STATE OF HAWAI'I

LAND USE COMMISSION

January 9, 2020

Commencing at 9:02 a.m.

Airport Conference Center
400 Rodgers Boulevard, Suite 700, Room IIT-2
Honolulu, Hawai'i 96819

AGENDA

VIII. CALL TO ORDER

IX. ACTION
       SP09-403 DEPARTMENT OF ENVIRONMENTAL SERVICES
       (Waimanalo Gulch Sanitary Landfill Remand)
       To Consider the Motion to Terminate Order
       Regarding Written Status Reports on Proceedings
       of the Planning Commission Relating to County
       Special Use Permit File No. 2008/SUP-2.

X. STATUS REPORT
       A87-610 TOM GENTRY AND GENTRY PACIFIC, LTD.,
       (Successor Petitioner - Kamehameha Schools),
       (O'AHU)

XI. CONTINUED ACTION (from November 20-21, 2019,
       LUC meeting)
       A87-610 TOM GENTRY AND GENTRY PACIFIC, LTD.,
       (Successor Petitioner - Kamehameha Schools),
       (O'AHU)

XII. ADJOURNMENT

BEFORE: Laura Savo, CSR #347
APPEARANCES:

COMMISSIONERS:

JONATHAN SCHEUER, Chair
NANCY CABRAL, Vice Chair
EDMUND ACZON, Vice Chair
DAWN CHANG
DAN GIOVANNI
LEE OHIGASHI
GARY OKUDA
ARNOLD WONG

WILLIAM WYNHOFF, ESQ.
Deputy Attorney General

STAFF:

DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk/Planner
RASMI AGRAHARI, Planner

DAWN APUNA, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI, Planning Program Administrator
LORENE MAKI, Planner
State of Hawai'i, Office of Planning

DINA WONG, ESQ.
Deputy Corporation Counsel
City & County of Honolulu
For Department of Planning & Permitting

KAMILLA C.K. CHAN, ESQ.
Deputy Corporation Counsel
City & County of Honolulu
For Department of Environmental Services

CALVERT CHIPCHASE, ESQ.
For Ko Olina Community Assoc. and Maile Shimabukuro

NAOMI IWABUCHI, ESQ.
For Schnitzer Steel Hawai'i Corporation

JENNIFER LIM, ESQ.
ONAONA P. THOENE, ESQ.
For A87-610

NAOMI KUWAYE, ESQ.
For Clearway Energy Group
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CHAIR SCHEUER: Aloha. Good morning. This is the January 9th, 2020, Land Use Commission meeting. Our next agenda item is an action meeting on Docket No. SP09-403, Department of Environmental Services, Waimanalo Gulch Sanitary Landfill Remand, to consider the motion to terminate the order regarding written status reports on proceedings of the planning commission relating to county's Special Use Permit File No. 2008/SUP-2.

Will the parties please identify themselves for the record?

MS. CHAN: Good morning. Kamilla Chan for the City and County of Honolulu.

MR. CHIPCHASE: Good morning. Cal Chipchase for intervenors Ko Olina Community Association and Maile Shimabukuro.

CHAIR SCHEUER: Come on down.

MS. IWABUCHI: We are not a party to this case, but I'm Naomi Iwabuchi on behalf of Schnitzer Steel --

(Reporter clarification.)

MS. IWABUCHI: My name is Naomi Iwabuchi on behalf of Schnitzer Steel Hawai'i Corporation.
We're an interested nonparty.

CHAIR SCHEUER: You are a party to this case. Why don't you have a seat.

MS. WONG: Good morning. Dina Wong for the City and County of Honolulu, Department of Planning and Permitting.

MR. FUNAKOSHI: Rodney Funakoshi --

(Reporter clarification.)

MR. FUNAKOSHI: Rodney Funakoshi with the State of Hawai'i, Office of Planning.

CHAIR SCHEUER: Okay. Let me update the record. On October 9, 2019, the commission met in Honolulu, Hawai'i, to consider the findings of fact, and conclusions of law and decision and order of the City and County of Honolulu Planning Commission's approving the City and County Honolulu, Department of Environmental Services', application for a new special use permit to supersede the existing special use permit to allow an expansion and time extension for the Waimanalo Gulch Sanitary Landfill and to modify Special Use Permit No. 2008/SUP-2 by modifying the LUC's order approving the City and County of Honolulu, Planning Commission's, findings of fact, conclusions of law and decision and order with modifications dated October 22nd, 2009 [sic].
On October 31st, the commission adopted a form of the order approving the consolidated applications of the Department of Environmental Services, City and County of Honolulu, for a new special use permit to supersede the existing special use permit to allow a 92.5 acre expansion and time extension for Waimanalo Gulch Sanitary Landfill and to modify Land Use Commission order adopting the City and County of Honolulu planning commission's findings of fact, conclusions of law and decision and order with modifications for Docket No. SP09-403, Department of Environmental Services.

On November 1st, the commission mailed copies of the executed decision and order to the parties.

On December 4th, the commission received the petitioner's motion to terminate the order regarding written status reports on proceedings of the Planning Commission related to the county's Special Use Permit File No. 2008/SUP-2.

On December 23rd, the commission received OP's Statement of No Opposition to the applicant's motion.

On December 30th, an LUC meeting agenda notice for the January 8th through 9th, 2020, meeting
was sent to the parties and to the statewide email, Oahu and Hawai'i island, mailing lists.

And in early January, the additional testimony has been received and posted to the LUC's website.

Let me first run over our procedures. I will first call anybody desiring to give public testimony.

Is there anybody desiring to give public testimony on this matter today?

Seeing none, the commission will begin proceedings on the motion starting with the petitioner presenting their case followed by the County Planning Department and Office of Planning and Petitioner Steel if they wish to make any statements.

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

Are you going to reserve some time?

MS. CHAN: I don't believe that's going to be necessary.

CHAIR SCHEUER: From time to time, if necessary, I will also take short breaks. Are there any questions on our procedures from our parties?

I'm sorry. I neglected to mention your
MR. CHIPCHASE: I figured you hadn't totally forgotten about us. I wasn't that worried, Chair.

CHAIR SCHEUER: Okay. Thank you.

So going once, going twice, any public testimony on this agenda item? Seeing none, let's start with the city and county.

MS. CHAN: The city and county respectfully requests termination of the May 2014 order that required us to provide written status reports on the Planning Commission proceedings. That order was issued while the case was on remand to the Planning Commission. And given that the LUC has issued its November 1st, 2019, order, there's nothing further for us to report on at the Planning Commission level.

CHAIR SCHEUER: Okay. Are there any questions for the petitioner from the commission?

COMMISSIONER WONG: So the question I have is for this docket, especially Waimanalo Gulch, what happens if someone from the general public or the Planning Commission itself or planning department wants to bring it back up, how would we go about it?

MS. CHAN: To bring back up the case?
COMMISSIONER WONG: Yes. Let's say they want to do something else, want to review this again or --

MS. CHAN: And you're talking about members of the public as well as --

COMMISSIONER WONG: Whoever -- whomever.

MS. CHAN: I believe that there's another condition. I'd have to double-check, but there's another condition in the existing order that would allow the LUC to bring it up on its own.

COMMISSIONER WONG: No, I'm not talking about the LUC. I'm talking about the city, the county, brings it up without our knowledge, how would we know about that?

MS. CHAN: You mean in terms of filing another application to further amend?

COMMISSIONER WONG: Exactly. Let's say they want to appeal what we just said or they want to take it to court or something, which they could; right?

MS. CHAN: The period of time to appeal the decision has past.

COMMISSIONER WONG: For Land Use?

MS. CHAN: Yes.

COMMISSIONER WONG: What about for the
courts?

MS. CHAN: Well, to appeal the LUC's decision, that's final at this point.

COMMISSIONER WONG: Okay. Let's say they want to change it or do something, how would we know about it?

MS. CHAN: At the time that an application is filed at the Planning Commission, it's my understanding that their rules require them to provide notice to the LUC.

COMMISSIONER WONG: I'm concerned the way the city and county dealt with this project. We have intervenors here and the general public who, for the past years or decades, have been hurt. So -- and, you know, we do have companies also. You know, so what is going to happen if this comes up again, and how would they know about it?

MS. CHAN: The permit notifications would be filed if the city was seeking to further amend the SUP or take another action. The only issue that we're trying to address here is the imposition of the requirement that we provide reports regarding the planning commission's actions while the case was on remand. There was no automatically terminating provision in that order even though the case had come
back up to the LUC.

COMMISSIONER WONG: So this case is --
this docket is considered closed for the Land Use; is
that correct?

MS. CHAN: I mean, as far as the city's
actions to amend the permit based on that application
that was filed back in 2009 and 2012, yes, there's
nothing further for us to do.

You are correct that if the city would
try to amend it down the road in the future, that
would be a separate issue, but the motion that we
brought and the order that we're seeking to terminate
is only the 2014 order that requires the reports to
be filed every other month regarding the Planning
Commission proceedings on that docket.

COMMISSIONER WONG: So could it be done
every year instead just saying there's nothing
happening, just the one there? Could that be done?

MS. CHAN: Yeah, I suppose we could do
that. There's other reporting requirements that have
been imposed in the November 1st, 2019, order that
requires certain reporting, you know, in terms of
progress for landfill siting and things of that
nature. So you would already receive that. Even an
annual report of that nature, while it wouldn't be
problematic for us to do, would probably be
duplicative.

   COMMISSIONER WONG: No other questions.
   Thank you.

   CHAIR SCHEUER: Thank you, Commissioner
   Wong.

   Are there other questions for the city
   and county? Commissioner Okuda.

   COMMISSIONER OKUDA: Thank you,
   Mr. Chair.

   Just so that I got some clarification
   here, so is it the city's position that the time to
   appeal the Land Use Commission's decision has run and
   passed?

   MS. CHAN: Yes, that's correct.

   COMMISSIONER OKUDA: And no notice of
   appeal has been filed; correct?

   MS. CHAN: That's correct.

   COMMISSIONER OKUDA: And is the city
   taking the position that anything which would amount
to a tolling motion, meaning some type of action or
motion which extends the time of appeal, is the city
taking the position that such a situation or motion
exists or appeal is just -- there's absolutely no
appellate jurisdiction here?
MS. CHAN: Yes. At this point in time, given the amount of time that has passed, that's correct. That's the city's position.

COMMISSIONER OKUDA: That there is no appellate jurisdiction; correct?

MS. CHAN: Correct.

COMMISSIONER OKUDA: Okay. And follow-up on Commissioner Wong's question as far as necessity for further reporting, the city intends to follow all the terms and conditions of the order that the Land Use Commission has issued in this matter; correct?

MS. CHAN: Yes.

COMMISSIONER OKUDA: And that includes the requirement to hold a public hearing, periodic public hearing, the period being specified in the order and that public hearing to report to the community to take place physically in Waianae, Maili or Nanakuli; correct?

MS. CHAN: That's correct.

COMMISSIONER OKUDA: And the city intends to comply with that requirement; is that true?

MS. CHAN: Yes.

COMMISSIONER OKUDA: Has the city scheduled a tentative date for such a public hearing?

MS. CHAN: I believe there's been
discussion at ENV as they were trying to find a
suitable location that would be easily accessible to
members of the public. I'm not aware of the specific
date, but the last one when I checked in with them a
couple weeks ago, they were in the process of setting
that up.

COMMISSIONER OKUDA: Okay. Do you have
any estimated time when the city is going to, you
know, make a decision about time, place -- time,
place and location of the hearing to the public?

MS. CHAN: I apologize. I didn't check
in with them in advance of this hearing with respect
to that specific question. So I'm not sure. But
they would be -- my understanding is that they would
follow the prior procedures that they followed in the
past regarding the hearings that were required under
the previous order, and they would then publish
notice of those meetings.

COMMISSIONER OKUDA: Okay. And just so
that I'm a little bit clear, and I apologize, I'm not
really familiar with the prior process of procedures.
In what manner would the Waianae, Maili, Nanakuli
communities, the leeward coast communities, receive
notice of this public hearing?

MS. CHAN: Those were done -- in addition
to the announcements at the prior hearing, the preceding ones, they would also publish in the newspaper and I believe post it to their website.

COMMISSIONER OKUDA: Okay.

MS. CHAN: And as to the meetings they were already holding in Kapolei, like, given the new conditions that were imposed, those meetings would be held in one of those three communities that you mentioned.

COMMISSIONER OKUDA: Okay. Thank you very much. I'm asking these questions to see whether or not your motion should be granted in part because of the fact that reporting might be redundant. Thank you.

MS. CHAN: Thank you.

CHAIR SCHEUER: Are there further questions for the Department of Environmental Services? If not, I'm just going to go down the line starting with Ko Olina Community Association and Colleen Hanabusa.

MR. CHIPCHASE: Very good, Chair.

So I'm trying to strike a balance here on the reporting because I certainly don't intend for the city to simply have to say -- I think it's every three months or something like that -- "There are no
proceedings. There are no proceedings." I don't think that that has value to the commission. It doesn't have value to us, and I don't intend to create busy work for the city even if it's minimally burdensome.

On the other hand, I have many of the same concerns that Commissioner Wong expressed and concerns that Commissioner Okuda expressed. Commissioner Wong's concerns that echo my own or that I echo his reflect what if there are further proceedings. Yes, there are notice obligations, certainly, upon filing. There aren't necessarily notice obligations or reporting obligations as proceedings go forward.

And so on that score, I would look to suggest to the commission that a more appropriate approach than terminating the order would be modifying so that it reads something to the effect that if there's an intent to proceed either on an amendment to the special permit or on a district boundary amendment, really anything involving the landfill, that notice be given to the commission and to the interested parties prior to filing. And that at that point, an obligation to update the commission reacts. So as long as there are proceedings or
intended proceedings involving the landfill before
the Honolulu Planning Commission, that there be a
reporting obligation. If there are none, there are
none, and the city doesn't have to report. If there
are some, there are some, and the city should report
them to you and to us as well as soon as practicable.

On the other side of it to Commissioner
Okuda's questions, those, to me, go to notice to the
community and involvement of the community of the
city's plans regarding the landfill and resiting the
landfill, and I think those are very important too.
And in terms of how the community finds out about
those meetings -- and they are required. I believe
the first one is going to be in February. I had it
on my phone. I can look it up. But I believe it's
in February. It isn't that easy to get notice of
them. You -- notice published in the paper, how many
folks read the legal notices in the paper? It's, you
know, not that common. It used to be a very good way
to notify people. It's really not these days. On
the website, you have to affirmatively go out and
look at the website.

So if the vehicle is appropriate, I think
this is an opportunity to put into the order and
modify the order, and that way, too, that notice
actually goes to, for example, the neighborhood
boards of these meetings, if it does not already. I
don't remember exactly that point, Kam. I don't mean
to be redundant, but something like. And notice to
us because we are the party that is in the case, as
Commissioner Wong mentioned, and would participate,
is very interested in participating in those
community meetings, and I think that would be an
appropriate modification to the order and wouldn't be
in any way burdensome on the city.

CHAIR SCHEUER: Thank you. And I
apologize for a second time. I suggested you were
representing Colleen Hanabusa. I meant Senator
Shimabukuro.

MR. CHIPCHASE: I let that one go too,
Chair. I figured you knew who I represented.

CHAIR SCHEUER: I made a mistake yet
again. It won't be the last time today, I am sure.

Are there questions for Mr. Chipchase?

COMMISSIONER WONG: Chair?

CHAIR SCHEUER: Commissioner Wong.

COMMISSIONER WONG: So, Mr. Chipchase,
if -- let's say there is something that starts up
again, like you said, regarding Waimanalo Gulch or
any other landfills, besides that one notice, I mean
that one time, did you want continuing notices also?

MR. CHIPCHASE: I think that periodic updates of the proceeding to the Land Use Commission are appropriate because this commission has been very involved for a very long time. In fact, the reason the notice obligation was imposed in the first place is to let us know what's going on there. So while there may be a notice of an initial filing already required, I think the periodic updates are important and are helpful.

COMMISSIONER WONG: Thank you.

CHAIR SCHEUER: Are there other questions for Mr. Chipchase?

Do you have suggested language?

MR. CHIPCHASE: Off the top of my head, I would say that if the city intends to initiate any other proceedings involving the Waimanalo Gulch Sanitary Landfill, including, but not limited to, an amendment of the SP or a district boundary amendment or an initiation of a new SP, that notice be provided to the parties to this SP and to the LUC prior to filing. And that once the proceeding is initiated, the city report on the status of the proceedings every three months. So in that way, the ongoing obligations nears what exists.
In terms of the notice to the community on the periodic updates on the status of the landfill to resite it and closing it, I would suggest something along the lines of, you know, seven days or ten days before the city's periodic meetings on periodic community meetings, and it also has a reporting obligation to the Planning Commission, an annual reporting obligation, that notice of those meetings and of the reporting to the Planning Commission be provided to the neighborhood boards, the applicable neighborhood boards and to the parties to this proceeding.

CHAIR SCHEUER: Thank you. Are there further questions for Mr. Chipchase? Commissioner Cabral.

COMMISSIONER CABRAL: I thank you and appreciate your perspective, and I am one that agrees that government that governs least governs best as I sit here. But I am wondering, and perhaps this is a question of our environmental services with the city and county, does that report that is generally given include things that updates on something that may have happened just -- not just the notices of governmental paper-pushing, procedural things, but what about, like, what if there was a landslide or
there was a fall, or something positive like spring flowers bloomed in the back corner? I mean, is that kind of notification ever given out to the Land Use included in these kind of reports? Because I would like to think that if something of note were to occur, perhaps the Land Use Commission would -- maybe they don't need to know that, but I would think that the public might need to know those kinds of things, and I'm wondering what the reporting vehicle is to the general public when something does occur on the site and how that can be included in some manner. That's my only concern.

MR. CHIPCHASE: Ms. Chan, did you want to answer that?

MS. CHAN: Yes. So to address that question, you're referring to the public meetings that we're holding in that reporting requirement, right, as opposed to the written status reports that's the subject of the motion?

COMMISSIONER CABRAL: Okay. There's two different things going on.

MS. CHAN: Yeah.

COMMISSIONER CABRAL: Okay. That's fine then. As long as notification of activity is still ongoing as activity occurs, that's my biggest
concern.

MS. CHAN: I think the city -- the Department of Environmental Services reports on the things that the LUC has requested, and this is with respect to things that were already in the prior order as well as going forward. What they're intending to do at the meetings is to address the things that are outlined in the conditions that they've been requested to report to the public on.

You know, in terms of other significant events, that's not to say that those things aren't reported on separately or, you know, advisories aren't published -- there's separate channels, like through their public information officer, for example. So that type of notification occurs as well as other notifications that are required to, say, the Department of Health. You know, just depending on what type of circumstance we're talking about, there's different vehicles for that.

COMMISSIONER CABRAL: Okay. Thank you very much.

MR. CHIPCHASE: And if I may, Commissioner, in my perspective, there is the updates to the community obligation, the periodic updates to the community, and there are other reporting
obligations that the city certainly has to different agencies in different ways. I'm not aware of a general reporting obligation of significant events, either positive or negative, to the community. It's certainly not in any way of the time limit. The meetings are periodic. So there could be a significant event, and the community hasn't had an opportunity to ask about it or learn about it unless it hunts around for the notices to the agencies until some period later. And I'm happy to be wrong about that, but I don't recall any general reporting obligation for significant events.

COMMISSIONER CABRAL: Let's hope there's never a significant event.

MR. CHIPCHASE: We can hope.

COMMISSIONER CABRAL: Thank you, though, for the general information.

CHAIR SCHEUER: Are there further questions for Mr. Chipchase?

COMMISSIONER OHIGASHI: Mr. Chair?

CHAIR SCHEUER: Commissioner Ohigashi followed by Commissioner Aczon.

COMMISSIONER OHIGASHI: I just have a simple question. You're requesting prior notification before they file -- city files anything
in regard to this matter before the Planning Commission?

MR. CHIPCHASE: Yes, Commissioner.

COMMISSIONER OHIGASHI: How much prior notification? I'm just curious.

MR. CHIPCHASE: I'll pick a number. Two weeks would be ample so that at least there's some preparation, some knowledge that something is coming and we can meaningfully participate in it.

COMMISSIONER OHIGASHI: Absent of course -- I'm just trying to get at -- because, you know, I do some practice of law. Not much in the last couple days. Sometimes the decision to file is not made until the time frame. That's why it was of concern. Wouldn't any filing that the city does and served upon you upon that time, wouldn't that give you enough time to respond to it, prepare for it, or are you looking to stop them from filing if you have notice of it?

MR. CHIPCHASE: So, Commissioner --

(Telephone ringing.)

MR. CHIPCHASE: If you'll excuse me for one second as my partner calls me at an inopportune time.

The nature of these filings are not the
sort of things that maybe you and I are used to in
the civil practice where you would have an emergency
motion or a complaint that you would put together;
you'd get a call on Friday, and the client wants to
file a complaint on Monday. There's not really an
opportunity to do those things. These are things
that you're working on for months and months before
you actually put a filing down. So I don't think
that there is -- there is a situation where there
would be some filing that the city is not able to
provide prior notice of.

In terms of the -- the notice to us, it's
not entirely clear to me that we would be notified.
I actually tend to think we wouldn't be notified
unless it was a specific proceeding on this special
use permit that came in for amendment. That would
probably be obliged to serve us when they filed. But
if there was some other proceeding on the landfill,
there's no direct obligation to notify us before they
initiate it. And so I do believe, given the history
of this, that you sat through for not just those two
days but for many years, that notice to an intervenor
who I spent so much time in these proceedings is
appropriate.

COMMISSIONER OHIGASHI: Mr. Chipchase, to
follow up, are you limiting prior notice to those items that are filed before the Planning Commission, or are you going to -- are you going to ask to be consulted in regard to federal agency filings? You know, what's the limits on it?

MR. CHIPCHASE: Specifically, I was only addressing the text of this order which the city has sought to modify which is a reporting obligation before the Planning Commission. So my two requests, which echoed Commissioner Wong and Commissioner Okuda, one is Planning Commission. Not all agencies, but the Planning Commission. And the other is the notice of these reporting events, these meetings and things like that that will happen period -- on a periodic basis to make sure we're able and the community is able to best participate in those meetings.

COMMISSIONER OHIGASHI: And if I may, Mr. Chair, if I can ask you, would we be able to elicit the city's response to this request?

CHAIR SCHEUER: Certainly. Do you want to do that at the end? Even though they declined the opportunity to reserve time, I certainly would allow them after we've gone through everybody to weigh in.

MS. CHAN: If I may, Chair, I would
appreciate having the opportunity to respond at the end, in part because the city was not aware of Ko Olina's position on this matter. So it would be helpful if we could respond in the end.

CHAIR SCHEUER: Certainly.

Commissioner Aczon.

VICE CHAIR ACZON: Not a question. Just a comment. I agree with Mr. Chipchase that nobody reads legal notices now. So perhaps Facebook or Twitter is more effective.

MR. CHIPCHASE: Not for me, Commissioner, I don't read those either, but I do think --

VICE CHAIR ACZON: Or for someone else.

MR. CHIPCHASE: -- someone else might.

CHAIR SCHEUER: Commissioner Okuda.

COMMISSIONER OKUDA: Thank you, Mr. Chair.

Mr. Chipchase, would you agree that depending on what the city might do, the law already has in place required processes or requirements for notice, time of notice and method of notice? For example, if the city intends to bring a district boundary amendment, there are certain things the city has to do possibly, even a 343 environmental review which contains its own set of required notices,
community engagement, things like that. If the city attempts to modify something on this exact docket, you, as a party, or your client, as a party, will have certain rights of notice. And so in other words, the existing framework as far as notices, required notices, how notices are done, it depends on what's actually being filed, what's actually taking place, and maybe we shouldn't muddy up those existing processes by setting a totally new notice scheme. In other words, the type of notice that's required to be given, if at all, depends on existing law. If it's complied with by the city, it's complied with. If it's not complied with, then there's going to be ramifications.

Although, I do agree -- I think my own personal view is we could make a little bit more clear the type of notice and method of notice that should be given regarding these public hearings, but perhaps the public hearing or the requirement for these public meetings are broad enough on their existing order since there's no appeal that can be had from that order anymore, that that can cover these other potential contingencies. And if you see in the future that somehow or another the city or your clients or other people in the community are
being prejudiced by a lack of notice, I think it's always a possibility to bring some type of motion to enforce the order that the commission entered, and we can take it up at that time.

In other words, I'm not saying your concerns are speculative, but it seems like they might not be ripe, and we might be trying to set up all these processes without knowing exactly what problem we're trying to address.

MR. CHIPCHASE: I appreciate the comments and the concern about mucking about. Certainly, there are some notice obligations, different notice obligations depending on what would be filed, and some of those, as I said, we would be able to participate in or have notice of and some we wouldn't. But I think it's important to remember the context of why we're here. We're not here with Ko Olina asking for fresh reporting obligations that haven't existed. We're here with the city asking to modify an existing reporting obligation, one that's been in place for five years and was in place for a very good reason. Some of the circumstances that gave rise to that notice have changed, but the underlying point of it has not. And so because we're here not on Ko Olina's request for additional
reporting obligations, but on the city's request to relieve it of a reporting obligation, I think it's appropriate to look at modifying that instead of ending it in a way that fits the context that we're in.

COMMISSIONER OKUDA: Thank you.

CHAIR SCHEUER: Are there further questions for Mr. Chipchase? If not, counsel for Schnitzer Steel, and if you would introduce yourself again, please.

MS. IWABUCHI: Naomi Iwabuchi for Schnitzer Steel Hawai'i Corporation. It is Schnitzer Steel's position that we take no position as to this motion. However, any reporting that is required of the city, we would like to be served with that in order to keep apprised of the situation.

CHAIR SCHEUER: Thank you. Are there questions, commissioners? No.

City and County, DPP.

MS. WONG: The city has no objection to the petitioner's motion to terminate the order regarding the written status reports.

CHAIR SCHEUER: Okay. Office of Planning, Mr. Funakoshi.

MR. FUNAKOSHI: Likewise, the Office of
Planning has no objection to the city's --

(Reporter clarification.)

MR. FUNAKOSHI: No objection to the city's terminating their written status reports.

CHAIR SCHEUER: Ms. Chan.

MS. CHAN: Thank you, Chair. It seems to me that the discussion that's come up and with KOCA's suggested modification to the 2014 order requiring written status reports, that there's really two different things that we're talking about. One is the motion that we've brought, the modification to that 2014 order that was really limited to status reports with respect to the planning commission's proceeding. And looking back at what was going on at that time, the case was remanded back to the Planning Commission after it was remanded from the Supreme Court, and there was admittedly a lengthy delay at that point in time. And so, understandably, the LUC wanted to know what was going on at that level. The city and Ko Olina and other parties were negotiating to see if there was a way to come up with a joint order to resolve the case. And so there are reasons for those delays and, understandably, a request to be updated on the status of the Planning Commission proceedings.
What I'm understanding is Ko Olina's request at that point is really, more appropriately, a modification to the November 2019 order that was issued. It is seeking further requirements and conditions upon the city, and so those are not appropriate for the 2014 order that's the subject of the city's motion. So we would disagree with Ko Olina on that point.

CHAIR SCHEUER: Commissioners, do you have any further questions for any of the parties?

Commissioner Wong.

COMMISSIONER WONG: So for some people in the audience, is the 2014 and 2019 about the same parcel?

MS. CHAN: Yes, that's correct.

COMMISSIONER WONG: So would a modification of this 2014 motion kind of fit the same parcel, the information?

MS. CHAN: Yes, with respect to the parcel. As far as what we were reporting on, it was limited to the status of the Planning Commission proceedings which, you know, had been sitting before the Planning Commission for quite some time at that point. But, yes, with respect to the parcel, we're still talking about --
COMMISSIONER WONG: The Waimanalo Gulch.

MS. CHAN: -- the Waimanalo Gulch, yes.

COMMISSIONER WONG: I'm a simple guy.

This is interesting in the sense that we're talking about Waimanalo Gulch as a whole, but there's two different motions, 2014 and 2019; right?

MS. CHAN: Sorry. There's one motion, but we're talking about two different orders, correct, yes.

COMMISSIONER WONG: One issue? I mean, the Waimanalo Gulch issue as a whole; right? The parcel.

MS. CHAN: No. I would explain it this way: The 2014 order simply requires the city to provide -- written status reports about the proceedings that were pending before the Planning Commission. So that is something separate from the 2019 order and the decision and all of the conditions that are imposed there. But our position would be that terminating the 2014 order that required written status reports about proceedings that were ongoing at that point in time while the case was still sitting before the Planning Commission really serves no purpose at this point, but, also, it doesn't take anything away from our obligations under 2019 order.
We would still be providing public notice for any types of meetings going forward.

COMMISSIONER WONG: Okay. Sorry. I'm just thinking -- I'm going to think out loud again. If we put this on now instead of the 2019, if we bring it back in and say "Let's modify 2019," isn't that a waste of time for everyone if we just put this on the 2014?

MS. CHAN: I don't think it's a waste of time if you're talking about trying to deal with it in an appropriate manner. The 2014 order really was limited to that specific purpose to require the status report. So it doesn't seem to be appropriate to modify that order to impose additional reporting requirements that are outside of what was covered under that particular order.

COMMISSIONER WONG: Yeah, okay. So I'm sorry. I'm still -- I'm sorry. I'm not being paid to sit here. My boss is getting on my case for taking too much time for Land Use.

