

## 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

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 ORODENKER, 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 McGRIFF

Russian interpreter



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1 CHAIRPERSON SCHEUER: Good morning. This  
2 is the October 24th, 2018 Land Use Commission  
3 meeting.

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

8 COMMISSIONER OHIGASHI: So moved.

9 VICE CHAIR CABRAL: Seconded.

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

15 Next agenda is the tentative meeting  
16 schedule. Mr. Orodenger.

17 EXECUTIVE OFFICER: Thank you, Mr. Chair.

18 Tomorrow we will be here for continuation  
19 of this hearing, if necessary, and to adopt the order  
20 on the Kualoa Ranch's Important Agricultural Land  
21 designation.

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

25 On November 28th, we will be again here on

1 the Big Island in Kona for the HHFDC Lanihau and  
2 Shopoff status report. There's also another matter  
3 that will be on the agenda that day, Church Motion to  
4 Amend.

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

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

12 On the 13th, we will be on Oahu for site  
13 visit for the Kapolei, Maui Kahana and Robinson.

14 That takes us through the end of the year.

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

17 Our next agenda hearing and action meeting  
18 on Docket A06-767 Waikoloa LLC to hear evidence,  
19 deliberate and take action on the Order to Show Cause  
20 as to why approximately 731.581 acres of land in the  
21 South Kohala District, Island of Hawaii, tax map key  
22 number (3)6-8-02:016, a portion thereof, should not  
23 revert to its former land use designation or be  
24 changed to a more appropriate classification issued  
25 on June 4th, 2018.

1 Will the parties please identify themselves  
2 for the record. I'll remind you to press your  
3 buttons down so they light to make sure that your  
4 microphone is on.

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

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

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

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

19 CHAIRPERSON SCHEUER: Hawaii County.

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

25 CHAIRPERSON SCHEUER: Office of Planning.

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

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

8 EXECUTIVE OFFICER: Thank you, Mr. Chair.

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

14 CHAIRPERSON SCHEUER: Thank you very much.  
15 Now let me update record.

16 COMMISSIONER OKUDA: Mr. Chair, before we  
17 proceed, may I ask or request the Chair ask that the  
18 interpreter identify herself by name, number one;  
19 number two, identify the language she is  
20 interpreting. And if you could swear the interpreter  
21 to promise to accurately interpret what is being said  
22 from English into whatever language she is  
23 interpreting, and from the language she is  
24 interpreting back to English, just so we have it for  
25 the record.



1                   CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.  
2 I was going to proceed in that matter later, but I'm  
3 happy to take it up now.

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

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

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

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

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

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

25                  THE INTERPRETER: I do.

-o0o-

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

1 Russian and Russian to English will be true and  
2 correct to the best of your ability?

3 THE INTERPRETER: Yes, I do.

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

7 Let me proceed in updating the record.

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

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

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

20 On September be 25th, 2018, the Commission  
21 mailed an agenda notice of the October 25th through  
22 25th meeting with copy of the legal advertisement and  
23 Exhibit A by certified mail.

24 On October 12th, the Commission received  
25 Statement of Position of the Office of Planning on



1 the Order to Show Cause dated October 12th and  
2 Waikoloa Highlands Supplemental Statement of Position  
3 on the Order to Show Cause dated October 12th, along  
4 with Exhibits 18 through 37.

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

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

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

17 Let me briefly run over our procedure for  
18 the day.

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

22 First in our procedures I will call those  
23 desiring to provide public testimony for the Order to  
24 Show Cause to identify themselves. All such  
25 individuals will be called in turn to our witness box

1 and I will swear them in prior to their testimony.

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

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

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

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

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

22 Are there any questions from the parties on  
23 our procedure?

24 MS. APUNA: Yes, Chair, Office of Planning.  
25 Actually not with regard to the procedures, but I

1 would like to submit that there is an error in the  
2 Statement of Position of the Office of Planning that  
3 I would like for the Commission to take note of.

4 On page 6, paragraph 3, and page 8 of our  
5 Statement of Position there is an error. We refer to  
6 Condition No. 9, which should actually be Condition  
7 No. 4.

8 CHAIRPERSON SCHEUER: Thank you for that  
9 clarification.

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

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

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

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

25 Mr. LaPinta informed me that he was calling

1 regarding the Waikoloa matter, and he continued to  
2 talk in what could appear to be an attempt to  
3 influence my vote in this matter. He made statements  
4 regarding the ownership of the property, and that  
5 ownership was distinguishable from the old former  
6 ownership.

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

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

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

20 I'm making this disclosure and bringing it  
21 to the attention of the Commission to ensure that  
22 full disclosure has been taken place with the public  
23 and that all parties and that has not been any  
24 ex-parte communication influencing the Commission's  
25 decision. Thank you.

1                   CHAIRPERSON SCHEUER: Thank you,  
2 Commissioner Cabral.

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

5                   Are you familiar with HRS Chapter 91, the  
6 Hawai'i Administratives Procedure Act?

7                   MR. LIM: Yes, I am.

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

11                  MR. LIM: Yes, I am.

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

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

23                  This is an extremely serious matter and  
24 should not be taken lightly. The Commission is  
25 taking notice of this on the record and warning that



1 you need to advise your clients to avoid any further  
2 ex-parte contact with any of the Commissioners.

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

6 Is that understood, Mr. Lim?

7 MR. LIM: That's understood you.

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

10 Is there anybody desiring to provide public  
11 testimony?

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

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

17 I have a list in front of me.

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

23 Good morning, and thank you for being here.

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

1 MS. ALOS: I do.

2 CHAIRPERSON SCHEUER: Thank you, please  
3 proceed.

4

5

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7

JULIA ALOS

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

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

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

22 In addition to my previously submitted  
23 testimonies, electronically for August 21st and  
24 orally September 4th hearing and presented on my  
25 behalf by Cindy Kester, I wish to submit this

1 additional information regarding my community's  
2 concern about the intersection improvement at  
3 Waikoloa Road, Paniolo Avenue and Pua Melia Street.

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

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

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

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

20 THE WITNESS: Thank you.

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

24 CHAIRPERSON SCHEUER: I didn't mean to  
25 throw you off. Take your time. We want to get to



1 the main points.

2 THE WITNESS: Very fine.

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

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

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

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

25 Also so in addition Waikoloa Mauka said it

1 intends to provide affordable housing under County  
2 Rules, which requires 20 percent of the units to be  
3 affordable low to moderate income household.

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

7 My comment is, according to what I've read,  
8 20 percent of the total units amounts to 400 homes  
9 equates to 80 credits. I believe Plumeria, which is  
10 not Pua Melia, when it transferred over, is only  
11 planning on doing 32 units on the 11.8 acres, and  
12 includes almost a quarter of the property that's  
13 being conveyed to commercial zoning for possibly  
14 A hardware store.

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

21 I'm wanting compliance with the affordable  
22 housing which is desperately needed. These are big  
23 issues and topics and the Waikoloa Village  
24 Association, and extending community at large, and  
25 there are many electronic footprints on apps next

1 door, Facebook and community meetings that include  
2 Waikoloa Community Leadership Council, South Kohala  
3 Traffic Safety Committee. Recent candidate forums,  
4 political campaign meetings, and it's currently being  
5 addressed as a Subcommittee members with the South  
6 Kohala Development Action Planning Committee since  
7 April.

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

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

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

23 CHAIRPERSON SCHEUER: Thank you.

24 Does the Petitioner have any questions for  
25 the testifier?

1 MR. LIM: Thank you.

2 CROSS-EXAMINATION

3 BY MR. LIM:

4 Q Good morning, Ms. Alos.

5 A Good morning.

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

10 A Correct.

11 Q And the development of more workforce and  
12 affordable housing?

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

15 Q Some common areas?

16 A Yeah, for bike and hiking trails, et  
17 cetera. I think that was where the golf course was  
18 supposed to be.

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

24 A I do.

25 Q No further questions.

1 CHAIRPERSON SCHEUER: Hawaii County?

2 MR. KIM: Hawaii County has no questions.

3 CHAIRPERSON SCHEUER: Office of Planning.

4 MS. APUNA: No questions.

5 CHAIRPERSON SCHEUER: Commissioners? Ms.

6 Chang.

7 COMMISSIONER CHANG: Good morning, Ms.

8 Alos. Just a few questions.

9 How long have you lived in Waikoloa?

10 THE WITNESS: 18 years.

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

13 THE WITNESS: Yes.

14 COMMISSIONER CHANG: Did you participate in  
15 the 2008 proceedings?

16 THE WITNESS: I did not.

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

19 THE WITNESS: Nearly every day.

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

23 THE WITNESS: I've seen nothing.

24 COMMISSIONER CHANG: Thank you very much.

25 CHAIRPERSON SCHEUER: Commissioners?



1 Nothing further. Thank you very much.

2 I'll next call Anita Glass.

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

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

7 We're completed the public testimony.

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

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

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

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

24 MR. KIM: No objection from the County.

25 MS. APUNA: No objection.

1 CHAIRPERSON SCHEUER: Commissioners?

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

4 (Petitioner's Exhibits were received into  
5 evidence.)

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

8 MR. KIM: No, thank you.

9 CHAIRPERSON SCHEUER: And, Ms. Apuna.

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

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

16 MR. LIM: No objection from the Petitioner.

17 MR. KIM: No objection from the County.

18 CHAIRPERSON SCHEUER: From the Commission?  
19 Hearing none, Office of Planning's exhibits are  
20 admitted into the record.

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

23 And, again, I'll mention, Mr. Lim, it would  
24 be good to have some written documentation of the  
25 qualification of your translator. If you can bring

1 that forward at later time for consideration of  
2 inclusion into the record.

3 MR. LIM: We will do that.

4 CHAIRPERSON SCHEUER: Thank you.

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

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

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

13 (Irina McGriff interpreted.)

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

16 THE WITNESS: I do, yes, I do.

17 CHAIRPERSON SCHEUER: Please proceed.

18 State his address on the record and please  
19 proceed.

20 VALERY GRIGORYANTS

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

24 DIRECT EXAMINATION

25 BY MR. LIM:



1           Q       State your full name and address.

2           A       My name is Valery Grigoryants. I reside in  
3 Moscow. And I'm vice president of the company Arch  
4 LLC, Limited. My address is Malaya Gruzinskaya  
5 Street, house number 25, unit one.

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

20           So I will proceed with that caveat now.

21           CHAIRPERSON SCHEUER: About how long do you  
22 think you have with this witness, Mr. Lim?

23           MR. LIM: Ordinarily without translator  
24 probably no more than an hour.

25           CHAIRPERSON SCHEUER: So we will go for

1 about 20-30 minutes and then take breaks.

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

9 I'm commencing with the questions.

10 BY MR. LIM:

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

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

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

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

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

1 story.

2 Q So the does Vitoil Corporation now own  
3 Waikoloa Highlands, Incorporated?

4 A Yes.

5 Q Are you familiar with Mr. Stefan  
6 Martirosan?

7 A Yes.

8 Q Was he a director for Waikoloa Highlands or  
9 Waikoloa Mauka during the period in question?

10 A Yes. He was not only the director, he was  
11 also chief financial officer and secretary at the  
12 same time.

13 Q Does Mr. Martirosian today have any  
14 shareholder interest or other management control of  
15 any of the Waikoloa companies?

16 A I would like to confirm with members of the  
17 committee, just because there were so many gossips  
18 and speculations before. I would like to let you  
19 know that Mr. Martirosian was never owner of the  
20 company or any other companies I'm involved in United  
21 States as well as abroad.

22 He was just a hired manager. He was not  
23 and is not the owner of the companies. And now he's  
24 fired from all the positions.

25 Q Please explain to the Commission who

1 managed the Waikoloa Highlands project during the  
2 years that Mr. Martirosian was the officer of  
3 Waikoloa Highlands, Incorporated?

4 THE INTERPRETER: Interpreter ask to repeat  
5 the question.

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

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

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

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

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

24 A It's a long story, but I will try to be  
25 short.

1 Well, we -- in America we are called  
2 Russians, but we are not Russians we are Armenians.  
3 We attend not Russian church but Armenian church.

4 So we had a goal to differentiate,  
5 diversify risks in business, like if you know, there  
6 is a huge Armenian community in Los Angeles. And  
7 this is how it happens in life, Jewish people help  
8 Jewish people; Armenian people help Armenian people  
9 and look for connections. That's how I met Stefan  
10 Martirosian.

11 It was at end of the '90's, beginning of  
12 2000. He seemed to me and my brother as a very  
13 intelligent, smart man. But we didn't let him to  
14 come too close to us, but he wanted. After all he  
15 reassured us to start to do some small investments in  
16 the United States. That's what we did.

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

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

25 Q One of the other issues has been the



1       suspicion, I suppose, the suspicion that this Russian  
2       company came to Hawai'i to buy land with a lot of  
3       money, and because of that, they must be Russian  
4       gangsters or illegal money.

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

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

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

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

23                   Then my company were manufacturing --

24                   THE INTERPRETER: Interpreter needs  
25       clarification from the Petitioner.

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

5           CHAIRPERSON SCHEUER: A clean balance  
6 sheet?

7           THE WITNESS: (No interpreter.)

8           Balance sheet, yes, for each year of Arch  
9 Company from our auditor in London. We have clean  
10 balance sheet and it's not a problem to provide with  
11 such documents. That's why I'm smiling. I'm not  
12 banded.

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

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

19           A       No, he is not involved in with company.

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

24           A       Yes, filed some claims.

25                   First I would like to explain in short that

1 in 2017, we discovered some bad acts by Martirosian.  
2 For example -- I'll give you one example.

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

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

12 Q What is the status of that proceeding in  
13 Armenia?

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

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

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

25 Martirosian appealed the decision made by



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

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

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

14 Q Is Mr. Martirosian currently in prison in  
15 Armenia?

16 A Yes, he's in prison.

17 Q So turning back --

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

21 (Recess taken.)

22 CHAIRPERSON SCHEUER: We're back on the  
23 record.

24 Mr. Lim, you can continue your questioning  
25 of your witness. I want to take a break, a lunch

1 break for one hour sometime between 12:00 and 12:30.  
2 Please proceed.

3 MR. LIM: Thank you, Mr. Chairman.

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

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

13 Also we made arrangements with bank  
14 Armbusinessbank, A-R-M-B-U-S-I-N-E-S-S-B-A-N-K, for  
15 financing in the amount of \$45 million to complete  
16 the project.

