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STATE OF HAWAII

LAND USE COMMISSION

Hearing held on April 14, 2022

Commencing at 9:14 a.m.

Held at

Airport Conference Center

400 Rodgers Blvd., Suite 700, Room IIT, No. 1

Honolulu, HI 96818

and

via Zoom Interactive Conference Technology

I. CALL TO ORDER

II. ADOPTION OF MINUTES

March 23, 2022

III. TENTATIVE MEETING SCHEDULE

IV. CONTINUED ACTION-A87-610 KS WAIAWA (Oahu)

To Consider Petitioner's Motion for Modification, Time Extension, and Release and Modification of Conditions of Order Granting Motion for Order Amending Findings of Fact, Conclusions of Law and Decision and Order issued by the Commission on February 11, 2020 to allow for modification of the Phase 1 and Phase 2 of the solar farm and to modify and release various conditions under the Commission's 2014 and 2020 Decisions and Orders concerning requirements of the submission of a Master Plan, archaeological sites and plans, burial plans, historic resources, aircraft hazards, traffic, development plans and schedules, and decommissioning of the solar farm phases.

V. ADJOURNMENT

BEFORE :

1 **APPEARANCES BY VIDEOCONFERENCE :**

2

3 **COMMISSIONERS PRESENT :**

4 Jonathan Scheuer, Chair

5 Dawn N.S. Chang

6 Dan Giovanni

7 Lee Ohigashi

8 Nancy Cabral

9 Arnold Wong

10 Gary Okuda

11

12 **COMMISSIONERS EXCUSED :**

13 Edmund Aczon

14

15

16 **STAFF PRESENT :**

17 Daniel Orodener, Executive Officer

18 Scott Derrickson, Chief Planner

19 Riley Hakoda, Planner

20 Natasha Quinones, Chief Clerk

21 Dan Morris, Esq. Deputy Attorney General

22

23

24

25

1 **APPEARANCES BY VIDEOCONFERENCE**

2

3 **PETITIONER:**

4 Jennifer Lim, Esq.

5 Derek Simon, Esq.

6 Onaona Thoene, Esq.

7

8 **CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING**

9 **AND PERMITTING:**

10 Brianna Weaver, Esq., Corporation Counsel

11 Dina Wong, Acting Planning Division Chief

12 Franz Kraintz, Planner

13

14 **OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT:**

15 Bryan Yee, Esq., Deputy Attorney General

16 Rodney Funakoshi, Land Use Administrator

17 Lorene Maki, Planner

18

19 **PETITIONER'S WITNESSES**

20 Jason Jeremiah, Kamehameha Schools

21 Michelle W. Swartman, Kamehameha Schools

22

23

24

25

1           **CHAIR SCHEUER:** Aloha mai kakou. This is  
2 the April 14th, 2022, Land Use Commission Meeting.  
3 This is our first hybrid meeting, which is being  
4 held at a physical meeting location open to the  
5 public here at Honolulu International Airport and  
6 also by interactive conference technology, which  
7 links -- I cannot put people on mute next to me --  
8 which links videoconference participants and other  
9 interested individuals of the public via the Zoom  
10 webinar platform in order to comply with state law.  
11 Members of the public are able to attend this in-  
12 person or view the meeting via the Zoom webinar  
13 platform.

14           For all meeting participants, I'd like to  
15 still emphasize the importance of speaking slowly  
16 and clearly and directly into your microphone. We  
17 do the recordings of this meeting from the Zoom --  
18 we do the transcripts of this meeting from the Zoom  
19 recording, so it's very important to have a clear  
20 audiovisual signal.

21           If you are tuned into this, your  
22 participation in the Zoom meeting is your implied  
23 consent to be part of the recording of this meeting.  
24 If you do not wish to be part of the recording, you  
25 should exit the meeting now.

1 This meeting allows the conference -- this  
2 Zoom conferencing technology allows the meeting  
3 participants and other participating members access  
4 to this meeting via their own digital devices and  
5 Internet access.

6 For reasons that are beyond any of our  
7 individual control, occasional disruptions to  
8 connectivity may occur from time to time. If this  
9 happens, please let us know, and it's going to be  
10 especially important during this hybrid work,  
11 because we're going to be trying to pay attention to  
12 people physically with us as well as virtually. So  
13 let us know if you're having problems accessing the  
14 meeting, and please be patient in the process as we  
15 try to restore audiovisual signals.

