

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on October 7, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

A03-745 HANOHANO, LLC (Maui)
Consider Docket No. A03-745 HANOHANO LLC'S
MOTION TO RELEASE AND MODIFY CONDITIONS FILED
8-10-2020 associated with its Petition to Amend
the Agricultural Land Use District Boundary to
the Urban Land Use District for approximately
28.695 Acres in Keahua, Kula, Maui, Hawaii, Tax
Map Key: 2-3-11:2

V. ACTION

A92-683 HALEKUA DEVELOPMENT CORPORATION (O'ahu)
Consider Successor Petitioner (as to Parcel 52)
Ho'ohana Solar 1, LLC's Motion for Modification
and Time Extension and Haseko Royal Kunia LLC,
et al's Motion in Opposition to Successor
Petitioner (as to Parcel 52) Ho'ohana Solar 1,
LLC's Motion for Modification and Time
Extension in Docket No. A92-683 Acres of Land
at Waikele and Ho'ae'ae Ewa, O'ahu, City and
County of Honolulu, Hawai'i, Tax Map Key No.
9-4-02:1, portion of 52, 70, and 71.

VI. Recess

BEFORE: Jean Marie McManus, CSR #156

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

JONATHAN SCHEUER, Chair (Oahu)
NANCY CABRAL, Vice Chair (Big Island)
EDMUND ACZON, Vice Chair (Oahu)
GARY OKUDA (Oahu)
LEE OHIGASHI (Maui)
ARNOLD WONG (Oahu)
DAWN CHANG (Oahu)
DAN GIOVANNI (Kauai)

STAFF:

COLIN LAU, ESQ.
Deputy Attorney General

DAN ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk
BERT SARUWATARI, Planner

DAWN T. APUNA, ESQ.
Deputy Attorney General
State Office of Planning
State of Hawaii

MICHAEL HOPPER, ESQ.
Deputy Corporation Counsel
MICHELE McLEAN, Planning Director
TARA FURUKAWA, Planner
County of Maui Planning Department
County of Maui

EUGENE TAKAHASHI, Second Deputy Director
MOLLY STEBBINS, ESQ.
Department of Planning and Permitting
City and County of Honolulu

STEVEN CHUNG, ESQ.
MICHAEL LAU, ESQ.
Haseko Royal Kunia

JENNIFER LIM, ESQ.
DEREK SIMON, ESQ.
JOHN PETE MANAUT, ESQ.
Ho'ohana Solar 1, LLC

INDEX

1		
2		
3	<u>A03-745 Hanohano, LLC</u>	PAGE
4	PETITIONER'S WITNESSES:	
5	Leilani Pulmano	
6	Direct Examination	38
7	<u>COUNTY'S WITNESSES:</u>	
8	Michele McLean	
9	Direct Examination	72
10	<u>A92-683 Halekua Development</u>	106
11	PUBLIC WITNESS TESTIMONY:	
12	David Tanoue	
13	Direct Examination	116
14	Cross-Examination/Ho'ohana	118
15	Chris Delaunay	
16	Direct Examination	133
17	PETITIONER WITNESSES:	
18	Jeff Overton	
19	Direct Examination/Petitioner	155
20	Cross-Examination/Haseko	173
21		
22		
23		
24		
25		

1 CHAIRPERSON SCHEUER: Aloha mai kakou; good
2 morning.

3 This is the October 7th, 2020 Land Use
4 Commission meeting, and it's being held using
5 interactive conference technology linking video
6 conference participants and other interested
7 individuals of the public via ZOOM internet
8 conferencing program in order to comply with State
9 and County official operational directives during the
10 COVID-19 pandemic. Members of the public are viewing
11 the meeting via ZOOM webinar platform.

12 For all meeting participants, I would like
13 to stress to everyone the importance of speaking
14 slowly, clearly and directly into your microphone.
15 Before speaking, please state your name and identify
16 yourself for the record.

17 Also please be aware that all meeting
18 participants are being recorded on the digital record
19 of this ZOOM meeting. Your continued participation
20 is your implied consent to be part of the public
21 record of this event. If you do not wish to be part
22 of the public record, please exit this meeting now.

23 This ZOOM conferencing technology allows
24 the Parties and each participating Commissioner
25 individual remote access to the meeting proceedings

1 via their personal digital devices.

2 Also please note that due to matters
3 entirely outside of our control, occasional
4 disruptions to connectivity may occur for one or more
5 members of the meeting at any given time. If such
6 disruptions occur, please let us know, using the chat
7 function, and be patient as we try to restore the
8 audio/visual signals to effectively conduct business
9 during the pandemic.

10 My name is Jonathan Likeke Scheuer, and I
11 currently serve as LUC Chair. Along with me,
12 Commissioners Edmund Aczon, Dawn Chang, Gary Okuda,
13 Arnold Wong, our LUC Executive Officer, Daniel
14 Orodener, LUC Chief Planner Scott Derrickson, Chief
15 Clerk Riley Hakoda, our Deputy Attorney General Colin
16 Lau, and the Court Reporter Jean McManus are all on
17 the Island of O'ahu. Commissioner Cabral is on
18 Hawaii Island. Commissioner Ohigashi is on Maui and
19 Commissioner Giovanni is on Kauai.

20 We currently have eight sitting members out
21 of a possible nine.

22 Our first order of business is the adoption
23 of the September 23rd through 24, 2020 minutes.

24 Mr. Hakoda, Mr. Derrickson, has there been
25 any written testimony submitted?

1 CHIEF CLERK: This is Riley Hakoda. There
2 have been no public comments on the minutes.

3 CHAIRPERSON SCHEUER: Are there any members
4 -- sorry

5 COMMISSIONER OHIGASHI: I thought you were
6 calling for a motion.

7 CHAIRPERSON SCHEUER: No, I need to
8 actually just check if there is anybody in the public
9 who might wish to testify purely on the adoption of
10 the minutes. If so, use the raise-hand function in
11 the ZOOM meeting and I will bring in. I see nobody.
12 So I will happily entertain a motion.

13 COMMISSIONER OHIGASHI: So move to adopt
14 the minutes.

15 CHAIRPERSON SCHEUER: There is a motion by
16 Commissioner Ohigashi, a second by Commissioner
17 Cabral. Affirmed by "shaka", a waiving of hands.

18 Is there any discussion on the motion
19 before us? If not, Mr. Orodenker, please poll the
20 Commission.

21 EXECUTIVE OFFICER: Thank you, Mr. Chair
22 Commissioner Cabral?

23 VICE CHAIR CABRAL: Yes.

24 EXECUTIVE OFFICER: Commissioner Okuda?

25 COMMISSIONER OKUDA: Yes.

1 EXECUTIVE OFFICER: Commissioner Wong?

2 COMMISSIONER WONG: Yes.

3 EXECUTIVE OFFICER: Commissioner Ohigashi?

4 COMMISSIONER OHIGASHI: Yes.

5 EXECUTIVE OFFICER: Commissioner Aczon?

6 VICE CHAIR ACZON: Aye.

7 EXECUTIVE OFFICER: Commissioner Giovanni?

8 COMMISSIONER GIOVANNI: Aye.

9 EXECUTIVE OFFICER: Commissioner Chang?

10 COMMISSIONER CHANG: Aye.

11 EXECUTIVE OFFICER: Chair Scheuer?

12 CHAIRPERSON SCHEUER: Aye.

13 EXECUTIVE OFFICER: Thank you.

14 Mr. Chair, the motion passes unanimously.

15 CHAIRPERSON SCHEUER: Thank you.

16 Our next agenda item is the tentative
17 meeting schedule. Mr. Orodenker, please continue.

18 EXECUTIVE OFFICER: Thank you, Mr. Chair.

19 Tomorrow we will be once again meeting by
20 ZOOM on the HMP matter.

21 On October 21st we will be taking up HCPO,
22 22nd is also HCPO.

23 On November 4th we take up the Halekua
24 Development Motion to Amend. And on November 5th,
25 have set aside for Hawaiian Islands Land Trust

1 matter.

2 On December -- November 18th, Pulama Lanai
3 and November 19th, Pulama Lanai.

4 On December 2nd, if we have any remaining
5 matters with Pulama Lanai, that will be heard. If
6 not, we will also have the Windward Hotel Maui
7 matter.

8 And on December 3rd Barry Trust matter will
9 be taken up. December 16th, the Church matter will
10 be taken up, and on December 17th we will, assuming
11 the December 3rd goes well, we will once again take
12 up the Barry Trust matter to adopt the order.

13 And that takes us to the end of December.
14 I will caution the Commissioners that we are getting
15 matters set for January. It has not been set yet,
16 but request you keep those dates open.

17 CHAIRPERSON SCHEUER: Thank you, Dan.

18 Are there any questions for Dan,
19 Commissioners?

20 COMMISSIONER GIOVANNI: Are these all ZOOM
21 meetings except for HCPO?

22 EXECUTIVE OFFICER: We're not sure about
23 that yet. There is some uncertainty as to whether or
24 not the exemptions that allow us to hold these ZOOM
25 meetings will continue to be contained in the

1 Governor's Emergency Proclamation. We won't know
2 until the end of this month as to whether that
3 happens or not. We're working with Department of
4 Attorney General to maintain those exemptions, but
5 we're not sure if that will occur.

6 CHAIRPERSON SCHEUER: Any followup,
7 Commissioner Giovanni? Thank you.

8 Any other questions for Dan, Commissioners?
9 Commissioner Cabral.

10 VICE CHAIR CABRAL: If we have any say in
11 it, as one of the three people that has to travel, I
12 think I would like to really recommend that we try
13 and at least maintain the known ability to do the
14 ZOOM meeting through the end of the year. It would
15 be nice to have a set plan, because Hilo has become
16 somewhat of a hot spot, even in my office I
17 practically wear a mask.

18 I would like to encourage that we reduce
19 travel or exposure through this method throughout the
20 end of the year, because you don't want me to come
21 and bring it to you all.

22 EXECUTIVE OFFICER: That is the intent, and
23 we're very much hoping that we can continue to do
24 this through the end of the year.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Cabral.

2 For me, the larger question is going to be
3 how might we move to some sort of hybrid of in-person
4 and remote meeting when the conditions of the
5 pandemic allow.

6 Anything else, Commissioners, on our
7 tentative meeting schedule?

8 Our next agenda item is an action meeting
9 on Docket No. A03-745 HANO HANO LLC (MAUI) to Consider
10 Hanohano, LLC's Motion to Release and Modify
11 Conditions Filed 8-10-2020 associated with its
12 Petition to Amend the Agricultural Land Use District
13 Boundary to the Urban Land Use District for
14 Approximately 28.695 Acres in Keahua, Kula, Maui,
15 Hawaii, Tax Map Key (2)2-3-11:1 and 2-3-11:2.

16 Will the parties for Docket No. A03-745
17 please identify yourselves for the record. You may
18 need to enable your audio.

19 MS. LIM: Good morning, Chair and
20 Commissioners, and public parties. This is Jennifer
21 Lim representing Petitioner Hanohano, LLC, and my
22 associate Derek Simon is not on the ZOOM, but he's
23 also here with me today.

24 And in the audience we should have Ms.
25 Leilani Pulmano, the project developer for this

1 project should there be questions. Good morning.

2 CHAIRPERSON SCHEUER: Thank you.

3 MR. HOPPER: Good morning. Deputy
4 Corporation Counsel, Michael Hopper representing the
5 Maui County Department of Planning. With me is
6 Planning Director Michele McLean and Planner Tara
7 Furukawa.

8 MS. APUNA: Good morning, Chair and Members
9 of the Commission, Deputy Attorney General Dawn Apuna
10 on behalf of the State Office of Planning

11 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.

12 Let me update the record.

13 From August 10th through September 30th of
14 2020, the Commission received the following
15 documents.

16 Hanohano LLC's Motion to Release and Modify
17 Conditions.

18 Hanohano LLC's Exhibits 1-27.

19 Requests for Extension of Time to respond
20 from the Office of Planning and the County of Maui
21 with the Land Use Commission approved.

22 The County of Maui's original and revised
23 Position Statement.

24 The Office of Planning's response to
25 Hanohano LLC's Motion to Release and Modify

1 Conditions, as well as Exhibit 1.

2 Hanohano LLC's Second List of Exhibits, and
3 Exhibits 28 and 31.

4 On September 28, 2020, the Commission
5 mailed the October 7-8, 2020 Notice of Agenda to the
6 Parties to the Statewide, O'ahu and Maui regular
7 email and mailing lists.

8 Now, let me briefly go over our procedures
9 for today's docket.

10 First, I will give the opportunity for
11 Petitioner to comment on the Commission's policy
12 governing reimbursement of hearing expenses.

13 I will then call on any individuals
14 desiring to provide public testimony to identify
15 themselves. First, beginning with folks who have
16 registered beforehand to testify, followed by anyone
17 in the audience who may wish to testify, they will
18 signify by raising their hands using the raise-hand
19 function in ZOOM.

20 After the completion of public testimony,
21 the Petitioner will make their presentation. After
22 the completion of Petitioner's presentation,
23 Commissioners will ask questions.

24 And after the Commissioners questioning, we
25 will conduct our deliberations.

1 Are there any questions for our procedures
2 for today?

3 MS. LIM: None from Petitioner.

4 MR. HOPPER: No questions, Mr. Chair.

5 MS. APUNA: No questions.

6 CHAIRPERSON SCHEUER: And from time to
7 time, approximately for 10 minutes every hour, we
8 will take breaks.

9 So, Ms. Lim, have you reviewed HAR
10 15-15-45.1 with regard to the reimbursement of
11 hearing expenses?

12 MS. LIM: We are familiar with the policy
13 and Petitioner will comply with that.

14 CHAIRPERSON SCHEUER: Thank you.

15 Is there anyone in the audience who wishes
16 to provide public testimony on this matter today? If
17 so, use the raise-your-hand function. Because nobody
18 has previously used the raise-hand function, I will
19 promote you to be into the main part of the meeting
20 and swear you in.

21 Seeing none, public testimony is closed on
22 this matter and, Ms. Lim, you can begin with your
23 presentation.

24 MS. LIM: Thank you.

25 CHAIRPERSON SCHEUER: If you want to give

1 us an overview of how long you expect to take, that
2 would be useful.

3 MS. LIM: I would say about 60 minutes,
4 perhaps even more quickly. And (indecipherable).

5 CHAIRPERSON SCHEUER: There is a lot of
6 background noise wherever you are physically. I
7 don't know if we are picking up traffic noise, or are
8 you using a wireless earpiece, by any chance?

9 MS. LIM: I am using wireless. It's an
10 otherwise silent room.

11 COURT REPORTER: Chair, I'm also having
12 difficulty listening to Ms. Lim with the background
13 noise. I can't catch every word.

14 CHAIRPERSON SCHEUER: It sounds as if your
15 window is open and we're hearing the city buses go
16 by.

17 MS. LIM: I'm so sorry. There's actually
18 no background noise.

19 CHAIRPERSON SCHEUER: Can you use your
20 built-in microphone or a wired mic?

21 MS. LIM: Let me see. Excuse me for a
22 minute.

23 Does this sound better?

24 CHAIRPERSON SCHEUER: No.

25 MS. LIM: I'm very sorry. Everybody's time

1 is precious. May I ask for a three-minute recess
2 while I try to find some --

3 CHAIRPERSON SCHEUER: We will recess at the
4 discretion of the Chair.

5 (Recess.)

6 CHAIRPERSON SCHEUER: We're back on the
7 record.

8 We have all the parties here and the
9 Commissioners -- Commissioner Cabral -- please wait.

10 Commissioner Cabral, if you can hear us,
11 we're ready to go.

12 Ms. Lim, you may proceed. Commissioner
13 Cabral is here.

14 MS. LIM: Thank you, Chair, Commissioners
15 and other parties. I'm Jennifer Lim representing the
16 Petitioner Hanohano LLC, and you've seen -- several
17 of you have seen me here before, and there's been
18 different levels of complexity with matters that I've
19 brought before the Commission.

20 I think sincerely that this should, quite
21 without question, be the most simple matter that I
22 have ever had the pleasure of bringing before this
23 Commission and here's why.

24 Hanohano LLC had a Petition for District
25 Boundary Amendment back in the mid 2000. As Chair

1 Scheuer explained, that Decision and Order was issued
2 by the Commission, that was actually issued on
3 May 17, 2005, and it reclassified by the Commission
4 through the reclassification of just under 29 acres
5 in Up Country, Maui, for Agricultural to Urban for
6 residential development.

7 The Commission did that subject to subject
8 to 26 Conditions of Approval.

9 We filed the motion in August because the
10 developer has completed the development of the
11 property. All of the conditions have been met.
12 There are a couple of conditions that are more of an
13 on-going nature, so those, of course, have been
14 satisfied and would continue to be satisfied in the
15 future.

16 But of the 26 conditions that the
17 Commission imposed back in 2005, as I said, 22 of
18 them have been completely satisfied, and we filed
19 several exhibits as Chair Scheuer mentioned to
20 provide the Commission evidence of that satisfaction.

21 Two conditions we're not requesting a
22 release of, because -- I'll explain it in a moment --
23 but one of those conditions prohibits condition of
24 ohana housing.

25 And the other condition that we're not

1 seeking release of us is the condition that basically
2 articulates what's in the Commission's rules about
3 allowing petitioners, whatever that may mean in the
4 context allowing them to seek release from the
5 Commission of an outstanding condition.

6 So we looked at those, sort of hand in
7 glove. We are not requesting release of the ohana
8 condition. And at the same time, because the
9 property has been, as I said, fully developed,
10 there's people living on the lots. There's a
11 community there right now. They may want to seek
12 release of that ohana prohibition in the future.

13 So, therefore, we said let's leave the two
14 of them there, and if the HOA or OTHER property
15 owners within the project wish to release the ohana
16 condition, then they would have that vehicle through
17 the Commission.

18 And then there are two conditions -- so
19 again, we have 26 conditions in total, 22 have been
20 completely satisfied. Two conditions we're not
21 seeking to release or amend whatsoever for the reason
22 I just explained.

23 And two conditions we are seeking amendment
24 to, and this is all presented in our motion, but I'll
25 just give a quick summary.

1 One condition that we are seeking amendment
2 to is a very long -- it's a multipart condition
3 having to do with -- I believe the heading of the
4 condition is archaeological resources or
5 historic/archaeological resources, but there's
6 actually -- it's a multipart condition -- and the
7 concerns were about cultural monitoring in light of
8 the fact that there is a heiau site within this
9 project.

10 And we're not seeking a release of that
11 multipart condition, I believe it runs from like 4a,
12 condition 4, 4a down to like 4g or something, so
13 several parts to it.

14 But we are requesting some tweaks to the
15 condition that I can explain in more detail if the
16 Commission would like. But the reasons for the
17 tweaks is that there are certain very specific items
18 that the Commission imposed in 2005 that we found to
19 be unworkable.

20 None of the unworkability has to do with
21 the spirit or intent of the condition, but there's
22 just some technical compliance issues.

23 So we wouldn't be -- to be quite
24 transparent, and to know that the people who are
25 living at this community would, I'm sure, want to

1 maintain compliance of the Commission's orders as
2 well. We're just seeking a few minor amendments
3 within that condition to make it something that is
4 workable on an on-going basis should that be the
5 Commission's pleasure.

6 And then finally, there's a condition that
7 requires all petitioners to record conditions after
8 the Commission issues an order.

9 And when this Decision and Order got issued
10 in 2005, that kind of condition was imposed, and we
11 would imagine that if the Commission's ultimate
12 pleasure is to release some conditions, you know,
13 modify the two that we're asking, whatever that may
14 be, we would just want to amend and restate the
15 existing recorded conditions to reflect whatever the
16 Commission's ultimate decision is today.

17 So that's the quick summary.

18 As I said, Leilani Pulmano, who is the
19 project manager and has been involved in this
20 property for many years should be in the audience, if
21 there is specific questions that the Commissioners
22 have about the project.

23 But it's a terrific -- I mean, it's modest,
24 but quite a beautiful project, and there's 49
25 residential lots. As I said, they've all been sold

1 to third parties. I believe, at least at the point
2 that we filed our motion, at least half of them I
3 believe were occupied by homes.

4 Ms. Pulmano may have a further update on
5 that. But 49 residential lots. There's a heiau
6 retention basin lot. That's called Lot 50, that's
7 where there's, again, particular measures that the
8 Commission has imposed, and the developer has adhered
9 to, and the HOA would continue to adhere to through
10 various means, including the declaration of CC&Rs
11 that the developer recorded against the property
12 after the Commission's approval.

13 Certain bylaws that establish the Curator's
14 Selection Committee, which was a requirement of the
15 Land Use Commission.

16 So those things would go forward. The
17 heiau retention basin lot is designated on the filed
18 plan. It's identified in the preservation plan.
19 There's absolutely -- it's got a beautiful rock wall
20 around it. Absolutely no question that this will be
21 maintained.

22 And then there's a couple of common area
23 laws which are roadway lots, which I don't think we
24 need to talk about but, of course, any questions are
25 welcome. Those have been conveyed and dedicated by

1 the developer to the homeowners association.

2 There's a lot that has been conveyed to the
3 County of Maui, and then there is a small roadway,
4 widening a roadway piece that is in the process of
5 being conveyed to the State Department of
6 Transportation.

7 So why are we doing this? Because -- I
8 mean, you folks have seen lots of projects, you've
9 approved several projects, and not very many people
10 come forward to say, "hey, give us a clean bill of
11 health. We're done here".

12 Again, Ms. Pulmano may want to supplement
13 what I say.

14 What Hanohano was thinking is, okay,
15 they're part of the Maui community. They built this
16 project. Some of the people who bought lots are
17 people who are friends or business contacts, you
18 know, colleagues of the developer, Hanohano. And
19 before they completed the turn over, meaning before
20 Hanohano, as developer, completed the turn over to
21 HOA, which is on the cusp of being completed, as I
22 said, land has already been turned over to the HOA.

23 Hanohano said, look, we just want to give
24 the HOA, for lack of a better term, a clean slate,
25 confidence that the conditions have been met, so that

1 the HOA understands what may be outstanding and what
2 may not be. Again, in our perspective, there's
3 nothing really outstanding.

4 And also so the HOA wouldn't be burdened
5 with -- I hate to describe it as a burden -- but
6 those annual reports that petitioners are always told
7 to file. Hanohano has tried to be very compliant
8 with that.

9 At this point with the project fully built
10 out, it seems like sort of an unnecessary burden to
11 put on HOA to report back to the LUC's Commission
12 staff who has to read these reports year-in,
13 year-out, this is done, this is done.

14 So with a combination of wanting to give
15 the HOA a crystal clear understanding of where the
16 project is in terms of Land Use Commission
17 compliance, and trying to make things more simple for
18 the HOA going forward.

19 So with that, I'll stop and see if there
20 are any questions; or if there's any supplement that
21 you would like to hear from Ms. Pulmano.

22 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.

23 Commissioners, are there questions for the
24 Petitioner? Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1 Ms. Lim, the Office of Planning filed a
2 pleading, and I'm just going to read one sentence,
3 and I'm going to ask you whether or not what the
4 Office of Planning was proposing is acceptable. Let
5 me quote. This is the last sentence in their
6 pleading.

7 "For purposes of efficiency, OP recommends
8 that LUC defer the relief of Condition 6e until the
9 dedication of the ROW and setback has been completed
10 to DOT's satisfaction, and that the Commission
11 authorize the LUC Chair to order the release of
12 Condition 6e once evidence of the completion of the
13 land dedication has been submitted to the LUC.

