redirect. Thank you.

CHAIR SCHEUER: Okay. Thank you very much.

Thank you, Mr. Jeremiah, for your testimony.

MR. JEREMIAH: Thank you, chair.

CHAIR SCHEUER: Please feel free to call your next witness.

MS. LIM: So, chair, commissioners, our next witness is Michelle Swartman. And to let the cat out of the bag, Michelle is going to walk the
commissioners through the PowerPoint that we filed. I think that's Exhibit 46. So I do want to be mindful of Commissioner Okuda's exit time, which is going to be in about 10 minutes, so we'll run through as much as we can.

CHAIR SCHEUER: That's what I was going to suggest.

MS. LIM: Okay. Exhibit 47 is the PowerPoint.

CHAIR SCHEUER: Okay. So, okay. So, sorry, in virtual land, how are we getting the PowerPoint? Are we putting the PowerPoint up on the screen?

MS. LIM: I'll be sharing it on Zoom.

CHAIR SCHEUER: Thank you, Ms. Lim. Okay. And, Ms. Swartman, good morning.

MS. SWARTMAN: Good morning. Aloha.

CHAIR SCHEUER: Do you swear or affirm the testimony you're about to give is the truth?

MS. SWARTMAN: I do.

CHAIR SCHEUER: Okay. Thank you.

MS. LIM: Michelle, for the record, would you please tell us --

CHAIR SCHEUER: Ms. Lim, talk into your microphone, if you can.
MS. LIM: Would you please tell the commissioners your business address for the record?

MS. SWARTMAN: Sure. It's 567 South King Street, Suite No. 200, Honolulu, Hawaii 96813.

MS. LIM: Thanks. And I know you work at Kamehameha Schools, but would you let the commissioners know, please, what your position is there?

MS. SWARTMAN: Sure. I work in the planning and development of the Commercial Real Estate Division at Kamehameha Schools.

MS. LIM: And how long have you been there?

MS. SWARTMAN: I've been there for the last six years, and I've been working in that capacity across -- and working on different land projects across the Ewa Moku for Kamehameha Schools for about the last six years.

MS. LIM: Okay.

MS. SWARTMAN: Including Waiawa.

MS. LIM: And, Michelle, what is your professional educational background? I just -- I know you haven't testified before this commission in the several hearings we have had on Waiawa, so let the commissioners know a little bit more about you.
MS. SWARTMAN:  Sure. So I was born and raised in Hawaii on Oahu. I attended Punahou School and received my bachelor degree from University of Hawaii, and I'm very happy to be working with Kamehameha Schools.

I have been in the real estate industry for the last 32 years, and I have been in land development and planning for the last 16 years.

MS. LIM:  Thanks for that. And, Michelle, you know the reason we're here today is because we filed a motion. And when I say "we", I mean your counsel filed a motion on behalf of Kamehameha Schools for a motion for modification, time extension, release and modification of some conditions. We filed that in December 2021. Would you let the commissioners know if you're familiar with the contents of that motion?

MS. SWARTMAN:  Yes. I am familiar with it and have reviewed the files along with the appendices that were attached to them.

MS. LIM:  Now, Michelle, for the record, did you attend the hearing that we had on March 23rd, the first hearing on this motion?

MS. SWARTMAN:  I did, but I did not provide any --
MS. LIM: So you were in the audience.

MS. SWARTMAN: I was.

MS. LIM: What was your takeaway as you listened to the hearing, and especially questions that came from the commissioners?

MS. SWARTMAN: I guess as I was listening to the testimony and hearing, it became apparent to me that there was some confusion over the Waiawa master plan and solar uses as an interim use.

I think there was a little bit of confusion as to whether or not these solar projects would hinder the development of future homes at Waiawa. And I hope this presentation that I'm hoping to present to you will, you know, add more clarity to that. And instead describe how in fact, the solar development is in synergy with the Waiawa master plan that we presented in 2020.

MS. LIM: I see with that, Michelle, I know we have Exhibit 46 up on the screen. Why don't you -- excuse me, I've done it again. Exhibit 47 is the PowerPoint presentation. Why don't you go ahead and walk the commissioners through that? And I'll ask you some questions as we go through it as well.

MS. SWARTMAN: Okay, then.

CHAIR SCHEUER: Don't be afraid to
MS. SWARTMAN: Okay.

CHAIR SCHEUER: Both of you, please.

MS. SWARTMAN: So I also want to note that we have submitted Exhibit 48, the GANTT chart, as requested, I think, by the commissioner last time. So we have submitted that as well.

MS. LIM: And, you know, Michelle, you and I, I think, have mind meld, because we keep messing up exhibit numbers.

MS. SWARTMAN: Yes. Sorry.

MS. LIM: But for the record, the GANTT chart is actually Exhibit 46.

MS. SWARTMAN: Oh, okay.

MS. LIM: And the PowerPoint is Exhibit 47.

MS. SWARTMAN: Correct.

MS. LIM: But it’s noted. A Gantt chart was submitted in response to comments from commissioners.

MS. SWARTMAN: Yes. I think we can start. Turning to the next slide, though. So, you know, you may recall in 2020, my colleague and managing director for commercial real estate -- really, my boss -- Walter Thoemmes presented to this commission
in January, I believe, of 2020, and he presented our Waiawa master plan.

And the master plan vision has not changed since then, and we continue to pursue. And while it's ambitious and it will be a long and arduous process, we are continuing to strive for the vision of Waiawa community to include culture, to include housing, the much-needed housing, and rail as well as solar as an interim use.

So collectively, you know, we do think that there's an opportunity using our lands and our aina at Waiawa.

MS. LIM: So, Michelle, you mentioned Walter and --

MS. SWARTMAN: Can I add one more thing?

MS. LIM: Of course.

MS. SWARTMAN: I'm sorry. I also want to just note that, you know, Kamehameha Schools has an obligation to our beneficiaries, and in all decisions that we make with our aina Hawaii, we have to make sure that it makes economic sense, and so through those lands we're able to provide in perpetuity for our beneficiaries.

So it's not for our beneficiaries today, but it's really the kinds of decisions that we make
that are hard and long really affect our
beneficiaries in the long term. So it's not for
just today. It's for generations to come.

        Sorry about that.

        MS. LIM: No. Those are important points.
I'm glad you interrupted me.

        Coming back to sort of the technical
details, why did Kamehameha Schools submit a master
plan to the commission? I believe it was submitted
in 2019, and then a presentation was done, like you
said, by Mr. Thoemmes in January 2020. Why was that
done?

        MS. SWARTMAN: In the 2014 decision and
order authorizing Kamehameha Schools to use our
lands for solar as an interim use required that we,
Kamehameha Schools, goes back to the commission with
a revised master plan within five years of that
approval, which in 2014, five years from then was
2019.

        So I believe it was condition 1 that we
were satisfying, and that was the reason why we sent
it to the commission in 2020. I believe we
submitted our motion in October of 2019, but
eventually made our presentation in 2020, January of
2020.
MS. LIM: That's correct. And just for the record, the master plan submittal that was made in October 2019, another copy of that's been filed. That's Exhibit 42; is that correct?

MS. SWARTMAN: That's correct.

MS. LIM: And Mr. Thoemmes' PowerPoint that he gave to this very commission in January, we filed as Exhibit 43.

MS. SWARTMAN: Yes. That's correct.

MS. LIM: So, Michelle, you're going to do this way better than I can. Why don't you give the commissioners a refresh? I mean, they've already heard all about the master plan. Will you give them a refresh going back to your opening point, which is there seemed to be some confusion. We just haven't explained things well enough.

MS. SWARTMAN: Yeah. Well, what you see on the screen here is an overview of our Waiawa master plan. It may seem familiar to you. The actual map that you see to the right was presented to the commission in 2019, and Walter did speak to it.

But so just to kind of give folks a reminder, another overview of the land plan, you know, our land plan remains the same today. It
covers approximately 2,010 acres. There's going to be various uses across the lands here that you see. It will include housing, open space, schools, parks, commercial uses. And what you see as the star, that location there marks the area where we intend to start our land plan and our Waiawa community.

**MS. LIM:** Michelle, I'm going to stop you there. I know we've always indicated since 2014 that Kamehameha Schools was intending to start development from the south, but let the commissioners know why.

What's the thinking behind that? Why is it important, and why was the decision made to pursue development starting from the south?

**MS. SWARTMAN:** True. So our plan differs from the previous plans that have been approved in the past. Primarily, the reason why we are starting at the southern or makai side of our land plan is because, one, it's closer to the Pearl Highlands transit station. And so -- and secondly, it's closer to the existing infrastructure.

**MS. LIM:** By infrastructure, do you mean --

**MS. SWARTMAN:** Well, sewer, roadways, and
water as well.

    MS. LIM: So there's a better ability to actually connect to existing sewer infrastructure as you start building roads?

    MS. SWARTMAN: And we felt that it was just -- you know, we constantly look for ways to be more efficient in our planning process. So, you know, instead of bringing all our infrastructure up to the mauka side through the Kula area, up that area, starting where, you know, our existing infrastructure makes more sense to us.

    MS. LIM: And certainly, the transit --

    MS. SWARTMAN: Yes. Obviously, yes.

    MS. LIM: -- component.

    MS. SWARTMAN: Yeah.

    MS. LIM: Michelle, the slide says interim solar, Phase 1 and Phase 2. And it's going to be 66 megawatts with a combined 384 megawatt-hour of storage. What are you talking about when you say interim solar? Where is Phase 1 and where is Phase 2?

    MS. SWARTMAN: I don't feel like you can see it as clearly on the screen, but if you follow along, my apologies, it's a little small, but.

    So there are two solar projects at Waiawa,
which was approved in 2014. And the area to the right, which is dashed in pink, where the hand is encircling right now, that is what we call the Waiawa Solar Phase 2. That's the Solar Phase 2 site, and that currently is being constructed by Clearway, and where this commission approved that solar project in 2020.

MS. LIM: I'm just going to interrupt you again. I want to make sure that we're very, very clear. So the site that you're calling the Phase 2 solar, where the hand is on the screen right now, that was approved by the commission for solar use in 2014?

MS. SWARTMAN: Yes. That was -- both projects were approved in 2014 as an interim use.

MS. LIM: And then, the Phase 2 solar site was approved again in 2020?

MS. SWARTMAN: That's correct. I think they were somewhat patient. The solar, Waiawa Solar Phase 2 site where that hand is, is to be decommissioned by 2059.

MS. LIM: At the latest.

MS. SWARTMAN: At the latest, based on -- with the caveat that there's conditions to that. But I believe it's at 2059.
MS. LIM: What is --

COMMISSIONER OKUDA: Chair, I'm sorry, chair. This is Gary Okuda. May we take a break at this point?

CHAIR SCHEUER: Yes. Reconvene in 25 minutes, half hour?

COMMISSIONER OKUDA: Yes. Hopefully, sooner than then. Thank you, chair.

CHAIR SCHEUER: Okay. We're going to pause right now. We're take a recess. I'm not going to at this time announce how long our recess is going to be. I'm going to be texted by Commissioner Okuda when he's done with his court hearing. I'm going to give people a five-minute warning that we're ready to start again.

(Recess taken from 9:55 - 10:58 a.m.)

CHAIR SCHEUER: We're back in session. We are joined in person by Commissioner Okuda. I apologize to everybody for the unexpectedly long delay, and thank you. It is 10:58. My intention is that we go until noon, or perhaps if we need to go slightly beyond an hour to conclude any cross and rebut of the witness, we will. So then we will take a half-hour break for lunch and resume our proceedings.
Ms. Lim, please continue with the direct testimony of your witness, Ms. Swartman.

MS. LIM: Thank you, chair. And my co-counsel, Ms. Onaona Thoene, is putting the PowerPoint back up on the screen, Exhibit 47. And I believe we left off on slide 3. We'll just let Michelle get started once that's pulled up.

MS. SWARTMAN: So thank you. I just wanted to kind of clarify also the various phases of our Waiawa master plan that we presented to you folks in 2020. And I know this is just kind of a recap of what we had presented then.

But the colors that you see correlate with the various phases, and it's chronologically. So what you see in yellow is Phase A. Green is Phase B. C is in brown to the left where those springs are. D is the pink area, and then E is in the most mauka region and in purple.

And I think where I left off was right between the two different solar projects that were approved in 2014. And the area in the pink dashed area is what we refer to as site of Solar Phase 2 site. And that is in construction right now by Clearway, which you folks approved in 2020.

And then in the area that you may see as
the hashed red area and blue, that boundary
identifies what the current motion is in front of
you. And that land area is that area, refers to
what we call Solar Phase 1.

And so Solar Phase 1 project occurs in two
different phases, if you will, and it correlates
with the rollout of our master plan development.

So in the red dashed area, we refer to
that as Parcel A, and the area in the blue dashed
area that covers portions of Phase D in our master
plan is what we refer to as Parcel B.

So this map, you know, kind of shows
ingraphically how the Waiawa master plan and the solar
uses as an interim use is an integral part of our
master plan.

MS. LIM: Michelle, just for
clarification, because you're using the term
"interim use", but I look at this map of the master
plan, and I see over in Phase C and Phase D of the
master plan a solar farm. So is that what you mean?
The master plan and the solar farms are going to co-
exist from --

MS. SWARTMAN: Actually, they -- the solar
uses are an interim use. So as we develop from the
makai for our Waiawa community, as we rollout into
the latter phases, the solar uses in Waiawa solar
site 1 or Solar Phase 1 will then be decommissioned
and roll out. They will go away.

Solar Phase 2 in the pink dashed area,
that will remain as we continue with our master
plan, working our way from the makai side up. So it
is timed with what we think is the absorption rate
for homes and commercial uses. And that's how we
created our agreements with the solar developers.

**MS. LIM:** So in your view, is there going
to be competition between the Phase 1 solar project,
which is what we're here about today -- is there
going to be competition between Phase 1 solar
project and the ability to construct homes on this
land?

**MS. SWARTMAN:** No, none of that. No, not
at all. There's no competition. It's just part of
the overall plan where we optimize the ability to
use our lands for renewable energy projects. And as
they roll off, the master plan will continue to move
upwards.

**MS. LIM:** Maybe it would be more clear if
you'd help the commissioners understand the
estimated timing of the master plan, which I think
is on the next slide.
MS. SWARTMAN: Yes. If we could change to the -- turn to the next slide there.

Okay. So this slide speaks directly to our phasing again. Just as a reminder, renewable energy sources create an opportunity for Kamehameha Schools and has a -- is a revenue source. And so, we think that -- we believe that renewable energy at Waiawa as an interim use is just very aligned to, you know, our values at Kamehameha Schools.

So back to the slide. Phase A you'll see in the pink there.

MS. LIM: I'm sorry. Can I just correct you? Phase A in the master plan, that's in yellow. Is that what you --

MS. SWARTMAN: Yes. Yeah. So if I go back to the red boundary bold line that you see here, identifies the urban uses or the urban district at Waiawa. And you'll see just below that big chunk a number 1 looking boundary. That, too, is within the urban district.

And you'll see here, again, on both the Ewa side and Diamond Head side of our master plan, you'll see where we intend to have our renewable energy projects, our solar projects.

MS. LIM: So please, again explain to the
1 commissioners what these timeframes are, where it says Phase A in yellow and it lists the number of homes, and then it's got years. What do those years represent?

MS. SWARTMAN: So the numbers that you see in parentheses this time around, because this, to kind of note, we presented an exhibit that had these kinds of timelines in the 2020 presentation. But this year, I'd like to highlight the fact that these timelines are in response to this commission's requirement for us to -- KS to complete the Phase A backbone infrastructure by 2030.

So these dates here, as in Phase A in yellow, 2031 to 2040, respond directly to -- they reflect the vertical construction of homes. So obviously, we have to complete the backbone infrastructure, as you folks required in 2020, by 2030. So we anticipate starting vertical construction in 2031.

MS. LIM: So then, explain from Phase A of the master plan, vertical construction starts -- it's estimated in 2031. Then what happens after that, Michelle, in terms of the phasing?

MS. SWARTMAN: So in terms of the phasing, we roll up into Phase B, where we anticipate
delivering 2,300, approximately, homes and starting construction, vertical construction, in 2038. And that will be throughout Phase B up to 2048.

And then the same goes with Phase C. And again, just as a reminder, Solar Phase 1 Parcel A will decommission by 2044, and then Phase 1 solar Parcel B will be decommissioned by 2054 that you see in pink in that D area of the master plan.

MS. LIM: So just to be real clear, the solar farm that we're here about today, the Phase 1 solar, the portion that's within Phase C of the master plan, that's going to be decommissioned no later than the end of 2044. And you anticipate vertical construction in Phase C of the master plan to begin when?

MS. SWARTMAN: In 2045. I'm sorry. I can just barely see that --

MS. LIM: I think it says 2048.


MS. LIM: It is light on the screen. So again, do you see that there's any competition? Is the solar farm, Phase 1 solar farm, in any way delaying, inhibiting, restricting the master plan?

