

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on October 8, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

VII. Call to Order

VIII. ADOPTION OF ORDER

A17-804 HAWAIIAN MEMORIAL LIFE PLAN, LTD(O'ahu)
Petition for district boundary amendment
Consider Adoption of Order for Petition To
Amend the Conservation Land Use District
Boundary into the Urban Land Use District for
Approximately 53.449 acres of Land at Kane'ohe,
Island of O'ahu, State of Hawaii TMK
(1)4-5-033:por.001

IX. ACTION

SP97-390 COUNTY OF MAUI (Central Maui Landfill)
Consider LUC Staff's request to issue errata to
LUC Order for Fourth Amendment to State Special
Permit (SP97-390) for the Proposed Central Maui
Landfill Facilities dated August 13, 2020, to
correct the number of acres subject to
Condition 23 and related findings of fact

X. CONTINUED ACTION (IF NECESSARY)

A92-683 Halekua Development Corporation (O'ahu)

XI. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair (Oahu)
3 NANCY CABRAL, Vice Chair (Big Island)
4 EDMUND ACZON, Vice Chair (Oahu)
5 GARY OKUDA (Oahu)
6 LEE OHIGASHI (Maui)
7 ARNOLD WONG (Oahu)
8 DAWN CHANG (Oahu)
9 DAN GIOVANNI (Kauai)

10 STAFF:

11 COLIN LAU, ESQ.
12 Deputy Attorney General

13 DAN ORODENKER, Executive Officer
14 RILEY K. HAKODA, Chief Clerk

15 DAWN T. APUNA, ESQ.
16 Deputy Attorney General
17 State Office of Planning
18 State of Hawaii

19 JORDON HART.
20 Deputy Planning Director
21 County of Maui Planning Department
22 County of Maui

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

26 RICHELLE THOMSON
27 First Deputy, Dept. of Environmental Management
28 ERIC NAKAGAWA, Director DEM
29 ELAINE BAKER, Manager DEM
30 County of Maui

31 STEVEN CHUNG, ESQ.
32 MICHAEL LAU, ESQ.
33 Haseko Royal Kunia

34 CURTIS TABATA, ESQ.
35 BENJAMIN MATSUBARA, ESQ.
36 Hawaiian Memorial Life Plan, Ltd.

25

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1 CHAIRPERSON SCHEUER: It's 9:00 o'clock.

2 Aloha mai kakou; good morning.

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

13 For all meeting participants, I would like
14 to stress the importance of speaking slowly, clearly,
15 directly into your microphone, and before speaking,
16 try to remember, particularly if you are in a room
17 with multiple people, to identify yourself prior to
18 speaking.

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

1 This conferencing technology allows the
2 parties and each participating Commissioner
3 individual remote access to the meeting proceedings
4 via your own personal digital devices.

5 Please note, as we experienced yesterday,
6 due to matters entirely outside of our control,
7 occasionally disruptions to connectivity for one or
8 more members of the meeting at any given time. If
9 such disruptions occur, please let us know and please
10 be patient as we try to restore the audio/video
11 signals to effectively conduct business during the
12 pandemic.

13 My name is Jonathan Likeke Scheuer, and I
14 currently have the pleasure of serving as the LUC
15 Chair. Along with me, Commissioner Aczon, Chang,
16 Okuda and Wong, our LUC Executive Officer Daniel
17 Orodanker, our Chief Planner Scott Derrickson, our
18 Chief Clerk Riley Hakoda, our Deputy Attorney Colin
19 Lau, and our Court Reporter Jean McManus are on the
20 Island of Oahu.

21 Commissioner Cabral is on Hawaii Island,
22 Commissioner Giovanni is on Kauai, Commissioner
23 Ohigashi is joining our meeting at approximately
24 10:30 A.M., and Commissioner Giovanni will have to
25 leave at 10:00 A.M.

1 We currently have eight seated
2 Commissioners out of a possible nine.

3 If you recall yesterday, I made an
4 exception at the request of an individual witness to
5 continue his cross-examination on the Halekua
6 Development Corporation matter, Docket A92-683.

7 We will have no more than one half hour of
8 questioning of Mr. Jeff Overton on cross-examination,
9 and any necessary redirect.

10 We will then proceed to our agenda as
11 previously planned starting with the Adoption of the
12 Order on Hawaiian Memorial Life Plan, followed by
13 taking up Special Permit on County of Maui Central
14 Landfill, and then return to the Halekua Development
15 matter.

16 If we have insufficient time to complete
17 all our matters, it will likely be the Halekua matter
18 that will not be completed.

19 Any questions on our proceedings from the
20 Commissioners?

21 If not, let's admit Mr. Overton into the
22 room. And we were at the point in the proceeding
23 where Haseko was cross-examining Mr. Overton.

24 Again, we have a tight schedule. I hope
25 that the questions and responses will be brief and

1 relevant to the proceedings that we have before us.

2 Mr. Overton, you're still under oath.

3 THE WITNESS: Thank you so much for
4 accommodating the schedule yesterday. I appreciate
5 that.

6 JEFF OVERTON

7 Having been called as a witness by and on behalf of
8 the Petitioner, was previously sworn to tell the
9 truth, was examined and testified as follows:

10 CROSS-EXAMINATION CONTINUED

11 BY MR. CHUNG:

12 Q Mr. Overton, this is Steven Chung. I am
13 the co-counsel for Haseko Royal Kunia.

14 So let's pick up where we left off
15 yesterday, talking about the drainage master plan.
16 But back up. Just setting the stage for my
17 questions.

18 It is 157,000 out of 161 -- I'm sorry, I
19 misspoke. 157 acres out of 161 acres of Parcel 52
20 that is proposed for installation of solar panels.

21 Is that correct?

22 A I would have to double check the acreage,
23 but that sounds approximately correct.

24 Q That's approximately 97 to 98 percent of
25 the entire Parcel 52 area?

1 A That's not the exact lot coverage
2 percentage, that's the acreage of the project area
3 less easement setbacks and such.

4 Q Would I be correct in assuming that the
5 project will extend up to the setback area?

6 A In most cases it will.

7 Q And so solar panels could be placed all the
8 way up to the setback areas?

9 A As allowed by the City.

10 Q And that would include the area that was
11 designated for the detention basin?

12 A In 2015 the Commission approved the solar
13 project, and the solar project was, at that time as
14 now, responsible for drainage on their own property.
15 So they're really just refreshing the project to the
16 2020 design.

17 But to the best of my knowledge, there's no
18 drainage easement affecting Parcel 52. So the same
19 conditions are applied to the current solar farm, and
20 the drainage system for this farm must be sufficient
21 for the current proposed solar.

22 Q So do you recall yesterday that we talked
23 about Condition 16 of the 1996 Amended Decision and
24 Order?

25 A I know there was discussion on that, but I

1 really don't know the answer to that question. I do
2 planning and permitting work. I don't do civil
3 engineering. I don't do legal interpretation of
4 conditions on that.

5 So I was aware there was a condition with
6 the City, we have to go through the drainage
7 ordinance to satisfy that for the grading approval,
8 and all of that was known by the LUC at the time of
9 the 2015 approval, and then the subsequent
10 Conditional Use Permit that was approved.

11 So the City has been all through it, and
12 the drainage was satisfied.

13 Q Please listen to my question. I'm just
14 specifically asking questions with respect to
15 Condition 16, is that okay?

16 MR. MANAUT: This is John Manaut for
17 Ho'ohana.

18 I'd like to object. It's outside the scope
19 of his written direct testimony. He's already
20 answered the question to the best of his ability, and
21 it's becoming argumentative.

22 CHAIRPERSON SCHEUER: Mr. Chung, can you
23 enlighten us as to the purpose of your question?

24 MR. CHUNG: I'm going to ask Mr. Overton if
25 the Ho'ohana movant is requesting a modification or

1 deletion of Condition 16.

2 CHAIRPERSON SCHEUER: That particular
3 question is allowable, and the witness may answer
4 that it's outside of his ability to answer, because
5 it's outside of his expertise.

6 Q (By Mr. Chung): Mr. Overton, are you able
7 to answer the question.

8 A It's really outside my area of expertise.

9 Q So you are not able to answer the question?

10 A That's correct.

11 Q Do you know whether or not the drainage,
12 the impact of drainage on neighboring properties was
13 discussed in the movant's motion?

14 A In the current action that's before the
15 Commission, was drainage addressed?

16 Q Correct.

17 A To the extent that we need to, to meet
18 State and really County standards, that comes out
19 really with design. That comes in the future.

20 We have to meet those standards, and
21 there's a requirement for onsite drainage control.

22 Q I'm just asking you whether the movant
23 addressed the impact on the neighboring parcels in
24 its motion.

25 CHAIRPERSON SCHEUER: I believe the witness

1 has answered the question.

2 Q (By Mr. Chung): In the motion that was
3 filed with the Commission, did the movant address the
4 impact of the project on the neighboring view planes?

5 A As was presented in my testimony yesterday,
6 we showed some very specific examples of existing and
7 future views so, yes, it's been addressed.

8 Q That was addressed in response to the
9 objection that my client filed, wasn't it?

10 A I know that for our submittals we need to
11 provide adequate view analysis. It's a requirement
12 for solar farm application. And just as we had done
13 in 2015, we updated that study to reflect the new
14 proposed solar farm.

15 And we actually took a closer look at
16 Haseko property, and I went through dimensions,
17 distances, as well as the buffer proposal.

18 Q So the landscape proposal that you
19 discussed yesterday, was that included in the
20 original motion?

21 MR. MANAUT: Objection. This is getting
22 irrelevant, and already been asked and answered
23 yesterday.

24 CHAIRPERSON SCHEUER: I am having a hard
25 time -- again, Mr. Chung, I want to allow you to

1 cross-examine the witness the Petitioner chose to
2 call, but I need to understand the relevance to your
3 overall point.

4 MR. CHUNG: The relevance, Mr. Chair, is
5 that these matters were not discussed in the motion
6 that was filed.

7 CHAIRPERSON SCHEUER: They were discussed
8 yesterday.

9 MR. CHUNG: Mr. Chair, I have no further
10 questions.

11 CHAIRPERSON SCHEUER: City and County, do
12 you have any questions for Mr. Overton?

13 MR. TAKAHASHI: For the record, Eugene
14 Takahashi, Second Deputy Director, Department of
15 Planning and Permitting, City and County of Honolulu.
16 We have no questions.

17 CHAIRPERSON SCHEUER: Thank you.

18 Ms. Apuna.

19 MS. APUNA: No questions.

20 CHAIRPERSON SCHEUER: Commissioners, do you
21 have any questions for Mr. Overton?

22 Are there any questions for Mr. Overton,
23 Commissioners?

24 Commissioner Cabral.

25 VICE CHAIR CABRAL: Yes, thank you.

1 I have to figure out where the hand motions
2 are and all that.

3 Mr. Overton, thank you very much for
4 testifying with us. I appreciate the perspective.

5 In your opinion, and based on the photos
6 that we saw yesterday, with what I'm assuming the
7 growth that is in place now is weeds, for lack of a
8 better description. I'm not familiar with the
9 terrain. We've been there, but I'm not -- from Hilo,
10 trust me, you wouldn't see anything. The trees would
11 be 50 feet tall in about two years.

12 But with that kind of growth, and the
13 representation was that there will be no visual view
14 of the solar panels that will go, start at six feet
15 high. The fence was going to be slightly higher.

16 But is there any plans with what you've put
17 together to put any kind of additional barrier? The
18 fence is going to be there, and you're going to have
19 a hedge or something. But is there any possibility
20 of having larger trees that would potentially help
21 stop any kind of view from anywhere on the
22 neighboring properties, but without blocking the
23 effectiveness of the PV panels?

24 I don't know what the possibility is in
25 that terrain.

1 THE WITNESS: Derek Simon may be able to
2 pull up the view projection that we did at this edge,
3 Commissioner Cabral. And to answer your question,
4 one of the concerns that we worked with the City on
5 appropriate vegetation buffers on all the solar
6 projects that we worked on. They can't get too tall,
7 because it shades the solar panels, and introduce
8 debris and things like that. So we try to keep a
9 good growth that exists along that edge.

10 But as you can see here in this depiction
11 (indicating). This is the finished situation. So
12 the fence line is kind of faintly seen here, and then
13 this growth is roughly about a seven-foot
14 intersection. And you can see some of the existing
15 vegetation here, which is roughly California Guinea
16 grass and hale koa, and other invasive species that
17 exist out there today.

18 I hope that answers your question.

19 VICE CHAIR CABRAL: Yeah, okay, that's --
20 this is the photos we saw yesterday.

21 The Guinea grass that we are seeing in the
22 forefront of the photo, that's from a neighboring
23 property, and we're looking at the hedge. Is that
24 the hedge that's already in place? It does look like
25 there is a line there, so is there an actual fence

1 already in place there?

2 THE WITNESS: Not yet. It will be
3 constructed as part of the solar project.

4 So we are standing on Lot 51, the Haseko
5 piece, looking out at the solar farm at grade here,
6 as you would from street view, and this gives you an
7 idea of how the future solar farm would be viewed.

8 You're going to have landscape, of course,
9 within the individual residential lots, so I think
10 that in itself will be shielding.

11 VICE CHAIR CABRAL: Okay. That's really my
12 real question is, if there are residential lots
13 abutting to that area, is there anything that you can
14 project that -- with a six-foot high solar project --
15 that would be potentially unpleasant, or there's not
16 a lot of noise, I assume, from my solar panels, but
17 is there anything that could be disruptive to a
18 neighboring lot owner, a neighboring resident living
19 there, a neighboring commercial property? Is there
20 anything that you are aware of that is something that
21 would become -- adjacent lots --

22 THE WITNESS: Sure. There is no noise. Of
23 course, these are tracking panels, which is great
24 because what it allows is the glare condition, which
25 might exist if you were flying by in a drone or a

1 plane, then you might at times on a fixed panel
2 system have a glare condition, but with tracking it
3 varies throughout the day. You would not see glare
4 at ground level here at all.

5 So it's more up in the upper's eye view
6 where you essentially have no glare conditions here,
7 no noxious odors or noise.

8 VICE CHAIR CABRAL: Great. Thank you, very
9 much.

10 CHAIRPERSON SCHEUER: You can take off the
11 share screen, Mr. Simon.

12 Anything further, Commissioners?

13 Any redirect -- oh, Commissioner Aczon.

14 VICE CHAIR ACZON: Not a question. I just
15 want to thank Mr. Overton for coming back today, and
16 I want to wish you a happy anniversary.

17 THE WITNESS: Thank you very much. I have
18 a very patient and understanding wife. We will make
19 35 years if I get to 4:00 o'clock.

20 I really appreciate it, Chair, and the
21 Commissioners, your flexibility here, really
22 appreciate that.

23 CHAIRPERSON SCHEUER: I guess I will
24 establish for the record here at this time, on
25 September 9th I chaired a LUC Commission meeting, and

1 it was my 20th anniversary.

2 Any redirect, Ms. Lim?

3 MS. LIM: No redirect.

4 CHAIRPERSON SCHEUER: Okay. Mr. Overton,
5 you're dismissed for your fun and games in Cape Cod.

6 THE WITNESS: Thank you very much everyone,
7 see you soon.

8 A17-804 Hawaiian Memorial Life Plan, Ltd.

9 CHAIRPERSON SCHEUER: Commissioners, we are
10 now going to, as I indicated earlier, hold off on
11 further proceedings on this docket and move on to the
12 Adoption of the Form of the Order for Hawaiian
13 Memorial Life Plan.

14 So if you are counsel for this particular
15 thing, you can at least turn your video off and we
16 will admit the parties for Docket No. A17-804.

17 City and County of Honolulu again.
18 Hawaiian Memorial Life Plan, Ltd., Petitioner,
19 Intervenor Hui O Pikiloa, Office of Planning.

20 MR. TAKAHASHI: Chair, I had an audio
21 glitch. The question is if we had any questions?

22 CHAIRPERSON SCHEUER: No. We're about to
23 start the proceedings on Adoption of the Form of the
24 Order for Hawaiian Memorial Life Plan. I was noting
25 who the parties are.

1 MR. TAKAHASHI: Oh, I'm sorry. For the
2 record --

3 CHAIRPERSON SCHEUER: Hold on.

4 Mr. Hakoda, Mr. Derrickson, do we expect
5 the Intervenors to be here?

6 EXECUTIVE OFFICER: Intervenor has
7 indicated that they --

8 CHAIRPERSON SCHEUER: You broke up at the
9 very moment of the critical word. Will or will not?

10 EXECUTIVE OFFICER: Has indicated that they
11 will not be present today.

12 CHAIRPERSON SCHEUER: Our next order of
13 business is Adopting the Form of the Order, Docket
14 A17-804 Hawaiian Memorial Life Plan, Ltd., a Petition
15 to Amend the Conservation Land Use District Boundary
16 into the Urban Land Use District for Approximately
17 53.449 acres of land at Kane'ohē, Island of O'ahu,
18 State of Hawai'i TMK(1)4-5-033 a portion of Lot 1.

19 Mr. Hakoda, Mr. Derrickson, any written
20 testimony submitted on the Adoption of the Order in
21 this matter?

22 CHIEF CLERK: Mr. Chair, think is Riley.
23 No testimony has been received.

24 CHAIRPERSON SCHEUER: Are there any members
25 of the public who wish to testify on this matter? If

1 so, please use the raise-hand function and indicate
2 your desire to testify now. Seeing none.

3 Can we have appearances on this matter?

4 MR. TABATA: Good morning, Chair, members
5 of the Commission, Curtis Tabata and Benjamin
6 Matsubara for Hawaiian Memorial. Good morning.

7 CHAIRPERSON SCHEUER: Good morning, Mr.
8 Tabata.

9 City and County.

10 MR. TAKAHASHI: For the record, City and
11 County of Honolulu, Department of Planning and
12 permitting, Second Deputy Eugene Takahashi, with me
13 is Molly Stebbins from our office, the Corporation
14 Counsel.

15 CHAIRPERSON SCHEUER: Thank you.

16 MS. APUNA: Good morning, Chair,
17 Commissioners, Deputy Attorney General, Dawn Apuna on
18 behalf of State Office of Planning.

19 CHAIRPERSON SCHEUER: Before we take any
20 motion up, the Chair would like to confirm for the
21 record that all Commissioners and myself are prepared
22 to participate in these proceedings.

23 Commissioner Chang?

24 COMMISSIONER CHANG: Yes, I am prepared,
25 Mr. Chair.

1 CHAIRPERSON SCHEUER: Commissioner Aczon?

2 VICE CHAIR ACZON: Yes.

3 CHAIRPERSON SCHEUER: Commissioner Cabral?

4 VICE CHAIR CABRAL: Yes, I am.

5 CHAIRPERSON SCHEUER: Commissioner Okuda?

6 COMMISSIONER OKUDA: Yes.

7 CHAIRPERSON SCHEUER: Commissioner Wong?

8 COMMISSIONER WONG: Yes.

9 CHAIRPERSON SCHEUER: Commissioner

10 Giovanni?

11 COMMISSIONER GIOVANNI: Yes.

12 CHAIRPERSON SCHEUER: The Chair is also

13 prepared to participate.

14 The Commission will now consider Adoption
15 of the Order.

16 Commissioners, before you for your
17 consideration, deliberation and adoption are the
18 proposed Findings of Fact, Conclusions of Law, and
19 Decision and Order prepared by staff as instructed at
20 the last meeting on this docket.

21 Is there any discussion?

22 Commissioner Aczon followed by Commissioner
23 Okuda.

24 VICE CHAIR ACZON: Are we in discussion or
25 do you need a motion?

1 CHAIRPERSON SCHEUER: The plan was to be in
2 discussion and then entertain a motion, but we could
3 also do it, take a motion, and then do discussion.

4 VICE CHAIR ACZON: Okay. Well, I want to
5 make a motion, is that okay, Mr. Chair?

6 CHAIRPERSON SCHEUER: You may proceed.

7 VICE CHAIR ACZON: I move that the
8 Commission approve and adopt the final form of the
9 Decision and Order for A17-804 Hawaiian Memorial Life
10 Plan, Ltd.

11 CHAIRPERSON SCHEUER: Is there a second?

12 COMMISSIONER WONG: Chair, this is
13 Commissioner Wong. Second.

14 CHAIRPERSON SCHEUER: A Motion to Adopt the
15 Form of the Order before us has been made and
16 accepted.

17 I now recognize Commissioner Okuda?

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

20 I first have a clerical question. What are
21 the total number of Commissioners present right now
22 today at this moment?

23 CHAIRPERSON SCHEUER: Seven.

24 COMMISSIONER OKUDA: Thank you.

25 I would -- I know my vote is already on

1 record, but I would ask that one sentence be added to
2 the Order at page 153. The one sentence would follow
3 a sentence, and if I can read that sentence that my
4 proposed sentence would follow.

5 The order now -- the proposed order now
6 reads:

7 A copy of the recorded Conservation
8 Easement and Declaration of Restrictive Covenants
9 shall be submitted to the City and County of
10 Honolulu, Department of Planning and Permitting,
11 "DPP" prior to the issuance of any grading permit or
12 any other permit which involves ground disturbance.

13 I would propose that the order add the
14 following sentence to read as follows:

15 Petitioner shall also execute the agreement
16 with the Ko'olaupoko Hawaiian Civic Club containing
17 all provisions consistent with the Petitioner's
18 representations before any work involving ground
19 disturbance.

20 And that's my only request, Mr. Chair.

21 CHAIRPERSON SCHEUER: So a request is made
22 to the movant and to the seconder to Amend the Motion
23 to Adopt the Form of the Order as is before us, with
24 the addition with that one sentence. Movant?

25 VICE CHAIR ACZON: I don't see any problem

1 with that, Mr. Chair.

2 CHAIRPERSON SCHEUER: Mr. Wong?

3 COMMISSIONER WONG: No problem, Chair.

4 CHAIRPERSON SCHEUER: We have a modified
5 motion before us for your consideration. We are in
6 discussion.

7 Do you want to speak towards your motion,
8 Mr. Aczon?

9 VICE CHAIR ACZON: I believe everything
10 that I have to say is on the record.

11 CHAIRPERSON SCHEUER: Commissioner Wong?

12 COMMISSIONER WONG: Yes, Chair.

13 I just want to say that this project and
14 motion was -- everyone had a say, even the
15 Intervenors, and the community. It was a very
16 difficult, but Petitioners did a very good job in
17 bringing in all sides and even bending over backwards
18 to get changes to the Ko'olaupoko and other people of
19 the Hawaiian community on board.

20 And I want to just thank them, and also
21 everyone who drafted this Findings of Fact for all
22 their due diligence and their work on this.

23 That's all, Chair.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Wong.

1 Commissioner Chang?

2 COMMISSIONER CHANG: Thank you, Mr. Chair.

3 I, like Commissioner Wong, have greatly
4 appreciated, one, the drafter staff and all those
5 involved in preparing this very detailed Findings of
6 Fact, Conclusions of Law and Order. I think it is
7 very comprehensive. This is decades of work that has
8 been involved in this matter.

9 But there's been a lot of sensitivity and
10 care taken in the drafting of the order to reflect,
11 accurately reflect, I think, the discussion, how
12 difficult it was, and more importantly the conditions
13 that the Petitioner has agreed to abide by. These
14 are their reputations that they will be held to.

15 And I think it's very clear that there are
16 many people that are interested, and they will be
17 monitoring this.

18 I just did have one concern with
19 Commissioner Okuda. I totally agree that I think it
20 is Ko'olaupoko Hawaiian Civic Club that will be
21 involved, but I'm a little cautious about presuming
22 that. I think that there is an understanding -- and
23 they have been involved in this with the Petitioner
24 for many years, but I don't want to bind them in the
25 event that they have second thoughts.

1 But I think I would just prefer that it be
2 kept more open. That it is -- they can consult with
3 the Ko'olaupoko Hawaiian Civic Club, but, again, I'm
4 not sure that the cultural preserve is going to be
5 actually executed with them.

6 So that's my only reluctance. And
7 Commissioner Okuda's --

8 CHAIRPERSON SCHEUER: Amendment to the
9 Motion.

10 COMMISSIONER CHANG: Yes, thank you.

11 CHAIRPERSON SCHEUER: Procedurally,
12 Commissioner Cabral, I recognize that you had your
13 hand up before, but I would like to give a chance to
14 Commissioner Okuda to respond.

15 I'll also note that having read the
16 entirety and having edited the entirety of the 160
17 pages, that in a number of places references to the
18 Ko'olaupoko Hawaiian Civic Club includes "or other
19 Hawaiian organization".

20 Mr. Okuda.

21 COMMISSIONER OKUDA: I would request that
22 the sentence remain as-is. And the reason for that
23 is that there were specific representations
24 specifically identifying the Ko'olaupoko Hawaiian
25 Civic Club, and that I believe was a major factor in

1 gaining support for this project.

2 I facetiously kind of indicated, "we
3 wouldn't want the Gary Okuda Civic Club involved".

4 So I think it's specific, since the
5 Ko'olaupoko Hawaiian Civic Club was specifically
6 mentioned repeatedly, there was a memorandum of
7 understanding submitted as part of the evidentiary
8 record that they should be named.

9 If it turns out that, for whatever reason,
10 an agreement cannot be executed with the Ko'olaupoko
11 Hawaiian Civic Club, then the appropriate motion can
12 be brought regarding that. And so that's my comment
13 to that.

14 I would just like to add one thing. My
15 vote and this discussion is in no way intended to
16 denigrate or take away from the fine legal work or
17 the reputation of Mr. Matsubara, Mr. Tabata.

18 I truly believe they are some of the best
19 dedicated attorneys in Hawaii. They truly have the
20 State's interest at heart, and I know that from my
21 years in practice. So this is -- my vote is no
22 reflection on what they presented.

23 But that's my explanation, Chair.

24 CHAIRPERSON SCHEUER: Did you have a
25 followup, Commissioner Chang?

1 COMMISSIONER CHANG: Well, I would just
2 like to proceed. I would hate for them to have to
3 come back with a motion. But that is the motion
4 that's on the table, so let's hope that they will
5 follow up through, and Ko'olaupoko Hawaiian Civic
6 Club will indeed be the entity. But I just feel very
7 uncomfortable binding them, but the bottom line, I
8 just would like to proceed with the motion.

9 So unless Commissioner Aczon and Wong want
10 to change their friendly amendment to include the
11 broader Ko'olaupoko Hawaiian Civic Club and/or
12 another relevant Hawaiian organization, as the Chair
13 had indicated.

14 That's my only comment, Mr. Chair.

15 CHAIRPERSON SCHEUER: Thank you for your
16 comment, and you're correct, we do have a motion
17 before us.

18 Commissioner Cabral, thank you for your
19 patience.

20 VICE CHAIR CABRAL: Yes, thank you.

21 I wanted to echo everyone's sentiments
22 including Commissioner Chang and Okuda, as I spoke
23 yesterday on a completely separate matter, because it
24 was subdivisions that are managed into the future. I
25 too agree with Commissioner Chang.

1 I hate tying it to someone because 40 years
2 from now, the whole world could be different, and
3 that organization may not exist. And you'd hate to
4 have everybody constantly coming back to a future
5 Land Use Commission for every time something changes.

6 I'm going to support the motion, because
7 the greater good is represented there, and I
8 appreciate the work of all of our fellow
9 Commissioners for putting that together.

10 I also wanted to express this has been a
11 really long hearing. In fact, I thought it had been
12 a couple of years we have been hearing it, but it's
13 just been a long year here.

14 But is that both attorneys involved and the
15 Intervenors, and they're I guess not present now, but
16 I wanted to express my appreciation for the amazingly
17 good job that they did providing relevant concerns
18 and information to counterbalance. And it was
19 clearly not an easy decision, but then again, I guess
20 we don't get paid for these easy decisions.

21 So thank you to everyone for their hard
22 work on this matter. Thank you.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner Cabral.

25 Commissioners, is there further discussion

1 on the matter before us? Commissioner Aczon.

2 VICE CHAIR ACZON: Mr. Chair, you know, I
3 want to also echo Commissioner Chang's concern on
4 this one. And if Commissioner Chang has some
5 additional amendment to open up to in addition to
6 Koolau, I'll be happy to entertain it.

7 CHAIRPERSON SCHEUER: Commissioner Chang?

8 COMMISSIONER CHANG: Thank you,
9 Commissioner Aczon.

10 My only amendment would be to be
11 consistent, as Chair Scheuer has indicated,
12 throughout the document.

13 While there is reference to Ko'olaupoko
14 Hawaiian Civic Club -- and please don't misunderstand
15 me, I believe the Ko'olaupoko Hawaiian Civic Club has
16 made the difference in this project. That
17 partnership, that cultural sensitivity, their
18 participation with the Petitioner, in my view, has
19 made all the difference.

20 However, I would prefer that we be
21 consistent with the entire document, and I do not
22 want to necessarily bind Ko'olaupoko Hawaiian Civic
23 Club.

24 If they choose, for whatever reason, not to
25 be involved as the recipient of the preserve, but

1 rather just a consulting party, then that should be
2 their decision.

3 So I would make an amendment that it read:
4 The Ko'olaupoko Hawaiian Civic Club or -- I think --

5 CHAIRPERSON SCHEUER: If I might offer,
6 Commissioner Chang, for instance on the Finding of
7 Facts contained on page 107, the sentence begins
8 with: Allowing the Ko'olaupoko Hawaiian Civic Club
9 or other local native Hawaiian organization, and then
10 with the cultural preserve supports Hawaiian cultural
11 practices and so on, or other local native Hawaiian
12 organization.

13 COMMISSIONER CHANG: I would be comfortable
14 with that, or even in deference to Commissioner
15 Okuda, that the Ko'olaupoko Hawaiian Civic Club be
16 given preference. If not, any other as, Chair, you
17 indicated the language.

18 CHAIRPERSON SCHEUER: A request to further
19 amend the motion has been made.

20 Commissioner Aczon.

21 VICE CHAIR ACZON: Mr. Chair, before I
22 accept that, just want to ask Commissioner Okuda,
23 will that satisfy your amendment, in addition to your
24 amendment?