16 Public testimony during this meeting. The  
17 only item which is open for public oral testimony is  
18 the adoption of the minutes. We closed public  
19 testimony on this docket item at the last hearing on  
20 this matter, and we have received some written  
21 testimony.

22 If anybody wishes to testify during the  
23 public testimony that's available on adoption of the  
24 minutes, if you are calling in by phone, press \*9 to  
25 raise your hand virtually. If you are here in the

1 room, there is a sign-up sheet in front of you.

2 We will take breaks from time to time,  
3 approximately 10 minutes every hour. In addition,  
4 due to schedule constraints from Commissioner Okuda,  
5 we will be taking a break at one point so that he  
6 can attend a court hearing.

7 Commissioner Okuda, that will be at  
8 approximately what time, do you believe?

9 **COMMISSIONER OKUDA:** Mr. Chair, that would  
10 be five minutes to 10:00, probably for about half an  
11 hour, depending on when the court calls our case.  
12 Thank you.

13 **CHAIR SCHEUER:** Thank you, commissioner.

14 So my name is Jonathan Likeke Scheuer. I  
15 have the pleasure and honor of serving as the Land  
16 Use Commission chair. We currently have eight  
17 seated commissioners of a possible nine, but we did  
18 actually get four more commissioners replacing  
19 vacancies as well as existing commissioners who are  
20 attending this meeting, as I understand, virtually.  
21 Commissioner-to-be Mike Yamane from Kauai is  
22 attending, I believe.

23 Here in the room, I have Commissioner Dawn  
24 Chang from Oahu; Commissioner Nancy Cabral, who  
25 represents Hawaii Island; Lee Ohigashi from Maui;

1 Commissioner Arnold Wong from Oahu. Virtually, we  
2 have Commissioner Dan Giovanni from Kauai and  
3 Commissioner Gary Okuda, who I mentioned already,  
4 from the island of Oahu as well.

5 With us in the room, we have our small but  
6 mighty staff, our Land Use Executive Officer Dan  
7 Orodenker, our Chief Planner Scott Derrickson, our  
8 Staff Planner Riley Hakoda, our Chief Clerk Natasha  
9 Quinones. Our deputy attorney general is tuning in  
10 virtually, Dan Morris. And we are all on the roll.

11 As I said, transcriptions are being done  
12 from the Zoom recording.

13 Commissioner Aczon is excused from today's  
14 meeting, and Commissioner Okuda will take a break as  
15 previously noted.

16 For the commissioners who are  
17 participating in this meeting via Zoom, I'd like you  
18 to confirm whether you are alone in the room or if  
19 there are any other people present. If so, who is  
20 present?

21 Commissioner Okuda?

22 **COMMISSIONER OKUDA:** Mr. Chair, I am in  
23 the public area of the First Circuit Court  
24 courtroom. There is no one else, however, observing  
25 or participating with me. But it is a public area.

1 Thank you.

2 **CHAIR SCHEUER:** Thank you, commissioner.  
3 Commissioner Giovanni?

4 **COMMISSIONER GIOVANNI:** Similarly, Chair,  
5 I am sitting in a public area, in the lobby area of  
6 a hotel, the Hilton Hotel in San Diego, but there's  
7 no other person within earshot or participating  
8 directly in this hearing.

9 **CHAIR SCHEUER:** Thank you very much.  
10 Are there any members of the public --  
11 sorry. Our next -- our first order of business,  
12 having made it through that, is the adoption of the  
13 March 23rd, 2022, minutes.

14 Ms. Quinones, has there been any written  
15 testimony submitted on the adoption of the minutes?

16 **MS. QUINONES:** No, Chair. No written  
17 testimony has been received.

18 **CHAIR SCHEUER:** Okay. No written  
19 testimony.

20 Are there any members of the public who  
21 are tuning in virtually who wish to testify on  
22 adoption of the minutes? If you are calling in,  
23 press \*9. If you are accessing via the Zoom webinar  
24 platform, please use the Raise Your Hand function.  
25 Are there any?