MS. SWARTMAN: No, not at all. Not at
1 all.

2 **MS. LIM:** You know, keeping track of all
3 the phasing and names and developer names is a
4 little bit confusing. You've managed it real well.
5 I guess maybe we'll just acknowledge that it's
6 difficult when there's different phases, different
7 parcels, and maybe assure the commissioners that
8 you're prepared to answer questions in that regard.

9 **MS. SWARTMAN:** Yes. I think anytime in
10 planning, there's difficulty in proper labeling. I
11 mean, we just review that so many times and often,
12 but, yes, you know, I think it's a little confusing
13 with regard to the phasing numbers.

14 But just to be clear, the motion for Phase
15 1 solar, that's the 387 acres in this -- in the 287-
16 acre area that this commission approved for the
17 interim uses in Solar Phase -- excuse me, interim
18 uses in 2014.

19 So both areas for Solar Phase 1 and Solar
20 Phase 2 were both authorized in the 2014 decision
21 and order.

22 **MS. LIM:** Is this motion requesting any
23 additional land for the solar farm than what was
24 already approved by the commission in 2014?

25 **MS. SWARTMAN:** No. Not for the solar farm
at all. No.

CHAIR SCHEUER: If I may, some of your points are on slide 6 of your exhibit? What you're talking about doesn't seem to be a little more --

MS. LIM: We'll continue. We do want to make sure that everybody can follow the facts, even if sometimes it seems like they're a bit redundant.

So coming back to what we have in front of us, which is, I believe -- now I've lost my track; are we on slide 3 or slide 4?

MS. SWARTMAN: Slide 4.

MS. LIM: Slide 4. Okay. Now, the -- can you explain to the commissioners why Phase 1 solar, the one that we're here about today, is split into Parcel A and Parcel B? And that's to make way for the master plan.

MS. SWARTMAN: Correct.

MS. LIM: Now, I see that the Phase 2 solar, which we're not here about today, but we want to be sure everybody has a complete picture, what's going on in this property. Why isn't that split into Parcel A or Parcel B or somehow split up into different little pieces?

MS. SWARTMAN: So Solar Phase 2 sits within the zone of contribution, and so there's no
urban uses that are contemplated within the area, so there was no need for them to make way for our master plan development.

You know, they were -- the commission authorized them to be there until 2059 and again, you know, should they meet the various conditions of that D&O from 2020.

MS. LIM: Gotcha. So, I mean, there's not going to be, at this point, anticipated development going on in that area whereas for Phase 1 solar, that is planned for development.

MS. SWARTMAN: That is correct.

MS. LIM: Michelle, switching gears, also on this slide, though, you explained what the red bold line means. And that's the 1,395-acre existing urban district land.

But then up at the top, you've got some other notations about land, and you said the master plan itself covers about 2,000 acres, so I don't know if you want to talk to that issue on this slide or the next slide. Just explain that for the commissioners, please.

MS. SWARTMAN: Yes. So the 2,010 acres that I mentioned earlier that the Waiawa master plan covered consists of the 1,395 acres that we have
1 currently in the existing urban lands.
2 And we will seek, based upon the existing
3 master plan, an additional 476 acres for
4 reclassification. And then the lands to be retained
5 in ag is about 130 -- again, I can't see that well
6 -- about 139 acres.
7 But, okay, thank you. Let's move to the
8 next slide. I think this helps to describe
9 graphically what I'm talking about.
10 So this slide, slide number 5, again
11 speaks to the various lands that are urban district.
12 So the red bold line that you see there indicates
13 the current 1,395 acres that are in the urban
14 classified district.
15 The areas that you see in hashed and
16 labeled where it says there are portions of Phase A
17 of 71 acres that we would need to reclassify in
18 Phase C of our master plan, where we need to
19 reclassify approximately 114 acres.
20 And then in the upper areas of our master
21 plan, our proposed master plan today, we're looking
22 at reclassifying 251 acres from ag to urban. So,
23 yes.
24
25 CHAIR SCHEUER: 291?

MS. SWARTMAN: 291 would be reclassified.
Yes. So collectively, that makes about 476 acres.

**MS. LIM:** So, Michelle, I know we're discussing the master plan, and yet you're talking about reclassification.

Now, I heard one of the commissioners raise a question at the last hearing. If this master plan is premised upon a reclassification, you know, how do we know they can go forward? So what happens if the commission decides not to grant that reclassification?

**MS. SWARTMAN:** You know, we have a very long road ahead of us. We have a number of steps to take before we even ask the commission to grant a reclassification. So, you know, I think the biggest step for us at this point would be satisfying the environmental impact statement for the entire Waiawa master plan. I think it's premature at this point to really know what the alternatives are that we, you know, evaluate in the EIS process.

But, you know, one of the possibilities is that we could have an alternative that shows a smaller Waiawa master plan than what we show today. We just need to go through the process of understanding the impacts of the various alternatives through our EIS process. We just
haven't gotten there yet.

**MS. LIM:** Understood. So whether ultimately this commission is asked to reclassify additional lands or not, it's not known at this point. But in an effort to be transparent, you're describing, you know, this sort of master desired vision for Waiawa, and then the hard work needs to get done.

**MS. SWARTMAN:** Yes. And what -- I mean, assuming that this is the land plan that we select and we go through our EIS, we obviously will have to look for reclassification of lands. But at this point, we don't really know what all those alternative plans look like.

**MS. LIM:** And even setting aside a question about reclassification, but, let's say ultimately, the Waiawa master plan is retained entirely within the existing urban district plans, and maybe some adjacent agricultural lands that you plan on keeping in the agricultural district, would Kamehameha Schools have to return to this commission to get permission to go forward with that project?

**MS. SWARTMAN:** Yes. So there are, I think, actually kind of -- I think the next slide will describe to you -- maybe we can jump to the
next slide first before I answer that question.

MS. LIM: Sure.

MS. SWARTMAN: That's slide number 6.

This is just kind of a reminder of -- again, I'm sorry if I'm repeating myself over and over again, but we just want to be crystal clear that, you know, this is again -- just this line, number 6, describes the urban boundary. It shows where the Phase 1 solar, which is who, through our partner AES, would develop these areas of Parcel A and Parcel B, and Phase 2 solar as Clearway, so.

And just as a reminder again, Solar Phase 1 of Parcel B is to be decommissioned in 2044, and then Parcel B decommissioned by 2054, and then lastly, Phase 2 Clearway Solar will be decommissioned in 2059, per the LUC 2020.

So I'm sorry. Again, my apologies for being repetitive, but thank you for bearing with me. We can turn to the next slide, if you don't mind.

So this slide describes in chronological order the solar approvals. And again, this might be a little redundant, but I just wanted to remind you all in 2012, KS regained control of our Waiawa lands from the Gentry Development. And then just two years later, we went to the State Land Use
Commission, and they approved the solar as an interim use until 2049.

And then even two years after that, unfortunately, Sun Edison, who was a merged company, filed bankruptcy, and the Waiawa lands returned back to KS once again.

MS. LIM: They were a publicly traded company; is that right?

MS. SWARTMAN: That is correct.

MS. LIM: So had KS done its due diligence to determine if SunEdison appeared to be a reputable and capable developer?

MS. SWARTMAN: Yes. At that time, we were definitely confident in their ability to deliver the solar as an interim use of that land.

MS. LIM: I think a lot of people were surprised.

MS. SWARTMAN: Yes.

MS. LIM: Thank you.

MS. SWARTMAN: Unfortunate. However, though, in 2018, HECO distributed a request for information, and KS responded to that request, because we felt that there was an opportunity for KS to use our aina for renewable energy and to support the state in their goals for renewable energy by
2050 -- 100 percent by 2050, so.

And then we went back to you folks again in -- we submitted our motion to amend in 2019.
This commission approved and reauthorized the use of our lands at Waiawa for solar as an interim use once again.

**MS. LIM:** In the 2019, 2020 motion on the Phase 2 solar, did Kamehameha Schools alert this commission that we would be coming back in fairly short order to request reauthorization for the Phase 1 solar site?

**MS. SWARTMAN:** Yes. In 2020, we did notify the LUC of our intent to come back for the use of the other solar site and for their authorization again. And thus, here we are today. But I also want to note here that you'll see in the slide that in 2020, the commission also imposed a condition on Kamehameha Schools to complete all backbone infrastructure for our Phase A by 2030.

**MS. LIM:** And going back to 2014, and this goes to a question I asked while you were on a prior slide, but I think you justifiably wanted to move ahead. But my question was even if Kamehameha Schools elects ultimately not to pursue a district
boundary amendment so the master plan stays entirely within the existing urban land, does Kamehameha Schools need to return to the Land Use Commission to get authorization to go forward with their master plan?

MS. SWARTMAN: Yes. The answer is yes. We do intend to come back to the State Land Use Commission for a couple of reasons. One is, well, you know, what was authorized in 2014 -- or, excuse me, what was authorized for Gentry's urban reclassification is quite different. What they represented back then is quite different from what our land plan shows.

You know, at that time, Gentry proposed two golf courses. They also proposed use of the lands for age-restricted housing, and whereas our land plan is quite different.

One of the ways that we're quite different from the Gentry plan that is in place today is that we intend to start at the very makai area, which is one. Two, we envision a place where we have multi-generational homes and residents living there. And three, it's just something that's very different than what was proposed by Gentry.

And our land plan also is really in sync
with, honestly, the solar, but also, we wanted to
have a connection to the rail transit station there
at Pearl Highlands.

    **MS. LIM:** And correct me if you think I'm
wrong on this, but in 2014, did the commission not
impose a condition on Kamehameha Schools that it
couldn't do anything other than interim solar until
such time as they filed a motion to amend and got
approval from this commission to do so?

    **MS. SWARTMAN:** Yes. So I believe one of
the conditions is that we need to present a revised
master plan upon decommissioning. However, you
know, our plan was never to just sit on this land,
even though there was solar being used, being
constructed and developed on this land.

    Our land plan, you know, Kamehameha
Schools' plan was always to evaluate these lands for
opportunities for housing and commercial uses. So
we anticipate, given -- assuming that it's the land
plan that we presented already, we would need to
come back to the Land Use Commission for a district
boundary amendment, and then shortly after that, we
would have to come back and make a motion to amend,
based on the different projects and what was
represented by Gentry and what we propose today.
MS. LIM: Shall we turn to the next slide, which will give the commissioners, like, sort of a high-level walkthrough on the next steps, kind of a short-term plan? And then we can talk more about the longer-term plan after.

MS. SWARTMAN: Yes.

MS. LIM: We're now on -- I believe it's slide 8.

MS. SWARTMAN: Yes. And I won't read each box here, but this is our road map of the Waiawa master plan entitlements and our process. I think -- well, the entitlements are what they are. There's no way to avoid or accelerate the entitlements process.

But we expect it to be long and ambitious and costly and arduous but, you know, again, we plan to go back to the State Land Use Commission at the very milestones that you see here marked in the red star. These are the initial steps that we need to take to even consider any -- delivering any houses.

MS. LIM: What are those steps? I'm sorry to interrupt you. And I agree. I don't think anybody wants to hear you read everything in every little box, but we keep talking about a motion to amend and possibly a district boundary amendment.
At a high-level, what are a couple of external steps that would have to happen before a motion to amend gets filed?

**MS. SWARTMAN:** Well, you're asking what happens before that second star?

**MS. LIM:** That's right.

**MS. SWARTMAN:** So we have to go through our EIS process. You know, we've identified -- PBR is our consultant to guide us through this process. So obviously, with the EIS process, we have to do community outreach, and that plays a huge role in that EIS process. And then that will start and be continuous and ongoing for quite a number of years.

And then we have to understand who our next -- who the appropriate EIS-accepting authority is. And so, we have to coordinate with various agencies to understand, you know, who that agency will be accepting our EIS.

And then, you know, we also need to file our prep notice and the publication of it, and then anticipate a 30-day comment period. And then, you know, I think you guys can all read the individual boxes and the different steps in each of these milestones, but.

And then, of course, we need to go through
the draft EIS, public comments again, and then

prepare the final EIS and submit the EIS to the
accepting authority for action.

So we have a long road ahead of us and, I
mean, again, like I mentioned before, there's no way
that we want to accelerate this entitlements
process. I mean, we'd love to, if we could do that
right, if we could get right to it. And, I mean,
and that's the plan is, you know, right after these
proceedings, we plan to get into our EIS and satisfy
the entitlements milestones.

**MS. LIM:** For clarification, PBR Hawaii
has been retained.

**MS. SWARTMAN:** Yes. They have been --
they have actually helped us identify what those
next steps. They're helping us to create a plan for
outreach and engagement. You know, we selected them
based on their experience on a number of EISs across
the state. So, I mean, we're satisfied with their
work.

**MS. LIM:** Thanks, Michelle. And just a
couple of more questions on this slide, and then I
don't know if you'll have anything that you'll want
to add.

But I note that at the bottom there's a
discussion about rezoning. Going to the Planning Commission and then eventually going to City Council.

Now, this commission and all the parties know that Exhibit 3 that we filed shows that this property is rezoned. So when Gentry had it, they pursued the reclassification, and then they went and they got it completely rezoned from the city. So why is there rezoning listed here?

**MS. SWARTMAN:** So what Gentry proposed as zoning, again, like I mentioned, is very different from what we propose. They in their plan included industrial as well as residential but, you know, the locations of where those uses are proposed from Gentry is, again, different because we're starting at the lower region.

And our plan, our Kamehameha Schools plan today, is much more dense. We look to find more efficiencies and increased density within the Waiawa plan.

**MS. LIM:** Got you. So the land already has zoning for development which, in pursuit of the master plan, that zoning needs to be changed.

**MS. SWARTMAN:** Yes. And granted, I'll also note that Gentry also completed an EIS.
MS. LIM: Right.

MS. SWARTMAN: But we don't -- I mean, we plan to complete our own EIS, go through our own zoning process, to ensure that we are doing it the right way and that it's relevant to what Kamehameha Schools is proposing versus another project or developer before us.

MS. LIM: Thanks, Michelle. Last question on this slide, and it's not really something that we need to sit on the slide for, but you've got 2027 for subdivision. So that's actions through the Department of Planning and Permitting.

So 2027, estimated date. Then what, construction happens 2028?

MS. SWARTMAN: Actually, we can -- if you don't mind, we can turn to the GANTT chart that we submitted. That's the one that's our design one that is developed.

MS. LIM: Exhibit 46, that is.

MS. SWARTMAN: Yes. Sorry, Exhibit 46.

MS. LIM: A challenge. Sorry. Just, if I could, we do have large printed hardcopies, if there's anyone, the parties or commissioners.

CHAIR SCHEUER: If the witness would specify what you're -- are we straight on the GANTT
MS. SWARTMAN: So what I was trying to share with you all is how shortly after our zoning in -- completing our zoning process in 2027 -- I can't even see that myself, I'm sorry.

I was hoping to share with you all how shortly after that, we would be starting our construction of our backbone infrastructure and how it rolls into the vertical construction and timed with the Phase A.

I think just kind of a big overview, this GANTT chart shows our overall planning and the various milestones of our EIS process, the petition for a district boundary amendment, and then the -- file for a motion to amend.

CHAIR SCHEUER: Sorry to interrupt.

MS. SWARTMAN: Yes.

CHAIR SCHEUER: As we're studying the GANTT chart, which are challenging to read even if you have it physically in front of you, could you just jump to what specifically are you trying to commend to the commission?

MS. SWARTMAN: I guess what I'm trying to say is that this process is going to be long and arduous. We're going to meet -- we're planning to
meet our milestones shortly after our subdivision,
going straight into our backbone infrastructure, and
starting vertical construction shortly thereafter in
2030.

CHAIR SCHEUER: Okay. I think I have -- I
just wanted to hear your words, and perhaps better
to hear words than the GANTT chart.

MS. SWARTMAN: Okay. I just wanted to make
sure that we acknowledge this GANTT chart that was
requested by one of the commissioners in the past
hearing, and we satisfied that.

CHAIR SCHEUER: Thank you very much.

MS. LIM: And again, I think part of the
GANTT chart communicates that people will view
things differently. Some people are words; some
people are pictures; some people are charts.

But if there are any lingering concerns
that this Phase 1 solar would delay the building of
homes in the area where the Phase 1 solar has been
approved, that's communicated in the GANTT chart as
well. You can see where the solar is and how the
Phase C development doesn't even get underway until
after the solar is removed.

CHAIR SCHEUER: Thank you.

MS. LIM: But we won't beat that horse any
further.

Is there anything you want to bring the commissioners back to within the PowerPoint, Michelle? I know you've got that slide, an update on the diligence.

**MS. SWARTMAN:** Yes. If we can go to slide 9, I just wanted to speak to this presentation and share with the commissioners all the different things that Kamehameha has done over the last couple of years.

**MS. LIM:** The diligence slide we're going to see in a moment when we can get it on the screen. Is this the collective diligence efforts, or is this just merely what has been done since Mr. Thoemmes' presentation in January 2020?

