

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on December 3, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. ACTION

All-791 HG Kaua'i Joint Venture LLC-Hokua Place
(Kaua'i)

Petition to Amend the Land Use District
Boundary of Certain Lands Situated at Kapa'a,
Island of Kaua'i, State of Hawai'i, Consisting
of 97 Acres from the Agriculture and Rural
District to the Urban District, Tax Map Key No.
(4) 4-3-03:Por 01

Consider Likoolani Martin, Wailua-Kapa'a
Neighborhood Association and Sierra Club
Kaua'i's Petitions to Intervene in Docket No.
All-791 and any other Petitions to Intervene
that may be timely filed

V. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

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

6

STAFF:

7 WILLIAM WYNHOFF, ESQ.
8 MELISSA GOLDMAN, ESQ.
9 Deputy Attorneys General

10 DANIEL ORODENKER, Executive Officer
11 RILEY K. HAKODA, Chief Clerk
12 SCOTT DERRICKSON, Chief Planner

13 DAWN T. APUNA, ESQ.
14 Deputy Attorney General
15 Rodney Funakoshi, Planning Program Administrator
16 Office of Planning
17 State of Hawaii

18 CHRIS DONAHOE, ESQ.
19 Kaua'i Corporation Counsel
20 JODI SAYEGUSA, Kaua'i Planning Dept.
21 County of Kaua'i

22 WILLIAM YUEN, ESQ.
23 For Petitioner A11-791
24 HG Kaua'i Joint Venture LLC
25

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

3 This is the December 3, 2020 Land Use
4 Commission meeting and 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 to comply with State and County
9 official operational directives during the COVID-19
10 pandemic. Members of the public are viewing the
11 meeting via the ZOOM webinar platform.

12 For all meeting participants, I would like
13 to stress to everyone the importance of speaking
14 slowly, clearly, and directly into your microphone.
15 Before speaking, please state your name and identify
16 yourself for the record. And also please be aware
17 that all meeting participants are being recorded on
18 the digital record of this ZOOM meeting. Your
19 continued participation is your implied consent to be
20 part of the public record of this event. If you do
21 not wish to be part of the public record, please exit
22 this meeting now.

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

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

8 My name is Jonathan Likeke Scheuer and I
9 currently serve as the LUC Chair. Along with me,
10 Commissioners Dawn Chang, Gary Okuda and Arnold Wong,
11 the LUC Executive Officer Daniel Orodener, LUC Chief
12 Planner Scott Derrickson, Chief Clerk Riley Hakoda,
13 the LUC's Deputy Attorneys General Melissa Goldman
14 and Bill Wynhoff, and the Court Reporter, Jean
15 McManus are on Oahu. Commissioner Cabral is on the
16 Big Island, Commissioner Lee Ohigashi is on Maui, and
17 Commissioner Dan Giovanni is on Kauai. There are
18 currently seven seated Commissioners of a possible
19 nine.

20 Our first order of business is the adoption
21 of the November 18, 2020 minutes.

22 Mr. Hakoda, Mr. Derrickson, has there been
23 any written testimony submitted on the adoption of
24 the minutes?

25 CHIEF CLERK: This is Riley. We have no

1 public testimony on the minutes.

2 CHAIRPERSON SCHEUER: Are there any members
3 of the public who wish to testify solely on the
4 adoption of the minutes? If so, I would ask you to
5 use the "raise your hand" function in the ZOOM
6 platform and indicate that you wish to testify.
7 Seeing none.

8 Are there any comments or questions from
9 the Commissioners on the minutes? If not, is there a
10 motion to adopt? Commissioner Cabral.

11 VICE CHAIR CABRAL: I would like to make a
12 motion to adopt the minutes.

13 CHAIRPERSON SCHEUER: Is there a second?

14 COMMISSIONER OHIGASHI: Second.

15 CHAIRPERSON SCHEUER: A motion has been
16 made BY Commissioner Cabral and seconded by
17 Commissioner Ohigashi to adopt the minutes.

18 Are there any discussions on the motion?
19 If not, Mr. Orodenker, please do a roll call vote.

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.

21 The motion is to adopt the minutes.

22 Commissioner Cabral?

23 VICE CHAIR CABRAL: Yes.

24 EXECUTIVE OFFICER: Commissioner Ohigashi?

25 COMMISSIONER OHIGASHI: Yes.

1 EXECUTIVE OFFICER: Commissioner Aczon is
2 absent.

3 Commissioner Chang?

4 COMMISSIONER CHANG: Yes.

5 EXECUTIVE OFFICER: Commissioner Okuda?

6 COMMISSIONER OKUDA: Yes.

7 EXECUTIVE OFFICER: Commissioner Giovanni?

8 COMMISSIONER GIOVANNI: Aye.

9 EXECUTIVE OFFICER: Commissioner Wong?

10 COMMISSIONER WONG: Aye.

11 EXECUTIVE OFFICER: Chair Scheuer?

12 CHAIRPERSON SCHEUER: Aye.

13 EXECUTIVE OFFICER: Thank you, Mr. Chair.

14 The motion passes unanimously.

15 CHAIRPERSON SCHEUER: Thank you, Mr.

16 Orodenker, for noting that Commissioner Aczon is not
17 here.

18 The next meeting agenda item is the
19 tentative meeting schedule. Mr. Orodenker.

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.

21 On December 30th we will be holding a
22 hearing on the C. Brewer bifurcation status review.

23 On January 6th and 7th, we will be holding
24 hearings on the matter commonly before us, the Hokua
25 Place matter. On the 6th, we will be hearing a

1 motion for protective order; and on the 7th we will
2 be hearing -- and we will begin proceedings on the
3 district boundary amendment on the 7th. We will be
4 hearing the district boundary amendment as well.

5 On January 28th we will have a hearing on
6 the Barry Trust matter.

7 On February 6th, we will also be holding a
8 hearing on the Barry Trust matter, and the U of N
9 Bancorp matter requesting LUC to be the accepting
10 authority.

11 On February 11th, we will begin hearing
12 with on the Oahu Important Agricultural Land
13 designation by the City and County of Honolulu; and
14 we will begin that on the 11th with an informational
15 briefing for the Commissioners and the public as to
16 what's been submitted and the process.

17 On February 24th, we will begin hearings on
18 the City and County of Honolulu IAL submittal, as
19 well as the 25th.

20 On March 10th we will be hearing the Hokua
21 Place matter, if required. That's on the 10th and
22 11th of March.

23 On the 24th and 25th of March, we will once
24 again take up the City and County of Honolulu's IAL
25 submission.

1 And that takes us through April, and we
2 would ask the Commissioners to hold their calendars
3 open in April and May for any potential hearings.
4 Thank you.

5 CHAIRPERSON SCHEUER: Thank very much, Dan.
6 Commissioners, any questions for Dan with
7 our schedule?

8 Commissioner Giovanni.

9 COMMISSIONER GIOVANNI: Is there any update
10 on whether these meetings will be a virtual meeting
11 or in-person meetings?

12 EXECUTIVE OFFICER: We have to play that on
13 a month-by-month basis. It depends on the Governor's
14 Emergency Proclamation. If that Emergency
15 Proclamation expires or does not contain the
16 necessary language for us to continue to hold ZOOM
17 meetings, we will have to hold them in person.

18 COMMISSIONER GIOVANNI: To the extent we
19 can, I would like to encourage that we continue the
20 virtual meetings where it makes sense on a
21 going-forward basis.

22 EXECUTIVE OFFICER: Thank you, Commissioner
23 Giovanni. We would like to continue that for a whole
24 bunch of reasons, safety being one of them. However,
25 we may have problems from a legal standpoint. We

1 have to adhere Chapter 91 and 92, if the Governor's
2 Emergency Proclamation does not continue.

3 CHAIRPERSON SCHEUER: Commissioners, are
4 there further questions for Dan about the schedule?

5 If not, Mr. Orodener, I would like to
6 agendize for a future meeting a discussion that would
7 be addressing what happens if we have to go to
8 physical meetings, whether or not we can pursue
9 hybrid meetings, and we would probably also include a
10 briefing on the Office of Information Practices'
11 current bills intending to amend public meeting laws
12 to deal with the pandemic and remote meetings, if
13 that's possible.

14 EXECUTIVE OFFICER: We will agendize that.

15 CHAIRPERSON SCHEUER: Thank you very much.

16 Okay, folks, we are now at the next item on
17 our agenda.

18 Docket A11-791 HG Kauai Joint Venture
19 LLC-Hokua Place (Kaua'i)'s Petition to Amend the Land
20 Use District Boundary of Certain Lands Situated at
21 Kapa'a, Island of Kaua'i, State of Hawai'i,
22 Consisting of 97 Acres from the Agriculture and Rural
23 District to the Urban District, Tax Map Key No. (4)
24 4-3-03: a portion of Lot 1 to Consider Likoolani
25 Martin, Wailua-Kapa'a Neighborhood Association and

1 Sierra Club Kaua'i's Petition to Intervene in Docket
2 No. A11-791 and any other Petitions to Intervene that
3 may have been timely filed.

4 Will the parties identify themselves for
5 the record?

6 MR. YUEN: William Yuen (overlapping
7 voices) for Petitioner.

8 CHAIRPERSON SCHEUER: I will call on
9 Petitioner.

10 MR. YUEN: William Yuen on behalf of
11 Petitioner HG Kaua'i Limited Partnership.

12 CHAIRPERSON SCHEUER: Thank you.
13 County of Kaua'i.

14 MR. DONAHOE: Good morning. Deputy County
15 Attorney Chris Donahoe for the County Attorney's
16 Office on Kaua'i.

17 CHAIRPERSON SCHEUER: Office of Planning.

18 MS. APUNA: Good morning, Chair, Members,
19 Deputy Attorney General Dawn Apuna on behalf of the
20 State Office of Planning. Rodney Funakoshi is here
21 with me today.

22 CHAIRPERSON SCHEUER: I will also note, Mr.
23 Martin, you're not yet a party to these proceedings.
24 That's what today's hearing is about, but I will note
25 you're present with us here today. Mahalo.

1 Before we begin, let me update the record
2 regarding this docket.

3 On December 17th and 18th, 2019, the
4 Commission met on Kauai to consider the acceptance of
5 the Petitioner's Final Environmental Impact Statement
6 or FEIS for its Petition to Amend the Land Use
7 District Boundary of the subject Petition Area.