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

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

24 And as I mentioned before, I am one of  
25 those people who help make all the decisions, and I

1 will make sure that their project is completed.

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

5 A Do you mean affordable housing?

6 Q That's correct.

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

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

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

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

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

23 I actually wanted to tell you at the  
24 beginning of the hearing, but just because it's my  
25 first time to be in front of such respected

1 committee, so I was nervous and I forgot.

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

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

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

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

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

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

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

25 CHAIRPERSON SCHEUER: Office of Planning?

1 MS. APUNA: Yes, Chair, I have a few  
2 questions.

3 CHAIRPERSON SCHEUER: Please proceed.

4 CROSS-EXAMINATION

5 BY MS. APUNA:

6 Q Thank you for your testimony.

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

10 A No, the staff of Martirosian was involved.

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

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

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

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

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

25 A I found out about that at the end of 2017,



1 but that was too late to do anything. So the only  
2 thing I could do was to transfer 11,000 acres for  
3 affordable housing -- sorry, 11.7 acres for  
4 affordable housing.

5 Q So he was -- you weren't aware of the whole  
6 Waikoloa Mauka project until 2017?

7 A I didn't know about subdivision or  
8 requirements that we were supposed to fulfill.

9 Q Were you aware of the Decision and Order  
10 for this matter that set forth the conditions? And  
11 when were you made aware of the conditions that were  
12 required?

13 A What decision order do you refer to?

14 Q The Decision and Order that this Commission  
15 adopted back in June 10th, 2008, and it provides  
16 20-something conditions, including that the project  
17 would be completed by 2018.

18 A As I mentioned before to you, I found out  
19 about all this in 2017.

20 Q And when was Mr. Martirosian fired?

21 A He was fired from Waikoloa Highlands 2016.  
22 I think so, let me check.

23 Q In 2016. And is there any documentation by  
24 Waikoloa that would show that?

25 A What documentation?

1           Q       Any documentation that would show, that  
2 would demonstrate or show that he was fired by  
3 Waikoloa?

4           A       Yes. All documents were presented to the  
5 committee.

6           Q       Among your exhibit there is Exhibit 32, I  
7 believe, there is a resignation letter in 2017,  
8 Exhibit 32, June 19th, 2017 of Mr. Martirosian  
9 resigning his position. But you say that he was  
10 fired rather than that he resigned; is that correct?

11          A       What company, because we have several  
12 companies?

13          Q       I'm sorry, from Waikoloa.

14                   I'm sorry, let me clarify.

15          A       It was the oil company, not Waikoloa.

16          Q       So he resigned from Vitoil 2017, but he was  
17 fired from Waikoloa Highlands from the project also  
18 in 2017?

19          A       No, in 2016. Yes, the committee has the  
20 documents.

21          Q       He resigned, he wasn't fired, is that  
22 correct, from Waikoloa?

23          A       As far as I remember, he was fired.

24          Q       And from 2008 when the boundary amendment  
25 was approved until 2017 when you said that you

1 started to learn of his bad acts, what type of  
2 oversight was there by you or others over Mr.  
3 Martirosian and the Waikoloa project?

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

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

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

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

21 Q Okay, thank you. No further questions.

22 CHAIRPERSON SCHEUER: Commissioners?  
23 Commissioner Aczon.

24 COMMISSIONER ACZON: I just need some  
25 simple clarification. Thank you very much, Mr.

1 Grigoryants for coming all the way down here to join  
2 us.

3 THE WITNESS: (No interpreter). My  
4 pleasure.

5 COMMISSIONER ACZON: You mentioned you have  
6 100 percent to make decisions for this project.

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

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

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

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

19 THE WITNESS: Yes, 100 percent.

20 COMMISSIONER ACZON: What is your  
21 relationship with Vitoil? What is your position with  
22 Vitoil?

23 THE WITNESS: I don't have any position  
24 with Vitoil. I'm owner of Arch Company, which is the  
25 owner of Vitoil Company.

1                   COMMISSIONER ACZON: So you still have 100  
2 percent authority for this project?

3                   THE WITNESS: Yes.

4                   COMMISSIONER ACZON: So I kind of noticed  
5 that there's several change of plans on this project.

6                   Was the Commission notified of these  
7 changes in a timely manner?

8                   THE WITNESS: What changes do you refer to?

9                   COMMISSIONER ACZON: All the changes of  
10 ownership.

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

14                  COMMISSIONER ACZON: What about in a timely  
15 manner?

16                  THE WITNESS: I think, yes.

17                  COMMISSIONER ACZON: That's all, Mr. Chair.  
18 Thank you.

19                  CHAIRPERSON SCHEUER: Thank you.  
20 Commissioners? Commissioner Cabral.

21                  VICE CHAIR CABRAL: I'm suffering from some  
22 confusion, and I would like to know if, as the  
23 100 percent owner of this project, if you have a way  
24 that you can provide us written verification and  
25 backup of that ownership, and of all of the



1 principals involved with the company that is going to  
2 be involved companies involved with Waikoloa  
3 Highlands?

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

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

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

16 VICE CHAIR CABRAL: Thank you.

17 CHAIRPERSON SCHEUER: Commissioners?  
18 Commissioner Okuda, then Commissioner Chang.

19 COMMISSIONER OKUDA: Thank you.

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

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

24 COMMISSIONER OKUDA: Let me assure you  
25 about how the Commission makes its decisions. We do

1 not have any preconceptions about anyone's  
2 background, ethnicity or what country they come from.  
3 I personally do not view you or anyone connected with  
4 this project as being connected with any type of  
5 criminal activity or anything like that.

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

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

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

23 So let me again assure you, we are just  
24 looking at the facts and the application of the law  
25 here, and nothing else.

1           There were questions that were asked about  
2           the organizational structure and chain of command  
3           involved here.

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

8           THE WITNESS: Yes.

9           COMMISSIONER OKUDA: Have you seen  
10          Exhibit 28 before today?

11          THE WITNESS: Yes, I saw.

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

16          THE WITNESS: Yes, correct.

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

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

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

25          THE WITNESS: Yes.

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

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

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

10                  THE WITNESS: Yes.

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

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

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

21                  THE WITNESS: Yes.

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

25                  THE WITNESS: Yes, Stefan told me about it.

1                   COMMISSIONER OKUDA: And you knew that Mr.  
2 Fuke had expertise or knowledge in dealing with  
3 government here in Hawai'i, correct?

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

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

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

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

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

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

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

24                  THE WITNESS: Well, how I would say? I  
25 would say that we had intention to develop, but we



1 didn't know where to start, how to start at that time  
2 just because we didn't have any experience of  
3 development in the United States.

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

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

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

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

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

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

24 THE WITNESS: As far as I know, as of  
25 today, it's not being used.

1                   COMMISSIONER OKUDA: Thank you. I have no  
2 further questions.

3                   CHAIRPERSON SCHEUER: Thank you.  
4 Commissioner Chang.

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

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

10                  When you bought the property, you said in  
11 2005, what was your intention?

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

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

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

23                  My intention was to start with a small park  
24 and talking to the specialist, getting their advices.  
25 That's why my understanding that was Sidney Fuke was

1       supposed to do. And as far as I know, he supposed to  
2       be a very good specialist.

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

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

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

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

20              Second, we hired a new project manager,  
21      LaPinta.

22              We secured financing in the amount of  
23      \$45 million.

24              We are planning, since we are not local, we  
25      are planning to invite a local developer for mutual

1 cooperation.

2 COMMISSIONER CHANG: You said you secured  
3 \$45 million. Did you secure any money for  
4 development during -- when Mr. Martirosian was  
5 involved, did you secure any financing to do the  
6 development at that time?

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

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

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

17 COMMISSIONER CHANG: Did you secure any  
18 financing in 2008?

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

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

25 THE WITNESS: It's hard for me to tell the

1 exact numbers right now, but based on the documents  
2 in this, as far as I can tell, so we purchased the  
3 property for \$60 million and invested 1.2.

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

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

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

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

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

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

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

25 COMMISSIONER CHANG: So, Mr. Grigoryants,



1 you have told the Commission that you have  
2 100 percent authority to make decisions.

3 THE WITNESS: Yes.

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

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

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

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

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

23 THE WITNESS: You mean 11 or 8?

24 COMMISSIONER CHANG: How much acres were  
25 given to the County?

1 THE WITNESS: 11.

2 COMMISSIONER CHANG: So 11 for affordable  
3 housing?

4 THE WITNESS: Yes, 11.

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

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

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

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

25 COMMISSIONER CHANG: This is my last

1 question.

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

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

11 COMMISSIONER CHANG: Thank you very much.

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

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

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

22 THE WITNESS: We are talking about retail  
23 company?

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

1 2016.

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

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

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

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

13 THE WITNESS: She was authorized to sign.

14 COMMISSIONER OHIGASHI: And on that same  
15 exhibit it says that Arch Corporation owns 80 percent  
16 of Waikoloa, and I believe it was Vitoil owned  
17 20 percent.

18 THE WITNESS: Yes.

19 COMMISSIONER OHIGASHI: When did Vitoil  
20 become 100 percent owner?

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

23 COMMISSIONER OHIGASHI: Was that about the  
24 same time that -- I'm have a hard time with these  
25 names -- Stefan was dismissed from Vitoil?

1 THE WITNESS: Maybe, maybe. I just can't  
2 find the document to compare the dates, but it's  
3 possible.

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

7 THE WITNESS: Who?

8 COMMISSIONER OHIGASHI: Stefan.

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

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

13 THE WITNESS: Yes.

14 COMMISSIONER OHIGASHI: Until he was  
15 dismissed?

16 THE WITNESS: Yes.

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

22 THE WITNESS: Yes.

23 COMMISSIONER OHIGASHI: And my last  
24 question.

25 I just wanted to be clear. At that time,



1 May 9th, 2016, did Arch Corporation own all of  
2 Vitoil?

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

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

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

10 THE WITNESS: Yes.

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

14 THE WITNESS: December.

15 COMMISSIONER OHIGASHI: December of 2016.

16 And you met -- and we were talking about  
17 11 acres and 8 acres. What was the acres that was  
18 transferred to Paradise -- I forgot, Paradise. What  
19 was the acreage of that?

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

22 COMMISSIONER OHIGASHI: I just wanted to  
23 know.

24 THE WITNESS: I don't know.

25 COMMISSIONER OHIGASHI: No further

1 questions.

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

6 (Noon recess taken.)

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

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

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

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

17 THE WITNESS: Yes, and LaPinta.

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

20 THE WITNESS: I think the end of 2017,  
21 maybe beginning of 2018.

22 COMMISSIONER ACZON: So was he involved  
23 during Martirosian time?

24 THE WITNESS: No.

25 COMMISSIONER ACZON: What about

1 Batichtcheva, Natalie, when did her involvement  
2 begin?

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

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

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

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

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

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

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

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

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

25 COMMISSIONER ACZON: I'm talking at the

1 time from she got involved with the project while Mr.  
2 Martirosian was, I believe, in charge.

3 THE WITNESS: She was not involved in the  
4 project.

5 COMMISSIONER ACZON: When Mr. Martirosian  
6 was there?

7 THE WITNESS: Yes, when Martirosian was the  
8 director.

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

11 THE WITNESS: No, no.

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

17 COMMISSIONER ACZON: That's correct.

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

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

23 COMMISSIONER ACZON: During Martirosian's  
24 time?

25 THE WITNESS: Yes.

1           COMMISSIONER ACZON: So, again, does she  
2 report to Martirosian or --

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

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

8           INTERPRETER: Interpreter ask for  
9 repetition.

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

14          THE WITNESS: No.

15          COMMISSIONER ACZON: Okay.

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

19          THE WITNESS: Yes.

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

23          THE WITNESS: Not yet, but I will take full  
24 responsibility to control of the project to make sure  
25 that the project is complete.



1                   COMMISSIONER ACZON: So there's no  
2 potential help from local developers? Are you still  
3 pursuing that?

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

7                   COMMISSIONER ACZON: One last question, Mr.  
8 Chair.

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

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

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

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

21                  CHAIRPERSON SCHEUER: Commissioners?

22                         I have an a few questions.

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

25                         I want to make sure I heard you correctly

1 earlier. You testified that Mr. Martirosian has no  
2 ownership interest in any of the entities involved in  
3 this development. Did I understand that correctly?

4 THE WITNESS: Yes.

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

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

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

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

22 CHAIRPERSON SCHEUER: Can you please  
23 further clarify the difference you're making between  
24 the nominal and beneficial ownership of the  
25 companies?

1           THE WITNESS: There is a trust agreement  
2 between Vitaly Grigoryants and Ovasafyan where  
3 Ovasafyan, he is nominal owner where he keeps his  
4 shares in the trust for the benefit of Vitaly.

5           CHAIRPERSON SCHEUER: Thank you.

6           Has that trust agreement been entered into  
7 the record?

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

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

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

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

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

25           THE WITNESS: Incorrect, by mistake,

1 happened by mistake only.

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

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

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

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

17 THE WITNESS: Yes, and I can explain.

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

23 CHAIRPERSON SCHEUER: Thank you.

24 Is there any written documentation  
25 otherwise provided to us that explains the error in

1       this record that you've just described?

2               THE WITNESS:   As far as I know, no.

3               CHAIRPERSON SCHEUER:   Thank you.

4               It was a pleasure to meet you today.

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

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

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

16              THE WITNESS:   Maybe our attorney will help  
17       me.

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

20              CHAIRPERSON SCHEUER:   When you can.

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

24              THE INTERPRETER:   Interpreter needs  
25       repetitious.



1                   CHAIRPERSON SCHEUER: Does the document  
2 referenced just now naming our witness as the vice  
3 president clarify that he has the legal authority to  
4 bind Waikoloa Highlands, Inc., in any commitment made  
5 to this Commission?

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

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

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

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

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

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

23                  CHAIRPERSON SCHEUER: Thank you.

24                  Did I understand your testimony earlier  
25 correctly to say part of the problem beyond fraud was

1       that Mr. Martirosian was not qualified to be running  
2       the business to develop this property?

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

6               CHAIRPERSON SCHEUER:   Thank you.

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

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

14              CHAIRPERSON SCHEUER:   So her training is as  
15       an accountant?

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

19              CHAIRPERSON SCHEUER:   Thank you.

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

23              I believe I understood you to say that you  
24       believe that we have a duty or responsibility to look  
25       out for the -- protect the interest of investors.