14 If the Commission were to approve your
15 request with that additional statement suggested by
16 the Office of Planning, would that be acceptable to
17 you or your client?

18 And that's my only question, Mr. Chair,
19 thank you.

20 CHAIRPERSON SCHEUER: Thank Commissioner
21 Okuda. Ms. Lim.

22 MS. LIM: Just to reflect back, if the
23 Commission were to take action today and
24 conditionally say that once the Commission's
25 Executive Officer received evidence of the completion

1 of the dedication, that that one part of Condition 6
2 would be released.

3 You know, if that's the Commission's
4 pleasure, I do want to say, because I don't want this
5 Commission to have any misunderstanding about the
6 diligence with which Hanohano has pursued that
7 creation of that road-widening lot, the pursuit of
8 having the property properly surveyed, preparation of
9 the dedication deed.

10 I mean, Hanohano is prepared to sign a
11 dedication deed, like, today. You can see in the
12 record -- I think it's our Exhibit 29, which is an
13 email chain from Ms. Pulmano to some folks at
14 Department of Transportation starting back in October
15 of 2019, saying we're ready to dedicate. What do you
16 need? And then, okay here's the property
17 description. Well, okay, here's the deed.

18 And I understand it's just a process. My
19 understanding -- I've never worked for the Department
20 of Attorney General -- is that the deed will have to
21 go back to the Land Board and for their deputy AG
22 possibly to review the language before it then goes
23 back to Director of DOT to sign, because the
24 dedication is actually to the State DLNR.

25 I do point in the record that on

1 August 14th, the Land Board did approve acceptance of
2 the dedication. So really, to us, we feel like it's
3 just a really ministerial matter, and our client is
4 prepared to sign the deed right now.

5 Again, I don't think it's unreasonable if
6 the Commission has sort of a contingent release on
7 that. We, of course, wouldn't want to (a) leave this
8 Commission with the wrong impression, or (b) require
9 anybody to come back before the Commission to
10 evidence something as ministerial at this point as
11 just a signed dedication deed.

12 We are trying to make things simple for the
13 HOA and not bring them back before the Commission.

14 CHAIRPERSON SCHEUER: Thank you,
15 Commissioner Okuda, for your question and for your
16 response.

17 Commissioner Ohigashi.

18 COMMISSIONER OHIGASHI: I was concerned
19 about Condition No. 4 and its various sub parts.

20 Can you explain to me how would your
21 modifications work with the three-member Curator
22 Selection Committee, how that exactly works? Who
23 would be on it? Because maybe I'm just in space
24 today, but when I was reading it earlier, yesterday
25 or day before, I couldn't imagine it or see it.

1 Can you explain how it works?

2 MS. LIM: Thank you, Commissioner Ohigashi.
3 That's a terrific question.

4 So when the Commission approved the DBA
5 back in 2005, one of the requirements was to
6 establish a curator selection committee. As I said,
7 that has been established, and it was a three-person
8 committee.

9 But here's the issue that we've had with
10 that. The condition itself said that there will be a
11 three-person committee and comprised from somebody
12 from the HOA, a representative from OHA, and one from
13 the Kupuna Council. And what has become problematic
14 is that the Kupuna Council no longer exists.

15 And what's become further problematic is
16 also the Curator Selection Committee process has
17 coordinated with OHA, OHA doesn't, in fact -- they
18 don't have a mechanism to actually participate in the
19 Curator Selection Committee.

20 So the change that we're requesting is,
21 again, to maintain Curator Selection Committee, but
22 to update the makeup of that committee to make it
23 something that can actually be complied with.

24 So our request is that CSC will have two
25 members from the HOA, one member from either Hawaiian

1 Civic Club, or Aha Moku Council or another similar
2 Hawaiian entity, because, again, we're trying to
3 maintain what we believe were the concerns and the
4 intent of the Commission by trying to actually make
5 it feasible since the entities that the Commission
6 had identified are not able to participate, and one
7 of them doesn't even exist.

8 And, in addition -- so it would still be a
9 three-person committee. In addition, this Curator
10 Selection Committee would be seeking input from
11 Office of Hawaiian Affairs.

12 Ms. Pulmano just recently did contact
13 Office of Hawaiian Affairs, as you probably know from
14 Office of Planning's filings, they had not gotten
15 feedback from Office of Hawaiian Affairs, but Ms.
16 Pulmano did speak to Office of Hawaiian Affairs this
17 last week.

18 If she raises her hand, she should be able
19 to explain to the Commission the basic premise of
20 that conversation.

21 But they did indicate they were willing to
22 play sort of a review role, but they wouldn't be a
23 member of the Curator Selection Committee.

24 So that's essentially it, Commissioner
25 Ohigashi. It's just, like I said, one of those

1 entities that the Commission imposed in 2005 doesn't
2 even exist.

3 OHA doesn't have a process or means by
4 which it would be a member of the committee, but we
5 still anticipate that they should have an advisory or
6 consultation role on this committee, and we would
7 have two members of the HOA.

8 COMMISSIONER OHIGASHI: I noticed the
9 original requirement was that only one member of the
10 HOA, and there be two sort of outside members.

11 Would the addition of an additional member
12 to the HOA have a hearing on how they make decisions
13 and sort of like take out the non-party -- the
14 non-party type of representative under Condition No.
15 4? Well, that was the balance that was established
16 in that Condition No. 4.

17 MS. LIM: That's a very fair question. I
18 mean, certainly that's not the intent whatsoever. As
19 I said, we're trying to find a way to replace what
20 the Commission has imposed as the Kupuna Council no
21 longer exists, so we just can't have that. We need a
22 replacement entity.

23 And as I said, OHA, in a consultation role,
24 would -- because OHA won't actually participate as a
25 members of the cultural -- Curator Selection

1 Committee.

2 I think that between OHA and the
3 appropriate Native Hawaiian organization that would
4 actually be a member of the committee, and the fact
5 that people who purchased into this project, and are,
6 therefore, members of the HOA, did so fully informed
7 about the existence of the heiau, very well aware of
8 it. It is recorded into their property documents. I
9 would not imagine there would be a shift in the
10 balance of power.

11 Again, the exhibit show that the heiau lot
12 has been extremely well-maintained. So I don't think
13 that that would be some thing -- there couldn't be a
14 change, any sort of significant change to the way
15 that the heiau lot is maintained currently.

16 COMMISSIONER OHIGASHI: The last question I
17 have on this particular area, more later on, but
18 Kupuna Council of Maui is a County entity?

19 MS. LIM: Commissioner Ohigashi, I have to
20 confess my ignorance on that, and perhaps the County
21 can opine, or even Ms. Pulmano, and the reason why
22 is, as I said, my understanding that it's defunct.
23 It no longer exists. And it no longer existed from
24 the point that I had knowledge of this project.

25 COMMISSIONER OHIGASHI: So I'm just

1 curious, has the Petitioner taken a look at any
2 substitution type of organization that replace the
3 Kupuna Council of Maui?

4 MS. LIM: I mean, as I mentioned, what we
5 are proposing in the condition -- and if there are
6 other ideas coming from the Commission, you know,
7 we're here because we want to get clarity, we want to
8 turn over to the HOA something that makes sense and
9 is workable.

10 The entities that would be proposed in the
11 Hawaiian Civic Club, Ahu Moko Council or another
12 similar Hawaiian entity.

13 Now, I know that doesn't necessarily
14 replace whatever it was that the Kupuna Council did.
15 And, again, I have to confess my ignorance on what
16 exactly the Kupuna Council of Maui did. That was
17 15 years ago.

18 COMMISSIONER OHIGASHI: The last thing
19 is -- I guess the last, last thing.

20 Would the curator know what exactly the
21 purpose of the Kupuna Council of Maui participation
22 means, or what the history, or why was the Kupuna
23 Council included as a representative, as a member of
24 this Curator Selection Committee?

25 MS. LIM: I don't know. Again, that was --

1 that requirement that was imposed by the Commission
2 in 2005, and the Petitioner went ahead and, you know,
3 prepared bylaws for the Curator Selection Committee
4 consistent with that, and it's not been feasible.

5 I mean, the purpose of the curator is to
6 make sure -- again, we're talking about Curator
7 Selection Committee, not trying to change the need
8 for there to be a curator -- the purpose of the
9 committee was to select somebody who would monitor
10 this heiau and be a curator and provide information
11 to the Curator Selection Committee.

12 And one of the requirements of the
13 Commission imposed in 2005 is that there also be
14 reporting to the Land Use Commission from the
15 curator. In fact, that's an element that we're
16 requesting some modifications too.

17 And here's the reason why. Again, the
18 Curator Selection Committee selects the curator. But
19 then the curator is an independent person who
20 maintains, or advises on the maintenance of the
21 heiau. And is a point of contact if there are, let's
22 say, questions or expressions of interest about that
23 particular lot.

24 When the Commission imposed the requirement
25 that there be reports from the curator -- I wouldn't

1 know because I wasn't here in 2005 -- but I'm sure
2 it's just because the Commission wanted to make sure
3 things were done correctly.

4 At this point, again, everything is built
5 out, and you can see the lot and see the heiau site,
6 everything has been done in accordance with the plan.

7 We would ask that the curator, because,
8 again, this is just a volunteer member of the
9 community who has an interest in matters of cultural
10 concerns, that they not be required to submit annual
11 reports to the Commission.

12 The curator will be the curator. The
13 curator would communicate, again, concerns or
14 information to the Curator Selection Committee which
15 could then report it to the larger HOA, but we would
16 prefer, knowing that writing reports is cumbersome
17 and so forth, that the curator, or the Curator
18 Selection Committee could provide reports to the
19 Commission upon request.

20 It's not an effort to try to dodge sharing
21 information by any means, just trying to make it more
22 practical for the small community association.

23 CHAIRPERSON SCHEUER: Commissioner
24 Ohigashi?

25 COMMISSIONER OHIGASHI: Just so -- the

1 last, last, last, last question.

2 Can the Curator Selection Committee replace
3 the curator?

4 MS. LIM: So, sure. Yes. In fact, I mean
5 their role is to identify the curator, and then when
6 a curator is either no longer interested in being in
7 that role, relocates, cannot do it for whatever
8 reason, then, yes, there is a process where they
9 would select another curator.

10 The curator that has been in place, Mr.
11 Ka'ai, was the curator. Again, all of the
12 landscaping has been done pursuant to the
13 preservation plan and with input, everything has been
14 complied with. But the requirement is that there
15 always be a curator. Mr. Ka'ai, we had understood,
16 had left the island, and so there's actually a gap
17 right now on the curator.

18 Luckily both the Petitioner and some of the
19 lot owners are extremely -- I don't want to say
20 savvy -- but extremely sensitive to matters of this
21 nature. So, you know, people are on the lookout for
22 a new curator, but without a properly constituted
23 Curator Selection Committee, then it's kind of hard
24 for them to move forward.

25 And properly constituted meaning, you know,

1 changing some of the things that are impossible about
2 the curator selection committee right now. And lo
3 and behold, although we understand Mr. Ka'ai had left
4 the island, he may in fact be back on Maui. And Ms.
5 Pulmano is trying to make efforts to get back in
6 touch with him.

7 In any event, we do want permission from
8 the Commission to officially change the composition
9 of the selection committee so that whether Mr. Ka'ai,
10 if he is still willing and able, or another curator
11 can be selected.

12 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.
13 Commissioner Chang. Sorry, you had a last,
14 last, last, last.

15 COMMISSIONER OHIGASHI: I just wanted to
16 say I don't have any more questions.

17 CHAIRPERSON SCHEUER: Commissioner Chang.

18 COMMISSIONER CHANG: Thank you, Chair.

19 Good morning Ms. Lim. I just want to
20 follow up on some questions raised by Commissioner
21 Ohigashi.

22 I guess it's my understanding in reading
23 back through the original Findings of Fact, there was
24 Uncle Charlie Maxwell who was the consultant for the
25 developer who put together curatorship conditions and

1 the program. And it was very thoughtfully done.

2 So I, like Commissioner Ohigashi, have
3 concerns about just the balance. And I understand
4 that the association has great intention. My
5 understanding that Leahy Hall is a landowner and is a
6 member of the commission.

7 Leahy comes from a family who undoubtedly
8 is extremely sensitive, and I have no doubt she will
9 accept this (indecipherable) --

10 Likewise, I think you have an Auntie Patty
11 Nishiyama, who is similarly a very well-respected
12 kupuna in the area. But these are individuals.

13 If there are numerous entities within this
14 area besides the homestead association, DHHL has a
15 very large development in Kula. Kamehameha Schools
16 is very nearby.

17 In my view, it is always better to find
18 people who are from that area who have ancestral ties
19 who would be the people that would most likely accept
20 the kuleana to malama that heiau.

21 So I greatly appreciate Leahy Hall's
22 participation, but in the event she moves, I am much
23 more comfortable, given the fact that there are
24 numerous Hawaiian organizations and relevant
25 affiliations nearby the development, that I would

1 feel much comfortable if the association had one
2 member to select -- and I understand, it's only a
3 selection committee, they aren't the ones actually
4 doing it -- but what we decide today will have to
5 last during the life of this subdivision.

6 So that is my concern that there are
7 numerous existing entities very nearby this area that
8 I think it would not be difficult to do a kahea or a
9 call out to that community, especially someone from
10 Kamehameha Schools or the Homestead Association who
11 I'm certain -- or even Haleakala above you -- would
12 be more than willing to sit on this committee.

13 So I too share the concern about having two
14 members of the association. I would prefer that it
15 remain -- the composition of the committee remain the
16 same, given the fact that there are other
17 organizations, individuals that could be tapped into
18 in the area.

19 That's my only comment about this. I think
20 that maintains the spirit of Uncle Charlie's, his
21 establishment of that, if Sam Ka'ai is back, that
22 would resolve a lot of issues as he would continue to
23 malama the area.

24 I just wanted to convey that. That was my
25 concern about your modification. I would prefer that

1 the composition remain the same.

2 CHAIRPERSON SCHEUER: Commissioner Chang,
3 were you hoping for a response or was it more of a
4 statement?

5 COMMISSIONER CHANG: More of a response,
6 because that is the Petitioner's recommendation to
7 modify and to have two HOA members sit on.

8 So my request, my inclination is to -- or
9 my ask is, would you be willing to accept that the
10 composition of the selection committee remain the
11 same, one member from the association, and two
12 members from the -- selected by Native Hawaiian
13 organizations, for example, like what you listed, and
14 then OHA continue to oversee, but that's my ask to
15 you.

16 Do you have any objections to keeping the
17 composition the same?

18 CHAIRPERSON SCHEUER: The ratio?

19 COMMISSIONER CHANG: Yes.

20 MS. LIM: Thank you very much for the
21 question, Commissioner Chang.

22 Chair, may I ask Ms. Pulmano to be brought
23 into the room so she can respond to this question
24 directly?

25 CHAIRPERSON SCHEUER: Yeah. I think she's

1 been admitted -- has she been admitted, Scott?

2 MR. DERRICKSON: Yes, she's in the process
3 right now. Do a sound check with her.

4 CHAIRPERSON SCHEUER: Ms. Pulmano, if you
5 can enable your audio and video.

6 THE WITNESS: Aloha.

7 CHAIRPERSON SCHEUER: I'm going to swear
8 you in before you respond to questions from
9 Commissioner Chang.

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

12 THE WITNESS: Yes, I swear.

13 LEILANI PULMANO

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

17 DIRECT EXAMINATION

18 CHAIRPERSON SCHEUER: Please continue, Ms.
19 Lim.

20 BY MS. LIM:

21 Q You know, Leilani, if I could -- it's funny
22 to see you on video -- you've heard the concerns from
23 Commissioner Ohigashi, and then even more so from
24 Commissioner Chang.

25 Could you offer your response?

1 A Sure. Thank you for that.

2 Commissioner Ohigashi and Commissioner --

3 CHAIRPERSON SCHEUER: Hold on. I am
4 experiencing audio issues with Ms. Pulmano. Is
5 anybody else?

6 Ms. Pulmano, I'm going to ask you to
7 disable your video and simply go to audio, which
8 might be more reliable. If you can hear me, if you
9 can disable your video.

10 COMMISSIONER OHIGASHI: My screen shows she
11 is frozen.

12 CHAIRPERSON SCHEUER: Ms. Lim, are you able
13 to text her?

14 MS. LIM: Yes.

15 CHAIRPERSON SCHEUER: Another tip I have
16 learned is that if you are not hardwired for your
17 internet connection, no matter how good your broad
18 band was, it's not super reliable.

19 Ms. Pulmano, can you hear me now?

20 THE WITNESS: Yes, I can.

21 CHAIRPERSON SCHEUER: Your connection is
22 still not robust, but let's try.

23 THE WITNESS: Okay. Can you hear me now?

24 CHAIRPERSON SCHEUER: Yes.

25 THE WITNESS: Okay, great.

1 CHAIRPERSON SCHEUER: No. Sorry.

2 Ms. Lim, we're not picking up the audio on
3 this, unfortunately.

4 MS. LIM: I understand.

5 CHAIRPERSON SCHEUER: Commissioner Chang?

6 COMMISSIONER CHANG: Perhaps Ms. Lim can
7 talk to Pulmano or text her during the presentation
8 of both County and OP's (frozen).

9 CHAIRPERSON SCHEUER: Where are we at here,
10 folks? I got booted out. I don't know if that
11 happened to everyone, or Mr. Hakoda or Mr.
12 Derrickson. Commissioner Chang, can you hear me?

13 COMMISSIONER CHANG: Yes, Chair, I can hear
14 you.

15 CHAIRPERSON SCHEUER: Not sure what
16 happened. See if we can reassemble. I have a number
17 of people connecting to audio and video.

18 Did the whole meeting go down or just my
19 connection?

20 VICE CHAIR CABRAL: Jonathan -- this is
21 Nancy. I'm hardwired in, but all of a sudden my
22 screen came up and said my connection is unstable.

23 COMMISSIONER OKUDA: Same thing happened to
24 me.

25 My guessing is that we might be

1 experiencing a problem with the ZOOM platform or a
2 broader internet instability across the island.

3 VICE CHAIR CABRAL: It was pounding rain a
4 little bit ago when I came into the office. When I
5 say it's pounding and really raining hard, in Hilo,
6 that's a lot.

7 CHAIRPERSON SCHEUER: I have Cabral. I
8 have Commissioner Chang. I have Commissioner Aczon.
9 Commissioner Okuda has already spoken. Commissioner
10 Giovanni.

11 COMMISSIONER GIOVANNI: I'm here.

12 CHAIRPERSON SCHEUER: Commissioner
13 Ohigashi?

14 COMMISSIONER OHIGASHI: I'm here.

15 CHAIRPERSON SCHEUER: Ms. McManus, can you
16 hear us?

17 THE COURT REPORTER: Yes, I can.

18 CHAIRPERSON SCHEUER: Ms. Lim?

19 MS. LIM: Yes, Chair, I can hear you. If I
20 may, we have sent Ms. Pulmano the phone number that
21 Riley had emailed when he emailed the ZOOM invite.
22 So she will be trying to get in that way.

23 CHAIRPERSON SCHEUER: Thank you. I don't
24 know now whether it was a problem with Ms. Pulmano's
25 connection or the start of our universal problem.

1 Mr. Wong, and the folks at LUC offices, are
2 you able to hear us? Mr. Hakoda, Mr. Derrickson, Mr.
3 Wong?

4 Ms. Apuna, you can hear us?

5 MS. APUNA: Yes, Chair, I can.

6 CHAIRPERSON SCHEUER: Mr. Hopper? Mr.
7 Hopper?

8 Mr. Lau? Mr. Deputy Attorney General for
9 LUC, can you hear us?

10 Folks, we are fading in and out here. We
11 may be unable, due to technical reasons, to continue
12 these proceedings. But let's bear with it for a
13 little while, see whether we can get onboard.

14 MS. LIM: Mr. Chair, I'll just mention Ms.
15 Pulmano just texted to say she can't get in through
16 the phone number that was in the State Clerk --

17 CHAIRPERSON SCHEUER: It is 9:59 A.M.

18 Let's declare an 11-minute recess to 10:10.
19 During the break we will try and see if we can get
20 Ms. Pulmano on, and I'll ask Commissioners to be
21 cognizant of not saying anything that you don't want
22 broadcast. Keep your audio and video running so we
23 can be sure that we're able to conduct our business
24 today. Recess until 10:10.

25 (Recess taken.)

1 CHAIRPERSON SCHEUER: Let's go back on the
2 record.

3 It is 10:13 and I'm confirming that we have
4 Commissioner Giovanni, myself, Ohigashi, Okuda, Wong,
5 Cabral, and Aczon and Chang. We're going to try,
6 though we may have to cancel.

7 Ms. Lim is going to read a statement from
8 Ms. Pulmano.

9 MS. LIM: Thank you, Chair.

10 To bring us back to where we are, there had
11 been questions raised by Commissioner Ohigashi and
12 Chang about our proposed makeup of the Curator
13 Selection Committee in light of the practical
14 difficulties of the original Curator Selection
15 Committee requirements, and what we had proposed in
16 our amendment was to have two members of the HOA, one
17 member of a native Hawaiian organization, and to
18 consult the Office of Hawaiian Affairs.

19 And Commissioners have raised obviously
20 very valid concerns or interest in whether there was
21 a change in the balance of power, because of the
22 different makeup of the Cultural Selection Committee.
23 So Ms. Pulmano explains that the Petitioner's
24 thinking was sort of twofold.

25 One, all the of the buyers in this project

1 are local buyers, and I think the Commissioners know
2 that anyway, but it's not a resort development, it's
3 local buyers who, as I said before, bought in knowing
4 about the importance of this property.

5 Secondly, the second HOA member who had
6 been identified actually works for Kamehameha Schools
7 as a teacher. His name is Kahuna Noa, and so he
8 would be the second HOA member along with Ms. Leilani
9 (sic) Hall, as Commissioner Chang mentioned earlier.

10 That said, again, to Commissioner Chang's
11 point, Leilani (sic) Hall is extremely well-equipped
12 to be in a role like that. But homeowners can change
13 over the course of time. So if the Commission
14 believes that the composition should be still be one
15 HOA member, and two members from yet to be identified
16 native Hawaiian organizations, along the line of what
17 Commissioner Chang said, that would be fine.

18 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.

19 I want to check. I saw that OP and Maui
20 faded in and out. Were you still having connection
21 problems during Ms. Lim's response, Mr. Hopper or Ms.
22 Apuna?

23 COMMISSIONER WONG: Mr. Hopper is mute.

24 MR. HOPPER: We're trying to do the audio
25 through the (indecipherable) -- can you hear us okay?

1 CHAIRPERSON SCHEUER: We can hear you.

2 MR. HOPPER: We are doing the audio through
3 the phone in case we get kicked off. We're on and
4 off like several other parties.

5 CHAIRPERSON SCHEUER: Ms. Apuna?

6 MS. APUNA: This is Dawn Apuna. I got
7 maybe half of that.

8 CHAIRPERSON SCHEUER: I am also -- I'm just
9 going to acknowledge as the Chair, I can see the
10 number of participants in the meeting shifting very
11 frequently. I'm not able to track to see whether or
12 not I have all of my Commissioners at any given time,
13 or if some of my Commissioners or the parties who are
14 essential to this proceeding are participating.