**MS. SWARTMAN:** Yes. So --

**MS. LIM:** It's an update.

**MS. SWARTMAN:** This is an update. So since the 2020 hearing and the presentation by Walter, my colleague Walter Thoemmes, these are all the different steps that we've had that we've completed over the last two years over COVID.

The last time we were here, we submitted a long list of actions, but this time, all these tasks that we've been addressing over the last two years
really is we heard you folks and the importance of meeting that 2030 deadline of all our infrastructure for Phase A.

And so, we took it upon ourselves to get right to it, and we started working with different agencies and addressing infrastructure capacity and agreements with the state. And, you know, these are all the things, obviously, that we need to provide even before we considered -- started considering delivering any homes.

It describes various actions, who we've been working with, who our consultant is to help guide us through that process, and some of the outcomes over the last years -- two years since we presented to you folks in January 2020.

Aside from the things that you don't see, we've also updated our residential demand study. We've engaged a traffic engineer, Wilson Okamoto, for updated regional traffic impact assessment. And then we've also worked on de-registering a portion of our wAIWA lands from land court to the regular system.

So we haven't been sitting idly over the last two years while the world adjusted to COVID and the impacts from COVID. We've been quite busy
addressing access and sewer and water. And again, we've also worked internally to refine our own master plan that we proposed in 2020 to ensure that it is fiscally sustainable and viable at the same time.

And then what you see here we've completed, but we've also engaged EIS. I added that to the list as well.

MS. LIM: So, Michelle, I see -- I know, also what I see here from this slide, and what you just said, is that work toward the master plan has been underway, but a lot of this is technical work. It's figuring out how to make the infrastructure feasible. It's, you know, where can you connect the sewer and how can you connect the sewer. But I'm not seeing community consultation here.

Now, I know in the last presentation, there was a long list of meetings that had taken place with stakeholders. How come we aren't seeing community consultation on this chart?

MS. SWARTMAN: Yes. I guess before Walter Thoemmes presented in 2020, we had completed significant community engagement and consultation with the state and city agencies, some of which are here today.
But we knew that while we anticipated the report, by the time we came back to your folks for solar approvals for the re-authorization of Solar Phase 1, we knew that through our EIS process, we would again do a huge amount of community engagement.

As you know, that process is going to be involved and lengthy and, you know, we anticipate getting right to it as soon as we're done with these proceedings. Have we done as much as we expected and anticipated? No. But we do anticipate that, you know, a much more accelerated outreach once we start our EIS.

**MS. LIM:** And by the master plan refinement and financial feasibility work that's been done with DPI, that was really trying to figure out how to make the master plan pencil.

**MS. SWARTMAN:** It was really about looking for ways to be way more efficient with our infrastructure, with our roadways, our wastewater. You know, we met with the City Environmental Services to look for opportunities for existing capacity that they may have.

So, yes, every step of the way. And it is our obligation to make sure that what we present to
our own leadership and our beneficiaries makes sense.

And I think I might have mentioned -- I mentioned in the very beginning, is that whatever we do and however we assess our lands and how we propose our lands to be used, we have a fiscal responsibility to make sure that we make the best decisions for our beneficiaries.

**MS. LIM:** You don't want to run off kind of half-cocked doing consultation until you've done some of the hard homework.

**MS. SWARTMAN:** No. And the work that we've done through this whole process of working in order to find new efficiencies working with the different agencies is to make sure that we have that information when we're asked by our alumni association who are some of our stakeholders or the Native Hawaiian community organizations.

When they ask us questions about our proposed, you know, master plan, we want to make sure we have the correct answers to the best of our ability and have those facts clear.

**MS. LIM:** So this kind of maybe not very sexy but important internal diligence work is -- you called it a necessary prerequisite.
MS. SWARTMAN: I find planning quite sexy, but.

MS. LIM: So just, you know, I've come just about to the end of my questions. I just -- I do want to touch on estimated cost figures because as the commissioners and other parties may recall, Mr. Thoemmes estimated that the infrastructure alone would cost, like, $630 million for this project. Is that number is still ringing true, Michelle?

MS. SWARTMAN: I wish it were. The more we are delayed, the higher the cost escalates. And today we anticipate upwards of $664-665 million for infrastructure. And that includes onsite and offsite improvements of the roadways or upsizing of wastewater facilities. So that includes all the infrastructure for the entire project on and offsite -- what we know today.

MS. LIM: Thanks, Michelle. I feel we've gone through a lot of the master plan, and I guess I just want to bring it back to what we are here about today, which is the motion that we filed in December for the re-authorization of Phase 1 solar. Do you have any final comments on that?

MS. SWARTMAN: You know, I've reiterated -- I hope that I've cleared up the confusion that
there might have been with regards to solar, you know, taking place as being in competition, if you will, as Jennifer mentioned, with the master plan. But on the contrary, the solar plan -- the solar developments on our project sites at Waiawa has always been a complementary use and as an interim use for our master plan.

So, you know, I respectfully hope, you know, request that this commission approve the motion before you folks and approve the request to modify the 2014 decision and order to authorize the use of Waiawa Solar Phase 2, LLC's -- AES' project over our solar site 1.

**MS. LIM:** And just to be real clear, in 2014, the commission already approved the use of the Phase 1 solar site until November 2049, I think it is. So when I look at your slide, you're saying that Parcel A is actually going to be decommissioned five years earlier than what the commission has authorized. So it's Parcel B that's going to be decommissioned five years later.

**MS. SWARTMAN:** Correct.

**MS. LIM:** I don't have any further questions for Ms. Swartman.

**CHAIR SCHEUER:** Thank you, Ms. Lim. I'm
sure that, having listened to the presentation and
knowing my commission, I'm sure we're probably going
to need time with Ms. Swartman beyond what we can do
before lunch, so let's go through what we can, and
then try to take a break at noon for half an hour.

Questions for the witness from the
Department of Planning and Permitting?

MS. WEAVER: No questions. Thank you.

CHAIR SCHEUER: Questions from the Office
of Planning and Sustainable Development?

MR. YEE: I have a few.

CHAIR SCHEUER: Okay. Thank you.

MR. YEE: Thank you. I do have a few
questions, and hopefully, there'll only be a few. I
want to make sure I understand. Any solar that will
be constructed will be outside of Phase A; correct?

MS. SWARTMAN: Yes. That's correct.

There's no solar uses within the master plan Phase
A.

MR. YEE: And would the commissioning or
decommissioning of the solar have any impacts or any
direct impact on the timing of development within
Phase A?

MS. SWARTMAN: No impact at all.

MR. YEE: Okay. But you will need to come
in order to develop in Phase A, I think you've testified that you will need to come back before the Land Use Commission at least for an amendment to the conditions, if not also for an additional amendment, district boundary amendment for additional lands.

**MS. SWARTMAN:** That is correct.

**MR. YEE:** Okay. And in order for you to come back before the commission, you also need -- you need an EIS completed before that.

**MS. SWARTMAN:** Absolutely.

**MR. YEE:** Okay. And let me focus on the EIS. I understand that, moving forward, sometimes it's difficult to tell exactly what's going to happen, so let me focus on this year. What do you plan to do this year to move forward with the EIS?

**MS. SWARTMAN:** So this year, in that last slide that I shared with you all, we're looking at presenting our outreach, community outreach engagement.

And then the next step would be, you know, obviously, we have to understand who the accepting authority is for our EIS, and so working with the various agencies, you folks or LUC or DPP, to understand which of you are going to be the accepting authority of our EIS.
And then shortly thereafter, we would be drafting our prep notice.

**MR. YEE:** And if you could be a bit more concrete, what do you mean by outreach? What do you intend to do for outreach this year?

**MS. SWARTMAN:** So there are a lot of stakeholders that we've already identified. Aside from, you know, working with the state agencies on pre-consultation, we look to working and meeting with our neighbors at Waiawa. Those would include the various neighbors within Mililani, Wahiawa, Pearl City Highlands, because they look directly at our properties, and then Waipio.

There are a number of stakeholders, and I think included in that would be the Native Hawaiian communities. I mean, we really need to vet any kind of development at Waiawa through the community, so neighborhood boards, business associations, practitioners, alumni.

We want to talk to others about the various demands and what they see. What are their concerns? What are some of the issues that they may have? I mean, these are all the processes that we have to go through as part of our EIS anyways, and understand what those impacts are.
You know, we'll have to talk to some of our subconsultants. Obviously, you know, we have to complete our traffic impact assessment. We have to do a biological study, you know, engineering.

And not only will we be engaging a number of consultants for those reports and studies that make up the EIS but, you know, we'll be doing that to assess a number of alternative plans, a number of different variations of what our plans are.

So it's an extensive process that I think you may already know but, you know, just to highlight it, like I said, it's a long -- we have a long road ahead of us.

**MR. YEE:** So prior to the publication of the preparation notice, this year -- I want to make sure I understand -- you intend to have a meeting with all of the relevant neighborhood boards?

**MS. SWARTMAN:** No. No, no, no. That's over the course of many -- but we're in the course of the whole process. This year I think it's about kind of laying the groundwork for ourselves, identifying who are all those stakeholders, you know, that we should be consulting with. That's first and foremost.

And then we just get going, and we work on
that list. I can't say that, you know, I can't say
we're going to have 100 meetings by December 31st of
2022, but I can state that we're using -- we would
be making good faith efforts to talk to as many
people as we can in the next eight months.

MR. YEE: Are you not yet ready to -- do
you not yet have a plan for community outreach for
2022? Is that something that's still to be done?

MS. SWARTMAN: That is in -- that's in
draft form right now. That's one of the scopes of
work that we've engaged PBR to help us identify what
does that outreach plan look like.

MR. YEE: Okay. So in the remaining,
roughly, eight months of the year, you will have to
finalize that community outreach plan and then begin
the meetings that you have described?

MS. SWARTMAN: Yes. Absolutely. I mean,
even for the 2020 presentation that we had
completed, we did speak to a number of different
stakeholders. We've met with our 'Aina Ulu
education partners that exist in the lower regions
of our lands. We've met with the various UH
chancellors at LCC and their staff and their
administration. We've met with UH West Oahu. We've
met with the Pearl City Highlands Neighborhood Board
president.

And so we've met with -- we've given our presentation already once before to our Kamehameha Schools Alumni Association representatives, so. And we have a long list of stakeholders that Kamehameha Schools already relies on for input on anything that we do.

But that said, we have -- you know, we anticipate a much more exhaustive round and outreach program.

MR. YEE: And after you finish this, then you intend to issue the prep notice; is that right?

MS. SWARTMAN: Once we know who we're submitting it to, yes. And, yes.

MR. YEE: And do you anticipate that prep notice won't come out until 2023?

MS. SWARTMAN: We're hoping that it will be -- we'll be able to draft that by the end of this year, if not early 2023. That is correct.

MR. YEE: In the GANTT chart, it seemed to indicate you have allocated up to four years for the EIS. You have 2022, '23, '24, and '25, I think. The GANTT chart, however, lists them in total years, so it might not be all of 2025, for example. And if I misread this, let me know.
Do you think this is -- let me put it this way. It seems a little long to me, even for an EIS of this scope. Can you explain why it came out this long?

**MS. SWARTMAN:** This is our best guess as far as how long it would take. If we could accelerate that, we definitely would want it to be accelerated. I mean, obviously, we are being -- satisfying the condition to complete our backbone infrastructure by 2030, and before we do that, we have to prepare the EIS.

So, yes, you know, does it look long? Does it -- would we hope that it takes four years? No. But, you know, a project of this magnitude to deliver over 11,000 homes we don't take lightly at all.

**MR. YEE:** Do you anticipate hiring your subconsultants this year?

**MS. SWARTMAN:** We do. PBR is our prime, and who they -- and the subconsultants are a subconsultant to PBR, not to Kamehameha Schools.

**MR. YEE:** Sorry. Do you anticipate PBR will hire their subconsultants by the end of this year?

**MS. SWARTMAN:** Yes.
MR. YEE: And then you anticipate that the subconsultants will begin their work, their studies that will be necessary for the EIS.

MS. SWARTMAN: Yes. That's correct.

MR. YEE: And you think they will start in this calendar year?

MS. SWARTMAN: No. By 2023, they should -- they would be engaged, but I really don't think that they would start their actual studies until the early beginnings of 2023.

MR. YEE: Okay. So they will start their studies, you think, after the preparation notice.

MS. SWARTMAN: Correct.

MR. YEE: Okay. When you get back to the Land Use Commission, do you anticipate that you will then have a revised master plan, a revised table for the various phases in this project?

MS. SWARTMAN: I think the answer is yes. I mean, we would have gone through our EIS process and assessed the various alternatives that we will have in that process, and then who knows what comes out of that? And who knows what kind of feedback that the community had that we respond to and adjust the master plan?

So, you know, at this point, I don't know
if they will accept what we've already proposed. It
really is up to the community and what their
feedback is, based on the alternatives that we put
out there.

   MR. YEE: Well, the master plan you
created was in 2019. I guess what I'm trying to say
is when you get to the EIS and draft the EIS, you
will have in that drafted EIS a proposal, obviously,
that has to be analyzed, and that would presumably
be the master plan, whatever master plan you're
proposing at that time; correct?

   MS. SWARTMAN: That is correct.

   MR. YEE: And do you think that probably
at that point, whatever that master plan is -- we
don't know what the details are and we have to be
open to the alternatives -- whatever that master
plan is, there will be some revision of what you've
-- than the 2019 plan.

   MS. SWARTMAN: Correct.

   MR. YEE: Okay.

   MS. SWARTMAN: I mean, very little.

   MR. YEE: It might contain, for example,
earlier constructions of housing in Phase A;
correct?

   MS. SWARTMAN: Well, the construction of
Phase A is going to be based on how quickly we can get our EIS and the district boundary amendment and then the motion to amend and then zoning completed. I mean, that order of entitlements, it is what it is, and so if we can get through those entitlements quicker, then yes.

MR. YEE: Those are all the questions I have. Thank you.

CHAIR SCHEUER: Thank you, Mr. Yee.

Commissioners? We have a few who want to start. I'm going to start with Commissioner Cabral. We will try and end in a few minutes, and a 30-minute break.

COMMISSIONER CABRAL: Thank you.

Hopefully, my questions are really for clarification. So two sets of glasses to read all this. And thanks to Mr. Yee for some clarification your answers provided with his questions.

So your land is divided by phases A through E, but your projects are phases 1 and 2 at this point.

MS. LIM: For clarification, when we speak to our Solar Phase 1 and Solar Phase 2, that just refers to solar.

COMMISSIONER CABRAL: Okay. And Solar
Phase 2 is already under construction and permitted, so you put 2 before 1?

MS. SWARTMAN: And the reason -- yes, that's correct.

COMMISSIONER CABRAL: Okay. No, I'm okay with that. I just want to make sure it was clear. I'm just a simple-minded country girl. Okay.

MS. SWARTMAN: Me, too.

COMMISSIONER CABRAL: You're not as country as I.

So the next thing is right now, though, in all of this talk, I mean, and so much of these wonderful plans and stuff really are talking about all these future houses. But the petition you have before us right now is only really obligating you and allowing us to work with the details about Phase 1 of your solar; correct?

MS. SWARTMAN: That is correct.

COMMISSIONER CABRAL: Okay. So nothing that we're really considering has anything to do with building a house.

MS. SWARTMAN: Not at all.

COMMISSIONER CABRAL: Okay. My concern is that -- and I've seen all your plans, and God knows you're honorable, et cetera, but so was the people
that sat in my chair 34 years ago when we thought by
now there'd be 8,000 houses on that land or more by
now. And so I got the -- and I might not to have to
worry about 2070. By then you'll have 11,100
planned homes.

But that's our concern, is that we have no
ability to obligate Kamehameha Schools to even one
house with what you're moving forward with under
this petition for the additional solar. And so
that's the only question I have or concern I have.
Okay. Thank you.

MS. SWARTMAN: Thank you.

CHAIR SCHEUER: Commissioners, you're not
obligated now, but there's a sense of who has
questions. Commissioner Ohigashi? Commissioner
Chang? You all have some? Commissioner Okuda?

COMMISSIONER OKUDA: Yes. I do.

CHAIR SCHEUER: Okay. Commissioner Wong
as well?

COMMISSIONER WONG: Yes, chair.

CHAIR SCHEUER: Commissioner Giovanni as
well.

So okay. So did you want to try and
squeeze one in before the bell, Commissioner
Ohigashi?
COMMISSIONER OHIGASHI: Yeah, because I just want to make sure I get this one out of my mind.

CHAIR SCHEUER: That should be amazing, if that's going to happen, but okay.

COMMISSIONER OHIGASHI: The backbone infrastructure that you're planning for Phase A, is that -- and you're estimating it taking two years for you to build, according to this. Is that based upon the existing lines or what you project to be the total Phase A?

In other words, you need a boundary amendment to expand here to take all of Phase A. So the backbone infrastructure you're planning to finish by 2030, the projected two years, is that for the entire Phase A, or is that for that portion?