The issue is if -- let's say Mr. Chipchase comes up and says "Let's modify 2019, make a motion to modify 2019," on the same issue that we just talked about modifying, isn't that a waste of time for all of the Land Use commissioners?
MS. CHAN: I would hesitate to characterize it as a waste of time simply because if it's important to a party, then I'm not going to --

COMMISSIONER WONG: So the question is if we put the 2014 motion that's in front of us right now and just add this modification about Waimanalo Gulch, can we do it?

MS. CHAN: I would say, no, that it would impermissibly modify -- the action would be modifying the 2019 decision, and that would be a separate process.

COMMISSIONER WONG: I want to hear from Mr. Chipchase on this one, please.

MR. CHIPCHASE: Happy to, Commissioner. Of course you can modify the 2014 order. The city is coming and seeking to end the 2014 order and existing reporting obligation. If you can terminate it, you can modify. That has nothing to do with any sort of impropriety or excess of the Land Use Commission's powers. The Land Use Commission imposed an order. It was done in a specific context for very good reasons. The city has said, "Some of those circumstances have changed. So we don't want to do it anymore." To modify it to reflect the current circumstances is perfectly appropriate and is the
right vehicle to do it.

COMMISSIONER WONG: So the question is, again, let's say we just -- hypothetically say, "Okay. Let's pass this motion with no modification," then Mr. Chipchase, in your mind, you say, "Hey, you know what, I want this modification to go through. So let's bring them back in for the 2019," you could do that, right, just on this issue again; right?

MR. CHIPCHASE: I could make a motion to modify the order, and we would have to have a whole additional proceeding on it.

COMMISSIONER WONG: Okay. Thank you.

CHAIR SCHEUER: Thank you, Commissioner Wong.

Commissioner Okuda.

COMMISSIONER OKUDA: Mr. Chipchase, if I can ask you this and preface my remarks. Right now the city has said it has not appealed from our order. There's no tolling motion, meaning something that -- or tolling event, which means something that could extend the time of appeal, and the city has said there's no appellate jurisdiction. So would you agree that, you know, as long as we don't do something, for lack of the term, "stupid," this is a done deal right now; correct?
MR. CHIPCHASE: The 2019 order?

COMMISSIONER OKUDA: Yes. The order that this commission has entered which has the termination date for the landfill, the community reporting requirements, all those other conditions, that's a final, unappealable order; correct?

MR. CHIPCHASE: As it stands today, it is a final, unappealable order.

COMMISSIONER OKUDA: Okay. And you having done a law of trial practice and appellate practice. A conservative way of protecting that order is not to do anything which might inadvertently create a new issue on appeal where maybe that whole order can be reopened up; correct?

MR. CHIPCHASE: I would be very reluctant to come in on a modification of the existing 2019 order.

COMMISSIONER OKUDA: Okay. Given the fact that it might be in everyone's interest, and when I say everyone, I mean not only the Land Use Commission, but your client, the city, the community as a whole, that we have now something definite that has to be followed, possibly under penalty of contempt of court if it comes to some type of enforcement action, would it make sense that -- or
would your client really face that significant harm if the city's motion is just granted, just a plain, vanilla granting of the city's motion, and all other matters are left for possible future enforcement actions, not a modification of the existing Land Use Commission order, but enforcement?

For example, I'm not saying the city is going to do this because I think we have all the confidence that the city is going to, in good faith, carry out its legal obligations under the Land Use Commission's order. But, for example, if it appears that the sunshine law or other requirements of giving notice about the public hearings and the public reporting hearings aren't being carried out or if it looks like people are trying to game the notification process and hold a meeting in the community at some location which makes it extremely difficult for people to get to in a reasonable fashion, you still could bring a motion to enforce our Land Use Commission order; correct?

MR. CHIPCHASE: I could bring a motion asking you to enforce the order.

COMMISSIONER OKUDA: Right. And very well we might, actually, enter orders, not modifying the Land Use Commission order, but orders in aid of
basically our jurisdiction to the extent we have
certain types of abilities to, you know, make sure
our orders are followed. You could ask for that type
of relief; correct?

MR. CHIPCHASE: To an extent, and I don't
mean to get into a debate about the Land Use
Commission's enforcement powers. I know that that is
an ongoing issue in whether they're limited or
whether they're not. But I would say this,

Commissioner: In general, I would agree with you
that there is an opportunity to bring violations to
the attention of the Planning Commission or this
body.

The question finality, too, is a
reasonable point. Everybody wants to put this behind
them. I also have to recognize that the 2003 order
was final as well, and the city came in for an
extension and then an amendment to it twice,
actually. I have to also recognize that the Supreme
Court vacated the 2009 decision approving the SUP,
yet the city continued to operate the landfill
without a special permit. So I have to recognize
this history existed. And all the confidence in the
world does not eliminate to me that history.

So what we face here is a request by the
city, as I've said, to modify an existing reporting obligation. We could leave that reporting obligation in place and say, "No. You have to continue to report on any proceedings before the Planning Commission on this permit because we would want to know if you come in immediately for a modification and how that goes along the way given that that has happened before." So that would be a perfectly reasonable thing. It simply results in the commission and the city submitting reports to say, "There are no proceedings. There are no proceedings."

What I propose is a middle ground on that to say we don't expect the city to have to do this. I don't think it benefits anyone. But I don't think the reporting obligation itself is irrelevant. It's simply not activated at this point because there are no proceedings. But if there were or if there were planned to be, then it would be a very relevant obligation and we think an important obligation, and we would not ask or we would not support relieving it wholesale as the city has proposed.

COMMISSIONER OKUDA: Thank you.

CHAIR SCHEUER: Commissioners, further questions for any of the parties? If not,
commissioners, what is your pleasure?

Oh, Commissioner Chang. Right under the wire.

COMMISSIONER CHANG: Right under the wire. I couldn't resist. I hadn't said anything.

Mr. Chipchase, I just want a clarification. I mean, a lot of this appears to just be that you just don't trust the city. Because the city's motion, as I understand it -- the city's motion, as I understand, is very limited to terminating the requirement with respect to the reporting on the Planning Commission. And that has actually -- I mean, quite frankly, that's been completed. And there are other requirements within our existing order, the 2019, that provides for all of these other kinds of reporting requirements that may be more relevant. Would you -- do you see this Planning Commission reporting requirement much broader than that?

MR. CHIPCHASE: So if I may approach both parts of your question and your statement. To say that I don't trust the city, I think that would overly personalize it. I don't feel that way at all in some general sense that I don't trust the city. I simply have to recognize the history.
COMMISSIONER CHANG: Sure.

MR. CHIPCHASE: And the history was that although the landfill was supposed to close many, many, many times, it didn't. It continued, and we continued these proceedings. I've personally been involved since 2011. And so I have to recognize that history, and history does tend to have a way of repeating itself. That's not a lack of trust. That's just simply wanting to be vigilant --

COMMISSIONER CHANG: Sure.

MR. CHIPCHASE: -- and wanting the community to be aware of what is going on with respect to the landfill and any possible extensions, changes, modifications in proceedings involving it, whether on a special permit or otherwise.

In terms of this specific condition or this specific order, I should say, it is limited to reporting on proceedings on the consolidated application before the Planning Commission. I completely agree with that. As I said, that reporting obligation, if there were further proceedings on the special permit, in my view, remains relevant because it remains important to me for the Land Use Commission to be updated on any such proceedings as they're happening, not simply the
beginning, and at the end of it.

What I've tried to do since the city has asked to be relieved completely of that obligation, not to hold it in abeyance or anything like that, but to be relieved completely is to recognize that there's no reason to report on something if there is nothing to report it. But if there is something to report on, then that obligation, I believe, regains its relevance and should be continued. We've asked as part of that -- so that would be any proceedings on the landfill portion of it. We've asked as part of it, seeing this as an opportunity to make sure since a lot of what the city has said is that we have these other reporting obligations to the community, to take care of any concerns that Mr. Chipchase might have on history repeating itself or proceedings involving landfill that people aren't aware of. Well, okay, those reporting obligations are great as long as people know where to be, when to be, have easy access to that. So if those reporting obligations are relied on as a reason, that this one has lost its vitality, then let's modify this one, not eliminate it, but modify it in a way to make sure people find out about these other venues.

COMMISSIONER CHANG: And I appreciate
that, and I apologize for perhaps "not trusting" was a much stronger term.

MR. CHIPCHASE: Not at all.

COMMISSIONER CHANG: I mean, the facts are the facts. I totally understand because I guess I am just not wanting us to -- I want us to address what's before us, and I appreciated your modifications as they applied to proceedings before the Planning Commission so that the city does have an obligation, if they do something before the Planning Commission, that your modification's of their motion to terminate, but more providing notice seemed to be very reasonable and relevant to that particular condition.

I fear that we brought in this to address other -- other --

Where there are existing conditions that address the other kinds of notifications, we begin to include this in this motion, does it open up to say, "Okay, now that they did this or, you know, are they in essence, in some way, changing?" So I am just trying to be very mindful of limiting what is before so that we don't get to the point, as Commissioner Okuda raises, the potential argument that we've now kind of reopened some issues that we think had been
closed.

So that's my only concern. I do appreciate the commissioners' concerns about notification. I would hope that the county -- the city would really utilize the neighborhood boards that have monthly meetings, and that they do -- they include in their regular updates, as there's always a county representative there, an update on the landfill. And that to me, you don't need an order. You can administratively do that. So that I just wanted to get a clarification of that.

MR. CHIPCHASE: Understood, Commissioner.

CHAIR SCHEUER: Commissioners, what is your pleasure on this matter?

Commissioner Okuda.

COMMISSIONER OKUDA: Chair, I move that the city's motion or request be granted.

VICE CHAIR ACZON: Second.

COMMISSIONER GIOVANNI: I second.

CHAIR SCHEUER: A second was made by Commissioner Aczon immediately prior to --

COMMISSIONER GIOVANNI: I third.

CHAIR SCHEUER: A motion has been made to grant the motion requested by the City and County Department of Environmental Services by Commissioner
Okuda, seconded by Commissioner Aczon. We are in
discussion on the motion. Does the movant or the
seconder or the thirder wish to speak to the motion?

COMMISSIONER OKUDA: Chair, I would.

This is not to take away from the concerns raised by
Mr. Chipchase or his client, but I do agree that the
city has brought forth good cause on why this
reporting requirement is not necessary given the
order that has been entered by the Land Use
Commission. And I made this motion specifically
relying on the representations of the city that,
No. 1, there is no appeal filed with respect to
the -- this Land Use Commission's order, No. 1;
No. 2, there does not exist any tolling motion or
event that would toll the time period to file or
perfect a notice of appeal; and, No. 3, that the city
has represented there's no appellate jurisdiction
with respect to appealing this order.

I do believe that the existing law sets
forth sufficient notice and processes for notice if
the city or any other party takes actions with
respect to the landfill. Also, if any party believes
that someone is not acting in accordance with the
terms and conditions of the Land Use Commission
order, that party has the ability to file an
appropriate motion or pleading before the Land Use Commission.

I recognize what Mr. Chipchase has stated about limitations about enforcement powers by the Land Use Commission, but I do not believe, for example, the Bridge Aina Lea case holds that parties or persons or people who are subject to Land Use Commission orders can simply ignore clear terms and conditions of those orders, and I don't read the case to say that. As far as what would be the appropriate or lawful sanction or remedy if the order is not followed, well, that would depend on the facts and circumstances at that time.

So in the interest of keeping this order final, which spells out final, clear requirements of the city with respect to our fellow citizens on the leeward coast, I ask the motion be -- my motion be granted.

CHAIR SCHEUER: Thank you, Commissioner Okuda.

Commissioner Aczon, do you have anything to say?

VICE CHAIR ACZON: I'll be very short. I agree that the applicant's proceeding with the Planning Commission leading to the docket has been
concluded. But Commissioner Wong's statement kind of strikes me about the wasted time. There's nothing to report, nothing to report. I would rather like to see the county spend their time on trying to comply to our recent rulings than spend time on these reports that they don't know if there's something to report or not. I'm pretty sure that there are other conditions on the orders to have the public or the parties to be notified if something major happens.

Therefore, I'll be supporting the motion.

CHAIR SCHEUER: Thank you.

Commissioner Giovanni.

COMMISSIONER GIOVANNI: Thank you, Chair.

On the surface, I think that the city and county's motion is reasonable, and I will support it. Having said that, as evidenced in our hearings which occurred in October, we had concerns about the city and county being forthcoming and transparent about its actions and inactions regarding the landfill, and that was a major reason why our order of November 2019 included specific reporting requirements that were different than anything it had seen before on this matter. So with that being said, I really encourage the city and county to be transparent and to provide details on a timely basis through these
reporting requirements that are specified in the November order. More is better. And I have every confidence if you do that, then all the concerned parties will be amply notified and be able to respond to it. But I will be supporting the motion.

CHAIR SCHEUER: Thank you, Commissioner. Commissioners, we're in deliberation. Don't feel obligated to speak, but Commissioner Wong?

COMMISSIONER WONG: I feel obligated. I'm going to oppose this motion just because I think we should modify it because, you know, I don't want to come back for that 2019, you know, issue and Mr. Chipchase may want to see my face again and say how to modify it. So I hope that -- I mean, if that's the case, yes, we should come back, but if we could do it now and nip it in the bud, so be it. So that's why I'm going to oppose this motion.

CHAIR SCHEUER: Commissioner Cabral.

COMMISSIONER CABRAL: I'm of that same feeling. I am concerned that there's such a huge, long history of which I was only part of a short amount, but the history book is very large here, that I would like to think that maybe we can make an amendment to this motion that would allow the Land Use Commission to know that there's not -- that we
could go back to the reporting if we so choose
without a major amount of hearings and all of the
paper pushing and hearings and lawyers and
everything. But in the event that it's deemed that
there's maybe some situations that we're not getting
proper reporting, that we could then make some time
in an executive order for this to revert back to the
current status. I'm just concerned there's been too
much history and too much neglect on the part of the
city and county in the past that to let everybody
know what's going on, and so I'm debating what to do
with this motion as it stands as it is. Thank you.

CHAIR SCHEUER: Thank you, Commissioner
Cabral.

Commissioner Ohigashi.

COMMISSIONER OHIGASHI: Like Commissioner
Wong, I'm a complicated person. I just wanted to say
that. This thing that -- first thing that strikes me
is that there's very difficult ways to legislate
perfect government or to provide any order. I think
the request of the city is reasonable. I think that
if they file anything in the Planning Commission
regarding this matter, they would have to follow the
law in order to give notice.

I disagree with Mr. Chipchase. I don't
think that we are entitled to two weeks' notice prior
to any kind of filing of any document that the city
may choose to do so. I think that that is the city's
obligation to notify persons of any filings of any
actions like that in front of the Planning
Commission.

Given that I agree that the type of
notice provided for in a legal sense or required by
the city is maybe inadequate in terms -- but it is
proper. It's legal. It satisfies the docket. The
city should, as a form of good government, go out and
inform their plans to the neighborhood boards and
tell them these things, but that's a political
decision. That's a decision that administrators
make, people who are interested in good government.
If you decide not to make that decision, then that
tells a lot about the administration and the type of
government. So I'm inclined to support the motion.

CHAIR SCHEUER: Thank you, Commissioner
Ohigashi.

Commissioner Chang, did you want a chance
to speak?

COMMISSIONER CHANG: Just a few words. I
see this as a very, I guess, limited to this
particular -- the Planning Commission. But I think
the city has heard the commission, and I think it is in the city's best interest to embrace the community rather than to think of them as an afterthought.

And I think, Ms. Chan, you seem -- you've been here long enough. It is better -- I think we would prefer to have KOCA and the parties know what you're planning to do rather than them to be reactionary and then it's very defensive. But in my view, I think it is appropriate. Your motion is reasonable. It's limited. There are other -- there are other reporting requirements that provide for some other kinds of issues that we've discussed here, but I would hope that the city would do more than just what we have ordered; that you see it's in your best interest, again, to be more engaging with the community. This is a really important issue, and I think the community knows it's a hard one, but they'll share that with you if you tell them. So I'm inclined -- I will vote in favor of this motion.

CHAIR SCHEUER: Thank you, Commissioner Chang.

Chair will also vote in favor of the motion, but I certainly -- I appreciated Mr. Chipchase's pointing out again for the record that even though the Supreme Court vacated the
special use permit, the city and county continued to
operate the landfill and insists the permit was bad,
it does not set a ground of great trust in the
operation of this landfill.

And I think it's particularly telling
that the city's actions around Waimanalo Gulch has
persisted through multiple administrators that points
to a larger cultural issue rather than the actions of
any single individual. And that's what's troubling
to me, but I agree with the simple legal arguments as
made by the movant. So we'll be voting in favor of
the motion.

Mr. Orodenker, will you please poll the
commission?

EXECUTIVE OFFICER: Thank you, Mr. Chair.
The motion is to grant the city's motion. The motion
is the city's motion to grant --

(Reporter clarification.)

EXECUTIVE OFFICER: The motion is to
grant the city's motion without amendment.

Commissioner Okuda.

COMMISSIONER OKUDA: Yes.

EXECUTIVE OFFICER: Commissioner Aczon.

VICE CHAIR ACZON: Yes.

EXECUTIVE OFFICER: Commissioner
COMMISSIONER GIOVANNI: Aye.

EXECUTIVE OFFICER: Commissioner Wong.

COMMISSIONER WONG: No.

EXECUTIVE OFFICER: Commissioner Chang.

COMMISSIONER CHANG: Yes.

EXECUTIVE OFFICER: Commissioner Ohigashi.

COMMISSIONER OHIGASHI: Aye.

EXECUTIVE OFFICER: Commissioner Cabral.

COMMISSIONER CABRAL: No.

EXECUTIVE OFFICER: Chair Scheuer.

CHAIR SCHEUER: Aye.

EXECUTIVE OFFICER: Thank you, Mr. Chair.

The motion passes with six affirmative votes and two noes.

CHAIR SCHEUER: Thank you very much. It is 10:07. We will reconvene at 10:17 to take up A87-610 Tom Gentry status report.

(Recess taken from 10:07 a.m. until 10:19 a.m.)

CHAIR SCHEUER: Sorry to be late, but everybody was having far too good of a time.

The commission will now hear the status report scheduled on its agenda for Docket No. A87-610
Tom Gentry and Gentry Pacific, Limited, Successor Petition, Kamehameha Schools, Oahu.

For members of the public, please be reminded the commission will not be considering here the merits of the petition. Rather, the commission's interested in learning about the current state of activities related to the conditions, including compliance with conditions.

Let me go over our procedures for this docket. First, I will give the opportunity for the petitioner to comment on the commission's policy governing reimbursement of hearing expenses. I will then call on those individuals desiring to give public testimony to identify themselves. All such individuals will be called in turn to the witness box, and I will swear you in prior to giving testimony.

There's three individuals who have signed up to give testimony. My notes here indicate it is on item 11, the next item. Are there people who are desiring to give testimony on this item? I'm seeing none.

After that, the petitioner will provide their presentation on the docket status on this matter, and then I will call on the county and the OP
for comments. I understand from the petitioner that, without interruption, the presentation from the petitioner is about 50 minutes. There may be comments from the petitioner's counsel as well as questions from the commission during this time. So I'm generally anticipating the agenda for today is that we will move through this item, take a break for lunch, and then take up item 11. Does that make sense? So I see, again, that there's no individuals desiring to give public testimony on this agenda item?

Okay. Let me next update the record on this docket. On July 24th, 2019, the commission received successor trustees of the Estate of Bernice Pauahi Bishop, dba Kamehameha Schools, the motion for modification and time extension.

On July 30th, we received the OP's request for an extension of time to respond to the petitioner's motion.

On August 5th, the commission received the petitioner's objection to OP's request.

On August 6th, the commission mailed the LUC's correspondence granting the OP's time extension request.

On August 9th, the petitioner requested
clarification of the LUC's correspondence granting OP's request.

On August 13th, the LUC sent correspondence to the petitioner clarifying its previous correspondence.

On October 7th, the L-U received -- the LUC received the first exhibit list and first witness list and Exhibits 26 through 41 as well as successor petitioner trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools' revised master plan and schedule for development and Exhibits 1 through 3.

On October 8th and October 17th, the commission received CDs from the petitioner containing the first exhibit list, first witness list, and Exhibit 6 -- 26 through 41 as well as Exhibits 1 through 25.

On October 21st, the commission received the OP's response to the petitioner's motion.

On November 4th, the L-U received -- LUC received successor petitioner's rebuttal memorandum in response to the OP's response to the petitioner's motion and, as well as from the petitioner, the revised master plan and schedule for development and Exhibits 1 through 3.
On November 12th, the commission mailed and emailed the November 20th through 21st LUC agenda notice to the statewide email and Oahu mailing lists.

On November 14th, the commission received the executed signature sheet for petitioner's Exhibit 45.

On November 19th, the commission received the OP's response to successor petitioner's rebuttal memorandum in response to the OP's response to the petitioner motion.

On November 20th and 21st, the commission received -- held initial proceedings on this matter, but we were unable to conclude them. All parties had made their presentation, and the commission decided that the status report and remaining matters on the motion for modification and time extension were to be rescheduled to January 9th.

On December 30th, an LUC meeting agenda notice to the January 8th and 9th, 2020, meetings was sent to the parties and to the statewide email and Oahu as well as Hawai'i Island mailing lists.

With the record updated, Ms. Lim, have you reviewed HAR 15-15-45.1 with regard to the reimbursement of hearing expenses?

MS. LIM: Jennifer Lim on behalf of
Kamehameha Schools. Yes, we are familiar with the rules, and Kamehameha Schools will comply.

CHAIR SCHEUER: Thank you very much.

Last check. Are there any individuals desiring to give public testimony on this status update?

If not, then, Ms. Lim, you can proceed with your presentation.

MS. LIM: Thank you, Chair. Before I do that, I just -- could we double-check? I think when I heard your reading an update on the record that you read that the master plan was submitted on November 4th. I may have missed that. You were reading a lengthy description, but the master plan development schedule Kamehameha Schools submitted -- again, it's not part of our motion pleading, but we submitted that on October 7th.

CHAIR SCHEUER: What my notes show is that the successor petitioner, Kamehameha Schools, revised -- submitted a revised master plan and schedule for development as well as Exhibits 1 through 3 on October 7th, and on November 4th, you submitted a revised master plan and schedule for development. But is that incorrect?

MS. LIM: The master plan and development
schedule was submitted on October 7th. I happen to have a file-stamped copy before me.

CHAIR SCHEUER: Thank you for correcting the record.

MS. LIM: Thank you. So without further ado, this is Kamehameha Schools' presentation of a revised master plan for the 1,395-acre urban district property in Waiawa. Commissioners know this, but I gotta talk; right? Let me talk for just a few quick minutes.

Five years ago or a little over five years ago when the commission approved the use of about 655 acres within this 1,395-acre urban property, they approved the use of that 655 acres for a solar project development on an interim basis. The commission issued an order that has certain conditions in that order primarily related to conditions to ensure development of the solar development wasn't going to interfere with, you know, surrounding uses or anything like that. But one of the conditions that the commission imposed was a requirement that Kamehameha Schools actually present or submit to the commission within five years a revised master plan for this property and a schedule for development. So that's what we're here for.
today, and it was just a requirement to submit. It wasn't a requirement for, you know, commission approval or anything like that. It's an informational requirement and --

CHAIR SCHEUER: Sorry. Just because you're a little more soft-spoken today and we have this jackhammering going on in the building, if you can get slightly closer to the mike and maybe even increase the volume.

MS. LIM: Thank you for mentioning that. I also have a cold. So if I get too hoarse, you're going to get to hear from Ms. Thoene.

So without further ado, what I'd like to do is bring up Mr. Walter Thoemmes from Kamehameha Schools. And can we dim the lights? Is that all right? He'll be going through the PowerPoint presentation.

CHAIR SCHEUER: That's fine. Let me swear him in first.

Good morning.

THE WITNESS: Good morning.

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

THE WITNESS: I do.

CHAIR SCHEUER: Thank you.
You may proceed, Ms. Lim.

WALTER THOEMMES,

having been called as a witness by Petitioner,

was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. LIM:

Q Walter, they really want to hear from you. So would you go ahead? And we all know that you're the KS commercial real estate division lead, but can you tell the commission briefly about your background and then bring them through this master plan presentation?


You know, I've been with Kamehameha Schools, now, my 25th year. Doing a bunch of different things. Principally, I was actually hired to develop the Maui, Hawai'i campuses and spent the first 10 years doing that. I spent some time as a chief of staff working for two CEOs, and most recently for the last five years, I've been the managing director of commercial real estate. And since late 2014, I have been guiding those strategies. I'm very happy to be here.

Okay. So you've seen -- is my volume all
right? You've seen our written presentation, and I wanted to just kind of lay out what we're going to talk about today over the next 45 minutes or so, what our purpose is, and Jennifer helped set the table for that, but also a little bit about who we are, why our plan is important, not just for Kamehameha Schools, but why we think it's important for everyone in Hawai'i and on Oahu, specifically. We want to share our vision for Waiawa, and then finally talk about the plan itself.

I'll try to move through this quickly, but please don't hesitate to stop me for questions if you have any.

So as Jennifer stated, today's purpose is related to 2014, and in a motion related to two large solar projects in the area shown here in the 1,395-acre area that is urban, in that motion, we were also asked to submit a revised master plan and development schedule in five years. So that's the primary reason why I'm sitting here today.

Now, in addition to that, additional conditions imposed by the commission in 2014 --

Sorry. This thing is moving on its own.

-- related specifically to the solar project are listed here, and it includes the interim
use of the petition area, the time frame of that interim use, as well as the requirement to decommission the solar farm after its use. And our understanding is that the commission approved the solar farm to be in place for 35 years, essentially until 2049. But as you'll see with our plan and our schedule, we are, in fact, not just waiting around for the use of solar before we do anything else related to the plan. We actually do want to get moving.

Q If I can, Walter, I just want to interject. So with condition 7 that you've got up on the screen, it says "The interim use of the petition area shall be limited to utility-scale solar energy development or solar farm and no other use shall be permitted without prior written approval of the commission." So the interim use you explained was until 2049 --

A Yes.

Q -- which was the deadline that the commission approved. So what's your understanding that -- of the uses that can otherwise take place within the petition area during this interim period?

A Well, the areas identified were for solar, and that we would need to create a plan for
other uses -- urban uses in this period.

Q    And under condition 9 that you have up there, does it actually describe what would happen once Kamehameha Schools had its plan put together and was ready to activate its plan?

A    Related to the solar -- the solar areas?

Q    No. The solar areas, no. Related to its master plan development regarding studies that would be needed.

A    Yeah. I mean, in order to effectuate the master plan, we would need to revise all of the plans, the studies, the traffic reports, economic analysis and whatnot to advance the master plan.

Q    And are you familiar with the decision and order that the commission issued in 2014 --

A    Generally.

Q    -- that led up to these conditions --

A    Yes.

Q    -- and other conditions?

And I'm going for read for you finding of fact 123, and you tell me if you're familiar with it and then what it means to you: how Kamehameha Schools has interpreted this.

So finding of fact 123 from the commission's November 2014 order says "KS represents
that using portions of the KS property, which is the whole 1,395-acre property, for a solar farm project will provide KS with the time and opportunity to assess potential development options for the entire property -- for the entire KS property."

So what's your understanding of that finding of fact?

A Well, you know, it's basically -- an interim use, it's not meant to be a permanent, long-standing use. And given at the time, you know, the Gentry project failed and KS got back these lands, we didn't really have a plan immediately what to do with it. So we needed time to effectuate those plans. And as I'll talk about in our presentation, that was a time we were actually redoing our strategies in the organization.

So, you know, I personally felt we needed to have an organizational -- organizational strategy first to really define what we needed to do in Waiawa. So the solar projects really were a use that would help bridge the gap in time that we needed to understand what we really want to do with these lands. And I think the plan that we've come up with to this point in this status report accomplishes that.
Q So not to jump too far ahead, but, again, the interim use contemplated that the petition area, the whole 1,395, would be in solar --

A Yes.

Q -- until 2049. But is the master plan anticipating that nothing is going to happen on the property?

A No. Actually, we think we can actually do both, and I think our plan here, what we're presenting to you, is a way to accomplish both the interim energy goals as well as produce the community, the community of the future and move faster.

Q That's great. Thanks.

A Sure.

COMMISSIONER GIOVANNI: Chair? Point of clarification, Chair?

CHAIR SCHEUER: Please, Commissioner Giovanni.

COMMISSIONER GIOVANNI: Yeah, Ms. Kim [sic], could you expand upon your comment that your understanding was that the entire parcel of 1,395 acres would be used for solar? That's what I thought you said, and that confuses me.

MS. LIM: Thank you for the question.
The condition 7 says "the interim use of the petition area." So that's the whole 1,395-acre property. "The interim use of the petition area shall be limited to utility-scale solar energy development or solar farm. No other use shall be permitted without the prior written approval of the commission." So that's the condition 7. It's tough to see on that slide, but you should have a hard copy of it.

And then condition 8 says time frame of that interim use. "The interim use of the petition area for the proposed solar farm, including any and all permitting, construction, operation and decommissioning activities shall not exceed a period of 35 years from the date of the decision and order without prior written approval of the commission."

And then condition 9, which is largely shown on the screen, although there's some additional verbiage that was, you know, removed for -- to be more concise is that following the decommissioning of that solar farm, any future use of the petition area, so any nonsolar use of the petition area, following decommissioning would be subject to environmental review and various studies, et cetera.

