LAND USE COMMISSION

STATE OF HAWAII

October 24, 2018

Commencing at 10:00 a.m.

Courtyard by Marriott

King Kamehameha's Kona Beach Hotel
Ballroom #1

75-5660 Palani Road, Kailua-Kona, Hawaii 96740

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. Action-A06-767 Waikoloa Mauka LLC, (Hawai'i)
Hear evidence, deliberate and take action on
order to show cause issued June 4, 2018

VI. Recess

BEFORE: Jean Marie McManus, CSR #156

Exhibit 55
APPEARANCES

COMMISSIONERS:

JONATHAN SCHEUER, Chairperson
NANCY CABRAL, Vice Chair
LEE OHIGASHI
EDMUND ACZON
GARY OKUDA
DAWN N.S. CHANG

RANDALL S. NISHIYAMA, ESQ.
Deputy Attorney General

STAFF:
DANIEL ORODENCER, Executive Officer
RILEY K. HAKODA, Chief Clerk/Planner
SCOTT A.K. DERRICKSON, AICP
RASMI AGRAHARI, Planner

STEVEN LIM, ESQ.
NATALIA BATICHTCHEVA
JOEL LaPINTA
For A06-767 Waikoloa Mauka

DAWN APUNA, ESQ.
RODNEY FUNAKOSHI, Planner
Deputy Attorney General
State of Hawai'i

RON KIM, ESQ.
JEFF DARROW, Planning Program Manager
Deputy Corporation Counsel
County of Hawai'i

IRINA McGRUFF
Russian interpreter
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CHAIRPERSON SCHEUER: Good morning. This is the October 24th, 2018 Land Use Commission meeting.

Our first order of business is the adoption of September 27th, 2018 minutes. Are there any corrections or comments on the minutes? Is there a motion to adopt the minutes?

COMMISSIONER OHIGASHI: So moved.

VICE CHAIR CABRAL: Seconded.

CHAIRMAN SCHEUER: Moved by Commissioner Ohigashi and seconded by Commissioner Cabral to adopt the minutes. Any discussion on the motion? All in favor say "aye". Any opposed? The minutes are unanimously adopted.

Next agenda is the tentative meeting schedule. Mr. Orodenerker.

EXECUTIVE OFFICER: Thank you, Mr. Chair. Tomorrow we will be here for continuation of this hearing, if necessary, and to adopt the order on the Kualoa Ranch's Important Agricultural Land designation.

On November 14th, we will be on Oahu for the Kapolei motion to amend, and the adoption of order in the Hale Mua matter.

On November 28th, we will be again here on
the Big Island in Kona for the HHFDC Lanihau and Shopoff status report. There's also another matter that will be on the agenda that day, Church Motion to Amend.

On 29th, we will be on Maui for Emmanuel Lutheran, and any other matters that require adoption of orders.

On December 12th, we have status report on Ka'ono'ulu Ranch and continuation of the Church matter that I previously mentioned. We will be on Maui.

On the 13th, we will be on Oahu for site visit for the Kapolei, Maui Kahana and Robinson. That takes us through the end of the year.

CHAIRPERSON SCHEUER: Commissioners, are there any questions for Dan? Thank you, Dan.

Our next agenda hearing and action meeting on Docket A06-767 Waikoloa LLC to hear evidence, deliberate and take action on the Order to Show Cause as to why approximately 731.581 acres of land in the South Kohala District, Island of Hawaii, tax map key number (3)6-8-02:016, a portion thereof, should not revert to its former land use designation or be changed to a more appropriate classification issued on June 4th, 2018.
Will the parties please identify themselves for the record. I'll remind you to press your buttons down so they light to make sure that your microphone is on.

MR. LIM: Good morning, Mr. Chairman, members of the Commission. Steven Lim representing the Applicant and Petitioner Waikoloa Highland Incorporated.

With me today are Mr. Valery Grigoryants, who is the Vice President of Arch Limited, 100 percent shareholder, who is the in turn 100 percent owner of Waikoloa Highlands, Inc., Natalia Batichtcheva who is the President of Waikoloa LLC, and Joel LaPinta who is our Project Manager.

CHAIRPERSON SCHEUER: I believe you also have a translator with you.

MR. LIM: I was going to introduce her just prior to the testimony of Mr. Grigoryants.

CHAIRPERSON SCHEUER: Hawaii County.

MR. KIM: Good morning, Chairperson and Commissioners, Ron Kim appearing on behalf of Hawaii County, and accompanying me is Planning Program Manager for the Planning Division of the Planning Department for the County, Jeff Darrow.

CHAIRPERSON SCHEUER: Office of Planning.
MS. APUNA: Good morning Chair, members of
the Commission, Deputy Attorney General Dawn Apuna on
behalf of Office of Planning. Here with me is Rodney
Funakoshi.

CHAIRPERSON SCHEUER: I'm going to take one
minute to ask Dan to introduce our new staff member
who some of you may not recognize.

EXECUTIVE OFFICER: Thank you, Mr. Chair.

With us today I would like to introduce our
later member of our staff, Planner 4. Her name is
Rasmi Agrahari. We would like to welcome her. She
has only been here for two weeks, so she is
completely lost, but we will get her there.

CHAIRPERSON SCHEUER: Thank you very much.

Now let me update record.

COMMISSIONER OKUDA: Mr. Chair, before we
proceed, may I ask or request the Chair ask that the
interpreter identify herself by name, number one;
number two, identify the language she is
interpreting. And if you could swear the interpreter
to promise to accurately interpret what is being said
from English into whatever language she is
interpreting, and from the language she is
interpreting back to English, just so we have it for
the record.
CHAIRPERSON SCHEUER: Thank you, Mr. Okuda. I was going to proceed in that matter later, but I'm happy to take it up now.

Mr. Lim, please introduce by name the translator whom you are using and what their expertise in translation is, and then I'll swear her in.

MR. LIM: The translator is Irina McGriff, M-c-G-R-I-F-F, and I'll ask her a broad question and she can go into qualifications.

Ms. McGriff, can you please tell the Commission your experience in interpretation of Russian to English and English to Russian?

THE INTERPRETER: Good morning. As the attorney said, my name is Irina McGriff and I'm court appointed qualified interpreter of Russian language, and federal immigration court certified interpreter in the State of Hawaii.

CHAIRPERSON SCHEUER: I'm going to swear you in.

Do you swear or affirm that any testimony you give will be the truth and that you will accurately and truthfully translate from Russian into English the matters that translate?

THE INTERPRETER: I do.
IRINA McGRIFF

Was called as an interpreter to translate English into Russian and Russian to English to the best of her ability.

CHAIRPERSON SCHEUER: Thank you.

CHAIRPERSON SCHEUER: Does that address your concern, Mr. Okuda?

COMMISSIONER OKUDA: Not to be too technical, I would request that she also promise to translate accurately English to Russian and Russian to English both ways.

MR. LIM: I'll go ahead and do that just for the short questions.

Irina, when was the first time that you met the principals of Waikoloa Highlands?

THE INTERPRETER: Today at 8:00 o'clock in the morning.

MR. LIM: How many times have you translated Russian to English and English to Russian in the courts of the State of Hawaii?

THE INTERPRETER: I've been interpreter since 2004, and I have interpreted over 300 cases.

MR. LIM: Do you promise and affirm to the Commission today that your translation to English to
Russian and Russian to English will be true and
correct to the best of your ability?

THE INTERPRETER: Yes, I do.

CHAIRPERSON SCHEUER: Mr. Lim, I'm also
going to ask that you include a resume or some
qualification for inclusion into the record later.

Let me proceed in updating the record.

On September 6, 2018, this Commission held
a meeting to consider and act on A06-767 Waikoloa
Highlands, Inc's Motion to continue the hearing on
Order to Show Cause. The Commission voted in favor
of the motion and we set October 24th-25th, 2018 as
the new hearing date.

On September 14th, 2018, the Commission
mailed or emailed an Order Granting Waikoloa
Highlands Inc.'s Motion to Continue to the parties.

On September 20th, the Commission mailed an
agenda notice of the October 24th to 25th meeting
with a copy of the legal advertisement and Exhibit A.

On September 25th, 2018, the Commission
mailed an agenda notice of the October 25th through
25th meeting with copy of the legal advertisement and
Exhibit A by certified mail.

On October 12th, the Commission received
Statement of Position of the Office of Planning on
the Order to Show Cause dated October 12th and
Waikoloa Highlands Supplemental Statement of Position
on the Order to Show Cause dated October 12th, along
with Exhibits 18 through 37.

On October 15th, and LUC meeting agenda
notice for the October 24th and 25th was sent to the
Parties and the Statewide, Oahu and Hawai'i Island
mailing lists.

Also on the same day, the Commission
received a digital copy of WHI's Supplemental
Statement of Position and Exhibits 18 through 37.

On October 23rd, the Commission received an
email from the County containing an electronic copy
of its Statement of Position, but it failed to meet
the filing requirement of HAR 15-15-37 and is
therefore not considered as part of the record.

Let me briefly run over our procedure for
the day.

First -- and will all members of the
audience and public remember to please silence your
telephones and electronics devices.

First in our procedures I will call those
desiring to provide public testimony for the Order to
Show Cause to identify themselves. All such
individuals will be called in turn to our witness box
and I will swear them in prior to their testimony.

Second, we will consider the exhibits that
the Parties wish to offer into evidence in the Order
to Show Cause.

Next the Commissioner will then begin
proceedings on the Order to Show Cause Docket A06-767
beginning with Petitioner presenting its case,
followed by County Planning Department and then the
Office of Planning.

Petitioner may reserve a portion of their
time to respond to comments made by the Office of
Planning and the County.

It is my intent, as the Chair, to close the
evidence in this docket and deliberate on this matter
during the remainder of today and tomorrow. If we do
not complete the proceedings tomorrow, the next
meeting on will be at NELH on this island on
November 28, 2018.

I'll also note for the parties and the
public from time to time, I will be calling for short
breaks.

Are there any questions from the parties on
our procedure?

MS. APUNA: Yes, Chair, Office of Planning.

Actually not with regard to the procedures, but I
would like to submit that there is an error in the Statement of Position of the Office of Planning that I would like for the Commission to take note of. On page 6, paragraph 3, and page 8 of our Statement of Position there is an error. We refer to Condition No. 9, which should actually be Condition No. 4.

CHAIRPERSON SCHEUER: Thank you for that clarification.

Are there any other questions on our procedures from any other parties. Mr. Lim, No. County, no.

Before we get started on public testimony, I would like to ask for any disclosures from any of the members of the Commission. I understand you have a disclosure, Ms. Cabral?

VICE CHAIR CABRAL: Yes. And I apologize to the Commission and that for what is in part my error here also.

I wanted to let you know, Mr. Chair, that for the record I would like to disclose that I do know Mr. Joel LaPinta as real estate agent, and that I did receive an unsolicited phone call from him last week.

Mr. LaPinta informed me that he was calling
regarding the Waikoloa matter, and he continued to
talk in what could appear to be an attempt to
influence my vote in this matter. He made statements
regarding the ownership of the property, and that
ownership was distinguishable from the old former
ownership.

He also indicated he was part of the
current management group. He impressed upon me the
need for Hawai'i to have additional housing that has
been proposed that this project should be able to
move forward.

I had repeatedly instructed Mr. LaPinta
that he should contact the LUC staff, and that his
attorney would be able to work with him and work with
the staff on this matter.

I would also -- indicated that I should not
have discussed anything with him, and I informed Mr.
Orodenker, our Executive Director who would be the
one to discuss this matter with him.

I'm making this disclosure and bringing it
to the attention of the Commission to ensure that
full disclosure has been taken place with the public
and that all parties and that has not been any
ex-parte communication influencing the Commission's
decision. Thank you.
CHAIRPERSON SCHEUER: Thank you, Commissioner Cabral.

Mr. Lim, I would like to ask you a few questions regarding this disclosure.

Are you familiar with HRS Chapter 91, the Hawai'i Administrative Procedure Act?

MR. LIM: Yes, I am.

CHAIRPERSON SCHEUER: Are you also familiar with Hawai'i Administrative Rules 15-15, the Land Use Commission Administrative Rules?

MR. LIM: Yes, I am.

CHAIRPERSON SCHEUER: I'm going to note for the record that a member of your client new management team, Mr. Joel LaPinta, attempted to have ex-parte communication with the Commission's Hawai'i Island representative, Nancy Cabral, which is in violation of HRS Chapter 91 and the LUC Administrative Rules.

These interactions appear to have been intended to provide information to the Commissioner outside of scheduled public hearings in order to influence her vote.

This is an extremely serious matter and should not be taken lightly. The Commission is taking notice of this on the record and warning that
you need to advise your clients to avoid any further ex-parte contact with any of the Commissioners.

Any and all future communications need to be through the Commission's Executive Officer, or staff or the Deputy Attorney General.

Is that understood, Mr. Lim?

MR. LIM: That's understood you.

CHAIRPERSON SCHEUER: Now, I'm going to proceed with public testimony.

Is there anybody desiring to provide public testimony?

Sorry, are there any other disclosures from any of the other members of the Commission? Hearing none.

Are there any individuals desiring to provide public testimony on the Order to Show Cause?

I have a list in front of me.

First is Ms. Julia Alos? Excuse me if I've mispronounced your name. Come forward. Sit in the chair, turn on the microphone. I'll swear you in and then you will proceed to say your name, your address and continue with your testimony.

Good morning, and thank you for being here.

Do you swear or affirm that the testimony you are about to give is the truth?
MS. ALOS: I do.

CHAIRPERSON SCHEUER: Thank you, please proceed.

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JULIA ALOS

Was called as a public witness, was sworn to tell the truth, and examined and testified as follows:

THE WITNESS: Good morning everyone on the Commission and other people in the room. My name is Julia Alos. I'm a resident of the South Kohala District in Waikoloa Village and testifying in person and on my own behalf regarding Docket A06-767 Waikoloa Mauka LLC’s Order to Show Cause.

I'm an active and engaged community volunteer and feel that this developer's lack of progress and diligence that our community -- has our community very concerned on a host of levels that I will address, as well as my findings from the research on the matter.

In addition to my previously submitted testimonies, electronically for August 21st and orally September 4th hearing and presented on my behalf by Cindy Kester, I wish to submit this
additional information regarding my community's concern about the intersection improvement at Waikoloa Road, Paniolo Avenue and Pua Melia Street.

I want to thank the LUC for the exhibits that were provided on their website, which was a great amount of information for me to garner this testimony today.

My humble opinion deduces that the hibernating bear, Waikoloa Highlands, has been poked and awakened by the LUC, hence the hearings.

Please afford me this occasion to direct you to some of these exhibits on my stance on this issue.

CHAIRPERSON SCHEUER: Ms. Alos, we have your written testimony, which is lengthy. Can I ask you, for now at least, to summarize your main points for us so that the parties, and if the Commissioners, if they are inclined, to have opportunity to ask you questions.

THE WITNESS: Thank you.

I just wanted to address the energy conservation measures with their design. I also feel that with respect to -- what's important here --

CHAIRPERSON SCHEUER: I didn't mean to throw you off. Take your time. We want to get to
the main points.

THE WITNESS: Very fine.

I put in here that I feel that the sustainable Hawai'i initiative should be taken into consideration as they're moving forward with their developments as there has been such delays in compliance with the 2045 goals for the State of Hawai'i.

I also mentioned that I feel that -- with regards to the intersection, it seems from exhibits that I've seen that the Work Order and Agreement, Exhibit 22a, that the Plaintiff has paid a lot of money already towards this development, this part of the work, and I'm hoping that that will be considered as you make your decision moving forward. And I've listed the invoices on that.

Also included was Julian Ng's traffic analysis that he did for this intersection that we're concerned about.

Let's see, Carlsmith Ball stated the Waikoloa Deed for Plumeria LLC was on May 1st, but it was noted June 1st, a little discrepancy there. Now, I guess, Plumeria LLC is now Peaceful Ventures. They changed their name.

Also so in addition Waikoloa Mauka said it
intends to provide affordable housing under County Rules, which requires 20 percent of the units to be affordable low to moderate income household.

The developer has also planned to open space for hiking and biking, et cetera. And I wanted to address that.

My comment is, according to what I've read, 20 percent of the total units amounts to 400 homes equates to 80 credits. I believe Plumeria, which is not Pua Melia, when it transferred over, is only planning on doing 32 units on the 11.8 acres, and includes almost a quarter of the property that's being conveyed to commercial zoning for possibly a hardware store.

And let's see. In summary, based on the aforementioned, I want to stress that I'm greatly concerned about the safety of our area intersection, the future development of Waikoloa Plaza and a Waikoloa library land which is on Pua Melia Street, southwest side of Waikoloa Road.

I'm wanting compliance with the affordable housing which is desperately needed. These are big issues and topics and the Waikoloa Village Association, and extending community at large, and there are many electronic footprints on apps next
door, Facebook and community meetings that include Waikoloa Community Leadership Council, South Kohala Traffic Safety Committee. Recent candidate forums, political campaign meetings, and it's currently being addressed as a Subcommittee members with the South Kohala Development Action Planning Committee since April.

Workforce and affordable housing are so critical, now more than ever, with homeless rates rising, and home prices rising, and casualties of Pele. It is paramount that the County stand firmly on the 20 percent minimum so as not to price our keiki out of paradise.

Mahalo for your time to allow my testimony to be entered today, and your patience for listening to me.

These developers have a lot of documents. It was very confusing to follow as you can see. I did my best as I said to do with all the information I had to better understand this case, and I hope that my testimony, as reflected today, is clearly understood to be true in front of you.

CHAIRPERSON SCHEUER: Thank you.

Does the Petitioner have any questions for the testifier?
MR. LIM: Thank you.

CROSS-EXAMINATION

BY MR. LIM:

Q Good morning, Ms. Alos.

A Good morning.

Q So the things that are important to you that could be provided by this project are the roundabout intersection at Waikoloa Road and Paniolo Drive?

A Correct.

Q And the development of more workforce and affordable housing?

A As well as -- I don't think I mentioned also a promise of some common areas as well.

Q Some common areas?

A Yeah, for bike and hiking trails, etcetera. I think that was where the golf course was supposed to be.

Q You understand that if the Commission reverts the project down from agricultural -- excuse me -- from Rural to Agricultural, that the project is not likely to proceed and those benefits to the community won't be happening?

A I do.

Q No further questions.
CHAIRPERSON SCHEUER: Hawaii County?

MR. KIM: Hawaii County has no questions.

CHAIRPERSON SCHEUER: Office of Planning.

MS. APUNA: No questions.

CHAIRPERSON SCHEUER: Commissioners? Ms. Chang.

COMMISSIONER CHANG: Good morning, Ms. Alos. Just a few questions.

How long have you lived in Waikoloa?

THE WITNESS: 18 years.

COMMISSIONER CHANG: So you've lived there since this project was approved in 2008?

THE WITNESS: Yes.

COMMISSIONER CHANG: Did you participate in the 2008 proceedings?

THE WITNESS: I did not.

COMMISSIONER CHANG: As a resident of Waikoloa, do you pass by this property every day?

THE WITNESS: Nearly every day.

COMMISSIONER CHANG: Can you tell me what kind of improvements or how has the property has been used since 2008?

THE WITNESS: I've seen nothing.

COMMISSIONER CHANG: Thank you very much.

CHAIRPERSON SCHEUER: Commissioners?
Nothing further. Thank you very much.

I'll next call Anita Glass.

MS. GLASS: The last testifier covered my points, so thank you.

CHAIRPERSON SCHEUER: Anybody else from the public wishing to provide testimony on this matter?

We're completed the public testimony.

I'll now move on to exhibits. Mr. Lim, will you please describe exhibits you wish to have admitted to the record?

MR. LIM: Thank you, Mr. Chair. We'd ask that the Commission enter into the record the pleadings submitted by the Petitioner to include the exhibits that are listed with the Motion to Continue filed with the Commission. Also with our Statement of Position filed with the Commission. And the last was the October 12th, 2018 Supplemental Statement of Position.

And we ask that that be entered into the evidence, into the record?

CHAIRPERSON SCHEUER: Are there any objections on this from the County or Office of Planning?

MR. KIM: No objection from the County.

MS. APUNA: No objection.
CHAIRPERSON SCHEUER: Commissioners?

Hearing none, Petitioner's exhibits are submitted into the record.

(Petitioner's Exhibits were received into evidence.)

County, do you have any exhibits you wish to enter into the record?

MR. KIM: No, thank you.

CHAIRPERSON SCHEUER: And, Ms. Apuna.

MS. APUNA: Yes, Office of Planning would like to submit Exhibits 1 through 4 as part of our Statement of Position.

CHAIRPERSON SCHEUER: Are there any objections to Office of Planning's exhibits from the parties?

MR. LIM: No objection from the Petitioner.

MR. KIM: No objection from the County.

CHAIRPERSON SCHEUER: From the Commission?

Hearing none, Office of Planning's exhibits are admitted into the record.

(OP Exhibits 1-4 were received into evidence.)

And, again, I'll mention, Mr. Lim, it would be good to have some written documentation of the qualification of your translator. If you can bring
that forward at later time for consideration of inclusion into the record.

MR. LIM: We will do that.

CHAIRPERSON SCHEUER: Thank you.

Why don't we start with your case, Mr. Lim?

MR. LIM: Thank you. We will have two witnesses. One is Mr. Valery Grigoryants, and that's V-A-L-E-R-Y G-R-I-G-O-R-Y-A-N-T-S. We will be utilizing the services of Irina McGriff as the Russian to English and Russian to English translator.

CHAIRPERSON SCHEUER: I'm going to swear you in.

(Irina McGriff interpreted.)

Do you swear or affirm that the testimony you are about to give is the truth?

THE WITNESS: I do, yes, I do.

CHAIRPERSON SCHEUER: Please proceed.

State his address on the record and please proceed.

VALERY GRIGORYANTS

Was called as a witness by and on behalf of the Petitioner, was sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LIM:
Q  State your full name and address.
A  My name is Valery Grigoryants. I reside in Moscow. And I'm vice president of the company Arch LLC, Limited. My address is Malaya Gruzinskaya Street, house number 25, unit one.

