

LAND USE COMMISSION
STATE OF HAWAI'I
Hearing held on March 11, 2021
Commencing at 9:00 a.m

Held via ZOOM by Interactive Conference Technology

I. Call to Order

II. CONTINUED HEARING AND ACTION
A11-791 HG Kaua'i Joint Venture LLC-HoKua Place
(Kaua'i)

III. ADJOURNMENT

Before: Jean Marie McManus, Hawaii CSR #156

1 APPEARANCES:

2 JONATHAN LIKEKE 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 WILLIAM WYNHOFF, ESQ.
12 Deputy Attorneys General

13 DANIEL ORODENKER, Executive Officer
14 RILEY K. HAKODA, Chief Clerk
15 SCOTT DERRICKSON, Chief Planner
16 NATASHA A. QUINONES, Program Specialist

17 BRYAN YEE, ESQ.
18 Deputy Attorney General
19 RODNEY FUNAKOSHI, Planning Program Administrator
20 State Office of Planning
21 State of Hawaii

22 CHRIS DONAHOE, ESQ.
23 Kaua'i Corporation Counsel
24 JODI HIGUCHI SAYEGUSA, Kaua'i Planning Dept.
25 County of Kaua'i

26 WILLIAM YUEN, ESQ.
27 JANNA AHU, ESQ.
28 For Petitioner A11-791
29 HG Kaua'i Joint Venture LLC

30 BIANCA ISAKI, ESQ.
31 LANCE COLLINS, ESQ.
32 For Intervenor

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.
2 Good morning.

3 This is the March 11, 2021 Land Use
4 Commission meeting. It's being held using
5 interactive videoconference technology linking video
6 conference participants and interested individuals of
7 the public via the ZOOM internet conferencing program
8 to comply with State and County official operational
9 directives during the COVID-19 pandemic. Members of
10 the public are viewing the meeting via the ZOOM
11 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. Also please be aware that
17 all meeting participants are being recorded on the
18 digital record of this ZOOM meeting. Your continued
19 participation is your consent to be part of the
20 public record of this event. If you do not wish to
21 be part of the public record, please exit this
22 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 not
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 For members of the public participating via
9 telephone, please use the *6 function to "mute" and
10 then *6 to "unmute". Use *9 to virtually raise your
11 hand and then *9 to virtually lower your hand.

12 My name is Jonathan Likeke Scheuer and I
13 currently serve as the LUC Chair.

14 Commissioner Aczon will be with us in
15 approximately one hour and will be later reviewing
16 the recording and transcript of this event so that
17 when it comes eventually to decision-making he will
18 be prepared to do so.

19 Along with me, Commissioners Chang, Okuda
20 and Wong, the LUC Executive Officer, Daniel
21 Orodener, LUC Chief Planner, Scott Derrickson, Chief
22 Clerk, Riley Hakoda, the LUC's Deputy Attorney
23 General, William Wynthoff, Program Specialist, Natasha
24 Quinones, an our Court Reporter, Jean McManus are on
25 Oahu. Commissioner Cabral is on the Big Island;

1 Commissioner Ohigashi is on Maui; and Commissioner
2 Giovanni is on Kaua'i. There are currently eight
3 seated Commissioners of a possible nine.

4 We will now move into a continued meeting
5 on Action item number -- for a hearing and action on
6 Docket A11-791 HG Kauai Joint Venture LLC, a Petition
7 to Amend the Land Use District Boundary of certain
8 land situated at Kapaa, Island of Kauai, State of
9 Hawaii, consisting of 97 acres of the Agricultural
10 District to the Urban District, Tax Map Key No.
11 (4)4-3-3, a portion thereof.

12 Will the parties please identify themselves
13 for the record beginning with the Petitioner?

14 MR. YUEN: Your Honor -- I'm sorry, Mr.
15 Chair, Petitioner represented by William Yuen and
16 Janna Ahu. Our client representative Jake Bracken is
17 on the witness stand.

18 CHAIRPERSON SCHEUER: You don't have to
19 call me "Your Honor" but if you're going to call me
20 Mr. Chair, you have to call me Dr. Chair.

21 County.

22 MR. DONAHOE: Good morning, Chair, Deputy
23 County Attorney Chris Donahoe for the County. Also
24 present as the representative of the Planning
25 Department is Deputy Director of Planning Jodi

1 Higuchi Sayegusa.

2 CHAIRPERSON SCHEUER: Thank you.

3 Office of Planning.

4 MR. YEE: Deputy Attorney General Bryan
5 Yee. With me is Rodney Funakoshi from the Office of
6 Planning.

7 CHAIRPERSON SCHEUER: Intervenor.

8 MS. ISAKI: Bianca Isaki and Lance Collins
9 here for Intervenor Liko Martin, who is also here.
10 You're also not unmute, Liko, just so you know.

11 CHAIRPERSON SCHEUER: Where we left off
12 yesterday we were on cross-examination of
13 Petitioner's first witness, and I believe I cruelly
14 prevented Mr. Yee from being so close to concluding
15 his cross, but I was asked to end promptly at 3:00
16 and I did so.

17 Mr. Yee, you may continue. I remind the
18 witness you're still under oath.

19 MR. YEE: Thank you.

20 JAKE BRACKEN

21 CROSS-EXAMINATION CONTINUED

22 BY MR. YEE:

23 Q Mr. Bracken, a clean-up question.

24 Are you authorized to speak on behalf of
25 Petitioner HG Kauai Joint Venture for this proceeding

1 today?

2 A Yes, I am.

3 Q And within the EIS there are some
4 recommendations for mitigation.

5 Are you aware of that?

6 A I'm aware of recommendations. You would
7 have to remind me specific which ones that you want
8 to ask about, something specifically.

9 Q My question for you is whether you will
10 represent that either those mitigation measures,
11 equivalent mitigation measures or better mitigation
12 measures will be implemented for this project?

13 A Yes. Yes, we agree with that.

14 Q And I've not been to the project, but I was
15 wondering, is the Petition Area demarcated either by
16 fencing or perhaps by flags to note where the
17 Petition Area is and where the neighboring property
18 is?

19 A Not currently, no.

20 Q There is some fencing though, is that
21 correct?

22 A Yeah, there is some fencing. Like I
23 mentioned, we do have a piece we are not including in
24 the Petition Area that has some agriculture on it, so
25 there is some goats and other things. There are also

1 existing roads that delineate the property
2 boundaries.

3 Q So otherwise, the specific property line
4 between the Petition Area and then the adjacent
5 properties, other than the roadways and the
6 agricultural portion are not easily, just by going on
7 to the property and looking at it; is that right?

8 A No. Well, you've got the school on one
9 side, which would give you a clean boundary, even the
10 bypass road is probably, you know, that will give you
11 a clean boundary, like we mentioned. We were
12 (indecipherable) bypass road. We understand that
13 there is 100-foot setback off of that.

14 There's been mention of streams that would
15 be on our property boundary, but those are off of the
16 area that is included in the Petition Area. It
17 wouldn't be necessary a boundary of the Petition
18 Area.

19 Q In the public -- there was public testimony
20 about archaeological sites, including heiau within
21 the Petition Area.

22 Will you agree to send your archeologist to
23 both try and inquire further as to the specific
24 location as well as to go and revisit the property?

25 A Absolutely. In fact, our archeologist has

1 already been in contact trying to understand the
2 particular site that was described.

3 Q And can we then expect some further
4 information, even video, of her inspection of those
5 locations?

6 A Yes. There will be further information.
7 I'll see what she can include as part of her site
8 visit.

9 Q I noticed in your testimony you spoke of
10 the Office of Planning conditions. Thank you very
11 much for that testimony.

12 I take it you've reviewed the Office of
13 Planning's testimony in this case?

14 A Yes, I've reviewed that with our attorney.

15 Q So let me first talk about Conditions 1
16 through 9 which does not include the infrastructure.

17 Conditions 1 through 9, you agree with
18 those conditions?

19 A Let me just -- Bill, are these in the same
20 order?

21 MR. YUEN: Janna, why don't you put on a
22 PowerPoint.

23 COMMISSIONER OKUDA: Mr. Chair, can I make
24 a request?

25 Thank you, Mr. Chair. Unless a witness or

1 someone is actually speaking, can I ask that everyone
2 mute their microphones, because I hear shuffling on a
3 keyboard. That might interfere with a clean record.
4 Thank you, Mr. Chair.

5 CHAIRPERSON SCHEUER: Thank you.

6 I think it might be, Commissioner Okuda,
7 the problem might be from the fact that the
8 Petitioner's two counsel and the Petitioner's
9 representative are all in the same room. So some of
10 the background noise may be unavoidable, but I will
11 ask all other participants to mute their computers.

12 THE WITNESS: I'll try to be more careful.
13 I was sorting through, trying to make sure I was
14 looking through the same list of conditions here.

15 CHAIRPERSON SCHEUER: Ms. Ahu, you wanted
16 to share a screen. And can you make a specific
17 reference, counselor, to what is being put up.

18 VICE CHAIR ACZON: Mr. Chair, Edmund Aczon.

19 CHAIRPERSON SCHEUER: Welcome, Commissioner
20 Aczon. You haven't missed much.

21 MS. AHU: Exhibit 36, which was a
22 PowerPoint, the Office of Planning.

23 CHAIRPERSON SCHEUER: Exhibit 36, if you're
24 going to a particular page number, either the witness
25 or counsel should reference that so it's clear in the

1 transcript what we are looking at when the discussion
2 is going on.

3 MS. AHU: Page three.

4 CHAIRPERSON SCHEUER: You may --

5 MS. AHU: Page 3 of Exhibit 36.

6 CHAIRPERSON SCHEUER: You may need to speak
7 up, Ms. Ahu.

8 Please continue, Mr. Yuen.

9 MR. YEE: It's Bryan Yee.

10 CHAIRPERSON SCHEUER: Thank you. My
11 apology, I don't confuse you two, really.

12 Q (By Mr. Yee): So I was referring to your
13 PowerPoint specifically to identify the specific
14 conditions, but as I was following your PowerPoint
15 and our conditions, my first question related to OP's
16 Conditions 1 through 9.

17 I was asking whether you were in agreement
18 with OP's Conditions 1 through 9?

19 A Yes. Yes, we do.

20 Q Now, let me turn to -- I'm sorry. And just
21 to highlight, there was one provision and it wasn't
22 clear from your PowerPoint, so I'm not trying to, you
23 know, hide anything.

24 The submittal of the MOA prior to the
25 subdivision approval where the MOA lists the regional

1 and mitigation measures that would be required.

2 You're in agreement with that, correct?

3 A Yes, of course.

4 Q And then Condition 10 refers to
5 infrastructure deadline, which the Office of Planning
6 is asking that the backbone infrastructure be
7 completed ten years after the date of the Decision
8 and Order.

9 And I notice that in your PowerPoint you
10 wanted to finish the backbone infrastructure within
11 ten years from all discretionary approval being
12 granted.

13 Do you I understand that correctly?

14 A That you're just asking what we're looking
15 for is the date of all of the approval versus the
16 Land Use Commission; am I clarifying that correctly?

17 Q That's correct.

18 A Yeah, that is what I stated. You know, I
19 guess we made that comment mainly because we don't
20 know if there is going to be a substantial difference
21 between the two. We will make our best efforts.

22 Our expectation is within the deadline of
23 the Land Use Commission.

24 CHAIRPERSON SCHEUER: If I may interrupt
25 one moment, sorry.

1 I'm not actually understanding, Ms. Ahu,
2 why we have this up, because I'm not sure that we're
3 directly referring to it.

4 MR. YEE: Ms. Ahu, can you switch to the
5 next page?

6 MS. AHU: I believe it's page 5 of
7 Exhibit 36.

8 MR. YEE: I believe we're referring to the
9 last condition on that page.

10 CHAIRPERSON SCHEUER: Thank you, Mr. Yee.
11 Please continue.

12 Q (By Mr. Yee): Is it your proposal that
13 this -- is it your representation this project will
14 be completed within ten years from the date of the
15 LUC Decision and Order?

16 A Yes, I believe so.

17 Like I said, for some reason if we have
18 delay at the County level, we may need to ask for
19 little bit of an extension, but it is our
20 representation that we will complete within the ten
21 years that is typically required.

22 Q And you are aware that if you are not going
23 to make that representation, then LUC would have to
24 address whether this project should be approved with
25 incremental redistricting?

1 A Exactly. That's why our preference is not
2 to do incremental redistricting, because just because
3 of the substantial infrastructure going in up-front,
4 we have to plan that for the entire subdivision --
5 sorry, go ahead.

6 Q I didn't mean to cut you off. You finish
7 up, then I will go.

8 A I just -- to reiterate, yes, we are looking
9 at completing. We are committing to commit within
10 the ten years required from the approval.

11 Q So my question is: If your representation
12 and agreement to comply, actually comply with the
13 representation, is that you'll complete the entire
14 project in ten years from the date of the Decision
15 and Order, why are you objecting to a condition that
16 requires only the backbone infrastructure to be
17 completed within ten years from the date of the
18 Decision and Order?

19 A Say that again.

20 Q Let's separate this out one more time.

21 You've represented that you will complete
22 the entire project within ten years from the Decision
23 and Order, correct?

24 A The backbone infrastructure, the main
25 infrastructure into it or the --

1 Q I'm referring to your representation that
2 you will complete the entire project within ten years
3 from the date of the LUC Decision and Order.

4 Do you remember making that representation?

5 A I believe -- and let me just clarify -- my
6 understanding was that as we were representing that
7 we were going to complete the backbone infrastructure
8 within the ten years.

9 If I wasn't clear on that, I apologize, but
10 that is what I believe my representation should have
11 been, if I was not clear.

12 Q And do you understand that you must
13 substantially comply with your representations to the
14 Commission?

15 A Yes, I do understand that.

16 Q So if you have made a representation that
17 you will complete the backbone infrastructure within
18 ten years and that you're required to substantially
19 comply with that representation, why are you opposed
20 to a condition requiring the completion of the
21 backbone infrastructure within ten years of the date
22 of the D and O?

23 A I'm okay with a condition that we will
24 complete the infrastructure within the ten-year
25 period.

1 Q From the date of the Decision and Order?

2 A Yes. Sorry for the confusion.

3 CHAIRPERSON SCHEUER: Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you, Mr. Chair.

5 Is there any way that we can see a video or
6 a CD image of the witness testifying so that we may
7 consider his demeanor in evaluating?

8 CHAIRPERSON SCHEUER: It depends on how
9 your ZOOM is set up. You should be able to scroll to
10 see the witness, if your options under "view" are
11 side by side and gallery.

12 COMMISSIONER OKUDA: Mr. Chair, you can see
13 the witness; is that correct?

14 CHAIRPERSON SCHEUER: I can see the
15 witness. I cannot, given today's particular ZOOM,
16 determine the line-up of things, seeing Mr. Yee and
17 the witness on the same screen while we are doing
18 screen share.

19 COMMISSIONER OKUDA: Okay, thank you, Mr.
20 Chair. If it's on my end, I will fix it.

21 MS. AHU: We are going to go ahead and stop
22 sharing so the screen can be filled with the gallery.

23 CHAIRPERSON SCHEUER: Thank you, Ms. Ahu.

24 MR. YEE: I was going to say I have no
25 further questions but (indecipherable) --

1 Q Mr. Bracken, you're aware that in the
2 Office of Planning's testimony we identified that
3 there is a Fish and Wildlife Inventory Survey
4 indicating wetlands within the Petition Area?

5 A Yes, I have. I'm aware.

6 Q And I notice you list in Mr. Agor's
7 rebuttal testimony some testimony about that.

8 My question is whether you will represent
9 on behalf of the Petitioner, Mr. Agor's -- and we can
10 go through them -- but just to let you know, that's
11 what the next questions are going to be regarding.

12 Will the Petitioner be establishing a
13 buffer area between the wetland area and on the
14 development in the Petition Area?

15 A Yes, we will.

16 Q And will you be engaging in a restoration
17 plan to clean up at least within the Petition Area,
18 the wetlands and buffer area?

19 A Yes.

20 Q That would include certain amount of
21 restoration, removal of invasive species, the
22 outlying of native species?

23 A Yes, I understand that.

24 Q And will you agree to have that habitat
25 restoration plan, a reasonable plan, be approved by

1 DOFAW, the Division of Forestry and Wildlife of the
2 Department of Land and Natural Resources?

3 A Yeah, we will work with them to approve a
4 reasonable plan for everybody.

5 Q And would that include best management
6 practices for the preservation of the restored area
7 and the buffer?

8 A Yes.

9 Q Sorry, one second.

10 Will you agree that you and DLNR will work
11 together to come up with an agreed distance for the
12 buffer area?

13 A Yes, I will agree to that.

14 Q Will you agree to put fencing between the
15 wetland and buffer area and the remainder of the
16 developed projects, at least on your side of the
17 Petition Area to prevent -- sufficient to prevent
18 dogs and other similar predators from entering into
19 the wetlands?

20 A Yes, we will.

21 Q Would you agree to a feral cat and predator
22 protection plan which would include reasonable
23 efforts to fence feral cats and other predators from
24 using the Petition Area to enter into the Petition
25 Area?

1 A Yes, we will.

2 Q And would that also be -- willing to make
3 that subject to reasonable approval of the Division
4 of Forestry and Wildlife?

5 A Yes.

6 Q Have you seen the Office of Planning's
7 proposed conditions relating to this wetland area?

8 A No, I have not.

9 Q That was sent very late, so I can
10 understand why you might not have.

11 You know, it's been very wet lately, and so
12 it is a somewhat timely question as to whether you
13 would also agree to engage in best management
14 practices to avoid nonpoint source pollution from the
15 Petition Area into the wetlands?

16 A Yes, we would.

17 Q And that would include an analysis of
18 overflow of water from your water detention basins
19 into the wetland area?

20 A Yes. I don't believe our detention is near
21 the wetland, but we would agree to that, yes.

22 Q Are you aware that just because of the
23 nature of projects, flood control often diverts water
24 into the undeveloped areas to avoid flooding of
25 roadways and other areas like school?

1 A Right, yes.

2 Q And that then causes then more water to go
3 into the uninhabited areas?

4 A Yes.

5 Q And that -- and so it would be important
6 then to ensure that the water that does go into any
7 wetland area have the amount of pollutants minimized
8 to the extent --

9 A Yes, I agree, we will be responsible for --

10 Q I believe that concludes my questions.
11 Thank you very much, Mr. Bracken.

12 A Thank you.

13 CHAIRPERSON SCHEUER: Thank you.

14 Intervenor, it is your opportunity to cross
15 Mr. Bracken.

16 MR. COLLINS: Chairman Scheuer, I have one
17 preliminary question that wasn't resolved yesterday,
18 and that was the timeline for the briefing of the
19 offers of proof.

20 Because there's at least, I think, there's
21 three different things that are going to be getting
22 filed, and it wasn't settled when any of those were
23 due.

24 CHAIRPERSON SCHEUER: I followed you until
25 three different things that were going to be filed.

1 MR. COLLINS: What was discussed yesterday
2 for offers of proof, three things would be filed and
3 no deadlines.

4 CHAIRPERSON SCHEUER: We didn't set out a
5 deadline for that.

6 Thank you for your forbearance on that. I
7 meant to talk to the LUC staff about setting up a
8 deadline in relationship to the next scheduled
9 meeting dates on this docket.

10 Can we answer that later today?

11 MR. COLLINS: Sure. I was just going to
12 ask at the beginning of the day, but the hearing
13 started very quickly. I just wanted to note that.

14 CHAIRPERSON SCHEUER: With that said, are
15 you prepared to start your cross-examination of Mr.
16 Bracken, Ms. Isaki?

17 MS. ISAKI: Yes, we are. Thank you. And
18 thank you for bearing with our tag team
19 representation.

20 CHAIRPERSON SCHEUER: We will take a break.
21 I didn't announce this today, approximately every
22 50 minutes, so we will go to about 9:50 and take a
23 break.

24 MS. ISAKI: Understood.

25 CROSS-EXAMINATION

1 BY MS. ISAKI:

2 Q Good morning, Mr. Bracken. And I'm going
3 to take off right where Office of Planning left off,
4 although I do have questions in a bunch of different
5 areas, they will all reference either your Exhibit 11
6 or 36 and the EIS and the Petition.

7 You just mentioned that you would ensure
8 that water goes into wetland areas with minimal
9 amounts of pollutants; is that correct?

10 A Yes, that's correct.

11 Q Would you agree to have the water quality
12 monitoring program to make sure it's working?

13 A Yeah, we have had discussion of that. We
14 would agree to water quality monitoring.

15 Q Can you -- well, who would do that program?
16 And who would continue to pay for that? Two
17 questions.

18 A We would have to hire somebody locally, I
19 don't know who specifically would do that right now,
20 but, you know, a firm who typically does that. And I
21 would imagine during the construction phase, that
22 would be a cost of developer.

23 Q So your water quality monitoring program,
24 that will be just during construction?

25 A Were you asking for a longer term?

1 Q Yes, for a longer term or --

2 A I was thinking of taking your question to
3 be construction only. So I apologize.

4 Yeah, I would have to look into that. Look
5 and see if -- yeah, I believe that we would look -- I
6 believe that there is -- we can talk with the County
7 on how to make sure that is maintained properly.
8 But, yes, we would work with the County on how that
9 should be monitored, make sure that is approved at
10 the appropriate level at the County.

11 Q To follow up on that, is it your
12 understanding that the district boundary amendment is
13 only going to last during construction, or -- yeah,
14 that's my question.

15 A No, that was not my understanding. No, but
16 just the way you asked the question, I thought you
17 were specifically talking about construction runoff,
18 but I understand now.

19 Q So is it your understanding that the County
20 is going to be responsible for the conditions on the
21 dba after the construction?

22 A Well, that is something that I will have to
23 discuss with the County. I don't know offhand. It
24 might be a better question for my civil engineer. I
25 don't know exactly what the process is, but we would

1 want to make sure that we are following the proper
2 procedures here.

3 Q Thank you.

4 So you said that HG Kauai Joint Venture,
5 did they identify you as manager in January 2021; is
6 that correct?

7 A Yes, I'm the manager.

8 Q Could you tell me about the date, not day,
9 but the month and year that you were --

10 A I know I'm the manager this year. I
11 believe I have been in years past. I would have to
12 refer to my corporate documents to note specifically
13 what we have when. I don't know off hand. I'm the
14 manager for a number of different entities, so I
15 couldn't tell you the exact dates.

16 Q Okay. And were you -- so -- I know that HG
17 Kauai bought the property in 2013 according to your
18 presentation.

19 Were you working on the project from 2013?

20 A Yes.

21 Q Okay, you were working, okay.

22 Did you move to Kauai in 2013 or any point
23 between then and now?

24 A No, I have not.

25 Q And so this entire time you've lived not in

1 Kauai, but Utah or some place?

2 A Yes, I work at a number of locations. We
3 have been using local engineers and local contacts to
4 help us with the process.

5 Q But your CPA license, is that in Hawaii or
6 Utah?

7 A Utah.

8 Q So there is other people in the company
9 that actually work and reside in Kauai full-time to
10 address the project?

11 A The people directing the project on Kauai
12 are all consultants, our civil engineer, our land
13 planner, our attorneys that are local either on
14 island or on Oahu. So that's how our local activity
15 is taking place.

16 Q Okay, understood.

17 Did you state the Applicant has good title
18 to the property in reference to the title report,
19 Exhibit 38? You mentioned that.

20 A Yes.

21 Q Is that a status report or a title
22 abstract? Let me know if you understand the
23 difference and move on.

24 A You know, I know the difference. I don't
25 remember off hand what -- yeah, it is a status

1 report.

2 Q So your report does not explain the change
3 of title?

4 A I don't believe so, but we did, as I
5 mentioned, we purchased this at a foreclosure sale in
6 2013.

7 Q Are you aware -- are you familiar with any
8 of the following terms: Crown lands, public trust
9 land or ceded lands?

10 A Generally, I'm familiar with the terms, not
11 necessarily the nuances of it.

12 Q Is the Applicant aware that these lands
13 were identified as crown lands?

14 MR. YUEN: I'm going to object to this line
15 of questioning, it's irrelevant. The Land Use
16 Commission is not an appropriate body to address the
17 title to the property.

18 CHAIRPERSON SCHEUER: Well, my first
19 reaction is the Land Use Commission does have to at
20 least have, which you have offered into record, some
21 assurances that the Petitioner has the property
22 interest.

23 Ms. Isaki, would you explain why you're
24 pursuing this line of questioning?

25 MS. ISAKI: Yes. There's -- for the reason

1 that you just stated, which is we believe that there
2 are questions about ownership that -- more
3 specifically this goes to the history of the land
4 which makes it culturally important and subject to
5 and significant to the Intervenor.