1 THE WITNESS: Yes, I said that. But I  
2 meant that any committee have interest in protecting  
3 investors.

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

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

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

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

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

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

24 CHAIRPERSON SCHEUER: Since you mentioned  
25 affordable housing, are you aware in the letter that

1 was not accepted into the record, at least yet from  
2 the County, that they do not believe you have  
3 fulfilled your obligation as to affordable housing?

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

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

10 THE WITNESS: Yes.

11 CHAIRPERSON SCHEUER: Have you been all  
12 across the property?

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

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

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

23 I was betrayed by Mr. Martirosian. I was  
24 betrayed by my brother because I trusted him, and he  
25 just did not do what he promised.

1                   CHAIRPERSON SCHEUER: Thank you. I just  
2 have one more question about your testimony regarding  
3 how much has been invested in the property.

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

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

10                  CHAIRPERSON SCHEUER: And how many of the  
11 \$1.5 million that you said was invested was spent  
12 after the point at which the Decision and Order was  
13 passed, but before the point to which this Order to  
14 Show Cause hearing began?

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

17                  CHAIRPERSON SCHEUER: Yes. I can break it  
18 up.

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

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

25                  CHAIRPERSON SCHEUER: Don't have exact



1        dates in front of me.

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

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

11                Armbusinessbank is also owned by your  
12        brother?

13                THE WITNESS:    Yes.

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

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

23                CHAIRPERSON SCHEUER:    Thank you very much.

24                Commissioners, any further questions for  
25        this witness?    Commissioner Chang.

1                   COMMISSIONER CHANG: Thank you. I would  
2 like to thank you very much. I would like to just  
3 follow up on some of the questions by Chair Scheuer.

4                   Mr. Grigoryants, you seem to be a business  
5 person that is involved in many different business  
6 ventures, oil, movies and development. Is that true?

7                   THE WITNESS: I try.

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

11                  THE WITNESS: Yes, he also tries.

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

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

22                  COMMISSIONER CHANG: Because I think your  
23 previous testimony was when Mr. Martirosian was  
24 managing, he used the \$19 million for the movies that  
25 was supposed to be for this project; is that correct?

1 THE WITNESS: Yes, I said. But I meant if  
2 we knew that in 2008 there would be an act, at that  
3 time we had money for development in 2009/2010, so  
4 instead of movie business.

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

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

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

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

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

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

24 COMMISSIONER CHANG: Let me just ask  
25 another question.

1                   How much money have you actually spent?  
2           You said 1.5 million, and I know I heard your counsel  
3           that most of that money was spent prior to 2008.

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

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

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

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

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

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

22                  THE WITNESS:   Yes.

23                  COMMISSIONER CHANG:   What was the fraud?

24                  THE WITNESS:   A lot.   If I start to talk  
25          about it, I can talk till morning.

1                   COMMISSIONER CHANG: I only ask because  
2 your papers say there's more than enough evidence for  
3 the Commission to find that these things were  
4 committed.

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

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

9                   COMMISSIONER CHANG: Yes, I would like.

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

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

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

21                  THE WITNESS: Also the same Waikoloa  
22 project, there was put collateral for the amount 1  
23 million, 200. Maybe because of the title report --  
24 you can see that on the title report. Yeah, the  
25 title report shows that there's a collector for 1



1 million, 200, and another one for 1 million, and we  
2 didn't give him the authority.

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

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

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

13 COMMISSIONER CHANG: Thank you.

14 But you have taken no action at this time.

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

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

20 THE WITNESS: The other cases are still  
21 pending.

22 COMMISSIONER CHANG: But nothing in  
23 Hawai'i?

24 THE WITNESS: Soon.

25 COMMISSIONER CHANG: Are any of your

1 companies registered to do business in Hawai'i?

2 THE WITNESS: Waikoloa Highlands is  
3 registered.

4 COMMISSIONER CHANG: Thank you.

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

9 MR. LIM: Maybe a short wrap up rebuttal.

10 REDIRECT EXAMINATION

11 BY MR. LIM:

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

15 A Yes.

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

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

24 We understand our responsibilities for  
25 decisions we make. And I would like to say one more

1 time that I know that all the responsibility is on  
2 me, and because I am here, and because also trusted  
3 Mr. Martirosian, and he betrayed us.

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

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

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

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

19 CHAIRPERSON SCHEUER: No further questions?

20 MR. LIM: No further questions.

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

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

25 Since in response to your question, Mr.

1 Lim, about discrepancies in the documents, can you  
2 identify by specific exhibit number documents which  
3 contain discrepancies or erroneous information?

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

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

15 CHAIRPERSON SCHEUER: Yes, Mr. Okuda.

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

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

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

22 CHAIRPERSON SCHEUER: I asked that question  
23 earlier.

24 COMMISSIONER OKUDA: I forgot the answer.

25 MR. LIM: There's no documents, but I think

1 Mr. Grigoryants's testimony today has corrected  
2 errors in the documents.

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

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

7 (Recess taken.)

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

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

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

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

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

23 Now you may proceed with your second and  
24 final witness.

25 MR. LIM: Petitioner will call Joel



1 LaPinta.

2 CHAIRPERSON SCHEUER: Mr. LaPinta, good  
3 afternoon.

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

6 THE WITNESS: Yes, I do.

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

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

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

16 MR. LIM: I was trying to correct my.

17 Prior --

18 CHAIRPERSON SCHEUER: Please proceed.

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

25 CHAIRPERSON SCHEUER: Please go ahead.

1                                   -o0o-

2                                   JOEL LaPINTA.

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

6                                   DIRECT EXAMINATION

7       BY MR. LIM:

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

10                   What is your line of business at this time?

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

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

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

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

25                   CHAIRPERSON SCHEUER: I don't know why

1 we're getting a lot of static, whether the mic is too  
2 high --

3 THE WITNESS: How's that?

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

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

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

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

14 COURT REPORTER: I can hear you.

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

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

24 Q Can you please identify some of your  
25 professional training with regard to the subject

1 matter?

2 A My professional training with regard to  
3 this subject matter?

4 Q Yes. Regard to real estate, what kind of  
5 training did you have in real estate?

6 A I was describing the Commercial Investment  
7 Real Estate Institute training. Also, I don't have  
8 it in front of me, but I've taken a number of courses  
9 over the years in, like I said, multi-family  
10 development, and taken courses in land acquisition  
11 and development analysis.

12 And I'm a fairly -- I also actually  
13 developed real estate and subdivision here in County  
14 of Hawaii.

15 Q For how many years has that been that  
16 you've been developing real property in the County of  
17 Hawaii?

18 A First subdivision I did was in 1986.

19 Q Have you done any projects that are similar  
20 to the Waikoloa Highlands project?

21 A Yes. In the '90's I acquired a piece of  
22 land, went through the zoning change, did everything  
23 from having the subdivision approved, engineering  
24 done, to in process of dedicating the streets to the  
25 County of Hawai'i and provided 28 gap-housing

1 residential sites.

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

4 A Yes.

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

7 A Correct.

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

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

13 MR. KIM: No questions.

14 CHAIRPERSON SCHEUER: Office of Planning?

15 MS. APUNA: No questions.

16 CHAIRPERSON SCHEUER: Commissioners?

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

20 THE WITNESS: Yes.

21 CHAIRPERSON SCHEUER: What was the size of  
22 that project?

23 THE WITNESS: 28 lot residential  
24 subdivision.

25 CHAIRPERSON SCHEUER: Where was that.



1           THE WITNESS:  Pepeekeo.  I bought land from  
2   C. Brewer Company, who also I did consulting work  
3   for.

4           CHAIRPERSON SCHEUER:  That was solely under  
5   County zoning?

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

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

11          Please proceed.

12          MR. LIM:  Thank you.

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

17          A     I started --

18          Q     Approximately.

19          A     Approximately I started in June on this  
20  project.

21          Q     Of this year?

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

25          Q     From June of this year, what have you done

1 with respect to development of the project.

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

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

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

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

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

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

25 I've come up with -- I have an estimate of

1     how much the remaining engineering will cost. And I  
2     confirmed with RM Towill that the work they have done  
3     so far, it can be used, and they will work from where  
4     they are now with the grading plan that they have,  
5     with the flood control plans that they have with  
6     street design. So that was good to know.

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

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

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

22            So in Waikoloa, a residential lot, they  
23    consider residential lot will use 600 gallons a day,  
24    that's their measure; 400 gallons for potable use and  
25    200 gallons a day for landscaping.

1           Because of these proposed to be one-acre  
2           lots, they want an additional agreement and  
3           additional fees to be paid for the anticipation that  
4           people with one acre lots would use more water.

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

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

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

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

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

25          A       What this stage -- the project would be

1 developed in increments and the increments would be  
2 sized based on market and demand. I'm looking at  
3 doing somewhere between 50 to 80 lots in the first  
4 increment.

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

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

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



1       landscaping along the shoulders of the project.

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

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

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

18             A       Yes, it's quite far along.

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

21             A       I guess we could do it by the numbers.  
22      It's about, I estimate that we have \$670,000  
23      additional work to do with the engineering. And to  
24      date there was close to maybe 900,000 spent on the  
25      engineering for this particular space of the first

1 phase of the project.

2 Q How long, if you were given the go-ahead,  
3 how long would it take the engineers to -- I know  
4 that you are not in charge of that -- but your  
5 estimated time frame for getting the project plans up  
6 to snuff so that they could pass muster with the  
7 County's Department of Public Works and Department of  
8 Water Supply?

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

12 Q And that's to final construction drawings?

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

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

18 A To get the construction drawings we go out,  
19 get competitive bids from a number of contractors who  
20 are qualified contractors. We enter into a  
21 subdivision agreement with the County, and as part of  
22 that agreement they will have to post a bond to bond  
23 for the bid price of the improvements. And then we  
24 can register under the Uniform Land Sales Practices  
25 Act with Department of Commerce and Consumer Affairs,

1 and we can proceed to take actual binding contracts  
2 prior to starting construction.

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

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

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

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

15 Q When you say "we" --

16 A General real estate, yeah, land developers.

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

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

23 A Yes. I'm in contact with many developers,  
24 engineers and contractors in the industry, and have  
25 been for -- I started selling and developing land

1 back in the '90's, so I've known a lot of them and  
2 I'm in contact with them today. I'm in contact --  
3 actually I am talking to one contractor about the  
4 project, working with a contractor as partner on  
5 development has its advantages.

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

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

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

15 Is that a concern for the Waikoloa  
16 Highlands project?

17 A Okay, should I mention -- okay.

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

22 Conditional zoning, there's nowhere in the  
23 literature that I can find where the statement of the  
24 legislative committee that reclassifying land to  
25 Urban results in land speculation.



1           In fact, all the research that I've seen in  
2 urban -- in urban economics is basically saying a  
3 land speculator is a farmer. You do not hold -- it's  
4 a very bad business of model to hold lands as  
5 speculation. The industry has changed. Since the  
6 '90's the industry of funding real estate development  
7 to private equity markets don't award anyone for  
8 doing a land speculation business. There's just no  
9 money in it, and it's been proven to be a way to lose  
10 money.

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

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

24           And I can also give you another study that  
25 Homeless Advocacy Organization located in the bay



1 area. This is published in University of California  
2 Berkeley.

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

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

8 CHAIRPERSON SCHEUER: I was addressing  
9 counsel.

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

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

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

23 What you can finance is a viable business  
24 model. And the underwriting criteria for that  
25 business model includes economic analysis, also

1 includes in-depth market analysis. They are party  
2 groups. It includes that you can show -- of course,  
3 you have the entitlement. Entitlement comes into the  
4 business model as a risk that has to be valued if  
5 it's risk, or as an uncertainty.

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

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

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

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

24 Q Moving to another subject.

25 The Commission has discussed, through other

1 witnesses, the conveyance of 11.7 acres by the  
2 Petitioner for the purpose of satisfying an  
3 affordable housing agreement.

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

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

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

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

25 Q Did Waikoloa Highlands, Inc., subsequently

1 get a release of the Affordable Housing Agreement?

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

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

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

12 CHAIRPERSON SCHEUER: I'm going to sustain  
13 that.

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

17 A Yes.

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

24 MR. KIM: Again, I need to object. If the  
25 witness has any direction knowledge of this document

1 other than looking at it.

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

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

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

10 MR. LIM: That's correct.

11 CHAIRPERSON SCHEUER: Moving along.

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

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

19 A Yes.

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



1           A       Yes.

2           Q       When was that?

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

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

10          A       Their legal counsel.

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

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

20               The developer apparently needs more land  
21 area because there's a mauka-makai drainage channel  
22 that runs through the property, so he doesn't have  
23 enough land area to develop his affordable housing  
24 units. And I'm trying to -- the reason why we're  
25 talking about this for this proceeding, is we're

1     trying to show the Commission that the Petitioner in  
2     good faith on a voluntary basis is trying to assist  
3     the County in developing its Affordable Housing  
4     Project.

5 CHAIRPERSON SCHEUER: Thank you. Please  
6 proceed.

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

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

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

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

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

25 And the parcel is inefficiently shaped,

1 being very triangular and shaped at one point because  
2 of other landowners.

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

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

9 A The conveyance?

10 Q Who was the land conveyed to?

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

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

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

22 Q What was the ultimate outcome of the  
23 meeting?

24 A That we would like to accommodate them. We  
25 would like to talk with -- they're talking about

1 working with a nonprofit. I don't know the name.

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

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

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

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

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

24           CHAIRPERSON SCHEUER: One moment.  
25 Commissioner Chang.

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

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

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

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

22           But it relates in part to the current  
23 effort by the County Housing and Community  
24 Development. Because if the County is going to end  
25 up taking the final position that we haven't fully



1 satisfied the agreement, then this will become very  
2 relevant.

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

6 MR. LIM: Not very much longer.

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

10 COMMISSIONER OHIGASHI: Mr. Chair.

11 CHAIRPERSON SCHEUER: Commissioner  
12 Ohigashi.

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

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

20 What we were told is that the County land  
21 hasn't been cleared of unexploded ordinance to the  
22 level that's required under HUD rules. So they can't  
23 do the affordable housing until they do go to a  
24 second clearance done. The Army Corps of Engineering  
25 has done the clearance, but now they need a

1 clearance -- a report done to the Department of  
2 Health. I believe that's the case, right?

