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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

1 APPEARANCES:

2 COMMISSIONERS:

3 JONATHAN SCHEUER, Chair  
4 NANCY CABRAL, Vice Chair  
5 EDMUND ACZON, Vice Chair  
6 DAWN CHANG  
7 DAN GIOVANNI  
8 LEE OHIGASHI  
9 GARY OKUDA  
10 ARNOLD WONG

11 WILLIAM WYNHOFF, ESQ.  
12 Deputy Attorney General

13 STAFF:

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

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

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

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

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

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

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

37 NAOMI KUWAYE, ESQ.  
38 For Clearway Energy Group

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1 HONOLULU, HAWAI'I JANUARY 9, 2020, 9:02 A.M.

2 - o0o -

3 CHAIR SCHEUER: Aloha. Good morning.

4 This is the January 9th, 2020, Land Use Commission  
5 meeting. Our next agenda item is an action meeting  
6 on Docket No. SP09-403, Department of Environmental  
7 Services, Waimanalo Gulch Sanitary Landfill Remand,  
8 to consider the motion to terminate the order  
9 regarding written status reports on proceedings of  
10 the planning commission relating to county's Special  
11 Use Permit File No. 2008/SUP-2.

12 Will the parties please identify  
13 themselves for the record?

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

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

19 CHAIR SCHEUER: Come on down.

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

23 (Reporter clarification.)

24 MS. IWABUCHI: My name is Naomi Iwabuchi  
25 on behalf of Schnitzer Steel Hawai'i Corporation.

1 We're an interested nonparty.

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

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

7 MR. FUNAKOSHI: Rodney Funakoshi --  
8 (Reporter clarification.)

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

11 CHAIR SCHEUER: Okay. Let me update the  
12 record. On October 9, 2019, the commission met in  
13 Honolulu, Hawai'i, to consider the findings of fact,  
14 and conclusions of law and decision and order of the  
15 City and County of Honolulu Planning Commission's  
16 approving the City and County Honolulu, Department of  
17 Environmental Services', application for a new  
18 special use permit to supersede the existing special  
19 use permit to allow an expansion and time extension  
20 for the Waimanalo Gulch Sanitary Landfill and to  
21 modify Special Use Permit No. 2008/SUP-2 by modifying  
22 the LUC's order approving the City and County of  
23 Honolulu, Planning Commission's, findings of fact,  
24 conclusions of law and decision and order with  
25 modifications dated October 22nd, 2009 [sic].

1           On October 31st, the commission adopted a  
2 form of the order approving the consolidated  
3 applications of the Department of Environmental  
4 Services, City and County of Honolulu, for a new  
5 special use permit to supersede the existing special  
6 use permit to allow a 92.5 acre expansion and time  
7 extension for Waimanalo Gulch Sanitary Landfill and  
8 to modify Land Use Commission order adopting the City  
9 and County of Honolulu planning commission's findings  
10 of fact, conclusions of law and decision and order  
11 with modifications for Docket No. SP09-403,  
12 Department of Environmental Services.

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

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

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

24           On December 30th, an LUC meeting agenda  
25 notice for the January 8th through 9th, 2020, meeting

1 was sent to the parties and to the statewide email,  
2 Oahu and Hawai'i island, mailing lists.

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

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

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

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

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

19 Are you going to reserve some time?

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

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

25 I'm sorry. I neglected to mention your

1 client, Cal.

2 MR. CHIPCHASE: I figured you hadn't  
3 totally forgotten about us. I wasn't that worried,  
4 Chair.

5 CHAIR SCHEUER: Okay. Thank you.

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

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

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

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

25 MS. CHAN: To bring back up the case?



1                   COMMISSIONER WONG: Yes. Let's say they  
2 want to do something else, want to review this again  
3 or --

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

6                   COMMISSIONER WONG: Whoever -- whomever.

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

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

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

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

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

23                   COMMISSIONER WONG: For Land Use?

24                   MS. CHAN: Yes.

25                   COMMISSIONER WONG: What about for the

1 courts?

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

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

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

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

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

1 back up to the LUC.

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

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

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

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

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

1       problematic for us to do, would probably be  
2       duplicative.

3                   COMMISSIONER WONG:  No other questions.  
4       Thank you.

5                   CHAIR SCHEUER:  Thank you, Commissioner  
6       Wong.

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

9                   COMMISSIONER OKUDA:  Thank you,  
10      Mr. Chair.

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

15                   MS. CHAN:  Yes, that's correct.

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

18                   MS. CHAN:  That's correct.

19                   COMMISSIONER OKUDA:  And is the city  
20      taking the position that anything which would amount  
21      to a tolling motion, meaning some type of action or  
22      motion which extends the time of appeal, is the city  
23      taking the position that such a situation or motion  
24      exists or appeal is just -- there's absolutely no  
25      appellate jurisdiction here?

1 MS. CHAN: Yes. At this point in time,  
2 given the amount of time that has passed, that's  
3 correct. That's the city's position.

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

6 MS. CHAN: Correct.

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

12 MS. CHAN: Yes.

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

19 MS. CHAN: That's correct.

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

22 MS. CHAN: Yes.

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

25 MS. CHAN: I believe there's been

1 discussion at ENV as they were trying to find a  
2 suitable location that would be easily accessible to  
3 members of the public. I'm not aware of the specific  
4 date, but the last one when I checked in with them a  
5 couple weeks ago, they were in the process of setting  
6 that up.

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

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

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

25 MS. CHAN: Those were done -- in addition

1 to the announcements at the prior hearing, the  
2 preceding ones, they would also publish in the  
3 newspaper and I believe post it to their website.

4 COMMISSIONER OKUDA: Okay.

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

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

15 MS. CHAN: Thank you.

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

21 MR. CHIPCHASE: Very good, Chair.

22 So I'm trying to strike a balance here on  
23 the reporting because I certainly don't intend for  
24 the city to simply have to say -- I think it's every  
25 three months or something like that -- "There are no

1 proceedings. There are no proceedings." I don't  
2 think that that has value to the commission. It  
3 doesn't have value to us, and I don't intend to  
4 create busy work for the city even if it's minimally  
5 burdensome.

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

15 And so on that score, I would look to  
16 suggest to the commission that a more appropriate  
17 approach than terminating the order would be  
18 modifying so that it reads something to the effect  
19 that if there's an intent to proceed either on an  
20 amendment to the special permit or on a district  
21 boundary amendment, really anything involving the  
22 landfill, that notice be given to the commission and  
23 to the interested parties prior to filing. And that  
24 at that point, an obligation to update the commission  
25 reactivates. So as long as there are proceedings or



1 intended proceedings involving the landfill before  
2 the Honolulu Planning Commission, that there be a  
3 reporting obligation. If there are none, there are  
4 none, and the city doesn't have to report. If there  
5 are some, there are some, and the city should report  
6 them to you and to us as well as soon as practicable.

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

23 So if the vehicle is appropriate, I think  
24 this is an opportunity to put into the order and  
25 modify the order, and that way, too, that notice

1 actually goes to, for example, the neighborhood  
2 boards of these meetings, if it does not already. I  
3 don't remember exactly that point, Kam. I don't mean  
4 to be redundant, but something like. And notice to  
5 us because we are the party that is in the case, as  
6 Commissioner Wong mentioned, and would participate,  
7 is very interested in participating in those  
8 community meetings, and I think that would be an  
9 appropriate modification to the order and wouldn't be  
10 in any way burdensome on the city.

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

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

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

19 Are there questions for Mr. Chipchase?

20 COMMISSIONER WONG: Chair?

21 CHAIR SCHEUER: Commissioner Wong.

22 COMMISSIONER WONG: So, Mr. Chipchase,  
23 if -- let's say there is something that starts up  
24 again, like you said, regarding Waimanalo Gulch or  
25 any other landfills, besides that one notice, I mean

1 that one time, did you want continuing notices also?

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

11 COMMISSIONER WONG: Thank you.

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

14 Do you have suggested language?

15 MR. CHIPCHASE: Off the top of my head, I  
16 would say that if the city intends to initiate any  
17 other proceedings involving the Waimanalo Gulch  
18 Sanitary Landfill, including, but not limited to, an  
19 amendment of the SP or a district boundary amendment  
20 or an initiation of a new SP, that notice be provided  
21 to the parties to this SP and to the LUC prior to  
22 filing. And that once the proceeding is initiated,  
23 the city report on the status of the proceedings  
24 every three months. So in that way, the ongoing  
25 obligations nears what exists.

1           In terms of the notice to the community  
2           on the periodic updates on the status of the landfill  
3           to resite it and closing it, I would suggest  
4           something along the lines of, you know, seven days or  
5           ten days before the city's periodic meetings on --  
6           periodic community meetings, and it also has a  
7           reporting obligation to the Planning Commission, an  
8           annual reporting obligation, that notice of those  
9           meetings and of the reporting to the Planning  
10          Commission be provided to the neighborhood boards,  
11          the applicable neighborhood boards and to the parties  
12          to this proceeding.

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

16                   COMMISSIONER CABRAL: I thank you and  
17                   appreciate your perspective, and I am one that agrees  
18                   that government that governs least governs best as I  
19                   sit here. But I am wondering, and perhaps this is a  
20                   question of our environmental services with the city  
21                   and county, does that report that is generally given  
22                   include things that updates on something that may  
23                   have happened just -- not just the notices of  
24                   governmental paper-pushing, procedural things, but  
25                   what about, like, what if there was a landslide or

1       there was a fall, or something positive like spring  
2       flowers bloomed in the back corner? I mean, is that  
3       kind of notification ever given out to the Land Use  
4       included in these kind of reports? Because I would  
5       like to think that if something of note were to  
6       occur, perhaps the Land Use Commission would -- maybe  
7       they don't need to know that, but I would think that  
8       the public might need to know those kinds of things,  
9       and I'm wondering what the reporting vehicle is to  
10      the general public when something does occur on the  
11      site and how that can be included in some manner.  
12      That's my only concern.

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

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

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

22                   MS. CHAN: Yeah.

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

1 concern.

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

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

20 COMMISSIONER CABRAL: Okay. Thank you  
21 very much.

22 MR. CHIPCHASE: And if I may,  
23 Commissioner, in my perspective, there is the updates  
24 to the community obligation, the periodic updates to  
25 the community, and there are other reporting

1 obligations that the city certainly has to different  
2 agencies in different ways. I'm not aware of a  
3 general reporting obligation of significant events,  
4 either positive or negative, to the community. It's  
5 certainly not in any way of the time limit. The  
6 meetings are periodic. So there could be a  
7 significant event, and the community hasn't had an  
8 opportunity to ask about it or learn about it unless  
9 it hunts around for the notices to the agencies until  
10 some period later. And I'm happy to be wrong about  
11 that, but I don't recall any general reporting  
12 obligation for significant events.

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

15 MR. CHIPCHASE: We can hope.

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

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

20 COMMISSIONER OHIGASHI: Mr. Chair?

21 CHAIR SCHEUER: Commissioner Ohigashi  
22 followed by Commissioner Aczon.

23 COMMISSIONER OHIGASHI: I just have a  
24 simple question. You're requesting prior  
25 notification before they file -- city files anything

1 in regard to this matter before the Planning  
2 Commission?

3 MR. CHIPCHASE: Yes, Commissioner.

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

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

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

20 MR. CHIPCHASE: So, Commissioner --

21 (Telephone ringing.)

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

25 The nature of these filings are not the



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

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

25 COMMISSIONER OHIGASHI: Mr. Chipchase, to

1 follow up, are you limiting prior notice to those  
2 items that are filed before the Planning Commission,  
3 or are you going to -- are you going to ask to be  
4 consulted in regard to federal agency filings? You  
5 know, what's the limits on it?

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

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

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

25 MS. CHAN: If I may, Chair, I would

1 appreciate having the opportunity to respond at the  
2 end, in part because the city was not aware of Ko  
3 Olina's position on this matter. So it would be  
4 helpful if we could respond in the end.

5 CHAIR SCHEUER: Certainly.

6 Commissioner Aczon.

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

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

13 VICE CHAIR ACZON: Or for someone else.

14 MR. CHIPCHASE: -- someone else might.

15 CHAIR SCHEUER: Commissioner Okuda.

16 COMMISSIONER OKUDA: Thank you,  
17 Mr. Chair.

18 Mr. Chipchase, would you agree that  
19 depending on what the city might do, the law already  
20 has in place required processes or requirements for  
21 notice, time of notice and method of notice? For  
22 example, if the city intends to bring a district  
23 boundary amendment, there are certain things the city  
24 has to do possibly, even a 343 environmental review  
25 which contains its own set of required notices,

1 community engagement, things like that. If the city  
2 attempts to modify something on this exact docket,  
3 you, as a party, or your client, as a party, will  
4 have certain rights of notice. And so in other  
5 words, the existing framework as far as notices,  
6 required notices, how notices are done, it depends on  
7 what's actually being filed, what's actually taking  
8 place, and maybe we shouldn't muddy up those existing  
9 processes by setting a totally new notice scheme. In  
10 other words, the type of notice that's required to be  
11 given, if at all, depends on existing law. If it's  
12 complied with by the city, it's complied with. If  
13 it's not complied with, then there's going to be  
14 ramifications.

15           Although, I do agree -- I think my own  
16 personal view is we could make a little bit more  
17 clear the type of notice and method of notice that  
18 should be given regarding these public hearings, but  
19 perhaps the public hearing or the requirement for  
20 these public meetings are broad enough on their  
21 existing order since there's no appeal that can be  
22 had from that order anymore, that that can cover  
23 these other potential contingencies. And if you see  
24 in the future that somehow or another the city or  
25 your clients or other people in the community are

1 being prejudiced by a lack of notice, I think it's  
2 always a possibility to bring some type of motion to  
3 enforce the order that the commission entered, and we  
4 can take it up at that time.

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

10 MR. CHIPCHASE: I appreciate the comments  
11 and the concern about mucking about. Certainly,  
12 there are some notice obligations, different notice  
13 obligations depending on what would be filed, and  
14 some of those, as I said, we would be able to  
15 participate in or have notice of and some we  
16 wouldn't. But I think it's important to remember the  
17 context of why we're here. We're not here with  
18 Ko Olina asking for fresh reporting obligations that  
19 haven't existed. We're here with the city asking to  
20 modify an existing reporting obligation, one that's  
21 been in place for five years and was in place for a  
22 very good reason. Some of the circumstances that  
23 gave rise to that notice have changed, but the  
24 underlying point of it has not. And so because we're  
25 here not on Ko Olina's request for additional

1 reporting obligations, but on the city's request to  
2 relieve it of a reporting obligation, I think it's  
3 appropriate to look at modifying that instead of  
4 ending it in a way that fits the context that we're  
5 in.

6 COMMISSIONER OKUDA: Thank you.

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

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

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

19 City and County, DPP.

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

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

25 MR. FUNAKOSHI: Likewise, the Office of

1 Planning has no objection to the city's --

2 (Reporter clarification.)

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

5 CHAIR SCHEUER: Ms. Chan.

6 MS. CHAN: Thank you, Chair. It seems to  
7 me that the discussion that's come up and with KOCA's  
8 suggested modification to the 2014 order requiring  
9 written status reports, that there's really two  
10 different things that we're talking about. One is  
11 the motion that we've brought, the modification to  
12 that 2014 order that was really limited to status  
13 reports with respect to the planning commission's  
14 proceeding. And looking back at what was going on at  
15 that time, the case was remanded back to the Planning  
16 Commission after it was remanded from the Supreme  
17 Court, and there was admittedly a lengthy delay at  
18 that point in time. And so, understandably, the LUC  
19 wanted to know what was going on at that level. The  
20 city and Ko Olina and other parties were negotiating  
21 to see if there was a way to come up with a joint  
22 order to resolve the case. And so there are reasons  
23 for those delays and, understandably, a request to be  
24 updated on the status of the Planning Commission  
25 proceedings.

1           What I'm understanding is Ko Olina's  
2 request at that point is really, more appropriately,  
3 a modification to the November 2019 order that was  
4 issued. It is seeking further requirements and  
5 conditions upon the city, and so those are not  
6 appropriate for the 2014 order that's the subject of  
7 the city's motion. So we would disagree with  
8 Ko Olina on that point.

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

11           Commissioner Wong.

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

15           MS. CHAN: Yes, that's correct.

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

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



1 COMMISSIONER WONG: The Waimanalo Gulch.

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

3 COMMISSIONER WONG: I'm a simple guy.

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

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

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

13 MS. CHAN: No. I would explain it this  
14 way: The 2014 order simply requires the city to  
15 provide -- written status reports about the  
16 proceedings that were pending before the Planning  
17 Commission. So that is something separate from the  
18 2019 order and the decision and all of the conditions  
19 that are imposed there. But our position would be  
20 that terminating the 2014 order that required written  
21 status reports about proceedings that were ongoing at  
22 that point in time while the case was still sitting  
23 before the Planning Commission really serves no  
24 purpose at this point, but, also, it doesn't take  
25 anything away from our obligations under 2019 order.

1 We would still be providing public notice for any  
2 types of meetings going forward.

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

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

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

21 The issue is if -- let's say  
22 Mr. Chipchase comes up and says "Let's modify 2019,  
23 make a motion to modify 2019," on the same issue that  
24 we just talked about modifying, isn't that a waste of  
25 time for all of the Land Use commissioners?

1 MS. CHAN: I would hesitate to  
2 characterize it as a waste of time simply because if  
3 it's important to a party, then I'm not going to --

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

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

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

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

1 right vehicle to do it.

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

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

12 COMMISSIONER WONG: Okay. Thank you.

13 CHAIR SCHEUER: Thank you, Commissioner  
14 Wong.

15 Commissioner Okuda.

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

1 MR. CHIPCHASE: The 2019 order?

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

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

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

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

18 COMMISSIONER OKUDA: Okay. Given the  
19 fact that it might be in everyone's interest, and  
20 when I say everyone, I mean not only the Land Use  
21 Commission, but your client, the city, the community  
22 as a whole, that we have now something definite that  
23 has to be followed, possibly under penalty of  
24 contempt of court if it comes to some type of  
25 enforcement action, would it make sense that -- or

1 would your client really face that significant harm  
2 if the city's motion is just granted, just a plain,  
3 vanilla granting of the city's motion, and all other  
4 matters are left for possible future enforcement  
5 actions, not a modification of the existing Land Use  
6 Commission order, but enforcement?

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

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

23 COMMISSIONER OKUDA: Right. And very  
24 well we might, actually, enter orders, not modifying  
25 the Land Use Commission order, but orders in aid of

1 basically our jurisdiction to the extent we have  
2 certain types of abilities to, you know, make sure  
3 our orders are followed. You could ask for that type  
4 of relief; correct?

5 MR. CHIPCHASE: To an extent, and I don't  
6 mean to get into a debate about the Land Use  
7 Commission's enforcement powers. I know that that is  
8 an ongoing issue in whether they're limited or  
9 whether they're not. But I would say this,  
10 Commissioner: In general, I would agree with you  
11 that there is an opportunity to bring violations to  
12 the attention of the Planning Commission or this  
13 body.

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

25 So what we face here is a request by the

1 city, as I've said, to modify an existing reporting  
2 obligation. We could leave that reporting obligation  
3 in place and say, "No. You have to continue to  
4 report on any proceedings before the Planning  
5 Commission on this permit because we would want to  
6 know if you come in immediately for a modification  
7 and how that goes along the way given that that has  
8 happened before." So that would be a perfectly  
9 reasonable thing. It simply results in the  
10 commission and the city submitting reports to say,  
11 "There are no proceedings. There are no  
12 proceedings."

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

23 COMMISSIONER OKUDA: Thank you.

24 CHAIR SCHEUER: Commissioners, further  
25 questions for any of the parties? If not,



1 commissioners, what is your pleasure?

2 Oh, Commissioner Chang. Right under the  
3 wire.

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

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

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

1 COMMISSIONER CHANG: Sure.

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

10 COMMISSIONER CHANG: Sure.

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

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

1 beginning, and at the end of it.

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

25           COMMISSIONER CHANG: And I appreciate

1 that, and I apologize for perhaps "not trusting" was  
2 a much stronger term.

3 MR. CHIPCHASE: Not at all.

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

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

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

1 closed.