25 COMMISSIONER OKUDA: With all respect to

1 everyone, I'm sorry, but it wouldn't because, as
2 stated, I believe that the specific identification of
3 the Ko'olaupoko Hawaiian Civic Club makes all the
4 difference.

5 And by the way, the reason why I asked --
6 no, that's all I have to say. I'm sorry, it still
7 wouldn't.

8 VICE CHAIR ACZON: I believe Commissioner
9 Chang's amendment specifically mentions the Koolau,
10 so I will accept that amendment.

11 CHAIRPERSON SCHEUER: Commissioner Wong?

12 COMMISSIONER WONG: No problem.

13 CHAIRPERSON SCHEUER: Our further Amended
14 Motion before us is to Adopt the Form of the Order
15 but with the additional line offered by Commissioner
16 Okuda, with the additional phrase offered by
17 Commissioner Chang.

18 We are in discussion. Is there anything
19 further, Commissioners, on this matter?

20 I'll just say to this particular last minor
21 point in our very long and complex multi-year process
22 of first approving the EIS and then approving the
23 project, that I do believe that there's actually
24 enough in the record specifying the Ko'olaupoko
25 Hawaiian Civic Club as the potential steward, that

1 even with this amendment, that if somehow -- I have
2 100 percent expectation that the agreement will be
3 with the Ko'olaupoko Hawaiian Civic Club. If it
4 doesn't come to pass, I would actually expect that
5 there is enough in the record presuming that they
6 were to be the entity, that at the very least the
7 Petitioner would come to us with a briefing, if not a
8 full motion to amend even with that language.

9 If there is nothing further, we have a
10 motion before us as stated, made by Commissioner
11 Aczon, seconded by Commissioner Wong, amended by
12 Commissioners Okuda and Chang with the amendments
13 accepted.

14 Mr. Orodener, would you please poll the
15 Commission?

16 EXECUTIVE OFFICER: Thank you, Mr. Chair.

17 The motion is to approve and adopt the
18 final form of the order with amendments proposed by
19 Commissioner Okuda and Commissioner Chang to page 153
20 of the proposed Decision and Order.

21 Commissioner Aczon?

22 VICE CHAIR ACZON: Yes.

23 EXECUTIVE OFFICER: Commissioner Wong?

24 COMMISSIONER WONG: Aye.

25 EXECUTIVE OFFICER: Commissioner Okuda?

1 COMMISSIONER OKUDA: No.

2 EXECUTIVE OFFICER: Commissioner Chang?

3 COMMISSIONER CHANG: Aye.

4 EXECUTIVE OFFICER: Commissioner Cabral?

5 VICE CHAIR CABRAL: Yes.

6 EXECUTIVE OFFICER: Commissioner Giovanni?

7 COMMISSIONER GIOVANNI: Aye.

8 EXECUTIVE OFFICER: Commissioner Ohigashi
9 is absent.

10 Chair Scheuer?

11 CHAIRPERSON SCHEUER: Aye.

12 EXECUTIVE OFFICER: Thank you, Mr. Chair.

13 The motion passes with six "yes" votes and one "no".

14 CHAIRPERSON SCHEUER: Thank you to the
15 parties in this matter, Mr. Tabata, Mr. Matsubara,
16 City and County, Office of Planning and Intervenors.

17 MR. TABATA: Thank you.

18 CHAIRPERSON SCHEUER: We have been going
19 40 minutes. It somehow seems longer, 38 minutes.

20 Our next order of business, let's go for at
21 least another ten minutes -- well, hold on.

22 Mr. Giovanni, you need to leave at 10:00,
23 correct?

24 COMMISSIONER GIOVANNI: Yes. I have
25 another commitment.

1 CHAIRPERSON SCHEUER: And Commissioner
2 Ohigashi comes at 10:30, is that correct?

3 Let's proceed and see how far we get.

4 SP97-390 Central Maui Landfill

5 Our next order of business is Docket No.
6 SP -- related to Docket No. SP97-390 of consideration
7 of the LUC Staff's request to issue errat to the LUC
8 order for the fourth Amendment to the State Special
9 Permit SP97-390 for the proposed Central Maui
10 Landfill Facilities project dated August 13, 2020, at
11 TMK (2)3-8-003:019, a portion thereof, as well as Lot
12 20, Pu'unene, Maui, Hawai'i to correct the number of
13 acres subject to Condition 23 and the related
14 Findings of Fact.

15 Will the parties for Docket SP97-30 please
16 identify yourselves, and turn on your video as well.

17 Starting with Mr. Hopper, followed by Ms.
18 Thomson.

19 MS. THOMSON: Thank you, Chair.

20 Mr. Hopper is attending another meeting, so
21 on behalf of the Office of Planning we have Jordan
22 Hart, Deputy Director.

23 However, my name is Richelle Thompson,
24 First Deputy Counsel, County of Maui. I'm
25 representing the Department of Environmental

1 Management.

2 With me, although not the same location,
3 but present at the meeting is Eric Nakagawa. He is
4 the Director of the County of Maui, Environmental
5 Management; as well as Elaine Baker, our manager.

6 CHAIRPERSON SCHEUER: Thank you very much.
7 Office of Planning.

8 MS. APUNA: Good morning, I don't think
9 that we are a party to this, but we are present and
10 have provided public testimony that we would like to
11 speak to, if possible.

12 CHAIRPERSON SCHEUER: Yes, that is correct.
13 Let me update the record.

14 On August 13th of 2020, the Commission
15 mailed its Decision and Order in this matter.

16 On September 23, 2020, the Commissioner
17 dismissed Office of Planning's Motion for
18 Reconsideration, and I directed the staff to add
19 consideration of the LUC's staff request for an
20 errata to the LUC Order for the fourth amendment to
21 the State Special Permit to this agenda in order to
22 correct the number of acres subject to Condition 23
23 and related findings of fact.

24 On September 28, 2020, the Commission
25 mailed the October 7th and 8th, 2020 Notice of Agenda

1 to the Parties and to the Statewide, Oahu and Maui
2 regular and email mailing lists.

3 Further, the Department of Environmental
4 Management, County of Maui offered comments on our
5 October 8th, 2020 LUC Meeting Agenda and Agenda Item
6 IX on SP97-390, a filing dated October 7th. And on
7 October 6th, as stated by counsel for the Office of
8 Planning, the Office of Planning has offered a
9 comment letter on this matter.

10 I believe that's the entirety of the
11 record, the updates to this point, Mr. Hakoda?

12 CHIEF CLERK: Yes, Mr. Chair.

13 CHAIRPERSON SCHEUER: Has there been any
14 written testimony other than those two offered on
15 this matter?

16 CHIEF CLERK: Not to my knowledge, Chair.

17 CHAIRPERSON SCHEUER: Is there anybody in
18 the audience wishing to provide public testimony on
19 this matter? If so, raise your hand using the
20 raise-hand function. Seeing that there is no public
21 testimony on this matter, LUC staff will be called on
22 to describe the action it would like the Commission
23 to approve regarding errata on Special Permit 97-390
24 -- sorry, excuse me, one moment. I'm going to call
25 for a short recess.

1 (Recess taken.)

2 I'm recognizing Commissioner Ohigashi is
3 joining us.

4 CHAIRPERSON SCHEUER: Here's the procedures
5 we're going to do.

6 We are first going to hear from -- there
7 being no public testimony other than the written
8 public testimony from the Applicant and the Office of
9 Planning, I want to first hear from the Staff their
10 presentation, and why they seek this errata; and then
11 I will allow a presentation by both the County of
12 Maui Planning as well as Environmental Management
13 followed by a brief presentation of their comments
14 from the Office of Planning with questions being
15 allowed to all of those parties by the Commission.

16 Commissioner Ohigashi.

17 COMMISSIONER OHIGASHI: Is there anything
18 that occurred during my absence that would require me
19 to review the record prior to voting on this matter?

20 CHAIRPERSON SCHEUER: Not on this docket
21 regarding the Central Maui Landfill.

22 COMMISSIONER OHIGASHI: Thank you.

23 CHAIRPERSON SCHEUER: Thank you,
24 Commissioner.

25 So that's our procedure for this docket.

1 Let's hear from LUC staff.

2 EXECUTIVE OFFICER: Mr. Chair, this request
3 stems from some confusion that occurred, and my staff
4 actually -- when staff drafted the Decision and Order
5 in this matter, it was unclear as to whether or not
6 the requirement that the Applicant seek a District
7 Boundary Amendment was limited to the 22 acres of
8 Important Agricultural Land, or the 95.659 acres of
9 the total permitted area of the CML, Central Maui
10 Landfill.

11 After review of the record and discussion
12 among staff, we concluded that in fact the Commission
13 intended, when it made its original motion in this
14 matter and directed staff to prepare the Decision and
15 Order, that the requirement to seek a District
16 Boundary Amendment was intended to be applied to the
17 95.659 acres of the Central Maui Landfill.

18 We therefore, request permission from the
19 Commission to correct that error in paragraph 23 on
20 page 58, striking the language 22 acres of Important
21 Agricultural Land, and inserting language 95.659
22 acres of the total permitted area of the CML, and
23 Finding of Fact No. 12, in which we, once again, make
24 the same change as well as Finding of Fact No. 135 on
25 page 43. Again, making the same change -- changing

1 the acreage to 95.659 acres; and Finding of Fact --
2 as well as making the same change in Finding of Fact
3 No. 138 on page 46.

4 These changes will therefore render the
5 Decision and Order consistent with the motion that
6 was made by the Commission in the original
7 proceeding.

8 CHAIRPERSON SCHEUER: Questions for Mr.
9 Orodenker from the Commission?

10 Commissioner Giovanni.

11 COMMISSIONER GIOVANNI: Thank you, Chair.

12 I believe I was the movant for the order in
13 this particular case. And as Mr. Orodenker
14 explained, it was the intent for the condition to
15 apply to the full 95.659 acres.

16 So I thank the staff for coming forward to
17 correct the error. It is consistent with the
18 original intent of movant.

19 CHAIRPERSON SCHEUER: Commissioners,
20 further questions for Mr. Orodenker? If there is
21 none at this time, I'll make time available for Ms.
22 Thomson, and to direct the County's presentation on
23 this matter.

24 We will probably take a break in about
25 11 minutes.

1 MS. THOMSON: Thank you, Chair. Richelle
2 Thompson, again, speaking on behalf of the Department
3 of Environmental Management.

4 DEM has submitted its written testimony, so
5 I'm going to summarize the points that we wish to
6 make today.

7 COURT REPORTER: Excuse me, before you
8 continue, can you speak louder, please? This is the
9 court reporter.

10 MS. THOMSON: Yes.

11 COURT REPORTER: Thank you.

12 MS. THOMSON: So DEM submits the
13 consideration of the LUC staff errata is procedurally
14 deficient in that it seems to substantially amend the
15 LUC adopted Decision and Order, which granted DEM's
16 Petition to Amend SP97-390 by modifying the acreage
17 subject to Condition No. 23 which presently requires
18 DEM seek a District Boundary Amendment for the
19 22-acre portion of the Project Area that is
20 designated Important Ag Lands.

21 So as noted, this is a substantive change
22 to the D&O, which should not be addressed by the LUC
23 by an errata which should be reserved for minor
24 typographical or clerical errors.

25 Additionally, the D&O was provided in

1 advance to the Commissioners prior to the LUC
2 adoption of the D&O on the 45th day, which is the
3 deadline for the decision being August 13th, 2020.

4 If the Commissioners did not at that time
5 agree that the D&O accurately reflected their
6 decision made at final close of the hearing on July
7 9th, the opportunity to address that would have been
8 on or before the Commission's August 13th adoption of
9 the D&O.

10 So both the Office of Planning and DEM
11 requested to obtain a proposed D&O in advance of the
12 adoption, but were not provided that opportunity.

13 Arguably, LUC Rule 15-15-82(b) requires
14 service of the proposed D&O on the parties. Although
15 I recognize that have been -- (indecipherable) that's
16 not the practice for these types of applications and
17 the D&Os have all been special permits.

18 DEM further submits that it was
19 procedurally improper to deny the Office of
20 Planning's Motion to Reconsider filed on August 31st
21 where its oral Motion to Amend was made during the
22 hearing on September 24, 2020.

23 Although both DEM and the County Department
24 of Planning filed joinders to OP's motion, neither
25 was allowed to provide -- neither was allowed the

1 opportunity to offer arguments on September 24th.

2 So at this juncture, DEM suggests the LUC
3 may rescind its decision to deny the Office of
4 Planning's Motion for Reconsideration or Motion to
5 Amend the condition, or it might rescind its decision
6 to adopt the D&O.

7 DEM further requests the opportunity to
8 offer its arguments on these, the Motion to
9 Reconsider or Amend, so that the LUC can develop a
10 full complete record on the acreage subject to the
11 requirements.

12 We wanted to add that in a review of the
13 transcript of the July 9th hearing, it appeared that
14 the Commission was leaning more toward requiring the
15 40-acre portion of the Project Area that would be
16 considered for those buildings and other buildings
17 and structures for the recycling activities.

18 There was a lot of discussion about those
19 being more industrial-type uses rather than
20 traditional landfill, the actual hole-in-the-ground
21 landfill, and said those types of uses, the
22 Commission seemed to indicate were more of a
23 permanent nature, and therefore, should be subject to
24 the District Boundary Amendment.

25 Requiring a DBA for the entire 96-plus acre

1 project area is an immense expansion as a
2 requirement. Not only will it affect the Central
3 Maui Landfill, but it will also affect the three
4 other active landfills within Maui County.

5 It's not a small requirement. These
6 involve multiple year and upwards of probably 500 to
7 a million dollars per site. So the ramifications of
8 this condition are quite immense, and we respectfully
9 request that the LUC give us the weight that it
10 deserves, and the opportunity for further argument.
11 Thank you.

12 CHAIRPERSON SCHEUER: Is there anything
13 further from the other Maui parties, Ms. Thomson?

14 MS. THOMSON: Perhaps with Jordan Hart,
15 Deputy Planning Director, so see if he has anything
16 further to add.

17 MR. HART: Chair, thank you. I would like
18 to add -- I'm not going to make any --

19 CHAIRPERSON SCHEUER: Sorry.

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

22 THE WITNESS: I do.

23 JORDAN HART

24 Was called as a witness by and on behalf of Maui
25 County, Department of Planning, was sworn to tell the

1 truth, was examined and testified as follows:

2 MR. HART: Thank you.

3 So without Mike Hopper here, I'm not going
4 to address any of the procedural issues, but just
5 from a land use planning perspective, the Planning
6 Department needs the tool of the Special Permit to
7 address issues like this.

8 There is an ability, too, that occurs.
9 Sometimes when the foreseeable life of the landfill
10 changes unexpectedly, as has happened a number of
11 times on Maui for various reasons, and I'm sure that
12 there will be other situations in the future that we
13 can't foresee that will cause that to happen again.

14 So I think having that tool in the tool box
15 for land use planning is important for us.

16 To reiterate what Ms. Thomson mentioned, we
17 do have three other facilities in the County, and we
18 wonder what makes this decision different from any
19 potential requests when those would come forward, or
20 is this expected to be applied to all?

21 From my perspective, it wasn't really clear
22 specifically why this happened at this location now.
23 You know, there was consultation with LUC staff by
24 Petitioner earlier on in the process, and there
25 wasn't really a substantive indication that this

1 might be something that's forthcoming. And I don't
2 really think that the discussion that I heard clearly
3 explained for me why this is different.

4 And then, you know, the final thing is that
5 we really just strongly do feel we need this option,
6 and do need to figure out a way to pursue how it will
7 be addressed in the future, based on the outcome of
8 this discussion. Thank you.

9 CHAIRPERSON SCHEUER: Thank you, Mr. Hart.

10 Commissioners, are there questions for Ms.
11 Thomson or Mr. Hart?

12 Ms. Thomson, you're suggesting, if I
13 understood your written testimony and your oral
14 summary right now, correctly, you're suggesting that
15 we erred by dismissing OP's motion for the reason
16 that it was filed in an untimely manner?

17 MS. THOMSON: Yes. And specifically that
18 motion to amend, so the oral Motion to Amend -- so
19 the Motion to Reconsider is one thing. And I think
20 the Office of Planning has provided that there would
21 have been no opportunity to file a timely Motion for
22 Reconsideration because the LUC made its decision on
23 the 45th day. So that was under Section (c).

24 There was no timely opportunity to file a
25 Motion for Reconsideration, therefore, they made the

1 oral Motion to Amend the permit condition, which was
2 not granted, and we believe that was an error, and it
3 would have also further allowed the Commission to
4 make a full and complete record because if it is
5 going to require a DBA for the entire 96-acre permit
6 acreage, that's an enormous change, and we believe
7 that the record doesn't fairly support that.

8 CHAIRPERSON SCHEUER: My question, just to
9 be clear, was specifically focused on our discussion
10 on choosing to end the proceedings was focused on the
11 very particular administrative rule that specified
12 when a motion could be timely filed.

13 Are you suggesting the Land Use Commission
14 misread that rule?

15 MS. THOMSON: I believe that the Motion to
16 Amend, the oral Motion to Amend, although it was made
17 after the close of the hearing, was properly made
18 pursuant to --

19 CHAIRPERSON SCHEUER: Let me try one more
20 time, and then I'll stop harassing you.

21 A written Motion for Reconsideration was
22 filed, and we determined under our rules that it was
23 not filed in a timely manner based on an
24 administrative rule of ours.

25 Are you suggesting that we have misread

1 that rule? That's my narrow question.

2 MS. THOMSON: Yes, I do believe so. And
3 the reason that I believe that it was a misreading of
4 the rule is that it would render that section of your
5 rules absurd, if there were no opportunity to file a
6 Motion for Reconsideration because the clock had run.

7 CHAIRPERSON SCHEUER: You feel that if the
8 Office of Planning had filed within 45 days, or
9 within seven days of the 45-day end, that would not
10 have been timely either? Since the 45-day clock ran,
11 we filed our thing, and if they filed within seven
12 days of the written order being issued, that that
13 also would not have been timely, and therefore,
14 absurd, because they didn't -- it was well after
15 that?

16 MS. THOMSON: I understand that. Honestly,
17 I think that that rule is -- it's not all that
18 clearly drafted. But I do believe that there's a
19 provision for reconsideration, and that it was denied
20 based on the seven days. But Section (c) of that
21 rule discusses within the timeframe, but not after
22 the timeframe required by the LUC to make its
23 decision which is the 45 days.

24 CHAIRPERSON SCHEUER: It's 10:00 o'clock.
25 We have just lost Commissioner Giovanni, as

1 indicated.

2 It is time for a ten-minute recess. We
3 will reconvene, if there are any further questions
4 for County of Maui, then we will hear from Office of
5 Planning. Ten-minute recess.

6 (Recess taken.)

7 CHAIRPERSON SCHEUER: We're back on the
8 record. Thank you for the ten-minute break.

9 We are offering the Commissioners
10 opportunity to ask questions of Ms. Thomson or Mr.
11 Hart.

12 Commissioner Chang.

13 COMMISSIONER CHANG: Thank you, Mr. Chair.

14 Good morning, Ms. Thomson. As I understand
15 the staff, LUC staff's errata, it's actually to
16 correct essentially a typographical error that the
17 Commission's intent, as confirmed by Commissioner
18 Giovanni who made the motion, was to require the DBA
19 for the entire parcel, the 90-plus acres, not just
20 the 23 acres.

21 And so we're not doing anything
22 substantially, we are just correcting essentially
23 what I would consider a typo, which an errata to me
24 is appropriate to do that.

25 Because what it appears is that the County

1 is asking us essentially to reopen the hearing.
2 There was opportunity during the hearing for the
3 County to address the Land Use Commission's concerns
4 about use of a Special Use Permit for landfills.

5 And this was not the first instance where
6 issues like this have been raised. The Waimanalo
7 Gulch issue that's come before us, the Commission has
8 also raised the question about whether a Special Use
9 Permit is appropriate.

10 So I guess my question to you is that the
11 County, your County, your letter, in my view, asking
12 us to reopen; is that what you're asking us to do?

13 MS. THOMSON: Thank you, Commissioner
14 Chang.

15 Yes. On a narrow point raised by the
16 Office of Planning in its Motion for Reconsideration
17 or oral Motion to Amend is to just develop for the
18 Commission so you can make a full and complete
19 decision on the record as to which area, if any,
20 should be the subject of a District Boundary
21 Amendment.

22 When I reviewed the transcript of the
23 hearing, there was no clear indication, at least in
24 my reading of it, whether it involved just the
25 important ag lands section, the 22 acres, the 40-acre

1 project site, which I think many Commissioners noted
2 certain concerns about the type of proposed uses on
3 that area. And I know that the County made the
4 arguments at that hearing, and in its application,
5 that these uses were all ancillary to the actual
6 landfill, hole-in-the-ground landfill uses; or
7 whether it involves the entire 96-acre area Special
8 Permit Project Area.

9 And the reason that that's important is not
10 only for this permit but, you know, in going forward
11 as the Department of Planning mentioned, we have
12 three active landfills, and that's just within Maui
13 County. And my understanding is that the other
14 counties also use the special permit vehicle to
15 permit their landfills.

16 So the decision potentially has very broad
17 impacts for land use and land use planning. And so
18 if the Commission is going to go this way, we would
19 appreciate the opportunity to develop a full record
20 so that it's clear, not only to Maui County, but to
21 the other counties which direction everybody is
22 instructed in going further forward.

23 COMMISSIONER CHANG: Thank you for that
24 explanation.

25 Is there anything that precludes the County

1 of Maui from raising this at another time before the
2 five years to come to the LUC and raise those
3 questions in a more appropriate motion?

4 My problem is that this came to us under a
5 Motion for Reconsideration. There is a very, in my
6 view, a very legal, a very narrow legal basis upon
7 which we reconsider; that there was a full
8 opportunity for discussion at the hearing where the
9 public was invited to participate in that. They
10 heard the testimony.

11 So legally, I find that this is an
12 inappropriate vehicle to be raising what I consider a
13 substantive issue versus a typographical error.

14 But let me ask again.

15 Is there anything that precludes the County
16 of Maui from coming to the Land Use Commission at
17 another time before the five years to ask that this
18 particular condition be removed or be -- and you
19 develop a full record about why it should be -- why
20 it should not be a DBA required, because you're
21 putting the burden on the LUC. So is there anything
22 that precludes you from coming back?

23 MS. THOMSON: Thank you, Commissioner
24 Chang.

25 We could file a motion for -- to modify the

1 condition, and then go through the normal route
2 through 15-15-96.1 to go through the Planning
3 Commission and then back to you, the Land Use
4 Commission.

5 So, yes, we could go that route. I think
6 our point today would be if that is the
7 recommendation, or if that's what happens here, it's
8 leave the Decision and Order as it was adopted by the
9 LUC with the 22 acres, and then we would move forward
10 from that and potentially seek to modify that
11 condition going forward.

12 In that case, our request would be to leave
13 the Decision and Order as it has been adopted.

14 COMMISSIONER CHANG: Thank you very much.
15 I have no further questions.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Chang.

18 Further questions for the County?

19 COMMISSIONER OHIGASHI: I have a question
20 for Mr. Hart.

21 How many of these other landfills in the
22 County of Maui are planning to have an
23 industrial-type use area next to them by the County?

24 MR. HART: Thank you very much, Chair.
25 I'll try to respond to that.

1 The first thing I'll say is that -- let me
2 address the use issue. It may be considered to be
3 industrial in nature, but it's accessory to the
4 County's facility, so there is a discussion that was
5 happening previously about industrial parks and
6 things like that, and I think that there is
7 significant difference for the County between
8 commercial industrial and utilities --

9 CHAIRPERSON SCHEUER: Sorry, Mr. Hart, if I
10 may. And you're going to now be the recipient of
11 yesterday's proceedings with people taking very long
12 and diversionary explanations in response to specific
13 questions.

14 I would like you to answer Commissioner
15 Ohigashi's specific question.

16 How many other landfills in the County on
17 the island have this kind of -- if you want to call
18 it accessory use -- or his words were ancillary uses.

19 MR. HART: I think the appropriate person
20 to address that question to would be Environmental
21 Management.

22 CHAIRPERSON SCHEUER: Who specifically, Ms.
23 Baker?

24 MR. HART: I think Ms. Thomson can identify
25 the representative that she has with her today.

1 MS. THOMSON: I believe Eric Nakagawa,
2 Director of Environmental Management.

3 CHAIRPERSON SCHEUER: Aloha.

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

6 THE WITNESS: Yes.

7 ERIC NAKAGAWA

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

12 CHAIRPERSON SCHEUER: Commissioner
13 Ohigashi, did you hear his question?

14 THE WITNESS: Yes.

15 CHAIRPERSON SCHEUER: Please respond.

16 THE WITNESS: I think potentially all of
17 them. I think -- do you want me to elaborate or just
18 give you a yes?

19 CHAIRPERSON SCHEUER: Commissioner
20 Ohigashi.

21 COMMISSIONER OHIGASHI: No, I just wanted
22 to know how many -- have any of them had these
23 industrial park uses now, with accessory uses now?

24 THE WITNESS: Sorry, just have a hard time.
25 I can say yes or no, but I don't know if it will make

1 sense. I'll just say no.

2 COMMISSIONER OHIGASHI: You'll say no,
3 okay.

4 CHAIRPERSON SCHEUER: Go ahead and expand.

5 THE WITNESS: Sorry, I didn't want to get
6 scoldings also.

7 So I think if Commissioner Giovanni, I
8 think in the discussions explained it well, in that
9 the look in the landscape of a landfill in the future
10 and now is totally different than what it was
11 30 years ago.

12 30 years ago, hole in the ground with every
13 piece of rubbish, whether plastic, whatever. And
14 that's different now, and it's not because we want to
15 do it as far as department, but it's what the
16 community wants and what everybody thinks.

17 You got to recycle. It's a landfill
18 diversion. So that's why we say it's ancillary. So
19 in the future, absolutely, I think in the future all
20 of them will go different. Whether they have a
21 buffer-type style building, or they're separating all
22 the different type of recyclable materials. And
23 there's regulatory requirements that do not allow us
24 to landfill certain things.

25 That's why when you asked me, are they now?

1 I'll say no, there is recycling. But I believe this
2 body, that I can remember when they were talking
3 about it, is the heartache was a buffer building with
4 a concrete slab, and all that kind of stuff. Those
5 are regulatory requirements we need to comply with.

6 When we do those types of activities, we
7 have to build it. If we could do it right on the
8 ground, we would have done it in agricultural-type
9 setting. So that's why I say, no, because there is
10 no buffer buildings currently there.

11 But in the future, absolutely, yes, because
12 you cannot landfill certain items now per regulatory
13 requirements. So everything is changing as far as
14 landscape, what a landfill will look like in the
15 future.

16 COMMISSIONER OHIGASHI: I understand
17 Commissioner Giovanni's line of questioning or his
18 expression of thought. He indicated that the type of
19 recycling and type of activities, I think, was
20 confirmed by your department, could occur on a
21 separate lot or separate area, similar to what
22 H-Power is being used for in Oahu.

23 So I understand your concern, and it would
24 appear that the choice is up to the County as to how
25 it wants to proceed forward.

1 I'm just saying that I'm supporting Dan
2 Giovanni's position with regard to his intent, what
3 was stated, his correction or his belief on what the
4 errata should contain.

5 And I join Commissioner Chang in her
6 feelings that if this is going to be modified, then
7 the burden is upon the County to show why it should
8 be modified, and to establish and to file the
9 necessary motions to do so.

10 That was -- that has been my concern all
11 along. It took the department -- looks like the
12 Department of Planning took the lead in determining
13 this issue, and for all I could see at the hearing
14 and even after, during the discussions, it would
15 appear that the County of Maui has taken more of a
16 neutral position in this matter.

17 So if I feel very strongly. I think that
18 the proper exercise would be that the County of Maui
19 take the initiative and put together your case,
20 provide us, through the Planning Commission, the
21 information necessary to determine whether this
22 condition should be (inaudible).

23 CHAIRPERSON SCHEUER: Commissioner
24 Ohigashi, I'm understanding your recent statement to
25 be more of a comment than a question directed to any

1 of three individuals. Thank you.

2 Commissioners, questions for Maui County?
3 If not, Office of Planning.

4 MS. APUNA: Thank you, Chair.

5 We appreciate the opportunity to provide
6 these comments.

7 OP believes, like the County of Maui, that
8 there were procedural errors of the dismissal of OP's
9 Motion for Reconsideration, and this agenda item that
10 asks the Commission to correct the required DBA
11 acreage into the Condition 23 of the Central Maui
12 Landfill SP Decision and Order.

13 First, OP acknowledges that it was late in
14 its Motion for Reconsideration filing, but the
15 Commission's filing of the D&O on the 45th day within
16 which it could act on the special permit would deny
17 any person or party the opportunity to file a motion
18 for reconsideration. Moving forward, we hope that
19 decisions and orders for special permits, DBAs and
20 dec rulings are timely filed by the Commission.

21 I actually -- I received a call from County
22 of Maui Deputy Corporation Counsel asking when the
23 dec ruling would be filed on the short-term vacation
24 rental issue that we had. That Petition was filed, I
25 believe, May 19, and the Commission was supposed to

1 act within 90 days of that.

2 We are far past 90 days, and there's no
3 declaratory ruling filed in that matter. So I think
4 that the Commission is beyond the 90 days within
5 which to act.

6 Secondly, we understand and appreciate the
7 Commission proceeding cautiously when it comes to
8 providing public notice, but under the rules, OP's
9 verbal motion to amend did not require public notice
10 and would not have denied the public of proper notice
11 because the substantive arguments and relief
12 requested of both motions were basically the same.

13 Lastly, and most importantly, the
14 Commission should not issue an errata on the specific
15 DBA acreage. There are substantive considerations
16 that have been based on certain comments made by
17 Commissioners at the last hearing and even today.
18 And that should also include the arguments yesterday
19 made by the County Department of Environmental
20 Management and Department of Planning.