MR. LIM: Again, for the record, as I stated at the Commission initial hearing for Motion to Continue Waikoloa Highlands, Incorporated would like to reiterate that all pleadings and statements made by Waikoloa Highlands, Inc.'s witnesses and counsel relating to Stefan Martirosan, the former director are allegations that he has not been adjudicated to date, however, we wish stress that Waikoloa -- I'll refer to it as Waikoloa for short -- Waikoloa strongly believes in the strength of the allegations of fraud and other mismanagement against Mr. Martirosian, and that we are taking this precaution to not expose ourselves to any claims by him.

So I will proceed with that caveat now.

CHAIRPERSON SCHEUER: About how long do you think you have with this witness, Mr. Lim?
MR. LIM: Ordinarily without translator probably no more than an hour.

CHAIRPERSON SCHEUER: So we will go for
about 20-30 minutes and then take breaks.

MR. LIM:  See how it goes. Just for the
Commission's information, Mr. Grigoryants does
understand some English, but because of the severity
and seriousness of this proceeding, he wanted to make
sure that his words were very clear and precise and
thus he engaged the Russian interpreter for testimony
today.

I'm commencing with the questions.

BY MR. LIM:

Q Can you please state your involvement with
Waikoloa Highlands, Incorporated?

A Yes. I'm the Vice President of the company
Arch, and the company Arch is owner of Waikoloa
Highlands. Was owned -- was the owner.

So all decisions made by Waikoloa Highlands
company, actually were made by me, otherwise
President of Arch, together with my brother who's the
president of the company.

But today I would like to affirm all
members of the committee that I have the full
authority to make any decision in connection with
Waikoloa.

At this time the company Arch is no longer
the owner of Waikoloa, but this is just different
story.

Q So the does Vitoil Corporation now own Waikoloa Highlands, Incorporated?
A Yes.
Q Are you familiar with Mr. Martirosan?
A Yes.
Q Was he a director for Waikoloa Highlands or Waikoloa Mauka during the period in question?
A Yes. He was not only the director, he was also chief financial officer and secretary at the same time.
Q Does Mr. Martirosian today have any shareholder interest or other management control of any of the Waikoloa companies?
A I would like to confirm with members of the committee, just because there were so many gossips and speculations before. I would like to let you know that Mr. Martirosian was never owner of the company or any other companies I'm involved in United States as well as abroad.

He was just a hired manager. He was not and is not the owner of the companies. And now he's fired from all the positions.
Q Please explain to the Commission who
managed the Waikoloa Highlands project during the years that Mr. Martirosian was the officer of Waikoloa Highlands, Incorporated?

THE INTERPRETER: Interpreter ask to repeat the question.

Q Please explain to the Commission who managed the Waikoloa Highlands during the years that Mr. Martirosian was an officer of the company.

A Stefan was the director of the company as well as the manager of the company. He received all the permits. He met with engineers and architects. He conducted all business activity in the United States.

Q Approximately when did you become aware that Mr. Martirosian was not pursuing the best interest of the company to fulfill the conditions imposed by the Land Use Commission?

A It was in summer of 2017. In summer 2017 we started to have concerns about him and we stopped trusting him.

Q The issue of the owner's trust in Mr. Martirosian has come up from the Commissioners, and the natural question is, why did you trust him?

A It's a long story, but I will try to be short.
Well, we -- in America we are called Russians, but we are not Russians we are Armenians. We attend not Russian church but Armenian church. So we had a goal to differentiate, diversify risks in business, like if you know, there is a huge Armenian community in Los Angeles. And this is how it happens in life, Jewish people help Jewish people; Armenian people help Armenian people and look for connections. That's how I met Stefan Martirosian.

It was at end of the '90's, beginning of 2000. He seemed to me and my brother as a very intelligent, smart man. But we didn't let him to come too close to us, but he wanted. After all he reassured us to start to do some small investments in the United States. That's what we did.

And over time we developed a trustful relationship, I would say, like brothers relationship.

Our relationship became so close that when his mother passed away, we came to the funeral, flying 13 hours. And when my mother passed away, he flew all the way from Los Angeles to Moscow to funeral. That's it.

Q: One of the other issues has been the
suspicion, I suppose, the suspicion that this Russian
comp any to Hawai'i to buy land with a lot of
money, and because of that, they must be Russian
gangsters or illegal money.

A  I understand. You know, I often hear this,
and from on one hand I get angry, on other hand I
get -- I start to laugh. Because this is just a
typical stereotyping.

You know, I would like to tell you that at
the beginning of the '90's, my brother and I started
business by selling shoes. Then we started to sell
alcoholic drinks. Then we started to sell other
things, all different, all different types of things.
We started to open stores.

And then it's just we were lucky to have
opportunity to be introduced to oil business. And
then we started to explore, not immediately, but
started to explore oil and oil materials abroad.

We are very hard working people, and we
achieved what we achieved through hardship. And I'll
tell you that my first vacation was after ten years
of hard work, and that was only one week of vacation.

Then my company were manufacturing --

THE INTERPRETER: Interpreter needs

clarification from the Petitioner.
A I will explain in English. Well, open companies, and we produced clean balance sheet for last 20 years. Everything is clear, and if possible to check how we earn money, if possible, if it need.

CHAIRPERSON SCHEUER: A clean balance sheet?

THE WITNESS: (No interpreter.) Balance sheet, yes, for each year of Arch Company from our auditor in London. We have clean balance sheet and it's not a problem to provide with such documents. That's why I'm smiling. I'm not banded.

COURT REPORTER: Excuse me. Can I suggest that we not have him speak any English? It's difficult for me to separate that.

Q At the last hearing, the Commission was concerned that somehow Mr. Martirosian was somehow still involved with the Waikoloa Highlands project.

A No, he is not involved in with company.

Q Have any of the entities related to Waikoloa Highlands, Incorporated taken any legal action against Mr. Martirosian for his fraudulent acts?

A Yes, filed some claims.

First I would like to explain in short that
in 2017, we discovered some bad acts by Martirosian. For example -- I'll give you one example.

I not going to even talk about the history with the movies. Without having authority from us, he would apply for money by putting land as a collateral. And he took pocket money. There were many cases like this in California and U.S. Virgin Islands as well. We have some land there too.

Therefore, we filed a lawsuit with Supreme Court in Los Angeles. Also the company Pulham filed a fraud claim against Martirosian in Armenia.

Q What is the status of that proceeding in Armenia?

A So the status is there lawsuit, criminal lawsuit was initiated because of the fraudulent activity by Martirosian. That was in September 2017.

And Armenian court in Armenia heard his case while he was absent, and made decision to sentence him. It was in October 2017.

When Martirosian arrived to Moscow because there was a warrant for extradition, he was arrested at the Moscow airport. Then prosecution office in Russia reviewed all their extradition paperwork and they extradited him to Armenia.

Martirosian appealed the decision made by
Russia, and Moscow court held the public hearing. Held the hearing with the presence of three attorneys and their interpreter. And the court made decision that expediting him to Armenia is the right decision.

He again disagreed and appealed with the Supreme Court of Russia. So the Supreme Court of Russia considered the complaint. Again the decision of Moscow City Court, and made decision that decision on detention -- on extradition came enforce. It was in July 2018.

And in August he was extradited until the papers became full in force. And now Armenia investigator conduct investigation.

Q Is Mr. Martirosian currently in prison in Armenia?

A Yes, he's in prison.

Q So turning back --

CHAIRPERSON SCHEUER: I think this might be a good time. We will take a ten-minute break reconvene at 11:08 a.m.

(Recess taken.)

CHAIRPERSON SCHEUER: We're back on the record.

Mr. Lim, you can continue your questioning of your witness. I want to take a break, a lunch
break for one hour sometime between 12:00 and 12:30.

Please proceed.

    MR. LIM: Thank you, Mr. Chairman.

    Q Moving to the present, what steps has
    Waikoloa Highlands, Incorporated taken after removing
    Mr. Martirosian from his position in fulfilling the
    conditions of the Commission's decision in this
    matter?

    A We appointed a new director of the company,
    Natalia Batichtcheva, N-A-T-A-L-I-A,
    B-A-T-I-C-H-T-C-H-E-V-A. And Joe LaPinta as project
    manager.

    Also we made arrangements with bank
    financing in the amount of $45 million to complete
    the project.

    Q Is Waikoloa currently able and willing to
    see the project through to completion?

    A Yes. As already explained, we received the
    financing to complete the project. Also we don't
    have office in Hawai'i, that's why we have intention
    to invite a local developer for mutual cooperation on
    the project.

    And as I mentioned before, I am one of
    those people who help make all the decisions, and I
will make sure that their project is completed.

Q Are you aware of any recent discussions with the County's Office of Housing and Community Development?

A Do you mean affordable housing?

Q That's correct.

A Yes, and I would like to confirm that we have intention to start negotiation in good faith to transfer three or four acres for affordable housing.

Q Would this be to the proposed developer of the affordable housing project next to Waikoloa Highlands?

A Yes. We have some land next to Waikoloa, and we would like to start negotiations with the County. So if the committee will give us a chance to return and refresh and start to go back to negotiate rezoning with the County, so we can take care of that, and then we can come back to talk about zoning.

Q Do you have anything in the form of a personal statement to make to the Commission?

A Yes, I would like. Yes, there's something I wanted to tell.

I actually wanted to tell you at the beginning of the hearing, but just because it's my first time to be in front of such respected
committee, so I was nervous and I forgot.

I would like to apologize for being absent during the first couple hearings, for being absent for the May hearing. I didn't realize the seriousness of this situation, as well as there was a very short notice.

I would like to say that, yes, we are investors, and we invest here in Hawai'i. We would like to ask you committee to protect us the same way as you would protect any other investors from Japan or China. You can consider us as Japanese investors.

I also would like to say that we already lost a lot of money here in Hawai'i. And out of 14,000 acres that we had, now we only have 3,000 acres.

And it's you who will decide if we have to lose everything, or if you give us opportunity to develop the project.

Q I would like to reserve a short time for rebuttal and we will close now.

CHAIRPERSON SCHEUER: County, do you have questions for the witness?

MR. KIM: County did not have questions for the witness.

CHAIRPERSON SCHEUER: Office of Planning?
MS. APUNA: Yes, Chair, I have a few questions.

CHAIRPERSON SCHEUER: Please proceed.

CROSS-EXAMINATION

BY MS. APUNA:

Q Thank you for your testimony.

I was wondering, were you involved in the original boundary amendment, the reclassification for the project back in 2008?

A No, the staff of Martirosian was involved.

Q So were you aware of the proposed project for Waikoloa Mauka?

A I didn't know the details on the project and that was one of the problems with him, that he never informed us, never told us details.

Q And so was it just Mr. Martirosian that was involved in the boundary amendment and the project, or were there other people, part of the company that were involved in the boundary amendment?

A As far as I know, it was only Mr. Martirosian.

Q So when did you become aware of the boundary amendment and the proposed project for the area?

A I found out about that at the end of 2017,
but that was too late to do anything. So the only	hing I could do was to transfer 11,000 acres for
affordable housing -- sorry, 11.7 acres for
affordable housing.

Q So he was -- you weren't aware of the whole
Waikoloa Mauka project until 2017?
A I didn't know about subdivision or
requirements that we were supposed to fulfill.

Q Were you aware of the Decision and Order
for this matter that set forth the conditions? And
when were you made aware of the conditions that were
required?
A What decision order do you refer to?

Q The Decision and Order that this Commission
adopted back in June 10th, 2008, and it provides
20-something conditions, including that the project
would be completed by 2018.
A As I mentioned before to you, I found out
about all this in 2017.

Q And when was Mr. Martirosian fired?
A He was fired from Waikoloa Highlands 2016.

I think so, let me check.

Q In 2016. And is there any documentation by
Waikoloa that would show that?
A What documentation?
Q   Any documentation that would show, that
would demonstrate or show that he was fired by
Waikoloa?
A   Yes. All documents were presented to the
committee.
Q   Among your exhibit there is Exhibit 32, I
believe, there is a resignation letter in 2017,
Exhibit 32, June 19th, 2017 of Mr. Martirosian
resigning his position. But you say that he was
fired rather than that he resigned; is that correct?
A   What company, because we have several
companies?
Q   I'm sorry, from Waikoloa.
I'm sorry, let me clarify.
A   It was the oil company, not Waikoloa.
Q   So he resigned from Vitoil 2017, but he was
fired from Waikoloa Highlands from the project also
in 2017?
A   No, in 2016. Yes, the committee has the
documents.
Q   He resigned, he wasn't fired, is that
correct, from Waikoloa?
A   As far as I remember, he was fired.
Q   And from 2008 when the boundary amendment
was approved until 2017 when you said that you
started to learn of his bad acts, what type of
oversight was there by you or others over Mr.
Martirosian and the Waikoloa project?

THE INTERPRETER: Interpreter needs
clarification. Can you restate your question?

Q From 2008 when the Decision and Order --
when the boundary amendment was made, and 2017 when
you became aware of the bad acts of Mr. Martirosian,
what type of oversight did you have, or anyone else
in this Vitoil Company over Mr. Martirosian and the
Waikoloa project?

A So the problem, me and my brother
communicated to him almost every day. And so when we
communicated, he never told us details on actually
what was going on with the project. He would tell us
that everything is good. That he worked with Sidney
Fuke, that everything was good.

And then in 2010 that things happened, why
he is in prison now. That he sought to be involved
in movies and completely forgot about the project.

Q Okay, thank you. No further questions.

CHAIRPERSON SCHEUER: Commissioners?

Commissioner Aczon.

COMMISSIONER ACZON: I just need some
simple clarification. Thank you very much, Mr.
Grigoryants for coming all the way down here to join us.

THE WITNESS: (No interpreter). My pleasure.

COMMISSIONER ACZON: You mentioned you have 100 percent to make decisions for this project.

THE WITNESS: Yes. When I was leaving to come here, we agreed with my brother that I would have 100 percent authority to make decision.

COMMISSIONER ACZON: You also mentioned that Waikoloa Highlands is owned by Arch, Limited, which you are the vice president.

THE WITNESS: I just want to just clarify that Arch Company was their owner of Waikoloa Highlands. Now Vitoil is owner.

COMMISSIONER ACZON: I'm coming to THAT. Later on you mentioned that now Vitoil is the owner of Waikoloa Highlands?

THE WITNESS: Yes, 100 percent.

COMMISSIONER ACZON: What is your relationship with Vitoil? What is your position with Vitoil?

THE WITNESS: I don't have any position with Vitoil. I'm owner of Arch Company, which is the owner of Vitoil Company.
COMMISSIONER ACZON: So you still have 100 percent authority for this project?

THE WITNESS: Yes.

COMMISSIONER ACZON: So I kind of noticed that there's several change of plans on this project. Was the Commission notified of these changes in a timely manner?

THE WITNESS: What changes do you refer to?

COMMISSIONER ACZON: All the changes of ownership.

THE WITNESS: We produced all the documents of ownership, and the committee should have those documents.

COMMISSIONER ACZON: What about in a timely manner?

THE WITNESS: I think, yes.

COMMISSIONER ACZON: That's all, Mr. Chair.

Thank you.

CHAIRPERSON SCHEUER: Thank you.

Commissioners? Commissioner Cabral.

VICE CHAIR CABRAL: I'm suffering from some confusion, and I would like to know if, as the 100 percent owner of this project, if you have a way that you can provide us written verification and backup of that ownership, and of all of the
principals involved with the company that is going to be involved companies involved with Waikoloa Highlands?

THE INTERPRETER: It's very simple. We produced before a diagram who is who and who owns what. So the company Arch is the owner of the company Vitoil, 100 percent owner of company with Vitoil. And Vitoil company is 100 percent owner of Waikoloa Highlands company.

So Arch Company is owned my brother as well, me and my brother, we both decision-makers.

And the director of Waikoloa Highlands company is present here. Her name is Natalia. And we have complete understanding with each other, and she fulfills all the tasks we ask her to do.

VICE CHAIR CABRAL: Thank you.

CHAIRPERSON SCHEUER: Commissioners?

Commissioner Okuda, then Commissioner Chang.

COMMISSIONER OKUDA: Thank you.

Mr. Grigoryants, thank you so much for coming so far from Moscow.

THE WITNESS: (No interpreter). Pleasure is mine.

COMMISSIONER OKUDA: Let me assure you about how the Commission makes its decisions. We do
not have any preconceptions about anyone's background, ethnicity or what country they come from.
I personally do not view you or anyone connected with this project as being connected with any type of criminal activity or anything like that.

I'm not an expert in Eastern European history, but I do know the Armenian people have suffered at the hands of many people who have oppressed, and in fact attempted to exterminate Armenian people.

That is the reason why our Commission follows American legal principles, which is basically that cases should be decided based on the law and the facts, and not on anyone's background or ethnicity. We neither favor nor disfavor people whether they come from Europe, Eastern Europe or Asia.

In fact, let me assure you that I personally, as a lawyer, am very aware of the infamous United States Supreme Court case called Korematsu versus United States, which allows Japanese-Americans to be in prison even though they did no wrong during World War II.

So let me again assure you, we are just looking at the facts and the application of the law here, and nothing else.
There were questions that were asked about the organizational structure and chain of command involved here.

May I ask your attorney to possibly assist us by showing you what was submitted as Exhibit 28 of your submittal? Do you have Exhibit 28 in front of you?

THE WITNESS: Yes.

COMMISSIONER OKUDA: Have you seen Exhibit 28 before today?

THE WITNESS: Yes, I saw.

COMMISSIONER OKUDA: Exhibit 28, in the box at the top indicates that you are the ultimate beneficial owner. Is that -- is what I'm saying correct?

THE WITNESS: Yes, correct.

COMMISSIONER OKUDA: Are you in fact the ultimate beneficial owner, or is your brother also an additional ultimate beneficial owner with you?

THE WITNESS: The owner is, as you can see, is my brother. We have a separate agreements where we make all decisions together.

COMMISSIONER OKUDA: I'm just trying to determine the accuracy of Exhibit 28.

THE WITNESS: Yes.
COMMISSIONER OKUDA: Is the first block at the top, which indicates Vitaly Grigoryants as the ultimate beneficial owner. Is that first block completely accurate or is there additional information that needs to be added to that block?

THE WITNESS: No, everything is correct. No additional information needed to be added.

COMMISSIONER OKUDA: And is all the information in Exhibit 28 a 100 percent accurate?

THE WITNESS: Yes.

COMMISSIONER OKUDA: Did you and your brother know back in 2008, or around that time, when the property was purchased that you and your brother intended to develop the property?

THE WITNESS: First I would like to clarify that the project was purchased in 2005 not 2008. And when we were purchasing, we had intention to develop the project.

COMMISSIONER OKUDA: And you mentioned the name of Mr. Sidney Fuke, F-U-K-E, correct?

THE WITNESS: Yes.

COMMISSIONER OKUDA: Did you know that one of the companies that you were either owning or controlling had hired Mr. Fuke?

THE WITNESS: Yes, Stefan told me about it.
COMMISSIONER OKUDA: And you knew that Mr. Fuke had expertise or knowledge in dealing with government here in Hawai'i, correct?

THE WITNESS: I didn't know. He communicated with Stefan Martirosian always.

COMMISSIONER OKUDA: What did you understand Mr. Fuke's role to be?

THE WITNESS: I understood that Mr. Martirosian was not a specialist and he needed someone who could assist him and give him guidance what to do.

COMMISSIONER OKUDA: And what type of guidance did you understand Mr. Fuke was to provide?

THE WITNESS: I don't know. I can only guess. And if guessing is sufficient for the committee, I can tell you.

COMMISSIONER OKUDA: I'm just trying to find out your understanding. So let me ask a few more questions.

At the time that Mr. Fuke was hired, did you understand, or was it your intention that you intended to have some type of development of the property?

THE WITNESS: Well, how I would say? I would say that we had intention to develop, but we
didn't know where to start, how to start at that time just because we didn't have any experience of development in the United States.

So the role of Fuke was to guide us, to explain -- Fuke was supposed to tell, advise Stefan on what stages to go through, and then Stefan was supposed to inform us.

COMMISSIONER OKUDA: But in any event, you understood that certain approvals and certain things would have to be done with respect to government entities regarding the development, correct?

THE WITNESS: Well, everybody knows about, it's common knowledge.

COMMISSIONER OKUDA: And you do agree that if people working for your company have made promises to any of the government entities here in Hawai'i, that your company is supposed to live up to those promises, correct?

THE WITNESS: I do not waive any responsibility. I except full responsibility. I just regret that we discovered things too late.

COMMISSIONER OKUDA: And right now, as of today, what is the property being used for?

THE WITNESS: As far as I know, as of today, it's not being used.
COMMISSIONER OKUDA: Thank you. I have no further questions.

CHAIRPERSON SCHEUER: Thank you.

Commissioner Chang.

COMMISSIONER CHANG: Good morning, Mr. Grigoryants. Thank you again for being here this morning.

I'm going to follow up on some of the questions that Commissioner Okuda asked.

When you bought the property, you said in 2005, what was your intention?

THE WITNESS: My intention was simple, just like anyone else has just to make some money, develop a project.

COMMISSIONER CHANG: When you say develop the project, what was your intention? How did you propose to develop the project?

THE WITNESS: Well, my understanding was that this is a huge part of the land that might be not enough my life to completely develop. So I understood that we needed to talk to specialist and get some information on how to start.

My intention was to start with a small park and talking to the specialist, getting their advices. That's why my understanding that was Sidney Fuke was
supposed to do. And as far as I know, he supposed to
be a very good specialist.

COMMISSIONER CHANG: And you trusted Mr.
Martirosian to provide you information based upon his
discussions with Mr. Fuke?

THE WITNESS: Yes, we trusted him
completely. But the problem that -- the questions
what he told us, and how sufficient that information
was. At this time now I understand that he didn't
have any intention to develop the project, he just
wanted to make money to pocket them.

COMMISSIONER CHANG: So what are you doing
now to ensuring -- because you're saying, that you
have the authority to make decisions. So what are
you doing different now to ensure that the
development proceeds that you didn't do when Mr.
Martirosian was in charge?

THE WITNESS: As I mentioned earlier, first
of all, we hired a new director, Natalia.

Second, we hired a new project manager,
LaPinta.

We secured financing in the amount of
$45 million.