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

12 MR. CHIPCHASE: Understood, Commissioner.

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

15 Commissioner Okuda.

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

18 VICE CHAIR ACZON: Second.

19 COMMISSIONER GIOVANNI: I second.

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

22 COMMISSIONER GIOVANNI: I third.

23 CHAIR SCHEUER: A motion has been made to  
24 grant the motion requested by the City and County  
25 Department of Environmental Services by Commissioner

1 Okuda, seconded by Commissioner Aczon. We are in  
2 discussion on the motion. Does the movant or the  
3 seconder or the thirder wish to speak to the motion?

4 COMMISSIONER OKUDA: Chair, I would.

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

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

1 appropriate motion or pleading before the Land Use  
2 Commission.

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

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

19 CHAIR SCHEUER: Thank you, Commissioner  
20 Okuda.

21 Commissioner Aczon, do you have anything  
22 to say?

23 VICE CHAIR ACZON: I'll be very short. I  
24 agree that the applicant's proceeding with the  
25 Planning Commission leading to the docket has been

1 concluded. But Commissioner Wong's statement kind of  
2 strikes me about the wasted time. There's nothing to  
3 report, nothing to report. I would rather like to  
4 see the county spend their time on trying to comply  
5 to our recent rulings than spend time on these  
6 reports that they don't know if there's something to  
7 report or not. I'm pretty sure that there are other  
8 conditions on the orders to have the public or the  
9 parties to be notified if something major happens.  
10 Therefore, I'll be supporting the motion.

11 CHAIR SCHEUER: Thank you.

12 Commissioner Giovanni.

13 COMMISSIONER GIOVANNI: Thank you, Chair.  
14 On the surface, I think that the city and county's  
15 motion is reasonable, and I will support it. Having  
16 said that, as evidenced in our hearings which  
17 occurred in October, we had concerns about the city  
18 and county being forthcoming and transparent about  
19 its actions and inactions regarding the landfill, and  
20 that was a major reason why our order of November  
21 2019 included specific reporting requirements that  
22 were different than anything it had seen before on  
23 this matter. So with that being said, I really  
24 encourage the city and county to be transparent and  
25 to provide details on a timely basis through these



1 reporting requirements that are specified in the  
2 November order. More is better. And I have every  
3 confidence if you do that, then all the concerned  
4 parties will be amply notified and be able to respond  
5 to it. But I will be supporting the motion.

6 CHAIR SCHEUER: Thank you, Commissioner.

7 Commissioners, we're in deliberation.

8 Don't feel obligated to speak, but Commissioner Wong?

9 COMMISSIONER WONG: I feel obligated.

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

18 CHAIR SCHEUER: Commissioner Cabral.

19 COMMISSIONER CABRAL: I'm of that same  
20 feeling. I am concerned that there's such a huge,  
21 long history of which I was only part of a short  
22 amount, but the history book is very large here, that  
23 I would like to think that maybe we can make an  
24 amendment to this motion that would allow the Land  
25 Use Commission to know that there's not -- that we

1       could go back to the reporting if we so choose  
2       without a major amount of hearings and all of the  
3       paper pushing and hearings and lawyers and  
4       everything.  But in the event that it's deemed that  
5       there's maybe some situations that we're not getting  
6       proper reporting, that we could then make some time  
7       in an executive order for this to revert back to the  
8       current status.  I'm just concerned there's been too  
9       much history and too much neglect on the part of the  
10      city and county in the past that to let everybody  
11      know what's going on, and so I'm debating what to do  
12      with this motion as it stands as it is.  Thank you.

13                   CHAIR SCHEUER:  Thank you, Commissioner  
14      Cabral.

15                   Commissioner Ohigashi.

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

25                   I disagree with Mr. Chipchase.  I don't

1 think that we are entitled to two weeks' notice prior  
2 to any kind of filing of any document that the city  
3 may choose to do so. I think that that is the city's  
4 obligation to notify persons of any filings of any  
5 actions like that in front of the Planning  
6 Commission.

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

19           CHAIR SCHEUER: Thank you, Commissioner  
20 Ohigashi.

21           Commissioner Chang, did you want a chance  
22 to speak?

23           COMMISSIONER CHANG: Just a few words. I  
24 see this as a very, I guess, limited to this  
25 particular -- the Planning Commission. But I think

1 the city has heard the commission, and I think it is  
2 in the city's best interest to embrace the community  
3 rather than to think of them as an afterthought.

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

20 CHAIR SCHEUER: Thank you, Commissioner  
21 Chang.

22 Chair will also vote in favor of the  
23 motion, but I certainly -- I appreciated  
24 Mr. Chipchase's pointing out again for the record  
25 that even though the Supreme Court vacated the

1 special use permit, the city and county continued to  
2 operate the landfill and insists the permit was bad,  
3 it does not set a ground of great trust in the  
4 operation of this landfill.

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

13 Mr. Orodener, will you please poll the  
14 commission?

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

18 (Reporter clarification.)

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

21 Commissioner Okuda.

22 COMMISSIONER OKUDA: Yes.

23 EXECUTIVE OFFICER: Commissioner Aczon.

24 VICE CHAIR ACZON: Yes.

25 EXECUTIVE OFFICER: Commissioner

1 Giovanni.

2 COMMISSIONER GIOVANNI: Aye.

3 EXECUTIVE OFFICER: Commissioner Wong.

4 COMMISSIONER WONG: No.

5 EXECUTIVE OFFICER: Commissioner Chang.

6 COMMISSIONER CHANG: Yes.

7 EXECUTIVE OFFICER: Commissioner

8 Ohigashi.

9 COMMISSIONER OHIGASHI: Aye.

10 EXECUTIVE OFFICER: Commissioner Cabral.

11 COMMISSIONER CABRAL: No.

12 EXECUTIVE OFFICER: Chair Scheuer.

13 CHAIR SCHEUER: Aye.

14 EXECUTIVE OFFICER: Thank you, Mr. Chair.

15 The motion passes with six affirmative votes and two  
16 noes.

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

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

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

24 The commission will now hear the status  
25 report scheduled on its agenda for Docket No. A87-610

1 Tom Gentry and Gentry Pacific, Limited, Successor  
2 Petition, Kamehameha Schools, Oahu.

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

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

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

23 After that, the petitioner will provide  
24 their presentation on the docket status on this  
25 matter, and then I will call on the county and the OP

1 for comments. I understand from the petitioner that,  
2 without interruption, the presentation from the  
3 petitioner is about 50 minutes. There may be  
4 comments from the petitioner's counsel as well as  
5 questions from the commission during this time. So  
6 I'm generally anticipating the agenda for today is  
7 that we will move through this item, take a break for  
8 lunch, and then take up item 11. Does that make  
9 sense? So I see, again, that there's no individuals  
10 desiring to give public testimony on this agenda  
11 item?

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

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

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

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

25 On August 9th, the petitioner requested



1 clarification of the LUC's correspondence granting  
2 OP's request.

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

6 On October 7th, the L-U received -- the  
7 LUC received the first exhibit list and first witness  
8 list and Exhibits 26 through 41 as well as successor  
9 petitioner trustees of the Estate of Bernice Pauahi  
10 Bishop dba Kamehameha Schools' revised master plan  
11 and schedule for development and Exhibits 1 through  
12 3.

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

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

20 On November 4th, the L-U received -- LUC  
21 received successor petitioner's rebuttal memorandum  
22 in response to the OP's response to the petitioner's  
23 motion and, as well as from the petitioner, the  
24 revised master plan and schedule for development and  
25 Exhibits 1 through 3.

1                   On November 12th, the commission mailed  
2 and emailed the November 20th through 21st LUC agenda  
3 notice to the statewide email and Oahu mailing lists.

4                   On November 14th, the commission received  
5 the executed signature sheet for petitioner's Exhibit  
6 45.

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

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

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

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

25                   MS. LIM: Jennifer Lim on behalf of

1 Kamehameha Schools. Yes, we are familiar with the  
2 rules, and Kamehameha Schools will comply.

3 CHAIR SCHEUER: Thank you very much.

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

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

9 MS. LIM: Thank you, Chair. Before I do  
10 that, I just -- could we double-check? I think when  
11 I heard your reading an update on the record that you  
12 read that the master plan was submitted on November  
13 4th. I may have missed that. You were reading a  
14 lengthy description, but the master plan development  
15 schedule Kamehameha Schools submitted -- again, it's  
16 not part of our motion pleading, but we submitted  
17 that on October 7th.

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

25 MS. LIM: The master plan and development

1 schedule was submitted on October 7th. I happen to  
2 have a file-stamped copy before me.

3 CHAIR SCHEUER: Thank you for correcting  
4 the record.

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

11 Five years ago or a little over five  
12 years ago when the commission approved the use of  
13 about 655 acres within this 1,395-acre urban  
14 property, they approved the use of that 655 acres for  
15 a solar project development on an interim basis. The  
16 commission issued an order that has certain  
17 conditions in that order primarily related to  
18 conditions to ensure development of the solar  
19 development wasn't going to interfere with, you know,  
20 surrounding uses or anything like that. But one of  
21 the conditions that the commission imposed was a  
22 requirement that Kamehameha Schools actually present  
23 or submit to the commission within five years a  
24 revised master plan for this property and a schedule  
25 for development. So that's what we're here for

1 today, and it was just a requirement to submit. It  
2 wasn't a requirement for, you know, commission  
3 approval or anything like that. It's an  
4 informational requirement and --

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

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

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

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

20 Good morning.

21 THE WITNESS: Good morning.

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

24 THE WITNESS: I do.

25 CHAIR SCHEUER: Thank you.

1                   You may proceed, Ms. Lim.

2                                   WALTER THOEMMES,

3                   having been called as a witness by Petitioner,

4                                   was duly sworn and testified as follows:

5                                   DIRECT EXAMINATION

6 BY MS. LIM:

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

13                   A       Sure, sure. Aloha mai kakou. Mahalo,  
14 commissioners. Mahalo, Jennifer.

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

25                                   Okay. So you've seen -- is my volume all

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

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

14 So as Jennifer stated, today's purpose is  
15 related to 2014, and in a motion related to two large  
16 solar projects in the area shown here in the  
17 1,395-acre area that is urban, in that motion, we  
18 were also asked to submit a revised master plan and  
19 development schedule in five years. So that's the  
20 primary reason why I'm sitting here today.

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

23 Sorry. This thing is moving on its own.

24 -- related specifically to the solar  
25 project are listed here, and it includes the interim

1 use of the petition area, the time frame of that  
2 interim use, as well as the requirement to  
3 decommission the solar farm after its use. And our  
4 understanding is that the commission approved the  
5 solar farm to be in place for 35 years, essentially  
6 until 2049. But as you'll see with our plan and our  
7 schedule, we are, in fact, not just waiting around  
8 for the use of solar before we do anything else  
9 related to the plan. We actually do want to get  
10 moving.

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

19 A Yes.

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

24 A Well, the areas identified were for  
25 solar, and that we would need to create a plan for



1 other uses -- urban uses in this period.

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

6 A Related to the solar -- the solar areas?

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

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

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

16 A Generally.

17 Q -- that led up to these conditions --

18 A Yes.

19 Q -- and other conditions?

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

24 So finding of fact 123 from the  
25 commission's November 2014 order says "KS represents

1 that using portions of the KS property, which is the  
2 whole 1,395-acre property, for a solar farm project  
3 will provide KS with the time and opportunity to  
4 assess potential development options for the entire  
5 property -- for the entire KS property."

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

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

17 So, you know, I personally felt we needed  
18 to have an organizational -- organizational strategy  
19 first to really define what we needed to do in  
20 Waiawa. So the solar projects really were a use that  
21 would help bridge the gap in time that we needed to  
22 understand what we really want to do with these  
23 lands. And I think the plan that we've come up with  
24 to this point in this status report accomplishes  
25 that.

1           Q     So not to jump too far ahead, but, again,  
2     the interim use contemplated that the petition area,  
3     the whole 1,395, would be in solar --

4           A     Yes.

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

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

14          Q     That's great. Thanks.

15          A     Sure.

16                COMMISSIONER GIOVANNI: Chair? Point of  
17    clarification, Chair?

18                CHAIR SCHEUER: Please, Commissioner  
19    Giovanni.

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

25                MS. LIM: Thank you for the question.

1 The condition 7 says "the interim use of the petition  
2 area." So that's the whole 1,395-acre property.

3 "The interim use of the petition area shall be  
4 limited to utility-scale solar energy development or  
5 solar farm. No other use shall be permitted without  
6 the prior written approval of the commission." So  
7 that's the condition 7. It's tough to see on that  
8 slide, but you should have a hard copy of it.

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

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

24 COMMISSIONER GIOVANNI: Could I ask you  
25 to go back one slide? So the area outlined in the

1 dark line is the 1,395; correct?

2 THE WITNESS: Yes, yes.

3 MS. LIM: Yes.

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

7 MS. LIM: Those are.

8 COMMISSIONER GIOVANNI: So not the full  
9 1,395?

10 MS. LIM: That's correct.

11 COMMISSIONER GIOVANNI: That's my point  
12 of confusion. Your statement said that the entire  
13 1,395 would be used for solar.

14 MS. LIM: I understand your confusion.  
15 I'm just reading what the condition that the  
16 commission put onto the approval of the solar says  
17 that the interim use of the petition area, which is  
18 defined as the whole 1,395, shall be limited to  
19 utility-scale solar energy development.

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

1 subareas?

2 MS. LIM: I may need to ask you to  
3 reframe the question, but what I -- I'll try to  
4 answer it in the way that I think that you're asking.  
5 Five years ago or a little over five years ago, when  
6 KS came to request approval for those two solar  
7 areas, and the commission thankfully authorized it,  
8 KS also said, and this is all in the decision and  
9 order that was issued, "Hey, we're looking at  
10 probably changing what the original development plan  
11 was for this entire property," and Mr. Thoemmes will  
12 get into this in great detail, "and it's going to  
13 take us awhile, and this solar is a great win-win  
14 because it's obviously beneficial for the state from  
15 a renewable energy and environmental perspective. It  
16 also provides some income for Kamehameha Schools from  
17 this property while KS figures out what's the best  
18 way to develop the property and move forward with  
19 that development." And the commission's conditions  
20 were, "Okay, you can do the solar, but we understand  
21 that you're planning on rejiggering, probably, the  
22 plan that was originally approved, and when -- when  
23 you are going to do that, you're going to have to  
24 come back to us and seek authorization for that  
25 plan."

1                   COMMISSIONER GIOVANNI:  So I'll wait to  
2                   hear some more details, but I do specifically recall,  
3                   and I ask you to correct me if my recall is  
4                   incorrect, that when we met -- was it October at our  
5                   hearing?

6                   MS. LIM:  November.

7                   COMMISSIONER GIOVANNI:  November.  Thank  
8                   you.

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

14                 MS. LIM:  So you are 100 percent correct,  
15                 and as Mr. Thoemmes goes through the presentation, it  
16                 will become clear.  And that's so, again, when the  
17                 commission imposed its conditions saying the use of  
18                 the petition area for this interim period, which,  
19                 again, under the 2014 order was through December  
20                 2049, the commission said, "That's what's happening  
21                 on this petition area for that period unless you get  
22                 approval from us to do otherwise."  What you'll see  
23                 through this master plan presentation is that, in  
24                 fact, Kamehameha Schools does have plans and wants to  
25                 move much more aggressively than just waiting around

1 until 2049 to then begin actually doing development  
2 on this property. And, in fact, again, as he goes  
3 through the presentation, you'll see how the solar  
4 projects will not interfere with the proposed path of  
5 development.

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

8 COMMISSIONER CHANG: Miss Lim -- Chair?

9 CHAIR SCHEUER: Commissioner Chang.

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

20 And maybe the petition area was not a  
21 good term of art given -- in general, we think of the  
22 petition area as the boundary amendment. But isn't  
23 that reasonable to have concluded that the petition  
24 area in 2014 was just the two solar-proposed farm  
25 areas and not the entire 1,400 acres?



1 MS. LIM: Well, the conditions certainly  
2 don't make that clear because of the use of the  
3 terms. And I appreciate your question. So this is a  
4 topic where maybe there are reasonable minds who can  
5 disagree. But if I may also, I'd like to read into  
6 the records finding of fact 123 from the 2014 order.  
7 And when we use the word "KS property" -- excuse me.  
8 When the commission used the word "KS property" in  
9 that 2014 order, it's defined as the petition area  
10 aka all 1,395 acres. Finding of fact 123, "KS  
11 represents that using portions of the KS property for  
12 a solar farm project will provide KS with the time  
13 and opportunity to assess potential development  
14 options for the entire KS property."

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

1 use of the defined terms.

2 CHAIR SCHEUER: Commissioner Giovanni.

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

5 MS. LIM: That's correct.

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

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

18 So knowing that using those portions  
19 through 2049, which was what was approved in 2014,  
20 and knowing there's a condition saying that interim  
21 use of the petition area is all that's allowed and  
22 then you read the finding of facts, it seems, I  
23 think, a reasonable conclusion that during that  
24 interim period, it will allow KS to assess what  
25 they're going to do with the entire property.

1                   COMMISSIONER GIOVANNI: I would agree  
2 with that perspective if I interpreted what you said  
3 correctly, which is -- and I'm just going to restate  
4 my understanding of what you said. That from the  
5 2014 order, the two hashed portions, basically may be  
6 set aside on an interim basis for a solar farm --  
7 utility-scale solar farm development, but that does  
8 not mean that a utility-scale solar farm could be  
9 implemented in the interim in the portion which is  
10 not hashed.

11                   MS. LIM: I agree with that entirely.

12                   COMMISSIONER GIOVANNI: Thank you.

13                   CHAIR SCHEUER: Sorry. Yes.

14                   MS. APUNA: Chair, if I may.

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

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

19                   CHAIR SCHEUER: Ms. Apuna.

20                   MS. APUNA: We would like to just add  
21 under the decision and order on page 59 of the 2014  
22 amendment, that the language that has not been  
23 mentioned is that the actual decision and order  
24 applies to those specific areas only. It says "It is  
25 hereby ordered that the identified areas within the

1 KS property consisting of approximately 650 acres of  
2 land situated at Waiawa and Waipio," I'll move down  
3 further, "and shown approximately on Exhibit A,  
4 attached, may be used as a solar farm to include all  
5 related utility and other infrastructure for a period  
6 not to exceed 35 years from the date of the order."  
7 And then it goes on to say that "It is further  
8 ordered that the use of the identified areas," which  
9 is the 655 acres, "within the KS property for a solar  
10 farm shall be subject to the following conditions,"  
11 and then it lists the conditions, including  
12 conditions 7 and 8, that Ms. Lim is referring to. So  
13 it is limited to the 655 acres. It does not include  
14 the full 1,395 acres of the full petition area.

15 CHAIR SCHEUER: Thank you, Ms. Apuna.  
16 We're still in the portion -- the very beginning  
17 portion of Kamehameha Schools' presentation. And,  
18 you know, I actually have my own set of  
19 recollections, including from 2014, which differ from  
20 some of the characterizations by counsel. But what  
21 I'd like to do in the interest of getting a good flow  
22 to our very long proceedings today is to hold in  
23 abeyance questions of exactly what was meant in the  
24 2014 action, without having to argue or contest it or  
25 implicitly agree by not contesting it, and hear from

1 the representative from Kamehameha Schools, and then  
2 we can, during discussion, go into the details of how  
3 this relates to the 2014 modification of the original  
4 D&O. Is that acceptable?

5 COMMISSIONER CHANG: Yes.

6 THE WITNESS: Yes. Thank you.

7 CHAIR SCHEUER: Please proceed.

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

16 Specifically around population, scholars  
17 note that at the time of Cook's discovery or visit to  
18 Hawai'i, there were about 800,000 Native Hawaiians.  
19 When Pauahi was born in 1831, that population had  
20 declined to 124,000, and at the time of her passing  
21 in 1884, 44,000. And many -- many perished due to  
22 health-related complications, but there also existed  
23 a loss of culture, language and identity. And, you  
24 know, Pauahi had the foresight to, through her  
25 legacy, become a change agent. She actually turned

1 down the opportunity to be the queen, and she  
2 understood that it was actually through education and  
3 her founding of Kamehameha Schools that really  
4 could -- she could lift back her people, which  
5 remains our goal today. And part of that is being  
6 good stewards of the land which is part of my daily  
7 job.

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

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

22           Now, what's important here is this vision  
23 does not apply to just those lucky kids who get  
24 enrolled at our campuses. It's actually intended to  
25 apply to all Native Hawaiian kids, and that is a

1 profound shift from what Kamehameha was prior.