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

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

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

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

17 THE WITNESS: I apologize.

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

20 CHAIRPERSON SCHEUER: Thank you. County of  
21 Hawaii.

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

24 CHAIRPERSON SCHEUER: Thank you. State  
25 Office of Planning.

1 MS. APUNA: Thank you, Chair. I do have a  
2 few questions.

3 CROSS-EXAMINATION

4 BY MS. APUNA:

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

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

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

15 A Yes.

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

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

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

23 A Maybe you should ask your question again.  
24 It's not a clear question. Your question should be  
25 clearer.

1           Q       The road infrastructure and utilities that  
2       you claim are on the Petition Area at this time, were  
3       they placed there by the Petitioner since the  
4       Decision and Order was made?

5           A       No.

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

9           A       Not that I'm aware of.

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

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

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

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

21          Q       That wasn't my question.

22                   Was there agreement between the Petitioner  
23       and DOT with regard to the improvement required under  
24       Condition No. 6? Is there a document that says that  
25       DOT and Petitioner agree?

1           A       I don't know of a mutual document, no.

2           Q       A unilateral agreement? I mean unilateral  
3 document? No agreement, is that correct?

4           A       Steve Lim's office reviewed that and  
5 cleared it. I, right now, can't hold out a document  
6 or what the basis of that was, but they cleared that  
7 it had been satisfied by the improvements at the  
8 intersection.

9           Q       But you can't point to a written agreement?

10          A       No.

11          Q       With regard to archaeological Site No. 22,  
12 has Petitioner consulted with SHPD, State Historic  
13 Preservation Division on Site 22 directly?

14          A       May I consult with counsel, because it was  
15 ordered and it's in process. Did we receive that?

16                 Yeah, we're in compliance. I think we have  
17 one last report that has to be approved, right?

18                 CHAIRPERSON SCHEUER: Counsel can answer  
19 that, if you have the information.

20                 MR. LIM: We made application for SHPD site  
21 number, and we are awaiting for their reply.

22                 THE WITNESS: That's the answer.

23                 CHAIRPERSON SCHEUER: You can continue.

24          Q       (By Ms. Apuna): Was a timeline for  
25 development by major task and phases prepared?



1           A       Are you talking about construction?

2           Q       For development, for construction, for  
3 anything as far as --

4           A       Yes.

5           Q       And was it submitted to the Land Use  
6 Commission?

7           A       No.

8           Q       When is the full project expected to be  
9 fully complete?

10          A       I did a ten-year projection.

11          Q       And isn't it true that earnest efforts to  
12 pursue development occurred only after the Land Use  
13 Commission decided to issue an Order to Show Cause?

14          A       No. I don't think so, because Sidney Fuke  
15 was working on the affordable housing condition prior  
16 to my being involved in the project.

17          Q       With regard to affordable housing  
18 condition, what is your understanding -- is that  
19 affordable housing condition the same as the  
20 requirement under Chapter 11, Article 1 of the Hawaii  
21 County Code?

22          A       I believe so.

23          Q       And do you know --

24          A       I believe that's the right citation. I am  
25 familiar with that.

1 Q That's the affordable housing chapter?

2 A Right.

3 Q Do you know what the requirement is for  
4 residential lots as far as what the affordable  
5 housing requirement is?

6 A 2020 -- it's like 20 points for the number  
7 of units. It's a point system, not a number of units  
8 exactly. So depending on how those units are priced,  
9 and to what income levels, you get different points.

10 So let's say we have 400 units, we need  
11 80 points.

12 Q Right. And so --

13 A But the points can be accomplished by  
14 40 units. They're priced or designed for like a  
15 60 percent, I think, income level, yes.

16 Q So generally it's 20 percent, there's a  
17 20 percent requirement. So for this project, we  
18 have --

19 A Well, that's not accurate. It's 20 points,  
20 not 20 percent of the project. 20 of the percent of  
21 the unit in account, is 20 points based on the point  
22 table.

23 Q Well --

24 A Well, what?

25 Q Well, according to the housing code --

1           A       Well --

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

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

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

11                   So this is a 398 lot that are proposed, so  
12 20 percent of 398 would be the 80-unit that you had,  
13 so 80 would be the affordable housing requirement for  
14 this project?

15           A       80 points.

16           Q       80 points, 80 units.

17                   And you said that for -- the developer has  
18 put in 201H application for 32 units for the  
19 11.7-acre lot?

20           A       Which developer?

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

22           A       This is what I'm told by -- this is what I  
23 was told by the Office of Housing and Community  
24 Development and the County and their officials.   But  
25 we're not really involved in that.   Our meeting was

1 to discuss them acquiring more land to complete their  
2 project.

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

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

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

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

16 Q Thank you.

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

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

24 Is that acceptable to the parties and my  
25 fellow Commissioners? Let's take ten minutes. Thank

1       you.

2                       (Recess taken.)

3               CHAIRPERSON SCHEUER:   Okay, we're back.

4       Thank you for your patience.

5               Commissioners?   OP, you were done?

6               MS. APUNA:   Yes.

7               CHAIRPERSON SCHEUER:   Commissioners?

8       Commissioner Aczon and then Commissioner Chang.

9               COMMISSIONER ACZON:   Like my fellow  
10      Commissioner Wong always says, we're just laymen,  
11      just simple questions.

12              Mr. LaPinta, who do you report to?

13              THE WITNESS:   I report to Natalia  
14      Batichtcheva and to Valery Grigoryants.

15              COMMISSIONER ACZON:   So your immediate  
16      supervisor is Natalia?

17              THE WITNESS:   Yes.

18              COMMISSIONER ACZON:   She has the power  
19      to --

20              THE WITNESS:   But I'm an independent  
21      contractor.   But anything that I do, I get clearance  
22      from them.   They don't want to have me appear to be  
23      an agent or a person who has rights to enter into  
24      contracts or contractually bind them.

25              So everything I run by them before I have



1 meetings or interactions with the utility company,  
2 for example, or with RM Towill, engineering  
3 companies.

4 COMMISSIONER ACZON: So you cannot do  
5 anything without --

6 THE WITNESS: Without authority from the  
7 owner, correct.

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

10 THE WITNESS: The owners, yes.

11 COMMISSIONER ACZON: -- permission?

12 THE WITNESS: Correct.

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

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

24 COMMISSIONER ACZON: So from start to  
25 finish?

1 THE WITNESS: Yeah, correct.

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

4 THE WITNESS: Excuse me?

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

8 THE WITNESS: What would I do differently?  
9 Move quicker, one.

10 Work with designing a product that the  
11 market will accept.

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

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

24 And in this area of the island there are  
25 very few to no one acre or even half to one-acre

1       lots, little larger lots that people want a bigger  
2       site.

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

7               THE WITNESS:   My responsibility.

8               COMMISSIONER ACZON:   And my question is --

9               THE WITNESS:   I do the financial modeling  
10       for the project.

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

14              THE WITNESS:   Yes, correct.

15              COMMISSIONER ACZON:   Do you think that the  
16       45 million that is borrowed is enough to finish the  
17       project?

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

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

25              So based on -- I have this particular model

1 here. It's for the 398 lots. The peak, we call peak  
2 capital during the entire sellout of the project  
3 towards the development cost, comes to 15 million,  
4 790. 15,800,000 would be peak capital.

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

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

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

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

23 COMMISSIONER ACZON: So --

24 THE WITNESS: What I said, I told you --  
25 I'm sorry.

1           What I mean by -- if you're going along,  
2   the max, in this model, the maximum amount of capital  
3   the developer will have out is 15 million, 800,000?

4           CHAIRPERSON SCHEUER: Does that answer your  
5   question?

6           COMMISSIONER ACZON: That's the maximum?

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

9           COMMISSIONER ACZON: What is the minimum?

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

15          COMMISSIONER ACZON: I understand.

16          Just to follow up with Ms. Apuna's question  
17   about the time.

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

20          THE WITNESS: Correct, yeah.

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

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

25          COMMISSIONER ACZON: Talking about ten



1 months for the whole project -- ten years for the  
2 whole project?

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

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

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

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

24 COMMISSIONER ACZON: So after all the  
25 infrastructure is finished, the model for this

1 project is to sell individual lots?

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

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

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

15 THE WITNESS: Right. Sell lots  
16 individually, correct.

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

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

21 COMMISSIONER ACZON: The 11 acres, going  
22 back to the 11 acres that I asked earlier. I  
23 understand it was conveyed to Plumeria, correct? Was  
24 Plumeria, they understand the conditions by the  
25 Commission for affordable, how many affordable

1 housing do they have to supply?

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

4 COMMISSIONER ACZON: So does the -- did the  
5 Petitioner give Plumeria instruction on how to comply  
6 with our condition?

7 THE WITNESS: No.

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

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

22 CHAIRPERSON SCHEUER: Sorry, you were  
23 qualified as a development expert before this  
24 Commission. It's kind of a core part of doing  
25 development before this Commission. So if you could

1 at least try and answer the question.

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

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

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

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

23 THE WITNESS: Correct. That's my  
24 understanding.

25 MR. LIM: Goes onto say that we would

1 provide the Commission (indecipherable) copy of the  
2 affordable housing agreement within 30 days.

3 I do not know whether that happened or not.

4 THE WITNESS: I'm sorry, I could have  
5 looked it up, but I was trying to go by memory.  
6 Probably a bad idea.

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

10 MR. LIM: Of the County.

11 COMMISSIONER ACZON: One last question, Mr.  
12 Chair.

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

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

19 COMMISSIONER ACZON: Condition 6.

20 THE WITNESS: Yes, my understanding.

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

23 THE WITNESS: Yeah.

24 COMMISSIONER ACZON: So who has the final  
25 say? DOT is saying that Petitioner didn't comply.



1 So my question is, who has the final say to say, yes,  
2 the Petitioner complied or did not comply?  
3 Petitioner, DOT or Commission?

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

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

10 COMMISSIONER ACZON: Thank you, Mr. Chair.

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

13 COMMISSIONER CHANG: Thank you.

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

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

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

22 COMMISSIONER CHANG: Make sure I  
23 understand.

24 THE WITNESS: I'm describing that during  
25 the process of developing the project, you would

1 develop it in increments, so you wouldn't subdivide  
2 and put streets in for 398 lots and have them sit  
3 empty. You do it in increments. So each increment  
4 would be done as sales occur. And the proceeds from  
5 the sales would then come back to help fund the  
6 project.

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

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

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

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

25 Can you give me, based upon your expert

1 opinion as a real estate developer, what is the total  
2 estimated cost to build this project, not in phases,  
3 not based upon certain assumptions, but what is the  
4 total cost?

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

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

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

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

21 COMMISSIONER CHANG: And my understanding  
22 is you have -- your testimony has also been today  
23 that approximately \$900,000 has been spent on -- I  
24 think you called it first phase of the project,  
25 pre-engineering. Is that correct?

1           THE WITNESS: I wouldn't call it  
2 pre-engineering. It's engineering that's been done,  
3 and a lot of work was done. And topographic surveys,  
4 drainage studies, a drainage plan was done. And the  
5 civil engineering on the first phase. And the civil  
6 engineer meaning design of the road. These are plans  
7 that can be construction plans bid by a contractor  
8 for the roundabout.

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

12          THE WITNESS: Yeah.

13          COMMISSIONER CHANG: So up-to-date,  
14 \$900,000 in your opinion has been spent to date?

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

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

25                 So the estimated cost to build this



1 development is approximately \$45 million. To date,  
2 approximately \$900,000 has been spent.

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

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

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

13 THE WITNESS: No, not the land.

14 COMMISSIONER CHANG: Okay, no land use.

15 In your expert opinion as a real estate  
16 developer, looking back, this was approved in 2008.

17 Do you believe that the environmental work,  
18 the environmental studies that were completed, are  
19 they still viable or are they stale?

20 THE WITNESS: I believe they're still  
21 viable.

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

25 THE WITNESS: Viable.



1           COMMISSIONER CHANG: And so that, in your  
2 opinion, you feel confident that you could proceed  
3 based upon the existing environmental studies that  
4 were completed prior to 2008, prior to the approval  
5 of the boundary amendment, you feel confident that  
6 those studies are still relevant and pertinent to  
7 today?

8           THE WITNESS: Yes.

9           CHAIRPERSON SCHEUER: You can take a break  
10 for other Commissioners, and come back to you.  
11 Commissioner Ohigashi.

12          COMMISSIONER CHANG: Yes, thank you.

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

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

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

24          THE WITNESS: The property -- because in  
25 order for this property to be classified Rural, the

1 owners went through a process with their consultant  
2 and --

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

6 THE WITNESS: I'm sorry --

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

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

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

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

19 COMMISSIONER OHIGASHI: Maybe even denser.

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

25 COMMISSIONER OHIGASHI: The 11 acres, they

1 were originally part of the 730 some-odd acres that  
2 were designated from Agriculture to Urban, right?

3 THE WITNESS: Right, right, correct.

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

6 THE WITNESS: Yeah.

7 COMMISSIONER OHIGASHI: -- sometime in  
8 2016?

9 THE WITNESS: Correct.

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

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

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

20 THE WITNESS: None.

21 COMMISSIONER OHIGASHI: None?

22 THE WITNESS: Right.

23 COMMISSIONER OHIGASHI: And if it reverts  
24 back, you can still have the one-acre ag lots, but  
25 you don't get any low cost housing, correct?

1 THE WITNESS: That's correct, yeah.

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

5 THE WITNESS: Right.

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

12 THE WITNESS: I appreciate that.

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

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

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

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

24 THE WITNESS: If reverting it from  
25 Agriculture to Rural --

1 COMMISSIONER OHIGASHI: From Rural to Ag.

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

9 COMMISSIONER OHIGASHI: I'm not worried  
10 about that.

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

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

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

22 THE WITNESS: It would be the same thing.  
23 There would be pretty much the same list of  
24 requirements and conditions can be put there. We  
25 really don't need the Land Use Commission's



1 conditions at all, because the County can impose the  
2 same conditions, like putting one hat on top of  
3 another.

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

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

8 COMMISSIONER OHIGASHI: I have no further  
9 questions.

10 CHAIRPERSON SCHEUER: Commissioner Okuda.

11 COMMISSIONER OKUDA: Thank you, Mr. Chair.

12 Frankly, any of the parties can answer this  
13 question. What in the record shows or can assure the  
14 Commission that if we do not revert the property and  
15 rely on representations ten years from now, whoever  
16 is on the Commission then, might find itself in the  
17 very same position as this Commission finds itself  
18 today.

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

22 CHAIRPERSON SCHEUER: Commissioner Okuda, I  
23 think it's a good question to perhaps ask during  
24 closing arguments, rather than necessarily directly  
25 in front of this witness.