MS. SWARTMAN: I think I get your question. The answer is, yes, the backbone infrastructure that we plan to complete for Phase A by 2030 includes the lands within the area that we would need to reclassify -- or, excuse me, to reclassify as well. So it is based on the assumption that we would need to complete all the backbone infrastructure for the entire Phase A, including the lands that we need to reclassify as
COMMISSIONER OHIGASHI: That probably will lead me to more questions, but I'll reserve that.

CHAIR SCHEUER: Okay. We'll continue with questions from Commissioner Ohigashi at 12:31.

(Recess taken from 12:01 - 12:35 p.m.)

CHAIR SCHEUER: It is 12:35. Sorry for the short delay. We are resuming cross-examination of Kamehameha Schools' witness, Michelle Swartman, with continued questioning from Commissioner Lee Ohigashi.

Please continue, Commissioner.

COMMISSIONER OHIGASHI: Thank you. I lost all my stuff on my computer, but from memory my question is this, is that within the solar project here before us today, has there been any infrastructure development there?

MS. SWARTMAN: No. There has not been any type of infrastructure development within the solar boundary at all.

COMMISSIONER OHIGASHI: Even for the solar items themselves, the solar panels themselves?

MS. SWARTMAN: Yup. Exactly. They don't rely on any wastewater. They bring in their own water. We've created roadways for access.
COMMISSIONER OHIGASHI: There is some, then. There's roadways for access.

MS. SWARTMAN: They're dirt roads to access their site; correct.

COMMISSIONER OHIGASHI: And is there any infrastructure being planned for that area?

MS. SWARTMAN: As I mentioned in the earlier part of the presentation, there is no infrastructure being planned for future of the master plan -- for the future master plan within the Clearway project development, because there is no contemplation for urban uses at all.

However, with regards to your question relevant to Phase 1, there is just our existing ag roads, which today they continue, as well as our own KS operations folks that keeps those open and maintained for fire or whatever, if we need to get access to our own lands.

COMMISSIONER OHIGASHI: What I'm -- my real question, I guess, what I want to get at is this. Is that in the solar event that we're in front of today -- it would be easier if I had it up on my screen that I was referring to. But the ones that we are concerned with today, will any of the --

MS. SWARTMAN: Infrastructure for future
COMMISSIONER OHIGASHI: Infrastructure for that area, for the solar panels, be utilized in --

MS. SWARTMAN: I don't --

COMMISSIONER OHIGASHI: Let me finish my question. In the development of the total area. The total area?

MS. SWARTMAN: So I would say the only infrastructure that our Phase 1 would remain in place for the future development of the Waiawa master plan is the main arterial road.

So we have worked with AES in identifying our future roads, and they are to retain that road through their project site.

COMMISSIONER OHIGASHI: And my question, then, would be to our attorney general, whether or not developing that infrastructure, if that constitutes beginning of substantial plans?

CHAIR SCHEUER: Commencement? Is that a question you're directing to Mr. Morris?

COMMISSIONER OHIGASHI: Yes.

MR. MORRIS: Well, it's not a question that can just be answered on a description like that, really. As you know, the courts have struggled with the idea of what substantial
commencement is. And I can certainly provide the
board, you know, more detailed advice.

It's not a black and white question. And
so, it's a nuanced question based on some of the
criteria or discussions that we have in some
published cases -- Bridge Aina Le'a, for example.
It's a fairly low bar for substantial commencement.
I will say that.

CHAIR SCHEUER: Commissioner Ohigashi?

COMMISSIONER OHIGASHI: I'm not clear what
the answer would be, but I'm all over it.

CHAIR SCHEUER: Commissioner? Mr. Morris?

MR. MORRIS: And I apologize for referring
to the board; I meant the commission.

But again, it's a nuanced question, and I
think I don't have enough information to answer the
question completely now. I can certainly lay out
the legal framework for you, or if you have a
request to go into executive discussion, we can
discuss it in that context. So on that limited basis
of information, I can't answer that one way or the
other.

CHAIR SCHEUER: Thank you, Mr. Morris.

Commissioner Wong?

COMMISSIONER WONG: Chair, question. This
is probably one for Commissioner Ohigashi. Does he want us to go into executive session to talk about this at this time?

    CHAIR SCHEUER: Sorry. The pronoun. Who are you referring to?

    COMMISSIONER WONG: Commissioner Ohigashi.

    COMMISSIONER OHIGASHI: I already mentioned I would like to go to, but I was just thinking of some questions.

    CHAIR SCHEUER: Okay. No further questions for the witness at this time, commissioner?

    COMMISSIONER OHIGASHI: Not at this time.

    CHAIR SCHEUER: Thank you.

    Commissioner Chang?

    COMMISSIONER CHANG: Thank you so much, Ms. Swartman.

    CHAIR SCHEUER: Commissioner Chang, could you speak directly into the microphone, please?

    COMMISSIONER CHANG: I really appreciated your very thoughtful presentation. It helped to clarify some issues, but it also raised some other additional issues for me.

    I am looking at the exhibit that you had.

    I think it was with the different phases. And it
showed that 476 acres Kamehameha Schools is going to pursue a reclassification.

MS. SWARTMAN: Correct.

COMMISSIONER CHANG: Seventy-one acres is in Phase 1; is that correct?

MS. SWARTMAN: Correct. Phase A.

COMMISSIONER CHANG: I'm sorry. Phase A.

You're right. Phase A. Phase A.

MS. SWARTMAN: I know. I, too, was getting confused.

COMMISSIONER CHANG: Phase A. Is the 71 acres critical and necessary for the development of Phase A?

MS. SWARTMAN: I would say yes. If you notice, between -- on that same exhibit on page 4, or slide 4, you'll see the red bold line that demarcates the boundary of the urban district area.

We have two separated urban district areas, so connecting the boundary so it's one cohesive urban district area would make a lot more sense in that we could have a lot more congruent development.

COMMISSIONER CHANG: So your Waiawa master plan that you presented, the 476 acres that has yet to be submitted to the LUC for a reclassification,
those acres are critical for the implementation of
the master plan that you presented.

MS. SWARTMAN: That is correct.

COMMISSIONER CHANG: And this master plan, the implementation of this master plan, specifically Phase A infrastructure, is dependent upon the approval of the LUC DBA for the 476 acres?

MS. SWARTMAN: I wouldn't say it's dependent on. The infrastructure is not dependent on the reclassification. They work in sync together, I would say, because what we build in infrastructure would accommodate whatever is approved within that Phase A.

COMMISSIONER CHANG: Let me try to rephrase it. So according to your timeline, you are presenting -- or coming to the Land Use Commission for a DBA for the 476 acres.

MS. SWARTMAN: Correct.

COMMISSIONER CHANG: And that is the only -- that would be the only jurisdiction -- I shouldn't say jurisdiction, but -- and the EIS that you're preparing is for this master plan; is that correct?

MS. SWARTMAN: That is correct.

COMMISSIONER CHANG: And this master plan
is -- is it dependent upon the 476 acres being reclassified? I guess that's my question.

**MS. SWARTMAN:** Yes. Yes. As -- you know, the master plan that we propose is dependent on the 476 acres for reclassification. However, I'd like to add that, as I mentioned earlier, in our EIS process, we could possibly be looking at a smaller land plan, or land concept plan, where we wouldn't need as much reclassification. So instead of the 476, it might be less than that. We just don't know, as we still have yet to go through and analyzing what those alternatives look like.

**COMMISSIONER CHANG:** So that might be an alternative. An alternative may be we go with the existing 1,300-plus acres that is currently zoned under -- would not require any additional LUC DBA? That could be an alternative, or the alternative to include that?

**MS. SWARTMAN:** Possibly. However, in order to get to implement our land plan starting from the bottom, we would need to at least connect the two urban pieces that we are now looking -- the bigger looking permitted land. The larger group. The larger piece of land.

**COMMISSIONER CHANG:** And that is in Phase
A.

**MS. SWARTMAN:** Correct.

**COMMISSIONER CHANG:** So, I mean just that is -- that's sort of kind of critical to my overall -- one of my fundamental concerns.

LUC's conditions of building that infrastructure by 2030 is -- that's an existing condition. But what I'm also hearing today is that the 71 acres for the DBA is also critical to Phase A. So if you do not time -- if we do not get a timely approval of at least the 71 acres for the DBA from the LUC, will you still be able to complete the infrastructure for Phase A?

**MS. SWARTMAN:** We would most certainly try. I mean, we would definitely -- if this commission did not grant us approval of, you know, reclassifying the lands into urban, we would then have to reassess it, take a look at what can we do.

**COMMISSIONER CHANG:** Because this, your master plan, there's a lot of assumptions in the plan, that each phase is going to move in a chronological way, that you're going to get the DBA approved for the 476 acres, that the decommissioning will occur.

So a lot of this is -- it seems to be a
great plan, but it also seems to be sort of conditioned upon certain things happening that you may or may not have any control over. Do you kind of agree with me?

MS. SWARTMAN: I would agree with you.

COMMISSIONER CHANG: I guess we're looking at this was originally approved in 1987. And I know you said Kamehameha Schools regained control of the Waiawa land in 2012. And that appears to be the time when Kamehameha Schools had a lot of commitment and adopted this master plan. Prior to that, you were leaving it up to the previous developer?

MS. SWARTMAN: Yes. That's correct.

COMMISSIONER CHANG: So the first housing may or may not -- well, the first housing, based upon your plans, is not anticipated to be built until after 2030.

MS. SWARTMAN: Yes. Shortly after we complete the 2030 infrastructure or meet that deadline, we anticipate starting vertical construction in 2031 and anticipate delivery of homes 2032 to 2034, in that area.

COMMISSIONER CHANG: And your master plan, your EIS or your master plan, I mean, this is really a plan development over the next 15 years. So where
would your EIS also contemplate, for example, your traffic study? Will your traffic study include the whole buildout, or are you looking at doing updates of those traffic studies throughout the planning process?

**MS. SWARTMAN:** So our EIS plans to assess the impacts over the entire buildout of the master plan. So, however, that said, you know, if there are updates to be made, amendments in the later -- in the future, we would obviously have to do that as well.

But what we contemplate today is to ensure that our EIS addresses the entire master plan over the full buildout and understand what those impacts are.

**COMMISSIONER CHANG:** And I would just -- I would assume from a planning perspective, and that is a very difficult position to be in, because you are contemplating full buildout on your project, but you are not necessarily -- is your EIS also going to contemplate proposed buildout all along the TODs, all the composed development in that entire border ahupua'a of Kunia and beyond to Kapolei?

**MS. SWARTMAN:** So I think, well, Waiawa is an ahupua'a of itself, and I believe, you know, as
Central Oahu's sustainable communities plan, which was revised and approved in March, I believe, of 2021, it identified the Waiawa master plan of residential commercial uses and solar as an acceptable use and part of the long-term plan for that region.

As far as taking into account other development from surrounding neighborhoods, I think there is -- our consultants need to consider the overall impacts facing the things that are in the pipeline, if you will, when we look at traffic. And obviously, I'm not a traffic engineer, but, you know, our consultants will have to take into consideration other developments that have approvals that file as well in their assessment of the impacts.

**COMMISSIONER CHANG:** And I appreciate that. I think there's a whole question of whether the EIS would even be stale at the time that it's approved, given that you've got proposed development in Phase E.

So hopefully, your consultants will take this into consideration, and perhaps those could be future conditions of any kinds of approvals.

Let me move on to ask you about community
consultation, because I know that in previous presentations, there has been a lot of consultation. I think there was talk with alumni, with the various stakeholder groups.

Could I ask you was the question ever -- was the presentation to these various stakeholders -- did it present the solar project as an interim project? And was the community asked whether they wanted to have housing done as soon as possible, or they were willing to wait for the solar projects to be decommissioned?

MS. SWARTMAN: If I understand you correctly, that's a couple of questions.

COMMISSIONER CHANG: Right. Sorry.

MS. SWARTMAN: Number one, to address the first, in our presentations to our stakeholders, did we share with them how solar is an interim use of the master plan? The answer is yes.

We have been transparent with our community stakeholders from the very beginning. I think it is very aligned with all of the things that Kamehameha Schools, you know, focuses on in various initiatives.

So the short answer is, yes, we have included in our outreach the use of solar as an
interim use. And --

COMMISSIONER CHANG: I'm sorry. Go ahead and please answer.

MS. SWARTMAN: And then can you repeat?

COMMISSIONER CHANG: It was kind of an evolving question, so I think the best way is let me ask you another question based upon your response.

Based upon the presentations to the stakeholders and the transparency, was the question asked if the community had a choice of whether -- a choice -- in other words, is it to them reasonable to have a solar project as an interim use or, no, we'd rather have housing done?

MS. SWARTMAN: So I guess, if I may, we have -- obviously, we've been transparent, and there was never any kind of feedback from the community that we presented to that we shouldn't do solar because we want the houses first. Because in reality, we have the housing going on as solar is already being built at the same time. So they're coming on board concurrently. So this Phase A and B are moving forward; right?

And then we -- and then, so the answer is, no, there has not been any feedback from any of the outreach that instead of solar, we want housing
first, because they understood the long-term vision for Kamehameha Schools was to have both.

COMMISSIONER CHANG: Let me ask you this question. Is Kamehameha -- the implementation of the master plan, specifically the housing, and even in Phase A, is that dependent upon the approval of -- is that dependent upon the revenue produced by the two solar projects?

MS. SWARTMAN: No, not necessarily.

COMMISSIONER CHANG: What do you mean by not necessarily?

MS. SWARTMAN: So we are not dependent on the revenue from the two solar projects to, in effect, be able to financially build the master plan. The master plan will be in partnership with a number of partners. I mean, we consider the LUC as a partner.

You know, in order for the KS to complete this master plan, we need to work with the community, we need to work with the LUC and the various agencies that are sitting here, and we also need to work with a development partner and homebuilders. So we see this as an opportunity for a lot of partnerships to make this happen.

COMMISSIONER CHANG: And I appreciate
that, and I realize that there are numerous entities
that will be working with you.

But the estimated cost I think you said
was about $665 million for infrastructure. And I
also recognize that Kamehameha Schools has got --
and you're looking at perpetuity, and so you weren't
-- you don't have -- you don't have a blank check.
Somebody has got to pay for this. And I know you
also mentioned that some of your considerations are
economic.

But I am wondering, because, well, if the
Land Use Commission has approved the two solar
projects -- I think this kind of goes back to the
question by Commissioner Ohigashi.

If there hasn't been substantial
commencement, could the property be reverted to
rezone? I don't think anybody wants rezoning. I
shouldn't speak on behalf of anyone else. I don't
think it's my desire to revert, but I am looking at
the realities of how critical is this solar project
to the implementation of the master plan,
specifically Phase A, the housing, and the backbone
infrastructure?

**MS. SWARTMAN:** So again, to restate, the
solar projects don't dictate what the master plan
1 does, or the timing of our master plan. I mean, the
2 delivery of homes is going to run concurrently with
3 Clearway.
4
5 So we have Phase A coming up along with
6 our Clearway development projects, and then as we --
7 and then, of course, granted you folks reauthorize
8 the use of those lands in Phase 1 today, based on
9 this motion in front of you, as they roll off, once
10 they have decommissioned, the future additional
11 homes.
12
13 By then we would have already about, you
14 know, 4,500 to 5,000 homes in place. So just between
15 Phase A and B, we're looking at 4,000 to 5,000
16 homes. And that's a chunk of demand that we sure
17 could use.
18
19 So do I think that this commission has a
20 right to revert the lands back to ag? I think you
21 do. I think that's your kuleana. I just don't
22 understand how that affects or how that helps our
23 housing demand in Hawaii.
24
25 COMMISSIONER CHANG: I think we
26 understand. I guess we just -- it's just we're also
27 bound by legal precedent and how we've treated other
28 landowners, and this was approved in 1987. But it
29 is not -- what you presented to this date is an
extremely appealing and necessary project for the future, so I'm not going to try to stand in -- but I'm also trying to balance those other issues that come before us.

Let me ask you a question about the estimate. You have said the estimated cost of infrastructure was about $665 million.

**MS. SWARTMAN:** That’s correct.

**COMMISSIONER CHANG:** And I personally have -- this has been sort of a mission for me, obviously, and you don't have to answer that question today, but at some point in time, if I still sit on the commission and this matter comes up, I will ask if Kamehameha Schools is willing to put up a bond that reflects that infrastructure cost. Because too often we have representations, and they aren't necessarily full.

Now, I know where Kamehameha Schools lives. I know where you live, so, I mean, we will go back and we will haunt you. So I know you guys are good for it. I do. But I also -- I mean, I have -- that's been a point I've consistently made with other developers about its performance bonds to ensure that those commitments are either met by the applicant or by somebody else.
So again, you don't have to answer that now, but that is something I will ask about.

Those are my questions. I do greatly appreciate your presentation. It really helped me understand and clarified some of the questions we had from the last hearing.

MS. SWARTMAN: Thank you.

COMMISSIONER CHANG: Thank you very much.

CHAIR SCHEUER: Thank you, Commissioner Chang.