COMMISSIONER GIOVANNI: Could I ask you to go back one slide? So the area outlined in the
dark line is the 1,395; correct?

THE WITNESS: Yes, yes.

MS. LIM: Yes.

COMMISSIONER GIOVANNI: So the two hashed portions within it, are those the parts that are allocated for the solar projects?

MS. LIM: Those are.

COMMISSIONER GIOVANNI: So not the full 1,395?

MS. LIM: That's correct.

COMMISSIONER GIOVANNI: That's my point of confusion. Your statement said that the entire 1,395 would be used for solar.

MS. LIM: I understand your confusion.

I'm just reading what the condition that the commission put onto the approval of the solar says that the interim use of the petition area, which is defined as the whole 1,395, shall be limited to utility-scale solar energy development.

COMMISSIONER GIOVANNI: So the two subparcels within the 1,395 that are being allocated for potential solar projects is part of your plan of how you're going to apportion it, is that what you're saying, as opposed to the permit specifically limiting the solar to those two subparcels --
subareas?

MS. LIM: I may need to ask you to reframe the question, but what I -- I'll try to answer it in the way that I think that you're asking. Five years ago or a little over five years ago, when KS came to request approval for those two solar areas, and the commission thankfully authorized it, KS also said, and this is all in the decision and order that was issued, "Hey, we're looking at probably changing what the original development plan was for this entire property," and Mr. Thoemmes will get into this in great detail, "and it's going to take us awhile, and this solar is a great win-win because it's obviously beneficial for the state from a renewable energy and environmental perspective. It also provides some income for Kamehameha Schools from this property while KS figures out what's the best way to develop the property and move forward with that development." And the commission's conditions were, "Okay, you can do the solar, but we understand that you're planning on rejiggering, probably, the plan that was originally approved, and when -- when you are going to do that, you're going to have to come back to us and seek authorization for that plan."
COMMISSIONER GIOVANNI: So I'll wait to hear some more details, but I do specifically recall, and I ask you to correct me if my recall is incorrect, that when we met -- was it October at our hearing?

MS. LIM: November.

COMMISSIONER GIOVANNI: November. Thank you.

That the area between those two hashed parcels was actually intended for residential development, and that the statement was made by Kamehameha Schools that the solar would not impinge on those residential requirements.

MS. LIM: So you are 100 percent correct, and as Mr. Thoemmes goes through the presentation, it will become clear. And that's so, again, when the commission imposed its conditions saying the use of the petition area for this interim period, which, again, under the 2014 order was through December 2049, the commission said, "That's what's happening on this petition area for that period unless you get approval from us to do otherwise." What you'll see through this master plan presentation is that, in fact, Kamehameha Schools does have plans and wants to move much more aggressively than just waiting around.
until 2049 to then begin actually doing development on this property. And, in fact, again, as he goes through the presentation, you'll see how the solar projects will not interfere with the proposed path of development.

COMMISSIONER GIOVANNI: Thank you. I'll look forward to the details.

COMMISSIONER CHANG: Miss Lim -- Chair?

CHAIR SCHEUER: Commissioner Chang.

COMMISSIONER CHANG: Just wanting to follow up. Is it reasonable to conclude that at that time in 2014, that the intention that the petition area was what was before the commission, which was the two solar farms and not the entire project? Because there seems to be a big deal about whether the limitation to the solar farm -- the solar use is the entire 1,300 or 1,400 acres, but isn't it reasonable to conclude that what was before the commission --

And maybe the petition area was not a good term of art given -- in general, we think of the petition area as the boundary amendment. But isn't that reasonable to have concluded that the petition area in 2014 was just the two solar-proposed farm areas and not the entire 1,400 acres?
MS. LIM: Well, the conditions certainly don't make that clear because of the use of the terms. And I appreciate your question. So this is a topic where maybe there are reasonable minds who can disagree. But if I may also, I'd like to read into the records finding of fact 123 from the 2014 order. And when we use the word "KS property" -- excuse me. When the commission used the word "KS property" in that 2014 order, it's defined as the petition area aka all 1,395 acres. Finding of fact 123, "KS represents that using portions of the KS property for a solar farm project will provide KS with the time and opportunity to assess potential development options for the entire KS property."

Now, if you read that finding of fact and you look at the conditions themselves, and there's other findings of facts sprinkled throughout that transcript, it indicates that this was a -- as I said, environmentally, the state energy goal was beneficial use of this petition area while Kamehameha Schools had the opportunity to revamp and take another look, you know, at how to go forward on the development of the entire property. So there's different ways to interpret the conditions. Again, we interpret them somewhat more strictly based on the
CHAIR SCHEUER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: Going back to what you just read, I think was No. 123?

MS. LIM: That's correct.

COMMISSIONER GIOVANNI: The first sentence said "Portions of the land would be used for solar." What's your interpretation of "portions of the land" if not just to have sections?

MS. LIM: Again, there's no dispute that the portions that were identified were the areas that the commission said, "Yes, you may pursue solar in those areas." To me, the key part of that finding of fact is using those portions will provide Kamehameha Schools with the time and opportunity to assess potential development options for the entire KS property.

So knowing that using those portions through 2049, which was what was approved in 2014, and knowing there's a condition saying that interim use of the petition area is all that's allowed and then you read the finding of facts, it seems, I think, a reasonable conclusion that during that interim period, it will allow KS to assess what they're going to do with the entire property.
COMMISSIONER GIOVANNI: I would agree with that perspective if I interpreted what you said correctly, which is -- and I'm just going to restate my understanding of what you said. That from the 2014 order, the two hashed portions, basically may be set aside on an interim basis for a solar farm -- utility-scale solar farm development, but that does not mean that a utility-scale solar farm could be implemented in the interim in the portion which is not hashed.

MS. LIM: I agree with that entirely.

COMMISSIONER GIOVANNI: Thank you.

CHAIR SCHEUER: Sorry. Yes.

MS. APUNA: Chair, if I may.

CHAIR SCHEUER: Sorry. Just for the record, your name. I didn't do attorneys.

MS. APUNA: Deputy Attorney General Dawn Apuna on behalf of the State Office of Planning.

CHAIR SCHEUER: Ms. Apuna.

MS. APUNA: We would like to just add under the decision and order on page 59 of the 2014 amendment, that the language that has not been mentioned is that the actual decision and order applies to those specific areas only. It says "It is hereby ordered that the identified areas within the
KS property consisting of approximately 650 acres of land situated at Waiawa and Waipio," I'll move down further, "and shown approximately on Exhibit A, attached, may be used as a solar farm to include all related utility and other infrastructure for a period not to exceed 35 years from the date of the order."

And then it goes on to say that "It is further ordered that the use of the identified areas," which is the 655 acres, "within the KS property for a solar farm shall be subject to the following conditions," and then it lists the conditions, including conditions 7 and 8, that Ms. Lim is referring to. So it is limited to the 655 acres. It does not include the full 1,395 acres of the full petition area.

CHAIR SCHEUER: Thank you, Ms. Apuna.

We're still in the portion -- the very beginning portion of Kamehameha Schools' presentation. And, you know, I actually have my own set of recollections, including from 2014, which differ from some of the characterizations by counsel. But what I'd like to do in the interest of getting a good flow to our very long proceedings today is to hold in abeyance questions of exactly what was meant in the 2014 action, without having to argue or contest it or implicitly agree by not contesting it, and hear from
the representative from Kamehameha Schools, and then
we can, during discussion, go into the details of how
this relates to the 2014 modification of the original
D&O. Is that acceptable?

COMMISSIONER CHANG: Yes.

THE WITNESS: Yes. Thank you.

CHAIR SCHEUER: Please proceed.

THE WITNESS: Okay. So before we move
ahead, I think it's important to understand, you
know, where we come from. Obviously, it's well-known
that Kamehameha Schools was founded by Bernice Pauahi
Bishop who was last lineal descendant of Kamehameha
the Great. But what we're also cognizant of is what
happened in Pauahi's life to actually cause her to do
the things she did.

Specifically around population, scholars
note that at the time of Cook's discovery or visit to
Hawai'i, there were about 800,000 Native Hawaiians.
When Pauahi was born in 1831, that population had
dropped to 124,000, and at the time of her passing
in 1884, 44,000. And many -- many perished due to
health-related complications, but there also existed
a loss of culture, language and identity. And, you
know, Pauahi had the foresight to, through her
legacy, become a change agent. She actually turned
down the opportunity to be the queen, and she
understood that it was actually through education and
her founding of Kamehameha Schools that really
could -- she could lift back her people, which
remains our goal today. And part of that is being
good stewards of the land which is part of my daily
job.

So we're constantly asking ourselves, you
know, are we and how are we fulfilling Pauahi's
vision? What's our plan? How do we measure? And I
can tell you my early years at Kamehameha wasn't
really clear. In 2015, though, a lot started to
change, and we really started to define how we're
doing against what Pauahi had intended, and we
created a new strategic plan and vision to 2040.

The words are up on the screen, but
essentially what's important here is that in a
generation of 25 years, our learners will achieve
post-secondary success, that they'll be grounded in
Christian Hawaiian values, and that they'll be
leaders both locally and globally.

Now, what's important here is this vision
does not apply to just those lucky kids who get
enrolled at our campuses. It's actually intended to
apply to all Native Hawaiian kids, and that is a
profound shift from what Kamehameha was prior.

Here are some statistics of -- in 2018, 61,000 learners were supported by the school, 7,000 on our campuses, 29, our preschools -- on our three campuses and 29 preschools, 13,000 through direct programs. So the 7 and the 13 are directly funded by -- directly operated programs. The balance, the other 40,000, are actually indirectly supported, and this is through support of the DOE, through the charter schools, immersion schools, scholarships as well as other private school scholarships.

So how is all of this funded? This is an interesting and complicated slide, but it's actually really simple. Everything on the right is what Kamehameha's programmatic efforts consist of. We spend over $450 million a year advancing education and land stewardship. So you can see what we spend on campuses, what we spend on stewardship, educational support, community programs, scholarships, et cetera. 98 percent of that funding comes from this other dial here, and this is our endowment. It's worth about $12 billion. We only -- we get very nominal philanthropic and tuition sources. So, basically, we're entirely dependent on pana, our endowment. 31
percent of that endowment is Hawai'i real estate, and
that is Hawai'i commercial real estate. So that is
actually what is my responsibility. It does not
include the agriculture and conservation lands. We
don't put that kind of, like, pressure on those lands
to produce revenue for education.

What's interesting about this is to
ensure intergenerational equity, future generations
will have the same benefit as today's generation. We
don't spend down on the corpus, the 12 billion. We
actually target a rough 7 percent rate of return, and
we spend 4 percent every year. So that 4 percent on
the endowment is what funds everything. And so when
I think about -- and when we talk about why we do
things in real estate, part of that reason is
economic because it's what drives the expenditure of
all of this. And the Waiawa lands at question are
right now in our commercial real estate portfolio.

So from a land perspective, I think it's
well-known that Kamehameha is the largest private
landowner. We have 363 [sic] acres of land. But
interestingly enough, the commercial portfolio I
oversee is only 15,000 acres, and of that, only 1,000
is productive acreage that you could assume to be
shopping centers, hotels, Kaka'ako. The balance is
vacant land like Waiawa or, you know, golf courses, that sort of thing. So really only 1 percent of the land is actually contributing to the financial fortunes of education.

To the lower left, this is an interesting part of this story is on my commercial land portfolio, 80 percent of it is ground lease. Only 20 percent is space lease. And the difference there is in the ground lease, we lease the land to an entity who develops something for 50, 60, 70 years. We don't really have control over the land. We get passive ground lease payments.

Space leases are actually owned-and-operated centers like Windward Mall. That tells you that a lot of the land we may have that we have in our portfolio we don't really control.

What our portfolio looks like is also very unique for a real estate organization. We have many different types of property types from retail, hospitality, industrial, residential, and a lot of that is because the history of ground leases allowed for many different types of development to happen across Kamehameha's portfolio.

So why do we manage real estate? And the answer may seem obvious based upon what I just
shared, but I think and I hope you will come away with the understanding that it's actually not that simple. Making money is not just it. So let me kind of take a little sidestep here.

This is a graph of the consumer price index and selected categories for the last 35 years. The labeling is -- we've lost the labeling. So I'll try to walk my way through this. The orange bar is energy. The green bar is medical costs. Housing is the blue bar, and as you can see, those are a few of the larger -- the higher-appreciating type of costs for people living in Hawai'i. But interestingly enough, even though housing does not increase as much as medical care, I think we can all appreciate that housing consumes more of families' purchasing power on an annual basis than anything. So it is a big impact.

So let's look at housing. This is a busy slide. So I apologize in advance. But this looks at the housing market versus median income versus building permits for new housing since statehood. And we can see here at the time of statehood, the median home price of $21,000 was three times the median income, roughly. That has now -- we are where we are currently. That has now risen to the median
home price of a family -- of a home is seven times -- seven times the median income of that same family.

Now, interestingly enough, when we plot permits, and these are pulled from the city records, housing -- new housing permits in that time, we can see in the early years a lot of -- significant amount of home building. And somewhere in the mid to late '70s, that crashed significantly, and we had only 2,500 new housing permits issued last year.

I think if you -- we didn't include population growth, but what this slide tells us clearly is there's a correlation between housing affordability, increased demand, reduced supply.

So why should this be important to Kamehameha Schools when our business is education? Why should it be important to me as head of real estate? Well, I'll talk about a couple of our challenges and then maybe some of our strategies.

Our first challenge is economic. You know, I shared a little bit about our outside mission. I shared the impact to kids that are outside of our system directly. We have a historical portfolio that is ground lease. We don't control a lot of the land that we own.

Ground leases are great. They're very
secure, but they generate bond-like returns. We have a 98 percent dependence on our endowment performance to fund education. So how do we economically generate greater returns needed for the robust education strategies of the organization? That's the economic challenge. And, actually, that may not be the more important one. The second challenge is more of a community challenge. I kind of call it in my own language, it's the mission-success challenge.

And, you know, I think all of us come to work every day -- I don't work in education. I rarely go to the campuses, but I come to work every day believing that if we spend $400 million on education, that our educators will be successful; that these kids will be empowered and enabled to go to college and get out and become the next leaders of Hawai'i that we hope them to be. But when they're getting out now, they're being faced with housing in communities they can't afford, jobs that are not well paying enough to meet the current market, which leads to other things like health issues and lifestyle issues because they're not working -- they're working multiple jobs in some cases or very, very long commutes.

So what's happening is they're leaving,
and our records are showing that many of our kids are leaving and not coming back. I don't know how we can call it success when we are, in fact, educating the future leaders of Nevada, Portland, Phoenix and the like. If we don't figure out a way to create the conditions for our kids to be successful leaders here in Hawai'i, then I don't know how Kamehameha Schools can claim success.

So what are we doing about it? You know, obviously, economically, I can share with you we are taking a much more active role in development. We are putting more of our capital at risk to generate higher returns. We're looking to partner more to do joint ventures and get into deals. Those are economic solutions.

We are looking at our leasing cycles and taking back ground leases that are expiring, but, you know, the beauty of the ground lease portfolios, it's safe and it's a long-term deal, and many of those ground leases were done in the '60s, '70s, '50s. Well, guess what. Those ground leases are ending; right? So areas like Kaka'ako are actually a result of KS taking back control. So we're going to start to take back control. We're going to start to master plan areas of concentration and create new
What I put up on the slide is actually new for KS. We pivoted to a regional approach, and this is a key strategy. We actually structurally changed in the organization because we realized that not every community is the same, but how do you reconcile decision-making between different communities, and we've come up with -- our regional teams have come up with six key drivers of a healthy community: education, housing, infrastructure, business, health and aina. We apply this framework to all our decision-making, including commercial real estate. So we look at a spectrum of outcomes that we can influence, recognizing that not every area is going to hit every outcome and different areas have different needs. I don't expect development in Waipahu to look and feel like development in Kaka'ako; right? And that's the point of understanding the needs of regions. And our regional teams really help guide our commercial real estate team to really achieve multiple bottom lines.

Now, at the end of 2018, what this all meant for commercial real estate is the creation of what we're calling an urban core strategy. When we factor in our historic ground lease tenure with many
leases that are naturally expiring and control is coming back to KS, we have significant community deficits, housing just one of them, transportation, equity, access to healthcare. I mean, there are many issues that we have in our community, and what can our portfolio do to help solve it?

This element of transit, we may not all like what's happening with our development of our transit system, and we all hope it would finish on time, on budget and all of that, but it's going to get done, and it is an organizing element for us because, as you can see, what's stated here on this map is Kamehameha's holdings along the transit line. So we've actually identified five key areas on the currently approved transit line for urban redevelopment, and we are strategically taking back control and master planning these areas. So Kaka'ako, which is down here in Honolulu, really was, you know, the first step of that. But areas like Kapalama, Kaonohi area, Waiawa, Waipahu, ultimately Moiliili, will all be part of our strategy of delivering what we hope in the next 15 years or so would be 8- to 10,000 new homes in these urban master plan communities.

And, you know, part of this strategy is
that we are largely developing areas that have
already been developed or have been held and
identified for development for a long time.

Leveraging transit with a mix of uses
creates new types of communities that maybe
de-emphasizes the need or reduces the need for
automobiles; right? And it just creates healthier
living and a better quality of life.

We want to leverage the plan of others.
There is a lot of activity happening around us. The
state is moving on a lot of different things. And to
try to -- what we're doing with Howard Hughes is
trying to coordinate development side by side and
recognize that communities are different, as I
mentioned before.

This also, you know, helps us preserve ag
and conservation land. It's also important to
Kamehameha, and as I shared earlier, it makes up the
bulk of our holdings.

These are actually the transit-oriented
development circles as defined by the city.

Looking at Waiawa as a region -- we
actually have nine different regions. Waiawa is one
of them. You know, these lands are squarely in
Waiawa, and interestingly enough, 52,000 Native
Hawaiians live in this region. It’s actually one of the -- it's actually the highest concentration on Oahu, but it's expected to grow. We expect by 2040 this to grow by as much as 66 percent. It is an area that's ripe for new housing development and affordable housing development, and we expect the Hawaiian population to grow here and find it a popular place. So our attention is very much on the Ewa region.

Now, I do want to note that commercial real estate strategies are not exclusive to Native Hawaiians. We do not target -- we're not in the business of building homes for Native Hawaiians. That's DHHL. But we believe a rising tide will lift all boats; that if we can create culturally sensitive development and great communities, Native Hawaiians as well as non-Native Hawaiians will be attracted to the communities that we create.

So now getting down -- a little further down to Waiawa. This is an overhead shot, and here's a Waiawa -- KS's Waiawa Holdings, and you can kind of see its relation to transit, the Pearl Highlands Center and the future rail parking structure, Waikele, Leeward Community College.

Now, I will note that the city defines
the TOD zone as a half mile from the station. There really is no official industry definition. First, it's proximity that counts, you know, with realistic, lasting solutions. That's really what the key to transit success is. And we also think in a cognizant in our thinking about this community and others that technology is advancing at a pace that it's hard for us to even know sitting here today what will be available to a homeowner --

Yes?

CHAIR SCHEUER: Sorry. Just on this map with the shaded area pointed out as KS Waiawa, the petition area consists of two distinct noncontiguous parcels. Can you point out where the noncontiguous portion is on this map?

THE WITNESS: So this map is not depicting the petition area. It's the total ownership. I think the lower sliver is here and then it begins -- you know, it's kind of in this area, the 1,395 acres.

BY MS. LIM:

Q For clarification, Kamehameha Schools owns approximately how much land in the Waiawa area?

A The ownership in Waiawa is 9,000 acres, and it stretches from Pearl Harbor, hops over the
freeway and goes up to the peak -- hops over the
freeway. It bypasses -- the freeway splits it.

CHAIR SCHEUER: To the summit?

THE WITNESS: The summit. The peak of
the Ko'olau, yes.

So we know it's entirely reasonable that
the community in Waiawa 30 years from now or 50 years
from now could be completely served by autonomous
vehicles such that residents may not even own cars.
Garages will be man caves. For some, they already
are. It already is; right?

So after all that buildup -- oh, I'm
sorry. Here's our Waiawa vision where we envision an
environment of sustainable and thriving Waiawa that
utilizes a traditional Hawaiian land management
approach and modern technology to inform contemporary
land uses and living unique in Hawai'i.

It is central location and proximity to
transit. It's going to be a -- it's well positioned,
and Waiawa residents, we envision, to live, walk and
create this big community in a very different way.
It's not the vision of a 1988 community. And
interestingly enough, the implementation of this
vision also contemplates solar as a part of it along
the way.
Just, you know, kind of in terms of alignment, the Central Oahu Sustainable Communities Plan, it shows the Waiawa petition area aligning with the urban-developed areas that are intended in the city's plan. The existing zoning -- and we actually have existing zoning based upon the prior plan. You know, our plan will call for some modifications of this -- sorry -- you know, once we properly vet our new plan.

So mainly just to point out these are areas that have long been envisioned for urban development in our plans and the city's plans and actually with prior LUC authorizations.

So here is our Waiawa Master Plan. 2,000 acres, over five phases of development. You know, at its maximum, about 11,000 homes and over half a million total square feet of commercial uses. This is very much in conceptual form, but it kind of represents what we want to take to market. You know, Kamehameha Schools is not a greenfield developer. We need to go out and get a development partner, and we need something that we can kind of take to them to show what it is we'd want them to work with us on.

Our immediate desire is to advance on phases A and B. And, you know, as you can see
here -- sorry. This area here is what has been defined as the phase 1 solar project. And it is actually not impacting the master plan community at all.

BY MS. LIM:

Q Walter, if I may, I just want a clarification from you. So we've been talking about a 1,395-acre urban district area that the commission approved many years ago, but when you describe the master plan, you've got 2,010 acres?

A Yes.

Q Can you explain the disconnect?

A Yeah. So, you know, ultimately, this plan would require about an adjustment of, I want to say, about 450 to 500 acres, as well as there will be some acreage that's kind of retained in the agriculture areas, agriculture zoning. But, you know, that's for -- you know, we really can't say exactly what that is because --

Let me talk a little bit about the execution. We're executing this a little differently. We're not simply turning this over to a developer as we've done in the past. KS's full intention and expectation is to be involved in this development to work with the developer in the plan in
securing entitlements and approvals and negotiating
with governments and other parties to ensure that
this vision is fulfilled, and we have no surety of
that if we just hand this off to a third-party
developer.

In the process of doing what we're doing,
we're trying to de-risk the development to ensure a
greater chance of success and provide more certainty
to our development partner, but, yet, we have to
allow for some tweaking by a developer, and we expect
that they will be -- some of that that will happen
and would be permitted by KS provided the overall
vision is not sacrificed.

Q Meaning that it remains consistent --
A Yes.

Q -- with the elements that you
identified --
A Yes.

Q -- to the board about support of the
infrastructure, support of the housing?
A Yes. That's why we cannot commit to a
product mix yet or anything like that, but we do
expect things that are important to KS to continue to
be a part of this plan even with another guest
developer involved. And as I, you know, kind of
mentioned on some of our strategies, we expect to also develop as appropriate.

So, you know, to generate more returns, it requires us to be more active, and I'll use Kaka'ako as an example. We actually developed all of the commercial in Kaka'ako while developers built the residential units. And, actually, we built all the rental housing as well. So KS will actually be a partner in this and not be just divorced from it. So we intend and expect to be a development entity in this project as well.

Q So in that way, KS's role in this master plan is quite different from KS's role with the Gentry project?

A Yes. Because I could best describe that as generally hands off.

Q Why is it important for Kamehameha Schools to find a development partner?

A You know, as I mentioned, we are not primarily a development company. We will selectively develop. Development is a lot of risk. It's very risky, especially greenfield type of development, a lot of -- very patient -- it can even take a long time to find a lot of capital sources. And we have, as you can see by our urban core strategy, you know,
a lot of other things going on as well. So it's just
not something we're built to take on.

Q Because, ultimately, Kamehameha Schools'
primary mission is --
A Is education.
Q -- education?
A Yeah.
Q Development is just something --
A Development is something to help generate
the resources and kind of create the community uplift
that's needed. And, you know, I will say -- I will
clarify, I mean, we create community uplift in the
course of also generating economic returns. So it's
not a social service type of function.

Q You have a lot of housing planned for
this master plan area?
A Yeah. I mean, it's a smaller footprint,
and I'll show a comparison later with Gentry. And
it's meant to be more dense and more efficient, and
that's really that work we did in the last few years
of studying how to make this plan more economically
viable.

So, you know, kind of tying back, I
shared the regional slide, and this is almost like
the scorecard of, "Okay, have you talked about
influencers or drivers of a healthy community? So how does Waiawa contribute to that?" So, specifically, you know, we consider Waiawa to, you know, meet educational goals. We have schools. Housing is a big one, you know, 11,000 homes. A lot of infrastructure investment, you know, both on-site as well as connecting to transit. Energy, it still has its place within the project, and I'll show a little bit more about the phasing and how that's intended to work. Commercial, healthy. You know, we have 10 miles in this plan. You don't really see it. 10 miles of alahele. The idea is to -- which is our walking trails; right? The idea is to make that the easier thing to do than get in your car and drive, and our plan tries to map that out.

Preserving open space in parks, critical for an attractive community. And we even want to have ag farm lots -- agriculture farm lots. These are 2-acre lots envisioned, 51 of them in the plan.

COMMISSIONER GIOVANNI: Chair?
CHAIR SCHEUER: Commissioner Giovanni.
COMMISSIONER GIOVANNI: Thank you, Chair. Could you go back to the prior slide? I just have a question I'd like you to expand on. Is that appropriate?
CHAIR SCHEUER: That's fine. I'm just checking time. We've been going approximately an hour. We're about halfway through?

THE WITNESS: Yeah.

CHAIR SCHEUER: So let's have this question. Let's take a quick break and then do the second half. I'm guessing, in contradiction of my earlier statement, that we might not finish this prior to taking our lunch break depending on how the discussion goes. So please proceed with your question.

COMMISSIONER GIOVANNI: Thank you, Chair. So when we met in November, we were particularly interested in hearing of the master plan and how it portended to and focused on infrastructure development for other than the solar projects. So you have a block up here under infrastructure, which is $630 million for infrastructure development, nonsolar, nonenergy; is that correct?

THE WITNESS: Correct.

COMMISSIONER GIOVANNI: Could you describe that in general terms because I don't think it's explicitly described in any more detail in your presentation?

THE WITNESS: Yeah. So, you know,
basically, it's all the infrastructure that's needed to support a 11,000-unit housing development. It includes on-site grading, roads, water systems, the pathway system, the alahele system I mentioned. Off-site, we've got gravity sewer lines to the pump stations. We've got stream crossings. We've got off-site traffic improvement. So it's kind of a whole ball of wax by phase.

COMMISSIONER GIOVANNI: By phase?

THE WITNESS: Yeah.

COMMISSIONER GIOVANNI: On some timeline?

THE WITNESS: Yes.

COMMISSIONER GIOVANNI: So can you give us an indication consistent with your current view of your master plan of what the timeline is for that investment? When does it start? Just tell me the first phase.

THE WITNESS: Okay. So the first phase actually would -- which is phase A --

If you want, I can actually go to that phase. It might be easier.

COMMISSIONER GIOVANNI: If it's coming, I can wait for it.

THE WITNESS: It's coming.

COMMISSIONER GIOVANNI: Okay.
THE WITNESS: 2030 would actually be when it would start. Sorry.

COMMISSIONER GIOVANNI: So just to clarify that statement, so there will be no investment in infrastructure other than solar until it would begin in 2030?

THE WITNESS: Yes.


(A recess was taken from 11:20 a.m. until 11:32 a.m.)

CHAIR SCHEUER: We're back on the record now. That was not on the record. And we're continuing with the presentation.

THE WITNESS: Thank you, Chair. So it was mentioned before briefly, so I won't spend a lot of time here, but Kamehameha's holdings in Waiawa actually encompasses over 9,000 acres. It includes conservation lands up to the ridge lines. We actually have 1,000 acres that are part of a watershed program, contributing 30 percent to the statewide goal for priority watersheds.

Energy, you know, in this area, the commission approved in 2014 plans for a solar project. Waiawa Solar, which you're also discussing
today, is a 36-megawatt utility-scale power production.

And then, you know, down behind -- so this is the area overlooking Pearl Harbor. We have what we call Waiawa Kai Kipuka. This is about 70 acres of land. It's also part of our Waiawa holdings. This is largely ag -- actually completely ag zone, but we run both agricultural education programs and commercial ag programs on nine parcels.

So, you know, we believe Waiawa aligns with many goals that are out there. You know, we mentioned the city's sustainable communities plan, the Hawai'i State plan. There are private sector initiatives like the change initiatives that are being advanced as well as various plans within Kamehameha Schools around the region and around our finances. And here you actually see on this slide one of our newer initiatives. This is the Aloha Plus Challenge, and we're starting to mark a lot of our initiatives within KS against the Aloha Plus Challenge. And so you can see where Waiawa contributes to clean energy, local food production, natural resource management, the smart, sustainable communities, you know, obviously, creating those new communities and new homes as well as the green
workforce and education.

So while control of the Waiawa lands returned to Kamehameha in 2012, you know, I believe I mentioned this at the opening, you know, we were really focused at the time coming up with our new organizational direction and strategic plan, and that's what really should drive our land management and planning practices.