8 On December 23rd of 2019, the Commission
9 mailed correspondence to the Office of Environmental
10 Quality Control, hereinafter referred to as OEQC,
11 requesting publication of the FEIS in the
12 "Environmental Notice" publication.

13 On August 27th of this year, the Commission
14 received Petitioner's Amended Petition for Land Use
15 District Boundary Amendment.

16 On September 18th, the Commission mailed
17 correspondence to the Petitioner's representative
18 acknowledging receipt of documents and notifying the
19 representative that the Commission would be accepting
20 the FEIS, thereby deeming it complete.

21 On November 6, 2020, the Commission met
22 with the Parties and potential intervenors to
23 establish a schedule to file their documents with the
24 Commission and each other; and mailed its prehearing
25 order resulting from that meeting to the Parties and

1 potential intervenors Liko Martin, Sierra Club and
2 the Wailua-Kapaa Neighborhood Association.

3 On November 10th the Commission mailed the
4 filing schedule for documents to the Parties and
5 potential intervenors.

6 From December 19, 2019 until today,
7 December 3rd, 2020, the Commission has received
8 approximately 20 emails and written public testimony
9 on this matter which have been posted to our website
10 and made a part of the record.

11 On November 20, 2020, the Commission mailed
12 the agenda notice of the December 3rd, 2020 meeting
13 to the Parties and potential intervenors, as well as
14 Statewide email and Kauai mailing lists.

15 On November 25th, 2020, two significant
16 events occurred:

17 First, the Commission received an email
18 from David Kimo, Esq., attorney for the Sierra Club,
19 representing that the Sierra Club would not be
20 following through with its original plan to intervene
21 and suggesting that it was possible that the
22 Wailua-Kapaa Neighborhood Association would also
23 decide not to intervene as well.

24 Second, the Commission received an email
25 from Liko Martin confirming his intent to intervene.

1 We note that there were no attachments to the initial
2 email, nor was there a filing fee accompanying this
3 initial email to intervene.

4 On November 27, 2020, the Commission
5 received Liko Martin's substantive written Petition
6 to Intervene and his filing fee.

7 As of the date of this meeting, the
8 Wailua-Kapaa Neighborhood Association has not
9 submitted any notices indicating a desire to
10 intervene.

11 Finally, on December 1st, 2020, the
12 Commission received HG Kauai Joint Venture, LLC's
13 Memorandum in Opposition to the Petition to Intervene
14 by Liko Martin.

15 I've now updated the record, so now let me
16 briefly describe our procedures for today, which will
17 consider the timely Motion to Intervene and Boundary
18 Amendment Petition.

19 First, I'm going to give an opportunity to
20 the Petitioner to comment on the Commission's policy
21 governing reimbursement of hearing expenses.

22 Second, I will call for any individuals who
23 wish to testify on this matter to identify
24 themselves. I will ask you to do so by raising your
25 hand using the "raise-your-hand" function in the ZOOM

1 meeting box. When you've raised your hand, I will
2 bring you in one by one. I will admit you to be a
3 part of the main panel of the meeting. I will swear
4 you in, ask you to identify your name and address for
5 the record, and then I will give you the opportunity
6 to testify. When you are done testifying, you will
7 need to remain open to questioning from the
8 Petitioner, from the County and the Office of
9 Planning and the Commissioners.

10 After we have completed all public
11 testimony on this matter, Mr. Martin will have his
12 opportunity to make his presentation in support of
13 his Petition to Intervene.

14 Following Mr. Martin's presentation, we
15 will receive argument on the motion from the
16 Petitioner, the County and State Office of Planning.

17 After all parties have presented their
18 arguments on the Motion to Intervene, the Commission
19 will conduct our deliberations and possibly issue a
20 decision on the Motion.

21 Any questions on our procedure for today,
22 beginning with the Petitioner?

23 MR. YUEN: No questions.

24 CHAIRPERSON SCHEUER: County?

25 MR. DONAHOE: Commissioner, no questions by

1 the County of Kauai.

2 CHAIRPERSON SCHEUER: Thank you. OP?

3 MS. APUNA: No questions, Chair.

4 CHAIRPERSON SCHEUER: Mr. Martin, do you
5 understand our procedure?

6 THE WITNESS: I do.

7 CHAIRPERSON SCHEUER: Okay, great.

8 Mr. Yuen, you've reviewed HAR 15-15-45.1
9 with regard to the reimbursement of LUC hearing
10 expenses?

11 MR. YUEN: Yes.

12 CHAIRPERSON SCHEUER: What's your stance?

13 MR. YUEN: We agree. Petitioner agrees.

14 CHAIRPERSON SCHEUER: Thank you.

15 With that, is there anyone in the audience
16 who desires to provide public testimony on this
17 matter today? And to be clear, what we're
18 considering today is not the substance of the
19 Petition, but rather the Petition to Intervene.

20 Is there anybody in the audience who wishes
21 to testify in this matter? If so, use the
22 "raise-your-hand" function and I will admit you in.

23 I see a number of people. I have two
24 screens, so this is why I'm leaning over. I see a
25 number of people who are in the meeting, but I do not

1 see anybody who is raising their hands.

2 Now there is. Ms. Rayne Regush, I'm going
3 to admit you to the meeting. When you come in,
4 please enable your camera and your microphone.

5 MS. REGUSH: Good morning, Commissioners.

6 CHAIRPERSON SCHEUER: Can you enable your
7 video?

8 Good morning. I'm first going to swear you
9 in.

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

12 THE WITNESS: Yes.

13 CHAIRPERSON SCHEUER: Please state your
14 name and address for the record, then you may proceed
15 with your testimony.

16 RAYNE REGUSH

17 Was called as a witness by and on behalf of the
18 Public, was sworn to tell the truth, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: My name is Rayne Regush. My
22 address is 5820A Hala Kahiki Place, Kapaa, Hawaii
23 96746.

24 CHAIRPERSON SCHEUER: Please proceed,
25 Rayne.

1 Commission had received the three important documents
2 that they had spelled out in the LUC letter of
3 September 18th. So we thought that would be part of
4 the record today.

5 So again, we're in support of Liko's
6 Petition.

7 And in closing, I want to let you know that
8 Bridget Hammerquist, who is on the call, but by
9 phone, does not have the technology to raise her hand
10 to be included. So, Chairperson Surer (sic), if you
11 could call on her at some point during the public
12 testimony, that would be great.

13 CHAIRPERSON SCHEUER: Thank you, Ms.
14 Regush.

15 Scheuer is how it's pronounced.

16 I would need to know what telephone number
17 she is calling from.

18 THE WITNESS: Her phone number ends in the
19 number 1973.

20 CHAIRPERSON SCHEUER: Got it. Okay.

21 THE WITNESS: Thank you.

22 CHAIRPERSON SCHEUER: Thank you for that
23 clarification.

24 THE WITNESS: If I can just add, as this
25 thought is coming, because we did receive the Motion

1 for Protective Order, and back in August we did
2 receive the financials.

3 And, again, it just instilled little
4 confidence in us when we see their net profit and
5 losses and negative \$38,000.

6 So with the opportunity to explore much
7 more of this project, I think it might allow us to
8 make a better decision going forward.

9 CHAIRPERSON SCHEUER: Thank you, Ms.
10 Regush.

11 Are there questions for Ms. Regush,
12 beginning with the Petitioner, Mr. Yuen. You're
13 muted, Mr. Yuen.

14 Mr. Yuen, does the Petitioner have
15 questions for the witness?

16 MR. YUEN: Sorry, I was muted.

17 No questions.

18 CHAIRPERSON SCHEUER: Thank you very much.
19 County of Kauai, Mr. Donahoe.

20 MR. DONAHOE: County of Kauai has no
21 questions for Ms. Regush.

22 CHAIRPERSON SCHEUER: OP?

23 MS. APUNA: No questions, Chair.

24 CHAIRPERSON SCHEUER: Commissioners,
25 questions? Anyone? If not, thank you very much for

1 your testimony, and for taking the time to be with us
2 today.

3 I'm next going -- so I will now move you
4 back to being an attendee, and I'm going to admit
5 Bridge.

6 Folks, the way the ZOOM controls look, if
7 you're calling in, I can't admit you to be a
8 panelist, but I am able to enable Ms. Hammerquist's
9 audio.

10 Ms. Hammerquist, are you able to hear me?
11 Ms. Hammerquist, you're muted. You need to -- okay,
12 I think I can unmute you.

13 Thanks for your patience, folks. Okay, so
14 Mr. Derrickson or Mr. Hakoda, there might be
15 something that Ms. Hammerquist needs to do on her
16 phone, a key combination to unmute herself.

17 MS. HAMMERQUIST: Good morning, good
18 morning, thank you. I apologize. My sight
19 limitations and the technology -- it's mostly my
20 sight, I apologize.

21 CHAIRPERSON SCHEUER: I understand. It's
22 nice to be with you, Bridge. I'm going to swear in
23 first, okay?

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

1 THE WITNESS: I do.

2 CHAIRPERSON SCHEUER: Thank you.

3 Now, if you would state your name and
4 address for the record, then proceed with your
5 testimony.

6 BRIDGET HAMMERQUIST

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

10 DIRECT EXAMINATION

11 THE WITNESS: Thank you. Good morning,
12 Commissioners.

13 My name is Bridget Hammerquist. My address
14 is 2963 Pua Alani Place, Koloa, Hawaii.

15 CHAIRPERSON SCHEUER: Please proceed.

16 THE WITNESS: Thank you.

17 I'm here today as a member of the public,
18 but I'm also testifying in support of Mr. Martin's
19 Petition.

20 In particular, I'm currently involved with
21 a lawsuit that involves the County of Kauai over the
22 issue of the delivery of water to the subject area,
23 and I have personal knowledge of the limitations of
24 the water available for the area between Hanamaulu
25 and Kapaa, and I'm concerned, because as I reviewed

1 the FEIS -- and I acknowledge that I haven't
2 necessarily exhausted all of it -- I was unable to
3 find where the developer disclosed to the Commission
4 that there are already 441 residential units, and
5 several more resort units permitted for development
6 in the same area that will rely on the same water
7 source.

8 Those have been considered in the current
9 water source, whereas Hokuia Place has not yet been
10 permitted and has not been considered. They already
11 have a shortage for what is permitted. So I'm very
12 concerned that the Commissioners understand the
13 amount of development that has been approved ahead of
14 Hokuia Place before making the decision to redistrict
15 from Ag to Urban, ag lands which are valuable and
16 much needed for the Island of Kaua'i.