Commissioner Giovanni?

COMMISSIONER GIOVANNI: No questions, chair.

CHAIR SCHEUER: Thank you.

Commissioner Okuda?

COMMISSIONER OKUDA: Thank you, Mr. Chair.

I can't help myself, but a follow-up question to the lines of questions that Commissioner Chang and Commissioner Ohigashi raised.

And, you know, I do recognize, and we all recognize, that there's no issue or petition regarding reversion or anything of that sort pending in front of us right now, but that's, like, the proverbial elephant or rat in the room that seems to be scurrying around.
So let me ask you this; okay? And this question -- and let me preface it by saying this; okay? I don't want this question to be taken that I'm an automatic friend of the Bishop Estate or anything like that. I think the record would show that one of your trustees was a consultant in a case where I was the lone vote against what he was advocating. So, you know, the fact -- and I know one of the counsel in the audience can verify that fact.

So, you know, this question is not intended to reflect any type of bias or inclination one way or the other. It's just to clarify what the standard is.

And so, you know, we all know that the reversion standard comes from a number of cases. One of them is DW 'Aina Le'a Development versus Bridge 'Aina Le'a. And for people who were really interested, the Pacific 3rd citation is 339 P.3d 685. The Hawaii report citation I can give you, but I've had -- oh, I'm sorry. I believe it's 134 Hawaii.

And where I'm going to quote to you is from 187, just so that we can see what the Hawaii Supreme Court was concerned about. And so, after I
read this section, I'm going to ask you whether or
not -- if you have just one or two-sentence comment
on whether or not that's really the situation that
is being faced here with this specific request, this
specific applicant, this specific landowner, and
this specific situation.

And I'll ask the same question of the
community watchdogs, meaning the DPP and the Office
of Planning.

But this is what the Hawaii Supreme Court
said, quoting the Senate Committee on Energy and
Natural Resources about the danger of having land
which is given entitlement and nobody does anything
to go and, you know, make sure infrastructure or
housing is really built.

It says here the senate committee -- I
quote -- specifically noted that, quote, vacant land
with the appropriate state and county land use
designation is often subjected to undesirable
private land speculation and uncertain development
schedules and that such speculation and untimely
development inflates the value of land, increases
development cost, and frustrates federal, state,
county, and private coordination of planning
efforts, adequate funding, public services, and
facilities.

Okay. That's the admonition or warning the Hawaii Supreme Court has given. So along that line, can I ask you this? Has there -- have you heard, during your entire career at the Bishop Estate, any discussion, no matter how small or manini that discussion might be, that the intention of the Bishop Estate is to flip or sell or, for lack of a better term, speculate on the value of this land?

**MS. SWARTMAN:** That's an easy answer for me. Absolutely not.

**COMMISSIONER OKUDA:** Okay. And you already talked about the long-range planning that you folks intend to do; correct?

**MS. SWARTMAN:** Yes.

**COMMISSIONER OKUDA:** As far as the master plan, I'm sorry, for that question.

**MS. SWARTMAN:** Yes.

**COMMISSIONER OKUDA:** So I won't go over that. Okay. I just wanted to make sure that it wasn't something which, you know, we might have overlooked as far as some type of tension, you know, speculate on the land -- although I might say this. And this is a question I will ask also to the
community guardians, the DPP and city Office of Planning.

Does the Bishop Estate, because it serves disadvantaged communities, does it somehow -- or do we take that into account when applying the standards that are laid out in the Bridge 'Aina Le'a case? But I'll leave that for them.

Thank you very much, Mr. Chair. No further questions.

CHAIR SCHEUER: Thank you, commissioner.
Commissioners?
Commissioner Wong?

COMMISSIONER WONG: Thank you.

CHAIR SCHEUER: So easy to see you in person. It's great. I'm not looking for a waving hand trying to speak.

COMMISSIONER WONG: Thank you, chair.
Several questions. First off, good afternoon.

MS. SWARTMAN: Hello.

COMMISSIONER WONG: Okay. So going back to your Exhibit 47 -- the one with the phases and A, B, C, D and solar?

MS. SWARTMAN: The GANTT chart?

COMMISSIONER WONG: Yeah, the -- no, not
the GANTT chart; the one after that.

MS. SWARTMAN: The PowerPoint outline?

COMMISSIONER WONG: So there are some questions I have.

CHAIR SCHEUER: Would you like to have it put on the screen?

COMMISSIONER WONG: Yes, please. Let's go to page 3 for now. I'm going to use that one for a couple of questions, so if you don't mind showing slide 3?

MS. SWARTMAN: Slide 3.

COMMISSIONER WONG: That starts with the 2,010 acres. Okay.

So one of the first questions I have is I know you talked about, after the EIS you'll be coming back for a DBA; correct? For those things not in red. Like, first off, Phase A, and then also Phase C; correct?

MS. SWARTMAN: Correct. I think there's a slide that speaks directly to that one.

COMMISSIONER WONG: Oh, no, it's one of -- it's going to --

MS. SWARTMAN: Okay. Okay.

COMMISSIONER WONG: So the question I have on this issue is two parts. The first question I
have is we have two connections to H2 and I guess
down on the bottom by the TOD there; correct?

   MS. SWARTMAN: Two connections meaning

access points to the --

   COMMISSIONER WONG: No, just access points

to the --

   MS. SWARTMAN: -- community?

   COMMISSIONER WONG: Yes.

   MS. SWARTMAN: Yes. We actually have

three access points for the entire project. And
they're demarcated in the blue kind of stars or
asterisk.

   COMMISSIONER WONG: Okay. You're not in

the Koa Ridge. You're on the side of Koa Ridge.

   MS. SWARTMAN: That is the Ka Uka

Boulevard, and that is planned for the latter phases
of -- actually, it's in the early phase of Phase C.

   COMMISSIONER WONG: Okay. The reason I

have that is I'm looking at this, just thinking out
loud, for 2,000 something homes in Phase A and 2,338
homes in Phase B. Is that enough access points?

   MS. SWARTMAN: Yes. That is correct. We

-- yes. So we have engaged a number of consultants,
traffic consultants, to help us analyze what are the
capacities of those different access points. And in
fact, as I mentioned here in one of my slides, in fact the Department of Transportation has also concurred that -- and with their support, they have concurred that connecting one of those access to Waipahu Street and Kamehameha, they agree with it, and they concur that as an access.

So I guess the short answer is, yes, those access points that we've identified would have enough capacity for those -- for our project.

COMMISSIONER WONG: And I guess later on for the LUC to come with a TIAR.

MS. SWARTMAN: That is correct. With the specific studies and outcomes.

COMMISSIONER WONG: So the next one I have is looking at this diagram again, now you said in Phase 2 solar farm, right, on the righthand side by Phase B.

MS. SWARTMAN: Yup.

COMMISSIONER WONG: Okay. So I'm looking for a little bit questioning of this. So we're looking at shutting down the solar farms eventually; correct? Both sites, Phase 1 and Phase 2.

MS. SWARTMAN: Correct.

COMMISSIONER WONG: And I'm just thinking -- and Phase 2 would not even be touched, because
you're saying we're not going to do any housing in there.

**MS. SWARTMAN:** That is correct.

**COMMISSIONER WONG:** Don't you think we should look into the future, as you say, and say we still need alternative energies, and there's going to be more houses here. Have you ever thought about looking into the future for what's next to help, you know, charge up or keep the electricity going for these houses instead of looking at -- was that ever thought about?

**MS. SWARTMAN:** So if I understand correctly, the Phase 2 project or solar development which is being done by Clearway today, they have a decommission date of 2059, and I think your question is what about extending that beyond?

So they have a PPA that expires in -- I believe it's 2049, and they're looking -- and this commission approved up to 2059 if they were able to get an extension from the PUC on their PPA.

I think Clearway would be happy if we were to extend that area for continued use of solar. I do think, though, however, today in 2022 and in 2059, the technology for solar I think would have made huge leaps and bounds. And if at some point
later down the road, that land would be appropriate for continued use of solar given the new technologies, that could be contemplated. But we really haven't thought of that, and that -- we really haven't thought of continued use. Who knows? I mean, we may have reached our goals by 2050, and the entire island is -- or state is on renewable energy 100 percent by then.

**COMMISSIONER WONG:** We hope so.

**MS. SWARTMAN:** Right.

**COMMISSIONER WONG:** I mean, just thinking ahead, you know. Right now it's gas crisis and everything that -- we do need alternative energy.

**MS. SWARTMAN:** Correct.

**COMMISSIONER WONG:** To reach that goal. So I'm just thinking about it, you know. All this thing I'm going to ask, then, is, you know, I know Phase 2 solar and Phase B of the housing -- Phase B housing; right? -- is --

**MS. SWARTMAN:** So --

**COMMISSIONER WONG:** So Phase A is going to be housing first, and Phase B is the next set of housing. Phase C is the next set of housing.

**MS. SWARTMAN:** Correct.

**COMMISSIONER WONG:** Okay. So is there a
reason or rationale not to use Phase C instead of Phase B, or that's --

MS. SWARTMAN: Well, the reason why we identified those lands for AES, also known as Waiawa Solar Phase 2 LLC, is because it's based upon the approvals of the boundaries that the commission approved in 2014.

So instead of going before the commission and asking for a whole new area to approve, we thought that because the commission has already approved this area for solar use, it makes more -- it makes sense to use the boundaries for solar.

COMMISSIONER WONG: Yeah. So what I'm saying is Phase A, you still have to come back to the LUC for a DBA; correct?

MS. SWARTMAN: For the entire project; correct.

COMMISSIONER WONG: And then Phase 1 of AES solar finishes in 2044; correct? And the start of the homes for Phase C starts in 2048.

MS. SWARTMAN: Correct.

COMMISSIONER WONG: I guess I was thinking out loud why we cannot switch the Phase B and Phase C homes if you're going to --

MS. SWARTMAN: Because it actually -- it
aligns with our road network.

COMMISSIONER WONG: Okay.

MS. SWARTMAN: And knowing the topography of that area makes all the difference as well. And so, you know, there -- it just makes more sense based on how our roadways occur and the phasing of our development, that they would use their Phase A within that portion that we have identified here instead of switching them out.

COMMISSIONER WONG: Okay. That's all the questions. I just wanted to share that. Thank you.

Thank you, chair.

CHAIR SCHEUER: Thank you, Commissioner Wong.

Commissioners, further questions for the witness?

Commissioner Giovanni, you good still?

Okay.

The chair has a few. Because you have the PowerPoint up, I guess I'm going to just jump into -- there was one, at least, where I want to refer to the PowerPoint. So if you go to slide 9, particularly the third row with content and then having water.

Back on the update and outcome cells,
This update is "worked with CWRM to test and monitor for existing potable water wells approved for the Waiawa Master Plan." And the outcome was "confirmed existing water use permits."

Can you explain specifically when Kamehameha Schools did that in that regard?

**MS. SWARTMAN:** Yes. So we have an existing -- four existing potable well permits. And to be compliant with those permits, we've been working with state CWRM, state Commission of Water Resource Management, on testing of those wells. And so, we've been working quite closely with them and have capped them as well.

So they confirmed that indeed we are in compliance with their standards for their -- of those four water use permits.

**CHAIR SCHEUER:** Okay. So to what use were those water use permits issued?

**MS. SWARTMAN:** So if I understand correctly, the four wells were intended for the use of our Waiawa water master plan.

**CHAIR SCHEUER:** So I believe, having commented on those permits, they were for golf course use.
MS. SWARTMAN: I don't believe so. But I could be wrong.

CHAIR SCHEUER: This is a factual matter that would be great to have. Your master plan did not get permitted -- or presented to us until 2020; correct?

MS. SWARTMAN: There were a number of wells along -- within the Waiawa area. But I believe those four wells --

CHAIR SCHEUER: To repeat my question, your master plan that you're referring to did not get in front of this commission until 2020; correct?

MS. SWARTMAN: Oh, that is correct. Yes.

CHAIR SCHEUER: Okay. When were your wells permitted?

MS. SWARTMAN: They were permitted with the Gentry plan.

CHAIR SCHEUER: Okay. So it's actually for a different proposed use.

MS. SWARTMAN: Yes. And as we retained the lands back and regained control of the lands, everything, including those well permits, then came back to Kamehameha Schools.

CHAIR SCHEUER: Are you familiar with the provisions of the state law code that allowed the
Water Commission to revoke water use permits if the
water is not used within four years?

MS. SWARTMAN: I would have to confer with
my counsel, but I believe you.

CHAIR SCHEUER: Okay. And are you
familiar with the requirement that if you are
proposing a change in use, you actually have to get
a modification to your water use permit?

MS. SWARTMAN: Yes.

CHAIR SCHEUER: Okay. So I'm confused by
-- what the slide seems to be suggesting is that
you're all good; you have four confirmed water use
permits for the uses that you're preparing in front
of us. But that's not actually the case; is it?

MS. SWARTMAN: We actually have a number
of other wells that we need to drill for. We have,
you know, at different water elevations, we have a
-- which will serve the various areas within that
elevation.

So right now we're working with the BWS on
a 228 well to help with their own water master plan,
which won't serve our -- any of our required usage.
And then we have another well site that we have yet
to drill and get permitted.

So I'm not implying that those are the
only wells that we need for the entire master plan,
but those are some of the wells that we need for the
water master plan.

**CHAIR SCHEUER:** But you actually -- my
point is you don't actually have the permits in
place that would allow you to any the less modify to
use those for this master plan.

**MS. SWARTMAN:** You know, I would have to
go back. I don't have the answer for that. I would
have to go back and double-check, but I was -- I had
the understanding that those wells, if not all, were
allowed for use of potable uses.

**CHAIR SCHEUER:** I can assure you the state
water code, if you were proposing a change in use,
some of the proposed uses of those wells were for
the proposed golf courses that -- at least I would
advise you that action from the commission is going
to be necessary, so that I'm not actually convinced
that you have necessarily any permits in place that
would fully allow you to do what you're planning to
do, or even partially allow you to do what you want
to do.

Can you go to slide -- the slide with the
vision on it? I think it's slide 2 or slide 3.
That's the one.
And really, if I had one set of questions for you really around this, it's a beautifully stated vision, but I don't see the connection between the vision and what has been presented and reiterated as the master plan. So can -- broadly, can you help me understand that?

**MS. SWARTMAN:** Yes. So our vision for Waiawa, obviously, aside from the granular uses that we've been talking about today of housing and commercial uses and solar, this is really about how Kamehameha Schools looks at our lands from a much more holistic view.

In Waiawa we have a total of almost 9,000 acres along which a significant part of it falls within the preservation area and is a part of the very important watershed.

So in our land span from Pu'uloa all the way up to the Koolau mountain range and within -- if you can imagine within this ahupua'a of Waiawa, we have approximately, you know, these lands that we have visions for use of inhabitants and for life and for studying and for education and for cultural celebration and educational opportunities.

Our vision, while it's difficult to see how it extrapolates into the master planning of
things, it's where we start with. It's our approach of how we manage our lands and how smart we are with our lands.

So we know there are opportunities within the Waiawa ahupua'a, and so our vision is based on using all those opportunities to deliver a community for residents and shoppers and people to recreate and folks to jump on the transit station, attend schools, and other aina opportunities.

And, of course, what we're here today for is for the solar uses. So, you know, I'm not sure if that helps. I guess it's hard to envision what we envision. But we do think that Waiawa has a huge opportunity to meet the demands of many needs of our community.

CHAIR SCHEUER: I guess I have a couple of responses. And we could stop the screenshare.

One is that the solar uses are not the only reason why you're here, at least according to the petition that you filed with us. You also asked for the waiver of a number of conditions; is that correct?

MS. SWARTMAN: That is correct.

CHAIR SCHEUER: Okay. So second is, I guess -- again, it's a beautiful vision. It's a
vision that I think is appropriate for Kamehameha Schools. But what's in front of us is -- while it's certainly distinguishable from what Gentry proposed, I'm not seeing how it's particularly distinguishable from Koa Ridge across the gulch.

**MS. SWARTMAN:** And we do have to do considerably a lot more studies. I mean, I don't have any of those glossy photos or renderings for you folks, because we just haven't gotten there yet. You know, we have a vision. We have some entitlements that we want to modify. We have an interim use for those lands.

And really, the trigger for us to start getting into the weeds of things and how we expect to deliver on our vision is getting to our EIS process.

**CHAIR SCHEUER:** So then, I guess that's a great transition for my next question. Since you're a real estate professional, can you describe for me what you understand, the difference between a master plan and an EIS?

**MS. SWARTMAN:** Yes. So the EIS is an environmental impact statement, and it is part of the HRS 343 process. And that process evaluates the proposed uses and the impact of those proposed uses.
based on community feedback and public comments.

And so, there are a number of different milestones within the EIS process from the scoping to the prep notice to the draft EIS to the final EIS. And so that's what that EIS is about.

The actual master plan is a concept plan of proposed uses. It's not the study of the impacts of proposed uses. That's the defining difference, I think, between a master plan and an EIS.