21 OP therefore respectfully requests that the
22 Commission deny the LUC staff's request for an
23 erratum to the specific acreage of the Central Maui
24 Landfill special permit Condition No. 23.

25 One last point. I think the Commission

1 went through extensive arguments on the DBA for the
2 Waimanalo Gulch landfill and that had been brought up
3 previously, but ultimately there was no DBA condition
4 placed on the City and County of Honolulu. But that
5 was a completely separate record to which the County
6 of Maui did not participate in, and would have no
7 reason to be aware of those arguments, or those
8 comments made by Commissioners as far as the special
9 Permit.

10 They should have full opportunity to make
11 their arguments separate from those that were made at
12 the Waimanalo Gulch Landfill. Thank you.

13 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.

14 Commissioners, are there questions?

15 Commissioner Wong.

16 COMMISSIONER WONG: Thank you, Chair.

17 Good morning, Ms. Apuna. I have some
18 concerns with your statement you just stated. As you
19 know, you were a party of the Maui Landfill from day
20 one pretty much and, you know, you knew where we were
21 going, and I'm very concerned the statement that you
22 said about the staff and the Land Use Commission
23 about the timeliness issue.

24 I'm very concerned that, you know, to do a
25 D&O in one day would be ridiculous for any of us. As

1 you saw in our last docket, we took some time to
2 go -- even to do that findings of facts, conclusion
3 of law, and Decision and Order. And just to say that
4 we can turn it around in like couple weeks is
5 ridiculous to me. So it's just a statement of facts.

6 Other thing is about the Waimanalo Gulch.
7 I think we did put it in their D&O, but we did tell
8 them if they do want to come back, they should do a
9 DBA. I think I said it to them. So it's not --
10 maybe not in the D&O, but we did state in the
11 minutes, and I think that all DES or Department
12 Statewide do talk about things, and they know about
13 things happening, because they will say, hey, did you
14 hear what the Land Use Commission did to us this
15 time? You know, I mean, people do talk to the
16 islands.

17 So I take some offense to that, so I just
18 wanted to say for the record, those things little
19 concerns about those statements that you say the LUC
20 should have turned around something so shortly, when
21 our staff worked the darndest to try to do things in
22 a timely manner.

23 Also in the errata sheet, I believe this is
24 the proper way to do something. I'm going to support
25 Mr. Giovanni's issue that we should use the errata.

1 That's all. Thank you.

2 CHAIRPERSON SCHEUER: Commissioner Chang.

3 MS. APUNA: May I respond to that, Chair?

4 CHAIRPERSON SCHEUER: Go ahead.

5 MS. APUNA: Thank you, Commissioner Wong.

6 I appreciate your comments.

7 As far as we are not asking that the
8 Commission staff provide a D&O within a day or within
9 two weeks. We're asking that the staff provide the
10 Decision and Order within the 45 days minus seven
11 days within which a party can submit their motion for
12 reconsideration. This is consistent with your rules.

13 We're not asking for a quick turnaround.
14 We're just asking that you be consistent with your
15 rules.

16 As far as Waimanalo Gulch, I understand
17 that there were arguments made there on the special
18 permit, and the possibility of requiring it, but that
19 never happened.

20 But my main point there is that Maui County
21 was not part of that whole proceeding, and maybe
22 there are discussions, but I don't believe that Maui
23 County, or even Office of Planning was aware or
24 thought that it would become an actual condition.

25 The only time it was raised as a condition

1 was during the deliberation by the Commissioners.
2 And I think I speak for Maui County and OP and in
3 saying that we were caught off-guard. We were really
4 surprised that it became an actual condition.

5 We understand that we think that the
6 Commission believes that the County should look in
7 that direction and consider doing a DBA rather than
8 an SP, but it was kind of last minute condition that
9 was imposed. And we were pretty much shocked, and I
10 think that's why the County and OP are here again to
11 strongly say that we don't believe a SP is an
12 appropriate vehicle, and, yeah.

13 So thank you for your comments.

14 COMMISSIONER WONG: Chair.

15 CHAIRPERSON SCHEUER: Commissioner Wong,
16 followed by Commissioner Chang.

17 COMMISSIONER WONG: Thank you, Ms. Apuna.
18 I guess I always protect our own, the Land Use
19 Commission staff. So that's just a statement.

20 The other thing is, I think the Commission,
21 as it sits now, we don't believe a special use permit
22 should be done, you know, that would be forever, for
23 example, say a school, which I think should be a DBA.
24 It shouldn't be special use permit.

25 So I think this Commission, if I may speak

1 on behalf of Commission on this, that special use
2 permit is special and should be short-term, and DBA,
3 you know, do the DBA if need.

4 So I think that's what we're trying to
5 state. That's all, thank you.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Wong.

8 Commissioner Chang followed by Commissioner
9 Okuda.

10 COMMISSIONER CHANG: Thank you, Mr. Chair.
11 Thank you Ms. Apuna.

12 I wanted to ask you your comment about the
13 rules, 15-15-84 specifically provides a motion for
14 reconsideration shall be filed with the Commission
15 within seven calendar days after issuance of the
16 Commission's written decision and order.

17 So it's not from the oral decision. So
18 notwithstanding that it has taken maybe a little
19 longer, it is from the written order. And, again, I
20 don't want to debate what we had talked about the
21 last time about a motion for reconsideration.

22 But in my view, the Motion for
23 Reconsideration that you filed, it was -- it raised
24 substantive issues about the DBA, so that I felt was
25 inappropriate. So let me ask you this question.

1 Is there anything to preclude the County of
2 Maui, before the five years, to come before the LUC
3 after going before the Planning Commission on a
4 motion to amend the condition, and permit the County
5 of Maui to provide a fuller record before the LUC on
6 why a DBA is inappropriate?

7 MS. APUNA: Thank you, Commissioner Chang.
8 No, I don't think there is anything precluding the
9 County of Maui to come forward and do a modification
10 to the special permit.

11 COMMISSIONER CHANG: Let me ask you this
12 question on the errata.

13 If it is for a typographical correction, do
14 you believe an errata is appropriate?

15 MS. APUNA: If it is a typographical error,
16 yes.

17 COMMISSIONER CHANG: And in this particular
18 case, based upon the transcript, and now we have an
19 affirmation from the movant, Commissioner Giovanni,
20 his intention and from the record, it was to require
21 the DBA for the entire 93 acres not the 23. So in
22 that case I see this as a typographical error, not
23 one that there would be a substantive change.

24 Do you agree or disagree?

25 MS. APUNA: I disagree in that when you

1 look at the transcript, it wasn't clear, I mean, yes,
2 Commissioner Giovanni never stated that it would be
3 the full acreage, the 95, but then there was also
4 argument made by Commissioner Ohigashi referring to
5 the 40 acres of industrial -- so it could have been
6 40 acres as well, and then there is the 22 acres.

7 So I think that -- I understand
8 Commissioner Giovanni intended it to be 95, but I'm
9 not so sure that all the Commissioners understood
10 that it was 95, just based on a plain review of the
11 transcript, there were different arguments that would
12 allow for either 22, 40 or 95 acres.

13 COMMISSIONER CHANG: And I guess that's the
14 purpose of today's motion, is to accept the staff's
15 errata. And then we will find out whether all the
16 Commissioners agree or disagree with Commissioner
17 Giovanni.

18 Would you agree that the Commission has a
19 discretion whether to grant or deny a
20 reconsideration?

21 MS. APUNA: Of course, yes.

22 COMMISSIONER CHANG: Thank you, Mr. Chair,
23 I have no further questions.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Chang.

1 Commissioner Okuda, followed by
2 Commissioner Ohigashi.

3 COMMISSIONER OKUDA: Thank you, Mr. Chair.
4 Thank you, Ms. Apuna.

5 Let me first just state that you in your
6 capacity as a Deputy Attorney General believe that
7 any of us at the Land Use Commission staff,
8 Commissioners or otherwise, are doing something which
9 is not in compliance with the rules or the statute,
10 please speak up. We don't hold it against anyone,
11 that's your duty as a litigator and as an attorney
12 representing the State.

13 But if I could go back, Commissioner Chang
14 raised a question on under 15-15-84 about the fact
15 that the deadline to file a motion for
16 reconsideration runs from the entry of the written
17 order, not the oral order.

18 Do agree with the fact that that's what
19 Rule 15-15-84 states?

20 MS. APUNA: Yes. I believe from the filing
21 of the written Decision and Order.

22 COMMISSIONER OKUDA: What evidence in the
23 record indicates that anyone, either on the Land Use
24 Commission staff or members of the Commission itself,
25 prevented anyone from filing a motion for

1 reconsideration within the timeframe that is stated
2 within 15-15-84?

3 MS. APUNA: You're asking me within -- so
4 based on the facts, I'm just saying that I think that
5 we're saying that because the written order was filed
6 on the 45th day in which the Commission could act on
7 the special permit, but the Commission is supposed to
8 act within 45 days, that therefore there was no time,
9 they had used up all the time within which to act,
10 leaving no seven days within which any party could
11 have filed a motion for reconsideration.

12 COMMISSIONER OKUDA: Yeah, but 15-15-84
13 states, I quote:

14 "(a) a motion for reconsideration shall be
15 filed with the commission within seven calendar days
16 after issuance of the commission's written decision
17 and order."

18 So in other words -- so my question is:
19 What evidence is there in the record that the Land
20 Use Commission, either itself or staff, prevented the
21 filing of a motion for reconsideration within seven
22 calendar days after issuance of the Commission's
23 written Decision and Order?

24 MS. APUNA: I don't think there was --
25 well, someone could have filed within seven days of

1 the written Decision and Order that was filed on
2 August 13th, yes. There was nothing preventing --
3 the staff would have accepted that. They even
4 accepted ours that was later than seven days. But
5 according to Subsection (c) the Commission can't do
6 anything after 45 days, the time within which it must
7 act on special permit.

8 So if they filed it on the 45th day,
9 there's no time for a motion for reconsideration.

10 So the special permit -- I can't recall the
11 exact -- the Commission must act within 45 days from
12 receipt of the full record to the special permit.

13 That was June 19th, I believe. So 45 days
14 from June 19th the Commission needed to act - --
15 including act on any motion for reconsideration. But
16 they filed on the 45th day. So even if I was
17 timely -- OP was timely, it was beyond the 45 days
18 within which the Commission could act.

19 COMMISSIONER OKUDA: Is there anything in
20 the law which requires an agency to allow a motion
21 for reconsideration?

22 I understand your argument here, and how
23 the rules might, in effect under certain
24 circumstances, prevent a motion for reconsideration,
25 but is there anything in the law that requires an

1 administrative agency in Hawaii to allow
2 reconsideration?

3 MS. APUNA: Not sure if Chapter 91 does. I
4 can't say right now.

5 COMMISSIONER OKUDA: Because, in fact,
6 reconsideration, whether it's in court or whether
7 before an administrative agency, doesn't it require
8 new evidence, meaning not only something that is
9 newly discovered, but the standard requires that it's
10 something that with due diligence couldn't have been
11 discovered or presented in the initial presentation?

12 MS. APUNA: I don't disagree that that
13 might be the case in court. But under this 15-15-84
14 rule, there's nothing that requires that there be any
15 new or different information in order to file for
16 motion for reconsideration.

17 COMMISSIONER OKUDA: So it's the Office of
18 Planning's position that even if an issue had been
19 discussed, maybe adjudicated or discussed and
20 considered over many days, parties to the proceeding
21 basically can just have a blank slate and have a
22 second bite at the apple?

23 MS. APUNA: I mean, it's within your
24 discretion, Commissioner, within the Commission's
25 discretion, I suppose.

1 But I think here, again, we saw that there
2 could be various interpretations of the acreage, and
3 I don't think it's a second bite at the apple as far
4 as that a DBA is not an appropriate vehicle over a
5 special permit. I think it's the County and Office
6 of Planning believing very strongly that we didn't
7 get to provide all the necessary arguments to show
8 that a special permit is the appropriate vehicle.

9 COMMISSIONER OKUDA: I understand your
10 argument. Thank you very much.

11 Thank you, Mr. Chair.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner Okuda. Commissioner Ohigashi.

14 COMMISSIONER OHIGASHI: My comment is
15 mostly -- let me put it this way.

16 I'm not sure whether or not it's worthwhile
17 discussing a motion to reconsideration when we have
18 none before us today. If there was a procedural
19 problem, it would behoove the parties to have filed
20 some type of motion so we have a notice for public
21 hearing, meet all of the standards for us to address
22 these issues.

23 We've made our decision. I am sure that
24 Attorney General's Office is really smart and they
25 can figure out a way whether or not to appeal our

1 decision or to bring it up again to us.

2 However, today, I don't think that we have
3 before us an issue of reconsideration.

4 The real question in my mind is whether or
5 not to move forward with the errata. And if I
6 understand your argument regarding that, Ms. Apuna,
7 is that you believe that there is insufficient
8 evidence to make that leap for Mr. Giovanni's
9 interpretation, wants to make that, is that right?

10 MS. APUNA: Yes.

11 COMMISSIONER OHIGASHI: One of the examples
12 that you use is me, but I'm kind of confused as I
13 voted against the motion. However, if you want to
14 know, it is my recollection and my feeling that the
15 intent was the entire parcel, Mr. Giovanni.

16 I just wanted to clear up that, because if
17 I am the cause of your confusion, I apologize.

18 MS. APUNA: No need to apologize,
19 Commissioner, but I think that's helpful.

20 I think that it says 22 acres of IAL. I
21 mean, you could call it a typo, but if you are
22 talking about specifically IAL as opposed to 95 acres
23 non IAL or 40 acres, I mean, it's more than a typo.
24 It's not just a difference in number.

25 But I appreciate that, Commissioner

1 Ohigashi. I think, knowing what the Commissioners
2 understood that acreage to be, would be helpful.

3 CHAIRPERSON SCHEUER: Commissioners, are
4 there further questions for the Office of Planning?

5 COMMISSIONER WONG: Chair.

6 CHAIRPERSON SCHEUER: Commissioner Wong.

7 COMMISSIONER WONG: Ms. Apuna, question.

8 So, you know, I know you filed this -- you
9 did file something. Is there anything that stops you
10 from filing a motion to amend?

11 MS. APUNA: No, but I think we talked about
12 that. We are -- maybe the County can file a motion
13 for modification of the special permit.

14 COMMISSIONER WONG: But you filed, OP filed
15 the motion to reconsider. So I mean, I'm sorry, I'm
16 confused. You know, something already, why can't you
17 stop you from filing something else?

18 MS. APUNA: I don't believe we're stopped
19 from doing anything further. We can move forward
20 with a motion to modify, but I think it was important
21 that Office of Planning filed the Motion for
22 Reconsideration because it was not clear what the
23 acreage was.

24 And we do have a strong position that there
25 should not be a DBA for a landfill. It should remain

1 in special permitting.

2 COMMISSIONER WONG: That's it. Thank you,
3 Ms. Apuna. Thank you, Chair.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Wong.

6 Commissioners, is there anything further
7 for Office of Planning?

8 I guess my --it might be questions or might
9 be comments for Office of Planning.

10 My recollection first of all is distinctly
11 different from yours, Ms. Apuna. Without the
12 transcript in front of me, I think we had an
13 extensive discussion prior to deliberation over
14 whether or not a special permit or DBA was
15 appropriate. That's my recollection.

16 And I guess I'll just echo Commissioner
17 Wong's statement. While it has been a now common
18 practice, but not universal, to put in landfills
19 through the special permit process, I will note that
20 the current construction demolition landfill on Oahu
21 was actually put into the Urban District prior to the
22 landfill siting.

23 It's a common practice. I think it's
24 wrong. I think it's contrary to the law. And if I,
25 along with Commissioner Giovanni, it was absolutely

1 my understanding at the time the motion was made that
2 it was for the entire 95 acres, rather than for the
3 smaller part of the IAL provision.

4 I guess I'm also just going to note for the
5 record at this time, that like part of the dilemma
6 that we are in was that it took so long for the
7 County to come to us with this thing in the first
8 place. And we were forced into a tough position of
9 potentially denying them a special permit and a
10 legally operating landfill, because of the late hour.

11 Yeah, maybe we filed something on the 45th
12 day, but we were not the first person to come close
13 with deadlines. So I kind of a little bit share
14 Commissioner Wong's feeling, a little bit irritated
15 at the suggestion that somehow the Land Use
16 Commission is the source of all the problems in this
17 matter.

18 Anything further, Commissioners?

19 Questions for any of the parties, including
20 -- or the people we have been discussing things with,
21 including the staff?

22 If not, Commissioners, what's your pleasure
23 on this matter?

24 COMMISSIONER WONG: Chair.

25 CHAIRPERSON SCHEUER: Commissioner Wong.

1 COMMISSIONER WONG: Okay. So just wanted
2 just get a point of clarification first before I do
3 anything.

4 CHAIRPERSON SCHEUER: Okay.

5 COMMISSIONER WONG: It's the errata itself,
6 right? What we are deliberating on; is that correct?

7 CHAIRPERSON SCHEUER: The agenda item
8 before us is an LUC staff request to issue an errata
9 to the LUC order Fourth Amendment to the State
10 Special Permit SP93-390 for the proposed Central Maui
11 Landfill Facilities, dated August 13th, 2020, notice
12 to correct the number of acreage subject to Condition
13 23 as well as the related Findings of Fact.

14 COMMISSIONER WONG: So, Chair, I know that
15 Mr. Orodener stated that the issue of the errata,
16 plus changing the findings of facts on this.

17 So can I use that statement as my motion,
18 plus add one more portion? Or do you --

19 CHAIRPERSON SCHEUER: Yes.

20 COMMISSIONER WONG: So I'm going to use
21 that portion with the changes on the findings. Plus
22 I want to say that the Chair can sign the order and
23 we don't need to meet again on this.

24 CHAIRPERSON SCHEUER: You're going to
25 delegate authority to the Chair to sign an order

1 effectuating this motion.

2 Commissioner Ohigashi.

3 COMMISSIONER OHIGASHI: Second.

4 CHAIRPERSON SCHEUER: A motion has been
5 made and seconded to accept the LUC staff
6 recommendations on changes, the errata, correcting
7 the errata on the Decision and Order, and to
8 authorize the Chair to sign on behalf of the
9 Commission.

10 It's been made by Commissioner Wong and
11 seconded by Commissioner Ohigashi.

12 Commissioner Ohigashi, did you have
13 something further to say?

14 COMMISSIONER OHIGASHI: Nothing further. I
15 think I made my statements clear.

16 CHAIRPERSON SCHEUER: Commissioners, we are
17 in discussion. We have a motion before us. I will
18 also say before I call for the question that I think
19 it's well-established that even if the County feels
20 somehow harmed by this action, and that -- they have
21 a number of remedies that are available to them. The
22 most direct would be file a motion for amendment of
23 the condition.

24 Commissioner Cabral.

25 VICE CHAIR CABRAL: Thank you. I listened

1 to this, and I'm not -- I'm one of the few
2 non-lawyers in the room here, and I find -- I
3 appreciate the necessity for all these rules and
4 regulations. I find myself -- I'm such a practical
5 person, I just want to know -- I think we all want to
6 get to the same end here, and have it be a successful
7 landfill operation for the County and for the public
8 there.

9 So I just wanted to double check with our,
10 with, I guess, our Executive Director and the legal
11 team that helps advise us to make sure we are all
12 doing the right thing with all of these legal
13 decisions and protocol and procedures, because I am
14 clearly not the expert in all of this.

15 So I just wanted to make sure before we
16 proceed with any kind of vote that our representative
17 from the Attorney General's office and our Executive
18 Director Orodener are all on board with this action.
19 Thank you.

20 CHAIRPERSON SCHEUER: I'm going to rephrase
21 your question, Commissioner Cabral, for the point of
22 clarity in the record.

23 It's a two-part question. Does the
24 Executive Officer stand by his recommendation on the
25 errata, and to Mr. Lau, was the motion properly

1 phrased?

2 VICE CHAIR CABRAL: That's exactly what I
3 said. Thank you.

4 EXECUTIVE OFFICER: If I could address the
5 first question.

6 Yes, we stand by -- this is Dan Orodenker,
7 Executive Officer. We stand by our request for
8 correction through the errata process. It was
9 actually done on the advice and with consultation
10 with the Attorney General.

11 CHAIRPERSON SCHEUER: Mr. Lau, has the
12 motion been properly put forward?

13 MR. LAU: Yes. This is Colin Lau, Deputy
14 AG. I did consult with the prior AG who handled the
15 prior matter, and together we believe that the motion
16 is properly phrased.

17 VICE CHAIR CABRAL: Thank you very much. I
18 feel much better about having our legal counsel weigh
19 in on this at this moment. Thank you.

20 CHAIRPERSON SCHEUER: Thank you,
21 Commissioner Cabral.

22 Commissioner Okuda.

23 COMMISSIONER OKUDA: Thank you very much,
24 Mr. Chair. I would like to speak in favor of the
25 motion.

1 I agree, even though I believe I voted
2 against the motion, if my recollection is correct,
3 but I do believe Commissioner Giovanni's recollection
4 was my recollection of what the overall intention is.

5 I would like to assure everyone, that at
6 least for me personally, I'm not prejudging any
7 future application that might be filed by the County
8 of Maui or any other interested person or any other
9 entity or any other county.

10 I do believe that there are certain things
11 regarding the Waimanalo Gulch Landfill which may be
12 distinguishable from what has taken place on other
13 islands. I did hear and took to heart the Office of
14 Planning's concerns about spot zoning.

15 Again, I haven't prejudged anything as far
16 as what might be filed in the future. I will say one
17 thing, however, about Waimanalo Gulch, and I said it
18 at the hearing. I believe that there was something
19 that raises a serious -- and I don't want to call it
20 environmental justice, because that's a loaded term.

21 But one of the problems I saw with that
22 landfill is that somehow these landfill, and what
23 I've described as negative public facilities, somehow
24 always end up in the back yards in Waianae, Maili,
25 and Nanakuli, and that is a concern.

1 It might be just limited to the Waimanalo
2 Gulch Landfill, and that concern might be
3 distinguished from what the County of Maui is doing.
4 I would just like to state that and assure everyone
5 I'm trying to keep an open mind on everything. But
6 for this specific narrow issue about the errata, I
7 believe the errata correctly corrects a mere
8 typographical error. It does not affect substantive
9 rights of the parties. Thank you.

10 CHAIRPERSON SCHEUER: Commissioners, we are
11 in discussion over the motion which is -- has been
12 made by Commissioner Wong and seconded by
13 Commissioner Ohigashi. Commissioner Aczon.

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

15 I will be voting in support of the motion.
16 Aside from different discussions from OP and also the
17 County, I agree with Commissioner Okuda and
18 Commissioner Ohigashi, that my attention is focused
19 on the narrow issue of errata for the purpose of this
20 hearing.

21 And upon hearing Commissioner Giovanni's
22 statement later clarifying his motion, I believe we
23 are on the right path on this discussion.

24 So, again, you know, this hearing is also
25 regarding the errata that was requested by the staff,

1 and we should be voting narrowly on this issue.

2 Thank you.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Aczon.

5 Is there further discussion, Commissioners,
6 on the motion before us, which is to accept the
7 errata offered by the LUC staff, and authorize the
8 Chair to sign the order?

9 Seeing none. Mr. Orodenker, will you
10 please poll the Commission.

11 EXECUTIVE OFFICER: Thank you, Mr. Chair.

12 The motion is to grant staff's request to
13 issue an errata to the LUC order for the Fourth
14 Amendment to Special Permit SP97-390, and authorize
15 the Chair to sign the order.

16 Commissioner Wong?

17 COMMISSIONER WONG: Yes.

18 EXECUTIVE OFFICER: Commissioner Ohigashi?

19 COMMISSIONER OHIGASHI: Yes.

20 EXECUTIVE OFFICER: Commissioner Okuda?

21 COMMISSIONER OKUDA: Yes.

22 EXECUTIVE OFFICER: Commissioner Aczon?

23 VICE CHAIR ACZON: Aye.

24 EXECUTIVE OFFICER: Commissioner Giovanni
25 is absent.

1 Commissioner Cabral?

2 VICE CHAIR CABRAL: Yes.

3 EXECUTIVE OFFICER: Commissioner Chang?

4 COMMISSIONER CHANG: Yes.

5 EXECUTIVE OFFICER: Chair Scheuer?

6 CHAIRPERSON SCHEUER: Aye.

7 EXECUTIVE OFFICER: Thank you, Mr. Chair.

8 The motion passes with seven affirmative votes.

9 CHAIRPERSON SCHEUER: Thank you very much,
10 Commissioners, and thank you to Maui County and all
11 the participants as well as Office of Planning for
12 participating in this discussion and agenda item.

13 It is now 11:00 A.M.

14 I have been informed by email that
15 Commissioner Giovanni is available starting at noon,
16 so he has been here for the full -- sorry, let me try
17 and be articulate here.

18 Mr. Giovanni is available at noon and could
19 continue his participation in our agenda item
20 regarding Halekua Development Corporation.

21 Particularly given his expertise and his
22 background in utility matters, I think the Commission
23 would be well served by allowing us to have his
24 participation in this matter. What I'm going to
25 suggest is that we take an early lunch, breaking now,

1 reconvening at noon. At which time we will reconvene
2 for the last remaining agenda item which is the
3 Halekua Development matter.

4 Is this acceptable to the Commissioners?
5 And since I see some of you are here, Mr. Simon,
6 since you're the only one who's made yourself
7 visible --

8 MR. SIMON: That's perfectly well with the
9 Petitioner.

10 CHAIRPERSON SCHEUER: Mr. Lau?

11 MR. LAU: Yes, we're okay with that.

12 CHAIRPERSON SCHEUER: We are in recess
13 until noon.

14 (Noon recess taken.)

15 CHAIRPERSON SCHEUER: It's noon. We are
16 back on the record, and we are now taking up our last
17 item which was also our second item of this today
18 hearing.

19 A92-683 Halekua Development Corporation
20 Halekua Development Corporation (O'ahu) to
21 consider the Successor Petitioner as to Parcel 52,
22 Ho'ohana Solar 1, LLC's Motion for Modification and
23 Time Extension, as well as the associated matters
24 raised by Haseko.

25 Let's do appearances starting with

1 Petitioner.

2 MS. LIM: Good Afternoon, Chair,
3 commissioners, Jennifer Lim representing Petitioner
4 Ho'ohana Solar 1, and with me, as you can see, is Mr.
5 John Pete Manaut and Derek Simon also representing
6 Ho'ohana.

7 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.

8 MR. CHUNG: Good afternoon. Steven Chung
9 and with me is Michael Lau representing Haseko Royal
10 Kunia.

11 CHAIRPERSON SCHEUER: Thank you, Mr. Chung.
12 Mr. Takahashi.

13 MR. TAKAHASHI: This is Eugene Takahashi,
14 Second Deputy Director, Department of Planning and
15 Permitting representing City and County of Honolulu.

16 Also joining me is Molly Stebbins from our
17 Corporation Counsel's office.

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

20 CHAIRPERSON SCHEUER: Let me first note
21 something that I will later confirm in the record
22 prior to deliberation, if we get to deliberations on
23 this matter.

24 Commissioner Ohigashi missed the portion of
25 the proceedings where we had the conclusion of

1 cross-examination of Mr. Overton. However, Mr.
2 Ohigashi spent our lunchtime break listening to the
3 recording of that matter, and I will confirm if we go
4 into deliberation that he's prepared to deliberate on
5 this matter.

6 We've also been joined by Commissioner
7 Giovanni who's been here for the entire time. So we
8 have eight sitting Commissioners out of a possible
9 nine, and all eight have now attended the entirety of
10 the record in these proceedings.

11 COMMISSIONER OHIGASHI: Chair, do I have to
12 confirm on the record your representation? If so, I
13 do.

14 CHAIRPERSON SCHEUER: I will check with all
15 Commissioners whether they're prepared to deliberate
16 on these matters prior to any deliberation.

17 Thank you, Commissioner Ohigashi.

18 Where we are in our proceedings is that Ms.
19 Lim had chosen to pull one witness and present one
20 witness. If the Petitioner chooses to do any more
21 witnesses, we will hear from them, hopefully if so,
22 very briefly, allowing for cross-examination and
23 questioning by the Commissioners and any redirect of
24 any such witnesses.

25 We will then proceed to hear from Haseko on

1 their main argument and their witness.

2 City and County of Honolulu and Office of
3 Planning followed by any rebuttal from the
4 Petitioner, at which point we will conclude argument
5 and go into deliberations.

6 Are our procedures clear for today, Ms.
7 Lim?

8 MS. LIM: Procedures are clear, thank you.

9 MR. CHUNG: Mr. Chair.

10 CHAIRPERSON SCHEUER: Mr. Takahashi?

11 MR. TAKAHASHI: Yes, it is. It's clear.

12 CHAIRPERSON SCHEUER: Ms. Apuna?

13 MS. APUNA: Yes, Chair.

14 CHAIRPERSON SCHEUER: Ms. Lim, give us an
15 overview of how you're planning to proceed before
16 launching into it.

17 MS. LIM: I will do so. Thank you very
18 much, Chair.

19 We filed many exhibits, including those
20 exhibits as written direct testimony by not only Mr.
21 Overton, but also Mr. Greene, Mr. Wallenstrom,
22 there's other written direct testimony, and many
23 other items in the exhibits.

24 We also pretty extensively briefed this
25 matter both in the motion that we filed in August, as

1 well as three reply briefs that we filed in response
2 to Haseko's document which we were never served a
3 copy of, and OP's filing, and DPP's filing.

4 So in light of all of that, in light of the
5 fact that the Commission has gone through these
6 extensive filings, and that we've already taken up
7 more time than would otherwise be expected in a
8 simple motion like this, Petitioner is willing to
9 really rest on the filings that we have made thus
10 far, and of course, we're available for questions
11 that the Commission may have. But we don't intend on
12 bringing up our witnesses.