Since 2016, we've been busy with studying Waiawa, understanding the opportunities these assets present, understanding the challenges that Gentry went through in the years that they had the kuleana for this development, understanding our regional and community needs. And we commenced due diligence around key infrastructure and archaeological matters that have, in fact, informed the plan that we're sharing. And so this includes archaeological work, civil engineering work, transportation studies, wastewater studies, and, obviously, the master plan itself.

I would also note that just as a part of our general practice, Kamehameha completed an ethnohistoric study for its Waiawa land as well as surrounding lands in 2010.

BY MS. LIM:
Q Walter, if I may, you have on this chart -- I'm sorry -- on the slide prior several consultants listed, studies or work product. Can you give the commission some sense of the financial commitment that KS has made thus far purely on that kind of due diligence?

A To date, we have spent in excess of $1.2 million to advance our due diligence and studies and creation of this master plan, you know, with an intent to continue, you know, subject to great reception of this plan and to include, one day, our development partner.

Q So is it in some sense all part of the de-risking strategy that you mentioned at the start of your presentation?

A Yes, because, you know, we've made this investment to really support, you know, and understand that the vision we've come up with is financially feasible and viable; that the vision of this community is supportable and supported by community because if we -- if we didn't do that, if we didn't do this investment, we might just wind up with the same type of situation where we advance a plan that was really not attainable.

Q You mean the same type of situation that
Gentry ultimately --

A Yes.

Q -- found itself in?

A Yes. So the goal was to study -- and every one of these studies will be made available to our partners, right, to kind of show these are the things we looked at; these are the conversations we've had; these are the people that we've met with; this is the response we're getting from community, from government related to this master plan in an effort to bring more certainty to attract interest and investment by, you know, developers and investors who are sometimes skittish in really putting capital at risk in greenfield development here in Hawai'i and elsewhere.

Q And do you think it's important for our development partners to have assurance that this property that's in urban, has been in urban, will continue to stay in the urban district?

A Absolutely.

Q This 630 million, I assume that's a rough order of magnitude figure for infrastructure cost. How did you come up with that number?

A It's actually driven a lot by the firms that you see here that commissioned these studies
that looked at, you know, what was needed for traffic
and grading and utilities and whatnot.

Q   Thank you.
A   You're welcome.

As far as outreach, this is initial
outreach. This is really just what's happened in
2019 just for, you know, point of who we've talked to
across various constituencies of government and
legislative branches.

Q   And, Walter, if I may, how do you
characterize the purpose of these stakeholder
outreach meetings? I mean, are you coming in saying
this is a plan and --

A   No. Very similarly, we come in with kind
of what is the vision. We want them to understand
just kind of what we shared today, what Kamehameha's
doing and why, who we are, what are we doing and why,
and why do we believe the plans that we've come up
with will be good not just for Kamehameha, but also
for the community in general, and, you know, what are
we trying to solve for in this plan we've created.
And, you know, I would say most of the response has
been very positive.

Q   What do you think that -- if you were to
characterize one or two things that seemed to -- that
everybody seemed to coalesce behind, you know, one or
two aspects of the plan that seemed to get the most
positive attention?

A "Really, you guys can do that many homes,
and can you get started tomorrow?" I mean, that's
probably the two biggest pieces of feedback. You
know, many of us were surprised when we threw out the
amount of housing. It is an issue of today and has
been for the last several years. And timing. You
know, everybody wants us to go faster as well.

CHAIR SCHEUER: Should that be Barry
Usagawa for the Board of Water Supply rather than
Usugami?

THE WITNESS: Yeah, should be. I'm glad
Barry's not here right now. Sorry. We can correct
that.

COMMISSIONER CHANG: Mr. Chair?

CHAIR SCHEUER: Commissioner Chang.

COMMISSIONER CHANG: Are you wanting us
to wait for questions after the presentation?

CHAIR SCHEUER: Yeah. Let's try and see
whether we can finish up the presentation and then
have questions.

THE WITNESS: Okay. So this actually
lays out by color the different phases. And the
dates represent the commencement of horizontal
development ending with the completion of vertical
construction. So as mentioned previously, Phase A,
which is the phase closest to transit and Kamehameha
Highway, would begin horizontal construction in 2030,
and it would essentially conclude vertical
construction in 2040.

Phase B would similarly follow along with
horizontal construction from 19- -- 2038, concluding
vertical construction in 2048.

So, you know, we can -- we actually have
a slide that details this in greater fashion. So
Phase A and B, what we, you know, consider our very
first moves here, this is an interesting slide
because we're able to accommodate the solar projects
alongside our Phases A and B. And so if we look at
Phase B, it goes out to 2048. The Phase 1 project is
completely outside of any master plan development.

BY MS. LIM:

Q When you say the Phase 1 project, are you
talking about the Waiawa Solar Power --

A The Waiawa Solar project, yes, which I
refer to as Phase 1 is completely outside of the
development and actually does not pose any
limitations on commencing and developing any of our
phases of the community.

A proposed Phase 2 piece, obviously, does. And we've carefully looked at the timing of development of getting approvals, developing absorption and concluded that we could accommodate a second phase of solar in a fashion that would enable 20 to 30 years of solar service before --

My next slide.

-- Phases C, D and E come onboard.

So in summary, Phases A and B, if what we would be -- really immediate moves would be to start Phase A and B. Together 4,300 homes. In excess of that, we would see a new DOE school and middle school in these two phases. We would see 380,000 square feet of commercial as well as a solar farm operating right next to it.

Now, this plan and this phasing is driven by a couple things. One is successful access from the bottom. It is not anticipated that we would access up at Ka Uka as the Gentry plan had anticipated. This plan anticipates access from Waipahu and from Pearl City Industrial Park.

The second key element to these two phases is it's driven by what we believe the existing regional sewer capacity is through our discussions.
and consultation with the city. And we've had pretty
good reception to that. It actually -- it helped
size these phases. That said, we recognize when we
move into Phases C, D and E, that we will need to
resolve access at Ka Uka as well as increase regional
sewer capacity.

Now, on Phases C, D and E, in summary,
they make up an additional 6,700-plus homes. We have
61 acres set aside for a second DOE elementary school
as well as high school, another 77,000 of commercial
space. And the timing is such that the second phase
of future solar projects would have to cycle off and
be decommissioned in order for Phases C, D and E to
be built.

Q Now, Walter, I know that you are not the
lead on the real estate division that would be
dealing directly with solar developers, but just on
that second phase of solar which is the one that's in
the northwest of the property --

A Yes.

Q -- what are the time frames should that
project get authorized? Because, as we know, that
area was already authorized for solar development,
but only through 2049. Should the commission
authorize that project pursuant to a subsequent
motion, not the motion we'll be talking about on the next agenda item, when would those projects be decommissioned and removed so that Kamehameha Schools can continue with their master plan development?

A Yes. Thank you. I'm not the expert on the solar project, but we have been working with our folks involved with the potential -- a potential second-phase solar project, and we've identified two phases of that solar. One would need to -- one would be allowed to operate until 2044 to make way for Phase C, and the other would be allowed to operate until 2054, which would then be decommissioned to make way for Phases D and E. So they're not the same time horizons. The first part of Phase 2 solar would be a 20-year commitment, and the second would be a 30-year commitment, but it's -- and it would be sized and it would be agreed upon by the solar operators to allow for, you know, the ultimate expansion of the residential community.

Q Whereas the Waiawa Solar Power project that's planned for the zone of contribution area, is there any need to have that project removed within any time as it relates to the development of the master plan?

A Related to the master plan, no. So that
would be an independent decision related to, you know, the life of that system and the 35 years it's allowed to be there, and we would, you know, need to wait and see what would come next. But because it's tied to the zone of contribution, we don't envision it as any development of community assets at that location.

Q So even after 2059 at the point --
A Yes.

Q -- there's never anything planned by KS in that area?
A No. It would revert to open space.

So before we leave the master plan, I guess this bears mentioning at a sort of a high level, what's different from what the Gentry plan was, you know, I mentioned the starting point, you know, access would be starting from the bottom, closest to existing infrastructure, and transit allowing for that connectivity as opposed to previously starting at Ka Uka which is in the middle of the property.

From a community identity standpoint, you know, our Gentry plan -- the Gentry plan envisioned a retirement/golf-centric community --

(Reporter clarification.)
THE WITNESS: Envisioned a retirement, slash, golf-centric community versus, you know, really our plan is a kama'aina transit-oriented community.

From a density standpoint, we envisioned increased housing per acre. So increased density, especially closer to transit. So a lot of the mixed-use density will be down below. Obviously, there was no renewable energy planned in the Gentry plan, and we have significant renewable energy synchronized with our plan. And the number of homes, over 4,000 additional homes are included in large part because of the manner in which it's envisioned to be developed.

So I don't -- if anyone can read this, please admit it because I can't. This is an interesting --

So this slide, we apologize for this. I don't know if we can actually focus that. But this slide was provided to you in the written submission.

BY MS. LIM:

Q Meaning the October submission --

A Yes.

Q -- of the master plan development --

A Yes. It was provided in October, and
it -- I was going to say it may be hard to read. It is exactly hard to read. But if you can kind of maybe bear with me, what I can share with you is it is intended to show the interplay between the projects. So that upper block between the top blue line and the bottom blue line, that's really just a summary of the entitlements that the process -- entitlement process we need to go through between now and, you know, 2030, roughly. And so that's all predevelopment work. Yes. It's all predevelopment work.

Then you see the next band which includes three yellow bars. Those yellow bars represent the solar phases that I was talking about. So solar Phase 1 is actually the Waiawa Solar project, and as you can see, that work begins with your approval and city permitting approval and goes up to 2059. And it really does not impact the master plan implementation as we've envisioned it. However, phases -- the phase -- the two increments of Phase 2 of solar are purposefully staggered so that they can be accommodated with how we expect the master plan to go. So the first piece of that second phase of solar could only go out to 2044 because if you look below it, we get into our phases of construction, C, D --
these are C, D -- C, D and E. These -- these solar projects basically need to end in line with our future phases. So Phases A and B are not competing at all with the solar projects. Phases C, D and E are competing for the same space that the second phase of solar is.

I thought this would be super clear, but, you know, it may not be. So if you, obviously, have any questions on it, I'd be happy to answer it. But that is the intention to produce or solve for multiple things here. We can contribute to our statewide energy goals and provide renewable energy in a planful approach where the time we would otherwise be building out a master plan community, these lands can be used and be productive. And that's basically what we spent the last several years trying to figure out.

Q When you say "figure out," was there a marketing or absorption or demand component that helped you figure out how to break these phases up?

A Yeah. You know, there's a lot of -- a lot goes into a greenfield development and markets is one of it. We, obviously, did market studies and looked at what absorption -- rate of absorption would be and how it might compare with what other
developments are doing and where's Ho'opili in comparison with that and Koa Ridge and how long it actually takes to effectuate this type of development. And so it all came into why the schedule is what it is and why you don't see, you know, 11,000 homes starting and finishing in 10 years.

Q And can -- and it is nearly impossible to read, but way up at the top of the schedule, I see there's a master plan update to the LUC identified for 2019 because this was prepared, of course, in October before the November hearing. And then the row underneath that is "identify development partner and execute DA." What is it, DA?

A Development agreement.

Q Okay. So that's planned for -- is it 2020 and 2021?

A Yes.

Q So I mean, what's -- okay. I mean, that's the expectation?

A Yes.

Q That's the, you know, ironclad certainty?

A Well, that's the --

Q Can you characterize that, please?

A That's the expectation. I mean, you
know, it's one of these things you have two willing parties, and if you get two willing parties to come to agreement quick, it's something that happens quickly. And if you get two parties that are not so willing, then it takes longer. So we expect, you know, with -- with continued positive reception of our plan, to go out, you know, with an RFP. We actually have been talking to developers and consulting with potential developers. We have a list. And, hopefully, we can get proposals and come to an agreement with one of them. And these negotiations take time. You know, it's very different than Kamehameha Schools or any owner just doing it on their own; right? They need to satisfy their own needs and move forward. When you're dealing with two parties, you know, how you split costs, how you split returns, you know, sales transaction-type of activities can take a long time to negotiate.

Our master plans in Kaka'ako, we have reached agreement with developers in as quick as six months, and there's one we're working on and we're approaching a two-year mark for a single project on a single block. So that's how involved these negotiations are, and I think like all of the time
frames that we've put out, we try to make a reasonable guess based upon what we know of the complexity of this project and the work and how long things take.

Q That makes sense. Is executing the development agreement a threshold issue that would be necessary before the steps that come in the rows below that can be effectuated?

A Yes. If our strategy remains to utilize a third-party development partner, and I see no reason why we would change that strategy. So, yes, that would actually be a necessity to move forward. Now, if for some reason we decided to develop this ourselves, then obviously that would be eliminated, but I'm not foreseeing that eventuality.

Q I imagine that would be very challenging for Kamehameha Schools to undertake.

A I like to sleep at night. So does my team. So that's not something we could take on.

Okay. Now, I know time -- and I mentioned this to you in some of our feedback, you know, time has been an issue, and I know there's been some discussion about imposing time limits on our project. I respectfully disagree with that. I think this is a very complex endeavor. You know, we are --
I'm not sitting here as a developer, and I can't give
surety to every step that's here. We need to -- you
know, our effort here in stepping into this project,
as we're doing, is to try to build certainty and
de-risk this project as much as we can knowing
there's a lot of uncertainty out there.

To entice a party to bring the resources
and capital, you know, in the billions of dollars,
right, when we're all said and done, and so you know,
more requirements can be counterproductive. We
understand why it's desired, but it can be an
obstacle and could be because it creates a "what if"
type scenario. "What if we don't hit this timeline?"
It just creates more risk, and investors don't like
risk.

Q Meaning it would be challenging to find a
development partner?

A It could just make it more challenging,
yes.

The plan is ambitious. I mean, you know,
it's not quite as big as Mililani and Ho'opili, but
actually it's on par with Ho'opili in terms of its
size. It's a different type of geography. It's a
different type of product. And I believe our
schedule is reasonable and put together in good
faith. I actually do have more details on this predevelopment area in a few slides.

Now, that said, do we want to go faster? Yes. I mean, we could have just sat back and let the solar projects, you know, productively use these lands and call it good for 30 years, but, you know, kind of back to the big why. And we really feel strongly that we need to, through our lands and management and planning, influence living here in Hawai'i in a more positive way, not just generate returns to give to the school. So that's the reason why Waiawa is coming forth in the timetable that we're bringing it for.

So on the solar, since we were talking about the solar, I won't obviously get into all the details, but this slide kind of lays out, you know, where that project has been, Waiawa Solar, and kind of where it's going. And time is of the essence in that after commission approval, it still needs to go to the city through their permitting process, and the plan is to start construction in October. And there's a deadline to start commercial operations by the solar company in December of 2021, and they're probably going to need that time. We also show here the rough decommissioning dates that are 35 years
Q So just to stick on that schedule. So I'm looking at it. If the commission were to -- on the second agenda item, which is not what we're talking about right now, but if the commission were to authorize that project in January 2020, the next step is to do the permitting. Then they got to rush to the city permitting --

A City permitting, right.

Q -- in April 2020 --

A Right.

Q -- grading permits, building permits just so they can meet that commercial operation date?

A In December, yeah. That's their key date. So starting -- you know, the permits so they can start grading in October is what they're striving for.

Q Okay. So there's several steps --

A Yes.

Q -- before they can hit that? Okay. Thanks.

How about for Kamehameha Schools and its development schedule?

A So kind of leading -- thank you, Jennifer -- leading off identifying --
You see here, this is really just meant to lay out our thinking around this predevelopment -- so if you think about between now and 2030, why does it take 10 years; right? And, you know, so we've -- we've identified the need to, you know, solicit our development partner, convince them this is a great investment, be a part of a great community that no one's seen before, execute that agreement. If we can do it in a year, we will, but we've given ourselves a couple years to do that. They're going to want to come in and want to get their fingerprints on this plan a little bit, and that's where a lot of this negotiation is going to be to ensure our vision is held true. And then we get into environmental review. So two years out, you know, we get into the environmental review process. And to get through that, resulting in a final EIS, you know, you essentially see a two-year process. Back to the Land Use Commission, subsequent to that, where at that point in time, we will have a hardened plan with all of the details and we'll be able to specifically request amendments to, you know, the current approvals, and then we go back to the city. We'd have to update our zoning and go through, you know, Planning Commission and all of the approvals and
unilateral agreements with the city. Then get into subdivision in 2027, a year for that, and then we'd start to be able to really commit at that point to our design and working drawings and bids and all of that, which would allow us to be in construction of Phase A in 2030, essentially turning over homes a few years later.

So our immediate next steps -- our immediate desire is to take our plan to market. You know, what are we selling? We're not selling land. We don't view it as that. We're trying to sell a vision of this community. We're trying to sell a financially viable investment. We're trying to sell a predictable and manageable process. And most important, we're trying to sell community support. You know, I think there's a lot of sentiment that are painting developers in a negative light, and we're trying to communicate the need that --

All of us live in probably a home that was developed by somebody else; right? And so our message is that it can be done in the right way and a respectable way and a culturally appropriate way, and that's what we're selling.

We look for your support. I will tell you that this is a favorite picture of mine. It is a
reason why we are doing what we're doing, why I'm
doing what I'm doing. Our keiki are our future, and
we know we can create a better future for them. We
need government's help. We need community support.
We need businesses that are willing to put their
capital at risk to create communities like Waiawa.
So we're very interested to get this going, and
mahalo for your time. I will answer any question I
can.

CHAIR SCHEUER: Thank you. Let's bring
the lights up.

Commissioners, let's start on questions
and see how we do, and we might get through this
agenda item prior to a lunch break, or we might be
going so strong that --

COMMISSIONER CHANG: We should take a
lunch break maybe because it's 12:05.

CHAIR SCHEUER: It's 12:05. We've been
going about a half hour now. So I was thinking we
would at least do some questions and then take a
lunch break. But I have no strong feelings.

COMMISSIONER GIOVANNI: Just a procedural
question.

CHAIR SCHEUER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: Some of the
questions I have, based on what I've learned from the
master plan presentation, probably are more relevant
during the next agenda item. So the questions can
actually wait until then.

CHAIR SCHEUER: Commissioner Wong.

COMMISSIONER WONG: Why don't you ask if
there -- go for maybe 10 minutes, and then my stomach
will call a recess.

CHAIR SCHEUER: So both points being well
taken, let's have questions now. Let's -- to the
degree that -- obviously, these two agenda items are
fairly integrated, but to the degree they're focused
on the presentation and KS's ongoing plans or
comments about that, let's start with that.

So did you have something, Commissioner
Chang?

COMMISSIONER CHANG: Thank you very much.
I really appreciated the presentation, and I applaud
Kamehameha Schools' efforts to be very thoughtful and
mindful during this process.

I just have a few -- few questions.
There were times that were mentioned community
support, and I looked at the -- I'm trying to find
the specific page. People that you've met with,
they're primarily organizations and agencies. So
help me understand what communities you had some
discussions with in regards to your master plan to
provide you input into the master plan.

THE WITNESS: Yeah. So we've actually
had a number of charrette-type events, you know, very
early on with people that have interest in Waiawa,
our lessees, you know, the businesses, the leeward,
like, Leeward Community College is a big partner of
Kamehameha Schools. I acknowledged that those are
very kind of dreamlike discussions. We haven't --
we've been reticent to, like, kind of lay more
hardened plans out until we had dreams that we felt
were more achievable. And so underlying all of the
work that we've done and all of the work that we need
do, there is a need to talk to the broader
community because, you know, it's not just the
community in Waiawa now that's impacted by this
project. I live in Mililani. I can tell you I've
got neighbors in Mililani that are not going to want
to see this project done. So I'm not suggesting that
we, you know, we've done our community work. In
fact, we're just getting started. But we need to
have something to kind of socialize and talk about,
and that's what a lot of this work has entailed. So
it's really just been localized to our community
stakeholders that we have relationships with, that we have partnerships with in the area.

COMMISSIONER CHANG: Because, you know, we've sat through several LUC hearings on different types of projects with different degrees of community engagement.

THE WITNESS: Yes.

COMMISSIONER CHANG: Clearly, the ones who have had very extensive, genuine broad-based community engagements have been so much more successful --

THE WITNESS: Yes.

COMMISSIONER CHANG: -- where the community has become the champion of the project.

THE WITNESS: Yes.

COMMISSIONER CHANG: So are you going to also expand the community to your own Kamehameha Schools and Hawaiian community as well?

THE WITNESS: Oh, absolutely, yes.

COMMISSIONER CHANG: This -- you have a phased approach, and this is a status report on the master plan. Your -- the original D&O was the Gentry project. It was designed to be built in a much shorter period of time. Under our own rules, we usually are looking at projects over a 10-year period
of time. And so -- and I noticed on your plan, you
have an LUC boundary petition. So maybe this is more
for Ms. Lim.

Are you proposing to file a new
boundary -- a new LUC boundary --

This is -- I see this in 20- -- "Land Use
Commission, 2024, file petition for district boundary
amendment with LUC."

MS. LIM: Thank you, Commissioner Chang.
Right now, as the plan is envisioned, there will be
two filings with the Land Use Commission. One is a
district boundary amendment because, as Mr. Thomas
mentioned --

I'm sorry. Did I just mispronounce your
name? Thoemmes.

As Mr. Thoemmes mentioned before, there
are areas that are proposed. Right now as the plan
is envisioned, it's actually 476 acres that are
proposed for urban district reclassification, and
that's shown on one of the master plan pictures in
crosshatch. If you look at our written submittal
from October, it's actually figure 1 that shows those
areas in cross hatches, primarily in the southern
portion of the property and then creeping up into the
area that's designated as Phase C.
So there would be -- again, as currently proposed --

And this does still need to be vetted through the community and vetted through an EIS process.

-- there would be a district boundary amendment, and then there would also need to be a motion to amend, which is what KS had represented to the commission five years ago before it came in. Unless it was going to develop the Gentry project, presumably, you know, exactly as planned, that KS would be coming in with a motion to amend so that the commission can take another look, conditions can be reevaluated based upon what is happening.

COMMISSIONER CHANG: So the 2022 filing, that's for a totally separate parcel of land? It's not the existing petition area?

MS. LIM: Just give me a moment because I've got several different schedules in front of me.

COMMISSIONER CHANG: The 2024. You have 2024 on the Waiawa Master Plan Next Steps, "File petition for district boundary amendment with LUC."

So that's for the 400 -- the additional 400 acres?

MS. LIM: That's correct, but you'll also see, and excuse me for the delay. So if you're
looking at Walter's slide 38, which is -- it's very wordy, but it was KS's, you know, effort to demonstrate it knows -- these are just high level, all the steps that have to happen before anything can actually happen on the ground. So if you look under the component labeled "Land Use Commission," there's the filing of -- a file of petition of boundary amendment, and that's for the 476-some-odd acres, and then there's also a 2024, filing a motion to amend. And these would be, you know -- would they be addressed at the same time? It's hard for me to think they wouldn't be. And I don't think at the same time in the same exact proceeding, but they would be two requests that would be going to get approval for this entire master plan area.

COMMISSIONER CHANG: But so you're proposing to file the motion to amend in this current almost 1,400-acre parcel in 2024?

MS. LIM: If things go according to the schedule. And, again, as you heard from Walter, getting a development partner onboard is important. You know, the filings, I mean, that's predevelopment kind of things, but that maybe is something that Kamehameha Schools could do without a development partner maybe, but at the same time because of the

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strong desire and almost need to have a development partner, going too far down the path risks creating -- requesting and creating an approval for something that may not be entirely consistent with what the development partner is seeking. But those are the dates. Those are the dates that are in the master plan schedule that we submitted in October and repeated on this slide.

COMMISSIONER CHANG: So the existing D&O, I'm trying to go back to the original. I don't believe there was an EIS prepared by Gentry for that?

MS. LIM: Actually, an EIS had been prepared by Gentry and accepted by the city, and it had to do with the development plan amendment that preceded the LUC's approval.

COMMISSIONER CHANG: Did it cover this entire --

MS. LIM: It did. It did. And it's a very old EIS, and there was a determination regarding the solar projects from the city that there was no need for -- there was no EIS trigger to develop the solar projects, and there was, therefore, no need to, you know, explore updating the EIS at that time. But as part of KS's due diligence, recognizing that there will be infrastructure that needs to be developed and
certainly discretionary approval from the commission, it's anticipated that 343 will be triggered, and let's be frank, it's highly likely it would be an EIS and not an environmental assessment.

COMMISSIONER CHANG: So is your EIS that you're doing in 2022 for the new addition of 400-plus acres, or is it for the entire 1,400 plus 400 acres?

MS. LIM: It would be for the entire master plan area.

COMMISSIONER CHANG: So the entire master plan area is what, 2000 acres?

MS. LIM: That's correct.

COMMISSIONER CHANG: Okay.

CHAIR SCHEUER: Still have a couple more, Commissioner?

COMMISSIONER CHANG: Yeah, just a few more.

And this is one -- I have two sons graduating from Kamehameha and greatly appreciated that, but you're right. Many of our -- many of our young Hawaiians -- our young Hawaiian leaders have to leave, and many of them have graduated from Kamehameha. So I noticed on your plan the difference between Gentry and KS's plan is kama'aina. So when you say kama'aina, how do you ensure -- explain to me...
what do you mean by kama'aina? Because I'm trying to
tackle your initial mission is raising all these
young Hawaiian leaders who have to move. A lot of
the reasons they have to move is they cannot afford
to buy a house here or live here. So are some of
these homes contemplated to provide housing for our
young Hawaiians?

THE WITNESS: You know, it's difficult to
target housing in a racial way because of the Fair
Housing Act. So our approach is to produce housing
for kama'aina, meaning that local people can afford
to live there. And that in producing housing for
local people in a culturally attractive and sensitive
way, we expect that Native Hawaiians are going to
want to live here too.

DHHL has ability to build specifically
for Native Hawaiians. Kamehameha Schools does not
have that ability. I will suggest to you that
getting DHHL involved here is a desire, and we've had
conversations with them from time to time. But it's
not something that we're permitted to do. So coming
back to that statement I made about, you know, we
can't target Native Hawaiians specifically in
housing, but we can create attributes of a community
and culture that is appealing to them in the hopes
that they make that the choice, and that we're solving housing for all kama'aina, not just Native Hawaiians, but they will be part of, you know, the benefit.

COMMISSIONER CHANG: I'm going to hold you to that. I will, at this point in time, yeah, thank you so much for your answers. Thank you.

CHAIR SCHEUER: Thank you, Commissioner Chang.

Commissioner Aczon.

VICE CHAIR ACZON: You mentioned in your presentation you did some charrettes, also outreach to different people. Is this including neighborhood boards?

THE WITNESS: No, not yet.

VICE CHAIR ACZON: Okay. So the plans that you presented, was it based on the outcome of the charrette planning and outreach, or are you just presenting your plan to them?

THE WITNESS: Actually, a charrette is kind of more like you don't really have a plan. You actually are looking for, you know, the ideas of what would a community like this be and who would it serve. So it was more that the information we get from -- the feedback we get actually helped create
the plan. And so it wasn't, you know, Kamehameha putting a plan in front of people.

VICE CHAIR ACZON: There's a -- in Maui we had two successful developments that were kind of in front of us, and it really made our job easy when the developers went out to the community, talked to the community, and then developed their plan, and then came to us; that the plans came from the community itself rather than the developer say, "This is what we want to do." So I just want to kind of mention that, you know, I think the development in Maui can be one of the models statewide, can be followed by the developers.

THE WITNESS: Yeah. Yeah. That's a great point. I mean, we've tried to balance, you know, moving quickly, getting input. We've also used our experience with master planning in other areas. So I put Haleiwa out there as an example. When we master planned the North Shore, that is a community that's all there; right? So the key stakeholders are being impacted every day. They all were part of it. Waiawa, there are community -- there is community there, but it's also a largely vacant ahupua'a as well. The question is how wide of a net do we cast in our initial consultation. We decided
to keep it more localized in Waiawa and our key partners. But, certainly, the next steps would be -- because the impact of all this would be felt up in Central Oahu and all over. But it's a great point, and we really tried to balance the right mix of involvement at different stages.

VICE CHAIR ACZON: I'm really looking forward to have more in-depth discussions on this in the commission.

THE WITNESS: Thank you.

CHAIR SCHEUER: Thank you, Commissioner Aczon.

Commissioners? Commissioner Okuda.

COMMISSIONER OKUDA: Thank you, Mr. Chair.

This is more, Mr. Thoemmes, an organizational, maybe cultural -- kind of organizational culture kind of question. At some point in time, the Land Use Commission may be asked to make a decision which is going to be involved. How much discretion should be left to the Bishop Estate, you and your professional staff, versus whether or not the commission might have to or should put all these restrictions which limit discretion, which may limit your flexibility. And part of it --
and you could have seen a little bit from the prior hearing. Part of it comes down to, you know, to trust, belief in the mission and things like that. I think we all in this community recognize the importance of Kamehameha Schools, you know, KSBE, its support that cuts across ethnic lines. I don't think this is an ethnic thing at all.

But just like the Land Use Commission, I mean, let's be frank, if you read some books like Land and Power, people think that the Land Use Commission, maybe even now, is just a bunch of political hacks who don't know what they're doing, who get rewarded based on who they know. And it might be true, might not be, but that kind of factors into should you really rely on people to have discretion, or do you have to keep people who you might not have trust in to be honest like those of us on the commission by having these really strict standards.