We are planning, since we are not local, we
are planning to invite a local developer for mutual
cooperation.

COMMISSIONER CHANG: You said you secured $45 million. Did you secure any money for development during -- when Mr. Martirosian was involved, did you secure any financing to do the development at that time?

THE WITNESS: Yes. We received several financing from several banks. But because of the crisis of 2008 in the United States, we were not able to return money to the banks, so we lost a lot of land that was sold by the bank.

COMMISSIONER CHANG: So how much financing did you secure for the initial development that you got approvals in 2008?

THE WITNESS: In 2008 we didn't know about the subdivision and that we had to make the project.

COMMISSIONER CHANG: Did you secure any financing in 2008?

THE WITNESS: Well, at the time in 2010 we had money for financing, and we invested $19 million in movie industry. If we knew, we could have invest those money into this project.

COMMISSIONER CHANG: So how much money did you invest in this project?

THE WITNESS: It's hard for me to tell the
exact numbers right now, but based on the documents in this, as far as I can tell, so we purchased the property for $60 million and invested 1.2.

COMMISSIONER CHANG: So was it ever your intention to build the development after the 2008 approval?

THE WITNESS: We always had intention, but at the beginning we just didn't know about requirements that supposed to be met in 2008.

COMMISSIONER CHANG: What is your understanding now as far as the requirements that need to be met?

THE WITNESS: Well, one of them we already fulfilled, that was with affordable housing. And then also as I mentioned before, we are willing to consider additional three or four acres for affordable housing.

And I think that this question you should ask our specialist LaPinta who will testify.

COMMISSIONER CHANG: One of the conditions is that you're supposed to have completed the build-out by 2018. Were you aware of that condition?

THE WITNESS: I learn about that at the end of 2017.

COMMISSIONER CHANG: So, Mr. Grigoryants,
you have told the Commission that you have
100 percent authority to make decisions.

THE WITNESS: Yes.

COMMISSIONER CHANG: What assurances do we
have that you're going to complete the project in a
timely fashion when it's not clear that you
understand what all the conditions are?

THE WITNESS: I know the requirements.
It's not that I don't know. I just mention that it
would be more appropriate to ask the specialist about
the requirements.

I know that one of the requirements is
about road, water, park.

Well, as far as assurance, I'm not the bank
to give you a reassurance, but because we already
transferred some part of the land, it should show
that we do have intention.

COMMISSIONER CHANG: If for some reason the
land gets -- and as Mr. Okuda said, no decision has
been made -- but if for some reason the land gets
reverted, will you take the land back? The acres
that you gave to the County, will that be taken back?

THE WITNESS: You mean 11 or 8?

COMMISSIONER CHANG: How much acres were
given to the County?
THE WITNESS: 11.

COMMISSIONER CHANG: So 11 for affordable housing?

THE WITNESS: Yes, 11.

COMMISSIONER CHANG: So if -- because today's hearing is whether to revert the land, if the land gets reverted back to agriculture, will you withdraw or take the land back, the 11 acres that you gave to the County?

THE WITNESS: Well, that's a very difficult question. And it's better if it will never happen. It's better let's just work together. Let us go back to the County, talk to them and make it work.

COMMISSIONER CHANG: I appreciate that, but I guess it's important for me as a commissioner to understand. Your intention is that was this conveyance to the County of the 11 acres that if you don't get, if the land gets reverted back to agriculture, that you'll take that land back from the County?

THE WITNESS: It's hard for me to tell you. I think it will be -- it is difficult to say, maybe yes, maybe not. I would just suggest, let's just move forward.

COMMISSIONER CHANG: This is my last
question.

As the owner, what do you understand is your responsibility as the owner of this property to proceed with the development? What is your responsibility as the owner?

THE WITNESS: Well, I understand my responsibility is to complete the project, and it will be good for everyone. It will be good for County, and hopefully it will help us to recover some losses.

COMMISSIONER CHANG: Thank you very much.

CHAIRPERSON SCHEUER: It is 12:11. How's our court reporter? You're okay. We can do one more. Commissioner Ohigashi.

COMMISSIONER OHIGASHI: I'm looking at Exhibit No. 5, and in that exhibit it was exhibit that said that Natalia, whatever her last name is, she would become -- working for the company, Waikoloa Highlands, Inc., and dismiss Stefan Martirosian.

MR. LIM: Try Exhibit 31, there may be duplicate exhibits. I think the most recent one --

THE WITNESS: We are talking about retail company?

COMMISSIONER OHIGASHI: I'm asking you about that exhibit. That's the one dated May 9th,
2016.

THE WITNESS: I did not find, but I'll try to understand.

COMMISSIONER OHIGASHI: I'm just asking, since that time, has Natalia been the person making the signing and binding Waikoloa Highlands, Inc?

THE WITNESS: I did not understand the question. Purchase of what?

COMMISSIONER OHIGASHI: I'm asking, since that date, May 9, 2016, has Natalia been the person in charge or signing on behalf of Waikoloa Highlands, Inc?

THE WITNESS: She was authorized to sign.

COMMISSIONER OHIGASHI: And on that same exhibit it says that Arch Corporation owns 80 percent of Waikoloa, and I believe it was Vitoil owned 20 percent.

THE WITNESS: Yes.

COMMISSIONER OHIGASHI: When did Vitoil become 100 percent owner?

THE WITNESS: I think it was in 2017, but I don't remember exact date.

COMMISSIONER OHIGASHI: Was that about the same time that -- I'm have a hard time with these names -- Stefan was dismissed from Vitoil?
THE WITNESS: Maybe, maybe. I just can't find the document to compare the dates, but it's possible.

COMMISSIONER OHIGASHI: But in 2016 he represented Vitoil Corporation in the signing of that document?

THE WITNESS: Who?

COMMISSIONER OHIGASHI: Stefan.

THE WITNESS: Yes, because he was fired from Vitoil Company 2017.

COMMISSIONER OHIGASHI: Vitoil Corporation, was he able to sign documents on behalf of Vitoil?

THE WITNESS: Yes.

COMMISSIONER OHIGASHI: Until he was dismissed?

THE WITNESS: Yes.

COMMISSIONER OHIGASHI: And the reason you said the dismissal from Waikoloa, the reason for that dismissal May 9th of 2016 was because you discovered that there were problems with the development and his use of money from that development?

THE WITNESS: Yes.

COMMISSIONER OHIGASHI: And my last question.

I just wanted to be clear. At that time,
May 9th, 2016, did Arch Corporation own all of
Vitoil?

THE WITNESS: Yes, it owned -- Arch owned
Vitoil from the beginning.

COMMISSIONER OHIGASHI: My next set of
questions, I'm kind of curious.

Is it correct that Natalia signed the
housing agreement between the County and the
Petitioner in this case?

THE WITNESS: Yes.

COMMISSIONER OHIGASHI: And if I remember
correctly, that was about November 30th of 2016
after --

THE WITNESS: December.

COMMISSIONER OHIGASHI: December of 2016.

And you met -- and we were talking about
11 acres and 8 acres. What was the acres that was
transferred to Paradise -- I forgot, Paradise. What
was the acreage of that?

MR. LIM: Perhaps we can have Mr. LaPinta
cover that.

COMMISSIONER OHIGASHI: I just wanted to
know.

THE WITNESS: I don't know.

COMMISSIONER OHIGASHI: No further
questions.

CHAIRPERSON SCHEUER: I think it is time to break for lunch, and we will continue with the witness after lunch. I want to start in exactly one hour at 1:20 p.m. Thank you.

(Noon recess taken.)

CHAIRPERSON SCHEUER: We're back on the record. I'll remind the witness that you're still under oath.

Commissioners, we're continuing with questioning of the first witness. I have a series -- Commissioner Aczon. Please, go ahead.

COMMISSIONER ACZON: I just want to follow up, clarification.

You mentioned your new management thing is composed of Mr. LaPinta and Natalia Batichtcheva?

THE WITNESS: Yes, and LaPinta.

COMMISSIONER ACZON: When was Mr. LaPinta brought into the project?


COMMISSIONER ACZON: So was he involved during Martirosian time?

THE WITNESS: No.

COMMISSIONER ACZON: What about
Batichtcheva, Natalie, when did her involvement begin?

THE WITNESS: As I mentioned before, she became a director of Waikoloa in 2016.

COMMISSIONER ACZON: So she wasn't involved during Martirosian time?

THE WITNESS: She was, I think, a chief financial officer, but she was not involved in the development of the project.

COMMISSIONER ACZON: So what was her role exactly besides the financial? Does she report to Mr. Martirosian or she report to Mr. -- to the owners?

THE WITNESS: What period of time? What period of time are you asking?

COMMISSIONER ACZON: From the time she got involved in the project.

THE WITNESS: From the time when she became involved in the project, she reports directly to me.

COMMISSIONER ACZON: So Ms. Batichtcheva didn't tell you what's going on in the project?

THE WITNESS: I feel like we misunderstood each other. Are we talking about the time when she became a director?

COMMISSIONER ACZON: I'm talking at the
time from she got involved with the project while Mr. Martirosian was, I believe, in charge.

THE WITNESS: She was not involved in the project.

COMMISSIONER ACZON: When Mr. Martirosian was there?

THE WITNESS: Yes, when Martirosian was the director.

COMMISSIONER ACZON: I thought what I read was she was there during Mr. Martirosian.

THE WITNESS: No, no.

MR. LIM: Just to clarify. I think there's maybe a misunderstanding, because I get what you're asking. I believe you're asking was Natalia Batichtcheva ever involved in developing the project while Stefan Martirosian was running the project.

COMMISSIONER ACZON: That's correct.

MR. LIM: And you're centering only on when she became the director, but she was working for the company before that.

THE WITNESS: Before. Before she worked in the company. So she was accountant of the company.

COMMISSIONER ACZON: During Martirosian's time?

THE WITNESS: Yes.
COMMISSIONER ACZON: So, again, does she report to Martirosian or --

THE WITNESS: At that time she reported only to Martirosian.

COMMISSIONER ACZON: And by any other time that Ms. Batichtcheva mentioned anything about the project to you directly?

INTERPRETER: Interpreter ask for repetition.

COMMISSIONER ACZON: During any of the time that she was accountant or Ms. Batichtcheva didn't mention anything to you directly about what's going on in the project?

THE WITNESS: No.

COMMISSIONER ACZON: Okay.

During your earlier testimony you mentioned about trying to involve local developers to help on this project.

THE WITNESS: Yes.

COMMISSIONER ACZON: What was the outcome? Is there any solid discussions or agreement with a local developer?

THE WITNESS: Not yet, but I will take full responsibility to control of the project to make sure that the project is complete.
COMMISSIONER ACZON: So there's no
potential help from local developers? Are you still
pursuing that?

THE WITNESS: Yes, we continue to look for
local developer, but I can't tell you right now
anything concrete.

COMMISSIONER ACZON: One last question, Mr.
Chair.

Regarding the 11 acres that you said was
dedicated to affordable housing, who owns the
11 acres now?

THE WITNESS: I don't know. We fulfilled
our only obligation and we transferred the land for
affordable housing. There were different newspaper
publications, but I can't say.

MR. LIM: Mr. LaPinta can answer the
question about the 11.7 that were conveyed for
housing.

COMMISSIONER ACZON: Maybe I can ask the
next question to Mr. -- thank you, Mr. Chair.

CHAIRPERSON SCHEUER: Commissioners?
I have an a few questions.

First, and I share thanks with the rest of
the parties for your being here.

I want to make sure I heard you correctly
earlier. You testified that Mr. Martirosian has no ownership interest in any of the entities involved in this development. Did I understand that correctly?

THE WITNESS: Yes.

CHAIRPERSON SCHEUER: So I'm trying to understand, it's an exhibit that Commissioner Ohigashi referenced before, Exhibit 5, which is the May 9th, 2016 Resolution signed by Mr. Ovasafyan Aykz, as well as Stefan Martirosian appointing Natalia Batichtcheva as the Director for Waikoloa Highlands, Inc?

THE WITNESS: (No interpreter) I can't answer. I see what you mean.

CHAIRPERSON SCHEUER: So this Exhibit 5, aid couple questions about it. Can you explain who Mr. Ovasafyan Aykz -- and excuse me for mispronouncing.

THE WITNESS: No problem. Ovasafyan is a director for of Arch Company. And also is nominal owner of Arch, but actual beneficial owner of Arch is Vitaly.

CHAIRPERSON SCHEUER: Can you please further clarify the difference you're making between the nominal and beneficial ownership of the companies?
THE WITNESS: There is a trust agreement between Vitaly Grigoryants and Ovasafyan where Ovasafyan, he is nominal owner where he keeps his shares in the trust for the benefit of Vitaly.

CHAIRPERSON SCHEUER: Thank you.

Has that trust agreement been entered into the record?

THE WITNESS: No, but we can send to you.

CHAIRPERSON SCHEUER: I would like to have that trust agreement entered into the record, Mr. Lim.

So a number of my questions really get to -- well, to a vocal part of your early testimony when you talked about how you met Mr. Martirosian, that you shared community ties and cultural ties and there was a trust.

Fundamentally, a lot of what this Commission has to grapple with is trust that a developer is going to follow through on what they've promised to do. So my questions are motivated by that.

On that Exhibit 5, I read Exhibit 5 as listing Stefan Martirosian as owning 20 percent of the property through Vitoil; is that incorrect?

THE WITNESS: Incorrect, by mistake,
happened by mistake only.

That was a mistake, you can check, review the files and records of the company Vitoil, and you can see that Arch was always the only owner.

CHAIRPERSON SCHEUER: And does Mr. Martirosian have any interest in Vitoil? Any ownership?

THE WITNESS: He never had any interest before, and he still -- and now he doesn't have any interest as well.

CHAIRPERSON SCHEUER: So immediately regarding Exhibit 5, it was given to us as an exhibit by the Petitioner, by you, as a basis for our decision-making, but you're stating now that it's erroneous in regards to Mr. Martirosian's ownership and role?

THE WITNESS: Yes, and I can explain.

Well, we give you what we had. There was a mistake on this document but this is the only document we had. So you asked us for document, we gave it to you. We didn't make any changes on that document.

CHAIRPERSON SCHEUER: Thank you.

Is there any written documentation otherwise provided to us that explains the error in
this record that you've just described?

THE WITNESS: As far as I know, no.

CHAIRPERSON SCHEUER: Thank you.

It was a pleasure to meet you today.

Are you listed in any of the documents that have been provided to us? There were 30-plus exhibits. I see your brother's signature and name but not yours. Are you pointed to anywhere in these documents?

THE WITNESS: There is a document that verifies that I'm the vice president of the company, document signed by Ovasafyan, the director of the company.

CHAIRPERSON SCHEUER: Do you know the exhibit number of that, either or your counsel?

THE WITNESS: Maybe our attorney will help me.

MR. LIM: I don't have the immediate reference.

CHAIRPERSON SCHEUER: When you can.

Does that document make it clear in writing that you have the ability to bind the company before this Commission as to your commitment?

THE INTERPRETER: Interpreter needs repetitious.
CHAIRPERSON SCHEUER: Does the document referenced just now naming our witness as the vice president clarify that he has the legal authority to bind Waikoloa Highlands, Inc., in any commitment made to this Commission?

THE WITNESS: This letter states that I'm holding the position of vice president, and my brother holds the position of the president.

CHAIRPERSON SCHEUER: Which document or exhibit are you referring to, please?

THE WITNESS: I'm looking at Exhibit 33, but I think we have different numbers on the exhibits.

CHAIRPERSON SCHEUER: No, this is Exhibit 33. Thank you.

So do you have any documentation that would be normally accepted in a court in the State of Hawaii showing that you have an authority to bind the company?

THE WITNESS: I don't have such document with me today, but I do have, so it's not a problem to show.

CHAIRPERSON SCHEUER: Thank you.

Did I understand your testimony earlier correctly to say part of the problem beyond fraud was
that Mr. Martirosian was not qualified to be running
the business to develop this property?

THE WITNESS: Not exactly. What I was
trying to say that he was a director of the project,
and he ran business with the help of specialist Fuke.

CHAIRPERSON SCHEUER: Thank you.

Can you explain to me what the
qualification of Ms. Batichtcheva are for helping
this project to proceed?

THE WITNESS: First, the most important we
have the trust. And second, she has education in
accountant finances that is very important, so she
understand.

CHAIRPERSON SCHEUER: So her training is as
an accountant?

THE WITNESS: Her main training and
experience is accounting, but she does any task I ask
her to do.

CHAIRPERSON SCHEUER: Thank you.

And I want to talk just a little bit about
another thing that I heard you say. And correct me
if I misunderstood you.

I believe I understood you to say that you
believe that we have a duty or responsibility to look
out for the -- protect the interest of investors.
THE WITNESS: Yes, I said that. But I meant that any committee have interest in protecting investors.

CHAIRPERSON SCHEUER: Are you familiar with any of the other duties of this Land Use Commission?

THE WITNESS: I know that the committee can make any decision in connection with the land use. Can change zoning or can keep it the same.

CHAIRPERSON SCHEUER: Are you familiar with any of our duties regarding the protection of environment or Native Hawaiian rights or water resources?

THE WITNESS: Yes, absolutely. It's a duty of any committee.

CHAIRPERSON SCHEUER: So you're similarly familiar with our duties to look out for affordable housing, traffic concerns as well?

THE WITNESS: I know that Batichtcheva does take care of such concern as you mentioned, but that's why I feel like we fulfilled our obligation with affordable housing, and we do intend to negotiate for extra three or four acres for affordable housing.

CHAIRPERSON SCHEUER: Since you mentioned affordable housing, are you aware in the letter that
was not accepted into the record, at least yet from the County, that they do not believe you have fulfilled your obligation as to affordable housing?

    THE WITNESS: I heard, but on other side, it's kind of strange. We do have agreement of release signed by the County of fulfillment of all obligations. It looks strange we have such document.

    CHAIRPERSON SCHEUER: Thank you. Have you been to the property?

    THE WITNESS: Yes.

    CHAIRPERSON SCHEUER: Have you been all across the property?

    THE WITNESS: Practically, yes. We even went to their area where they had the cows.

    CHAIRPERSON SCHEUER: Has there been physical improvements to the property since the time that the Decision and Order was passed ten years ago?

    THE WITNESS: I did not notice any changes, but what I would like to add is that I do not take off responsibility for myself. I am completely responsible, and otherwise I wouldn't be here today. And what else I can say?

    I was betrayed by Mr. Martirosian. I was betrayed by my brother because I trusted him, and he just did not do what he promised.
CHAIRPERSON SCHEUER: Thank you. I just have one more question about your testimony regarding how much has been invested in the property.

When you testified that the acquisition price of the land was $60 million, that was for a much larger property of which this is a part, correct?

THE WITNESS: Yes, that was for the 14,000 acres.

CHAIRPERSON SCHEUER: And how many of the $1.5 million that you said was invested was spent after the point at which the Decision and Order was passed, but before the point to which this Order to Show Cause hearing began?

THE INTERPRETER: Sorry, can you rephrase for the interpreter?

CHAIRPERSON SCHEUER: Yes. I can break it up.

The witness testified that $1.5 million had been invested in the property. How much of that was spent after the Decision and Order but before these Order to Show Cause proceedings began?

THE WITNESS: I do not really understand the question. To what time?

CHAIRPERSON SCHEUER: Don't have exact
dates in front of me.

MR. LIM: The majority of the money was spent previous to -- Petitioner will stipulate that the majority of the money was spent prior to the 2008 reclassification by the Commission.

CHAIRPERSON SCHEUER: I will still have the question, but we cannot address it now. I will still have the question of how much was spent during that particular period of time. And I said that was my last question. I forgot one.

Armbusinessbank is also owned by your brother?

THE WITNESS: Yes.

CHAIRPERSON SCHEUER: So the commitment of additional funding is not from an outside entity who necessarily did their own due diligence on this transaction, correct?

THE WITNESS: I wouldn't put question this way. But I would say that it was a very important decision for us to invest this money. That was the duty diligence, that decision was made through due diligence.

CHAIRPERSON SCHEUER: Thank you very much. Commissioners, any further questions for this witness? Commissioner Chang.
COMMISSIONER CHANG: Thank you. I would like to thank you very much. I would like to just follow up on some of the questions by Chair Scheuer. Mr. Grigoryants, you seem to be a business person that is involved in many different business ventures, oil, movies and development. Is that true?

THE WITNESS: I try.

COMMISSIONER CHANG: And is your brother also involved with you in many of those business opportunities?

THE WITNESS: Yes, he also tries.

COMMISSIONER CHANG: So this $45 million that has been set aside or committed by your brother's bank, if you have different opportunities other than this Waikoloa development, will you withdraw that money for this project?

THE WITNESS: First of all I wouldn't do that, because this 45 million planned for ten years. And the rest of other opportunities for financial, if we have other opportunities for investments and we have our own money.

COMMISSIONER CHANG: Because I think your previous testimony was when Mr. Martirosian was managing, he used the $19 million for the movies that was supposed to be for this project; is that correct?
THE WITNESS: Yes, I said. But I meant if we knew that in 2008 there would be an act, at that time we had money for development in 2009/2010, so instead of movie business.

COMMISSIONER CHANG: So what assurances do we have now that you have the $45 million, your brother has committed to this project, that something else won't come up?

THE WITNESS: It's no brother, it's a bank, two different things.

COMMISSIONER CHANG: Would you put that money in an escrow account to assure that it's dedicated to this project?

THE WITNESS: Well, it's not a business approach, nobody would put 45 million in their escrow for ten years. But we don't need 45 million every year. So if we breakdown 45 million by ten years, it comes to we need about 4.5 million each year.

COMMISSIONER CHANG: Is that based upon the full build-out, that the $4.5 million, that's the cost every year to build out the project?

THE WITNESS: It's very approximate. One year may be less, one year can be more.

COMMISSIONER CHANG: Let me just ask another question.
How much money have you actually spent?

You said 1.5 million, and I know I heard your counsel
that most of that money was spent prior to 2008.

So could you tell us approximately how much
money has actually been spent on this development
since 2008?

THE WITNESS: So the only work we managed
to do since 2008 was transferring 11 acres for the
affordable housing. And then since 2017, just
because only in 2017 that's when we learned that
nothing were happening.