6 CHAIRPERSON SCHEUER: Just make sure you
7 stick to those things.

8 Mr. Yuen, you can certainly object again if
9 Ms. Isaki's clarification of her questions aren't to
10 your satisfaction.

11 If you would restate the question.

12 Q (By Ms. Isaki): Is the fact that
13 Intervenor is concerned that these are identified as
14 crown lands a matter that you will research further?

15 A Yes, that's something we could look into.
16 We did buy the land at a court approved foreclosure
17 action. I believe this was something we were
18 confident in, but that is something I can familiarize
19 myself. I'm happy to have Bill take a closer look at
20 that, if there's a concern.

21 Q Was there -- I'm sorry, was attorney Yuen
22 asking the question? I couldn't tell.

23 A I was suggesting I would need him to help
24 me understand that better, but if that is a concern,
25 that is something that, you know, we will address.

1 Q Thank you. I'm done with that line of
2 questioning.

3 Moving onto another, please tell me if I
4 did not understand your statement. Did you opine
5 that the project is consistent with the 2008 Kauai
6 General Plan land use designation?

7 A That is my understanding.

8 Q Have you examined whether the project is
9 consistent with the applicable community development
10 plan, community plan or specifically here
11 Kapaa-Wailua Development Plan?

12 A That is my understanding that, from my
13 consultant, my engineer, land planner, that we are
14 consistent.

15 Q Are you aware that the Kapaa-Wailua
16 Development Plan which it incorporated by reference
17 the 1971 General Plan designated this area as open?

18 A Sorry, which plan, '71 Wailua --

19 Q The 1973 Kapaa-Wailua Development Plan
20 incorporated by reference the General Plan that was
21 activated at the time which designated this area as
22 open?

23 A I'm not completely familiar with that off
24 hand. That might be a better question for my land
25 planner.

1 Q And your land planner is Mr. Agor?

2 A Mr. Agor.

3 COURT REPORTER: Ms. Isaki, please slow
4 down a bit on those long questions.

5 Q Moving to another question. Did you state
6 that the Applicant would dedicate the setback area of
7 the Kapaa bypass road that goes along the property to
8 Department of Transportation?

9 A Are you specifically asking if we would
10 dedicate the setback area?

11 Q Did you state that? I thought I heard.
12 Did you not state that?

13 A I thought we said we would dedicate the
14 road and we acknowledge that they also requested
15 100-foot setback area.

16 Q Did you take the property with the
17 awareness of the existing 2002 MOU with DOT to
18 dedicate a setback to the DOT?

19 A Yes, we took it with awareness of that MOU
20 and we expect to comply with that.

21 Q So there was an outstanding obligation to
22 dedicate the land irrespective of this Land Use
23 Commission decision?

24 A Yes.

25 Q And I apologize, I do have one more

1 question that refers back to the title, which is
2 simply that were you aware that there is a
3 reservation of rights to third parties of an
4 exception in the title status report?

5 CHAIRPERSON SCHEUER: Ms. Isaki, are you
6 referring to an exhibit?

7 MS. ISAKI: Yes, Exhibit 38.

8 A I'm not aware of the particular one offhand
9 at this point.

10 MR. COLLINS: Chair Scheuer, I'm sorry.
11 I'm not sure if this is an objection or a questions,
12 but I'm not sure if the record is clear that it
13 appears that Mr. Yuen is speaking to the witness
14 before he answers questions.

15 And I'm not sure if that's exactly going
16 on, or he's talking to somebody else off screen, but
17 it's happened now three times, so I just was
18 wondering if we could get some guidance on the
19 propriety of that.

20 CHAIRPERSON SCHEUER: Hold on. I will
21 address that in one second.

22 If you're referring to a particular
23 exhibit, can you refer to whose exhibit it is as
24 well.

25 MS. ISAKI: I'm sorry, yeah.

1 CHAIRPERSON SCHEUER: That said, Mr.
2 Collins, I have not noticed that that is happening
3 right here. I actually did notice in the Hearing on
4 Intervention that the Intervenor was clearly being
5 advised by somebody off screen who we could not see,
6 but we could hear him speaking to them.

7 Here is my thinking about it, but I would
8 actually seek, among other things, the thoughts of my
9 fellow Commissioners as well as my counsel.

10 If we were all physically in a room
11 together, witnesses would often have the chance to
12 say, wait one moment, I want to talk to my counsel.
13 They would lean over, they would discuss something
14 and they would respond to the question.

15 If you want that to be a little bit more
16 explicit, I can certainly ask for the parties to do
17 so.

18 Part of my thinking on this is like even if
19 we are all physically in separate locations, I can't
20 stop anybody from using chat or text or something to
21 be otherwise sort of advising their witnesses on how
22 to respond to a question.

23 What is most important to me, particularly
24 from this witness, is the statements that he is
25 making in relationship to the representations of this

1 entity.

2 So my thinking is it doesn't bother me so
3 much, but if the witness would like a little further
4 guidance on things, if you can just say, pause for a
5 second, I want to talk to my counsel, you can come
6 back and answer the question.

7 Mr. Collins, you said you weren't sure
8 whether it was an objection. Does this address your
9 concerns?

10 MR. COLLINS: Yes. I just want to make
11 sure that, one, that the record is clear on what is
12 going on because if everybody were in person, those
13 kinds of asides would be reflected in the record; and
14 then also, I do think that it does implicate the
15 credibility and demeanor of a witness.

16 CHAIRPERSON SCHEUER: You can certainly
17 argue that point later.

18 MR. COLLINS: What I'm saying, is that if
19 it's not -- like you weren't aware that that was
20 going on, so if it's not in the record, then it's not
21 somewhere that can pointed to later. Whereas if we
22 were in person, it would be clear to everybody that
23 that's what's going on.

24 CHAIRPERSON SCHEUER: Clearly there are
25 advantages and disadvantages of the current world

1 that we are living in now. And I don't know if any
2 of my quite genius and well-trained colleagues have
3 anything to add on this.

4 With that said, given the current
5 circumstance, if you're conferring to somebody before
6 answering the question, please indicate that so that
7 the record can be as clear as possible.

8 Thank you for raising the concern, Mr.
9 Collins.

10 Please continue, Ms. Isaki, with specific
11 reference to whose exhibit, what exhibit number and
12 what page number.

13 MS. ISAKI: I will do that, thank you.

14 Q I do want to go back a little bit for the
15 timeline for the project development.

16 CHAIRPERSON SCHEUER: Ms. Isaki, your
17 previous question you were referring to Petitioner's
18 Exhibit 38.

19 MS. ISAKI: Yes. You know, actually I'm
20 going to move onto that.

21 CHAIRPERSON SCHEUER: Just want to make
22 sure that we are clear on the record what you were
23 referring to.

24 MS. ISAKI: Yes, I was referring to
25 Petitioner's Exhibit 38.

1 CHAIRPERSON SCHEUER: Now we can move on.

2 Q (By Ms. Isaki): So, Mr. Bracken, did you
3 mention that the pre -- the guy that created the
4 predevelopment plan, the line was up to \$20 million
5 for infrastructure?

6 A Yes, the two lines of credit that I
7 referenced in my presentation.

8 Q Do you have -- how do you define
9 infrastructure, just so I'm clear?

10 A That was our initial predevelopment
11 planning, and to get started on that, some of those
12 spine road and infrastructure. I don't know exactly
13 what the full budget of that is going to be until we
14 have a fully engineered plan. But we do feel like
15 we've got financing in place to take us quite a ways
16 into that process.

17 Q Is the spine road referencing culturally
18 significant lines related to the heiau, or is that
19 something different?

20 A The spine road through our project, the
21 Road A that goes through the middle. I'm not exactly
22 sure where the reference -- where the location was
23 for the heiau that was mentioned yesterday. I'm not
24 aware of that, so I'm only referring to that spine
25 road through the middle.

1 Q Would you consider the spine road to be the
2 same thing as Road A, the connector road?

3 A Yes.

4 Q And you can put this on the screen if you
5 like. This is our Intervenor Exhibit 2 to the EIS
6 Appendix H, that would be page 212, and that's
7 looking at our Exhibit 2. And that's the Kapaa, the
8 side -- one of the traffic studies, and it says in
9 there --

10 CHAIRPERSON SCHEUER: Put it on screen, Ms.
11 Isaki.

12 MS. ISAKI: I can do that. I wasn't sure
13 if I should or not. I can certainly do that. Try to
14 be fast, but now you can see this.

15 So the Kapaa -- I hope you can see my
16 cursor -- this is the only full paragraph on this
17 page. This is from the May 2017 Appendix H EIS
18 volume 2A.

19 The Kapa'a Transportation Solutions and new
20 connector road between Olohena Road and the Kapaa
21 bypass road, which was prioritized beyond the
22 ten-year time frame. And the cost would be \$25
23 million, \$26 million.

24 So when it says prioritized beyond the
25 ten-year time frame, does that mean that the road

1 would be constructed after ten years, or is that
2 included in your spine infrastructure?

3 And I'm going to (indecipherable).

4 A I don't know specifically what that was
5 referring to as prioritized beyond, but that -- from
6 a development standpoint that is the first road that
7 would have to go in. It is where our utility
8 corridor will be as well.

9 So it is the primary road for the
10 subdivision.

11 Q So that does not mean that the road will be
12 constructed after ten years, or will take longer than
13 ten years?

14 A That is the infrastructure that we are
15 referring to at Office of Planning that needs to go
16 in. That is the first step there, the primary road
17 that needs to go in for the subdivision.

18 Q Okay. Thank you for clarifying that for
19 me.

20 So one more question about your timeline,
21 and I'm looking at capacity report, Petitioner's
22 Exhibit 30 at page 35.

23 I'll share the screen. This is what I was
24 confused about.

25 First closing, you sell lots or housing in

1 2025, full absorption sell out by 2034.

2 And so my question -- well, 2025 is four
3 years from now, so you expect to sell the houses in
4 2025 because that's when all the approvals will be
5 expected to be achieved?

6 A Yeah, that's when we talk about the
7 timeline. Our expectations are that we would be able
8 to go through the next step, would have to go through
9 all the approvals with the County. We have to come
10 up with actual fully engineered plans. We were
11 expecting to be ready to break ground in 2023, but
12 the first houses, the first protocol being about
13 2025.

14 Q And would that mean that a conclusion bond
15 with the County for infrastructure would be arranged
16 to ensure that all the houses get their road and
17 everything?

18 A Yeah. We would be going through the
19 typical process required by the County.

20 Q Thank you.

21 And when in the timeline would the
22 protection for wetlands happen?

23 A When in the timeline? You know,
24 obviously --

25 Q Would that -- sorry.

1 A The wetlands are a concern at all times.
2 Certainly we talked about construction mitigation for
3 the wetlands, which would take place before we broke
4 ground.

5 And certainly we would want to maintain
6 those wetlands with a plan beyond that.

7 Q Who would maintain -- you would develop
8 that plan later?

9 A We would work with the appropriate agencies
10 at that time.

11 Q And -- my next group of questions is about
12 affordable housing. And that's referring to your
13 PowerPoint, slide 14, and this is the exhibit from
14 the Petitioner's 11. And I don't know if I need to
15 share my slide. Let me know if you want that to jog
16 your memory.

17 Does the project have an apartment owner's
18 association or homeowner's association or some other
19 ownership organization?

20 A Are you asking if we are planning on a
21 homeowner's association?

22 Q Yes.

23 A I have not had any specific discussions on
24 homeowner's association. We have been looking at
25 more of either apartments or townhouses. I don't

1 know if that would always be required, other than
2 you're going to need, you know, if you were doing
3 some sort of shared building, or something like that,
4 you would need some sort of association. I haven't
5 done any planning or we haven't gotten that far.

6 I think we will deal with most of that once
7 we are -- specific building plans and working with
8 approvals of the County.

9 Q So will there be common property in the
10 multi-family units?

11 A There may be some common landscaping or
12 common parking lot. Again, I don't have anything
13 planned. I have heard these comments of 800 to \$1100
14 a month maintenance fee. I don't see that as
15 reasonable at all. I don't know where those numbers
16 come from, but I'm not expecting anything like that.

17 Only kind of maintenance fee or association
18 fee I'm aware of that we would have in a community
19 like this might be some landscaping, minimal fees.

20 Q And I'm conscious of the time, but I'll
21 just ask one more question unless you --

22 CHAIRPERSON SCHEUER: One more, then we
23 will take a break. Then you can be continue after
24 the break.

25 Q (By Ms. Isaki): Who will own the common

1 property that will be in the townhomes or apartments
2 in the multi-family units?

3 A I don't know offhand right now. I guess we
4 would have -- that might be a question either for my
5 engineer or something that would be determined down
6 the road. Typically I'm not familiar with all the
7 local rules that would be in some sort of
8 association, but I couldn't answer that today. I'm
9 not the expert on how that would be typically done
10 locally. We wouldn't be doing anything unusual.

11 CHAIRPERSON SCHEUER: It's 9:54. Let's
12 take a breather until 10:04.

13 (Recess taken.)

14 CHAIRPERSON SCHEUER: We're going to get
15 started. It's 10:06 A.M. Let's try to start on time.
16 Going to be a very long docket.

17 Please continue with your questioning of
18 the witness, Ms. Isaki.

19 Q (By Ms. Isaki): Mr. Bracken, are you
20 ready?

21 A I'm ready.

22 Q I just want to clarify. You said
23 multi-family property will be owned separately and
24 also have some condo elements?

25 A Common elements, there will be common

1 elements, yeah.

2 Q Are you aware that what you're describing
3 could be considered a condominium?

4 A I'm aware of condominiums and townhomes,
5 yes.

6 Q To go back to the timeline, do you know
7 about how long it takes to get a declaration of
8 condominium regime?

9 A I've gone through that process in Hawaii
10 some time ago. I know that it does take some time to
11 go through that process, yes.

12 Q And do you know how long it takes to get a
13 condominium map?

14 A I would have to defer to my folks
15 specifically, but I'm aware it does take some time.

16 Q Are you aware of legal restrictions on a
17 use of sales of housing moneys, getting a building
18 out of a project when it's considered a condominium
19 project?

20 A Yes.

21 Q Do you know about how long condominium
22 takes?

23 A I know it takes a long time. I couldn't
24 answer that specifically, though.

25 Q So but the Applicant still expects to begin

1 selling by 2025?

2 A We expect to start, yes, we expect to start
3 doing some vertical construction by 2025.

4 Q So you mentioned earlier that you weren't
5 sure where the HOA fees, the amount came from. Do
6 you know how much the fees would be charged for these
7 condominiums?

8 A The budgeting process for something like
9 that would take place once you have plans that are
10 closer to that. But I'm not ensure if, you know, at
11 this point today, I'm not sure if the multi-family
12 would be condo, townhomes or just apartments. That's
13 a little preliminary for this right now, so I don't
14 have an answer on that.

15 Q I'm sorry, maybe I didn't understand.
16 You said that the multi-family, they will
17 still have common elements, right, even if they are
18 townhomes or condominiums?

19 A If you're selling individual units, you
20 would expect to have some sort of common element.

21 Q Right.

22 And you understand that a condominium is
23 real estate, portions of which are designated for
24 separate ownership and remainder for common
25 ownership?

1 A Yes.

2 Q Okay, thank you.

3 And so is there -- are you -- is the
4 Applicant -- are you saying that she might not charge
5 any HOA fees, when you said you are not sure where it
6 comes from?

7 A I would say I'm not sure where these
8 numbers that some people have been throwing around
9 recently of \$800 a month or more, I'm not sure where
10 they were coming up with budgeted numbers for that
11 plan, that seems extremely high.

12 I actually live in a resort community. My
13 common fees are \$200 a month, and those are a little
14 on the high end.

15 This isn't a resort project. I would
16 expect these to be reasonable fees for the type of,
17 you know, development that it is.

18 Q To repeat that, you said you pay about 200
19 a month. And this is in Utah, correct?

20 A That's correct.

21 Q Do you know about what the average condo
22 fee is in Hawaii?

23 A I'm sure the average condominium fees in
24 Hawaii are significantly more. I wouldn't be
25 surprised to see common fees of \$800 or more,

1 especially considering some of the nicer high-end
2 communities that are available here.

3 So I can understand where some expectations
4 are that something could be high, but that is not the
5 type of development we're planning on building, this
6 is not luxury condominiums.

7 Q But you do not know what the HOA fees will
8 be, because you haven't done the condo planning yet;
9 right?

10 A Right. We don't have -- we don't even --
11 we're going through our land designation here. We've
12 got to go through the process with the County. We
13 have got a lot of steps where we get to the point of
14 budgets and that level of planning.

15 Q Okay, thank you.

16 And so I would like to look to your
17 exhibit, your presentation, Petitioner's Exhibit 11,
18 slide 14. This is about your commitment. I'm
19 quoting you.

20 "HG Kauai will sign an affordable housing
21 agreement with the County to confirm the number of
22 affordable units, sales and buyer selection
23 procedures, and buyer resale restrictions."

24 And I'm curious, your FEIS and your housing
25 study, or capacity housing study specified certain

1 prices.

2 Will you commit to those prices, or will
3 the prices be indexed to AMI?

4 A We will commit to substantially comply with
5 what we have. It's hard to say we will commit to a
6 price plan. Just recently lumber has taken
7 140 percent increase in a several-month period, so I
8 can't tell the future, but that report is the best
9 data we have today, and we will commit to move along,
10 assuming without substantial market changes or
11 something that's outside of our control, that is the
12 plan that we're committing to.

13 Q What are the anticipated buyer selection
14 procedures?

15 A The buyer selection procedures?

16 Q Yes.

17 I'm reading from your slide. You said that
18 your agreement will have sales and buyer selection
19 procedures.

20 A Yes. That is for our commitment with the
21 County. That would be part of the agreement we work
22 out with the County. So --

23 Q Have you anticipated -- sorry, please
24 finish.

25 A I know that there are standard procedures.

1 I don't want to overstate what we can and can't do,
2 because there are plenty of fair housing rules and
3 everything else. And I know that the County
4 affordable housing allows there to be some
5 prioritization, but that would be something that we
6 would work with the County and the County rules on.

7 Q So my question though is, have you already
8 anticipated, by looking at those rules, what the
9 selection procedures, the buyer resale restrictions
10 will be in your planning?

11 A Yeah. Whatever is appropriate to put in
12 the planning, yes, I agree with that.

13 Q Just to clarify.

14 Have you anticipated them, and by looking
15 at them, and incorporating them into your plan, or
16 you're just going to wait to see what the County
17 does?

18 A We were going to get a little bit closer to
19 that. We are still very preliminary in our plans. I
20 don't have any unit plans. We're not pulling
21 permits. That is something that we will develop with
22 the County.

23 Q Okay.

24 And I was going next move to the Petitioner
25 Exhibit 36, which is your presentation, and slide two

1 where you say:

2 HG Kauai will provide design of mixed
3 multi-family housing type at County zoning level.

4 My question is, does this mean that the
5 Applicant will provide single-family housing in the
6 affordable ranges?

7 A Our affordable has been mainly on the
8 multi-family. If it's appropriate to have something
9 on the single family, that's something we would have
10 to work with the County. I don't have an answer on
11 that today.

12 Q Will some of the multi-family housing be
13 for four-person families?

14 A Are you talking about, like, number of
15 bedrooms, like three bedroom units?

16 Q Yeah, four bedroom units.

17 A We would be looking at having a mix of
18 bedrooms, and I understand that there is some --
19 there will likely be some sort of requirement for
20 more bedrooms.

21 But, again, I don't have specific numbers
22 on that. That would be something we would negotiate
23 with the County, we would work with them on.

24 Q And so you will have four-bedroom houses if
25 the County requires it; is that correct?

1 A Yeah, we will do whatever -- we will do
2 what the County requires.

3 Q Okay. But you have not made any plans
4 about -- or looked into how much it will cost,
5 penciled it out?

6 A Not beyond a preliminary level, just to
7 make sure that our general plan seems to make sense,
8 back of the napkin.

9 Q And your affordable housing units, will
10 they been integrated with the other units in the
11 project?

12 A Yes.

13 Q And just kind of a separate question.
14 Has the Applicant ever contacted Intervenor
15 Martin to address his concerns of the project?

16 A I would have to talk to -- I mean, you'd
17 have to address that question to the particular
18 consultants who have been working on addressing them.
19 I couldn't tell you offhand who's contacted who.

20 Q Do you know who the --

21 But HG Kauai never directed any of the
22 consultants to ask the Intervenor about his concerns
23 or to ask his input?

24 A I would say we directed our consultants to
25 review and address that. I can't tell you whether

1 they contacted him directly. Whether they contacted
2 which of the -- you know, other commentators may have
3 been contacted. But I couldn't answer that right
4 now.

5 Q But you do know, HG Kauai, you did tell
6 your consultants to talk to Intervenor Martin?

7 A No, I would say that we instructed all of
8 our people to address the concerns, to take them
9 seriously.

10 You know, we -- that is something we are
11 looking at. I don't know that I necessarily said,
12 "go talk to the Intervenor", but, you know, we'd have
13 to find out who the individuals -- who they have
14 spoken to and how we addressed those concerns.

15 Q Okay, thank you.

16 A We are not opposed to it, though, if that
17 hasn't taken place.

18 Q Okay, thank you.

19 Did you say yesterday that you will take
20 appropriate action if you encounter historic
21 properties?

22 A Yes.

23 Q How will you know if you're encountering
24 historic property?

25 A We would certainly be relying on our

1 consultants. We've worked with our archeologist. I
2 would be relying on people who knew what that is and
3 could identify them.

4 Some things will be easier. The obvious
5 ones, you know, if there is a grave site or something
6 that was discovered, obviously, that does not take a
7 lot of expertise to identify. But I would need to
8 rely on the experts for that.

9 Q So are you going to retain archeological
10 monitors throughout the ground disturbance to assist?

11 A I would have to look at what's required and
12 what's appropriate. We would certainly get there
13 with specific concerns. We want to make sure that
14 we're doing what is right.

15 Q And you'll be using the same archaeological
16 consultant, Exploration Associates, that you used in
17 the FEIS and the Environmental Impact Statement; is
18 that correct?

19 A That would be our intent.

20 Q Thank you.

21 One more question, maybe two along this
22 line.

23 Did you say that you dealt with historic
24 properties and cultural sites on a daily basis in
25 regard to your Gallup plan in New Mexico?

1 A Yes. We have about 26,000 acres down
2 there, and that particular property has substantial
3 native American sites on it, and a number of
4 historical sites.

5 So we have done a number of archaeological
6 data out there, and we also have very common things.

7 We're talking about a project 40-square
8 miles, so we often have people hunting for artifacts
9 that we need to deal with. It does seem to come up
10 on a regular basis. It does come up as an item of
11 discussion, probably weekly.

12 Q Thanks for clarifying that.

13 And these are Gallup, that's on Hopi,
14 Navajo (indecipherable) lands?

15 A Navajo. The archaeological sites are often
16 more ancient.

17 Q And do you contact the affected community,
18 Navajo community, in addressing historic properties
19 there?

20 A Yes.

21 For example, we did recently have somebody
22 who disturbed a grave site that was previously
23 unknown to us. We contacted -- again, it was a more
24 ancient tribe. We contacted the local Navajo who
25 handles those particular issues. They came out,

1 assessed the site and did a reburial ceremony for the
2 site that was disturbed.

3 And then we ended up registering that site
4 or making the state agency aware of the site and have
5 them put fencing on it as well.

6 But that's something that's very common for
7 us.

8 Q And so previous to this grave disturbance
9 or your other weekly disturbances, have you done some
10 kind of archaeological survey, or I guess, an
11 archaeological assessment like the one that your
12 archaeological consultant did in this case?

13 A In this case the land that we bought, the
14 previous owner had done substantial assessments,
15 because they had actually acquired the land for coal
16 mining, which was not what we were interested in.
17 But in that process, they had done a number of
18 assessments, a number of archaeological.

19 Probably more recently we have been working
20 with the local community out there to bring in some
21 major waterlines, and so all of the easements we've
22 done, have been before anything gets disturbed in a
23 project like that, we have the archaeologist come in.

24 In this case the city had an archaeologist
25 come in and clear those sites as well. And there was

1 a few, you know, dwellings that were excavated,
2 studied, and I believe that some of the waterlines
3 were adjusted to make sure that they missed that.

4 But it's a very common thing for that area.
5 Any construction we have to do some sort of
6 archeological.

7 Q Okay.

8 And just to clarify, there was
9 archaeological studies done previous to your
10 construction, and then there was still, on a weekly
11 basis (indecipherable).

12 A Yes. Any time there is construction, we
13 have to clear it as part of an environmental
14 assessment. And kind of the more common things would
15 be, you know, trespassers who might disturb things.