2 Here are some statistics of -- in 2018,  
3 61,000 learners were supported by the school, 7,000  
4 on our campuses, 29, our preschools -- on our three  
5 campuses and 29 preschools, 13,000 through direct  
6 programs. So the 7 and the 13 are directly funded  
7 by -- directly operated programs. The balance, the  
8 other 40,000, are actually indirectly supported, and  
9 this is through support of the DOE, through the  
10 charter schools, immersion schools, scholarships as  
11 well as other private school scholarships.

12 So how is all of this funded? This is an  
13 interesting and complicated slide, but it's actually  
14 really simple. Everything on the right is what  
15 Kamehameha's programmatic efforts consist of. We  
16 spend over \$450 million a year advancing education  
17 and land stewardship. So you can see what we spend  
18 on campuses, what we spend on stewardship,  
19 educational support, community programs,  
20 scholarships, et cetera. 98 percent of that funding  
21 comes from this other dial here, and this is our  
22 endowment. It's worth about \$12 billion.

23 We only -- we get very nominal  
24 philanthropic and tuition sources. So, basically,  
25 we're entirely dependent on pana, our endowment. 31

1 percent of that endowment is Hawai'i real estate, and  
2 that is Hawai'i commercial real estate. So that is  
3 actually what is my responsibility. It does not  
4 include the agriculture and conservation lands. We  
5 don't put that kind of, like, pressure on those lands  
6 to produce revenue for education.

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

19           So from a land perspective, I think it's  
20 well-known that Kamehameha is the largest private  
21 landowner. We have 363 [sic] acres of land. But  
22 interestingly enough, the commercial portfolio I  
23 oversee is only 15,000 acres, and of that, only 1,000  
24 is productive acreage that you could assume to be  
25 shopping centers, hotels, Kaka'ako. The balance is



1 vacant land like Waiawa or, you know, golf courses,  
2 that sort of thing. So really only 1 percent of the  
3 land is actually contributing to the financial  
4 fortunes of education.

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

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

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

24 So why do we manage real estate? And the  
25 answer may seem obvious based upon what I just

1 shared, but I think and I hope you will come away  
2 with the understanding that it's actually not that  
3 simple. Making money is not just it. So let me kind  
4 of take a little sidestep here.

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

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

1 home price of a family -- of a home is seven times --  
2 seven times the median income of that same family.

3 Now, interestingly enough, when we plot  
4 permits, and these are pulled from the city records,  
5 housing -- new housing permits in that time, we can  
6 see in the early years a lot of -- significant amount  
7 of home building. And somewhere in the mid to late  
8 '70s, that crashed significantly, and we had only  
9 2,500 new housing permits issued last year.

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

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

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

25 Ground leases are great. They're very

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

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

25           So what's happening is they're leaving,

1 and our records are showing that many of our kids are  
2 leaving and not coming back. I don't know how we can  
3 call it success when we are, in fact, educating the  
4 future leaders of Nevada, Portland, Phoenix and the  
5 like. If we don't figure out a way to create the  
6 conditions for our kids to be successful leaders here  
7 in Hawai'i, then I don't know how Kamehameha Schools  
8 can claim success.

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

16 We are looking at our leasing cycles and  
17 taking back ground leases that are expiring, but, you  
18 know, the beauty of the ground lease portfolios, it's  
19 safe and it's a long-term deal, and many of those  
20 ground leases were done in the '60s, '70s, '50s.  
21 Well, guess what. Those ground leases are ending;  
22 right? So areas like Kaka'ako are actually a result  
23 of KS taking back control. So we're going to start  
24 to take back control. We're going to start to master  
25 plan areas of concentration and create new

1 communities.

2           What I put up on the slide is actually  
3 new for KS. We pivoted to a regional approach, and  
4 this is a key strategy. We actually structurally  
5 changed in the organization because we realized that  
6 not every community is the same, but how do you  
7 reconcile decision-making between different  
8 communities, and we've come up with -- our regional  
9 teams have come up with six key drivers of a healthy  
10 community: education, housing, infrastructure,  
11 business, health and aina. We apply this framework  
12 to all our decision-making, including commercial real  
13 estate. So we look at a spectrum of outcomes that we  
14 can influence, recognizing that not every area is  
15 going to hit every outcome and different areas have  
16 different needs. I don't expect development in  
17 Waipahu to look and feel like development in  
18 Kaka'ako; right? And that's the point of  
19 understanding the needs of regions. And our regional  
20 teams really help guide our commercial real estate  
21 team to really achieve multiple bottom lines.

22           Now, at the end of 2018, what this all  
23 meant for commercial real estate is the creation of  
24 what we're calling an urban core strategy. When we  
25 factor in our historic ground lease tenure with many

1 leases that are naturally expiring and control is  
2 coming back to KS, we have significant community  
3 deficits, housing just one of them, transportation,  
4 equity, access to healthcare. I mean, there are many  
5 issues that we have in our community, and what can  
6 our portfolio do to help solve it?

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

25 And, you know, part of this strategy is

1 that we are largely developing areas that have  
2 already been developed or have been held and  
3 identified for development for a long time.

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

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

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

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

22           Looking at Waiawa as a region -- we  
23 actually have nine different regions. Waiawa is one  
24 of them. You know, these lands are squarely in  
25 Waiawa, and interestingly enough, 52,000 Native



1       Hawaiians live in this region. It's actually one of  
2       the -- it's actually the highest concentration on  
3       Oahu, but it's expected to grow. We expect by 2040  
4       this to grow by as much as 66 percent. It is an area  
5       that's ripe for new housing development and  
6       affordable housing development, and we expect the  
7       Hawaiian population to grow here and find it a  
8       popular place. So our attention is very much on the  
9       Ewa region.

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

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

25               Now, I will note that the city defines

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

10 Yes?

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

16 THE WITNESS: So this map is not  
17 depicting the petition area. It's the total  
18 ownership. I think the lower sliver is here and then  
19 it begins -- you know, it's kind of in this area, the  
20 1,395 acres.

21 BY MS. LIM:

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

24 A The ownership in Waiawa is 9,000 acres,  
25 and it stretches from Pearl Harbor, hops over the

1 freeway and goes up to the peak -- hops over the  
2 freeway. It bypasses -- the freeway splits it.

3 CHAIR SCHEUER: To the summit?

4 THE WITNESS: The summit. The peak of  
5 the Ko'olaus, yes.

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

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

18 It is central location and proximity to  
19 transit. It's going to be a -- it's well positioned,  
20 and Waiawa residents, we envision, to live, walk and  
21 create this big community in a very different way.  
22 It's not the vision of a 1988 community. And  
23 interestingly enough, the implementation of this  
24 vision also contemplates solar as a part of it along  
25 the way.

1           Just, you know, kind of in terms of  
2 alignment, the Central Oahu Sustainable Communities  
3 Plan, it shows the Waiawa petition area aligning with  
4 the urban-developed areas that are intended in the  
5 city's plan. The existing zoning -- and we actually  
6 have existing zoning based upon the prior plan. You  
7 know, our plan will call for some modifications of  
8 this -- sorry -- you know, once we properly vet our  
9 new plan.

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

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

24           Our immediate desire is to advance on  
25 phases A and B. And, you know, as you can see

1 here -- sorry. This area here is what has been  
2 defined as the phase 1 solar project. And it is  
3 actually not impacting the master plan community at  
4 all.

5 BY MS. LIM:

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

11 A Yes.

12 Q Can you explain the disconnect?

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

20 Let me talk a little bit about the  
21 execution. We're executing this a little  
22 differently. We're not simply turning this over to a  
23 developer as we've done in the past. KS's full  
24 intention and expectation is to be involved in this  
25 development to work with the developer in the plan in

1       securing entitlements and approvals and negotiating  
2       with governments and other parties to ensure that  
3       this vision is fulfilled, and we have no surety of  
4       that if we just hand this off to a third-party  
5       developer.

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

14                    Q       Meaning that it remains consistent --

15                    A       Yes.

16                    Q       -- with the elements that you  
17      identified --

18                    A       Yes.

19                    Q       -- to the board about support of the  
20      infrastructure, support of the housing?

21                    A       Yes. That's why we cannot commit to a  
22      product mix yet or anything like that, but we do  
23      expect things that are important to KS to continue to  
24      be a part of this plan even with another guest  
25      developer involved. And as I, you know, kind of

1 mentioned on some of our strategies, we expect to  
2 also develop as appropriate.

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

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

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

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

19           A       You know, as I mentioned, we are not  
20 primarily a development company. We will selectively  
21 develop. Development is a lot of risk. It's very  
22 risky, especially greenfield type of development, a  
23 lot of -- very patient -- it can even take a long  
24 time to find a lot of capital sources. And we have,  
25 as you can see by our urban core strategy, you know,

1 a lot of other things going on as well. So it's just  
2 not something we're built to take on.

3 Q Because, ultimately, Kamehameha Schools'  
4 primary mission is --

5 A Is education.

6 Q -- education?

7 A Yeah.

8 Q Development is just something --

9 A Development is something to help generate  
10 the resources and kind of create the community uplift  
11 that's needed. And, you know, I will say -- I will  
12 clarify, I mean, we create community uplift in the  
13 course of also generating economic returns. So it's  
14 not a social service type of function.

15 Q You have a lot of housing planned for  
16 this master plan area?

17 A Yeah. I mean, it's a smaller footprint,  
18 and I'll show a comparison later with Gentry. And  
19 it's meant to be more dense and more efficient, and  
20 that's really that work we did in the last few years  
21 of studying how to make this plan more economically  
22 viable.

23 So, you know, kind of tying back, I  
24 shared the regional slide, and this is almost like  
25 the scorecard of, "Okay, have you talked about



1 influencers or drivers of a healthy community? So  
2 how does Waiawa contribute to that?" So,  
3 specifically, you know, we consider Waiawa to, you  
4 know, meet educational goals. We have schools.  
5 Housing is a big one, you know, 11,000 homes. A lot  
6 of infrastructure investment, you know, both on-site  
7 as well as connecting to transit. Energy, it still  
8 has its place within the project, and I'll show a  
9 little bit more about the phasing and how that's  
10 intended to work. Commercial, healthy. You know, we  
11 have 10 miles in this plan. You don't really see it.  
12 10 miles of alahele. The idea is to -- which is our  
13 walking trails; right? The idea is to make that the  
14 easier thing to do than get in your car and drive,  
15 and our plan tries to map that out.

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

20 COMMISSIONER GIOVANNI: Chair?

21 CHAIR SCHEUER: Commissioner Giovanni.

22 COMMISSIONER GIOVANNI: Thank you, Chair.

23 Could you go back to the prior slide? I  
24 just have a question I'd like you to expand on.

25 Is that appropriate?

1 CHAIR SCHEUER: That's fine. I'm just  
2 checking time. We've been going approximately an  
3 hour. We're about halfway through?

4 THE WITNESS: Yeah.

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

12 COMMISSIONER GIOVANNI: Thank you, Chair.

13 So when we met in November, we were  
14 particularly interested in hearing of the master plan  
15 and how it portended to and focused on infrastructure  
16 development for other than the solar projects. So  
17 you have a block up here under infrastructure, which  
18 is \$630 million for infrastructure development,  
19 nonsolar, nonenergy; is that correct?

20 THE WITNESS: Correct.

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

25 THE WITNESS: Yeah. So, you know,

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

9 COMMISSIONER GIOVANNI: By phase?

10 THE WITNESS: Yeah.

11 COMMISSIONER GIOVANNI: On some timeline?

12 THE WITNESS: Yes.

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

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

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

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

24 THE WITNESS: It's coming.

25 COMMISSIONER GIOVANNI: Okay.

1 THE WITNESS: 2030 would actually be when  
2 it would start. Sorry.

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

7 THE WITNESS: Yes.

8 CHAIR SCHEUER: Okay. It's 11:20. Let's  
9 take a 10-minute break and reconvene at 11:30.

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

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

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

23 Energy, you know, in this area, the  
24 commission approved in 2014 plans for a solar  
25 project. Waiawa Solar, which you're also discussing

1 today, is a 36-megawatt utility-scale power  
2 production.

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

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

1 workforce and education.

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

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

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

25 BY MS. LIM:

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

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

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

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

25          Q     You mean the same type of situation that

1 Gentry ultimately --

2 A Yes.

3 Q -- found itself in?

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

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

20 A Absolutely.

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

24 A It's actually driven a lot by the firms  
25 that you see here that commissioned these studies



1 that looked at, you know, what was needed for traffic  
2 and grading and utilities and whatnot.

3 Q Thank you.

4 A You're welcome.

5 As far as outreach, this is initial  
6 outreach. This is really just what's happened in  
7 2019 just for, you know, point of who we've talked to  
8 across various constituencies of government and  
9 legislative branches.

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

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

24 Q What do you think that -- if you were to  
25 characterize one or two things that seemed to -- that

1 everybody seemed to coalesce behind, you know, one or  
2 two aspects of the plan that seemed to get the most  
3 positive attention?

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

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

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

17 COMMISSIONER CHANG: Mr. Chair?

18 CHAIR SCHEUER: Commissioner Chang.

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

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

24 THE WITNESS: Okay. So this actually  
25 lays out by color the different phases. And the

1 dates represent the commencement of horizontal  
2 development ending with the completion of vertical  
3 construction. So as mentioned previously, Phase A,  
4 which is the phase closest to transit and Kamehameha  
5 Highway, would begin horizontal construction in 2030,  
6 and it would essentially conclude vertical  
7 construction in 2040.

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

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

19 BY MS. LIM:

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

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

1 phases of the community.

2 A proposed Phase 2 piece, obviously,  
3 does. And we've carefully looked at the timing of  
4 development of getting approvals, developing  
5 absorption and concluded that we could accommodate a  
6 second phase of solar in a fashion that would enable  
7 20 to 30 years of solar service before --

8 My next slide.

9 -- Phases C, D and E come onboard.

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

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

23 The second key element to these two  
24 phases is it's driven by what we believe the existing  
25 regional sewer capacity is through our discussions

1 and consultation with the city. And we've had pretty  
2 good reception to that. It actually -- it helped  
3 size these phases. That said, we recognize when we  
4 move into Phases C, D and E, that we will need to  
5 resolve access at Ka Uka as well as increase regional  
6 sewer capacity.

7 Now, on Phases C, D and E, in summary,  
8 they make up an additional 6,700-plus homes. We have  
9 61 acres set aside for a second DOE elementary school  
10 as well as high school, another 77,000 of commercial  
11 space. And the timing is such that the second phase  
12 of future solar projects would have to cycle off and  
13 be decommissioned in order for Phases C, D and E to  
14 be built.

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

20 A Yes.

21 Q -- what are the time frames should that  
22 project get authorized? Because, as we know, that  
23 area was already authorized for solar development,  
24 but only through 2049. Should the commission  
25 authorize that project pursuant to a subsequent

1 motion, not the motion we'll be talking about on the  
2 next agenda item, when would those projects be  
3 decommissioned and removed so that Kamehameha Schools  
4 can continue with their master plan development?

5 A Yes. Thank you. I'm not the expert on  
6 the solar project, but we have been working with our  
7 folks involved with the potential -- a potential  
8 second-phase solar project, and we've identified two  
9 phases of that solar. One would need to -- one would  
10 be allowed to operate until 2044 to make way for  
11 Phase C, and the other would be allowed to operate  
12 until 2054, which would then be decommissioned to  
13 make way for Phases D and E. So they're not the same  
14 time horizons. The first part of Phase 2 solar would  
15 be a 20-year commitment, and the second would be a  
16 30-year commitment, but it's -- and it would be sized  
17 and it would be agreed upon by the solar operators to  
18 allow for, you know, the ultimate expansion of the  
19 residential community.

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

25 A Related to the master plan, no. So that

1 would be an independent decision related to, you  
2 know, the life of that system and the 35 years it's  
3 allowed to be there, and we would, you know, need to  
4 wait and see what would come next. But because it's  
5 tied to the zone of contribution, we don't envision  
6 it as any development of community assets at that  
7 location.

8 Q So even after 2059 at the point --

9 A Yes.

10 Q -- there's never anything planned by KS  
11 in that area?

12 A No. It would revert to open space.

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

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

25 (Reporter clarification.)

1           THE WITNESS:  Envisioned a retirement,  
2 slash, golf-centric community versus, you know,  
3 really our plan is a kama'aina transit-oriented  
4 community.

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

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

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

21 BY MS. LIM:

22           Q       Meaning the October submission --

23           A       Yes.

24           Q       -- of the master plan development --

25           A       Yes.  It was provided in October, and



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

12 Then you see the next band which includes  
13 three yellow bars. Those yellow bars represent the  
14 solar phases that I was talking about. So solar  
15 Phase 1 is actually the Waiawa Solar project, and as  
16 you can see, that work begins with your approval and  
17 city permitting approval and goes up to 2059. And it  
18 really does not impact the master plan implementation  
19 as we've envisioned it. However, phases -- the  
20 phase -- the two increments of Phase 2 of solar are  
21 purposefully staggered so that they can be  
22 accommodated with how we expect the master plan to  
23 go. So the first piece of that second phase of solar  
24 could only go out to 2044 because if you look below  
25 it, we get into our phases of construction, C, D --

1 these are C, D -- C, D and E. These -- these solar  
2 projects basically need to end in line with our  
3 future phases. So Phases A and B are not competing  
4 at all with the solar projects. Phases C, D and E  
5 are competing for the same space that the second  
6 phase of solar is.

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

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

21 A Yeah. You know, there's a lot of -- a  
22 lot goes into a greenfield development and markets is  
23 one of it. We, obviously, did market studies and  
24 looked at what absorption -- rate of absorption would  
25 be and how it might compare with what other

1 developments are doing and where's Ho'opili in  
2 comparison with that and Koa Ridge and how long it  
3 actually takes to effectuate this type of  
4 development. And so it all came into why the  
5 schedule is what it is and why you don't see, you  
6 know, 11,000 homes starting and finishing in 10  
7 years.

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

15 A Development agreement.

16 Q Okay. So that's planned for -- is it  
17 2020 and 2021?

18 A Yes.

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

21 A Yes.

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

23 A Well, that's the --

24 Q Can you characterize that, please?

25 A That's the expectation. I mean, you

1 know, it's one of these things you have two willing  
2 parties, and if you get two willing parties to come  
3 to agreement quick, it's something that happens  
4 quickly. And if you get two parties that are not so  
5 willing, then it takes longer. So we expect, you  
6 know, with -- with continued positive reception of  
7 our plan, to go out, you know, with an RFP. We  
8 actually have been talking to developers and  
9 consulting with potential developers. We have a  
10 list. And, hopefully, we can get proposals and come  
11 to an agreement with one of them. And these  
12 negotiations take time. You know, it's very  
13 different than Kamehameha Schools or any owner just  
14 doing it on their own; right? They need to satisfy  
15 their own needs and move forward. When you're  
16 dealing with two parties, you know, how you split  
17 costs, how you split returns, you know, sales  
18 transaction-type of activities can take a long time  
19 to negotiate.

20 Our master plans in Kaka'ako, we have  
21 reached agreement with developers in as quick as six  
22 months, and there's one we're working on and we're  
23 approaching a two-year mark for a single project on a  
24 single block. So that's how involved these  
25 negotiations are, and I think like all of the time

1 frames that we've put out, we try to make a  
2 reasonable guess based upon what we know of the  
3 complexity of this project and the work and how long  
4 things take.

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

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

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

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

20 Okay. Now, I know time -- and I  
21 mentioned this to you in some of our feedback, you  
22 know, time has been an issue, and I know there's been  
23 some discussion about imposing time limits on our  
24 project. I respectfully disagree with that. I think  
25 this is a very complex endeavor. You know, we are --

1 I'm not sitting here as a developer, and I can't give  
2 surety to every step that's here. We need to -- you  
3 know, our effort here in stepping into this project,  
4 as we're doing, is to try to build certainty and  
5 de-risk this project as much as we can knowing  
6 there's a lot of uncertainty out there.

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

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

18 A It could just make it more challenging,  
19 yes.

20 The plan is ambitious. I mean, you know,  
21 it's not quite as big as Mililani and Ho'opili, but  
22 actually it's on par with Ho'opili in terms of its  
23 size. It's a different type of geography. It's a  
24 different type of product. And I believe our  
25 schedule is reasonable and put together in good

1 faith. I actually do have more details on this  
2 predevelopment area in a few slides.

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

14 So on the solar, since we were talking  
15 about the solar, I won't obviously get into all the  
16 details, but this slide kind of lays out, you know,  
17 where that project has been, Waiawa Solar, and kind  
18 of where it's going. And time is of the essence in  
19 that after commission approval, it still needs to go  
20 to the city through their permitting process, and the  
21 plan is to start construction in October. And  
22 there's a deadline to start commercial operations by  
23 the solar company in December of 2021, and they're  
24 probably going to need that time. We also show here  
25 the rough decommissioning dates that are 35 years

1 out.