COMMISSIONER CHANG: I appreciate the
honest answer. I want to ask you one final question.

Did you work with your lawyer in preparing
the documents that were filed?

THE WITNESS: I was in contact with the
attorney and was getting advice.

COMMISSIONER CHANG: So your papers, the
statement that was filed, it says Mr. Martirosian
committed fraud, misrepresentation and breach of
duty. Is that true?

THE WITNESS: Yes.

COMMISSIONER CHANG: What was the fraud?

THE WITNESS: A lot. If I start to talk
about it, I can talk till morning.
COMMISSIONER CHANG: I only ask because your papers say there's more than enough evidence for the Commission to find that these things were committed.

I don't see that in the record, so I'm just asking.

THE WITNESS: Okay, I can give you couple examples if you want.

COMMISSIONER CHANG: Yes, I would like.

THE WITNESS: We have land on U.S. Virgin Island. We purchased 3,000 acres for 25 million. And Stefan was the director and he ran the entire project.

And in 2017 when we received title report, we sold that. The entire land was put as collateral for the amount of 7,900 -- interpreter ask permission -- 7 million, 900. We were very surprised.

COMMISSIONER CHANG: Are there any fraudulent acts for this project?

THE WITNESS: Also the same Waikoloa project, there was put collateral for the amount 1 million, 200. Maybe because of the title report -- you can see that on the title report. Yeah, the title report shows that there's a collector for 1
million, 200, and another one for 1 million, and we
didn't give him the authority.

COMMISSIONER CHANG: Have you filed any
action against Mr. Martirosian for these acts?

THE WITNESS: We plan, but so far we only
filed for the Malibu. Now, when I come back, I will
be take care of this.

In 2005 he announced that land is for sale.
We paid 1 million, 625,000. Vitoil got 35 acres.
But then in 2017 we found out that for that price,
two lots were sold, 35 acres and 17, and apparently
he put title for 17 acres into his name.

COMMISSIONER CHANG: Thank you.

But you have taken no action at this time.

THE WITNESS: So this is the Malibu case,
that's what I mentioned earlier. This is the one we
already filed.

COMMISSIONER CHANG: So it's not the
Hawai'i?

THE WITNESS: The other cases are still
pending.

COMMISSIONER CHANG: But nothing in
Hawai'i?

THE WITNESS: Soon.

COMMISSIONER CHANG: Are any of your
companies registered to do business in Hawai'i?

THE WITNESS: Waikoloa Highlands is registered.

COMMISSIONER CHANG: Thank you.

CHAIRPERSON SCHEUER: Commissioners, any further questions of this witness? Hearing none, I think we're at a good time for a break. Then after the break you can bring your second witness, Mr. Lim.

MR. LIM: Maybe a short wrap up rebuttal.

REDIRECT EXAMINATION

BY MR. LIM:

Q Mr. Grigoryants, you testified that there are discrepancies in the corporate documents that you submitted, correct?

A Yes.

Q Can you tell the Commission who makes the final decisions and who owns the companies that you've been talking about today?

A I just want to reconfirm that my brother Vitaly is the owner of the company, and we together run the business. And it's only two of us make all the decision in connection with all American companies, and all the companies in other countries.

We understand our responsibilities for decisions we make. And I would like to say one more
time that I know that all the responsibility is on me, and because I am here, and because also trusted Mr. Martirosian, and he betrayed us.

Q Last question. Can you personally commit to the Commission that you will be taking charge of development of the project along with Ms. Batichtcheva and Mr. LaPinta?

A I promise that I will be personal control this project, and if committee makes a favorable decision, I promise that we will complete the project.

Q Do you have any more statements for the Commission before you leave?

A I would like to thank all the members of the committee for your patience, for your excellent questions, and I hope that now you have more clarity on this issue. And, again, I apologize for not being here in May.

CHAIRPERSON SCHEUER: No further questions?

MR. LIM: No further questions.

CHAIRPERSON SCHEUER: Sorry, Mr. Okuda indicated he might have one last question.

COMMISSIONER OKUDA: Counsel can answer this question also just to speed things up.

Since in response to your question, Mr.
Lim, about discrepancies in the documents, can you identify by specific exhibit number documents which contain discrepancies or erroneous information?

MR. LIM: The ones I'm aware of are Exhibit 5, our last filing which was May 9th, 2016, where I think Mr. Grigoryants already testified that that was in error by identifying Mr. Martirosian as a shareholder.

And I don't know if it's in error or not, but the other issue was the organizational chart which showed his brother as being the ultimate decisionmaker, and I think he's clarified today that they have an agreement to share both control and ownership.

CHAIRPERSON SCHEUER: Yes, Mr. Okuda.

COMMISSIONER OKUDA: If I can ask a follow-up question.

Were there any -- or can you tell us -- strike that.

First question is: Are there any documents in the record correcting these erroneous documents?

CHAIRPERSON SCHEUER: I asked that question earlier.

COMMISSIONER OKUDA: I forgot the answer.

MR. LIM: There's no documents, but I think
Mr. Grigoryants's testimony today has corrected
errors in the documents.

COMMISSIONER OKUDA: Thank you, Chair. I
have no further questions.

CHAIRPERSON SCHEUER: We are now going to
take a ten-minute recess.

(Recess taken.)

CHAIRPERSON SCHEUER: Aloha. We're back on
the record.

Before we proceed, Mr. Lim, I have received
by us today a submission of a copy of a Irina Frances
McGriff, Certificate of Service. Did you want to
make this an exhibit?

MR. LIM: That's correct. This would be
Petitioner's Exhibit No. 38.

CHAIRPERSON SCHEUER: Are there any
objections from the County or Office of Planning or
the Commissioners for the inclusion of this as
Exhibit 38? Hearing none it's included in the
record. Thank you.

(Petitioner's Exhibit 38 was received into
evidence.)

Now you may proceed with your second and
final witness.

MR. LIM: Petitioner will call Joel
LaPinta.

CHAIRPERSON SCHEUER: Mr. LaPinta, good afternoon.

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

THE WITNESS: Yes, I do.

CHAIRPERSON SCHEUER: Thank you. Please state your name and address for the record and then Mr. Lim can proceed.

THE WITNESS: Joel LaPinta, and my address is 255 Puia Road, Hilo, Hawai'i.

CHAIRPERSON SCHEUER: You don't have to go that close to the mic. You can be slightly back. Normally people are too far away, including your counsel.

MR. LIM: I was trying to correct my.

Prior --

CHAIRPERSON SCHEUER: Please proceed.

MR. LIM: At this time the Petitioner would like to offer Joel LaPinta as an expert witness in the area of real estate development and sales. His curriculum vitae is attached as Petitioner's Exhibit No. 23. And I can ask him some more qualifying question, if the Commission would like.

CHAIRPERSON SCHEUER: Please go ahead.
JOEL LaPINTA.

Was called as a witness by and on behalf of the Petitioner, was sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LIM:

Q  Mr. LaPinta, how long have you been employed -- let me back up.

What is your line of business at this time?

A  Currently I'm doing development land consultant with a number of developers. I'm doing development modeling so that their projects can financed with debt and equity sources, and a number of projects.

And also I worked for Kennedy Wilson for seven years. We acquired a project in Kaua'i. I was -- and I was in charge of the development in completing the development of that project that was partly finished and did not have all of its subdivision infrastructure done.

I also was one with -- when the CEO did the investment for Kennedy Wilson.

MR. LIM: This is Petitioner's Exhibit 6.

CHAIRPERSON SCHEUER: I don't know why
we're getting a lot of static, whether the mic is too
high --

THE WITNESS: How's that?

So I'm involved in the working with
developers and people and plans that are suited for
development. And myself, I have a project in Kaua'i,
I bought out the interest in a project in Kaua'i.

Q (By Mr. Lim): I'll be following some of
the information that's on Petitioner's Exhibit 6.

What is your education as it relates to
this particular subject?

A My background in undergraduate was science.
I was premed student. I studied history, science.

COURT REPORTER: I can hear you.

THE WITNESS: My background was in science
and math. And when I got into real estate, I
immediately went through a program which a Commercial
Investment Real Estate Institute has which provides
educational opportunities.

And also I have a background in course work
in doing development review, project review, projects
for analyzing high-rise, multi-family development,
that type of thing.

Q Can you please identify some of your
professional training with regard to the subject
A My professional training with regard to this subject matter?
Q Yes. Regard to real estate, what kind of training did you have in real estate?
A I was describing the Commercial Investment Real Estate Institute training. Also, I don't have it in front of me, but I've taken a number of courses over the years in, like I said, multi-family development, and taken courses in land acquisition and development analysis.
And I'm a fairly -- I also actually developed real estate and subdivision here in County of Hawaii.
Q For how many years has that been that you've been developing real property in the County of Hawaii?
A First subdivision I did was in 1986.
Q Have you done any projects that are similar to the Waikoloa Highlands project?
A Yes. In the '90's I acquired a piece of land, went through the zoning change, did everything from having the subdivision approved, engineering done, to in process of dedicating the streets to the County of Hawaii and provided 28 gap-housing
residential sites.

Q So currently your primary job now is to act as budget consultant, project manager?

A Yes.

Q That would be what you've been retained to do for Waikoloa Highlands?

A Correct.

MR. LIM: I would offer Mr. LaPinta as expert witness in the area of real estate development and sales.

CHAIRPERSON SCHEUER: Are there questions on this matter from the County of Hawai'i?

MR. KIM: No questions.

CHAIRPERSON SCHEUER: Office of Planning?

MS. APUNA: No questions.

CHAIRPERSON SCHEUER: Commissioners?

I just want to know, Mr. LaPinta, you mentioned one project that you took through entitlements?

THE WITNESS: Yes.

CHAIRPERSON SCHEUER: What was the size of that project?

THE WITNESS: 28 lot residential subdivision.

CHAIRPERSON SCHEUER: Where was that.
THE WITNESS: Pepeekeo. I bought land from C. Brewer Company, who also I did consulting work for.

CHAIRPERSON SCHEUER: That was solely under County zoning?

THE WITNESS: Yes, it had already been urbanized, correct.

CHAIRPERSON SCHEUER: Does anybody object to Mr. LaPinta being qualified as proposed? Hearing none.

Please proceed.

MR. LIM: Thank you.

Q Can you give the Commission a brief background of your work on the Waikoloa Highlands project and when it was that you started work on this project?

A I started --

Q Approximately.

A Approximately I started in June on this project.

Q Of this year?

A Yeah, June of this year. But I had been talking to the ownership for sometime before that. I don't know exactly how long.

Q From June of this year, what have you done
with respect to development of the project.

To begin with I reviewed the engineering. And I at my insistence I told the client that we first need to proceed with reviewing the project and see if it's viable as a project economically.

And so I reviewed the engineering. That was done so far by RM Towill on the project. And quite a bit of engineering was done.

In fact, to date, the roundabout plans were completed to the point that they were first submitted to the County, and the County had actually done its first review of the roundabout plans.

The drainage study, topographic surveys were done on the first phase. They had completed civil engineering plans with grading plans, and erosion control plans as well. We reviewed those.

At my insistence, the client, there were some outstanding bills. And to get cooperation and to work with RM Towill, those had to be paid. It was about $43,000.

I had numerous meet -- I had a three-and-a-half, four-hour meeting going over the plans alternative ways in which we can develop the project, and what was work was done.

I've come up with -- I have an estimate of
how much the remaining engineering will cost. And I confirmed with RM Towill that the work they have done so far, it can be used, and they will work from where they are now with the grading plan that they have, with the flood control plans that they have with street design. So that was good to know.

And we can also work from the roundabout plans as well.

I also then had contact with the West Hawaii Water Company and discussed the issues concerning the service. The area is within the service area of West Hawaii Water Company talking to Stephen Green. We went over the tariffs and cost and discussed the issues concerning this specific project because the contribution and aid of a construction, if you're familiar with that, to get water, the developer needs to contribute to the capital cost of the system.

So the acronym CIAC fees were discussed and how are they based because they're based on a formula about the amount of water each lot would use.

So in Waikoloa, a residential lot, they consider residential lot will use 600 gallons a day, that's their measure; 400 gallons for potable use and 200 gallons a day for landscaping.
Because of these proposed to be one-acre lots, they want an additional agreement and additional fees to be paid for the anticipation that people with one acre lots would use more water.

So we come to an estimate of about what they will cost, and a procedure for getting our commitment.

And also investigated the cost and calculated whether County fair share, what contributions will be on the project.

Also reviewed and discussed it with -- you know, did a market analysis of what I think the price points will be. And I built the business model and estimated what the cash flows would be to model what the cash flows will be from a project to be developed at that site.

I've also reviewed the affordable housing, and you may have questions about affordable housing. I can go over that with you as well.

Q Can you please give the Commission an overview of the project itself and how many lots, et cetera? Then go into a description of the subdivision process that will be necessary to get to final subdivision approval and sales of the lots.

A What this stage -- the project would be
developed in increments and the increments would be sized based on market and demand. I'm looking at doing somewhere between 50 to 80 lots in the first increment.

In order to proceed at this point, assuming we can go back and get rezoning and extension on the conditions from the County. We would go forward and get the tentative approval on a preliminary plat map. And I would work with RM Towill to finalize the engineering for the streets. And we are also looking at ways to reengineer to make them more cost effective. Looking at doing, rather than County dedicated streets, doing private streets using -- and I've also discussed using native plants that use very little water for the landscaping on the shoulders of those streets.

One of our concerns if the project would need to be fenced to keep out goats and feral donkeys, because that's a major problem if we were to landscape our streets. So I've looked at the possibility of doing that and the cost.

I met with and toured the Waikoloa drive force initiative and did a write-up on that. And I think it's possible we can use a lot of their knowledge towards coming up with the program for
landscaping along the shoulders of the project.

So we would have a very nice project that would reduce the amount of water. And if you haven't seen the Waikoloa dryland initiative, it's quite a beautiful environment when you look at the ground cover that is generated by promoting the native plants.

So to meet those criteria, at that point prior to construction, we would register the project under Uniform Land Sales Practices Act, and we would register under the Uniform Lands Sales Practices Act and we would do pre-sales on a preconstruction basis after bonding for completion on the first phase of subdivision improvements.

Q So the project already has some level of construction drawings for the subdivision infrastructure and water system and roundabout?

A Yes, it's quite far along.

Q Do you have an estimated percentage of how complete those are at this point?

A I guess we could do it by the numbers. It's about, I estimate that we have $670,000 additional work to do with the engineering. And to date there was close to maybe 900,000 spent on the engineering for this particular space of the first
Q    How long, if you were given the go-ahead, how long would it take the engineers to -- I know that you are not in charge of that -- but your estimated time frame for getting the project plans up to snuff so that they could pass muster with the County's Department of Public Works and Department of Water Supply?

A    After one year going through the County rezoning, after the one-year County rezoning, we would be there in about 14 months.

Q    And that's to final construction drawings?

A    Yeah, really, 26 months with the County rezoning.

Q    Once you have the final construction drawings approved by the County, what happens next in terms of going towards --

A    To get the construction drawings we go out, get competitive bids from a number of contractors who are qualified contractors. We enter into a subdivision agreement with the County, and as part of that agreement they will have to post a bond to bond for the bid price of the improvements. And then we can register under the Uniform Land Sales Practices Act with Department of Commerce and Consumer Affairs,
and we can proceed to take actual binding contracts
prior to starting construction.

Q So at that point in time you're selling the
lots essentially and there's no construction on the
ground?

A That's correct. And I will say that I did
that in the subdivision in Pepeekeo 6789.

In fact, in order to close the loan with
First Hawaiian Bank and Isimoto (phonetic) as my
partner, I had to do that, because the pink wouldn't
finance until we had preconstruction sales in place.

This is not -- this is how we have been
doing this in the state for 40, 50 years, so it's not
new.

Q When you say "we" --

A General real estate, yeah, land developers.

This has been the process of doing land
subdivision and development for decades.

Q In during consulting work, do you have
occasion to speak with various developers,
purchasers, sellers in terms of feasibility of
projects as they are looking at them?

A Yes. I'm in contact with many developers,
engineers and contractors in the industry, and have
been for -- I started selling and developing land
back in the '90's, so I've known a lot of them and
I'm in contact with them today. I'm in contact --
actually I am talking to one contractor about the
project, working with a contractor as partner on
development has its advantages.

Q Based on your experience on evaluating
projects, do you think that the Waikoloa Highlands
project is a feasible development?

A Yeah. That was the first step that I
analyzed it and believe it's feasible.

Q One of the concerns that has been raised by
the Commissioners is that the fear is that having had
the District Boundary Amendment to Rural for the last
ten years will lead to private land speculation.

Is that a concern for the Waikoloa
Highlands project?

A Okay, should I mention -- okay.

You know, that thinking, the land uses or
the law that was passed that created -- what the Land
Use Commission does is what's called conditional
zoning, right?

Conditional zoning, there's nowhere in the
literature that I can find where the statement of the
legislative committee that reclassifying land to
Urban results in land speculation.
In fact, all the research that I've seen in urban -- in urban economics is basically saying a land speculator is a farmer. You do not hold -- it's a very bad business of model to hold lands as speculation. The industry has changed. Since the '90's the industry of funding real estate development to private equity markets don't award anyone for doing a land speculation business. There's just no money in it, and it's been proven to be a way to lose money.

In fact, what I have find, and if you want to know in urban economics, is peer-reviewed studies showing that land regulations is positively correlated. Levels of land regulation is positively correlated, positively correlated with high housing prices and with homelessness.

I have a study here from the Journal of Urban Economics. It's peer-reviewed. It's published by University of California Los Angeles and University of California Berkeley and University of Netherlands, comes to the conclusion that higher levels of approval on land use results in high housing cost.

And I can also give you another study that Homeless Advocacy Organization located in the bay
area. This is published in University of California Berkeley.

CHAIRPERSON SCHEUER: Mr. Lim, can you please help explain how witness' testimony on this point is relative to this?

THE WITNESS: It's relevant because there is no --

CHAIRPERSON SCHEUER: I was addressing counsel.

MR. LIM: The other of proof is that one of the issues here, and maybe one of the biggest issues is the issue of whether the Petitioner here is engaging in speculative land banking.

CHAIRPERSON SCHEUER: I understand that point, but I was trying to draw the connection between a discussion of apparently two peer-reviewed articles finding correlation between real estate prices and homelessness.

THE WITNESS: I agree, I went off course there. In fact, what I would go back to is in the industry the capital does not finance speculation. That's the whole point, cannot finance speculation.

What you can finance is a viable business model. And the underwriting criteria for that business model includes economic analysis, also
includes in-depth market analysis. They are party
groups. It includes that you can show -- of course,
you have the entitlement. Entitlement comes into the
business model as a risk that has to be valued if
its risk, or as an uncertainty.

If it is an uncertainty then it can kill
the business model and its ability to be funded.
That's basically what happens.

But they don't fund land speculation.
There's no capital out there. If you guys can find
some, give me a call, because it's just an absurdity
frankly in the market today to say that there's a
capital source to speculate land.

Q  So in conclusion, is it your opinion that
Waikoloa Highlands, Incorporated is or is not engaged
in land speculation?

A  It appeared from the amount of work done in
the engineering, and steps taken to get the
archaeological inventory review approved, getting the
drainage plan, all the cost put in the engineering,
that is not speculation, that's proceeding with the
business plan to use the property for the subdivision
and lots to be sold to the open market.

Q  Moving to another subject.

The Commission has discussed, through other
witnesses, the conveyance of 11.7 acres by the
Petitioner for the purpose of satisfying an
affordable housing agreement.

Can you please describe for the Commission
how that came down, and whether or not there have
been any current discussion on the affordable housing
issue?

A Well, it's -- to begin with I want to draw
your attention to the letter from Paul Sulla. Have
you read that letter?

That letter gives an explanation of the
transaction. Today I called Sidney Fuke. I asked
him about the transaction from Waikoloa Mauka to
Plumeria, Plumeria at Waikoloa who's manager is Paul
Sulla.

Sidney said he did not know who Plumeria at
Waikoloa is. And I asked him -- and he also said
that the Office of Housing and Community Development
of the County instructed him to have his client deed
the property to that entity in order to satisfy the
affordable housing requirement. Other than that he
doesn't know who the owner of that company is, and he
only knows that Paul Sulla is the attorney and
manager of that company.

Q Did Waikoloa Highlands, Inc., subsequently
get a release of the Affordable Housing Agreement?

A Yes. They received a release, which basically ratifies that they completed their requirement for affordable housing per the agreement with the Office of Housing and Community Development.

And they followed the instructions of that office and fulfilled that obligation.

MR. KIM: If I may object to the witness' testimony. It's a legal effect of a document. He was qualified as real estate and investment expert, not as legal expert.

CHAIRPERSON SCHEUER: I'm going to sustain that.

Q (By Mr. Lim): You're aware that the release of the Affordable Housing Agreement was filed -- excuse me -- dated July 20th, 2017?

A Yes.

Q And signed by the Housing Administrator of the Office of Housing and Community Development by Natalia Batichtcheva, the Director of Waikoloa Highlands, Incorporated, approved as to formal legality by Amy Self, Deputy Corporation Counsel and signed by County of Hawaii Managing Director?

MR. KIM: Again, I need to object. If the witness has any direction knowledge of this document
other than looking at it.

THE WITNESS: Yes, I have. I saw the
document that's recorded and it was part of my due
diligence.

MR. LIM: The document we are talking
about, for the Commission's benefit, is the
Petitioner's Exhibit 11 on that last filing.

CHAIRPERSON SCHEUER: This document has
been included as an exhibit, correct?

MR. LIM: That's correct.

CHAIRPERSON SCHEUER: Moving along.

MR. LIM: I wanted to set the basis for
that.

Q In talking to Mr. Grigoryants about the
project, and about the affordable housing issue, are
you of the opinion that the Petitioner believes that
their affordable housing requirements for the
Waikoloa Highlands project has been fully satisfied?

A Yes.

Q Moving on to more current days. Were you
part of a meeting, recent meeting with these County's
Office of Housing and Community Development regarding
assistance by Waikoloa Highlands, Incorporated, with
County of Hawaii sponsored Affordable Housing
Project?
A Yes.