15 I would like to ask Mr. Orodener and the
16 folks at the LUC office whether or not we might
17 consider recessing until 1:00 P.M. to see if these
18 technical issues can be resolved, because right now
19 this is not productive use of our time, and I'm not
20 sure we are meeting the requirements even under our
21 orders.

22 MR. DERRICKSON: We are still experiencing
23 technical problems, seems like with our cloud server
24 from our originating location.

25 MR. HAKODA: I think we're agreed.

1 CHAIRPERSON SCHEUER: Ms. Lim, Ms. Apuna,
2 and Mr. Hopper, my suggestion is going to be that we
3 recess and reconvene at 12:30 to see whether or not
4 that's enough time for the staff to figure out what
5 is going on, and for us to resolve issues.

6 But I don't think it's going to be a
7 productive use of anyone's time to try to do this
8 live. Starting with Ms. Lim.

9 MS. LIM: Petitioner doesn't have any
10 objections. We agree that this is a very disjointed
11 hearing process; isn't doing anybody a good service.

12 CHAIRPERSON SCHEUER: Mr. Hopper?

13 MR. HOPPER: Let us know what time before
14 logging off, then we can log back in.

15 CHAIRPERSON SCHEUER: We would reconvene at
16 12:30 per my suggestion.

17 MR. HOPPER: I'm available.

18 CHAIRPERSON SCHEUER: Ms. Apuna,
19 Commissioners any concerns?

20 Commissioner Ohigashi.

21 COMMISSIONER OHIGASHI: I just want to know
22 if we stay on or --

23 CHAIRPERSON SCHEUER: My suggestion would
24 be to log off, then log back in a little, maybe 12:15
25 or so, with the aim to start at 12:30.

1 MR. HAKODA: OP, can you unmute?

2 MS. APUNA: I only heard the last, like the
3 last --

4 CHAIRPERSON SCHEUER: My suggestion is that
5 we log off now, log on 12:15, try to reconvene
6 proceedings at 12:30 if the technical issues --
7 thumbs up from OP. Thumbs up from any Commissioners
8 or thumbs down with anybody with concerns.

9 VICE CHAIR ACZON: Mr. Chair, like
10 Commissioner Giovanni, I have to leave by
11 4:00 o'clock.

12 CHAIRPERSON SCHEUER: I'm trying on the fly
13 to figure out, give us enough time to see if we can
14 resolve this problem, but not so much time that we
15 are unable to complete our business.

16 Mr. Lau, is that okay? Okay.

17 We're going to recess until 12:30 P.M.
18 this is for the audience too. Audience members, the
19 meeting itself might shut down and restart. Plan to
20 log on at 12:15.

21 (Indecipherable.)

22 VICE CHAIR ACZON: Mr. Chair, same link?

23 CHAIRPERSON SCHEUER: Same link.

24 (Recess taken.)

25 CHAIRPERSON SCHEUER: It is 12:30, we will

1 give it another try. We're out of recess and back on
2 the record.

3 Where we left off was questions about the
4 constitution of the advisory committee which chooses
5 the curator for the heiau were asked to Ms. Lim and
6 Ms. Leilani Pulmano, having been sworn in, is going
7 to respond.

8 Let's try again. Ms. Lim and Mr. Pulmano.

9 MS. LIM: Good afternoon, Commissioners.
10 I'll turn it directly over to Ms. Pulmano.

11 THE WITNESS: I was trying to say we spent
12 a lot of time thinking about how we would ensure the
13 Land Use Commission's intent to make sure that the
14 heiau was properly taken care of, and the makeup of
15 the composition of the Curator Selection Committee,
16 we felt really comfortable with having two homeowner
17 association members because of a couple of reasons.

18 One, all of the lots were purchased by
19 local residents.

20 Two, the lots for the owners, many of them
21 were from Up Country. We have a pretty big, a broad
22 number of owners that are involved in the cultural
23 Hawaiian community, and one of the board members, in
24 fact, works at Kamehameha Schools as their cultural
25 program specialist.

1 So in the makeup of that selection
2 committee, we felt pretty comfortable that they would
3 honor their commitment to maintain the heiau.

4 So it wasn't to, quote/unquote, stack the
5 committee, but really because we knew that we were
6 going to turn that over to responsible homeowners
7 that would care diligently for the heiau.

8 CHAIRPERSON SCHEUER: Thank you.

9 Commissioner Chang, did you have a
10 followup, since this was prompted most immediately by
11 your question?

12 COMMISSIONER CHANG: Just one.

13 So, Ms. Pulmano, is there like a covenant
14 with the property that these homes -- how do we
15 ensure in the future the same kind of homeowners will
16 have the same sensitivities to these cultural
17 resources?

18 THE WITNESS: In the project document,
19 there's bylaws for the heiau, and those bylaws
20 require the proper maintenance of the heiau.

21 COMMISSIONER CHANG: Mr. Chair, I'm
22 satisfied with the response.

23 CHAIRPERSON SCHEUER: Thank you.

24 Commissioner Ohigashi, followed by
25 Commissioner Cabral.

1 COMMISSIONER OHIGASHI: Mr. Simon, are you
2 going to be responding -- oh, Jennifer is there.

3 I was looking at some other conditions that
4 I was concerned about. And I was concerned about
5 Condition No. 5, and maybe 8, 14, 18, 19 and 20. I
6 believe, maybe 15. But it seems to me that some of
7 these conditions are saying that it's not necessary
8 because there seems to be protection within the
9 CC&Rs, or within deed restrictions on the property,
10 so that these things, although they may be ongoing
11 requirements, are covered by the restriction and
12 CC&Rs?

13 MS. LIM: Yes, I'm afraid, Commissioner
14 Ohigashi, you would need to repeat for me again the
15 specific conditions. But, for example, Condition No.
16 5, which requires communication with SHPD if anyone
17 identified archeological finds are discovered. As a
18 starting point, archeological inventory survey has
19 been done; preservation plan has been done, and
20 mitigation plans have all been done and all of that
21 has been approved by SHPD.

22 But the CC&Rs that are recorded against the
23 property do also incorporate that requirements that
24 SHPD would be contacted if -- I suppose it could
25 happen, even though the property has been, as I said,

1 subdivided, the lots are created, all the roadway
2 lots are created.

3 If an unidentified site was located, then
4 SHPD would be contacted. That's also a requirement
5 under HRS Chapter 6e is my understanding. So I feel
6 like that particular item is covered in a multitude
7 of different ways.

8 But I know you mentioned some other
9 conditions.

10 COMMISSIONER OHIGASHI: I was looking at
11 Condition 8 and maybe 14, 15, 18, 19, 20.

12 MS. LIM: Thank you for that.

13 So that's the one that requires the HOA to
14 maintain the property, maintain landscaping outside
15 of residential lots, and that is a requirement under
16 the CC&Rs. It's also a requirement under the deed
17 that Hanohano conveyed the HOA property -- excuse me,
18 conveyed the common area to the HOA. So it is a deed
19 restriction, as well as a requirement under the CC&Rs
20 that all lot buyers understand that that's a
21 requirement of the HOA.

22 And then I think, I mean, it's also
23 probably an understood requirement when you purchase
24 into a community that has a homeowner's association
25 that they need to keep it up, that's why you purchase

1 the property in a community with an association
2 versus just a lot that's not connected to any kind of
3 organization of that sort.

4 And there are other conditions,
5 Commissioner Ohigashi. Some of them are completely
6 cut and dry. For instance, provide water service.
7 That has obviously been done, and that's why the
8 subdivision was granted.

9 When I look through some of the other
10 items, I mean notification of -- did you say 18 was
11 one that had caught your attention?

12 COMMISSIONER OHIGASHI: Yeah, notification
13 of perspective buyers about the, I think it was --

14 CHAIRPERSON SCHEUER: Right to farm.

15 COMMISSIONER OHIGASHI: Yeah, the right to
16 farm.

17 MS. LIM: Right. Again, that's a situation
18 where when the subdivision got registered, that was a
19 notification that was in the public offering
20 statement.

21 We have in our record, we just provided one
22 lot deed, we didn't want to provide you all 49 lot
23 deeds for the residential lots. But that's
24 Exhibit 21, and that has that language in it. And
25 that language is also in the CC&Rs.

1 So there are several places where buyers --
2 should a new buyer come in from California, want to
3 buy a lot here, there are several items that will
4 show on title to put them on notice of that
5 particular Right-To-Farm Act.

6 COMMISSIONER OHIGASHI: Let's say that --
7 just give an example. Let's say we decide, well, the
8 CC&Rs are sufficient.

9 Is there any kind of problem or difficulty
10 that the Petitioner do -- that your client has with
11 regard to having an overlay of these conditions?

12 In other words, one of the -- it seems to
13 me what you're saying is that, yeah, we are all
14 protected through other mechanisms. So I'm just
15 trying to say, why would we want to reduce the amount
16 of conditions in those areas?

17 Now, you're the Petitioner and what
18 detriment does it have?

19 MS. LIM: I think I understand. I'm going
20 to try to respond, and then Ms. Pulmano can
21 supplement this, if that's okay with the Commission.

22 Certain conditions like the one we were
23 just discussing, Commissioner Ohigashi, about
24 notification of potential nuisances -- I mean,
25 granted, if it's already documented in other places,

1 or a condition that's already embodied in state law,
2 those things are already documented in other places.
3 Then what's the harm having yet another encumbrance
4 on the property imposed by another body?

5 So I guess you could say, there is not
6 really an additional problem if we come back to what
7 is the point and the purpose of us filing this
8 motion, it was try to turn over to the HOA a tidy
9 package, assurance that the conditions have been met,
10 these are the conditions that are ongoing. And so
11 that they know how to comply, so they don't -- and
12 then also so they don't have to continue to submit
13 annual reports.

14 Frankly, that's an expense of time and
15 money, both for HOA members and for Commission staff.

16 It won't do anything extra by having it
17 continue to be an encumbrance pursuant to an LUC
18 declaration, but it certainly doesn't enhance the
19 security. And, in fact, you could even say, well,
20 what is the validity of conditions after a project is
21 fully built anyway?

22 Doesn't really enforcement fall to the
23 County and not to the LUC under Chapter 205.

24 It's almost like when a project is
25 completed and somebody can come and show you evidence

1 of that, wouldn't the Commission want to say, yes,
2 our job is done here. And now, we turn it to the
3 County to deal with whatever enforcement.

4 And we're very grateful that the County --
5 and we have had discussions with the County, and we
6 are very grateful that the County provided statements
7 essentially in full support, although, of course, Ms.
8 McLean can modify that if I didn't phrase it quite
9 right.

10 So it's almost -- it's more like, let's
11 just put an end, you know, cut things off, make it
12 very clear what the HOA has to do. That's the goal.

13 And, Leilani, is there anything that you
14 would care to add?

15 THE WITNESS: I would add that in my
16 experience of selling these lots, only one person
17 asked about the LUC conditions, and everyone else
18 asked about all of the CC&R requirements. And that
19 one person was an attorney general working for the
20 State at the time, so very, very thorough.

21 But just from my experience is that lot
22 owners basically pay much more attention to the CC&Rs
23 and those types of documents than a document that is
24 embedded in their title, especially the Land Use
25 Commission list of conditions. It's really just

1 about practicality.

2 COMMISSIONER OHIGASHI: Would it be correct
3 to say that the CC&Rs may be amended by the HOA?

4 MS. LIM: The CC&Rs may be amended. I
5 don't have immediately at my fingertips, but I
6 believe it probably requires that 75 vote of the
7 total membership.

8 THE WITNESS: It says 67 percent.

9 MS. LIM: Thank you.

10 COMMISSIONER OHIGASHI: There may be
11 conditions, for example, like you can't build a
12 second dwelling. And that I don't think we're being
13 asked to remove that condition, but if that condition
14 was removed in the CC&Rs, based on that condition,
15 can be amended to say, yeah, you can build a second
16 dwelling. Is that right?

17 MS. LIM: Yes, that's correct.

18 I mean, whatever the Land Use Commission
19 does or doesn't do today, if it's contrary to what's
20 in the CC&Rs, the homeowners would not have any
21 ability to take action. They would have to, of
22 course, adhere to whatever the project governing
23 documents are.

24 COMMISSIONER OHIGASHI: The sad thing about
25 me is this, I'm a lawyer who does a lot of family

1 law. I believe that -- sometimes I seen things go
2 really, really wrong when things are left up to the
3 parties to make a decision upon without that guidance
4 that is in there.

5 And I know that things are going well, that
6 the intent of the homeowners now are in compliance,
7 CC&Rs are in compliance. But just the fact that said
8 that, well, they still have the framework, at least
9 we know that if the people change, the project won't.

10 And that's where I'm coming from. So if
11 you can identify specific harm that may have, I would
12 be glad to take a look at some of the changes. And I
13 think there's an agreement with a lot of the
14 conditions, but I was just looking at those
15 conditions that appear to me to have some kind of
16 relationship back to, or reasoning to say that, don't
17 worry, this is protected by the CC&Rs.

18 So that's a comment or that's a question.
19 That's a question you may want to answer if you can
20 do it, or cannot do it.

21 CHAIRPERSON SCHEUER: Commissioner Cabral
22 has been waiting to go ask a question.

23 Ms. Lim, you had a brief response?

24 MS. LIM: Things got a little echoey sound
25 at the end of what Commissioner Ohigashi said. I

1 believe what I heard you say, but it got kind of
2 echoey, if there's information in the CC&Rs, that
3 document that the intentions of the Commission have
4 been articulated in the CC&Rs, that deal with -- like
5 need to call attention to that. I'm sorry, if I
6 misheard you.

7 COMMISSIONER OHIGASHI: It was more of a
8 comment. What I wanted to say was this, is that: I
9 see the conditions as general rules or a skeleton or
10 a framework as to what should be required. And what
11 you indicated to me is that the CC&Rs have
12 implemented a lot of these conditions that you want
13 to essentially say will satisfy, even though there
14 may be some ongoing requirements.

15 What I'm saying is if you can show me the
16 harm in getting rid of them, I would -- I would be
17 glad to consider that. But I hopefully, I like to
18 keep the framework so that we understand what is
19 going forward is part of this framework, and that if
20 the people change, develop the CC&Rs or implementing
21 the CC&Rs, the people change, the framework remains
22 the same. And that's what I was trying get at, if
23 you understand.

24 MS. LIM: I do. I do come back to again --
25 yes, CC&Rs can change. I mean the CC&Rs, the bylaws,

1 entire project was built to be consistent with what
2 the Land Use Commission imposed in 2005. Everybody
3 who has bought in there, bought in there with an
4 awareness -- as Leilani said, the first thing they're
5 looking at is not LUC recorded declaration, they're
6 looking at the CC&Rs, their deed, the things that
7 most of us, except for maybe very diligent attorneys
8 would be looking at.

9 But what was required has been
10 accomplished. As I said, at this point the desire
11 was to be able to give the homeowners association a
12 sense of assurance and clarity on what they need to
13 comply with, what additional Land Use Commission
14 matters might be of an on-going nature, since really
15 everything except for the couple we have identified
16 as having some ongoing requirements have been
17 satisfied.

18 If the project were to change entirely, a
19 whole different crop of homeowners would come in.
20 The Land Use Commission's ability to take action on
21 that is limited, if nonexistent altogether, right?
22 Because the Land Use Commission's abilities to, let's
23 say, reel in, property owners really comes down to
24 before there's been substantial commencement. This
25 project is totally built out.

1 So it's a formality, but it was an
2 important formality for the Petitioner, because they
3 did want to be able to give as much clarity as they
4 could to the homeowners association.

5 CHAIRPERSON SCHEUER: I just wanted to also
6 briefly do an audio check. You indicated you were
7 receiving some echo. I've had an excellent quality
8 from everybody else. Anybody else experiencing any
9 audio problems at this point? Thank you.

10 Commissioner Cabral. Thank you for your
11 patience.

12 VICE CHAIR CABRAL: Thank you very much.

13 Some of my questions have been somewhat
14 answered in the last conversation, but I think I want
15 to get really good clarification.

16 Attorney Lim, can you verify that my
17 assumptions are correct? When you come to CC&Rs for
18 subdivision, that the enforcement of those can be
19 made by the homeowner's association, their board of
20 directors, as well as by any of the individuals in
21 the homeowner's association, as well as through any
22 type of court action, even from an outside member
23 from that homeowner's association if they felt like
24 there's a violation of some sort, particularly if it
25 involved violation of one of the things connected to

1 a State or County law.

2 So it could be enforced through the courts,
3 as well as the County could move for enforcement, or
4 the State could move for enforcement if they were so
5 violated.

6 Am I correct in understanding it that way?

7 MS. LIM: That's really beyond the scope.
8 I'm sorry to disappoint. It's really beyond the
9 scope of what I would be here to talk about.

10 I mean, the CC&Rs set forth who can enforce
11 them and how they can be enforced. CC&Rs also do
12 have the ability to get amended by the requisite
13 votes, which Ms. Pulmano corrected me is 67 and not
14 75 as I've seen in certain CC&Rs.

15 To what extent people can seek enforcement
16 outside of the actual coverage of the CC&Rs, I'm not
17 going to be able to comment on that.

18 VICE CHAIR CABRAL: Well, I'm trying to
19 give information to my fellow Commissioners, because
20 that's what I do for a living is manage subdivision
21 associations and CC&Rs -- I think my understanding is
22 what we are trying to do, or you're trying to do is
23 take this subdivision and remove these conditions so
24 that the subdivision homeowner's association has a
25 clear guideline as to what they have to deal with as

1 long as the LUC conditions on it, they have that set
2 of conditions, plus they have their CC&R conditions
3 as well as potentially any other ordinances that come
4 through the County.

5 And having been involved with CC&R
6 enforcement, as well as through the courts as a
7 master receiver for a large subdivision, is very
8 convoluted to have various governing documents.

9 I very strongly support the intention here
10 of relieving the LUC of these conditions, so the LUC
11 can no longer have to be having this subdivision in
12 its portfolio, and letting the homeowner's
13 association take on a good document with good CC&Rs,
14 because I will tell you, they are very strongly
15 enforceable by the association, as well as by members
16 in the subdivision, as well as outside of it, and
17 through court actions.

18 So I agree with the concept of trying to
19 get these cleaned up.

20 And regards -- initially my question was
21 regarding No. 4 with the archeological sites. I have
22 other CC&Rs where it names that I have to deal with a
23 certain entity, and then that entity -- because I've
24 got a subdivision that I manage that is 70 years old,
25 it was here before statehood. So, wow, how wonderful

1 it names and entity that haven't existed for
2 60 years.

3 So instead of naming which organization is
4 going to oversee the selection of the overseers of
5 the heiau, to have some kind of other fluid
6 organizational body, or at least have the language
7 allow for it to be this organization or something
8 similar to, because you can get really stuck when
9 they're exactly something that no longer exists.

10 So I don't know that there's a County
11 agency that exists that could be named to be
12 something to help select the -- oversee the heiau or
13 not. But I would try and get away from nonofficial
14 organizations to be part of the decision-making. So
15 that's just my two cents. Thank you.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Cabral.

18 Commissioners, are there further questions
19 for Ms. Lim at this time?

20 Seeing none, I'm just going to state for
21 the record, when I went over our procedures for this
22 docket this morning, I did not indicate that the
23 County and OP would have a chance to present, but I
24 intended to. We will now move onto the County.

25 MR. HOPPER: Thank you, Mr. Chair. Can you

1 hear me okay?

2 CHAIRPERSON SCHEUER: We can, thank you,
3 Mr. Hopper.

4 MR. HOPPER: Hopefully we can get through
5 the entire discussion.

6 The County of Maui has filed a Position
7 Statement in this docket. I don't want to go over
8 every single condition in our position. And Planning
9 Director Michele McLean is here if you have followup
10 questions as well, may be able to help answer some of
11 those questions.

12 I think the conditions sort of fall into
13 several different categories for the County.

14 First, under a variety of conditions, the
15 County supports the removal of the conditions. Those
16 would be Conditions 1, 3, 5, 6 and 7, 9 through 13,
17 16 and 17, 21 and 22 and 25. And that's set forth in
18 our Position Statement. And those conditions -- the
19 County supports the release of those conditions.

20 With respect to other -- there is another
21 class of conditions that the County does not take a
22 position on removal, but does note for the record
23 that they appear that they may be intended to run
24 with the land in perpetuity.

25 These are Conditions No. 8, 14 for BMPs

1 during and post construction. Condition 15, with
2 respect to water conservation. Conditions 18 and 19,
3 which refer to agricultural nuisances in Hawaii
4 Right-to-Farm Act, which are actually conditions that
5 I think are required by statute to be on the Decision
6 and Order. And Condition 23, which is the annual
7 report filing condition.

8 These appear to be conditions that were
9 intended to be perpetual. I think Commissioner
10 Ohigashi noted that maybe a good thing that they're
11 contained in the CC&R documents, but those documents
12 can be amended. And if you would delete those
13 conditions from your Decision and Order, and then
14 they were deleted from the CC&Rs, I'm not certain if
15 there would be any ongoing obligation of the property
16 owners to abide by that.

17 So I think the question for the Commission
18 is: Are these conditions that you intend to run with
19 the land perpetually, or like some of the other
20 conditions that you do look at them as being where
21 they would be fulfilled and then could be released.

22 So the County doesn't take a position on
23 those conditions, but we look at the Commission to
24 determine if it believes these are conditions that
25 are comfortable leaving in the CC&Rs only and

1 deleting from the D&O, or rather leave in the D&O.

2 And, again, with respect to enforcement --
3 let me go through the last couple of conditions, and
4 then I'll try to touch briefly on enforcement
5 authority.

6 One condition, Condition 2, is intended to
7 stay. The County just wanted to note for the record
8 that in support of removing the condition, that's the
9 condition that deals with disallowing ohana units in
10 the project area.

11 The County, I think, Planning Department
12 takes the position that allowing for ohana units can
13 allow for an increase of variety of housing types.
14 So if there were to be a motion in the future to
15 release that, County believes that's something that
16 the Commission may want to consider.

17 The other issue would be if that increases
18 traffic, an additional mitigation would be needed.
19 We understand why that's not being requested to be
20 released, but the County just wants to note that if
21 you do allow ohana units, that's one way to allow for
22 increased housing opportunities.

23 And then the County does not support the
24 deletion of Condition No. 20. Condition No. 20 deals
25 with access to the property from native Hawaiians who

1 are exercising gathering rights. The condition
2 states:

3 The's access rights of native Hawaiians who
4 customarily and traditionally have used the property
5 for access on-site, or to other areas for
6 subsistence, cultural and religious practices shall
7 be preserved."

8 We understand there currently has not been
9 a request for such access, and provisions related to
10 this are in the CC&Rs, but the County does believe
11 this is a condition the Commission had intended to
12 remain in perpetuity.

13 So with respect to modifications of
14 Condition 4, the County does recognize that if there
15 is an entity that's listed specifically, and they no
16 longer exist and can no longer provide a member, it's
17 appropriate to amend that condition.

18 We would leave it up to the Commission as
19 far as the adequacy of all the protections remaining
20 in the condition, but the County does recognize that
21 there would be a necessity for amendment of that
22 condition if it's impossible to fulfill for the
23 reasons that have been provided by the Petitioner.

24 And then as far as the deletion of
25 modification to, I think it was Condition 26, it does

1 make sense that if the conditions are modified, then
2 a subsequent filing of the modified conditions would
3 need to be recorded on the property. So that makes
4 sense to the County.