1           COMMISSIONER OKUDA: Okay, than can be  
2 reserved for closing arguments, if I can give a  
3 heads-up for closing argument, I would ask all  
4 parties to tell us whether or not the following is an  
5 accurate statement of the law.

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

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

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

18           THE WITNESS: Is that a question to me?

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

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

24           COMMISSIONER OKUDA: It's found at volume  
25 339 of Pacific 3rd at page 710. I don't have the

1 Hawai'i report citation in front of me.

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

4 CHAIRPERSON SCHEUER: Again --

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

7 CHAIRPERSON SCHEUER: Commissioner Cabral.

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

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

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

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

1 THE WITNESS: Around 200, 225.

2 VICE CHAIR CABRAL: Thank you.

3 CHAIRPERSON SCHEUER: Thank you, Mr.  
4 LaPinta.

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

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

10 One is referring to your resume. It states  
11 that in 2003 you were the exclusive -- from 2003 to  
12 2004 you were the exclusive broker for Waikoloa  
13 Heights.

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

17 THE WITNESS: Okay, I can do that.

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

24 I represented Oak Tree Capital who acquired  
25 the property in a settlement with a dispute with Bill

1 Mills. And then I sold the property for them.

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

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

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

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

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

14 THE WITNESS: No, not at all.

15 CHAIRPERSON SCHEUER: Thank you.

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

21 THE WITNESS: I've seen the study, and it's  
22 being handled by Steve Lim's staff, and to be  
23 finalized. And SHPD has reviewed it apparently  
24 does -- the archaeological site has been identified,  
25 I know where it is.



1           CHAIRPERSON SCHEUER: What is the basis of  
2 your concluding that from a real estate development  
3 perspective that that's a sufficient analysis?

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

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

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

13          CHAIRPERSON SCHEUER: What year was the  
14 original archaeological study completed?

15          THE WITNESS: I don't know.

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

18          THE WITNESS: No.

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

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

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

25          What's the aggregate amount of water that

1 would be needed for full buildout?

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

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

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

12 CHAIRPERSON SCHEUER: Do you know what  
13 aquifer this development is in?

14 THE WITNESS: I don't know the name of it,  
15 but I know it's in a specific aquifer.

16 CHAIRPERSON SCHEUER: Do you know whether  
17 the water source is in the same aquifer?

18 THE WITNESS: I'm relying on the West  
19 Hawaii Water Company. That's their business. That's  
20 not within the purview of my work.

21 CHAIRPERSON SCHEUER: Sorry, I had  
22 understood as an expert in development that you would  
23 be able to testify as to the availability of water  
24 for the entirety of the project.

25 THE WITNESS: For the entirety of the

1 project.

2 CHAIRPERSON SCHEUER: That is what is  
3 before us.

4 THE WITNESS: Well, I started working on  
5 this a few months ago, and I believe my  
6 communications with the West Hawaii Water Company,  
7 they believe they can supply water to the project.

8 CHAIRPERSON SCHEUER: For the first phase  
9 alone is all that you spoke to them about?

10 THE WITNESS: Talking about the first  
11 phase, yeah.

12 CHAIRPERSON SCHEUER: You have not spoken  
13 about water availability for the entirety of the  
14 project?

15 THE WITNESS: I have not discussed that  
16 with them. But they are aware how many units are  
17 there, and they didn't say there was no red flag.

18 CHAIRPERSON SCHEUER: You are not aware of  
19 the aquifer, you're not aware of what the sustainable  
20 yields are for this aquifer?

21 THE WITNESS: No, I'm not.

22 CHAIRPERSON SCHEUER: Are you aware of the  
23 fact the Water Commission is about to go out with  
24 revised sustainable yields for the two aquifers in  
25 this area?

1 THE WITNESS: No.

2 CHAIRPERSON SCHEUER: Do you know that  
3 those numbers are going to be reduced?

4 THE WITNESS: No.

5 CHAIRPERSON SCHEUER: Are you aware the  
6 Water Commission is preparing to revise downward  
7 sustainable yields for two aquifers in this area?

8 THE WITNESS: No, I'm not.

9 CHAIRPERSON SCHEUER: Are you aware that  
10 revision downward of sustainable yields in this area  
11 could result in proceedings to designate these areas  
12 as groundwater management areas?

13 THE WITNESS: I'm familiar with the  
14 process, but I'm not aware of the specific instance.

15 CHAIRPERSON SCHEUER: Are you aware that  
16 that could slow the development of water sources for  
17 this project?

18 THE WITNESS: I could infer that it could.

19 CHAIRPERSON SCHEUER: So are you familiar  
20 with -- and this is going again to your testimony in  
21 response to Commissioner Chang about the freshness of  
22 documents -- are you familiar with the Hawai'i  
23 Supreme Court case Unite Here versus City and County  
24 of Honolulu?

25 THE WITNESS: No.

1           CHAIRPERSON SCHEUER: That court case dealt  
2 specifically with for how long an EIS is actually an  
3 adequate basis for decisionmaking, but you're not  
4 familiar with that case?

5           THE WITNESS: No.

6           CHAIRPERSON SCHEUER: So that actually does  
7 provide a standard by which documents and analysis  
8 can be considered to be fresh.

9           Do you know how old the transportation  
10 impact analysis study was?

11          THE WITNESS: No, but that we know we need  
12 to redo that.

13          CHAIRPERSON SCHEUER: So you acknowledge  
14 that that --

15          THE WITNESS: That that component needs to  
16 be redone, I know that.

17          CHAIRPERSON SCHEUER: That's usually part  
18 of an EIS, correct?

19          THE WITNESS: Right.

20          CHAIRPERSON SCHEUER: You testified earlier  
21 about -- I'm sorry, I'm jumping around a lot of  
22 subjects you testified on.

23                You testified earlier about your very  
24 recent last week conversations with the County of  
25 Hawaii Housing Department, I believe.



1           Are you aware of what period of time this  
2 Commission is legally obligated to look at in terms  
3 of whether or not substantial commencement has  
4 occurred?

5           Can we look at things that happened last  
6 week, or do we look at it from the period of time  
7 before we issued an Order to Show Cause?

8           THE WITNESS: I'm not aware of that.

9           CHAIRPERSON SCHEUER: Finally, I want to  
10 talk to you about articles that were referenced both  
11 orally by Mr. Lim, as well as in the briefings from  
12 Environment Hawai'i.

13           And I think you actually started at one  
14 point in your testimony to talk about some -- one of  
15 the transactions for transferring land to the various  
16 affordable housing entity.

17           Did you want to respond to that a little  
18 bit more?

19           THE WITNESS: Well, I want to say, I  
20 appreciate your volunteering and taking the time to  
21 go through the details to get the true story about  
22 this project and about the owners involved in it this  
23 morning.

24           Because the Environment Hawai'i articles  
25 were full of a lot of false statements that were

1 prejudicial to our client, my client.

2 CHAIRPERSON SCHEUER: Could you identify  
3 those false statements on the record?

4 THE WITNESS: I will identify one  
5 particular right now.

6 CHAIRPERSON SCHEUER: You said pleural, so  
7 if you can do more than one that would be great.

8 THE WITNESS: Well, to begin with, the  
9 statement that Steve Lim was working for Stefan  
10 Martirosian in one of the articles. She could have  
11 called Steve and gotten -- and ask Steve if he was  
12 actually working for Stefan Martirosian. He was not.

13 Here's a specific statement from the  
14 July 2018 Environmental Hawai'i, page 9 through 10.  
15 It says under the heading, belated filings. It says,  
16 in other words, thanks to the County affordable  
17 housing agreement, the last obstacle to Martirosian  
18 holding clear title to more than 2,800 acres of Waiko  
19 land was are cleared away.

20 This statement is based on her analysis  
21 that the sale from Plumeria to Plumeria Waikoloa for  
22 \$1.5 million, the money was used to pay off a loan  
23 that Stefan Martirosian had taken out and mortgaged  
24 the property for. This is not what happened. This  
25 is a false statement. It's a false inference. And

1 you have a copy of Paul Sullu's affidavit stating  
2 what the events were.

3 I had also contacted the person who made  
4 the loans. The loans were paid before. It was  
5 simply a matter of clearing title by recording the  
6 leases of mortgages.

7 CHAIRPERSON SCHEUER: You said there were  
8 other --

9 THE WITNESS: There is a -- in that same  
10 section of related filings, it says: Nearly nine  
11 months past the required deadline, insinuating that  
12 the owner was in default of the subdivision agreement  
13 because it went beyond 180 days.

14 And she's referring to the date that the  
15 deeds were recorded. That's not the same as the date  
16 the conveyance -- you do not have to record a deed to  
17 have a conveyance.

18 So that I would say is not a strictly false  
19 statement, but it's misleading. I think that's  
20 enough. The articles were so full of -- I mean, the  
21 level of away from the truth and the salacious  
22 connections made were easy to see.

23 CHAIRPERSON SCHEUER: I've never personally  
24 used the word "salacious" in reference to  
25 Environmental Hawai'i. It's not my kind of salacious

1 literature.

2 THE WITNESS: Those articles were.

3 CHAIRPERSON SCHEUER: I have nothing  
4 further. Commissioners?

5 So I would just like to notice, since they  
6 have already been referenced, at least one reference,  
7 one article was specifically cited in Mr. Lim's  
8 testimony as well as -- or Mr. Lim's pleadings, as  
9 well as orally referenced to Environmental Hawai'i.

10 I would just like to note these articles  
11 for the record, as part of the record.

12 So I'm done. Anything more from the  
13 Commissioners? Okay.

14 Do you want to redirect, Mr. Lim, before we  
15 leave for the day?

16 MR. LIM: No. I just reserve rebuttal  
17 either by two witnesses depending on what's said in  
18 the coming witnesses. Thank you.

19 CHAIRPERSON SCHEUER: Okay. I'm looking  
20 for my cheat sheet, but what we are going to do is go  
21 into recess until I believe 8:00 a.m.

22 COMMISSIONER OHIGASHI: (Indecipherable).

23 CHAIRPERSON SCHEUER: Commissioner Ohigashi  
24 needs to be here by 7:30.

25 My apologies.

1                   We are recessed for the day and we will  
2 reconvene these hearings here tomorrow at 8:00 a.m.

3                   (The proceedings recessed at 4:39 p.m.)  
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1 CERTIFICATE  
2 STATE OF HAWAII )  
3 ) SS.  
4 COUNTY OF HONOLULU )

5 I, JEAN MARIE McMANUS, do hereby certify:

6 That on October 24, 2018, at 10:00 a.m., the  
7 proceedings contained herein was taken down by me in  
8 machine shorthand and was thereafter reduced to  
9 typewriting under my supervision; that the foregoing  
10 represents, to the best of my ability, a true and  
11 correct copy of the proceedings had in the foregoing  
12 matter.

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

16 Dated this 24th day of October, 2018, in  
17 Honolulu, Hawaii.

18  
19 /s/ Jean Marie McManus  
20 JEAN MARIE McMANUS, CSR #156  
21  
22  
23  
24  
25

1 **WRITTEN DIRECT TESTIMONY OF JOEL K. LAPINTA**

2 1. **Please state your name and business address for the record.**

3 Joel K. LaPinta  
4 40 Kamehameha Avenue  
5 Hilo, HI 96720

6 2. **What is your current occupation?**

7 I am currently involved in three aspects of the development real estate process:

8 1) management & advisory, 2) ownership, 3) brokerage.

9 Management & Advisory: In addition to working for Waikoloa Highlands, Inc., as a  
10 development consultant and manager, earlier this year I completed an assignment modeling an  
11 ongoing real estate development in Waikoloa currently under construction and selling houses.  
12 The assignment included modeling the project for presentation to the capital markets for  
13 continued funding using industry practices for such modeling. Inputs came from forensic analysis  
14 of the development's books, consultation with the developer's bookkeeper and the project  
15 manager, review of all completed engineering and construction work product and costs, review of  
16 construction contracts and job bid sheets, contracts with engineers, contracts and will-serve  
17 agreements with utility companies, and cost estimates and budgeting done by the Home Owners  
18 Association management company.

19 Ownership: In 2017, I formed a partnership and purchased the remaining 10 lots from the  
20 developer of a 70-lot subdivision known as Wai'nani at Po'ipu, located in Koloa, Kauai. As an  
21 employee of the developer I had been responsible for the acquisition, completion of the  
22 development, served as a director of the subdivision association, and negotiated the terms of the  
23 agreements of the master association that was formed to, among other functions, comply with the  
24 conditions of the Decision & Order of the Land Use Commission that urbanized the land in 1976  
25 (Moana Corporation, Docket No. A76-418). Presently I serve as a director and treasurer of the  
26 owners' association and I am the representative to the Kiahuna Maintenance Association.

27 Brokerage: I represent various owners of land on the Big Island to assist in the marketing  
28 and sales of their land.

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DRAFT

1           **How long have you been specializing in real estate development?**

2           32 years.

3           3.       **Is Petitioner's Exhibit 6 a true and correct copy of your resume?**

4           Yes.

5           4.       **Please briefly describe your educational background.**

6           I graduated with a Bachelor of Arts degree from St. John's College in Santa Fe, New  
7           Mexico in 1980. I graduated with honors and received a fellowship that paid for my studies at  
8           University of New Mexico and Brandeis University. I studied financing for development of real  
9           estate in 1984 at University of Hawaii at Hilo. I completed the educational requirements to  
10          receive a broker's license in 1984. In 1986, I completed course work for the Graduate Realty  
11          Institute. In 1987, I completed requirements for a real estate brokers license from the State of  
12          Hawaii. In 1999, I completed the requirements of the Commercial Investment Real Estate  
13          Institute of the National Association of Realtors including lecture courses and work experience to  
14          be awarded the Certified Commercial and Investment Member designation ("CCIM").

15          In 2001, I completed course work from the CCIM organization in economic modeling for  
16          land, commercial, and multiple-family housing development. In 2006, I completed a course on  
17          Multiple-Family Residential Development focused on development of high-rise residential  
18          projects (>6 stories) in Oahu. (That same year I sold two high-rise development sites in Waikiki,  
19          Oahu: one is the site of the Allure, Waikiki.) In 2017, I completed course work on acquisition  
20          and market studies for development land through an educational program affiliated with the  
21          CCIM organization.