CHAIR SCHEUER: How do they differ in terms of community engagement?

MS. SWARTMAN: Well, the EIS is a requirement based on our discretionary permitting process. The master plan is just a plan, and a master plan is a just concept plan that hasn't been vetted through the requirements of an EIS.

CHAIR SCHEUER: Hmm. So maybe this is where we either differ or just don't understand, but in my experience, the kind of engagement you can get with the community in the EIS process, because it's structured under 343 deadlines, tends not to be the deep level of engagement that you would try and get when you say, hey, here's our vision for this entire ahupua'a; how are we going to see that play out on this parcel?
MS. SWARTMAN: So actually, before we even presented in 2020, we did exactly that with the master plan without a pretense of needing an EIS. We actually went to our own stakeholders and submitted to -- I guess it's not, you know, a much broader community.

We did go and seek some comments and feedback of our overall vision of Waiawa for Kamehameha Schools. You know, that's part of our responsibility is understanding, you know, we want to know that, you know, we understand what these lands mean to us, and what are the opportunities that we can see for the benefit of not just our own beneficiaries, but for the community at large?

So I guess that's your question, is whether or not we've used exhaustive measures for outreach for just our vision versus being able to do that for our EIS. I think --

CHAIR SCHEUER: Are you referring to the list of people consulted on Exhibit 43?

MS. SWARTMAN: Some of those, and then some.

CHAIR SCHEUER: Who are the "and then some"?

MS. SWARTMAN: I think I mentioned earlier
that Commissioner Dawn for sure had mentioned or stated back to us. So we've met with a number of stakeholders, which include the alumni association, our representative group. We've met with cultural groups. We have -- Kamehameha Schools has a number of stakeholders that we have identified as the, you know, young generation of leaders, that we've presented to them as well.

So -- and then we've also presented to our 'Aina Ulu partners in Waiawa down along the Pearl Harbor shoreline. So those are just some of the folks that, outside of, you know, department agencies and state agencies, that we've presented to.

CHAIR SCHEUER: That was helpful. Was there was a reason I wasn't included as part of the outreach which you described in your materials?

MS. SWARTMAN: No, no specific reason why you weren't included in our written materials.

CHAIR SCHEUER: Were they -- did they tend to be supportive of --

MS. SWARTMAN: Yes. Yes. And we've actually -- I think I also mentioned this earlier in the presentation or in my testimony that we also presented to, you know, various University of Hawaii
state chancellors as well.

You know, we plan to partner with even education facilities or systems that are in the ahupua'a, like Leeward Community College, and we have done that with the chancellor already. And, in fact, we have other plans that we'd like to share with the various educational leaders from the university system as well.

CHAIR SCHEUER: But other than your own testimony on that, that's just information for us, I guess.

MS. SWARTMAN: Yes.

CHAIR SCHEUER: Okay. This is a small point, but I just wanted to clarify a statement, because I think if you read the record and just read your statement, it may appear unusual.

You referenced the Gentry EIS. You said we're not relying on the Gentry EIS. We're doing a new EIS. Were you trying to suggest that the Gentry EIS is deficient and you couldn't rely on it if you wanted to?

MS. SWARTMAN: No.

CHAIR SCHEUER: Okay. Then are you -- I guess, could you clarify why you referenced the Gentry EIS?
MS. SWARTMAN: I think it was in the context of, I think, the entitlements. I can't recall why we were talking -- what we were talking about at the time, but I believe we were talking about the various entitlements that are currently in place with the 1,395 urban classified lands and zoning. I think it was in the context of that.

CHAIR SCHEUER: Okay. You made a couple of references during your oral direct testimony, and then on cross-examination, to your duties to beneficiaries. But I believe -- correct me if I'm wrong -- what I only heard you refer to was financial commitments, the duty to derive revenue from your lands.

Perhaps the strategic direction of Kamehameha Schools has changed since I worked there, but are there other returns that you seek from your lands?

MS. SWARTMAN: Yes. Absolutely. And my apologies if it implied in any way that that was the only obligations that we have for our beneficiaries. I mean -- and I stand corrected if you folks don't already understand that our mission is education for Kamehameha Schools. That is our primary business at Kamehameha Schools.
However, we are very fortunate to have the ability to expand our reach within the extent of our community to provide other benefits to our beneficiaries and use our lands for agricultural purposes, for renewable energy, for housing, and even for commercial.

I mean, I work for the Commercial Real Estate Division, and we are charged with understanding not just that we have a fiscal responsibility, but we have a responsibility for all the other things.

It's not like, in this case, not solar or the master plan. It's we have a financial responsibility, we have an educational responsibility, we have a cultural responsibility to our beneficiaries. It's not one or the other. It's how they coexist together so that we do the best job we can.

CHAIR SCHEUER: Okay. Thank you. That's very helpful.

To get at how you manage to do these things simultaneously, you briefly referenced an absorption rate and an absorption study for housing. Could you expand on what that study was and how, if at all, it informed the phases that you have in your...
current master plan?

MS. SWARTMAN: Sure. So we did a market demand study in, I believe, 2018. And in 2021, we updated the residential demand study. And what that told us is that the demand for housing is even greater. The type of housing -- in that study we considered the impacts of the existing Koa Ridge and D.R. Horton's Hoopili developments and how that impacts the demand.

What we have learned and understand is that we cannot keep up with the pace. In fact, we need to try even harder to keep up with the pace. Even though we may never meet the total demand of housing in Hawai‘i, at least we know that through Waiawa, we certainly can take a chunk off of that.

You know, we can --

So we've also learned that within the Waiawa proposed master plan, there is a dire need for an intense increase in density. We've also learned that segmentation is important to what we deliver. And by segmentation, I mean that there are different types of houses or homes that are needed across our lands and in Hawai‘i in general -- anything from rental to single-family, multi-family.

There are a number of different types of
products that is in demand. And what our market
demand studies told us is that we need to bring on a
multitude of housing and different types of housing.

    CHAIR SCHEUER: So I guess this is the
part where I continue to be confused about the
phases and other questions from my fellow
commissioner, Commissioner Chang, about whether or
not there's competition between solar and the
delivery of housing. Because certainly, like, one
of the cudgels that is used to beat the LUC every
year is the quota, like, we need 10,000 homes, we
need 50,000 times a year.

    Nothing I'm hearing in your direct
testimony suggests that there is a limit to the
absorption rate that's very meaningful. You could
produce all 11,000 of these homes in the next three
years, if you could, and they'd get absorbed into
the market.

    MS. SWARTMAN: Actually, as far as
absorption rate, absorption rate, you know, what
we've looked at is anywhere from 300 to 400 units a
year. So --

    CHAIR SCHEUER: So that's actually very
different.

    MS. SWARTMAN: Than?
CHAIR SCHEUER: If really all you're targeting and willing to deliver into the market is 300 to 400 units per year --

MS. SWARTMAN: I think a large part of it has to do with the amount of regulation that developers and landowners have to go through. Do I think that -- what we have heard from D.R. Horton is that they can't build them fast enough in order to meet the demand.

So because there's -- the entitlements are what they are and we -- there's no way for us to, you know, obviously, not shirk our responsibilities or permits or entitlements, we just -- there are a lot of buyers out there that are willing to buy homes, but we can't build them fast enough.

CHAIR SCHEUER: That's what I'm getting at. It's right. I mean, one of the number one reasons why people say that you can't build enough homes is there's not a lot of land in the urban district.

This is all an urban district. That barrier is overcome. But you're saying you still can't deliver more than 300 to 400 homes per year.

MS. SWARTMAN: Well, what we've seen through our market study is that, based on the
trends today, that's what they're seeing, is 300 to
400 because based on how fast they build it.

CHAIR SCHEUER: Sorry. I'm not following
what you're trying to convey to me.

MS. SWARTMAN: So I guess, you know, so
the construction rate is anywhere from 300 to 400,
and that's what we've been using as our absorption
rate for our projected timeline in the master plan.

What we're hearing in the market today is
that other builders or other developers continue to
build, but they have long lists of folks that are on
a list to buy a home. So while we have, you know,
urban lands today, that doesn't mean we can build
without any of our permits. I mean, we still have
to go through our EIS process and our DBA and all
the different entitlements and milestones that I
outlined today.

CHAIR SCHEUER: I understand. But that
GANTT chart could be considerably compressed, not
over decades, if you wanted to deliver more than 300
to 400 homes per year.

MS. SWARTMAN: If we could, we would.
We'd want to.

CHAIR SCHEUER: If you could.

MS. SWARTMAN: Correct.
CHAIR SCHEUER: So what's the -- what's
the constraint?

MS. SWARTMAN: The constraint is that
we're not using the plan that was represented by
Gentry. We instead have a whole different plan,
which triggers the need to come before you folks in
the next five to six years a couple more times for
your approval.

So if we can, you know, work together to
accelerate that approval process based on all these
things that we've presented, that would be
wonderful. We would -- I mean, like I mentioned,
you know, we need you folks as partners to make it
happen. So I guess --

CHAIR SCHEUER: But what you're proposing
for us right now conceptually is still not -- it's
still stretched out over decades.

MS. SWARTMAN: Correct.

CHAIR SCHEUER: It's still stretched out
over 300 to 400 units per year, not actually on a
level of production that would start to impact the
market in a sort of tangible way.

MS. SWARTMAN: That is absolutely correct.

Right now, we have to still go through this process
of the EIS to understand what the impacts are before
we even land on a single master plan.

CHAIR SCHEUER: Okay. Couple more. And this goes back to my questions to you about the difference between a master plan and EIS. And you described it as really two different kinds of documents.

But the proposed stipulated agreement says that we could accept it either -- we can take your EIS in lieu of accepting a master plan?

MS. SWARTMAN: I'm sorry. Can you repeat that?

CHAIR SCHEUER: So I will -- let me pull up petitioner's Exhibit 40 -- or perhaps, Ms. Thoene can pull up Exhibit 40. And that's your proposed stipulation with the Office of Planning and Sustainable Development, proposed condition 1. "Revised Master Plan. Petitioner shall submit to the commission a revised master plan and schedule for development for the approximately 1,395-acre Petition Area by February 11, 2025; provided, however, that this condition may be satisfied by the publication of a Draft Environmental Impact Statement."

So this, when I read it, seems to say you're thinking that, oh, a master plan or an EIS is
interchangeable, but your earlier testimony seemed
to draw a distinction between the two.

    MS. SWARTMAN: Yes. So I guess my reading
on this is that if we were -- we're proposing to
keep you folks apprised of our progress of our
master plan. But, however, if the EIS happens
sooner than 2025, then that would satisfy this
condition.

    CHAIR SCHEUER: Okay. I guess I'm curious
-- maybe we're moving towards opining, but I don't
see them as the same. I agree with your earlier
testimony. And this would also only work for -- you
referenced in your earlier testimony that you're not
sure about who the accepting authority would be.

    MS. SWARTMAN: Correct.

    CHAIR SCHEUER: I don't see a meaning or a
power of this condition if there's another body who's
the accepting authority on the EIS and it's simply
handed over to us and saying here's what we came up
with. I only think this works if the LUC is the
accepting authority. But you haven't made that
commitment yet?

    MS. SWARTMAN: Well, no. We have not
identified who -- I mean, right now, I think my best
guess on who the accepting agency would be, it would
be you. It would be the State Land Use Commission, as that's the next discretionary permitting process now.

CHAIR SCHEUER: I don't see this proposed condition working unless we are also the accepting authority.

Because if we're supposed to have this as a meaningful condition to see that indeed the master plan has considered alternatives, the EIS impacts have been evaluated, and we're getting the housing that's been promised, if somebody else is accepting it, what are we supposed to do? Like, okay, they accepted it. Do you see any other meaningful alternative to make this operable?

MS. SWARTMAN: I guess I can confer with my counsel, if you don't mind?

CHAIR SCHEUER: Please. So a short recess, please.

(Recess taken from 1:46 - 1:57 p.m.)

CHAIR SCHEUER: Thank you for taking the time to consult with your counsel. Did you have a response to my question?

MS. SWARTMAN: Yes. Just wanted to make it clear that with regards to the Exhibit 40 proposed stipulation, proposed conditions for
approval, condition number 1, a little bit of context for that.

The original 2014 condition 1 required us to come back within five years with a revised master plan. Therefore, we came back to you folks in 2019. And that condition we wanted to remove because we satisfied it.

However, I believe another -- OP wanted us to come back to the LUC with a revised master plan, but instead of just saying the revised master plan within another five years, we instead proposed to add language that we could come back to you folks with the draft EIS by that as well. So that's kind of, I guess, how that condition was formed.

As far as the accepting agency or authority, I don't think that, after conferring with counsel, that it is up to us as far as who is the accepting authority. I believe, if I understand correctly, that is something to be discussed and, I guess, agreed to between DPP and the State Land Use Commission. I don't believe we can make that call as the petitioner.

CHAIR SCHEUER: I believe your earlier testimony was that you were working on determining the proper accepting authority. I might be
misquoting you, however, per their --

**MS. SWARTMAN:** No. That would be our next step, once we've completed these proceedings for the Waiawa solar site 1.

**CHAIR SCHEUER:** Okay. I believe my last question for you, at least for now, is that typically in our proceedings, one of our standard terms of conditions are that the applicant is bound by the representations made before us. Are you able to bind Kamehameha Schools as to the representations you have made today?

**MS. SWARTMAN:** Yes.

**CHAIR SCHEUER:** Okay. Great.

Commissioner Wong, followed by, I believe, possibly Commissioner Giovanni.

**COMMISSIONER WONG:** Chair, do you want to give Commissioner Giovanni, since he didn't ask any questions, follow up, you know, just real fast.

**CHAIR SCHEUER:** Commissioner Giovanni?

**COMMISSIONER GIOVANNI:** I didn't have any questions at this point. Thank you.

**CHAIR SCHEUER:** Okay.

**COMMISSIONER WONG:** Just a follow-up. Can you go to Exhibit 46, please, the GANTT chart? And thank you again for giving us the GANTT chart. It
helps to -- I don't know. Can we -- If you can adjust it a little bit.

So on the top portion, you have the EIS process that will be done in 2022, approximately, through 2025, depending on all these issues that may arise; right? So I'm not --

But looking at the whole project itself -- and by the way, this is Commissioner Chang's, but she really helped me think about. Looking at Phase E, that will be done in around -- approximately for a start of approximately in 2060, approximately. Do you -- tell me when you're ready.

You know, again, I'm worried about things can change, as you said, even with solar. So I'm wondering about the staleness of the EIS. You know, just because things change in our lifetime, you know, from rotary dial phones to push phones to iPhones, you know, and actually, I should say the party lines for me. Sorry. I'm showing my age.

But anyway, what I'm just saying is EIS can get stale. Things does change. You know, your whole master plan can change, you know, like that. So don't you think maybe you should look at maybe doing phased EIS with a phase development instead? Would that be a possibility?
MS. SWARTMAN: So we have not contemplated it to date, but I guess we could take a look at that as a consideration.

COMMISSIONER WONG: Yes. So just I'm worried just because of the Turtle Bay issue with the EIS and others, that eventually things does change. And, you know, let's say we find out, hey, you need more roadways because Koa Ridge is going to have all these projects, all these cars coming in from a TIAR, and you may need more roadways or something that you have to do in, you know, more TIAR or, you know, more infrastructure or, as chair said, you may have to do more wells for water. But he didn't say that, but I was thinking about that.

But, you know, those things may come up -- or more sewer lines because -- so I was just thinking that you may want to think about that, that you may have to do a phase EIS that's phased with, let's say, first one is Phase A and B, second one is, you know, C and D. And I forgot what letters after that, but that's what I'm just saying. So thank you.

MS. SWARTMAN: Thank you.

COMMISSIONER WONG: Thank you, chair.

CHAIR SCHEUER: Thank you, Commissioner
Wong.

Commissioners?

Commissioner Chang?

Ms. Thoene, will you stop screensharing, please?

COMMISSIONER CHANG: Thank you. The chair raised some questions that I wanted to just follow up on. You know, with all due respect to Commissioner Wong -- I really love Commissioner Wong, but I do hope that you're not going to do a phased EIS.

I mean, I'm hoping that we would be able to do, like we have considered this, is within the conditions of any approval, you could come in for a DBA, that it contemplates that there will be -- that there will be updates.

But I think there should be full disclosure, as you say, on your entire development. I think the Kamehameha Schools are being -- to comment on them. But I think we all appreciate the concern about a stale EIS.

But let me just follow up. I think -- I read this morning's paper. I had a chance to take a look at it. Hawaii has the highest number of regulations. So I appreciate the sort of comment
that you had, your comment to the chair's questions
about the regulatory challenges.

    I'd like to ask you, based upon your own
schedule or timing, by 2027, if all goes as
Kamehameha Schools envisions and hopes, by 2027, all
entitlements should be obtained.

    What would be the constraint at that point
in time to expedite the development of housing
rather than spanning out over 40 years to build
another 1,000 homes, that you were accelerating the
development of homes? Because I would suspect there
is going to be a next generation of young
beneficiaries who need homes.