5 With respect to enforcement, I think it is
6 important to note that from time to time the
7 Commission does place conditions that are intended to
8 run with the land in perpetuity. I think those
9 conditions are still enforceable, even if maybe they
10 would not resolve in a reversion of the property
11 that's agriculture, there are the options for fines
12 or judicial enforcement.

13 The County could bring a petition with a
14 declaratory ruling before you in order to clarify if
15 conditions are being violated or not. And so I think
16 that that's something that in general the Commission,
17 I think, through County enforcement, can solve access
18 to.

19 Those conditions can still be enforced and
20 would not want to generally say that if there has
21 been commencement of the building of a project, that
22 there's no longer any ability to enforce conditions
23 because that would lead to some problematic results
24 with respect to Commission documents.

25 Again, respect to this project, County has

1 no evidence that there's any violations of these
2 conditions, and doesn't want to suggest that there
3 are problems with anything on this property. And, in
4 fact, in doing the review, the conditions are all in
5 compliance.

6 Just the issue would be, as we move
7 forward, whether it's appropriate to have the
8 conditions totally released from the record, and only
9 contained in the CC&Rs; or have some of them remain
10 on the Decision and Order conditions that are
11 recorded on the property separately.

12 That's all that we have for now. But,
13 again, I or Director Michele McLean can be available
14 for questions.

15 CHAIRPERSON SCHEUER: Thank you, Mr.
16 Hopper, for that excellent review of your points.

17 Commissioners, questions for Mr. Hopper?
18 Commissioner Okuda.

19 COMMISSIONER OKUDA: Thank you very much,
20 Mr. Chair.

21 Mr. Hopper, if I can ask you a
22 pass-the-buck question.

23 If the association's business reason is --
24 and I can appreciate it that they don't want to year
25 after year after year after year spend money to

1 present annual reports.

2 Would it be acceptable to the County if
3 maybe that requirement is deleted, the requirement to
4 present annual reports? We kind of pass the buck to
5 you at the County to keep an eye on everything else.

6 Would that be acceptable? In other words,
7 we don't delete any of the conditions except to the
8 extent it is a condition, the requirement to file
9 annual reports, and we leave the overview and
10 watching out for things, especially cultural
11 resources and cultural access, we leave it to you at
12 the County, or maybe individuals who might bring
13 separate enforcement action?

14 MR. HOPPER: Well, if you do delete a fair
15 amount -- I'm not sure what's going to happen, but if
16 you do delete a fair amount of conditions, then it
17 would appear the reports would be necessarily very
18 burdensome to provide.

19 The only concern I think would be that the
20 County oftentimes worries about compliance, annual
21 reports, something that provides updates. Ultimately
22 it's up to the Commission, but I think if a good
23 number of these conditions are deleted, then it would
24 appear to be less burdensome for the association to
25 provide those reports.

1 I do think that's up to the Commission.
2 But, again, the County doesn't necessarily learn
3 about enforcement issues without an annual report.
4 It can get complaints obviously most likely from
5 homeowners, but maybe some other sources, but that's
6 one of the sources the County does rely on. But if
7 the Commission decides it's burdensome, that's within
8 your purview. But if there's a fair number of
9 conditions deleted, it would appear to be less
10 burdensome then right now.

11 COMMISSIONER OKUDA: Thank you very much.
12 Thank you, Mr. Chair.

13 CHAIRPERSON SCHEUER: Commissioners, are
14 there further questions for the County?

15 Commissioner Aczon followed by Commissioner
16 Ohigashi.

17 VICE CHAIR ACZON: Thank you, Mr. Chair.
18 Good afternoon, Mr. Hopper. Just a quick
19 question.

20 As you all know, Ms. Lim alluded to Land
21 Use Commission doesn't have that much enforcement
22 power in this one because of the substantial
23 completion. So the enforcement responsibility kind
24 of run down to the County.

25 Is the County prepared to enforce all those

1 conditions.

2 MR. HOPPER: I can have Director Michele
3 McLean answer it. Her department would be
4 responsible for enforcement.

5 CHAIRPERSON SCHEUER: Aloha.

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

8 MS. McLEAN: I do. Thank you for the
9 question.

10 MICHELE McLEAN

11 Was called as a witness by and on behalf of the
12 County of Maui, was sworn to tell the truth, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 MS. McLEAN: Yes, the County has an
16 enforcement responsibility for Land Use Commission
17 conditions. We haven't always done a great job of
18 that in the past, but we do find that to be our
19 responsibility.

20 Yes, we are prepared to do so.

21 VICE CHAIR ACZON: Thank you, Ms. McLean,
22 thank you, Mr. Chair.

23 CHAIRPERSON SCHEUER: Commissioner
24 Ohigashi.

25 COMMISSIONER OHIGASHI: Mr. Hopper

1 indicated about Condition 26. What was Condition No.
2 26? Condition 26 was about the report of conditions.
3 What specifically -- can you clarify to me what your
4 position is on Condition 26?

5 MR. HOPPER: Let me double check the
6 record, but I believe that it was we support the
7 proposed modification.

8 COMMISSIONER OHIGASHI: Condition No. 26,
9 Petitioner shall record the conditions with Bureau of
10 Conveyances of the State of Hawaii, 15-15-92 by
11 Hawaii Administrative Rule. I'm not sure what the
12 modification of that is.

13 MR. HOPPER: Essentially, I believe it
14 would be to, once -- it's pretty ministerial.

15 If you agree to the modifications, and the
16 Petitioner can clarify this, what would happen would
17 be, there would be a subsequent filing of amended and
18 restated declaration of conditions that would
19 supersede the previous recorded conditions, and say
20 these are the conditions that would run with the
21 land.

22 That would be out of necessity, I believe,
23 that should you agree to modify the conditions, then
24 the remaining conditions would be recorded in a
25 document that would be amended and restated

1 declaration of conditions that would supersede the
2 previous ones, and that would be the document that
3 gives record notice to future homeowners.

4 COMMISSIONER OHIGASHI: Well, removing
5 Condition 26 would be no problem. As I read, the
6 condition was fully satisfied.

7 MR. HOPPER: Let me check the motion again
8 -- yeah, Condition 26 does not appear to be one of
9 the conditions that's requested to be released.

10 It says, request limited modifications to
11 Conditions Nos. 4 and 26. Again, this is getting
12 into the request and I don't want to misstate
13 anything.

14 COMMISSIONER OHIGASHI: I just was
15 wondering -- okay.

16 CHAIRPERSON SCHEUER: Are you good,
17 Commissioner Ohigashi?

18 COMMISSIONER OHIGASHI: Yeah, I think I
19 understand.

20 CHAIRPERSON SCHEUER: Commissioners, are
21 there other questions for the County?

22 If not, we will proceed with the Office of
23 Planning, Ms. Apuna.

24 MS. APUNA: Thank you, Chair.

25 So OP has reviewed Petitioner's Motion to

1 Release and Modify conditions and does not object to
2 the release of Conditions Nos. 1, 3, 5, 7 through 23
3 and 25 as being satisfied, and to the proposed
4 modifications of Nos. 4 and 26.

5 For Condition No. 6, which pertains to
6 traffic impact mitigation, OP notes that while most
7 of the condition has been satisfied, in particular 6a
8 through 6d, the dedication process for the
9 right-of-way and setback along portions of lots
10 fronting Old Haleakala Highway, is still pending
11 under 6e.

12 DOT believes that the Petitioner should not
13 be released from this obligation until the land
14 dedication process is complete, which we expect to
15 happen in the next few months.

16 OP has therefore recommended, as
17 Commissioner Okuda brought up, that the LUC defer the
18 release of Condition 6e until the dedication of the
19 right-of-way and setback have been completed to DOT's
20 satisfaction; and that the Commission authorize the
21 Chair to order the release of Condition 6e once
22 evidence of the completion of the land dedication has
23 been submitted to the LUC.

24 In OP and DOT's view, the alternative is to
25 simply deny the release of Condition 6e. Thank you.

1 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
2 Commissioners, other questions for the
3 Office of Planning? Any questions? Seeing no
4 questions.

5 Commissioners, do you have any final
6 comments or questions for any of the parties in this
7 matter, Commissioners?

8 Commissioner Ohigashi.

9 COMMISSIONER OHIGASHI: Jennifer -- Ms.
10 Lim, the question I have is, do you have, somewhere
11 in there, language on what you want to use for
12 Condition 26?

13 MS. LIM: Thank you, Commissioner Ohigashi.
14 I was going to ask the Chair's permission to offer
15 that, because we didn't articulate the precise
16 language in our motion.

17 CHAIRPERSON SCHEUER: Please proceed.

18 MS. LIM: We didn't write the precise
19 language in our motion, whereas for Condition 4 we
20 very clearly said this is the language that we
21 request the Commission to strike, this is the
22 language we ask the Commission to add.

23 For item 26 we did not. That's because I
24 didn't want to anticipate erroneously what the
25 Commission's ultimate decision would be. But I will

1 read language, and Mr. Hopper actually reflected it
2 pretty clearly in concept, that we would expect the
3 Commission to impose upon us a requirement to record
4 an amended and restated declaratory of conditions.

5 So with that, I will read you the precise
6 language that I have in mind as follows:

7 Petitioner shall record in the Bureau of
8 Conveyances of the State of Hawaii an amended and
9 restated Certificate of Condition, recognizing the
10 Commission's release of conditions and modifications
11 of conditions as ordered pursuant to this Decision
12 and Order, whatever Decision and Order come out of
13 these proceedings, and restating the conditions
14 reaffirmed by the Commission, if any, pursuant to the
15 Decision and Order, the amended and restated
16 certificate of condition shall fully supersede and
17 release the certificate of conditions that was record
18 as Document No. 2005-105309.

19 That put it very neatly, that's how we
20 anticipated that condition would get modified.

21 So whatever is ultimately going to repeat,
22 the Commission wants to retain, or retain as modified
23 would be recorded through an amended and restated
24 declaration of conditions.

25 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.

1 COMMISSIONER OHIGASHI: Would you be able
2 to email the language to our clerk in regard to that,
3 because I was slow in writing it out?

4 MS. LIM: Chair, are you asking me to do
5 that now?

6 CHAIRPERSON SCHEUER: Yes.

7 EXECUTIVE OFFICER: Mr. Chair, I believe we
8 have that language already.

9 CHAIRPERSON SCHEUER: Is it -- Mr.
10 Orodenker, would you clarify where that -- do the
11 parties all have that language?

12 MR. SARUWATARI: I had asked Jennifer Lim
13 about the question that Commissioner Ohigashi asked
14 about giving us language for Condition No. 26, and
15 she had emailed me that language previously.

16 COMMISSIONER OHIGASHI: Thank you.

17 CHAIRPERSON SCHEUER: Ms. Lim, do you have
18 that up in front of you on your screen?

19 MS. LIM: I need a moment do that. I'm
20 going to --

21 CHAIRPERSON SCHEUER: Or Mr. Simon?

22 MS. LIM: I'm going to forward you if --

23 CHAIRPERSON SCHEUER: I just want to be
24 very clear that all the parties to this are --

25 MS. LIM: Of course, of course.

1 CHAIRPERSON SCHEUER: -- seeing the same
2 information.

3 MS. LIM: As I said, this is the concept
4 that we wrote in the motion, but I guess --

5 CHAIRPERSON SCHEUER: Do you have that
6 language, Ms. Lim?

7 MS. LIM: It seemed presumptuous, but I
8 just forwarded the email and Derek will pull that up
9 on his computer.

10 CHAIRPERSON SCHEUER: You should have
11 screen sharing ability, Mr. Simon.

12 COURT REPORTER: Excuse me, Chair. This is
13 the court reporter.

14 CHAIRPERSON SCHEUER: Ms. McManus.

15 COURT REPORTER: Thank you.

16 I do not know who was speaking from LUC,
17 was that Dan --

18 CHAIRPERSON: Bert. First was Dan,
19 followed by Bert.

20 COURT REPORTER: Thank you.

21 CHAIRPERSON SCHEUER: Mr. Simon, are you
22 able to put that up? We're seeing your email.

23 MS. LIM: Derek is telling me that somebody
24 else is sharing their screen.

25 CHAIRPERSON SCHEUER: You are, Ms. Lim.

1 MS. LIM: Well, then, can you see the email
2 that I have right here?

3 CHAIRPERSON SCHEUER: I can see the email.

4 MS. LIM: This is the email. And that is
5 the language right there. Petitioner shall record in
6 the Bureau of Conveyances.

7 CHAIRPERSON SCHEUER: Thank you. You can
8 stop screen sharing.

9 Any other questions, Commissioners, for any
10 of the parties?

11 If not, Commissioners, the Chair will
12 entertain a motion that the LUC grant or deny
13 Hanohano LLC's Motion to Release and Modify
14 conditions filed August 10th, 2020, associated with
15 the Petition to Amend the Agricultural Land Use
16 District Boundary to the Urban Land Use District for
17 approximately 28.695 acres in Keahua, Kula, Maui,
18 Hawaii, Tax Map Keys 2-3-11:1 and 2-3-11:2.

19 Is there a motion? Commissioner Ohigashi.

20 COMMISSIONER OHIGASHI: Before I make a
21 motion, I would like to request a short recess of
22 three minutes to attend to personal matters.

23 CHAIRPERSON SCHEUER: It's 1:17. We will
24 reconvene at 1:20.

25 (Recess taken.)

1 CHAIRPERSON SCHEUER: Back on the record.
2 Commissioners, is there a motion on the
3 matter before us?

4 COMMISSIONER OHIGASHI: Mr. Chair.

5 CHAIRPERSON SCHEUER: Commissioner
6 Ohigashi.

7 COMMISSIONER OHIGASHI: I move that we
8 grant in part and deny in part Petitioner's request
9 for -- I think there is good cause and agreement to
10 release Conditions 1, 3 and 4 in all the parts, and
11 modify -- well, 4f, 4h, 6a through 6d, 7 to 13, 16,
12 17, 21, 22, and 25.

13 With regard to the Petitioner's request to
14 modify Conditions 4a, 4b, and I believe c, d, e, g,
15 and i. I believe there is -- I would accept -- and
16 move that we accept their conditions' modifications.

17 With regard to Condition 5, I propose that
18 we deny their request to release them from this
19 condition, and that would go for Conditions Nos. 8,
20 14, 15, 18, 19, 20 and 23.

21 And I believe that these are in -- well, as
22 indicated and agreed to, as indicated by the County
23 of Maui, I think those are continuing obligations
24 that should remain.

25 With regard to Condition No. 6e, I believe

1 that we should accept the position of the Department
2 of Planning in regard to requiring that our Executive
3 Director be empowered to ministerially release
4 Petitioners from this particular condition.

5 With regard to Condition 25 -- I'm sorry --
6 with regard specifically to Condition 23, I'm of the
7 opinion that we should -- I believe that the motion
8 should read that we should not require any more
9 annual reports by the Petitioner, and that the County
10 would be responsible for enforcement of the existing
11 conditions.

12 As to Condition 26, I think we should adopt
13 the Petitioner's language, and the Petitioner shall
14 record it in the Bureau of Conveyance of the State of
15 Hawaii, an amended and restated certificate of
16 conditions recognizing the Commission's release of
17 conditions and modifications of conditions as ordered
18 pursuant to our Decision and Order, and restating the
19 conditions affirmed by the Commission, if any, to
20 enter this Decision and Order.

21 An amended and restated certificate of
22 conditions shall fully supersede and release a
23 certificate of conditions that was recorded as
24 Document No. 2005-105309.

25 CHAIRPERSON SCHEUER: Commissioner

1 Ohigashi, may I ask you a clarifying question?

2 Because I think the oral way that you
3 stated your motion referred to both the retention and
4 the deletion of Condition 8.

5 At the beginning of your statement you said
6 that you wanted to release Conditions 7 through 13,
7 but then you later said that you wanted to retain
8 Condition 8 in its original form, if I heard you
9 right.

10 COMMISSIONER OHIGASHI: Yes. I apologize,
11 I believe Condition 8 should be retained.

12 CHAIRPERSON SCHEUER: Commissioners, we
13 have a complex motion before us. Is there a second?

14 COMMISSIONER WONG: Chair, this is
15 Commissioner Wong.

16 CHAIRPERSON SCHEUER: Commissioner Wong.

17 COMMISSIONER WONG: I want to second it for
18 discussion purposes, but I also wanted to get more
19 information about Condition 4. So can I do that?

20 CHAIRPERSON SCHEUER: Certainly.

21 COMMISSIONER WONG: I do second it, but I
22 would like more information on Condition 4 and all
23 the letters in Condition 4, just to make sure I got
24 everything correct.

25 CHAIRPERSON SCHEUER: Commissioner

1 Ohigashi, do you want to speak to that?

2 COMMISSIONER OHIGASHI: My understanding is
3 that modifications essentially deal with the change
4 in -- position of this CSC and ultimately No. 4c.

5 COURT REPORTER: I'm sorry, you got stuck
6 there on my screen. Can you repeat that, please?

7 COMMISSIONER OHIGASHI: My understanding,
8 to answer Mr. Wong's question, was that 4c, which is
9 essentially the position that you're requesting,
10 requires the change in the formation of three-person,
11 and three-person composition of the CSC. And based
12 upon the arguments or the statements made by the
13 curator, as well as statements made by Dawn,
14 Commissioner Chang, I came to the realization that,
15 yeah, the composition of that should be --
16 composition of the CSC should be modified.

17 As to the remaining conditions, it would
18 fall in line with the amendments that they have made,
19 that Petitioner has requested.

20 And that's essentially my understanding.

21 CHAIRPERSON SCHEUER: Commissioner Wong
22 followed by Commissioner Okuda.

23 COMMISSIONER WONG: Chair, sorry, I'm very
24 slower after lunch.

25 If you don't mind, Commissioner Ohigashi,

1 can go letter by letter in Condition No. 4, like
2 Condition 4a, what is your -- is it to modify, retain
3 as original, or release? Can you explain each letter
4 individually, please?

5 COMMISSIONER OHIGASHI: Let me pull up --

6 COMMISSIONER WONG: Thank you, Chair, for
7 your indulgence on this.

8 CHAIRPERSON SCHEUER: No, it's a
9 complicated set of conditions. This could be one
10 instance in which our physically not being together
11 is making this more burdensome.

12 COMMISSIONER OHIGASHI: I think we're not
13 complaining about Condition 4a, everybody agrees that
14 Condition 4a was satisfied.

15 COURT REPORTER: I'm not hearing you
16 clearly.

17 COMMISSIONER OHIGASHI: Trying to save
18 paper, I have printed out.

19 Condition 4a deals with the establishment
20 of permanent -- (indecipherable). I think that
21 there's nothing in anybody's filings that indicate
22 that we all agree that this --

23 Condition 4b has been satisfied according,
24 they incorporated the provisions of the CC&Rs into
25 the necessary conditions were important to CC&Rs.

1 Nobody disagrees with that.

2 4c was the attempt to modify the condition
3 so that they can change the composition of the CSC,
4 and based upon what the curator indicated, I think
5 that change should be made and should be allowed.

6 MS. LIM: Chair.

7 CHAIRPERSON SCHEUER: Ms. Lim, we're in
8 deliberation. What would you like us --

9 MS. LIM: Just to facilitate. I know
10 you're in deliberations. We do have a table in our
11 motion that Derek Simon can pull up to share screen
12 for everybody to look at the same time. It shows the
13 original existing language, how we would propose to
14 modify that language. If that's at all of
15 assistance, it starts on page 19 of our motion and
16 runs several pages.

17 Not that I am suggesting that the
18 Commission is going to do everything exactly as we
19 have it here, but at least you would have the exact
20 language in front of you. It runs from page 19 to 25
21 of our motion.

22 CHAIRPERSON SCHEUER: Thank you for that
23 offer, Ms. Lim. We will hold off for now.
24 Commissioner Okuda.

25 COMMISSIONER OKUDA: That was actually my

1 question to Commissioner Ohigashi, if I may ask
2 Commissioner Ohigashi.

3 Commissioner, is your intent of the motion
4 to adopt the Petitioner's language which appears on
5 pages 19 through page 25 of the Petitioner's filing,
6 the language that's in the middle of part or middle
7 column of the table, which is under the column that
8 says "Petitioner's proposal".

9 Is that your intention by your motion, or
10 do you intend something else?

11 COMMISSIONER OHIGASHI: That is my
12 intention.

13 COMMISSIONER OKUDA: Thank you very much,
14 Commissioner Ohigashi.

15 Thank you, Mr. Chair. Chair, that was the
16 only question I had.

17 COMMISSIONER OHIGASHI: Getting back at
18 that, what that -- page 19, purpose of the motion is
19 to adopt Petitioner's changes.

20 CHAIRPERSON SCHEUER: Mr. Ohigashi, sorry,
21 I am also having a hard time hearing you speak when
22 you're facing the other screen. Can you restate your
23 last statement?

24 COMMISSIONER OHIGASHI: That is -- I can
25 take each one of these, but my position is what I

1 answered Mr. Okuda.

2 CHAIRPERSON SCHEUER: To adopt the
3 Petitioner's recommendation?

4 COMMISSIONER OHIGASHI: That's correct.

5 CHAIRPERSON SCHEUER: In its entirety?

6 COMMISSIONER OHIGASHI: Yes -- no,
7 Condition No. 4.

8 CHAIRPERSON SCHEUER: For Condition No. 4.
9 We are in discussion, Commissioners.

10 COMMISSIONER WONG: Chair, this is
11 Commissioner Wong.

12 CHAIRPERSON SCHEUER: Commissioner Wong.

13 COMMISSIONER WONG: I wanted to reaffirm
14 Condition 4c for Commissioner Ohigashi.

15 Are you following Commissioner Chang's
16 recommendation or the Petitioner's recommendation,
17 the movant?

18 COMMISSIONER OHIGASHI: My understanding is
19 that I'm not -- Commissioner Chang's recommendation,
20 it was not a recommendation that she accepted, she
21 didn't accept that the position of the curator as
22 following 4c.

23 CHAIRPERSON SCHEUER: For the clarity of
24 our deliberations, I think I have captured -- I think
25 I've captured what the motion was. I'm going to

1 share my screen, Commissioner Ohigashi, and ask that
2 you confirm or modify what I have caught so that
3 everybody can see it.

4 Are you seeing a sheet that lists the
5 conditions to be released, modified and retained?
6 Are you able to see that?

7 COMMISSIONER OHIGASHI: Yes.

8 However, the Conditions 4c, 4d, 4e, 4i
9 should be modified in accordance with the Petitioner.
10 4a and b should be released. They have already been
11 -- I'm sorry, 4a and b should be modified.

12 CHAIRPERSON SCHEUER: I just followed your
13 instructions.

14 COMMISSIONER WONG: Chair, this is
15 Commissioner Wong. What is condition 16?

16 CHAIRPERSON SCHEUER: It is not listed. It
17 should be listed as a condition to be released.

18 Commissioner Ohigashi, just confirming this
19 is your motion?

20 COMMISSIONER OHIGASHI: Yes.

21 CHAIRPERSON SCHEUER: Commissioner Okuda.

22 COMMISSIONER OKUDA: Thank you, Chair.

23 Your question to Commissioner Ohigashi
24 answered my question. Thank you.

25 CHAIRPERSON SCHEUER: Commissioners, I can

1 leave this up if it's useful or stop screen sharing.