13 CHAIRPERSON SCHEUER: That is happy news,
14 Ms. Lim, and I agree with your characterization of
15 everything, including your extensive briefing, and
16 the fact that the Commissioners are very diligent in
17 reading all of your extensive briefing and direct
18 testimony.

19 Commissioners, are there any questions for
20 the Petitioner at this time?

21 Commissioner Okuda.

22 COMMISSIONER OKUDA: Thank you, Mr. Chair.

23 I just want to assure Ms. Lim that I have
24 read all of her filings, and I've also read all of
25 the other filings, and I would like to assure Ms. Lim

1 that I have also studied very carefully the direct
2 testimony she's submitted, so I would like to assure
3 her, at least for me, she is not waiving any real
4 advantage by submitting on the record.

5 Thank you, Mr. Chair.

6 CHAIRPERSON SCHEUER: Thank you very much,
7 Commissioner Okuda.

8 Commissioner Chang followed by Commissioner
9 Giovanni.

10 COMMISSIONER CHANG: Thank you, Mr. Chair.

11 Ms. Lim, I greatly appreciate your
12 facilitation of this hearing. This is -- I see this
13 more as a motion rather than as litigation. So thank
14 you again for expediting this, and having confidence
15 that the Commissioners have read all the materials.

16 So the question that I have is, in your
17 memo in support of your motion, you state that
18 Ho'ohana is not the landowner, therefore, they do not
19 have an obligation, in particular, to Condition A.1;
20 is that your position?

21 CHAIRPERSON SCHEUER: Just confirming, is
22 the barking noise coming from your location? So you
23 might go and mute while the response is going on. We
24 are living in COVID land. Ms. Lim.

25 MS. LIM: Thank you for the question,

1 Commissioner Chang.

2 You didn't specify which particular filing
3 you read that statement in, but it doesn't matter,
4 because that is a statement that I'm sure we have
5 made in our filings. I know for a fact we have.

6 If you look at the 2015 order, which is the
7 order that we're seeking amendment to, there are two
8 classes of conditions, and this is again in our reply
9 briefs, both that we filed in response to Haseko's
10 filing, and also to Office of Planning's filings.

11 The 2015 order has two categories of
12 conditions. There are the Conditions A, and they go
13 A.1 through A.4, and Conditions B, and that's B.1
14 through B.7, and B Conditions state very precisely on
15 page 54 of the 2015 order, the following Conditions
16 B.1 through and including B.7 shall be applicable
17 only to the solar farm on Parcel 52, and shall be
18 applicable only upon the development of the solar
19 farm use on Parcel 52.

20 And then it lays out seven conditions
21 related to requirements that the Commission wanted
22 the solar farm to fulfill in the solar farm.

23 The A conditions that are on page 53 of the
24 order, say the following Conditions A.1 through and
25 including A.3 shall replace Condition No. 19 of the

1 Halekua orders, and the Halekua orders are defined
2 elsewhere in that document, actually several
3 decisions and orders dealing with the original
4 reclassification.

5 And Condition A.4 shall replace Condition
6 21 of the Halekua order. And if you look at the
7 Conditions A.1 through A.3, by bifurcating and saying
8 the B conditions apply only to the development of the
9 solar farm, clearly that's a different class of
10 conditions, whereas A conditions apply to the
11 landowners, because the language in Condition A.1
12 says within six months of the date of the
13 Commission's order, the landowners within the
14 Petition area shall, blah, blah -- I won't read it
15 out unless the Commission wants to read it. I'm sure
16 you have it at your fingertips.

17 Condition A.2 within X number of months,
18 the landowners within the A Petition Area will submit
19 revised master plan.

20 COMMISSIONER CHANG: The only question I
21 ask is that Ho'ohana, that your representation in
22 your briefings have been that the solar lessee is not
23 obligated under Condition A.1. They are not the
24 landowner. Just confirmation.

25 MS. LIM: That is correct. I'm sorry to be

1 so longwinded.

2 COMMISSIONER CHANG: So my next question
3 is: Is Ho'ohana's position that the Robinsons, who
4 are the landowners of Parcel 52, are bound by those
5 conditions, Condition A.1?

6 MS. LIM: Well, I have to be careful here
7 because, as you know, Ho'ohana doesn't represent the
8 Robinsons. So I have a limited ability to make any
9 kind of representation for another party.

10 COMMISSIONER CHANG: You're right.

11 CHAIRPERSON SCHEUER: That's a complete
12 answer, Ms. Lim.

13 COMMISSIONER CHANG: Let me ask it this
14 way. I should have asked it this way.

15 Is Ho'ohana's position that the Petitioners
16 of the original Petition back in 1996, that the
17 Robinsons were a landowner at that time?

18 MS. LIM: The Robinsons were a landowner
19 when the land was originally reclassified.

20 If I can just expand on that very, very
21 quickly. There are two declarations of conditions
22 that we filed as exhibits, and relating to the 1993
23 and 1996 Commission orders, and in those documents it
24 clearly says that the Robinsons are not obligated for
25 the conditions imposed by the Land Use Commission.

1 It was the Petitioner, the Petitioner
2 Halekua Development Company. That's just in the
3 record. I'm not opining on it. I'm just describing
4 what's in the record.

5 COMMISSIONER CHANG: Would you agree that
6 the lang -- that the specific language of the
7 condition only refers to the landowners in the
8 Petition Area?

9 MS. LIM: The specific language of
10 Condition A.1?

11 COMMISSIONER CHANG: Yes. Am I reading it
12 wrong? That the landowners --

13 MS. LIM: The language from the 2015 order
14 Condition A.1 says that the landowner(s) -- and the
15 is "S" is in parenthesis indicating whether one or
16 multiple -- within the Petition Area shall finalize
17 an amendment to an MOU.

18 And as we heard from David Tanoue
19 yesterday, an MOU was in fact finalized and then
20 assigned to Haseko.

21 But that is the language in that order.

22 COMMISSIONER CHANG: Are the Robinsons
23 still the landowners for the property for Parcel 52?

24 MS. LIM: Robinson Kunia Land, LLC, owns
25 Parcel 52. They are the lessors to Ho'ohana.

1 COMMISSIONER CHANG: Have you notified the
2 Robinsons of your filings?

3 MS. LIM: Yes. They have been served with
4 copies of our filings. And they, of course, provide
5 authorization for us to file the motion.

6 COMMISSIONER CHANG: Has the Robinsons also
7 received copies of all of the pleadings that have
8 been filed in this docket?

9 MS. LIM: I can say with absolute certainty
10 that we served everybody. I cannot say with absolute
11 certainty if the other parties served the Robinsons.

12 I can look right now, because I have the
13 pleadings, and I can look at certificate of service,
14 but --

15 COMMISSIONER CHANG: Let me ask you this.
16 Did you serve the Robinsons with your reply
17 briefs to both Haseko's motion, OP's motion and DPP's
18 motion?

19 MS. LIM: Yes, ma'am.

20 COMMISSIONER CHANG: Do you know why they
21 aren't participating in this action, if you know? If
22 you don't know, and if you are speculating, you don't
23 need to answer.

24 MS. LIM: It would be speculation for me to
25 say.

1 COMMISSIONER CHANG: Mr. Chair, at this
2 point in time, that's the only question I have right
3 now.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner.

6 Commissioner Giovanni.

7 COMMISSIONER GIOVANNI: Thank you, Chair.
8 Greetings, Ms. Lim. How are you?

9 MS. LIM: Fine. How are you, Commissioner?

10 COMMISSIONER GIOVANNI: I'm very good,
11 thank you.

12 So your motion is looking to extend the
13 term of this approval for 43 years, which I believe
14 we calculate to 2063 if we approved it today?

15 MS. LIM: That's correct. Approximately
16 2063, and that would be decommissioned and gone from
17 the property.

18 COMMISSIONER GIOVANNI: I think your motion
19 indicates approximately a couple of years for that
20 decommissioning process, its estimated time that
21 would be required, is that correct?

22 MS. LIM: To the best of my recollection, I
23 think we are estimating about a year for
24 decommissioning, somewhere in the range of two years
25 for permitting, building permits and actually

1 construction.

2 So it's a couple years on the front end,
3 and approximately a year on the back end.

4 COMMISSIONER GIOVANNI: Congratulations on
5 your PUC approved Power Purchase Agreement.

6 Can you tell me what the term of that a
7 agreement is?

8 It will go into, I think you indicated, go
9 into commercial operation in approximately two years
10 from now, so that would be 2022.

11 What would be the term of the Power
12 Purchase Agreement?

13 MS. LIM: So on this, Commissioner, it's
14 not that I want to drag this out, but I would like to
15 be able to defer that question to Lawrence Greene,
16 who is the project manager for the Ho'ohana project,
17 because he is much closer to the Power Purchase
18 Agreement.

19 COMMISSIONER GIOVANNI: That would be fine
20 with me. Is he available?

21 MS. LIM: He is available.

22 CHAIRPERSON SCHEUER: That's acceptable.
23 He has, I believe, raised his hand, Mr. Greene,
24 right? Lawrence Greene, right?

25 I'm going to promote him to be a panelist.

1 I'm going to swear him in. As he's being included as
2 a witness. I do feel like I have to provide, though
3 I do not need to avail the other parties -- I mean,
4 the other parties don't have to avail themselves of
5 the opportunity -- I do need to provide the
6 opportunity for the other parties to ask questions.

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

9 THE WITNESS: I do.

10 LAWRENCE GREENE

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

14 DIRECT EXAMINATION

15 CHAIRPERSON SCHEUER: Please proceed.

16 Were you following the questioning?

17 THE WITNESS: Yes, I was.

18 The original Ho'ohana PPA was 22-years, the
19 current PPA that has been approved by Public
20 Utilities Commission is 20 years.

21 COMMISSIONER GIOVANNI: So if you go from
22 commercial operation, that would be 2042 is the
23 estimated termination of the Power Purchase
24 Agreement?

25 THE WITNESS: Correct, approximately, yes,

1 for a 20-year operation period.

2 COMMISSIONER GIOVANNI: So if the Power
3 Purchase Agreement terminates in 2042, and it takes
4 approximately one to two years to decommission, why
5 do we need a permit that goes all the way to 2063?

6 THE WITNESS: That's an excellent question,
7 Commissioner. The short answer that it relates
8 primarily to the way the projects are financed. So
9 if I have to take my project and finance it over
10 20 years, and presume that there's no value in my
11 project after 20 years, then I have to charge a
12 higher price to HECO, to bid a higher price to HECO,
13 and then hope that my bid is accepted.

14 But what all developers are doing these
15 days is that they're designing their pricing.
16 They're designing their projects around the design
17 life of the equipment. And modern solar equipment
18 has improved over the years, and now the design life
19 for these kind of projects is 40 years.

20 And so the idea is, in order to offer
21 Hawaiian Electric the lowest possible price, is that
22 we make a reasonable assumption that at year 20 the
23 equipment is perfectly capable of generating
24 electricity; the facility is in and running, and
25 we're hopeful to come back to Hawaiian Electric with

1 a compelling price for additional electricity at that
2 time.

3 COMMISSIONER GIOVANNI: Does the Power
4 Purchase Agreement provide for bilateral negotiation
5 of an extension of the Power Purchase Agreement, or
6 would you be required to go through a competitive
7 process again?

8 THE WITNESS: I know -- what I can tell you
9 is that years ago there was something called an
10 evergreen provision for Power Purchase contracts.
11 And with something like that, it was very clearly a
12 bilateral negotiation, it wasn't necessarily a
13 competitive process at all.

14 What I can tell you is that our PPA does
15 not have such provision, we have to negotiate with
16 Hawaiian Electric. I am not aware of the specific
17 regulations that would be in place 20 years from now;
18 how much latitude Hawaiian Electric would have to
19 either engage with us bilaterally, or have it as part
20 of a competitive solicitation.

21 But, again, with all of the utility
22 infrastructure in place, we feel that it would be a
23 very -- we would be able to offer a very compelling
24 price because essentially the plant will have been
25 built.

1 COMMISSIONER GIOVANNI: So basically your
2 working assumption is that either through
3 augmentation of the battery storage every ten or
4 15 years, the replacement of panels as the warranties
5 expire, you're going to renew the project, and your
6 financing assumptions is based on a 40-year term.

7 However, you're kind of hoping that you --
8 I think that was your word -- hope that you could
9 extend it through a bilateral negotiation, but you
10 have no guarantee of that?

11 THE WITNESS: We have no guarantee, and
12 maybe it is a competitive process, but we have very
13 good faith that the equipment will be in good shape,
14 as you say, by standard operating and maintenance
15 practices.

16 We have a very valuable project at the end
17 of 20 years of operation, and we feel that it would
18 be a disservice to the rate payers of Hawaii to
19 simply pretend that that equipment wouldn't last that
20 long, and then consequently have to provide Hawaiian
21 Electric with a higher price, which, of course, in a
22 competitive solicitation, that's not what our
23 competitors are doing, they're also providing for a
24 reasonable expectation of the equipment life.

25 And so this is the standard in our industry

1 right now.

2 COMMISSIONER GIOVANNI: So in the event
3 that you're unsuccessful, and that the -- maybe this
4 is a question to Ms. Lim -- in the event that the
5 project is unsuccessful in getting an extension of
6 the Power Purchase Agreement, would you be willing to
7 initiate the decommissioning process and returning
8 the land to its original intent, and basically
9 terminating the interim permit sooner?

10 MS. LIM: So our reputation is that the
11 request that we're making is for the solar farm, the
12 way that it's been described.

13 So if the solar farm is no longer operating
14 substantially in the way that we have represented,
15 then it would be terminated.

16 And that's actually maybe a representation
17 that you would want to hear from Mr. Greene rather
18 than counsel.

19 COMMISSIONER GIOVANNI: Well, I think it's
20 the owner of the project that would have to commit to
21 -- looking to restore the land to its original
22 condition.

23 THE WITNESS: Yes.

24 COMMISSIONER GIOVANNI: Under the provision
25 that you're unsuccessful in getting an extension to

1 the Power Purchase you wouldn't have to wait until
2 2060 for that to occur?

3 THE WITNESS: No, that's correct.

4 CHAIRPERSON SCHEUER: Just checking, Ms.
5 Lim, are you or Mr. Greene able to bind to that
6 representation?

7 THE WITNESS: I personally am not able to
8 bind the project company, but I can say that our
9 agreements are that once the project is no longer in
10 operation, we do have to remove the project.

11 So I think that -- it's hard to say what
12 the utility market is going to be like 20 years from
13 now. It's most likely going to be Hawaiian Electric
14 with the same kind of structure.

15 In other markets, we would have other ways
16 to potentially have the project in operation that
17 wouldn't rely on a single utility off-take, which is
18 the case in Hawaii right now.

19 But I do think that -- I'm very confident
20 to say that if we are not able to continue with the
21 project in operation, selling to someone who is, you
22 know, 99.9 going to be Hawaiian Electric, that the --
23 we would have to remove the project, we agree to
24 remove the project.

25 COMMISSIONER GIOVANNI: And my question

1 was -- I understand you agree to it, and you're
2 committed to that, but would you do it sooner rather
3 than later?

4 THE WITNESS: Oh, in other words, not let
5 it sit five or ten years before removing it?

6 COMMISSIONER GIOVANNI: 13 years.

7 THE WITNESS: Right. Right. So I would
8 agree to move it earlier. I think that it's, again,
9 subject to what the market looks like in 20 years.
10 I would like a little bit of time to try to
11 get a contract for a little while, but give us a
12 reasonable amount of time, and if that's not working
13 out, we would have to remove the project.

14 COMMISSIONER GIOVANNI: Mr. Greene, did you
15 see Mr. Overton's testimony yesterday?

16 THE WITNESS: Yes, I did.

17 COMMISSIONER GIOVANNI: Do you recall in
18 one of the visuals he was describing the
19 interconnection to the overhead transmission line?

20 THE WITNESS: Yes.

21 COMMISSIONER GIOVANNI: My presumption is,
22 maybe unfairly, that he was describing a proposed
23 interconnection and the substation adjacent to where
24 that existing transmission line is?

25 THE WITNESS: Yes. The 138 corridor runs

1 within tens of feet of the property boundary, and we
2 would break the line of the existing line, and move
3 that through the new Hawaiian Electric substation.

4 COMMISSIONER GIOVANNI: Can you confirm
5 whether or not the interconnection requirement study
6 that Hawaiian Electric requires has been performed
7 and accepted yet?

8 THE WITNESS: It's still in process.

9 COMMISSIONER GIOVANNI: Do you have an
10 expectation when that would be completed?

11 THE WITNESS: We're pretty close now. I've
12 said that for some time. But we are working very
13 closely with Hawaiian Electric. They have been very
14 good partners on this project.

15 And so will it be October? I think so.
16 Will it be by the end of the year? I'm certain.

17 COMMISSIONER GIOVANNI: You don't see, at
18 least up until this point in time, any potential
19 problems that would necessitate an alternative
20 interconnection?

21 THE WITNESS: No, no.

22 I think that, you know, with the 138 kV
23 lines right there, I cannot foresee any circumstance
24 that we would have to build a gen-tie line some
25 place. We will interconnect into those circuits that

1 are right next door to us.

2 COMMISSIONER GIOVANNI: Thank you. That's
3 all the questions I have, Chair. I'll pass the mic.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Giovanni.

6 Just procedurally, I want to make sure to
7 check before we let go of Mr. Greene, because he's
8 now been brought in as a witness.

9 Are there any questions for Mr. Greene from
10 Haseko?

11 MR. CHUNG: Steven Chung. I don't have
12 questions relating to the Power Purchase Agreement.
13 I would like to ask Mr. Greene questions regarding
14 their intentions with respect to regional drainage.

15 CHAIRPERSON SCHEUER: Is there an
16 objection, Ms. Lim?

17 MR. MANAUT: John Manaut for Ho'ohana.

18 CHAIRPERSON SCHEUER: Mr. Manaut.

19 MR. MANAUT: Yes, so those types of
20 questions would go beyond the existing scope of
21 questions from the Commissioners. So this is not the
22 appropriate time to ask those questions.

23 CHAIRPERSON SCHEUER: That tends to be my
24 instinct, Mr. Chung, that I would want to limit
25 questions to the matters that the Commissioners have

1 raised with Mr. Greene.

2 MR. CHUNG: Mr. Chair, all we want is a
3 statement from the movant as to whether they intend
4 to perform the obligations of the landowner with
5 respect to drainage.

6 MR. MANAUT: Outside the scope of the
7 questions that have been posed up to this point.

8 CHAIRPERSON SCHEUER: I'm going to rule
9 that that goes beyond what you need to -- do you have
10 any other questions for him, Mr. Chung?

11 MR. CHUNG: I do not.

12 CHAIRPERSON SCHEUER: City and County, any
13 questions for Mr. Greene?

14 MR. TAKAHASHI: No questions.

15 CHAIRPERSON SCHEUER: OP?

16 MS. APUNA: My questions are regarding the
17 waterline. I don't know if the Commission wants to
18 ask about the waterline, so we can proceed.

19 CHAIRPERSON SCHEUER: You want to ask Mr.
20 Greene about the waterline which is also outside what
21 has been asked?

22 MS. LIM: If I may, you know, consistent
23 with what my partner, Mr. Manaut, said when objecting
24 to Mr. Chung's questions, we would state a similar
25 objection.

1 But I also note that my understanding is
2 that OP will an OP witness, and my expectation is
3 that the OP witness would want to discuss the filing
4 OP made yesterday morning that has an item in it
5 regarding the waterline.

6 So I believe there will be later
7 opportunity for discussion about the waterline.

8 CHAIRPERSON SCHEUER: So the question here
9 is, are we going to have a chance to hear from the
10 Petitioner's witness on matters that are substantive
11 to our deliberation?

12 Commissioner Chang.

13 COMMISSIONER CHANG: Thank you, Mr. Chair.

14 I was going to ask actually the question
15 you have.

16 The way that the Petitioners have
17 presented, they have sat on their filings, which we
18 appreciate. Then we have opened up for the
19 Commission, so that we are limiting the questions of
20 the parties only to questions that the Commission
21 raised.

22 Will there been an opportunity for the
23 other parties to raise questions beyond what the
24 Commissioners have raised, so that a full record is
25 developed?

1 CHAIRPERSON SCHEUER: Can you restate your
2 question?

3 COMMISSIONER CHANG: My question is, the
4 Petitioners have rested on their filings.

5 CHAIRPERSON SCHEUER: Correct.

6 COMMISSIONER CHANG: Then we have opened
7 the questions up to the Commission.

8 But based upon the objections of
9 Petitioner's counsel, any questions that are beyond
10 what the Commissioners have raised, is beyond the
11 scope of the witness' ability to testify.

12 So will there be an opportunity for
13 questions to be raised by the other parties that the
14 Commissioners may not have raised, so that we ensure
15 that we have a full record?

16 So it's more a procedural question. Will
17 the parties, Haseko, OP and DPP have an opportunity
18 to raise questions to the Petitioner's experts,
19 because they have chosen not to put on their case,
20 which we have all agreed to, but will the other
21 expert witnesses be available for the other parties
22 to question and raise issues that the Commissioners
23 have not raised?

24 CHAIRPERSON SCHEUER: I understand your
25 question. And I certainly share the desire that we

1 -- well, I have a desire that we make a decision on
2 this docket today. If, for many reasons, including
3 the fact that a nondecision might imperil the
4 project.

5 I also have a desire to have obviously a
6 complete and full record. I do believe that all of
7 the parties have had the chance to offer argument,
8 written argument, rebuttal, responsive arguments to
9 offer witnesses that they feel are doing things.

10 But, Mr. Colin Lau, our Attorney General,
11 do you have some guidance for us on this matter?

12 MR. LAU: Have the other parties had a
13 chance to call witnesses already?

14 CHAIRPERSON SCHEUER: No, not yet.

15 MR. LAU: So if they wish to, they could
16 call the same persons if they're willing to come
17 forward.

18 CHAIRPERSON SCHEUER: Was that a statement
19 or a question?

20 MR. LAU: That was a question.

21 Are the same persons who they have
22 questions for now, which we have ruled as beyond the
23 scope, are they willing to be witnesses for the other
24 parties?

25 CHAIRPERSON SCHEUER: Hostile witness,

1 presumably.

2 MR. LAU: It would actually be direct
3 testimony, but you could declare them as hostile,
4 hostile witnesses.

5 CHAIRPERSON SCHEUER: So to be really
6 clear, I'm seeking guidance here. If other
7 Commissioners wish to, this is, you know -- the
8 overall issue we're facing, right, is that motions
9 are generally simple. The more that we start to
10 develop these motions into highly contested case-like
11 procedures, the more complex our proceedings become,
12 the more difficult it is to make good use of our
13 time.

14 Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you, Mr. Chair.

16 I believe you, as Chair, have the
17 discretion to manage the time, to use the time
18 efficiently. I would just ask that in the interest
19 of efficiency, if someone is going to want to call
20 someone as a witness, and we certainly don't want to
21 limit anyone's ability to do so, then an offer of
22 proof be made.

23 In other words, the person who wants to
24 call a witness, tell us what they anticipate or
25 expect the witness to say, and then maybe the other

1 counsels involved would agree, yeah, if called, that
2 witness would say that.

3 And so in other words, we can get to the
4 heart of the matter and we don't have to turn into a
5 fishing expedition.

6 Nothing wrong with fishing expeditions, but
7 we're talking about efficient use of time.

8 So my request would just be that you have
9 the discretion to give people leeway, but if
10 questions are going to be asked of a witness, an
11 offer of proof be made, and response from the other
12 parties to find out whether this line of questioning
13 really is in contention or not in contention.

14 Thank you, Mr. Chair.

15 CHAIRPERSON SCHEUER: Thank you,
16 Commissioner Okuda.

17 Mr. Lau.

18 MR. LAU: I do agree with Commissioner
19 Okuda on that. You do have that supervisory
20 capability as Chair to determine --

21 CHAIRPERSON SCHEUER: So I both want to
22 remain grateful for the main Petitioner resting on
23 their written record, for also making their witnesses
24 available for Commissioners' questions.

25 I do want to make sure that we do not

1 procedurally err, and unfairly prohibit another party
2 from asking a reasonable question of one of your
3 witnesses that you plan to present who would be able
4 to answer a question that would help us establish a
5 full record in this matter.

6 I also intend to not sort of, as the term
7 that Gary Okuda used, allow for fishing expeditions.

8 Could we proceed, assuming good faith in
9 this manner, Ms. Lim or Mr. Manaut?

10 MR. MANAUT: Thank you, Chair.

11 We do agree that you ultimately have
12 discretion to manage this process. I would point out
13 that the procedure established for this hearing did
14 set up deadlines, and we submitted written direct
15 testimony that was fully available to Haseko and the
16 other parties. They did respond. They filed
17 declarations.

18 There was also a subpoena process, if
19 somebody decided they needed to call an adverse
20 witness.

21 So the process or procedure that I believe
22 Commissioner Chang alluded to earlier, our view would
23 include appropriately responding to our written
24 direct testimony, and if it was in some manner
25 delivered such that they could not fully respond,

1 then it would be on them to issue appropriate
2 subpoenas for persons that they would want to call.

3 That's how we look at it, strictly
4 procedurally.

5 CHAIRPERSON SCHEUER: Mr. Chung, do you
6 have a response?

7 MR. CHUNG: Thank you, Mr. Chair.

8 So all that Haseko is looking for is
9 confirmation of what we believe, which is that the
10 movant does not intend to comply with the drainage
11 requirements that were approved by the Department of
12 Planning and Permitting in 1996 in the drainage
13 master plan, that the movant is taking the position
14 that it's only the lessee of the property, not the
15 landowner, and therefore, has no obligation that the
16 landowner may have.

17 We just need that confirmation. If Ms. Lim
18 would confirm that, then we would have no questions
19 for any of their witnesses.

20 CHAIRPERSON SCHEUER: Is there a
21 Commissioner who wishes to raise that question?

22 Commissioner Giovanni.

23 COMMISSIONER GIOVANNI: I'm happy to raise
24 that very question. Do I need to repeat it?

25 CHAIRPERSON SCHEUER: Please don't.

1 COMMISSIONER GIOVANNI: Thank you.

2 CHAIRPERSON SCHEUER: Mr. Greene.

3 THE WITNESS: So as not to have to repeat
4 the question, what I am doing is, I am managing the
5 stormwater on our site, and have designed a
6 stormwater plan that complies with what I'm required
7 to do on my site. I'm not handling stormwater for
8 other parties.

9 CHAIRPERSON SCHEUER: Commissioner Okuda.

10 COMMISSIONER OKUDA: Mr. Chair, all of the
11 colloquy, and Commissioner Giovanni's question
12 actually raised the question I was going to ask.

13 Thank you, Chair.

14 CHAIRPERSON SCHEUER: Commissioner Chang.

15 COMMISSIONER CHANG: I want to move onto
16 another question for Mr. Greene.

17 CHAIRPERSON SCHEUER: Okay.

18 COMMISSIONER CHANG: Is that --

19 CHAIRPERSON SCHEUER: I thought we were --
20 other than what's done with questions for Mr.
21 Greene --

22 COMMISSIONER CHANG: I apologize.

23 CHAIRPERSON SCHEUER: If you still have
24 one, please do it.

25 But before we do, there was a direct

1 question that Mr. Chung expressed a desire to have
2 answered.

3 I take Mr. Greene's response, while not a
4 direct "yes" or "no" as a full answer. It was not,
5 yes, we intend to follow the 1995 order. It was that
6 we intend to follow what we believe we're legally
7 obligated to follow.

8 So it's my understanding from the statement
9 of the witness that, if I'm phrasing Mr. Chung's
10 desired information correctly, the answer is
11 negative, the Petitioner is not intending to fulfill
12 the landowner's obligation under the 2015 order.

13 MR. CHUNG: If I may, Mr. Chair, I accept
14 that.

15 CHAIRPERSON SCHEUER: Thank you, Mr. Chung.
16 Thank you everyone for helping us through this sticky
17 wicket.

18 Ms. Chang.

19 COMMISSIONER CHANG: I'm going to keep my
20 question very short. Mr. Greene, it's really a "yes"
21 or "no".

22 Condition B.2 -- B.1 Royal Kunia ag park
23 nonpotable water connection.

24 And my question is, is Ho'ohana going to
25 fulfill this condition?

1 THE WITNESS: Yes.

2 COMMISSIONER CHANG: Okay, very good.

3 That's it. Thank you.

4 CHAIRPERSON SCHEUER: Commissioners, are
5 there any further questions for Mr. Greene?

6 Ms. Apuna, was the question that you had
7 concerned about the waterline sufficiently answered
8 in the response to Commissioner Chang's question?

9 CROSS-EXAMINATION

10 BY MS. APUNA:

11 Q I very much appreciate Commissioner Chang's
12 question.

13 I just would like to clarify with a
14 question to Mr. Greene whether Ho'ohana is agreeing
15 to the Condition B.1 that OP has provided in it's
16 revised Exhibit 1?

17 A I think I heard the question. And you're
18 referring to the revision that was received right
19 before the proceedings started yesterday?

20 Q Yes.

21 A We are. We are in agreement.

22 MS. APUNA: Thank you.

23 Thank you Chair, no further questions.

24 CHAIRPERSON SCHEUER: Ms. Lim or Mr.
25 Manaut, any redirect of Mr. Greene?

1 MR. MANAUT: No further redirect.

2 CHAIRPERSON SCHEUER: Thank you very much,
3 Mr. Greene.

4 THE WITNESS: Thank you. Thank you all.

5 CHAIRPERSON SCHEUER: We are now back to
6 the main process of any further questions for the
7 Petitioner at this time. If there is no further
8 questions for the Petitioner, we will move on to the
9 beginning of the argument and witnesses from Haseko.
10 Are there any further questions for the
11 Petitioner at this time, Commissioners?

12 Seeing none, Mr. Chung, will you give me an
13 overview of how long you would like to spend on your
14 argument and your witness?