16 We actually have a couple of public trails
17 across the property as well. There's a very large
18 substantial project, and takes a lot of just land
19 maintenance on it.

20 Q Thank you.

21 I'm going to move onto water, and this is
22 Exhibit 11, your Exhibit 11 at slide 14.

23 Applicant proposes to dedicate a well to
24 the County and construct lines to reservoirs in
25 consideration of the County Department of Water

1 providing potable water and fire protection water for
2 HoKua Place.

3 Is that correct? Is that a correct reading
4 of your presentation?

5 A Yes.

6 Q Is Applicant proposing that reservoirs and
7 not storage tanks be used in its water system?

8 A No. We would be looking at storage tanks.

9 Q I just wanted to be clear what this meant
10 by "reservoir".

11 And where would those reservoirs be located
12 if you have to do your private system?

13 A I don't have a design on that. That would
14 be something we would have to look at, at that time.

15 Our expectations, as I mentioned, is to
16 hope to work with the County on that, and be tied
17 into the system there.

18 If we have to do a private system, that is
19 something we will have to figure out where to place
20 and design at that point.

21 Q Okay, understood.

22 And this is relating to sewage collection
23 on that same slide 14.

24 You stated that Applicant will construct a
25 sewage collection system and transmission line to the

1 Wailua Wastewater Treatment Plant; is that correct?

2 A Yes.

3 Q Did that indicate that the Applicant is not
4 going to build another wastewater treatment plant? I
5 think you said this yesterday.

6 A That would be our expectations. My
7 understanding is that we would work with the County
8 to make sure that the current system has capacity and
9 has the upgrades that it might need as we are tying
10 onto it.

11 Our expectations would be we would pay our
12 fair share of that. If that was not possible, that
13 would be something we would have to work with the
14 County on an alternative. But that's our
15 understanding and our expectation.

16 Q So the Applicant is committing to paying
17 its fair share to build out properties for the Wailua
18 Wastewater Treatment Plant, whatever that might be?

19 A Whatever that might be. Whatever, you
20 know, to be negotiated with the County.

21 I understand if there's some capacity in
22 there, that might be something, you know, if there is
23 some capacity, expansion needed, that's obviously
24 something we will have to deal with at that level.

25 Q Moving onto another item which is, you said

1 the Applicant has been actively involved with the
2 project since 2013, correct?

3 A Yes.

4 Q Now, this is referring to Exhibit 36, slide
5 2, which is also your presentation.

6 HG Kauai will confer with County of Kauai
7 agencies regarding a location for relocation of
8 County swimming pool and other County facilities,
9 such as police and fire station; is that correct?

10 A Yes.

11 Q Has the Applicant discussed the terms and
12 conditions for relocation of the County pool with the
13 County Parks Department?

14 A We've had conversations with the parks
15 department. We've kind of had some preliminary notes
16 on some maps, but this has been so far in advance of
17 being able to actually put something in place.

18 We haven't, you know, finalized a specific
19 location or the specifics of that. We do know that
20 it has been a desire to move that, because from what
21 I understand, they needed some better facilities,
22 some expansion of that, and there has been some
23 discussion of locating that closer to the schools so
24 there would be some access related to the school.

25 None of the details have been worked out or

1 discussed much more than that other than there is a
2 desire and we've committed to help them work that
3 out.

4 Q Along the same lines, have you discussed
5 these plans with the police or fire department?

6 A Not specifically, but just knowing that
7 that is something that has been needed and something
8 we have had to deal with on other projects, that is
9 something we will work out.

10 Q Did either the County parks, police or fire
11 department provide comment letters on your EIS?

12 A I don't know offhand. I know we have had
13 conversation, mainly on the parks level. I don't
14 know if we got a comment letter in. I couldn't tell
15 you offhand.

16 Q So the EIS describes the fire and police
17 substation several times, but nobody talked, as far
18 as you know, talked to the police or fire department?

19 A I don't know which departments we have
20 talked to. Again, these have been identified that we
21 have discussed, that we would be willing to help
22 with.

23 Q Okay, thank you.

24 My final questions are about, also on your
25 presentation, Exhibit 36 at slide 2. This is in

1 regard to the Applicant cooperating with -- HG -- the
2 State Department of Transportation and County and
3 making improvements to Kapaa bypass and Olohena Road.

4 Is that just to accommodate HoKua Place
5 residents?

6 A Certainly to accommodate HoKua Place
7 residents, but we are part of a larger network, just
8 because of the bypass road.

9 So I don't know if you can look at that in
10 isolation. We will work with them to address the
11 needs that we can help on with our development --

12 Q So --

13 A Go ahead.

14 Q I notice the County -- actually I'm going
15 to defer that question.

16 Did you state that you didn't update your
17 TIAR because of the COVID pandemic condition?

18 A Yes. We were going into the COVID pandemic
19 conditions. It was asked that we update that. We
20 looked at that internally. We didn't feel like the
21 reduced -- potentially reduced traffic, I think at
22 that time, we weren't quite sure what the pandemic
23 was going to be, still early on, and we made that
24 decision to do that at a later time when that felt
25 more appropriate.

1 Q But then your Exhibit 19, which is traffic
2 or supplemental traffic memorandum, this is based on
3 March 2017 observation; is that correct?

4 A Yes, but it was not a full updated traffic
5 study.

6 Q Was it not a full updated traffic study
7 because it excluded the midday traffic?

8 I'm sorry, withdraw that question. That's
9 actually confusing.

10 Can you explain why -- or does your
11 supplemental traffic memorandum, Exhibit 19, is the
12 only thing it adds, the midday traffic numbers from
13 March 1017?

14 A Again, this would be a better question for
15 that consultant, but --

16 Q Okay.

17 A -- my understanding was that we did that
18 because specifically there was a gap in the timing,
19 midday. But he would be better able to answer that.

20 Q I will ask them that. I do have one more
21 question.

22 I want to clarify that your previous
23 obligations to the Department of Transportation
24 recorded against the property as to the setback area,
25 the dedication of the setback area, is that to be

1 counted as mitigation for traffic, for this project,
2 as a condition of this project approval?

3 A I know that it is something that we have
4 already committed to. And I know that it's -- and
5 certainly it is something we feel like we have
6 committed and have been a mitigating factor.

7 I don't know specifically if we have
8 counted that as one of the mitigating factors.

9 But some of the things that are not in the
10 Petition Area as well, just like the agriculture, you
11 know, even though it's not in the Petition Area, we
12 felt like it was the right thing to do, and maybe
13 mentally in our mind it was part of our mitigation,
14 even though it might not be counted as that. I mean,
15 it might need to be to the individuals that were
16 putting that together. I couldn't answer that
17 offhand.

18 Q And along that line of mitigation for the
19 project -- and I'm asking this because in your
20 presentation 36, slide 3, you prefer to refer to
21 project generated impact and pro rata share.

22 So my question is: Will the determination
23 of what is generated by the project, as opposed to
24 what other traffic improvements are already going on,
25 will that be done in your fourth traffic impact

1 assessment report?

2 A I think that it might be best to have the
3 traffic consultant address that. I think he would
4 understand your question a little bit better.

5 Q Thank you. I have no more questions.

6 CHAIRPERSON SCHEUER: Thank you, Ms. Isaki.

7 We're now in the state of the proceedings
8 where the Commissioners will ask questions, but I'm
9 going to do something slightly different than I
10 normally do.

11 I have a sense that there will be a robust
12 desire from many Commissioners to ask questions, so I
13 want to first get a sense for managing our
14 proceedings today.

15 Are there any Commissioners who don't have
16 any plans to ask questions of this witness? Nancy,
17 you're saying -- do you have plans to ask questions?

18 VICE CHAIR CABRAL: No, no, I'm actually --
19 I think I'm not at this point thinking any of my
20 questions really matter, they're about condos and
21 housing, which all have to be worked out. So there
22 is not answers to my questions as previously, so I'm
23 okay not asking questions.

24 CHAIRPERSON SCHEUER: So Commissioner
25 Okuda, Commissioner Wong -- did I see you raise your

1 hand -- Commissioner Chang, Commissioner Giovanni.
2 The Chair also has questions. Commissioner Aczon.
3 Okay.

4 I want to defer to the Kauai Island
5 Commissioner. Do you have a desire to go first or do
6 you have no preference?

7 COMMISSIONER GIOVANNI: I appreciate the
8 consideration, but I have no preference to go first.
9 In fact, I generally learn much from the questioning
10 of my fellow Commissioners, so maybe in the middle
11 someplace would be fine.

12 CHAIRPERSON SCHEUER: So let's start off
13 with Commissioner Okuda. We will follow up by
14 Commissioner Chang, followed by Wong, followed by
15 Aczon. And then let me be very clear, this does not
16 mean that if you come up with a question, I'm not
17 saying you have to speak now and forever hold your
18 peace. I'm just trying to get a sense, Okuda, Chang,
19 Wong, Aczon, Giovanni and then myself.

20 This might well take us through the day,
21 even if we're lucky.

22 Commissioner Okuda, we will go to -- I
23 noted we started at 10:06 -- we will go to about
24 10:56.

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1 Thank you, Mr. Bracken, for giving your
2 testimony and being here today.

3 Let me frame my questions so that I'm not
4 either intentionally or inadvertently playing hide
5 the ball to you.

6 My question is basically designed to
7 address an admonition that the Hawaii Supreme Court
8 has given us at the Land Use Commission, and
9 specifically, I'm going to follow up on questions
10 regarding that admonition to determine basically
11 whether or not there really will be a development in
12 the end, or there won't be a development.

13 So let me first read what the Supreme Court
14 said. It's short, but I think it's important to
15 read. It's from a case called DW Aina Le'a
16 Development LLC versus Bridge Aina Le'a, LLC found at
17 134 Hawaii Reports 187 at pages 211 to 212; on the
18 Pacific 3d citation it's 339 Pacific 3d 65 at pages
19 709 to 710. It's a 2014 case. And this is what the
20 Hawaii Supreme Court said.

21 The legislative history further indicates
22 that the legislature added this language in order to
23 empower the LUC to address a particular situation,
24 namely, where the landowner does not develop the
25 property in a timely manner.

1 The Senate Committee on Energy and Natural
2 Resources specifically noted that, quote, "vacant
3 land with the appropriate State and County Land Use
4 Designation is often subjected to undesirable private
5 land speculation and, uncertain development
6 schedules", close quote, and that, quote, "such
7 speculation and untimely development inflates the
8 value of land, increases development costs, and
9 frustrates federal, state, county and private
10 coordination of planning efforts, adequate funding,
11 public services and facilities", close quote.

12 So that is the foundation or basis that I'm
13 basing the following questions I'm going to be ask,
14 and I'm really going to try my best to try to finish
15 before the break.

16 You have given testimony on many assurances
17 and representations in response to questions from
18 Deputy Attorney General Yee representing the Office
19 of Planning and the Intervenor's counsel.

20 How much are all of these representations
21 going to cost?

22 THE WITNESS: I don't have a specific
23 budget amount. Most of the representations that I
24 have made I would consider normal development
25 practices.

1 Certainly in this local area there's some
2 of them above and beyond. Our preliminary budget, as
3 we've looked at it, we do expect there to be, you
4 know, 20-plus-million dollars to bring the
5 infrastructure in. And I believe that we have --
6 we've taken into account our representations in that.

7 And my expectations are that throughout the
8 development process, looking at it from a cash flow
9 and an accounting perspective, my measurement is a
10 high water mark of probably between \$25 and
11 35 million in cash needed to continue the process.

12 COMMISSIONER OKUDA: Does that estimate --
13 did you say \$35 million on the high side?

14 THE WITNESS: Yes, ballpark.

15 COMMISSIONER OKUDA: Does that \$35 million
16 take into account the representations you have made
17 about traffic improvements, or dealing with the
18 traffic, dealing with sewage, dealing with
19 archaeological monitoring, dealing with protection of
20 the wetland, dealing with all the other
21 representations and promises you have responded and
22 told the Deputy Attorney General, Mr. Yee, and
23 Intervenor's lawyer, or could it be more?

24 THE WITNESS: It could be more. But I
25 believe -- and, again, this isn't the total budget,

1 this is my cash-flow needs.

2 This is not too dissimilar to other
3 projects that I have done, or I've had to build water
4 systems, you know, for the city in -- I'll use the
5 Sand Hollow project. We spent two-and-a-half million
6 dollars on building the city water tanks, because
7 they were not in the city plan at this time, and we
8 built almost four miles of sewerline to connect into
9 the local system.

10 So I believe the representations that I
11 have made are consistent with the development
12 practices that we have done at other locations. And
13 I have not heard anything that seems overly
14 unreasonable at this time.

15 And I believe that our financial resources
16 are in place to see this through.

17 COMMISSIONER OKUDA: Mr. Bracken, I
18 apologize if my questions seem a little bit pointed,
19 but we are a quasi-judicial body that is required to
20 follow the statutes that the legislature has passed
21 and make our decisions based on the evidence that's
22 presented in the record.

23 And so let me ask this question. And you
24 can ask the help of your counsel if that helps.

25 Where in the record is there evidence of

1 the total expected budget for this project, including
2 all these representations that you made today?

3 Is there a document in the record which you
4 can point to which shows the budget, including all
5 these representations that you have made?

6 THE WITNESS: I don't believe that there is
7 in the record at this time.

8 COMMISSIONER OKUDA: Okay, thank you.

9 Let's talk about what is in the record, and
10 if you can look at Exhibit 6, which I believe is the
11 financial statement.

12 CHAIRPERSON SCHEUER: Petitioner 6?

13 COMMISSIONER OKUDA: Yes, I'm sorry, Mr.
14 Chair. I should have been more clear. Yes,
15 Petitioners Exhibit 6.

16 Mr. Bracken, do you have that in front of
17 you?

18 THE WITNESS: I don't have it in front of
19 me, but I believe I'm generally familiar with it.

20 We're trying to call it up right now.

21 COMMISSIONER OKUDA: No problem. If at any
22 time you want to stop and refer to any documents, let
23 me know. This is not a memory test, and this is not
24 trick questions.

25 By the way, please do not take from my

1 questions that I have an inclination one way or the
2 other regarding this matter. All I'm doing is trying
3 to get evidence on the record so we can carry out our
4 duties and our obligations under the statute and the
5 cases.

6 Now, this financial statement titled "HG
7 Kauai Joint Venture LLC Financials Management Basis,
8 December 31, 2019.

9 So this financial statement accurately
10 shows the assets and liabilities with respect to HG
11 Kauai Joint Venture LLC, correct?

12 THE WITNESS: That is correct.

13 MS. AHU: Chair Okuda, may I share on my
14 screen so that he can see it?

15 CHAIRPERSON SCHEUER: You've promoted Mr.
16 Okuda.

17 COMMISSIONER OKUDA: Sorry, Mr. Chair, I
18 don't have control over that.

19 Mr. Bracken, if you look at the assets of
20 HG Kauai Joint Venture LLC, and that's the Applicant,
21 right, the LLC?

22 THE WITNESS: That's correct.

23 COMMISSIONER OKUDA: 13,884 -- I'm sorry,
24 yeah, \$13,884,570; correct?

25 THE WITNESS: That's what's on the

1 statement, yes.

2 COMMISSIONER OKUDA: About \$14 million.
3 The assets are basically the land. Is that true?

4 THE WITNESS: Yes.

5 COMMISSIONER OKUDA: In fact, besides the
6 real estate, which is the subject of this Petition,
7 the Applicant has no other substantial assets that
8 would be able to be used to complete the development,
9 even based on your estimate, which seems to be
10 tentative; isn't that correct?

11 THE WITNESS: Yeah, but as -- this is a
12 common structure that we would often develop, yes.

13 COMMISSIONER OKUDA: And your estimate -- I
14 don't want to call it pure speculation, because it
15 seems based on your experience and education. But
16 it's not an estimate which, again, you can point to a
17 written budget in the record; correct?

18 THE WITNESS: Correct.

19 COMMISSIONER OKUDA: Okay.

20 Can you point in the record where there is
21 an irrevocable commitment to provide the funds
22 necessary to pay for all of these representations
23 that you have made today to the Office of Planning
24 and to the Intervenors, and to the representations
25 actually made in the Applicant's submission and

1 Boundary Amendment Petition?

2 THE WITNESS: I can't point to -- I believe
3 on the financial statement in the notes just there
4 under line of credit, we've secured right there on
5 the balance sheet there's a \$15 million and \$5
6 million line of credit that is not drawn up at this
7 point.

8 And, again, so that is a financial resource
9 that is available, and in addition, as you can see,
10 that we really have not leveraged the existing
11 property at all.

12 We do plan on trying to utilize as much
13 traditional financing as possible, and outside of
14 that, we do have the ability within our larger
15 organization to provide some equity into the project.

16 This is not the first development we have
17 done. And I have been, at last count, I know I have
18 been directly involved in over \$200 million of
19 development in one form or another.

20 So we are early in the process. I don't --
21 we don't have all of the assets specifically in this
22 entity sitting here, but we do have the financing
23 secured for the first 20 million or so, which I
24 believe will take us far enough along to take the
25 project to the point where we can get more

1 traditional financing. And if not, we will go
2 through our internal process.

3 COMMISSIONER OKUDA: Where is there
4 evidence in the record of even a preliminary inquiry
5 with respect to traditional financing?

6 THE WITNESS: I did have that on my initial
7 testimony. When I discussed the two lines of credit.
8 I believe I made a statement that it was on the
9 PowerPoint that we would be looking at traditional
10 institutional financing.

11 COMMISSIONER OKUDA: I see. But my
12 question is more specific.

13 Where is evidence in the record that there
14 has been communication with, to use your term,
15 traditional financiers, and there's at least
16 something in the record showing preliminary interest
17 by these traditional financiers to provide the funds
18 that would be necessary to complete this development
19 and the representations you have made to the
20 attorneys and to the community?

21 THE WITNESS: There is not at this time.
22 We would normally do that when we have engineering
23 and an actual cost breakdown.

24 COMMISSIONER OKUDA: Okay.

25 Now, I did review the underlying credit,

1 lines of credit, especially with -- you had a
2 mortgage with Goldman Sachs, isn't that correct?

3 THE WITNESS: That is that correct.

4 COMMISSIONER OKUDA: In fact, it appears on
5 the preliminary title report that we will go to
6 later.

7 That mortgage and that document, or that
8 financing agreement is also an exhibit in the record,
9 but it indicates that it was basically guaranteed or
10 a co-borrower or whatever term you want to use, is
11 Mr. Roche or one of his related entities; correct?

12 THE WITNESS: Right.

13 COMMISSIONER OKUDA: Because isn't it true
14 that in reality a conventional lender -- and this is
15 based -- I'm asking, your answer is based on your
16 experience and also being a CPA, that the expectation
17 is a conventional lender or the lender that's going
18 to extend all these additional funds is going to want
19 to have the loan guaranteed by somebody who has
20 basically the collateral or wealth to pay off the
21 loan, correct?

22 THE WITNESS: Yes. I would say that is
23 normal.

24 COMMISSIONER OKUDA: And that would be
25 normal, because HG Kauai Joint Venture LLC, according

1 to its own financial statement, does not have the
2 assets for financial wherewithal itself to enter into
3 such loan, correct?

4 THE WITNESS: Yes. It's very common for
5 the bank to want a personal guarantee, you're
6 correct.

7 COMMISSIONER OKUDA: Now, unfortunately the
8 Land Use Commission, in some recent cases, have had
9 to deal with situations where we have given -- or
10 prior Commissions have given approval for boundary
11 amendment changes, with representations that certain
12 affordable housing or infrastructure would be built;
13 nothing is built, and the entity that received the
14 approval, just went, and for no better term, flipped
15 or resold the property at a profit or used it as
16 collateral, basically taking out the entity -- taking
17 out the equity rather -- and not providing the
18 benefits to the community as promised.

19 CHAIRPERSON, SCHEUER: Mr. Okuda --
20 Commissioner Okuda, sorry, do we still need to show
21 screen?

22 COMMISSIONER OKUDA: No, we don't. Thank
23 you.

24 So, Mr. Bracken, let me ask you this.

25 Since Mr. Roche seems to be the person with

1 the money and the person who's controlling these
2 entities, is he willing to personally guarantee,
3 personally guarantee all the representations and
4 promises that you're making in this Petition, and
5 also at this current hearing, the representations
6 that you're making on behalf of HG Kauai Joint
7 Venture LLC, will Mr. Roche personally guarantee
8 these representations?

9 THE WITNESS: That would be a question I
10 would need to address with him. But it has not been
11 something we have discussed internally.

12 COMMISSIONER OKUDA: Let me ask you a hard
13 question facing the Commission, one of the hard
14 questions facing the Commission.

15 If Mr. Roche is not going to personally
16 guarantee the promises and representations that are
17 making, or that you are making, what assurances do we
18 as the Land Use Commission have that these
19 representations and promises are going to be made?

20 And frankly, I'm just paraphrasing what
21 Deputy Attorney General Yee had asked.

22 I mean, what assurances do we have that
23 future Land Use Commissions will not face the same
24 type of situation we have where you have a parcel of
25 land, 20 years later promises haven't been kept?

1 THE WITNESS: All I would ever consider
2 that, to be perfectly frank, I will say that, you
3 know, at least some of our history on other projects
4 shows our commitment to a project, even when things
5 don't work out.

6 We've had the Sand Hollow Resort project.
7 The reason why I brought that one up specifically is
8 construction started on that right before the real
9 estate crashed.

10 It was a project that should not have
11 survived. We -- you know, when the prices dipped, we
12 did not have sales for multiple years. This was
13 2007, '8, '9. We stood behind the project. We took
14 it through the downturn and was able to come out the
15 other end, when frankly, it would have been in our
16 best interest to walk away or to flip the project at
17 that point in time.

18 So I know that maybe the past history isn't
19 necessarily indicator of the future all the time, but
20 I would like to think that we've done this in the
21 past. We've been able to see projects through when
22 there's expected, as you're talking about, what
23 assurances or how we can do that. I don't
24 necessarily have an answer for that right now, other
25 than what the property that we're putting up here, as

1 I'm certainly making representations.

2 I don't know the exact procedure, but I
3 would assume that those representations are there
4 with the property and with our approval.

5 I understand one of the things that we have
6 stated is that we will comply substantially with the
7 representations that are being made, and if we don't,
8 then our designation could be revoked.

9 So I suppose ultimately even after we get
10 this, the Land Use Commission have that right if
11 we're not following the representations that we make.

12 CHAIRPERSON SCHEUER: The time, Mr. Okuda.
13 I'm going to ask for a ten-minute break and ask you
14 to continue questioning of the witness.

15 COMMISSIONER OKUDA: Yes, Mr. Chair. Thank
16 you very much. I did not --

17 CHAIRMAN SCHEUER: No problem. It's 10:57,
18 we will reconvene at 11:07.

19 (Recess taken.)

20 CHAIRPERSON SCHEUER: It's 11:07. We are
21 back in session.

22 Commissioner Okuda, please continue with
23 your cross-examination of the witness.

24 COMMISSIONER OKUDA: Thank you, Mr. Chair.
25 Just a heads up to yourself, Mr. Chair, I

1 have two questions remaining regarding the matter I
2 was questioning. I have a series of questions
3 regarding the status title report, and one very short
4 question regarding traffic.

5 So that's what I plan to cover.

6 Mr. Bracken, going back to the topic we
7 were discussing.

8 Is the -- or would the Applicant be willing
9 to offer to the Commission and the community agreeing
10 to a condition that the property would not be sold or
11 transferred, and that condition also including the
12 standard type of covenant against change of control
13 of the entity until all representations have been
14 completed?

15 In other words, would the Applicant be
16 agreeable to offer to agree to a covenant against
17 change of control to prevent the flipping of the
18 property after, or if the boundary amendment were to
19 be granted?

20 THE WITNESS: Just offhand, that's a
21 concern I have is you're putting my accounting hat
22 on, and oftentimes we will make a change in ownership
23 internally at the development stage just to move the
24 property from an investment to an actual development.

25 This is a capital gains versus ordinary

1 income rule. And I'm hesitant to answer that
2 question right now because I haven't thought through
3 whether that might conflict with a future loan
4 covenant or something else.

5 I think, you know, obviously we have put
6 millions of dollars into this property right now. We
7 want to stand behind what we're saying. I'm just a
8 little hesitant that I might be conflicting with
9 another obligation or another loan covenant
10 inadvertently.

11 But generally speaking, I think that we are
12 willing to have some sort of discussion along how we
13 could make those assurances.

14 COMMISSIONER OKUDA: Yeah, okay.

15 Let me ask you this. Can you point to any
16 other development or project in Hawaii that your
17 company or groups of companies or affiliates have
18 engaged in in Hawaii at any time?