2 Q So just to stick on that schedule. So  
3 I'm looking at it. If the commission were to -- on  
4 the second agenda item, which is not what we're  
5 talking about right now, but if the commission were  
6 to authorize that project in January 2020, the next  
7 step is to do the permitting. Then they got to rush  
8 to the city permitting --

9 A City permitting, right.

10 Q -- in April 2020 --

11 A Right.

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

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

18 Q Okay. So there's several steps --

19 A Yes.

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

21 Thanks.

22 How about for Kamehameha Schools and its  
23 development schedule?

24 A So kind of leading -- thank you,  
25 Jennifer -- leading off identifying --



1                   You see here, this is really just meant  
2 to lay out our thinking around this predevelopment --  
3 so if you think about between now and 2030, why does  
4 it take 10 years; right? And, you know, so we've --  
5 we've identified the need to, you know, solicit our  
6 development partner, convince them this is a great  
7 investment, be a part of a great community that no  
8 one's seen before, execute that agreement. If we can  
9 do it in a year, we will, but we've given ourselves a  
10 couple years to do that. They're going to want to  
11 come in and want to get their fingerprints on this  
12 plan a little bit, and that's where a lot of this  
13 negotiation is going to be to ensure our vision is  
14 held true. And then we get into environmental  
15 review. So two years out, you know, we get into the  
16 environmental review process. And to get through  
17 that, resulting in a final EIS, you know, you  
18 essentially see a two-year process. Back to the Land  
19 Use Commission, subsequent to that, where at that  
20 point in time, we will have a hardened plan with all  
21 of the details and we'll be able to specifically  
22 request amendments to, you know, the current  
23 approvals, and then we go back to the city. We'd  
24 have to update our zoning and go through, you know,  
25 Planning Commission and all of the approvals and

1 unilateral agreements with the city. Then get into  
2 subdivision in 2027, a year for that, and then we'd  
3 start to be able to really commit at that point to  
4 our design and working drawings and bids and all of  
5 that, which would allow us to be in construction of  
6 Phase A in 2030, essentially turning over homes a few  
7 years later.

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

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

24           We look for your support. I will tell  
25 you that this is a favorite picture of mine. It is a

1 reason why we are doing what we're doing, why I'm  
2 doing what I'm doing. Our keiki are our future, and  
3 we know we can create a better future for them. We  
4 need government's help. We need community support.  
5 We need businesses that are willing to put their  
6 capital at risk to create communities like Waiawa.  
7 So we're very interested to get this going, and  
8 mahalo for your time. I will answer any question I  
9 can.

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

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

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

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

22 COMMISSIONER GIOVANNI: Just a procedural  
23 question.

24 CHAIR SCHEUER: Commissioner Giovanni.

25 COMMISSIONER GIOVANNI: Some of the

1 questions I have, based on what I've learned from the  
2 master plan presentation, probably are more relevant  
3 during the next agenda item. So the questions can  
4 actually wait until then.

5 CHAIR SCHEUER: Commissioner Wong.

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

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

15 So did you have something, Commissioner  
16 Chang?

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

21 I just have a few -- few questions.  
22 There were times that were mentioned community  
23 support, and I looked at the -- I'm trying to find  
24 the specific page. People that you've met with,  
25 they're primarily organizations and agencies. So

1 help me understand what communities you had some  
2 discussions with in regards to your master plan to  
3 provide you input into the master plan.

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

1 stakeholders that we have relationships with, that we  
2 have partnerships with in the area.

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

7 THE WITNESS: Yes.

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

12 THE WITNESS: Yes.

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

15 THE WITNESS: Yes.

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

19 THE WITNESS: Oh, absolutely, yes.

20 COMMISSIONER CHANG: This -- you have a  
21 phased approach, and this is a status report on the  
22 master plan. Your -- the original D&O was the Gentry  
23 project. It was designed to be built in a much  
24 shorter period of time. Under our own rules, we  
25 usually are looking at projects over a 10-year period

1 of time. And so -- and I noticed on your plan, you  
2 have an LUC boundary petition. So maybe this is more  
3 for Ms. Lim.

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

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

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

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

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

1           So there would be -- again, as currently  
2 proposed --

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

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

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

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

20           COMMISSIONER CHANG: The 2024. You have  
21 2024 on the Waiawa Master Plan Next Steps, "File  
22 petition for district boundary amendment with LUC."  
23 So that's for the 400 -- the additional 400 acres?

24           MS. LIM: That's correct, but you'll also  
25 see, and excuse me for the delay. So if you're



1 looking at Walter's slide 38, which is -- it's very  
2 wordy, but it was KS's, you know, effort to  
3 demonstrate it knows -- these are just high level,  
4 all the steps that have to happen before anything can  
5 actually happen on the ground. So if you look under  
6 the component labeled "Land Use Commission," there's  
7 the filing of -- a file of petition of boundary  
8 amendment, and that's for the 476-some-odd acres, and  
9 then there's also a 2024, filing a motion to amend.  
10 And these would be, you know -- would they be  
11 addressed at the same time? It's hard for me to  
12 think they wouldn't be. And I don't think at the  
13 same time in the same exact proceeding, but they  
14 would be two requests that would be going to get  
15 approval for this entire master plan area.

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

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

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

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

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

16 COMMISSIONER CHANG: Did it cover this  
17 entire --

18 MS. LIM: It did. It did. And it's a  
19 very old EIS, and there was a determination regarding  
20 the solar projects from the city that there was no  
21 need for -- there was no EIS trigger to develop the  
22 solar projects, and there was, therefore, no need to,  
23 you know, explore updating the EIS at that time. But  
24 as part of KS's due diligence, recognizing that there  
25 will be infrastructure that needs to be developed and

1 certainly discretionary approval from the commission,  
2 it's anticipated that 343 will be triggered, and  
3 let's be frank, it's highly likely it would be an EIS  
4 and not an environmental assessment.

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

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

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

12 MS. LIM: That's correct.

13 COMMISSIONER CHANG: Okay.

14 CHAIR SCHEUER: Still have a couple more,  
15 Commissioner?

16 COMMISSIONER CHANG: Yeah, just a few  
17 more.

18 And this is one -- I have two sons  
19 graduating from Kamehameha and greatly appreciated  
20 that, but you're right. Many of our -- many of our  
21 young Hawaiians -- our young Hawaiian leaders have to  
22 leave, and many of them have graduated from  
23 Kamehameha. So I noticed on your plan the difference  
24 between Gentry and KS's plan is kama'aina. So when  
25 you say kama'aina, how do you ensure -- explain to me

1        what do you mean by kama'aina?  Because I'm trying to  
2        address your initial mission is raising all these  
3        young Hawaiian leaders who have to move.  A lot of  
4        the reasons they have to move is they cannot afford  
5        to buy a house here or live here.  So are some of  
6        these homes contemplated to provide housing for our  
7        young Hawaiians?

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

16                   DHHL has ability to build specifically  
17       for Native Hawaiians.  Kamehameha Schools does not  
18       have that ability.  I will suggest to you that  
19       getting DHHL involved here is a desire, and we've had  
20       conversations with them from time to time.  But it's  
21       not something that we're permitted to do.  So coming  
22       back to that statement I made about, you know, we  
23       can't target Native Hawaiians specifically in  
24       housing, but we can create attributes of a community  
25       and culture that is appealing to them in the hopes

1 that they make that the choice, and that we're  
2 solving housing for all kama'aina, not just Native  
3 Hawaiians, but they will be part of, you know, the  
4 benefit.

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

8 CHAIR SCHEUER: Thank you, Commissioner  
9 Chang.

10 Commissioner Aczon.

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

15 THE WITNESS: No, not yet.

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

20 THE WITNESS: Actually, a charrette is  
21 kind of more like you don't really have a plan. You  
22 actually are looking for, you know, the ideas of what  
23 would a community like this be and who would it  
24 serve. So it was more that the information we get  
25 from -- the feedback we get actually helped create

1 the plan. And so it wasn't, you know, Kamehameha  
2 putting a plan in front of people.

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

14 THE WITNESS: Yeah. Yeah. That's a  
15 great point. I mean, we've tried to balance, you  
16 know, moving quickly, getting input. We've also used  
17 our experience with master planning in other areas.  
18 So I put Haleiwa out there as an example. When we  
19 master planned the North Shore, that is a community  
20 that's all there; right? So the key stakeholders are  
21 being impacted every day. They all were part of it.

22 Waiawa, there are community -- there is  
23 community there, but it's also a largely vacant  
24 ahupua'a as well. The question is how wide of a net  
25 do we cast in our initial consultation. We decided

1 to keep it more localized in Waiawa and our key  
2 partners. But, certainly, the next steps would be --  
3 because the impact of all this would be felt up in  
4 Central Oahu and all over. But it's a great point,  
5 and we really tried to balance the right mix of  
6 involvement at different stages.

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

10 THE WITNESS: Thank you.

11 CHAIR SCHEUER: Thank you, Commissioner  
12 Aczon.

13 Commissioners? Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you,  
15 Mr. Chair.

16 This is more, Mr. Thoemmes, an  
17 organizational, maybe cultural -- kind of  
18 organizational culture kind of question. At some  
19 point in time, the Land Use Commission may be asked  
20 to make a decision which is going to be involved.  
21 How much discretion should be left to the Bishop  
22 Estate, you and your professional staff, versus  
23 whether or not the commission might have to or should  
24 put all these restrictions which limit discretion,  
25 which may limit your flexibility. And part of it --

1 and you could have seen a little bit from the prior  
2 hearing. Part of it comes down to, you know, to  
3 trust, belief in the mission and things like that. I  
4 think we all in this community recognize the  
5 importance of Kamehameha Schools, you know, KSBE, its  
6 support that cuts across ethnic lines. I don't think  
7 this is an ethnic thing at all.

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

20 How would you address the concern that  
21 some people might have which is right now Kamehameha  
22 Schools, KSBE, has some really good planners, people  
23 who are committed to education, committed to the  
24 community as a whole, think of really impressive ways  
25 of educating not only students on campus, but going



1 out in preschools and doing all the things that maybe  
2 a lot of educators should do, but you know, you  
3 shouldn't give them discretion -- shouldn't give you  
4 discretion because this could just change in a matter  
5 of a very short time by changes in who are the  
6 trustees, who are appointed in senior leadership. I  
7 mean, yeah, we might trust you today, but, you know,  
8 10 years from now, you might not be there. You might  
9 not be there because, you know, people might think  
10 you're too honest a guy. I mean, how do you address  
11 that?

12 THE WITNESS: Well, thank you. A lot of  
13 compliments in there. I'll take it that way. I  
14 guess the easiest way for me to answer that is, you  
15 know, this is the risk we all deal with in the  
16 positions that we're in. You know, I can't discount  
17 that Kamehameha, in the future, could turn into  
18 something that it isn't. But I think, you know, you  
19 can also take a look back 20 years, you know, and I  
20 was there. You know, I am who I am today because I  
21 was there. And, you know, as an organization, we  
22 were -- we were looking at oblivion basically with  
23 broken trust and an IRS that, you know, was ready to  
24 drop the hammer and take away our tax-exempt status,  
25 and it was a shock to everyone. And the organization

1 we are today is because of what happened then. And  
2 the people that are there, you know, my staff get --  
3 you know, we have a lot of new people on our team,  
4 and they get indoctrinated on this every day.

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

16 So I don't know if that allays your  
17 fears. You know, I think you gotta look at the track  
18 record, and you gotta look at the things we were  
19 doing, and that people coming in even now that are  
20 new to the organization are seeing kind of what  
21 success looks like when you treat people right.  
22 Right? Even in my area, we are not above having  
23 tough negotiations with other parties. But at the  
24 end of the day, if it's not a win-win, it's not  
25 successful; right? And we recognize that.

1           So I don't know if I'm answering your  
2 question, but I think the organizational culture is  
3 very different. And, you know, it's great to hear --  
4 not great. We were Bishop Estate back then, and now  
5 we're Kamehameha Schools. So when I hear Bishop  
6 Estate, I kind of go, huh, I remember -- I remember  
7 those days. But we try not to be that, and I feel we  
8 have very strong leadership, and everyone kind of  
9 understands that we're not that far away from where  
10 we could have been, and let's treat our  
11 responsibility to our beneficiaries and to the  
12 community with the respect that's needed.

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

18           THE WITNESS: Right.

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

22           THE WITNESS: You're welcome.

23           CHAIR SCHEUER: Thank you, Commissioner  
24 Okuda.

25           Commissioners, any other comments or

1 questions at this time?

2 COMMISSIONER GIOVANNI: I've got one  
3 quick one.

4 CHAIR SCHEUER: Commissioner Giovanni.

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

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

20 THE WITNESS: Yes.

21 COMMISSIONER GIOVANNI: But from a master  
22 plan perspective, are you looking to broaden the  
23 definition beyond what was in the decision and order  
24 to include utility-scale, battery, energy storage or  
25 other forms of storage, or features that look like a

1 microgrid here or features that might actually take  
2 energy production off of the grid and directly feed  
3 into the supply for the development of the  
4 residential?

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

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

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

23 COMMISSIONER GIOVANNI: Okay. So just to  
24 distinguish for today's purposes, when we talk about  
25 utility-scale solar projects that are under

1 consideration today and for which you're seeking a  
2 permit later this afternoon, it's for utility-scale  
3 solar projects that are directly connected to the  
4 grid?

5 THE WITNESS: Yes.

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

10 THE WITNESS: Yes.

11 COMMISSIONER GIOVANNI: -- within the  
12 community?

13 THE WITNESS: Absolutely.

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

16 THE WITNESS: That's not before us.

17 COMMISSIONER GIOVANNI: Thank you.

18 CHAIR SCHEUER: Thank you, Commissioner  
19 Giovanni.

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

22 COMMISSIONER CHANG: Mr. Chair, just two.

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

25 COMMISSIONER CHANG: Okay. I guess what

1 concerns me is this -- you've got one -- 2024 is when  
2 you're going to come in and do a boundary amendment.  
3 Aren't you running risk? You're going to try to go  
4 out and try to get a partner. What happens if you  
5 have a Land Use Commission that is not favorable and  
6 chooses to say, "Nope. You gotta do what you  
7 proposed to do in Gentry"? Why are you waiting until  
8 2024 to do a boundary amendment on --

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

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

19           So retreating back and, you know, as I  
20 mentioned, you know, what the time we spent in the  
21 last few years and really trying to understand why  
22 that plan didn't go and what were they thinking and  
23 what were they doing and how our plan can and should  
24 be different, there's some real technical aspects to  
25 that. You know, an example was just starting it down

1 below where you got much more -- much less costly  
2 connections to infrastructure and water.

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

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

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

25 Can you confirm for me at this point in



1 time has there been any use of this land? Is there  
2 any roads that have been built, anything that has  
3 been done on the 1,400 acres?

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

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

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

21 COMMISSIONER CHANG: All right. Thank  
22 you very much.

23 THE WITNESS: You're welcome.

24 CHAIR SCHEUER: Thank you, Commissioner  
25 Chang.

1 Commissioner Cabral.

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

11 THE WITNESS: Thank you.

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

15 THE WITNESS: Thank you.

16 CHAIR SCHEUER: Commissioners?

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

22 I guess I'll start by observing that the  
23 year that Gentry filed its plans for these lands was  
24 the year I graduated from high school, which is now  
25 an increasingly long time ago.

1           So my comments are really oriented  
2 towards that I'm grateful to hear about the current  
3 status of the master plan. The commitment to bring  
4 the new master plan was the reason I voted for the  
5 change a few years ago in 2014 because -- and this is  
6 where I differ from Ms. Lim's recollection -- it  
7 wasn't maybe we'll do something different. It was  
8 we're going to do something different. The Gentry  
9 plan is not viable at all.

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

19           THE WITNESS: Yes.

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

23           THE WITNESS: Yes.

24           CHAIR SCHEUER: -- "'A'ole, this is not  
25 what we want here."

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

18                  So the fact that -- I mean, I just gotta  
19                  know this because it's always bugged me. The whole  
20                  way this was branded Waiawa by Gentry. It isn't  
21                  Waiawa by Cutter. You know, it's Tom Gentry. I  
22                  mean, the arrogance of that old vision. Thank God  
23                  that failed, and there's a chance to do something  
24                  new. And, you know, to me, that brings to mind this  
25                  reference to how long it's been since then. What

1 we've envisioned then as being very good was from a  
2 different Kamehameha Schools, different Bishop Estate  
3 at that time. It was from a different Hawaiian  
4 community; right?

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

22           And I guess one of the last things I'll  
23 mention before we close is that, you know, regardless  
24 of how you feel about Mauna Kea and the TMT and  
25 what's going on up at the mauna, one of the most

1 interesting comments that I've heard about, it was  
2 from a long-term fixture at Kamehameha Schools, Neil  
3 Hannahs. And he said, "You know, all the leaders up  
4 there right now are the kids who went through Punana  
5 Leo." So you just naturally look at the world  
6 differently.

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

20 THE WITNESS: Yes.

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

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

25 Is there anything further on this agenda

1 item?

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

5

6

CROSS-EXAMINATION

7

BY MS. WONG:

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

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

23

MS. WONG: Okay. Thank you.

24

CHAIR SCHEUER: OP?

25

MS. APUNA: We have questions, but I

1 think we'll wait until the second agenda item to ask.

2 CHAIR SCHEUER: Okay. Thank you very  
3 much.

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

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

11 COMMISSIONER CABRAL: Accept and move on.

12 CHAIR SCHEUER: Accept and move on.

13 Ms. Lim?

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

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

25 THE WITNESS: I can stay.



1                   CHAIR SCHEUER: Because the alternative,  
2 Ms. Lim, is we don't adjourn this item and then we  
3 take a lunch break.

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

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

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

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

21                  CHAIR SCHEUER: We're in recess.

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

24                  CHAIR SCHEUER: We're in recess.

25                                   (Recess taken from 12:45 p.m.)

1                                   until 12:49 p.m.)

2                   CHAIR SCHEUER: Ms. Lim, we would like to  
3 have -- we would like to have Mr. Thoemmes available  
4 after lunch if we have questions as what he's  
5 presented today relates to the next docket. Is that  
6 a problem?

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

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

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

1 reopen the record so that the --

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

4 COMMISSIONER GIOVANNI: Chair?

5 CHAIR SCHEUER: Commissioner Giovanni.

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

10 COMMISSIONER OKUDA: Chair?

11 CHAIR SCHEUER: Commissioner Okuda.

12 COMMISSIONER OKUDA: And I believe  
13 Chair's approach is the appropriate approach. And my  
14 recollection was that because we had juxtaposed or  
15 switched around the presentation, a lot of the  
16 information that Mr. Thoemmes has presented today was  
17 really necessary. That was one of the reasons why we  
18 stopped and rescheduled or continued this matter  
19 until today because if we had proceeded based on the  
20 record that was presented the last time, I think a  
21 result -- it wouldn't have been unexpected for me for  
22 a result to come out which might not have not only  
23 been in the best interest of KSBE, but it might not  
24 have accurately reflected the record. So I support  
25 how the chair plans to handle this.

1                   CHAIR SCHEUER: Is Mr. Thoemmes available  
2 after lunch when we take up the next agenda item,  
3 Ms. Lim?

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

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

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

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

16                               (Whereupon, a lunch recess was  
17                               taken from 12:53 p.m. until  
18                               1:51 p.m.)

19        ///  
20        ///  
21  
22  
23  
24  
25

1 HONOLULU, HAWAI'I

2 THURSDAY, JANUARY 9, 2020

3 1:51 P.M.

4 - o0o -

5 CHAIR SCHEUER: Thanks to everybody for  
6 being on time.

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

15 There are three individuals who have  
16 signed up to give public testimony on this matter.  
17 After the completion of public testimony, the  
18 petitioner will be allowed to make their comments.  
19 We will, as discussed prior to the break, ask that  
20 Mr. Thoemmes be made available for questions. After  
21 the completion of any subsequent comments from the  
22 petitioner, we'll receive any comments from the  
23 county planning department and the Office of  
24 Planning, and following the final comments of the  
25 petitioner, the county and the state, we will conduct

1 our deliberations. Are there any questions on our  
2 procedures?