1           Seeing none, are there any members of the  
2 public who are attending physically who wish to  
3 testify? Seeing none.

4           Commissioners, are there any comments or  
5 question on the adoption of the minutes?

6           Commissioner Cabral?

7           **COMMISSIONER CABRAL:** I move for the  
8 adoption of the minutes of the March 23rd, 2022,  
9 meeting.

10          **CHAIR SCHEUER:** Is there a second?

11          **COMMISSIONER WONG:** Chair?

12          **CHAIR SCHEUER:** Commissioner Wong?

13          **COMMISSIONER WONG:** This is Commissioner  
14 Wong. I second.

15          **CHAIR SCHEUER:** A motion has been made by  
16 Commissioner Cabral and seconded by Commissioner  
17 Wong to adopt the minutes. Is there any discussion?

18                 Seeing none, Mr. Orodener, would you  
19 please poll the commission?

20          **MR. ORODENKER:** Thank you, Mr. Chair. The  
21 motion is to adopt the minutes.

22                 Commissioner Cabral?

23          **COMMISSIONER CABRAL:** Yes.

24          **MR. ORODENKER:** Commissioner Wong?

25          **COMMISSIONER WONG:** Yes.

1           **MR. ORODENKER:** Commissioner Aczon is  
2 excused.

3           Commissioner Chang?

4           **COMMISSIONER CHANG:** Aye.

5           **MR. ORODENKER:** Commissioner Okuda?

6           **COMMISSIONER OKUDA:** Yes.

7           **MR. ORODENKER:** Commissioner Giovanni?

8           **COMMISSIONER GIOVANNI:** Aye.

9           **MR. ORODENKER:** Commissioner Ohigashi?

10          **COMMISSIONER OHIGASHI:** Yes.

11          **MR. ORODENKER:** Chair Scheuer?

12          **CHAIR SCHEUER:** Aye.

13          **MR. ORODENKER:** Thank you, Mr. Chair. The  
14 motion passes unanimously.

15          **CHAIR SCHEUER:** Thank you. Mr. Orodenker,  
16 would you now please go over our next meeting agenda  
17 item, the tentative meeting schedule?

18          **MR. ORODENKER:** Thank you, Mr. Chair. Our  
19 next meeting will be on April 27th at Hilo for the  
20 Church-Hildal motion for reconsideration. We will  
21 also begin discussion on the election of officers  
22 for the upcoming year and staff performance reviews.

23                 We will be on Kauai on May 11th for a  
24 continuation of the Kekaha Ag matter. We will also  
25 be on Kauai on May 12th, where we will be honored by

1 Chair Scheuer's presentation on the public trust  
2 doctrine.

3 On May 25th, we will be on Oahu, if  
4 necessary, for this, a continuation of this matter.  
5 And if we conclude today, that would be the adoption  
6 of the order.

7 June currently is open; however, we are  
8 anticipating those dates to be filled in the near  
9 future, so we would ask the commissioners to keep  
10 those dates open.

11 July, we have the 13th and 14th scheduled  
12 for tentative meetings, although the dockets have  
13 not been determined as yet. On July 27th and 28th,  
14 we are anticipating a training session for the new  
15 commissioners. And that's all we have on the  
16 calendar so far.

17 **CHAIR SCHEUER:** Thank you, Mr. Orodener.  
18 Commissioners, are there any questions for  
19 Dan about our meeting schedule?

20 The next agenda item is a continued action  
21 for Docket No. A87-610, Kamehameha Schools Waiawa  
22 Oahu to consider Petitioner's Motion for  
23 Modification, Time Extension, and Release and  
24 Modification of Conditions of an Order Granting a  
25 Motion for an Order Amending the Findings of Fact,

1 Conclusions of Law, and Decision and Order issued by  
2 the Commission on February 11th, 2020, to allow for  
3 modification of Phase 1 and Phase 2 of the solar  
4 farm and to modify and release various conditions  
5 under the Commission's 2014 and 2020 Decisions and  
6 Orders concerning requirements of the submission of  
7 a Master Plan, archaeological sites and plans,  
8 burial plans, historic resources, aircraft hazards,  
9 traffic, development plans and schedules, and  
10 decommissioning of the solar farm phases.