15 MR. CHUNG: If the Chair pleases, Mr. Lau
16 will be taking over this portion of the hearing.

17 CHAIRPERSON SCHEUER: Thank you for that
18 clarification. Pardon me, Mr. Lau.

19 MR. LAU: Good afternoon.

20 CHAIRPERSON SCHEUER: You might need to
21 speak directly into your microphone.

22 MR. LAU: We're just going to have Ms.
23 Sharene Tam as our witness who is in the waiting room
24 right now. She's just going to summarize briefly her
25 testimony, and she will then be available for

1 cross-examination or questions from the Commission
2 itself.

3 CHAIRPERSON SCHEUER: About how long do you
4 anticipate her oral testimony to be?

5 MR. LAU: Her summary should take no more
6 than five minutes at the most.

7 CHAIRPERSON SCHEUER: Let's start in on it
8 then. I'm going to bring in Ms. Tam.

9 You're being promoted to be a panelist.

10 THE WITNESS: Good afternoon,
11 Commissioners. Thank you for letting me in.

12 CHAIRPERSON SCHEUER: Do you swear or
13 affirm that the testimony you're about to give is the
14 truth?

15 THE WITNESS: Yes.

16 CHAIRPERSON SCHEUER: Mr. Lau, your
17 witness.

18 SHARENE TAM
19 Was called as a witness by and on behalf of Haseko,
20 was sworn to tell the truth, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LAU:

24 Q Good afternoon, Ms. Tam. Are you the same
25 Sharene Tam that submitted a declaration to this

1 Commission comprised of four pages of statements and
2 four exhibits?

3 A Yes.

4 Q Why don't you please proceed with your
5 summary of your testimony, please?

6 A Thank you. Thank you to the Commissioners.

7 We are very appreciative of Ho'ohana's
8 response to our filing. The additional information
9 that they provide alleviated the concerns that we had
10 about the 138 kilovolt line connection point.

11 We took comfort in seeing their landscape
12 plan and confirmation of what they had orally told me
13 a few days before their responsive filing about the
14 Natal Plums hedge that was intended to be placed to
15 provide some sort of screening from our planned
16 future homes.

17 The one issue that still remains of
18 tremendous concern for our ability to move forward
19 with the affordable housing we have planned is
20 whether they will be consistent with the drainage
21 master plans that are currently in place for that
22 project, and that all of the developers in the area,
23 including us, HRT and their potential buyer Jupiter,
24 we have to base our development and due diligence
25 based on what has been approved by the City in

1 determining what kind of infrastructure costs will be
2 required.

3 And we discovered after they had done their
4 initial filing, that their plan did not appear to be
5 consistent with the drainage master plan.

6 To help the Commissioners, I took a screen
7 shot of the different drainage master plan that are
8 part of the record, to make it easier for you folks
9 to see compared to the 2015 solar farm plan versus
10 what they have before you today.

11 If you will permit me, I can show that to
12 you.

13 CHAIRPERSON SCHEUER: You have the ability
14 to share screen.

15 THE WITNESS: Okay, thank you.

16 CHAIRPERSON SCHEUER: Please refer to
17 whatever specific reference in the record, so that
18 it's clear what we are looking at.

19 THE WITNESS: Can you see my screen now?

20 CHAIRPERSON SCHEUER: For the purposes of
21 the transcript, we can.

22 THE WITNESS: So this is from the 1991
23 drainage master plan.

24 CHAIRPERSON SCHEUER: The figure on the far
25 left?

1 THE WITNESS: Yes. That's from 1991, and
2 you will --

3 CHAIRPERSON SCHEUER: That's in the record?

4 THE WITNESS: That is in the record,
5 Exhibit 5 that Michael Lau submitted to the
6 Commission. And you'll note that there is a
7 detention drainage basin that is shown in the 1991
8 that's on what is Parcel 52.

9 The next exhibit is from the 1996 drainage
10 master plan, also part of the Exhibit 5 submitted by
11 Mr. Lau, and it also includes this drainage basin on
12 Parcel 52.

13 And this was Ho'ohana's Exhibit 28 from
14 their response to our filing, and the orange was the
15 2015 footprint of their solar farm at that time.

16 The blue outline represents what they say
17 will be their current solar farm plans before you,
18 and in this area here is where that drainage basin
19 would have gone.

20 And what Haseko is asking for is that there
21 be some space provided in this general area here
22 along the makai boundary of the existing golf course.

23 This is our property right next door. So
24 that the drain and master plan 360 cfs can continue
25 to be conveyed as called for in that drainage master

1 plan to an existing culvert to that golf course.

2 Now, we did have a conversation with
3 Ho'ohana a few days ago. They made an offer to us
4 about being able to possibly provide 75 feet of space
5 to accomplish this goal. Our engineers are looking
6 at it, but we do not have a formal agreement in place
7 yet. Resolving the drainage issue is our biggest
8 concern.

9 CHAIRPERSON SCHEUER: Is that the
10 conclusion of your testimony, Ms. Tam?

11 THE WITNESS: Yes, thank you for the time.

12 CHAIRPERSON SCHEUER: The witness is
13 available for cross-examination starting with the
14 Petitioner.

15 CROSS-EXAMINATION

16 BY MR. MANAUT:

17 Q This is John Manaut. I represent Ho'ohana.

18 In your declaration you state that Haseko
19 acquired Parcel 71, 70 and 78 recently from RP2;
20 correct?

21 A We acquired Parcel 71 from RP2. I believe
22 the other two are from HRT.

23 CHAIRPERSON SCHEUER: Sorry, Mr. Manaut and
24 Ms. Tam, we are at around 12:51. I will break at
25 around 1:00 o'clock.

1 THE WITNESS: Thank you.

2 Q (By Mr. Manaut): When you acquired the
3 property from RP2, was it your understanding that
4 Haseko assumed all the obligations that ran with the
5 land?

6 A We understood, and are ready to fulfill all
7 of the obligations called for in the existing D&O on
8 this property.

9 Q As part of your due diligence, did you
10 review the 2015 solar farm order?

11 A Yes, I was aware of it.

12 Q Haseko was aware that a solar farm proposal
13 was being renewed for this Parcel 52 before you
14 closed on the transaction?

15 A We were aware that there was some activity
16 going on. We did not know that you were as far along
17 as you actually are.

18 Q Are you aware that there was efforts being
19 developed to renew the solar facility on the
20 adjoining parcel, correct?

21 A Yes.

22 Q Did you ever reach out to Ho'ohana about
23 any drainage concerns before Haseko closed on the
24 property?

25 A We didn't think we needed to. Our

1 experience has been that all developers are required
2 to comply with the existing approved infrastructure
3 master plan. So I was taken aback to discover that
4 there might be an inconsistency with the drainage
5 master plan that's on the record.

6 Q So my question, did you do anything to
7 reach out to determine whether Ho'ohana would do
8 anything about drainage concern that you may have
9 before closing?

10 A Not before closing, because we discovered
11 the issue after closing occurred.

12 Q You didn't do anything before closing to
13 inquire about drainage over Parcel 52, correct?

14 A Correct, because they believed they would
15 be forced to comply with the existing approved
16 drainage master plan.

17 Q Are you aware of any recorded drainage
18 easement running across 52 in favor of the Haseko
19 parcel?

20 A I'm unfamiliar with that.

21 Q Are you familiar what the term "easement"
22 means?

23 A Yes.

24 Q Did you know if there are drainage
25 easements in favor of Haseko in the Petition Area?

1 A I'm unfamiliar with that.

2 Q So from your understanding of the 2015
3 solar farm order, are there obligations that are
4 required of the landowners contained in clause A.1?

5 A There are obligations to provide offsite
6 infrastructure to the Department of Agriculture,
7 agricultural park.

8 Q Was it your understanding that that related
9 to the landowner obligations as stated in A.1?

10 A I believe it says "landowners".

11 Q Did you also understand that the solar
12 farm's obligations were stated in Conditions B.2?

13 A Are you referring to the irrigation line
14 again? Yes.

15 Q That would be one of them, yes, but the
16 conditions in Section B of the 2015 order related to
17 the Ho'ohana Solar Farm, correct?

18 A From 2015, yes, I understood that Ho'ohana
19 has an obligation to provide the irrigation line for
20 the Department of Agriculture's agricultural park, as
21 well as to maintain that line.

22 Q Does the 2015 solar farm order state
23 anything about handling of stormwater drainage?

24 A Not that I'm aware of.

25 But, again, my experience has been that you

1 have to comply with the existing infrastructure
2 master plan, including drainage, and the 1996 D&O
3 does specifically require that all the landowners
4 together to accomplish dealing with the drainage.

5 Q But your testimony is you do not know or
6 recall of any provision in the 2015 order that
7 addresses how Ho'ohana would handle its own
8 stormwater drainage, correct?

9 A Its onsite drainage is different than the
10 entire area's drainage master plan compliance.

11 Q So reading between the lines there, you
12 understood that there was some provision for how
13 Ho'ohana itself would handle its own stormwater
14 drainage in that 2015 order, correct?

15 A That's a requirement for any development
16 that is willing to move forward.

17 Q You saw that, or were aware that that
18 existed in that order?

19 A I'm just aware that that exists in general.
20 I don't know if it was specific to the 2015 order. I
21 know that it was specifically referenced in the 1996
22 order.

23 Q In your Exhibit 1 that you attach in the
24 declaration submitted, there is a conceptual plan.

25 Did you do anything to designate a drainage

1 area on that exhibit?

2 A Not yet, no. This is still being worked
3 on, because we need to account for changes in the
4 different stormwater handling requirements on our
5 site.

6 Q Let me shift now to the Department of Ag
7 MOU.

8 CHAIRPERSON SCHEUER: Mr. Manaut, I'm just
9 going to check in terms of not disrupting your flow
10 later, give me a sense where you're trying to go and
11 how much time you might need.

12 MR. MANAUT: A few more questions. If I
13 can just ask a few more, then take a break and we can
14 come back.

15 CHAIRPERSON SCHEUER: So you want to be
16 able to conclude your questions prior to the break,
17 is that what I'm hearing you say?

18 MR. MANAUT: I've got a few more questions
19 and we can take a break; and I can finish up after
20 the break.

21 CHAIRPERSON SCHEUER: We will stop in two
22 minutes.

23 Q (By Mr. Manaut): So, Ms. Tam, to your
24 understanding that Haseko assumed all of the RP2
25 obligations under the 2020 MOU with the Department of

1 Agriculture?

2 A Yes.

3 Q So it's your understanding that MOU is
4 binding and valid on Haseko, or --

5 A I guess it's -- I'm sorry.

6 Q So is it Haseko's present intention to
7 honor all of the obligations contained in that 2020
8 MOU with the DOA?

9 A We have had discussions with the department
10 to adjust the timeframes that are stated in that
11 memorandum.

12 Q But with respect to the substantive
13 obligations, your understanding is that Haseko will
14 honor those?

15 A Yes, we think everyone should have to
16 fulfill the obligations that are stated in all of the
17 existing D&O's.

18 Q As a landowner, Haseko assumed whatever
19 obligations the predecessor owner Halekua Kunia had,
20 is that your understanding?

21 A Yes.

22 Q Did you know that Halekua Kunia had assumed
23 all of the infrastructure obligations for this
24 Petition Area?

25 A I'm unaware of any agreement that would

1 have relieved the landowner of Parcel 52 from
2 fulfilling its obligations under the existing D&Os.

3 Q So you're not aware that in 2007 Halekua
4 Kunia had assumed all of the obligations for
5 infrastructure with respect to this Petition Area?

6 A I am unaware that there was any relief
7 granted to -- the LUC issued its D&O. I'm aware of
8 civil private agreements, but that does not provide a
9 relief from a decision that the Land Use Commission
10 had ordered.

11 Q Let me back up.

12 CHAIRPERSON SCHEUER: It's 1:00 o'clock,
13 I'm going to call for a ten-minute break. We will
14 resume at 1:10.

15 (Recess taken.)

16 MR. MANAUT: I've got about five or six
17 questions. Should be quick.

18 CHAIRPERSON SCHEUER: Please proceed.

19 MR. MANAUT: Thank you, Chair.

20 Q Ms. Tam, you testified earlier that Haseko
21 was unaware that Ho'ohana was putting panels in the
22 lower part of the Parcel 52 before the closing of the
23 purchase from RP2, correct?

24 A No. I said I was unaware that they were
25 going to be inconsistent with the drainage master

1 plan.

2 I could not tell from the initial filing
3 that you folks have made some other type of
4 accommodations for an engineered solution in place of
5 the basin.

6 Q But you didn't see a basin in the materials
7 that were sent to you before the closing on
8 August 4th, did you?

9 A No, I did not.

10 Q Do you recall getting a copy of the initial
11 motion with the exhibits --

12 CHAIRPERSON SCHEUER: Hold on one second.
13 All of a sudden Mr. Simon has started to screen
14 share. Please explain.

15 MR. MANAUT: Yes, can we show Exhibit 18?

16 CHAIRPERSON SCHEUER: This is Petitioner's
17 Exhibit 18?

18 MR. MANAUT: Yes.

19 CHAIRPERSON SCHEUER: Give me a heads up
20 first.

21 Q (By Mr. Manaut): So, Ms. Tam, this is a
22 copy of an email that was sent from Jennifer Lim.
23 You are shown as cc on August 4th.

24 As I understand it, that was eight days
25 before closing of the purchase, correct?

1 A Yes, that's correct.

2 Q The exhibits that came with it included an
3 Exhibit 5. Did you look at those exhibits?

4 A Yes, I did.

5 Q Did you see on Exhibit 5 that the solar
6 panels went essentially to the bottom of Parcel 52
7 and that there was no drainage area indicated?

8 A It didn't show a basin, but my
9 understanding was the basin is needed when Robinson
10 moved forward with the residential use on that
11 property. The full-on basins may not have been
12 needed just for the solar farm development at this
13 time. I could not tell what they were doing --

14 CHAIRPERSON SCHEUER: One moment, Ms. Tam.
15 Mr. Manaut, prior to pulling up, or
16 referencing an exhibit, let me know you're going to
17 do so and what it is, otherwise, among other things,
18 the transcript will not make a lot of sense.

19 MR. MANAUT: Yes, I apologize. That did
20 get up there too soon.

21 If we can go to Exhibit 1 that was
22 referenced on that parcel.

23 Q Do you recall, Ms. Tam, seeing this figure
24 in that email package?

25 A Yes.

1 Q Do you see on the far right of the shaded
2 area, that would be the panel location, and there's
3 no drainage basin area indicated there; correct?

4 A Like I stated, I did not see a basin. But
5 I also did not see information of how drainage was
6 going to be handled on top of that parcel. And we
7 could not tell from this exhibit where the actual
8 panels would be, or any of the other details that we
9 felt were missing that prompted us to file our
10 response to your motion.

11 Q So, again, prior to closing, though, you
12 did not reach out and ask Ho'ohana how they were
13 expected to handle the drainage concern you might
14 have; correct?

15 A I did not ask Ho'ohana that question,
16 because we apparently wrongly assumed that they would
17 know they have to comply with existing drainage
18 master plans.

19 They don't need to necessarily do a basin.
20 For example, they could have chosen some other type
21 of solution, and we were unaware of that. We were
22 not particular about how they chose to deal with it,
23 but we think it's critical that they abide by and
24 account for the flows that are shown in that approved
25 master plan.

1 Q When you filed your opposition to this
2 motion, did you raise anything related to drainage
3 that you're raising now?

4 A We did not know that they were inconsistent
5 with the drainage master plan after -- until after my
6 declaration was filed --

7 Q The opposition itself did not raise
8 anything about your drainage concerns, correct?

9 A That's correct, because we did not know
10 that Ho'ohana was being inconsistent with the
11 drainage master plan at that time.

12 MR. MANAUT: I have no further questions.

13 Thank you, Chair.

14 CHAIRPERSON SCHEUER: Thank you, Mr.
15 Manaut.

16 City and County, Mr. Takahashi, any
17 questions for Ms. Tam?

18 MR. TAKAHASHI: No, we have no questions.

19 CHAIRPERSON SCHEUER: Ms. Takeuchi Apuna.

20 MS. APUNA: Thank you, Chair, we do have a
21 couple of questions.

22 CROSS-EXAMINATION

23 BY MS. APUNA:

24 Q Thank you, Ms. Tam, for your testimony. I
25 just have a few questions.

1 Are you familiar with OP's revised
2 Exhibit 1 that was provided to the Commission
3 yesterday morning?

4 A Yes.

5 Q And so is Haseko committed to providing the
6 offsite infrastructure under the A.1 condition?

7 A Yes.

8 Q And does Haseko understand that the offsite
9 infrastructure does include the nonpotable
10 waterline --

11 THE COURT REPORTER: Excuse me, I'm not
12 understanding you clearly at all.

13 Q (By Ms. Apuna): Ms. Tam, does Haseko
14 understand that the offsite infrastructure under the
15 A.1 condition includes the nonpotable waterline
16 appurtenances, for example, the pump system for the
17 waterline?

18 A I understand that RP2 had designed a system
19 that included the pumps, and my understanding was
20 that Ho'ohana did not agree that they were required
21 to provide pumps, just a strict waterline.

22 Q And so is it your understanding that Haseko
23 will cover the water pump system -- I'm sorry, the
24 waterline system other than the waterline under
25 Condition A.1 that OP is proposing?

1 that owns the bulk of the Royal Kunia residential
2 areas with the exception of Parcel 52 that's
3 currently owned by the Robinsons. HRT continues to
4 own the industrial parcel, but it's in the process of
5 selling it to Jupiter.

6 COMMISSIONER CHANG: And is it your
7 understanding that all the landowners are responsible
8 for the offsite infrastructure?

9 THE WITNESS: Yes.

10 COMMISSIONER CHANG: Is Haseko a party to
11 the MOU with the Department of Ag regarding the
12 offsite infrastructure?

13 THE WITNESS: There was an assignment of
14 that to us, and we have been talking to the
15 Department of Agriculture about updating the
16 timelines and deadlines that are stated in it to
17 being more reflective of what we are able to actually
18 achieve for them.

19 COMMISSIONER CHANG: Do you know whether
20 the landowner of Parcel 52, the Robinsons, is also a
21 party to the MOU?

22 THE WITNESS: I don't believe they are.
23 There was just requirement to obtain easements
24 through Robinson lands to be able to provide the
25 waterline in particular, and infrastructure also

1 needs to cross a little flag stem of the Robinson's
2 property to reach the Department of Ag property.

3 COMMISSIONER CHANG: So let me ask you a
4 followup question.

5 So when I read Condition A.1, it says
6 within six months of the date of the Commission's
7 order the landowner(s) within the Petition Area shall
8 finalize the amendment to the MOU dated 1993, 2007,
9 2009, 2012 with the Department of Ag, and to comply
10 with this Amended Memorandum of Understanding.

11 So what I heard you just state is that the
12 Robinson's Parcel 52 is not a party to the MOU.

13 Is that correct?

14 THE WITNESS: I don't recall seeing them
15 sign the MOU between RP2 and the Department of
16 Agriculture.

17 COMMISSIONER CHANG: All right. Very good.
18 Thank you very much. I appreciate your answers.

19 CHAIRPERSON SCHEUER: Commissioner Wong.

20 COMMISSIONER WONG: I thought Commissioner
21 Okuda was before me.

22 CHAIRPERSON SCHEUER: He normally raises
23 his hand, and I was just going by his smile.
24 Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1 I don't mean to cut in line. I was just smiling.

2 If I can ask you this question, these are
3 more cleanup questions.

4 First of all, the Petitioner submitted
5 written direct testimonies. These are Petitioner's
6 Exhibits 42 through 49.

7 Does Haseko dispute any of the statements
8 made in those exhibits, the direct testimonies
9 identified as Exhibits 42 through 49?

10 THE WITNESS: I'm sorry, Commissioner, I'm
11 not familiar enough with all of the exhibit numbers
12 to know specific which ones you're referring to.

13 If you don't mind, I can go look them each
14 up to see.

15 COMMISSIONER OKUDA: No, no, I'm just
16 trying to find out maybe if right off the top of your
17 head there was something in any of these direct
18 testimonies which stuck out, which you objected to,
19 but if you don't have any specific knowledge, that's
20 fine also.

21 THE WITNESS: The only thing that I'm
22 particularly concerned about is to make sure that
23 they comply with the drainage master plan. If we are
24 able to resolve some of that issue, we, just like all
25 of you, are in support of the solar farm and

1 understand the need to provide for and attain the
2 State's energy obligations in that way to go to
3 renewable.

4 We're not trying to stop the farm or
5 anything like that, we just want to make sure that
6 everybody is treated equitably and held to comply
7 with the existing drainage master plan, and the D&Os.

8 COMMISSIONER OKUDA: That actually led to
9 my second question, so you answered that, which is
10 the only objection that Haseko is raising is issues
11 regarding drainage, and I'll -- you know, to use the
12 descriptions and testimony you gave, it's simply this
13 drainage issue, if I can classify or describe it so
14 generally. Is that correct?

15 THE WITNESS: At this time, yes, the
16 additional information filed in response to our
17 motion adequately addressed the questions and
18 concerns we had about the 138 kV line, as well as the
19 landscape buffer they're talking about.

20 The landscaping plan was not included in
21 the original filing, nor was information about the
22 connection.

23 Those two issues are now done. It is just
24 the drainage that we are most concerned with.

25 COMMISSIONER OKUDA: Would you agree that

1 the Land Use Commission frankly is not the end all
2 when it comes to enforcement of drainage obligations
3 or drainage conditions?

4 Let me be more specific. If such a
5 condition existed on an adjoining parcel, you, as an
6 adjoining landowner, if you're benefitted by that
7 condition, could go into court to get a court order
8 to enforce that condition, correct?

9 THE WITNESS: Yes, we could. And we are
10 willing to do so, but we understand that could impede
11 their ability to meet their obligations under the
12 Power Purchase Agreement.

13 So we are hoping to find a way to resolve
14 this without having to go to that extent. If they
15 just comply with Condition 16 already existing in the
16 D&O, then I think we can work something out amicably.

17 COMMISSIONER OKUDA: Is there something in
18 the record from an expert that provides opinion or
19 statement that the solar farm, or the drainage issues
20 there, is not in compliance with any condition? Have
21 you -- has Haseko submitted a statement or testimony
22 from an expert indicating there is such
23 noncompliance?

24 THE WITNESS: We did not submit something
25 like that from an expert. We had asked Ho'ohana,

1 after we got the additional information about it, and
2 they said they did not think they were required to,
3 so we're asking again about making sure that
4 everybody has to comply with what is already in the
5 existing D&O issued by the Commission, which includes
6 coordinating for drainage.

7 COMMISSIONER OKUDA: I'm just trying to
8 make sure that whatever decision we make is not based
9 on speculation, because we have to make it based on
10 evidence in the record.

11 Can I ask this?

12 Your current engineer is still RM Towill,
13 correct?

14 THE WITNESS: Yes.

15 COMMISSIONER OKUDA: And since there really
16 is no client-engineer privilege, have you been
17 advised by any of your engineers that there is a risk
18 of harm to your property, Haseko's property, from any
19 drainage issues?

20 THE WITNESS: If the drainage master plan
21 is not respected in the 300 cfs that is supposed to
22 flow and connect to existing pipe culverts that are
23 on the Robinson property to the existing operational
24 golf course, yes. We will be forced to figure out
25 some other solution. And that has an adverse effect

1 on us, if we don't have an answer for that.

2 We're just asking that they be forced to
3 comply, just like anybody else would be, to respect
4 the existing infrastructure master plan.

5 COMMISSIONER OKUDA: Let me ask you a
6 slightly different question related to that a little
7 bit more broadly.

8 You are aware that whether or not there is
9 a recorded condition or -- yeah, a recorded condition
10 or recorded requirement, adjoining landowners have a
11 duty not to negligently or carelessly alter the
12 natural flow causing damage from water to down-flow
13 owners, correct?

14 THE WITNESS: Yes.

15 COMMISSIONER OKUDA: Is there any evidence
16 in the record that you can point to that the solar
17 farm property, for lack of a better description, is
18 contemplating doing anything which indicates not just
19 a speculative harm, but a reasonably foreseeable harm
20 in the future?

21 Because I didn't see any such report in the
22 record, so maybe I didn't read everything carefully,
23 but can you point to where in the record there is
24 evidence of the conduct with which we can conclude
25 will show foreseeable harm?

1 THE WITNESS: The site plan does not show
2 the drainage basins called for in the drainage master
3 plan. We did not want to assume that they were
4 choosing to not be consistent with the plan.

5 They may have had some other engineers'
6 solution, so we asked about it. And at that point
7 they did not have some other way. They did not feel
8 that they were obligated to conform with it.

9 The discussions have advanced to the point
10 now where Mr. Greene has sent me an exhibit that says
11 they could provide enough space for us to put in an
12 engineered solution to satisfy, be consistent with
13 the drainage master plan.

14 We just have not been able to finalize
15 that. Our engineer's looking at it. If that occurs,
16 allow us to have a safe way to convey the flow shown
17 in the plans tying existing infrastructure per that
18 master plan, then we are good. We are just not at
19 the point to have agreement in place yet.

20 COMMISSIONER OKUDA: Then my final question
21 is: Would I be totally wrong, would I be totally
22 wrong if I were to conclude that perhaps your concern
23 right now is not, as we say in the law, ripe,
24 r-i-p-e, that it's something that might be of concern
25 in the future, might not, but we really can't tell

1 one way or the other, because people are still
2 talking, which is really, really good, we should talk
3 things out as much as possible, but that's where we
4 are right now.

5 Maybe everybody is going to be good
6 neighbors, and everybody seems to have respectful
7 competent advisors and engineers that, you know, more
8 probable than not this can be worked out in the
9 future, that maybe this issue right now is premature
10 and not ripe? Would I be totally wrong to come to
11 that conclusion?

12 THE WITNESS: Well, Commissioner, if I may
13 ask. If the solar farm is allowed to proceed the way
14 that their plans are shown, and there is no
15 accommodation or requirement for them to accommodate
16 drainage that is spelled out in existing
17 infrastructure master plan, and they proceed trying
18 to put their panels on, and at that point it gets
19 litigated and they're affected, how are we supposed
20 to be able to proceed with our development plan?

21 This is a billion dollar project that's
22 been applied, more than a thousand jobs as well. The
23 State has a priority on doing affordable workforce
24 housing. We would be adversely impacted if they do
25 not have to conform with every other developer on the

1 island is required to do --

2 COMMISSIONER OKUDA: Sorry to interrupt.

3 That wasn't my question.

4 My question was, because of the existence
5 of these discussions, as far as I can tell, nobody is
6 breaking up talks or anything like that.

7 My question was a really simple question.
8 Would I be totally wrong to conclude that maybe the
9 issue is not ripe at this point in time?

10 THE WITNESS: Well, Ho'ohana, Mr. Greene
11 admitted that he does not believe that they need to
12 conform or comply with the 1996 drainage master plan.

13 CHAIRPERSON SCHEUER: I think, Ms. Tam, it
14 can be "yes", "no", or you don't know.

15 THE WITNESS: I think a decision from you
16 folks today that would require them to comply will
17 have an extremely beneficial effect on both sides.

18 COMMISSIONER OKUDA: Sorry to interrupt.
19 Chair is right. I want to keep my question simple.
20 Either "yes", "no" or "I don't know".

21 CHAIRPERSON SCHEUER: The question is, is
22 the issue ripe?

23 COMMISSIONER OKUDA: Would I be totally
24 wrong to conclude that this is premature right now?
25 The answer is either "yes", "no" or "I don't know".

1 THE WITNESS: If they can comply, then I
2 don't think there is an issue. If you are unwilling
3 to do that, and we need to weigh it further, then I
4 think you're doing harm to our project.

5 COMMISSIONER OKUDA: I will evaluate your
6 answer based on what it is.

7 Thank you, Mr. Chair. No further
8 questions. Thank you, Ms. Tam.

9 CHAIRPERSON SCHEUER: Commissioners Wong.

10 COMMISSIONER WONG: Thank you, Chair.

11 Is it Mrs., Ms. Tam.

12 THE WITNESS: Either is fine.

13 COMMISSIONER WONG: It's right after lunch,
14 so I kind of ate too much loco moco, so excuse me on
15 this first question.

16 So when you were talking to OP, something
17 about bonding. What is that? Can you explain that
18 to me about you guys would be okay with bonding?

19 THE WITNESS: My understanding is some of
20 the prior landowners of the parcel that we own today
21 have made a lot of promises, and said that, yes, they
22 would meet their schedule; yes, they would install
23 infrastructure that the agricultural park needed, and
24 then didn't do anything.

25 And I can understand that they feel very

1 doubtful about what is going to make us different
2 than who has come before.

3 So we said, to provide you that assurance,
4 we will do those plans. This is the timeframe we
5 think we can do it in, and we are willing to put a
6 bond in place so that, if for some reason, we fail to
7 perform, they are still going to be able to get
8 infrastructure that they need to reach that
9 agricultural park.

10 COMMISSIONER WONG: Thank you. That
11 explains a lot to me.

12 The next thing is, you know, you were
13 talking to Commissioner Okuda about master plan.
14 What master plan we are talking about?

15 THE WITNESS: The drainage master plan.
16 There is an existing drainage master plan that
17 covered the entire area agriculture park, industrial
18 park, all of the Royal Kunia residential areas,
19 including Increment 3, which is today Parcel 52 for
20 Ho'ohana Solar Farm.

21 COMMISSIONER WONG: When was that made?

22 THE WITNESS: The last updated one that's
23 on the record is from 1996.

24 COMMISSIONER WONG: So before I was on the
25 Commission then. Sorry. I was trying to look for it

1 like in 2015, 2018. It was '96.

2 THE WITNESS: The drainage master plans
3 were a part of the facts that were considered for the
4 1996 D&O that was issued on this property.

5 COMMISSIONER WONG: Okay. But you guys,
6 you said something about you're planning to do a new
7 plan or something?

8 THE WITNESS: The City generally will ask
9 that you provide an updated drainage master plan,
10 especially for one that is as old as this one is to
11 reflect what the current uses are going to be.