17 And so in that regard, I am here today to
18 say that I will support -- would support and do
19 support Liko Martin's Petition, and will be making
20 available documents to him for his production on, I
21 believe, the 10th of December.

22 And that's the sum of my testimony this
23 morning.

24 CHAIRPERSON SCHEUER: Thank you very much,
25 Ms. Hammerquist. I'm going to ask you to standby if

1 folks have questions for you, beginning with Mr. Yuen
2 for the Petitioner.

3 MR. YUEN: No questions.

4 CHAIRPERSON SCHEUER: County?

5 MR. DONAHOE: Thank you, Chair. No
6 questions by the County.

7 CHAIRPERSON SCHEUER: OP?

8 MS. APUNA: No questions.

9 CHAIRPERSON SCHEUER: Commissioners?

10 I will just disclose that I spent quite a
11 few meetings in the company of Ms. Hammerquist
12 representing the Department of Hawaiian Home Lands on
13 separate water matters on Kauai and she was
14 representing Liko, which is how I know her.

15 Any other questions for Ms. Hammerquist at
16 this time? If not, thank you very much for your
17 testimony today.

18 THE WITNESS: Thank you, Members of the
19 Commission. I appreciate having the opportunity.

20 CHAIRPERSON SCHEUER: I'm now just
21 clicking, removing you from the meeting. I'm hoping
22 that's not going to -- I'm going to disable talking.
23 There we go.

24 Okay. Is there anyone else who wishes to
25 testify on this matter? If so, please use the

1 "raise-your-hand" function in the ZOOM meeting.

2 Seeing none.

3 I'm going to close public testimony on this
4 matter, and we're now going to proceed with Mr.
5 Martin and your presentation.

6 Could you please share with us, before you
7 start, about how long do you intend to present for?
8 About every 55 minutes we take a break.

9 How long are you going to want to present
10 your testimony?

11 THE WITNESS: I would say within 10 to
12 15 minutes.

13 CHAIRPERSON SCHEUER: Okay, perfect.

14 And as we do for all non-attorneys, I'm
15 going to swear you in before you begin.

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

18 THE WITNESS: Yes.

19 CHAIRPERSON SCHEUER: Mahalo. Please
20 proceed with your presentation.

21 LIKOOKALANI MARTIN

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

25 DIRECT EXAMINATION

1 THE WITNESS: Greetings, Commissioners.

2 For the record, I have not received the
3 three documents the LUC has required the developer to
4 deliver. I have received, however, the LUC e-mails
5 of November 5th, 10th and 19th in order to prepare
6 for this hearing.

7 My email address on those e-mails, along
8 with that of the developer, provided ample time,
9 opportunity and a means to comply with the LUC order.

10 That's just for the record.

11 I would like to start with the statements
12 that my family has lineage in this area of Kauai. I
13 have in my possession records dated December 4,
14 certified December 1st, 2020, the Bureau of
15 Conveyances, establishing the pertinent lands under
16 question as inalienable and part of the Crown Land
17 Estate, and subject to the obligation that the State
18 of Hawaii, which is a holder in trust, administrator
19 in trust.

20 And that this document, in anticipation of
21 the December 10th, would be submitted in conjunction
22 with a list of qualified and expert witnesses, and
23 other exhibits on subjects and issues articulated in
24 my Petition filed November 27, 2000 (frozen screen)
25 -- by certificate of service hand-delivered and by

1 way of the U.S. postal service express mail, and I
2 would be happy to provide those documents for
3 verification.

4 I have great concerns about the
5 infrastructure impact, as I have documents from the
6 Kauai Department of Water establishing the limited
7 freshwater resource available, and lack of
8 availability for the proposed Hokua Place residences.
9 Specifically, my concerns stem from the fact that
10 there are already over 400 new homes planned and
11 permitted for the development in the same area, which
12 I don't believe was disclosed in the developer's EIS.

13 I'm also concerned, among other things,
14 that the runoff, as an Intervenor and active cultural
15 protection, cultural practitioner and steward with
16 generational knowledge of the area.

17 I would like to present evidence of the
18 impact to the wetlands and streams on the property
19 that will be generated and caused by the excess
20 runoff that this development would create.

21 At this time, in closing, I request the
22 Commission to approve my Petition to Intervene and
23 consider a delay in the tentative rescheduled
24 December 10th document hearing, and the January 6 and
25 7, 2021 hearing since the hearing, in my opinion, is

1 foundational to providing Commission with crucial
2 information relative to its decision-making.

3 I sincerely feel I need more time to
4 prepare for the hearing, and am in the process of
5 securing legal counsel.

6 Thank you, very much.

7 CHAIRPERSON SCHEUER: Commissioners,
8 questions for Mr. Martin?

9 Commissioner Chang.

10 You're muted, Ms. Chang.

11 COMMISSIONER CHANG: Aloha, Mr. Martin.
12 I'm Dawn Chang, one of the Commissioners. Thank you
13 for being here this morning.

14 When you said that your family has lineage
15 in this area, so are you asserting that you have
16 traditional customary practices that you exercise in
17 this area, or that your family has exercised in the
18 area?

19 THE WITNESS: Yes.

20 COMMISSIONER CHANG: Okay. And you
21 currently live on Kauai as well?

22 THE WITNESS: Yes, I have a residence
23 there.

24 COMMISSIONER CHANG: I have no other
25 questions, Mr. Chair. Thank you.

1 CHAIRPERSON SCHEUER: Commissioners,
2 further questions for Mr. Martin?

3 Commissioner Giovanni.

4 COMMISSIONER GIOVANNI: Thank you, Chair
5 Scheuer.

6 Mr. Martin, in your brief testimony you
7 indicated that in your review of the FEIS that the
8 Petitioner neglected to recognize more than 400 homes
9 that are being developed and permitted and that would
10 have an impact on the water issues in the area. Also
11 consistent with the public testimony provided by Ms.
12 Hammerquist.

13 On a related basis, have you had an
14 opportunity to consider the impact to these same
15 developments, the 400-plus developments, might have
16 on the traffic in the area, and whether or not the
17 FEIS adequately addressed the traffic issues in that
18 context? Thank you.

19 THE WITNESS: Yes, I have been concerned
20 about that, but I did not feel to address that
21 specifically here. The traffic definitely is a major
22 concern, because it is extremely congested already,
23 and I don't think that was adequately addressed also
24 in the EIS, as well as many other issues.

25 COMMISSIONER GIOVANNI: If the Commission

1 elects to grant you intervenor status, is it your
2 position that you would be not only able, but intent
3 on addressing those traffic issues as an intervenor
4 in this matter?

5 THE WITNESS: Yes.

6 COMMISSIONER GIOVANNI: Thank you.

7 I have no further questions, Chair.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Giovanni.

10 Commissioners, questions for Mr. Martin?

11 Commissioner Wong followed by Commissioner
12 Cabral.

13 COMMISSIONER WONG: Thank you, Chair.

14 Good morning, Mr. Martin.

15 THE WITNESS: Good morning.

16 COMMISSIONER WONG: The question I have is
17 regarding your intervention, in such that you're
18 talking about issues and cultural issues; correct?

19 THE WITNESS: It was a little garbled there
20 on your statement.

21 COMMISSIONER WONG: So intervention is only
22 on petitions and cultural issues; is that correct?

23 THE WITNESS: No.

24 COMMISSIONER WONG: So what are you
25 requesting?

1 THE WITNESS: It's very garbled. I'm
2 unable to clearly hear your question.

3 CHAIRPERSON SCHEUER: The question, Mr.
4 Martin, is what specific issues are you wishing to
5 have your intervention focus on?

6 THE WITNESS: Well, they are outlined in
7 my, you know, in my three-page filing of the 27th,
8 and cultural, environmental, social impact. My
9 residence there on the island, as an example, have
10 20 years with a custom upholstery, and just providing
11 services.

12 I know many, many, many hundreds of people
13 in the area, so those are, you know, those are -- and
14 health and safety issues, also.

15 COMMISSIONER WONG: So the question I have
16 is more that -- how different the other person.

17 CHAIRPERSON SCHEUER: I know the audio is
18 really bad for some reason in the LUC hearing room.

19 I believe Commissioner Wong, and you can
20 like gesture if I'm getting it wrong, Commissioner
21 Wong, I believe the question is:

22 How do you believe your perspective or
23 interests are distinguishable from those of the
24 general public?

25 THE WITNESS: Yes. Because I descend from

1 the area, I'm a cultural practitioner of the area
2 also from mauka to makai. At one time I was in the
3 newspaper holding my throw net, avid throw net
4 fisherman and planter involved in, actually by the
5 Mohikea Stream, involved in the long time project to
6 restore some of the fishpond access that's in the
7 back there.

8 CHAIRPERSON SCHEUER: Did I capture,
9 Commissioner Wong, the question correctly?

10 COMMISSIONER WONG: Yeah.

11 So the other question I have is, did you
12 talk, or did you put any testimony in during the EIS
13 process?

14 THE WITNESS: No.

15 COMMISSIONER WONG: Do you -- did you know
16 about the EIS process, sir?

17 THE WITNESS: Yes, I was familiar with it.
18 I am somewhat familiar.

19 COMMISSIONER WONG: So I guess at that time
20 you could have put in your issues on the EIS process.
21 So I just was wondering why you didn't at that time?

22 THE WITNESS: At that time I was unaware of
23 the public component.

24 COMMISSIONER WONG: That's it. Thank you,
25 Mr. Martin. Thank you, Mr. Chair.

1 THE WITNESS: Thank you.

2 CHAIRPERSON SCHEUER: Thank you,
3 Commissioner Wong.

4 Commissioner Cabral followed by
5 Commissioner Okuda.

6 VICE CHAIR CABRAL: Thank you, Mr. Martin,
7 for being with us and expressing your concerns.

8 In reviewing some of the notes I've taken
9 from information received, it looks like you're
10 wanting to intervene on a large series of items,
11 including what you've already previously stated, you
12 have your cultural concerns; you have traffic
13 concerns. You have concerns for agricultural usage,
14 the water concerns, sewer concerns, traffic, of
15 course. And then you indicated also concerns over
16 view lines and social input. And then you just now
17 referenced health and safety.