3 MS. LIM: No questions from petitioner.

4 CHAIR SCHEUER: County?

5 MS. WONG: No questions.

6 CHAIR SCHEUER: OP?

7 MS. APUNA: No questions.

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

12 THE WITNESS: Good afternoon, Chair.

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

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

19 THE WITNESS: Yes.

20 CHAIR SCHEUER: Thank you.

21

22 JEFFREY OVERTON,  
23 having been called as a witness by Petitioner,

24 was duly sworn and testified as follows:

25 THE WITNESS: Jeff Overton. I'm a

1 planning principal with G70. I gave you an incorrect  
2 address yesterday. Our proper street address is 111  
3 South King Street, Suite 170, Honolulu, Hawai'i  
4 96813.

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

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

16 So as a little background, my career, a  
17 land use planner, environmental consultant spanning  
18 36 years, believe it or not, including the planning  
19 permitting for eight commercial solar projects since  
20 2014.

21 G70 has assisted and continues to assist  
22 Clearway and its subsidiaries like Waiawa Solar  
23 Project with their land use planning and permitting  
24 requirements on its solar projects in Hawai'i,  
25 including the one at Waiawa. And given our past work

1 with Clearway on its solar projects, I am familiar  
2 with the land use permitting and time requirements  
3 for solar projects such as the one that's before you.

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

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

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

23 So these are -- this includes the utility  
24 tie-in or gen-tie route that's running from the  
25 project site to the west within the petition area



1 across the gulch near Ka Uka Boulevard near the exit  
2 of the H-2 Freeway to reach the point of  
3 interconnection on the existing Hawaiian Electric  
4 Company 46 kV Waiiau-Mililani line. I'll just  
5 identify that gen-tie connection goes across to this  
6 position here (indicating).

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

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

19 The petition area is designated for  
20 urban-type uses, such as residential, commercial,  
21 recreational, industrial under both the current 2002  
22 and the proposed Central Oahu Sustainable Communities  
23 Plan land use maps. Exhibits 4 and 5 are attached.  
24 I haven't put those boards up, but they're in your  
25 handout before you.

1           There is a mixture of county zoning  
2 within this petition area, and it includes  
3 Neighborhood Business District B-1, Community  
4 Business District B-2, low density Apartment District  
5 A-1, medium density Apartment District A-2,  
6 Industrial/Commercial Mixed-Use IMX-1, Residential  
7 District R-5, and General Preservation District P-2.

8           KS Exhibit 3 also in your packet shows  
9 the current county zoning on the property. The  
10 project site for the Waiawa Solar Project is zoned  
11 AG-1, a restricted agricultural district.

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

21           So following the commission's approval of  
22 the motion for modification, a conditional use permit  
23 will be submitted followed by a number of building,  
24 electrical and civil permits as well as grading  
25 permits. And it will take approximately four to six

1 months for approval of the CUP application as well as  
2 approximately eight to nine months for approval of  
3 the ministerial permits. These timelines do not  
4 include the internal preparation of the permits and  
5 applications and consultations with the county prior  
6 to filing. Construction will take approximately one  
7 year.

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

17           With respect to decommissioning the  
18 project, about six months is set aside for permitting  
19 based on the current requirements. It does not take  
20 into consideration environmental studies or  
21 consultations that may be needed to complete --  
22 completely ensure compliance with state or federal  
23 regulations. And it's my understanding that  
24 construction activities with decommissioning could  
25 take approximately one year.

1                   So in conclusion of my testimony, I  
2                   strongly support Waiawa Solar Project and urge this  
3                   commission to approve KS's motion today to allow the  
4                   project to move forward and meet its PPA  
5                   requirements. I'll be glad to respond to questions.

6                   CHAIR SCHEUER: Thank you very much.

7                   Are there questions from the petitioner?

8                   MS. LIM: None from the petitioner.

9                   Thanks.

10                  CHAIR SCHEUER: City and county?

11                  MS. WONG: No questions.

12                  CHAIR SCHEUER: OP?

13                  MS. APUNA: I do have a question.

14                  CHAIR SCHEUER: Please.

15                  MS. APUNA: Thank you, Chair.

16

17

CROSS-EXAMINATION

18                  BY MS. APUNA:

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

24                   A       Just generally. I don't have a specific  
25                   understanding.

1           Q     Okay.  So, yeah, generally, it's just  
2     that we're asking that petitioner put in the backbone  
3     infrastructure for just Phase A of their development  
4     within the next 10 years.  So within the 200 acres of  
5     the petition area of Phase A.  Do you know if our  
6     condition or that requirement would interfere with  
7     the solar projects in any way as far as the  
8     permitting or the actual construction of the solar  
9     project?

10          A     So my responsibilities have really been  
11     limited to the planning and permitting associated  
12     with the solar project.  So I think it would be  
13     extending for me to really comment on the  
14     infrastructure outside the project area for the  
15     solar.

16          Q     But you don't see any -- if there was --  
17     if the infrastructure for Phase A were to move  
18     forward in the next 10 years or even 5 years, you  
19     don't see any interference with that as far as the  
20     solar project?  Is that a problem at all in any way  
21     for the solar?

22          A     Well, the timeline for construction of  
23     the solar project, I present in the testimony there's  
24     also a timeline attached -- I'm sorry I didn't mount  
25     it here for you.  At the back, there's a simplified

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

10 MS. APUNA: Okay. Thank you.

11 CHAIR SCHEUER: Commissioners, questions  
12 for Mr. Overton?

13 Commissioner Giovanni.

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

20 THE WITNESS: As I understand it, and  
21 Daniel von Allmen is also here from Clearway, who can  
22 probably answer that question more directly. But as  
23 I understand it, we have a very rigid timeline that  
24 I've tried to capture in a summary in this exhibit  
25 that's at the end of the package that you have before

1 you. So it's a simplified project schedule that  
2 shows that by the beginning of 2020, really the end  
3 of fourth quarter 2019, we needed to be completed  
4 with the Land Use Commission process so that we could  
5 file for the county conditional use permit that is  
6 the next entitlement that's required to proceed  
7 towards construction. And as you can see, the time  
8 bars are not generous to reach the end of the  
9 timeline shown here. To reach system operation and  
10 under the power purchase agreement, that would be  
11 fourth quarter of 2021. We've got quite a bit of  
12 permitting work to be done. As you can see, building  
13 permit review just shows about eight or nine months  
14 in here, which I'd say is optimistic given the way  
15 permits are approved here. So it's urgent. If we  
16 were delayed a month or more here, it would probably  
17 throw off the schedule.

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

1 specific term of the power purchase agreement?

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

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

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

13 COMMISSIONER GIOVANNI: That's the  
14 starting point?

15 THE WITNESS: Correct.

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

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

22 COMMISSIONER GIOVANNI: Okay. So I'm  
23 going to interpret it that, and it's the third of the  
24 last paragraph of your letter, that what's really  
25 relevant here is you need the commission to take



1 action now for its motion modification this month in  
2 order to get started and meet your operational  
3 deadline of fourth quarter 2021?

4 THE WITNESS: Correct.

5 COMMISSIONER GIOVANNI: Thank you.

6 CHAIR SCHEUER: Are there further  
7 questions?

8 If not, thank you very much.

9 THE WITNESS: Thank you.

10 CHAIR SCHEUER: Our next witness is  
11 Daniel von Allmen followed by Cameron Black.

12 Aloha.

13 THE WITNESS: Aloha.

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

16 THE WITNESS: I do.

17 CHAIR SCHEUER: Okay.

18 THE WITNESS: Thank you, Chair.

19

20 DANIEL VON ALLMEN,  
21 having been called as a witness by Petitioner,  
22 was duly sworn and testified as follows:

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

25 THE WITNESS: My name is Daniel von

1 Allmen, and I work for Clearway Energy Group, and our  
2 address is 100 California Street, 4th Floor, in  
3 San Francisco, California 94111.

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

7 COMMISSIONER GIOVANNI: Can you turn on  
8 your mike?

9 THE WITNESS: Sorry. My apologies. Is  
10 that -- okay. There we go.

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

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

24 I'm not going to read Patrick's entire  
25 written testimony for you. There are two key points

1 that I want to briefly summarize as I sit here, and  
2 that is, first, the need for approval today and to  
3 reinforce what Mr. Overton just went through, and the  
4 second is our need for the 35-year-term time  
5 extension.

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

18 So as you can see from the timeline Jeff  
19 laid out and from the points that I just touched on,  
20 we don't have any time to spare right now, and that  
21 even losing a month of further deferment would put us  
22 on our most aggressive schedule outside of that 2021  
23 date. And that has a lot of negative implications  
24 for us in terms of coming into a violation of a  
25 major -- major contract and defaulting on an

1 agreement with Hawaiian Electric that none of us  
2 would like to see come to fruition here. So time is  
3 certainly of the essence, and we really appreciate  
4 you guys hearing our arguments today and, hopefully,  
5 providing us the approvals that we need to move  
6 forward with this project and with this process.

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

21 The second point that I want to make is  
22 that the agreement between Waiawa Solar Power and  
23 Kamehameha Schools explicitly considers the extension  
24 to the 35-year term as long as we have a power  
25 agreement in place that backs that up as well. And

1 so the parties to that agreement have agreed that as  
2 long as there's somewhere to sell the power to, that  
3 this is a good, functional use of this land and that  
4 we should be able to continue to operate the project  
5 for its full 35-year life.

6           The third and perhaps most important item  
7 that I want to highlight for you guys is that this  
8 project was bid to Hawaiian Electric with the  
9 assumption that it would be able to operate for 35  
10 years based on the terms of the lease that we have  
11 with Kamehameha Schools. And I want to highlight  
12 that point because in these competitive solicitations  
13 for projects that have the ability to operate for  
14 their entire useful life, every developer that  
15 participates in these solicitations will make that  
16 assumption that you have the ability to capture  
17 post-contract revenue. And the way that you make  
18 that assumption is kind of up to a business decision  
19 of every individual company, but it's part of how  
20 developers are able to push the prices as low as  
21 we've been able to achieve here in Hawai'i and  
22 achieve the greatest possible benefit to Hawai'i  
23 ratepayers. And so to cut short a project's  
24 operational life span would come to the detriment of  
25 rate payers not just through that project not

1 delivering that energy for the remainder of its life,  
2 but also that developers would have to basically redo  
3 the math on the assumption that they would not be  
4 able to operate the project for its full life, and  
5 the pricing for those interim years would also be  
6 higher. And so it's extremely important to maximize  
7 benefits to Hawai'i rate payers, that the full  
8 35-year term be approved, and that the project be  
9 able to operate for its full life expectancy.

10 And, finally, the last point that I  
11 wanted to make is that looking at Hawaii's resource  
12 needs for the coming decades, we fully expect there  
13 to be a strong demand for this project beyond the PPA  
14 term. At the end of the 20-year PPA term, Hawai'i  
15 will still have not reached the peak of its 100  
16 percent clean energy mandate. And as you'll see in  
17 the testimony that was filed by HECO in support of  
18 this point, Hawaiian Electric will need to be  
19 continuing to work to meet that goal without losing  
20 the capacity that it already has. And given that  
21 Hawaiian Electric has come forward and said that they  
22 also expect to be able to renegotiate this PPA to  
23 extend it to the benefit of Hawai'i rate payers, it  
24 only gives us more confidence that that opportunity  
25 will be there.

1           So all of that said, in order to maximize  
2 the benefit that this project provides and take  
3 advantage of the full term that has been laid out in  
4 agreements between Waiawa Solar Power and Kamehameha  
5 Schools, we are asking respectfully that the  
6 commission extend the term of this approval to the  
7 full 35 years.

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

15           CHAIR SCHEUER: Are there questions from  
16 the petitioner?

17           MS. LIM: None from the petitioner.

18           CHAIR SCHEUER: City and county?

19           MS. WONG: None from the county.

20           CHAIR SCHEUER: Office of Planning?

21           MS. APUNA: Yes, Chair, please.

22

23

CROSS-EXAMINATION

24 BY MS. APUNA:

25           Q     Thank you, Mr. Allmen, for your

1 testimony. Similar to what I had asked Mr. Overton,  
2 counsel at the last hearing had stated that OP's  
3 proposed condition would have incredibly traumatic  
4 and very dangerous effects on the solar project  
5 itself. Can you explain what those dangerous  
6 conditions and effects might be if OP's condition was  
7 approved?

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

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

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

22 Q Please.

23 COMMISSIONER GIOVANNI: Chair, if I may,  
24 to help clarify the question, it might be -- I'm very  
25 interested in the answer to this question, but it



1 might be worthwhile to show what -- just to show the  
2 land area for Phase A and how it's apart from the  
3 subject area of the solar farm. I mean, physically,  
4 it's two different locations within the petition, the  
5 subject area.

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

8 COMMISSIONER GIOVANNI: The Petitioner to  
9 do it?

10 MS. APUNA: Yeah.

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

15 CHAIR SCHEUER: You're being handed a --

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

25 BY MS. APUNA:

1           Q     Okay.  So -- and then your understanding  
2     is that the solar project is not within that red area  
3     that you pointed to.  It's south of that southern  
4     portion of the yellow --

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

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

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

17           MS. APUNA:  Right.

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

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

25           MS. APUNA:  Okay.  That's fine.

1                   CHAIR SCHEUER: But it's certainly  
2 obvious from what we heard earlier what he's saying  
3 now.

4 BY MS. APUNA:

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

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

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

20                  A       That's correct.

21                   MS. APUNA: Okay. Thank you.

22                   CHAIR SCHEUER: Is that it?

23                   MS. APUNA: Yes.

24                   CHAIR SCHEUER: Okay. Commissioners?

25                   COMMISSIONER CABRAL: I have a question.

1                   CHAIR SCHEUER: Commissioner Cabral  
2 followed by Commissioner Giovanni.

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

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

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

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

24                   THE WITNESS: We will have someone mowing  
25 the lawn every day. But our entrance to the site

1 comes off of Waiawa prison road and utilizes the  
2 existing old cane haul roads through the site which  
3 will be improved up to the border of our project on  
4 the kind of southwest side there, and that's where  
5 our project fence line will be.

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

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

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

19 THE WITNESS: Correct. So there will not  
20 be any permanent staff on-site. We won't have an  
21 operations building on-site. So there will be a  
22 porta potty next to a temporary trailer for  
23 day-to-day operations and maintenance. We may have  
24 folks -- a limited number of staff coming in and out  
25 for routine maintenance checks and security checks on

1 a regular basis, but there will be no permanent  
2 infrastructure as it relates to bathrooms, buildings,  
3 things like that on our project.

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

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

14 COMMISSIONER CABRAL: It's a big area.

15 THE WITNESS: Yeah.

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

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

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

24 THE WITNESS: Uh-huh.

25 CHAIR SCHEUER: Commissioner Giovanni.

1 COMMISSIONER GIOVANNI: Thank you, Chair.  
2 Thank you, Mr. Von Allmen. Thanks for  
3 coming back.

4 THE WITNESS: Of course.

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

8 THE WITNESS: AC.

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

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

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

24 THE WITNESS: Yeah. That's generally  
25 correct. I think what we summarized last time was

1 that our typical O&M strategy contemplates rebuilding  
2 certain aspects of the inverters on a regular basis  
3 to replace certain parts and to extend their life as  
4 a unit rather than a wholesale replacement. There  
5 will be augmentations of the battery system over time  
6 as that does start to degrade, and that panel  
7 replacements will probably be done on an as-needed  
8 basis. There is not an explicit timeline that the  
9 panels will have to be replaced.

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

13 THE WITNESS: That's correct.

14 COMMISSIONER GIOVANNI: So in terms of  
15 the power purchase agreement, I think you said it's a  
16 20-year term?

17 THE WITNESS: That's correct.

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

22 THE WITNESS: I don't think that there's  
23 an explicit expectation from Hawaiian Electric's  
24 side, let's say, on the time of the extension. We  
25 would seek a 15-year extension to match the extended



1 lease term.

2 COMMISSIONER GIOVANNI: Is it your  
3 understanding that that extension could be the result  
4 of a bilateral negotiation with Hawaiian Electric?  
5 Is that specified in the PPA?

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

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

17 THE WITNESS: That is my understanding,  
18 yes.

19 COMMISSIONER GIOVANNI: Do you know that  
20 for certain?

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

23 COMMISSIONER GIOVANNI: Okay. So at this  
24 point in time, is it fair to characterize that  
25 15-year period as having some uncertainty associated

1 with it?

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

6 COMMISSIONER GIOVANNI: Okay. Thank you.

7 CHAIR SCHEUER: Are there further  
8 questions from the commissioners?

9 Commissioner Wong.

10 COMMISSIONER WONG: Thank you, Chair.  
11 Thank you.

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

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

19 COMMISSIONER WONG: Sure. Bring them in.

20 THE WITNESS: It is, as Mr. Overton  
21 noted, a sequential process where we cannot -- DPP  
22 cannot begin its review of our CUP until after the  
23 approval of the commission is given, and that we  
24 would not be able to start preparation of materials  
25 for the ministerial permits until after we receive

1 approval from DPP and know all the conditions that  
2 they have incrementally imposed.

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

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

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

25 MS. KUWAYE: In the past, DPP was highly

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

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

14 MS. KUWAYE: That's correct. We're just  
15 basically assuming it's going to take at least a year  
16 for construction and just basically going through all  
17 of that. So we know, basically, by this time next  
18 year, we are going to have to be on-site  
19 constructing. But we also know that DPP is going to  
20 take some time to get through all their permits and  
21 reviews and their processes. And it's essentially a  
22 give and take sometimes on some of these conditions.  
23 So we need to allot enough time for that give and  
24 take and resubmissions of information that they think  
25 they're missing. So yeah.

1                   COMMISSIONER WONG:   So would Hawaiian  
2   Electric also be somewhere in that loop in terms of  
3   the PPA that -- when it's due or the electricity is  
4   due?

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

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

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

22                  THE WITNESS:   Yes, please.

23                  COMMISSIONER WONG:   Okay.  That's all I  
24  wanted to know.  If not, then everything will be  
25  pushed back, and you may be at risk of losing a

1 contract or a PPA; correct?

2 THE WITNESS: That's correct.

3 COMMISSIONER WONG: Okay. Thank you.

4 CHAIR SCHEUER: Are there further  
5 questions?

6 Commissioner Giovanni.

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

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

25 COMMISSIONER GIOVANNI: In other words,

1 you haven't already banked on a courtesy review?

2 That's the point I wanted to make.

3 THE WITNESS: That's correct.

4 CHAIR SCHEUER: Commissioner Wong.

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

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

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

25 THE WITNESS: For Kawaiiloa Solar with an

1 expediter, it took us nine months.

2 COMMISSIONER WONG: Oh, okay. Thank you.

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

8 Our next witness is Cameron Black.

9 Could you come up?

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

12 THE WITNESS: Yes. Thank you.

13

14 CAMERON BLACK,

15 having been called as a witness by Petitioner,

16 was duly sworn and testified as follows:

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

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

24 CHAIR SCHEUER: We have the same address  
25 too. So we'll trust you on that.



1                   THE WITNESS: Okay. Sorry. I don't want  
2 to give you my home address, but I can give you that  
3 too.

4                   CHAIR SCHEUER: I'm inclined to say no.

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

13                   Hawai'i State Energy Office has  
14 traditionally operated as a division of DBEDT, the  
15 Department of Business, Economic Development and  
16 Tourism, the strategic industries division  
17 specifically. In 2019, the Hawai'i State Legislature  
18 created, statutorily, the Hawai'i State Energy  
19 Office, and that's under Hawai'i Revised Statute  
20 196-71.

21                   The purpose of our office is stated in  
22 our testimony, but I'll read it for the record. "To  
23 promote energy efficiency, renewable energy and clean  
24 transportation to help achieve a resilient, clean  
25 economy."

1           Our acting CEO is Scott Glenn, formally  
2 of the Office of Environmental Quality Control, and  
3 I'm here on his behalf and our office's behalf.

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

12           A big part of reaching these goals will  
13 be the ultimate retirement of the AES coal plant down  
14 here or at Campbell Industrial Park which currently  
15 provides 16 percent of the power to Hawaiian Electric  
16 according to Hawaiian Electric. So it's a very  
17 important and significant facility. Retiring that  
18 plant will be an important step in reaching the  
19 benchmark mandate of 40 percent renewable energy by  
20 2030 from the filings we've seen, and it's our  
21 understanding that this project is going to be a part  
22 of retiring the AES coal plant eventually. AES also,  
23 according to the Department of Health, contributed  
24 approximately 8 percent of the greenhouse gas  
25 emissions in 2016. I'm sorry. That's the most

1 current information that I was provided, but that is  
2 from a December 2019 greenhouse gas inventory report  
3 that was recently published by our Department of  
4 Health.