Q When was that?

A Well, I have notes from the meeting. It was on the 19th, Friday, October 19th at the Office of Housing and Community Development with Neil Gyotoku, Alan Rudo, Duane Hosaka, Malia Hall.

Q And Malia, and the first three where Office of Housing and Community Development. And the last was who? Who was Ms. Hall?

A Their legal counsel.

CHAIRPERSON SCHEUER: I'm getting a little uncomfortable, but you can clarify. We're talking about a meeting that nobody else in this room was a party to. Where you are going?

MR. LIM: Offer of proof is the Petitioner was requested just last week by the County Office of Housing and Community Development to assist their project developer who is developing the project on that 11.7 acres that we're talking about.

The developer apparently needs more land area because there's a mauka-makai drainage channel that runs through the property, so he doesn't have enough land area to develop his affordable housing units. And I'm trying to -- the reason why we're talking about this for this proceeding, is we're
trying to show the Commission that the Petitioner in
good faith on a voluntary basis is trying to assist
the County in developing its Affordable Housing
Project.

CHAIRPERSON SCHEUER: Thank you. Please
proceed.

Q (By Mr. Lim): Can you -- who called the
meeting? Was it the Petitioner or you or who called
the meeting?

A The Office of Housing called the meeting,
asked us to come and meet with them to discuss them
acquiring more land in order to accommodate 80
affordable apartments on the site.

Q Can you detail for the Commission the
substance of that meeting?

A Basically the substance was that they had
been -- that the owner of Pua Melia did not have
enough space to put his True Value Hardware store and
commercial use, plus 80 affordable apartments unless
they go high, like three stories, and do stacked
plats, and they prefer not to do that.

They prefer to do a two-story town home
design. So the footprint would be much larger than
the parcel would allow.

And the parcel is inefficiently shaped,
being very triangular and shaped at one point because
of other landowners.

So we talked about the reconfiguring the
parcel with lands owned by my client in order to
accommodate 80 apartments.

Q When you spoke of Pua Melia, is this the --
I'll ask you to explain the chain of conveyances from
Waikoloa Highlands, 11.7 acres?

A The conveyance?

Q Who was the land conveyed to?

A I got to pull up the chart. It was
conveyed from Waikoloa Highlands to Plumeria at
Waikoloa. And then there was a warranty deed to Pua
Melia, which is owned by Danny Joseph Julikowski of
Cook, Minnesota.

Q Pua Melia, LLC is the current owner of the
parcel?

A Pua Melia, LLC is the current owner. And
through using 201H approval through the County's
Office of Housing and Community Development, he plans
to do a mixed use project on the site.

Q What was the ultimate outcome of the
meeting?

A That we would like to accommodate them. We
would like to talk with -- they're talking about
working with a nonprofit. I don't know the name.

They're talking to a nonprofit. The executive director I think is Delene Osorio. And they would like to do the 80 town homes there as affordable rentals. And they need a better configuration site to have a footprint for that project.

And we talked about working with them, their architects and engineers coming up with a better footprint, and after that, us doing a boundary adjustment in order to accommodate that. And we ended it with we're willing to work with them.

Q What were the drivers that were represented to you during the meeting in terms of why it's a good time to do the affordable housing project right now?

A The available affordable tax credits from the state, they would like to be able to take advantage of those at this time. I don't know exactly what the quantity is, but, yeah.

Q Was there also discussion of why the County's nearby Kamakoa Nui workforce housing project was stalled, and why the Waikoloa Highlands land was better suited for conclusion in this particular --

CHAIRPERSON SCHEUER: One moment.

Commissioner Chang.
COMMISSIONER CHANG: I'm sorry. In all due respect, I'm a little confused and I'm trying to understand. Is this transaction related to the affordable housing condition in the matter before us? Or is this a separate private transaction between Waikoloa and the County for a project?

I guess I'm a little confused. Maybe you can clarify.

MR. LIM: We think it's a separate transaction, but I don't know what the County thinks. For the first time yesterday they filed a document saying that they although we conveyed the 11.7 acre irrevocably to a third-party per their instruction, and got an release of agreement, they're now telling us that maybe that wasn't good. And frankly that surprised us.

That's why we're discussing the fact that we feel like we have satisfied the Affordable Housing Agreement by conveyance of this land which we can't get back, I don't think. We will have to file litigation or something to get it back.

But it relates in part to the current effort by the County Housing and Community Development. Because if the County is going to end up taking the final position that we haven't fully
satisfied the agreement, then this will become very relevant.

CHAIRPERSON SCHEUER: Sorry, just at this point, about how long do you think you have with this witness?

MR. LIM: Not very much longer.

CHAIRPERSON SCHEUER: I'm assuming there will be some questions for the witness. Please proceed.

COMMISSIONER OHIGASHI: Mr. Chair.

CHAIRPERSON SCHEUER: Commissioner Ohigashi.

COMMISSIONER OHIGASHI: Are you going to ask the same question again, because I didn't hear an answer?

THE WITNESS: Could I finish answering the question of why they want to do the affordable housing there and not on the County land? I can answer that.

What we were told is that the County land hasn't been cleared of unexploded ordinance to the level that's required under HUD rules. So they can't do the affordable housing until they do go to a second clearance done. The Army Corps of Engineering has done the clearance, but now they need a
clearance -- a report done to the Department of
Health. I believe that's the case, right?

So they don't have clearance to build
housing on that. It involves tax credits and federal
money, they can't do it.

So our site that we're talking about is
cleared, so we can clear that and be done. And then
they can use the tax credits, and they can develop
housing on this site. That's the reason. Is that
clear? Anybody have a question?

CHAIRPERSON SCHEUER: Respectfully, you
need to not ask us questions. I only mention it
because you asked us before whether we had read a
document in this case or not.

I ask you to reserve that urge to ask us
questions. I understand the urge, believe me.

THE WITNESS: I apologize.

MR. LIM: I would like to reserve time for
rebuttal.

CHAIRPERSON SCHEUER: Thank you. County of
Hawaii.

MR. KIM: County has no questions for this
witness.

CHAIRPERSON SCHEUER: Thank you. State
Office of Planning.
MS. APUNA: Thank you, Chair. I do have a few questions.

CROSS-EXAMINATION

BY MS. APUNA:

Q  So basically you're kind of stepping in the shoes of Mr. Martirosian with respect to the project manager at this point?

A  With respect to that, yes. But I will be capable of doing more, because I know more about what to do than he did apparently. I have seen the correspondence. He was relying heavily on Sidney Fuke's work.

Q  And so you're familiar with the Petition Area at this point in time?

A  Yes.

Q  Are there any roads for infrastructure or utilities built on the Petition Area at this time?

A  There's quite a bit of utility infrastructure on the property, and there roads on the property as well.

Q  But were they built by the Petitioner since the Decision and Order?

A  Maybe you should ask your question again. It's not a clear question. Your question should be clearer.
Q The road infrastructure and utilities that you claim are on the Petition Area at this time, were they placed there by the Petitioner since the Decision and Order was made?

A No.

Q Are there any other structures on the property that were built by the Petitioner since the Decision and Order?

A Not that I'm aware of.

Q And to confirm the backbone infrastructure has not been built out on the Petition Area, is that correct?

A The definition of "backbone infrastructure" is ambiguous. But there is no infrastructure that I see that was built since the 2008 Petition.

Q Has an agreement been reached with DOT with regard to Condition No. 6 highway improvements?

A Condition No. 6 satisfied by the intersection improvement that was done down at the Queen Kaahumanu intersection I understand.

Q That wasn't my question.

Was there agreement between the Petitioner and DOT with regard to the improvement required under Condition No. 6? Is there a document that says that DOT and Petitioner agree?
A: I don't know of a mutual document, no.
Q: A unilateral agreement? I mean unilateral document? No agreement, is that correct?
A: Steve Lim's office reviewed that and cleared it. I, right now, can't hold out a document or what the basis of that was, but they cleared that it had been satisfied by the improvements at the intersection.
Q: But you can't point to a written agreement?
A: No.
Q: With regard to archaeological Site No. 22, has Petitioner consulted with SHPD, State Historic Preservation Division on Site 22 directly?
A: May I consult with counsel, because it was ordered and it's in process. Did we receive that?
Yeah, we're in compliance. I think we have one last report that has to be approved, right?
CHAIRPERSON SCHEUER: Counsel can answer that, if you have the information.
MR. LIM: We made application for SHPD site number, and we are awaiting for their reply.
THE WITNESS: That's the answer.
CHAIRPERSON SCHEUER: You can continue.
Q: (By Ms. Apuna): Was a timeline for development by major task and phases prepared?
A Are you talking about construction?
Q For development, for construction, for anything as far as --
A Yes.
Q And was it submitted to the Land Use Commission?
A No.
Q When is the full project expected to be fully complete?
A I did a ten-year projection.
Q And isn't it true that earnest efforts to pursue development occurred only after the Land Use Commission decided to issue an Order to Show Cause?
A No. I don't think so, because Sidney Fuke was working on the affordable housing condition prior to my being involved in the project.
Q With regard to affordable housing condition, what is your understanding -- is that affordable housing condition the same as the requirement under Chapter 11, Article 1 of the Hawaii County Code?
A I believe so.
Q And do you know --
A I believe that's the right citation. I am familiar with that.
Q  That's the affordable housing chapter?
A  Right.
Q  Do you know what the requirement is for residential lots as far as what the affordable housing requirement is?
A  2020 -- it's like 20 points for the number of units. It's a point system, not a number of units exactly. So depending on how those units are priced, and to what income levels, you get different points.
    So let's say we have 400 units, we need 80 points.
Q  Right. And so --
A  But the points can be accomplished by 40 units. They're priced or designed for like a 60 percent, I think, income level, yes.
Q  So generally it's 20 percent, there's a 20 percent requirement. So for this project, we have --
A  Well, that's not accurate. It's 20 points, not 20 percent of the project. 20 of the percent of the unit in account, is 20 points based on the point table.
Q  Well --
A  Well, what?
Q  Well, according to the housing code --
A Well --

CHAIRPERSON SCHEUER: Excuse me. I would encourage both of you not to interrupt each other, and encourage the witness to use a respectful tone in this meeting room.

Please continue with the Office of Planning and then you can respond.

Q (By Ms. Apuna): As I read -- well, so there's a 20 percent of total number of units proposed at the project.

So this is a 398 lot that are proposed, so 20 percent of 398 would be the 80-unit that you had, so 80 would be the affordable housing requirement for this project?

A 80 points.

Q 80 points, 80 units.

And you said that for -- the developer has put in 201H application for 32 units for the 11.7-acre lot?

A Which developer?

Q I think it's Plumeria -- Pua Melia.

A This is what I'm told by -- this is what I was told by the Office of Housing and Community Development and the County and their officials. But we're not really involved in that. Our meeting was
to discuss them acquiring more land to complete their project.

Q    But as far as you know, the 11.7 or .8-acre lot that was transferred from Petitioner to Plumeria and then was sold to Pua Melia, on that lot it is proposed to have 32 units of affordable housing; is that correct?

A    Where did you get that information? I don't have that information.

Q    Well, I think one of our exhibits from the Hawai‘i Housing and Finance Department said there is an application.

A    I can't really -- I'm not -- that's not part of something I need to work on, because that's their project.

Q    Thank you.

CHAIRPERSON SCHEUER: It is 3:28 p.m. What I would like to propose doing is taking a break, ten minutes. We will then go for one further hour and then call it a day for the day.

I suspect we might have a full hour of questions for Mr. LaPinta, I don't know. If not, we can begin with the County.

Is that acceptable to the parties and my fellow Commissioners? Let's take ten minutes. Thank
(Recess taken.)

CHAIRPERSON SCHEUER: Okay, we're back.

Thank you for your patience.

Commissioners? OP, you were done?

MS. APUNA: Yes.

CHAIRPERSON SCHEUER: Commissioners?

Commissioner Aczon and then Commissioner Chang.

COMMISSIONER ACZON: Like my fellow

Commissioner Wong always says, we're just laymen,

just simple questions.

Mr. LaPinta, who do you report to?

THE WITNESS: I report to Natalia

Batichtcheva and to Valery Grigoryants.

COMMISSIONER ACZON: So your immediate

supervisor is Natalia?

THE WITNESS: Yes.

COMMISSIONER ACZON: She has the power

to --

THE WITNESS: But I'm an independent

contractor. But anything that I do, I get clearance

from them. They don't want to have me appear to be

an agent or a person who has rights to enter into

contracts or contractually bind them.

So everything I run by them before I have
meetings or interactions with the utility company, for example, or with RM Towill, engineering companies.

COMMISSIONER ACZON: So you cannot do anything without --

THE WITNESS: Without authority from the owner, correct.

COMMISSIONER ACZON: Natalia's permission; and Natalia can't do anything without the owners --

THE WITNESS: The owners, yes.

COMMISSIONER ACZON: -- permission?

THE WITNESS: Correct.

COMMISSIONER ACZON: Maybe I'm kind of losing it. I'm still not -- not fully understand what is your core responsibility for this project?

THE WITNESS: My core responsibility for the project is to manage the development, to initially to do a feasibility study to see if developing these lots, and given the potential market for them and the price points that we could sell them at, and giving the anticipated cost and steps and the time to develop that it would be a profitable enterprise rather than lose money.

COMMISSIONER ACZON: So from start to finish?
THE WITNESS: Yeah, correct.

COMMISSIONER ACZON: What would you do differently from the previous management?

THE WITNESS: Excuse me?

COMMISSIONER ACZON: What would you do differently from the previous management for the ten years that went by?

THE WITNESS: What would I do differently?

Move quicker, one.

Work with designing a product that the market will accept.

Three, work in finding ways to do cost engineering with the engineers. And that's what my discussions with them and meetings have been, and they believe there's ways in which we can do that.

We don't believe this is a high-end luxury development. It's going to be pretty much, you know, modestly priced in line with Waikoloa Village residential, but with a larger lot. And actually pricing similar to one-acre lots, maybe a bit higher, but in a price range that we think we can move the lots. And we're looking at the price range for places around Kailua-Kona, Hilo and in Waimea.

And in this area of the island there are very few to no one acre or even half to one-acre
lots, little larger lots that people want a bigger
site.

COMMISSIONER ACZON: Maybe you answered
this before, but do you have an overall financial
plan for the project, or is that your responsibility
or Natalia's responsibility?

THE WITNESS: My responsibility.

COMMISSIONER ACZON: And my question is --
THE WITNESS: I do the financial modeling
for the project.

COMMISSIONER ACZON: So you have an overall
financial planning for what the whole project is
going to cost?

THE WITNESS: Yes, correct.

COMMISSIONER ACZON: Do you think that the
45 million that is borrowed is enough to finish the
project?

THE WITNESS: Actually it's way more than
we need. Like for my model in here -- let me look at
the spreadsheet.

What happens is this is done in increments,
the project is done in increments. And as the
increments go forward, we sell lots and that reduces
the capital cost.

So based on -- I have this particular model
here. It's for the 398 lots. The peak, we call peak
capital during the entire sellout of the project
towards the development cost, comes to 15 million,
790. 15,800,000 would be peak capital.

COMMISSIONER ACZON: Just give me a minimum
dollar amount from minimum to maximum.

THE WITNESS: This is a model using
strictly equity capital, so there's no enhancement
using dead capital, because if you have a project
like this, you have assets that banks would lend on,
especially finished lots. You have an inventory
finished lots, or if you have future increments that
are finaceable, and bank knows they're good
collateral. You can get some enhancement by
borrowing money.

COMMISSIONER ACZON: I'm not going to hold
you to it.

THE WITNESS: We're talking about cost
that, you know, in the early stage, you want up-front
cost because of infrastructure up-front, so those
numbers get to be high. So in the early stage we get
a high --

COMMISSIONER ACZON: So --

THE WITNESS: What I said, I told you --
I'm sorry.
What I mean by -- if you're going along, the max, in this model, the maximum amount of capital the developer will have out is 15 million, 800,000?

CHAIRPERSON SCHEUER: Does that answer your question?

COMMISSIONER ACZON: That's the maximum?

THE WITNESS: That's the maximum amount, yes.

COMMISSIONER ACZON: What is the minimum?

THE WITNESS: Well, it starts out in the first month that -- the first months they're putting in a million one to million six every month to do. But as that goes along, they will be selling lots and lots will help pay.

COMMISSIONER ACZON: I understand. Just to follow up with Ms. Apuna's question about the time.

So you have a overall timeline for the project, correct?

THE WITNESS: Correct, yeah.

COMMISSIONER ACZON: When do you think is the project's shovel ready?

THE WITNESS: My timeline has us out 26 months, which would be at a point to --

COMMISSIONER ACZON: Talking about ten
months for the whole project -- ten years for the whole project?

THE WITNESS: Yeah, but in 26 months we will be at a point where we can start pre-sales, because we have to go through a zoning, 12 months with the County zoning, get that in place. Then get our civil plans done, approved, reviewed. And we have a number of other agreements that need to be finalized with the utility companies.

So at that point I think we would be ready to register the project and then go to preconstruction sales.

COMMISSIONER ACZON: So when do you think Mr. Grigoryants can come down over here to break the ground; looking forward to it?

THE WITNESS: Well, if the market's right, it would be about 30 months. Because you've got to -- it might be earlier than that, because once you start the preconstruction -- preconstruction sales have to be cash sales, and once you start that, you want to complete your streets and deliver lots, because then you can sell to people who can build houses right away.

COMMISSIONER ACZON: So after all the infrastructure is finished, the model for this
project is to sell individual lots?

    THE WITNESS: Right. During preconstruction -- during preconstruction sales pretty much will have to be cash sales because banks will not finance unless you can build the house. And you need to complete the streets to be able to get a loan to build the house.

    So we'd start out with the preconstruction sales. Probably be a lower price, give people incentive to buy preconstruction. And then once construction --

    COMMISSIONER ACZON: You're not answering my question. My question is the model for this project is to sell the lots individually?

    THE WITNESS: Right. Sell lots individually, correct.

    COMMISSIONER ACZON: So it's going to be all owner builder?

    THE WITNESS: Yes. Yeah, in the beginning, that's our plan is to sell lots.

    COMMISSIONER ACZON: The 11 acres, going back to the 11 acres that I asked earlier. I understand it was conveyed to Plumeria, correct? Was Plumeria, they understand the conditions by the Commission for affordable, how many affordable
housing do they have to supply?

THE WITNESS: Ask the question again. I'm sorry.

COMMISSIONER ACZON: So does the -- did the Petitioner gave Plumeria instruction on how to comply with our condition?

THE WITNESS: No.

COMMISSIONER ACZON: My point is just barely giving 11 acres to this one entity, it doesn't -- for me it doesn't -- the Petitioner doesn't necessarily comply with the Petition. It has to be, you know, ultimately the Petitioner is responsible to make sure the conditions are met, not when they turn over the land.

THE WITNESS: That's a legal question beyond my expertise. That's beyond my expertise technically how the condition -- you're asking about the State's condition and how it works with the County's condition and management of affordable housing, and I'm not qualified to answer that question.

CHAIRPERSON SCHEUER: Sorry, you were qualified as a development expert before this Commission. It's kind of a core part of doing development before this Commission. So if you could
at least try and answer the question.

    THE WITNESS: My understanding is that the
conditions are on the land, on the order, the
boundary amendment, conclusions of law that these
then are, at least authority, actually is with the
County and the County agencies in charge from that
point on to work with the developer, so the developer
is in compliance. That's how I understand it's being
done.

    COMMISSIONER ACZON: Well, I beg to differ,
but let's move on.

    MR. LIM: Perhaps I can -- the Decision and
Order for this project has Condition No. 9 on
affordable housing, basically requires that the
Petition shall provide affordable housing
opportunities for residents of the State of Hawaii in
accordance with applicable affordable housing
requirements of the County.

    Location and distribution of affordable
housing, or other provisions for affordable housing
shall be under such terms as may be mutually
agreeable between Petitioner and the County.

    THE WITNESS: Correct. That's my
understanding.

    MR. LIM: Goes onto say that we would
provide the Commission (indecipherable) copy of the
affordable housing agreement within 30 days.

I do not know whether that happened or not.

THE WITNESS: I'm sorry, I could have
looked it up, but I was trying to go by memory.

Probably a bad idea.

COMMISSIONER ACZON: So let me understand.
So still the Petitioner's responsibility to meet the
compliance?

MR. LIM: Of the County.

COMMISSIONER ACZON: One last question, Mr.
Chair.

Condition No. 6. In your opinion, who has
the final say that the condition has been met, the
Petitioner or Department of Transportation, or the
Commission? That's the Department of Transportation?

THE WITNESS: What is your question? I
just reviewed --

COMMISSIONER ACZON: Condition 6.

THE WITNESS: Yes, my understanding.

COMMISSIONER ACZON: The Petitioner is
claiming that they complied with Condition 6 by --

THE WITNESS: Yeah.

COMMISSIONER ACZON: So who has the final
say? DOT is saying that Petitioner didn't comply.
So my question is, who has the final say to say, yes, the Petitioner complied or did not comply? Petitioner, DOT or Commission?

MR. LIM: Petitioner will stipulate that Condition 6 on the DOT intersection requires that Petitioner shall reach an agreement with the State Department of Transportation.

I'll represent to you that no agreement was made, although the improvement did get built.

COMMISSIONER ACZON: Thank you, Mr. Chair.

CHAIRPERSON SCHEUER: Thank you, Commissioner Aczon. Commissioner Chang.

COMMISSIONER CHANG: Thank you.

Good afternoon, Mr. LaPinta, I just have a couple questions.

First one, I just wanted to make sure I heard you correctly. Was it your testimony that this project to build approximately 398 rural lots and all of the infrastructure would cost $15 million? Did I hear that correctly?

THE WITNESS: No, that's not my testimony.

COMMISSIONER CHANG: Make sure I understand.

THE WITNESS: I'm describing that during the process of developing the project, you would
develop it in increments, so you wouldn't subdivide and put streets in for 398 lots and have them sit empty. You do it in increments. So each increment would be done as sales occur. And the proceeds from the sales would then come back to help fund the project.

And at that point -- so when I describe that number, that's based on a model of certain rate of sales per month and per year, certain rate of doing the development incrementally. So that would be called the peak -- in the model it's the peak capital that the owner has to put in to fund the project. So that's the maximum amount he would get to.