18 So I'm just kind of -- and I understand
19 you've been involved during opposition to this for
20 many, many years, looks like from 2011.

21 So have you obtained additional, like,
22 professional information in regards to these traffic
23 studies or water studies, or sewer, land use studies
24 or something?

25 My question is, is it you just based on

1 your opinion of this, because we're going to be
2 listening to information from the County and from the
3 State who we expect to have professional opinions
4 from.

5 So what is your expertise in these fields,
6 or do you have experts in these fields that are going
7 to be able to substantiate your personal opinion?

8 THE WITNESS: I have been gathering
9 contacts to have my own personal -- like an example,
10 hydrologist. And that would be separate from, maybe
11 somewhat similar, but would add onto to anything that
12 would be provided by the professional, you know,
13 bodies like the County.

14 I'm actually -- thank you for your
15 question, because I'm gathering these, and becoming
16 aware of these, the various details of information as
17 you've heard from Rayne. And I'm in concert and
18 consultation with them.

19 And that would be my answer.

20 VICE CHAIR CABRAL: Thank you very much.

21 CHAIRPERSON SCHEUER: Commissioner Okuda.

22 COMMISSIONER OKUDA: Thank you, Mr. Chair.

23 Thank you, Mr. Martin, for participating.

24 You heard the testimony of the two prior
25 public witnesses. Is that correct?

1 THE WITNESS: I didn't get the first part
2 of your question, your opening statement, the audio
3 --

4 COMMISSIONER OKUDA: I'm sorry. My first
5 statement was to thank you for participating. But my
6 question was whether or not you heard the public
7 testimony of the public witnesses?

8 THE WITNESS: Yes.

9 COMMISSIONER OKUDA: They mentioned that
10 they were willing to work with you if your petition
11 or request for intervention was granted or is
12 granted.

13 Are you willing to work with them and
14 others in the community to prepare yourself for
15 whatever presentation you need to make if your
16 Petition for Intervention is granted?

17 THE WITNESS: Yes, I am aware. I did hear
18 the comments of the two previous, Rayne and Bridget,
19 and I'm grateful for their appearing before this
20 Commission on this day to support my Petition to
21 Intervene.

22 COMMISSIONER OKUDA: Now, we really try to
23 encourage public participation, because, at least for
24 me personally, democracy functions better if all the
25 citizens have a say in what takes place.

1 But the Land Use Commission also has to
2 follow certain legal standards and certain rules set
3 out by the legislature, by statute in the
4 administrative rules, and also case law which might
5 be set out by the Hawaii Supreme Court.

6 If your intervention is granted, are you
7 willing to also abide by these rules and laws to the
8 best of your ability?

9 THE WITNESS: Absolutely, yes, yes.

10 COMMISSIONER OKUDA: And finally, Mr.
11 Martin -- no, actually that concludes all the
12 questions.

13 Thank you very much, Mr. Martin, for your
14 presentation.

15 Thank you, Mr. Chair, no further questions.

16 CHAIRPERSON SCHEUER: Thank you,
17 Commissioner Okuda.

18 Commissioners, are there further questions
19 for Mr. Martin at this time? If not, Mr. Martin, I
20 have a couple questions.

21 I'll disclose first, when I worked at the
22 Office of (indecipherable) and I was able to work
23 with Marian --

24 THE WITNESS: Yeah, my mother, all right.

25 CHAIRPERSON SCHEUER: Nice to make your

1 acquaintance.

2 THE WITNESS: Thank you.

3 CHAIRPERSON SCHEUER: I've reviewed your
4 Petition to Intervene, and I want to draw attention
5 to one set of issues that you raised, because if we
6 can either grant or deny your Petition to Intervene
7 and we grant it, we can limit the subject matter on
8 what you intervene. We can say you can comment on
9 these matters, but not on these matters.

10 And you were explicit in your Petition to
11 Intervene that you wanted to raise issues of U.S.
12 Constitutional law and relationship. I don't have --
13 let me pull up the document so I don't misquote you.

14 I'm an independent Hawaiian elder concerned
15 about the environmental impact and potential
16 illegalities that would arise in this case under the
17 Constitution of the United States of America, and the
18 laws of Hawaii with respect to Hawaiian national
19 usage.

20 And just for the sake of clarity, I would
21 like you to expand a little bit upon what you mean by
22 that, and what your hope is to intervene on that
23 matter so that we can make a meaningful decision on
24 whether to grant or deny that portion of your
25 request.

1 THE WITNESS: The document I got from the
2 Bureau of Conveyances with respect to the substantial
3 evidence that those lands in question are actually
4 under trust obligation of the State of Hawaii, I
5 think is the trust of -- there are many other issues,
6 but that in particular, that there's -- without that
7 information, those -- what would result would be
8 violation to the constitution and laws of the State
9 of Hawaii.

10 CHAIRPERSON SCHEUER: So to follow up --

11 THE WITNESS: Especially with respect to
12 usage in reviewing the terms of the lease from the
13 Crown Land Estate by the Crown Land Commissioners in
14 1877. There were certain issues expressed by the
15 first party being the heirs to the estate, regarding
16 the protection of forest and trees, and especially
17 with respect to the environment. And so that is an
18 issue of usage, yes. An issue of usage of
19 historically usage that was qualified and identified
20 at the time of the Hawaiian kingdom. And that the
21 Hawaiian national usage that I refer to is actually
22 initially was part of the Republic of Hawaii in the
23 Constitution. It was part of the -- it's something
24 that the State can legally, technically refer to, and
25 this is -- that's the nature.

1 And, of course, it extends to all kinds of
2 usages, the rights and the history which would be
3 severely affected of gathering, and just the
4 maintenance of the waterways, the type of usage.

5 So this is the extent, nature of my
6 reference to that term.

7 CHAIRPERSON SCHEUER: Mahalo for the
8 explanation.

9 I just want to be clear that this -- I'm
10 very aware and fully acknowledge that many people who
11 believe that the State of Hawaii and federal
12 government are not properly ceded in the Hawaiian
13 Islands, and that there continue to exist a Hawaiian
14 nation.

15 But for us, for my ability to participate
16 as a member of this Commission, and now as Chair, one
17 of the things I have to do is I have to swear an oath
18 of allegiance to the State of Hawaii and U.S.
19 Constitution to uphold it.

20 So we're bound within U.S. and State law in
21 our ability to talk about things. Claims that might
22 arise from outside of that are outside of our ability
23 to have a discussion about within this venue.

24 THE WITNESS: Yes, I am aware of your
25 limitations and the boundaries that you operate under

1 and respectfully so.

2 CHAIRPERSON SCHEUER: Mahalo.

3 Can I ask you a little bit more about two
4 of the cultural practices, and just make sure that we
5 have on the record, you have mentioned that you are,
6 I believe, a fisherman in makai areas, areas makai of
7 this?

8 THE WITNESS: Directly makai, yes.

9 CHAIRPERSON SCHEUER: And you briefly
10 mentioned fishponds. But I didn't quite follow what
11 you were describing.

12 So can you describe your, on broad a
13 spectrum, your cultural practice?

14 THE WITNESS: Okay. Given that the land in
15 question is actually on the slope which would be
16 important -- well, I would say about 15-degree
17 slope -- there are very many wetlands and fishponds
18 that still exist.

19 As an example, in back of where the boats
20 launch in Kapaa. In the back there, there are many
21 fishponds, endangered species habitat, the ko'ae ula
22 is there, and specifically to me by the Mohikea
23 Stream, which was an entrance to, of course, Mohikea,
24 historically the navigator, and the entrance to the
25 fishponds there, and from extending from there all

1 the way over into the Wailua ahupua'a.

2 I have been very familiar with the, you
3 know, kind of the delicacy that is required by
4 developers.

5 And there were issues I was involved in,
6 and currently I'm registered with the Department of
7 Interior in Washington D.C. as a caretaker and lineal
8 descendants to -- within the historic designation of
9 Wailua Nui ahupua'a complex.

10 CHAIRPERSON SCHEUER: If I may, it was a
11 briefer question, perhaps.

12 Just what is the nature of your cultural
13 practices associated with that site?

14 MR. LIKO: Limu, fishponds and actual
15 fishing, planting of coconut groves, removing species
16 that have invaded the area, and kalo and dryland
17 kalo, and very close with Dr. De La Pena before he
18 retired. So I'm very much a practitioner in the
19 importance of kalo.

20 CHAIRPERSON SCHEUER: Mahalo. I'm going to
21 pause for now and recognize Commissioner Giovanni.

22 COMMISSIONER GIOVANNI: Thank you, Chair.

23 I want to revisit a question that
24 Commissioner Okuda asked. Not sure I got a clear
25 response from Mr. Martin, so I want to make sure it's

1 very clear for the record.

2 THE WITNESS: I'm not hearing.

3 COMMISSIONER GIOVANNI: Can you hear me
4 okay, Mr. Martin?

5 THE WITNESS: Now, I can, but I did not.

6 COMMISSIONER GIOVANNI: Commissioner Okuda
7 asked or indicated that in the public testimony we
8 heard today that representatives from the Sierra Club
9 Kauai, and the Wailua-Kapaa Neighborhood Association
10 had offered, not only support for your intervention,
11 but that they would work with you to support your
12 intervention if it so be granted.

13 The question was whether you would welcome
14 and utilize their assistance in your intervention as
15 the Sierra Club and Wailua-Kapaa Neighborhood
16 Association.

17 THE WITNESS: Yes, I would.

18 COMMISSIONER GIOVANNI: Thank you, that's
19 all.

20 CHAIRPERSON SCHEUER: Are there further
21 questions, Commissioners, for Mr. Martin right now?

22 If not, it is 9:54 A.M., I'm going to
23 suggest we take a ten minute recess and we
24 reconvene -- it's 9:55 -- at 10:05 A.M. and conclude
25 any further questions for Mr. Martin.

1 (Recess taken.)

2 CHAIRPERSON SCHEUER: It's 10:05. We're
3 back on the record.

4 Commissioners, are there any further
5 questions for Mr. Martin at this time? Seeing none.
6 Let's hear from Mr. Yuen on behalf of the Petitioner.

7 MR. YUEN: Thank you, Mr. Chairman.

8 Let me object to the intervention, in
9 particular we object to consideration of discussion
10 of any claims based on a violation of the
11 constitution or Native Hawaiian title issues, since
12 these issues are outside of the jurisdiction of the
13 Commission.