How would you address the concern that some people might have which is right now Kamehameha Schools, KSBE, has some really good planners, people who are committed to education, committed to the community as a whole, think of really impressive ways of educating not only students on campus, but going...
out in preschools and doing all the things that maybe
a lot of educators should do, but you know, you
shouldn't give them discretion -- shouldn't give you
discretion because this could just change in a matter
of a very short time by changes in who are the
trustees, who are appointed in senior leadership. I
mean, yeah, we might trust you today, but, you know,
10 years from now, you might not be there. You might
not be there because, you know, people might think
you're too honest a guy. I mean, how do you address
that?

THE WITNESS: Well, thank you. A lot of
compliments in there. I'll take it that way. I
guess the easiest way for me to answer that is, you
know, this is the risk we all deal with in the
positions that we're in. You know, I can't discount
that Kamehameha, in the future, could turn into
something that it isn't. But I think, you know, you
can also take a look back 20 years, you know, and I
was there. You know, I am who I am today because I
was there. And, you know, as an organization, we
were -- we were looking at oblivion basically with
broken trust and an IRS that, you know, was ready to
drop the hammer and take away our tax-exempt status,
and it was a shock to everyone. And the organization
we are today is because of what happened then. And the people that are there, you know, my staff get -- you know, we have a lot of new people on our team, and they get indoctrinated on this every day.

It is -- we are as responsible for our culture as anything. It's not about numbers and metrics. It's about who we are and our culture and our relationship and our values; right? And that's the organization that it is today. I'd like to think that that will persist. I cannot guarantee that. I don't know where I'll be in 10 years, Commissioner. Maybe I'm here. Maybe I'm not. But, you know, I mean, I think it's a seed that has grown, and, you know, I'm proud of the difference in the organization that we are today versus the one I came into in 1995.

So I don't know if that allays your fears. You know, I think you gotta look at the track record, and you gotta look at the things we were doing, and that people coming in even now that are new to the organization are seeing kind of what success looks like when you treat people right. Right? Even in my area, we are not above having tough negotiations with other parties. But at the end of the day, if it's not a win-win, it's not successful; right? And we recognize that.
So I don't know if I'm answering your question, but I think the organizational culture is very different. And, you know, it's great to hear -- not great. We were Bishop Estate back then, and now we're Kamehameha Schools. So when I hear Bishop Estate, I kind of go, huh, I remember -- I remember those days. But we try not to be that, and I feel we have very strong leadership, and everyone kind of understands that we're not that far away from where we could have been, and let's treat our responsibility to our beneficiaries and to the community with the respect that's needed.

COMMISSIONER OKUDA: Yeah. I'm not doubting what you said, and, frankly, I probably -- if I was asked a question to answer my own question, I probably would have said exactly what you said. I just wanted to hear it from you --

THE WITNESS: Right.

COMMISSIONER OKUDA: -- on the record, under oath just so the record is clear, but thank you very much.

THE WITNESS: You're welcome.

CHAIR SCHEUER: Thank you, Commissioner Okuda.

Commissioners, any other comments or
questions at this time?

COMMISSIONER GIOVANNI: I've got one quick one.

CHAIR SCHEUER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: Just to clean up some maybe terminology. So in the master plan, you referred to different ways different places, solar energy, utility-scale solar, solar farm. I think the actual order that was referenced referred to interim use of the petition area for utility-scale solar energy development or solar farm. In that context, I'd like to call your attention to this slide. I don't know the number. Mine don't have numbers on it.

But now we're looking at, you know, Waiawa Solar Phase 1, and that's a project that's clearly interconnected directly to the utility grid. There is no residential development as shown on this slide?

THE WITNESS: Yes.

COMMISSIONER GIOVANNI: But from a master plan perspective, are you looking to broaden the definition beyond what was in the decision and order to include utility-scale, battery, energy storage or other forms of storage, or features that look like a
microgrid here or features that might actually take
energy production off of the grid and directly feed
into the supply for the development of the
residential?

THE WITNESS: Yeah. That's a great
question. For the purposes of the plan as it stands
today, the two solar phases are separate. They are
intended to be utility-serving solar projects.
Within the master plan --

COMMISSIONER GIOVANNI: And by that, you
mean to the grid?

THE WITNESS: Yes. Now, within the
master plan itself, yeah, I mean, ideally, we would
love, you know, a microgrid. We would love homes
generating the power, a net-zero community. And to
the extent that we can find a financial way for that
to happen with a development partner that shares that
vision, that would be an outcome we'd love. Just as
other sustainable practices around water retention
and reuse and whatnot, those would be part of the
community development, and we will have, obviously,
more details and can't commit to it at this point.

COMMISSIONER GIOVANNI: Okay. So just to
distinguish for today's purposes, when we talk about
utility-scale solar projects that are under
consideration today and for which you're seeking a permit later this afternoon, it's for utility-scale solar projects that are directly connected to the grid?

THE WITNESS: Yes.

COMMISSIONER GIOVANNI: But from a master planning perspective, you have an open mind to consider new and different forms of energy production and interconnection --

THE WITNESS: Yes.

COMMISSIONER GIOVANNI: -- within the community?

THE WITNESS: Absolutely.

COMMISSIONER GIOVANNI: But that's not before us today?

THE WITNESS: That's not before us.

COMMISSIONER GIOVANNI: Thank you.

CHAIR SCHEUER: Thank you, Commissioner Giovanni.

Are there any other comments or questions before we break for lunch?

COMMISSIONER CHANG: Mr. Chair, just two.

CHAIR SCHEUER: I also have a few. Go ahead, Commissioner Chang.

COMMISSIONER CHANG: Okay. I guess what
concerns me is this -- you've got one -- 2024 is when you're going to come in and do a boundary amendment. Aren't you running risk? You're going to try to go out and try to get a partner. What happens if you have a Land Use Commission that is not favorable and chooses to say, "Nope. You gotta do what you proposed to do in Gentry"? Why are you waiting until 2024 to do a boundary amendment on --

Clearly, you've got a master plan that is -- that is -- that is not the same plan that was submitted back in -- that was approved in 1989.

THE WITNESS: So, yes, there is risk. There is -- I mentioned we've spent money -- 1.2 million to get to where we are, and we will need to spend more to go to the environmental review. But if you think about it, if the Gentry plan were viable, it would have been done, and we wouldn't be sitting here.

So retreating back and, you know, as I mentioned, you know, what the time we spent in the last few years and really trying to understand why that plan didn't go and what were they thinking and what were they doing and how our plan can and should be different, there's some real technical aspects to that. You know, an example was just starting it down
below where you got much more -- much less costly connections to infrastructure and water.

Our grading plan, which I didn't share in detail, actually is much -- follows the existing contours much more than what was envisioned. So not as much mass grading just to be more environmentally sensitive to topography. The old-fashioned way of doing subdivisions, you just go and mow everything down. So it follows topography. Those are the type of things that that plan did not --

I mean, there were a lot of reasons, I imagine, that the Gentry plan did not go in all this time, and we've identified some that we know we can change, and we've kind of built that into our thinking. But to your point, there is risk and -- but this is risk we take in real estate. We take it in Kaka'ako. We take it in Kapalama. And all the other areas that we're planning, if we don't take the risk, nothing will ever get done.

COMMISSIONER CHANG: And I guess to the extent that you can -- you ensure as much certainty by obtaining the kind of necessary approvals sooner better than later, but that's a business decision that KS -- Kamehameha Schools will need to make.

Can you confirm for me at this point in
time has there been any use of this land? Is there any roads that have been built, anything that has been done on the 1,400 acres?

THE WITNESS: You know, I don't want to misspeak because I don't personally manage the lands. I do know that we have had -- there was a reservoir there at one time that was closed. We don't have any commercial uses on these lands, I'm sure. It's been used for storage here and there, but no long-term business operations that I'm aware.

COMMISSIONER CHANG: So none of the conditions that were set forth in the original 1989 D&O for Gentry, as far as you know of, there have been -- there have been no -- none of those conditions have -- other than, like, studies, but things that actually impacted the land, you are not aware of any implementation or execution of those uses?

THE WITNESS: No, and I don't believe any have been permitted.

COMMISSIONER CHANG: All right. Thank you very much.

THE WITNESS: You're welcome.

CHAIR SCHEUER: Thank you, Commissioner Chang.
Commissioner Cabral.

COMMISSIONER CABRAL: I do want to thank you for the wonderful presentation, and it's wonderful to hear and see, and I hope that myself or some future commissioners can assist in bringing this to a reality, but I think right now I'm just happy and satisfied that you're making movement -- moving forward. And because we see a lot of -- a lot of show and no go around here, so I'm happy to support you in your efforts.

THE WITNESS: Thank you.

COMMISSIONER CABRAL: And, hopefully, we'll have real detailed questions in the near future.

THE WITNESS: Thank you.

CHAIR SCHEUER: Commissioners?

I'll just share a few thoughts before we move off this agenda item on to lunch and, after lunch, on to the thing. And I apologize. I have a whole bunch of thoughts, and I tried to organize them, but they might not come out as fully cohesive.

I guess I'll start by observing that the year that Gentry filed its plans for these lands was the year I graduated from high school, which is now an increasingly long time ago.
So my comments are really oriented towards that I'm grateful to hear about the current status of the master plan. The commitment to bring the new master plan was the reason I voted for the change a few years ago in 2014 because -- and this is where I differ from Ms. Lim's recollection -- it wasn't maybe we'll do something different. It was we're going to do something different. The Gentry plan is not viable at all.

And, you know, I think, you know, with full acknowledgment of the overwhelmingly challenging job that you have and your team has, it's a tough job. It's a lot of kuleana. I want to acknowledge that I think, even though it was not what was intended in 1988, it's such a gift that Gentry failed. It's such a gift in so many ways. You know, I'm reminded of when I lived and worked at Waipa, Kamehameha Schools lands --

THE WITNESS: Yes.

CHAIR SCHEUER: -- which were -- was envisioned for a leasehold gentleman's agricultural estate until the community stepped up and said --

THE WITNESS: Yes.

CHAIR SCHEUER: -- 'A'ole, this is not what we want here.
They say -- one of the things Stacey Smo (phonetic) taught me when she -- they first came onto land -- her dad and Sam Mahuiki and other folks, they had no capital, and the first thing they really wanted was, like, some heavy equipment. They were, "We gotta open up the hau bush. We gotta get in here, and we want to open up lo'i," and they asked Kamehameha Schools for money. And KS said, "No. We're not giving you money. You guys gotta raise all your money yourselves," and they were so mad when they first got that lease. And then 20 years later, they were, like, "Thank God. We had no idea what was here. We had no idea what this land -- how this land worked, how this land related to its water and its other resources, and good thing we were not dragging around buckaloose with an excavator." Buckaloose is not exactly what they said.

So the fact that -- I mean, I just gotta know this because it's always bugged me. The whole way this was branded Waiawa by Gentry. It isn't Waiawa by Cutter. You know, it's Tom Gentry. I mean, the arrogance of that old vision. Thank God that failed, and there's a chance to do something new. And, you know, to me, that brings to mind this reference to how long it's been since then. What
we've envisioned then as being very good was from a
different Kamehameha Schools, different Bishop Estate
at that time. It was from a different Hawaiian
community; right?

So the part that I am very encouraged
about is the intensification of use around the
transit station, the development of housing around
the transit station, which was the promise that we
still need to fulfill that we need more housing on
this island. The part that makes me very nervous is
the 40-, 50-year lookout and the assumption of what
we might do on the rest of this property. There's a
certain level of presumption in trying to take that
longer view of saying we want to hold on to this
urban districting for these very, very poor local
lands that we really don't know what the world is
going to be like or the Hawaiian community is going
to be like in that period of time. So that's the
part of this -- there's part of this that I'm very,
very encouraged by, but there's parts of this that
give me great pause.

And I guess one of the last things I'll
mention before we close is that, you know, regardless
of how you feel about Mauna Kea and the TMT and
what's going on up at the mauna, one of the most
interesting comments that I've heard about, it was from a long-term fixture at Kamehameha Schools, Neil Hannahs. And he said, "You know, all the leaders up there right now are the kids who went through Punana Leo." So you just naturally look at the world differently.

So what made sense to decision-makers 30 years ago for the summit of Mauna Kea, when you grow up in the culture, you grow up in the language and you grow up with these opportunities, you just will naturally look at the world in a very different way. And so the kind of master plan and, you know, I think the short-term solar things that this makes great sense as an interim use, but the long-term plans I think should account for a development as an island community, as a Hawaiian community and not be so presumptuous to what we do not know because we hope greatly the generations we're raising are far better than we are --

THE WITNESS: Yes.

CHAIR SCHEUER: -- and envisioning what we should be.

That's just my mana'o for what it's worth.

Is there anything further on this agenda
item?

Oh, yes. I have to -- we do have to present opportunity for the county and OP to comment on this matter.

CROSS-EXAMINATION

BY MS. WONG:

Q I just have one quick question. When you come in for the state land use district boundary amendment, is it going to be for, I guess, the Phase A lands and the C lands at one time even though C is not scheduled until 2052?

A Yeah. That would be the plan to come in at one time. You know, we'd have a developer and partner. We're looking at all five phases. You know, you need to spread infrastructure costs out. You need to create community association, help pay for it. It's easier to kind of picture the whole, even though you will implement it and the market will absorb it in different time frames. And so, yes, we would want to come in and get that level of certainty up front.

MS. WONG: Okay. Thank you.

CHAIR SCHEUER: OP?

MS. APUNA: We have questions, but I
think we'll wait until the second agenda item to ask.

CHAIR SCHEUER: Okay. Thank you very much.

So, commissioners, on this item, we have the opportunity to simply accept the report, or if you felt that at this time there was some information in the presentation that necessitated another motion, we could take one up, or we could simply accept this item and go on to the next agenda item after lunch.

What's your pleasure? Let's move on?

COMMISSIONER CABRAL: Accept and move on.

CHAIR SCHEUER: Accept and move on.

Ms. Lim?

MS. LIM: I'm so sorry, Chair. If I could ask for clarification what Ms. Apuna said in terms of questions. Of course, questions are welcome, but Walter is the person who is the most able to respond to questions about the master plan. So does OP anticipate having questions as to the master plan and development schedule or about the solar project? Because I just want to make sure we have the right people here to --

MS. APUNA: A little of both, but will he still be present during the second item?

THE WITNESS: I can stay.
CHAIR SCHEUER: Because the alternative, Ms. Lim, is we don't adjourn this item and then we take a lunch break.

MS. LIM: I just wanted a clarification because, again, the plan was to leave. So you're thinking that the questions would be questions that you would want to direct to possibly Mr. Thoemmes?

MS. APUNA: Possibly Mr. Thoemmes regarding the development schedule and -- yeah.

CHAIR SCHEUER: I'll just say based on the comments on some of the other commissioners earlier, that might be useful to a number of the commissioners as well.

MS. LIM: So in that case, the record on the solar will need to be reopened because I know the commission closed it on the 21st. So we'll be reopening the record on the solar so that additional witness testimony can be taken? Which, I mean, petitioner is happy to do whatever is going to give --

CHAIR SCHEUER: We're in recess.

MS. LIM: -- the commission and the parties information.

CHAIR SCHEUER: We're in recess.

(Recess taken from 12:45 p.m.)
CHAIR SCHEUER: Ms. Lim, we would like to have -- we would like to have Mr. Thoemmes available after lunch if we have questions as what he's presented today relates to the next docket. Is that a problem?

MS. LIM: So just for clarification, we will be reopening the record on the solar --

CHAIR SCHEUER: We're going to ask him questions about things that he's testified on today. I don't know that we're reopening things as to the entirety of every witness you've called to this point or any additional witnesses. So I am perplexed by your question and the intent of it.

MS. LIM: Well, because the commission said that they were closing the evidentiary portion of the solar motion and went into deliberations. So what I think I'm hearing from you now, and I'm going to say it and you tell me if I've got this correct, is that you would like finishing -- the commission will finish on this agenda item, and then after lunch, we'll reopen the solar motion and rather than going straight into deliberations, there will be some opportunity for discussion, and at that point if there are questions for Mr. Thoemmes, then you would
reopen the record so that the --

CHAIR SCHEUER: Insofar as we have
questions for Mr. Thoemmes.

COMMISSIONER GIOVANNI: Chair?

CHAIR SCHEUER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: I see information
presented by Mr. Thoemmes that is in conflict with
what was presented in the evidentiary portion. So to
resolve such conflicts, we might have to reopen.

COMMISSIONER OKUDA: Chair?

CHAIR SCHEUER: Commissioner Okuda.

COMMISSIONER OKUDA: And I believe
Chair's approach is the appropriate approach. And my
recollection was that because we had juxtaposed or
switched around the presentation, a lot of the
information that Mr. Thoemmes has presented today was
really necessary. That was one of the reasons why we
stopped and rescheduled or continued this matter
until today because if we had proceeded based on the
record that was presented the last time, I think a
result -- it wouldn't have been unexpected for me for
a result to come out which might not have not only
been in the best interest of KSBE, but it might not
have accurately reflected the record. So I support
how the chair plans to handle this.
CHAIR SCHEUER: Is Mr. Thoemmes available after lunch when we take up the next agenda item, Ms. Lim?

MS. LIM: He is, and, again, we're just confirming that those questions, should there be questions, and his responses will then become part of the record in the solar proceeding?

CHAIR SCHEUER: If we have questions for him that we ask during the next proceeding, that will be part of the record.

MS. LIM: Thanks very much for clearing that up.

CHAIR SCHEUER: Thank you. It is 12:53. We will reconvene at 1:50 for the remainder of the proceedings today.

(Whereupon, a lunch recess was taken from 12:53 p.m. until 1:51 p.m.)
HONOLULU, HAWAI'I

THURSDAY, JANUARY 9, 2020

1:51 P.M.

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CHAIR SCHEUER: Thanks to everybody for being on time.

Our next agenda item is a continued action meeting on Docket No. A87-610 Tom Gentry and Gentry Pacific, Limited, Successor Petitioner, Kamehameha Schools, Oahu, to consider the petitioner's motion for modification and time extension. We will follow the very similar procedures for this docket and the record was already updated on the previous status report.

There are three individuals who have signed up to give public testimony on this matter. After the completion of public testimony, the petitioner will be allowed to make their comments. We will, as discussed prior to the break, ask that Mr. Thoemmes be made available for questions. After the completion of any subsequent comments from the petitioner, we'll receive any comments from the county planning department and the Office of Planning, and following the final comments of the petitioner, the county and the state, we will conduct
our deliberations. Are there any questions on our procedures?

MS. LIM: No questions from petitioner.

CHAIR SCHEUER: County?

MS. WONG: No questions.

CHAIR SCHEUER: OP?

MS. APUNA: No questions.

CHAIR SCHEUER: Our first public witness is Jeff Overton for Group 70 followed by Daniel von Allmen from Clearway and Cameron Black from HSEO.

THE WITNESS: Good afternoon, Chair.

CHAIR SCHEUER: Good afternoon. So I'm going to -- for all the witnesses, I will swear you in and ask you to state your name and address for the record and then proceed.

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

THE WITNESS: Yes.

CHAIR SCHEUER: Thank you.

JEFFREY OVERTON,

having been called as a witness by Petitioner,

was duly sworn and testified as follows:

THE WITNESS: Jeff Overton. I'm a
planning principal with G70. I gave you an incorrect address yesterday. Our proper street address is 111 South King Street, Suite 170, Honolulu, Hawai'i 96813.

So I'm here to speak regarding Kamehameha Schools' motion for modification and time extension. There is an exhibit before you that includes a letter I'm going to summarize as well as five exhibits. A couple of them are mounted on the tripods over here to my right.

So I am Jeff Overton, principal planner at G70. I'm testifying in support of the motion for modification and extension of time that will allow Waiawa Solar Project, LLC, [sic] solar project to go forward.

So as a little background, my career, a land use planner, environmental consultant spanning 36 years, believe it or not, including the planning permitting for eight commercial solar projects since 2014.

G70 has assisted and continues to assist Clearway and its subsidiaries like Waiawa Solar Project with their land use planning and permitting requirements on its solar projects in Hawai'i, including the one at Waiawa. And given our past work
with Clearway on its solar projects, I am familiar
with the land use permitting and time requirements
for solar projects such as the one that's before you.

So for a little background regarding the solar project, Waiawa Solar Project, excuse me, consists of a 36-megawatt 144 megawatt hour battery energy storage solar farm with related electrical improvements and overhead utility tie-ins or what is referred to as a project, in quotes.

The project is proposed to be installed on an approximately 200-acre area, the project site, in the central eastern portion of a 1,395-acre Kamehameha Schools property that is within the state urban district property at Waiawa, an Ewa district of Oahu and KS -- what we call the KS property or petition area. And I'll refer to the exhibit with my laser here carefully, and it is this area on the easternmost portion of the property and here and then also referenced here in the crosshatch in these two exhibits.

So these exhibits are -- they're before you, Exhibit 1 and Exhibit 2.

So these are -- this includes the utility tie-in or gen-tie route that's running from the project site to the west within the petition area
across the gulch near Ka Uka Boulevard near the exit of the H-2 Freeway to reach the point of interconnection on the existing Hawaiian Electric Company 46 kV Waiau-Mililani line. I'll just identify that gen-tie connection goes across to this position here (indicating).

The actual lot coverage of the solar farm facilities within the 200-acre project site, it's only 83 acres and includes the project elements on the site. So in terms of the location, I've kind of touched on this, but the project is within the KS petition area in Waiawa and Waipio, Ewa, Oahu, Hawai'i, and designated by the TMK numbers referenced in the letter and the exhibits attached.

The KS property is located east of the H-2 Freeway Ka Uka Boulevard interchange west of Pearl City, and the petition area is in the state land use urban district as shown in KS Exhibit 2.

The petition area is designated for urban-type uses, such as residential, commercial, recreational, industrial under both the current 2002 and the proposed Central Oahu Sustainable Communities Plan land use maps. Exhibits 4 and 5 are attached. I haven't put those boards up, but they're in your handout before you.
There is a mixture of county zoning within this petition area, and it includes Neighborhood Business District B-1, Community Business District B-2, low density Apartment District A-1, medium density Apartment District A-2, Industrial/Commercial Mixed-Use IMX-1, Residential District R-5, and General Preservation District P-2. KS Exhibit 3 also in your packet shows the current county zoning on the property. The project site for the Waiawa Solar Project is zoned AG-1, a restricted agricultural district.

To summarize the permits requirement, Waiawa Solar Project will need to get approval of a conditional use permit from the county planning department, conditional use permit, minor, to allow for the construction on lands that are zoned restricted agricultural AG-1 district. In addition, there will be ministerial construction site permits, such as grading, grubbing, stockpiling and PDES, construction, stormwater as well as building permits.

So following the commission's approval of the motion for modification, a conditional use permit will be submitted followed by a number of building, electrical and civil permits as well as grading permits. And it will take approximately four to six
months for approval of the CUP application as well as
approximately eight to nine months for approval of
the ministerial permits. These timelines do not
include the internal preparation of the permits and
applications and consultations with the county prior
to filing. Construction will take approximately one
year.

Based on this timetable and our past
experience with similar projects, Waiawa Solar
Project is already significantly constrained in its
overall permitting and construction timeline and
needs approval of a motion for modification this
month in order to make its operational deadline of
the fourth quarter 2021 as required by the power
purchase agreement with Hawaiian Electric Company.
And this is really the key.

With respect to decommissioning the
project, about six months is set aside for permitting
based on the current requirements. It does not take
into consideration environmental studies or
consultations that may be needed to complete --
completely ensure compliance with state or federal
regulations. And it's my understanding that
construction activities with decommissioning could
take approximately one year.
So in conclusion of my testimony, I strongly support Waiawa Solar Project and urge this commission to approve KS's motion today to allow the project to move forward and meet its PPA requirements. I'll be glad to respond to questions.

CHAIR SCHEUER: Thank you very much. Are there questions from the petitioner?

MS. LIM: None from the petitioner.

Thanks.

CHAIR SCHEUER: City and county?

MS. WONG: No questions.

CHAIR SCHEUER: OP?

MS. APUNA: I do have a question.

CHAIR SCHEUER: Please.

MS. APUNA: Thank you, Chair.

CROSS-EXAMINATION

BY MS. APUNA:

Q Thank you, Mr. Overton, for your testimony. Are you aware of OP's proposed condition with regard to backbone infrastructure to be built within the first 10 years -- within the next 10 years?

A Just generally. I don't have a specific understanding.
Q Okay. So, yeah, generally, it's just

that we're asking that petitioner put in the backbone

infrastructure for just Phase A of their development

within the next 10 years. So within the 200 acres of

the petition area of Phase A. Do you know if our

condition or that requirement would interfere with

the solar projects in any way as far as the

permitting or the actual construction of the solar

project?

A So my responsibilities have really been

limited to the planning and permitting associated

with the solar project. So I think it would be

extending for me to really comment on the

infrastructure outside the project area for the

solar.

Q But you don't see any -- if there was --

if the infrastructure for Phase A were to move

forward in the next 10 years or even 5 years, you

don't see any interference with that as far as the

solar project? Is that a problem at all in any way

for the solar?

A Well, the timeline for construction of

the solar project, I present in the testimony there's

also a timeline attached -- I'm sorry I didn't mount

it here for you. At the back, there's a simplified
timeline that shows where we need to get to for system operation by the fourth quarter of 2021. And so we're challenged to move expeditiously to meet this timetable, and that's really the focus of the project that I'm consulting on. Activities that are happening elsewhere in the petition area are really the responsibility of KS and not Clearway. So I don't think I can comment further. I don't see a complication here. That's about all I can say.

MS. APUNA: Okay. Thank you.

CHAIR SCHEUER: Commissioners, questions for Mr. Overton?

Commissioner Giovanni.

COMMISSIONER GIOVANNI: Thank you, Mr. Overton. In your testimony, you referenced specific terms of the purchase power [sic] agreement that would be complicated if we don't move forward today. Could you be more explicit? What terms are you speaking of?

THE WITNESS: As I understand it, and Daniel von Allmen is also here from Clearway, who can probably answer that question more directly. But as I understand it, we have a very rigid timeline that I've tried to capture in a summary in this exhibit that's at the end of the package that you have before
you. So it's a simplified project schedule that shows that by the beginning of 2020, really the end of fourth quarter 2019, we needed to be completed with the Land Use Commission process so that we could file for the county conditional use permit that is the next entitlement that's required to proceed towards construction. And as you can see, the time bars are not generous to reach the end of the timeline shown here. To reach system operation and under the power purchase agreement, that would be fourth quarter of 2021. We've got quite a bit of permitting work to be done. As you can see, building permit review just shows about eight or nine months in here, which I'd say is optimistic given the way permits are approved here. So it's urgent. If we were delayed a month or more here, it would probably throw off the schedule.

COMMISSIONER GIOVANNI: So if I understood you correctly, the issue here concerned about is getting started on a timely basis. And it's not the term of the PPA, but it's the designated commercial operation date or target commercial operation date by the end of 2021, and you want to start now. So you need a decision promptly. Is that what your position is as opposed to any other
specific term of the power purchase agreement?

    THE WITNESS: Correct. I can't comment on those details. We're tasked to execute on the conditional use permit, which we have prepared and we're ready to file with the county, but we're unable to process that until we've completed the approval of this motion.

    COMMISSIONER GIOVANNI: Okay. So it's -- you refer to a time extension in your modification and time extension of the -- of the permit?

    THE WITNESS: If we were delayed and unable to proceed with the filing with the county.

    COMMISSIONER GIOVANNI: That's the starting point?

    THE WITNESS: Correct.

    COMMISSIONER GIOVANNI: But your testimony, as written, said you needed to have actions by the Land Use Commission, including the extension of the timeline.

    THE WITNESS: I'm going to stand by what's written in here.

    COMMISSIONER GIOVANNI: Okay. So I'm going to interpret it that, and it's the third of the last paragraph of your letter, that what's really relevant here is you need the commission to take
action now for its motion modification this month in
order to get started and meet your operational
deadline of fourth quarter 2021?

THE WITNESS: Correct.

COMMISSIONER GIOVANNI: Thank you.

CHAIR SCHEUER: Are there further questions?

If not, thank you very much.

THE WITNESS: Thank you.

CHAIR SCHEUER: Our next witness is

Daniel von Allmen followed by Cameron Black.

Aloha.

THE WITNESS: Aloha.

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

THE WITNESS: I do.

CHAIR SCHEUER: Okay.

THE WITNESS: Thank you, Chair.

DANIEL VON ALLMEN,

having been called as a witness by Petitioner,
was duly sworn and testified as follows:

CHAIR SCHEUER: Okay. State your name and address for the record and then proceed.

THE WITNESS: My name is Daniel von
Allmen, and I work for Clearway Energy Group, and our address is 100 California Street, 4th Floor, in San Francisco, California 94111.

Thank you, Chair. Thank you, commissioners. Pleasure to be back in front of you guys again today. It was supposed to be --

COMMISSIONER GIOVANNI: Can you turn on your mike?


It was supposed to be Patrick Sullivan, our vice president of development, sitting here today. He sends his regrets. Unfortunately, he's dealing with a family emergency right now. So it's my pleasure to represent him and represent Clearway in this chair today.

I am, if you don't remember me from November, the development project manager for the Waiawa project and all of Clearway's Hawai'i development assets. So I'm responsible for all the preconstruction project management and happy to answer any questions about the lease, the PPA or anything else along the way.

I'm not going to read Patrick's entire written testimony for you. There are two key points
that I want to briefly summarize as I sit here, and that is, first, the need for approval today and to reinforce what Mr. Overton just went through, and the second is our need for the 35-year-term time extension.