12 COMMISSIONER WONG: So the question I have
13 -- let me give you a step back.

14 So we just did Hawaiian Memorial Park, and
15 there was issues about rain and runoff and all this.
16 And they talked about, you know, the City has a
17 limited amount of drainage, water basin.
18 Commissioner Giovanni knows more about this than me,
19 but Commissioner Giovanni said, you know, we should
20 get it bigger because we are having more 100 year
21 floods. So this drainage plan will be updated
22 because there is more 100 year floods, or something
23 like that; correct?

24 THE WITNESS: The master plan will take
25 into effect the updated rainfall total. I think in

1 this particular area, the City calls it a Plate 6
2 amount that the engineers will use to factor how much
3 capacity they need to provide in the drainage system
4 in terms of basin and other stormwater treatment
5 facilities.

6 COMMISSIONER WONG: So, you know, I guess
7 in 2018 we asked for a status report from Mr. Tanoue,
8 or he was representing his company, RP2, or RM Towill
9 (frozen screen).

10 THE WITNESS: I'm sorry, I lost you there,
11 Commissioner.

12 COMMISSIONER WONG: David Tanoue gave us a
13 status report approximately in 2018. And so because
14 we wanted to know what is happening pretty much.

15 So, I mean, are you guys going to give us a
16 status report also to keep us updated, or do we have
17 to do a motion, Order to Show Cause, because we don't
18 get anything? I mean, you know, I mean how will we
19 get this information?

20 THE WITNESS: There is an obligation to
21 provide an annual status report to the Commission as
22 well as to the City about where we are in satisfying
23 the conditions of the existing D&O.

24 So we would continue to provide that annual
25 report to you.

1 COMMISSIONER WONG: Thank you. I mean,
2 sorry, just didn't know these things.

3 Then the other question I have is, you
4 know, for the -- the doing the bonding issue again
5 about the waterline that everyone is talking about,
6 or the MOU or whatever everyone is talking about.

7 So what is Haseko's belief and the
8 obligations for the funding? Is it your obligation
9 and the landowners for the MOU, or something like
10 that?

11 THE WITNESS: The Fourth Amendment to that
12 MOU deals with providing the offsite infrastructure
13 to the agricultural park. And we told the Department
14 of Agriculture that we wanted to be able to update
15 the timeframes shown in the Fourth Amendment to
16 something we know we can conform to, and we would be
17 providing them the permanent infrastructure rather
18 than temporary water, power, sewer through the
19 agricultural park. That's because we're the ones who
20 are actually developing the roadways that these
21 utility lines would fall under.

22 So once we build it, it's theirs. During
23 the period before it is built, we are willing to bond
24 it so they have proof that it's going to be there,
25 and they're able to pursue the additional funding

1 that they may need from the legislature to take care
2 of the rest of their agricultural park development.

3 COMMISSIONER WONG: So MOU is between you
4 and DOA; is that correct?

5 THE WITNESS: The current MOU was executed
6 between RP2 and the Department of Agriculture
7 assigned to us when we acquired it, and we then
8 talked to the department about updating it. We
9 understood that the department wanted to put it on
10 the record. I believe it's supposed to be scheduled
11 for the Commission to review it at one of the
12 upcoming meetings.

13 We have asked that it be updated again to
14 reflect more realistic timeframes that we believe we
15 can deliver on.

16 COMMISSIONER WONG: So I guess the issue is
17 more the water and all this MOU stuff, Robinson or
18 Ho'ohana has no say in this then, just got to follow
19 up, got to do it then, because they're not a party.

20 THE WITNESS: My understanding was there is
21 a 2015 D&O that specifically calls out Ho'ohana as
22 being responsible for providing and maintaining that
23 irrigation line, and for obtaining the easement
24 necessary to the Robinson lands to run that line to
25 the Department of Agriculture's ag park. I believe

1 that's the initial motion that Ho'ohana has filed.

2 We thought it seemed to say that they were
3 trying to not have to fulfill that obligation any
4 more.

5 CHAIRPERSON SCHEUER: If I may. I thought
6 we put aside the issue of the waterline, right? Your
7 only dispute is with drainage?

8 THE WITNESS: My issue is drainage, but he
9 was asking me about it, so I was just trying to
10 answer his question.

11 COMMISSIONER WONG: Thank you, Chair.

12 I guess the last question I have is, that
13 motion you filed in opposition stating citing a
14 subsection 15-15-70(e) calling for a culture
15 affidavit and memorandum in opposition.

16 Is it a motion or is it something else? Is
17 it supposed to be considered an affidavit or
18 memorandum?

19 THE WITNESS: I think that's a question
20 better answered by Mr. Lau.

21 MR. LAU: Commissioner Wong, I think our
22 sole purpose was to get onto the record our
23 opposition to some of the matters that were going to
24 be brought before the Commission.

25 Whether it should be a motion or just a

1 memorandum in opposition, I don't think we have a
2 preference, so if we mischaracterized it and did not
3 choose the appropriate provision, we apologize, but
4 our main goal was just to make the point that we were
5 concerned about a couple issues that they had raised,
6 and we needed more clarification and information on
7 the 138 kV line and the proximity of the solar farm
8 to the residential areas.

9 COMMISSIONER WONG: So now that, I guess,
10 Chair reminded me that's put aside, and we're just
11 dealing with just one item, correct?

12 MR. LAU: That's correct.

13 COMMISSIONER WONG: Thank you, Chair.
14 Thank you, Ms. Tam; thank you, Mr. Lau.

15 CHAIRPERSON SCHEUER: Commissioner Giovanni
16 followed by Commissioner Ohigashi, and then
17 Commissioner Aczon, as well, were you indicating?
18 Giovanni, Ohigashi and Aczon.

19 COMMISSIONER GIOVANNI: Thank you, Chair.
20 I'm not sure if my question goes to Mr. Lau or Ms.
21 Tam, so I'll ask, and either of you can answer it.

22 Under the hypothetical that the solar
23 project does not exist, would it be your position
24 that the landowner has the responsibility for
25 compliance with the master plan relative to drainage

1 on Parcel 52?

2 MR. LAU: I guess from a legal standpoint,
3 the answer is yes.

4 COMMISSIONER GIOVANNI: If the solar
5 project does exist, and they obtained a lease from
6 the landowner, and that lease conveyed the
7 responsibility for compliance with the master plan
8 for drainage, is it your understanding that the
9 project owner would be responsible, or the lessee
10 would be responsible for compliance?

11 MR. LAU: I think that was one of the
12 issues that we had raised in our opposition. Because
13 it appeared from the pleadings that were filed by
14 Ho'ohana Solar, that because they were merely the
15 lessee and not the landowner, that they were under no
16 obligation.

17 And our purpose in filing the opposition
18 was really to bring the issue to a head, because it
19 doesn't make sense if someone who would tie up the
20 land for 40-plus years, and then say, oh, those
21 obligations don't apply to us because we are not the
22 landowner.

23 Having a 40-year lease in Hawaii is just a
24 little short of fee simple ownership. That was our
25 main point for raising that particular issue.

1 COMMISSIONER GIOVANNI: I understand you
2 raised it. What's your position on that point?

3 MR. LAU: Certainly as the lessee, a
4 long-term ground lessee it should run with the land
5 and follow the lessee during that period of time.

6 COMMISSIONER GIOVANNI: I asked if it was
7 explicitly in the lease that they would be required
8 to fulfill that requirement.

9 Would it be your understanding that it
10 would be the project owner or the lessee's
11 responsibility?

12 MR. LAU: In our mind, the conditions run
13 with the land. So whether they're just a lessee or
14 fee owner, nevertheless, it goes with the land. As a
15 lessee, they have that obligation.

16 And I believe the conditions from the land
17 use decisions were recorded against all of the
18 parcels in the Petition Area.

19 COMMISSIONER GIOVANNI: So it's your
20 position -- I'm assuming it's your position -- I ask
21 you to conform or agree or disagree -- that the
22 landowner is not responsible for compliance, it's the
23 lessee that's responsible for compliance?

24 MR. LAU: I think the way we phrase it is
25 and/or, so one of them has to be responsible for it.

1 Ultimately, the landowner, but our position is, given
2 this is a long-term lease, the lessee is responsible
3 for that.

4 COMMISSIONER GIOVANNI: So you don't care
5 who does it, as long as somebody does it?

6 MR. LAU: As long as someone is going to
7 follow the terms of the master plan, that's all we
8 care.

9 COMMISSIONER GIOVANNI: But in your legal
10 opinion, in the absence of the lease explicitly
11 addressing who is responsible between landowners
12 or/and lessee, what is your opinion?

13 MR. LAU: I haven't seen the lease, so I
14 don't know what is contained in the lease, but
15 certainly most leases would say subject to all of the
16 encumbrances that impact the land.

17 From my legal standpoint, it doesn't matter
18 whether lessee or landowner. I would hold them
19 equally liable and responsible for compliance.

20 COMMISSIONER GIOVANNI: Thank you. I have
21 no further questions.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Giovanni.

24 Commissioner Ohigashi followed by Aczon.

25 COMMISSIONER OHIGASHI: I think my

1 questions are slightly similar lines, but I'm trying
2 to grasp what exactly you want the Land Use
3 Commission to do about this.

4 Do you want a condition that says, hey, you
5 guys got to follow the drainage master plan? You
6 want a specific statement like that as a condition,
7 is that what you want?

8 MR. LAU: I'll try to answer that. We
9 don't mind the Commission approving the Petition
10 subject to the parties filing an agreement resolving
11 the drainage issue.

12 COMMISSIONER OHIGASHI: That's not my
13 question. Apparently it's not resolved, according to
14 your witness Tam.

15 All I'm trying to say is that we -- I want
16 to resolve this today. I'm curious what are you
17 asking for. If you are asking for that, I'm not sure
18 we're able to give that, because that would
19 essentially be something akin to a declaratory ruling
20 to make a finding that they're not in compliance with
21 the drainage master plan; or make a finding that the
22 drainage master plan is part of a condition that is
23 required by the Applicant, and that are required by
24 the Petitioner, and that they are in breach of that
25 condition, so we're directing them to meet that

1 condition.

2 As I see it now, I'm more in line with what
3 Commissioner Okuda said, that it doesn't seem like
4 something ripe for determination at this point in
5 time.

6 So if you can tell me what do you want us
7 to do, Mr. Lau?

8 MR. LAU: First of all, Condition 16 from
9 the 1996 Decision and Order clearly required the
10 Petitioner, in this case all of the landowners, to
11 develop the appropriate drainage improvements, and
12 having the adjoining landowners cooperate in that
13 development. So that's the first point.

14 Second point, I think the point that
15 Commissioner Okuda raised, is it ripe or not? I
16 think we heard from the witness earlier today, Mr.
17 Greene, indicating that they did not intend to comply
18 with the drainage master plan.

19 So I think, I beg to differ with Mr. Okuda,
20 but I think the issue is ripe, and therefore, we
21 would request that the Commission, as a condition,
22 require the parties -- require Ho'ohana to comply
23 with the drainage master plan requirements.

24 COMMISSIONER OHIGASHI: It sounds like you
25 want us, or you want us to enforce the term of the

1 condition; is that correct?

2 MR. LAU: Yes.

3 COMMISSIONER OHIGASHI: And if we do that,
4 don't we run into a problem with the issue of
5 substantial commencement of the entire project?
6 Because my understanding, this was one project when
7 it was approved and broken up in into about four
8 parts, I understand, and some of it has been
9 developed. There is some -- and technically I think
10 the supreme court has indicated to us that we do not
11 have enforcement powers.

12 So I am not sure that what you're asking
13 for right now can be granted. So why don't you
14 convince me that you can.

15 MR. LAU: Well, you know, I think there's
16 an interplay between the Land Use Commission, and in
17 this case, the City and County of Honolulu. As an
18 example, the Land Use Commission imposes affordable
19 housing requirements in any of these urbanization,
20 when there's going to be residential development.

21 So Condition No. 1 of the Land Use
22 Commission's order states that they shall have --
23 shall provide affordable housing.

24 Now, the Land Use Commission doesn't
25 necessarily enforce or police affordable housing, but

1 that's an issue that plays into the hand of the City
2 when they go in for the zoning.

3 So in that situation, the City has the
4 jurisdiction of handling that.

5 Similarly, in drainage, I think DPP filed
6 in this proceeding their comments indicating that it
7 was necessary for the parties to work out these
8 issues relative to the infrastructure.

9 So they have proposed that as a condition
10 of them obtaining their building permits, that a
11 memorandum of agreement, or similar type of
12 arrangement, be filed with DPP prior to the
13 submission of building permits.

14 So I guess to answer your question, there
15 is an interplay between what the Land Use Commission
16 says, as well as how the City would then take over
17 matters that are solely within their jurisdiction.

18 COMMISSIONER OHIGASHI: Thank you, Mr. Lau.
19 That clears up my mind. I do not think that this is
20 a Land Use Commission matter. I think it is properly
21 placed before the City to make that determination as
22 to whether or not the condition has been met, and
23 what necessary requirements they will require for
24 drainage purposes. Thank you.

25 CHAIRPERSON SCHEUER: Commissioner Aczon.

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

2 Good afternoon, Ms. Tam.

3 THE WITNESS: Nice to see you again,
4 Commissioner.

5 VICE CHAIR ACZON: Some of my questions
6 pretty much answered in part, and I'm still not, you
7 know, clear on some of the answers.

8 But one is, who is ultimately responsible
9 for this drainage master plan? Is it the lessee or
10 is it the landowner? That I'm still not clear who is
11 responsible.

12 So, Ms. Tam, from your testimony you
13 mentioned that all the issues, all Haseko's concerns
14 were resolved sufficient except the drainage plan;
15 correct?

16 THE WITNESS: Yes.

17 VICE CHAIR ACZON: Again, going back to who
18 is responsible for this drainage master plan.
19 That's, you know, there's -- I'm not a lawyer, so you
20 know, I'm going to be depending on those lawyers to
21 answer that.

22 But the question is, you also testified in
23 response to Commissioner Okuda's question about is
24 Haseko going to be harmed if this project moves on
25 without a fix on the drainage master plan?

1 THE WITNESS: Yes.

2 VICE CHAIR ACZON: Now, if we move ahead
3 with this motion and did nothing about this master --
4 this drainage plan, what is your recourse?

5 THE WITNESS: To take them to court to
6 appeal that decision to require them to have to
7 comply. The lawyers could give the correct legal
8 verbage for that.

9 But I understand that there are legal
10 remedies we could pursue, but I also recognize that
11 doing so will have an adverse affect on the solar
12 farm's ability to proceed, that's why we are hoping
13 to be able to resolve things amicably.

14 VICE CHAIR ACZON: I just want to know, you
15 file a notice on this one, what will happen? In the
16 example, I know you making about a fact on the solar
17 farm. Is there any other effects that you kind of,
18 you know, on your layman's interpretation or for my
19 sake?

20 THE WITNESS: If they don't comply with the
21 drainage master plain, and allow the 300 cfs that is
22 supposed to be able to flow to the existing
23 connection points, then I don't know how we are able
24 to move forward with the development of our parcel
25 that's right next door.

1 VICE CHAIR ACZON: I'm talking about if you
2 file a lawsuit, if this thing goes to court, you
3 mention about effect on the solar farm.

4 What do you mean by that? Are you talking
5 about they going to be delayed? You also mention
6 about, you know, the affordable housing going to be
7 delayed.

8 So I'm just trying to figure out the cost
9 if you do something now, or we don't do anything, if
10 you do -- if you don't do anything. What is the cost
11 to the State? To the Petitioner? To other
12 landowners?

13 Because I believe that doing something now
14 is better than waiting for whatever happens later.
15 So if there's nothing we can do right now, then so be
16 it. I just want kind of get some idea on how to
17 protect those lands, how to move on with this
18 development. We talking about, you know, thousands
19 of, you know, employment for everybody, and also
20 providing affordable housing to the State of Hawaii.

21 THE WITNESS: Well, if the project were my
22 project, and I did not have the clear ability to move
23 forward with my development, I would not spend any
24 money to proceed in the event that the court chooses
25 to rule against me. That will cause delays.

1 Now, perhaps the solar farm developer has a
2 different point of view, and is willing to take that
3 sort of gamble, and if they lose the case, and we
4 prevail, they then have to remove panels that they
5 have knowingly put in place where an engineer
6 solution could be installed for drainage that would
7 have an adverse impact.

8 I think it would be far more beneficial
9 since you would have the time, and then hopeful that
10 we both get there. We're just not there yet.

11 They just sent to me a diagram of how much
12 space they think they can provide to us. And they
13 have asked us to provide an easement for them that
14 they need as well.

15 I'm not sure if that answers your question.

16 VICE CHAIR ACZON: I guess I don't have an
17 easy answer for you, or any answer for everybody, but
18 I believe everybody understand that everybody is
19 going to be taking a risk whatever we decided today.
20 And I'm talking about a big risk for everybody.

21 Thank you, Mr. Chair.

22 CHAIRPERSON SCHEUER: Commissioner Wong
23 followed by Commissioner Chang, but I need to do a
24 time check here.

25 Because despite the good efforts of the

1 main Petitioner, things are stretching out here.

2 We need to take a break soon. Do you have
3 extensive questions, Commissioners Wong or Chang?

4 COMMISSIONER WONG: I have one question,
5 Chair.

6 CHAIRPERSON SCHEUER: Commissioner Chang?

7 COMMISSIONER CHANG: Just one.

8 CHAIRPERSON SCHEUER: Just one. Go for it.

9 COMMISSIONER WONG: I guess this the issue
10 I'm really having trouble with, you know, the
11 drainage plan was done in 1996. And I guess what I
12 heard Ms. Tam say is they're doing a new plan that
13 will also have to include new drainage and everything
14 because -- even EIS, because everything is stale. So
15 what we going to do?

16 I mean it doesn't make sense for us, as
17 Commissioner Okuda say, this sucker's not ripe. So
18 why do we have to deal with this drainage thing?
19 Sorry, just a statement.

20 CHAIRPERSON SCHEUER: I think it's more of
21 a statement than a question.

22 COMMISSIONER WONG: That's it. That's how
23 I feel right now.

24 CHAIRPERSON SCHEUER: I think the witness
25 has expressed her thoughts on the matter.

1 Commissioner Chang.

2 COMMISSIONER CHANG: Thank you.

3 Ms. Tam, you said you were -- would prefer
4 to find a solution, and you did receive some plans
5 from Mr. Greene on a potential drainage mitigation
6 measure.

7 So my question to you is: To avoid this
8 ripeness and speculative issue, how long will it take
9 for Haseko to review the plans to determine whether
10 it is an acceptable drainage mitigation measure for
11 your Parcel 71?

12 THE WITNESS: We had told Ho'ohana folks
13 that we thought we would need two weeks to be able to
14 resolve whether it worked from an engineering
15 standpoint, then it was a matter of getting the
16 lawyers all the way around to agree on the actual
17 documentation.

18 COMMISSIONER CHANG: Is it going to require
19 DPP or Department of Ag review and approval? Is
20 there anyone else that needs to review this solution
21 between you and Ho'ohana?

22 THE WITNESS: I think to actually implement
23 and construct the items that are in the utility
24 corridor that they are asking permission from us for
25 would require some sort of DPP review, but I think if

1 the concept that we are agreeable to granting that
2 space, I think we are perfectly empowered to be able
3 to reach that type of agreement ourselves.

4 COMMISSIONER CHANG: Just to summarize my
5 understanding, you're saying that you're anticipating
6 that it would take two weeks for your engineers to
7 determine whether the solution proposed by Ho'ohana
8 is acceptable, and would avoid any further objections
9 to this, to their particular motion. Is that
10 correct?

11 THE WITNESS: Yes.

12 COMMISSIONER CHANG: Thank you.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Chang.

15 Commissioners, are there further questions
16 right now for Ms. Tam? If not, I have some. Any
17 questions, Commissioners?

18 Ms. Tam, are you familiar with Condition 23
19 of the original Decision and Order in this matter?

20 THE WITNESS: I'm sorry, I don't know
21 offhand. Release of condition --

22 CHAIRPERSON SCHEUER: No, it is that you
23 are bound by all representations made by the
24 developer.

25 THE WITNESS: I'm familiar with that type

1 of requirement, but I don't know the exact language
2 offhand.

3 CHAIRPERSON SCHEUER: Did you, in your due
4 diligence, review all the transcripts from the
5 original hearing entitling this parcel to know what
6 those reputations were?

7 THE WITNESS: I did read through the record
8 for the Findings of Fact and Conclusions of Law, and
9 Decision and Order. I did not go through actual
10 reading the transcript, no.

11 CHAIRPERSON SCHEUER: I'm now going to ask
12 you a question that's like impossible for you to
13 answer.

14 Do you know what my favorite thing about
15 this entire docket is? My favorite thing about this
16 docket is that the LUC is constantly being kicked
17 around the capital as the excuse for why we have no
18 affordable housing in Hawaii.

19 And this docket is the awesome example of
20 the even when we entitle stuff, other parties can
21 completely screw up and cause no housing to be
22 occurring.

23 So I'm very glad that you guys are actually
24 working towards finally getting housing occurring.
25 It's not our fault it hasn't occurred until now.

1 My final question is: When are you going
2 to actually come to us with an update on what started
3 when I was two years out of college, and I can assure
4 you I am more than two years out of college now.
5 When are you coming back to us with an actual plan?

6 THE WITNESS: Well, we did just close the
7 middle of August. We're in the middle of making sure
8 we deal with all the updates, the infrastructure
9 master plans to be reflected properly in our project.

10 We hope to be able to come back -- if you'd
11 like us to show you what the latest conceptual plan
12 is, I'm happy to do that. I'll be able to do that.
13 I think I would be able to do that in the coming
14 months. (Indecipherable).

15 CHAIRPERSON SCHEUER: That would probably
16 be a very, very good idea. Especially, as again,
17 this Commission, which works very hard, is
18 continually accused of being the problem with the
19 lack of affordable housing in Hawaii. We're not.
20 This is a great example of it.

21 You guys need to step up and figure out how
22 you're going to get this done and show it us so that
23 we can respond to these problems.

24 THE WITNESS: I'm trying very hard to do
25 that, sir. Thank you.

1 CHAIRPERSON SCHEUER: Is there any
2 redirect, Mr. Lau?

3 MR. LAU: No redirect, Mr. Chair.

4 CHAIRPERSON SCHEUER: Do you have any final
5 comments during this portion of argument?

6 MR. LAU: No final comments.

7 CHAIRPERSON SCHEUER: It is 2:05. We are
8 breaking until 215, then continue with any statements
9 by City and County and Office of Planning.

10 (Recess taken.)

11 CHAIRPERSON SCHEUER: We are back on the
12 record. We are now going to commence with any
13 presentation by the City and County of Honolulu. Mr.
14 Takahashi.

15 MR. TAKAHASHI: For the record, again, my
16 name is Eugene Takahashi, Deputy Director Department
17 of Planning and Permitting.

18 I just want to, as we submitted earlier,
19 the City has no objections with regard to the
20 extension of time.

21 CHAIRPERSON SCHEUER: Are there any
22 questions for the City from the Commissioners?

23 Commissioner Chang.

24 COMMISSIONER CHANG: Just one question.

25 Mr. Takahashi, does the City review the

1 master drainage plan?

2 THE WITNESS: Yes. The City does review
3 drainage master plans. We do have a drainage master
4 plan for this development, as notated during the
5 hearings.

6 The City will confirm compliance with the
7 master plan that we have on record when any
8 development within the area comes in for development
9 permit.

10 If they are not in compliance with the
11 drainage master plan, then the City may require that
12 the drainage master plan be amended, or be revised
13 prior to the approval any development in the affected
14 area.

15 I believe that's the concerns that was
16 previously raised by Haseko with regard to a delay of
17 the projects.

18 And just as a clarification, the suggestion
19 by the department, it was just with respect to seeing
20 if they -- if the parties could reach a consensus,
21 because, you know, the City both support affordable
22 housing and the energy initiative that is being put
23 forward, and we just would like to see all these
24 things resolved before a permit comes in. Because at
25 that time, each party or the entity would put forth

1 substantial amount of resources to get to that point,
2 and the last thing we would like to see is a delay in
3 the approval of these permits.

4 So it is -- we just would like to see
5 everyone to do their due diligence to try to resolve
6 the matter before we get to the point, because when
7 we get to the point, and if it requires a redesign,
8 that would setback the Applicant possibly a
9 significant amount of time.

10 Those are things not in the best interest
11 that we feel to anyone.

12 COMMISSIONER CHANG: Thank you, Mr.
13 Takahashi.

14 So when you say, when they submit a
15 development permit, would that be when Ho'ohana, is
16 there a permit that they need to come in and get your
17 approval?

18 MR. TAKAHASHI: Yes, they will. They will
19 need the grading, grubbing, grading permits as well
20 as when they come in for the actual improvements
21 itself to be constructed on the property.

22 COMMISSIONER CHANG: And I'm assuming by
23 the time they come in for that on approval (frozen
24 screen.)

25 MR. TAKAHASHI: It would be that they may

1 not be subject to an update, but the problem is
2 holistically the City would need to review the big
3 picture overall, because we can't just approve pieces
4 here and there, because then it becomes a life and
5 safety issue.

6 Because we can't knowingly approve
7 something that could have definitely have a negative
8 impact or affect public health and safety downstream.

9 So we have to look at everything
10 collectively. What complicates the matter is in
11 addition to that, as the landowners are aware of, the
12 laws have changed. The federal laws have changed and
13 you have heard that with the Hawaiian Memorial
14 proposal with respect to how much water you have to
15 retain on the property, what is allowed to enter the
16 drainage system.

17 So those are all things that were not
18 accounted for the in the 1995 plan, but those are
19 additional steps that the landowners would have to do
20 to ensure compliance with federal requirements.

21 So those are all things that will be
22 confirmed when these projects move forward. But at
23 this point in time, for the Department or the City to
24 say this is exactly what is needed, we wouldn't be
25 able to do that, because we don't know exactly what

1 is being proposed, and the details as to what is
2 being constructed and how they're going to
3 accommodate it, if it's going to be a detention basin
4 or other types of methods in accommodating the flow.

5 COMMISSIONER CHANG: Thank you.

6 Just one last question. Assuming that
7 Haseko and Ho'ohana come to some kind of a
8 resolution, so they have -- they've reached an
9 agreement. But Ho'ohana comes in for their permit
10 and you are reviewing it in light of, as you say
11 holistically, all the other projects around there,
12 and you're looking at it in a very objective way,
13 notwithstanding the agreement by Ho'ohana and Haseko,
14 could the City find that the drainage is not
15 consistent with the master plan?

16 MR. TAKAHASHI: It is always a possibility.
17 But what that agreement would put forward is the
18 responsibility as to who will be constructing which
19 portion of the improvements; how it will be handled.
20 They would need to maybe do some site modifications
21 to address different standard requirements imposed,
22 for example, by the federal government because of
23 NPDES.

24 So there is always a possibility, but
25 again, what that agreement also helps -- it's not

1 really specifically related to this -- is that if we
2 have some type of phasing of assurances as to who is
3 going to do what and when, there is a possibility
4 that the City will be able to support a phased
5 approval.

6 Because, yes, they may not be able to
7 accommodate ultimate capacity at that point in time,
8 but because of the agreement of who is going to be
9 building what, then we know, okay, at least this
10 increment we can allow them to move forward.

11 And those are things that property owners
12 would like that type of assurances because they're
13 putting forth a lot of investment capital, just to
14 have assurance to say, okay, we need to start. We
15 know we can't build everything at one time, but let's
16 see what we can do in a timely manner and plan it and
17 schedule it.

18 So those are things we look at. Say, okay,
19 do we have enough information to conclude that this
20 project can proceed in a safe manner.

21 COMMISSIONER CHANG: Very helpful.

22 So, Mr. Takahashi, it is -- it would be
23 wise for Haseko and Ho'ohana to consider these kinds
24 of considerations that you just talked about, as they
25 review these plans together that they are taking into

1 consideration the federal requirements, as well as
2 all of those things that you just mentioned.

3 You would agree that that would be wise on
4 their part for purposes of minimizing unnecessary
5 expenses. Would you agree?

6 MR. TAKAHASHI: Correct.

7 COMMISSIONER CHANG: Thank you so very
8 much. You've been very helpful, Mr. Takahashi.

9 Mr. Chair, I have no other questions.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Wong.

12 Commissioner Aczon, followed by
13 Commissioner Ohigashi followed by Commissioner Wong.

14 VICE CHAIR ACZON: Chair, that was
15 Commissioner Chang.

16 CHAIRPERSON SCHEUER: I'm so sorry, but you
17 had raised your hand earlier. Commissioner Aczon.

18 VICE CHAIR ACZON: That's correct. I'm
19 also with Commissioner Chang, that I'm hoping that
20 the two parties can come together and come to
21 resolution without getting into any litigation, and
22 delaying whatever project they have.

23 My question to you, Mr. Takahashi, is when
24 you're reviewing the permit, if the thing comes to
25 you, you are not necessarily look into the compliance

1 with original drainage master plan?

2 MR. TAKAHASHI: We are required to, because
3 everything -- water flows downhill. So whatever
4 improvement in one area, would have affect on another
5 area. So we have to look holistically how everything
6 is tied into.

7 So we are looking with respect as how do we
8 reflect the original drainage master plan.

9 VICE CHAIR ACZON: I thought I heard you
10 that you're basing your approval based on other
11 projects, and also the current situation of the land.

12 MR. TAKAHASHI: I'm not exactly clear on
13 your question.

14 What we do is based upon what we feel is a
15 safe amount of water that can be accommodated under
16 the current drainage infrastructure that is in place
17 at that time.

18 So respect to timing, everything has to be
19 coordinated and tied together in which we have to
20 make sure --

21 CHAIRPERSON SCHEUER: If I may. Do you
22 want to restate your question, Commissioner Aczon?

23 VICE CHAIR ACZON: I'm just trying to
24 determine if this drainage master plan is still good
25 or is obsolete?

1 MR. TAKAHASHI: The drainage master plan is
2 dated. But respect to may just require minimum
3 update.

4 Again, without the details with respect to
5 what is exactly going to be proposed in each one of
6 these developments, would reflect the amount of water
7 that is being discharged from the site.