22          5.       **Please briefly describe your work experience as a real estate development consultant.**

23          Since 1990, I have worked in several capacities as an advisor and manager for real estate  
24          developments in Hawaii. In 1990, I was hired by the developer of a subdivision of 21 residential  
25          lots to prepare the information package on the subdivision for submission to the Department of  
26          Commerce and Consumer Affairs, Land Division, and to prepare the Public Offering Statement  
27          per the requirements of the Uniform Land Sales Practices Act (Hawaii Revised Statutes ("HRS")  
28          Chapter 484, and Hawaii Administrative Rules Title 16 Chapter 106) for pre-construction sales of

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1 their subdivision which had received Tentative Approval for the Preliminary Plat Map ("PPM")  
2 from the County of Hawaii. Between 1991 and 1994, I owned and managed the development of a  
3 residential subdivision consisting of 28 residential lots. The subdivision improvements included  
4 building streets with curbs and sidewalks that were later conveyed to the County of Hawaii and  
5 the installation of water and sewer lines, and underground electric, cable, and telephone utility  
6 lines. The subdivision was registered under HRS Chapter 484. Twelve of the lots were sold to a  
7 non-profit self-help housing organization and all the lots currently have homes on them. These  
8 subdivision projects were similar in process to the Waikoloa Highlands project currently being  
9 developed.

10 In 1995, I did analysis of the development potential of the properties owned by Puna  
11 Sugar Company for the parent corporation, AMFAC/JMB Hawaii, Inc. In 2001, I completed a  
12 development analyses for the Resolution and Collection Corporation under the Ministry of  
13 Finance of Japan to evaluate the development potential for approximately 16 acres adjoining  
14 Kaunala Beach on the North Shore of the Island of Oahu. Between 2002 and 2003, I modeled  
15 alternative development plans for subdivision of land owned by Castle & Cooke located in  
16 Waikoloa Village consisting of 255 acres of land located off Waikoloa Road (now known as  
17 Kikaha and Makana kai).

18 In 2009, I was a consultant for the Trustee of Western United Creditors Trust to evaluate  
19 the entitlements for development of a 120-acre parcel of land zoned Project District for  
20 Commercial, Single Family, and Multiple-Family residential development.

21 Between 2009 and 2017, I was an employee of Kennedy Wilson Inc., (KW) and worked  
22 on various projects in Hawaii. These included Wai'nani at Po'ipu on the island of Kaua'i and  
23 KW's investment in Kohanaiki on the island of Hawaii.

24 6. **To what professional organizations do you belong?**

25 I am an active member of the Hawaii Isle Board of Realtors, the Hawaii Association of  
26 Realtors, the National Association of Realtors, and the Certified Commercial Investment Institute  
27 affiliated with the National Association of Realtors.

1     **7. Have you ever been qualified as an expert witness on land development before the**  
2     **Land Use Commission, any other administrative agency or a court?**

3             Yes. I was qualified as an expert in real estate development and sales at the  
4     Commission's October 24, 2018 hearing on this Docket. I have also been qualified as an expert  
5     witness before the Circuit Court of the Third Circuit, State of Hawaii, Poggenburg vs. Merle  
6     Montague and Bernice Montague, et al., Civil No. 04-0298.

7     **8. Are you familiar with the proposed development plans for the Waikoloa Highlands,**  
8     **Inc., ("WHI") subdivision ("Project") and the Petition Area?**

9             Yes. I was retained by WHI to be the project manager for the Project in June 2018.

10            I have been to the Petition Area 8 times since June of this year. The Petition Area is  
11     approximately 731.581-acres and currently identified by TMK No. (3) 6-8-002:016. The Project  
12     is proposed as a rural-residential subdivision to consist of approximately 398 one acre lots.  
13     Related infrastructure improvements to support the Project include the construction of internal  
14     roadways, drainage retention systems, grading, landscaping, and utilities (e.g., water, telephone,  
15     cable, electric, private water system, individual wastewater systems, etc.).

16     **9. Who do you report to at WHI?**

17            I report to both Natalia Batichtcheva and Valery Grigoryants. I am not authorized to take  
18     any substantive action without prior authorization from Valery Grigoryants.

19     **10. Have you done any projects similar to the Project that WHI has retained you for?**

20            Yes. The Nani Malia Subdivision, Kulaimano, South Hilo District, County of Hawaii, and  
21     the Wai'nani at Po'ipu, Koloa, Kiahuna Mauka, District of Koloa, Kauai, among others.

22     **11. Please provide the Land Use Commission with an overview of the process of**  
23     **subdividing the Petition Area and what needs to be completed prior to the selling the**  
24     **individual lots?**

25            Assuming the Land Use Commission does not revert the land to the Agricultural District  
26     classification, the following requirement and tasks will need to be accomplished to begin pre-  
27     construction sales and then obtain final subdivision approval:



- 1       1. Rezoning ("REZ"): Process an amendment to the conditions of Ordinance No. 13-29  
2       (Ord. 13-29) to allow additional time for WHI to obtain final subdivision approval and  
3       other amendments as required by the County.
- 4       2. PPM: A revised PPM will need to be approved under the procedures of the County of  
5       Hawaii Subdivision Code, Chapter 23. WHI is aware of specific changes to the  
6       previously tentatively approved PPM that the County has requested and these will be  
7       incorporated in the new PPM along with any other changes required or desirable for the  
8       development.
- 9       3. Roundabout plans and civil construction plans for the subdivision improvements. These  
10      plans have been preliminarily reviewed by the County agencies, and also include design  
11      plans for access into the Project from Waikoloa Road and Pua Malia Street. All these  
12      plans will need to be approved in their final form by the County Departments of Planning,  
13      Public Works, and Water Supply; the Department of Health, State of Hawaii; and the  
14      West Hawaii Water Company. We would need to have plans approved for line extension  
15      from Hawaii Electric Light Company, HawaiianTel, and Spectrum (optional). In  
16      addition, plans for an internal trail system we need to be completed assuming the  
17      condition for a pedestrian trail system will carry over from Ord. 13-29 to the new REZ  
18      ordinance.
- 19      4. Comply with all the conditions of the State Land Use Commission's Findings of Fact,  
20      Conclusions of Law, and Decision and Order for Docket No. A05-727 ("D&O").
- 21      5. Complete Project tasks, including:
  - 22          a. Obtain a "will-serve" letter from West Hawaii Water Company and approval of  
23          construction plans for system improvements and line extension.
  - 24          b. Determine if the improvements required by the State Department of Transportation  
25          have been met for the intersections of Queen Ka'ahumanu Highway and  
26          Mamalahoa Highway.
  - 27          c. Confirm full satisfaction of Condition 9 relating to affordable housing, and in  
28          addition, pursue agreement with a bona fide affordable housing developer to

- 1 develop a portion of the Petition Area for affordable housing meeting the approval  
2 of the County of Hawaii, Office of Housing and Community Development.
- 3 d. Complete the archeological report, treatment plan, and registration of Waikoloa  
4 Highlands Site T-22 CS per the requirements of the State of Hawaii, Department  
5 of Land and Natural Resources, State Historic Preservation Division.
- 6 e. Drainage: Finalize approval of the drainage study for incorporation into the  
7 subdivision grading and improvement plans that will be submitted for review and  
8 approval by the Department of Public Works of the County of Hawaii and if  
9 required, by the Army Corps of Engineers.
- 10 f. Pay pro-rata share of civil defense system.
- 11 g. Pay educational fund contribution at lot closings.
- 12 h. Complete solid waste plan.
- 13 i. Submit annual progress reports to the Land Use Commission.
- 14 6. Pay Fair Share Contributions to the County of Hawaii.
- 15 7. Prepare covenants required by the County of Hawaii restricting use of lots to one single  
16 family dwelling per lot.
- 17 8. Prepare Covenants, Conditions, and Restrictions for the Project, incorporating conditions  
18 that all lots meet architectural design guidelines for vertical improvements, landscaping,  
19 and landscaping maintenance.
- 20 9. Structure Subdivision Governance and Budget for Association Fees: Form by Charter the  
21 Association of Lot Owners, adopt By-Laws, Design Guidelines, and procedures for the  
22 Design Review Committee.
- 23 10. Register the Subdivision under the HRS Chapter 484 and obtain an approved Public  
24 Offering Statement and, if required, under TITLE XIV -- INTERSTATE LAND SALES,  
25 Public Law 90-448; 82 Stat. 590; 15 U.S.C. 1701 et seq.
- 26 11. Enter into a contract with a bona fide contractor to complete the subdivision  
27 improvements for the first increment.
- 28

- 1 12. Submit the contract and bid price to Public Works and Planning for approval and provide  
2 the County with a bond or standby letter of credit acceptable to the County to cover the  
3 cost of the subdivision improvements.
- 4 13. Complete and execute with the County of Hawaii a Subdivision Agreement.
- 5 14. Record the subdivision map at the Bureau of Conveyances.
- 6 15. At this stage the subdivider may convey title to individual lots and receive payment from  
7 lot buyers. **The subdivider has not yet touched the soil.**
- 8 16. Engineer will complete staking and place control points for grading contractor.
- 9 17. Obtain a National Pollution Disbursement Elimination System ("NPDES") permit from  
10 the State Department of Health and a grading permit from the County of Hawaii.
- 11 18. Advance initial payment to contractor who will commence staging operation, wind and  
12 runoff barriers per the requirements of the NPDES permit and the Public Works  
13 Department requirements and deliver equipment and supplies to site.
- 14 19. Start initial grading.

15 12. **Have you or WHI approached any local developers or contractors to partner with on**  
16 **the Project?**

17 Yes. I have started conversations and shared information with two. I have reviewed the  
18 land use issues with them. They both indicated interest but told me to contact them after we  
19 resolve the issues with the Land Use Commission first.

20 13. **Please identify the various plans and studies you have prepared for the Project since**  
21 **June 2018.**

22 I have prepared a feasibility study for the Waikoloa Highlands – 398 Lots Entitlement  
23 Phase (Packaging) and a construction phasing study, both for internal use for the Construction  
24 and Sales Phase. R. M. Towill Corporation has provided me with engineering plans for  
25 completion of the streets and infrastructure to County of Hawaii Decidable Standards for Phase I  
26 and for Phase II. The civil plans are complete enough to estimate costs for the subdivision  
27 improvements.

28



1 We are in discussions with Ikaika Ohana LLC for them to acquire approximately 6 acres  
2 out of TMK Parcel (3) 6-8-002-016 (i.e., the Petition Area) that fronts on Pua Melia Street and  
3 will be at the entrance to the Phase I of the Waikoloa Heights subdivision. Ikaika Ohana LLC  
4 already owns the 4.4 acre TMK Parcel (3) 6-8-003-028 on the makai side of Pua Melia Street.  
5 They plan soon to start construction of 60 affordable apartments on the approximately 4.4-acre  
6 parcel. I have provided maps, engineer design sheets, aerial images, and topographic maps for  
7 the ~6-acres. Ikaika Ohana LLC has toured the location of the proposed ~6-acre site and believe  
8 this will allow them to develop an additional 80 affordable units.

9 14. **Please describe the scope of the market analysis / feasibility study.**

10 The market analysis / feasibility study includes data collection and running statistical analysis for  
11 sales in the North Kona and South Kohala Districts of the Island of Hawaii and reviewing sales of  
12 vacant lots and houses in subdivisions developed in the past 5 years with lots sizes of  
13 approximately 1.0 acre in South Hilo district as well.

14 15. **In the market analysis / feasibility study, did you rely on any other studies or**  
15 **external data in drawing your conclusions and making your assessment of the Project?**

16 Yes. I reviewed an appraisal dated August 16, 2017 and another completed on March 7, 2008 for  
17 Waikoloa Mauka LLC; both appraisals were prepared by The Hallstrom Group and signed by  
18 James E. Hallstrom, Jr., MAI, CRE. I reviewed sales data from the Hawaii Information Service  
19 Multiple Listing Service and data from the County of Hawaii real property tax assessor's office. I  
20 also reviewed a market study prepared by a real estate market and economics advisory service for  
21 another residential development in the Waikoloa area currently under construction.

22 16. **Please describe the methodology used to conduct the market analysis/feasibility**  
23 **study.**

24 The definition of "feasibility" in this context is to determine if the anticipated future  
25 benefits will exceed the expected future costs. The first step was to order a status title report and  
26 review it to determine the property was free and clear of any monetary liens, to ascertain what  
27 other encumbrance may affect the use of the land including any recorded governmental or private  
28 restrictions or covenants, effect of easements recorded, and any other matters contained in

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1 documents recorded in the public record. The second step was to review with legal counsel the  
2 effect of D&O in Docket No. A05-727; the status of the owner's compliance with the conditions  
3 of the D&O; and the Order to Show Cause. I then reviewed the most recent conditional zoning  
4 ordinance, Ordinance No. 13-29, affecting the use of the land. In doing this I reviewed the files at  
5 the Planning Department of the County of Hawaii and those of the owner's former planning  
6 consultant. I then obtained and reviewed what was available in the form of studies and plans  
7 prepared by other third-party providers, including surveyor's reports, appraisals, a drainage study,  
8 an archeological report, a water resources report, engineer's prepared grading plans, and civil  
9 construction plans for the subdivision and for the off-site roundabout.

10 I contacted the West Hawaii Water Company to confirm the land was within their service  
11 area and that they could provide service to the Project. We discussed what infrastructure would  
12 need to be constructed to provide adequate pressure to the lots in the subdivision and what would  
13 be the estimated Contribution in Aid of Construction fees and the timing for these fees to be paid.  
14 Because deadlines to comply with conditions to construct the subdivision in the zoning and  
15 tentative approval had passed I first developed a feasibility model for the Entitlement Phase of the  
16 project: "Entitlement Phase" meaning the completed steps necessary for taking the land from its  
17 current status to having in place the rights to begin offering the lots for sale, and then to close  
18 sales on a pre-construction basis. For the Entitlement Phase I reviewed what work product would  
19 have to be completed and the timing for completion by the attorney and planning consultant,  
20 environmental consultant, archeological and cultural consultants, and by the engineers. The next  
21 phase of the development process is "Construction and Sales Phase." For this phase I developed  
22 a model based on cost estimates supplied from the engineer. I then compared the estimates with  
23 actual contract prices for work being performed on other projects this year. I extrapolated costs  
24 based on construction commencing about 3 years from now. For the sales side I also developed  
25 confidential pricing and market absorption for the Project.

26 17. **Are the methodologies that you used in the market study/feasibility study consistent**  
27 **with generally accepted industry standards?**



1 Yes. I worked in the industry for an international real estate investment company and had  
2 been tasked with reviewing market/feasibility studies for potential acquisitions of developments  
3 in Hawaii, so I feel comfortable providing opinions on these issues.