2 COMMISSIONER WONG: Chair, can you leave it
3 up, please.

4 So Condition 2 and 24 should be retained as
5 is? Petitioner is not asking for any changes.

6 COMMISSIONER OHIGASHI: Yes.

7 CHAIRPERSON SCHEUER: So you're asking for
8 clarification that 2 and 24 remain unchanged?

9 COMMISSIONER WONG: That's correct.

10 CHAIRPERSON SCHEUER: What I would do is
11 add them to this list. On the third line, conditions
12 to be retained.

13 COMMISSIONER WONG: Thank you, Mr. Chair.

14 CHAIRPERSON SCHEUER: My punctuation is
15 slightly off. I was doing this on the side to try
16 and track for my own purposes.

17 Commissioners, we are in discussion. We
18 have a motion before us. Anybody else want to speak?

19 COMMISSIONER OHIGASHI: Nobody seconded it.

20 CHAIRPERSON SCHEUER: Commissioner Wong
21 seconded it for the purposes of discussion.

22 Commissioners, we are in discussion on the
23 motion. If there's no comments, I will indicate a
24 willingness to vote in favor of the motion. I'll
25 note for the record that it's interesting that we're

1 taking up a form of the order for Hawaiian Memorial
2 Park tomorrow, which in part deals with the
3 protection of the heiau on the property. And I feel
4 that the manner in which -- that we're dealing with
5 that motion, that DBA, and a long-term protection
6 stewardship of the property, particularly as it
7 pertains to having funding for stewardship as well as
8 for established access as well as for Conservation
9 Easement to be held by accredited land trust, in my
10 mind, is a more superior way of dealing with these
11 kinds of conditions than the LUC chose to in the
12 past.

13 COMMISSIONER WONG: This is Commissioner
14 Wong. Clarification, please.

15 For Condition 6e is it Department of
16 Planning or DOT? I think, because I heard
17 Commissioner Ohigashi said Planning, and I thought it
18 was DOT.

19 CHAIRPERSON SCHEUER: I think it was as
20 proposed by Office of Planning releasing a condition
21 after acceptance by DOT.

22 COMMISSIONER WONG: Thank you, Chair.

23 CHAIRPERSON SCHEUER: I think the
24 difference is, what I believe I heard the Office of
25 Planning state, I think she might have suggested that

1 the release be done by the Chair, and Mr. Ohigashi's
2 motion was it be done ministerially by Executive
3 Officer.

4 But perhaps I misheard Ms. Apuna. Ms.
5 Apuna?

6 MS. APUNA: That's correct. We had that
7 the Chair would release the condition upon the
8 evidence showing such.

9 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
10 Commissioner Giovanni.

11 COMMISSIONER GIOVANNI: Thank you, Chair.

12 For clarification, could I ask Commissioner
13 Ohigashi to identify which of these conditions apply
14 to the ohana housing that would be -- that could be
15 built or not built? And what would be -- clarify
16 what would be the consequence if we vote in favor of
17 this motion regarding ohana housing.

18 COMMISSIONER OHIGASHI: My understanding is
19 that Condition No. 2 deals with ohana housing. And
20 we're retaining that condition to prevent it from
21 developing ohana housing.

22 If it's necessary that they want to change
23 their CC&Rs, or they want to pursue ohana
24 development, then they would have to come back to the
25 Commission, modify Condition No. Number 2.

1 COMMISSIONER GIOVANNI: Thank you,
2 Commissioner Ohigashi.

3 I will be voting in favor of the motion.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Giovanni.

6 Commissioners?

7 COMMISSIONER OHIGASHI: Mr. Chair. I don't
8 want to usurp your authority, so I would be glad to
9 accept a friendly amendment to the Executive Officer
10 to the Chair ministerially.

11 CHAIRPERSON SCHEUER: I would just ask -- I
12 mean, I can always use one fewer things to sign in my
13 life. But I would ask Deputy Attorney General
14 whether -- I'm not familiar with the previously
15 delegating authority to the Executive Officer or in
16 such a fashion. Do you have any thoughts to share
17 with us? It's typically done to delegate it to the
18 Chair.

19 Mr. Lau? You're muted.

20 COMMISSIONER WONG: Chair, this is
21 Commissioner Wong. Because Commissioner Ohigashi has
22 a motion on the floor for friendly amendment, do we
23 have to have a second, second his amendment?

24 CHAIRPERSON SCHEUER: I was ready to have
25 it seconded just to see, but I want to see whether it

1 was necessary and allowable.

2 COMMISSIONER WONG: If not, I'll agree to
3 the friendly amendment so we don't need to ask the
4 AG.

5 CHAIRPERSON SCHEUER: We can't seem to hear
6 the AG at this moment. Can we hear you now, Colin?
7 No.

8 Commissioner Chang.

9 COMMISSIONER CHANG: Thank you, Mr. Chair.
10 I know we're all kind of exhausted. I
11 guess I just wanted a clarification on Condition 23,
12 the annual reports.

13 Now, what I heard the County say is that
14 they actually found those annual reports to be
15 helpful, because that's how they knew that, you know,
16 the status of the Petitioner's compliance.

17 And the LUC is still retaining some of
18 these conditions, so I am wondering how do we monitor
19 their compliance of the conditions without the annual
20 report?

21 And I guess I'm trying to understand what
22 does this mean, Condition 23 be deleted with
23 enforcement by the County. If someone can explain
24 that to me.

25 CHAIRPERSON SCHEUER: I'll first ask Mr.

1 Ohigashi to respond, then allow others --

2 COMMISSIONER CHANG: Thank you.

3 COMMISSIONER OHIGASHI: I believe that we
4 don't have real enforcement powers, that's the first
5 thing.

6 So the County would have enforcement.
7 Condition 23 they had no position, but they said that
8 if there was less conditions, Condition 23 could be.

9 It doesn't seem to be onerous. What I
10 believe is that the County, through its own
11 enforcement agencies, through its own inspectors,
12 through its own lawyers and corporation counsel, they
13 should be determining or trying to enforce whatever
14 conditions that are in there, and it's not necessary
15 that we send out, require additional reports in this
16 matter.

17 If, however, the Commission wants to amend
18 it, and continue to need additional reports, I'm not
19 going object to that.

20 CHAIRPERSON SCHEUER: Thank you,
21 Commissioner Ohigashi.

22 Commissioner Okuda.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair.

24 I plan to vote in favor of this motion,
25 including the deletion of the annual reports, and if

1 I can just say very quickly why.

2 I think the cost and the burden on the
3 association for preparing the annual reports
4 outweighs any benefit. I do recognize the response
5 by the County to my question about the annual report,
6 but I think in the end -- and I'm glad these
7 conditions are kept regarding the heiau and cultural
8 sites, because I do agree with the Chair that we have
9 a duty to present and future generations to protect
10 the cultural heritage of Hawaii.

11 But in the end, I believe the most
12 effective way of protection, what makes Hawaii
13 special is basically vigilance of the community, and
14 the vigilance comes from the fact that we shouldn't
15 just assume that because somebody is submitting a
16 report, somebody else is going to take care of it.

17 I believe that sometimes the lack of a
18 report will keep us from being lulled into a belief
19 that somebody else will do the job which really falls
20 to all the citizens of the community.

21 So for those reasons I plan to vote in
22 favor of the motion as stated.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Okuda.

25 Commissioner Chang, do you have further

1 comment?

2 COMMISSIONER CHANG: Thank you, Mr. Chair.

3 I guess I'm just trying to look at
4 Condition 4. There was a provision about submission
5 of reports, and I'm trying to find which condition
6 was that, because if that's being retained, deleted
7 or modified.

8 CHAIRPERSON SCHEUER: Commissioners, while
9 Commissioner Chang is pursuing that or -- I would
10 make a very brief space available to the parties if
11 they had a specific response to Commissioner Chang's
12 inquiry.

13 MS. LIM: If I may, Chair, just for the
14 purpose of clarification.

15 CHAIRPERSON SCHEUER: Proceed, Ms. Lim.

16 MS. LIM: Thank you.

17 4e, Commissioner Chang, was the -- is the
18 condition that requires the curator to provide
19 reports. I've lost my place -- there is a condition
20 that requires the curator to provide reports to the
21 Commission, and what we had asked within 4e for the
22 reasons that I spoke about this morning about that
23 being burdensome for a curator, is the curator will
24 continue to keep the Cultural Selection Committee
25 updated, but we would ask that any reports from

1 either the Curator Selection Committee or from the
2 curator him or herself will be provided to the
3 Commission upon request, just so that doesn't become
4 an administrative and work burden for somebody who is
5 there to be a curator of the site --

6 CHAIRPERSON SCHEUER: Ms. Lim, are you
7 proposing a further modification or clarifying
8 something you said already?

9 MS. LIM: I'm pointing to what we have
10 already written in our motion, clarifying what we
11 already have said.

12 COMMISSIONER CHANG: Chair, this is
13 Commissioner Chang.

14 With that clarification, because that is
15 consistent with the representation that is being
16 modified, I accept that explanation. No other
17 comments or questions. I will be supporting the
18 motion as well.

19 CHAIRPERSON SCHEUER: Going back to the
20 friendly amendment offered by Commissioner Ohigashi
21 and seconded by Commissioner Wong, since we were
22 unable to receive any -- I could propose language
23 that would replace the fourth line.

24 Does that capture, Commissioner Ohigashi,
25 for 6e?

1 COMMISSIONER OHIGASHI: Yes.

2 CHAIRPERSON SCHEUER: Commissioner Wong?

3 COMMISSIONER WONG: Yes, Chair.

4 CHAIRPERSON SCHEUER: We have an amended
5 motion before us, Commissioners. Is there further
6 discussion?

7 COMMISSIONER WONG: Chair.

8 CHAIRPERSON SCHEUER: Commissioner Wong.

9 COMMISSIONER WONG: So, you know, I'm still
10 going back to Commissioner Chang's point regarding
11 the reports. Because there is LUC conditions on
12 there, I mean, how will the LUC know if the
13 conditions are done or not? For example, let's say
14 6e, how will we know that DOT has given the okay?

15 CHAIRPERSON SCHEUER: Commissioner Wong,
16 Commissioner Ohigashi accepted the willingness to
17 modify that condition. I would concur personally.
18 I'm not going to like stop action over this, but I
19 would prefer to see the reports retained.

20 COMMISSIONER WONG: That's what I'm talking
21 about, Chair, is, you know, just because we do have
22 LUC conditions, and if we don't, how will the LUC
23 know these conditions have been satisfied or not?

24 CHAIRPERSON SCHEUER: Are you asking
25 Commissioner Ohigashi to amend his motion?

1 COMMISSIONER WONG: Yeah, just because
2 Commissioner Chang brought it up.

3 CHAIRPERSON SCHEUER: The nature of it
4 would be to add 23 to the list of conditions to be
5 retained.

6 Obviously, the conditions reported on would
7 be smaller because many had been released or
8 modified.

9 COMMISSIONER WONG: Yes. Thank you, Chair,
10 if Commissioner Ohigashi wouldn't mind that friendly
11 amendment.

12 COMMISSIONER OHIGASHI: I will accept as an
13 amendment, however, the duty of the Petition is to
14 submit information with regard to 6e, so I don't
15 think that is required.

16 The second issue is that as long as there
17 are conditions, I believe, that the Land Use
18 Commission can, through their Executive Director's
19 office, they can request for status at any time
20 regards to the conditions that are still in effect.

21 However, again, I will -- I will agree to a
22 friendly amendment.

23 CHAIRPERSON SCHEUER: So, Commissioner
24 Wong, may I count your request for the friendly
25 amendment as an agreement with the amendment as the

1 seconded of the motion?

2 COMMISSIONER WONG: Yes, Chair.

3 CHAIRPERSON SCHEUER: So we have an amended
4 motion before us. I have now Commissioner Cabral
5 followed by Commissioner Aczon.

6 VICE CHAIR CABRAL: Thank you, everyone.

7 I like the idea of not having to force them
8 to give annual reports. The fact that, as just
9 stated, the Land Use Commission staff can contact the
10 developer and the parties at any time to ask for a
11 status update. And I'm very much in favor of, you
12 know -- we all need to realize part of why housing is
13 so expensive is that a poor developer never can stop
14 paying a lawyer to write these reports at the rate
15 this goes. So the sooner we can clean up these
16 situations and release these poor developers and the
17 people who have put themselves out there to create
18 lots and help provide for housing for our community,
19 maybe the sooner more people will be willing to get
20 strung out for 50-years trying to have somebody build
21 a house.

22 So I'm really in favor of trying to
23 reduce -- let them comply with their requirements,
24 and let them free. And so I think -- I'm going to
25 support the ultimate outcome in order to go for the

1 better part to release and modify so many conditions.

2 But I would like to see more of our goals
3 that clean up things, and get them to where people
4 willing trying to develop land, and let people have
5 houses and perhaps maybe contribute to having less
6 homeless people.

7 We would be able to have a great community
8 without constantly -- nothing against you lawyers --
9 but I'm sure you're busy enough. I don't want to
10 have every developer support a lawyer into eternity
11 just because they had to come through the LUC once in
12 their lifetime. Thank you.

13 CHAIRPERSON SCHEUER: Commissioner Aczon.
14 I think we are getting down -- I don't want to cut
15 conversation too short, but we have a long agenda
16 ahead of us as well.

17 Commissioner Aczon, followed by
18 Commissioner Giovanni.

19 VICE CHAIR ACZON: Thank you, Mr. Chair.

20 I just want to mention that I agree with
21 Commissioner Ohigashi that Commissioner Wong's
22 amendment is not necessary. I'm pretty sure the
23 Petitioner is going to notify LUC right away as soon
24 as they comply with the conditions.

25 Having said that, I'll be voting in favor

1 of the motion. And I just want to thank the
2 Petitioner for coming forward and in putting forth
3 this modifications, and I hope that, you know, by
4 cleaning up this docket conditions, will make it
5 easier for the County to enforce all these
6 conditions, and it will serve as guidance for them.
7 Thank you.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Aczon.

10 Commissioner Giovanni.

11 COMMISSIONER GIOVANNI: I just want to say
12 I agree with Commissioner Cabral, and I'm against the
13 friendly amendment that would add back the reporting
14 requirement.

15 CHAIRPERSON SCHEUER: As it stands, the
16 motion is to retain the reporting requirement. The
17 motion having been modified by the movant and agreed
18 to by the seconder.

19 Is there further discussion? The motion is
20 displayed on my share screen.

21 Commissioner Ohigashi.

22 COMMISSIONER OHIGASHI: I want to thank
23 everybody for putting up with my trying to figure out
24 what the condition should and should not be. I thank
25 Jonathan for keeping good notes. And I ask as we

1 proceed with this matter to support my motion. Thank
2 you.

3 CHAIRPERSON SCHEUER: Anything further,
4 Commissioners? Commissioner Aczon.

5 VICE CHAIR ACZON: I just want to thank
6 Commissioner Ohigashi for all his research and
7 efforts taking care of his County.

8 CHAIRPERSON SCHEUER: I might have to mute
9 everybody, which is the power I have.

10 If there is nothing further, Mr. Orodener,
11 would you please poll the Commission on the motion
12 before us?

13 EXECUTIVE OFFICER: Thank you, Mr. Chair.
14 The Motion is to grant in part and deny in part as
15 enumerated by Commissioner Ohigashi.

16 The conditions to be released are
17 Conditions 1, 3, 4f --

18 CHAIRPERSON SCHEUER: I was trying to save
19 the document before it got lost.

20 EXECUTIVE OFFICER: 6a to 6e, 7, 9 through
21 13, 16, 17, 21, 22 and 25.

22 Conditions to be modified are 4a, 4b, 4c,
23 4d, 4e, 4g, 4i and 26 as proposed by Petitioner.

24 Conditions to be retained are Conditions 2,
25 5, 6e, 8, 14, 15, 18, 19, 20, 23 and 24.

1 The Chair will be authorized to release
2 Condition 6e once appropriate evidence is submitted
3 to the LUC that the dedication of the right-of-way
4 and setback has been completed to DOT's satisfaction.

5 The Chair is authorized to sign the order.

6 Commissioner Ohigashi?

7 COMMISSIONER OHIGASHI: Aye.

8 EXECUTIVE OFFICER: Commissioner Wong?

9 COMMISSIONER WONG: Aye.

10 EXECUTIVE OFFICER: Commissioner Aczon?

11 VICE CHAIR ACZON: Aye.

12 EXECUTIVE OFFICER: Commissioner Chang?

13 COMMISSIONER CHANG: Aye.

14 EXECUTIVE OFFICER: Commissioner Cabral?

15 VICE CHAIR CABRAL: Yes.

16 EXECUTIVE OFFICER: Commissioner Okuda?

17 COMMISSIONER OKUDA: Yes.

18 EXECUTIVE OFFICER: Commissioner Giovanni?

19 COMMISSIONER GIOVANNI: Aye.

20 EXECUTIVE OFFICER: Chair Scheuer?

21 CHAIRPERSON SCHEUER: Chair votes aye.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair,
23 the motion passes unanimously.

24 CHAIRPERSON SCHEUER: Thank you, Ms. Lim,
25 Mr. Hopper, Ms. Apuna, Mr. Simon.

1 It is 2:00 o'clock on the nose. We are
2 going to take -- I'm going to propose a 15-minute
3 recess, and then we will proceed from 2:15 until
4 4:00 o'clock without break to take up our next agenda
5 item Halekua Development Corporation, Oahu.

6 MS. LIM: Thank you very much, Chair and
7 Commissioners.

8 CHAIRPERSON SCHEUER: 15-minute recess.
9 Reconvene at 2:15.

10 (Recess taken.)

11 CHAIRPERSON SCHEUER: Let's go back on the
12 record.

13 A92-683 Halekua Development Corporation

14 Our next agenda item is an action meeting
15 on Docket A92-683, Halekua Development Corporation
16 (O'ahu) to Consider the Successor Petitioner (as to
17 Parcel 52) Ho'ohana Solar 1, LLC's Motion for
18 Modification and Time Extension and Haseko Royal
19 Kunia, LLC et al's Motion in Opposition to Successor
20 Petitioner (as to Parcel 52) Ho'ohana Solar 1, LLC's
21 Motion for Modification and Time Extension in Docket
22 No. A92-683 the Petition to Amend the Agricultural
23 Land Use District Boundary into the Urban Land Use
24 District for Approximately 503.886 Acres of Land at
25 Waikele and Ho'ae'ae, 'Ewa, O'ahu, City and County of

1 Honolulu, Hawai'i, Tax Map Key No. 9-4-02, Lot 1,
2 portion of 52, 70, and 71.

3 The Chair would like to note for the record
4 that the Motion in Opposition filed by Haseko is
5 better characterized as a Memorandum in Opposition
6 for the purposes of this proceeding.

7 Will the parties for Docket A92-683 please
8 identify themselves for the record. You may each
9 enable your audio, beginning with Petitioner.

10 MS. LIM: Good afternoon, Chair, members of
11 the Commission. Everybody can hear me, I hope?

12 CHAIRPERSON SCHEUER: Yes.

13 MS. LIM: This is Jennifer Lim representing
14 movant Ho'ohana Solar 1, LLC. With me today is my
15 associate Mr. Derek Simon. We also have another
16 counsel, name is John Pete Manaut. He's my partner
17 here at Carlsmith. He needs to be let into the room.

18 CHAIRPERSON SCHEUER: Raise your hand, and
19 we will let you in using the raise-your-hand
20 function.

21 CHAIRPERSON SCHEUER: Ms. Lim, don't bocchi
22 our proceedings by saying these are simple, the way
23 you did the first one.

24 MS. LIM: The phrase is stricken.

25 CHAIRPERSON SCHEUER: For Haseko.

1 MR. CHUNG: Good afternoon, Chair.

2 I'm Steven Chung with the Imanaka Asato law
3 firm, and with us we represent Haseko Royal Kunia,
4 I'm co-counsel with Michael Lau from the Morihara Lau
5 and Fong firm.

6 We just have one witness, Ms. Sharene Tam,
7 who is an officer of Haseko Development, which is
8 manager of Haseko Royal Kunia.

9 CHAIRPERSON SCHEUER: City and County of
10 Honolulu, DPP. You're muted.

11 MR. DERRICKSON: Chair, this is Scott
12 Derrickson. Eugene Takahasi is supposed to be
13 joining us after 1:00 P.M., so he should be on and in
14 the room.

15 MR. TAKAHASHI: I am here. There are two
16 unmuting buttons. I only pressed one of them, I
17 apologize.

18 This is Eugene Takahashi, Second Deputy
19 Director, Department of Planning and Permitting.
20 Also joining me is Molly Stebbins from our Office of
21 Corporation Counsel.

22 CHAIRPERSON SCHEUER: Office of Planning.

23 MS. APUNA: Good afternoon, Chair, members
24 of the Commission, Deputy Attorney General Dawn Apuna
25 on behalf of the State Office of Planning.

1 CHAIRPERSON SCHEUER: Anybody else for this
2 docket?

3 Let me update the record now.

4 From August 17, 2020, until recently, the
5 Commission received the following documents:

6 * A92-683 Halekua Development

7 Corporation-Successor Petitioner (as to
8 Parcel 52) Ho'ohana Solar 1, LLC's Motion
9 for Modification and Time Extension and
10 Exhibits 1-15.

11 * Requests for Extension of Time to
12 Respond - from OP and DPP (which the
13 Commission responded to on August 26,
14 2020)

15 * Petitioner Haseko Royal Kunia, LLC's
16 Motion in Opposition to Successor
17 Petitioner Ho'ohana Solar 1, LLC Motion
18 for Modification and Time Extension and
19 the joinders of HRT Realty, LLC and
20 Jupiter Investors II, LLC.

21 * Office of Planning's Response Successor
22 Petitioner's Motion for Modifications and
23 Time Extension.

24 * City and County of Honolulu Department
25 of Planning and Permitting (DPP) Position

1 Statement.

2 * Correspondence from the Haseko
3 Representative re-Amended-Certificate of
4 Service.

5 * Successor Petitioner (As to Parcel 52)
6 Ho'ohana Solar 1, LLC's:
7 Reply to Petitioner Haseko Royal Kunia,
8 LLC's Motion (or more accurately
9 Memorandum in Opposition to Successor
10 Petitioner's Motion.

11 First List of Exhibits; Exhibits 15, 53;
12 First List of Witnesses;
13 Reply to Office of Planning's Response to
14 Successor Petitioner's Motion reply to
15 Department of Planning and Permitting's
16 Letter re: Docket No. A92-683 Halekua
17 Development Corporation Motion by Ho'ohana
18 Solar 1, LLC (Movant)

19 * Imanaka-Asato-Steven Chung's Notice of
20 Appearance of Co-Counsel for Petitioner Haseko Royal
21 Kunia, LLC;

22 * Haseko Royal Kunia, LLC-Declaration of
23 Sharene S. Tam and Exhibit 1-4.

24 * Haseko Royal Kunia, LLC - Declaration of
25 Michael Lau and Exhibit 5.

1 On September 29, 2020, the Commission
2 mailed the October 7-8, 2020 agenda notice to the
3 Statewide, Oahu, Maui and respective email lists.

4 From October 1-6, 2020, the Commission
5 received public testimony from numerous members of
6 the public, business and non-profit organizations and
7 government officials that have been made part of the
8 record and are posted on the LUC website.

9 Let me briefly run over our hearing
10 procedure for the day.

11 1. First, I will give opportunity for the
12 Petitioner to comment on the Commission's Policy
13 governing reimbursement of hearing expenses.

14 2. I will then call on individuals who are
15 attending and are preregistered to testify. You will
16 be brought into the main part of the meeting, sworn
17 in, given two minutes to testify, after which you
18 will be questioned by the parties and the
19 Commissioners, if they have questions for you.