14 Keeping my remarks brief.

15 CHAIRPERSON SCHEUER: Very.

16 Commissioners, are there questions for Mr.
17 Yuen?

18 Commissioner Chang followed by Commissioner
19 Okuda. You're muted, Commissioner Chang. We haven't
20 been meeting enough, and we are all getting out of
21 practice, I guess.

22 COMMISSIONER CHANG: I apologize. I
23 apologize.

24 Thank you, good morning, Mr. Yuen. Would
25 you agree that under 15-15-52(d) intervention shall

1 be liberally granted, freely granted?

2 MR. YUEN: Yes, Commissioner.

3 At the time that the petition was
4 submitted, Mr. Martin did not indicate any residence
5 on Kauai or anything directly interested in the
6 subject matter of the petition.

7 We understand the standards for granting
8 intervention.

9 COMMISSIONER CHANG: In light of the
10 testimony by Mr. Martin this morning that:

11 (1). He is a resident of Kauai;

12 (2). He is a cultural practitioner;

13 (3). He's got some family lineage to the
14 area.

15 Do you still object to his participation,
16 his intervention?

17 MR. YUEN: I think our position, formally
18 for the record, but I'm purposely keeping my remarks
19 brief because my intervention is not particularly
20 strenuous in this area.

21 COMMISSIONER CHANG: That's good to know.
22 For the record --

23 CHAIRPERSON SCHEUER: Sorry, Commissioner
24 Chang, if I may briefly interject.

25 Mr. Martin, it might be Ms. Teale's hand is

1 somewhat distracting. Thank you.

2 Please proceed.

3 COMMISSIONER CHANG: Thank you.

4 So, Mr. Yuen, under the same rules it says,
5 the applicant for intervention.

6 Is there anyone else in the proceeding that
7 represents the interests that Mr. Martin represents,
8 in particular, interests related to Native Hawaiian
9 rights?

10 MR. YUEN: I don't -- (indecipherable).

11 COMMISSIONER CHANG: I'm sorry, I didn't
12 hear your testimony. It kind of garbled.

13 MR. YUEN: I said I don't believe so.

14 COMMISSIONER CHANG: Thank you very much,
15 Mr. Yuen. I appreciate your comments.

16 Mr. Chair, I have no further questions.

17 CHAIRPERSON SCHEUER: Thank you,
18 Commissioner Chang.

19 Commissioner Okuda.

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

22 Mr. Yuen, thank you very much for being
23 present. I have some follow-up questions to
24 Commissioner Chang's question about the standard for
25 intervention.

1 Is there any differences in your mind as
2 far as the applicable standard between the standard
3 which is applied for a judicial intervention and
4 intervention in an administrative proceeding such as
5 the Land Use Commission? We apply basically the same
6 standard of review?

7 MR. YUEN: I believe you do. The standard
8 that goes way back to the East Diamond Head
9 Association case from the late 1960's I think set the
10 standard for intervention in both land use judicial
11 cases, and I think the Commission has followed that
12 standard over the years.

13 COMMISSIONER OKUDA: And when applying the
14 judicial standard of intervention, the courts also
15 look at the technical legal issue of standing,
16 correct?

17 MR. YUEN: Yes.

18 COMMISSIONER OKUDA: And just so that we
19 have the record clear, you know, I read your
20 Opposition Memorandum, and I appreciate your
21 clarification that you gave to Commissioner Chang
22 about your client's position.

23 I didn't see any citation to any cases, but
24 did you look at this case, Life of the Land versus
25 Land Use Commission of State of Hawaii, that's found

1 at 63 Hawaii 166, a 1981 Hawaii Supreme Court case?

2 MR. YUEN: I'm familiar with the case.

3 COMMISSIONER OKUDA: If you can just
4 indulge me, let me just read two rather short
5 paragraphs from the case and a footnote, and if you
6 can tell me whether what I read or what I'm going to
7 read is an accurate statement of the law which should
8 be considered by the Land Use Commission in
9 determining Mr. Martin's petition or application for
10 intervention.

11 And let me start here. It says, and I
12 quote:

13 "There has been an unmistakable parallelism
14 in the substance of our standing decisions involving
15 the particular interests. Life of the Land seeks to
16 protect, and in the substance of related federal
17 decision" -- and there is a citation, and then the
18 Supreme Court continues.

19 "While the term", quote, 'injury in fact',
20 close quote, "may not appear in their text, our
21 decisions have afforded standing on a basis at least
22 coextensive with federal doctrine, where harm to such
23 interest has been alleged. This is not to suggest
24 our standing requisites will follow every twist or
25 turn in the development of federal doctrine, our

1 touchstone remains", quote, 'the needs of justice',
2 close quote, and then there's, "see discussion."

3 But let me also read this paragraph, quote.

4 "Life of the Land and its members have a",
5 quote, 'stake', close quote, "in the outcome of the
6 alleged controversy adequate to invoke judicial
7 intervention even though they are neither owners nor
8 adjoining owners of land reclassified by the Land Use
9 Commission in the 1974 boundary review. What the
10 Land Use Commission argues are generalized interests
11 have been previously recognized and pleaded here as
12 personal and special interest or right."

13 And there's a footnote which might be worth
14 repeating here.

15 And that footnote says: "See Hawaii State
16 Constitution Article IX, Section 9, Environmental
17 Rights Reading: Each person has the right to a clean
18 and helpful environment as defined by laws relating
19 to environmental quality, including control of
20 pollution and conservation, protection and
21 enhancement of natural resources. Any person may
22 enforce this right against any party, public or
23 private, through appropriate legal proceedings
24 subject to reasonable limitations and regulations as
25 provided by law." And the footnote continues for

1 another sentence.

2 Would you agree that that part of the
3 decision of the Hawaii Supreme Court, which I read,
4 suggests that Mr. Martin's petition for intervention
5 should be granted?

6 MR. YUEN: I could certainly see the Land
7 Use Commission granting this petition.

8 COMMISSIONER OKUDA: I do agree with you
9 that the Land Use Commission is an administrative
10 agency with limits on its subject matter, and we
11 cannot act on matters which are not part of the
12 subject matter.

13 But would you also agree that our
14 Chairperson seems very capable in limiting or
15 excluding extraneous types of evidence which would be
16 outside of our jurisdiction, or would be simply
17 wasting time that, you know, if it comes down to
18 things that are being brought up which are outside of
19 are jurisdiction, our Chair has not only the ability,
20 but the authority to keep that type of discussion
21 from spiraling into a place it shouldn't go?

22 MR. YUEN: I have great confidence in the
23 abilities of the Chair. I suggest, however, that
24 should the Commission grant the intervention,
25 specifically preclude the -- (indecipherable) -- from

1 raising issues of constitutionality or Hawaiian
2 sovereignty or title issues of that sort, since the
3 Petitioner acquired foreclosure sale, and the
4 foreclosure sale from which we acquired title
5 addressed all prior claims of title to the land.

6 So I just submit that title claims of
7 regulations of land use based on the Constitution of
8 the State of Hawaii are not generally been the
9 jurisdiction of the Land Use Commission to address.

10 COMMISSIONER OKUDA: Yeah, I don't
11 necessarily disagree with you. But would you agree
12 with me that the Chairperson that we currently have
13 is capable of making those types of decisions on
14 evidence or testimony which, frankly, is irrelevant
15 to the proceedings, that he can make the decision at
16 that time, based on what's presented before him? So
17 we have a clear record as far as what is not being
18 considered, that he has the smarts and the ability to
19 do so?

20 MR. YUEN: As I said, I have no doubts
21 about the abilities of the Chair. It's just that,
22 you know, I would prefer not to have to prepare to
23 defend against such issues on the chance that the
24 Chair allows them to proceed.

25 It's a matter of just how much preparation

1 or what kinds of issues we have to prepare for in
2 addition to the land use issues that are normally
3 considered by the Commission in determining any
4 petition for reclassification.

5 COMMISSIONER OKUDA: And my final question,
6 Mr. Yuen, is: Having heard Mr. Martin's
7 presentation, has there been any indication in the
8 record that Mr. Martin would not, in fact, follow the
9 direction of the Chair?

10 In other words, Mr. Martin might not agree,
11 but if the Chair were to make a ruling that, you
12 know, he's not permitted to -- for reasons such as
13 subject matter jurisdiction, he's not permitted to
14 make a presentation on certain points or his evidence
15 would be excluded. Is there any evidence that Mr.
16 Martin is just going to be disruptive and not follow
17 the direction of the Chair?

18 MR. YUEN: I certainly haven't seen any
19 thing to indicate that.

20 COMMISSIONER OKUDA: Thank you very much,
21 Mr. Yuen; and thank you very much, Mr. Chair. No
22 further questions.

23 CHAIRPERSON SCHEUER: Thank you, very much.

24 Commissioner Ohigashi followed by
25 Commissioner Chang.

1 COMMISSIONER OHIGASHI: I was reading your
2 memorandum, and on page three on the bottom you state
3 that: In addition, County of Kauai Planning
4 Department and the Office of Planning adequately
5 represent the interests expressed by Mr. Martin.
6 Main concerns are of general concerns of all
7 development projects, including risk and
8 environmental resources, water and traffic. These
9 interests are already represented by the State and
10 County.

11 Do you have any other limitations other
12 than the, I guess, the constitutional argument that
13 you believe should be placed in an order regarding
14 Mr. Martin's participation, if allowed to intervene?

15 MR. YUEN: I have no objections to the
16 Commission or so ordered.

17 COMMISSIONER OHIGASHI: I'm trying to --

18 MR. YUEN: I said I have no objection.

19 COMMISSIONER OHIGASHI: No objections to
20 him participating fully other than with the
21 limitation that -- the constitutional issues, is that
22 what you said?

23 MR. YUEN: Yeah. I'm just suggesting that
24 the Commission limit his participation to what would
25 normally be within the Commission's jurisdiction, but

1 preclude raising constitutional or issues related to
2 Hawaiian sovereignty and that sort of thing.

3 COMMISSIONER OHIGASHI: Thank you.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Ohigashi.

6 MR. YUEN: This is not the first time the
7 Commission has been faced with those claims.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Ohigashi.