4 18. **Please describe the scope of work regarding the infrastructure you have reviewed**  
5 **and the estimated timeframe of completion of these plans.**

6 I had meetings, email exchanges, and telephone conversations with the lead engineer at  
7 the Kona office of R. M. Towill Corporation. The purpose of these communications was to  
8 ascertain the extent of the work product completed including studies, mitigation plans, and  
9 infrastructure design for the Project so far; what portion of the work product is still usable; what  
10 would have to be done over; and what additional work product will need to be completed and the  
11 time and cost to complete the work. The completion time for preparation of the final drainage  
12 plan, roundabout plans, and subdivision documents was estimated to be 12 months.

13 19. **Did you rely on any other studies or external data in drawing your conclusions and**  
14 **making your assessment on the infrastructure required for the Project?**

15 For the Project infrastructure requirements, I relied primarily on the civil engineer, R. M.  
16 Towill, and conversation and correspondence with the West Hawaii Utility Company and Hawaii  
17 Electric Company. We have not initiated further negotiation with the utilities pending the  
18 outcome of the Land Use Commission's decision on the Order to Show Cause.

19 20. **Please elaborate on the discussions you have had with West Hawaii Water Company**  
20 **regarding the amount of water needed for the Project and the availability of water for the**  
21 **entire Project.**

22 West Hawaii Water Company ("WHWC") has confirmed the property is within their  
23 service area to supply potable water. Wells and reservoirs for the system are located at the 1,200-  
24 foot elevation, roughly the same elevation as Puu Hinai adjacent to the Petition Area. From this  
25 elevation, water from the system will be gravity fed to service Phase I, Increment 1 of the  
26 subdivision and the Ikaika Ohana LLC affordable housing site. Additional storage tanks to  
27 provide adequate pressure will have to be located mauka of the project for later phases. WHWC  
28 owns easement rights for additional wells, transmission lines, and tank sites over parcels of land  
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1 adjoining the Petition Area to complete its water system development plan to service the entire  
2 development of the Petition Area.

3 WHWC has further informed me of the following: "We currently have 7 wells  
4 operational capable of producing 10 MGD and an 8th well that is being outfitted at this time to be  
5 completed very soon which will raise production to 11.4 MGD. With the 8th well we use the  
6 criteria of the 2 largest wells out of service to meet demand, so effective production is 8.3 MGD.  
7 Present demand is 5.0-6.0 MGD. We do have 4.0 MG of storage at the wells, but we also have  
8 6.0 MG of storage for Waikoloa Resort." Therefore, it is my opinion that there is sufficient  
9 potable water to service the entire proposed Project of approximately 398 1-acre lots and ancillary  
10 uses.

11 21. **Do you believe that the Project is feasible?**

12 The subdivision will create larger homesites than those that are currently available in the  
13 Waikoloa Village in a superior location to other existing and proposed residential developments  
14 in the village area. The barrier to entry for any competing product is very high and only those  
15 targeted to higher priced resort housing are being considered at locations nearer the coast in South  
16 Kohala. The price of the lots in my feasibility study are well below sales prices currently and for  
17 the past 12 years for similar sized lots both for South Kohala and North Kona. The cost estimates  
18 used in study are thorough and conservatively high. The rate of sales is consistent with the  
19 market and the project lends itself to being developed in increments to allow the subdivider to  
20 maintain a profit margin throughout the development.

21 22. **WHI conveyed 11.7 acres subdivided from the Petition Area to Plumeria at**  
22 **Waikoloa, LLC under an Affordable Housing Agreement. Are you familiar with that**  
23 **parcel of land?**

24 Yes. It is currently identified by Tax Map Key No. (3) 6-8-002:057.

25 23. **Based upon your market analysis /feasibility study for the Project and other work**  
26 **you have done in area, are you generally familiar with land value in the Waikoloa Area?**

27 Yes. I have experience working on projects in Waikoloa since 1999. Recently I  
28 completed a development model for a project in Waikoloa for a developer of resort-residential  
4845-0249-9706.8.069590-00001



1 housing. I have reviewed in August 2018 the status of the current and planned residential  
2 developments in Waikoloa Village as part of my market analysis for the Waikoloa Highlands  
3 project.

4 24. **What is your appraisal of the market value of that 11.7 acre parcel that was**  
5 **conveyed?**

6 Given the considerations below in my answer to Question 24, I could with confidence  
7 value the 11.7-acre parcel at around \$2,300,000 with the OHCD entitlement enhancements. If  
8 there were no OHCD enhancements the 11.7-acre parcel is valued at least the price of \$1,500,000  
9 recently paid for it. It is valuable because it has road frontage near a major intersection.

10 25. **What is your estimate based on?**

11 The current owner of the 11.7-acre parcel plans to use approximately half the land for  
12 commercial and the other half for affordable housing. During a conference with him I learned he  
13 is planning to build a True Value Hardware Store and other commercial space on the property and  
14 that he has an agreement with the Office of Housing and Community Development (OHCD) of  
15 the County of Hawaii permitting this use through a HRS Chapter 201H application, with the  
16 condition that affordable housing also be developed on the land. Valuing the 11.7-acre parcel  
17 with the entitlement enhancement based on an agreement with OHCD is the best guide to value,  
18 when compared with two recent sales in the area.

19 The first is the sale recorded on January 1, 2018 of the 40.808 acres immediately makai of  
20 the intersection of Pua Melia Street/Paniolo Drive with Waikoloa Road. The land is zoned for  
21 commercial use and sold for \$9,500,000 (about \$233,000 per acre). The second is the sale of  
22 Parcel (TMK (3) 6-8-003-028). It was purchased for \$1,000,000 on April 24, 2015. The buyer  
23 plans to develop a 60-unit residential apartment for affordable housing using, in part, tax credit  
24 financing. Parcel 028 is located immediately adjoining the Waikoloa Highlands Inc., Petition  
25 Area of Parcel 016 on Pua Melia Street.

26 26. **Is the Petition Area suited for the Project?**

27 Yes. The Petition Area has adequate road access, access to adequate potable water source,  
28 is within the service area of a utility company qualified to provide potable water service, and is

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1 located with access to electrical, telephone and other telecommunication infrastructure. The  
2 location of the proposed rural-residential subdivision at the intersection of Paniolo Drive/Pua  
3 Melia Street and Waikoloa Road is superior to the other residential developments currently  
4 offering lots for sale and those proposing to provide future homesites.

5 27. **Please tell the Land Use Commission, in your professional opinion, whether the**  
6 **Petitioner has engaged in private land banking.**

7 No, the Petitioner and its predecessor Waikoloa Mauka LLC have definitely not engaged  
8 in private land banking. The owners had gone to considerable expense to obtain engineering and  
9 other third-party studies and reports prior to obtaining the Land Use Commission's June 1, 2008  
10 boundary amendment in order to meet the conditions of the December 15, 2005 County zoning  
11 ordinance. Part of the reason for delay in developing this Project was the particularly unfortunate  
12 timing of its approval by the LUC just prior to the meltdown of the financial market in the fall of  
13 2008 which stalled most real estate developments in the State and bankrupted many owners.  
14 Resort residential projects only started recovery in 2014 and Waikoloa Village, as a transitional  
15 primary housing and affordable retirement community, had only achieved price stabilization in  
16 2017. The Waikoloa Highlands Project appears to be feasible at this time, provided however, that  
17 there will be no near-term economic shock and/or protracted recession.

18 28. **Please tell the Land Use Commission, in your expert opinion, has the Waikoloa**  
19 **Highlands Project attained substantial commencement of use of the land of the Petition**  
20 **Area with its development activities through the present date?**

21 Yes, the Project has attained substantial commencement of use of the Petition Area  
22 because of the unusual entitlement history for this Project, where the County zoning had been  
23 approved for years and substantial development activities had commenced, even before the  
24 Project came before the Land Use Commission in 2007-2008. After the approval of the D&O in  
25 this matter, the Petitioner also caused preparation of additional construction and other plans for  
26 review by the governmental agencies, and irrevocably conveyed at no cost a 11.7 acre parcel in  
27 satisfaction of the affordable housing requirements of this D&O and the County's zoning  
28 Ordinance.

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1 29. **Is there currently or do you project market demand for the types of lots proposed for**  
2 **this Project?**

3 Yes. I have spoken to several brokers who have indicated there would be an interest in  
4 one-acre lots at the proposed prices I have used in the model. The market lots will be attractively  
5 priced and well located for primary housing, retirement, and some 2<sup>nd</sup> home owners. The price  
6 point will attract buyers from Oahu and other states but will also be attractive to residents for use  
7 as primary housing.

8 30. **What is your estimate on when the first lots of the subdivision are ready for sale?**

9 Assuming the Land Use Commission does not revert the Petition Area, and depending on  
10 whether the County will allow concurrent or require sequential processing of the applications for  
11 rezoning and the subdivision, the closings on binding contracts could start in approximately 24  
12 months to 34 months.

13  
14  
15 DATED: Hilo, Hawaii, November 18, 2018.

16  
17 Respectfully submitted,

18  
19  
20  
21  
22  
23 

24 JOEL K. LAPINTA  
25  
26  
27  
28





**ARCH LIMITED**

1<sup>ST</sup> FLOOR,  
KINGS COURT,  
BAY STREET,  
P.O. BOX N-3944,  
NASSAU BAHAMAS

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



<a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Hawaii Home</a>	<a href="#">Real Property Home</a>
<b>Owner and Parcel Information</b>					
<b>Owner Name</b>	PUA MELIA LLC Fee Owner, Tenants in Severalty PUA MELIA LLC Addressee		<b>Today's Date</b>	November 19, 2018	
<b>Mailing Address</b>	ATTN:JULKOWSKI,DANNY JOSEPH 730 HIGHWAY 169 TOWER, MN 55790-8232		<b>Parcel Number</b>	680020570000	
<b>Location Address</b>			<b>Project Name</b>		
<b>Property Class</b>	AGRICULTURAL		<b>Parcel Map</b>	<a href="#">Show Parcel Map</a> <a href="#">Plat (TMK) Maps</a>	
<b>Neighborhood Code</b>	6822-8		<b>Land Area (acres)</b>	11.707	
<b>Legal Information</b>	FROM: 6802-16 11.707 AC		<b>Land Area (approximate sq ft)</b>	509,957	

<b>Assessment Information</b> <a href="#">Show Historical Assessments</a>										
Year	Property Class	Market Land Value	Dedicated Use Value	Assessed Land	Land Exemption	Market Building Value	Assessed Building Value	Building Exemption	Total Market Value	Total Taxable Value
2018	AGRICULTURAL	\$ 921,900	\$ 0	\$ 921,900	\$ 0	\$ 0	\$ 0	\$ 0	\$ 921,900	\$ 921,900

<b>Land Information</b>			
<b>Property Class</b>	<b>Square Footage</b>	<b>Acreage</b>	<b>Agricultural Usage</b>
	509,957	11.707	

<b>Improvement Information</b>	
No improvement information available for this parcel.	

<b>Other Building and Yard Improvements</b>				
<b>Description</b>	<b>Quantity</b>	<b>Year Built</b>	<b>Area</b>	<b>Gross Building Value</b>
No information associated with this parcel.				

<b>Permit Information</b>			
<b>Date</b>	<b>Permit Number</b>	<b>Reason</b>	<b>Permit Amount</b>
No permit information associated with this parcel.			

<b>Dept of Public Works Bldg Division Permit and Inspections Information</b>							
Permit Date	Permit Type	Permit Number	Permit Reason	Permit Description	Estimated Cost	Inspection Date	Inspection Status
No permit and inspections information associated with this parcel.							
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.							

<b>Sales Information</b>										
Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date of Recording	Land Court Document Number	Cert #	Book/Page	Conveyance Tax	Document Type
04/24/2018	\$ 1,500,000	67050158	FEE CONVEYANCE	Warranty Deed	05/11/2018				4500	Warranty Deed
06/01/2017	\$ 55,000	66030880	FEE CONVEYANCE	Warranty Deed	01/29/2018				82.5	Warranty Deed
05/15/2017	\$ 0		OTHER	Mapping Change	05/15/2017					Mapping Change

<b>Current Tax Bill Information</b> <a href="#">2018 Tax Payments</a> <a href="#">Show Historical Taxes</a>									
Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
2018-2	Real Property Tax	02/20/2019	\$ 0.00	\$ 0.00	\$ 3,784.66	\$ 0.00	\$ 0.00	\$ 0.00	\$ 3,784.66
									<b>\$ 3,784.66</b>
Tax bill is computed to 11/30/2018 Or pay online at <a href="http://payments.ehawaii.gov/propertytax/hawaii">http://payments.ehawaii.gov/propertytax/hawaii</a> Other Payment Options Click <a href="#">Here</a>									

<a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Hawaii Home</a>	<a href="#">Real Property Home</a>
The Hawaii County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. Website Updated: November 5, 2018					

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## Exhibit 58

# WAIKOLOA HIGHLANDS, Inc.

---

1200 S. Brand Blvd., #202, Glendale, CA 91204 - Ph: 818-421-4545

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



Its

Director



2610 Pacific Heights Road • Honolulu, Hawaii 96813 • (808) 829-1426  
Corporate: 2000 E Fourth Street, Suite 220 • Santa Ana, CA 92705 • (714) 835-3955

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,

Douglas Bigley  
President  
Ikaika Ohana

**Exhibit 59b**



INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **DEC 30 2009**

IKAIKA OHANA  
126 QUEEN ST STE 304  
HONOLULU, HI 96813

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.

Letter 947 (DO/CG)

IKAIKA OHANA

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Choi". The signature is stylized with a large, looping "R" and a cursive "Choi".