11 Will the parties please identify  
12 yourselves for the record, starting with the  
13 petitioner?

14 **MS. LIM:** Good morning, chair and  
15 commissioners. Am I loud enough?

16 **CHAIR SCHEUER:** Maybe a little louder, if  
17 you could.

18 **MS. LIM:** Start again. Good morning,  
19 chair and commissioners, other parties. Jennifer  
20 Lim representing petitioner Kamehameha Schools.

21 **MS. THOENE:** Good morning, chair and  
22 commissioners. Onaona Thoene, co-counsel for the  
23 petitioner Kamehameha Schools. With me today is  
24 Derek Simon. Thank you.

25 **CHAIR SCHEUER:** So you press the button

1 until it's lit, and then you don't have to hold it  
2 down. It should stay lit. And speak directly into  
3 the microphone.

4 **MS. WEAVER:** Good morning. Deputy  
5 Corporation Counsel Briana Weaver appearing on  
6 behalf of the Department of Planning and Permitting.

7 **CHAIR SCHEUER:** I'm going to say I'm in  
8 the same room and having a hard time hearing you.

9 **MS. WEAVER:** Should the light be green, or  
10 is it supposed to be red?

11 **CHAIR SCHEUER:** It should be orange. Did  
12 you press the bottom button?

13 **MS. LIM:** Yes.

14 **CHAIR SCHEUER:** Okay.

15 **MS. LIM:** Okay. How's that?

16 **COMMISSIONER WONG:** A bit louder.

17 **MS. LIM:** Okay.

18 **CHAIR SCHEUER:** Among the artifacts that  
19 I'll just note for everybody that we're having is  
20 that we actually have a number of participants  
21 who've only participated virtually in our meetings  
22 and never actually participated physically, so  
23 there's going to be that aspect of things going on  
24 as well.

25 **MS. WEAVER:** Good morning. Briana Weaver

1 appearing on behalf of the Department of Planning  
2 and Permitting. With me are Franz Kraintz and Dina  
3 Wong. Thank you.

4 **CHAIR SCHEUER:** Thank you.

5 Office of Planning and Sustainable  
6 Development?

7 **MR. YEE:** Good morning. Deputy Attorney  
8 General Brian Yee on behalf of the Office of  
9 Planning and Sustainable Development. With me is  
10 Lorene Maki and Rodney Funakoshi from the Office of  
11 Planning and Sustainable Development.

12 **CHAIR SCHEUER:** Thank you. I will note  
13 that I think it will work better for our hybrid  
14 meetings in the future if we all have access to  
15 laptops physically so that we can see your beautiful  
16 smiling faces.

17 I will now update the record. On April  
18 4th, 2022, the LUC mailed and emailed the meeting  
19 agenda for this meeting to the parties in this  
20 docket to our citywide and county mailing lists. On  
21 April 7th, petitioner filed a second list of  
22 witnesses, a second list of exhibits, a certificate  
23 of service, and Exhibits 42 through 47.

24 On April 12th, the Department of Planning  
25 and Permitting filed its Notice of Appearance of

1 Counsel Briana Weaver. Also on that date, the  
2 commission received additional public testimony.

3 Let me go over our procedures for today.  
4 First, I will ask the commissioners if there's any  
5 additional disclosures to make. Next, I will  
6 recognize any written public testimony. As I  
7 mentioned before, I did close oral testimony on this  
8 matter in the last hearing, so there will be no  
9 further oral testimony on this matter at the time.

10 After the notification of written  
11 testimony, the petitioner will continue their  
12 presentation from where they left off.

13 Oh, excuse me, before that, we will accept  
14 the new exhibits into the record as proposed -- or  
15 consider the acceptance of new exhibits into the  
16 record as proposed by petitioner.

17 Then we will hear from the petitioner  
18 continuing their presentation, followed by DPP and  
19 then OPSD to make their presentations with questions  
20 and comments from the commissioners.

21 The petitioner will be given the  
22 opportunity to provide any rebuttal, and after all  
23 parties have presented their arguments, presuming we  
24 make it through all of that, the commission will  
25 conduct formal deliberations and issue a decision on

1 the motion.