10 Commissioner Chang.

11 COMMISSIONER CHANG: Thank you.

12 Mr. Yuen, I just want to clarify. When you
13 say "constitutional issues", I want to be clear that
14 you're not suggesting that Mr. Martin is precluded
15 from raising issues related to Article XII, Section
16 7, he's indicated that he is a cultural practitioner,
17 that under the constitution as a -- if he can
18 establish that he has traditional customary
19 practices, that is a constitutionally protected
20 right.

21 You're not suggesting he's not permitted to
22 argue that, are you?

23 MR. YUEN: What I'm suggesting is that if
24 he says that any reclassification may be a violation
25 of original lands because these are crown lands

1 that (indecipherable) -- has long since alienated
2 away, those kinds of issues should be precluded
3 from -- (indecipherable).

4 COMMISSIONER CHANG: I guess, let me just
5 ask one more point.

6 Notwithstanding the manner in which the
7 Petitioner obtained the land, would you agree that
8 their lands are encumbered with the rights under
9 Article XII, Section 7, that it's not necessarily a
10 title issue, but it is a constitutionally guaranteed
11 right that if he can establish as a cultural
12 practitioner. So it's not a sovereignty, but it is

13 MR. YUEN: If he can establish rights as a
14 cultural practitioner that's undeveloped land with
15 those rights, yes.

16 COMMISSIONER CHANG: I just want to be very
17 clear that the constitutional objections you have are
18 not -- do not preclude him from raising Article XII,
19 Section 7, and you seem to agree with that?

20 MR. YUEN: No. Yes, I agree.

21 COMMISSIONER CHANG: Thank you, Mr. Yuen.
22 Thank you.

23 CHAIRPERSON SCHEUER: Commissioners,
24 further questions for Mr. Yuen?

25 If not, Mr. Yuen, I am trying to understand

1 some of what you said, because there were three
2 issues you mentioned which -- I just want to make
3 sure I really clearly understand what you're saying,
4 because when you say things like sovereignty stuff,
5 I'm not exactly sure what the bounds are of what your
6 concerns are.

7 So you said constitutional issues,
8 sovereignty matters and title issues.

9 I do believe that actually it's very
10 squarely within the Land Use Commission's
11 jurisdiction that an owner of a property is somebody
12 who has the right to bring a petition. But to be
13 very clear for you and Mr. Martin, the standard LUC
14 has on that, we're not going to hold a hearing on the
15 validity of your title report. If you show us your
16 title record, and you're assured title, that exists,
17 you say this is our property, you will have met the
18 needs that we have to establish that you have the
19 right to bring this petition forward. And that would
20 be the end of our inquiry in relationship to title.

21 Does that make sense to you?

22 MR. YUEN: Yes.

23 CHAIRPERSON SCHEUER: Are you objecting to
24 presenting us with your title certificate as part of
25 these proceedings?

1 MR. YUEN: I believe we can provide you
2 with some title insurance policy. Maybe -- it may be
3 old, because it may date when we acquired the
4 property, but it would show our title to the
5 property.

6 CHAIRPERSON SCHEUER: I would just note
7 this is not --

8 MR. YUEN: By way an analogy, years ago --

9 CHAIRPERSON SCHEUER: Go ahead.

10 MR. YUEN: A number of years ago someone
11 tried to intervene in a Land Use Commission boundary
12 amendment petition that I had on the basis that he
13 was the heir of a grantee who acquired title to the
14 entire Island of Maui, and he wanted the Land Use
15 Commission to hear his claim.

16 CHAIRPERSON SCHEUER: So to be clear --

17 MR. YUEN: -- Land Use Commission did not
18 grant intervention for that.

19 CHAIRPERSON SCHEUER: We are not equipped
20 nor capable or empowered to determine any claims to
21 title. But we do review people's title records.

22 I would note for the record, and for you,
23 that issues of whether or not the owner is the actual
24 owner of title has come up in questions not involving
25 any native Hawaiian concerns.

1 In Waikoloa Mauka we were concerned whether
2 or not the person who was showing up in front us
3 continued to own the property that they were seeking
4 to act on or they had otherwise encumbered it.

5 So you are not objecting to us having a
6 narrow inquiry as to title, just you got to show us
7 that you own this property. You're not objecting to
8 that?

9 MR. YUEN: If we did include as exhibit our
10 deed to the property, that's been filed with the
11 Commission.

12 CHAIRPERSON SCHEUER: And by constitutional
13 issues, you're really -- I guess I didn't quite
14 understand what you said when you said you would
15 object to any raising of Federal or State
16 constitutional issues. Could you rephrase for
17 clarity?

18 MR. YUEN: I guess what I heard the
19 intervenor raise was claims of putting the use of the
20 land to agriculture, raising the standard of -- or
21 raising the question of whether the
22 (indecipherable) -- to uses consistent with a public
23 trust, and I don't believe those kinds of issues are
24 within the purview of the Land Use Commission, if
25 this is private property, and not State land to a

1 public trust.

2 CHAIRPERSON SCHEUER: Sorry, things like
3 water, however, the public trust applies to
4 regardless of property boundary, correct?

5 MR. YUEN: Yes, yes. But use of the land
6 as opposed to use of water.

7 CHAIRPERSON SCHEUER: I think understand
8 that objection.

9 And finally, just what I perceive as your
10 being shorthand for sovereignty, when you said
11 "sovereignty issues", or something like that, you
12 don't want this proceeding to be the venue for
13 discussion over whether or not the State of Hawaii
14 and Federal Government are legitimately ceded in the
15 State of Hawaii; is that correct?

16 Because sovereignty is sort of a really
17 broad term, but that's really what you're talking
18 about, or have I misunderstood?

19 MR. YUEN: Yes, I don't think any
20 (indecipherable) -- should be at least before the
21 Land Use Commission, raise the question of whether
22 any titles in the State have validly due to the
23 validity of the overthrow of Queen Liliokalani.

24 CHAIRPERSON SCHEUER: Okay. I agree with
25 you on that regard.

1 But I just wanted to be clear, because
2 sovereignty means a lot of things to a lot of people,
3 and there might be things that people consider to be
4 issues of sovereignty that do actually fall within
5 our current jurisdiction.

6 I have nothing further. Is there anything
7 further for Mr. Yuen? If not, thank you very much.

8 We will hear from Mr. Donahoe of the County
9 of Kauai?

10 MR. DONAHOE: Thank you, Chair.

11 Given the Petition, the testimony, the
12 County of Kauai's role as well as the case law, and
13 especially Life of the Land stated by Commissioner
14 Okuda, County is not objecting to the Petition by Mr.
15 Martin.

16 County appreciates Mr. Martin's testimony
17 and presentation here today.

18 CHAIRPERSON SCHEUER: Thank you very much,
19 Mr. Donahoe.

20 Are there questions for County of Kauai?

21 And again, sorry, Mr. Martin. I realize
22 you're trying to record or something, your assistant
23 was recording it, it's a bit distracting. Thank you.

24 Questions for the County of Kauai,
25 Commissioners? Commissioner Cabral.

1 VICE CHAIR CABRAL: Yes, thank you.

2 Mr. Donahoe, by your sort of open-blanket
3 statement, you're indicating that you have no
4 objection to all of the aspects of his report to be
5 an intervenor without limitation?

6 MR. DONAHOE: At this point, yes. Yes,
7 Commissioner.

8 VICE CHAIR CABRAL: Okay, thank you.

9 CHAIRPERSON SCHEUER: Anything further? I
10 will say for the -- not particularly picking on Mr.
11 Donahoe, only that because your audio has been a
12 little bit worse than everybody else, I encourage
13 everybody who is participating in this proceeding,
14 what tends to work best is a computer with a headset
15 or in a room just by yourself. And I have found not
16 using wifi, but actually using a wired connection is
17 what provides us an ability to maintain a
18 visual/audio signal.

19 MR. DONAHOE: Thank you, Chair.

20 CHAIRPERSON SCHEUER: Not picking on you,
21 though.

22 Office of Planning, Ms. Takeuchi Apuna.

23 MS. APUNA: Thank you, Chair.

24 Mr. Martin's Petition to Intervene is made
25 a permissive right, pursuant to HAR 15-15-52(d)

1 "which shall be freely granted" unless the Commission
2 determines that:

3 1. Mr. Martin's position is substantially
4 the same as the position of a party admitted; and

5 2. His admission will render the
6 proceedings inefficient and unmanageable.

7 Mr. Martin has demonstrated that his
8 position is different from that of the already
9 admitted parties, and if limited in scope, Mr.
10 Martin's admission as an intervenor should not render
11 the proceedings inefficient and unmanageable.

12 If admitted as an intervenor, Mr. Martin's
13 participation should be limited in scope to those
14 items of concern he has mentioned in his Petition and
15 during this hearing, namely:

- 16 * water resources
- 17 * view planes
- 18 * maintenance of prime agricultural lands
- 19 * vehicular transportation
- 20 * cultural practices
- 21 * environment
- 22 * health and safety

23 Based on the foregoing, OP has no objection
24 to Mr. Martin's Petition to Intervene.

25 Lastly, OP would like to know how much more

1 time Mr. Martin would need to prepare and possibly
2 secure counsel, if admitted as an intervenor.

3 Thank you.

4 CHAIRPERSON SCHEUER: Thank you.

5 Questions for Ms. Takeuchi, starting with
6 Commissioner Chang.

7 COMMISSIONER CHANG: Thank you.

8 Dawn, based upon your listing of issues, in
9 your mind, what would he be precluded from outside of
10 that list? What would he not be permitted -- what
11 issues would he not be permitted to participate in?

12 MS. APUNA: I can't -- I mean, I don't know
13 of any -- I guess it's a trick question. I think he
14 should be limited to those issues, and I can't really
15 think of anything that he would necessarily be
16 precluded that he's mentioned that we should pursue.

17 I think everything that he has asked to
18 speak on in his scope, but I'm not sure what -- I
19 think everything else should be off limits.

20 COMMISSIONER CHANG: I guess that's the
21 difficulty I have, is monitoring what is everything
22 else.

23 So as we go through the hearing, is there
24 going to be sort of like a traffic cop who says
25 that's outside of the scope of his issues; or that

1 is -- as opposed to the County's position is without
2 limitation.

3 So I'm just wondering what do you believe
4 he's not permitted to participate in or ask or raise?

5 MS. APUNA: Well, I think as far as, you
6 know, the traffic cop, I think that would be for the
7 Parties, you know, Petitioner, the County or maybe
8 Petitioner and OP and the Chair to -- and even the
9 Commissioners -- if they feel that there are subjects
10 that Mr. Martin will be delving into that are not
11 aligned with his position, and that would seem to
12 maybe duplicate certain issues, or would not be
13 helpful to the Commission in providing a fuller, you
14 know, view, then I think that that would be the role
15 of the Parties and the Chair.