COMMISSIONER CHANG: And a lot of that is based upon presumption?

THE WITNESS: Yeah. I wish I could project the future, you know. There's major risks in real estate development, and not just entitlement risks, obtaining entitlement. Also the risk of market. There's macroeconomics that as we know 2008 great recession. There's all kinds of risk involved.

COMMISSIONER CHANG: Currently the condition is you have to build within ten years.

Can you give me, based upon your expert
opinion as a real estate developer, what is the total estimated cost to build this project, not in phases, not based upon certain assumptions, but what is the total cost?

THE WITNESS: About that $45 million number. That's where that came from. And my client put up that letter, because he said, well, if you were to fund the whole thing all at once, but no one does that. That's not how you would do it.

COMMISSIONER CHANG: So I'm going to take this in phases. So I'm going to look at what the current proceeding before us is an Order to Show Cause why the property should not be reverted because there has been substantial noncompliance.

So based upon your expert opinion to do this project that was approved in 2008 to have been completed by 2018, it would have cost $45 million; is that correct?

THE WITNESS: That's an estimate, yeah, that's an estimate. It's an estimate.

COMMISSIONER CHANG: And my understanding is you have -- your testimony has also been today that approximately $900,000 has been spent on -- I think you called it first phase of the project, pre-engineering. Is that correct?
THE WITNESS: I wouldn't call it pre-engineering. It's engineering that's been done, and a lot of work was done. And topographic surveys, drainage studies, a drainage plan was done. And the civil engineering on the first phase. And the civil engineer meaning design of the road. These are plans that can be construction plans bid by a contractor for the roundabout.

COMMISSIONER CHANG: You said that was about 60 percent, so 40 percent more would need to be done.

THE WITNESS: Yeah.

COMMISSIONER CHANG: So up-to-date, $900,000 in your opinion has been spent to date?

THE WITNESS: Yeah, yeah. That's based on detail analysis of the billings from RM Towill in my meetings with them, and discussion -- and then my goal there was not to come up with this figure for this purpose. Actually my goal was to come up with a figure what we anticipate the future cost will be. That's why I did that.

COMMISSIONER CHANG: Well, our goal is from LUC is to determine whether there has been substantial compliance.

So the estimated cost to build this
development is approximately $45 million. To date, approximately $900,000 has been spent.

In your opinion -- and I take you've actually gone out on the site -- has there been any -- what kind of use of the land has been done on the acreage, actual land use? What kind of improvements to the land have been done other than engineering?

THE WITNESS: The engineering work has been done. And the conveyance of the parcel for affordable housing.

COMMISSIONER CHANG: So in your opinion there has been no land use on the property?

THE WITNESS: No, not the land.

COMMISSIONER CHANG: Okay, no land use.

In your expert opinion as a real estate developer, looking back, this was approved in 2008. Do you believe that the environmental work, the environmental studies that were completed, are they still viable or are they stale?

THE WITNESS: I believe they're still viable.

COMMISSIONER CHANG: In your opinion, are the archaeological work still viable or are they stale?

THE WITNESS: Viable.
COMMISSIONER CHANG: And so that, in your opinion, you feel confident that you could proceed based upon the existing environmental studies that were completed prior to 2008, prior to the approval of the boundary amendment, you feel confident that those studies are still relevant and pertinent to today?

THE WITNESS: Yes.

CHAIRPERSON SCHEUER: You can take a break for other Commissioners, and come back to you.

Commissioner Ohigashi.

COMMISSIONER CHANG: Yes, thank you.

COMMISSIONER OHIGASHI: Can you tell me the difference between the rural designation that they have now, and state ag land, can both be subdivided?

THE WITNESS: Both could be subdivided into one-acre lots. And there's zoning for family agriculture in the County of Hawaii zoning ordinance allows zoning of one-acre lots in the State Agricultural District.

COMMISSIONER OHIGASHI: So if this matter is reverted, would they still be able to develop the one-acre lots?

THE WITNESS: The property -- because in order for this property to be classified Rural, the
owners went through a process with their consultant
and --

COMMISSIONER OHIGASHI: I understand that.
My question is different. My question is, State
ag --

THE WITNESS: I'm sorry --

COMMISSIONER OHIGASHI: Can still be
divided into one-acre lots?

THE WITNESS: In ag you can sub -- no,
because the general -- we would have to change the
General Plan. The General Plan of the County of
Hawaii supports Rural classification for this site.

COMMISSIONER OHIGASHI: But in each case,
whether it's a Rural designation or State Land Use
Designation, it would be ag? It would be one-acre
lots, right?

THE WITNESS: Under Rural it's possible to
do half acre lots.

COMMISSIONER OHIGASHI: Maybe even denser.

THE WITNESS: You could do smaller lot
size. But we wouldn't be able to increase the number
of lots. So by density, if you mean number of lots,
I don't believe that's possible because the County
will not allow that.

COMMISSIONER OHIGASHI: The 11 acres, they
were originally part of the 730 some-odd acres that were designated from Agriculture to Urban, right?

THE WITNESS: Right, right, correct.

COMMISSIONER OHIGASHI: And it was subdivided to a three lot subdivision --

THE WITNESS: Yeah.

COMMISSIONER OHIGASHI: -- sometime in 2016?

THE WITNESS: Correct.

COMMISSIONER OHIGASHI: And then the Petitioner transferred 11 acres, approximately, a little bit over 11 acres, to the Plumeria?

THE WITNESS: Plumeria Waikoloa is the name of the LLC.

COMMISSIONER OHIGASHI: If it reverts back to Agricultural designation, how many homes would be built on that property, on that 11-acres? How many units can be built on that property for low-cost housing?

THE WITNESS: None.

COMMISSIONER OHIGASHI: None?

THE WITNESS: Right.

COMMISSIONER OHIGASHI: And if it reverts back, you can still have the one-acre ag lots, but you don't get any low cost housing, correct?
THE WITNESS: That's correct, yeah.

COMMISSIONER OHIGASHI: So if we decide to revert it back, we wouldn't get any low cost housing; is that right?

THE WITNESS: Right.

COMMISSIONER OHIGASHI: Now, the three-acre -- you know, I'm not -- my concern is not necessarily these people are bad people or good people or wonderful people. I'm just trying to look at what the practical effects of what we are trying to do today.

THE WITNESS: I appreciate that.

COMMISSIONER OHIGASHI: That's all I'm trying to do.

So the other question I have is that because the subdivision was done to meet a County requirement, if you revert it back to Agriculture, wouldn't that negate, or be a basis to try to negate the subdivision itself?

THE WITNESS: I don't know how to answer that question.

COMMISSIONER OHIGASHI: You don't have to. That was a query that I had. I'm sure the County --

THE WITNESS: If reverting it from Agriculture to Rural --
COMMISSIONER OHIGASHI: From Rural to Ag.

THE WITNESS: From Rural to Ag creates a lot of cascading contingent problems. One is that the General Plan of the County supports Rural classification, not Agriculture. So in order to do the Agriculture zoning, we would have to go back and change the General Plan to support the Agriculture, and that's a problem.

COMMISSIONER OHIGASHI: I'm not worried about that.

CHAIRPERSON SCHEUER: It's totally impossible for our court reporter to transcribe to people speaking simultaneously.

COMMISSIONER OHIGASHI: I apologize. I'm trying to ask a simple question so my simple mind can get ahold of this thing.

Now, if it was reverted back to Agriculture, what requirements, besides changing the General Plan or amending of the General Plan, would be -- would the County get to require upon this particular subdivision?

THE WITNESS: It would be the same thing. There would be pretty much the same list of requirements and conditions can be put there. We really don't need the Land Use Commission's
conditions at all, because the County can impose the same conditions, like putting one hat on top of another.

COMMISSIONER OHIGASHI: And the only missing part would be affordable housing, which they can fight among themselves?

THE WITNESS: Right, we'd have to deal.

COMMISSIONER OHIGASHI: I have no further questions.

CHAIRPERSON SCHEUER: Commissioner Okuda.

COMMISSIONER OKUDA: Thank you, Mr. Chair. Frankly, any of the parties can answer this question. What in the record shows or can assure the Commission that if we do not revert the property and rely on representations ten years from now, whoever is on the Commission then, might find itself in the very same position as this Commission finds itself today.

And I don't mean to be blunt about it, but it's like we're being told, hey, take our word for it.

CHAIRPERSON SCHEUER: Commissioner Okuda, I think it's a good question to perhaps ask during closing arguments, rather than necessarily directly in front of this witness.
COMMISSIONER OKUDA: Okay, than can be reserved for closing arguments, if I can give a heads-up for closing argument, I would ask all parties to tell us whether or not the following is an accurate statement of the law.

In other words, quote, "where the LUC issues an OSC and seeks to revert property based on a Petitioner's failure to substantially commence use of the land in accordance with its representation. The LUC is not required to follow the procedures otherwise applicable to boundary changes under HRS Chapter 205. And that's from Bridge Aina Le'a 339 Pacific 3rd at 710.

The other question is, whether that's an accurate statement of the law. Thank you.

CHAIRPERSON SCHEUER: Commissioners? I'm ready to go if no one else is.

THE WITNESS: Is that a question to me?

CHAIRPERSON SCHEUER: I believe it was stated by Commissioner Okuda as something that he wanted the parties to address in closing arguments.

THE WITNESS: Can you give me the reference in the Aina Le'a case?

COMMISSIONER OKUDA: It's found at volume 339 of Pacific 3rd at page 710. I don't have the
Hawaii'i report citation in front of me.

THE WITNESS: It doesn't refer to just 205, it refers to specific clauses in 205.

CHAIRPERSON SCHEUER: Again --

THE WITNESS: I don't know if your quote is correct.

CHAIRPERSON SCHEUER: Commissioner Cabral.

VICE CHAIR CABRAL: Yes, I do thank my fellow Commissioners. You've asked all my questions I think so far except for one. And I apologize. I don't think I've heard it and we've had some intermittent ability to not hear in my old age.

You're looking at approximately 398, 400 lots, vacant lots at the initial onset of this with a possibility of later maybe building out some as life goes on, but initially they will be probably an acre or half acre to an acre.

And you said you referenced doing some market analysis in order to do your cost analysis. I don't recall if you've given us any numbers as to what you feel like you were able to be able to sell those.

If you have those ready today, have you analyzed what they might sell for at a half acre to an acre in general?

VICE CHAIR CABRAL: Thank you.

CHAIRPERSON SCHEUER: Thank you, Mr. LaPinta.

THE WITNESS: The spreadsheet requires a number, so that's the --

CHAIRPERSON SCHEUER: I have a set of questions for you that are sort of widely dispersed on different subjects.

One is referring to your resume. It states that in 2003 you were the exclusive -- from 2003 to 2004 you were the exclusive broker for Waikoloa Heights.

Can you explain the relationship between that project and the history of these many interlocking projects?

THE WITNESS: Okay, I can do that.

Waikoloa Heights is the half of Waikoloa that is to the north. I think it was 898 acres zoned Residential Urban. Its original Urban classification, so there is no Sunset, no annual reports, no conditions, it's just Urban, and it was zoned by the County for residential.

I represented Oak Tree Capital who acquired the property in a settlement with a dispute with Bill
Mills. And then I sold the property for them.

CHAIRPERSON SCHEUER: So it had nothing to
do with Mr. Martirosian or any of the other corporate
entities --

THE WITNESS: Are you are familiar with the
company Oak Tree Management?

CHAIRPERSON SCHEUER: I am familiar but
that's not question that I asked you.

THE WITNESS: That was the client. It had
nothing to do with Martirosian.

CHAIRPERSON SCHEUER: Do you have any
previous dealings with Mr. Martirosian regarding this
project at all?

THE WITNESS: No, not at all.

CHAIRPERSON SCHEUER: Thank you.

You testified in relationship to
questioning from Commissioner Chang about you believe
your ability that we could rely on the existing
archaeological studies as a sufficient analysis at
this point in time that they remained fresh.

THE WITNESS: I've seen the study, and it's
being handled by Steve Lim's staff, and to be
finalized. And SHPD has reviewed it apparently
does -- the archaeological site has been identified,
I know where it is.
CHAIRPERSON SCHEUER: What is the basis of your concluding that from a real estate development perspective that that's a sufficient analysis?

THE WITNESS: It's a very open site, so the archeologist would have had opportunity to go through all the property and see.

But, you know, there will be a need if there's an incidental find during construction to stop construction and, of course, have those incidental finds to be analyzed and determined.

So we would have an archeologist working for that purpose during construction.

CHAIRPERSON SCHEUER: What year was the original archaeological study competed?

THE WITNESS: I don't know.

CHAIRPERSON SCHEUER: Do you know when SHPD revised its rules for archaeological surveys?

THE WITNESS: No.

CHAIRPERSON SCHEUER: Are you aware that they revised their rules since that study was done?

THE WITNESS: No, I wasn't aware of that.

CHAIRPERSON SCHEUER: You testified that you have spoken to water companies for providing water to this development.

What's the aggregate amount of water that
would be needed for full buildout?

    THE WITNESS: I would just inquire for the first phase, which is what I'm focusing on.

    CHAIRPERSON SCHEUER: So you did no inquiry as to the amount of water needed for the entirety of the development?

    THE WITNESS: No. We would have to negotiate an extension agreement to improve the system and build storage tanks and pumps, was my understanding. And I don't have -- I would rely on an engineer when the time comes for doing that.

    CHAIRPERSON SCHEUER: Do you know what aquifer this development is in?

    THE WITNESS: I don't know the name of it, but I know it's in a specific aquifer.

    CHAIRPERSON SCHEUER: Do you know whether the water source is in the same aquifer?

    THE WITNESS: I'm relying on the West Hawaii Water Company. That's their business. That's not within the purview of my work.

    CHAIRPERSON SCHEUER: Sorry, I had understood as an expert in development that you would be able to testify as to the availability of water for the entirety of the project.

    THE WITNESS: For the entirety of the
CHAIRPERSON SCHEUER: That is what is before us.

THE WITNESS: Well, I started working on this a few months ago, and I believe my communications with the West Hawaii Water Company, they believe they can supply water to the project.

CHAIRPERSON SCHEUER: For the first phase alone is all that you spoke to them about?

THE WITNESS: Talking about the first phase, yeah.

CHAIRPERSON SCHEUER: You have not spoken about water availability for the entirety of the project?

THE WITNESS: I have not discussed that with them. But they are aware how many units are there, and they didn't say there was no red flag.

CHAIRPERSON SCHEUER: You are not aware of the aquifer, you're not aware of what the sustainable yields are for this aquifer?

THE WITNESS: No, I'm not.

CHAIRPERSON SCHEUER: Are you aware of the fact the Water Commission is about to go out with revised sustainable yields for the two aquifers in this area?
THE WITNESS: No.

CHAIRPERSON SCHEUER: Do you know that those numbers are going to be reduced?

THE WITNESS: No.

CHAIRPERSON SCHEUER: Are you aware the Water Commission is preparing to revise downward sustainable yields for two aquifers in this area?

THE WITNESS: No, I'm not.

CHAIRPERSON SCHEUER: Are you aware that revision downward of sustainable yields in this area could result in proceedings to designate these areas as groundwater management areas?

THE WITNESS: I'm familiar with the process, but I'm not aware of the specific instance.

CHAIRPERSON SCHEUER: Are you aware that that could slow the development of water sources for this project?

THE WITNESS: I could infer that it could.

CHAIRPERSON SCHEUER: So are you familiar with -- and this is going again to your testimony in response to Commissioner Chang about the freshness of documents -- are you familiar with the Hawai'i Supreme Court case Unite Here versus City and County of Honolulu?

THE WITNESS: No.
CHAIRPERSON SCHEUER: That court case dealt specifically with for how long an EIS is actually an adequate basis for decisionmaking, but you're not familiar with that case?

THE WITNESS: No.

CHAIRPERSON SCHEUER: So that actually does provide a standard by which documents and analysis can be considered to be fresh.

Do you know how old the transportation impact analysis study was?

THE WITNESS: No, but that we know we need to redo that.

CHAIRPERSON SCHEUER: So you acknowledge that that --

THE WITNESS: That that component needs to be redone, I know that.

CHAIRPERSON SCHEUER: That's usually part of an EIS, correct?

THE WITNESS: Right.

CHAIRPERSON SCHEUER: You testified earlier about -- I'm sorry, I'm jumping around a lot of subjects you testified on.

You testified earlier about your very recent last week conversations with the County of Hawaii Housing Department, I believe.
Are you aware of what period of time this
Commission is legally obligated to look at in terms
of whether or not substantial commencement has
occurred?

Can we look at things that happened last
week, or do we look at it from the period of time
before we issued an Order to Show Cause?

THE WITNESS: I'm not aware of that.

CHAIRPERSON SCHEUER: Finally, I want to
talk to you about articles that were referenced both
orally by Mr. Lim, as well as in the briefings from
Environment Hawai'i.

And I think you actually started at one
point in your testimony to talk about some -- one of
the transactions for transferring land to the various
affordable housing entity.

Did you want to respond to that a little
bit more?

THE WITNESS: Well, I want to say, I
appreciate your volunteering and taking the time to
go through the details to get the true story about
this project and about the owners involved in it this
morning.

Because the Environment Hawai'i articles
were full of a lot of false statements that were
prejudicial to our client, my client.

CHAIRPERSON SCHEUER: Could you identify those false statements on the record?

THE WITNESS: I will identify one particular right now.

CHAIRPERSON SCHEUER: You said plural, so if you can do more than one that would be great.

THE WITNESS: Well, to begin with, the statement that Steve Lim was working for Stefan Martirosian in one of the articles. She could have called Steve and gotten -- and ask Steve if he was actually working for Stefan Martirosian. He was not.

Here's a specific statement from the July 2018 Environmental Hawai'i, page 9 through 10. It says under the heading, belated filings. It says, in other words, thanks to the County affordable housing agreement, the last obstacle to Martirosian holding clear title to more than 2,800 acres of Waiko land was are cleared away.

This statement is based on her analysis that the sale from Plumeria to Plumeria Waikoloa for $1.5 million, the money was used to pay off a loan that Stefan Martirosian had taken out and mortgaged the property for. This is not what happened. This is a false statement. It's a false inference. And
you have a copy of Paul Sullu's affidavit stating what the events were.

I had also contacted the person who made the loans. The loans were paid before. It was simply a matter of clearing title by recording the leases of mortgages.

CHAIRPERSON SCHEUER: You said there were other --

THE WITNESS: There is a -- in that same section of related filings, it says: Nearly nine months past the required deadline, insinuating that the owner was in default of the subdivision agreement because it went beyond 180 days.

And she's referring to the date that the deeds were recorded. That's not the same as the date the conveyance -- you do not have to record a deed to have a conveyance.

So that I would say is not a strictly false statement, but it's misleading. I think that's enough. The articles were so full of -- I mean, the level of away from the truth and the salacious connections made were easy to see.

CHAIRPERSON SCHEUER: I've never personally used the word "salacious" in reference to Environmental Hawai'i. It's not my kind of salacious
literature.

THE WITNESS: Those articles were.

CHAIRPERSON SCHEUER: I have nothing further. Commissioners?

So I would just like to notice, since they have already been referenced, at least one reference, one article was specifically cited in Mr. Lim's testimony as well as -- or Mr. Lim's pleadings, as well as orally referenced to Environmental Hawai'i.

I would just like to note these articles for the record, as part of the record.

So I'm done. Anything more from the Commissioners? Okay.

Do you want to redirect, Mr. Lim, before we leave for the day?

MR. LIM: No. I just reserve rebuttal either by two witnesses depending on what's said in the coming witnesses. Thank you.

CHAIRPERSON SCHEUER: Okay. I'm looking for my cheat sheet, but what we are going to do is go into recess until I believe 8:00 a.m.

COMMISSIONER OHIGASHI: (Indecipherable).

CHAIRPERSON SCHEUER: Commissioner Ohigashi needs to be here by 7:30.

My apologies.
We are recessed for the day and we will reconvene these hearings here tomorrow at 8:00 a.m.

(The proceedings recessed at 4:39 p.m.)
CERTIFICATE

STATE OF HAWAI'I

)  ) SS.
COUNTY OF HONOLULU

I, JEAN MARIE McMANUS, do hereby certify:

That on October 24, 2018, at 10:00 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

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

Dated this 24th day of October, 2018, in Honolulu, Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156
WRITTEN DIRECT TESTIMONY OF JOEL K. LAPINTA

1. Please state your name and business address for the record.
   Joel K. LaPinta
   40 Kamehameha Avenue
   Hilo, HI 96720

2. What is your current occupation?
   I am currently involved in three aspects of the development real estate process:
   1) management & advisory, 2) ownership, 3) brokerage.
   Management & Advisory: In addition to working for Waikoloa Highlands, Inc., as a
development consultant and manager, earlier this year I completed an assignment modeling an
ongoing real estate development in Waikoloa currently under construction and selling houses.
The assignment included modeling the project for presentation to the capital markets for
continued funding using industry practices for such modeling. Inputs came from forensic analysis
of the development’s books, consultation with the developer’s bookkeeper and the project
manager, review of all completed engineering and construction work product and costs, review of
construction contracts and job bid sheets, contracts with engineers, contracts and will-servé
agreements with utility companies, and cost estimates and budgeting done by the Home Owners
Association management company.

   Ownership: In 2017, I formed a partnership and purchased the remaining 10 lots from the
developer of a 70-lot subdivision known as Wai‘nani at Po‘ipu, located in Koloa, Kauai. As an
employee of the developer I had been responsible for the acquisition, completion of the
development, served as a director of the subdivision association, and negotiated the terms of the
agreements of the master association that was formed to, among other functions, comply with the
conditions of the Decision & Order of the Land Use Commission that urbanized the land in 1976
(Moana Corporation, Docket No. A76-418). Presently I serve as a director and treasurer of the
owners’ association and I am the representative to the Kiahuna Maintenance Association.

   Brokerage: I represent various owners of land on the Big Island to assist in the marketing
and sales of their land.
How long have you been specializing in real estate development?

32 years.

3. Is Petitioner’s Exhibit 6 a true and correct copy of your resume?

Yes.