19 THE WITNESS: Within this group, no, we
20 can't.

21 I have, many years ago, worked on a very
22 small one on Oahu. I don't remember the name. It's
23 been more than a decade ago. But it was quite a
24 different property.

25 We took a duplex. We went through a CPR

1 process. We built two more duplexes on it, expanding
2 it to three units, but it was not a wildly
3 significant project. But that would be the only
4 thing that this related party, this group has done.

5 COMMISSIONER OKUDA: Okay, thank you.

6 Let me move on now to the status title
7 report. That is, I believe, is Petitioner's
8 Exhibit -- was that 48?

9 THE WITNESS: 38.

10 COMMISSIONER OKUDA: Okay, I'm sorry.
11 Yeah, you're right, Exhibit 38. I'm looking at my
12 screen here, okay.

13 There is a difference between a status
14 title report and a title insurance policy, correct?

15 THE WITNESS: Correct.

16 COMMISSIONER OKUDA: A status title report
17 is basically what the title company reports is the
18 state of title. But the title company really is not
19 putting up much of a guarantee or promise or being
20 exposed to the report if the information turns out to
21 be wrong, correct?

22 THE WITNESS: Right. They're not putting
23 the policy in place.

24 COMMISSIONER OKUDA: Right. In fact, if
25 you look on the first page of your status title

1 report, Title Guaranty of Hawaii LLC specifically
2 limited its liability to either the lesser of \$3,500
3 or two times the amount paid for the title report,
4 correct?

5 THE WITNESS: Correct.

6 COMMISSIONER OKUDA: Do you know whether or
7 not more than \$2,000 is paid for this status title
8 report?

9 THE WITNESS: I couldn't tell you off hand,
10 but I would think that that would be substantially
11 correct. This type of title report, that would be
12 what I would expect.

13 COMMISSIONER OKUDA: Okay, because the
14 difference is, if you had a title insurance policy,
15 and let's say the title insurance policy was for the
16 amount of, we could say the value of the real
17 property, and let's just take \$10 million as a round
18 figure or whatever amount used in the prior exhibit,
19 the title insurance company would have substantially
20 more obligations toward the landowner, correct?

21 THE WITNESS: Correct.

22 COMMISSIONER OKUDA: The title insurance
23 company, for example, if there was a claim against
24 title or question against title, the title insurance
25 company at its expense would have to step in, hire

1 the lawyer to protect the title, correct?

2 THE WITNESS: Correct.

3 COMMISSIONER OKUDA: And if for some reason
4 the title company was not able to protect the title
5 in whole or in part, and there was a financial loss,
6 the title insurance company may have to pay up to the
7 amount of the coverage which may be \$12 million or
8 whatever the title policy was for, correct?

9 THE WITNESS: Yes.

10 COMMISSIONER OKUDA: With respect to the
11 present property, did the Applicant or anyone else
12 ever obtain a title insurance policy for the
13 property?

14 THE WITNESS: When we purchased the
15 property, it was at a foreclosure sale. And I don't
16 remember if there was a policy at this point in time,
17 but usually in a foreclosure sale you have a court
18 approved foreclosure sale, which gives you a very
19 clean title at that point in time.

20 And I can't tell you offhand whether we did
21 an additional title policy on top of that process
22 there.

23 COMMISSIONER OKUDA: Well, you know, I'm
24 not here to testify in this proceeding, just -- you
25 know my practice, my partners for almost 40 years

1 have done a great bulk of foreclosures in the State
2 of Hawaii, and I believe the rule is actually in a
3 foreclosure case, you only get the title that the
4 foreclosing entity had. You don't get any better
5 title than what the foreclosure --

6 THE WITNESS: Right.

7 COMMISSIONER OKUDA: So you have in the
8 record a Foreclosure Commissioner's Deed from a
9 person named Curtis Shiramizu, right? The Foreclose
10 Commissioner, correct?

11 THE WITNESS: That sounds correct.

12 COMMISSIONER OKUDA: So it's whatever title
13 he had, good, bad or otherwise, which is whatever
14 title the foreclosure entity had good, bad or
15 otherwise, that's what you folks have; correct?

16 THE WITNESS: Right.

17 COMMISSIONER OKUDA: So it's either yes, no
18 or I don't know.

19 THE WITNESS: I can't tell you right now, I
20 don't remember. This was 2013.

21 I would have to look through my records.
22 That's something I'll have to look at.

23 COMMISSIONER OKUDA: Okay.

24 Well, let's look at the status title report
25 then. The status title report seems to track the

1 Commissioner's deed, but whether it does or it
2 doesn't, let me ask you to look at certain exceptions
3 that are shown on the status title report.

4 And my question to you is whether or not
5 you are aware of the substance of the exception, and
6 whether or not you can tell us whether or not the
7 exception affects the ability of the Applicant to
8 actually develop the property as being represented in
9 this proceeding?

10 Do you have the status title report in
11 front of you?

12 THE WITNESS: I don't have it in front of
13 me.

14 MS. AHU: Chair, can I please share my
15 screen?

16 COMMISSIONER OKUDA: Okay, if you can look
17 at, for example, Exception No. 17, it says Memorandum
18 of Option Agreement, and there's a document of a
19 Bureau of Conveyance document which shows the
20 recordation of that Memorandum of Agreement. That's
21 Bureau Document 2006-203541.

22 Do you know what the substance is generally
23 of Exception No. 17?

24 THE WITNESS: Yes. Yes, I do.

25 It is on a piece of property outside of the

1 Petition Area where the existing solar farm is on the
2 ag property.

3 COMMISSIONER OKUDA: So does that
4 memorandum in any way affect the development of the
5 property as represented?

6 THE WITNESS: No.

7 COMMISSIONER OKUDA: Do you know why it's
8 then listed as an exception on title?

9 THE WITNESS: Because the Petition Area is
10 smaller than the parcel area. So we actually have a
11 little bit larger parcel to the title report on the
12 entire parcel, not just the Petition Area.

13 COMMISSIONER OKUDA: Do you have an
14 understanding of Exception No. 18, which is another
15 Memorandum of Agreement, the recordation number
16 2009-166981.

17 What is that Memorandum of Agreement
18 regarding or about?

19 THE WITNESS: I'm not sure offhand, but I
20 believe the agreement that we had in place were all
21 on the ag property outside of the Petition Area.

22 You know, I need to actually pull that
23 specific agreement to make sure it's the same one,
24 but it would be very related to the option agreement.

25 I'm a little hesitant to say that's

1 actually what it is, because it was just referred to
2 with the Memorandum of Agreement and the date.

3 COMMISSIONER OKUDA: If you don't know,
4 responding "you don't know" is fine. We can deal
5 with this if necessary later.

6 Please look at Exception No. 19. It says
7 the terms and provisions contained in unrecorded
8 co-tenancy agreement, dated April 13, 2001 between
9 Allen Family LLC, an Arizona limited liability
10 company, and Kapaa 160 LLC, a Hawaii limited
11 liability company, as mentioned in instrument dated
12 May 17, 2003, recorded as document number
13 2002-098923.

14 Can you tell us or do you know what that
15 document deals with or is about?

16 THE WITNESS: Yes, generally, but I do know
17 this does not affect the Petition, our ability to
18 follow through with the representation.

19 COMMISSIONER OKUDA: Well, can you tell me
20 what the substance is of that agreement? What does
21 that agreement basically say in summary?

22 THE WITNESS: It was some terms with the
23 Allen family, who is a minority interest in HG Kauai
24 as well. So this is a related entity with HG Kauai.

25 I'm trying to remember the specific

1 details.

2 Yeah, I'm sorry, right now the specifics --
3 but I do know this does not affect the Petition Area.

4 COMMISSIONER OKUDA: Well, what are HG's
5 responsibilities or obligations under that unrecorded
6 co-tenancy agreement?

7 THE WITNESS: Let me -- would you mind if I
8 just took a quick consultation with my attorney real
9 quick and just briefly familiarize --

10 COMMISSIONER OKUDA: Mr. Bracken, that's
11 okay. I mean, if you don't know right now, that's
12 fine. Let's me move on. If you don't know, just
13 tell me you don't know. These documents are of
14 record. I'm sure at some point in time somebody will
15 look at it.

16 Same question for Exception No. 20, it's an
17 instrument titled Land Use Agreement dated March 14,
18 2003. And there's a recordation number there. You
19 know, whenever I see the term "Land Use Agreement" it
20 kind of perks my ears up a little bit.

21 Can you, or are you able to give us a
22 summary of what the duties and obligations are under
23 that Land Use Agreement? And if you can't, saying
24 you can't give us an answer at this point in time is
25 fine.

1 THE WITNESS: I don't know the details of
2 that one, because I don't believe that one is still
3 in effect.

4 COMMISSIONER OKUDA: But you don't know the
5 details, correct?

6 THE WITNESS: I don't know the details on
7 that.

8 CHAIRPERSON SCHEUER: Commissioner, with
9 forbearance that this is your question, I just have
10 one question, inspired by your line of questioning,
11 that I want to ask at this time while we are on it.

12 If the Petitioner's representative is
13 stating that certain parts of this title report apply
14 to the larger lot but not the Petition Area, is there
15 anything in the record that differentiates and gives
16 us a good sense of what portion of this title report
17 applies only to the Petition Area?

18 Is there anything in the record that gives
19 us this guidance, or is only the responses to these
20 questions the basis for us knowing these things?

21 THE WITNESS: No. I don't believe there is
22 anything in the record.

23 CHAIRPERSON SCHEUER: Thank you for
24 indulging my question, Commissioner Okuda.

25 COMMISSIONER OKUDA: Chair, that's a good

1 follow up and ending question for that line of
2 question I have regarding the status title report.

3 A final few questions regarding traffic,
4 Mr. Bracken. And in the documents and the record
5 that's submitted there is this term that's used
6 called "level of service". And it seems to be a term
7 used by traffic experts to grade how traffic flows,
8 and it's like an A to F grade.

9 Did you see that in the documents,
10 especially the traffic study that was submitted?

11 THE WITNESS: I did, yes.

12 COMMISSIONER OKUDA: And, in fact, you
13 know, there's discussion about what the levels of
14 service, the LOS, as the acronym sometimes is used,
15 is at different intersections or roadways.

16 Did you see references or discussions
17 regarding that in the traffic study, or other
18 documents submitted as part of this application?

19 THE WITNESS: Yes.

20 COMMISSIONER OKUDA: Is there any evidence
21 in the record that this development is going to make
22 the level of service grade better on any of the roads
23 or intersections which are going to be served or
24 impacted by the development?

25 THE WITNESS: I believe so, but it's

1 probably a question better answered by the traffic
2 consultant that we will have on. But I couldn't give
3 you a lot of details on that, because that's not my
4 area of expertise.

5 COMMISSIONER OKUDA: Let me ask this final
6 question then.

7 Is it your impression, as the
8 representative and manager of the Applicant, that
9 this development, in fact, is going to have certain
10 roads or intersections an unavoidable negative impact
11 on the level of service, that at best the level of
12 service might be maintained at a low grade, and it
13 might be a deteriorated low grade?

14 Is that a general impression we can take
15 away from the traffic studies?

16 THE WITNESS: Again, I don't want to put
17 words in the traffic engineers. I don't, you know, I
18 certainly don't believe that we're going to solve all
19 of the traffic problems with this subdivision.

20 I don't believe that we are going to, you
21 know, make traffic stop on the island either.

22 I think that the traffic engineer would be
23 a better person to address the details on that.
24 Other than, you know, from the developer's
25 standpoint, we want to do our best to minimize the

1 traffic impact that we have and we are relying on the
2 experts in this area to guide us along here.

3 COMMISSIONER OKUDA: I understand that.
4 And I'm not asking whether or not you would solve the
5 traffic problems.

6 My question is more narrow, whether it's
7 your impression, your impression, that at best this
8 development is not going to improve any of the level
9 of services, the LOS's and in fact many of the LOS's
10 will show a deterioration?

11 Is that your impression? It's just "yes",
12 "no" or "I don't know".

13 THE WITNESS: I would say, yes, there are
14 certainly levels that are probably going to --
15 certainly are going to be deteriorated. There was
16 one study that showed that there was one intersection
17 that went from like an F to E. But at the same time
18 I don't expect that we're going to make traffic
19 significantly -- or we are not going to make it
20 better, my impression, is probably generally what
21 you're speaking to.

22 COMMISSIONER OKUDA: Thank you very much,
23 Mr. Bracken.

24 Thank you very much for indulging my
25 questions. Thank you, Mr. Chair.

1 CHAIRPERSON SCHEUER: Commissioner
2 Giovanni.

3 COMMISSIONER GIOVANNI: Thank you.

4 Can we get an idea from the Petitioner what
5 additional witnesses and consultants they plan to
6 present to the Commission?

7 CHAIRPERSON SCHEUER: Why don't you go
8 ahead right now, Mr. Yuen.

9 MR. YUEN: Looking at my -- hang on one
10 second -- we have our next witness is Cody Winchester
11 addressing climate change and greenhouse gasses.

12 David Rietow is going to be addressing
13 agricultural impacts.

14 Ricky Cassiday is going to be addressing
15 the market demands for this project.

16 Randall Okaneku is our traffic consultant.

17 Nancy McMahon is our archeological
18 consultant.

19 Tom Nance is going to discuss the water.

20 William Bow is going to discuss engineering
21 aspects, including drainage wastewater, solid waste.

22 And Ron Agor is our planning consultant.

23 I also would like to supplement the list by
24 adding a Milton Ching, who is, I guess, best
25 described as a kamaaina witness in the area who we

1 have located who can discuss the existence or
2 nonexistence of heiau on the property.

3 CHAIRPERSON SCHEUER: So regarding the
4 last, will you be submitting proposed written direct
5 as an additional exhibit?

6 MR. YUEN: I'm not sure if we are going to
7 have written exhibits. We can. I believe Mr. Ching
8 submitted a letter to the Land Use Commission today,
9 but we can certainly submit something for you.

10 CHAIRPERSON SCHEUER: So I think we'll have
11 to do it via the same standards for other exhibits.
12 So if you submit something, we can bring it in the
13 next time we are together.

14 Did you have followup, Commissioner
15 Giovanni?

16 COMMISSIONER GIOVANNI: Did I interpret Mr.
17 Yuen's representation that I'll have an opportunity
18 to cross-examine each of the witnesses that he named?

19 CHAIRPERSON SCHEUER: That is our
20 procedure.

21 MR. YUEN: I would expect that you would
22 have the opportunity to examine them.

23 COMMISSIONER GIOVANNI: In other words,
24 they will show up. Thank you, I'm good.

25 CHAIRPERSON SCHEUER: Mr. Collins.

1 MR. COLLINS: Chair, we have a question.
2 When is the deadline for the parties to
3 name additional witnesses?

4 CHAIRPERSON SCHEUER: We have not set a
5 deadline in this proceeding.

6 Correct me if I am wrong, Mr. Orodener.

7 EXECUTIVE OFFICER: Usually the witnesses
8 are all identified before the hearing begins. But if
9 the parties feel there is a need to identify
10 additional witnesses during the course of the
11 proceedings, they may do so at the discretion of the
12 Chair.

13 CHAIRPERSON SCHEUER: Mr. Collins.

14 MR. COLLINS: Chair, I guess the only
15 question or request for guidance is how additional
16 witnesses will be identified and so forth, because
17 we're now hearing only under the questioning of a
18 Commissioner that we haven't gotten through the first
19 witness yet, and now we're hearing there will be
20 additional witnesses called.

21 CHAIRPERSON SCHEUER: Thank you.

22 And before the question from Commissioner
23 Giovanni, I was going to, as I had announced, talk
24 about procedures.

25 So let me take this up as part of the

1 general discussion and procedures for today.

2 I suppose, starting with the end, what are
3 the time limits from any of our Commissioners today?
4 4:00 o'clock? Anybody before 4:00?

5 Sorry, Commissioner Chang, was that 3:00 or
6 4:00? 4:00 o'clock.

7 Anybody before 4:00 o'clock? Commissioner
8 Ohigashi.

9 COMMISSIONER OHIGASHI: I'm going to be
10 leaving. I notified Dan that I have a court hearing
11 between 1:00 and I think it was (indecipherable).

12 CHAIRPERSON SCHEUER: Thank you for
13 reminding me of that.

14 Anything else? I have an appointment I'll
15 miss at 3:00, but I can do so to be here.

16 Mr. Wynhoff?

17 MR. WYNHOFF: I have to leave today at 3:30
18 but if we go on, I'll be certain to get somebody to
19 cover it. If there is some reason why that isn't
20 good enough, I'll take care of it.

21 CHAIRPERSON SCHEUER: So we will plan to go
22 until 4:00 o'clock today.

23 Regarding -- we're scheduled, to my
24 understanding with the staff, scheduled to take this
25 up again in two weeks. So regarding the earlier

1 question for offers of proof and responses, I would
2 like to ask the parties that the Intervenor submit
3 their offer of proof and deliver to the parties and
4 Commission by next Tuesday, and any responses from
5 Mr. Yuen by next Friday.

6 I suppose the County, as well, since the
7 County had joined in some of the objections,
8 certainly welcome to respond.

9 MR. DONAHOE: Chair, if I might, Deputy
10 County Attorney, Chris Donahoe.

11 Because we withdrew because of the proviso
12 that we could later on, the County is not intending
13 on submitting any written --

14 CHAIRPERSON SCHEUER: Mr. Collins.

15 MR. COLLINS: Will there be a deadline to
16 file a reply?

17 CHAIRPERSON SCHEUER: If you want to do a
18 reply to the response to your offer of proof, the
19 following Monday.

20 And then I just -- this came yesterday, but
21 I want to be absolutely clear on the record -- sorry,
22 Commissioner Aczon.

23 VICE CHAIR ACZON: Mr. Chair, instead of
24 4:00 o'clock, can we adjourn at 3:30, only half hour,
25 so we can accommodate Mr. Wynhoff so he doesn't have

1 to grab anybody to replacement him? If everybody is
2 okay with that.

3 CHAIRPERSON SCHEUER: We can end 3:30
4 today. The added value you get from the Land Use
5 Commissioners at the very end of the day, I will
6 assure, on a personal basis, is sometimes limited.
7 So 3:30 is fine. I know I get tired at the end of
8 the day even with breaks.

9 What I was going to say, I want to make it
10 really clear to the Petitioner, we are going to need
11 to recall this witness at the end of our proceedings,
12 because we're going to hear a lot from various
13 experts to which he is deferring, and then we're
14 going to need to hear from the witness for any
15 assurances to any representations made.

16 Is that clear, Mr. Yuen?

17 MR. YUEN: Yes.

18 CHAIRPERSON SCHEUER: Commissioner
19 Giovanni.

20 COMMISSIONER GIOVANNI: I would like to add
21 to that request, maybe it's covered in your remarks,
22 but the witness has made representations regarding
23 commitment or conditions that are going to be offered
24 by OP and the County, and whether or not he intends,
25 or would make a hard commitment relative to those.

1 I would like to have the opportunity to
2 question Mr. Bracken after we hear the presentations
3 from OP and the County.

4 CHAIRPERSON SCHEUER: So his recall would
5 allow that to occur.

6 COMMISSIONER GIOVANNI: Thank you.

7 CHAIRPERSON SCHEUER: Anything further
8 procedurally from the parties or my fellow
9 Commissioners?

10 Mr. Collins?

11 MR. COLLINS: Just the issue of the
12 witnesses, additional witnesses.

13 CHAIRPERSON SCHEUER: So, you know, my
14 inclination is to balance the need for an orderly
15 proceeding with the understanding that this complex
16 and contested docket there may be a need for many of
17 the parties, perhaps all of the parties at some point
18 to notice that there is additional witness.

19 I'm not prepared to set a deadline at this
20 point because, frankly, I did yesterday morning think
21 we would get through more than one witness in our
22 first few days of proceedings, and I am now skeptical
23 that that is the case.

24 So what I would like to ask is all the
25 parties, if you believe you need to call additional

1 witnesses at this time, be prepared on our next
2 hearing, before our next hearing date to file papers
3 describing who these witnesses are, any CV or
4 statements of qualifications, and the other standard
5 things that you would present a supplemental witness
6 and exhibit list.

7 Then we will take up whether or not they
8 are going to be allowed as witnesses at our next
9 hearing procedurally.

10 Does that are work for the parties? Mr.
11 Yuen?

12 MR. YUEN: Yes.

13 CHAIRPERSON SCHEUER: County? You can nod
14 your head. I can see you trying to -- thumbs up from
15 the County.

16 Mr. Yee?

17 MR. YEE: We have no objection. Just to be
18 clear, we would request that it be a revised exhibit
19 and witness list that is submitted by the parties for
20 additional witnesses and/or exhibits.

21 CHAIRPERSON SCHEUER: Yes. Thank you for
22 that clarification.

23 MR. YEE: And can I only add one other
24 issue. Since we're talking about this now, it's
25 possible that the Office of Planning will not need to

1 call its Department of Education witness.

2 CHAIRPERSON SCHEUER: Mr. Collins or Ms.
3 Isaki?

4 MS. ISAKI: Yes, thank you.

5 CHAIRPERSON SCHEUER: With that, we're
6 going to go to noon. Let's start in with
7 Commissioner Chang.

8 COMMISSIONER CHANG: Thank you very much,
9 Chair.

10 I probably have the same amount of
11 questions and time as Commissioner Okuda, so I'll
12 start, and then we will continue on after lunch.

13 CHAIRPERSON SCHEUER: We will plan on
14 taking a break at noon, resuming at 1:00.

15 COMMISSIONER CHANG: Thank you very much.

16 Good morning, Mr. Bracken, thank you so
17 much for being here this morning. And I greatly
18 appreciated your willingness to accommodate the
19 parties.

20 I am going to ask you a series of
21 questions, and I'm going to try not to be redundant
22 and asking you questions that Commissioner Okuda may
23 have asked.

24 Let me start first off with -- in your
25 Exhibit 11 you described a lot of your development

1 experience. And I know that you -- under
2 Commissioner Okuda he asked whether you've done any
3 similar development projects in Hawaii. And I think
4 you said, no, you had just a very small -- you were
5 involved in a small project maybe ten years ago; is
6 that correct?

7 THE WITNESS: That's correct.

8 COMMISSIONER CHANG: What is your
9 experience in any development experience on the
10 Island of Kauai in particular?

11 THE WITNESS: This will be the first
12 development on Kauai.

13 COMMISSIONER CHANG: Do you have any
14 experience doing agricultural development, if not in
15 Hawaii, elsewhere?

16 THE WITNESS: Yes, I have. We've developed
17 approximately 5,000 acres of agricultural land. And
18 we also manage over 10,000 acres of grazing land.

19 COMMISSIONER CHANG: Again, where is that
20 located?

21 THE WITNESS: The agriculture is in Eastern
22 Utah, and the grazing land would be in New Mexico.

23 COMMISSIONER CHANG: But, again, no
24 experience developing ag land in the State of Hawaii;
25 is that correct?

1 THE WITNESS: That is correct.

2 COMMISSIONER CHANG: I wanted to ask you,
3 the title of your development is called H-o, capital
4 K-u-a. What does that mean?

5 THE WITNESS: What is that? The HoKua
6 Place, what does that mean?

7 COMMISSIONER CHANG: What does HoKua mean?

8 THE WITNESS: It was -- I can't remember
9 offhand. I apologize. It was put together by one of
10 our consultants. I don't know the translation right
11 now.

12 COMMISSIONER CHANG: Do you know whether it
13 has any relationship to the property?

14 THE WITNESS: I don't know if it has
15 relationship to the property specifically, but it was
16 a name that we were going because it had a local
17 connection and meaning there.

18 COMMISSIONER CHANG: When you say it had a
19 local connection, what do you mean?

20 THE WITNESS: It was a name that one of our
21 original consultants suggested as meaningful for the
22 area.

23 COMMISSIONER CHANG: Could I ask -- sorry,
24 go ahead.

25 Could I ask you the name of the consultant?

1 THE WITNESS: I don't remember who
2 originally proposed the name. This was probably in
3 2015 or something like that. It's been a name we
4 have been using for some time.

5 COMMISSIONER CHANG: But as we speak right
6 now, you don't know what it means?

7 THE WITNESS: No, I do not, I apologize.

8 COMMISSIONER CHANG: I'm going to ask you a
9 series of questions involving community engagement.
10 Your testimony yesterday was that you want
11 to do, or you implied that you want to do what the
12 community wants.

13 Could you explain to me what did you mean
14 by that statement?

15 THE WITNESS: For several years we did talk
16 to a number of people in the community. We also
17 spent some time talking to the County Commissioners
18 at certain times. Like it's been so long I don't
19 know how many of the County Commissioners we spoke to
20 in the past are still Commissioners.