    So what would be the constraint to keep
this to 40 years for 11,000 homes?

    **MS. SWARTMAN:** And, you know, I think I
don't want to speculate on -- I don't know the
answer to that question directly. But there are a
number of things that could happen that could impact
-- you know, everything from a natural disaster
could occur or timely delivery of, you know, the
rising cost of fuel and building materials to the
extent where it's out of control and it will have a
severe negative impact on not just the homebuilders,
but the homeowners and the purchasers or the buyers
Those are just a few. We can have a huge -- another economic downturn. We anticipate another economic cycle between now and then. However, based on the plans and the cost estimates that we've had, that's our timeline. That's our projected timeline.

As far as speculating what could happen between now and then to deliver, who knew COVID would hit and impact us in a way that was so drastically changing? No one could have predicted COVID and its impact on us.

COMMISSIONER CHANG: I totally appreciate that. I think many people got squandered two years during COVID, so a much better plan. So I think that there are opportunities notwithstanding extraordinary catastrophes.

But I'm going to share with you my concern is -- and I'm going to ask this to the Office of Planning -- how do we as the Land Use Commission evaluate competing state interests, competing state policies?

We have an affordable housing crisis. We are short 40,000 homes. We have sustainable ag. We are shipping in 95 percent of our goods. We have a renewable energy goal. All of these interests on a
limited amount of resources. And I think our time
is accelerating, given climate change.

So it concerns me that this very ambitious
project from 1987 to 2070 -- that is 83 years, 83
years from the time that the DBA was approved to the
time that 11,000 homes were built.

I understand that there are -- there were
circumstances beyond Kamehameha Schools' control.
But there were -- not all of those could have -- I
think there were some that could have happened.

This was always your land. Gentry was --
they were the developer, but it was always
Kamehameha Schools' lands. So it does -- I am very
troubled by the length of time, and I am --

Forty years to build 11,000 homes, all the
entitlements that you made and assuming that the
backbone infrastructure should be built, seems to be
an extraordinary amount of time. I would hope that
by the time that this goes out for public review and
stakeholder review, that you are considering
accelerating that schedule.

So that's probably more of a comment than
a question, because I realize you can't answer that,
but that is going to be a real concern for me
because of the length of time and the plan beneath
that we have.

My second question is do you believe that Kamehameha Schools has a different kuleana, responsibility of other developers?

**MS. SWARTMAN:** Yes. I do.

**COMMISSIONER CHANG:** Could you explain to me what that difference consists of?

**MS. SWARTMAN:** I don't believe that the builders that we have today are a whole lot different in that they want to deliver communities to our island. There are a lot of good developers out there that have a lot of history in Hawaii and on Oahu, and they have done a great job so far in delivering communities that you and I both -- all of us live in today.

However, as a Hawaiian trust and Native Hawaiian education organization, I think we -- I don't think we are any better per se, but I do think that we have a much bigger impact in terms of all of the different values that I mentioned before as far as culture, education, energy, and agriculture.

I mean, Kamehameha Schools is charged with a lot of responsibility, and I appreciate your statement about the LUC navigating through competing interests, state interests. We, to, at Kamehameha
Schools go through that as well, and it's not an easy job. And we try the best that we can.

And at this point in the life of the Waiawa community under the direction of Kamehameha Schools since 2020, that's what we're trying to do, is just do the best that we can and do what needs to be done to set up our development partners who are going to actually build the communities for success.

**COMMISSIONER CHANG:** I appreciate that. I think there is a heightened expectation, in particular by the Hawaiian community, for Kamehameha. But it is the competing interest that you talked about when you were asked what is your kuleana. It is education. It's culture. It's all of these things, and the trust that you made to beneficiaries that continues in perpetuity.

So I understand the very difficult challenges that you face. But I do believe that you have the opportunity -- not only kuleana; opportunity -- to be different from other developers, to be more than just putting up a sign with a Hawaiian name.

So this is, I believe, a harder question. How do you ensure that these homes that you are proposing to build will be built to length and use
of your beneficiaries?

MS. SWARTMAN: That's a good question.

And my apologies, so.

COMMISSIONER CHANG: No. This is fine.

MS. SWARTMAN: Those two explain Waiawa. You know, one of the things that we strive for or aspire to, and one of our goals at Kamehameha Schools, is to really -- it's about having a Native Hawaiian identity.

And in so many ways that plays out in our community, in our everyday life, from the moment we wake up to how we wake up our children in Hawaii, whether it's the way we say, you know, rise, rise, ala, rise today, because right now I have to get up and go to school, to how we address our kupuna and our treatment of Hawaii's own --

COMMISSIONER CHANG: Are you okay?

MS. SWARTMAN: Yeah. It's like, you know, but in Waiawa there's an opportunity, as you mentioned, for the Native Hawaiian identity to flourish.

And while we may not be doing the greatest job of translating how we envision that happening, I mean, there's different ways of honoring a sense of place and doing the research and understanding the
historical context that all of our olelo that Jason
and his team understand, that preserving all our
cultural places that are important and, you know,
kind of bringing that to life in a built urban
development.

And you'll see that in places that we've
done in Kamehameha Schools, like Kaka'ako, you know.
Even when you get out of the car, you know what
floor you are in Hawaiian. And that has some
meaning to us, because everywhere you see in a
community that has the olelo Hawaii is a way or a
small measure of perpetuating our culture.

And even in our approach that we deliver
our homes or even in the way we negotiate contracts
or easements, in every aspect that we do business at
Kamehameha Schools -- I'm not even a graduate, but I
feel that deep, deep kuleana in all that we do. And
so -- I'm sorry.

COMMISSIONER CHANG: Do not apologize.
Don't apologize. And I greatly appreciate that. I
appreciate your passion and that it is a personal
kuleana that you've accepted. So don't ever
apologize.

You know, I think Kamehameha Schools is in
a very difficult position. You are viewed as the
synergy for all Hawaiians. They see you as a deep pocket, and you should be doing and -- but you also, you know, and I recognize that you have other responsibilities, you know, other considerations. Make sure that the trust continues.

But I look around, and it is very -- it's painful, because our local kids, they cannot stay. They are living in multi-generations. And so, I will -- frankly, I do have a higher expectation of Kamehameha Schools.

I expect Kamehameha Schools to find a way to prioritize our beneficiaries, not only for education, but to sustain us as a people. And that means housing. And that means finding ways that you're not just building so that people from around the world can buy some place in Kaka'ako. I mean, that's not kuleana.

In Waiawa, you have that opportunity. So I know you would take my heart there, but I -- we do look to Kamehameha to find a way. We have a housing problem, especially of our -- I will say young people. And that this master plan that's going to be designed the day --

When the chair asked you what's different about this, and I know you said you're still in the
planning stages, but I'd like to see from your community engagement that you are taking to heart those considerations that make us unique, that you're incorporating them.

And I didn't get a sense of that, but I know you're in the planning stage. That to me is community engagement when you're doing a master plan. What are you hearing? What are we listening? And how are you integrating that within your plan?

But so I apologize. I am just -- mine is just so much more -- less of a question and more of an appeal to you, that you do have -- this is me personally. I feel that you have an obligation to be different. So, you know, with that in consideration, accelerating these homes.

Fourty years to build 11,000 homes, finding a way to make this so that it is -- so that our local people can stay here to live and that -- defining a way to reconciling your own kapili just as we try to navigate our own. It's on a larger scale. But I understand the challenges that you have, and I greatly appreciate how serious, and I know how generally you would be.

So I'm sorry for just going on and on and on. I apologize. Thank you very much.
CHAIR SCHEUER: Thank you very much, commissioner.

Commissioners?

Commissioner Okuda?

COMMISSIONER OKUDA: Thank you, Mr. Chair.

And I really do appreciate your testimony. If I can just slightly disagree with my dear friend Dawn Chang here.

COMMISSIONER CHANG: Of course.

COMMISSIONER OKUDA: Kamehameha Schools is a trust, which means the trust controls the duties of the trustees. And I think I know a little bit about Kamehameha Schools, because I teach -- to graduate students, I'm teaching this year higher education law. And one of the cases that I, you know, sent to our doctoral and master students was the John Doe case out of the Ninth Circuit Court. As far as I can tell, there's nothing in the will of Princess Bernice Pauahi Bishop which charged the trustees with providing affordable housing to the community.

Now, that's a really good goal, and if the KSBE can work it into their plans, that's fine. But we should not forget the fact that it's a trust, and it's a charitable trust with specific duties and
obligations with identified beneficiaries.

And as much as maybe I might be criticized for saying this, yeah, you know, when development stretches out over time, it cuts against what many of us have a goal as providing additional supply of housing which, hopefully, might not drive down prices, but might moderate the increase in prices so that maybe our kids can stay in Hawaii and not have to feel like they move to the mainland.

But frankly speaking, if the trustees in their discretion -- not being bribed or anything like that -- in their discretion come to the conclusion that stretching out the development timetable maximizes the assets to provide education to the designated beneficiaries of the ali`i trust, I don't see that contrary to the law. And, in fact, if the trustees did anything other than that, they might themselves be breaching their fiduciary duties to the beneficiaries.

Now, if for some reason, the federal courts overturn the Ninth Circuit Court controlling case which upheld the admissions policy of the Kamehameha Schools, I might have a different view of that.

And by the way, my statements aren't based
on the fact that there's any racial or ethnic purpose or anything like that. You know, my statements aren't based on the fact that there might be a so-called constitutional suspect classification involved.

It's based on the fact that the record shows that there's at least a recent history of KSBE looking out for disadvantaged individuals, disadvantaged families and things like that.

So again, I don't disagree with what my dear friend Dawn Chang had to say, but I would just like to point out that the primary fiduciary obligations of the trustees, as far as I can tell, does not include providing affordable housing to the community.

That job rests with us at the Land Use Commission, with -- what's it -- 301-H housing projects, whatever else we can do.

And if the trustees can help out, that's fine, but that's not their obligation, and I don't look to them as being, you know, taking that on, where that's not stated as a part of the trust.

CHAIR SCHEUER: Commissioner?

COMMISSIONER OKUDA: Okay. Thank you, Mr. Chair.
CHAIR SCHEUER: Thank you, commissioner.

Commissioners, questions for the witness?

With the deepest of affection for my fellow commissioners, these aren't, according to public policy, considerations for Hawaii. But questions for the witness at this time?

Redirect, Ms. Lim?

MS. LIM: Thank you, chair.

Just a couple of quick questions, Michelle. I know it's been a long afternoon. So I just want to clear up a couple of things, because I think I might have heard a few different answers.

I understand that the master plan, as currently envisioned, contemplates a district boundary amendment for a portion of it. But it also contemplates a motion to amend; is that correct?

MS. SWARTMAN: That's correct.

MS. LIM: And I also heard you say that through the EIS process, it may -- you may come to the conclusion that the most appropriate land plan to actually pursue to entitlement would not involve 400-some odd acres of reclassification.

MS. SWARTMAN: That is correct.

MS. LIM: It may include no acres for reclassification. It may include some number
between 0 and 476.

MS. SWARTMAN: Correct.

MS. LIM: So but no matter what, does Kamehameha Schools understand that it will need to come back to this commission with a motion to amend, to request whatever the significance differences are between your ultimate plan and what was approved as the Gentry plan?

MS. SWARTMAN: Yes. That is correct.

Even if we decided not to go to the State Land Use Commission for a district boundary amendment, we would still have to go before the commission to motion to amend.

MS. LIM: And is it your understanding that at the point in time when this commission is considering that motion to amend and they have all of the information from the EIS plus all the witness testimony at that point, that the commission would have the ability to weigh in on timeframes for development of that master plan?

MS. SWARTMAN: I would imagine everything they would have a chance to speak or make comments to.

MS. LIM: Thanks, Michelle. And then my last question for you, and I just -- this is more I
don't want it to get lost. We were talking about Exhibit 40 of the stipulated proposed conditions of approval -- and I take that back; I have two questions.

First question is with respect to condition 1 on the revised master plan, is it your position that no matter who the ultimate EIS accepting authority is, that pursuant to this condition, Kamehameha Schools' representation and commitment is that a draft EIS or revised master plan, but hopefully a draft EIS, would be submitted no later than February 11, 2025?

**MS. SWARTMAN:** Yes. That is correct.

**MS. LIM:** So it doesn't matter who the accepting authority is. That's your representation.

**MS. SWARTMAN:** Yes.

**MS. LIM:** Thank you, Michelle. And now this is truly my last question. With respect to condition 9 in that stipulated proposed -- the conditions of approval, I just want to hear you affirm or deny that Kamehameha Schools has committed, pursuant to this condition, that the master plan Phase A infrastructure would be in place by the end of 2030.

**MS. SWARTMAN:** Yes. That is correct.
MS. LIM: And so this would be -- if the commission were to accept these conditions, this would now be a condition that would be imposed on this solar farm.

MS. SWARTMAN: Correct.

MS. LIM: Whereas, the existing condition is really only imposed on the other solar farm.

MS. SWARTMAN: The first one. Yes.

MS. LIM: Okay. Thank you. I don't have any further questions.

CHAIR SCHEUER: Thank you, Ms. Lim.

Thank you for your testimony.

It is 2:29. I want to confirm with Commissioner Giovanni. Are you good until -- for the next half hour, and then you're not available?

COMMISSIONER GIOVANNI: I'm good until the top of the hour. And then I have to go.

CHAIR SCHEUER: Okay. Yeah, 30 minutes.

So with the forbearance of my fellow commissioners, we will plow through without a break.

Commissioner Ohigashi?

COMMISSIONER OHIGASHI: Thank you. Being old and infirm, you know, pushing the button. I was wondering. I would like to see if we could go into executive session to discuss the issue that remains
about substantial commencement and take it as our
decision today. I believe that that kind of
discussion should take place in executive session.
If there isn't time today, then I would probably
move that we move forward at the beginning of the
next session.

CHAIR SCHEUER: Thank you, commissioner.

We could do it one of two ways. We could do that
now, knowing that we would go until 3 and no longer.
Or what I would suggest we might do, not knowing how
long we might need for that discussion, we move it
to the next time we take up this agenda item, which
I believe is going to be -- Mr. Orodenker? -- on May
25th. Which would also give our deputy attorney
general additional time to prepare for that
discussion. Is that acceptable, commissioner?

COMMISSIONER OHIGASHI: Fine with me.

CHAIR SCHEUER: Ms. Lim, are we done? Are
we moving on to DPP?

MS. LIM: I'm done with witness
examination. I have some closing remarks that I'll
keep very brief, but I'm done with the witnesses.

CHAIR SCHEUER: Okay. So let's use if the
next 29 minutes together to see how far we get
through the Department of Planning and Permitting
and the Office of Planning and Sustainable Development.

COMMISSIONER WONG: Mr. Chair?

CHAIR SCHEUER: Commissioner Wong?

COMMISSIONER WONG: I know at the last meeting we requested that if any witnesses can come -- if Ms. Lim's witnesses can come back if we have any questions after the presentation. I just want to confirm that.

CHAIR SCHEUER: Ms. Lim?

MS. LIM: The witnesses who are present today, Ms. Swartman is here. Mr. Jeremiah has stayed, and Ms. Sato as well as Mr. Nick Molinari, so all of the witnesses. Are you referring to the ones that you've heard as live witness testimony or the consultants who we've had sitting in the waiting room in Zoom?

COMMISSIONER WONG: That was, I guess, the one we had in Zoom the last time we had a Zoom.

CHAIR SCHEUER: Ms. Sato, I believe.

COMMISSIONER WONG: Ms. Sato.

MS. LIM: Ms. Sato is here in the room, and she would be available for questions today.

COMMISSIONER WONG: I don't think it would be -- it may be after I hear from DPP and OPSD, if I
have any, yeah.

CHAIR SCHEUER: And what I understood the commissioner to ask is after we are done with hearing from DPP and OPSD, would the commissioners -- would you make your witnesses available to commissioners if we can?

MS. LIM: Of course.

CHAIR SCHEUER: Thank you.

Is that it, commissioner?

COMMISSIONER WONG: Yes, chair. Thank you.

CHAIR SCHEUER: Any further matters on our proceedings for the next half-hour, commissioners?

Seeing none, Department of Permitting for the City and County of Honolulu?

MS. WEAVER: Good afternoon. The Department of Planning and Permitting, DPP, would just like to clarify the letter that it sent in response to KS' 2021 motion.

All right. So in a February 3rd letter to the State Land Use Commission, DPP objected to the proposed modification of condition 10, because it believes that the petitioner did not want to provide a supplemental environmental impact statement, the EIS. And so, condition 10 in the stip says that the
petition area would be subject to Hawaii Revised Statutes Chapter 343.

And the DPP would also like the condition to state that it would be subject to HAR, which is Hawaii Annotated -- no, sorry, Hawaii Administrative Rules Chapter 11-200.1 as applicable, because especially in 200.1-30, it talks about the supplemental EIS. So we would just want to make sure that that's followed.