4. Please briefly describe your educational background.

I graduated with a Bachelor of Arts degree from St. John’s College in Santa Fe, New Mexico in 1980. I graduated with honors and received a fellowship that paid for my studies at University of New Mexico and Brandeis University. I studied financing for development of real estate in 1984 at University of Hawaii at Hilo. I completed the educational requirements to receive a broker’s license in 1984. In 1986, I completed course work for the Graduate Realty Institute. In 1987, I completed requirements for a real estate brokers license from the State of Hawaii. In 1999, I completed the requirements of the Commercial Investment Real Estate Institute of the National Association of Realtors including lecture courses and work experience to be awarded the Certified Commercial and Investment Member designation ("CCIM").

In 2001, I completed course work from the CCIM organization in economic modeling for land, commercial, and multiple-family housing development. In 2006, I completed a course on Multiple-Family Residential Development focused on development of high-rise residential projects (>6 stories) in Oahu. (That same year I sold two high-rise development sites in Waikiki, Oahu: one is the site of the Allure, Waikiki.) In 2017, I completed course work on acquisition and market studies for development land through an educational program affiliated with the CCIM organization.

5. Please briefly describe your work experience as a real estate development consultant.

Since 1990, I have worked in several capacities as an advisor and manager for real estate developments in Hawaii. In 1990, I was hired by the developer of a subdivision of 21 residential lots to prepare the information package on the subdivision for submission to the Department of Commerce and Consumer Affairs, Land Division, and to prepare the Public Offering Statement per the requirements of the Uniform Land Sales Practices Act (Hawaii Revised Statutes ("HRS") Chapter 484, and Hawaii Administrative Rules Title 16 Chapter 106) for pre-construction sales of
their subdivision which had received Tentative Approval for the Preliminary Plat Map ("PPM") from the County of Hawaii. Between 1991 and 1994, I owned and managed the development of a residential subdivision consisting of 28 residential lots. The subdivision improvements included building streets with curbs and sidewalks that were later conveyed to the County of Hawaii and the installation of water and sewer lines, and underground electric, cable, and telephone utility lines. The subdivision was registered under HRS Chapter 484. Twelve of the lots were sold to a non-profit self-help housing organization and all the lots currently have homes on them. These subdivision projects were similar in process to the Waikoloa Highlands project currently being developed.

In 1995, I did analysis of the development potential of the properties owned by Puna Sugar Company for the parent corporation, AMFAC/JMB Hawaii, Inc. In 2001, I completed a development analyses for the Resolution and Collection Corporation under the Ministry of Finance of Japan to evaluate the development potential for approximately 16 acres adjoining Kaunala Beach on the North Shore of the Island of Oahu. Between 2002 and 2003, I modeled alternative development plans for subdivision of land owned by Castle & Cooke located in Waikoloa Village consisting of 255 acres of land located off Waikoloa Road (now known as Kikaha and Makana kai).

In 2009, I was a consultant for the Trustee of Western United Creditors Trust to evaluate the entitlements for development of a 120-acre parcel of land zoned Project District for Commercial, Single Family, and Multiple-Family residential development.

Between 2009 and 2017, I was an employee of Kennedy Wilson Inc., (KW) and worked on various projects in Hawaii. These included Wai’nani at Po’ipu on the island of Kaua’i and KW’s investment in Kohanaiki on the island of Hawaii.

6. **To what professional organizations do you belong?**

I am an active member of the Hawaii Isle Board of Realtors, the Hawaii Association of Realtors, the National Association of Realtors, and the Certified Commercial Investment Institute affiliated with the National Association of Realtors.
7. **Have you ever been qualified as an expert witness on land development before the Land Use Commission, any other administrative agency or a court?**

   Yes. I was qualified as an expert in real estate development and sales at the Commission’s October 24, 2018 hearing on this Docket. I have also been qualified as an expert witness before the Circuit Court of the Third Circuit, State of Hawaii, Poggenburg vs. Merle Montague and Bernice Montague, et al., Civil No. 04-0298.

8. **Are you familiar with the proposed development plans for the Waikoloa Highlands, Inc., (“WHI”) subdivision (“Project”) and the Petition Area?**

   Yes. I was retained by WHI to be the project manager for the Project in June 2018.

   I have been to the Petition Area 8 times since June of this year. The Petition Area is approximately 731.581-acres and currently identified by TMK No. (3) 6-8-002:016. The Project is proposed as a rural-residential subdivision to consist of approximately 398 one acre lots. Related infrastructure improvements to support the Project include the construction of internal roadways, drainage retention systems, grading, landscaping, and utilities (e.g., water, telephone, cable, electric, private water system, individual wastewater systems, etc.).

9. **Who do you report to at WHI?**

   I report to both Natalia Batichtcheva and Valery Grigoryants. I am not authorized to take any substantive action without prior authorization from Valery Grigoryants.

10. **Have you done any projects similar to the Project that WHI has retained you for?**

    Yes. The Nani Malia Subdivision, Kulaimano, South Hilo District, County of Hawaii, and the Wai‘nani at Po‘ipu, Koloa, Kiahuna Mauka, District of Koloa, Kauai, among others.

11. **Please provide the Land Use Commission with an overview of the process of subdividing the Petition Area and what needs to be completed prior to the selling the individual lots?**

    Assuming the Land Use Commission does not revert the land to the Agricultural District classification, the following requirement and tasks will need to be accomplished to begin pre-construction sales and then obtain final subdivision approval:
1. Rezoning ("REZ"): Process an amendment to the conditions of Ordinance No. 13-29 (Ord. 13-29) to allow additional time for WHI to obtain final subdivision approval and other amendments as required by the County.

2. PPM: A revised PPM will need to be approved under the procedures of the County of Hawaii Subdivision Code, Chapter 23. WHI is aware of specific changes to the previously tentatively approved PPM that the County has requested and these will be incorporated in the new PPM along with any other changes required or desirable for the development.

3. Roundabout plans and civil construction plans for the subdivision improvements. These plans have been preliminarily reviewed by the County agencies, and also include design plans for access into the Project from Waikoloa Road and Pua Malia Street. All these plans will need to be approved in their final form by the County Departments of Planning, Public Works, and Water Supply; the Department of Health, State of Hawaii; and the West Hawaii Water Company. We would need to have plans approved for line extension from Hawaii Electric Light Company, HawaiianTel, and Spectrum (optional). In addition, plans for an internal trail system we need to be completed assuming the condition for a pedestrian trail system will carry over from Ord. 13-29 to the new REZ ordinance.

4. Comply with all the conditions of the State Land Use Commission’s Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A05-727 ("D&O").

5. Complete Project tasks, including:
   a. Obtain a "will-serve" letter from West Hawaii Water Company and approval of construction plans for system improvements and line extension.
   b. Determine if the improvements required by the State Department of Transportation have been met for the intersections of Queen Ka‘ahumanu Highway and Mamalahoa Highway.
   c. Confirm full satisfaction of Condition 9 relating to affordable housing, and in addition, pursue agreement with a bona fide affordable housing developer to
develop a portion of the Petition Area for affordable housing meeting the approval 
of the County of Hawaii, Office of Housing and Community Development.

d. Complete the archeological report, treatment plan, and registration of Waikoloa 
Highlands Site T-22 CS per the requirements of the State of Hawaii, Department 
of Land and Natural Resources, State Historic Preservation Division.

e. Drainage: Finalize approval of the drainage study for incorporation into the 
subdivision grading and improvement plans that will be submitted for review and 
approval by the Department of Public Works of the County of Hawaii and if 
required, by the Army Corps of Engineers.

f. Pay pro-rata share of civil defense system.

g. Pay educational fund contribution at lot closings.

h. Complete solid waste plan.

i. Submit annual progress reports to the Land Use Commission.

6. Pay Fair Share Contributions to the County of Hawaii.

7. Prepare covenants required by the County of Hawaii restricting use of lots to one single 
family dwelling per lot.

8. Prepare Covenants, Conditions, and Restrictions for the Project, incorporating conditions 
that all lots meet architectural design guidelines for vertical improvements, landscaping, 
and landscaping maintenance.

9. Structure Subdivision Governance and Budget for Association Fees: Form by Charter the 
Association of Lot Owners, adopt By-Laws, Design Guidelines, and procedures for the 
Design Review Committee.

10. Register the Subdivision under the HRS Chapter 484 and obtain an approved Public 
Offering Statement and, if required, under TITLE XIV -- INTERSTATE LAND SALES, 

11. Enter into a contract with a bona fide contractor to complete the subdivision 
improvements for the first increment.
12. Submit the contract and bid price to Public Works and Planning for approval and provide
the County with a bond or standby letter of credit acceptable to the County to cover the
cost of the subdivision improvements.
13. Complete and execute with the County of Hawaii a Subdivision Agreement.
14. Record the subdivision map at the Bureau of Conveyances.
15. At this stage the subdivider may convey title to individual lots and receive payment from
lot buyers. **The subdivider has not yet touched the soil.**
16. Engineer will complete staking and place control points for grading contractor.
17. Obtain a National Pollution Disbursement Elimination System ("NPDES") permit from
the State Department of Health and a grading permit from the County of Hawaii.
18. Advance initial payment to contractor who will commence staging operation, wind and
runoff barriers per the requirements of the NPDES permit and the Public Works
Department requirements and deliver equipment and supplies to site.
19. Start initial grading.

12. **Have you or WHI approached any local developers or contractors to partner with on the Project?**

Yes. I have started conversations and shared information with two. I have reviewed the
land use issues with them. They both indicated interest but told me to contact them after we
resolve the issues with the Land Use Commission first.

13. **Please identify the various plans and studies you have prepared for the Project since June 2018.**

I have prepared a feasibility study for the Waikoloa Highlands – 398 Lots Entitlement
Phase (Packaging) and a construction phasing study, both for internal use for the Construction
and Sales Phase. R. M. Towill Corporation has provided me with engineering plans for
completion of the streets and infrastructure to County of Hawaii Decidable Standards for Phase I
and for Phase II. The civil plans are complete enough to estimate costs for the subdivision
improvements.
We are in discussions with Ikaika Ohana LLC for them to acquire approximately 6 acres out of TMK Parcel (3) 6-8-002-016 (i.e., the Petition Area) that fronts on Pua Melia Street and will be at the entrance to the Phase I of the Waikoloa Heights subdivision. Ikaika Ohana LLC already owns the 4.4 acre TMK Parcel (3) 6-8-003-028 on the makai side of Pua Melia Street. They plan soon to start construction of 60 affordable apartments on the approximately 4.4-acre parcel. I have provided maps, engineer design sheets, aerial images, and topographic maps for the ~6-acres. Ikaika Ohana LLC has toured the location of the proposed ~6-acre site and believe this will allow them to develop an additional 80 affordable units.

14. **Please describe the scope of the market analysis / feasibility study.**

The market analysis / feasibility study includes data collection and running statistical analysis for sales in the North Kona and South Kohala Districts of the Island of Hawaii and reviewing sales of vacant lots and houses in subdivisions developed in the past 5 years with lots sizes of approximately 1.0 acre in South Hilo district as well.

15. **In the market analysis / feasibility study, did you rely on any other studies or external data in drawing your conclusions and making your assessment of the Project?**

Yes. I reviewed an appraisal dated August 16, 2017 and another completed on March 7, 2008 for Waikoloa Mauka LLC; both appraisals were prepared by The Hallstrom Group and signed by James E. Hallstrom, Jr., MAI, CRE. I reviewed sales data from the Hawaii Information Service Multiple Listing Service and data from the County of Hawaii real property tax assessor’s office. I also reviewed a market study prepared by a real estate market and economics advisory service for another residential development in the Waikoloa area currently under construction.

16. **Please describe the methodology used to conduct the market analysis/feasibility study.**

The definition of “feasibility” in this context is to determine if the anticipated future benefits will exceed the expected future costs. The first step was to order a status title report and review it to determine the property was free and clear of any monetary liens, to ascertain what other encumbrance may affect the use of the land including any recorded governmental or private restrictions or covenants, effect of easements recorded, and any other matters contained in...
documents recorded in the public record. The second step was to review with legal counsel the
effect of D&O in Docket No. A05-727; the status of the owner’s compliance with the conditions
of the D&O; and the Order to Show Cause. I then reviewed the most recent conditional zoning
ordinance, Ordinance No. 13-29, affecting the use of the land. In doing this I reviewed the files at
the Planning Department of the County of Hawaii and those of the owner’s former planning
consultant. I then obtained and reviewed what was available in the form of studies and plans
prepared by other third-party providers, including surveyor’s reports, appraisals, a drainage study,
an archeological report, a water resources report, engineer’s prepared grading plans, and civil
construction plans for the subdivision and for the off-site roundabout.

I contacted the West Hawaii Water Company to confirm the land was within their service
area and that they could provide service to the Project. We discussed what infrastructure would
need to be constructed to provide adequate pressure to the lots in the subdivision and what would
be the estimated Contribution in Aid of Construction fees and the timing for these fees to be paid.
Because deadlines to comply with conditions to construct the subdivision in the zoning and
tentative approval had passed I first developed a feasibility model for the Entitlement Phase of the
project: “Entitlement Phase” meaning the completed steps necessary for taking the land from its
current status to having in place the rights to begin offering the lots for sale, and then to close
sales on a pre-construction basis. For the Entitlement Phase I reviewed what work product would
have to be completed and the timing for completion by the attorney and planning consultant,
environmental consultant, archeological and cultural consultants, and by the engineers. The next
phase of the development process is “Construction and Sales Phase.” For this phase I developed
a model based on cost estimates supplied from the engineer. I then compared the estimates with
actual contract prices for work being performed on other projects this year. I extrapolated costs
based on construction commencing about 3 years from now. For the sales side I also developed
confidential pricing and market absorption for the Project.

17. **Are the methodologies that you used in the market study/feasibility study consistent
with generally accepted industry standards?**
Yes. I worked in the industry for an international real estate investment company and had been tasked with reviewing market/feasibility studies for potential acquisitions of developments in Hawaii, so I feel comfortable providing opinions on these issues.

18. **Please describe the scope of work regarding the infrastructure you have reviewed and the estimated timeframe of completion of these plans.**

   I had meetings, email exchanges, and telephone conversations with the lead engineer at the Kona office of R. M. Towill Corporation. The purpose of these communications was to ascertain the extent of the work product completed including studies, mitigation plans, and infrastructure design for the Project so far; what portion of the work product is still usable; what would have to be done over; and what additional work product will need to be completed and the time and cost to complete the work. The completion time for preparation of the final drainage plan, roundabout plans, and subdivision documents was estimated to be 12 months.

19. **Did you rely on any other studies or external data in drawing your conclusions and making your assessment on the infrastructure required for the Project?**

   For the Project infrastructure requirements, I relied primarily on the civil engineer, R. M. Towill, and conversation and correspondence with the West Hawaii Utility Company and Hawaii Electric Company. We have not initiated further negotiation with the utilities pending the outcome of the Land Use Commission's decision on the Order to Show Cause.

20. **Please elaborate on the discussions you have had with West Hawaii Water Company regarding the amount of water needed for the Project and the availability of water for the entire Project.**

   West Hawaii Water Company ("WHWC") has confirmed the property is within their service area to supply potable water. Wells and reservoirs for the system are located at the 1,200-foot elevation, roughly the same elevation as Puu Hinai adjacent to the Petition Area. From this elevation, water from the system will be gravity fed to service Phase I, Increment 1 of the subdivision and the Ikaika Ohana LLC affordable housing site. Additional storage tanks to provide adequate pressure will have to be located mauka of the project for later phases. WHWC owns easement rights for additional wells, transmission lines, and tank sites over parcels of land.
adjoining the Petition Area to complete its water system development plan to service the entire development of the Petition Area.

WHWC has further informed me of the following: "We currently have 7 wells operational capable of producing 10 MGD and an 8th well that is being outfitted at this time to be completed very soon which will raise production to 11.4 MGD. With the 8th well we use the criteria of the 2 largest wells out of service to meet demand, so effective production is 8.3 MGD. Present demand is 5.0-6.0 MGD. We do have 4.0 MG of storage at the wells, but we also have 6.0 MG of storage for Waikoloa Resort." Therefore, it is my opinion that there is sufficient potable water to service the entire proposed Project of approximately 398 1-acre lots and ancillary uses.

21. **Do you believe that the Project is feasible?**

The subdivision will create larger homesites than those that are currently available in the Waikoloa Village in a superior location to other existing and proposed residential developments in the village area. The barrier to entry for any competing product is very high and only those targeted to higher priced resort housing are being considered at locations nearer the coast in South Kohala. The price of the lots in my feasibility study are well below sales prices currently and for the past 12 years for similar sized lots both for South Kohala and North Kona. The cost estimates used in study are thorough and conservatively high. The rate of sales is consistent with the market and the project lends itself to being developed in increments to allow the subdivider to maintain a profit margin throughout the development.

22. **WHI conveyed 11.7 acres subdivided from the Petition Area to Plumeria at Waikoloa, LLC under an Affordable Housing Agreement. Are you familiar with that parcel of land?**

Yes. It is currently identified by Tax Map Key No. (3) 6-8-002:057.

23. **Based upon your market analysis/feasibility study for the Project and other work you have done in area, are you generally familiar with land value in the Waikoloa Area?**

Yes. I have experience working on projects in Waikoloa since 1999. Recently I completed a development model for a project in Waikoloa for a developer of resort-residential
housing. I have reviewed in August 2018 the status of the current and planned residential
developments in Waikoloa Village as part of my market analysis for the Waikoloa Highlands
project.

24. **What is your appraisal of the market value of that 11.7 acre parcel that was
conveyed?**

Given the considerations below in my answer to Question 24, I could with confidence
value the 11.7-acre parcel at around $2,300,000 with the OHCD entitlement enhancements. If
there were no OHCD enhancements the 11.7-acre parcel is valued at least the price of $1,500,000
recently paid for it. It is valuable because it has road frontage near a major intersection.

25. **What is your estimate based on?**

The current owner of the 11.7-acre parcel plans to use approximately half the land for
commercial and the other half for affordable housing. During a conference with him I learned he
is planning to build a True Value Hardware Store and other commercial space on the property and
that he has an agreement with the Office of Housing and Community Development (OHCD) of
the County of Hawaii permitting this use through a HRS Chapter 201H application, with the
condition that affordable housing also be developed on the land. Valuing the 11.7-acre parcel
with the entitlement enhancement based on an agreement with OHCD is the best guide to value,
when compared with two recent sales in the area.

The first is the sale recorded on January 1, 2018 of the 40.808 acres immediately makai of
the intersection of Pua Melia Street/Paniolo Drive with Waikoloa Road. The land is zoned for
commercial use and sold for $9,500,000 (about $233,000 per acre). The second is the sale of
Parcel (TMK (3) 6-8-003-028). It was purchased for $1,000,000 on April 24, 2015. The buyer
plans to develop a 60-unit residential apartment for affordable housing using, in part, tax credit
financing. Parcel 028 is located immediately adjoining the Waikoloa Highlands Inc., Petition
Area of Parcel 016 on Pua Melia Street.

26. **Is the Petition Area suited for the Project?**

Yes. The Petition Area has adequate road access, access to adequate potable water source,
is within the service area of a utility company qualified to provide potable water service, and is
located with access to electrical, telephone and other telecommunication infrastructure. The
location of the proposed rural-residential subdivision at the intersection of Paniolo Drive/Pua
Melia Street and Waikoloa Road is superior to the other residential developments currently
offering lots for sale and those proposing to provide future homesites.

27. **Please tell the Land Use Commission, in your professional opinion, whether the**
**Petitioner has engaged in private land banking.**

No, the Petitioner and its predecessor Waikoloa Mauka LLC have definitely not engaged
in private land banking. The owners had gone to considerable expense to obtain engineering and
other third-party studies and reports prior to obtaining the Land Use Commission's June 1, 2008
boundary amendment in order to meet the conditions of the December 15, 2005 County zoning
ordinance. Part of the reason for delay in developing this Project was the particularly unfortunate
timing of its approval by the LUC just prior to the meltdown of the financial market in the fall of
2008 which stalled most real estate developments in the State and bankrupted many owners.

Resort residential projects only started recovery in 2014 and Waikoloa Village, as a transitional
primary housing and affordable retirement community, had only achieved price stabilization in
2017. The Waikoloa Highlands Project appears to be feasible at this time, provided however, that
there will be no near-term economic shock and/or protracted recession.

28. **Please tell the Land Use Commission, in your expert opinion, has the Waikoloa**
**Highlands Project attained substantial commencement of use of the land of the Petition**
**Area with its development activities through the present date?**

Yes, the Project has attained substantial commencement of use of the Petition Area
because of the unusual entitlement history for this Project, where the County zoning had been
approved for years and substantial development activities had commenced, even before the
Project came before the Land Use Commission in 2007-2008. After the approval of the D&O in
this matter, the Petitioner also caused preparation of additional construction and other plans for
review by the governmental agencies, and irrevocably conveyed at no cost a 11.7 acre parcel in
satisfaction of the affordable housing requirements of this D&O and the County's zoning
Ordinance.
29. **Is there currently or do you project market demand for the types of lots proposed for this Project?**

   Yes. I have spoken to several brokers who have indicated there would be an interest in one-acre lots at the proposed prices I have used in the model. The market lots will be attractively priced and well located for primary housing, retirement, and some 2\textsuperscript{nd} home owners. The price point will attract buyers from Oahu and other states but will also be attractive to residents for use as primary housing.

30. **What is your estimate on when the first lots of the subdivision are ready for sale?**

   Assuming the Land Use Commission does not revert the Petition Area, and depending on whether the County will allow concurrent or require sequential processing of the applications for rezoning and the subdivision, the closings on binding contracts could start in approximately 24 months to 34 months.

DATED: Hilo, Hawai'i, November 18, 2018.

Respectfully submitted,

JOEL K. LAPINTA
November 09, 2018

State Land Use Commission
State of Hawaii
County of Hawaii
USA

Re: Letter of Confirmation

Dear Sirs/Madams:

As the President of Arch, Ltd. and the sole shareholder of Armbusinessbank CJSC, I guarantee that the funds of up to $45,000,000 (forty-five million USD) are available for the sole purpose of developing the project of Waikoloa Highlands, Inc. on the area currently identified by TMK No. (3) 6-8-002:016 and consisting of approximately 731.581-acres.