21 This is a project -- this is the type of
22 project that they were pushing for us, or submitting
23 would be very helpful.

24 I also, on a personal level, I grew up in
25 an area about an hour-and-a-half out of Las Vegas.

1 That is an area that most of my friends that I grew
2 up with actually came over from Oahu because they --
3 their families could no longer afford to live here.

4 So there was a little bit of a personal
5 connection for me to try to help establish something
6 that's affordable, again, just because of that long
7 history of people no longer being able to be able to
8 afford to stay on the island they had been on.

9 Again, from the Commissioners at the local
10 level, we were getting a lot of comments about
11 multiple families living in a house because they
12 didn't have another option in that area.

13 So we opted to try to provide an outlet to
14 the resource for that, which is why we have been
15 planning, and are going along the route of
16 affordability and accessibility of housing for the
17 local community primarily.

18 COMMISSIONER CHANG: So in your opinion,
19 besides -- and when you -- besides affordable
20 housing, what else do you think this community wants?

21 THE WITNESS: Again, what we're getting is
22 accessibility, open space, access to some of the
23 existing infrastructure, bike trails, walking trails,
24 walkability.

25 And, again, our vision here is, you know,

1 Old Kapaa Town. You know, we want to establish a
2 similar look and feel. As part of our planning also,
3 you know, included things like open space. There was
4 an outdoor pavilion, and various things that were
5 specifically requested by people who lived in the
6 area and were interested in the project.

7 COMMISSIONER CHANG: I appreciate that.
8 You've identified some -- can I ask, who have you
9 spoken to in this community?

10 THE WITNESS: Recently, because of the
11 pandemic, it's been a long time since I've had an
12 opportunity to come over and really engage in the
13 community. So there's -- the last year, plus, it has
14 been by way of our consultants. My engineers, my
15 land planners have been doing all of the
16 communicating for me because I have not been
17 accessible on the island.

18 COMMISSIONER CHANG: Fair enough.
19 Can I ask who are the local consultants
20 that have been speaking to the community?

21 THE WITNESS: We are talking about the same
22 people that we're having on our witness list, Ron
23 Agor, Bill Bow, you know, various other people.
24 Generally our witness list here has been doing a lot
25 of our community discussions.

1 COMMISSIONER CHANG: Prior to the pandemic,
2 did you have any community meetings where you engaged
3 with the people, the community in Kapaa, the
4 surrounding residents?

5 THE WITNESS: Me personally, I would say
6 that there were a number of public hearings that we
7 had when we were going through the General Plan at
8 the County level that I had an opportunity to attend
9 and to talk to the people at that time, at least the
10 ones that were wanting to talk and to discuss what
11 was going on.

12 At that point in time we also took the time
13 to meet with all of the County Commissioners and get
14 their individual feedback as well.

15 COMMISSIONER CHANG: As I understand your
16 statement, that was in the context of the Kauai
17 General Plan process?

18 THE WITNESS: Yes.

19 COMMISSIONER CHANG: Have you had any
20 public meetings or even small talks, story sessions
21 or any kind of engagement with the Kapaa residents
22 regarding this project?

23 THE WITNESS: We have not set up
24 specifically for us and the community, but like I
25 said, when we went through the General Plan this

1 project was an area of specific discussion, and it
2 gave a forum and ability, an opportunity to talk to
3 the people at that point in time. You know --

4 COMMISSIONER CHANG: Could you -- I'm
5 sorry, what?

6 THE WITNESS: I was just saying the
7 interested parties at that time.

8 COMMISSIONER CHANG: Could you refresh my
9 memory? What was the time period that you had these
10 conversations?

11 THE WITNESS: The General Plan update was
12 2018, I believe, so it would have been around that
13 time period.

14 COMMISSIONER CHANG: Can I ask you, do you
15 have a community engagement plan moving forward?

16 THE WITNESS: Not a specific plan. We have
17 discussed how to do that. We've actually started
18 building a database of anybody who's been interested.
19 Been collecting names, you know, of anyone who's
20 interested in it. And the plan was, once we go
21 forward from here, we would start engaging with the
22 interested individuals. We have not done that to
23 date though.

24 COMMISSIONER CHANG: Sitting on the Land
25 Use Commission, it might be so many times what makes

1 a difference in a successful project versus one with
2 a lot of controversy is the community engagement
3 process.

4 And here we had just numerous public
5 testimony on this, or at least that was submitted.

6 What I'm hearing you say is you don't have
7 a specific plan, but you intend to engage the
8 community after this proceeding; is that correct?

9 THE WITNESS: Right. That is correct.
10 With some engagement in the past, we actually had a
11 number of people wanting to -- who asked if they
12 should testified. We were concerned about the number
13 of people, so we actually discouraged the positive
14 testimony, because -- just because we were concerned
15 about the time.

16 But, yes, your assessment is correct.

17 COMMISSIONER CHANG: I guess in light of
18 the public testimony that you heard yesterday, and
19 the submission of written testimony, I just wanted to
20 confirm that you will be engaging this community?

21 THE WITNESS: Yes, absolutely.

22 In fact, we have already had our
23 archeologist reach out on some of the concerns that
24 were brought up to get a better understanding there.
25 And that is an area that we have already started

1 engaging to try to address some of the additional
2 concerns on that?

3 COMMISSIONER CHANG: Is your archeologist
4 Nancy McMahan?

5 THE WITNESS: That is correct.

6 COMMISSIONER CHANG: I'm going to ask you
7 questions involving just sort of the native Hawaiian
8 community, because you testified that you are
9 sensitive to Hawaiian community, because of your
10 experience working in New Mexico.

11 And you, under questioning by the
12 Intervenor's counsel, you talked about your
13 experience working with indigenous communities.

14 So could you explain to me, what do you
15 mean when you say sensitive to the Hawaiian
16 community? What do you mean?

17 THE WITNESS: I will say, you know, as an
18 outsider who typically works in a number of cultures,
19 we do business in not just the native areas of New
20 Mexico, but we've -- in a global level, we do
21 business internationally in Asia. Oftentimes that is
22 a learning process for us, so we have to rely on the
23 experts and spend more time listening and taking the
24 lead from the people who can help us understand the
25 culture and help us integrate rather than take our

1 assumptions on what that culture is.

2 So we would be trying to take the lead from
3 the people who are local and the people who can help
4 us understand.

5 COMMISSIONER CHANG: Can you tell me who
6 are your local consultants helping you to engage with
7 the Hawaiian community?

8 THE WITNESS: Right now, probably relying
9 on our engineer and our land planner to help us
10 identify some of that. We've have some locals who
11 live there that we've worked with in the past, who
12 made introductions. I couldn't tell you names right
13 offhand.

14 But like I've said, we have done
15 preliminary out reach. We have some connections. I
16 don't have a list of names we would be relying on at
17 this point in time.

18 COMMISSIONER CHANG: Do you know what some
19 of the hot community issues, kind of the pressing
20 issues on Kauai are with the native Hawaiian
21 community currently?

22 THE WITNESS: I'm probably not familiar
23 with all of them. I've probably been focusing on the
24 hot button issues related to this project, you know,
25 traffic. Obviously I'm aware of a lot of the

1 cultural, you know, the gathering, the traditional
2 land access, but I'm certainly not an expert in that,
3 but it's something that I would want our people to
4 help me understand as an outsider.

5 COMMISSIONER CHANG: I appreciate that
6 sensitivity and acknowledging that, because I want to
7 move onto a statement.

8 Mr. Yuen, I'm paraphrasing what he said.
9 He asked if you would agree to honor and respect
10 traditional and customary practices. And you
11 answered "yes".

12 Could you explain to me in your own words
13 what is your understanding of traditional and
14 customary practices?

15 THE WITNESS: In my own words, a lot of the
16 traditional practices that are -- have been brought
17 up, concerns related to this property has been
18 somewhat along the lines of access related to
19 gathering rights. A lot of that involves access
20 along some of the streams at traditional location.

21 That's generally what I understand in terms
22 of this particular project. Outside of that, there
23 are certain locations, archeological locations, that
24 if those were there, we certainly would be sensitive
25 to that.

1 Again, this is something I would be relying
2 on a lot of local help with.

3 COMMISSIONER CHANG: Do you know where that
4 term "traditional customary practices", and do you
5 know what the basis of the foundation for that is?

6 THE WITNESS: I do not. I don't.

7 COMMISSIONER CHANG: And I appreciate the
8 honesty on that.

9 It is a constitutional obligation that is
10 in our Hawaii State Constitution, and it specifically
11 requires, in our case, the Land Use Commissioners,
12 before we make a decision, that we have an
13 affirmative obligation to ensure that we are
14 preserving and protecting the traditional and
15 customary practices.

16 So that's the foundation, legal foundation
17 of the constitution, and that is our obligation as
18 the Commissioners.

19 So, and I notice in the status report
20 there's a condition in the status report, I think
21 it's paragraph 29, that you obtain the title subject
22 to traditional and customary practices.

23 Do you have any idea what that means?

24 THE WITNESS: What I would understand that
25 to mean is that the title, those traditional

1 practices that have been on that property, must be
2 maintained and remain in effect.

3 That is not something that can be bartered
4 or sold or detached from the property.

5 COMMISSIONER CHANG: That's very good and
6 that's reassuring.

7 So do you understand that although your
8 cultural impact assessment said there are no known
9 traditional customary practices, but this obligation
10 runs with the land?

11 So if during your construction process or
12 even once the project is developed, that if someone
13 with a legitimate constitutional right comes up and
14 says this, you're interfering with my right to
15 access, to gather, and I want these resources to be
16 protected, what do you believe is your obligation?

17 THE WITNESS: Our obligation would be to
18 follow the rules and the laws of Hawaii here, and
19 work to maintain those rights.

20 I don't think that I have the right to, you
21 know, change something that we bought that property
22 subject to.

23 COMMISSIONER CHANG: So we heard testimony
24 from several witnesses, public testimony that they
25 actually gather some, what some people are saying are

1 weeds.

2 If they come in and they say we want those
3 resources protected, and it's in the middle of one of
4 your development phases, what would you do?

5 THE WITNESS: Well, I certainly would want
6 to understand the issue in particular, so I would
7 certainly would have to have somebody on my side.
8 Again, not my area of expertise, I would reach out to
9 make sure that I understood what the situation was,
10 and, as you said, if it was determined that we have a
11 legitimate traditional right, we would have to work
12 to address that, you know, with the appropriate
13 channels, make sure with that person or group.

14 I would follow the established practices, I
15 guess.

16 COMMISSIONER CHANG: I know, Mr. Chair,
17 we're at 11:59 and I'm going into a line of
18 questioning involving burials, so I think it may be
19 better we wait until after lunch before I start.

20 CHAIRPERSON SCHEUER: Thank you for that
21 consideration.

22 Members or parties, is there anything that
23 we have to discuss before going into recess for
24 lunch? Seeing none. It is 11:59. We will reconvene
25 at 1:00 P.M.

1 (Noon recess taken.)

2 CHAIRPERSON SCHEUER: It's 1:00 P.M.

3 Thank you to everyone for being prompt. I
4 note for the record the previously announced absence
5 of Commissioner Lee Ohigashi.

6 We will continue with cross-examination by
7 the Commission of the Petitioner's first witness. We
8 broke off part way through Commissioner Chang.

9 Commissioner Chang, please continue.

10 COMMISSIONER CHANG: Thank you very much.

11 I greatly appreciate your cooperation, Mr.
12 Bracken, and your counselor's.

13 I'm going to go into along a line of
14 questions involving native Hawaiian burials, because
15 I'm hoping that your consultants shared with you how
16 sensitive that is, especially on the Island of Kauai.
17 So let me ask you this question.

18 Do you know the difference between a
19 previously identified burial and an inadvertent
20 burial?

21 THE WITNESS: I can tell from context, but
22 I don't know specifically, so I'd rather you define
23 that for me.

24 COMMISSIONER CHANG: Previously identified
25 burial is generally one that we find during an

1 archaeological inventory survey. And any disposition
2 or whether to preserve that burial in place or
3 whether to relocate is not up to the developer or the
4 owner, but it is it up to the Kauai-Lanai Island
5 Burial Counsel.

6 Unlike inadvertent burial that we generally
7 find during archaeological monitoring many times
8 during the construction phase, if a burial is
9 discovered and it's determined to be Hawaiian, the
10 State Historic Preservation Division makes a
11 decision. Again, it's not the developer or the
12 owner, but it is the State that makes that decision.

13 So in this case, there was an archeological
14 assessment that was completed. But do you understand
15 that you could be required to preserve a burial in
16 place if during construction burials are discovered?

17 THE WITNESS: Yes, absolutely.

18 COMMISSIONER CHANG: And do you understand
19 that preserving that burial in place may require you
20 to redesign your project?

21 THE WITNESS: Yes.

22 COMMISSIONER CHANG: And do you understand
23 that, for example, if that burial is discovered,
24 let's say, in the middle of a proposed roadway, or in
25 the middle of a major infrastructure, you may have to

1 redesign that feature?

2 THE WITNESS: Yes, that's correct.

3 COMMISSIONER CHANG: And you understand
4 that the cost or the delay cost, because there is a
5 regulatory process, could be quite substantial?

6 THE WITNESS: Yes, I understand that.

7 COMMISSIONER CHANG: Because I just want to
8 make sure that you understand all the risks that
9 you're accepting.

10 I do a lot of work with developers, and
11 including burials, and we had -- there are many
12 projects on Oahu -- actually islandwide -- that have
13 been stopped, that have been delayed, and have had to
14 redesign, even to the point of a condominium that had
15 to be abandoned.

16 So your consultants have shared that with
17 you?

18 THE WITNESS: Yes, they have.

19 As I mentioned, I do have a little
20 experience with that myself. Sometime ago that
21 little project I was involved with on Oahu, we did
22 find a burial, even though it was such a small one,
23 we had to stop everything and go through that
24 process.

25 And we deal with it on a fairly regular

1 basis in the native American areas as well.

2 So burials are always a sensitive area, and
3 we will be respectful and follow the process.

4 COMMISSIONER CHANG: That's really good to
5 know that you understand and that you are sensitive,
6 because especially on the Island of Kauai there have
7 been numerous litigations involving native Hawaiian
8 burials, and the issue involving whether they need to
9 be preserved or burial treatment plan.

10 So my understanding is, you seem to be well
11 aware of those potential risks, and aware of why that
12 is so significant.

13 THE WITNESS: Yes.

14 COMMISSIONER CHANG: That's good to know.
15 Most developers who come from the mainland aren't
16 aware, so that's good to know that you are aware.

17 I'm going to now move on to the issue of
18 affordable housing, affordable housing commitment.

19 You mentioned on numerous occasions, both
20 in direct testimony and under examination, that
21 you're committed to affordable housing, and I greatly
22 applaud that. Clearly Kauai is in dire need of
23 affordable housing.

24 So when Deputy Attorney General, Mr. Yee,
25 asked you, he represents OP, that is your commitment

1 to do more than the 20 percent required by the
2 County? And my recollection is you said, yes. That,
3 in fact, you would do the original 30 percent.

4 Is that correct?

5 THE WITNESS: Yes. The original standard
6 that we started this project with.

7 COMMISSIONER CHANG: Okay.

8 So I am looking at Exhibit 11, which is
9 your PowerPoint, your testimony. And it has under
10 here a total of 769 total units. And the County
11 affordable requirement 20 percent of the total units
12 include 154.

13 Where are you going to do the additional
14 ten percent?

15 THE WITNESS: It's on that same page. It's
16 the bottom -- I don't have it in front of me. The
17 bottom --

18 MR. YUEN: Could we put that page up, Mr.
19 Chair?

20 CHAIRPERSON SCHEUER: Please.

21 COMMISSIONER CHANG: I'm hoping the
22 Petitioner, Janna, can do it. Okay.

23 There are no page numbers, but under the
24 title "affordable housing plan".

25 THE WITNESS: Yes.

1 The bottom three bullet points where it
2 says, the additional 10 percent, or 77 units,
3 probably that line should have been moved over to the
4 left to make that a little bit more clear, or the 21,
5 the 56 units maybe should have been indented to
6 clarify a little bit.

7 COMMISSIONER CHANG: Oh, I see. So help me
8 do the math 154 is not 20 percent? That's
9 30 percent?

10 THE WITNESS: The 154 is 20 percent, then
11 the 77 is the additional ten percent.

12 COMMISSIONER CHANG: Oh, I see. I see.
13 Okay.

14 Then you go down 21, 56, that's all part of
15 your 154 units?

16 THE WITNESS: That's actually part of the
17 77 units. There could have been something there to
18 clarify that.

19 COMMISSIONER CHANG: So the total is 154
20 plus 77, right?

21 THE WITNESS: Yeah, based on that 769.

22 COMMISSIONER CHANG: So that's 231 units.

23 So will the remainder -- let me do the
24 math. 769 minus 231 is 8, 3, 5.

25 So the remainder of the 538 units, are they

1 going to be market price?

2 THE WITNESS: Yes. But at the same time I
3 don't expect our market price, based on the unit, to
4 be significantly different.

5 The goal is to try to build everything in
6 an affordable way, so that our market price remains
7 under those affordable requirements, and also, you
8 know, stays that way in the future.

9 If you've got smaller units, more
10 reasonable units, the market rate is not going to be
11 significantly different than the affordable rates in
12 order to prevent the concern of people flipping homes
13 at a profit later, and using the affordability
14 aspect, if that makes sense.

15 COMMISSIONER CHANG: It makes sense, but
16 I'm not sure whether that's actually going to pencil
17 out.

18 THE WITNESS: Right.

19 COMMISSIONER CHANG: Did you see the recent
20 real estate statistics that show the Kauai average
21 home sales price?

22 THE WITNESS: I just read that article
23 talking about, I believe it was 1.6 million.

24 COMMISSIONER CHANG: I thought it was just
25 one million, and that's the average sales price, one

1 million.

2 So help me understand. Can we see the
3 slide that shows your proposed development plans?
4 It's that drawing or the map that you had -- yes,
5 this one. Okay.

6 The area in red, is that just -- that's the
7 Project Area?

8 THE WITNESS: Yes, that's right.

9 COMMISSIONER CHANG: So the area that you
10 have outlined where you have HoKua Ag Lots. That's
11 outside of the Petition Area?

12 THE WITNESS: Yes. That's part of the
13 parcel that's not included in the Petition Area.

14 COMMISSIONER CHANG: And that's currently
15 zoned ag, is that correct?

16 THE WITNESS: Yes.

17 COMMISSIONER CHANG: How large are those
18 lots going to be?

19 THE WITNESS: I believe that we just did
20 some rough pencilling of somewhere around three to
21 five acres, but at the same time we really haven't
22 done any planning on that.

23 In fact, the layout, it does not take into
24 account the existing solar farm and things that are
25 actually down in that area.

1 It's not something we have been looking at
2 too closely.

3 COMMISSIONER CHANG: But is it your
4 intention that the ag lots, they will be sold as one
5 single lot, and the owner can put one housing on it,
6 one residential unit on it?

7 THE WITNESS: That would be our intent or
8 our understanding.

9 Like I said, some of that will never be ag
10 lots, because it will stay as a solar farm or some
11 other ag project that may not have a specific -- I
12 think that the solar farm that's on two of those lots
13 that are currently, so that wouldn't be developed
14 into any sort of ag housing necessarily.

15 COMMISSIONER CHANG: Well, I would just
16 caution you that you should make sure that if you are
17 proposing to do those as ag lots for residential
18 purposes, that you are well versed with both the Land
19 Use Commission decision, and the Office of Planning's
20 decisions regarding dwelling units on ag lots.

21 And I know that's outside of the Petition
22 Area, so I won't go any further into that.

23 So you're telling me that while it is your
24 intention to keep the market homes, the 538 units to
25 be closer to your affordable prices, is that what you

1 said?

2 THE WITNESS: That is our intent. You
3 know, we're going to do our best. You know, that's
4 the reason why we can't commit to every single one of
5 them to be under the affordable, but we will do our
6 best to make sure things are generally in line out
7 there.

8 COMMISSIONER CHANG: Can you explain to me
9 what do you mean you're going to do your best?

10 THE WITNESS: What I mean is affordability.
11 Our strategy for maintaining affordability is,
12 frankly, density and unit size. So with more density
13 and a little bit smaller unit size, the market rates
14 are going to generally make these units more
15 affordable.

16 And that, you know, that is our intent.
17 Now, we can't control lumber prices or what fuel will
18 be in the future, and so component of that is going
19 to be what those costs may drive some of that. But
20 we don't expect, or we have no plans of doing luxury
21 condominiums or anything that would look closer to
22 these prices that are driving the ultra high pricing
23 on Kauai currently.

24 COMMISSIONER CHANG: Mr. Bracken, I would
25 suspect if you spoke to a lot of realtors, the

1 prices, the homes that are driving these prices are
2 not luxury end homes. These are --

3 THE WITNESS: I agree.

4 So what, I guess, I'm not going to argue
5 that all the housing is very expensive. I guess I'm
6 just making assumption on the luxury end, it does
7 pull the average up a little bit.

8 COMMISSIONER CHANG: Okay.

9 So when I asked you how are you going to
10 keep it affordable, you said density, unit size, and
11 cost. Those were the factors that you will consider?
12 And I'll talk about cost more later.

13 So you clarified for me that you're
14 intending to do 30 percent affordable, a total of
15 231 units.

16 So is it my understanding, because you
17 haven't finalized your development plan, could your
18 plans change the total number of units that you have?

19 THE WITNESS: The plans could change the
20 total number of units. You've outlined plenty of
21 contingencies that could change that as well
22 yourself.

23 We can start construction and find
24 something significant in the process that was
25 drastically reduce the number of units.

1 So, yes, that could be potentially a fluid
2 number, depending on a number of factors as we go
3 through the rest of the process.

4 COMMISSIONER CHANG: Notwithstanding the
5 number of units, because as you said, that could
6 change.

7 Am I hearing your commitment and your
8 representation today that you will commit and
9 represent that 30 percent of the units, whatever that
10 total is, will fall under the affordable, the
11 County's affordable definition?

12 THE WITNESS: Yes, I believe so. I believe
13 there was a little bit of a change in the County's
14 definition, is where I'm a little concerned. That's
15 where some of the 20 -- let me consult with my
16 attorney.

17 COMMISSIONER CHANG: All right.

18 THE WITNESS: To clarify, we are committing
19 on the original County definition. So the 20 percent
20 is the current definition, and the difference, as
21 Bill was clarifying to me, is there are some of the
22 units in the 120 to 140 range of the AMI that is no
23 longer considered affordable at the County level.

24 That is a little bit of a definitional
25 change on that presentation we are still calling

1 affordable because that was the definition of
2 affordable just recently. So there is a -- just to
3 clarify that point.

4 COMMISSIONER CHANG: So based upon your
5 representation, you're only committed to do
6 20 percent affordable units based upon the County's
7 current definition?

8 THE WITNESS: Based on the County's current
9 definition. So in addition we are committing to
10 follow the old affordable rules as well, that 120 to
11 130 percent.

12 COMMISSIONER CHANG: I guess what I'm
13 trying to get is a firm commitment.

14 Are you committed to 30 percent, or are you
15 committed to 20 percent? How do I define what you're
16 committed to if we put it in as condition to LUC
17 approval?

18 MS. AHU: Could I share our PowerPoint
19 again?

20 THE WITNESS: Our affordable commitment
21 would be the -- what we have on the chart here.

22 COMMISSIONER CHANG: You just testified the
23 total number of units may change. So how do I
24 describe this if I was to recommend that this be a
25 condition of the LUC approval, if one should be

1 granted?

2 THE WITNESS: I would go with a ratio, a
3 percentage.

4 COMMISSIONER CHANG: Okay, perhaps your
5 counsel can come up with something that you're
6 acceptable to.

7 THE WITNESS: Right.

8 COMMISSIONER CHANG: Because I don't want
9 to misrepresent that you're not truly committing to
10 do 30 percent, you're willing to do what is minimally
11 required by the County, 20 percent, and then this
12 additional ten percent based upon this criteria.

13 THE WITNESS: That's right.

14 COMMISSIONER CHANG: So your market
15 material needs to be very clear and consistent that
16 you're not messaging that you're doing 30 percent,
17 but it is 20 percent, right?

18 THE WITNESS: Okay.

19 COMMISSIONER CHANG: I don't want to put
20 words in your mouth --

21 THE WITNESS: Thank you.

22 COMMISSIONER CHANG: I'm going to go onto
23 the next series of questions involving your
24 development cost.

25 And I think Commissioner Okuda did, he

1 covered this. He talked about -- well, let me ask
2 you.

3 Could you give to me a cost estimate of
4 your total development cost? Do you have one? Do
5 you have a cost estimate of the infrastructure cost?