Robert Choi  
Director, Exempt Organizations  
Rulings and Agreements

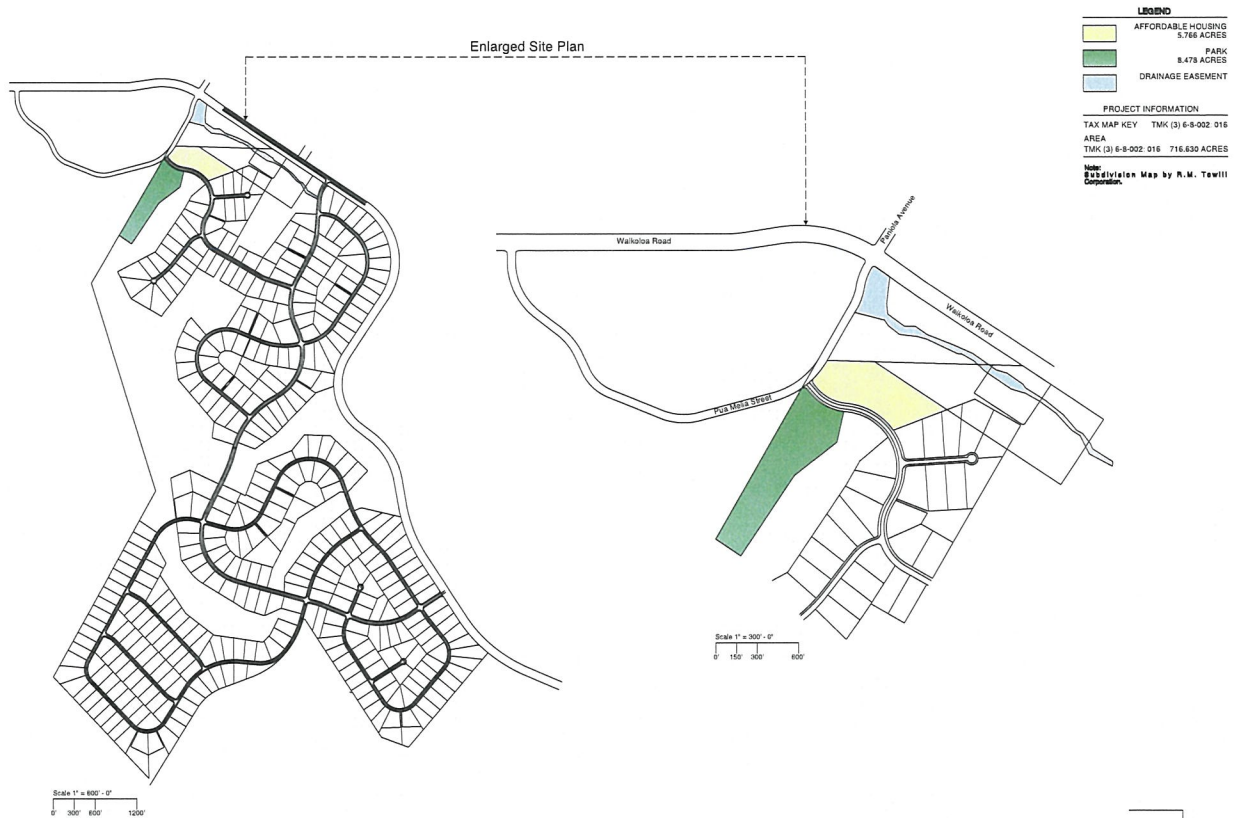
Enclosure: Publication 4221-PC

# **IKAIKA OHANA DEVELOPMENT EXPERIENCE IN HAWAII**

#	Project Name and Address	# of Units	Housing Type	New Const. or Rehab	Project Status	Project Achievement and Problems	Delays	Audit Findings
1	Kaiaulu O Waikoloa 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'opua Villages 4 & 5 Kealahou HI	160	Single Family	New Const	Pre-Development	RFP Awarded, no problems	None	None
3	Kaiwahine Village 555 Kaiwahine 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 Lepeka Ave Waianae HI	48	Multi Family	New Const	Placed in Service Dec 2013	Construction complete, project operational, no problems	None	None
7	E Komo Mai Apts 816 Kinohiwa St. Hilo HI	45	Multi Family	Rehab	Placed in Service Nov 2011	Construction complete, project operational, no problems	None	None
	<b>Total</b>	<b>569</b>						

# **IKAIKA OHANA DEVELOPMENT EXPERIENCE IN HAWAII**

		Construc- tion	Permanent Sources										
#	Project Name	HMMF Bond	HOME	HTF	RHRF	USDA/ RD	Other	First Mort- gage	Deferred Dev Fee	LIHTC	Total Perm Sources	Total Constr & Perm Assistance	Rental Subsidy (units)
1	Kaiaulu O Waikoloa 68-1850 Pua Melia St. Waikoloa HI	12,360,000	2,300,000	None	9,900,000	None	None	2,640,000	387,455	11,959,563	27,187,018	39,547,018	15
2	Villages of La'opua Villages 4 & 5 Kealahou HI	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
3	Kaiwahine Village 555 Kaiwahine St. Kihei Maui HI	27,184,000	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
4	Kamana Elderly 145 Kamana St. Hilo HI	8,150,000	None	None	None	None	6,030,224	2,196,000	1,154,206	6,569,570	15,950,000	24,100,000	61
5	Riverside Apts 333 Ohai St. Hilo HI	5,610,415	None	None	7,894,095	None	None	1,725,000	298,532	8,039,379	17,957,006	23,567,421	69
6	Hale Makana 89-201 Lepeka Ave Waianae HI	7,350,000	1,600,000	None	4,409,748	1,000,000	249,300	1,500,000	790,088	5,765,212	15,314,348	22,664,348	48
7	E Komo Mai Apts 816 Kinoole St. Hilo HI	5,850,000	None	None	850,000	None	575,000	600,000	370,098	6,205,986	8,601,084	14,451,084	11
	<b>Total</b>	<b>66,504,415</b>	<b>5,750,000</b>	<b>1,425,000</b>	<b>42,759,303</b>	<b>1,000,000</b>	<b>6,854,524</b>	<b>13,111,000</b>	<b>3,899,859</b>	<b>64,051,770</b>	<b>138,851,456</b>	<b>205,355,871</b>	<b>204</b>



Master Plan



Scale 1" = 800' - 0"

0 300 600 1200

# Waikoloa Highlands South Kohala, Island of Hawaii

*Richard Owensby*  
 PLANNERS  
 ARCHITECTS

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Sheet No: A - 1



**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?**

1 I have been the decision-maker of WHI together with my brother Vitaly, since it was  
2 incorporated in 2015. I have been the Vice-President of Arch, Ltd. since it was incorporated in  
3 December 1996.

4 7. **Who are the current Directors of Arch, Ltd?**

5 Mr. Aykaz V. Ovasafyan and Mr. Roberto R. Bernal.

6 Mr. Ovasafyan is our relative and we have trusted him for a long time. A company called  
7 Oehri Corporate Services AG (Principality of Liechtenstein) proposed Mr. Bernal to be appointed  
8 director of Arch, Ltd. We also acquired Arch, Ltd. through the same corporation and we trust  
9 their recommendations.

10 8. **Are either Mr. Ovasafyan or Mr. Bernal shareholders of any of the entities**  
11 **involved with WHI (Davies Limited, Arch, Ltd., Vitoil Corporation, or WHI)?**

12 Mr. Ovasafyan is a nominal shareholder of Davies Partners Limited. Mr. Ovasafyan is  
13 holding the said shares in benefit of Vitaly Grigoryants.

14 Mr. Bernal has never been a nominal owner of any of our companies.

15 9. **Pursuant to Exhibit 28 (Corporate Structure), Davies Partners Limited is the**  
16 **parent of Arch, Ltd. Please explain to the Land Use Commission what corporate**  
17 **activities Davies performs, where Davies was incorporated, and who the Directors are.**

18 Davies Partners Limited registered address is at Trident Trust Company (B.V.I.) Limited,  
19 Trident Chambers, P.O. Box 146, Road Town, Tortola, B.V.I. Mr. Ovasafyan and Mr. Bernal  
20 serve as the directors. The company's sole purpose is to hold Arch, Ltd.'s shares.

21 10. **Are you familiar with Mr. Stefan Martirosian?**

22 Yes. He was the Director of Waikoloa Mauka, LLC ("WML") from approximately 2005  
23 to 2017, and the Director of WHI January 2015 until May 2016.

24 11. **Is Mr. Martirosian currently a shareholder or involved in the management of**  
25 **WHI, Vitoil, or Arch, Ltd, or any other company associated with WHI?**

26 No. Mr. Martirosian has no current connection with any of the corporations or the WHI  
27 Project. He has never been a shareholder of WHI, Vitoil Corporation, or Arch, Ltd., or any other  
28 company associated with WHI.

1           12.     Please explain to the Land Use Commission in what capacity Mr. Martirosian  
2                 signed the Shareholder's Resolution of WHI, dated May 9, 2016, (Exhibit 5 of the  
3                 initial Statement of Position on Order to Show Cause, filed with the Land Use  
4                 Commission on August 8, 2018)?

5           As stated in the Shareholder's Resolution itself, Mr. Martirosian signed the resolution, *i.e.*,  
6     **Exhibit 5**, as the representative of Vitoil Corporation. Mr. Ovasafyan signed the same resolution  
7     as the representative of Arch, Ltd. At the time the Shareholder's Resolution was signed, Arch,  
8     Ltd. had a 80% ownership interest and Vitoil Corporation had a 20% ownership interest in WHI.  
9     Neither Mr. Martirosian nor Mr. Ovasafyan signed the Shareholder's Resolution in their  
10    individual capacity as a shareholder of WHI or any other entity, *i.e.*, both of them signed as  
11    Directors of the then-respective shareholders of WHI.

12           At the time the Shareholder's Resolution was signed, Mr. Martirosian was the Director of  
13    Vitoil Corporation and hence acting for Vitoil Corporation just like Mr. Ovasafyan was, and is  
14    currently, the Director of Arch, Ltd. As previously stated, Mr. Martirosian was never a  
15    shareholder of any company associated with WHI.

16           13.     Please explain to the Land Use Commission who managed the Project during  
17                 the years Mr. Martirosian was an officer of WHI?

18           Mr. Martirosian. He served as WHI's Secretary, Chief Financial Officer, and Director.  
19    He was trusted by WHI's owners to act as the only one who dealt with the Project and who was  
20    solely responsible for overseeing all aspects of the Project.

21           During the early part of Mr. Martirosian's tenure with WML and WHI, he oversaw the  
22    development of the Project, obtained land use approvals and attained the substantial  
23    commencement of the Project under Hawaii law.

24           Later in the process, Mr. Martirosian's complete abdication of his corporate duties,  
25    fraudulent activities and his failure to inform myself and my brother Vitaly of his true business  
26    dealings is the direct cause of the predicament that WHI now finds itself in before the Land Use  
27    Commission.



1           14.   Approximately when did you become aware that Mr. Martirosian was not  
2           pursuing the necessary actions to fulfill the terms and conditions imposed by the Land  
3           Use Commission?

4           In the summer of 2017. I accept full responsibility for the delays in developing the Project  
5           caused by putting our trust with Mr. Martirosian.

6           However, we now fully understand the requirements of the Land Use Commission's  
7           Decision and Order and are diligently working on the tasks to develop the Project with our new  
8           development team.

9           15.   What steps has WHI taken, after removing Mr. Martirosian from his positions  
10          with WHI, in respect of fulfilling the terms and conditions of the Project?

11          WHI has hired new management, both internally and externally. Internally, WHI has  
12          appointed Natalia Batichtcheva to replace Mr. Martirosian. My brother and I are taking charge of  
13          the Project and implement decisions on moving the Project forward. WHI has also hired an  
14          external project manager in Hawaii, Joel K. LaPinta, who has extensive development experience.

15          In addition to fully satisfying affordable housing Condition 9 through voluntary  
16          conveyance of the 11.7 acre parcel pursuant to the Affordable Housing Agreement with the  
17          County of Hawaii, WHI has recently initiated discussions with the County of Hawaii Office of  
18          Housing and Community Development to cooperate in conveyance of additional land to a non-  
19          profit affordable housing developer to develop more affordable housing at Waikoloa. WHI has  
20          also recently obtained financing from Armbusinessbank CJSC ("ABB") in the amount of  
21          \$45,000,000 USD in order to complete the Project. See Petitioner's Exhibit 20.

22          16.   Please elaborate to the Land Use Commission what ABB is.

23          ABB is an Armenian bank that was established in 1991. ABB's sole shareholder is my  
24          brother, Vitaly Grigoryants. The bank has been a member of the Yerevan Stock Exchange since  
25          1994. The bank is also a member of ArCa local payment system, as well as MasterCard and Visa  
26          International payment systems.

27          17.   Please elaborate to the Land Use Commission ABB's role in this Project and  
28          your involvement with ABB?

1 ABB has committed to lending \$45,000,000 to Arch, Ltd. and has consented to the  
2 transfer of those funds from Arch, Ltd. to WHI for the specific purpose of developing the Project  
3 on the Petition Area.

4 My brother Vitaly Grigoryants is the sole shareholder of ABB.

5 18. **Is ABB accredited to lend money internationally?**

6 Yes. ABB joined the international payment system of Western Union in 2000. The bank  
7 is a SWIFT s.c.r.l (Society for Worldwide Interbank Financial Telecommunication) shareholder  
8 since 2006. Funds remittance orders of individual customers are channeled via Anelik, Money  
9 Gram, Unistream, Ria, Sigue, Converse Transfer, Intelepress and BEST instant money transfer  
10 systems, in RUB, USD and EUR.

11 19. **Is WHI financially capable of going forward with the Project?**

12 Yes. We own the Petition Area, which is a parcel of land consisting of approximately  
13 731.581-acres, free and clear of encumbrances. Further, as mentioned above, WHI has the  
14 financing to proceed with the development of the Petition Area.

15 20. **Is WHI currently able and willing to see the Project through completion?**

16 Yes. As explained, we have received financing for the Project, have a competent  
17 development team, and are ready to proceed. As the ultimate decision-makers of WHI, my  
18 brother Vitaly and I will make sure that the Project moves forward on a timely basis.


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21 *[Signature page to follow]*  
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DATED: Honolulu, Hawai'i, November 16, 2018.

Respectfully submitted,

  
VALERY GRIGORYANTS



**ARCH LIMITED**

1<sup>ST</sup> FLOOR,  
KINGS COURT,  
BAY STREET,  
P.O. BOX N-3944,  
NASSAU BAHAMAS

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.



**ARCH LIMITED**

1<sup>ST</sup> FLOOR,  
KINGS COURT,  
BAY STREET,  
P.O. BOX N-3944,  
NASSAU BAHAMAS

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



**ARCH LIMITED**

1<sup>ST</sup> FLOOR,  
KINGS COURT,  
BAY STREET,  
P.O. BOX N-3944,  
NASSAU BAHAMAS

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

A handwritten signature in blue ink, appearing to be 'Ovasafyan A.V.', written in a cursive style.

Ovasafyan A.V.

**Exhibit 63b**





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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]*

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DATED: Los Angeles, CA, November 16, 2018.

Respectfully submitted,

  
NATALIA BATICHTCHEVA

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