16 But I'm -- I think if we just limit to the
17 list of issues, and we believe that it's becoming
18 unmanageable or inefficient, then the Parties or the
19 Chair can call it out and say, let's get back on
20 track.

21 COMMISSIONER CHANG: But at this point in
22 time, you cannot identify any specific issues that
23 you believe he would be precluded from, you can't
24 identify any?

25 MS. APUNA: Not necessarily.

1 COMMISSIONER CHANG: I can't either. When
2 I think about the EIS, I think he's covered just
3 about all of them. So all right. I have no further
4 questions.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Chang.

7 Are there further questions for Ms. Apuna?

8 COMMISSIONER WONG: Mr. Chair.

9 CHAIRPERSON SCHEUER: Commissioner Wong.

10 COMMISSIONER WONG: Not a question for Ms.
11 Apuna, but I would like to, after everyone has their
12 chance to ask OP questions, I would like to make a
13 motion for executive session, and I'll say more after
14 everyone has a chance.

15 CHAIRPERSON SCHEUER: I would like to, if
16 there's no objections from Mr. Yuen or the County, I
17 would actually like to direct a question to Mr.
18 Martin, which is essentially a repeating of the
19 question raised by Ms. Apuna, which is how long do
20 you believe you need to prepare to obtain outside
21 counsel and prepare for hearing, if your petition is
22 granted in whole or in part?

23 MARTIN: Well, I would imagine maybe to
24 February, possibly March.

25 CHAIRPERSON SCHEUER: That's your response?

1 Okay.

2 Sorry, OP, I'm going to sort of translate
3 here. Did you have further followup in that regard?

4 MS. APUNA: No. I think that's sufficient.
5 Thank you.

6 CHAIRPERSON SCHEUER: Thank you, Mr.
7 Martin; thank you, Ms. Apuna.

8 Commissioner Ohigashi.

9 COMMISSIONER OHIGASHI: I was wondering,
10 the January 10th date -- I think it was January 10th
11 or something like that -- was for the Motion for
12 Protective Order. And I think the Intervenor, Mr.
13 Martin, was asking for it to be moved.

14 I don't see a reason to move it at this
15 point in time, but I would appreciate to hear from
16 Mr. Martin why it should be moved.

17 CHAIRPERSON SCHEUER: Noting Commissioner
18 Wong wants to ask a question following Commissioner
19 Ohigashi.

20 Mr. Martin.

21 THE WITNESS: I did not hear the question
22 fully.

23 CHAIRPERSON SCHEUER: Why do you request
24 additional time to respond to the Motion for
25 Protective Order?

1 THE WITNESS: I would like to confer with
2 Ms. Hammerquist and the others to be able to
3 consolidate the position what would be the most
4 appropriate time, and also I haven't received, you
5 know, the three items --

6 CHAIRPERSON SCHEUER: Mr. Ohigashi.

7 COMMISSIONER OHIGASHI: Someone is talking
8 in the background.

9 THE WITNESS: I would like time to consult
10 with Ms. Hammerquist regarding this, and I still need
11 to receive the documents that I have not received
12 from the developer. And so that's my response.

13 CHAIRPERSON SCHEUER: Commissioner Wong.

14 COMMISSIONER WONG: Chair, due to this line
15 of questioning and others previously, I would like to
16 move to go into executive session to see what is our
17 ability to grant an extension of time with our legal
18 counsel.

19 CHAIRPERSON SCHEUER: There's a motion
20 before us to go into executive session to meet with
21 the Commission's Deputy Attorneys General in order to
22 consult with them regarding our powers, duties,
23 specifically with regards to the ability or
24 nonability to extend time.

25 It has been made by Commissioner Wong and

1 seconded by Commissioner Ohigashi.

2 Is there discussion on the motion? If not,
3 Mr. Orodener, please poll the Commission.

4 EXECUTIVE OFFICER: Thank you, Mr. Chair.
5 The motion is to go into executive session.
6 Commissioner Wong?

7 COMMISSIONER WONG: Aye.

8 EXECUTIVE OFFICER: Commissioner Ohigashi?

9 COMMISSIONER OHIGASHI: Aye.

10 EXECUTIVE OFFICER: Commissioner Cabral?

11 VICE CHAIR CABRAL: Yes.

12 EXECUTIVE OFFICER: Commissioner Chang?

13 COMMISSIONER CHANG: Aye.

14 EXECUTIVE OFFICER: Commissioner Okuda?

15 COMMISSIONER OKUDA: Yes.

16 EXECUTIVE OFFICER: Commissioner Giovanni?

17 COMMISSIONER GIOVANNI: Aye.

18 EXECUTIVE OFFICER: Chair Scheuer?

19 CHAIRPERSON SCHEUER: Aye.

20 EXECUTIVE OFFICER: Thank you, Mr. Chair,
21 the motion passes unanimously.

22 CHAIRPERSON SCHEUER: So for parties and
23 Intervenor Applicant Martin, as well as members of
24 the audience, what will happen now is that a separate
25 ZOOM meeting invitation will be sent from Mr.

1 Orodenker to the members of the Commission and the
2 Deputy Attorneys General.

3 We will go into executive session with
4 them. You will stay in this room, and I can't tell
5 you how long it's going to be. You're going to have
6 to hang out and wait for us, just like in a normal
7 meeting. Then we come back into this room and
8 continue with our proceedings.

9 So we are moving into executive session.

10 (Executive session.)

11 CHAIRPERSON SCHEUER: It is 11:25. We're
12 going to go back into session, confirming that we
13 have Commissioners Wong, Okuda, Chang, Ohigashi,
14 Cabral, and Giovanni and myself still present.

15 Commissioners, we left off with questioning
16 of Office of Planning's counsel.

17 Are there any further questions for OP, or
18 before we move into deliberations, questions for any
19 of the Parties or the potential intervenor?

20 Commissioners? Commissioner Chang.

21 COMMISSIONER CHANG: Yes, sorry. I just
22 have -- if I could ask the Petitioner, Mr. Yuen, did
23 he see any limitations to the intervenor's
24 participation should that be granted?

25 Do you see any limitations other than not

1 raising the issue of title or sovereignty; do you see
2 any limitations?

3 CHAIRPERSON SCHEUER: Mr. Yuen?

4 MR. YUEN: No, Commissioner. As a
5 practical matter, I think once the intervenor is
6 admitted to the proceedings, the intervenor -- it's
7 hard to draw a line, if you will, to say, for
8 instance, "Oh, the intervenor cannot comment on
9 traffic", to just use an example.

10 COMMISSIONER CHANG: I greatly appreciate
11 that, Mr. Yuen. Thank you very much. I have no
12 other questions.

13 CHAIRPERSON SCHEUER: Thank you very much,
14 Commissioner Chang.

15 Commissioners, questions for any of the
16 parties and the potential intervenor?

17 If not, Commissioners, what is your
18 pleasure on this matter? Commissioner Ohigashi,
19 followed by Commissioner Okuda.

20 COMMISSIONER OHIGASHI: Commissioner Okuda
21 is going to make a motion. I'll leave it to him.

22 CHAIRPERSON SCHEUER: Commissioner Okuda.

23 Mr. Derrickson or Mr. Hakoda, could you
24 make me co-host again, please? I lost the ability to
25 control peoples' hands and audio.

1 Commissioner Okuda.

2 COMMISSIONER OKUDA: Actually, I defer to
3 my senior Commissioner Ohigashi.

4 CHAIRPERSON SCHEUER: Commissioner
5 Ohigashi.

6 COMMISSIONER OHIGASHI: I'm going to move
7 that we grant intervention to Mr. Martin, and I
8 believe -- well, certainly grant intervention to Mr.
9 Martin.

10 I'm also going to include in the motion
11 that Mr. Martin is to file a Motion for Continuance
12 if he desires a continuance outlining what dates may
13 or may not be available to him for hearing on
14 January 6th and 7th. That's all.

15 CHAIRPERSON SCHEUER: A motion has been
16 made by Commissioner Lee Ohigashi of Maui to grant
17 the potential Intervenor's Motion to Intervene
18 subject only to further request if the motion passes
19 for the intervenor to then timely file a Motion for
20 Continuance.

21 Commissioner Okuda, followed by
22 Commissioner Chang -- actually, is there a second to
23 the motion?

24 COMMISSIONER CHANG: I was going to second.

25 CHAIRPERSON SCHEUER: Seconded by

1 Commissioner Chang. Then Commissioner Okuda followed
2 by Chang.

3 COMMISSIONER OKUDA: I would like to speak
4 to the motion as made. I believe that the Chair is
5 capable, competent and able to manage the
6 proceedings. I don't believe that my conclusion is
7 based on speculation.

8 For example, if there was ever a hearing
9 where the hearing could have gone, to use a
10 colloquial term, "sideways", where people would
11 absolutely lose faith in the fairness of the
12 procedure and proceeding, it would have been the
13 Petition filed by the Kanacheles regarding a Mauna Kea
14 issue. The Chair very skillfully handled that.

15 That hearing had many contentious and
16 controversial issues. I don't believe -- my
17 observation was that everyone generally went away
18 from the hearing feeling that the proceedings were
19 conducted fairly, and that's the credit to the Chair.

20 So I believe that the motion, as stated,
21 will allow the Chair flexibility also to properly
22 manage the proceeding.

23 I believe the case law and the statute,
24 administrative rules, make clear that Petitioner --
25 I'm sorry -- Mr. Martin, has demonstrated the proper

1 foundation for intervention.

2 So for those reasons, I'm supporting the
3 motion. Thank you, Mr. Chair.

4 CHAIRPERSON SCHEUER: Commissioner Chang?
5 No.

6 Commissioner Ohigashi, do you wish to speak
7 to your motion?

8 COMMISSIONER OHIGASHI: I agree with
9 Commissioner Okuda, and would implore the parties, or
10 I would suggest to the parties that Land Use
11 Commission is of limited jurisdiction, and we have --
12 the issue before us is a boundary amendment, and the
13 issues are for the determination. Standards are
14 stated in both statute and the rules.