6 THE WITNESS: Not at this point.

7 COMMISSIONER CHANG: When will you have
8 that estimate?

9 THE WITNESS: I will have that once we have
10 an engineer set of plans approved by the County.

11 COMMISSIONER CHANG: What I'm hearing you
12 say, you'll get those approved plans after LUC makes
13 its decision?

14 THE WITNESS: Correct.

15 COMMISSIONER CHANG: And I think
16 Commissioner Okuda did reference that the Land Use
17 Commission, we have been hearing numerous dockets on
18 old dba's where the land has been resold. In some
19 cases new buyers have bought it at foreclosure, very
20 similar to your situation. And they come in and ask
21 for modification.

22 But there is a whole bunch of commitments
23 that were included in the original Land Use as
24 conditions, the original dba. And now the conditions
25 are modified. We don't have money to do the road.

1 We don't have money to do the community center. We
2 don't even have money do the affordable housing.

3 So I have been advocating -- this is me,
4 personally -- I have been advocating that to ensure
5 that at least the infrastructure is built, that the
6 developer put up a performance bond.

7 Are you willing to do that?

8 THE WITNESS: That is something I would be
9 willing to explore. I don't know specifically how
10 the performance bonds would work here. I have done
11 performance bonds on other projects, so it's
12 something I'm not unfamiliar with. But before I make
13 a commitment here today, I would like to understand
14 that better, the situation.

15 COMMISSIONER CHANG: I'll even do better
16 than that. I'm going to let you confer with your
17 attorneys and whatever consultants you have, but you
18 come back and give us what you would suggest based
19 upon your experience, what would be an appropriate
20 performance bond based upon perhaps some criteria,
21 reasonable cost, estimated cost, but why don't you --
22 obviously, we are not going to get through with
23 everything today. Perhaps before the next hearing I
24 will want to know what would be the basis for
25 performance bond. But thank you very much. I really

1 appreciate you considering that.

2 I'm going to briefly talk about wetlands
3 now, because apparently in the EIS there wasn't that
4 full disclosure, but we subsequently have found that
5 there may be wetlands on the project site.

6 And let me ask you, does this wetlands
7 trigger a federal permit or a license?

8 THE WITNESS: I don't know that personally.
9 That would be my questions for either our engineer or
10 our land planner who's been going out to explore
11 these wetlands that have been discussed more
12 recently. I have not had a chance to personally see
13 those since that has come up.

14 COMMISSIONER CHANG: Would your engineer
15 and land planner also be the one, if I asked the
16 question whether an Army Corps of Engineers permit
17 would be required?

18 THE WITNESS: Yes.

19 COMMISSIONER CHANG: And would they also be
20 the right people to ask if a federal permit is
21 required, how long is that process going to take, and
22 whether that's going to trigger Section 106 National
23 Historic Preservation Act compliance?

24 THE WITNESS: Yes.

25 COMMISSIONER CHANG: Okay. I will ask them

1 that.

2 Just briefly, your Exhibit 38 was the
3 status report. Are you aware of any -- did you get a
4 warranty deed for this property?

5 THE WITNESS: I don't believe it's a
6 warranty deed. It was a foreclosure -- I can't think
7 of the name of it, but it was through a foreclosure
8 process.

9 COMMISSIONER CHANG: Do you know whether
10 there was any quiet title action completed for this
11 property?

12 THE WITNESS: Not that I know of.

13 COMMISSIONER CHANG: So I think when you
14 said you had clean title, it was sort of clarified
15 that you -- the foreclosure deed you got only was
16 what the previous owner had?

17 THE WITNESS: Yes, I understand, yeah.

18 COMMISSIONER CHANG: So if the previous
19 owner did not have clear title, for example, if there
20 are outstanding claims against the property, whether
21 it be kuleana owners or other interested parties,
22 that they could always come back and sue and seek a
23 quiet title action to clear that. You understand?

24 THE WITNESS: I understand.

25 COMMISSIONER CHANG: We're almost through.

1 I'm almost through, Mr. Bracken.

2 THE WITNESS: Thank you.

3 COMMISSIONER CHANG: So during Commissioner
4 Okuda's questioning, you mentioned that you
5 considered standard development costs; is that
6 correct?

7 THE WITNESS: Yes.

8 COMMISSIONER CHANG: So I'm going to ask
9 you a series of questions to see whether you consider
10 these as well.

11 One, did you anticipate redesign costs, if
12 there are legitimate customary practices that exist
13 on the property and that you must accommodate those?
14 Did you consider those costs of redesigning?

15 THE WITNESS: We consider -- there is a
16 level of redesign on any project so, yes. I would
17 say we considered that.

18 COMMISSIONER CHANG: Well, most developers
19 don't consider that, but okay.

20 Did you anticipate design cost, redesign
21 cost, if you discover human burial remains and you're
22 required to preserve them in place?

23 THE WITNESS: Yes. That's something we
24 have dealt with.

25 COMMISSIONER CHANG: Not only dealt with,

1 but did you consider that in your cost?

2 THE WITNESS: Yes, we considered that as a
3 potential cost and risks.

4 COMMISSIONER CHANG: So you're way ahead of
5 the game if you did consider that.

6 THE WITNESS: We've done that before.

7 COMMISSIONER CHANG: Did you anticipate
8 cost of delay of the project to comply with these
9 regulatory processes?

10 THE WITNESS: Not specifically for that,
11 but we anticipate delays in general. I've never had
12 a project that hasn't had significant delays at one
13 point in time for one reason or another.

14 COMMISSIONER CHANG: I'm not too sure
15 whether your consultant have shared with you. There
16 have been delay cost or delays for burials that have
17 amounted to years. So I'm glad you anticipated
18 those.

19 Did you anticipate design cost if you need
20 to expand the buffers around the heiau, assuming that
21 it is found within the Project Area?

22 THE WITNESS: No. Yesterday was the first
23 day we've heard about that specifically, so no, I've
24 not.

25 COMMISSIONER CHANG: I do understand that

1 your consultant is trying to confirm that as we
2 speak, so okay.

3 THE WITNESS: Right.

4 COMMISSIONER CHANG: Did you anticipate
5 construction delay costs, if you have to delay the
6 start of construction to obtain a federal permit or
7 to complete your Section 106 consultation process?

8 THE WITNESS: Probably not specifically
9 those permits. But, again, we expect those types of
10 delays in any project. So we have considered that in
11 general.

12 COMMISSIONER CHANG: Because you've noted
13 in your exhibits that you intend to start
14 construction in 2023 and complete housing in 2025?

15 THE WITNESS: That would be our intent,
16 yes.

17 COMMISSIONER CHANG: Welcome to doing
18 business in Hawaii, Mr. Bracken. That is extremely
19 ambitious, but good for you.

20 THE WITNESS: Always an optimist.

21 COMMISSIONER CHANG: Always an optimist, me
22 too. Okay.

23 Did you participate having to provide a
24 performance bond?

25 THE WITNESS: I've not considered a

1 performance bond today, no.

2 COMMISSIONER CHANG: And I guess this is --
3 so I know that you considered a lot of the standard
4 development costs in calculating. You said your
5 intent is to do the best to keep it affordable based
6 upon density, unit size and cost.

7 And density and unit size you can control,
8 but cost, you did consider a lot of standard costs,
9 but some of the lists that I just went over, you may
10 not have considered those. Is that fair to say?

11 THE WITNESS: That's fair to say.

12 COMMISSIONER CHANG: And, you know, Mr.
13 Bracken, I do believe you are a person who has good
14 intention, and you're a person of great integrity,
15 but at what point in time do you make a business
16 decision that the cost to develop this project
17 outweighs the profit margin?

18 THE WITNESS: As a business person, that's
19 a question we often ask. And like I said, sometimes
20 we've done this in the past where it hasn't made
21 sense. We've tried to -- you know, we have made our
22 way through that, through wading through it.

23 I mean, by just waiting out market
24 conditions in other projects, in particular when
25 markets are up, cost are up; and when they are down,

1 sometimes those costs go down. Even sometimes
2 planning the development when things are a little
3 slower.

4 If you would have asked me six months ago
5 if lumber prices were going to be what they are
6 today, I would not have been able to guess that. I
7 do not believe they will be there forever. It's
8 something that gets re-evaluated all the time. It's
9 always a risk.

10 I can't say that, you know, we're going to
11 do everything and build this even if it means that
12 we're going to sustain \$100 million loss on the
13 project. Obviously, that is something that we are
14 going to continue to assess and make the best
15 decisions that we can to adjust and move forward with
16 the plan that we have, and adjust to it as conditions
17 change.

18 COMMISSIONER CHANG: And that's fair.

19 You know, like I said, I consult with a lot
20 of developers. And for me it's the role of the
21 consultant to provide the developer not necessarily
22 what they want to hear, but what they need to hear to
23 help you manage risks and make the best informed
24 business decision. And I'm not making any judgment
25 about your consultants, because I'm sure they are

1 people of great integrity too.

2 But I'm hoping that someone has also
3 advised that owning land in Hawaii is not like owning
4 land on the continent.

5 We have, as we talked about the
6 constitutional provision, part of your bundle of
7 sticks, as a private landowner, is not the right to
8 exclude. So if there are burials, traditional
9 customary practices, those kinds of things, you don't
10 have the right to exclude them.

11 So just, you know, I think those are things
12 to consider.

13 So because you are not a government agency.
14 I do understand you need to make a profit. But I
15 would just ask you, like the Land Use Commission,
16 we're going to weigh all of these things -- at least
17 I will weigh all of these things.

18 I will tell you that I was prepared to vote
19 against, on the Island of Kauai, an affordable
20 housing project, a very good project, because they
21 did not provide me sufficient information to meet my
22 constitutional obligation to preserve and protect
23 traditional customary practices.

24 So I would just ask you, as the days
25 progress, and the hearing progress, and you have and

1 opportunity to talk to your consultants, you discuss
2 some of these things that we talked about so that you
3 are making an informed decision.

4 I have no further questions, Mr. Chair.
5 I'm complete with my questions.

6 Thank you, Mr. Bracken, very much.

7 THE WITNESS: Thank you.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Chang.

10 I'm going to ask Commissioner Wong to begin
11 his questioning. It's 1:36. My intention is to
12 split the remaining time -- we have until 3:30 --
13 roughly in half. So probably try to go to little
14 past 2:00, take a ten to 15 minute break depending on
15 (indecipherable) and come back and conclude.

16 Commissioner Wong.

17 COMMISSIONER WONG: Thank you, Chair.

18 Good afternoon, sir, Mr. Bracken.

19 I'm going to look at Exhibit 6 for my first
20 line of questioning. So if Janna can put up Exhibit
21 6.

22 CHAIRPERSON SCHEUER: Please go ahead.

23 COMMISSIONER WONG: Thank you, Janna.

24 While you bring it up, what I'm doing, I'm
25 a lazy kind of guy, so I'm following Commissioner

1 Okuda, Commissioner Chang, Mr. Yee's line of
2 questioning, because I'm not that bright. So I just
3 follow their lead and go from there. I'm a sheep
4 more than a wolf, lazy also, and simple.

5 So this is a financials on page, starts on
6 page two, says Current Assets, that page.

7 So the first -- I'm going to do some
8 background.

9 You got this piece of property through a
10 foreclosure with approximately \$4 million; correct?

11 THE WITNESS: That's correct.

12 COMMISSIONER WONG: So under that Other
13 Asset line says Investment in Real Estate 10,600,000.

14 Where that came from?

15 THE WITNESS: I would need to double check
16 the note, but I believe the amount that we bid in the
17 foreclosure sale is what we bid. But we also had
18 contributed in there a second position note and some
19 assets and some cost of the acquisition that did
20 not -- that we did not bid in cash at the foreclosure
21 sale.

22 So HG Kauai, there was a second position
23 note that we acquired as part of that, and we used
24 that had as a credit bid on top of the \$4 million and
25 as part of the foreclosure action. We didn't utilize

1 the whole note, but that was part of the acquisition
2 process there.

3 COMMISSIONER WONG: So this second note,
4 this note, does it show anywhere in any of the
5 exhibits?

6 THE WITNESS: No, because it was
7 technically wiped out by the foreclosure. So it was
8 a note in previous existence, so it really came in to
9 HG Kauai on the equity session, next session, and in
10 the foreclosure process was used as a credit bid
11 after the first position note was successfully bid
12 up.

13 COMMISSIONER WONG: Just want to clear that
14 up, because I couldn't figure out where that 10
15 million came from. That's the first part.

16 The second part of this is what is members
17 equity? It goes down little bit after total
18 liabilities.

19 THE WITNESS: So the members equity is the
20 contribution to the LLC.

21 COMMISSIONER WONG: Is that from the parent
22 company then?

23 THE WITNESS: Yes, partly, yeah. It's from
24 the parent company, and like we said, it's not all
25 owned. We do have another minority interest in

1 there, so it was all of the partnership members' LLC
2 members, which is mostly the parent company.

3 COMMISSIONER WONG: So that's Mr. Roche and
4 whoever else?

5 THE WITNESS: Yes, yes.

6 COMMISSIONER WONG: Just wanted to make
7 sure, because I couldn't figure out who the member
8 equity is.

9 Then the other question I have, you know,
10 your line of credit that you have, that line of
11 credit, it's from Arboretum Holdings, that's the
12 Roche parent company, correct?

13 THE WITNESS: That is one of the Roche
14 entities, yes.

15 COMMISSIONER WONG: I'm assuming Goldman
16 Sach is not a parent company, just a stand alone?

17 THE WITNESS: We would like to think so.
18 But it's a new banking relationship, something we
19 have been working with recently, and we have all
20 heard of Goldman Sachs.

21 COMMISSIONER WONG: Yeah, that's a sinister
22 stroke, if you know what I'm talking about.

23 So the other question I have on this issue
24 is, you know when you're doing all of this and trying
25 for line of credits for construction or even the

1 whole project itself, did you ever have assessed
2 value of the property?

3 THE WITNESS: We have had a couple of
4 appraisals that we have done over the years. Yes.

5 I can't think of when we did the last one
6 though.

7 COMMISSIONER WONG: But it's not part of
8 any exhibits, correct?

9 THE WITNESS: I don't believe it's part of
10 any exhibits.

11 I'm not sure, but I don't believe so.

12 COMMISSIONER WONG: Because the assumption
13 is, you know, when -- okay, let's say I want to build
14 something or purchase something, you know, you set up
15 a project cost, right? I'm going into the
16 construction portion. So, you know, just the whole
17 animal of construction.

18 Don't you have a conservative estimate on
19 how much it will cost per --

20 CHAIRPERSON SCHEUER: Stop screen sharing.
21 Can we stop screen sharing?

22 COMMISSIONER WONG: Please, yes.

23 Do we have like even a rough estimate on
24 the construction cost, or even the infrastructure
25 cost?

1 THE WITNESS: I don't on the infrastructure
2 cost at this time, not until we have a more
3 definitive design.

4 COMMISSIONER WONG: Okay, because looking
5 at one of the questions that Mr. -- I think Mr.
6 Okuda -- I can be wrong, could be Mr. Yee -- that one
7 of the cost for that road was \$25 million?

8 I mean, I'm assuming that's part of the
9 infrastructure cost; is that correct?

10 THE WITNESS: Yes. I believe that's what
11 you're referring to, that spine road and
12 infrastructure.

13 COMMISSIONER WONG: Yeah. Let's take, for
14 example, I'm just doing a rough talk out loud kind of
15 deal.

16 So we're looking at the road for, let's say
17 30 million for infrastructure.

18 And did we ever do, let's say, a rough
19 estimate for wastewater, sewerline, waterline and any
20 of these other cost, like just approximate?

21 THE WITNESS: I don't -- I mean, there is a
22 lot of questions in that, in that you're talking
23 about wastewater or municipal water, we've got to go
24 through a lot of process with the County on which
25 systems are being used, and how this will be

1 utilized.

2 I don't have a great way of answering that
3 today.

4 COMMISSIONER WONG: So the other question
5 I'm going to have is, if you're going to go for
6 construction cost, or even getting construction line
7 of credit, or even other things, don't you have to
8 get this rough information of how much it's going to
9 cost to these, you know, banks?

10 THE WITNESS: Yes. Usually we do that at
11 the point we have an engineer set of drawings and a
12 cost breakdown associated with that.

13 COMMISSIONER WONG: It's just that, you
14 know, in past dba projects that we had, they already
15 pencilled out, you know, even on a napkin, say, hey,
16 this is going to cost this much, this going cost this
17 much, even if it's like pie-in-the-sky I'm going to
18 get gold fittings on my toilets. They gave us some
19 numbers.

20 So this is a little different for me to
21 kind of wrap my head around it. So that's what I was
22 wondering.

23 So the other thing I was going to ask you,
24 going -- I'm going to jump around because I can't
25 think straight these days without coffee.

1 Are you planning to get any State or
2 Federal funds, you know, HHFDC or HUD loans, SBA
3 loans, et cetera, for this project?

4 THE WITNESS: I don't know that I've
5 considered that on the construction level. We've --
6 I know there has been some little discussion on some
7 of the remediation that there might be some funds,
8 but we haven't pursued any specific funds at this
9 point.

10 I have talked in the past with groups that
11 were interested in assisting on some of the
12 affordable levels that essentially work in just the
13 affordable size, subsidized affordable, and they're
14 interested in working with us and pursuing some of
15 that lending, but I have not at this point, no.

16 COMMISSIONER WONG: So, you know, I'm just
17 going, thinking out loud again about housing issues
18 more of, you know, for example, because, you know,
19 I'm young -- when I was young, not young any more,
20 but I used to be kalohe, which means I was very
21 mischievous. I used to jump into people's yards to
22 steal stuff -- yeah, I know, like guava --

23 CHAIRPERSON SCHEUER: Do you want to call
24 for a recess, Commissioner?

25 COMMISSIONER WONG: Anyway, that was in the

1 past. You can't catch me on that.

2 But are you ever planning to fence that
3 area for construction, and is that cost was ever
4 thought about? You know, to stop people like me to
5 jump in the fence and steal like guavas or something
6 like that?

7 THE WITNESS: I'm not sure. Apparently we
8 might need to be thinking of a taller fence than we
9 were thinking before.

10 COMMISSIONER WONG: So I was thinking about
11 going back to, you know, what we talking about HUD
12 and HHFDC, you said remediation, is it a brown field
13 or something? Can you clarify what you mean by
14 remediation?

15 THE WITNESS: It just was in reference, I
16 don't know the details, but I'm thinking recently
17 there's been a conversation where somebody was
18 talking about a wetland versus stream, that, you
19 know -- again, I didn't want to say, no there has
20 been no discussion on any funds, when there was
21 something recently that came up that there was an
22 environmental concern that there might be some source
23 of funds to help assist on maintaining.

24 But I don't know the details on it. It's
25 just something that came to my mind that I didn't

1 want to say, no, we've never talked about any other
2 funds when there might have been a passing
3 conversation by one of our consultants or our
4 engineer.

5 COMMISSIONER WONG: The other thing I was
6 thinking, following Commissioner Chang, about the
7 possible heiau or possible wetlands, wouldn't that
8 change the amount of houses that would be built
9 because, let's say, you cannot build on the heiau or
10 you can't build on the wetland?

11 THE WITNESS: Potentially if there was
12 something we were unaware of, that could change the
13 density units.

14 But from what I understand right now, that
15 the wetlands are all on the borders or slopes that
16 weren't necessarily in our developable areas.

17 I can't say that something I don't know
18 wouldn't change that density, but I agree with what
19 you're saying.

20 COMMISSIONER WONG: So the other question I
21 have, just now I'm thinking like pake, attorney guy
22 who wants money. Sorry, I have to explain that. You
23 know, what it would be money between an investment of
24 this, let's say I have all these things, I'm going to
25 put in this money. How do you pencil that kind of

1 information out --

2 THE WITNESS: Sorry, I cut you off. I'm
3 sorry.

4 COMMISSIONER WONG: No, no, just go ahead,
5 just the ROI.

6 THE WITNESS: Well, as of right now, a lot
7 that is based on the density that we are going for.
8 I mean, the ROI, which is what -- very bad, if we
9 have all of these contingencies and then we end up
10 having a density of 100 units or 40 units or
11 something like that.

12 Right now density is key for what we are
13 trying to do. Average that, develop that per unit
14 starts to look much more reasonable spreading out
15 over the number of units we're looking at.

16 COMMISSIONER WONG: I guess someone -- I
17 don't know if Ms. Bianca said something about
18 apartment zoning or whatever the term is. Have to
19 get involved with that to just make it more dense or
20 something like that?

21 THE WITNESS: We are looking mostly at
22 multi-family units as to increase the density.

23 COMMISSIONER WONG: I'm going to certain
24 questions.

25 You know, do you have any agreements with

1 the County Board of Water Supply on water service?

2 THE WITNESS: No, we don't have any current
3 agreements that I'm aware of.

4 COMMISSIONER WONG: So there is no
5 permitted well or digging of well on the site then
6 permitted?

7 THE WITNESS: There is a well on the site
8 now, it is on the site. It might be -- it's on the
9 ag side, not in the Petition Area.

10 COMMISSIONER WONG: So then even so you
11 don't -- do you have any legal written agreement with
12 the County Wastewater authorities for, you know,
13 waste, sewer, all that stuff for the project yet?

14 THE WITNESS: We don't have that yet. No
15 that's --

16 COMMISSIONER WONG: I'm going back to the
17 wetlands. Sorry, jumping around.

18 Let's say we found wetlands on your area or
19 even a heiau. I'm assuming you would take that out
20 of the Petition then and leave it as a separate -- I
21 mean just by itself. You know what I'm saying? And
22 don't even touch that for your --

23 THE WITNESS: I'm not sure I understand.
24 We would certainly need to deal with that
25 appropriately, with whatever the established rules

1 are. I don't know if that means physically removing
2 that from the Petition Area. Is that how you're
3 describing it?

4 Typically it would need leaving a buffer of
5 some sort, having setbacks around those areas.

6 COMMISSIONER WONG: I was thinking about
7 that, because we had another project that we had to
8 take out a portion of their project because of
9 cemetery, and some, you know, areas that they lost
10 some money, they cannot build on the cemetery area.

11 So I was just thinking about that out loud
12 and if it's going to affect your ROI because of the
13 density.

14 THE WITNESS: If something that we aren't
15 aware is there, it would certainly affect our ROI,
16 but I don't know how to answer what I don't know, I
17 guess, at this point.

18 COMMISSIONER WONG: It's coming up to 1:54
19 so, Chair, I'm going to stop my questioning, because
20 I'm done for the day.

21 Thank you, sir. And thank you, Chair.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Wong.

24 If you're ready, Commissioner Aczon,
25 perhaps we can get started on your questions.

1 VICE CHAIR ACZON: Thank you, Mr. Chair.
2 I'm going to be quick.

3 Good afternoon, Mr. Bracken. I have a
4 series of questions and are all checked and answered,
5 and I just do really appreciate the line of
6 questioning by Mr. Yee. Answers a lot of my
7 questions, and also Chair Scheuer made a real good
8 move in putting the lawyers first in front of us.

9 And in addition to Commissioner Wong, I
10 think we're ready to go home. But anyway, just to
11 follow up on one of Commissioner Chang, I'm looking
12 forward to testimony of your expert witnesses like
13 Cody Winchester, Nancy McMahon, and Randall Okaneka,
14 traffic engineer.

15 So there might be some questions that, you
16 know, I'll probably be, you know, asking, and looking
17 forward to their testimonies.

18 And just follow through Commissioner
19 Chang's questions about the community outreach. I
20 know, due to pandemic, it's kind of hard to do
21 community outreach. I'm just kind of wondering and
22 looking forward to your plan on how you do this
23 community outreach with this pandemic moving forward.

24 Maybe your community people can answer that
25 when they come in, or do you want to answer, that's

1 fine with me.

2 THE WITNESS: I'll speak to that a little
3 bit now, just because of the pandemic which is the
4 only reason that our consultants have been the only
5 contact more than anything.

6 During this time we have been doing a
7 little bit of community outreach over the internet in
8 that we had a simple website that really is just a
9 contact forum if you're interested for more
10 information. And we have been gathering a number of
11 email addresses related to that.

12 We wanted to kind of get through where we
13 are here and see which direction we needed to go.

14 But during the pandemic phase here, we will
15 probably be utilizing that database that we have been
16 creating to initiate our community outreach, and
17 hopefully when we get to the end of the current
18 conditions, we will be able to do, you know, more of
19 that in person than on-line or, you know.

20 VICE CHAIR ACZON: I'm looking forward to
21 hearing more about that. Just like my organization,
22 we had to be creative on trying to reach out to our
23 members, or we tried different ways. So, you know,
24 and it's going -- ongoing almost every day we have to
25 try to shift around our procedures and the steps that

1 we take.