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

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

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

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

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

25 -- which the Hawai'i PUC found to be

1 reasonable compared to the other PV farms. So we  
2 figured that was also a salient point for this  
3 commission to consider. And that wraps up our  
4 testimony and our comments this afternoon.

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

7 MS. LIM: No, thank you.

8 CHAIR SCHEUER: County?

9

10 CROSS-EXAMINATION

11 BY MS. WONG:

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

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

21 CHAIR SCHEUER: Anything else, County?

22 MS. WONG: No, no other questions.

23 CHAIR SCHEUER: OP?

24 MS. APUNA: No questions.

25 CHAIR SCHEUER: Commissioners?

1 Thank you very much.

2 Hold on. We cannot resist.

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

5 THE WITNESS: No problem, Commissioner.

6 CHAIR SCHEUER: Okay. Anything else?

7 Thank you very much.

8 Commissioner Ohigashi?

9 Yeah. Okay. We're done with witnesses.  
10 Let's take a 10-minute recess and reconvene at 2:51.

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

13 CHAIR SCHEUER: We are back on the  
14 record.

15 Okay. Ms. Lim, ready to present?

16 MS. LIM: Sure. Thank you, Chair.

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

24 So what I'm going to do right now is not  
25 go over all of the project details. You've heard

1 that perfectly well. I just want to touch on a  
2 couple of the highlights. Again, to put things in  
3 context, a little over five years ago, Kamehameha  
4 Schools requested this commission's approval to use,  
5 on an interim basis, two large areas of the petition  
6 area for interim -- for a solar farm development on,  
7 as I said, an interim basis, and that approval was  
8 granted. And that approval said by the end of 2049,  
9 those two projects need to be decommissioned.

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

18 What that meant -- and, again, we  
19 informed the commission of this through our annual  
20 reporting. What that meant is that the project --  
21 the solar farm project that SunEdison was going to  
22 pursue in the approved areas couldn't go forward  
23 because all of a sudden, there was no developer  
24 within an approved PPA. Luckily, Kamehameha Schools  
25 kept its eyes open. Luckily, Hawaiian Electric

1 issued another RFP still looking to develop  
2 additional renewable energy. And, luckily, Clearway  
3 and its subsidiary, Waiawa Solar Power, came forward  
4 and the perfect marriage was made. And in this case,  
5 Kamehameha Schools and Waiawa Solar have an agreement  
6 that will allow Waiawa Solar Power to use the  
7 Kamehameha Schools property in the same area that the  
8 commission already approved although, as you heard,  
9 the footprint has actually shrunk down from what was  
10 previously approved for SunEdison. And that  
11 agreement will run for as long as -- as I think what  
12 Mr. von Allmen said, as long as there's an agreement  
13 between Waiawa Solar and HECO for Waiawa Solar to  
14 continue selling power, the agreement with Kamehameha  
15 Schools will allow Waiawa Solar Power to stay in  
16 place selling power to HECO.

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

1 December 31st, 2059.

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

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



1 up really, really soon.

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

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

14 (Coughing.)

15 I'm so sorry about this.

16 VICE CHAIR ACZON: Do you want water?

17 MS. LIM: I've got water.

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

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

22 MS. LIM: Thank you very much, Riley.

23 And the third would be that the project  
24 that the commission had approved a little over five  
25 years ago had SunEdison developing in the zone of

1 contribution, but at that time no substation or  
2 battery storage was planned in that area. It was, in  
3 fact, going to be in the northwestern project area.  
4 Today we're only here to talk about the project area  
5 that is in the center eastern -- the central eastern  
6 portion of the petition area. That's the only  
7 project before us, and they would, in fact, need to  
8 put battery storage and a substation within the zone  
9 of contribution.

10 In the record --

11 Could you just give me one second,  
12 please?

13 CHAIR SCHEUER: Yes, please.

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

16 Okay. Thank you. In the record, as I  
17 was saying, when SunEdison came forward, the project  
18 that they were planning within this central eastern  
19 portion of the petition area did not anticipate  
20 battery storage or a substation because they were  
21 able to put that in the other solar farm area.  
22 Because Kamehameha Schools and Waiawa Solar Power  
23 understood that before we could pursue getting  
24 authorization to put a project that involved battery  
25 storage and a substation within the zone of

1 contribution, we needed to do our due diligence.  
2 What you'll find in the record is evidence of -- not  
3 evidence -- I mean copies of letters from both the  
4 Department of the Navy and the Department of Health  
5 explaining that KS and Waiawa Solar Power had come,  
6 had met with them, had described to them the various  
7 best management practices that would be put into  
8 place to ensure that this project will not cause any  
9 harm within the ground -- to the groundwater within  
10 the zone of contribution.

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

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

21 Kamehameha Schools is entirely supportive  
22 of the conditions as well. The only place where  
23 Kamehameha Schools and Office of Planning seem to be  
24 having conflict is regarding the requirement to  
25 impose a non-solar time condition on the project, and

1 we can deal with that later. I just wanted to get it  
2 out there. The rest of the conditions proposed by  
3 Office of Planning are acceptable to everybody with a  
4 slight modification that I'm going to read right now,  
5 if I can, into the record. That groundwater resource  
6 protection condition that OP had proposed, it seems  
7 as if it was written in anticipation of the  
8 correspondence that came about later between KS,  
9 Waiawa Solar, Department of Health and the Navy. So  
10 we would ask that that condition read "The operator  
11 of the solar farm to be developed in a central  
12 eastern portion of the petition area shall implement  
13 mitigative measures to prevent the introduction of  
14 contamination to the zone of contribution from the  
15 solar farm's operations," comma, "consistent with the  
16 representations made and relied upon by the  
17 Department of Health in its letter of March 28th,  
18 2019, to petitioner and the U.S. Department of Navy  
19 in its letter to the solar farm operator dated  
20 September 30th, 2019, in reference to the solar farm  
21 operator's representations in its letter dated July  
22 22nd, 2019."

23 And with the consideration of those  
24 modifications to the OP's condition, and, again,  
25 setting aside Kamehameha Schools' concern about the

1 infrastructure, that condition that they wish to  
2 impose, we're otherwise very appreciative of Office  
3 of Planning's support.

4           So in some -- five years ago -- a little  
5 over five years ago, this commission took a good,  
6 hard look and said, "Yes, this property on an interim  
7 basis is suitable for a solar farm development."  
8 Things didn't work out with that solar farm developer  
9 for reasons that were completely beyond Kamehameha  
10 Schools' control. The commission's been kept  
11 apprised of this through timely annual reporting that  
12 Kamehameha Schools does. We filed a motion in July  
13 requesting approval of this Waiawa Solar Power  
14 project, which again requires approximately a 10-year  
15 extension to give them the time to build a project,  
16 hopefully get the extension to the PPA, and then have  
17 sufficient time to properly decommission the project,  
18 which is what's required under their agreement with  
19 Kamehameha Schools, and some modifications, as I  
20 said, to the details of the project.

21           We hope that we've presented enough  
22 information in the record on the solar project for  
23 this commission to be able to confidently authorize  
24 the project today and help us meet Hawaii's 100  
25 percent renewable energy goals with Waiawa Solar

1 Power. They're in the driver's seat ready to build  
2 this project as soon as they possibly can.

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

7 CHAIR SCHEUER: Yes. So, commissioners,  
8 are there questions for Ms. Lim or for Mr. Thoemmes?  
9 Commissioner Chang.

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

14  
15 WALTER THOEMMES,  
16 having been recalled as a witness,  
17 was previously duly sworn and testified  
18 further as follows:

19 COMMISSIONER CHANG: So Office of  
20 Planning's proposal is that Phase 1, the backbone  
21 infrastructure, be developed within 10 years. And as  
22 I see the timeline that was included in the master  
23 plan presentation, and maybe you can clarify, but it  
24 appears as if Phase A, the timetable to start  
25 construction, is that 2030.

1                   THE WITNESS: Correct. The Phase A on  
2 this slide that we show the phases, this  
3 represents -- those dates represent the start of  
4 horizontal construction site work to the completion  
5 of vertical construction for that particular phase.  
6 So if you're looking at Phase A, based upon the  
7 schedule that we provide, the details of which are on  
8 the following slides, we would essentially break  
9 ground for site work in 2030, which is 10 years from  
10 now. So we would be breaking ground in 10 years as  
11 opposed to completing in 10 years.

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

19                   The anticipation of the start of the  
20 infrastructure development in Phase A is, as  
21 correctly noted, is identified right now as 2030, and  
22 that is a good faith estimate. But we do need to  
23 point out, as Mr. Thoemmes identified in the  
24 PowerPoint presentation earlier today, there are  
25 numerous steps that have to take place before we can

1 get to that point, including the development partner,  
2 the development agreement, more outreach, a complete  
3 EIS, and then coming back to this commission for  
4 actual approval of that whole master plan. I mean,  
5 there are several steps. So -- and that's all built  
6 into this time frame, but there is sort of a  
7 waterfall effect. And the same way with the solar  
8 project. If there's a significant delay on one  
9 component, it could have a spillover effect on those  
10 later components.

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

19 You know, we had a hearing yesterday in  
20 Kona. A very similar developer came in, took over  
21 the D&O, the project from another developer, hadn't  
22 done any work on it. There was a -- we had a  
23 motion -- an order to show cause, and they came in  
24 with a master proposal prepared by Mr. Overton, but  
25 we were on the verge of an order to show cause



1 because there was no commencement of work, but we  
2 applauded the work that they were working on with  
3 Mr. Overton and -- but this timeline is much more  
4 elongated than what they were proposing.

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

15 THE WITNESS: In all candor, we would  
16 love to move up the schedule. We are in the business  
17 of managing risk, not just activities; right? And so  
18 every one of these steps involve risk in  
19 environmental, in land use and zoning and  
20 subdivision. There's no certainty in any of this  
21 from time to, you know, just to getting into having  
22 hearings. We've looked hard at how other long-term  
23 developments have played out. Mililani took 50 years  
24 to do their project. You know, Koa Ridge, 33 years  
25 to do 3,500 homes. That's their program. I mean,

1 our overall timetables are not that different from  
2 how other developers are actually implementing. Not  
3 talking about implementing, but actually  
4 implementing.

5           You know, our concern is that, you know,  
6 if we can get a developer onboard and move faster, we  
7 absolutely will and want to. You know, as I  
8 mentioned in my presentation, these Waiawa lands sit  
9 in our endowment and we make zero, nothing. I mean,  
10 it is probably -- it is a loss for us to just secure  
11 it; right? I mean, we are motivated to make it  
12 productive because it will make economic gains for  
13 the organization as well as meet community need. My  
14 challenge is to have a time constraint that, you  
15 know, our best guess at this shows we're not going to  
16 meet it. To be complete with site work, four years  
17 of site work by 2030 means we gotta break ground in  
18 2026. That's, like, six years away to get a  
19 developer, make sure their business needs can be met  
20 as well as ours, to go through the environmental  
21 process, you know, back to the LUC, through city  
22 zoning. You know, that's really aggressive. You  
23 know, five, six years, that's really aggressive.

24           And so the only ways that I could see  
25 us -- if all of these requirements are still in play,

1 right, if there isn't some special legislation that  
 2 puts aside certain requirements, the only way for us  
 3 to go faster would be to take the risk to design  
 4 everything concurrently with the approvals, and I sit  
 5 here today in great candor not sure that I could  
 6 advise that for Kamehameha Schools.

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

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

18 THE WITNESS: We certainly do understand.

19 COMMISSIONER CHANG: This is your  
 20 greatest risk.

21 THE WITNESS: Yes.

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

25 THE WITNESS: Yes.

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

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

23                   THE WITNESS:  Thank you.

24                   CHAIR SCHEUER:  Commissioner Cabral?

25                   COMMISSIONER CABRAL:  I agree with

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

18 CHAIR SCHEUER: Commissioner Giovanni.

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

23 CHAIR SCHEUER: So where we are,  
24 procedurally, the petitioner is presenting. We asked  
25 the petitioner to bring up Mr. Thoemmes. OP had

1 actually requested -- earlier deferred asking  
2 questions of Mr. Thoemmes on a previous matter so  
3 they can ask now. Could we move -- would that be  
4 acceptable?

5 MS. LIM: Of course, Chair.

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

8 MS. APUNA: Yes, Chair. Thank you.

9

10 CROSS-EXAMINATION

11 BY MS. APUNA:

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

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

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

25 THE WITNESS: Selling this division to a

1 developer that is going to bring in, you know,  
2 tremendous capital and take ownership of it is  
3 something that we have to allow for, right, and this  
4 was a status update, and this is where we are in the  
5 process. And, you know, if, in the best world, we  
6 turn around and we get a developer step in six months  
7 from now and love the plan that we have, this whole  
8 thing gets compressed.

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

24 So that's really why the schedule is laid  
25 out that way. And I wish I could, you know, have an

1 easy answer to how we could go fast, but it really  
2 starts with being able to attract a development  
3 partner.

4 BY MS. APUNA:

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

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



1 to be back.

2 I think the specter of a 10-year  
3 requirement that we, by our own best knowledge, don't  
4 think we can meet, then tells us we'll be in  
5 noncompliance. Now, what is that risk? I can't  
6 answer that risk. I can't tell a developer what is  
7 the risk of noncompliance. Do we now find ourselves  
8 in a position where these entitlements get taken away  
9 because of our noncompliance? All of this adds risk.  
10 Now we gotta ask ourselves do we want to even get  
11 that far knowing that we're probably going to be in  
12 noncompliance sitting here today, right, due to this  
13 requirement. So, yeah, we do intend to be back in  
14 2024, you know, no later, hopefully earlier, you  
15 know, and it will be the result of having solidified  
16 our plan with our developer and having a feasible  
17 business plan and model and financing to make this  
18 happen, having gone through the environmental review,  
19 heard from the many, many stakeholders that weigh in  
20 on this and adapting our plan to that, and then when  
21 we come in, this is the goal, decision at that point.

22 Q So I understand, yes, you don't want to  
23 become noncompliant based on what you can or can't  
24 commit to today, but KS is in a way not in compliance  
25 at this point. You know, they are long overdue based

1 on the 1988 decision and order. At some point there  
2 needs to be some commitment, and I'm hoping that you  
3 understand that the commission can make adjustments,  
4 and that's why they're here today. Maybe that's  
5 something to consider.

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

14 A I think, candidly, because we're not  
15 those developers, we need to get a partner/developer.  
16 At this point, the plan is, you know, conceptual.  
17 It's our idea. It's our vision, right, and we just  
18 are probably further behind where other developers  
19 might be. I don't know. I'm not a developer.  
20 That's my speculation. And, you know, it's -- I  
21 can't speak to the reason why it's taken this long.  
22 I mean, that was with Gentry. I can tell you what's  
23 different now is we plan to be involved, and, you  
24 know, part of the backdrop that I try to create is  
25 why we're going to be involved. So -- and we do

1 intend to push it. But we cannot do it alone, and  
2 that's part of the challenge that I'm faced with  
3 sitting here today.

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

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

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

24 Q Okay. Thank you.

25 A You're welcome.

1                   CHAIR SCHEUER: Okay. Anything further  
2 for the Kamehameha Schools' witness? If not, we  
3 can --

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

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

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

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

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

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

24                  THE WITNESS: We actually do. Phase --  
25 Phase A -- I do have that detail. Pardon me.

1 Roughly \$700 million in infrastructure. Phase A, I  
2 believe, is about 226.

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

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

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

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

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

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

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

25 THE WITNESS: That's a hard -- so let me

1 just put it to you this way: It's not unusual for  
2 developers in negotiations where there's a shortfall  
3 to ask KS to pick up the tab.

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

6 THE WITNESS: Right.

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

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

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

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

21 THE WITNESS: Yeah.

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

25 THE WITNESS: Yeah. So a project like

1 this, we will -- will involve a partnership where  
2 certain elements of this -- and through the proposal  
3 process, we expect developers to propose different  
4 structures. So there will probably be many  
5 proposals, but we envision a structure where it will  
6 involve selling of parcels, selling of land. We will  
7 partner in infrastructure, selling of parcels for  
8 homes because we won't do homes. We will retain  
9 parcels for commercial if we do that. So it will be  
10 a really structured partnership of certain aspects of  
11 development the developer will do, and we'll take the  
12 sole risk of certain aspects that we will do and may  
13 also involve certain aspects that we joint venture  
14 on, including infrastructure. So it's not as simple  
15 as saying, you know, "You get this percent; we get  
16 that percent."

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

21 THE WITNESS: I would think with this  
22 restriction as currently our understanding of it, it  
23 may delay us even getting started because we would  
24 need to rethink -- we have not contemplated that. We  
25 would need to rethink a timetable to comply with

1 this -- with this new requirement, and make a  
2 business decision whether or not to proceed or not.  
3 And I'm not able to, sitting here today, tell you  
4 what that would be.

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

7 THE WITNESS: You're welcome.

8 CHAIR SCHEUER: Commissioner Okuda.

9 COMMISSIONER OKUDA: Thank you,  
10 Mr. Chair.

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

14 THE WITNESS: Yes.

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

18 THE WITNESS: Correct.

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



1                   THE WITNESS: Correct. I would agree  
2 with that, yes.

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

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

25                   THE WITNESS: You know, I'm not as

1 familiar with the other petitioners.

2 COMMISSIONER OKUDA: Yes.

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

6 COMMISSIONER OKUDA: And let me tell you  
7 this: At least me personally, I recognize, and I  
8 said this at the prior hearing, that KSBE may not  
9 necessarily fall within the same type of  
10 classification as land developers or speculators as  
11 described by the Hawai'i Supreme Court in Bridge Aina  
12 Lea when the Supreme Court said, "We don't like these  
13 types of projects or developments where you get  
14 certain entitlements, and the developer doesn't carry  
15 out its promises and just speculates with the land."  
16 Because I'm not sure if the evidence really shows  
17 that that's what KSBE does. And as I mentioned in  
18 the earlier hearing, perhaps it's good, given your  
19 mission that, yeah, go ahead and speculate. Make  
20 more money for Native Hawaiian kids. Nothing wrong  
21 with that in my mind. But you can see our need to  
22 treat people equally under the law.

23 Let me ask you this: Would there be a  
24 harm to KS if the Office of Planning's conditions  
25 were adopted, but without prejudice to KS's right to

1       come in by a later motion or even when you bring in  
2       whatever your new boundary amendment or modification,  
3       without prejudice at that point in time to get a  
4       modification of that condition? In other words, the  
5       fact that that condition exists in the record is not  
6       going to be a presumption that that condition should  
7       automatically attach to whatever new vision or  
8       upgraded vision or new plan or upgraded plan you  
9       present to the commission? I mean, is that a  
10      reasonable way of striking a balance here?

11                     That's my last question, Mr. Chair.

12                     THE WITNESS: Can I confer?

13                     CHAIR SCHEUER: You want to confer?

14                     THE WITNESS: Yeah.

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

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

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

21                     MS. LIM: If I may.

22                     CHAIR SCHEUER: Yes.

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

25                     CHAIR SCHEUER: Please.

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

10 The statutory language under 205-4G  
 11 regarding substantial commencement, that language  
 12 says "Within a period of not more than 365 days after  
 13 the proper filing of a petition," blah blah blah blah  
 14 blah. I'm not going to read all of the language.  
 15 It's really long, but it goes on to say that "the  
 16 commission shall act to approve the petition, deny  
 17 the petition or modify the petition by imposing  
 18 conditions necessary to uphold the intent and spirit  
 19 of this chapter with the policies and criteria  
 20 established pursuant to 205-17," and this is the  
 21 language I want to emphasize, "or to assure  
 22 substantial compliance with representations made by  
 23 the petitioner in seeking the boundary change. And  
 24 the commission may provide by a condition that absent  
 25 substantial commencement of use of the land in

1 accordance with such representations, the commission  
2 shall issue and serve upon the party bound by the  
3 condition in the order to show cause why the property  
4 should not revert to its former land use  
5 classification or more appropriate classification."

6           There is no such condition in the order  
7 that this commission issued in 1988. There was no  
8 condition when the commission amended the order in  
9 1990. In the motion to amend that Kamehameha Schools  
10 filed in 2014 and that this commission approved, in  
11 fact, the Office of Planning's attorney said --  
12 counsel on the record saying "What happens when we  
13 get a motion to amend?" I'm reading from the  
14 transcript on page 226 from the --

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

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

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

1 try to relitigate that question."