20 We will go through all the individuals for
21 testifying, and after those individuals, we will turn
22 to anybody else who wishes to testify in this matter.

23 After all testimony has been heard, I will
24 close public testimony on these proceedings and
25 Petitioner Ho'ohana Solar will make their

1 presentation.

2 Following Ho'ohana Solar's presentation, we
3 will receive comments from the Commissioners, then we
4 will give Haseko Royal Kunia an opportunity to make
5 their presentation and call their witness.

6 After that, they will be questioned by the
7 Commissioners, then Petitioner Ho'ohana will be given
8 the chance to provide any rebuttal, and the
9 Commission will ask its final questions of the
10 parties before beginning deliberations.

11 As I noted, after our break due to our
12 technical difficulties today, and our need to end
13 proceedings at 4:00 o'clock, my intention is to
14 proceed as far as we can up to 4:00 o'clock without
15 taking a break for the remainder, and then taking
16 this matter up tomorrow morning.

17 Are there any questions from the parties on
18 our procedures for today, starting with Petitioner?

19 MS. LIM: No questions from Petitioner,
20 Chair.

21 CHAIRPERSON SCHEUER: Haseko?

22 MR. CHUNG: No questions from Haseko.

23 MR. TAKAHASHI: No questions from City and
24 County.

25 MS. APUNA: Chair, Office of Planning

1 submitted revised Exhibit 1 this morning, and I think
2 it's Exhibit 2, which was provided to the Commission,
3 and I believe to the Commissioners and the other
4 parties.

5 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
6 I did not have that written down, because of its late
7 arrival. Thank you for updating that portion of the
8 record. It's so updated.

9 Anything regarding our procedures, Ms.
10 Apuna?

11 MS. APUNA: No, Chair.

12 CHAIRPERSON SCHEUER: Ms. Lim, have you
13 reviewed HAR 15-15-45.1 with regard to reimbursement
14 of hearing expenses, and can you state your client's
15 position on the matter?

16 MS. LIM: We have reviewed it, and Ho'ohana
17 Solar 1 will comply with those requirements. Thank
18 you.

19 CHAIRPERSON SCHEUER: Now, I'm going to
20 bring up the list of written testimony on this
21 matter. One moment.

22 We have written testimony, and if you hear
23 your name being called, and you're in the waiting
24 room to testify, then I'm going to ask you to use the
25 raise-your hand function and ask to be let in.

1 Kimo Spector or Rebecca Dayhuff-Matsushima
2 for Hawaiian Electric.

3 Use the raise-your-hand function if you
4 wish to testify in this matter orally in addition to
5 written testimony, or otherwise this will be
6 acknowledgment of your written testimony.

7 Tyler Dos Santos-Tam, Melvin Silva for the
8 International Union of Bricklayers and Allied
9 Craftworkers Local #1.

10 Jill Baptist of the Hawaii Carpenters
11 Union.

12 Nathaniel Kinney of Hawaii Construction
13 Alliance. Mr. Kinney.

14 Ryan Kobayashi for Government Affairs for
15 Hawaii Laborers' Union Local 368.

16 Joy Kimura of Hawaii Labors Employee
17 Cooperation and Education Trust Fund.

18 Dean Okimoto.

19 State Senator Michelle Kidani.

20 Denise Yamaguchi of the Hawaii Agricultural
21 Foundation.

22 Chris Delaunay of the Pacific Resource
23 Partnership.

24 Chamber of Commerce, Dan Kouchi.

25 Chris Delaunay, I will admit you in to be a

1 panelist. Please enable your video and audio.

2 I will swear you in. I'll ask you to state
3 your name and address for the record, and then give
4 you two minutes to testify.

5 Please enable your audio and video.

6 Mr. Delaunay is not yet able to enable his
7 audio and video. We will come back to him and go on.

8 Dan Kouchi of Chamber of Commerce of
9 Hawaii.

10 Samantha Ruiz of the Ulupono Initiative on
11 behalf of Murray Clay.

12 State Representative Ty Cullen. State
13 Representative Nicole Lowen.

14 Keith Hayashi of Waipahu High School,
15 principal of Waipahu High School.

16 State Senator Glenn Mukai.

17 Mr. Delaunay, are you able to unmute or
18 enable your video? If not, I'm going to ask LUC
19 staff to put you back into the audience and see
20 whether we can repromote you.

21 Finally, written testimony from Albi Mateo
22 and Wayne Nakamoto of Royal Community Association.

23 I see some people whose names I've called
24 are in the audience, if you are not using the
25 raise-hand function, I'm assuming you are not wishing

1 to give oral testimony on this matter.

2 Can we try to reach Mr. Delaunay from
3 Pacific Resource Partnership?

4 MR. DERRICKSON: I don't see Mr. Delaunay
5 in the audience any more. He may have tried to sign
6 off then trying to sign back in.

7 CHAIRPERSON SCHEUER: In the mean time, is
8 there anybody who is an attendee who wishes to
9 testify in this matter? If so, please use the
10 raise-hand function and I will admit you in order.

11 I'm going to start with Mr. David Tanoue.
12 When I bring you in, please enable your audio and
13 video, and I will swear you in. Are you able to I
14 see your mute is off? Are you able to enable your
15 video?

16 There you go. Do you swear or affirm the
17 testimony you're about to give is the truth.

18 THE WITNESS: Yes.

19 CHAIRPERSON SCHEUER: State your name and
20 address for the record and then you have two minutes
21 followed by questions.

22 DAVID TANOUE
23 Was called as a witness by and on behalf of the
24 Public, was sworn to tell the truth, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 THE WITNESS: David Tanoue. I'm with RM
3 Towill Corporation. Our business address is 2024 N.
4 King Street, Suite 200, Honolulu, Hawaii.

5 Thank you for the opportunity of testifying
6 this afternoon. Like you said, it's trying to
7 (indecipherable) especially in this format, very
8 difficult. And I appreciate the opportunity, and you
9 guys' commitment to public service.

10 I want to just let the Commissioners know
11 and Parties know that I'm available in case there's
12 any questions.

13 I also represent RP2. The last time we
14 were in front of this Commission regarding Royal
15 Kunia was about two-and-a-half years ago, RP2 was a
16 predecessor in interest to the Haseko lot.

17 You know, it took almost three years of
18 negotiating with the parties that the sale finally
19 was negotiated and came through, and Haseko took --
20 the closing just occurred less than two months ago.
21 So everybody is pretty fresh as far as Haseko side,
22 but I've been involved in negotiation, and constant
23 contact with the various parties.

24 You know, as RM Towill, as we are in a very
25 good and interesting situation, because, like HRT,

1 Haseko is our client. The Department of Ag on the Ag
2 Park is our client. We also are the clients for the
3 potential buyer for the industrial area of HRT.

4 So we are right in the middle. We're able
5 to assist all our clients and trying to move the
6 Royal Kunia project forward after 45 years of being
7 vacant.

8 A lot of prior owners, lot of broken
9 promises, but I think the parties can continue to
10 work together and actually need to work together to
11 keep the projects moving forward.

12 And I wanted to let the Commission know I'm
13 available for any questions, because I've been around
14 for the past two-and-a-half, three years working with
15 the parties to try to keep the project moving
16 forward.

17 Any questions?

18 CHAIRPERSON SCHEUER: Questions starting
19 with Petitioner.

20 CROSS-EXAMINATION

21 BT MS. LIM:

22 Q Mr. Tanoue, thank you for being here today.
23 It's nice to see you. I haven't seen you in months
24 and months. Even on video, it's good to see you.

25 I'm going to ask you something. I know the

1 answer, but I do want to hear it from your mouth.

2 There is an amended and restated, a 4th
3 amendment to amendment and restatement of Memorandum
4 of Understanding dated March 16, 2020.

5 Can you tell me who the parties are to that
6 agreement?

7 A That would be the Department of Ag and RP2,
8 LLC.

9 Q Thank you.

10 So that became an agreement when RP2 was
11 owning Parcel 71, the parcel that is owned by Haseko
12 now?

13 A That's correct.

14 Q Is that agreement assigned to Haseko upon
15 Haseko's acquisition of Parcel 71?

16 A I believe so. I understand Haseko has
17 assumed the obligation.

18 Q Thank you very much. I don't have any
19 further questions.

20 CHAIRPERSON SCHEUER: Haseko.

21 MR. CHUNG: Haseko has no questions.

22 MR. TAKAHASHI: City has no questions.

23 CHAIRPERSON SCHEUER: OP?

24 MS. APUNA: No questions.

25 CHAIRPERSON SCHEUER: Commissioners?

1 Commissioner Okuda.

2 COMMISSIONER OKUDA: Thank you very much,
3 Mr. Chair.

4 Thank you, Mr. Tanoue. I ask you to tell
5 me whether you agree, disagree, or you don't know
6 about certain statements that were made by the
7 Petitioner in their reply memorandum. And I'm asking
8 you this because usually there is no reply to the
9 reply.

10 Since you're the person who seems to know
11 and been in the middle of this, if you can tell me.

12 Let me quote you this sentence and tell me
13 whether this is an accurate statement, it's not
14 accurate, or you don't know. And I quote:

15 "At least since 2007, the offsite
16 infrastructure improvements for the ag park have been
17 the sole contractual obligation of the owner of
18 Parcel 71, which today is Haseko."

19 Is that statement true, not true, or you
20 can't tell us one way or the other?

21 THE WITNESS: You know, since RP2 that we
22 didn't take possession until September 2017. I can't
23 state the truth or otherwise on that statement
24 because it goes back to 2007.

25 COMMISSIONER OKUDA: Let me read you

1 another sentence from the Petitioner's reply. And
2 that actually follows, you know, that sentence which
3 I just read. And for the record, this is from the
4 top of page 5 of the Petitioner's reply.

5 "In May 2018 its predecessor and interest
6 to Parcel 71, RP2 Ventures, LLC ("RP2") represented
7 to the Commission in no uncertain terms that it - and
8 it alone - would be responsible for completing all of
9 the infrastructure improvements for the ag park."

10 Is that statement accurate, not accurate,
11 or you can't really say one way or the other?

12 THE WITNESS: I'll say it's mostly
13 accurate. I mean, as one of the landowners in this
14 Petition Area, we're obligated under the conditions
15 in the D&O, and that included providing needed
16 infrastructure for the Department of Ag's
17 agricultural park.

18 COMMISSIONER OKUDA: Let me just read this
19 last sentence and same question about this sentence.

20 "RP2 subsequently memorialized those
21 representations through an infrastructure agreement
22 with the DOA, which Haseko freely admits it assumed
23 when it purchased Parcel 71."

24 Is that statement accurate, not accurate,
25 or you can't tell us one way or the other?

1 THE WITNESS: You know, that statement is
2 accurate in the sense that it does reflect the
3 general terms of the agreement. RP2 did enter into
4 an agreement, the fourth amendment to the MOU with
5 the Department of Ag, and that was as a result of
6 prior meeting in front of the LUC.

7 I think at that time Chairperson Wong
8 directed the parties, RP2 as the new owner at that
9 time, and the DOA, to kind of take more time and work
10 it out.

11 So we continued to work with Department of
12 Ag. We came up with some dates. You know, to be
13 honest, Department of Ag was pushing. We understood
14 that there's been a lot of broken promises along the
15 way, and that they were anxious to get their project
16 moving forward.

17 As I mentioned, we are the engineers for
18 that project. So we helped them void the agriculture
19 cluster. We did the agriculture subdivision. We
20 knew where it was going. They needed to ensure that
21 they had the necessary infrastructure and the
22 irrigation lines.

23 So we were pushing that forward as RP2, and
24 that was moving forward. We did agree
25 to (indecipherable) -- an attorney, that there is

1 like a general clause in there about allowing
2 amendments to the date, you know, for good cause or
3 something along that line.

4 I wanted to make sure, because I did
5 represent to DOA that we'll be moving forward with
6 it, but we can't guarantee, some of the dates were
7 pretty fast. But we understood that they wanted to
8 show progress when they go back to legislature for
9 funding. And the deadlines of June 30th, 2021
10 coincides with the fiscal year. Things likes that.

11 Then I represented likely it will be little
12 bit further than that, but we will be under
13 construction by then.

14 So the document says what it says,
15 Commissioner Okuda. But there is -- there are some
16 built in leeway from our side, because we understood
17 we are trying to accommodate their financing
18 schedule, but knowing how the project was going to
19 lay out, that it would be unlikely that we could hit
20 the deadlines directly.

21 Currently we are up to date. The plans are
22 being reviewed by DPP. I think the deadline was
23 May 31st to have those plans submitted, so we are
24 moving forward.

25 But from the engineering side, we knew that

1 would be very difficult to hit the construction
2 deadlines in time.

3 COMMISSIONER OKUDA: Thank you very much,
4 Mr. Tanoue. Thank you, Chair.

5 CHAIRPERSON SCHEUER: Commissioner Chang.

6 COMMISSIONER CHANG: Thank you.

7 Good afternoon, Mr. Tanoue. Nice to see
8 you.

9 When you made those statements regarding
10 RP2, you were representing RP2; is that correct?

11 THE WITNESS: RP2 is like -- sort of like a
12 subsidiary from RM Towill, so that's why kind of wear
13 two hats at the same time, and RM Towill, like I
14 mentioned earlier, we're the engineers for all the
15 major parties that are involved here.

16 So we're like the common denominator and
17 facilitator to kind of get people together, because
18 as a former director for DPP, that project has been
19 struggling for five years. And even went out to the
20 City, and the last kind of developer came forward.

21 The City, the department was kind of
22 helping them along, trying to get it going again, and
23 that failed. That was back in 2007 and 2008.

24 So having the right players in place, I
25 think, was a way the project could move forward. And

1 having that opportunity to kind of help and
2 facilitate that moving forward really helped.

3 Three years, you know, we got the right
4 players all lined up. And I think we can just
5 continue to move forward, given the time.

6 COMMISSIONER CHANG: Thank you. I guess
7 that's the question I have. Who are the right
8 players?

9 As I understand it, the Petition Area
10 includes all of the parcels, not only 71, but 79, 78,
11 70, Parcel 1 and Parcel 52.

12 My question is with respect to who is
13 responsible for the offsite infrastructure
14 development? Is that a shared responsibility with
15 all of the landowners in the Petition Area?

16 Is that your understanding as someone who
17 was facilitating all of this, the right players at
18 the table?

19 THE WITNESS: You know, my perspective of
20 looking at it, Commissioner Chang, is that entire
21 Petition Area under the Petition in the Land Use
22 Commission, everybody is responsible for the
23 conditions in the D&O, unless it's specified
24 otherwise.

25 But there were individual agreements among

1 the parties themselves over the years, and those are
2 some of the reasons why it made it challenging and
3 why it had to be between -- I think when looking back
4 at it, when the original developer started to be
5 getting into financial trouble, and selling off
6 pieces, he maintains some of the responsibilities,
7 took the responsibilities on Parcel 71, the parcel
8 that he retained while selling off the pieces and
9 things like that.

10 After going through several owners and
11 developers and all that, it was -- the project was
12 bifurcated and broken up. And you look at the
13 parties, when we accepted, he had Candid Financial.
14 They are money people from the mainland. They
15 weren't going to build. They weren't looking at
16 building anything, more like flipping it.

17 He had HRT, who was the Weinberg Foundation
18 who was trying to support the project in the early
19 days. Like I said, the private agreements between
20 the landowners, HRT, the responsibility for the
21 infrastructure, things like affordable housing was
22 all put on Parcel 71 as part of the deal for the
23 transfer.

24 And so they're just sitting there. They
25 can't do anything because they don't have

1 infrastructure. So we needed to put the right
2 parties. We needed to put a developer/builder in
3 place. We needed to help HRT -- because they're not
4 a developer -- move on and find value in the property
5 and kind of move on, and put the right developers in
6 place.

7 And that's why we are fortunate enough to
8 have another client, Haseko, who's a
9 builder/developer who can bond the heavy financial
10 burden of the off -- because that Parcel 71 is
11 carrying a lot of the offsite improvements, a lot of
12 the infrastructure load on it.

13 Because that was Herbert Horita's last
14 piece he was holding on. He took responsibility on.
15 And they required the multi-family lot that they
16 purchased from HRT too.

17 And we put in the industrial developer for
18 the industrial side that's under contract with HRT?

19 So ultimately the right players will be in
20 place, who will look forward to developing the lot,
21 and not there for money, but in the long term.

22 As far as the LUC and the D&O, all the
23 parcels in the Petition Area are responsible.

24 COMMISSIONER CHANG: I guess the question I
25 had is more related to Parcel 52. The Robinsons are

1 the underlying landowner. Is that correct?

2 THE WITNESS: Yes.

3 COMMISSIONER CHANG: So have they been part
4 of these discussions with respect to obligations
5 under the -- for the offsite infrastructure?

6 THE WITNESS: You know, I've been having
7 regular conversations with the Robinson folks, and I
8 kind of joke to myself that they're the last
9 original, for the whole Royal Kunia Phase II, they're
10 the only original party that is left over. And they
11 have been along the ride, and a lot of broken
12 promises to people along the way.

13 So I really support them with the PV
14 project moving forward. Want them to succeed,
15 because they have been waiting along time.

16 They have a different -- and that's when it
17 comes to the attorneys, Commissioner Chang. One side
18 saying they're not obligated, another side saying
19 they are obligated. And that's why my concerns, you
20 know, with the current matter before this court, it's
21 like the attorneys -- I'm an attorney.

22 At certain point things to start to take on
23 their own life.

24 I'm trying to be part of it, and I think a
25 lot of people involved are trying to not to get in

1 the spiral in that direction. It can be resolved. I
2 think it just needs -- the attorneys got to state
3 their position, and then not be in agreement. But
4 ultimately it will end up at the same place where the
5 parties will have to sit down.

6 COMMISSIONER CHANG: And I guess that's the
7 ultimate question I have. Because, you're right, you
8 are not an attorney -- I mean, you're not an attorney
9 in this -- you were an attorney, but not in the
10 context of this proceeding, and you are trying to
11 facilitate so that this moves forward.

12 But ultimately, because I notice the
13 Robinsons are not represented in this proceeding. We
14 have the lessee who's proposing to do the solar
15 project, but we don't have the underlying landowner
16 the Robinsons. And there appears to have been other
17 agreements that may have been structured as far as
18 who's obligated.

19 So I just wanted to confirm with you who's
20 been helping to facilitate these discussions. One,
21 have the Robinsons been part of those discussions as
22 the underlying landowner for Parcel 52, because
23 eventually that land will go back to them;

24 And two, is it their understanding that
25 they have an obligation as a landowner from the

1 original Petition for these offsite infrastructure
2 developments?

3 THE WITNESS: First question, you know,
4 I've been in regular discussions with Robinsons. We
5 haven't been talking specifically about the matter
6 before you. You know, I've been talking with the
7 Robinsons -- I never knew there was a 2015 decision
8 with the prior solar farm project of the requirements
9 for the DOA infrastructure.

10 So when RP2 took possession of the
11 property, became the owner, we started to work with
12 Robinson, because we knew for the irrigation line and
13 the utility lines, we would need easements and
14 consent from the Robinson folks.

15 So I've been in contact and, you know, and
16 there's been a lot of verbal agreements over the
17 years that the Robinson attorney wanted to kind of
18 memorialize, because people come and go, so about
19 time everybody should kind of put these agreements in
20 writing so that everybody has understanding.

21 So there has been a lot of conversation
22 with myself and Steven Mau from the Robinson attorney
23 side with these other things. But never did we
24 really go into the discussion about the solar farm
25 and their obligations or perceived obligations, or

1 whatever, moving forward.

2 But it's always been the conversation we
3 are relating to how RP2 could meet conditions in the
4 MOU that we had with DOA, and continue with the
5 design for the irrigation lines and utility service
6 and negotiate for the easements.

7 You know, when I found out that the prior
8 solar farm project had that responsibility, and
9 looking at this being similar, I say, if I knew that,
10 I would have asked them for help getting the easement
11 from the Robinsons, because we were both on the hook.

12 But because, you know, I was still working
13 on trying to get the easements approved with the
14 Robinsons for the irrigation and the utility service
15 with the ag park.

16 COMMISSIONER CHANG: I guess what I'm
17 understanding, you've been having conversation with
18 the Robinsons, but not on this particular matter, nor
19 on the matter of whether it is their understanding
20 that they have an obligation to contribute to the
21 offsite infrastructure as the landowner in the
22 Petition Area?

23 THE WITNESS: I think, like again, Steven
24 Mau has mentioned it that he doesn't think that they
25 have a responsibility.

1 COMMISSIONER CHANG: Okay.

2 THE WITNESS: Somewhere during the history
3 of the 25-year history, there were some matters
4 before the Commission, or among the parties, so that
5 they're not responsible. That's probably their
6 position.

7 Like I mentioned, strictly from outside
8 looking in, I look at it that everybody in the
9 Petition Area is responsible to start with. And then
10 there is some agreements among themselves.

11 COMMISSIONER CHANG: Thank you. I have no
12 other questions.

13 CHAIRPERSON SCHEUER: Other questions,
14 Commissioners?

15 Anything further, Commissioners, for this
16 witness?

17 Thank you, Mr. Tanoue. I'm going to move
18 you back into being an attendee. And our
19 representative from PRP is now with us on audio and
20 video.

21 Can I ask you, as a favor, if you would
22 instruct me as to the proper pronunciation of your
23 last name?

24 THE WITNESS: Delaunay.

25 CHAIRPERSON SCHEUER: Delaunay, sorry about

1 that.

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

4 THE WITNESS: I do.

5 CHAIRPERSON SCHEUER: Thank you. Please
6 proceed.

7 CHRIS DELAUNAY

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

11 DIRECT EXAMINATION

12 THE WITNESS: Good afternoon,
13 Commissioners, Chris Delaunay with Pacific Resource
14 Partnership.

15 We are in support of this project and, you
16 know, as Hawaii faces an economic crisis without
17 parallel in its history as a state. Ho'ohana
18 provides a valuable opportunity to stimulate our
19 economy, both by creating new jobs and by creating
20 infrastructure which can help lower energy costs to
21 consumers and businesses.

22 There have been recent forecasts by UHERO
23 anticipating significant shortfalls in employment
24 numbers versus what it forecast about a year ago.
25 The declines will be steepest in 2020 and 2021.

1 UHERO predicts that Hawaii employment will not return
2 to 2019 levels before 2026.

3 Ho'ohana will employ approximately 175
4 construction workers in 2021, a period when some of
5 the worst shortfalls in employment are anticipated to
6 occur.

7 Additionally, Ho'ohana will provide
8 substantially more clean renewable energy than a
9 solar project proposed in 2015 for this site.

10 So when completed, this newly proposed
11 solar project will be capable of generating enough
12 energy annually to power approximately 19,100 homes,
13 which will advance the State closer towards achieving
14 its goal to generate 100 percent clean energy by
15 2045.

16 Thank you for this opportunity to testify.

17 CHAIRPERSON SCHEUER: Thank you. Thank you
18 for your persistence and patience in being able to
19 give your testimony.

20 Questions for the witness, starting with
21 Petitioner?

22 MS. LIM: No questions from Petitioner.
23 But thank you very much for your testimony.

24 CHAIRPERSON SCHEUER: Haseko?

25 MR. CHUNG: Haseko has no questions.

1 MR. TAKAHASHI: City has no questions.

2 MS. APUNA: No questions.

3 CHAIRPERSON SCHEUER: Commissioners?

4 Commissioners, any questions?

5 If none, I have a question.

6 You testified as to economic impact,
7 beneficial economic impact from the solar project
8 which would provide a greater impact than if this
9 land was actually being used to develop housing as
10 originally envisioned in the docket or a solar farm.