And as it relates to the need to receive approval from the commission today, Mr. Overton laid out a series of sequential steps starting with the approval from the Land Use Commission, leading into the approval of the conditional use permit, preparation and approval of the ministerial permits, including the clearing, grading and eventual building permits that will take at least the next year to work through that process followed by the one-year construction timeline to get us to the December 2021 guaranteed commercial operation date that is in the PUC-approved PPA that we have today.

So as you can see from the timeline Jeff laid out and from the points that I just touched on, we don't have any time to spare right now, and that even losing a month of further deferment would put us on our most aggressive schedule outside of that 2021 date. And that has a lot of negative implications for us in terms of coming into a violation of a major -- major contract and defaulting on an
agreement with Hawaiian Electric that none of us would like to see come to fruition here. So time is certainly of the essence, and we really appreciate you guys hearing our arguments today and, hopefully, providing us the approvals that we need to move forward with this project and with this process.

As it relates to the 35-year term, I want to touch on a few kind of sub-bullets under that topic to highlight why that's so important to us that I feel like maybe it wasn't presented as clearly as it could have been last time we spoke with you guys. And the first is that large-scale utility solar facilities are regarded in the industry as having life spans of 30 to 35 years and, in some geographic regions, up to 40 years. That's something that independent engineers sign off on as we go through the financing process and is accepted to be the industry standard at this point that a project that we install today would last and be productive for the next 30 to 40 years.

The second point that I want to make is that the agreement between Waiawa Solar Power and Kamehameha Schools explicitly considers the extension to the 35-year term as long as we have a power agreement in place that backs that up as well. And
so the parties to that agreement have agreed that as long as there's somewhere to sell the power to, that this is a good, functional use of this land and that we should be able to continue to operate the project for its full 35-year life.

The third and perhaps most important item that I want to highlight for you guys is that this project was bid to Hawaiian Electric with the assumption that it would be able to operate for 35 years based on the terms of the lease that we have with Kamehameha Schools. And I want to highlight that point because in these competitive solicitations for projects that have the ability to operate for their entire useful life, every developer that participates in these solicitations will make that assumption that you have the ability to capture post-contract revenue. And the way that you make that assumption is kind of up to a business decision of every individual company, but it's part of how developers are able to push the prices as low as we've been able to achieve here in Hawai'i and achieve the greatest possible benefit to Hawai'i ratepayers. And so to cut short a project's operational life span would come to the detriment of rate payers not just through that project not
delivering that energy for the remainder of its life, but also that developers would have to basically redo the math on the assumption that they would not be able to operate the project for its full life, and the pricing for those interim years would also be higher. And so it's extremely important to maximize benefits to Hawai‘i rate payers, that the full 35-year term be approved, and that the project be able to operate for its full life expectancy.

And, finally, the last point that I wanted to make is that looking at Hawaii's resource needs for the coming decades, we fully expect there to be a strong demand for this project beyond the PPA term. At the end of the 20-year PPA term, Hawai‘i will still have not reached the peak of its 100 percent clean energy mandate. And as you'll see in the testimony that was filed by HECO in support of this point, Hawaiian Electric will need to be continuing to work to meet that goal without losing the capacity that it already has. And given that Hawaiian Electric has come forward and said that they also expect to be able to renegotiate this PPA to extend it to the benefit of Hawai‘i rate payers, it only gives us more confidence that that opportunity will be there.
So all of that said, in order to maximize the benefit that this project provides and take advantage of the full term that has been laid out in agreements between Waiawa Solar Power and Kamehameha Schools, we are asking respectfully that the commission extend the term of this approval to the full 35 years.

So in conclusion, I appreciate you guys giving me the opportunity to speak with you again today. We are really excited about continuing to work in Hawai'i and to continue to help meet the challenges and the demands of the energy needs of the state and the islands, and I sincerely ask for your support today and your approval today of our motion.

CHAIR SCHEUER: Are there questions from the petitioner?

MS. LIM: None from the petitioner.

CHAIR SCHEUER: City and county?

MS. WONG: None from the county.

CHAIR SCHEUER: Office of Planning?

MS. APUNA: Yes, Chair, please.

CROSS-EXAMINATION

BY MS. APUNA:

Q Thank you, Mr. Allmen, for your
testimony. Similar to what I had asked Mr. Overton, counsel at the last hearing had stated that OP's proposed condition would have incredibly traumatic and very dangerous effects on the solar project itself. Can you explain what those dangerous conditions and effects might be if OP's condition was approved?

A Clearway and Waiawa Solar Power is not taking a position on the condition that OP has proposed. We've stated in November and reiterate today that we are fully willing to comply with the provision and conditions that are applicable to the solar project and are happy to accept those conditions, but we're not prepared to speak on conditions associated with the broader master plan.

Q Okay. But you're okay with OP's proposed condition? You don't have any issues with the condition with regard to backbone infrastructure within the --

A Do you mind if I confer with my counsel real quick?

Q Please.

COMMISSIONER GIOVANNI: Chair, if I may, to help clarify the question, it might be -- I'm very interested in the answer to this question, but it
might be worthwhile to show what -- just to show the
land area for Phase A and how it's apart from the
subject area of the solar farm. I mean, physically,
it's two different locations within the petition, the
subject area.

MS. APUNA: Am I able to, Chair -- I'm
wondering if we could ask maybe --

COMMISSIONER GIOVANNI: The Petitioner to
do it?

MS. APUNA: Yeah.

THE WITNESS: I can certainly point out
the area of the solar facility, which is inside of
the zone of contribution, the red thumb-shaped
intrusion into the map there, and so that --

CHAIR SCHEUER: You're being handed a --

THE WITNESS: So this is our project area
here, and as Mr. Overton explained, our gen-tie comes
across the project site here and meets the existing
transmission line along the highway. And so the
boundaries of our permit approvals are associated
with the footprint of our project. And so that's the
focus of my work, and I'll just state again that
we're not taking a position or can't take a position
on conditions related to the master plan.

BY MS. APUNA:
Q Okay. So -- and then your understanding is that the solar project is not within that red area that you pointed to. It's south of that southern portion of the yellow --

A Sorry. The solar project is in the red portion. I apologize if I misspoke.

Q And then Phase A, which is what our -- OP's condition is -- what our condition is imposing upon is Phase A -- you understand Phase A to be not within that same red area, but the southern portion of the yellow petition area?

CHAIR SCHEUER: Having to be fair to OP, you're asking him to speak about a matter that he's not a part of? But I think it's fair for you to state you'll note that Phase A that was presented to us is outside the area to which he is referring.

MS. APUNA: Right.

CHAIR SCHEUER: I don't want to necessarily force the witness to comment on a project that he said he doesn't want to comment on, that he's not necessarily the expert on.

THE WITNESS: I appreciate that, Chair. Yeah, I am not able to comment on the location of certain elements of the master plan.

MS. APUNA: Okay. That's fine.
CHAIR SCHEUER: But it's certainly obvious from what we heard earlier what he's saying now.

BY MS. APUNA:

Q But you did say that you -- that you're supportive of the conditions that are -- or you have no problem with the conditions that are proposed as part of the amendment?

A I believe I stated, and I can clarify, that we have no problem with the conditions that are proposed that are specific to the solar project, and I apologize. I don't have them in front of me, but they were the -- the water condition, the RFI condition, and then there was a third one which I'm blanking on as I sit here. But there were three conditions that were specific to the solar project, and we have no issue with those.

Q And you take no position as far as OP's backbone infrastructure condition; is that correct?

A That's correct.

MS. APUNA: Okay. Thank you.

CHAIR SCHEUER: Is that it?

MS. APUNA: Yes.

CHAIR SCHEUER: Okay. Commissioners?

COMMISSIONER CABRAL: I have a question.
CHAIR SCHEUER: Commissioner Cabral followed by Commissioner Giovanni.

COMMISSIONER CABRAL: Thank you very much for the information. I love solar. I just finished a really big project in Hilo. I think the biggest in Hilo right now.

So I'm looking at my drawings we got previously, and the solar project doesn't even touch upon Phase A. You have to go through A and B, if that's how you're dragging. So draw me a picture. I'm assuming you're not going to helicopter in every day to check on it. So you're going to have a road. Where is your road going to come to and go to to get in and out of there? Where's your equipment going to go, and once you get there, it's going to be chain-link fence, bushes around it? You're going to have it up high? You're going to have sheep underneath? What's going to happen every day there?

THE WITNESS: Well, just for the record, we are actually not allowed to have sheep on this project as much as we would like to.

CHAIR SCHEUER: Someone's going to mow the lawn every day?

THE WITNESS: We will have someone mowing the lawn every day. But our entrance to the site
comes off of Waiawa prison road and utilizes the
eexisting old cane haul roads through the site which
will be improved up to the border of our project on
the kind of southwest side there, and that's where
our project fence line will be.

COMMISSIONER CABRAL: Okay. But you're
going -- it's going to be chain-link fence around the
whole project site?

THE WITNESS: Yeah, the whole project
site will be fenced.

COMMISSIONER CABRAL: Okay. And then
inside of it, obviously, you'll have your own
electricity, and then you'll have bathrooms and a
septic system and all of that type of thing or just a
porta potty? I mean, no one has to stay much time
there unless you're going to have a guardhouse.
Because this could be there for a long time before
anybody else shows up in the neighborhood; right?

THE WITNESS: Correct. So there will not
be any permanent staff on-site. We won't have an
operations building on-site. So there will be a
porta potty next to a temporary trailer for
day-to-day operations and maintenance. We may have
folks -- a limited number of staff coming in and out
for routine maintenance checks and security checks on
a regular basis, but there will be no permanent
infrastructure as it relates to bathrooms, buildings,
things like that on our project.

COMMISSIONER CABRAL: And then I don't
know. I'm assuming the grass and jungle will grow.
What are you going to do to keep the jungle off --
how high are your panels going to be?

THE WITNESS: So I would have to
double-check the minimum and maximum height, but the
rows are arranged such that you can get an industrial
mower through them, and we'll have a mowing
contractor that's coming in to do vegetation
management on what will be a daily basis, basically.

COMMISSIONER CABRAL: It's a big area.

THE WITNESS: Yeah.

COMMISSIONER CABRAL: And why can't you
have sheep?

THE WITNESS: It's due to the location
within the zone of contribution that there's no other
allowed uses of that land.

COMMISSIONER CABRAL: Oh, wow. Okay.
Thank you very much for the general information. I
like pictures. Thank you.

THE WITNESS: Uh-huh.

CHAIR SCHEUER: Commissioner Giovanni.
COMMISSIONER GIOVANNI: Thank you, Chair.

Thank you, Mr. Von Allmen. Thanks for coming back.

THE WITNESS: Of course.

COMMISSIONER GIOVANNI: Just a couple things to clarify upfront. So we're talking about a solar facility that's 36 megawatts DC?

THE WITNESS: AC.

COMMISSIONER GIOVANNI: AC. Pardon me. And the 144 megawatt hours, is that battery storage?

THE WITNESS: Yeah, correct. So it's a four-hour battery for the full capacity of the system.

COMMISSIONER GIOVANNI: So when you talk about an industry standard, and this was somewhat covered by you and Mr. Sullivan previously, in order to fulfill the full 24-year term of your existing PPA, there would be some augmentation of battery storage and some replacement of inverters and some replacement of panels. So even though the facility has a life of 20 years plus, there will be components that need to be changed out on a periodic basis. Is that a correct understanding?

THE WITNESS: Yeah. That's generally correct. I think what we summarized last time was
that our typical O&M strategy contemplates rebuilding certain aspects of the inverters on a regular basis to replace certain parts and to extend their life as a unit rather than a wholesale replacement. There will be augmentations of the battery system over time as that does start to degrade, and that panel replacements will probably be done on an as-needed basis. There is not an explicit timeline that the panels will have to be replaced.

COMMISSIONER GIOVANNI: Okay. Thank you. But the warranty on the panels is much less than 35 years?

THE WITNESS: That's correct.

COMMISSIONER GIOVANNI: So in terms of the power purchase agreement, I think you said it's a 20-year term?

THE WITNESS: That's correct.

COMMISSIONER GIOVANNI: And we may have the -- when we had the hearing in November, there was reference to seeking -- I think it was a five-year extension or something of that sort?

THE WITNESS: I don't think that there's an explicit expectation from Hawaiian Electric's side, let's say, on the time of the extension. We would seek a 15-year extension to match the extended
COMMISSIONER GIOVANNI: Is it your understanding that that extension could be the result of a bilateral negotiation with Hawaiian Electric? Is that specified in the PPA?

THE WITNESS: It is specified. So the PPA explicitly states -- I'll do my best to paraphrase here, but there's an expectation that at the end of the contract term, the developer would have received its -- recovered its up-front capital investments and that the company would be able to recontract the asset at a potentially lower cost and greater benefit to repairs.

COMMISSIONER GIOVANNI: Is it your understanding that that would be not subject to a competitive process?

THE WITNESS: That is my understanding, yes.

COMMISSIONER GIOVANNI: Do you know that for certain?

THE WITNESS: I don't know if I can say for certain, but I believe that would be a bilateral.

COMMISSIONER GIOVANNI: Okay. So at this point in time, is it fair to characterize that 15-year period as having some uncertainty associated
with it?

THE WITNESS: There is some uncertainty, and that's part of what we dig into the, I guess, business risk decision of how we value that post-contract revenue.

COMMISSIONER GIOVANNI: Okay. Thank you.

CHAIR SCHEUER: Are there further questions from the commissioners?

Commissioner Wong.

COMMISSIONER WONG: Thank you, Chair.

Thank you.

A question regarding the permitting side, especially the timeline. So you're saying that it's more sequential and not parallel? Can you please explain that a little bit more?

THE WITNESS: Yeah. So -- and I might ask my counsel to come in and provide some of the specific details.

COMMISSIONER WONG: Sure. Bring them in.

THE WITNESS: It is, as Mr. Overton noted, a sequential process where we cannot -- DPP cannot begin its review of our CUP until after the approval of the commission is given, and that we would not be able to start preparation of materials for the ministerial permits until after we receive
approval from DPP and know all the conditions that they have incrementally imposed.

MS. KUWAYE: Commissioners, Naomi Kuwaye. I am the attorney for Clearway. Mr. von Allmen is correct. It is a somewhat sequential process, and it's sequential to the extent that DPP does not have jurisdiction to act on their portion of the permits until the Land Use Commission gives its approval. The Land Use Commission has the first authority to review this and approve it, and then it goes to the City and County of Honolulu for their processing.

As part of our CUP package, however, we are submitting a number of construction-related permits. So what will happen is it will first -- DPP will probably look at all the CUP-related documents first, circulate it around all their different divisions and departments, and then same thing with the construction-related permits. Based on our past experiences in dealing with G70 on this issue, it's been taking about six to nine months to get through that process internally.

COMMISSIONER WONG: So the question is let's say if -- you need nine months? I'm being conservative.

MS. KUWAYE: In the past, DPP was highly
efficient. However, my understanding from talking to some of their staff people, there have been some restraints. So we are -- we don't want to pressure DPP into rushing through the processing. We try to give them as much time to go through the review process, and we're allotting about nine months. And I told -- I usually tell my clients to allot more time than usual because you don't want to be stuck in pressuring the county to make a hasty decision.

COMMISSIONER WONG: Right. So let's say, hypothetically, if we don't do anything today, everything is pushed back that much more; is that correct?

MS. KUWAYE: That's correct. We're just basically assuming it's going to take at least a year for construction and just basically going through all of that. So we know, basically, by this time next year, we are going to have to be on-site constructing. But we also know that DPP is going to take some time to get through all their permits and reviews and their processes. And it's essentially a give and take sometimes on some of these conditions. So we need to allot enough time for that give and take and resubmissions of information that they think they're missing. So yeah.
COMMISSIONER WONG: So would Hawaiian Electric also be somewhere in that loop in terms of the PPA that -- when it's due or the electricity is due?

THE WITNESS: Yeah, so we report to Hawaiian Electric on a monthly basis on a whole suite of issues as part of our conditions of approval. And so we report to them on the status of our permitting on a monthly basis, and they know also how long this takes, especially given that we just went through this process with three other projects. And to Naomi's point, for the Kawailoa project, which we completed on Kamehameha Schools' land, that took nine full months to receive.

So HECO is certainly aware of the timelines that we're up against, and they're doing the math on their side in terms of the amount of time that we have left against our commercial operation date.

COMMISSIONER WONG: So going to the next question is you pretty much need a decision by today?

THE WITNESS: Yes, please.

COMMISSIONER WONG: Okay. That's all I wanted to know. If not, then everything will be pushed back, and you may be at risk of losing a
contract or a PPA; correct?

THE WITNESS: That's correct.

COMMISSIONER WONG: Okay. Thank you.

CHAIR SCHEUER: Are there further questions?

Commissioner Giovanni.

COMMISSIONER GIOVANNI: Just a follow-up on Commissioner Wong's question. Is there any consideration to seek courtesy review from DPP for any of these permits?

THE WITNESS: It is under consideration. We did receive courtesy review for -- to allow the Kawailoa project to move forward under its timelines. It will allow us to parallel track certain things, but my understanding is that the recent ruling that was passed formalizing the courtesy review process makes it slightly -- it formalizes it, but it makes it slightly more restrictive in terms of how you can enact it. So, one, we don't want to count on that being available to us; and, two, even if it is available to us, it may be on a more restrictive basis. So we would like to hold the current schedule, but make sure we have kind of the full green light in January.

COMMISSIONER GIOVANNI: In other words,
you haven't already banked on a courtesy review?
That's the point I wanted to make.

THE WITNESS: That's correct.

CHAIR SCHEUER: Commissioner Wong.

COMMISSIONER WONG: Thank you, Chair, again. So I guess not just talking to you about DPP, but I saw in the newspaper about the audit of DPP. So you cannot go to, like, a third-party person to assist in that process, the permitting process?

THE WITNESS: We retained last time what I understand to be colloquially referred to as a permit expediter. I think that's what you're referring to. They're extremely helpful, especially to a primarily mainland-based company like ourselves to have increased the local presence here. We are fortunate to have a few people who are locally based. So that is part of our kind of comprehensive permitting strategy is that on the ministerial permit side, our EPC contractor will work with an expediter, will work with our local staff to try and most efficiently navigate that process.

COMMISSIONER WONG: So even with the expediter, it will take still approximately nine months?

THE WITNESS: For Kawailoa Solar with an
expeditor, it took us nine months.

COMMISSIONER WONG: Oh, okay. Thank you.

CHAIR SCHEUER: Anything further, commissioners? I'll just note that if we need to make a decision by today, we are done at about 4:30, which gives us about two hours. Anything further for this witness? No? Okay. Thank you very much.

Our next witness is Cameron Black.

Could you come up?

Please swear or affirm the testimony you're about to give is the truth.

THE WITNESS: Yes. Thank you.

CAMERON BLACK,

having been called as a witness by Petitioner, was duly sworn and testified as follows:

CHAIR SCHEUER: State your name and address for the record and proceed.

THE WITNESS: Thank you. Cameron Black, energy analyst, Hawai‘i State Energy Office. We are at 235 South Beretania, downtown Honolulu. I can give you my business card. I don't know the ZIP Code.

CHAIR SCHEUER: We have the same address too. So we'll trust you on that.
THE WITNESS: Okay. Sorry. I don't want
to give you my home address, but I can give you that
too.

CHAIR SCHEUER: I'm inclined to say no.

THE WITNESS: Oh, yes. My testimony here
is regarding the Waiawa Solar Power project that was
the last two -- subject of the last two testimonies,
and I understand much more how that's part of the
larger discussion that was had this morning, and I
can appreciate more of that after attending this
morning. So I appreciate that as well as sitting in
on the very first agenda item.

Hawai'i State Energy Office has
traditionally operated as a division of DBEDT, the
Department of Business, Economic Development and
Tourism, the strategic industries division
specifically. In 2019, the Hawai'i State Legislature
created, statutorily, the Hawai'i State Energy
Office, and that's under Hawai'i Revised Statute
196-71.

The purpose of our office is stated in
our testimony, but I'll read it for the record. "To
promote energy efficiency, renewable energy and clean
transportation to help achieve a resilient, clean
economy."
Our acting CEO is Scott Glenn, formally of the Office of Environmental Quality Control, and I'm here on his behalf and our office's behalf.

Reaching our ambitious goal of 100 percent renewable energy by 2045 will probably require a lot of big renewable projects to replace our existing big fossil fuel power plants. One example of that, in November, Hawaiian Electric Company announced that it had received 75 bids in response to its recent RFP for renewable energy projects on Oahu, Maui and Hawai'i Island.

A big part of reaching these goals will be the ultimate retirement of the AES coal plant down here or at Campbell Industrial Park which currently provides 16 percent of the power to Hawaiian Electric according to Hawaiian Electric. So it's a very important and significant facility. Retiring that plant will be an important step in reaching the benchmark mandate of 40 percent renewable energy by 2030 from the filings we've seen, and its our understanding that this project is going to be a part of retiring the AES coal plant eventually. AES also, according to the Department of Health, contributed approximately 8 percent of the greenhouse gas emissions in 2016. I'm sorry. That's the most
current information that I was provided, but that is from a December 2019 greenhouse gas inventory report that was recently published by our Department of Health.

I'm telling you all this because the premise -- one of our premises is to reduce our greenhouse gas emissions.

As was discussed with the commissioners' decision, a decision on this motion would enable the parties to move forward or plan accordingly. So I'm also here to ask for a timely decision.

Also as reiterated by Mr. Overton, the project is located on what I thought was a 200-acre area, but I've learned it's about a 90-acre development area in the urban district, not the agricultural district, not the conservation district.

Finally, my last point is that the power purchase agreement that has been talked about as well was approved by the Hawai'i Public Utilities Commission in March of last year at 10 cents per kilowatt hour for the 20-year term --

I'm looking behind me. I don't have my counsel here, but in case anyone else wants to jump in here.

-- which the Hawai'i PUC found to be
reasonable compared to the other PV farms. So we figured that was also a salient point for this commission to consider. And that wraps up our testimony and our comments this afternoon.

CHAIR SCHEUER: Thank you very much. Are there questions for the witness?

MS. LIM: No, thank you.

CHAIR SCHEUER: County?

CROSS-EXAMINATION

BY MS. WONG:

Q I have a question. On the purchase power agreement, how easy is it to ask for an extension on that fourth quarter 2021? Is that something that can procedurally be easily done or --

A That's not really my place to speak on that. I wasn't part of negotiating this at all in any way, shape or form in the Hawai'i State Energy Office. So I'll defer to the parties who negotiated that agreement. I'm sorry.

CHAIR SCHEUER: Anything else, County?

MS. WONG: No, no other questions.

CHAIR SCHEUER: OP?

MS. APUNA: No questions.

CHAIR SCHEUER: Commissioners?
Thank you very much.

Hold on. We cannot resist.

COMMISSIONER CABRAL: I would like to get your calling card. Thank you.

THE WITNESS: No problem, Commissioner.

CHAIR SCHEUER: Okay. Anything else?

Thank you very much.

Commissioner Ohigashi?

Yeah. Okay. We're done with witnesses.

Let's take a 10-minute recess and reconvene at 2:51.

(Recess taken from 2:41 p.m. until 2:53 p.m.)

CHAIR SCHEUER: We are back on the record.

Okay. Ms. Lim, ready to present?

MS. LIM: Sure. Thank you, Chair.

So the commission heard the somewhat hurried presentation in November, and -- but we did touch on the major points of the project. So we're having a chance to come back, hopefully wrap things up and respond to questions, especially after commissioners had a chance to maybe review the materials that we filed or heard from witnesses.

So what I'm going to do right now is not go over all of the project details. You've heard
that perfectly well. I just want to touch on a couple of the highlights. Again, to put things in context, a little over five years ago, Kamehameha Schools requested this commission's approval to use, on an interim basis, two large areas of the petition area for interim -- for a solar farm development on, as I said, an interim basis, and that approval was granted. And that approval said by the end of 2049, those two projects need to be decommissioned.

As we talked about in November and, in fact, as has been filed in Kamehameha Schools' annual reports, the solar farm developer who we had identified and who we were under contract with at that time had two unfortunate events happen. One was that their power purchase agreement with HECO did not get approved by the Public Utilities Commission, and shortly thereafter they went bankrupt.

What that meant -- and, again, we informed the commission of this through our annual reporting. What that meant is that the project -- the solar farm project that SunEdison was going to pursue in the approved areas couldn't go forward because all of a sudden, there was no developer within an approved PPA. Luckily, Kamehameha Schools kept its eyes open. Luckily, Hawaiian Electric
issued another RFP still looking to develop additional renewable energy. And, luckily, Clearway and its subsidiary, Waiawa Solar Power, came forward and the perfect marriage was made. And in this case, Kamehameha Schools and Waiawa Solar have an agreement that will allow Waiawa Solar Power to use the Kamehameha Schools property in the same area that the commission already approved although, as you heard, the footprint has actually shrunk down from what was previously approved for SunEdison. And that agreement will run for as long as -- as I think what Mr. von Allmen said, as long as there's an agreement between Waiawa Solar and HECO for Waiawa Solar to continue selling power, the agreement with Kamehameha Schools will allow Waiawa Solar Power to stay in place selling power to HECO.

And so Kamehameha Schools is entirely supportive of the requested term, which is now to the end of 2059. So, remember, what's already been approved would allow the solar to be there until the end of 2049. Due to these delays that I just described, there's a need for an extension of 10 years from what was previously approved. So that would allow the Waiawa Solar Power project to be in place, again, fully decommissioned no later than
December 31st, 2059.

We believe that as well as the issues that SunEdison faced and the power purchase agreement concerns that they had faced, those alone would provide good cause because stepping back, the commission standard right now under HAR 15-15-94 for a motion to amend -- because that's what we're here about is just a motion to amend -- is good cause. That we believe we've demonstrated there's good cause for this 10-year extension because, obviously, the initial -- initially approved solar project couldn't go forward within the time frame as originally proposed. Really due to no fault whatsoever of Kamehameha Schools and certainly no fault of Waiawa Solar Power. We're very grateful that they came along and are prepared to go forward with this project.

We also think that good cause is demonstrated by the great testimony we just heard from the state energy office and, frankly, by even the supportive position that the Office of Planning has taken vis-a-vis the solar project. Because it is consistent with key elements of the Hawai'i State plan, it's also obviously in furtherance of our 100 percent renewable energy goal by 2045 which is coming
up really, really soon.

The project that Waiawa Solar Power would be developing in the area and, again, it's in that area on Exhibit 4, I believe it is. Excuse me. Exhibit 8. Excuse me. It is anticipated to generate enough renewable energy to power some 14,000 homes, which is not going to solve all of our renewable energy needs, but we think it's a really, really good start. Excuse me. Now I cough.

So, again, the standard that we're here to meet is good cause. We believe that we've given the commission good cause to authorize, again, the three modifications that we requested.

(Coughing.)

I'm so sorry about this.

VICE CHAIR ACZON: Do you want water?

MS. LIM: I've got water.

The one is the extension. The second is a little bit of a change in the footprint.

(Mr. Hakoda hands a cup of water to Ms. Lim.)

MS. LIM: Thank you very much, Riley.

And the third would be that the project that the commission had approved a little over five years ago had SunEdison developing in the zone of
contribution, but at that time no substation or battery storage was planned in that area. It was, in fact, going to be in the northwestern project area. Today we're only here to talk about the project area that is in the center eastern -- the central eastern portion of the petition area. That's the only project before us, and they would, in fact, need to put battery storage and a substation within the zone of contribution.

In the record --

Could you just give me one second, please?

CHAIR SCHEUER: Yes, please.

MS. LIM: This is just like what happened at your office yesterday, Rodney.

Okay. Thank you. In the record, as I was saying, when SunEdison came forward, the project that they were planning within this central eastern portion of the petition area did not anticipate battery storage or a substation because they were able to put that in the other solar farm area. Because Kamehameha Schools and Waiawa Solar Power understood that before we could pursue getting authorization to put a project that involved battery storage and a substation within the zone of
contribution, we needed to do our due diligence.

What you'll find in the record is evidence of -- not evidence -- I mean copies of letters from both the Department of the Navy and the Department of Health explaining that KS and Waiawa Solar Power had come, had met with them, had described to them the various best management practices that would be put into place to ensure that this project will not cause any harm within the ground -- to the groundwater within the zone of contribution.

And to that end, if I may, I'm going to read a slight modification for consideration to one of the conditions that OP proposed in their filing. And I'll just step back for a really quick second.

OP proposed a handful of conditions that relate to the solar farm project. As you heard Mr. von Allmen say, Waiawa Solar Power is comfortable with those conditions. I am going to read a little bit of a tweak to one of those conditions for everybody's consideration.

Kamehameha Schools is entirely supportive of the conditions as well. The only place where Kamehameha Schools and Office of Planning seem to be having conflict is regarding the requirement to impose a non-solar time condition on the project, and
we can deal with that later. I just wanted to get it out there. The rest of the conditions proposed by Office of Planning are acceptable to everybody with a slight modification that I'm going to read right now, if I can, into the record. That groundwater resource protection condition that OP had proposed, it seems as if it was written in anticipation of the correspondence that came about later between KS, Waiawa Solar, Department of Health and the Navy. So we would ask that that condition read "The operator of the solar farm to be developed in a central eastern portion of the petition area shall implement mitigative measures to prevent the introduction of contamination to the zone of contribution from the solar farm's operations," comma, "consistent with the representations made and relied upon by the Department of Health in its letter of March 28th, 2019, to petitioner and the U.S. Department of Navy in its letter to the solar farm operator dated September 30th, 2019, in reference to the solar farm operator's representations in its letter dated July 22nd, 2019."