2 But moving to also Commissioner Chang's
3 questioning about -- I'm not going to belabor the
4 cost, the development cost, and you answered that
5 already. I know it's going to be hard to give us
6 definite cost. But, you know, you mention during
7 Commissioner Chang's questioning that, you know, you
8 cannot give the total cost of development because,
9 that's fine.

10 You also said that you cannot give the cost
11 for the backbone infrastructure. And I thought I
12 remember, I believe, Commissioner Wong kind of
13 touched on this during questioning of Commissioner
14 Okuda about this backbone infrastructure. You
15 mentioned the cost of \$25 million.

16 Can you clarify that for me if it is
17 correct?

18 THE WITNESS: The \$25 million that you're
19 referring to comes from one of the exhibits that our
20 consultants put together, and I believe that's the
21 best information that we have at this point.

22 VICE CHAIR ACZON: So you have an estimate
23 then, it's not like you don't have?

24 THE WITNESS: It's an estimate. Not in the
25 way that as an accountant I would normally say this

1 is, because it's not based on an engineer's set of
2 plans approved by the County and signed off by
3 everything, but it was one of the consultants that
4 based on our experience this is what we would expect
5 it to be.

6 So it's a high level back of the napkin
7 cost on that road that was entered in on one of them.
8 I'm not quite ready to put my stamp on it.

9 VICE CHAIR ACZON: I understand that. You
10 know, I've been into contracting and everything, and
11 it change, you know, sometimes every week, sometimes
12 every month the cost changes, you know. So it's a
13 matter of how you control those costs.

14 So talking about 25, 30 million, because on
15 Commissioner Okuda's questioning is if you are
16 committed to finish this backbone infrastructure
17 within ten years upon approval of the Petition.

18 Is that correct?

19 THE WITNESS: Yes.

20 VICE CHAIR ACZON: So I'm kind of focused
21 on that, because, you know, ten years and especially
22 infrastructure is a good start of the project. So
23 let us -- 25 million, I know you have commitment, a
24 line of credit for at least 20 million, right?

25 THE WITNESS: Yes.

1 VICE CHAIR ACZON: So is there a way we can
2 get a backup on that, written thing, written from,
3 you know, Goldman Sachs, or your sister company about
4 committing that \$20 million in writing?

5 If you have some kind of documentation for
6 this line of credit, I would really kind of
7 appreciate seeing that.

8 THE WITNESS: Yeah, I believe that we had
9 the credit agreement entered into evidence as part of
10 this.

11 I believe it had been entered in as -- let
12 me just clarify with -- it was entered in as
13 Intervenor Exhibit.

14 VICE CHAIR ACZON: Intervenor, do you know
15 what number?

16 THE WITNESS: I'll ask.

17 COMMISSIONER WONG: If you can just tell me
18 when you're ready.

19 CHAIRPERSON SCHEUER: Yes, Commissioner
20 Wong.

21 COMMISSIONER WONG: Can we take a break
22 while they're looking for the information? I need to
23 go to the little boys' room.

24 VICE CHAIR ACZON: I only have one more
25 question. They can provide me the numbers.

1 CHAIRPERSON SCHEUER: Why don't you go to
2 your next question and we will move on to a break
3 then.

4 VICE CHAIR ACZON: My last question kind of
5 like a million-dollar question for you -- well,
6 million dollars nothing now, so a billion dollar.

7 So if the Petition is not approved, what is
8 your plan for the land?

9 THE WITNESS: If it is not approved?

10 VICE CHAIR ACZON: Yes.

11 THE WITNESS: We haven't done any specific
12 plans for the land, but most likely if it is not
13 approved, we would have to be looking at what our
14 options are under where we are currently and lower
15 density and, you know, which unfortunately for me
16 moves us away from the affordable, you know, plan
17 that we were hoping to put forward.

18 So, you know, I have not set any specific
19 plans. We would have to be looking for something to
20 do with the land that would meet under its current
21 status. I don't have a specific plan as of right
22 now, but only a few things we can do at this point.

23 So we probably looking at low density ag
24 lots, I guess.

25 VICE CHAIR ACZON: Some of the suggestions

1 from the public testimonies, Rural development,
2 something like that.

3 But anyway, I just want to kind of get some
4 idea. I don't know how I'm going to rule on this one
5 or vote on this one, but there's a lot of more expert
6 witness testimonies that we should be getting.

7 So thank you very much.

8 And then just let me know the exhibit
9 number when we come back.

10 Thank you, Mr. Chair.

11 CHAIRPERSON SCHEUER: Thank you. It's
12 2:04 P.M., 15-minute break to 2:20, then plan to go
13 through until 3:30.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: Let's get started.
16 We're back on the record. It's 2:20 P.M.

17 Next up on our line-up, I believe
18 Commissioner Cabral, you've indicated to me a desire
19 to ask a question before we hand it over to
20 Commissioner Giovanni?

21 VICE CHAIR CABRAL: Okay. Yes, thank you.

22 I want to thank everyone for these long
23 days.

24 CHAIRPERSON SCHEUER: Mr. Yuen, are you
25 trying to raise your hand, or are you just pointing?

1 MR. YUEN: Dr. Chair, the Exhibit that
2 contained the credit agreement with Goldsmith Sachs
3 is Exhibit Intervenor's 4.

4 CHAIRPERSON SCHEUER: Commissioner Aczon
5 thanks you.

6 Commissioner Cabral.

7 VICE CHAIR CABRAL: Thank you, Chair
8 Scheuer. Commissioners, I really appreciated so many
9 of you have such more eloquently stated questions and
10 I learn so much from listening.

11 But, of course, I'm also into housing, so
12 some of the answers have created more questions for
13 me, and I know they will all come out in the wash,
14 because at whatever level, the government won't let
15 you move on without clarifying some things.

16 But really basic, sounds like you're
17 looking at building out all of the houses that your
18 profit, are part of your expenses, not just putting
19 in infrastructure and selling off vacant lots.

20 If I can, Petitioner, if your guys are
21 going to be building all of those lots out with
22 houses is one question.

23 THE WITNESS: Yes, just to say, you know, I
24 don't have a general contractor's license here. I'm
25 not -- but at the same time right now, we are looking

1 at hiring somebody locally to help us through that
2 process or partnering with somebody on the affordable
3 side.

4 Not to say that, you know, plans may change
5 a little bit or something as we go along, but that is
6 the current intent right now is to look at that --

7 COMMISSIONER CABRAL: And then since so
8 much of your numbers, particularly in regards to
9 potential, your more affordable housing units are
10 going to be multi-family, and yet you weren't clear
11 on whether those would become condominiums.

12 So the thought there is, are you looking
13 at, particularly in your affordable housing, of
14 possibly either partnering, or having several acres
15 of land that you would sell to possibly the County or
16 some other entity, and they would put in the
17 affordable housing and operate it as one apartment
18 building, or is your dream that you would be able to
19 sell off condominiums at an affordable level?

20 THE WITNESS: Our ultimate goal is to be
21 able to have what we would consider affordable condos
22 across the whole project, to specifically meet some
23 of the affordable levels we have discussed
24 integrating them within the development and working
25 with some of the organizations who do that

1 specifically, who are experts in that area.

2 So I guess that's part of our plan. We are
3 not opposed to just giving or selling some land to
4 the County for that. But I know sometimes that
5 doesn't -- we don't want to put a burden on the
6 County or an obligation.

7 So we have been exploring with some of the
8 housing groups that may help us walking through the
9 process and operate those affordable, some of those
10 affordable pieces.

11 VICE CHAIR CABRAL: Thank you.

12 CHAIRPERSON SCHEUER: Was that it,
13 Commissioner Cabral?

14 VICE CHAIR CABRAL: Yes.

15 Well, he doesn't know yet, so it's okay,
16 thank you.

17 CHAIRPERSON SCHEUER: Commissioner
18 Giovanni.

19 COMMISSIONER GIOVANNI: Thank you, Dr.
20 Chair. Did you want to give Commissioner Ohigashi an
21 opportunity if he has a chance --

22 CHAIRPERSON SCHEUER: I will -- just to be
23 clear, before we are done with this witness, I will
24 ask all the Commissioners if they have any follow-up
25 questions. When I polled the Commission,

1 Commissioner Ohigashi hadn't indicated he had
2 questions.

3 COMMISSIONER GIOVANNI: Let me say up-front
4 that I'm going to try to keep my questions today to a
5 level of some detail, but I'm really reserving the
6 bulk of my questions, which are more detailed in
7 nature, to after I hear the expert testimony from the
8 Petitioners as well as from the County and State and
9 the Intervenor. And that I just want to be sure Mr.
10 Bracken understands that I look forward to followup
11 with him again as we recall him for some details.

12 COURT REPORTER: Excuse me, Commissioner
13 Giovanni, this is Jean, Court Reporter. Can you
14 raise your voice a bit for me, please? You're very
15 soft.

16 COMMISSIONER GIOVANNI: I will do that,
17 Jean.

18 COURT REPORTER: Thank you.

19 COMMISSIONER GIOVANNI: Do I need to repeat
20 any of what I've said?

21 COURT REPORTER: No, you do not.

22 COMMISSIONER GIOVANNI: Let me also express
23 my appreciation to Mr. Bracken. He's a busy guy with
24 a big portfolio of responsibilities, and he's taken a
25 big chunk of his personal time to be with us today.

1 And I'm sure he's going to have to spend more time.

2 Let me thank you right up-front for doing that.

3 My questions are in no particular order.

4 Let me start with, I heard testimony from, public
5 testimony yesterday about a gentleman by the name of
6 Greg Allen.

7 Are you familiar with that person of that
8 name?

9 THE WITNESS: Yes, I am.

10 COMMISSIONER GIOVANNI: He's been
11 affiliated with this project as a principal project
12 or project principal.

13 Is he still affiliated with the project?

14 THE WITNESS: He is still affiliated. He
15 did contribute his note. He is not one of the
16 managers at this time, but he still has some
17 membership interest.

18 COMMISSIONER GIOVANNI: Is he the sole
19 minority member that you referred to early?

20 THE WITNESS: No, there are two other very
21 small member interests that are really contingent.
22 I'm actually one of them, just a very small
23 percentage. And then there is one other individual
24 that has another one percent or two percent.

25 COMMISSIONER GIOVANNI: So aside from Mr.

1 Allen, who I believe still resides in Hawaii, is
2 there any members that reside in Hawaii?

3 THE WITNESS: No.

4 COMMISSIONER GIOVANNI: Okay, thank you.

5 Can I ask you to put up that map that was
6 in your PowerPoint presentation? Yeah, that's the
7 one.

8 The property that is outlined being a
9 combination of red outline and black dashed outline,
10 is that the property in total that you acquired
11 through foreclosure?

12 THE WITNESS: Yes.

13 COMMISSIONER GIOVANNI: Has the property
14 been formally subdivided at this point in time, or
15 are you just showing the division by example?

16 THE WITNESS: There is no formal
17 subdivision. This is showing just the Petition Area.

18 COMMISSIONER GIOVANNI: If you were to sell
19 the land tomorrow for some reason, would you sell the
20 entirety of the property, short of subdividing it?

21 THE WITNESS: Yes, that's correct.

22 COMMISSIONER GIOVANNI: On the property
23 that is not included in the Petition Area, you have
24 installed -- or at least some of that land I think
25 you referred to a couple of lots for a solar project?

1 THE WITNESS: Yes. Before we bought the
2 land, there was a lease in place and a solar farm
3 that had been constructed.

4 COMMISSIONER GIOVANNI: Do you know the
5 term of that lease?

6 THE WITNESS: The actual terms of the
7 lease, I believe it's a very long-term lease. You
8 know, I don't know exactly offhand. And, in fact,
9 the lessee would like to buy that property when we
10 get to the point where we can subdivide. So that is
11 that option agreement that was referenced earlier.

12 COMMISSIONER GIOVANNI: So at the present
13 time is your company receiving revenue from the
14 lease?

15 THE WITNESS: Yes, not significant. It's
16 just a minimal amount to keep the lease active.

17 COMMISSIONER GIOVANNI: I didn't quite
18 understand that. Could you repeat?

19 THE WITNESS: Yes. It's a minimal amount,
20 you know, like \$100 a year and pays the property
21 taxes or something like that. But it is a lease.

22 COMMISSIONER GIOVANNI: So the solar farm
23 is sitting there. I assume it has a power purchase
24 agreement with KIUC for delivery of solar power, and
25 the land is basically leased to the owner of the

1 solar farm at nominally \$100 a year; is that what
2 you're saying?

3 THE WITNESS: Yes. There was other
4 consideration that predated our involvement, so we
5 when we purchased, we took it subject to that lease
6 and have continued that.

7 COMMISSIONER GIOVANNI: Could we return to
8 the -- well, you can take the exhibit down, but I do
9 want to follow up on the questioning from
10 Commissioner Wong about the financials.

11 Let me state that this is a question or
12 statement, but I'll try to do it in the form of a
13 question.

14 What I've heard so far is pretty troubling
15 in the sense that you're conveying to this Commission
16 that you have not yet done a pro forma financial for
17 this project, or that you've only one that's very
18 preliminary, either not done it, or you've done one
19 and you're unwilling to share it; or the other
20 message you could be sending to us or some of us or
21 interpreting, your primary interest may very well be
22 to secure this LUC dba and flip the property, because
23 you've not really done the pro forma.

24 Can you give me any response, give us
25 encouragement that you, in fact, know what the

1 financial responsibilities are that you're stepping
2 into here in terms of the magnitude of this project?

3 THE WITNESS: Sir, we acquired the project
4 in 2013 and have spent a substantial amount of money
5 on the various reports and updating reports, you
6 know, for the environmental assessment.

7 And I think in that process, we certainly
8 have expressed and learned very firsthand terms in
9 terms of how timelines and expectations in Hawaii can
10 be different than what you would expect.

11 So as we've gotten to this point, we have
12 been a little bit hesitant to commit ourselves
13 internally to access design work when we are not
14 quite sure we are going to have 700 units or 100
15 unit, or 50 units.

16 And so in general terms, the reason why I'm
17 a little hesitant on that is because we have not
18 spent excess money on design, so we certainly have
19 not wanted to redesign the project six times over and
20 then have to carry that cost into the project.

21 And so it is not by lack of desire or
22 willingness to take it to that point, but just more
23 of a desire not to duplicate that expense as what we
24 don't have, you know, the density defined at this
25 point.

1 COMMISSIONER GIOVANNI: I can appreciate
2 that.

3 As time goes forward, you will develop what
4 I'll call more precise or more accurate cost
5 estimates as your engineering gets formalized, and as
6 the permitting process evolves.

7 But I would really encourage you, because
8 this Commission kind of has to view this project at a
9 high level. We understand that the County itself
10 will see its weak points or details permitting --
11 (indecipherable) -- as we proceed, will be going
12 through a lot more detailed permitting process with
13 you that might, in fact, result in cost.

14 But, nonetheless, really looking to see --
15 and I think I speak for my fellow Commissioners --
16 how big of a bread basket are we talking about here
17 in terms of the cost of this project? And I would
18 really encourage you, before this Commission has to
19 make its deliberation on the Petition, to put
20 something in the record that, number one, gives us an
21 idea of the breakdown of your best guess at the time,
22 best estimate at the time -- don't want to call it a
23 guess -- of what the costs are broken down by
24 infrastructure cost versus construction cost for
25 housing.

1 And at the same time demonstrate to this
2 Commission how you're going to execute and actually
3 follow through on the design build and construction
4 of this project.

5 If you could do that, it would be -- I
6 can't encourage you strong enough to do that before
7 we have to make a decision, and put it on the record.
8 Otherwise we're left with your representations of
9 your intentions. That doesn't carry a lot of water
10 for me, to be honest.

11 THE WITNESS: Okay, I share and understand
12 what you're saying. So thank you.

13 COMMISSIONER GIOVANNI: I would like to
14 turn to, in style -- may not logically sequence --
15 but another thing you've heard from my other
16 Commissioners already is about community outreach.

17 And I would like to start with just better
18 understanding of your company's philosophy with
19 community outreach.

20 In other words, at one end of the spectrum
21 are you just looking to outreach with all of the
22 decision-makers that will be involved, or were you
23 looking at the other end of the spectrum getting
24 involved with public meetings with community
25 representatives, whoever might be interested?

1 What is your philosophy of community
2 outreach?

3 THE WITNESS: Typically I would say we -- I
4 personally are more of a grassroots person. We've --
5 I'll use my New Mexico project as an example. We
6 certainly have started with the city and the economic
7 development, but we've tended to do a lot of, you
8 know, direct communication and working within the
9 community, not necessarily hosting public meetings
10 for every little thing.

11 We haven't had projects where we have had
12 to do that sort of a thing, but we've attended local
13 rotary clubs, for example, and put on demonstrations
14 of the type of things that we were doing and trying
15 to do more of a general outreach.

16 I typically would have been doing more of
17 that here other than it's been too difficult to
18 travel, and we've not quite been sure how to do that
19 under the current scenario.

20 And it certainly is something that we could
21 have done a better job at admittedly.

22 COMMISSIONER GIOVANNI: I think I'm the --
23 well, I know I'm the only Commissioner that actually
24 lives on Kauai. I could tell you in just very
25 specific and general terms, there is a keen amount of

1 high level of interest in this potential project.
2 Not only in Kapaa, but throughout the island.

3 And so I would really encourage you to
4 commit to an outreach program that reaches the people
5 who have interest. So let me be a little more
6 specific.

7 We have received in terms of written
8 testimony from the public on this docket
9 approximately 150 different pieces of written
10 testimony from the public.

11 If you're looking for people who have high
12 interest, and who would welcome an opportunity for
13 interaction, that's a good starting point for you,
14 but I would really encourage you to do that.

15 So my question is, what are you prepared to
16 do in terms of a firm commitment? Not intention, but
17 commitment for outreach on a grassroots basis to our
18 community who have a high interest in this project?

19 THE WITNESS: I'm willing to make a
20 commitment. I'm uncertain how to define that at this
21 point. I would be very willing and accepting of any
22 recommendation on what you would think would be good
23 to see at this point, to be quite frank.

24 COMMISSIONER GIOVANNI: So let me suggest
25 the following. We're obviously not going to finish

1 this docket today. Let me encourage you to confer
2 with your counsel and your consultants and to come
3 back and present to this Commission a more defined
4 plan for community outreach on a grassroots level,
5 the community of Kauai for this project.

6 THE WITNESS: Okay.

7 COMMISSIONER GIOVANNI: I have a lot of
8 detailed questions about affordable housing and about
9 traffic, but I'm going to defer those questions to
10 later in the proceedings.

11 But I do have a question about this \$25
12 million number that's been discussed, I think most
13 recently Commissioner Aczon had asked for
14 clarification on that.

15 My interpretation that that was an estimate
16 that was included in the TIAR for 2017 Road A, I
17 believe. Is that correct?

18 THE WITNESS: I believe you might be right
19 on that.

20 COMMISSIONER GIOVANNI: So is an estimate
21 for only that road, and that road would terminate at
22 the bypass; is that correct?

23 THE WITNESS: I believe, if I'm taking you
24 right, I believe you're correct.

25 COMMISSIONER GIOVANNI: So independent of

1 cost estimates, we have also heard testimony and
2 conjecture about potential additional items that
3 might be included under the heading of
4 infrastructure.

5 So to name a few, I would say protection of
6 the watershed, archaeological mitigations that might
7 be necessary.

8 I would encourage you to look at some
9 potential for safe crossing of the bypass road. It's
10 one thing to say that residents of the area will
11 enjoy walking downtown, but they are not going to
12 enjoy -- we need them to safely cross that bypass
13 road. That's infrastructure to me.

14 There are utilities. There are a number of
15 things that are set aside in terms
16 (indecipherable) -- might be given to the County.
17 But another really big one is pro rata share of the
18 traffic mitigation, which at this point in time is
19 not defined.

20 Would you agree that this \$25 million
21 estimate, assuming it's accurate for Road A alone,
22 would be the low end of the spectrum for what
23 infrastructure cost might evolve to?

24 THE WITNESS: Yes.

25 COMMISSIONER GIOVANNI: So let's say they

1 evolve -- I'm just going to put a hypothetical number
2 of \$100 million out there, or it could be more could
3 be less.

4 If the infrastructure cost were of that
5 order and you heard from Commissioner Chang about the
6 notion of a performance bond for the infrastructure
7 and background infrastructure -- you don't have to
8 answer today, you may want to do more research -- but
9 if the infrastructure was determined to be on the
10 order of \$100 million or more, would you be willing
11 to put forth a performance bond and commit to a
12 performance bond of that magnitude?

13 THE WITNESS: Certainly that is something I
14 need to understand better before I can commit to
15 that. But that is something we can discuss
16 internally and come back with what we can do.

17 COMMISSIONER GIOVANNI: So I will be
18 looking forward to more definitive response as the
19 proceedings go forward, because I can assure you that
20 consideration for a condition like that is in the
21 minds of us Commissioners, in part not so much from
22 what we know about your company, but from our
23 experiences from other projects of this type, where
24 LUC approvals were realized, but yet infrastructure
25 was never built or not built on a timely basis.

1 In your opening testimony, affordable
2 housing, you made the statement that it comes up over
3 and over, we've heard from the community, it's what
4 is wanted by the community, I think those were all
5 quotes in your comments.

6 Who were you hearing from, from the
7 community in this respect? Who were you referring
8 to?

9 THE WITNESS: We have had a number of --
10 early on, as we mentioned earlier, that based on the
11 zoning and everything when we acquired it, and our
12 meetings with the County Commissioners at the time,
13 we were being encouraged to pursue higher density.
14 We've talked to a number of -- again, some of my
15 trips have been short, and we talked to a number of
16 individuals over the years I knew who have been very
17 encouraging of this.

18 I will say one of the stories that came up
19 over and over again is people who have children and
20 even grandchildren living in their home unable to get
21 their own homes and looking for something like this.

22 So we've had a number of
23 one-on-one conversations, and talking about with some
24 other people in the County, and working with the
25 school district and others.

1 I'm fully not prepared off the top of my
2 head to give you specific names without looking at
3 notes and various things. But admittedly it's not
4 like we have had, you know, huge outreach grassroots,
5 you know, public hearings, and asked for people that
6 have been an informal process over the last almost a
7 decade for us, and longer for the previous
8 developers. So this has been something that we have
9 been told over and over again.

10 COMMISSIONER GIOVANNI: And in what you've
11 been hearing, and I can imagine, just as you've
12 described, as you have heard commentary to that
13 affect by a number of sources -- I don't need the
14 sources, but would you -- is it your impression that
15 those comments are to be interpreted for the Island
16 of Kauai as a whole, or for the neighborhood of the
17 Township of Kapaa specific?

18 THE WITNESS: I would say neighborhood of
19 Kapaa specifically is generally who, at least I've
20 been, the conversations that I've been involved with,
21 people that live in that area who want their children
22 and grandchildren to find homes in that area as well.

23 COMMISSIONER GIOVANNI: Your representation
24 is that your project will fill the need or the
25 expressed need for affordable housing as you've heard

1 it from different sources specific to Kapaa?

2 THE WITNESS: Yes.

3 COMMISSIONER GIOVANNI: You commented that
4 you had plans that were actually moving forward with
5 the update to the TIAR for the traffic study that was
6 done previously and updated once already; is that
7 correct?

8 THE WITNESS: Yes, we were -- as we were
9 preparing for our submission here, if we were
10 actually putting agreements together and we are
11 looking at doing an updated traffic report, but, as I
12 said, as we discussed internally, but we didn't feel
13 like it was right to have an updated report while
14 traffic levels were low, so we postponed that.

15 COMMISSIONER GIOVANNI: What is your
16 understanding of why the new traffic update is
17 needed?

18 THE WITNESS: Mainly timing. I know ours
19 was getting to be a little too old.

20 Second, as we were looking at it, there
21 have been some -- you know, there are about to be
22 some changes with the widening of the bypass road by
23 Cocopalms, which is under construction now that, you
24 know, that change the current conditions.

25 So time has passed and it needs to be

1 updated.

2 COMMISSIONER GIOVANNI: I agree. I was one
3 of the Commissioners that spoke to that at length at
4 the former hearing on this project involving the
5 acceptance of the Final EIS, in which we felt that
6 the traffic study was vague, not comprehensive
7 enough, even though it was loaded with numbers but
8 did not really reflect the level of detail that we
9 were looking for to make a clear judgment on the
10 impact of this project on traffic.

11 And, of course, you know, that traffic
12 concerns rises right up to the top of the list next
13 to affordable housing.

14 So very strong encouragement to follow
15 through on a comprehensive traffic study that
16 represents end to end what this impact of this
17 project might be.