Sincerely,

President

Vitaly S. Grigoryants

Exhibit 57
### COUNTY OF HAWAI'I

**Real Property Tax Office**

**Recent Sales in Area**  |  **Previous Parcel**  |  **Next Parcel**  |  **Return to Main Search Page**  |  **Hawaii Home**  |  **Real Property Home**
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**Owner and Parcel Information**

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**Improvement Information**

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**Dept of Public Works Bldg Division Permit and Inspections Information**

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As a courtesy to the public, we provide building permit data as supplied by the Department of Public Works. As such, no warranties, expressed or implied, are provided for the data herein, its use or its interpretation, and accuracy.

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<td>OTHER</td>
<td>Mapping Change</td>
<td>Mapping Change</td>
<td>05/15/2017</td>
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<td></td>
<td></td>
<td>Mapping Change</td>
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</table>

**Current Tax Bill Information**

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<tr>
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<th>Description</th>
<th>Original Due Date</th>
<th>Taxes Assessment</th>
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<th>Net Tax</th>
<th>Penalty</th>
<th>Interest</th>
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<td>02/20/2019</td>
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<td>$ 0.00</td>
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<td>$ 0.00</td>
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Tax bill is computed to 11/30/2018  Or pay online at [http://payments.ehawaii.gov/propertytax/hawaii](http://payments.ehawaii.gov/propertytax/hawaii) Other Payment Options Click **Here**

**Exhibit 58**
Date: November 16, 2018

Mr. Douglas Bigley
President
Ikaika Ohana
2000 E. Fourth St., Suite 220
Santa Ana, CA 92705

Re: Non-Binding Proposal for Conveyance of approximately 5 to 6 acres of Vacant Land Owned by Waikoloa Highlands, Inc., in Waikoloa, Hawaii, a portion of TMK: (3) 6-8-002: 016, to Ikaika Ohana, a Non-Profit Affordable Housing Developer

Dear Mr. Bigley,

The owners of Waikoloa Highlands, Inc. ("WHI"), are considering the following non-binding proposal to Ikaika Ohana, which will not be binding on WHI or any party unless and until a formal Agreement is negotiated and executed by WHI, Ikaika Ohana and the County Office of Housing and Community Development ("OHCD").

WHI is considering offering to subdivide an approximately 5 to 6 acre lot (the "Lot") from within TMK: (3) 6-8-002: 016 ("Parcel 016") for conveyance to Ikaika Ohana under the terms herein for the specific purpose of satisfying in full WHI’s affordable housing requirements under the State of Hawaii Land Use Commission Docket No. A06-767, and the County of Hawaii Zoning Ordinance No. 13-29, as those entitlements may be amended from time to time.

We understand that Ikaika Ohana intends to develop an affordable rental housing project on the Lot, which will generate a minimum of 80 affordable housing credits acceptable to the County’s OHCD. We understand that these 80 affordable housing credits would fully satisfy WHI’s affordable housing requirements under the above State and County entitlements.

Please provide us with your IRS determination letter confirming Ikaika Ohana’s 501c3 status as we understand that is one of the OHCD requirements. Another potential OHCD requirement is a list of affordable housing projects that have been completed or are ready for building by your organization in the State of Hawaii, so please send that also.

WHI requests that in consideration of the conveyance of the Lot to Ikaika Ohana at no cost, that Ikaika Ohana be responsible for designing and constructing an entry road and utilities from Pua Melia Road to
the Lot to standards acceptable to the County of Hawaii, which standards also allow WHI to take access to the adjacent phase of its proposed 398-lot subdivision project at Parcel 016.

Please let us know if you are willing to consider this proposal for the donation of land for development of affordable housing by Ikaika Ohana. If so, we will send you a draft Agreement with the specific details of the proposed land transaction for your review.

To be clear, unless and until the parties execute a binding Agreement, this communication is not a binding commitment on WHI to take any action.

Sincerely yours,

Waikoloa Highlands, Inc.

By [Signature]

Its [Signature] Director
November 19, 2018

Waikoloa Highlands, Inc. 
1200 S. Brand Blvd, #202 
Glendale, CA 91204

Dear Mr. LaPinta,

We are in receipt of your letter dated November 16, 2018 regarding the non-binding proposal for conveyance of approximately 5 to 6 acres of vacant land to Ikaika Ohana. We would like to confirm that we are interested in pursuing the matter as described in your letter, and we are uniquely qualified to execute such a transaction.

Ikaika Ohana currently owns property adjacent to yours that has received financial commitments from state and local resources for the construction of 60 affordable rental units beginning in 2019. We have also addressed issues related to developing residential property within the formerly used defense site known as the Waikoloa Maneuver Area, demonstrating our ability to fully satisfy your development requirements. We would like to continue conversations with your team to discuss how we may efficiently execute the proposed development plan and maximize the value received by all project participants.

As requested, please see attached for confirmation of Ikaika Ohana’s 501c3 status as well as a list of Hawaiian affordable housing projects in our portfolio or under development. If you need any additional information, please feel free to contact us.

With kindest regards,

[Signature]

Douglas Bigley 
President 
Ikaika Ohana

Exhibit 59b
Employer Identification Number:
80-0153639

DLN:
17053100010039

Contact Person:
DENISE L. TAMAYO
ID# 95120

Contact Telephone Number:
(877) 829-5500

Accounting Period Ending:
DECEMBER 31

Public Charity Status:
170(b)(1)(A)(vi)

Form 990 Required:
Yes

Effective Date of Exemption:
FEBRUARY 21, 2008

Contribution Deductibility:
Yes

Addendum Applies:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.
IKAIKA OHANA

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

[Signature]

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 4221-PC
# Project Name and Address | # of Units | Housing Type | New Const. or Rehab | Project Status | Project Achievement and Problems | Delays | Audit Findings
--- | --- | --- | --- | --- | --- | --- | ---
1 Kaiulu O Waikaloa 68-1850 Pua Melia St. Waikoloa HI | 60 | Multi Family | New Const | Pre-Development, LIHTC and Soft Funding Committed | Pending applications for funding from County, pending UXO clearance | UXO clearance | None
2 Villages of La'iopua Villages 4 & 5 Kealakehe HI | 160 | Single Family | New Const | Pre-Development | RFP Awarded, no problems | None | None
3 Kiiwahine Village 555 Kiiwahine St. Kihei Maui HI | 120 | Multi Family | New Const | Pre-Development, LIHTC and Soft Funding Fully Committed | Funding committed, pending financial close, no problems | None | None
4 Kamana Elderly 145 Kamana St. Hilo HI | 62 | Elderly | Rehab | Placed in Service Dec 2016 | Construction complete, project operational, no problems | None | None
5 Riverside Apts 333 Ohai St. Hilo HI | 74 | Multi Family | Rehab | Placed in Service Nov 2014 | Construction complete, award winning design, project operational, no problems | None | None
6 Hale Makana O Nanakuli 89-201 Lepeta Ave Waianae HI | 48 | Multi Family | New Const | Placed in Service Dec 2013 | Construction complete, project operational, no problems | None | None
7 E Komō Mai Apts 816 Kinole St. Hilo HI | 45 | Multi Family | Rehab | Placed in Service Nov 2011 | Construction complete, project operational, no problems | None | None

Total | 569 |
# IKAIAK OHANA DEVELOPMENT EXPERIENCE IN HAWAII

<table>
<thead>
<tr>
<th>#</th>
<th>Project Name</th>
<th>Construction</th>
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<tr>
<td>1</td>
<td>Kikaulu O Waikoloha 68-1850 Pua Melia St. Waikoloha HI</td>
<td>12,360,000</td>
<td>2,300,000, None, 9,900,000, None, None, 2,640,000, 387,455, 11,959,563, 27,187,018, 39,547,018, 15</td>
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<tr>
<td>2</td>
<td>Villages of Lā'opua Villages 4 &amp; 5 Kealakehe HI</td>
<td>TBD</td>
<td>TBD, TBD, TBD, TBD, TBD, TBD, TBD, TBD, TBD, TBD</td>
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<tr>
<td>3</td>
<td>Kahuwhe Village 555 Kahuwhe St. Kihel Mau HI</td>
<td>27,184,000</td>
<td>1,850,000, 1,425,000, 19,705,460, None, None, 4,450,000, 899,480, 25,512,060, 53,842,000, 81,026,000, None</td>
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<td>4</td>
<td>Kamana Elderly 145 Kamana St. Hilo HI</td>
<td>8,150,000</td>
<td>None, None, None, None, None, 6,030,224, 2,196,000, 1,154,206, 6,569,570, 15,950,000, 24,100,000, 61</td>
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<td>5</td>
<td>Riverside Apts 333 Oahi St. Hilo HI</td>
<td>5,610,415</td>
<td>None, None, 7,894,095, None, None, 1,725,000, 298,532, 8,039,379, 17,957,006, 23,504,021, 69</td>
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<td>6</td>
<td>Hale Makana 89-201 Lepake Ave Waianea HI</td>
<td>7,350,000</td>
<td>1,600,000, None, 4,409,748, 1,000,000, 240,300, 1,500,000, 790,088, 5,755,212, 15,314,348, 22,664,348, 48</td>
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<td>7</td>
<td>E Komo Mai Apts 816 Kinoole St. Hilo HI</td>
<td>5,850,000</td>
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<td>5,750,000, 1,425,000, 42,759,303, 1,000,000, 6,854,524, 13,111,000, 3,899,859, 64,051,770, 138,851,456, 205,355,871, 204</td>
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WRITTEN DIRECT TESTIMONY OF VALERY GRIGORYANTS

1. Please state your name and business address for the record.
   My name is Valery Grigoryants. My business address is 25/1, Malaya Gruzinskaya
   Street, 123557, Moscow, Russia, Representative Office in Moscow, Arch, Ltd.

2. What is your involvement with Waikoloa Highlands, Inc. ("WHI")?
   I am the Vice-President of Arch, Ltd. Arch, Ltd. is the parent company of Vitoil
   Corporation, which in turn is the parent company of WHI. Originally, Arch, Ltd. was the
   majority shareholder of WHI until Arch, Ltd., transferred its ownership in WHI to Vitoil
   Corporation as a capital contribution on December 28, 2017. The capital contribution was made
   for taxation purposes.

3. What is your brother's, Vitaly Grigoryants's involvement with WHI?
   My brother Vitaly is the President of Arch, Ltd. He is also the ultimate beneficiary under
   the entire corporate structure of WHI. However, Vitaly and I have equal rights to make decisions
   for the various corporations, including WHI.

4. Please explain to the Land Use Commission what it entails to be the "ultimate
   beneficiary" of the corporate structure of WHI (Exhibit 28)?
   It means that Vitaly is the ultimate shareholder of the corporate structure.

5. Are you entitled to make decisions for WHI?
   Yes.

   Even though my brother is technically the ultimate shareholder under the corporate
   structure of WHI, my brother Vitaly and I have equal rights (50/50) to make decisions for the
   various corporations, including WHI. Hence, we are both ultimate decision-makers on all issues
   of WHI, Vitoil Corporation, and Arch, Ltd.

   Further, Vitaly has authorized me with full authority to act and represent Arch, Ltd., Vitoil
   Corporation, and WHI in the proceedings regarding the Petition Area before the State of Hawaii
   Land Use Commission as well as with the County of Hawaii.

6. How long have you been the ultimate decision-maker of WHI and the Vice-  
   President of Arch, Ltd?

4842-6864-3962.6.069590-00001  1

Exhibit 61
I have been the decision-maker of WHI together with my brother Vitaly, since it was incorporated in 2015. I have been the Vice-President of Arch, Ltd. since it was incorporated in December 1996.

7. **Who are the current Directors of Arch, Ltd.?**

   Mr. Aykaz V. Ovasafyan and Mr. Roberto R. Bernal.

   Mr. Ovasafyan is our relative and we have trusted him for a long time. A company called Oehri Corporate Services AG (Principality of Liechtenstein) proposed Mr. Bernal to be appointed director of Arch, Ltd. We also acquired Arch, Ltd. through the same corporation and we trust their recommendations.

8. **Are either Mr. Ovasafyan or Mr. Bernal shareholders of any of the entities involved with WHI (Davies Limited, Arch, Ltd., Vitoil Corporation, or WHI)?**

   Mr. Ovasafyan is a nominal shareholder of Davies Partners Limited. Mr. Ovasafyan is holding the said shares in benefit of Vitaly Grigoryants.

   Mr. Bernal has never been a nominal owner of any of our companies.

9. **Pursuant to Exhibit 28 (Corporate Structure), Davies Partners Limited is the parent of Arch, Ltd. Please explain to the Land Use Commission what corporate activities Davies performs, where Davies was incorporated, and who the Directors are.**

   Davies Partners Limited registered address is at Trident Trust Company (B.V.I.) Limited, Trident Chambers, P.O. Box 146, Road Town, Tortola, B.V.I. Mr. Ovasafyan and Mr. Bernal serve as the directors. The company's sole purpose is to hold Arch, Ltd.'s shares.

10. **Are you familiar with Mr. Stefan Martirosian?**

    Yes. He was the Director of Waikoloa Mauka, LLC (“WML”) from approximately 2005 to 2017, and the Director of WHI January 2015 until May 2016.

11. **Is Mr. Martirosian currently a shareholder or involved in the management of WHI, Vitoil, or Arch, Ltd, or any other company associated with WHI?**

    No. Mr. Martirosian has no current connection with any of the corporations or the WHI Project. He has never been a shareholder of WHI, Vitoil Corporation, or Arch, Ltd., or any other company associated with WHI.
12. Please explain to the Land Use Commission in what capacity Mr. Martirosian signed the Shareholder's Resolution of WHI, dated May 9, 2016, (Exhibit 5 of the initial Statement of Position on Order to Show Cause, filed with the Land Use Commission on August 8, 2018)?

As stated in the Shareholder's Resolution itself, Mr. Martirosian signed the resolution, i.e., Exhibit 5, as the representative of Vitoil Corporation. Mr. Ovasafyan signed the same resolution as the representative of Arch, Ltd. At the time the Shareholder's Resolution was signed, Arch, Ltd. had a 80% ownership interest and Vitoil Corporation had a 20% ownership interest in WHI. Neither Mr. Martirosian nor Mr. Ovasafyan signed the Shareholder's Resolution in their individual capacity as a shareholder of WHI or any other entity, i.e., both of them signed as Directors of the then-respective shareholders of WHI.

At the time the Shareholder's Resolution was signed, Mr. Martirosian was the Director of Vitoil Corporation and hence acting for Vitoil Corporation just like Mr. Ovasafyan was, and is currently, the Director of Arch, Ltd. As previously stated, Mr. Martirosian was never a shareholder of any company associated with WHI.

13. Please explain to the Land Use Commission who managed the Project during the years Mr. Martirosian was an officer of WHI?

Mr. Martirosian. He served as WHI's Secretary, Chief Financial Officer, and Director. He was trusted by WHI's owners to act as the only one who dealt with the Project and who was solely responsible for overseeing all aspects of the Project.

During the early part of Mr. Martirosian's tenure with WML and WHI, he oversaw the development of the Project, obtained land use approvals and attained the substantial commencement of the Project under Hawaii law.

Later in the process, Mr. Martiosian's complete abdication of his corporate duties, fraudulent activities and his failure to inform myself and my brother Vitaly of his true business dealings is the direct cause of the predicament that WHI now finds itself in before the Land Use Commission.
14. **Approximately when did you become aware that Mr. Martirosian was not pursuing the necessary actions to fulfill the terms and conditions imposed by the Land Use Commission?**

In the summer of 2017. I accept full responsibility for the delays in developing the Project caused by putting our trust with Mr. Martirosian.

However, we now fully understand the requirements of the Land Use Commission’s Decision and Order and are diligently working on the tasks to develop the Project with our new development team.

15. **What steps has WHI taken, after removing Mr. Martirosian from his positions with WHI, in respect of fulfilling the terms and conditions of the Project?**

WHI has hired new management, both internally and externally. Internally, WHI has appointed Natalia Batichtcheva to replace Mr. Martirosian. My brother and I are taking charge of the Project and implement decisions on moving the Project forward. WHI has also hired an external project manager in Hawaii, Joel K. LaPinta, who has extensive development experience.

In addition to fully satisfying affordable housing Condition 9 through voluntary conveyance of the 11.7 acre parcel pursuant to the Affordable Housing Agreement with the County of Hawaii, WHI has recently initiated discussions with the County of Hawaii Office of Housing and Community Development to cooperate in conveyance of additional land to a non-profit affordable housing developer to develop more affordable housing at Waikoloa. WHI has also recently obtained financing from Armbusinessbank CJSC ("ABB") in the amount of $45,000,000 USD in order to complete the Project. See Petitioner’s Exhibit 20.

16. **Please elaborate to the Land Use Commission what ABB is.**

ABB is an Armenian bank that was established in 1991. ABB’s sole shareholder is my brother, Vitaly Grigoryants. The bank has been a member of the Yerevan Stock Exchange since 1994. The bank is also a member of ArCa local payment system, as well as MasterCard and Visa International payment systems.

17. **Please elaborate to the Land Use Commission ABB's role in this Project and your involvement with ABB?**
ABB has committed to lending $45,000,000 to Arch, Ltd. and has consented to the transfer of those funds from Arch, Ltd. to WHI for the specific purpose of developing the Project on the Petition Area.

My brother Vitaly Grigoryants is the sole shareholder of ABB.

18. **Is ABB accredited to lend money internationally?**

Yes. ABB joined the international payment system of Western Union in 2000. The bank is a SWIFT s.c.r.l (Society for Worldwide Interbank Financial Telecommunication) shareholder since 2006. Funds remittance orders of individual customers are channeled via Anelik, Money Gram, Unistream, Ria, Sigue, Converse Transfer, Intelexpress and BEST instant money transfer systems, in RUB, USD and EUR.

19. **Is WHI financially capable of going forward with the Project?**

Yes. We own the Petition Area, which is a parcel of land consisting of approximately 731.581-acres, free and clear of encumbrances. Further, as mentioned above, WHI has the financing to proceed with the development of the Petition Area.

20. **Is WHI currently able and willing to see the Project through completion?**

Yes. As explained, we have received financing for the Project, have a competent development team, and are ready to proceed. As the ultimate decision-makers of WHI, my brother Vitaly and I will make sure that the Project moves forward on a timely basis.

[Signature page to follow]

Respectfully submitted,

[Signature]

VALERY GRIGORYANTS
November 08, 2018

State Land Use Commission
State of Hawaii
County of Hawaii
USA

Re: Letter of Certification

Dear Sirs/Madams:

I, Ovasafyan Aykaz Vardgesovich, do hereby certify that as of the date of this letter, the sole shareholder of Arch, Ltd. is Davies Partners Limited. In its turn, I own shares of Davies Partners Limited not in my own interests but in the interests or on behalf of Grigoryants Vitaly Sarkisovich as I am the nominal owner of the mentioned shares. Therefore, the ultimate or final beneficiary and 100% owner of the shares of Arch, Ltd. is Grigoryants Vitaly Sarkisovich.

Sincerely,

Director

Ovasafyan A.V.

Exhibit 62
November 08, 2018

State Land Use Commission
State of Hawaii
County of Hawaii
USA

Re: Letter of Certification

Dear Sirs/Madams:

We, Grigoryants Vitaly, and Grigoryants Valery, do hereby certify that since the date of Arch, Ltd.' foundation in December 1996, we achieved an agreement which is in force at present time that we would have equal authority to represent and make decisions for Arch, Ltd. and its affiliated structures.

Sincerely,

President

Vitaly S.Grigoryants

Vice-President

Valery S.Grigoryants

Exhibit 63a
October 04, 2018

State Land Use Commission
State of Hawaii
County of Hawaii
USA

Re: Letter of Authorization

Dear Sirs/Madams:

This is to confirm that Valery Grigoryants is holding position of Vice-President of Arch, Ltd., the sole shareholder of Vitoil Corporation which is the whole owner of Waikoloa Highlands Inc., and hereby is authorized to act on behalf of Arch and Waikoloa Highlands, Inc., in the State Land Use Commission proceedings on Docket No. A06-767.

Sincerely,

Director

Ovasafyan A.V.

Exhibit 63b
WRITTEN DIRECT TESTIMONY OF NATALIA BATICHTCHEVA

1. Please state your name and business address for the record.

   My name is Natalia Batichtccheva. My business address is 1200 S. Brand Blvd., 202,
   Glendale, CA 91204.

2. What is your involvement with Waikoloa Highlands, Inc. ("WHI")?

   I am the Secretary, Chief Financial Officer, and Director of WHI. I am also the Director
   of Vitoil Corporation, the sole shareholder of WHI.

3. How long have you been the Director of WHI and Vitoil Corporation?

   I have been the Director of WHI since May 9, 2016.
   I have been the Director of Vitoil Corporation since June 19, 2017.

4. Are you familiar with Mr. Stefan Martirosian?

   Yes. He was the Director of Waikoloa Mauka, LLC ("WML") from approximately 2005

5. What was your role at WML/WHI during the time Mr. Martirosian served as the
   Director?

   My role was to maintain all day-to-day accounting procedures and other general
   accounting and bookkeeping functions among other administrative duties and responsibilities. I
   performed all my duties based on instructions I received from Mr. Martirosian.

6. Did you participate in the decision-making during Mr. Martirosian's tenure as the
   Director of WML/WHI?

   No. Mr. Martirosian made it seem like, and I was under the impression that, he had the
   authority from Valery and Vitaly Grigoryants to make all the decisions regarding the Project.
   However, he never had such authority.

7. Approximately when did you become aware that Mr. Martirosian was not pursuing
   the necessary actions to fulfill the terms and conditions imposed by the Land Use
   Commission?

Exhibit 64
I was not aware of his mismanagement until the summer of 2017. However, I didn't find out until summer 2018 that he had not been pursuing the necessary actions to fulfill the terms and conditions imposed by the Land Use Commission.

[Signature page to follow]
DATED: Los Angeles, CA, November 16, 2018.

Respectfully submitted,

[Signature]

NATALIA BATICHTCHEVA