And with the consideration of those modifications to the OP's condition, and, again, setting aside Kamehameha Schools' concern about the
infrastructure, that condition that they wish to impose, we're otherwise very appreciative of Office of Planning's support.

So in some -- five years ago -- a little over five years ago, this commission took a good, hard look and said, "Yes, this property on an interim basis is suitable for a solar farm development."

Things didn't work out with that solar farm developer for reasons that were completely beyond Kamehameha Schools' control. The commission's been kept apprised of this through timely annual reporting that Kamehameha Schools does. We filed a motion in July requesting approval of this Waiawa Solar Power project, which again requires approximately a 10-year extension to give them the time to build a project, hopefully get the extension to the PPA, and then have sufficient time to properly decommission the project, which is what's required under their agreement with Kamehameha Schools, and some modifications, as I said, to the details of the project.

We hope that we've presented enough information in the record on the solar project for this commission to be able to confidently authorize the project today and help us meet Hawaii's 100 percent renewable energy goals with Waiawa Solar
Power. They're in the driver's seat ready to build this project as soon as they possibly can.

So I'm not going to say anything more. I'm happy to answer questions, but I recall before the lunch break that there was an interest in maybe having some questions for Mr. Thoemmes.

CHAIR SCHEUER: Yes. So, commissioners, are there questions for Ms. Lim or for Mr. Thoemmes?

COMMISSIONER CHANG: And I think this is probably from Mr. Thoemmes, and this is kind of a follow-up from Commissioner Giovanni's question about phasing of your -- the infrastructure and financing.

WALTER THOEMMES,

having been recalled as a witness,

was previously duly sworn and testified further as follows:

COMMISSIONER CHANG: So Office of Planning's proposal is that Phase 1, the backbone infrastructure, be developed within 10 years. And as I see the timeline that was included in the master plan presentation, and maybe you can clarify, but it appears as if Phase A, the timetable to start construction, is that 2030.
THE WITNESS: Correct. The Phase A on this slide that we show the phases, this represents -- those dates represent the start of horizontal construction site work to the completion of vertical construction for that particular phase. So if you're looking at Phase A, based upon the schedule that we provide, the details of which are on the following slides, we would essentially break ground for site work in 2030, which is 10 years from now. So we would be breaking ground in 10 years as opposed to completing in 10 years.

MS. LIM: And if I may supplement that response too, again, what I'm looking at is the submittal that was made on October 7th, the master plan submittal and the detail schedule, one page of which was part of the PowerPoint presentation, but there's a more detailed schedule going over each of the phases of the project.

The anticipation of the start of the infrastructure development in Phase A is, as correctly noted, is identified right now as 2030, and that is a good faith estimate. But we do need to point out, as Mr. Thoemmes identified in the PowerPoint presentation earlier today, there are numerous steps that have to take place before we can
get to that point, including the development partner, the development agreement, more outreach, a complete EIS, and then coming back to this commission for actual approval of that whole master plan. I mean, there are several steps. So -- and that's all built into this time frame, but there is sort of a waterfall effect. And the same way with the solar project. If there's a significant delay on one component, it could have a spillover effect on those later components.

COMMISSIONER CHANG: But you understand the position that Land Use Commission is in as well is that your timeline is trying to drive and force the Land Use Commission to make a decision on your proposed amendment because of time constraints, is that the solar company needs to -- they need to get their approval so they can build. A lot of your assumptions are based upon LUC taking timely action.

You know, we had a hearing yesterday in Kona. A very similar developer came in, took over the D&O, the project from another developer, hadn't done any work on it. There was a -- we had a motion -- an order to show cause, and they came in with a master proposal prepared by Mr. Overton, but we were on the verge of an order to show cause
because there was no commencement of work, but we applauded the work that they were working on with Mr. Overton and -- but this timeline is much more elongated than what they were proposing.

And speaking very candidly in sort of this very open room, but is there a way that Kamehameha Schools can expedite that infrastructure so that you can do it in a much timelier fashion as a showing of good faith given that this LUC original approval was back in 1989? And I know you inherited it from someone else, but what is your good faith to demonstrate that you can timely develop this 1,400 acres so that we aren't looking at 50 years? But I mean in all candor, can you move up that schedule?

THE WITNESS: In all candor, we would love to move up the schedule. We are in the business of managing risk, not just activities; right? And so every one of these steps involve risk in environmental, in land use and zoning and subdivision. There's no certainty in any of this from time to, you know, just to getting into having hearings. We've looked hard at how other long-term developments have played out. Mililani took 50 years to do their project. You know, Koa Ridge, 33 years to do 3,500 homes. That's their program. I mean,
our overall timetables are not that different from how other developers are actually implementing. Not talking about implementing, but actually implementing.

You know, our concern is that, you know, if we can get a developer onboard and move faster, we absolutely will and want to. You know, as I mentioned in my presentation, these Waiawa lands sit in our endowment and we make zero, nothing. I mean, it is probably -- it is a loss for us to just secure it; right? I mean, we are motivated to make it productive because it will make economic gains for the organization as well as meet community need. My challenge is to have a time constraint that, you know, our best guess at this shows we're not going to meet it. To be complete with site work, four years of site work by 2030 means we gotta break ground in 2026. That's, like, six years away to get a developer, make sure their business needs can be met as well as ours, to go through the environmental process, you know, back to the LUC, through city zoning. You know, that's really aggressive. You know, five, six years, that's really aggressive.

And so the only ways that I could see us -- if all of these requirements are still in play,
right, if there isn't some special legislation that
puts aside certain requirements, the only way for us
to go faster would be to take the risk to design
everything concurrently with the approvals, and I sit
here today in great candor not sure that I could
advise that for Kamehameha Schools.

Our best guess of the cost to go through
the predevelopment, not including design, is probably
another three to four million dollars on top of what
we've already spent. To then go and advance
construction drawings and these are the things that
we need to get started earlier, you're into tens of
millions of dollars. And all subject to
discretionary approval, that's way too much risk for
Kamehameha Schools.

COMMISSIONER CHANG: Do you understand,
sir, our position?

THE WITNESS: We certainly do understand.

COMMISSIONER CHANG: This is your
greatest risk.

THE WITNESS: Yes.

COMMISSIONER CHANG: We are your greatest
risk at this point in time. We just heard from the
solar company.

THE WITNESS: Yes.
COMMISSIONER CHANG: "If we don't get
LUC's approval today," they almost said they're
walking. There is -- so we -- so to the extent that
we are dealing with the known risk, this is a known
risk. And part of my challenge as a land use
commissioner, I want you guys to be successful.
There's no doubt in my mind you are putting together
a plausible project that will benefit, in particular,
I want to believe the Native Hawaiian community, our
young Native Hawaiians. So there's no doubt, I want
you to be successful. But on the other hand, I'm
also cognizant that we cannot -- we cannot pick and
choose how we treat the different petitioners who
come before us. So here we had someone we chastised
yesterday who was coming in to us and asking us to
delay our motion to show cause to revert the land.
And I'm --

So to just understand sort of the real --
the very hard, painful -- and it just means we have
this opportunity right now. You've got a willing
developer. Known revenue can come in. We have a
reasonable condition. So think about it. Okay?

THE WITNESS: Thank you.

CHAIR SCHEUER: Commissioner Cabral?

COMMISSIONER CABRAL: I agree with
Commissioner Chang that I'd love to see this get built immediately, but I'm probably a little more in the real world too because nothing happens as fast as I'd like. I think my recommendation is that we really look at the solar project as it is right, I guess, before I came onboard that the LUC said you can take this land and make solar. So I think we need to address the solar project as the solar land and the solar project standing on its own. I know it's part of the bigger picture, but I think we'll drive ourselves crazy, and we'll create requirements or expectations that will just take up time and more paper pushing down the road if we try to lump everything into the perfect resolution, the perfect motion. So I recommend we really look at this solar project, and I think I would be in favor of trying to move forward with that.

CHAIR SCHEUER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: I respect where Commissioner Cabral is coming from, but I'd like to hear from OP first because it's their condition and it's really the crux of the matter.

CHAIR SCHEUER: So where we are, procedurally, the petitioner is presenting. We asked the petitioner to bring up Mr. Thoemmes. OP had
actually requested -- earlier deferred asking questions of Mr. Thoemmes on a previous matter so they can ask now. Could we move -- would that be acceptable?

MS. LIM: Of course, Chair.

CHAIR SCHEUER: Are you ready to ask your questions of this witness?

MS. APUNA: Yes, Chair. Thank you.

CROSS-EXAMINATION

BY MS. APUNA:

Q Thank you, Mr. Thoemmes. I just have a few questions, and I think Commissioner Chang had asked some questions that we had had. But one question, actually, Commissioner Chang had asked you earlier was if you know now that this project is so different than the original, the D&O, why won't you come in sooner rather than a few years from now for a motion to amend?

A Maybe because, you know, we're not -- we are not doing this -- developing this project alone, that, right, you know --

CHAIR SCHEUER: Okay. Can you move the microphone right next to you?

THE WITNESS: Selling this division to a
developer that is going to bring in, you know, tremendous capital and take ownership of it is something that we have to allow for, right, and this was a status update, and this is where we are in the process. And, you know, if, in the best world, we turn around and we get a developer step in six months from now and love the plan that we have, this whole thing gets compressed.

I know developers. They want to put their stamp of ownership on everything too, and we are anticipating some back and forth. Hence, the timelines that we've put out. I mean, it's certainly not our intention to drag this thing out. Lord knows this has been dragged out long enough. So our schedule anticipates, you know, the need to get, you know, an agreement with a developer, and then we start the environmental review process for which public comment can come in that creates new requirements and new conditions. And, you know, that may change what our boundary petition may look like, you know. So if we even try to run those parallel, we might get caught in a situation of doubling efforts, doubling costs.

So that's really why the schedule is laid out that way. And I wish I could, you know, have an
easy answer to how we could go fast, but it really
starts with being able to attract a development
partner.

BY MS. APUNA:

Q Okay. Yeah, you just spoke about
managing risk and these unknowns that are out there,
but couldn't you come back just like you have now the
third time to amend? You know, things do change and
we've seen this in this docket. You've come, you
know, twice before and then today here because things
have changed, and you're asking this commission to
understand that things change, and we need to kind of
make some changes to the decision and order. So
couldn't you -- isn't there some level of risk where
you can say we can do some things and know that if
it's impossible, you can come back to the commission,
and if it's reasonable, they can say, "Okay. We'll
make another change"? But this -- I mean, is that a
possibility too?

A Well, you know, we, obviously, are
planning to come back, right, for an approval of a
boundary adjustment which -- and other things, I'm
sure, in a future motion, and we'll have much more
certainty about our plans at that time and a much
more detailed conversation. So we certainly expect
to be back.

I think the specter of a 10-year requirement that we, by our own best knowledge, don't think we can meet, then tells us we'll be in noncompliance. Now, what is that risk? I can't answer that risk. I can't tell a developer what is the risk of noncompliance. Do we now find ourselves in a position where these entitlements get taken away because of our noncompliance? All of this adds risk. Now we gotta ask ourselves do we want to even get that far knowing that we're probably going to be in noncompliance sitting here today, right, due to this requirement. So, yeah, we do intend to be back in 2024, you know, no later, hopefully earlier, you know, and it will be the result of having solidified our plan with our developer and having a feasible business plan and model and financing to make this happen, having gone through the environmental review, heard from the many, many stakeholders that weigh in on this and adapting our plan to that, and then when we come in, this is the goal, decision at that point.

Q So I understand, yes, you don't want to become noncompliant based on what you can or can't commit to today, but KS is in a way not in compliance at this point. You know, they are long overdue based
on the 1988 decision and order. At some point there needs to be some commitment, and I'm hoping that you understand that the commission can make adjustments, and that's why they're here today. Maybe that's something to consider.

Can you maybe explain more how you're different? I think we see a lot of developers come to the commission and they say, "We can't do this for this reason or that." But for the most part, they are able to commit to some type of substantial commitment within 10 years, and I want to understand how KS is different than these other developers that are able to make those commitments in 10 years?

A I think, candidly, because we're not those developers, we need to get a partner/developer. At this point, the plan is, you know, conceptual. It's our idea. It's our vision, right, and we just are probably further behind where other developers might be. I don't know. I'm not a developer. That's my speculation. And, you know, it's -- I can't speak to the reason why it's taken this long. I mean, that was with Gentry. I can tell you what's different now is we plan to be involved, and, you know, part of the backdrop that I try to create is why we're going to be involved. So -- and we do
intend to push it. But we cannot do it alone, and that's part of the challenge that I'm faced with sitting here today.

If I had a partner already identified sitting next to me like I hope will be in a few years, then this would be a very different conversation.

Q Okay. One last question. In your view, does KS currently have any deadlines to initiate or complete the master plan development?

A Outside of what we shared? This is -- this is the schedule. We're trying to beat this schedule; right? This is the schedule we put out there when you say, "Okay, worst case, this is what it will look like." We want to beat this schedule, absolutely. There's a lot of other factors in play in development. I don't know what the market is going to say, right, at the time we're doing this. There's a lot of other competitive, you know, type of projects out there. But subject to that all working out, we hope to beat this schedule. Our intention is not to live with the conservative schedule. It's actually to beat the schedule.

Q Okay. Thank you.

A You're welcome.
CHAIR SCHEUER: Okay. Anything further for the Kamehameha Schools' witness? If not, we can --

Sorry. Is there a hand down there? Commissioner Ohigashi.

COMMISSIONER OHIGASHI: I have two areas of questions. If we were to put a condition saying you have to put backbone infrastructure in, have you any idea as to Phase A where would that go at this point?

THE WITNESS: It would essentially be starting at the bottom.

COMMISSIONER OHIGASHI: I understand that, but do you have any idea what the layout would be?

THE WITNESS: We have just a conceptual layout. With certain roads defined and certain land areas laid out on-site, and then off-site, we were working with DOT; we're working with the city on sewer connections, roadway connections, that sort of thing.

COMMISSIONER OHIGASHI: Do you have any idea what it costs maybe?

THE WITNESS: We actually do. Phase -- Phase A -- I do have that detail. Pardon me.
Roughly $700 million in infrastructure. Phase A, I believe, is about 226.

COMMISSIONER OHIGASHI: What's the difference then between backbone infrastructure and infrastructure?

THE WITNESS: I'm considering that the backbone infrastructure to be everything needed to get vertical construction built.

COMMISSIONER OHIGASHI: Okay. So the necessary infrastructure that we always have, roads --

THE WITNESS: Grading, water, roads, yep. Sewer.

COMMISSIONER OHIGASHI: And if we put this 10-year condition on it, would that affect your ability to attract partners?

THE WITNESS: That's our greatest concern. It will -- people may look at our schedule and our plan and say there's no way we're going to hit this.

COMMISSIONER OHIGASHI: Would that, in fact, maybe put the trust or the Kamehameha Schools at a disadvantage in terms of negotiating fair price with a developer on an equity split?

THE WITNESS: That's a hard -- so let me
just put it to you this way: It's not unusual for developers in negotiations where there's a shortfall to ask KS to pick up the tab.

COMMISSIONER OHIGASHI: Or to say that "We're assuming all this risk"?

THE WITNESS: Right.

COMMISSIONER OHIGASHI: "So we should get a bigger share of the profit"?

THE WITNESS: Right. Or the land should be discounted; right? Invariably, the land they take from us will be discounted. So absolutely.

COMMISSIONER OHIGASHI: In order to give you maximum leverage, I would say, because I don't know any other word to use, but in order to give you maximum leverage for the trust --

Well, let me reask the question this way: What kind of partnership -- I'm kind of unclear what kind of partnership you're looking for. 51/49 in favor of the trust? 50/50 in favor of the trust or not in favor of the trust?

THE WITNESS: Yeah.

COMMISSIONER OHIGASHI: Because from what you're telling me is that your involvement, you hope to have it be more involved?

THE WITNESS: Yeah. So a project like
this, we will -- will involve a partnership where
certain elements of this -- and through the proposal
process, we expect developers to propose different
structures. So there will probably be many
proposals, but we envision a structure where it will
involve selling of parcels, selling of land. We will
partner in infrastructure, selling of parcels for
homes because we won't do homes. We will retain
parcels for commercial if we do that. So it will be
a really structured partnership of certain aspects of
development the developer will do, and we'll take the
sole risk of certain aspects that we will do and may
also involve certain aspects that we joint venture
on, including infrastructure. So it's not as simple
as saying, you now, "You get this percent; we get
that percent."

COMMISSIONER OHIGASHI: If we put this
provision on, do you see, in realistic terms, a delay
of -- a potential delay in the development of this
area?

THE WITNESS: I would think with this
restriction as currently our understanding of it, it
may delay us even getting started because we would
need to rethink -- we have not contemplated that. We
would need to rethink a timetable to comply with
this -- with this new requirement, and make a
business decision whether or not to proceed or not.
And I'm not able to, sitting here today, tell you
what that would be.

COMMISSIONER OHIGASHI: I'm just curious
of your opinion. Thank you very much.

THE WITNESS: You're welcome.

CHAIR SCHEUER: Commissioner Okuda.

COMMISSIONER OKUDA: Thank you,

Mr. Chair.

Mr. Thoemmes, KSBE is planning to come in
at some point in time to modify the existing D&O;
correct?

THE WITNESS: Yes.

COMMISSIONER OKUDA: And that's -- at
that point, for lack of a better term, that's going
to be the plan of action; correct?

THE WITNESS: Correct.

COMMISSIONER OKUDA: So would you agree
that it's a fair statement that this discussion about
whether or not these conditions that are being
proposed by Office of Planning, it's kind of like
just theoretical stuff because if you're going to
come in with a new plan, that's what the focus should
be on; correct?
THE WITNESS: Correct. I would agree with that, yes.

COMMISSIONER OKUDA: So I'm not saying that, you know, this is all going to be a shibai or anything like that, but, really, if KSBE is really going to come in with a new wholesale plan which I think is necessary here, perhaps there's just too much concern being placed on this condition except in this sense if I might say this. We do have a concern here to treat everyone with equal protection of the laws. Basically, you know, similar people in similar situations should be treated similarly. And if we're taking a strict view of enforcement of requirements that the Land Use Commission has placed, I understand the stigmas made by a certain developer attorney saying, "Gee, why are you guys making such a big deal about it? Land Use Commission never enforced its rules before." I think that's almost a quote from one person appearing in front of us.

But if we are going to enforce or expect people to follow the rules, we have to have that expectation across the board. Do you think that's a fair thing for us to do that the rules should apply across the board?

THE WITNESS: You know, I'm not as
familiar with the other petitioners.

COMMISSIONER OKUDA: Yes.

THE WITNESS: So if you're just looking for a general comment on general fairness, I would say that's generally fair.

COMMISSIONER OKUDA: And let me tell you this: At least me personally, I recognize, and I said this at the prior hearing, that KSBE may not necessarily fall within the same type of classification as land developers or speculators as described by the Hawai'i Supreme Court in Bridge Aina Lea when the Supreme Court said, "We don't like these types of projects or developments where you get certain entitlements, and the developer doesn't carry out its promises and just speculates with the land."

Because I'm not sure if the evidence really shows that that's what KSBE does. And as I mentioned in the earlier hearing, perhaps it's good, given your mission that, yeah, go ahead and speculate. Make more money for Native Hawaiian kids. Nothing wrong with that in my mind. But you can see our need to treat people equally under the law.

Let me ask you this: Would there be a harm to KS if the Office of Planning's conditions were adopted, but without prejudice to KS's right to
come in by a later motion or even when you bring in whatever your new boundary amendment or modification, without prejudice at that point in time to get a modification of that condition? In other words, the fact that that condition exists in the record is not going to be a presumption that that condition should automatically attach to whatever new vision or upgraded vision or new plan or upgraded plan you present to the commission? I mean, is that a reasonable way of striking a balance here?

That's my last question, Mr. Chair.

THE WITNESS: Can I confer?

CHAIR SCHEUER: You want to confer?

THE WITNESS: Yeah.

CHAIR SCHEUER: Okay. We'll take a minute.

(Recess taken from 3:34 p.m. until 3:36 p.m.)

CHAIR SCHEUER: Okay. Back on the record. Any response?

MS. LIM: If I may.

CHAIR SCHEUER: Yes.

MS. LIM: We conferred, and I'd like to offer a response on behalf of KS.

CHAIR SCHEUER: Please.
MS. LIM: First off, for the record, I do need to state a few things, and some of this may be redundant to what we discussed on November 21st, but it's important. First of all, the decision and order that this commission issued in 1988 when it reclassified the property contains no time condition. There was never a time condition put on this decision and order. It's KS Exhibit 42, and there was no time condition imposed.

The statutory language under 205-4G regarding substantial commencement, that language says "Within a period of not more than 365 days after the proper filing of a petition," blah blah blah blah. I'm not going to read all of the language. It's really long, but it goes on to say that "the commission shall act to approve the petition, deny the petition or modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter with the policies and criteria established pursuant to 205-17," and this is the language I want to emphasize, "or to assure substantial compliance with representations made by the petitioner in seeking the boundary change. And the commission may provide by a condition that absent substantial commencement of use of the land in
accordance with such representations, the commission shall issue and serve upon the party bound by the condition in the order to show cause why the property should not revert to its former land use classification or more appropriate classification."

There is no such condition in the order that this commission issued in 1988. There was no condition when the commission amended the order in 1990. In the motion to amend that Kamehameha Schools filed in 2014 and that this commission approved, in fact, the Office of Planning's attorney said -- counsel on the record saying "What happens when we get a motion to amend?" I'm reading from the transcript on page 226 from the --

CHAIR SCHEUER: This is still prefatory to your actual response?

MS. LIM: It is. I promise. But these are items that are important for our record.

"What the Office of Planning does when we look at these motions to amend is we don't try to relitigate the prior decision. We sometimes look at a case. We look at the conditions. We think," quote, "I could have done a better job on that. I could have suggested this other condition," close quote. "You know, if it wasn't included, we don't
try to relitigate that question."

That was the Office of Planning's position five years ago -- a little over five years ago vis-a-vis timing. And at that time, the Office of Planning advocated that there would be time conditions imposed on the solar project because the Office of Planning said, "Hey, this motion is an amendment to pursue solar development. And so we're not going to look at the urban district reclassification question. We're going to look at what condition should be imposed on the solar project." And Kamehameha Schools agreed. I mean, it wasn't up for us to agree and, ultimately, this commission agreed, "Yes, we're going to impose conditions on the solar project."

So the fact that we're debating today, reflective of what Commissioner Cabral said, that we're debating today basically a master plan development time frame condition within the confines of this very narrow motion for the solar project is really hard for us to come around and buy into because it's really apples and oranges. The motion-to-amend standard is good cause, and we provided good cause.

We're not looking to get permission right
now to do the master plan. You saw the detailed
schedule of just predevelopment steps, and included
in that detail schedule is a targeted date for a
motion to amend, and that will be for the master
plan. And also a district boundary amendment for the
roughly 450, 460 additional acres. This commission,
whether it is the people in the room today or other
commissioners, will scrutinize that project very
closely. We are certain. And time conditions,
especially as it relates to the district boundary
amendment, will no doubt be, if not imposed,
certainly a topic of discussion. The EIS that will
be done prior to those filings also by law under the
EIS rules will have to identify the approximate
timing and scope of the development. So there is not
a situation where there's going to be, you know, an
unknown period of time before there's actual
development on the ground. It's just not
crystallized enough at this point, particularly when
we're only here on a motion to amend for the solar
project.

   And for that reason, we really strongly
oppose Office of Planning's condition, particularly
because having to build all that infrastructure, you
know, millions and millions of dollars of
infrastructure within the next 10 years would be virtually impossible. The EIS needs to take into account the full project, all 2,000 some-odd acres of it. Otherwise, it would be segmentation. So we couldn't just come in and do a motion to amend. We've got to look at the entire master plan and then come to this commission for approval.

So for those reasons and the reasons in our filing in October where we responded to the Office of Planning's condition on other legal grounds, including res judicata, again, we wanted to put those on the record.

Kamehameha Schools has also, notwithstanding those concerns, authorized me to present our best effort at trying to present something that will not so hamstring Kamehameha Schools that they won't be able to find a good and capable development partner, but will also give this commission some assurance that things will be moving in a more timely fashion. Although you've already heard there's every intention and every goal to move as quickly as possible. All that said, it's a long lead-up. These are important issues that we do want to make sure that the commission has heard them.

I'll read this condition.
CHAIR SCHEUER: Thank you.

MS. LIM: Thank you. "For the October 2019 revised master plan and schedule for development, petitioner shall complete and file a draft environmental impact statement and shall file with the commission a motion for amendment of the findings of fact, conclusion of law and decision and order dated May 17th, 1988, by no later than July 31st, 2024. This condition shall not affect any utility-scale solar farms approved by the commission within the petition area."

That condition we believe we can meet without causing -- without definitely causing undue prejudice to our ability to find a development partner. It will be cumbersome, but that is a condition that we could offer. Why are we saying only a draft environmental impact statement? Well, we cannot give a deadline for when the final would be done. Obviously, the environmental impact statement will take on a little bit of a life of its own. And so we can commit to when the draft can be filed, but when a final will be filed will really depend on the kinds of comments and the kinds of studies that are done in the draft.

And the filing of that motion to amend,
you know, this was actually -- the language of this
condition was a bit of a byproduct of some
negotiations that the Office of Planning and KS were
having that negotiations ultimately were not
successful, but we think the filing of the motion to
amend before the EIS is completed and before KS is
truly ready to come forward with the development
partner as an approval for everything is somewhat
premature, but that seemed like it was of interest at
least during those negotiations with Office of
Planning. So in good faith when presenting this
commission -- this condition to the commission, we
wanted to include that language as well.

CHAIR SCHEUER: Thank you. Commissioner
Giovanni.

COMMISSIONER GIOVANNI: Just to clarify
on your last suggested language. So this same
schedule that was put forth and we've been talking
about in the master plan shows the EIS process being
completed in 2023?

MS. LIM: That's correct.

COMMISSIONER GIOVANNI: And now your
position is that you won't even commit to other than
a draft by mid-2024. So it looks like you're begging
in about a two-year delay even on what you presented
this morning. And, yet, the commencement of the backbone infrastructure in Phase A wouldn't be until 2030. So already we're starting back -- I've got to add two years to that too, and so it's now 2032 like that. Am I interpreting what you're saying correctly?

MS. LIM: Well, I don't want to say you're interpreting it incorrectly. Let me clarify if I can. The language that I read included preparing and filing a draft environmental impact statement and also the motion to amend. So the motion to amend in your schedule is, just looking real quickly, 2020 -- excuse me. I was reading for the solar project. The motion to amendment and the district boundary amendment are planned for a filing in 2024/2025. So the date of July 21st, 2024, for filing that motion to amend seemed like it was taking into account both our EIS schedule as well as the anticipated timing of the filing of the motion to amend.

CHAIR SCHEUER: So hold on. I want to just check where we are procedurally. We have a very patient witness right here. I want to make sure if we're done with questions for the witness, we can then just proceed. Do you think this is going to
involves the witness? Are there any other questions
for the witness?

Commissioner Chang.

COMMISSIONER CHANG: Chair.

CHAIR SCHEUER: We have about 45 minutes.

COMMISSIONER CHANG: Okay.

CHAIR SCHEUER: We have to do
deliberations as well.

COMMISSIONER CHANG: Because I guess in
all due respect, Ms. Lim, you're not proposing
anything that's different, but I want to ask
Mr. Thoemmes this: As a compromise -- because we,
obviously, have to walk away with something over
here; right? We cannot walk out of here with
nothing, including OP, the Land Use Commission and
Kamehameha Schools.

You are looking at a Solar Phase 2A and
2B, and that you've got on your schedule as well and
nothing before. So the only thing before us is solar
farm -- Solar Phase 1, which is what is here. So in
order to permit this to timely proceed, because you
need a decision immediately, today. That's what
you're asserting. But before you come in to solar
projects A -- 2A and 2B, that Kamehameha Schools
comes in with a more -- either realistic schedule of
a Phase 1 development or backbone, but something that is more realistic than the 2030, '34 -- 2030 --

Because OP -- as we're saying, we're caught between a rock and a hard place. We've got other -- we would love to be able to treat you differently. You know, your mission is very different from many others. It's not just to make money. But on the other hand, because in all due respect, Ms. Lim, there's a rule that says reasonable -- that you have to -- substantial progress within a reasonable period. If we take your interpretation, if Kamehameha Schools did nothing, they could keep the entitlement. That clearly cannot be the intent of the law, either the letter of the law, the spirit of the law. So --

CHAIR SCHEUER: Respectfully, Commissioner Chang, what's the questions for the witness?

COMMISSIONER CHANG: So the question is can you come back, before you bring back Solar 2A, 2B, a more realistic schedule on a petition to amend the boundary amendment, EIS schedule and the backbone development for Phase A?

THE WITNESS: You know, unfortunately, Commissioner, I'm not involved in the solar projects.
So I don't know what -- the timetable, you know, in KS for making that decision and RFPs and selection. So I'm really not at liberty to say where that matches up against, you know, where we'll be on our timetable. We have a rough schedule of it, I believe, starting in 2025.