And then also for condition 11, if landscaping is involved, condition 11 talks about wildlife protection. We would like -- or DPP would like the petitioner to submit a landscape plan to DPP for review and approval.

CHAIR SCHEUER: It's a lengthy condition. Do you have a particular area that you wanted that included in?

MS. WEAVER: Yes. "8. If landscaping is installed as part of the solar farm project, non-invasive plant species and native plant species." So if that happens, then DPP would like the plan submitted to them.

CHAIR SCHEUER: Okay. You have (indiscernible) ready?

MS. WEAVER: We can provide that. That's
it.

CHAIR SCHEUER: Okay.

MS. WEAVER: Thank you.

CHAIR SCHEUER: Commissioners, questions for the Department of Planning and Permitting?

Commissioner Chang?

COMMISSIONER CHANG: Thank you.

Ms. Weaver, I just have one question. Have you had an opportunity to review Kamehameha Schools' proposed master plan?

MS. WEAVER: Yes.

COMMISSIONER CHANG: Is it consistent with the county's general plan and community sustainable?

MS. WEAVER: It is.

COMMISSIONER CHANG: Thank you very much.

CHAIR SCHEUER: Further questions for Ms. Weaver?

Commissioner Wong?

COMMISSIONER WONG: You heard my question about the EIS. What is your opinion about, you know, their phasing and that length of EIS? What is DPP's thoughts on that? Do you think the EIS will be stale or would it be just enough to -- for that whole four phases to 2060? What is DPP's idea or knowledge of that?
MS. WEAVER: HAR requires a new environmental impact statement if the effect of the project is substantial. So as long as petitioner complies with that.

So at the moment, we haven't received anything, so we do not know.

COMMISSIONER WONG: Okay. Yeah, I just was wondering about that just because I understand HRS and HAR, but what is -- if there are any city ordinances, ROH, dealing with that, or DPP's rules on that, because of the Supreme Court decision on Turtle Bay?

MS. WONG: For the record, this is Dina Wong with Department of Planning and Permitting. I'm the chief planner with the Planning Division. There is no -- oh.

CHAIR SCHEUER: Do you swear or affirm the testimony you're about to give is the truth?

MS. WONG: Yes.

CHAIR SCHEUER: Thank you. Please continue, Dina.

MS. WONG: Yes. I am not aware of any city ordinance or administrative rules. We follow Chapter 343 and the related administrative rules on that.
COMMISSIONER WONG: So the second question I have on -- you know, I guess, because of Red Hill, and Board of Water Supply is under the purview of the city, what is the feeling of the city regarding this whole project and the water wells? Do you have any ideas or any knowledge of anything about that?

MS. WONG: This project is consistent with our Central Oahu sustainable communities plan. The petition area is all within the community growth boundary. And as Michelle pointed out, the plan does recognize the Waiawa master plan and the solar farms.

With respect to the long-term water supply for the island, it's hard to answer that, because there are so many unknowns on, you know, what the Board of Water Supply can do in terms of increasing supply of water, what conservation measures can do. It's hard to answer.

This area is not part of urban Honolulu, where the shortage of water is, but it could be affected if water is diverted from other regions, but I can't answer that.

COMMISSIONER WONG: Okay. That's all.

Thank you.

Thank you, chair.
CHAIR SCHEUER: Thank you, Commissioner Wong.

Commissioners?

Commissioner Okuda?

COMMISSIONER OKUDA: Thank you, Mr. Chair.

A question for DPP. Even though it's not the kuleana or the duty of the trustees of KSBE to provide affordable housing or housing in general, does the DPP have any concern with the fact that if you look at the master plan and the schedule, a lot of this housing seems to be -- or going to be delayed to a point where many of us are not going to be alive when the last house is built? Is that a concern?

MS. WONG: Well, I think we all like to see housing built sooner rather than later, but I understand that these are really long-term projects, and if you looked at Koa Ridge and Hoopili and the length of time it took to get those started, it just seems to be the nature of these master plan developments.

You know, the city has other efforts underway to get more housing built. We're focusing growth more in the primary urban center, secondary city in Kapolei. So it's not all putting everything
in Waiawa or Hoopili or Koa Ridge, but throughout the island.

**COMMISSIONER OKUDA:** Because housing is such a concern, are there things that the DPP could do within the bounds of the law -- not asking for special treatment or anything like that, but are there things that DPP could do within the existing framework to assist developers such as KSBE to move forward with their development?

In other words, to cut the red tape, if there is red tape, or to find out where the tape is that nobody can figure out where the tape is.

**MS. WONG:** One thing that the department could do, and we are looking at, is expediting building permit processing. But that will be further down the line when they come in for actual permits.

**COMMISSIONER OKUDA:** Okay. Last question. The state at great expense once sent me -- periodically sends me off to learn new things, and I actually try to pay attention. There was this one city in -- on the San Francisco Bay that actually designated somebody to be, like, the concierge to cut through the red tape.

Just so that we don't have an amorphous
question here, would the DPP commit itself today to have somebody work with KSBE to expedite, where possible, this development?

In other words, so there's a commitment on the record here that the DPP will have a designated person to work with KSBE and its planners who, I think we can make a finding, seem to have the community interest at heart, to try to move this development forward in an expeditious manner? Can we get that commitment from the DPP?

**MS. WONG:** I think we can give a commitment that, you know, everybody at the department, and if it comes -- it will touch many divisions within the department. When they come in for the zone change, it will be in the Planning Division. When it comes in for the building permit, it will go through Building Division.

**COMMISSIONER OKUDA:** Yeah, I don't mean to interrupt, because time's getting short, but so let me just ask a more pointed question.

Would it be okay if you state on the record that you would be the person that -- yeah, I'll ask about this -- that you would be the person that KSBE can call if there seems to be a problem, just so that we don't have unnecessary bureaucracy
1. get in the way of a project?

   This is not to say you have to approve it, but at least there's a live body with a telephone number and an address where, you know, contact can be made. Would that be okay?

   **MS. WONG:** There will always be a person that they can contact, a live body, but I wouldn't be able to commit to say who that would be.

   **COMMISSIONER OKUDA:** Wouldn't be able to commit? Okay. Well, let me just urge that, you know, that we -- when everybody's responsible, like I tell our staff at our office, nobody's responsible, so just consider that to try to move things forward.

   Thank you very much, Mr. Chair.

   **CHAIR SCHEUER:** Thank you very much for that valiant yet unsuccessful attempt.

   Further questions for DPP?

   **CHAIR SCHEUER:** So I just want to know. Are you taking a position or not taking a position as to the length of time over which the housing production is stretched out as proposed in their master plan?

   **MS. WONG:** No. We don't take a position on that.
CHAIR SCHEUER: But the city does sort of
generally take a position that you want more housing
production?

MS. WONG: Yes.

CHAIR SCHEUER: But just not necessarily
here on this project.

MS. WONG: I think once -- it's sort of
out of our control. I mean, we do the processing of
the permits and the approvals, but whether it comes
down to their financing or conditions that we don't
have any control over, it might just be the nature
of these long-term, larger master plan
developments.

CHAIR SCHEUER: I will forego the
dissection of why some other master plan
developments took longer, but thank you for your
comment.

Anything further, commissioners?

OPSD? You have 15 minutes. How far do
you want to go? And we actually want to reserve a
couple of minutes at the end for procedural matters.

MR. YEE: We have an argument to make, and
we can make it that length of time to finish that on
time.

CHAIR SCHEUER: Okay.
MR. YEE: The Office of Planning has no objections to this motion to amend in order to allow a solar farm to be developed. The impact reviews we think were well done. The requested accommodations for more time is reasonable for a solar project that has already been approved by this commission under somewhat different circumstances. And we also think the impacts from this solar farm were adequately addressed.

So in the particular motion before you, the Office of Planning has no objection that that motion be granted.

I do have -- I want to address probably A larger question of what's going to happen with the housing development. Before I go there, though, I do want to address some particular questions that I think the commissioners had asked or indicated they were going to ask me. So let me just assume they're going to ask me this and try to address it now.

The first was how do we evaluate conflicting or competing state interests? This is a particularly difficult question, because there are really two different issues that are going on, because no one single piece of property can satisfy all of the different conflicting needs of the state
to both sustain and develop.

The problem is you need to look at a
particular piece of property in a larger context,
but you are doing so in a contested case hearing
that looks at the facts of one particular piece of
property.

There is a much, much longer discussion on
this, but let me give you the 30-second reply, which
is the City & County of Honolulu has done a larger
review of the various uses of all of its lands in
the county, and they have determined the various
uses that would best be able to meet those balancing
and -- that would best balance those conflicting
purposes.

What area should be reserved for
agriculture? How do you keep the country country?
What areas should be preserved and what areas should
be developed? Because development is important.
You can't keep the country country if you don't have
a strong urban core. You need a place for that
demand to go. And that is done at the county level
through their sustainable communities plan.

And this particular project, including the
solar, is part of the community -- part of the
sustainable community development plan for this
That still means you need to look at the particular facts of any particular request and the timing, because the sustainable community plan does not mean every single piece of property that's designated for urban use should be developed all at once.

So you do still need to do a case-by-case analysis of the particular request before you as to whether that particular urban use in that particular way would be appropriate and should be granted.

So there's a much longer discussion, but that's sort of my best 30-second reply.

You also asked how do we evaluate motions. Do we look at matters differently if petitioner is a charitable organization or does good for the world?

In its basic element, the answer is no. Every petition is evaluated on its merits, not who brings it, with some exceptions with respect to if you have to evaluate petitioner themselves -- for example, financial capacity.

You do, however, evaluate different uses. So one use is for luxury condos, and another use is
for single and multi-family housing. You might look
at those uses -- or you would look at those uses
differently, because they fulfill different uses in
the community.

You also asked about I think what you
referred to as a phasing, EIS phasing. And I think
maybe I would reframe that to ask how do you account
for the need for supplemental EIS as time moves on?
And that's an interesting question in this project
because of the length. And I think it does need to
get addressed.

The Office of Planning, I think, believes
that needs to be addressed in the motion to amend
the conditions and the potential district boundary
amendment that will come before you. That and many,
many, many, frankly, other questions.

When you asked about do you have concerns
about the length of time, this plays into the exact
same question, which is we do have -- it does make
things very complicated when you come to the Land
Use Commission on a particular case-by-case analysis
for something that's going to take so long to
develop, because our ability to predict the needs of
the state, or the ability to predict what the
conditions will be over that length of time is very,
very difficult. Which doesn't mean we will say no, but it means the analysis does become more difficult to do and, frankly, a little more tricky.

It may need to account for the need for updated studies. It may be we approve it as a -- not phase, interim --

**MS. LIM:** Incremental.

**MR. YEE:** Incremental. Incremental redistricting. And I'm not saying we will -- I'm not saying this is what we should do here. What I'm saying is these are some of the difficult questions we're going to have to face when this comes back to the commission.

I've actually made a list of several other issues that will have to be addressed, so I'm just going to take the opportunity to let everyone know at Kamehameha that these things are going to have to be addressed when you come back, particularly the water permits, the adequate traffic analysis, issues involving substantial commencement, issues involving compliance with your representations, future solar uses, the absorption rate of housing, and, frankly, many other things.

So these are relevant questions. They are vital to the larger project. But for the Office of
Planning, we believe these are issues that should be addressed -- not today -- which we think should be approved, because it's just for the solar part, but in that larger question.

    Let me, as quickly as I can, because I know I'm running out of time, try to address the questions that have been raised regarding the dilemma that occurs involving housing and what is the extent of the Land Use Commission's power to require development. This came up, as you may recall, many months ago involving an affordable housing project.

    How do you force a developer to develop, rather than allow the developer to revert back? And it's tricky. It's hard. There are limits to the Land Use Commission's power. There just are. And if a private landowner doesn't want to spend the money to develop a project, what other choice do you have other than revert the property back to agriculture?

    I want to let -- and so when we look at this particular case, what we have to remember is this was approved in 1988. If you look back at that decision, there was no condition for compliance with their representations. None whatsoever.
There was no condition for substantial commencement of backbone infrastructure or substantial commencement of the project within any period of time. None. That's simply what the LUC decided in 1988.

Subsequent to that, they came back in 2014. Actually, let me take a moment just -- and what's important about that is if you look -- because this will come up in your discussions with your attorney -- is if you look at HAR Section 205-4, one of the first thing it says the Land Use Commission may -- not a condition -- require substantial commencement of the property. And if they do not, then you may revert.

And the question is what happens if you don't have a condition, if they -- whether they substantially commence or not? You know, so whether or not this does or doesn't constitute substantial commencement, the more important question might be what can you do even if they do substantially commence, when there is no condition to do so?

Subsequent to that, although this will -- as I indicated, will be an issue we will need to address when they come back. The subsequent issues have come in. In 2014, they came for an amendment,
as you know. And there was a fight back then. I'm not sure if everyone remembers here, but there was a fight over the requirement to submit a revised master plan and their development for that.

It was something OP held very firm about, that, you know, without it, OP was not going to support solar, a solar permit, which in and of itself was something that was good to do.

We did require that they substantially comply with the representations of the development and operation of the solar farm, because at the time that's all we could get, you remember, because it's only with relation to the solar farm. But we thought for that, at least, we could link it there.

As you may recall, conditions have to be both roughly proportional to the impact as well as connected to the impacts of a project in order to be constitutional and not constitute a taking. So we got that from that.

Subsequently, they did submit a revised master plan, but it's just submittal of a revised master plan. It's not a house. It's just a piece of paper. An important piece of paper, and a piece of paper that involves consultation with many people. That's an important thing to do, but it's
still a piece of paper, not a house.

And then in 2020, they came in again, because stuff again happened. And at that point, what was -- one of the important parts of that, and there was a big fight, you may remember, or a big discussion about the backbone infrastructure requirement. And you specifically required, and they agreed -- at least they didn't appeal -- the requirement to complete construction of the backbone infrastructure for Phase A by 12/31/30.

And that was important, because we knew that they were going to have to come back to the Land Use Commission at some point, because based upon the uses in 1988, we knew it was not going to be the same as it was going to be in certainly 2030.

So much of what we have looked at in this particular motion has been what can we do to require them to come back to the Land Use Commission as soon as possible? Because that's what's going to have to happen in order for those houses to be built.

So we knew they had a sort of a general idea. They were looking at a district boundary amendment for a certain piece of property on the southern or the makai section, because that was important to -- let me try to finish this and then
That was important, because that was their connection to other infrastructure and the houses. We thought they were going to have come back to you for something, and the question was how do we force them to come back.

And so, condition 1 was part of that. That is, the environmental impact statement was not put in there as a replacement because we thought that was a way to connect with the public. It was a way to make sure they came back to the Land Use Commission, because in order to do a draft EIS, you have to hire consultants, and you have to pay a lot of money, which you will never get any money back from until you proceed with development and the sale.

So the reason we wanted -- and because in order to do an EIS, you have to know what you're planning. So it might not have maybe the same consultation process with the public, but it gets them back to the LUC. It puts a deadline by which it will encourage them to come to the LUC, because the EIS is such an important and expensive element which would have to be completed for that process. So it put a time deadline on that important
provision.

I know I'm running out of time, so let me just conclude by saying this particular matter before you, we think, is not a difficult question, because it's involving solar.

The second issue before you is going to be much more complicated. All we're asking is you not conflate those two things. Approve this, and then let's move on to the next step as soon as possible.

Thank you.

CHAIR SCHEUER: Thank you, Mr. Yee. We will reserve our opportunity to ask you questions at our next meeting on this matter.

It is 2:58 p.m. I thank everybody for your forbearance as we went through our first hybrid meeting.

Ms. Lim?

MS. LIM: Chair, commissioners, in light of the request to your AG to provide some kind of analysis on substantial commencement, petitioner Kamehameha Schools would ask for the opportunity to provide a simple brief to be filed to provide our analysis for the substantial commencement issue if, in fact, that's still an issue.

CHAIR SCHEUER: We certainly wouldn't
object to any briefs that you want to file with us on that matter.

MS. LIM: Thank you very much.

CHAIR SCHEUER: Same goes for DPP and OP, if you chose to.

Thanks for everybody's forbearance in the virtual and physical worlds. For this, what I wanted to make sure to make space for is that, including a very long and successful career as the administrator of the State Land Use Division of the Office of Planning and Sustainable Development, Rodney Funakoshi is no longer going to grace us with his presence. This is his last meeting before his incredibly well-deserved retirement.

And I will say as somebody who -- it would be no secret -- while I've not always agreed with Mr. Funakoshi on every stance he has taken before the commission, I have no question about his commitment to do what he believes is right for the state, and I know everybody would join me in thanking Rodney for his service to us, and wish him the best.

At this point, do you want to say something?

MR. FUNAKOSHI: Yeah. I appreciate your
statement.

CHAIR SCHEUER: Okay. Thank you very much.

With that, I believe there's no further business to attend to, and our meeting is adjourned. Mahalo.

(Meeting adjourned at 3:00 p.m.)
CERTIFICATE

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

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of May, 2022.

Davilyn Payne