11 THE WITNESS: Sorry, your question is, what
12 would be better?

13 CHAIRPERSON SCHEUER: Which would provide a
14 greater economic beneficial impact?

15 THE WITNESS: We think that this solar farm
16 will provide a good economic impact, which creates
17 more jobs. And also it's important to create more
18 solar at this time to reach our goals of getting
19 clean energy by 2045. So I think it's good use of
20 the land.

21 CHAIRPERSON SCHEUER: Which would provide a
22 greater economic --

23 THE WITNESS: I don't have that
24 information.

25 CHAIRPERSON SCHEUER: -- housing as was

1 originally intended with this docket or solar farm?

2 THE WITNESS: I don't have that information
3 in front of me right now. Thank you for your
4 question.

5 CHAIRPERSON SCHEUER: Anything further,
6 Commissioners?

7 Thank you very much for your testimony.

8 I will move you to being an attendee, and
9 Mr. Jeff Overton, again, if you are in the attendee
10 for this meeting and you wish to testify, raise your
11 hand and you will be promoted to be a panelist. I'm
12 letting in Mr. Overton now.

13 Good afternoon, Mr. Overton.

14 THE WITNESS: Good afternoon.

15 CHAIRPERSON SCHEUER: Do you swear or
16 affirm the testimony you're about to give is the
17 truth?

18 THE WITNESS: I do.

19 JEFF OVERTON

20 Was called as a witness by and on behalf of the
21 Public, was sworn to tell the truth.

22 THE WITNESS: I believe I'm part of the
23 Petitioner's presentation.

24 COURT REPORTER: Can you speak louder,
25 please?

1 THE WITNESS: Is that better?

2 COURT REPORTER: Yes, that is better.

3 Thank you.

4 THE WITNESS: Okay, I'll hold the
5 microphone up here.

6 Should I be deferring to that moment in the
7 agenda? I'm on the East Coast. It's 9:00 o'clock.
8 I'm just trying to move into my role here, sorry.

9 CHAIRPERSON SCHEUER: Ms. Lim.

10 MS. LIM: Chair, Mr. Overton is one of our
11 witnesses, so he's not a public testifier. He will
12 be the first witness we call.

13 THE WITNESS: Thank you, sorry.

14 CHAIRPERSON SCHEUER: Is there anybody else
15 who is an attendee? I'm going to move you back, Mr.
16 Overton.

17 Is there anybody else who's an attendee who
18 wishes to give public testimony on this matter? If
19 so, raise your hand.

20 If not, I will stop public testimony for
21 now and ask for any disclosures from the
22 Commissioners. Commissioner Aczon.

23 VICE CHAIR ACZON: Thank you, Mr. Chair.
24 After hearing all the testifiers and reading all the
25 minutes, including the past testifiers, I want to

1 disclose that all of those individuals, all
2 organizations I have some kind of interaction with
3 them, one way or another, from my previous life. And
4 in particular -- well, both proponents and supporters
5 of this motion. In particular, I want to mention
6 Hawaii Carpenters Union.

7 I just want to tell the Commission that I
8 don't work for the Carpenters Union, although I work
9 for Hawaii Carpenters Apprenticeship and Training
10 Fund. It's a different entity from the union.

11 I don't get any financial interest or
12 benefits from the union. So having said that, I can
13 assure the Commission that I can be impartial
14 regarding this docket during the deliberation.

15 CHAIRPERSON SCHEUER: Before I go to that,
16 I note Ms. Apuna has raised her hand.

17 MS. APUNA: I apologize, Chair. I actually
18 had a question about the proceedings. I know I was
19 supposed to ask earlier, but I can wait until after
20 Commissioner Aczon.

21 CHAIRPERSON SCHEUER: After disclosures.

22 Commissioners Aczon has made a disclosure,
23 I'm going to ask each of the parties if there are any
24 objections to the continued participation in these
25 proceedings beginning with Petitioner.

1 MS. LIM: I'm so sorry.

2 Petitioner has no questions or concerns
3 with Commissioner Aczon.

4 CHAIRPERSON SCHEUER: No objections to
5 Commissioner Aczon's continued participation.

6 MS. LIM: No.

7 CHAIRPERSON SCHEUER: Haseko?

8 MR. CHUNG: Mr. Chair, Haseko has no
9 objection.

10 MR. TAKAHASHI: City has no objections.

11 CHAIRPERSON SCHEUER: OP?

12 MS. APUNA: No objections.

13 CHAIRPERSON SCHEUER: Are there other
14 disclosures, Commissioners?

15 If not, until I saw Mr. Overton was going
16 to be a witness, my wife works for G70 with Mr.
17 Overton. I gather they are consultants on the
18 Petitioner's project.

19 She is not working on the project and has
20 no financial interest in the outcome of the project.
21 I want to make that disclosure and offer any of the
22 parties the opportunity to object to my continued
23 participation in this matter, starting with the
24 Petitioner.

25 MS. LIM: Petitioner has no objection,

1 thank you.

2 CHAIRPERSON SCHEUER: Haseko?

3 MR. CHUNG: Haseko has no objection.

4 CHAIRPERSON SCHEUER: City?

5 MR. TAKAHASHI: City has no objections.

6 MS. APUNA: No objections.

7 CHAIRPERSON SCHEUER: Any other

8 disclosures, Commissioners?

9 If not, Ms. Apuna.

10 MS. APUNA: Yes, Chair. Actually two --
11 well, the first one isn't a question, but OP actually
12 had two witnesses for their case, Mr. Funakoshi and
13 Ms. Fujimoto.

14 And then besides that, I know that you
15 mentioned as far as the proceedings, that there would
16 be Petitioner's case, and then Haseko's case, and
17 then rebuttal.

18 Well, OP and the County be able to put on
19 their position or case?

20 CHAIRPERSON SCHEUER: Mr. Lau and Mr.
21 Orodenger?

22 EXECUTIVE OFFICER: Chair, yes, it's
23 intended that OP and County put on their case.

24 CHAIRPERSON SCHEUER: That's what I
25 thought.

1 Did that address all your questions, Ms.
2 Apuna?

3 MS. APUNA: Yes, thank you, Chair.

4 CHAIRPERSON SCHEUER: It is 3:00 o'clock.
5 We're done with public testimony.

6 You know, I said we weren't going to take a
7 break before 4:00 o'clock, but there might be a need
8 for a five-minute bio break before we go to the final
9 proceedings.

10 Commissioners, is that desirable? It's
11 3:00 o'clock. We will reconvene promptly at 3:05.

12 (Recess taken.)

13 CHAIRPERSON SCHEUER: We're back on the
14 record.

15 Let me quickly see if there's -- and Ms.
16 Apuna started on this by noting her witnesses.

17 Ms. Lim, are there any other documents that
18 you want to add in addition to what you've already
19 filed with the Commission?

20 MS. LIM: Well, in addition to the
21 documents that we have already filed as exhibits,
22 there are certain orders that have come out of the
23 Commission within this docket that I would assume
24 are, in fact, part of the record by virtue of being
25 within the document, so if that is the case, then

1 there is not additional documentation that we will be
2 filing at this time, although I do need to reserve
3 the right to perhaps submit additional exhibits in
4 response to things that may come up during the
5 proceedings.

6 CHAIRPERSON SCHEUER: Understood, yes.

7 CHAIRPERSON SCHEUER: Mr. Lau, Haseko's
8 attorney, whoever is going to represent on this.

9 MR. CHUNG: Steve Chung for Haseko. Like
10 Ho'ohana, we would like to reserve the right to the
11 extent that an issue comes up to submit additional
12 information.

13 CHAIRPERSON SCHEUER: Same questions for
14 the County and OP.

15 MR. TAKAHASHI: No, we don't have anything
16 else, Chair.

17 MS. APUNA: Nothing.

18 CHAIRPERSON SCHEUER: Ms. Lim, why don't
19 you proceed, and keep in mind we do have a hard stop
20 at 4:00 o'clock today.

21 MS. LIM: Understood, Chair, thank you.
22 Thank you, Commissioners and parties. It's been a
23 long day already.

24 This is a very important project for our
25 client, Ho'ohana Solar 1, LLC, and I believe it's a

1 very important project for the State of Hawaii
2 because the solar project that Ho'ohana is proposing
3 is going to make it one of the largest contributors
4 to renewable energy in the State of Hawaii.

5 In some respect, although I know these are
6 dangerous words to use, in some respects it should be
7 simple.

8 CHAIRPERSON SCHEUER: I previously
9 instructed you, counsellor.

10 MS. LIM: I'm well aware of that, but let
11 me just explain.

12 In January of 2015, this Commission, after
13 several hearings, deliberately but then unanimously
14 voted to approve the use of Parcel 52 for the
15 development of a solar farm. And that solar farm is
16 going to be developed by Ho'ohana.

17 The Commission took deliberate action, but
18 did so in a timely manner. And the property was
19 Urban and everything looked good to go, and then
20 unfortunately, although the Commission issued its
21 order in January of 2015, which I'll call the 2015
22 order throughout these proceedings.

23 When HECO then went to the Public Utilities
24 Commission to request approval for the Power Purchase
25 Agreement, of course, that was a Power Purchase

1 Agreement between Ho'ohana and HECO, the PUC rejected
2 that.

3 The PUC at that time in 2015 rejected a
4 handful of Power Purchase Agreements.

5 So that could have been the end of this
6 project. The project that the Commission had
7 authorized we still wanted to go forward, but we
8 didn't have a Power Purchase Agreement.

9 HECO then issued another round of requests
10 for proposal seeking additional renewable energy
11 projects. Around the same time, the State of Hawaii
12 also passed a new law requiring that there be
13 100 percent renewable energy by 2045. These things
14 came together where Ho'ohana then submitted a
15 proposal in response to HECO's request, and the
16 project was selected.

17 A significant -- actually several
18 significant beneficial aspects about the new project.
19 One is the Power Purchase Agreements have already
20 been approved. So we're really coming before you as
21 the last really discretionary permit or discretionary
22 request that we have.

23 The City permits have been issued.
24 Building permits have not been issued. PUC has
25 approved the Power Purchase Agreement. But we do

1 want to get Commission approval because the project
2 that Ho'ohana wants to develop now is different from
3 the project that the Commission approved in January
4 2015.

5 The biggest difference is the 2015 project
6 was a 20 megawatt project, which was a sizeable
7 project at the time. However, right now, the project
8 that has been approved by the PUC is for a 52
9 megawatt project. That's the project that we are
10 requesting approval for today.

11 The 2020 solar farm is a 52 megawatt system
12 paired with a 52 megawatt, 208 megawatt hour battery
13 energy storage system with four hour duration at full
14 capacity. It includes related electrical
15 improvements and structures and utility tie-ins.

16 The request that we made in our motion that
17 we filed in August was pursuant to the Commission's
18 good-cause standard that we get permission again to
19 make the changes to the project from a 20 megawatt to
20 a 52 megawatt, and there is some differences in some
21 of the appurtenances with the project, and then the
22 operational timeframe.

23 Had the project that got approved in 2015
24 gone forward, it would have been in place -- excuse
25 me -- we're asking for this current project to be in

1 place, developed, operated and fully decommissioned
2 within 43 years of the Commission's approval.

3 So that's a little bit longer than the
4 project that had been approved in 2015. Obviously,
5 we have a lag period of over five years between the
6 approvals.

7 As I mentioned, we have taken into
8 consideration the Commission's good-cause standard
9 and we have articulated that in our motion. Some of
10 the differences that we think contribute to the good
11 cause would be not only the substantial increase in
12 renewable energy, this being a 52 megawatt project,
13 but also this very efficient use of the land. Parcel
14 52, again, that Ho'ohana leases from Robinson Kunia
15 land is the approximately 161 acres.

16 The project that we're proposing right now,
17 the 2020 solar farm project uses about 157 acres of
18 that property. So it is entirely within the Urban
19 District. That was an engineering challenge, and Mr.
20 Larry Greene can speak to that. He's the project
21 manager.

22 When you compare that against the 2015
23 project, which was only going to provide 20
24 megawatts -- nothing to sneeze at -- but 20 megawatts
25 on 124 acres, and now we're doing 52 megawatts on a

1 157 acres, we're looking at a 27 percent increase in
2 the amount of land being used, but we're getting
3 160 percent increase in renewable energy.

4 In addition to the project supporting Act
5 97, which is the law that requires 100 percent
6 renewable energy by 2045, I also want to spend a
7 minute talking about Act 23 that was just signed into
8 law in September of this year, just last month.

9 Act 23 eliminates the use of coal in Hawaii
10 for electrical production. I'm going to read some of
11 this.

12 "The state has committed to a decisive and
13 irreversible transition away from fossil fuels, and a
14 swift transition to a clean energy economy powered by
15 100 percent renewable energy. This renewable energy
16 transformation will help stabilize and strengthen
17 Hawaii's economy by reducing its dependency on
18 imported fossil fuels, fostering innovation and clean
19 energy job growth, helping protect Hawaii's
20 environment by greatly reducing carbon emissions, and
21 positioning Hawaii as a global leader on climate
22 solutions.

23 Coal is the largest source of carbon
24 dioxide emissions in the world. Coal fired power
25 plants are responsible for 70 percent of the nation's

1 mercury emissions, and when mercury emissions are
2 released into the air -- again, I'm taking this all
3 from Act 27 -- when mercury emissions are released
4 into the air, they accumulate in soil and in water
5 where it contaminates food consumed, especially fish.

6 Mercury is especially threatening to
7 pregnant women and young children. Mercury is one of
8 the leading causes of preventable birth defects,
9 including brain damage and cerebral palsy.

10 Federal regulations to reduce mercury from
11 coal power plants have been significantly weakened by
12 the current federal administration.

13 The Hawaii legislature finds that coal
14 power is one of the dirtiest fossil fuels, has no
15 role in Hawaii's clean energy future. The purpose of
16 the Act is to eliminate the use of coal in Hawaii for
17 electrical production.

18 This solar farm, Ho'ohana Solar Farm is a
19 major contributor to Hawaiian Electric's ability to
20 stop reliance on the AES coal-fired plant, and
21 instead rely on clean renewable energy.

22 So we believe that, if nothing else the
23 Commission hears today, Act 23 and the prohibition on
24 coal, and the 52 megawatts of clean energy that this
25 project wants to provide, provides the Commission

1 good cause to approve the rather modest amendments
2 that we are requesting.

3 I have lots of details about the project,
4 but I'm not going to read at this time, as I think
5 they will come out better in more interesting way
6 through our testifiers. But I do want to touch on a
7 couple of the other highlights, again, keeping in
8 mind of the Commission's good-cause standard; why
9 should you approve this request?

10 Again, the project was approved in January
11 2015, but we need a little more time, and we want to
12 do a 52 megawatt project instead of 20.

13 This 2020 solar farm is going to provide
14 educational benefits to the community. Ho'ohana is
15 going to partner with the Maui Economic Development
16 Board, which is a non-profit entity that's developed
17 the statewide and internationally recognized diverse
18 renewable energy curriculum for grades K through 12.

19 Earlier there was a recognition of
20 testimony that was received by Principal Hayashi from
21 Waipahu High School. Principal Keith Hayashi who
22 expressed support due to Ho'ohano's commitment to
23 provide development training to teachers on renewable
24 energy through STEM-based curriculum. That is one
25 example of maybe indirect financial, and clearly a

1 good community benefit that this project would bring.

2 We also have to acknowledge the support
3 that we've gotten from other folks, and not to
4 belabor the public testimony role that you read
5 through earlier, Chair, but we're very appreciative
6 that Royal Kunia Community Association, who's our
7 neighbor, has unanimously supported this 52 megawatt
8 project, and in fact, have been in support from the
9 start, and appreciate that Ho'ohana has been
10 transparent, has always tried to keep them informed.

11 We have also gotten lots of support from
12 both business leaders, the farming community, and the
13 elected officials, everyone able to touch on
14 something or find something in this project that they
15 believe is supportive of important needs in the State
16 of Hawaii.

17 It's probably better that I don't read out
18 all those names, because I wouldn't want to leave
19 anybody out, but certainly the union support, the
20 business support and the elected officials who
21 submitted testimony. We're extremely grateful for
22 that, and we think that too provides the Commission
23 some comfort that our request is consistent with it's
24 good-cause standard.

25 I believe, through Chair's question earlier

1 about whether Ho'ohana wished to file any additional
2 exhibits, I should have rephrased my response and
3 asked if through that we were officially admitting
4 our exhibits into the record? But we would want to
5 certainly admit all of the exhibits that we filed
6 thus far into the record.

7 And I want to also say that -- and that's
8 Exhibits 1 through 14 that were filed with our
9 Motion, and then Exhibits 15 to 53 that we filed on
10 September 25th.

11 And, again, I do ask that those get
12 admitted into record officially.

13 CHAIRPERSON SCHEUER: I believe they're
14 part of the record, but I'll ask for clarification if
15 we need to formally asked for them to be admitted
16 into the record and ask for any objections to the
17 parties from either Mr. Lau or Mr. Orodener.

18 MR. CHUNG: Haseko does not have any
19 objections.

20 CHAIRPERSON SCHEUER: Dan?

21 EXECUTIVE OFFICER: Mr. Chair.

22 CHAIRPERSON SCHEUER: Do we need to go
23 through the admission of things, or are they already
24 considered part of the record having been submitted
25 by the parties?

1 EXECUTIVE OFFICER: No, we don't. They
2 have already been submitted by the parties.

3 CHAIRPERSON SCHEUER: So we don't have to
4 go through that formalized process, Ms. Lim.

5 MS. LIM: Thank you.

6 So for our process today -- and we do
7 recognize that the Commission's time is short
8 today -- we have listed seven potential witnesses on
9 our list of witnesses. Some of those witnesses we
10 absolutely intend to call on and perhaps that will be
11 today or tomorrow morning. Other witnesses we have
12 reserve or rebuttal, depending on the nature of the
13 Commission's questions and areas that the Commission
14 may have a greater interest in.

15 Certain witnesses, like Sohrab Rashid who
16 prepared the traffic assessment, we filed written
17 direct testimony by Mr. Rashid. There do not appear
18 to be concerns from the parties, so we intended to
19 rest on his written direct testimony, but we can
20 certainly call him if needed.

21 Similarly for Dr. Monahan, who prepared the
22 cultural report for the project. We've submitted
23 written direct testimony for him. We didn't intend
24 to call upon him, but certainly we know the
25 Commissioners often have very distinct interest in

1 that topic area, so we could bring him forward. And
2 the same with a few of other witnesses that we
3 listed.

4 The key witnesses, let's say our primary
5 witnesses would be Mr. Jeff Overton on land use
6 planning and permitting; Mr. Lawrence Greene, who is
7 the project manager, and Mr. Jon Wallenstrom, who is
8 the development consultant working on the project.

9 And I'll just say one thing further before
10 we get into the actual presentation through
11 witnesses.

12 You can't see the room that we've been in
13 all day over here, but due to the social distancing
14 that we, the Ho'ohana legal team is trying to comply
15 with, there's some separation between myself and my
16 colleagues, Mr. Manaut and Mr. Simon. And it's
17 somewhat hampering our ability to communicate.
18 Everybody is dealing with this.

19 So in light of the fact that we have
20 several parties who, to our great disappointment,
21 have filed papers against us; and in light of the
22 fact of this somewhat cumbersome hearing process, we
23 are hoping that in order to facilitate an orderly and
24 efficient hearing, that the Chair does authorize all
25 counsel for Ho'ohana to participate in the

1 proceedings, consistent with Hawaii Administrative
2 Rules, 15-15-67.

3 We will use that permission judiciously.
4 Because we're not next to each other, we can't confer
5 as easily as we would otherwise.

6 CHAIRPERSON SCHEUER: The intention of your
7 request, Ms. Lim, is so that other counsel can jump
8 in as necessary?

9 MS. LIM: Correct, Chair.

10 CHAIRPERSON SCHEUER: I would suspect the
11 same thing, that Mr. Lau and Mr. Chung, that they
12 would want to as co-counsel be able to --

13 MR. CHUNG: That is correct, Your Honor --
14 Mr. Chair.

15 CHAIRPERSON SCHEUER: I haven't been
16 promoted to Your Honor yet, and since I'm not an
17 attorney, it's unlikely.

18 I don't see a problem with that.

19 MS. LIM: Thank you, very much, Chair.

20 CHAIRPERSON SCHEUER: How do you want to
21 use the rest of our 37 minutes together?

22 MS. LIM: Well, if I may, particularly
23 because Mr. Overton is six hours ahead and sounds
24 like he has a terrible cold as well, if we can bring
25 him in as our first witness, and have him go through

1 his presentation, and hopefully he can be released
2 and get a good night's sleep and be left alone
3 tomorrow.

4 CHAIRPERSON SCHEUER: Mr. Overton, I'm not
5 sure why you left God's country.

6 THE WITNESS: 35th wedding anniversary.
7 Stole my bride away from Cape Cod. It's 50, and the
8 winds are 50, lovely. I've got a sweater under my
9 aloha shirt.

10 CHAIRPERSON SCHEUER: Do you swear or
11 affirm the testimony you're about to give is the
12 truth?

13 THE WITNESS: I do.

14 CHAIRPERSON SCHEUER: Please proceed, Ms.
15 Lim.

16 JEFF OVERTON

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

20 DIRECT EXAMINATION

21 BY MS. LIM:

22 Q Thank you very much for sticking with us.
23 I'm going to just jump right into it.

24 You filed written direct testimony -- or
25 excuse me -- you provided written direct testimony

1 that we filed as Petitioner Exhibit 45; is that
2 correct?

3 A Correct.

4 Q I'm going to ask you to summarize that, but
5 first let's go through some preliminaries, if you
6 would.

7 What is your position at Group 70 or G70?

8 A Principal planner.

9 Q How long have you been in that role?

10 A About 37-year -- not as principal planner,
11 but 32 years with G70, 37 years in the profession,
12 EIS work, master planning, permitting.

13 Q And your resume was filed as Petitioner's
14 Exhibit 39, is that correct?

15 A Yes.

16 Q Have you testified before this Commission
17 before in areas of land use planning, permitting and
18 Chapter 343 analysis?

19 A Yes, I have, several times going back to
20 1990.

21 Q With that, if I may pause and ask the
22 Commission's indulgence to confirm that Mr. Overton
23 qualifies as an expert witness in the fields that we
24 have identified.

25 CHAIRPERSON SCHEUER: Specifically land use

1 planning, 343 analysis, and what was it?

2 MS. LIM: Land use planning, land use
3 permitting, and 343 analysis.

4 CHAIRPERSON SCHEUER: Any objections from
5 the parties?

6 MR. CHUNG: Steve Chung for Haseko. No
7 objection.

8 CHAIRPERSON SCHEUER: County?

9 MR. TAKAHASHI: City has no objections.

10 CHAIRPERSON SCHEUER: OP?

11 MS. APUNA: No objection.

12 CHAIRPERSON SCHEUER: Commissioners? He's
13 so admitted.

14 MS. LIM: Thank you very much.

15 Okay, Jeff, why don't you summarize a
16 little bit from your written direct testimony what
17 you know about the project, your history with the
18 project.