15 So I know that the parties will be careful
16 to direct their arguments and their evidence towards
17 those issues. And that those are the -- those
18 standards will be used to incorporate any decision
19 that the Land Use Commission makes.

20 I have confidence from Mr. Martin's filings
21 that he intends to not use this as a matter for
22 delaying purposes, that he intends to make good faith
23 arguments in this matter.

24 Finally, I think that -- I'm asking that
25 Mr. Martin file a formal Motion for Continuance for

1 the sake to be heard on the 6th and 7th.

2 However, I would encourage the parties, Mr.
3 Yuen and Mr. Martin, to maybe get together with our
4 Executive Director to see that if intervention is
5 granted, see if a schedule can be worked out for
6 hearings.

7 There may be a need for us to have the
8 hearing start on the 6th and 7th, however, it does
9 mean that we will be presenting evidence necessarily
10 on that date.

11 But I would suggest to both the Petitioner
12 and Intervenor to get together with Mr. Orodener to
13 try to work out a schedule that would meet everybody.

14 CHAIRPERSON SCHEUER: Thank you very much,
15 Commissioner Ohigashi.

16 Commissioner Chang. You're muted,
17 Commissioner Chang.

18 COMMISSIONER CHANG: I greatly appreciated
19 Mr. Yuen's response to my comment that the granting
20 of the Intervention would permit Mr. Martin to fully
21 participate in the proceedings.

22 But, Mr. Martin, I think you are well aware
23 that if you do not have counsel, you will be held to
24 the same standards as if you had counsel. So I'm
25 optimistic that you will -- you know, there have been

1 those who have been willing to work with you, and you
2 seem to have someone who is willing to help you.

3 So I am optimistic that the hearing will be
4 confined to the DBA and the issues before it. And as
5 Commissioner Ohigashi, if there is a request for a
6 continuance of the hearing, Mr. Martin, you know, I
7 would recommend you timely file that. And if the
8 parties can work together on a schedule, that would
9 be preferable.

10 But I will support this motion. Thank you
11 very much, Mr. Chair.

12 CHAIRPERSON SCHEUER: Thank you,
13 Commissioner Chang.

14 Commissioner Wong. I saw your aerobics
15 trying to get my attention.

16 COMMISSIONER WONG: There's a couple
17 things.

18 It is with great reluctance I will support
19 this motion. I feel that Intervenor should only
20 limit itself to water resource and cultural
21 practitioner issues. However, I will support the
22 motion, but I also wanted to state to the Intervenor
23 that if he is going get counsel or assistance, that
24 he has to be aware that when he does get the
25 assistance, that it will not interrupt our

1 proceedings, just because when he was taking pictures
2 and when someone was coaching him on the side, it
3 really bothered me and, it broke my train of thought.

4 So just be aware, please, if you're going
5 to have assistance, make sure it's kind of on the
6 side or something, okay? Thank you, Chair.

7 CHAIRPERSON SCHEUER: Thank you,
8 Commissioner Wong.

9 Commissioner Giovanni.

10 COMMISSIONER GIOVANNI: Thank you, Chair.

11 I am in support of this motion. I think
12 that this Petition for a DBA has gone a bit stale
13 with regards to the Final EIS, and it would be to the
14 benefit of the Commission to hear in more specific
15 terms from the community.

16 CHAIRPERSON SCHEUER: Could you raise your
17 voice, perhaps?

18 COMMISSIONER GIOVANNI: Thank you for
19 asking me to do that.

20 I'm in support of this motion. I think
21 that this Intervenor will bring important information
22 forward representing the community at large, and have
23 the ability to bring expert testimony in support of
24 several critical issues to the community. And for
25 that purpose, I favor this motion.

1 open-ended. That's my input at this point. Thank
2 you.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Cabral.

5 Commissioners, we are in deliberation on
6 the motion from Commissioner Ohigashi.

7 Is there further -- Commissioner Wong.

8 COMMISSIONER WONG: As our Executive
9 Director stated previously about the timeline that we
10 have a hearing for this issue January 6th and 7th,
11 and I hope that the Intervenor will work his schedule
12 on this so we can have some sort of hearing on the
13 6th and 7th regarding any continuance.

14 You need to file it before that date by the
15 29th of December, I think, for the January meeting.

16 CHAIRPERSON SCHEUER: Sorry, at this point,
17 even though we are in deliberation, if the Executive
18 officer Has something to share, please share it
19 directly.

20 EXECUTIVE OFFICER: Mr. Chair, Commissioner
21 Wong was overhearing a conversation that Riley and I
22 were having.

23 In order to ensure that we can properly
24 agendize a Motion for Continuance, we would have to
25 have that motion in hand no later than -- I would

1 prefer the close of business January 28th -- I mean
2 December 28th.

3 CHAIRPERSON SCHEUER: Thank you.

4 We are in deliberation.

5 Commissioners, there's a motion in front of
6 us. If Commissioners are done speaking, I will speak
7 in favor of the motion.

8 I want to thank the Petitioner to Intervene
9 for stepping forward to intervene. I think I've
10 sensed from you, you have at least some sense of the
11 burden which you're taking on by choosing to
12 intervene on this, it's not a small burden.

13 In that regard, I would echo the comments
14 of my fellow Commissioners that, without counsel,
15 you'll be held to the exact same standards as if you
16 had counsel.

17 What comes to my mind is the proverb that
18 in an abundance of counselors, there is safety. I
19 would strongly encourage you -- you are not required
20 to have legal counsel -- but it would be highly
21 advised, based on my last six years appearing as a
22 Commissioner here and seeing people appear both pro
23 se, as well as with counsel, that you would be well
24 served if you had counsel to assist on these matters,
25 and to do so as quickly as possible to get your

1 counselor up to speed on these matters.

2 And then I would just also note that I'm
3 going to take you at your word for your understanding
4 of the bounds and limitations of this Commission and
5 what we can consider.

6 I also thank the -- I'll speak in favor,
7 there's some comfort with the County, OP, as well as
8 the Mr. Yuen acknowledging the unique perspective
9 that Mr. Martin has bringing to this matter.

10 Anything further on deliberations before
11 us, Commissioners?

12 If not, Mr. Orodenker, will you please poll
13 the Commission on the motion?

14 EXECUTIVE OFFICER: Thank you, Mr. Chair.
15 The motion is to grant intervention and instruct Mr.
16 Martin to file a Motion for Continuance if he feels
17 one is so required.

18 Commissioner Ohigashi?

19 COMMISSIONER OHIGASHI: Aye.

20 EXECUTIVE OFFICER: Commissioner Chang?

21 COMMISSIONER CHANG: Aye.

22 EXECUTIVE OFFICER: Commissioner Aczon is
23 absent.

24 Commissioner Cabral?

25 VICE CHAIR CABRAL: No.

1 EXECUTIVE OFFICER: Commissioner Wong?

2 COMMISSIONER WONG: Aye.

3 EXECUTIVE OFFICER: Commissioner Okuda?

4 COMMISSIONER OKUDA: Yes.

5 EXECUTIVE OFFICER: Commissioner Giovanni?

6 COMMISSIONER GIOVANNI: Aye.

7 EXECUTIVE OFFICER: Chair Scheuer?

8 CHAIRPERSON SCHEUER: Aye.

9 EXECUTIVE OFFICER: Thank you, Mr. Chair,
10 the motion passes with six affirmative votes and one
11 negative vote and one absent.

12 CHAIRPERSON SCHEUER: Thank you very much,
13 Mr. Orodener.

14 Thank you very much to the Parties and now
15 the Intervenor. And I will note that since the
16 hearing on this particular matter is closed, a
17 written order will be forthcoming spelling out this
18 matter.

19 Mr. Yuen, were you asking a question?

20 MR. YUEN: Mr. Chair, I have a question.

21 The Executive Officer has set a deadline of
22 December 10th to submit witness lists and list of
23 exhibits, and the 23rd to submit the exhibits
24 themselves.

25 Does this apply -- I'm sure it applies to

1 us, but does it apply to the Intervenor as well?

2 CHAIRPERSON SCHEUER: That's a question for
3 Mr. Orodenger.

4 EXECUTIVE OFFICER: Mr. Chair, the current
5 filing schedule still applies in the absence of a
6 continuance.

7 CHAIRPERSON SCHEUER: So I think one of the
8 parts of -- when he spoke to his motion, Commissioner
9 Ohigashi encouraged all the parties to work together
10 with the Executive Officer to revisit the schedule.

11 EXECUTIVE OFFICER: For the parties to
12 agree to a revised schedule.

13 CHAIRPERSON SCHEUER: Yes.

14 MR. YUEN: My only concern, if Intervenor
15 gets an extension, then that should apply to
16 everybody.

17 CHAIRPERSON SCHEUER: That is well
18 understood, Mr. Yuen.

19 Were you trying to say something, Mr.
20 Martin?

21 A written order will be forthcoming on this
22 matter.

23 Is there any further business?

24 Commissioner Giovanni.

25 COMMISSIONER GIOVANNI: Just want to

1 express my appreciation to the Petitioner for his
2 reasonableness in dealing with the question of
3 whether intervention by Mr. Martin was acceptable.

4 Thank you, Mr. Yuen.

5 CHAIRPERSON SCHEUER: Commissioner Cabral.

6 VICE CHAIR CABRAL: I also just want to
7 thank the Petitioner, and actually Mr. Martin also as
8 the Intervenor. I am not opposed to the intervention
9 in general, I am just concerned that it's so
10 open-ended that it would allow, it appears to me,
11 allow everything that's been brought up, and
12 potentially all kinds of new things that have never
13 been discussed.

14 So I'm just concerned about the way that
15 appears to me as a non-lawyer. I'm concerned about
16 the structure of that. Thank you.

17 CHAIRPERSON SCHEUER: Anything further,
18 Commissioners. If not -- oh, Commissioner Ohigashi.

19 COMMISSIONER OHIGASHI: Everybody is
20 thanking, Bill, so I'll thank him too. Thank you,
21 Bill.

22 CHAIRPERSON SCHEUER: Thanks to everyone.
23 I'm grateful that even during the pandemic we're able
24 to get together and have good and civil information
25 about the future of our island.

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With that our meeting is adjourned. Aloha.

(The proceedings adjourned at 11:49.)

CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on December 3, 2020, at 9:00 a.m.,
6 the proceedings contained herein was taken down by me
7 in 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 3rd day of December, 2020, in
16 Honolulu, Hawaii.

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19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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