8 So those are details we don't have yet. At
9 this point it may be premature for the City to set
10 forth a requirement -- we need to do it now when, for
11 example, Haseko who just support the lot, is still
12 developing their master plan. So how much -- as
13 result of this proposal, how much runoff we may be
14 generating and how much can we accommodate onsite, so
15 many --

16 CHAIRPERSON SCHEUER: Thank you, Mr.
17 Takahashi.

18 VICE CHAIR ACZON: Understood.

19 Again, I'm hoping that the two parties can
20 come together. If not, Mr. Takahashi, do you have
21 any recommendation or suggestion or what the
22 Commission can do to prevent all those delays and
23 take care of the issue now rather than later?

24 MR. TAKAHASHI: That is a difficult
25 question, because it's not within the jurisdiction of

1 the City. The Commission does have a prerogative
2 with respect to what they can desire and request.
3 And at this point it is up to the Commission with
4 respect to how you decide to proceed with this
5 matter.

6 VICE CHAIR ACZON: Thank you very much, Mr.
7 Takahashi. Thank you, Mr. Chair.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Aczon.

10 Commissioner Ohigashi followed by
11 Commissioner Wong.

12 COMMISSIONER OHIGASHI: Is there any
13 condition that is preventing you from reviewing --
14 conducting your review of the drainage system and
15 drainage plan in regard to Ho'ohana?

16 MR. TAKAHASHI: There is no condition that
17 prohibits us from reviewing any drainage master plan,
18 the problem is we just don't have the information or
19 anything in front of us to review.

20 COMMISSIONER OHIGASHI: Is there any
21 condition that is preventing you from getting that
22 information, that you're aware of, that the Land Use
23 Commission has now?

24 MR. TAKAHASHI: I'm not aware of any
25 condition, but again, the information may be

1 incomplete, because we just don't have the other
2 bits, the pieces of the puzzle.

3 COMMISSIONER OHIGASHI: Any condition that
4 we can fashion that will get you that information
5 quicker?

6 MR. TAKAHASHI: That would be, again,
7 something that the Commission could explore. Right
8 now, I'm not aware of any.

9 COMMISSIONER OHIGASHI: Sounds like -- if
10 I'm wrong, correct me -- sounds like this drainage
11 master plan is there. Before you issue permits, you
12 got to make sure all -- any party wanting permits
13 would have to make sure that they meet the terms of
14 the drainage master plan, and procedures set up, so
15 that the department, your department would be the
16 final say in whether or not the proposals meet the
17 drainage master plan; is that right?

18 MR. TAKAHASHI: That is correct, the City
19 or Department of Planning and Permitting will confirm
20 compliance with the drainage master plan, yes.

21 COMMISSIONER OHIGASHI: And there is no
22 condition that you can think of that would increase
23 information or --

24 MR. TAKAHASHI: The increase of information
25 may be requested by the department if the department

1 feels, again, as we have identified the plan is
2 dated, proposal has change, then it may require an
3 update, and then that's when we are going to get
4 additional information.

5 COMMISSIONER OHIGASHI: That's within the
6 DPP's prerogative, isn't that right?

7 MR. TAKAHASHI: Yes, that is part of our
8 processing which we will need to confirm the adequacy
9 of infrastructure prior to approval of permits.

10 COMMISSIONER OHIGASHI: Those issues have
11 to be meted out before, I would imagine, any type of
12 litigation would take place between the parties.

13 I know you probably don't know the answer
14 to that, but it's just a comment.

15 CHAIRPERSON SCHEUER: Thank you,
16 Commissioner Ohigashi. Commissioner Wong.

17 COMMISSIONER WONG: Thank you, Chair.

18 Mr. Takahashi, this area that we are
19 talking about, it appears that there is multiple
20 landowners; correct?

21 MR. TAKAHASHI: That is correct.

22 COMMISSIONER WONG: I know back then in
23 1990 -- whenever the master plan was done, it was
24 pretty much one landowner, so there was only one
25 master plan, correct?

1 MR. TAKAHASHI: Correct, that was -- well,
2 the master plan is still related to the one project.
3 Now, you just have multiple landowners involved in
4 one project instead of just Halekua Development.

5 COMMISSIONER WONG: So the question I have
6 is, because there are actual multiple landowners,
7 does that mean each landowner have to turn in their
8 own drainage plan?

9 MR. TAKAHASHI: No, only one drainage
10 master plan, and has to work together with respect to
11 getting that plan. They have to work together with
12 respect to complying with that plan.

13 COMMISSIONER WONG: But the rules and
14 regulations says, let's say, I do, you know, build a
15 high rise in one area and another area I have a park,
16 and it's two owners.

17 Do you have to work together?

18 MR. TAKAHASHI: They all encumbered under
19 the same area. In this particular case, your
20 Petition, or if it is involved in a zone change under
21 the encumbered, under what we call a unilateral
22 agreement area.

23 COMMISSIONER WONG: Okay. Do we bifurcate
24 this project?

25 MR. TAKAHASHI: They still would need to

1 comply now instead of as a single entity as a party.

2 COMMISSIONER WONG: Instead of two
3 different landowners with two different issues,
4 because they're going to have two different drainage
5 plans?

6 MR. TAKAHASHI: No, it's one drainage plan,
7 but they all have to comply with that plan.

8 COMMISSIONER WONG: Thank you, Chair.
9 Thank you, Mr. Takahashi.

10 CHAIRPERSON SCHEUER: Further questions,
11 Commissioners, for the City and County?

12 Commissioner Chang.

13 COMMISSIONER CHANG: I apologize.

14 CHAIRPERSON SCHEUER: I was going to call
15 you last time, because you said one question, but it
16 had like six parts.

17 COMMISSIONER CHANG: One question.

18 So, Mr. Takahashi, when the City reviews,
19 let's say, Ho'ohana comes in with their grading and
20 grubbing permit, do you look at whether, for purposes
21 of being consistent with the master drainage plan, in
22 the City's eyes, does it matter whether they are the
23 lessee or they're the landowner?

24 MR. TAKAHASHI: In the City, it is
25 considered the condition, the requirement runs with

1 the land, so to answer your question, it does not
2 matter if it's the lessee or landowner.

3 COMMISSIONER CHANG: Very good. No more
4 questions.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner.

7 Commissioners, are there any further
8 questions for the City and County?

9 Mr. Takahashi, any final point you want to
10 make?

11 MR. TAKAHASHI: No, I don't.

12 CHAIRPERSON SCHEUER: Office of Planning.

13 MS. APUNA: Thank you, Chair, I hope you
14 can hear me.

15 So we were going to put on two of our
16 witnesses, Rodney Funakoshi from Office of
17 Planning --

18 CHAIRPERSON SCHEUER: You're now fading. I
19 don't know what changed.

20 Dawn, it's touch and go.

21 MS. APUNA: I'll just yell.

22 So we do have Mr. Funakoshi and Janice
23 Fujimoto --

24 COURT REPORTER: Yell louder.

25 MS. APUNA: -- from the Department of

1 Agriculture, but we will just have them available for
2 questioning. So I would like to provide our
3 position, and that if the Commissioners have
4 questions for myself or either witness, they are
5 available.

6 CHAIRPERSON SCHEUER: Great. Please
7 proceed.

8 MS. APUNA: OP recognize Ho'ohano's
9 proposed Solar Project is a worthy project because it
10 will be more productive and efficient than its 2015
11 Solar Project, and will assist the State in realizing
12 its energy goals. Haseko's plans to develop
13 approximately 1,800 housing units will assist the
14 State in realizing its housing goals.

15 And, DOA's Agricultural Park, which
16 requires offsite infrastructure and the nonpotable
17 waterline for its operation, will serve to assist the
18 State in realizing its agricultural goals. All three
19 can coexist. OP is supportive of all three.

20 But unlike this Solar Project and Haseko's
21 residential development that are on the horizon, the
22 ag park and its associated nonpotable waterline and
23 offsite infrastructure is a relic of a condition from
24 the original 1993 D&O. And as with any LUC D&Os, the
25 Commission should be concerned that this condition

1 has not been fulfilled and has been put off and
2 brushed aside.

3 DOA and the State have waited over twenty
4 years for its fruition during which agricultural
5 opportunities have been lost. The newly proposed and
6 very promising projects should not move forward
7 without strong assurances that the ag park will be
8 built.

9 DOA is not asking for anything more or
10 greater than what has already and repeatedly been
11 promised or required. In fact, DOA has conceded more
12 time in Conditions A. and B. because Ho'ohana and
13 Haseko say they can't meet the previously established
14 timelines.

15 We therefore ask that should the Commission
16 approve this motion, the Commission reinstate
17 Conditions A. and B. as we've provided in our revised
18 Exhibit 1 to continue to hold Petitioner and the
19 landowners accountable to finally and timely provide
20 the offsite infrastructure and nonpotable waterline
21 for the long overdue ag park.

22 It should not take another Order to Show
23 Cause for DOA and this Commission to get movement on
24 theses conditions.

25 A couple of additional details.

1 OP agrees with Haseko that the issue of
2 drainage should be sufficiently addressed by
3 Petitioner, as required under Condition 16, and
4 supported by Findings of Fact 184 and 185 of the 1996
5 amended D&O.

6 OP's Revised Exhibit 1 that includes
7 proposed Conditions A. and B. does not include B.3,
8 B.5 and B.7, because we did not alter them, but
9 should be included in the restatement of those
10 Conditions.

11 1. None of the A conditions proposed by OP
12 are applicable to the solar farm development on
13 Parcel 52.

14 2. The B conditions proposed by OP are
15 applicable only to the solar farm on Parcel 52 and
16 shall be applicable only upon development of the
17 solar farm use on Parcel 52.

18 Thank you. We are available for any
19 questions.

20 CHAIRPERSON SCHEUER: Commissioners, are
21 there questions for the Office of Planning? If you
22 happen to want to question either Ms. Fujimoto or Mr.
23 Funakoshi, I will have to make them available for
24 questioning to other parties.

25 Commissioner Chang.

1 COMMISSIONER CHANG: Thank you, Mr. Chair.
2 I do have a question for both Ms. Apuna and Ms.
3 Fujimoto.

4 The first question, did I hear you
5 correctly that you said Condition A is not applicable
6 to the solar farm?

7 MS. APUNA: To Ho'ohana, yes, as lessee.
8 Can I explain further, because I know that you had
9 questions, Commissioner Chang, about the
10 applicability of condition A. and B. to the
11 landowners versus a lessee.

12 So even in our Position Statement we said
13 that Condition A applies to all landowners. That
14 would include, for instance, the Robinsons.

15 And I think what we are trying to say is
16 based on a plain reading of Conditions A. and B.
17 under the 2015 order, that that is correct, that
18 Condition A. should apply to all landowners.

19 There have been, I think, some verbal
20 agreements between the parties. And so -- and there
21 was a commitment made by Haseko that they would take
22 care of the offsite infrastructure under Condition A.

23 So if a party steps forward and says they
24 will be responsible for that, even though all the
25 other landowners aren't part of that, but they're

1 willing to take on the full responsibility, OP
2 believes that that should be okay.

3 COMMISSIONER CHANG: So, Ms. Apuna, are you
4 aware of such an agreement where Haseko has observed
5 the Robinsons, the owner of Parcel 52, from the
6 obligations under Condition A?

7 MS. APUNA: No, I'm not aware of such an
8 agreement.

9 COMMISSIONER CHANG: With respect to your
10 position that Condition A applies to the landowner, I
11 think I just heard Mr. Takahashi with DPP say when
12 Ho'ohana, or if they come in for a grading and
13 grubbing permit for their solar project, as far as
14 the City's concerned, they don't care whether you're
15 the lessee or the landowner, it runs with the land,
16 and Parcel 52 has certain obligations.

17 So you heard that testimony from Mr.
18 Takahashi?

19 MS. APUNA: Yes.

20 COMMISSIONER CHANG: So would you agree
21 that that is not -- if the City -- if that's the
22 City's business practice, Office of Planning, do you
23 have any objections, or would you interfere with
24 their application of that?

25 MS. APUNA: No, I don't think we would

1 interfere with their application.

2 COMMISSIONER CHANG: So I just have a
3 question for Ms. Fujimoto.

4 CHAIRPERSON SCHEUER: Ms. Fujimoto, do you
5 swear or affirm that the testimony you're about to
6 give is the truth?

7 THE WITNESS: Yes.

8 JANICE FUJIMOTO

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

12 DIRECT EXAMINATION

13 COMMISSIONER CHANG: Hi, Janice, this is
14 Dawn. Nice to see you. Thank you for being here
15 this afternoon.

16 I have a question regarding -- are you
17 familiar with the Condition A.1?

18 THE WITNESS: I am.

19 COMMISSIONER CHANG: Do you know who all
20 the landowners are of the Petition Area?

21 THE WITNESS: I fear I'm going to misspeak
22 here. I do know that Robinson, Haseko are
23 landowners. I'm not sure of the status of the other
24 surrounding parcels.

25 COMMISSIONER CHANG: Those are the two key

1 owners I wanted to have you confirm.

2 With respect to the Robinsons, the
3 Condition A.1 says, refers to a Memorandum of
4 Understanding with the Department of Agriculture.

5 THE WITNESS: Yes.

6 COMMISSIONER CHANG: Have been part of
7 those discussions regarding the MOU?

8 THE WITNESS: I've only been a part of the
9 discussions of the 2020 MOU. The MOU that came
10 before that were before I was at the Department. I
11 was not involved in those.

12 COMMISSIONER CHANG: My question is, is the
13 owner of Parcel 52, the Robinsons, are they a party
14 to this Memorandum of Understanding?

15 THE WITNESS: Not the 2020 MOU. That is
16 just signed between RP2 Ventures and the Department
17 of Agriculture.

18 COMMISSIONER CHANG: Let me ask you this
19 question.

20 Is there any other memorandum other than
21 the memorandum of 2020?

22 THE WITNESS: There are previous
23 memorandums before that. And there is a memorandum
24 that we are considering going forward with Haseko.

25 COMMISSIONER CHANG: Are you aware of any

1 memorandums involving the Department of Ag and the
2 Robinsons in regards to Parcel 52's obligation under
3 Condition A.1?

4 THE WITNESS: No.

5 COMMISSIONER CHANG: Is it your
6 understanding that the Robinsons have an obligation
7 under Condition A.1?

8 THE WITNESS: I don't know the answer to
9 that. I do know that the MOU of 2020 is RP2
10 Ventures, but I do not know the answer to your
11 question specifically.

12 COMMISSIONER CHANG: Have you reviewed the
13 Office of Planning's amended conditions?

14 THE WITNESS: Yes, I have.

15 COMMISSIONER CHANG: Are you comfortable
16 with the proposed amendment?

17 THE WITNESS: Yes, I am.

18 COMMISSIONER CHANG: Thank you very much,
19 Janice. I appreciate your testimony.

20 THE WITNESS: Thank you for allowing me to
21 testify.

22 COMMISSIONER CHANG: Thank you. I have no
23 other questions.

24 CHAIRPERSON SCHEUER: Are there any others
25 questions for Ms. Fujimoto, Commissioners? If not,

1 I'm going to pause in our questions for OP and see if
2 the parties have any questions for Ms. Fujiimoto,
3 starting with Petitioner.

4 Ms. Lim, you guys keep switching off.

5 CROSS-EXAMINATION

6 BY MS. LIM:

7 Q I do have one question, and it relates to
8 Exhibit 34 that we filed, if I could ask Mr. Simon to
9 pull that up because it's an email from Ms. Fujimoto,
10 and I'm hoping when I show you this email, Ms.
11 Fujimoto, maybe it will refresh your recollection,
12 and you can explain to me what the Department's
13 expectation was.

14 If you just move the email down a little
15 bit, Derek.

16 It's an email right there from Ms. Fujimoto
17 to David Tanoue and some other folks, and without
18 belaboring it, you're writing to say that attached is
19 a draft motion for RP2 and Haseko to review.

20 If you would move up -- I'm sorry, move
21 down to the next page -- and that the goals of the
22 motion are as stated there, 1, to recognize Haseko as
23 the new owner, and 2, to incorporate the fourth MOU
24 into the orders so that the deadlines are
25 incorporated. And this is your understanding.

1 Could you -- again, not to belabor the
2 point. What was your intention with this motion?

3 A The intention of the motion is exactly what
4 it says in the email. It takes steps --
5 (indecipherable) department entered into with RP2 and
6 wanted Haseko to go before the LUC to recognize
7 themselves as new owner, and to show that the MOU be
8 incorporated --

9 Q My question is, you did -- I mean, it's in
10 the exhibit, you have --

11 CHAIRPERSON SCHEUER: Can you help guide me
12 as to where you're trying to go? What are you trying
13 to confirm?

14 MS. LIM: What I'm trying to confirm is the
15 confusion about the MOU, two points. One, was this
16 motion that's on the third page of this exhibit,
17 prepared by the department on behalf of Haseko or
18 prepared by Haseko; and two, when does the department
19 intend to file this motion to have the existing MOU,
20 which is a two-party agreement between Haseko and the
21 department, incorporated into the conditions here.
22 Because that's been something it seems like it keeps
23 on coming up in questions.

24 So those are my two questions, who prepared
25 it and when does the -- do you expect this motion to

1 be filed?

2 THE WITNESS: So this email that I sent,
3 this draft motion was prepared by our Deputy Attorney
4 General. Since we are not a party, we cannot file 1a
5 motion, but because it was our expectation that we
6 wanted to get the two files with the LUC we were
7 providing this to get the mechanism that we thought
8 would happen. (Indecipherable).

9 Q It's your expectation that this motion is
10 still going to be filed?

11 THE WITNESS: No, it's not, because we are
12 negotiating a new MOU with Haseko.

13 MS. LIM: Thank you, Chair, that's the only
14 question I had.

15 CHAIRPERSON SCHEUER: Anything further, Ms.
16 Lim?

17 MS. LIM: Not for me. Thank you.

18 CHAIRPERSON SCHEUER: Any questions from
19 Haseko for Ms. Fujimoto?

20 MR. LAU: I'm not sure if the question
21 should be directed to Ms. Fujimoto or Mr. Funakoshi,
22 but --

23 CHAIRPERSON SCHEUER: You're allowed to ask
24 questions of Ms. Fujimoto now.

25 CROSS-EXAMINATION

1 BY MR. LAU:

2 Q And if she doesn't know, then perhaps I
3 will able to ask Mr. Funakoshi.

4 This is regarding revised Exhibit 1. Ms.
5 Fujimoto, in the language of Condition A. it talks
6 about the landowner and with the plural(s) there,
7 basically shall enter into a memorandum of
8 understanding.

9 Is it the intent of the Department of
10 Agriculture to only have Haseko sign this agreement,
11 or would it also include the rest of the landowners
12 within the Petition Area that would include HRT
13 Realty and Robinson Trust?

14 A I believe that is carryover language from
15 the previous condition. So I would defer to OP on
16 that.

17 Q Second question I have is: There's a
18 proposed new Condition A.6 that says:

19 Failure of solar project. And if I may
20 just read this because it's fairly short. It says:

21 Should Ho'ohana fail to construct and
22 complete the solar project, the easements,
23 construction, maintenance and cost of the nonpotable
24 waterline described under Condition B.1 shall revert
25 to the responsibility and expense of the landowners.

1 Are you familiar with this particular
2 condition?

3 A I have read it, yes.

4 Q So, again, this condition would come into
5 play if the solar project were not to proceed; is
6 that correct?

7 A That is my understanding if they do not
8 comply with B.1.

9 Q Now --

10 CHAIRPERSON SCHEUER: Mr. Lau, same
11 question I had for Ms. Lim.

12 What are you trying to determine?

13 MR. LAU: Because potentially Haseko would
14 be responsible for this condition, so I'm trying to
15 understand the full scope of the condition.

16 CHAIRPERSON SCHEUER: Okay, if you can do
17 so quickly.

18 THE WITNESS: I can give it -- as it's
19 stated there, I actually don't think it's a
20 significant deviation from the A.1 condition back in
21 2015 where if the solar farm didn't come to fruition,
22 it goes back to the land (indecipherable) --

23 Q (By Mr. Lau): So the condition that this
24 looks like it's a holdover from, it sounds like all
25 the terms that were applicable to Condition B.1; is

1 that correct?

2 A I'm sorry. Can you repeat your question?

3 Q So this looks like this is a contingent
4 condition that should the solar project not go
5 forward, essentially all of the terms and conditions
6 in this proposed Condition A.6 are carried forward
7 from Condition B.1, and in particular, I'm focused on
8 the word "maintenance", because this condition was
9 not a -- the condition to maintain the waterline
10 infrastructure was really not a condition that was
11 previously imposed upon landowners under A.1,
12 correct?

13 A That's true.

14 Q And so we would, as a landowner, Haseko
15 would contingently be liable for this maintenance
16 condition if the solar project didn't go forward?

17 A It appears to be possible, yes.

18 CHAIRPERSON SCHEUER: Anything further, Mr.
19 Lau?

20 MR. LAU: I have no further questions for
21 Ms. Fujimoto. Thank you very much.

22 CHAIRPERSON SCHEUER: Does the City have
23 any questions?

24 MR. TAKAHASHI: We do not have any
25 questions.

1 CHAIRPERSON SCHEUER: We're back to the
2 questioning of the Office of Planning on their
3 Position Statement by the Commissioners.

4 Commissioners, any further questions for
5 Ms. Takeuchi Apuna? Going once, going twice. Okay.

6 It's 2:56 P.M., we need to wrap up by no
7 later than 4:15 P.M., perhaps earlier. I want to
8 take a break until 3:10. When we come back, I will
9 give the Commissioners a chance to ask any final
10 questions, a limited chance to ask any final
11 questions of any of the parties. I'm even willing to
12 give the parties like a very brief two minutes to
13 present any final thoughts before that, and if that
14 is done, then go into deliberation. Is that
15 acceptable?

16 MS. LIM: Yes, acceptable to the
17 Petitioner.

18 MR. LAU: Acceptable to Haseko.

19 CHAIRPERSON SCHEUER: County?

20 MR. TAKAHASHI: Acceptable.

21 CHAIRPERSON SCHEUER: Thumbs up. We will
22 reconvene at 3:10.

23 (Recess taken.)

24 CHAIRPERSON SCHEUER: I'm going to do for
25 you what I do for our public testifiers, some of whom

1 come in with no training.

2 You each have two minutes, and then make
3 some closing statements. I'll offer the opportunity
4 after for Commissioners to ask any questions.

5 MR. LAU: Chair, could you please check
6 whether the court reporter is there?

7 CHAIRPERSON SCHEUER: Ms. McManus?

8 COURT REPORTER: Yes, I'm here. Thank you.

9 MR. LAU: Thank you.

10 CHAIRPERSON SCHEUER: Thanks. We do have a
11 psychic bond after these many years. I kind of knew
12 she was there, but good to check.

13 Starting with Ms. Lim, will it be you
14 closing?

15 MS. LIM: Yes, Chair. Thank you. I'll
16 keep my eye on the clock.

17 Thank you, Chair; thank you, Commissioners,
18 for listening to us and reading through all of our
19 material. You heard what we're asking. We're asking
20 that the Commission authorize an extension of time so
21 that we can build a 52-megawatt solar project on
22 property totally within the Urban District. It is a
23 solar project that will contribute greatly to the
24 State's renewable energy goals. There are no other
25 immediate plans to develop this property.

1 By the time that the solar project is
2 finished and decommissioned, the property will then
3 be available for the third increment of development
4 of Royal Kunia Phase II.

5 Some of the issues that we talked about
6 today and yesterday included this MOU. And what are
7 the conditions that are going to be applicable to the
8 landowner versus the conditions applicable to the
9 solar farm.

10 As you know, some of the things that Office
11 of Planning had written in its initial response we
12 had issue with. But yesterday the Office of Planning
13 filed a revised Exhibit 1 listing out Conditions A.1
14 through A.6, and Conditions B.1 through B.6.

15 And then, as Ms. Apuna said, there's a
16 couple of other conditions that they would take from
17 the 2015 order and put into the B conditions as well.
18 And we had a bit of a question about them, but Ms.
19 Apuna clarified today when she did confirm the B.
20 conditions apply only to the solar farm and only upon
21 development of the solar farm; and B. conditions do
22 not apply to the development of the solar farm.

23 With that clarification, we understand
24 Ho'ohana is agreeing to build the nonpotable
25 waterline, but we are very happy for the Office of

1 Planning's support and find these conditions clearly
2 acceptable.

3 And the other outstanding issue --

4 CHAIRPERSON SCHEUER: Two minutes.

5 MS. LIM: Is that two now?

6 CHAIRPERSON SCHEUER: Do you want to
7 conclude?

8 MS. LIM: Other outstanding issue is the
9 drainage matter. The drainage matter is something
10 that can be worked out, to the extent it needs to be
11 worked out, through the City permitting process.

12 This is not an issue for the Land Use Commission.

13 The same way in January 2015 the Land Use
14 Commission approved the solar farm originally. We
15 are here to get a minor amendment to that original
16 approval, to the extent there is any City issues need
17 to be resolved, they can be resolved as we continue
18 the City permitting process.

19 We would ask that the Commission please not
20 delay taking action on this very important solar
21 motion.

22 With that I will conclude. Thank you very
23 much.

24 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.

25 Is it Mr. Chung or Mr. Lau?

1 MR. LAU: It will be me.

2 CHAIRPERSON SCHEUER: Please proceed.

3 MR. LAU: Thank you.

4 First of all, I want to thank the
5 Commission for taking the time to allow us to present
6 our position.

7 A couple points we want to make. We really
8 think it's important that the drainage master plan be
9 followed and complied with by Ho'ohana Solar. The
10 matter is ripe for resolution, because Mr. Greene,
11 Ho'ohana's witness, indicated they do not intend to
12 comply with the 1996 Drainage Master plan.

13 However, I'm encouraged that the parties
14 could still work out a resolution, and we're hopeful
15 that they will follow through with what they have
16 indicated they're willing to do.

17 With respect to the conditions that OP has
18 proposed, I had asked some questions of Ms. Fujimoto.
19 And the one that we were focused on was the
20 contingent responsibility to maintain the waterline
21 and the appurtenances should the solar project not be
22 completed.

23 The reason we're concerned is Haseko's
24 development will probably last ten years. Once
25 Haseko is gone, there's nobody there except for the

1 homeowner's association. I don't think that's a
2 burden we want to place on the homeowner's
3 association because this is probably going to be a
4 project made up of affordable housing and workforce
5 housing. No reason why homeowners should be burdened
6 with something that occurs on a State parcel.

7 And so conceptually, we don't want that
8 condition of maintenance being placed, even though
9 it's a contingent obligation.

10 I think that from our standpoint, that's
11 really the issues.

12 CHAIRPERSON SCHEUER: Two minutes.

13 MR. LAU: Thank you very much.

14 CHAIRPERSON SCHEUER: Thank you, Mr. Lau.
15 Mr. Takahashi.

16 MR. TAKAHASHI: Sorry, it's an unmute
17 problem again.

18 The City doesn't have anything else to
19 offer.

20 CHAIRPERSON SCHEUER: Thank you.

21 Ms. Takeuchi Apuna.

22 MS. APUNA: We would just like to address
23 the issue that Mr. Lau brought up.

24 As far as condition requiring, the fallback
25 condition requiring maintenance of all the

1 landowners, the intent there is just to make sure
2 that should the solar project not be completed --
3 we're hoping it will -- but should it not, that the
4 responsibility of the waterline and its maintenance
5 will still, under a condition, would be provided by
6 all the landowners.

7 So we don't intend that it's a specific
8 landowner, but that if the solar project fails, that
9 we don't include maintenance in that condition, then
10 we're not sure who. There is no party or specified
11 to be responsible for that maintenance.

12 So that's the intention for that specific
13 condition. Thank you.

14 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.

15 Commissioners, when we go into
16 deliberation, we will also, if necessary, I will
17 allow you to ask very specific questions of
18 individual parties. And I want to make it available
19 to you before we enter formal deliberation, if you
20 have any final question of any of the parties on this
21 docket, and I would ask you only that in the interest
22 of time you limit it to the counsel rather than any
23 of the witnesses.

24 Any questions, Commissioners?

25 Commissioner Wong.

1 COMMISSIONER WONG: This is for Ms. Lim.

2 Ms. Lim, again, just wanted to reaffirm
3 what you just said about the OP issue, and you guys
4 are agreeable to A.1 through 6 and B.1 through 6; is
5 that correct?

6 MS. LIM: Yes, Commissioner Wong. OP
7 confirmed that the Conditions A.1 through 6 do not
8 apply to the development of a solar farm. I'm here
9 to represent Ho'ohana as the developer of the solar
10 farm.

11 So these Conditions A.1 through A.6 are not
12 applicable to the development of the solar farm.

13 So, therefore, I really don't have a
14 position on these conditions. Whereas the B.
15 conditions she confirmed are intended to be the
16 conditions that apply to the solar farm, and apply
17 only if the solar farm gets developed, and I
18 represent the solar farm developer.

19 And we stand by our commitment to comply
20 with those conditions.

21 COMMISSIONER WONG: Thank you, Ms. Lim.

22 I just wanted to reaffirm that.

23 Chair, after the deliberation, I would like
24 to make a motion. So I would yield my time, so I can
25 make a motion after that.

1 CHAIRPERSON SCHEUER: Any further questions
2 for any of the parties at this time, Commissioners?

3 Commissioner Aczon.

4 VICE CHAIR ACZON: Thank you, Mr. Chair. I
5 just want --

6 CHAIRPERSON SCHEUER: Then Commissioner
7 Cabral.

8 VICE CHAIR ACZON: So if both parties are
9 committed to continue a good faith effort on trying
10 to resolve this drainage master plan issue.