MS. LIM: If I can maybe try to recharacterize what Commissioner Chang said, and then, of course, correct me if I'm off base. I believe she's saying because we're anticipating seeking commission approval for the second solar farm, and, again, it's in a space that the commission has already approved for a solar farm, but there will need to be some modifications just like we're doing here for Waiawa Solar Power. So that project motion is anticipated to be filed in -- well, we don't actually have it on the schedule, but the project would be getting started in 2022. So let's back it up and probably file sometime this year. So I believe Commissioner Chang is saying, okay, so at the point that you're filing that motion for refreshment of the other solar farm, which is sometime in the year 2020, could we come forward with a schedule that is somehow even more realistic and --

COMMISSIONER CHANG: More aggressive.
MS. LIM: -- accurate, more aggressive?

THE WITNESS: You know, I think we're -- you know, we're in this -- that we expect to be in 2020 and probably part of 2021 be in active negotiations hopefully with our developer. To the extent we'll know more, we'll know more than we know today, but it would be hard for me to commit to, you know, a hard schedule if that would be what the commission's looking for. We'd certainly be able to give an update as to where we are at that time, both with the partner we're hopefully agreeing with as well as what the schedule might be, you know, at that time. We certainly could give an update at that time. Does that answer your question?

COMMISSIONER CHANG: That may be as good as it's going to get.

CHAIR SCHEUER: Commissioners, further questions for the witness or for the petitioner? If not, we have to hear from the county and OP and go into deliberation. Anything further? No? Thank you.

THE WITNESS: Thank you very much.

CHAIR SCHEUER: County, we're going to plow through to the end, by the way. No breaks.

MS. WONG: I just wanted to add when I
was looking at the Waiawa Master Plan Next Steps, we would need to look at this more closely, but there could possibly be a need to amend the Central Oahu Sustainable Communities Plan for the -- it was Phase E, the purple area.

CHAIR SCHEUER: You need to speak right into the microphone.

MS. WONG: There may be a need in the future to amend the Central Oahu's Sustainable Communities Plan. I think there was some acreage that would be designated to urban, but it's outside of the community growth boundary. It's a little hard to tell from this map, though. So it's something that may need to be considered in your timeline.

THE WITNESS: Yes. Thank you.

MS. WONG: Thank you.

CHAIR SCHEUER: Thank you. Questions for the county from the commissioners?

OP.

MS. APUNA: Thank you, Chair. I would just like to just plainly state that OP's requested condition is with regard to just Phase A, the lower southern part of the petition area, for backbone infrastructure. It's not the entire petition area of 1,300 or 1,400 acres. It's only within 200 acres of
the petition area. And OP is fully supportive of the solar project. That's -- there's no issue there. We fully support, you know, renewable energy and the efforts of Kamehameha Schools and the solar project companies to move forward. But at the same time, we can't and we don't believe the Land Use Commission can turn a blind eye to the development schedule.

They have presented to us and to the commission, and like yesterday's hearing and other hearings that have come before on other projects, there needs to be forward movement on this project within 10 years, not 10 years from now, but within the next 10 years. And this 10-year deadline is not pulled out of thin air. It is from Hawai'i Administrative Rules 15-15-50-C20. This is from Hawai'i Administrative Rules 15-15-78. 10 years is the basic time within which there should at least be substantial commencement. We're not saying completion of the project or completion of backbone infrastructure for the entire petition area. This is just a small part. But that will keep them in compliance with these rules and Chapter 205.

That's the thing that petitioner came in here in 1988 for approval for reclassification, and when they got that reclassification, they came under
Land Use Commission's jurisdiction. They are under this jurisdiction. We are -- I don't think that OP is the rock or the hard place. We're just presenting what is the -- what are the rules and what is the law for this commission to follow. And that KS is an important corporate citizen as they are and all the good that they do, I can't see or it's hard to understand how they are so different and are so different that they can't do this amount of backbone infrastructure or development so that they are in compliance with these laws and that they are in compliance with just substantially commencing. Once they've substantially commenced, they're no longer in your jurisdiction and they are not, you know, subject to apportionment, but at this point they are.

To wait till completion in, you know, 88 years from the decision and order, that is far beyond anything we've looked at before. And even with this docket from the original docket, they made a representation. There's a representation under findings of fact that they would have completed the project within 12 years. So that didn't meet the 10 years, but at the time the commission said, "Okay. We understand. Two more years," and that was fine. Here, you know, it's a very -- it's 50 years. This
is far beyond, you know, 12 years or two more than
the regular 10.

So I don't think it's unreasonable and
it's not some unusual request by OP. This is just OP
stating what the rules are that you're under in the
law. And, finally, LUC does have the authority to
impose this condition. You know, if the petitioner
has not complied with their representation, as we
know it, that -- the petition area, there's nothing
built there. This is not unlike any of the other
properties that are under order to show cause. And
not that -- we are definitely not advocating for
reversion or order to show cause, but we want to see
them move forward. We want to see -- we want to be
able to at least hold them to their schedule. We
can't wait until the next time they come around
because, as it is, they are noncompliant. Just hold
them to the same standard that you've held all these
other developers to. That's all that we're asking
for. Thank you.

CHAIR SCHEUER: Thank you.

Commissioners, are there questions for
the Office of Planning? Commissioner Giovanni.

COMMISSIONER GIOVANNI: Thank you. I
understand your position on that point. I just
wanted to affirm that the petitioner read some
language modifying your originally proposed condition
for groundwater. Are you in agreement with the
language that she proposed on that?

MS. APUNA: Yes. I think it was the
Condition 5. Yeah, I think we would just -- there's
language in there that currently says with the
approval of the DOH and the Department of Navy. It
could just be changed to "as approved by Department
of Health and the Department of the Navy," but
generally we are in agreement with that change.

COMMISSIONER GIOVANNI: Thank you.

CHAIR SCHEUER: Anything further for the

COMMISSIONER OHIGASHI: Is there any kind
of -- is there any kind of difference in your mind
between the various cases involving OSC versus this
one that is a voluntary motion coming before this
commission, and, in fact, a voluntary motion, I
guess, to amend with regard to the authorization of
the solar in 2014? Is there any difference between
the cases that you can -- that you perceived as a
procedural matter?

MS. APUNA: As a procedural matter, no.
I think that, you know, the facts speak for
themselves where we are, and there's a fine line here between reversion and order to show cause and moving forward with a motion to amend. Of course, OP, we're not advocating for OSC, for reversion. We want to see them move forward. I think it's a good project, but move forward according to the rules and the law that this commission is under.

CHAIR SCHEUER: Okay. Anything else, commissioners, for the Office of Planning?

COMMISSIONER CHANG: Just one.

CHAIR SCHEUER: Commissioner Chang.

COMMISSIONER CHANG: So, Ms. Apuna, if they proceed with the solar farm, would you at that point in time say that that's then substantial compliance -- substantial use of the land if they start the solar farm?

MS. APUNA: Well, the problem is that the decision and order or the 19–-- I'm sorry -- the 2014 amendment to the decision and order says that it's an interim use of the petition area. So that wouldn't necessarily be -- or I would think it would take some more analysis to determine whether that is a substantial commencement.

COMMISSIONER CHANG: Okay. Thank you.

CHAIR SCHEUER: Anything further,
commissioners? If not, I'll offer the petitioner a very brief, final opportunity to make a statement before we go into deliberation.

MS. LIM: Thank you very much, Chair.

Kamehameha Schools strongly objects to the condition that OP has proposed, not because we're trying to hide from or delay development of this property. You've heard for hours that Kamehameha Schools wants this project to move forward, but there's a time and a place for the imposition of deadline conditions, and we don't believe this is the time or the place, and we don't believe that the law would support the commission imposing such a condition at this time and this place. We are here only seeking an amendment to the previously approved solar project. If SunEdison hadn't gone bankrupt, we wouldn't even be here today, meaning there would be no avenue to come in and file a motion to amend until the interim period, which was due to end in 2049, until that interim period was over. That's what the conditions of this commission imposed in 2014 said. Come back after the interim period. Do your motion to amend and get permission for the project.

So we are not trying to hide from the fact that in due time, when KS returns to the
commission to get actual approval of the master plan, 
there will be time conditions. But we are asking, 
please, that the commission not tie both arms behind 
our back as we try to find a development partner. 
Let the solar project go forward. Let us secure a 
development partner. Let's do the community 
outreach. Let's do the EIS and then come to this 
commission with a solid and deep master plan. What 
you saw today has had a lot of work done, but not 
every little corner has been unturned. Let us come 
back at that time with very concise timing and 
appropriate conditions to be imposed at that time. 

CHAIR SCHEUER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: I take issue with 
the statement "but for the bankruptcy of SunEdison, 
you wouldn't need to come back to this commission for 
this modification and time extension." The purchase 
power agreement that is in effect now would have an 
expiration of not only 2042. The 2049 that is 
already available to you, it concludes seven years 
beyond that which is more than enough time for the 
one year of remediation to bring the site -- to 
decommission the site. So I don't understand what 
you're saying. I know that they have an intent to 
get an extension, but they don't have one.
MS. LIM: What I meant to say was that if SunEdison, who was already authorized to develop the two areas with solar farms through 2049, if the PUC had approved their PPA and SunEdison hadn't gone bankrupt, there wouldn't have been -- there would be no reason for KS to have filed any motion.

COMMISSIONER GIOVANNI: I'm saying there's no reason now.

MS. LIM: The reason we filed the motion now, sir, is because unlike the original decision and order in 1988 which does not require compliance with the representations made by the commission, excuse me, does not require petitioner to comply with the representations made to the commission, the decision and order that the commission issued in 2014, vis-a-vis the solar farm, does have that requirement. So because the solar farm decision in 2014 has certain representations about the timing for the start of the construction of the solar project and for the nature of the solar project as I mentioned before without certain things in the zone of contribution --

COMMISSIONER GIOVANNI: For those reasons?

MS. LIM: Exactly.
COMMISSIONER GIOVANNI: I accept that.

Thank you.

CHAIR SCHEUER: Okay. Are you done, Ms. Lim?

MS. LIM: Yes.

CHAIR SCHEUER: Commissioners, we are in deliberation. What is your pleasure?

COMMISSIONER GIOVANNI: I'd like to make a motion.

CHAIR SCHEUER: Commissioner Giovanni.

COMMISSIONER GIOVANNI: Let me preface my motion by saying that I appreciate the need to commence work on the solar project, and I am in support of that general notion. I'd like to move that the petitioner's motion be granted subject to the following conditions:

Existing Condition 6 to the order granting motion for the order amending the D&O to delete and be replaced by a condition specifying that the proposed solar project be substantially completed within five years from the date of the commission's issuance of the order granting the motion for modification and time extension;

Existing Condition No. 7 to the order granting motion for the order amending the D&O to be
amended to specify that the proposed solar farm is limited to the approximately 200 acres portion of the petition area, we think that's consistent with what is being proposed here, not both;

Existing Condition 9 to the order, amending the D&O to be deleted and replaced by a condition requiring that the proposed solar farm shall be limited to the acreage and boundaries identified in the petitioner's revised master plan and schedule for development, and that the petitioner shall provide the metes and bounds map and description of the solar farm site to the commission within one year from the date of the commission's order granting the motion to modify and extend;

Existing conditions 5 and 8 to the order granting motion for the order amending the D&O be deleted. And additional conditions proposed by OP regarding aircraft hazard, traffic impacts and the ground resource protection be imposed. And with regards to the latest -- the latter, that it be the mutually agreeable language that was discussed between OP and petitioner.

The OP's proposed conditions regarding the time frame of interim use shall be imposed with modifications to reflect that the solar farm is
limited again to the 200 acres, a portion of the petition area.

Secondly, OP's condition to -- for substantial completion of construction for the horizontal backbone infrastructure for Phase A only of the master plan be completed by 12-31-30.

And, finally, having to do with the extension of the time itself, I propose the condition -- following condition: The interim use of the approximately 200-acre portion of the petition area for the proposed solar farm, including all permitting construction operation and decommissioning activities associated with solar farm, shall not exceed November 26, 2049. If WSP or its successor can demonstrate before November 26, 2049, that it has secured a PUC-approved power purchase agreement for extension of the operation of the wind farm --

CHAIR SCHEUER: Solar farm.

COMMISSIONER GIOVANNI: Pardon me.

-- solar farm and a lease extension with Kamehameha Schools, then the period extension shall be extended to 2059.

So, in other words, we appreciate that you need to demonstrate site control to HECO if you want to negotiate an extension to the power purchase
agreement. This will give you the control of the site. And if you're successful in those negotiations, you'll automatically get it to 2059. But if you do not have successful negotiations, it's over in 2049.

CHAIR SCHEUER: Hold on. Actually, Commissioner, with all respect, I realize he's looking at you and talking to you, but he's really making a motion to us.

COMMISSIONER CABRAL: Has your motion been completed?

COMMISSIONER GIOVANNI: Yes.

COMMISSIONER CABRAL: I'd like to second that motion.

CHAIR SCHEUER: Okay. So I was going to call for a second. The motion has been made by Commissioner Giovanni and seconded by Commissioner Cabral. We may address questions of the parties if they are specifically -- if there's a specific request, run it through me to have a narrow question for the party. I have a request for the movant to speak to the motion, and particularly for the purpose of our record, I'd like you to specifically address speaking to the motion how you chose the date of December 31st, 2011, as a reasonable date for the
EXECUTIVE OFFICER: 2030.

CHAIR SCHEUER: 2030. Excuse me. The date for the completion of backbone infrastructure --

COMMISSIONER GIOVANNI: It's consistent with OP's proposed condition to have the backbone infrastructure for Phase A only completed within 10 years.

CHAIR SCHEUER: And you believe the record is adequate in demonstrating that as reasonable and factually based?

COMMISSIONER GIOVANNI: I think it's a reasonable condition, and I think that the petitioner, who was planning to come back before this commission, as Commissioner Okuda clarified, within four years will have ample opportunity to modify that condition if it can justify that.

CHAIR SCHEUER: Okay. Commissioner Okuda.

COMMISSIONER OKUDA: Chair -- thank you, Mr. Chair. I'd like to offer a friendly amendment. My friendly amendment, if everyone agrees, is that these conditions are not severable from the main body of the motion. Or to put it in plain English, if anyone seeks and gets the ability to knock out, void
by court ruling or otherwise any one of the conditions, then that voids the entire motion here, including the solar approval. So in other words, my friendly amendment is to make the conditions nonseverable.

CHAIR SCHEUER: Okay. Do the movant and the seconder agree to that friendly amendment to the motion? Movant?

COMMISSIONER GIOVANNI: I agree.

CHAIR SCHEUER: Second?

COMMISSIONER CABRAL: I agree to move on.

CHAIR SCHEUER: Commissioners, we are in deliberations.

COMMISSIONER WONG: Chair, point of clarification?

CHAIR SCHEUER: Yes.

COMMISSIONER WONG: The first portion of your statement of the motion, what was it again? Can you explain it?

COMMISSIONER GIOVANNI: We heard clearly from the developer that they needed -- and his consultants that they needed to -- they needed action today. I was just acknowledging that.

COMMISSIONER WONG: Okay. So the other point of clarification of your last portion of the
motion for that 10-year extension, so does that allow
them to sell to Hawaiian Electric or to another third
party? Let's say Hawaiian Electric goes bankrupt.

COMMISSIONER GIOVANNI: Hawaiian Electric
goes bankrupt?

COMMISSIONER WONG: Just an example, or
someone else takes over. So a third party.

COMMISSIONER GIOVANNI: Yeah. For
example, they currently have a power purchase
agreement with Hawaiian Electric for Solar Phase 1,
and it currently expires 20 years after its
commercial operation date. Their target commercial
operation date is the end of 2021 or the beginning of
2022. So 20 years from then is 2042; right? And
then by terms of their lease with Kamehameha Schools,
they have one year to remediate the site to its
original condition. But by the permit that we've
granted, they have -- or previous order 2014, they
have until 2049 to do all that. We also heard that
the developer wishes to negotiate an extension to
that purchase power agreement for an additional -- up
to 15 years. That would push it from 2042 to 2057,
and then give them two years to remediate it to 2059.
And I'm saying that's a reasonable expectation and
desire, but at this point in time, it's hypothetical
because there's a number of factors that can come 
into play that would say they'll never be able to 
secure that extension. It could be a competitive 
process. Technology can change. There could be a 
hurricane that wipes out the thing. A lot of things 
can happen. But we're giving them to the end of the 
existing term, which is 2049, to demonstrate to us 
that they've been successful in securing that 
extension. If they have, then they'll automatically 
get it to 2059. Otherwise, what's on paper now is 
what governs.

COMMISSIONER WONG: So just like a 
judicial notice or something saying "We got that 
extension," or how would we be notified?

COMMISSIONER GIOVANNI: So I think as 
long as they have those two documents, that any claim 
made against them, I mean, by virtue of this order, 
it would demonstrate that they could operate until 
2059. I don't think they have to come back before 
this body again.

COMMISSIONER WONG: Okay. Sounds good. 
Thank you. So no commission. We don't -- okay. 
Thank you.

CHAIR SCHEUER: Commissioners, we are in 
deliberation over the amended motion.
COMMISSIONER OHIGASHI: Chair?

CHAIR SCHEUER: Commissioner Ohigashi.

COMMISSIONER OHIGASHI: I decided to vote against the motion, and the reason is the last friendly amendment. I disagree in the limitation of any party to obtain judicial review of our orders. And what the friendly amendment did, skilfully, is to create a situation where if you want the farm, you can't appeal. And I believe that that's fundamentally wrong for us as a commission to put up. I think that our position here is to try and create conditions that will individually stand up under any kind of review. Therefore, I cannot support the motion.

CHAIR SCHEUER: Thank you, Commissioner Ohigashi.

Commissioners? Commissioner Wong.

COMMISSIONER WONG: Wait. Just one more. So it's automatic extension -- going back to my previous question. Automatic extension so that there could be a third party again instead of Hawaiian Electric; correct?

COMMISSIONER GIOVANNI: (Nodding head.)

COMMISSIONER WONG: Okay. Thank you.

CHAIR SCHEUER: Commissioners, we're in
deliberation.

Commissioner Giovanni.

COMMISSIONER GIOVANNI: I have to admit that I don't -- from a legal perspective, I would appreciate if my fellow Commissioner Okuda could expand upon his proposed amendment with respect to Commissioner Ohigashi's comments.

CHAIR SCHEUER: Commissioner Okuda.

COMMISSIONER OKUDA: Thank you, and if I can respond, Commissioner Ohigashi. My proposed -- the reason why I brought the amendment is not to limit anyone's ability to challenge the order or any part of the order, but it's basically in line with the Bridge Aina Lea case where the Hawai'i Supreme Court found because certain conditions seemed to have been the impetus of people voting for a motion, that if one of those conditions were somehow negated, it goes to -- it goes to the heart of why the motion was voted for in the first place.

In this case, I believe all the conditions that were suggested and made part of the motion form an integral part of the reason why this motion is granted. In other words, it's granted based on these conditions. In other words, the motion is not just granted with no conditions. It's
granted with conditions because these conditions
basically support what really I think in my view
amounts to a reasonable compromise of the situation.
Because this is what we're really looking at here,
you know, and I understand that this was not through
any fault of the Bishop Estate or the Kamehameha
Schools itself. It's economic factors, developer
going broke or what have you or being unable to
complete the project.

But based on the responses to a number of
my commissioners' -- fellow commissioners' questions,
it appears that you could make a factual finding here
that there was no substantial commencement of the use
of the property as represented to get the original
boundary amendment. So really what the Kamehameha
Schools is facing here is some type of action to
rescind the entire boundary amendment, the entire
entitlement. Now, whether that's going to happen or
not is another question, but that's the risk that's
taking place here. And we don't have to get into
local island politics that there may be a number of
people that would want to stop this development for
many reasons.

So the reason why I viewed the motion
with OP's suggested conditions and the ability of KS
to come in and present the master plan, you know, without making -- without us -- I'm not saying we're ignoring the fact of the lack of substantial commencement, but I really think that's the big boogeyman here. That's the big threat. And, you know, hey, lawyers gotta advocate their positions. That's all of our duty and our oath that we take as lawyers. But I really believe that the motion with the friendly amendment is a reasonable compromise under the circumstance to respect the rules that the commission has, respect how we've been treating other applicants, but at the same time also recognizing the very, very important role KS plays in this community.

CHAIR SCHEUER: Thank you, Commissioner.

Commissioner Wong.

COMMISSIONER WONG: Just a question to Commissioner Okuda because I'm not familiar with the statement.

Commissioner Okuda, so if, let's say, hopefully not, KS screws up on the timing, does that mean if the solar farm is working right now and active, that everything is -- go kaput?

COMMISSIONER OKUDA: No.

CHAIR SCHEUER: Commissioner Okuda.

COMMISSIONER OKUDA: I'm sorry for
answering before being recognized, Chair.

No, not necessarily. It depends on the facts and circumstances at that point in time. Like, for example, if somebody turns around and says, "Oh, gee, now we can get an injunction to stop the operation of the solar farm," I mean, I'm not a judge, but I think a party would be hard pressed to get that kind of relief because it's a balancing test.

All I'm saying is this motion is one that stands not only on the body of the motion, but on the conditions. And, again, repeating what I had mentioned earlier, we may be just talking about some theoretical issue that is just a theoretical issue because I really believe Mr. Thoemmes and his professional staff, they're committed to doing what they plan to do. And, frankly, I don't need to -- me personally, I don't need to see a written condition saying he promises to bring this type of modification of the current D&O, a new boundary amendment or however it's termed, to move this development forward because I believe him. I really do.

CHAIR SCHEUER: Thank you, Commissioner.

Commissioners, I remain so grateful for the diligence and intelligence you bring to our
deliberations. I am cognizant of the time and how that actually deprives us of some of our ability to thoughtfully engage with each other.

Commissioner Aczon.

VICE CHAIR ACZON: I'm just going to -- I tend to support the main motion, but similar to Commissioner Ohigashi, I have some concern about the friendly amendment. If this thing goes, I might have to vote in line with Commissioner Ohigashi. Perhaps can we separate --

CHAIR SCHEUER: Well, I would suggest procedurally what we would do -- frankly, correct me if I'm wrong, but I think that if the amended motion fails, the original motion could be made again and then be taken on.

COMMISSIONER OKUDA: Chair, if I can interrupt. Yeah, you know, in line with my statement that I don't want to make a big deal about something that really shouldn't be a big deal. If this is causing heartburn and all of this stuff, I withdraw my friendly amendment.

CHAIR SCHEUER: Okay. So here I'm probably a little bit out of my procedural experience in terms of what should happen at this point, but I'm going to just check with the movant and the seconder
who earlier agreed to the addition of the friendly
amendment. Are you okay with that friendly amendment
being withdrawn?

COMMISSIONER GIOVANNI: I agree to
withdraw it.

COMMISSIONER CABRAL: I agree to withdraw
it.

CHAIR SCHEUER: Okay. Because the same
effect would be as if we just canceled the whole
motion and made a new motion again. So we're back to
the original motion --

COMMISSIONER GIOVANNI: Yes.
CHAIR SCHEUER: -- that's in front of us.
Commissioners have further discussion on
this or statements about it?

COMMISSIONER CHANG: I'd like to make a
statement.

CHAIR SCHEUER: Commissioner Chang.

COMMISSIONER CHANG: I am going to vote
in favor of the motion. This is really hard, but I
do find that this motion is based upon really looking
at all of the parties' interests. One, the integrity
to permit Kamehameha Schools to timely move forward
with its agreement or its relationship with the solar
farm, to permit that to timely move forward. It also
maintains the integrity of what OP was arguing, the
status of the rules and the laws upon which the LUC
is governed by. And it permits the integrity of the
Land Use Commission that has struggled with how do we
treat everybody fairly. And, again, in all due
respect to Ms. Lim, the alternative is we could
always do an order to show cause. And this -- and
nobody wants to do this. So this permits -- permits
Kamehameha Schools to move forward. It permits them
to move forward on their master plan. Perhaps it
gives them a little bit of motivation and incentive
to move a little faster, but as the Land Use
Commission indicated, there is nothing to prohibit
Kamehameha Schools to come back, request an amendment
to this action by the Land Use Commission today based
upon more information after you've done your
outreach, after you've done your studies.

But at this point in time, again, I am
going to vote in favor of the motion as, in my view,
it is the best compromise that we have before us
given the situation. Thank you.

CHAIR SCHEUER: Commissioners, further
discussions or comments?

Commissioner Aczon.

VICE CHAIR ACZON: I'll be reluctantly
voting in favor of this motion just for the reason that KS spent a lot of money -- time and money to put all this thing together, and I believe that they're sincere of their obligations and their intent on making this project to move forward. We can mix in the smaller solar farm to the bigger picture and with the mission of the Land Use Commission. Not all developments are equal, and that, you know, our mission is to make sure the state lands are being used to the best interest of the state and the community. We need housing. We need sustainability, and that's what this project is being offered.

There was mention about different similarities about yesterday's project, and I believe these two projects are entirely different. The other project eliminates entirely the housing. As you can see, there's no housing. They proposed housing before. They took it out. This project is adding 11,000 new homes. And for me, it's kind of hard to pass on this opportunity. And I believe that KS is not going to be -- is going to be here and is going to be around to finish the project. So, therefore, because of those reasons, I'm reluctantly supporting the motion.

CHAIR SCHEUER: Thank you, Commissioner
Aczon.

Commissioner Ohigashi.

COMMISSIONER OHIGASHI: Mr. Chair, for the same reasons that Commissioner Aczon proposed, I'll be supporting the motion with reservations.

CHAIR SCHEUER: Commissioners, anything further?

Okay. The chair will also be voting in favor of the motion. Five years ago when I voted in favor of the amendment, as I stated earlier, it was particularly because Kamehameha Schools was coming back with a draft master plan within five years. I think the commission has a legitimate interest in -- well, understanding the complexities of development and the significant constraints Kamehameha Schools faces seeing that things move forward in a timely manner. And to the degree the conditions placed on this motion put a further urgency on Kamehameha Schools to come in front of us sooner rather than later, I think that is a good thing ultimately for this area and for the state of Hawai'i.

Mr. Orodenker, please poll the commission.

EXECUTIVE OFFICER: Thank you, Mr. Chair.

The motion is to grant the petitioner's
motion subject to amendments as proposed.

Commissioner Giovanni.

COMMISSIONER GIOVANNI: Aye.

EXECUTIVE OFFICER: Commissioner Cabral.

COMMISSIONER CABRAL: Aye.

EXECUTIVE OFFICER: Commissioner Ohigashi.

COMMISSIONER OHIGASHI: Yes, with reservations.

EXECUTIVE OFFICER: Commissioner Wong.

COMMISSIONER WONG: Aye.

EXECUTIVE OFFICER: Commissioner Chang.

COMMISSIONER CHANG: Aye.

EXECUTIVE OFFICER: Commissioner Okuda.

COMMISSIONER OKUDA: Yes.

EXECUTIVE OFFICER: Commissioner Aczon.

VICE CHAIR ACZON: Yes.

EXECUTIVE OFFICER: Chair Scheuer.

CHAIR SCHEUER: Aye.

EXECUTIVE OFFICER: Thank you, Mr. Chair.

The motion passes unanimously.

CHAIR SCHEUER: Thank you very much.

Thank you, commissioners. If there's no further business, I declare this meeting --

Oh, yes, we do. We had one further item
on our agenda. So this motion is done. We have Action Item 12, appointment of the LUC 2020 Legislative Committee.

Mr. Orodenker, briefly.

EXECUTIVE OFFICER: Thank you, Mr. Chair. I'd like to ask the commission to set up a committee so that I can communicate a portion of the commission --

(Reporter clarification.)

CHAIR SCHEUER: This will just take a moment for those in the audience and will allow us to also move on.

Mr. Orodenker.

EXECUTIVE OFFICER: I'm asking the commission to set up a committee to handle approval of testimony on legislation at this year's legislative session so that we can expedite the filing of such testimony.

CHAIR SCHEUER: Is there a motion for appointment of members? Commissioner Wong?

COMMISSIONER WONG: Yeah. I move for appointment of --

COMMISSIONER CABRAL: I'll second that.

CHAIR SCHEUER: Which members?

COMMISSIONER WONG: I would place
Commissioner Aczon, myself and Commissioner Okuda.

Oh, no, Chair Scheuer.

(Reporter clarification.)

CHAIR SCHEUER: There's a motion by Commissioner Wong to appoint Commissioner Aczon, himself and myself as members of the LUC 2020 Legislative Committee. Is there a second?

COMMISSIONER OHIGASHI: Second.

CHAIR SCHEUER: Seconded by Mr. Ohigashi.

Is there a discussion on the motion?

Seeing none, all in favor, say aye.

(The board voted.)

CHAIR SCHEUER: Is there anybody opposed?

The motion carries. With that, we have no further business, and this meeting is adjourned.

(Whereupon, the hearing adjourned at 4:35 p.m.)
CERTIFICATE

STATE OF HAWAI'I

) ss.

CITY AND COUNTY OF HONOLULU )

I, LAURA SAVO, a Certified Shorthand Reporter in and for the State of Hawai'i, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place herein stated, and was thereafter reduced to typewriting under my supervision;

That the foregoing is a full, true and correct transcript of said proceedings;

I further certify that I am not of counsel or attorney for any of the parties to this case, nor in any way interested in the outcome hereof, and that I am not related to any of the parties hereto.

Dated this 25th day of January 2020 in Honolulu, Hawai'i.

s/s Laura Savo_________________
LAURA SAVO, RPR, CSR NO. 347