19 Then what I plan on doing is pulling up
20 certain exhibits regarding the project siting, the
21 138 kV line, and a few things like that, and we'll
22 talk about those in detail, but why don't you give
23 the Commission sort of an overview from your land use
24 permitting and planning perspective about this
25 project.

1 A That would be great. Thanks.

2 So G70 was retained by Ho'ohana in February
3 of 2014 as the land use planner originally for the
4 proposed solar farm that was granted the approval by
5 the Commission in 2015, and that motion is Petition
6 Exhibit 16 of 2015 order.

7 Also retained G70 for land use planning,
8 permitting in connection with the current solar farm
9 project.

10 As Jennifer had mentioned, the 52 megawatt
11 photovoltaic system, paired with a 52 megawatt, 208
12 megawatt hour battery energy storage with a four hour
13 duration. So the batteries are all in the newer
14 projects now, it's mandatory under HECO.

15 Again, 161 acres roughly owned by Robinson
16 Kunia, that's the Parcel 52. It's the same parcel
17 that was subject to the prior order in 2015.

18 I've been principal planner on the project
19 in both cases, and working with our team to go
20 through modification to the County's Conditional Use
21 Permit process, and now supporting the action before
22 the Commission.

23 We have a Petition Exhibit 1, and I believe
24 Derek Simon is going to launch a few screen share
25 exhibits that show -- and I'll just try to roll

1 through it -- a graphic that shows Parcel 52 which is
2 the boundary and the site plan.

3 Also be in your packet that each of the
4 Commissioners would have.

5 Thank you, Derek. I'm trying to juggle,
6 because I just have a laptop here, so I can't see
7 everything you're seeing.

8 So the shaded areas, Parcel 52, and that is
9 the Increment 3 of the Royal Kunia Phase II project.
10 And you can see the other parcels that are called out
11 here, all associated with Royal Kunia Phase II.

12 Q If I may, I'm going to pause there.

13 Do you know which parcel is owned by
14 Haseko?

15 A So I've got to go through the list here,
16 but Parcel 71 is really the key central development
17 parcel. The HRT parcel is Parcel 1. And I've got a
18 table in here that has a list of all the owners in
19 here. I just have to pull that up effectively.

20 Parcel 71 is really the key parcel.

21 Q The key Haseko parcel?

22 A Yes. So Parcel 1, Parcel 70 -- oh,
23 sorry -- 9-4-2 is 123 acres owned by HRT. 9-4-002
24 Parcel 70, Parcel 78, Parcel 71 are all Haseko
25 parcels. There is a small parcel, which is an

1 elementary school parcel owned by RKES. And then
2 Parcel 052, which is Increment 3, which is the
3 161-acre Robinson Kunia land parcel.

4 Q When you say Increment 3, not all of the
5 Commissioners who are here today were on the
6 Commission back in 2014 and 2015.

7 What are you talking about Increment 3?
8 Maybe you can give the Commission a very brief
9 summary about what is this entire Petition Area, and
10 how is it planned to be developed.

11 A David gave a very good kind of high level
12 capture of it, but Herbert Horita had to divide up
13 portions of the project, and the portion that
14 Robinsons had were basically obtained from Herbert to
15 kind of trade out as he was struggling.

16 Robinson came on board and picked up what
17 is the third increment up against the gulch of three
18 phases of Royal Kunia Phase II. So you have a
19 portion that's up against Kunia Road, kind of the
20 central larger parcel.

21 And then what was intended to be the final
22 phase actually was supposed to be a golf course at
23 the time. Robinsons picked it up, and that's the
24 parcel that Ho'ohana has established their lease deal
25 for the solar farm.

1 project duration of 43 years, and then this would
2 revert, they're required to decommission.

3 One question that you might have is that
4 approving the 2020 solar project will allow Parcel 52
5 to be used for this interim use, that's very
6 beneficial, not just to the environment as a
7 renewable energy project, but to the State in
8 achieving 100 percent renewable goal.

9 If the 2020 solar project here Ho'ohana
10 does not go forward, Parcel 52 will likely remain
11 undeveloped and unproductive. It's always been sort
12 of the parcel on the edge of this development plan,
13 and was always pushed way out there.

14 So the new group that's come in, and
15 hopefully they are successful and proceed, this would
16 be a final increment 43 years from now for this
17 development plan.

18 Q Just on that point, I want to make sure the
19 Commissioners follow what you're saying.

20 Parcel 52, where we want to, as an interim
21 use, but it's a long-term interim use, within our
22 lifetime. It is Urban property, and it is planned
23 for development, but it was the 1st, 2nd or 3rd
24 increment of the development plan within this entire
25 Petition Area?

1 A That's correct.

2 Q Was it the 1st, 2nd or 3rd?

3 A The 3rd, the final phase.

4 Q And would there be infrastructure reasons
5 for that?

6 A Well, it's challenging, of course, to
7 support all the homes with sewer, water, drainage,
8 roadways, et cetera. And there is also some
9 transportation concerns that have plagued the
10 project's ability to move forward. So that has
11 really been a damper on any additional interest in
12 converting this land to a subdivision.

13 Q So the increments that would -- go ahead
14 and construct the infrastructure would be Increment 1
15 or Increment 2 before it actually hooked up into
16 Increment 3?

17 A Correct.

18 Q Let's change gears, if we could a little
19 bit, and talk about view impacts.

20 I know G70 prepared various view analyses.
21 Maybe you can talk to the Commission about those, and
22 we'll start out with Petitioner's Exhibit 11, that
23 was filed with our motion. That was before there
24 were any opposition pleadings.

25 Could you just summarize for the Commission

1 what's there? Derek is pulling that up too.

2 A Yeah. The base question would be the
3 development of a solar project at this location --

4 COURT REPORTER: Excuse me, I'm having
5 difficulty hearing you. Can you please speak up and
6 repeat what you just said?

7 THE WITNESS: Yeah, so -- sorry, I'm just
8 speaking maybe too quickly, and I'll hold the mic
9 right next to my mouth.

10 The project that was approved by the Land
11 Use Commission in 2015, was examined very closely for
12 the concern -- potential concern of views, public
13 vantage points that may view the solar farm and have
14 some potential adverse visual effect.

15 At the time we went through the 2015
16 approval, it was found that there was no significant
17 visual effect to the adjoining community or
18 significant public vantage points.

19 We've gone back and prepared an updated
20 view study, that is Petition Exhibit 11. That
21 included view planes from eight regional vantage
22 points surrounding Parcel 52. And we created
23 accurate depictions of the future conditions of the
24 solar array and the facility, and computer visual
25 simulations, and the findings of this match up again

1 that the 2020 solar project will not adversely impact
2 any views or site lines, because it is low profile,
3 hugging the existing topography, low-rise solar
4 panels, they extend approximately six feet off the
5 ground, and will have a perimeter fence with
6 seven-foot high landscaping screen that surrounds it.

7 As these photos show in the depictions, the
8 2020 solar project is really in the background and
9 will not create an adverse -- an eyesore for the
10 surrounding community.

11 Q In fact, looking at the item that is on the
12 screen right now, is the solar farm even visible from
13 this vantage point?

14 A For most distant locations, because of
15 topography and intervening vegetation, it's not.

16 Q Are there any other photographs of that
17 exhibit?

18 Now, more recently, Jeff, I know G70 did
19 some other visual analysis. For example,
20 Petitioner's Exhibit 31.

21 Are you familiar with that? Derek is
22 pulling it up.

23 A Good, thank you.

24 More recently G70 prepared renderings of
25 2020 solar project to assess the views from the

1 Haseko owned property at TMK 9-4-002:71, that's the
2 larger piece of adjoining property.

3 These renderings also account for the
4 landscape concept plan that was prepared for this
5 2020 solar project. We're obligated to have
6 landscape buffer on the perimeter of the project as
7 it matches with the community, and is evidenced by
8 this rendering even from the closest boundary of
9 Parcel 71, the solar array will not be readily
10 visible.

11 Proposed fencing and landscaping should
12 mitigate virtually any potential view or contact,
13 impact from the 2020 solar project.

14 Q Thank you, Jeff, for discussing views. And
15 I do see, when I look at this exhibit, that the
16 panels really aren't visible.

17 I would like to turn, if we could -- and
18 help you -- or have you please explain to the
19 Commission how the 2020 solar farm is going to
20 connect to the HECO grid.

21 Derek will pull up the appropriate exhibit.
22 I'm basing all this on your written direct testimony.

23 A Thank you. I'll preload Derek's graphic.

24 Q Exhibit 25 would probably be the first one
25 to look at.

1 A All these solar projects, of course, have
2 to connect up with the solar grid, and they do so
3 through gen-tie, the plug-in of the solar system
4 after it goes to the substation and then eventually
5 into the power grid.

6 So the location, just answering Jennifer
7 Lim's question here, the 2020 solar project will
8 connect to the HECO grid through an existing 138
9 kilovolt transmission system that runs just outside
10 of Parcel 52 northern boundary.

11 When you drive through here, and when you
12 drive up the H-2, or you drive across Kunia Road, up
13 Kunia Road, you'll see the major power lines cross at
14 this point (indicating).

15 And in our Petition Exhibit 25, we have a
16 photo just taken within the past month. The vantage
17 point from the closest boundary of the Haseko-owned
18 Parcel 71 looking across Parcel 52.

19 Now, these power lines and polls for the
20 existing 138 kV system, HECO system, as well as the
21 lower voltage 46 kV system are clearly visible in the
22 distance. Those are existing poles. We didn't
23 simulate those.

24 So G70 prepared several graphics to show
25 the Commission how the 2015 solar project would have

1 connected to the HECO grid, and how the 2020 solar
2 project will connect up.

3 Our Petition Exhibit 24 shows dot, dot,
4 dot -- this will show how our 2020 solar project ties
5 into the existing 138 kilovolt system.

6 Q Just because it's such an important point,
7 so the 2020 solar farm, is it building or
8 establishing a new 138 kV line?

9 A No. We are tying into the existing 138 kV
10 system.

11 Q So how is that existing shown on this
12 Exhibit 24, please?

13 A The tie-in -- thank you, Derek, for zooming
14 a little bit -- at the top of this long red arrow
15 that says 1600 feet, and it can fix this short
16 segment of green tying into the parallel 138 line to
17 the substation battery component on the Ho'ohana
18 site.

19 So, again, the 138 all exist, the big
20 overhead towers, and we are just doing the short
21 connection in the mauka direction basically heading
22 upland away from the Ho'ohana site, also further away
23 from the Haseko site.

24 In terms of distances, the location of the
25 2020 solar project substation is even further away

1 from the other Petition Area properties than the
2 substation was planned in the 2015 solar project. We
3 have adjusted that. The current distance, this is In
4 petition Exhibit 27, is about 1320 feet to the
5 nearest Petition Area property Parcel 71. Before it
6 was roughly 1,057 feet. So we are about a football
7 field or soccer field further away in the new design,
8 which I think helps mitigate any potential view.

9 Q Thank you, Jeff.

10 If we could, because of your permitting
11 experience, I would like to quickly look at
12 Petitioner's Exhibit 28, and have you tell the
13 Commission whether or not the 2020 solar farm, as
14 approved by the City, complies with the applicable
15 zoning setback requirements?

16 A The 2020 solar project absolutely must
17 comply with the setback requirements around this
18 perimeter.

19 And, again, we have gone to great lengths
20 from an engineering standpoint to make it a very
21 efficient layout and use panels that are high
22 efficiency and a very dense layout. We still need to
23 respect the setbacks mandated by the City that is
24 shown in here.

25 Q That is the blue lines?

1 A We have the shaded panel arrangement that
2 is the old layout. The 2020 project takes it right
3 to the edge of the buffer, the setback distance, but
4 complies with the City's setback requirements
5 process.

6 CHAIRPERSON SCHEUER: Ms. Lim, just doing a
7 time check. It's 3:46. We have a hard stop at 4:00.

8 MS. LIM: You know, Chair, if I may,
9 especially because Mr. Overton, he desperately sounds
10 like he needs to get some rest.

11 CHAIRPERSON SCHEUER: I think the whole
12 Commission does too, but I admit, Mr. Overton more.

13 MS. LIM: I would like to turn him over to
14 the Commission for questioning, but I do need to
15 reserve the ability to call him back, because we
16 haven't touched on all of the areas within his area
17 of expertise.

18 CHAIRPERSON SCHEUER: Nor do we necessarily
19 appear to get through this docket in two days.

20 I'm not sure whether we will be able to
21 fully plumb the depths of all your expert's
22 expertise.

23 It's your case to make, but I'm concerned
24 about the level of detail that you're going into and
25 our ability to thoroughly hear from all the parties

1 to ask questions and deliberate.

2 MS. LIM: Your concerns are shared by all
3 of us. I'm going to ask Jeff two more questions, and
4 then I would turn him over for questions from the
5 Commission.

6 Q And, Jeff, those questions are -- and
7 again, that's all in your written direct testimony.

8 But G70 retained a biologist to do an
9 assessment on the property, because, of course, this
10 property hasn't been developed, none of the Petition
11 Area has been developed.

12 Were there any issues of concern that came
13 out of that biological assessment?

14 A No, the project will not have an adverse
15 effect on biological resources. Eric Guinther with
16 AECOS did the survey, and there were no findings of
17 endangered species, plant or animal for any federally
18 declared critical habitat located on or within Parcel
19 52.

20 Q And my last question for you is sort of a
21 catchall.

22 Taking into account your expertise, land
23 use planning, land use permitting, Chapter 343
24 issues, do you believe Parcel 52 is an appropriate
25 location, and that this is an appropriate time and

1 use of that property, meaning the development of 2020
2 solar farm?

3 A Absolutely.

4 As with the 2015 solar project, the 2020
5 solar project is a highly suitable interim use of
6 Parcel 52, which is consistent with all of those land
7 use criteria that are set out in the community plan,
8 the Commission's rules, and the applicable Decision
9 and Orders in the docket.

10 Most importantly, the Commission determined
11 that development of the solar farm at Parcel 52 is
12 consistent with the Hawaii Clean Energy Initiative,
13 which aims to achieve 70 percent clean energy by
14 2030, and 40 percent of it from locally generated
15 renewable sources.

16 So we have to go with these projects that
17 are really low-hanging fruit, and this one has
18 already gone through an approval process. It's now
19 over twice as large as it was back then in terms of
20 renewable energy by providing the 52 megawatts of
21 clean renewable energy. It's a prime example of how
22 we can go forward with renewable energy sources for
23 the State policies.

24 MS. LIM: Thanks very much, Jeff.

25 CHAIRPERSON SCHEUER: Mr. Simon, do you

1 want to stop screen sharing.

2 Mr. Overton is available for cross,
3 starting with Haseko, followed by County, OP and then
4 Commissioners.

5 CROSS-EXAMINATION

6 BY MR. CHUNG:

7 Q My name is Steven Chung, and I am
8 co-counsel for Haseko Royal Kunia.

9 So prior to submitting an application to go
10 forward with the solar farm, I would assume that the
11 Petitioner conducted some due diligence, and as part
12 of that due diligence, the Petitioner would have
13 reviewed the amended Findings of Fact, Conclusions of
14 Law and Decision and Order that this Commission
15 issued in October of 1996. Would I be correct?

16 A Yes.

17 Q And in reviewing the 1996 amended Findings
18 of Fact, there are provisions in there, paragraphs
19 184/185 to be specific that discuss drainage
20 requirements for the Petition Area.

21 Do you recall reading those Findings of
22 Fact?

23 A I know that drainage was an important part
24 of the overall master planning for infrastructure.

25 Q Do you know that Condition No. 16 of the

1 1996 amended Decision and Order provided that --
2 going to read this, and please correct me if I
3 misread it.

4 Condition 16 says: Petitioner shall
5 provide drainage improvements for the subject project
6 and shall coordinate offsite improvement with
7 adjoining landowners and developers, and/or other
8 federal, state and city agencies.

9 Do you recall reviewing such a condition?

10 A So in cases where we're dealing with
11 quasi-judicial findings, and Decision and Order and
12 conditions, we are always deferring to counsel in
13 terms of the interpretation of these conditions. As
14 a land use planner, I don't think I can --

15 CHAIRPERSON SCHEUER: Mr. Overton, please
16 make sure you speak right into the mic for the
17 benefit of the Court Reporter.

18 THE WITNESS: Would you like me to repeat?

19 CHAIRPERSON SCHEUER: Please.

20 THE WITNESS: So Mr. Chung was asking if I
21 was aware of a specific Condition No. 16 from the '96
22 D&O.

23 And, of course, we were not part of that
24 original finding. Talking more about the due
25 diligence that was done in preparation for this. And

1 since we are not counsel for the solar farm
2 developers, we always defer to counsel in terms of
3 interpretation of the specific legalities of those
4 conditions. I'm not a civil engineer, can't speak to
5 that.

6 I am aware that you need to work with
7 drainage on the property, and we have to make
8 provisions for the development.

9 Q (By Mr. Chung): As part of your due
10 diligence, didn't you review the Amended Decision and
11 Order, and would note that there were drainage
12 provisions or drainage requirements?

13 A We know that Bark Engineering did a master
14 plan for drainage on the property, and so it was
15 never, of course, implemented, because the
16 development was suspended so many times in a row.
17 And so they do the best they can, and with the rules
18 changing on storm water quality --

19 CHAIRPERSON SCHEUER: If I may, I actually
20 think it's -- for the witness, it's a kind of a
21 simple question. Did you read or are you aware of
22 that condition?

23 THE WITNESS: I'm aware of a drainage
24 provision.

25 MR. CHUNG: Thank you, Mr. Chair.

1 Q Mr. Overton, are you aware of the existence
2 of a 1996 Drainage Master Plan that covers the entire
3 Petition Area?

4 A We have a civil engineer that would speak
5 more specifically to the drainage requirements and
6 the historical.

7 I can't speak to the details of the
8 drainage master plan. The work that we were doing
9 was for Conditional Use Permit for utility
10 installation and -- I'm sorry, I can't give more
11 detail than that. I really defer to the civil
12 engineers as well as the attorneys' interpreting any
13 of those conditions.

14 Q My question to you is, were you aware that
15 there was a 1996 Drainage Master Plan?

16 A All of the zone changes in the City and
17 County require a drainage master plan, so that's part
18 of what Herbert had to go through in the original
19 rezoning.

20 Q Were you personally aware that there was a
21 196 drainage master plan that impacted parts of
22 Parcel 52?

23 A In our studies for the solar farm, again,
24 we deferred to civil engineers or attorneys to tell
25 us where things could be done in terms of solar on

1 the property.

2 So those requirements and meeting the
3 requirements for the Conditional Use Permit for the
4 utility installation were actually satisfied with the
5 City, integrating all those prior agreements.

6 Q I'm not asking you whether or not your
7 position is whether it's enforceable or not. I'm
8 just asking you whether you were aware that there was
9 a 1996 drainage master plan that impacted Parcel 52?

10 A Probably the straightest answer, because I
11 swore I would tell the truth, is I have some general
12 understanding of a drainage master plan.

13 Q Were you personally aware that the drainage
14 master plan called for a retention basin to be
15 developed on Parcel 52 just north of the border of
16 the golf course, the existing golf course?

17 A In the old plan there was an area in the
18 plan that was called out. And, again, as we
19 understand these, and my experience is that as these
20 developments progress, they're often placeholders in
21 the overall master planning scheme, and that is not a
22 hard rigid specific infrastructure land use
23 allocation there.

24 Q Were you aware that the 1996 master plan
25 called for a retention basin to be developed on the

1 sub portion of Parcel 52 just north of the golf
2 course?

3 A I saw one version of a master plan that had
4 a drainage basin there.

5 CHAIRPERSON SCHEUER: Mr. Chung, I'm going
6 to note the time. And we do have a hard stop at
7 4:00. It's 3:56. I don't know how much more you
8 have right now and how you want to proceed.

9 MR. CHUNG: I just have a few more.

10 CHAIRPERSON SCHEUER: We will lose quorum,
11 so we can't proceed past 4:00 o'clock.

12 My inclination at this point is to call for
13 a recess until 9:00 A.M. tomorrow, and unfortunately,
14 we will have to call you back from Cape Cod, Mr.
15 Overton, for continued -- I assume you are available?

16 THE WITNESS: You should speak with my wife
17 first. Go ahead, I'll be attending, sir.

18 CHAIRPERSON SCHEUER: Okay. I will ask the
19 parties to keep in mind that, you know --
20 Commissioner Wong.

21 EXECUTIVE OFFICER: I just want to point
22 out to the parties that this matter is the third
23 thing on the agenda tomorrow. So we're taking up two
24 other matters before we come back for this one.

25 THE WITNESS: That's not a helpful finding.

1 CHAIRPERSON SCHEUER: Thank you for that
2 clarification, Dan, but that is the way our agenda
3 has been published.

4 THE WITNESS: What time would you like me
5 to testify on my anniversary tomorrow?

6 CHAIRPERSON SCHEUER: It's up to your --
7 excuse me, Mr. Overton. I did not know it was your
8 anniversary tomorrow, but we are doing the best that
9 we can.

10 Your counsel took an extraordinary amount
11 of time to even get to this point. So we don't have
12 an ability, as I think you well know, to manage our
13 proceedings to the hour and the minute.

14 If you are to be called, you're going to
15 have to work with Ms. Lim on that. If not, I don't
16 know what we're going to do if you're not available
17 for cross-examination.

18 THE WITNESS: Is there any way we can start
19 at 9:00 o'clock Hawaii time?

20 CHAIRPERSON SCHEUER: The agenda is not set
21 up in that manner.

22 MS. LIM: If I may, there may be -- because
23 these questions are going to very specific items
24 that's really more within the area of expertise of
25 the civil engineer, and we have identified a civil

1 engineer, perhaps have instead of Mr. Overton to
2 respond to some of those questions.

3 CHAIRPERSON SCHEUER: This is
4 unfortunately, among other things, we are out of time
5 today. I'm a bit frustrated with the manner in which
6 the case has been put forward.

7 Mr. Lau, do we have the ability to reorder
8 the agenda to allow for at least one witness to be
9 called before proceeding with the adoption of the
10 order in Hawaiian Memorial Park, and take up the Maui
11 landfill matter?

12 MR. LAU: You do.

13 CHAIRPERSON SCHEUER: Do I need a motion
14 from the Commission to reorder the agenda?

15 MR. LAU: I don't believe so. I believe
16 you, as the Chair, can order that.

17 CHAIRPERSON SCHEUER: I'm willing, at the
18 inconvenience of the County of Maui and the parties
19 to Hawaiian Memorial Park, to allow no more than a
20 half hour for the full cross-examination and
21 conclusion of Mr. Overton's testimony, and then we
22 will proceed. Understood, Parties?

23 MR. CHUNG: Yes.

24 MS. LIM: Understood.

25 CHAIRPERSON SCHEUER: Mr. Ohigashi.

1 COMMISSIONER OHIGASHI: I think I informed
2 everyone that I will not be available until 10:30
3 a.m.

4 CHAIRPERSON SCHEUER: Thank you for that
5 reminder.

6 With that, it is 4:00 o'clock. We are
7 going into recess until 9:00 A.M. tomorrow as
8 instructed.

9 (The proceedings recessed at 4:00 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on October 7, 2020, at 9:00 a.m., the
6 proceedings contained herein was taken down by me in
7 machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

12 I further certify that I am not of counsel for
13 any of the parties hereto, nor in any way interested
14 in the outcome of the cause named in this caption.

15 Dated this 7th day of October, 2020, in
16 Honolulu, Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
21
22
23
24
25