11 CHAIRPERSON SCHEUER: Your question is:
12 Are both parties, presumably Petitioner and Haseko,
13 willing to continue good faith effort to resolve the
14 drainage plan issue, starting with Mr. Lim and then
15 Mr. Lau or Mr. Chung.

16 MS. LIM: Thank you. Petitioner, as I
17 believe Mr. Lau or maybe Ms. Tam indicated,
18 Petitioner has communicated with Haseko to indicate,
19 is there potential? Can we do something to adjust
20 the solar panel?

21 Please keep in mind, Petitioner doesn't own
22 the property. There is no easement in favor of
23 Haseko on the property. So our ability is limited to
24 our ability to seek ways of modifying the solar
25 panels, or maybe there is other solutions.

1 There have been efforts to talk, and I have
2 every reason to think that those efforts can be
3 ongoing.

4 I cannot commit to a specific result. But
5 certainly Ho'ohana has tried to talk with Haseko, and
6 I have every belief that they will continue to try to
7 talk with Haseko.

8 CHAIRPERSON SCHEUER: Haseko.

9 MR. LAU: We are pledging to work in good
10 faith with Ho'ohana Solar, and we hope to wrap things
11 up in a two- to three-week period that we need to
12 evaluate with two of the engineers a workable
13 solution.

14 And then the hard part is the lawyers who
15 will just have to document the agreement.

16 CHAIRPERSON SCHEUER: Commissioner Cabral.

17 Sorry, actually, Commissioner Aczon was
18 your question answered?

19 VICE CHAIR ACZON: Yes.

20 CHAIRPERSON SCHEUER: Commissioner Cabral.

21 VICE CHAIR CABRAL: Thank you.

22 Actually this is directed, I think, at
23 Attorney Lau. I'm not sure if I heard or
24 misunderstood.

25 In your comments about maintenance of the

1 waterline, you commented on not wanting to burden the
2 residential homeowners, that would be potentially
3 lower income residents, with the maintenance of the
4 waterline.

5 Are you specifically referring to the
6 maintenance of the waterline that would be servicing
7 the solar farm, or are you talking about wanting to
8 have the solar farm be responsible for the
9 maintenance of a primary line that would be
10 benefitting the housing project?

11 CHAIRPERSON SCHEUER: Please clarify.

12 MR. LAU: The comments that I made in
13 closing statement specifically relates to proposed
14 Condition A.6, which basically says that in the event
15 the solar project does not proceed forward, that the
16 landowners will be responsible for the development,
17 construction and maintenance of the nonpotable
18 waterline from -- which I believe it's Reservoir 225
19 to the State Ag Park.

20 So my comment was -- the previous condition
21 that applied to the solar company was that, for the
22 duration of their land lease, or the duration of
23 their operation, they would maintain the waterline.

24 So our comment was that, you know, when
25 Haseko completes this development, which should take

1 about ten years, there's nobody behind us. And if it
2 means that the homeowner's association, being the
3 successor of the development, it would be unfair to
4 penalize them with having to pay maintenance fee
5 towards the waterline when it has no benefit to them.

6 VICE CHAIR CABRAL: Thank you, but I think
7 that is potentially an issue, since the property is
8 all one large property with those conditions.

9 You clarified quite a bit of my concern
10 there, but I think there's still a potential problem
11 if things don't go perfect along the way. Thank you.

12 CHAIRPERSON SCHEUER: Are there any further
13 questions from the Commissioners at this time?
14 Otherwise, I'm going to ask to start into formal
15 deliberation. I know that the record will show that
16 all the Commissioners except Lee Ohigashi were
17 present for the entirety of these proceedings.

18 Commissioner Ohigashi was absent for the
19 brief cross-examination of Mr. Overton, who is
20 testifying for the Petitioner.

21 Just for the record, Mr. Ohigashi, can you
22 again affirm that you've listened to the recording of
23 this morning's cross-examination, and you're prepared
24 deliberate on this matter?

25 COMMISSIONER OHIGASHI: I'm sorry. Yes,

1 during the lunch break I was able to review or listen
2 to the recording of cross-examination of Mr. Overton.
3 I heard Nancy and heard Edmund, and I'm ready to
4 participate.

5 CHAIRPERSON SCHEUER: Commissioners, what
6 is your pleasure?

7 Commissioner Wong, you indicated a desire
8 to make a motion when it was time.

9 COMMISSIONER WONG: Yes, Chair, thank you.

10 I would like to make a motion to approve
11 the proposed changes by Ho'ohana Solar in its -- and
12 that all the changes Ho'ohana agreed to that OP
13 suggested. So I guess that's B.1 through 6, that's
14 applicable to them that they agreed to.

15 CHAIRPERSON SCHEUER: There is a motion
16 before us by Commissioner Wong. Is there a second?

17 COMMISSIONER OHIGASHI: Second.

18 CHAIRPERSON SCHEUER: Seconded by
19 Commissioner Ohigashi.

20 Commissioners, we are now in discussion.
21 Normally, I see a number of hands. Commissioner
22 Wong, do you wish to speak to the motion, followed by
23 Commissioners Chang and Giovanni and Ohigashi?

24 Commissioner Wong, you're muted.

25 COMMISSIONER WONG: Yes, Chair, thank you.

1 So I want to say that there was a lot of
2 discussion about everything from waterlines to the
3 drainage and all that, but I guess the main thing
4 right now is what the movant has requested. So
5 that's why I want to just say let's move on, and then
6 work -- hopefully everyone can work together to get
7 something done.

8 That's it. Thank you, Chair.

9 CHAIRPERSON SCHEUER: Thank you,
10 Commissioner Wong.

11 Commissioner Chang.

12 COMMISSIONER CHANG: Thank you, Mr. Chair.

13 I just wanted a clarification from
14 Commissioner Wong.

15 Is your motion only to adopt OP's proposed
16 revisions to Condition B? Are you also including
17 Condition A. that was included in their revised
18 Exhibit 1?

19 COMMISSIONER WONG: Well, I guess Ms. Lim
20 said that it's not applicable to them, but I'm open
21 to that if, you know, we have to put it in. Because
22 it's not applicable, I figure we don't need to put
23 it. So I'm unsure of that one.

24 COMMISSIONER CHANG: My request would be
25 that you would reconsider and include Condition A.

1 because it does apply to the offsite infrastructure,
2 clarifies, provides a new extended deadline, as well
3 as it addresses Condition No. 6, if the solar farm
4 does not proceed forward.

5 So there is some applicable provisions as a
6 contingency, so that would be my request, that you
7 consider amending your motion to include all of OP's
8 Conditions A. and B.

9 CHAIRPERSON SCHEUER: Commissioner Wong?

10 COMMISSIONER WONG: So I guess I'll
11 consider it a friendly amendment that I will agree
12 upon, and ask Commissioner Ohigashi if he's approving
13 that too?

14 COMMISSIONER OHIGASHI: No objections.

15 CHAIRPERSON SCHEUER: Anything further,
16 Commissioner Chang?

17 Commissioner Ohigashi followed by
18 Commissioner Giovanni.

19 COMMISSIONER OHIGASHI: I want to speak
20 directly about this drainage plan issue. I look at
21 the development as being all connected together, and
22 because it's all connected together, its delay or
23 forced delay on one would force the delay on the
24 other.

25 And rather than thinking about lawsuits,

1 things that will obviously delay, I guess, would be
2 three good projects. We should take a look, and
3 utilizing the DPP or the County, City and County
4 mechanism of trying to figure out what the drainage
5 should be in that area.

6 And all of you are related or connected to
7 each other because of this project. So if you don't
8 agree on a drainage plan, none of you will get
9 permits. And that just doesn't make sense.

10 So I leave it up to you for the people of
11 Honolulu and Hawaii to develop the energy that we
12 need, and the housing that we need.

13 And I think that that would go much further
14 than us putting any kind of specific conditions
15 reaffirming that somebody made a mistake, or somebody
16 needs to comply, or in noncompliance. That's why I'm
17 supporting this motion.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Ohigashi.

20 Commissioner Giovanni followed by
21 Commissioner Okuda and then Aczon. Sorry, when you
22 raise your physical hand instead of electronic hand,
23 I sometimes miss the order. I apologize,
24 Commissioner Giovanni.

25 COMMISSIONER GIOVANNI: I'm generally and

1 favorably inclined to support this motion. However,
2 I have lingering concern about potential for
3 abandonment of the solar farm for up to 18 years in
4 the event they don't get extension or a new Power
5 Purchase Agreement beyond the one they already have.

6 So I would like to propose a friendly
7 amendment, another friendly amendment, and it would
8 go as follows:

9 In the event that the project owner fails
10 to secure a PUC approved extension to the PPA, or a
11 new PUC approved PPA by December 31st, 2045, the
12 project owner would immediately commence with
13 decommissioning of the solar farm as described in
14 Condition B.7 of the Petitioner's motion. And
15 complete decommission by December 31st, 2047.

16 CHAIRPERSON SCHEUER: Commissioner
17 Giovanni, before I ask whether the movant and the
18 seconder are agreeable to such motion, I just want to
19 check.

20 Do you believe that, particularly in your
21 questioning of Mr. Greene, there was sufficient
22 information in the record to establish findings of
23 fact supportive of such a condition?

24 COMMISSIONER GIOVANNI: I do. I think he
25 represented the art and the practice in the industry

1 today. But 20 years from now, things could be a lot
2 different. And with the attainment of a PUC approved
3 extension, or PUC approved Power Purchase Agreement,
4 just as though they thought they had one in 2015 and
5 it didn't materialize, that could happen.

6 So I accept at face value from the
7 Petitioner and from Mr. Greene that they indeed plan
8 to extend, but there is no guarantee, just as he
9 said, there's no guarantee.

10 In the event they fail, give them up to
11 two-and-a-half years to be successful, then we start
12 the decommissioning, which is pretty much what he
13 said would happen when I asked him about it. So I
14 just wanted to formalize it.

15 CHAIRPERSON SCHEUER: Is the movant and the
16 seconder agreeable to the modification of the main
17 motion?

18 COMMISSIONER WONG: With all due respect to
19 Commissioner Giovanni, because we really didn't have
20 time to discuss this in detail with all parties, I
21 can't agree to this.

22 If it was during the deliberation -- during
23 the whole portion, then I would say, yes; but at this
24 point in time, to me it's too late in the game.

25 So I would say, sorry, Commissioner, but I

1 do not agree to this.

2 COMMISSIONER OHIGASHI: I don't think my
3 comment is necessary. But Commissioner Giovanni can
4 make it for a formal motion and amend the --

5 CHAIRPERSON SCHEUER: Yes. Another --
6 Commissioner Wong, would your objection -- I have no
7 idea what they will say -- but would your objection
8 to amending the motion be resolved if the Petitioner
9 indicated a willingness to accept said condition?

10 COMMISSIONER WONG: No, because right
11 now --

12 CHAIRPERSON SCHEUER: That's fine.

13 COMMISSIONER WONG: Okay, thank you.

14 CHAIRPERSON SCHEUER: So procedurally,
15 Commissioner Giovanni, you've asked for this
16 amendment, and the movant declined to make such
17 amendment.

18 Do you have anything further to say on this
19 matter at this time?

20 COMMISSIONER GIOVANNI: What is my options?
21 Is my option, as Commissioner Ohigashi indicated, can
22 I make a formal motion?

23 CHAIRPERSON SCHEUER: Here is where I'm
24 going to try and talk this through in a way I think
25 we're supposed to do this.

1 I think that we now continue on debate of
2 the main motion, and your option would be to vote
3 against the main motion and convince enough other
4 Commissioners to vote against that motion, and if
5 that motion fails, then provide a motion that
6 contains the provision that you would like.

7 COMMISSIONER GIOVANNI: Okay.

8 CHAIRPERSON SCHEUER: The Attorney General
9 can interrupt me if I'm getting my procedures
10 incorrect. You're muted.

11 MR. LAU: You could do it either way. You
12 can have both motions on the table simultaneously, or
13 you can handle them seriatim.

14 CHAIRPERSON SCHEUER: If I have them both
15 simultaneously, then what order do we consider them
16 in?

17 MR. LAU: You would consider them in the
18 order that they were made.

19 CHAIRPERSON SCHEUER: Okay.

20 Commissioner Giovanni, do you want to makes
21 a motion?

22 COMMISSIONER GIOVANNI: I would like to
23 make a motion that, which is identical to the one
24 that's on the floor currently that has been made by
25 Commissioner Wong and seconded by Commissioner

1 Ohigashi, and add the additional condition that I
2 added about restoration and decommissioning of
3 property in the event that the project owners fail to
4 get extension to the Power Purchase Agreement.

5 CHAIRPERSON SCHEUER: Is there a second to
6 what I will refer to as the Giovanni motion?

7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Thank you, Mr. Chair,
9 I'll second that motion.

10 CHAIRPERSON SCHEUER: We have two motions
11 before us. This is new and different, but I think
12 given the experience of this docket in the last two
13 days, it's not surprising.

14 Commissioners may speak to either or both
15 motions.

16 Commissioner Okuda, you had your hand up
17 before, and Commissioner Aczon followed by
18 Commissioner Chang.

19 COMMISSIONER OKUDA: Thank you, Mr. Chair.

20 I would like to speak in favor of this
21 motion, first of all.

22 CHAIRPERSON SCHEUER: The Giovanni motion?

23 COMMISSIONER OKUDA: Yes, in favor of the
24 Giovanni motion.

25 I believe there is sufficient evidence in

1 the record based on the testimony about the
2 possibility that there may not be a renewal, or for a
3 number of reasons, many unforeseeable, of a Power
4 Purchase Agreement. So I believe that what the
5 Giovanni motion does is take that into account.

6 So there is sufficient evidence in the
7 record to support that.

8 As to the rest of the motion, I believe
9 whether it's the Wong motion or Giovanni motion,
10 since those are basically identical, I believe the
11 record is very clear as far as why the Petitioner's
12 request should be granted.

13 If I may, just read one very short thing,
14 because I really believe what speaks in favor of the
15 Petitioner's project is really Article XI, Section 1
16 of the Constitution which says:

17 For the benefit of present and future
18 generations, the State and its political subdivisions
19 shall conserve and protect Hawaii's natural beauty
20 and all natural resources, including land, water,
21 air, minerals and energy sources, and shall promote
22 the development and utilization of these resources in
23 a manner consistent with their conservation, and in
24 furtherance of the self-sufficiency of the State.

25 This project fits squarely within the

1 Constitutional mandate, which for many decades has
2 not been followed, but fortunately now, people have a
3 commitment to do so.

4 But I believe the Giovanni motion takes
5 into account the potential that there might be this
6 future potential abandonment or inability to extend
7 the Power Purchase Agreement.

8 So for those reasons, and with all respect
9 to Commissioner Wong, I would ask that the Giovanni
10 motion be supported.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Okuda.

13 Commissioner Aczon followed by Commissioner
14 Chang. Actually, Commissioner Aczon, since
15 Commissioner Chang has spoken already, I want to give
16 space to any Commissioners who have not yet spoken.
17 Commissioner Aczon.

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

19 My intention is to speak about the original
20 motion by Commissioner Wong. But let me take care of
21 Commissioner Giovanni's motion first.

22 I intend to vote against it for the reason
23 what Commissioner Wong stated earlier. We don't
24 really have that much discussion on this one, so that
25 was -- I plan to vote against it.

1 On the Commissioner Wong's motion, we
2 talking about sustainability. We're talking about
3 employment. And we're talking about housing. And
4 these are areas that, you know, State of Hawaii need,
5 and also I believe that that's the Land Use
6 Commission's mission.

7 So having said that, you know, I have to
8 vote yes on this motion. But I'm hoping that, you
9 know, as I said earlier, that all parties can get
10 together, make a good faith effort to reach an
11 agreement among themselves to avoid very expensive
12 expenditures for all parties. And I'm hoping the
13 Department of Planning and Permitting do their due
14 diligence to make sure everybody is protected on this
15 one. And also enforce what is needed to be enforced.

16 Thank you, Mr. Chair.

17 CHAIRPERSON SCHEUER: Thank you,
18 Commissioner Aczon.

19 Giving space to Commissioners who have not
20 yet spoken.

21 Commissioner Cabral, do you wish to speak
22 or no?

23 VICE CHAIR CABRAL: I'm --

24 CHAIRPERSON SCHEUER: Not at this time?

25 VICE CHAIR CABRAL: It's Nancy. Sorry.

1 Yeah, I'm trying to work my brain through
2 these different options. I can appreciate both
3 options, but I don't have any questions at this time.

4 Thank our Commissioners that think of all
5 these finite details of what would happen if
6 something goes wrong. So thank you.

7 CHAIRPERSON SCHEUER: Commissioner Chang.
8 Thank you for your patience.

9 COMMISSIONER CHANG: Thank you, Mr. Chair.

10 I am -- I support Commissioner Giovanni's
11 motion. I think there has been adequate discussion
12 in the record both through Mr. Greene -- I mean we
13 actually did a truncated hearing process. There
14 probably could have been a lot more testimony
15 provided on that.

16 Office of Planning's proposed revision
17 exhibit, their Exhibit Condition B.7 specifically
18 deals with decommissioning.

19 So in addition to Commissioner Okuda's
20 recitation of the Constitution, I think many of us
21 have seen what happens when you have abandoned
22 structures. There are abandoned windmills and
23 abandoned solar farm all over the State. And that's
24 what happens -- I would have gone even further and
25 required a bond in an escrow account to cover the

1 decommissioning, because what we have seen is these
2 industrial plans that have not cleaned up their opala
3 after they are pau.

4 So I am going to support Commissioner
5 Giovanni's motion. I am also -- I just want to
6 clarify that Commissioner Giovanni's motion also
7 included my friendly amendment, which was to include
8 Condition A. as part of OP's, their proposed exhibit.

9 COMMISSIONER GIOVANNI: Yes, that's
10 correct.

11 CHAIRPERSON SCHEUER: Commissioner Chang, I
12 want to make something -- because you brought up
13 Condition B.7 regarding -- sorry, did somebody say
14 something?

15 Commissioner Chang, you brought up
16 Condition B.7, I want to make sure that the original
17 motion of Commissioner Wong included Condition B.7 as
18 well, which was not in Exhibit 1, but stated orally
19 was a soft condition by OP today.

20 COMMISSIONER GIOVANNI: You could check the
21 record, but I did not hear B.7 in the original
22 motion.

23 COMMISSIONER WONG: Same here, Chair. This
24 is Commissioner Wong.

25 I don't know whether it was B.7, so if

1 Commissioner Chang can either tell us where it is or
2 explain to us, please.

3 CHAIRPERSON SCHEUER: Actually, for the
4 limited purposes of responding to this, I'm going to
5 ask Office of Planning to speak right now in
6 deliberation and explain.

7 MS. APUNA: Thank you, Chair.

8 So we have our revised Exhibit 1, and it
9 speaks to certain B.1, B.2, B.4 and 6 that we
10 provided and it's to alteration, but we also would
11 like to include B.3, B.5 and B.7 that are in the 2015
12 order.

13 CHAIRPERSON SCHEUER: Commissioner Wong, is
14 your intention to clarify -- and that was orally
15 stated. I recall Ms. Apuna stating that during our
16 proceedings today.

17 So when there was a discussion of an
18 adoption of OP's recommendations, is that your
19 intention or is it for the more narrow list of
20 conditions in amended Exhibit 1?

21 COMMISSIONER WONG: So when I was going
22 through this with the Petitioner, I thought it was
23 only was A.1 through 6, and B.1 through 6, and that's
24 why I made that motion.

25 So I would like to ask, if you don't mind,

1 the Petitioner, if they're okay with that B.7?

2 CHAIRPERSON SCHEUER: Ms. Lim.

3 MS. LIM: Thank you, Chair. Thank you for
4 the question.

5 So B.7 is talking about the decommissioning
6 condition that was imposed in January 2015. As
7 explained in our motion that we filed in August,
8 Petitioner would adhere to that Condition B.7, the
9 decommissioning condition.

10 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.
11 So, Mr. Wong --

12 COMMISSIONER WONG: I have no problem with
13 that.

14 CHAIRPERSON SCHEUER: I'm going treat it as
15 a friendly amendment. So I'm going to have to ask
16 this four times.

17 Commissioner Ohigashi, are you okay with
18 the amendment to the Wong motion?

19 COMMISSIONER OHIGASHI: No objection.

20 CHAIRPERSON SCHEUER: Commissioner
21 Giovanni, are you willing to accept that as an
22 amendment to your motion?

23 COMMISSIONER GIOVANNI: Actually my motion
24 already includes it, because I reference B.7 that I'm
25 asking for.

1 CHAIRPERSON SCHEUER: So then that being
2 said, where we're at is now the two motions are
3 identical with the exception of your additional
4 language, Commissioner Giovanni; is that correct?

5 COMMISSIONER GIOVANNI: I believe that's
6 correct.

7 CHAIRPERSON SCHEUER: You have your hand
8 raised, Commissioner Giovanni.

9 COMMISSIONER GIOVANNI: Thank you, Chair.

10 I just want to -- I have every confidence
11 that the solar farm is going to be built. In fact, I
12 have a lot of more confidence it will be built than
13 any affordable housing or workforce housing. I think
14 it's going forward. And I think it's going to be
15 great for the community of Oahu and for helping the
16 State achieve its energy goals.

17 My only concern is what Commissioner Chang
18 raised about abandoned infrastructure for developers
19 to walk away from the project, even when there is
20 language that says otherwise.

21 So in my motion I have included a timeline
22 that basically said that in the event that they do
23 not get extension or a new PPA beyond the one they
24 already have in hand, that they don't have 18 years
25 to figure out if they're going to do the demolition or

1 not.

2 Consistent with testimony of Mr. Greene, he
3 said they would need a couple of years to figure out
4 if they're going to have a future or not, then make a
5 decision.

6 I added two years to the timeline to give
7 them opportunity to find an extension to the PPA or a
8 new PPA. And then two more years to do the
9 demolition under Condition B.7.

10 I think it's unlikely that that's going to
11 come into play because I have every hope and
12 confidence that they will be able to find a PPA
13 extension or new PPA, but in the event they don't, I
14 think the infrastructure should be removed from the
15 property on a reasonable timeline basis, which I
16 think is four years after the close or termination of
17 the existing PPA. That's why I put it in.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Giovanni.

20 Just so you know, the Chair is --
21 Commissioner Wong.

22 COMMISSIONER WONG: Mr. Chair. You know,
23 because I was listening to Commissioner Giovanni and
24 Commissioner Chang, I would withdraw my motion if the
25 movant is agreeable with Commissioner Giovanni's

1 changes.

2 CHAIRPERSON SCHEUER: Ms. Lim?

3 MS. LIM: Thank you. I mean, the B.7
4 condition says solar farm shall be decommissioned
5 following its operational timeframe, which I would
6 have interpreted it as when the solar farm is no
7 longer operating, it's got to be decommissioned, even
8 if the LUC were to allow it to be there for
9 100 years.

10 If that language needs further clarity
11 pursuant to what the Commissioner has suggested, then
12 so be it. To me we're saying the same thing, just
13 saying it in two different ways.

14 While the project is in operation, it's
15 good; and when it's no longer operating, we got to
16 get it out of there.

17 CHAIRPERSON SCHEUER: Commissioner Wong,
18 has Ms. Lim's response addressed your concerns?

19 COMMISSIONER WONG: Yes, Chair, for once I
20 was listening to Commissioner Chang and Commissioner
21 Giovanni, so I would like to withdraw my motion and
22 let Commissioner Giovanni's motion be the motion
23 living.

24 CHAIRPERSON SCHEUER: So I'm going to
25 actually ask, before we take a vote, I'm going to

1 make sure that we take a brief, not going away
2 recess, to make sure that Mr. Orodener has a proper
3 motion to read back to us before we take the vote.

4 I was about to state my support for
5 Commissioner Giovanni's amendment.

6 So this is now settled. We now have a
7 motion before us from Commissioner Giovanni, seconded
8 by Commissioner Okuda.

9 Commissioner Okuda.

10 COMMISSIONER OKUDA: Thank you, Mr. Chair.
11 Let me just say one thing very quickly, that's
12 regarding drainage.

13 I am convinced that Mr. Tanoue of RM
14 Towill, who has a long history in planning and
15 service to the community, I believe he is a person of
16 good faith. I believe that people of good faith will
17 work things out.

18 And so that's another reason why I'm
19 supporting this worthy project.

20 Thank you, Mr. Chair.

21 CHAIRPERSON SCHEUER: Thank you.

22 Commissioners, is there further discussion
23 on the Giovanni motion before us?

24 If not, I'll state my support for the
25 motion. I want to address the concerns brought up by

1 Haseko on drainage, and just add that I do believe
2 there's enough evidence in the record, particularly
3 in the presentations by Mr. Takahashi, that the City
4 has the ability to enforce conditions on drainage.

5 But knowing what that drainage should
6 actually look like is going to depend personally on
7 what Haseko is actually proposing and aligning, and I
8 do have great faith in the representations from Ms.
9 Lim and Mr. Lau, that discussions will continue to
10 resolve this in a manner that will allow all the
11 projects associated with this original docket to go
12 forward.

13 Commissioner Cabral.

14 VICE CHAIR CABRAL: Thank you. I'm going
15 to support this motion, and I would like to further
16 that encouragement of all the attorneys involved to
17 make sure they realize that they have all somehow
18 gotten themselves somewhat in bed with other parties,
19 because they have all purchased into and made an
20 agreement to be part of what was at one time a large
21 pie. Now they all have it in a smaller piece of it.

22 And so some of the standing that I have to
23 have it my way, may not work out. So I really
24 encourage everybody to work this out so we don't have
25 to hear from you folks for a long time to come.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner Cabral.

3 Commissioner Aczon.

4 VICE CHAIR ACZON: In light of the
5 Petitioner's agreement with Commissioner Giovanni's
6 motion, I just kind of want to make sure that
7 everybody has same information, and Petitioner has
8 the opportunity to chime in on this discussion. I
9 support this motion, thank you.

10 CHAIRPERSON SCHEUER: Commissioners, I want
11 to get the last word before I call for the vote. Any
12 more comments from Commissioners? Going once, going
13 twice.

14 I want to recognize a couple things. One
15 is that -- well, the chief thing I want to recognize
16 is that what should have become clear to us as we
17 live through our pandemic, our economic downturn, our
18 civil unrest, our political strife, is that what we
19 actually really need in Hawaii is kind of limited.

20 We need housing. We need food. We need
21 utilities. We need water. And we need to get along
22 with each other. And this project actually
23 represents all of these finally after many, many
24 years of fits and starts.

25 So I'm putting the faith of the people of

1 Hawaii in the proponents of these projects to make
2 this happen.

3 Mr. Orodenker, are you ready, or do you
4 need a short recess to compose a motion, or to recite
5 the motion before us?

6 EXECUTIVE OFFICER: Well, Mr. Chair, if you
7 mean a couple of days, yeah, maybe.

8 I think I can state what the motion is.

9 CHAIRPERSON SCHEUER: So there being no
10 further discussion, Mr. Orodenker, please poll the
11 Commission.

12 EXECUTIVE OFFICER: Mr. Chair, the Motion
13 is to approve the proposed changes as contained in
14 Ho'ohana's Motion, and to incorporate OP's suggested
15 changes as contained in OP's Exhibit 1, and include
16 amendments proposed by Commissioner Giovanni to
17 Condition 7.

18 CHAIRPERSON SCHEUER: Are there any
19 questions from any of the Commissioners? Do you
20 understand, Mr. Orodenker has correctly stated the
21 motion. Okay, thank you.

22 EXECUTIVE OFFICER: Commissioner Giovanni?

23 COMMISSIONER GIOVANNI: Aye.

24 EXECUTIVE OFFICER: Commissioner Okuda?

25 COMMISSIONER OKUDA: Yes.

1 EXECUTIVE OFFICER: Commissioner Wong?

2 COMMISSIONER WONG: Aye.

3 EXECUTIVE OFFICER: Commissioner Ohigashi?

4 COMMISSIONER OHIGASHI: Aye.

5 EXECUTIVE OFFICER: Commissioner Chang?

6 COMMISSIONER CHANG: Aye.

7 EXECUTIVE OFFICER: Commissioner Cabral?

8 VICE CHAIR CABRAL: Yes.

9 EXECUTIVE OFFICER: Commissioner Aczon?

10 VICE CHAIR ACZON: Aye.

11 EXECUTIVE OFFICER: Chair Scheuer?

12 CHAIRPERSON SCHEUER: Aye.

13 EXECUTIVE OFFICER: Thank you, Mr. Chair.

14 The motion passes unanimously with eight votes.

15 CHAIRPERSON SCHEUER: Okay. Are there
16 further comments from the Commissioners before we
17 close? Commissioner Wong.

18 COMMISSIONER WONG: Yes, Chair, thank you.

19 Because of all this moving parts, and the
20 changes of ownership with RP, to Haseko, and also
21 they stated that they're going to do a new plan and
22 all that, I would like to direct the staff to work
23 with Haseko to do a -- set up a status report for us.

24 CHAIRPERSON SCHEUER: Thank you.

25 Mr. Orodenker, can you please arrange that?

1 EXECUTIVE OFFICER: Thank you, Mr. Chair,
2 we will certainly do so.

3 CHAIRPERSON SCHEUER: Anything further,
4 Commissioners?

5 Commissioner Cabral? You're just saying
6 goodbye. Okay.

7 Thank you very much to the Petitioner, to,
8 the counsel for Haseko, to the City and County of
9 Honolulu, and Office of Planning.

10 And with pleasure and relief, I declare we
11 have no further business and this meeting is
12 adjourned.

13 MS. LIM: Thank you for all your kind work.

14 CHAIRPERSON SCHEUER: Thanks to all the
15 parties, and thank my fellow Commissioners.

16 VICE CHAIR CABRAL: Good job, everybody,
17 good job.

18 CHAIRPERSON SCHEUER: Thank you, Nancy.

19 (The proceedings adjourned at 4:00 o'clock
20 p.m.)

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on October 8, 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 8th day of October, 2020, in
16 Honolulu, Hawaii.

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18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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