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

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

25 We're not looking to get permission right

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

22 And for that reason, we really strongly  
23 oppose Office of Planning's condition, particularly  
24 because having to build all that infrastructure, you  
25 know, millions and millions of dollars of

1 infrastructure within the next 10 years would be  
2 virtually impossible. The EIS needs to take into  
3 account the full project, all 2,000 some-odd acres of  
4 it. Otherwise, it would be segmentation. So we  
5 couldn't just come in and do a motion to amend.  
6 We've got to look at the entire master plan and then  
7 come to this commission for approval.

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

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



1 CHAIR SCHEUER: Thank you.

2 MS. LIM: Thank you. "For the October  
3 2019 revised master plan and schedule for  
4 development, petitioner shall complete and file a  
5 draft environmental impact statement and shall file  
6 with the commission a motion for amendment of the  
7 findings of fact, conclusion of law and decision and  
8 order dated May 17th, 1988, by no later than July  
9 31st, 2024. This condition shall not affect any  
10 utility-scale solar farms approved by the commission  
11 within the petition area."

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

25 And the filing of that motion to amend,

1 you know, this was actually -- the language of this  
2 condition was a bit of a byproduct of some  
3 negotiations that the Office of Planning and KS were  
4 having that negotiations ultimately were not  
5 successful, but we think the filing of the motion to  
6 amend before the EIS is completed and before KS is  
7 truly ready to come forward with the development  
8 partner as an approval for everything is somewhat  
9 premature, but that seemed like it was of interest at  
10 least during those negotiations with Office of  
11 Planning. So in good faith when presenting this  
12 commission -- this condition to the commission, we  
13 wanted to include that language as well.

14 CHAIR SCHEUER: Thank you. Commissioner  
15 Giovanni.

16 COMMISSIONER GIOVANNI: Just to clarify  
17 on your last suggested language. So this same  
18 schedule that was put forth and we've been talking  
19 about in the master plan shows the EIS process being  
20 completed in 2023?

21 MS. LIM: That's correct.

22 COMMISSIONER GIOVANNI: And now your  
23 position is that you won't even commit to other than  
24 a draft by mid-2024. So it looks like you're begging  
25 in about a two-year delay even on what you presented

1 this morning. And, yet, the commencement of the  
2 backbone infrastructure in Phase A wouldn't be until  
3 2030. So already we're starting back -- I've got to  
4 add two years to that too, and so it's now 2032 like  
5 that. Am I interpreting what you're saying  
6 correctly?

7 MS. LIM: Well, I don't want to say  
8 you're interpreting it incorrectly. Let me clarify  
9 if I can. The language that I read included  
10 preparing and filing a draft environmental impact  
11 statement and also the motion to amend. So the  
12 motion to amend in your schedule is, just looking  
13 real quickly, 2020 -- excuse me. I was reading for  
14 the solar project. The motion to amendment and the  
15 district boundary amendment are planned for a filing  
16 in 2024/2025. So the date of July 21st, 2024, for  
17 filing that motion to amend seemed like it was taking  
18 into account both our EIS schedule as well as the  
19 anticipated timing of the filing of the motion to  
20 amend.

21 CHAIR SCHEUER: So hold on. I want to  
22 just check where we are procedurally. We have a very  
23 patient witness right here. I want to make sure if  
24 we're done with questions for the witness, we can  
25 then just proceed. Do you think this is going to

1 involve the witness? Are there any other questions  
2 for the witness?

3 Commissioner Chang.

4 COMMISSIONER CHANG: Chair.

5 CHAIR SCHEUER: We have about 45 minutes.

6 COMMISSIONER CHANG: Okay.

7 CHAIR SCHEUER: We have to do  
8 deliberations as well.

9 COMMISSIONER CHANG: Because I guess in  
10 all due respect, Ms. Lim, you're not proposing  
11 anything that's different, but I want to ask  
12 Mr. Thoemmes this: As a compromise -- because we,  
13 obviously, have to walk away with something over  
14 here; right? We cannot walk out of here with  
15 nothing, including OP, the Land Use Commission and  
16 Kamehameha Schools.

17 You are looking at a Solar Phase 2A and  
18 2B, and that you've got on your schedule as well and  
19 nothing before. So the only thing before us is solar  
20 farm -- Solar Phase 1, which is what is here. So in  
21 order to permit this to timely proceed, because you  
22 need a decision immediately, today. That's what  
23 you're asserting. But before you come in to solar  
24 projects A -- 2A and 2B, that Kamehameha Schools  
25 comes in with a more -- either realistic schedule of

1 a Phase 1 development or backbone, but something that  
2 is more realistic than the 2030, '34 -- 2030 --

3 Because OP -- as we're saying, we're  
4 caught between a rock and a hard place. We've got  
5 other -- we would love to be able to treat you  
6 differently. You know, your mission is very  
7 different from many others. It's not just to make  
8 money. But on the other hand, because in all due  
9 respect, Ms. Lim, there's a rule that says  
10 reasonable -- that you have to -- substantial  
11 progress within a reasonable period. If we take your  
12 interpretation, if Kamehameha Schools did nothing,  
13 they could keep the entitlement. That clearly cannot  
14 be the intent of the law, either the letter of the  
15 law, the spirit of the law. So --

16 CHAIR SCHEUER: Respectfully,  
17 Commissioner Chang, what's the questions for the  
18 witness?

19 COMMISSIONER CHANG: So the question is  
20 can you come back, before you bring back Solar 2A,  
21 2B, a more realistic schedule on a petition to amend  
22 the boundary amendment, EIS schedule and the backbone  
23 development for Phase A?

24 THE WITNESS: You know, unfortunately,  
25 Commissioner, I'm not involved in the solar projects.

1 So I don't know what -- the timetable, you know, in  
2 KS for making that decision and RFPs and selection.  
3 So I'm really not at liberty to say where that  
4 matches up against, you know, where we'll be on our  
5 timetable. We have a rough schedule of it, I  
6 believe, starting in 2025.

7 MS. LIM: If I can maybe try to  
8 recharacterize what Commissioner Chang said, and  
9 then, of course, correct me if I'm off base. I  
10 believe she's saying because we're anticipating  
11 seeking commission approval for the second solar  
12 farm, and, again, it's in a space that the commission  
13 has already approved for a solar farm, but there will  
14 need to be some modifications just like we're doing  
15 here for Waiawa Solar Power. So that project motion  
16 is anticipated to be filed in -- well, we don't  
17 actually have it on the schedule, but the project  
18 would be getting started in 2022. So let's back it  
19 up and probably file sometime this year. So I  
20 believe Commissioner Chang is saying, okay, so at the  
21 point that you're filing that motion for refreshment  
22 of the other solar farm, which is sometime in the  
23 year 2020, could we come forward with a schedule that  
24 is somehow even more realistic and --

25 COMMISSIONER CHANG: More aggressive.

1 MS. LIM: -- accurate, more aggressive?

2 THE WITNESS: You know, I think we're --  
3 you know, we're in this -- that we expect to be in  
4 2020 and probably part of 2021 be in active  
5 negotiations hopefully with our developer. To the  
6 extent we'll know more, we'll know more than we know  
7 today, but it would be hard for me to commit to, you  
8 know, a hard schedule if that would be what the  
9 commission's looking for. We'd certainly be able to  
10 give an update as to where we are at that time, both  
11 with the partner we're hopefully agreeing with as  
12 well as what the schedule might be, you know, at that  
13 time. We certainly could give an update at that  
14 time. Does that answer your question?

15 COMMISSIONER CHANG: That may be as good  
16 as it's going to get.

17 CHAIR SCHEUER: Commissioners, further  
18 questions for the witness or for the petitioner? If  
19 not, we have to hear from the county and OP and go  
20 into deliberation. Anything further? No? Thank  
21 you.

22 THE WITNESS: Thank you very much.

23 CHAIR SCHEUER: County, we're going to  
24 plow through to the end, by the way. No breaks.

25 MS. WONG: I just wanted to add when I

1 was looking at the Waiawa Master Plan Next Steps, we  
2 would need to look at this more closely, but there  
3 could possibly be a need to amend the Central Oahu  
4 Sustainable Communities Plan for the -- it was Phase  
5 E, the purple area.

6 CHAIR SCHEUER: You need to speak right  
7 into the microphone.

8 MS. WONG: There may be a need in the  
9 future to amend the Central Oahu's Sustainable  
10 Communities Plan. I think there was some acreage  
11 that would be designated to urban, but it's outside  
12 of the community growth boundary. It's a little hard  
13 to tell from this map, though. So it's something  
14 that may need to be considered in your timeline.

15 THE WITNESS: Yes. Thank you.

16 MS. WONG: Thank you.

17 CHAIR SCHEUER: Thank you. Questions for  
18 the county from the commissioners?

19 OP.

20 MS. APUNA: Thank you, Chair. I would  
21 just like to just plainly state that OP's requested  
22 condition is with regard to just Phase A, the lower  
23 southern part of the petition area, for backbone  
24 infrastructure. It's not the entire petition area of  
25 1,300 or 1,400 acres. It's only within 200 acres of



1 the petition area. And OP is fully supportive of the  
2 solar project. That's -- there's no issue there. We  
3 fully support, you know, renewable energy and the  
4 efforts of Kamehameha Schools and the solar project  
5 companies to move forward. But at the same time, we  
6 can't and we don't believe the Land Use Commission  
7 can turn a blind eye to the development schedule.

8           They have presented to us and to the  
9 commission, and like yesterday's hearing and other  
10 hearings that have come before on other projects,  
11 there needs to be forward movement on this project  
12 within 10 years, not 10 years from now, but within  
13 the next 10 years. And this 10-year deadline is not  
14 pulled out of thin air. It is from Hawai'i  
15 Administrative Rules 15-15-50-C20. This is from  
16 Hawai'i Administrative Rules 15-15-78. 10 years is  
17 the basic time within which there should at least be  
18 substantial commencement. We're not saying  
19 completion of the project or completion of backbone  
20 infrastructure for the entire petition area. This is  
21 just a small part. But that will keep them in  
22 compliance with these rules and Chapter 205.

23           That's the thing that petitioner came in  
24 here in 1988 for approval for reclassification, and  
25 when they got that reclassification, they came under

1 Land Use Commission's jurisdiction. They are under  
2 this jurisdiction. We are -- I don't think that OP  
3 is the rock or the hard place. We're just presenting  
4 what is the -- what are the rules and what is the law  
5 for this commission to follow. And that KS is an  
6 important corporate citizen as they are and all the  
7 good that they do, I can't see or it's hard to  
8 understand how they are so different and are so  
9 different that they can't do this amount of backbone  
10 infrastructure or development so that they are in  
11 compliance with these laws and that they are in  
12 compliance with just substantially commencing. Once  
13 they've substantially commenced, they're no longer in  
14 your jurisdiction and they are not, you know, subject  
15 to apportionment, but at this point they are.

16 To wait till completion in, you know, 88  
17 years from the decision and order, that is far beyond  
18 anything we've looked at before. And even with this  
19 docket from the original docket, they made a  
20 representation. There's a representation under  
21 findings of fact that they would have completed the  
22 project within 12 years. So that didn't meet the 10  
23 years, but at the time the commission said, "Okay.  
24 We understand. Two more years," and that was fine.  
25 Here, you know, it's a very -- it's 50 years. This

1 is far beyond, you know, 12 years or two more than  
2 the regular 10.

3 So I don't think it's unreasonable and  
4 it's not some unusual request by OP. This is just OP  
5 stating what the rules are that you're under in the  
6 law. And, finally, LUC does have the authority to  
7 impose this condition. You know, if the petitioner  
8 has not complied with their representation, as we  
9 know it, that -- the petition area, there's nothing  
10 built there. This is not unlike any of the other  
11 properties that are under order to show cause. And  
12 not that -- we are definitely not advocating for  
13 reversion or order to show cause, but we want to see  
14 them move forward. We want to see -- we want to be  
15 able to at least hold them to their schedule. We  
16 can't wait until the next time they come around  
17 because, as it is, they are noncompliant. Just hold  
18 them to the same standard that you've held all these  
19 other developers to. That's all that we're asking  
20 for. Thank you.

21 CHAIR SCHEUER: Thank you.

22 Commissioners, are there questions for  
23 the Office of Planning? Commissioner Giovanni.

24 COMMISSIONER GIOVANNI: Thank you. I  
25 understand your position on that point. I just

1 wanted to affirm that the petitioner read some  
2 language modifying your originally proposed condition  
3 for groundwater. Are you in agreement with the  
4 language that she proposed on that?

5 MS. APUNA: Yes. I think it was the  
6 Condition 5. Yeah, I think we would just -- there's  
7 language in there that currently says with the  
8 approval of the DOH and the Department of Navy. It  
9 could just be changed to "as approved by Department  
10 of Health and the Department of the Navy," but  
11 generally we are in agreement with that change.

12 COMMISSIONER GIOVANNI: Thank you.

13 CHAIR SCHEUER: Anything further for the  
14 Office of Planning? Commissioner Ohigashi.

15 COMMISSIONER OHIGASHI: Is there any kind  
16 of -- is there any kind of difference in your mind  
17 between the various cases involving OSC versus this  
18 one that is a voluntary motion coming before this  
19 commission, and, in fact, a voluntary motion, I  
20 guess, to amend with regard to the authorization of  
21 the solar in 2014? Is there any difference between  
22 the cases that you can -- that you perceived as a  
23 procedural matter?

24 MS. APUNA: As a procedural matter, no.  
25 I think that, you know, the facts speak for

1 themselves where we are, and there's a fine line here  
2 between reversion and order to show cause and moving  
3 forward with a motion to amend. Of course, OP, we're  
4 not advocating for OSC, for reversion. We want to  
5 see them move forward. I think it's a good project,  
6 but move forward according to the rules and the law  
7 that this commission is under.

8 CHAIR SCHEUER: Okay. Anything else,  
9 commissioners, for the Office of Planning?

10 COMMISSIONER CHANG: Just one.

11 CHAIR SCHEUER: Commissioner Chang.

12 COMMISSIONER CHANG: So, Ms. Apuna, if  
13 they proceed with the solar farm, would you at that  
14 point in time say that that's then substantial  
15 compliance -- substantial use of the land if they  
16 start the solar farm?

17 MS. APUNA: Well, the problem is that the  
18 decision and order or the 19- -- I'm sorry -- the  
19 2014 amendment to the decision and order says that  
20 it's an interim use of the petition area. So that  
21 wouldn't necessarily be -- or I would think it would  
22 take some more analysis to determine whether that is  
23 a substantial commencement.

24 COMMISSIONER CHANG: Okay. Thank you.

25 CHAIR SCHEUER: Anything further,

1 commissioners? If not, I'll offer the petitioner a  
2 very brief, final opportunity to make a statement  
3 before we go into deliberation.

4 MS. LIM: Thank you very much, Chair.

5 Kamehameha Schools strongly objects to  
6 the condition that OP has proposed, not because we're  
7 trying to hide from or delay development of this  
8 property. You've heard for hours that Kamehameha  
9 Schools wants this project to move forward, but  
10 there's a time and a place for the imposition of  
11 deadline conditions, and we don't believe this is the  
12 time or the place, and we don't believe that the law  
13 would support the commission imposing such a  
14 condition at this time and this place. We are here  
15 only seeking an amendment to the previously approved  
16 solar project. If SunEdison hadn't gone bankrupt, we  
17 wouldn't even be here today, meaning there would be  
18 no avenue to come in and file a motion to amend until  
19 the interim period, which was due to end in 2049,  
20 until that interim period was over. That's what the  
21 conditions of this commission imposed in 2014 said.  
22 Come back after the interim period. Do your motion  
23 to amend and get permission for the project.

24 So we are not trying to hide from the  
25 fact that in due time, when KS returns to the

1 commission to get actual approval of the master plan,  
2 there will be time conditions. But we are asking,  
3 please, that the commission not tie both arms behind  
4 our back as we try to find a development partner.  
5 Let the solar project go forward. Let us secure a  
6 development partner. Let's do the community  
7 outreach. Let's do the EIS and then come to this  
8 commission with a solid and deep master plan. What  
9 you saw today has had a lot of work done, but not  
10 every little corner has been unturned. Let us come  
11 back at that time with very concise timing and  
12 appropriate conditions to be imposed at that time.

13 CHAIR SCHEUER: Commissioner Giovanni.

14 COMMISSIONER GIOVANNI: I take issue with  
15 the statement "but for the bankruptcy of SunEdison,  
16 you wouldn't need to come back to this commission for  
17 this modification and time extension." The purchase  
18 power agreement that is in effect now would have an  
19 expiration of not only 2042. The 2049 that is  
20 already available to you, it concludes seven years  
21 beyond that which is more than enough time for the  
22 one year of remediation to bring the site -- to  
23 decommission the site. So I don't understand what  
24 you're saying. I know that they have an intent to  
25 get an extension, but they don't have one.

1 MS. LIM: What I meant to say was that if  
2 SunEdison, who was already authorized to develop the  
3 two areas with solar farms through 2049, if the PUC  
4 had approved their PPA and SunEdison hadn't gone  
5 bankrupt, there wouldn't have been -- there would be  
6 no reason for KS to have filed any motion.

7 COMMISSIONER GIOVANNI: I'm saying  
8 there's no reason now.

9 MS. LIM: The reason we filed the motion  
10 now, sir, is because unlike the original decision and  
11 order in 1988 which does not require compliance with  
12 the representations made by the commission, excuse  
13 me, does not require petitioner to comply with the  
14 representations made to the commission, the decision  
15 and order that the commission issued in 2014,  
16 vis-a-vis the solar farm, does have that requirement.  
17 So because the solar farm decision in 2014 has  
18 certain representations about the timing for the  
19 start of the construction of the solar project and  
20 for the nature of the solar project as I mentioned  
21 before without certain things in the zone of  
22 contribution --

23 COMMISSIONER GIOVANNI: For those  
24 reasons?

25 MS. LIM: Exactly.



1                   COMMISSIONER GIOVANNI: I accept that.  
2 Thank you.

3                   CHAIR SCHEUER: Okay. Are you done,  
4 Ms. Lim?

5                   MS. LIM: Yes.

6                   CHAIR SCHEUER: Commissioners, we are in  
7 deliberation. What is your pleasure?

8                   COMMISSIONER GIOVANNI: I'd like to make  
9 a motion.

10                  CHAIR SCHEUER: Commissioner Giovanni.

11                  COMMISSIONER GIOVANNI: Let me preface my  
12 motion by saying that I appreciate the need to  
13 commence work on the solar project, and I am in  
14 support of that general notion. I'd like to move  
15 that the petitioner's motion be granted subject to  
16 the following conditions:

17                         Existing Condition 6 to the order  
18 granting motion for the order amending the D&O to  
19 delete and be replaced by a condition specifying that  
20 the proposed solar project be substantially completed  
21 within five years from the date of the commission's  
22 issuance of the order granting the motion for  
23 modification and time extension;

24                         Existing Condition No. 7 to the order  
25 granting motion for the order amending the D&O to be

1 amended to specify that the proposed solar farm is  
2 limited to the approximately 200 acres portion of the  
3 petition area, we think that's consistent with what  
4 is being proposed here, not both;

5 Existing Condition 9 to the order,  
6 amending the D&O to be deleted and replaced by a  
7 condition requiring that the proposed solar farm  
8 shall be limited to the acreage and boundaries  
9 identified in the petitioner's revised master plan  
10 and schedule for development, and that the petitioner  
11 shall provide the metes and bounds map and  
12 description of the solar farm site to the commission  
13 within one year from the date of the commission's  
14 order granting the motion to modify and extend;

15 Existing conditions 5 and 8 to the order  
16 granting motion for the order amending the D&O be  
17 deleted. And additional conditions proposed by OP  
18 regarding aircraft hazard, traffic impacts and the  
19 ground resource protection be imposed. And with  
20 regards to the latest -- the latter, that it be the  
21 mutually agreeable language that was discussed  
22 between OP and petitioner.

23 The OP's proposed conditions regarding  
24 the time frame of interim use shall be imposed with  
25 modifications to reflect that the solar farm is

1 limited again to the 200 acres, a portion of the  
2 petition area.

3 Secondly, OP's condition to -- for  
4 substantial completion of construction for the  
5 horizontal backbone infrastructure for Phase A only  
6 of the master plan be completed by 12-31-30.