18 THE WITNESS: Yes, and that's something
19 we're willing to commit to.

20 COMMISSIONER GIOVANNI: Your comments on
21 the housing, I think you made reference to you
22 weren't sure what the final configuration would be
23 between townhouses, condominiums and apartments, if I
24 got your quote right.

25 Could you explain what you mean in terms of

1 the difference between townhouses, condominiums and
2 apartments?

3 THE WITNESS: Apartments I would typically
4 take to mean something that houses a single unit with
5 multi-family in it and operate it for long-term
6 rentals for housing.

7 Condominiums are often, you know, a unit
8 where you sell the right to the building, the
9 interior of the building, on the outside of the
10 structure -- (indecipherable).

11 Townhouses are, I would define that as
12 something where you have the ownership of the ground
13 underneath you, but sharing common walls and still a
14 multi-family-type unit.

15 That would be my description of the three.

16 COMMISSIONER GIOVANNI: So as you proceed
17 into the detail design of this project and the
18 commitment you're willing to make around it, are all
19 three of those alternatives in play?

20 THE WITNESS: Yes.

21 COMMISSIONER GIOVANNI: So have you
22 considered up until now the prospect for making this
23 a long-term rental project?

24 THE WITNESS: The entire project, is that
25 what you're asking?

1 COMMISSIONER GIOVANNI: At a minimum, all
2 of the affordable components?

3 THE WITNESS: That has been something that
4 has been discussed in the past and considered.
5 Again, we haven't made a final decision on that
6 because we have got a lot of work we need to do at
7 the County, and find out what the needs are there.

8 COMMISSIONER GIOVANNI: What are the
9 factors that go into your decision-making about
10 whether you would build condominiums versus
11 apartments?

12 THE WITNESS: Really, just first of all,
13 market demand. What the needs are going to be.
14 What's, you know, what's going to satisfy what the
15 County is looking for, for us.

16 I'm not sure that we are super enthused
17 about condominium project necessarily. Apartments
18 are easier to build and operate as less complexity,
19 but again, I don't know all the issues that are going
20 to come up at the County level for that.

21 COMMISSIONER GIOVANNI: Let me invert that
22 question a little bit.

23 From your company's perspective, have you
24 been in the business of owning apartment houses for
25 long-term rental?

1 THE WITNESS: We have done some long-term
2 rentals, yes.

3 COMMISSIONER GIOVANNI: Is that something
4 that, as the terms of your business, irrespective of
5 the requirements of the County, that you would be
6 interested in doing?

7 THE WITNESS: I believe so. The part I
8 don't know is locally how to integrate it locally for
9 the management.

10 Obviously my business is not necessarily
11 set up here. Not meaning that I would be opposed to
12 that, but those would be the types of questions we
13 would need to answer to make that decision.

14 COMMISSIONER GIOVANNI: One of the general
15 concerns about affordable housing projects is that
16 they're affordable on day one, but on day five-year
17 they flip to market rate.

18 THE WITNESS: Yes.

19 COMMISSIONER GIOVANNI: What would be your
20 plan to mitigate that potential for this project?

21 THE WITNESS: I guess mainly we are trying
22 to build a project that is affordable, you know,
23 truly affordable in terms of market rate as well.

24 You know, higher density oftentimes -- not
25 trying to say completely small units -- but lower

1 square footage and higher density mean lower market
2 rate.

3 Ultimately, we are looking for a project
4 that is closer market rate and affordable at the same
5 time. I know it's not always going to be something
6 that's going to be perfect, but by building a product
7 that is more affordable to begin with, it will always
8 maintain more affordability in the long run.

9 COMMISSIONER GIOVANNI: Let's talk about
10 the 30 percent of the homes that are purposely
11 offered at a lower price.

12 THE WITNESS: Yes.

13 COMMISSIONER GIOVANNI: The other
14 70 percent are going to go at market price, and
15 you're just suggesting that somehow you can build
16 those in a way that will be competitive with
17 affordable homes.

18 I'm not buying that personally, but I
19 understand what you're saying.

20 THE WITNESS: Trying to narrow the gap.

21 COMMISSIONER GIOVANNI: I know you're
22 trying.

23 Let's just focus on the 30 percent. How do
24 we sustain that 30 percent at affordable level beyond
25 the initial cost?

1 THE WITNESS: That is -- that would be
2 something I feel like we would have to work with the
3 County on with our agreement with the County on our
4 affordability commitment.

5 I don't have an answer for that beyond that
6 at this point.

7 COMMISSIONER GIOVANNI: Do you see a
8 difference in terms of business model whether it be
9 for sale versus long-term rental that you would
10 manage over the life of the project, say 30 years, in
11 your ability as the owner to manage those costs for
12 rentals at an affordable rental or longer term?

13 THE WITNESS: Yeah, and there are plenty of
14 programs out there to hold that at a longer term, and
15 certainly that has been one of -- we have spoken to a
16 couple of groups who managed the affordable project
17 and are able to match that with preferred lending to
18 keep it in those rates long term.

19 COMMISSIONER GIOVANNI: Mr. Bracken, I want
20 to thank you for your time. I don't have any
21 additional questions today, but I will look forward
22 to speaking with you again.

23 THE WITNESS: All right, thank you.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Giovanni.

1 Commissioners I'm ready to dive in, but if
2 any of you have anything you want to ask first.

3 You okay, Mr. Bracken?

4 THE WITNESS: Trying. Thank you.

5 CHAIRPERSON SCHEUER: I have questions in
6 broad categories. One is about ownership of the
7 project. One category about affordability. One
8 category about the role of the LUC versus County.
9 And one category about traditional customary rights
10 of native Hawaiians.

11 I know it's been a long day, so it's
12 possible if I'm being repetitive, I'll look to Ms.
13 Ahu and Mr. Yuen to say the witness has already
14 answered that. Please forgive me, it's not
15 intentional.

16 Starting off, HG Kauai Joint Venture. What
17 does HG stand for?

18 THE WITNESS: It refers to Hickory Grove,
19 which just happens to be the name of the entities --
20 parent companies -- it's a level of parent companies.
21 (Indecipherable).

22 CHAIRPERSON SCHEUER: So one thing I'm very
23 interested in and might be something in the form of a
24 written matter that you give to the Commission in the
25 course of these proceedings.

1 I'm really interested in understanding who
2 the members are, and how it's related to other
3 entities. And to give you an example of why.

4 On the Island of Maui in a docket recently
5 we had two companies, two separate LLCs that were
6 obviously, like they shared most of the same name,
7 they were obviously part -- they were owned by the
8 same parent, but the attorney who came before us
9 asked for something on behalf of one entity, said,
10 oh, I'm only representing this one entity. I have
11 nothing to do with the other entity, so I can't say
12 anything about the other entity.

13 So I want to be really, really clear on
14 this record.

15 First of all, who are the members, all of
16 the members of this entity HG Kauai Joint venture?

17 THE WITNESS: I'll try to be specific here
18 and I'm going from memory. I may need to actually
19 have to refer to an old chart or something later.
20 Generally speaking, I guess I'll take a step back.
21 Ultimately our ownership role -- we kind of look a
22 little bit like a large corporate structure but our
23 owner is Robert Roche and his family, mainly in the
24 form of a series of trusts that he has for his kids.
25 But that is essentially our ultimate ownership here.

1 I believe that HG Kauai Joint Venture
2 specifically is owned mostly by an entity named just
3 HG Kauai, which is his membership interest, the Roche
4 family interest.

5 And then there's a little bit by an entity
6 called Steve Investment, which is where the Allen
7 family has their interest from what they basically
8 contributed?

9 And then there is two individuals, myself
10 and a gentleman by the name of Dave Wilkie (phonetic)
11 who have kind of a contingent percentage in the
12 neighborhood of one or two percent.

13 CHAIRPERSON SCHEUER: Please go ahead.

14 THE WITNESS: I don't -- I was just going
15 to say the Roche interest may have, you know, an
16 ownership chain within their organization, but I
17 would need a chart to go into further detail. I just
18 don't have that.

19 CHAIRPERSON SCHEUER: Is it going to be
20 possible for you to submit a chart to have us fully
21 understand how these ownership interest, basically
22 where the buck stops, getting to the questions that
23 Commissioner Okuda asked earlier?

24 THE WITNESS: I don't believe that that
25 would be a problem. I would need to make sure that I

1 would have authority to submit that on behalf of any
2 entity. There might be some entities that I don't
3 have full authority to commit to, but I don't see
4 that as a problem.

5 CHAIRPERSON SCHEUER: I'm only interested
6 so far as it relates to this, I'm not trying to get
7 to anything unrelated.

8 THE WITNESS: I understand. I don't see
9 that as a problem.

10 CHAIRPERSON SCHEUER: Can I ask if your
11 interest is one based on invested equity, or is it
12 based on, sometimes the case in real estate, your
13 interest is based on the successful securing of an
14 entitlement?

15 THE WITNESS: Not actually entitlement, it
16 is more of a success fee. It's basically I have a
17 small percent that is contingent upon return of
18 original capital to the investors. It doesn't really
19 kick in until the original capital has been returned.

20 CHAIRPERSON SCHEUER: Which is dependent on
21 getting successful action by this Commission?

22 THE WITNESS: Any successful action,
23 correct. So the further along that we make it, you
24 know, further going through development,
25 construction, the better that is for myself.

1 CHAIRPERSON SCHEUER: And the gentleman you
2 mentioned who also has a small one or two percent
3 interest, you had earlier said under testimony that
4 this -- so you're a manager of the entity, correct?

5 THE WITNESS: I am a manager of the entity.
6 Then there is another manager that is, you know,
7 Theresa Roche, who is Robert Roche's sister.

8 CHAIRPERSON SCHEUER: So the minority, can
9 you explain something about the other one or two
10 percent member?

11 THE WITNESS: Yeah, that's another business
12 partner that Robert has done business with in the
13 past. He's a partner on our Sand Hollow project, and
14 he made some of the original introduction out here.

15 CHAIRPERSON SCHEUER: Thank you.

16 Is the solar farm owned by yet another
17 separate entity?

18 THE WITNESS: The solar farm is a third
19 party, as I mentioned, it was -- I couldn't tell you
20 the entity offhand, but it is not a party within this
21 group, it is third-party.

22 CHAIRPERSON SCHEUER: So the legal
23 relationship with them is just by a lease?

24 THE WITNESS: By a lease and option to
25 purchase when we're able to subdivide that.

1 CHAIRPERSON SCHEUER: And I apologize if
2 this is somewhere in the record, it's an extensive
3 record, which I'm still trying to familiarize myself
4 with.

5 Is there something in the record that
6 points to any rights that the lessee of the solar
7 farm may have to restrict development or have a say
8 in what happens to the remainder of the property,
9 access, easements, sunlight easements. I don't know
10 what kind of things might exist. Is there anything
11 like that?

12 THE WITNESS: I don't know that there is
13 anything like that in the record. I believe that the
14 lease is in the public record though.

15 CHAIRPERSON SCHEUER: Is there anything
16 that, to your knowledge, that the solar entity, as a
17 lessee, might have that would implicate the ability
18 to successfully -- for you to successfully complete
19 development in the Petition Area?

20 THE WITNESS: Not that I believe, no, there
21 is -- no.

22 CHAIRPERSON SCHEUER: I asked a question
23 before, I rudely interrupted Commissioner Okuda. I
24 was a little concerned that the title report is for
25 the entire TMK and then it was revealed that certain

1 aspects in the exceptions in the title report you
2 asserted were only applicable to the other portion of
3 the property, not the portion of the property that's
4 in the Petition Area.

5 Is there a plan from the Petitioner to
6 submit a title report that is clearer, only
7 applicable to the Petition Area?

8 THE WITNESS: I would need to discuss that.
9 I'm not sure offhand how to do a title report that is
10 only a part of a --

11 CHAIRPERSON SCHEUER: I'm not either, but
12 my concern is that when we go down the road, and then
13 you say, oh, well, that exception, that actually did
14 apply to this area, but that other one didn't apply
15 and we don't have a clear record of it.

16 So I'm open to creative solutions to this
17 problem, but it's a legitimate concern of the LUC, I
18 believe.

19 THE WITNESS: Okay, I understand.

20 CHAIRPERSON SCHEUER: I'm going pivot to
21 affordability. I believe I'm looking at Petitioner's
22 Exhibit 11, I believe, your PowerPoint.

23 And on the summary of affordability it
24 notes, for whatever reason, unfortunately -- there we
25 go. On my screen it's not coming up.

1 56 of the units will be made available at
2 121 percent to 140 percent of HUD AMI.

3 This is on page -- not sure exactly. Six
4 pages. Am I reading that correctly? 56 units at 140
5 percent of HUD AMI?

6 THE WITNESS: Yes.

7 CHAIRPERSON SCHEUER: Do you happen to know
8 what the 140 percent of the HUD AMI is on the Island
9 of Kauai for 2020 for a family of four?

10 THE WITNESS: I don't know that offhand. I
11 don't I know that. It is definitely higher, and one
12 of the reasons why the affordability definitions have
13 changed recently, but I couldn't tell you the number
14 right here today.

15 CHAIRPERSON SCHEUER: It's just shy for the
16 publicly published -- just shy of \$800,000 for a
17 family of four at a three percent interest rate.

18 So am I to understand that if that was the
19 case, that the rest of the units would be priced
20 above sort of that threshold if they were for a
21 family of four?

22 THE WITNESS: It is definitely not our
23 intent to strike above those thresholds, but at the
24 same time I'm trying not to overcommit at this point
25 in time when I don't have all my plans, cost

1 breakdown. You know, our goal is to try to maintain
2 in those levels.

3 CHAIRPERSON SCHEUER: As an experienced,
4 very well-experienced professional builder, do you
5 think \$800,000 is generally affordable for -- do you
6 think a home price of \$800,000 is affordable on
7 Kauai?

8 THE WITNESS: I think a price of \$800,000
9 is hard to be affordable, you know, for most people.

10 CHAIRPERSON SCHEUER: Commissioner Giovanni
11 asked you some questions regarding the retention of
12 ownership.

13 Do you have anything in your exhibits or in
14 your documentation as to the length of time which you
15 would anticipate these homes being affordable, the
16 affordable units?

17 THE WITNESS: I don't think I've got
18 anything in there now. I believe our expectation is
19 that the affordability commitment would be finalized
20 with the County based on what they typically do.

21 CHAIRPERSON SCHEUER: Are you at all
22 familiar with the ability of the County to restrict
23 ownership, say, I mean because the representation has
24 been that this is a project for Kauai residents, can
25 you explain to me what the restrictions might be that

1 the County can place, if you are aware of them, on
2 restricting sales as to Kauai residents?

3 THE WITNESS: I'm not actually aware.
4 Again, it's one of those situations where I'm a
5 little bit careful, because we certainly don't want
6 to violate any fair housing rules or anything like
7 that.

8 So I don't want to misstate a different
9 real estate process, but I do understand that there
10 is -- there are some restrictions that the County can
11 put into place. I don't know the details on that?

12 CHAIRPERSON SCHEUER: So you don't know the
13 details.

14 Is it possible that somebody who would like
15 to live on Kauai in an affordable rate, but is not
16 from Kauai, would be able to purchase one of these
17 units?

18 THE WITNESS: I suppose it's possible. I
19 believe that, you know, again, with fair housing
20 rules, we have to be careful how we reposition that.
21 I don't want to speak outside of what the other
22 federal rules are. But in the opportunity that we
23 can work with the County to make sure that it's going
24 to the people we are intending, and it's being
25 utilized in the way that we would like to see it

1 without violating any additional rules, is something
2 that we're very interested in. We would like it to
3 go to help the community.

4 CHAIRPERSON SCHEUER: I'm aware of fair
5 housing law. Commissioner Cabral certainly is more
6 deeply familiar with it, given her professional
7 experience. But I'm aware that some jurisdictions
8 manage to work within fair housing law and still
9 prioritize, for instance, employment-related groups
10 such as employees in public education, or public
11 safety or fire protection.

12 Have you at all explored or considered any
13 mechanism such as that to balance the affordable
14 federal fair housing rules with a sincere desire of
15 many people in the State to see affordable housing
16 not only built, but built for people who are actually
17 already here?

18 THE WITNESS: It is not something we have
19 explored to date, but it's something I'm very
20 interested in and we would be willing to commit to
21 explore that.

22 CHAIRPERSON SCHEUER: Would you be
23 willing -- a commitment to explore, you might --

24 THE WITNESS: I would be willing to commit
25 to take advantage or to go down that road to do what

1 we can, what is available, that is something that we
2 would be willing to commit to.

3 CHAIRPERSON SCHEUER: I, like many of my
4 Commissioners, have said --

5 THE WITNESS: -- without feeling like I'm
6 misstating something on a fair housing rule, so I'm
7 willing to make the commitment to use those
8 mechanisms the County or whoever may have in place.

9 CHAIRPERSON SCHEUER: We intend to recall
10 you as a witness, so you will have the opportunity to
11 come back with commitments that are clear.

12 And as I said, I was about to say, as
13 Commissioner Okuda and others have stated, I don't
14 have a pre-made decision in this docket. I'm just
15 asking my questions to try to better understand the
16 docket and perform my responsibilities.

17 You talked about County requirements, so
18 that's a good transition for me to pivot to the role
19 of the LUC versus the Counties.

20 Can you briefly understand sort of your
21 understanding of the role of the Land Use Commission,
22 because your extensive experience may not have led
23 you to encounter a Commission quite like us.

24 THE WITNESS: Definitely a very unique
25 organization we have not had to deal with in other

1 places. My understanding is that these Land Use
2 Commission is set aside to -- you're there to try to
3 figure out -- how to state this -- you give us the
4 initial zoning change. You're there to keep the
5 interest of the State aligned in the interest of the
6 various organizations, and you're the first step.

7 I'm not describing this very well. And
8 then the County is what we deal with with the --
9 where the nuts and bolts are where we are dealing
10 with utilities, we're dealing with the actual plans
11 and the specifics.

12 I'm sure you could be a little bit more
13 eloquent than I am at that, but that's my general
14 understanding at this point.

15 CHAIRPERSON SCHEUER: That's helpful.

16 How would you contrast our role to the role
17 of the County, Kauai County in particular?

18 THE WITNESS: I would put it -- let me
19 think about that answer for a second.

20 I would contrast that specifically with,
21 you know, again, the County is probably more on the
22 specifics of dealing with the actual operations, and
23 putting this in my own terms here, and maybe the Land
24 Use Commission is a little higher level on the
25 administration side in terms of making sure that

1 the -- it is consistent with the overall objectives
2 of the State and consistent with the overall
3 objectives of how the development should be on a more
4 global level.

5 CHAIRPERSON SCHEUER: That's very hopeful.
6 Thank you.

7 So one of the things LUC looks out for,
8 it's not like the Counties don't look out for it, but
9 we intend to be the first run of it, is the public
10 trust, and we follow the Public Trust Doctrine.

11 Are you sure of your familiarity with your
12 understanding of the Public Trust doctrine?

13 THE WITNESS: I would prefer to have you
14 describe that at this point. I'm a little outside of
15 my expertise here.

16 CHAIRPERSON SCHEUER: I mention that
17 because I think it informs a lot of the questions
18 that you've been asked that, and will be asked in the
19 future in terms of kinds of concerns that the Land
20 Use Commission is constitutionally obligated to take
21 up.

22 One of the clearest areas in which the
23 Public Trust Doctrine applies in Hawaii is with
24 water. So are you able to explain your understanding
25 of the kind of water rights that you might have on

1 this property?

2 THE WITNESS: Probably better question for
3 my water engineer. I'm not as familiar with Hawaii
4 water rights as I am in the other locations.

5 You're definitely a little different here.
6 We do have a current well and on the Petition Area,
7 but on the other side of the property, but those
8 questions might be better directed at our water
9 engineer or water expert.

10 CHAIRPERSON SCHEUER: Thank you.

11 And then we might actually end a little
12 early, or you can have a chance for redirect. I just
13 have one last question.

14 I want to clarify my understanding at this
15 time. I want to clarify my understanding of
16 something you said in response to a series of
17 questions from Commissioner Chang and others
18 regarding traditional and customary practices of
19 native Hawaiians.

20 If I -- please correct me as wrong if I've
21 misunderstood your testimony.

22 Your testimony is that you've heard now
23 that there might be certain traditional customary
24 practices on the property, exercise that you weren't
25 aware of before. But the commitment you're making to

1 us, is if entitled to work with those practitioners,
2 to try and protect those practices?

3 THE WITNESS: Yes. If there are
4 traditional practices that are found to be in place,
5 we would certainly want to follow the rules. We're
6 not looking for any tension here.

7 This is something we are sensitive to.
8 We're not looking at trying to get out of an
9 obligation that every landowner has out here. We're
10 not trying to be treated different than anybody else.

11 CHAIRPERSON SCHEUER: And you're looking to
12 doing that after receiving your entitlements from the
13 Land Use Commission?

14 THE WITNESS: I guess. Right now, again,
15 from what we have had, I don't have an understanding
16 of necessarily all of the traditional practices that
17 are being claimed so, you know, or described, so I
18 need to understand that better, I guess, before I can
19 answer that.

20 So I think maybe this might be a question
21 that might make more sense to ask at the end after we
22 have heard from everybody, and I can understand that
23 a little bit better.

24 CHAIRPERSON SCHEUER: Thank you very much.

25 I'm going to make a last ask for

1 Commissioners on our cross-examination of the witness
2 at this time, keeping in mind he will be recalled
3 later.

4 Any more questions for this witness at this
5 time? Otherwise I'll offer him back to Mr. Yuen for
6 redirect.

7 Commissioner Giovanni?

8 COMMISSIONER GIOVANNI: In the interest of
9 time, I had held this question in abeyance, but since
10 you've given up time, you've yielded this time back,
11 I'll take advantage of it.

12 We heard some discussion about the
13 watershed and fencing that might be required around
14 that. There was a reference to predators.

15 Are you familiar with what is called
16 predator-proof fencing?

17 THE WITNESS: I'm familiar with the term.
18 I don't know if that's something different or
19 specific that you have here.

20 COMMISSIONER GIOVANNI: We do have a unique
21 situation in Kauai, relatively unique, in that our
22 native bird species are threatened, a couple of them
23 are endangered species, actually. And we're quite
24 protective of watersheds. And at the same time we
25 have a situation where we have numerous, large

1 population of feral cats and rodents that roam the
2 land.

3 So it's been conceived that the greatest
4 protection for watershed is to not only encircle it
5 with predator-proof fencing, but to have a program to
6 evacuate it from the predators that threaten those
7 native bird species, rodent and feral cats.

8 Is any of that, what I just described, been
9 made aware of any of that?

10 THE WITNESS: Not specifically here. I
11 don't know the specifics of it, but I've heard it.
12 It's been discussed at high levels, I should say.
13 I'm familiar with predator fencing. I'm familiar
14 with the cat problem. I don't know specifically what
15 that fence is or what the process is.

16 COMMISSIONER GIOVANNI: As you go forward,
17 and as you might expect we deal with the watershed
18 issue, conditions such as those that require
19 protection of those native birds could become a real
20 condition and there is cost associated with that. I
21 want to make sure you are aware of it.

22 Thank you for your time.

23 THE WITNESS: Thank you.

24 CHAIRPERSON SCHEUER: Commissioners, is
25 there anything further? Seeing no further cross of

1 the witness from Land Use Commission, Mr. Yuen, it's
2 your witness to redirect.

3 MR. YUEN: I would like to reserve my
4 redirect, as the Commission wants this witness to
5 come back after all of the other witnesses have
6 testified. I would like to reserve further questions
7 until that time.

8 CHAIRPERSON SCHEUER: That's fine. I have
9 no problem with that.

10 Is there any further business for this
11 Commission today? Mr. Orodenger, any scheduling
12 issues?

13 EXECUTIVE OFFICER: No, Mr. Chair. I think
14 we've addressed all of those.

15 CHAIRPERSON SCHEUER: So I want to thank
16 the witness for your stamina among other things
17 today. I want to thank the Petitioner and all the
18 parties for their participation these last two days.
19 Our next hearing on this matter will be the next LUC
20 hearing dates which are March 23 and 24 -- 24th and
21 25th?

22 MR. ORODENER: 24th and 25th.

23 CHAIRPERSON SCHEUER: There being no
24 further business, I'm going to declare this meeting
25 adjourned.

(The proceedings adjourned at 3:23 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 March 11, 2021, commencing at 9:00
6 a.m., the proceedings contained herein was taken down
7 by me in machine shorthand and was thereafter reduced
8 to typewriting under my supervision; that the
9 foregoing represents, to the best of my ability, a
10 true and correct copy of the proceedings had in the
11 foregoing 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 11th day of March, 2021, in
16 Honolulu, Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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