7 And, finally, having to do with the  
8 extension of the time itself, I propose the  
9 condition -- following condition: The interim use of  
10 the approximately 200-acre portion of the petition  
11 area for the proposed solar farm, including all  
12 permitting construction operation and decommissioning  
13 activities associated with solar farm, shall not  
14 exceed November 26, 2049. If WSP or its successor  
15 can demonstrate before November 26, 2049, that it has  
16 secured a PUC-approved power purchase agreement for  
17 extension of the operation of the wind farm --

18 CHAIR SCHEUER: Solar farm.

19 COMMISSIONER GIOVANNI: Pardon me.

20 -- solar farm and a lease extension with  
21 Kamehameha Schools, then the period extension shall  
22 be extended to 2059.

23 So, in other words, we appreciate that  
24 you need to demonstrate site control to HECO if you  
25 want to negotiate an extension to the power purchase

1 agreement. This will give you the control of the  
2 site. And if you're successful in those  
3 negotiations, you'll automatically get it to 2059.  
4 But if you do not have successful negotiations, it's  
5 over in 2049.

6 CHAIR SCHEUER: Hold on. Actually,  
7 Commissioner, with all respect, I realize he's  
8 looking at you and talking to you, but he's really  
9 making a motion to us.

10 COMMISSIONER CABRAL: Has your motion  
11 been completed?

12 COMMISSIONER GIOVANNI: Yes.

13 COMMISSIONER CABRAL: I'd like to second  
14 that motion.

15 CHAIR SCHEUER: Okay. So I was going to  
16 call for a second. The motion has been made by  
17 Commissioner Giovanni and seconded by Commissioner  
18 Cabral. We may address questions of the parties if  
19 they are specifically -- if there's a specific  
20 request, run it through me to have a narrow question  
21 for the party. I have a request for the movant to  
22 speak to the motion, and particularly for the purpose  
23 of our record, I'd like you to specifically address  
24 speaking to the motion how you chose the date of  
25 December 31st, 2011, as a reasonable date for the

1 completion of backbone instruction.

2 EXECUTIVE OFFICER: 2030.

3 CHAIR SCHEUER: 2030. Excuse me. The  
4 date for the completion of backbone infrastructure --

5 COMMISSIONER GIOVANNI: It's consistent  
6 with OP's proposed condition to have the backbone  
7 infrastructure for Phase A only completed within 10  
8 years.

9 CHAIR SCHEUER: And you believe the  
10 record is adequate in demonstrating that as  
11 reasonable and factually based?

12 COMMISSIONER GIOVANNI: I think it's a  
13 reasonable condition, and I think that the  
14 petitioner, who was planning to come back before this  
15 commission, as Commissioner Okuda clarified, within  
16 four years will have ample opportunity to modify that  
17 condition if it can justify that.

18 CHAIR SCHEUER: Okay. Commissioner  
19 Okuda.

20 COMMISSIONER OKUDA: Chair -- thank you,  
21 Mr. Chair. I'd like to offer a friendly amendment.  
22 My friendly amendment, if everyone agrees, is that  
23 these conditions are not severable from the main body  
24 of the motion. Or to put it in plain English, if  
25 anyone seeks and gets the ability to knock out, void

1 by court ruling or otherwise any one of the  
2 conditions, then that voids the entire motion here,  
3 including the solar approval. So in other words, my  
4 friendly amendment is to make the conditions  
5 nonseverable.

6 CHAIR SCHEUER: Okay. Do the movant and  
7 the seconder agree to that friendly amendment to the  
8 motion? Movant?

9 COMMISSIONER GIOVANNI: I agree.

10 CHAIR SCHEUER: Second?

11 COMMISSIONER CABRAL: I agree to move on.

12 CHAIR SCHEUER: Commissioners, we are in  
13 deliberations.

14 COMMISSIONER WONG: Chair, point of  
15 clarification?

16 CHAIR SCHEUER: Yes.

17 COMMISSIONER WONG: The first portion of  
18 your statement of the motion, what was it again? Can  
19 you explain it?

20 COMMISSIONER GIOVANNI: We heard clearly  
21 from the developer that they needed -- and his  
22 consultants that they needed to -- they needed action  
23 today. I was just acknowledging that.

24 COMMISSIONER WONG: Okay. So the other  
25 point of clarification of your last portion of the

1 motion for that 10-year extension, so does that allow  
2 them to sell to Hawaiian Electric or to another third  
3 party? Let's say Hawaiian Electric goes bankrupt.

4 COMMISSIONER GIOVANNI: Hawaiian Electric  
5 goes bankrupt?

6 COMMISSIONER WONG: Just an example, or  
7 someone else takes over. So a third party.

8 COMMISSIONER GIOVANNI: Yeah. For  
9 example, they currently have a power purchase  
10 agreement with Hawaiian Electric for Solar Phase 1,  
11 and it currently expires 20 years after its  
12 commercial operation date. Their target commercial  
13 operation date is the end of 2021 or the beginning of  
14 2022. So 20 years from then is 2042; right? And  
15 then by terms of their lease with Kamehameha Schools,  
16 they have one year to remediate the site to its  
17 original condition. But by the permit that we've  
18 granted, they have -- or previous order 2014, they  
19 have until 2049 to do all that. We also heard that  
20 the developer wishes to negotiate an extension to  
21 that purchase power agreement for an additional -- up  
22 to 15 years. That would push it from 2042 to 2057,  
23 and then give them two years to remediate it to 2059.  
24 And I'm saying that's a reasonable expectation and  
25 desire, but at this point in time, it's hypothetical

1 because there's a number of factors that can come  
2 into play that would say they'll never be able to  
3 secure that extension. It could be a competitive  
4 process. Technology can change. There could be a  
5 hurricane that wipes out the thing. A lot of things  
6 can happen. But we're giving them to the end of the  
7 existing term, which is 2049, to demonstrate to us  
8 that they've been successful in securing that  
9 extension. If they have, then they'll automatically  
10 get it to 2059. Otherwise, what's on paper now is  
11 what governs.

12 COMMISSIONER WONG: So just like a  
13 judicial notice or something saying "We got that  
14 extension," or how would we be notified?

15 COMMISSIONER GIOVANNI: So I think as  
16 long as they have those two documents, that any claim  
17 made against them, I mean, by virtue of this order,  
18 it would demonstrate that they could operate until  
19 2059. I don't think they have to come back before  
20 this body again.

21 COMMISSIONER WONG: Okay. Sounds good.  
22 Thank you. So no commission. We don't -- okay.  
23 Thank you.

24 CHAIR SCHEUER: Commissioners, we are in  
25 deliberation over the amended motion.



1 COMMISSIONER OHIGASHI: Chair?

2 CHAIR SCHEUER: Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: I decided to vote  
4 against the motion, and the reason is the last  
5 friendly amendment. I disagree in the limitation of  
6 any party to obtain judicial review of our orders.  
7 And what the friendly amendment did, skillfully, is  
8 to create a situation where if you want the farm, you  
9 can't appeal. And I believe that that's  
10 fundamentally wrong for us as a commission to put up.  
11 I think that our position here is to try and create  
12 conditions that will individually stand up under any  
13 kind of review. Therefore, I cannot support the  
14 motion.

15 CHAIR SCHEUER: Thank you, Commissioner  
16 Ohigashi.

17 Commissioners? Commissioner Wong.

18 COMMISSIONER WONG: Wait. Just one more.  
19 So it's automatic extension -- going back to my  
20 previous question. Automatic extension so that there  
21 could be a third party again instead of Hawaiian  
22 Electric; correct?

23 COMMISSIONER GIOVANNI: (Nodding head.)

24 COMMISSIONER WONG: Okay. Thank you.

25 CHAIR SCHEUER: Commissioners, we're in

1 deliberation.

2 Commissioner Giovanni.

3 COMMISSIONER GIOVANNI: I have to admit  
4 that I don't -- from a legal perspective, I would  
5 appreciate if my fellow Commissioner Okuda could  
6 expand upon his proposed amendment with respect to  
7 Commissioner Ohigashi's comments.

8 CHAIR SCHEUER: Commissioner Okuda.

9 COMMISSIONER OKUDA: Thank you, and if I  
10 can respond, Commissioner Ohigashi. My proposed --  
11 the reason why I brought the amendment is not to  
12 limit anyone's ability to challenge the order or any  
13 part of the order, but it's basically in line with  
14 the Bridge Aina Lea case where the Hawai'i Supreme  
15 Court found because certain conditions seemed to have  
16 been the impetus of people voting for a motion, that  
17 if one of those conditions were somehow negated, it  
18 goes to -- it goes to the heart of why the motion was  
19 voted for in the first place.

20 In this case, I believe all the  
21 conditions that were suggested and made part of the  
22 motion form an integral part of the reason why this  
23 motion is granted. In other words, it's granted  
24 based on these conditions. In other words, the  
25 motion is not just granted with no conditions. It's

1 granted with conditions because these conditions  
2 basically support what really I think in my view  
3 amounts to a reasonable compromise of the situation.  
4 Because this is what we're really looking at here,  
5 you know, and I understand that this was not through  
6 any fault of the Bishop Estate or the Kamehameha  
7 Schools itself. It's economic factors, developer  
8 going broke or what have you or being unable to  
9 complete the project.

10 But based on the responses to a number of  
11 my commissioners' -- fellow commissioners' questions,  
12 it appears that you could make a factual finding here  
13 that there was no substantial commencement of the use  
14 of the property as represented to get the original  
15 boundary amendment. So really what the Kamehameha  
16 Schools is facing here is some type of action to  
17 rescind the entire boundary amendment, the entire  
18 entitlement. Now, whether that's going to happen or  
19 not is another question, but that's the risk that's  
20 taking place here. And we don't have to get into  
21 local island politics that there may be a number of  
22 people that would want to stop this development for  
23 many reasons.

24 So the reason why I viewed the motion  
25 with OP's suggested conditions and the ability of KS

1 to come in and present the master plan, you know,  
2 without making -- without us -- I'm not saying we're  
3 ignoring the fact of the lack of substantial  
4 commencement, but I really think that's the big  
5 boogeyman here. That's the big threat. And, you  
6 know, hey, lawyers gotta advocate their positions.  
7 That's all of our duty and our oath that we take as  
8 lawyers. But I really believe that the motion with  
9 the friendly amendment is a reasonable compromise  
10 under the circumstance to respect the rules that the  
11 commission has, respect how we've been treating other  
12 applicants, but at the same time also recognizing the  
13 very, very important role KS plays in this community.

14 CHAIR SCHEUER: Thank you, Commissioner.  
15 Commissioner Wong.

16 COMMISSIONER WONG: Just a question to  
17 Commissioner Okuda because I'm not familiar with the  
18 statement.

19 Commissioner Okuda, so if, let's say,  
20 hopefully not, KS screws up on the timing, does that  
21 mean if the solar farm is working right now and  
22 active, that everything is -- go kaput?

23 COMMISSIONER OKUDA: No.

24 CHAIR SCHEUER: Commissioner Okuda.

25 COMMISSIONER OKUDA: I'm sorry for

1       answering before being recognized, Chair.

2               No, not necessarily. It depends on the  
3 facts and circumstances at that point in time. Like,  
4 for example, if somebody turns around and says, "Oh,  
5 gee, now we can get an injunction to stop the  
6 operation of the solar farm," I mean, I'm not a  
7 judge, but I think a party would be hard pressed to  
8 get that kind of relief because it's a balancing  
9 test.

10              All I'm saying is this motion is one that  
11 stands not only on the body of the motion, but on the  
12 conditions. And, again, repeating what I had  
13 mentioned earlier, we may be just talking about some  
14 theoretical issue that is just a theoretical issue  
15 because I really believe Mr. Thoemmes and his  
16 professional staff, they're committed to doing what  
17 they plan to do. And, frankly, I don't need to -- me  
18 personally, I don't need to see a written condition  
19 saying he promises to bring this type of modification  
20 of the current D&O, a new boundary amendment or  
21 however it's termed, to move this development forward  
22 because I believe him. I really do.

23              CHAIR SCHEUER: Thank you, Commissioner.

24              Commissioners, I remain so grateful for  
25 the diligence and intelligence you bring to our

1 deliberations. I am cognizant of the time and how  
2 that actually deprives us of some of our ability to  
3 thoughtfully engage with each other.

4 Commissioner Aczon.

5 VICE CHAIR ACZON: I'm just going to -- I  
6 tend to support the main motion, but similar to  
7 Commissioner Ohigashi, I have some concern about the  
8 friendly amendment. If this thing goes, I might have  
9 to vote in line with Commissioner Ohigashi. Perhaps  
10 can we separate --

11 CHAIR SCHEUER: Well, I would suggest  
12 procedurally what we would do -- frankly, correct me  
13 if I'm wrong, but I think that if the amended motion  
14 fails, the original motion could be made again and  
15 then be taken on.

16 COMMISSIONER OKUDA: Chair, if I can  
17 interrupt. Yeah, you know, in line with my statement  
18 that I don't want to make a big deal about something  
19 that really shouldn't be a big deal. If this is  
20 causing heartburn and all of this stuff, I withdraw  
21 my friendly amendment.

22 CHAIR SCHEUER: Okay. So here I'm  
23 probably a little bit out of my procedural experience  
24 in terms of what should happen at this point, but I'm  
25 going to just check with the movant and the seconder

1 who earlier agreed to the addition of the friendly  
2 amendment. Are you okay with that friendly amendment  
3 being withdrawn?

4 COMMISSIONER GIOVANNI: I agree to  
5 withdraw it.

6 COMMISSIONER CABRAL: I agree to withdraw  
7 it.

8 CHAIR SCHEUER: Okay. Because the same  
9 effect would be as if we just canceled the whole  
10 motion and made a new motion again. So we're back to  
11 the original motion --

12 COMMISSIONER GIOVANNI: Yes.

13 CHAIR SCHEUER: -- that's in front of us.  
14 Commissioners have further discussion on  
15 this or statements about it?

16 COMMISSIONER CHANG: I'd like to make a  
17 statement.

18 CHAIR SCHEUER: Commissioner Chang.

19 COMMISSIONER CHANG: I am going to vote  
20 in favor of the motion. This is really hard, but I  
21 do find that this motion is based upon really looking  
22 at all of the parties' interests. One, the integrity  
23 to permit Kamehameha Schools to timely move forward  
24 with its agreement or its relationship with the solar  
25 farm, to permit that to timely move forward. It also

1 maintains the integrity of what OP was arguing, the  
2 status of the rules and the laws upon which the LUC  
3 is governed by. And it permits the integrity of the  
4 Land Use Commission that has struggled with how do we  
5 treat everybody fairly. And, again, in all due  
6 respect to Ms. Lim, the alternative is we could  
7 always do an order to show cause. And this -- and  
8 nobody wants to do this. So this permits -- permits  
9 Kamehameha Schools to move forward. It permits them  
10 to move forward on their master plan. Perhaps it  
11 gives them a little bit of motivation and incentive  
12 to move a little faster, but as the Land Use  
13 Commission indicated, there is nothing to prohibit  
14 Kamehameha Schools to come back, request an amendment  
15 to this action by the Land Use Commission today based  
16 upon more information after you've done your  
17 outreach, after you've done your studies.

18 But at this point in time, again, I am  
19 going to vote in favor of the motion as, in my view,  
20 it is the best compromise that we have before us  
21 given the situation. Thank you.

22 CHAIR SCHEUER: Commissioners, further  
23 discussions or comments?

24 Commissioner Aczon.

25 VICE CHAIR ACZON: I'll be reluctantly



1 voting in favor of this motion just for the reason  
2 that KS spent a lot of money -- time and money to put  
3 all this thing together, and I believe that they're  
4 sincere of their obligations and their intent on  
5 making this project to move forward. We can mix in  
6 the smaller solar farm to the bigger picture and with  
7 the mission of the Land Use Commission. Not all  
8 developments are equal, and that, you know, our  
9 mission is to make sure the state lands are being  
10 used to the best interest of the state and the  
11 community. We need housing. We need sustainability,  
12 and that's what this project is being offered.

13 There was mention about different  
14 similarities about yesterday's project, and I believe  
15 these two projects are entirely different. The other  
16 project eliminates entirely the housing. As you can  
17 see, there's no housing. They proposed housing  
18 before. They took it out. This project is adding  
19 11,000 new homes. And for me, it's kind of hard to  
20 pass on this opportunity. And I believe that KS is  
21 not going to be -- is going to be here and is going  
22 to be around to finish the project. So, therefore,  
23 because of those reasons, I'm reluctantly supporting  
24 the motion.

25 CHAIR SCHEUER: Thank you, Commissioner

1 Aczon.

2 Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: Mr. Chair, for  
4 the same reasons that Commissioner Aczon proposed,  
5 I'll be supporting the motion with reservations.

6 CHAIR SCHEUER: Commissioners, anything  
7 further?

8 Okay. The chair will also be voting in  
9 favor of the motion. Five years ago when I voted in  
10 favor of the amendment, as I stated earlier, it was  
11 particularly because Kamehameha Schools was coming  
12 back with a draft master plan within five years. I  
13 think the commission has a legitimate interest in --  
14 well, understanding the complexities of development  
15 and the significant constraints Kamehameha Schools  
16 faces seeing that things move forward in a timely  
17 manner. And to the degree the conditions placed on  
18 this motion put a further urgency on Kamehameha  
19 Schools to come in front of us sooner rather than  
20 later, I think that is a good thing ultimately for  
21 this area and for the state of Hawai'i.

22 Mr. Orodener, please poll the  
23 commission.

24 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
25 The motion is to grant the petitioner's

1 motion subject to amendments as proposed.

2 Commissioner Giovanni.

3 COMMISSIONER GIOVANNI: Aye.

4 EXECUTIVE OFFICER: Commissioner Cabral.

5 COMMISSIONER CABRAL: Aye.

6 EXECUTIVE OFFICER: Commissioner

7 Ohigashi.

8 COMMISSIONER OHIGASHI: Yes, with

9 reservations.

10 EXECUTIVE OFFICER: Commissioner Wong.

11 COMMISSIONER WONG: Aye.

12 EXECUTIVE OFFICER: Commissioner Chang.

13 COMMISSIONER CHANG: Aye.

14 EXECUTIVE OFFICER: Commissioner Okuda.

15 COMMISSIONER OKUDA: Yes.

16 EXECUTIVE OFFICER: Commissioner Aczon.

17 VICE CHAIR ACZON: Yes.

18 EXECUTIVE OFFICER: Chair Scheuer.

19 CHAIR SCHEUER: Aye.

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.

21 The motion passes unanimously.

22 CHAIR SCHEUER: Thank you very much.

23 Thank you, commissioners. If there's no further

24 business, I declare this meeting --

25 Oh, yes, we do. We had one further item

1 on our agenda. So this motion is done. We have  
2 Action Item 12, appointment of the LUC 2020  
3 Legislative Committee.

4 Mr. Orodenker, briefly.

5 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
6 I'd like to ask the commission to set up a committee  
7 so that I can communicate a portion of the  
8 commission --

9 (Reporter clarification.)

10 CHAIR SCHEUER: This will just take a  
11 moment for those in the audience and will allow us to  
12 also move on.

13 Mr. Orodenker.

14 EXECUTIVE OFFICER: I'm asking the  
15 commission to set up a committee to handle approval  
16 of testimony on legislation at this year's  
17 legislative session so that we can expedite the  
18 filing of such testimony.

19 CHAIR SCHEUER: Is there a motion for  
20 appointment of members? Commissioner Wong?

21 COMMISSIONER WONG: Yeah. I move for  
22 appointment of --

23 COMMISSIONER CABRAL: I'll second that.

24 CHAIR SCHEUER: Which members?

25 COMMISSIONER WONG: I would place

1 Commissioner Aczon, myself and Commissioner Okuda.

2 Oh, no, Chair Scheuer.

3 (Reporter clarification.)

4 CHAIR SCHEUER: There's a motion by  
5 Commissioner Wong to appoint Commissioner Aczon,  
6 himself and myself as members of the LUC 2020  
7 Legislative Committee. Is there a second?

8 COMMISSIONER OHIGASHI: Second.

9 CHAIR SCHEUER: Seconded by Mr. Ohigashi.  
10 Is there a discussion on the motion?  
11 Seeing none, all in favor, say aye.

12 (The board voted.)

13 CHAIR SCHEUER: Is there anybody opposed?  
14 The motion carries. With that, we have no further  
15 business, and this meeting is adjourned.

16 (Whereupon, the hearing adjourned  
17 at 4:35 p.m.)

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C E R T I F I C A T E

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