2 As noted, from time to time, we will be  
3 taking breaks, one approximately at five minutes to  
4 10. We will lose one of our commissioners at 3  
5 p.m., so we will hopefully make it through our  
6 proceedings by 3. If not, then we will have to  
7 continue this yet again. We will also take a longer  
8 break for lunch.

9 Are there any questions on the procedures  
10 today, beginning with the petitioner?

11 **MS. LIM:** No questions from petitioner.  
12 Thank you.

13 **CHAIR SCHEUER:** DPP?

14 **MS. WEAVER:** No questions. Thank you.

15 **CHAIR SCHEUER:** OPSD?

16 **MR. YEE:** No questions. Thank you.

17 **CHAIR SCHEUER:** Thank you.

18 Commissioners, are there any further  
19 disclosures to make regarding this docket?

20 I believe the additional witness added to  
21 the Kamehameha Schools witness list is the wife of a  
22 high school classmate of mine, but not one of the  
23 high school classmates who bullied me, so I can  
24 continue to be fair and impartial in these  
25 proceedings. But I just want to throw that out



1 there.

2 If there's any concerns from the parties,  
3 I can hand it over to Vice Chair Giovanni to  
4 proceed. Any objections? I'm getting plenty of  
5 feedback from OPSD. Commissioner Giovanni  
6 personally must have helped them. Any objections or  
7 concerns with my disclosure, starting with the  
8 petitioner?

9 **MS. LIM:** No concerns. Thank you.

10 **CHAIR SCHEUER:** DPP?

11 **MS. WEAVER:** No concerns. Thank you.

12 **CHAIR SCHEUER:** OPSD?

13 **MR. YEE:** No concerns. Thank you.

14 **CHAIR SCHEUER:** Of course, the difference  
15 between Brian and I is that he went there when there  
16 was only boys.

17 **COMMISSIONER WONG:** Mr. Chair?

18 **CHAIR SCHEUER:** Commissioner Wong?

19 **COMMISSIONER WONG:** A question about the  
20 witness. Was -- is it on our list or was she --

21 **CHAIR SCHEUER:** She is on the list, which  
22 we have not yet accepted.

23 **COMMISSIONER WONG:** Thank you. Just  
24 wanted to make sure.

25 **CHAIR SCHEUER:** I acted preemptively.

1           **COMMISSIONER WONG:** Thank you, chair.

2           **CHAIR SCHEUER:** Anything else,  
3 commissioners? Any disclosures?

4           If not, Ms. Quinones, written testimony?

5           **MS. QUINONES:** Good morning, chair.

6           **CHAIR SCHEUER:** If you can speak directly  
7 into the microphone, Ms. Quinones.

8           **MS. QUINONES:** Good morning, chair. This  
9 is Natasha. We received two additional testimonies.  
10 One is Garret Matsunami from Castle & Cooke Hawaii,  
11 and the second one is Stanford Carr for Stanford  
12 Carr Development LLC.

13           **CHAIR SCHEUER:** Thank you. Those have  
14 been posted?

15           **MS. QUINONES:** They have been posted to  
16 the website.

17           **CHAIR SCHEUER:** Thank you very much.  
18 And I'll deal with the petitioner's  
19 exhibits. Ms. Lim, you have additional exhibits you  
20 wish to enter into the record?

21           **MS. LIM:** That's correct, chair. Jennifer  
22 Lim speaking, Kamehameha Schools, and we submitted  
23 Exhibits 42 through 47 as you noted earlier. Some  
24 of these materials are materials that have  
25 previously been submitted in this docket, but we

1 provided them again in light of some of the  
2 questions that came up last week.

3 Some of the materials are newspaper  
4 articles that came out after the last master plan  
5 hearing that we had in, I believe, this very room,  
6 and then an updated master plan PowerPoint  
7 presentation and an updated Gantt chart, again, all  
8 in response to questions from commissioners.

9 So we would ask for those to please be  
10 admitted into the record.

11 **CHAIR SCHEUER:** Thank you, Ms. Lim. Any  
12 objections to these admissions to the record?  
13 County?

14 **MS. WEAVER:** No objections. Thank you.

15 **CHAIR SCHEUER:** OPSD?

16 **MR. YEE:** No objections.

17 **CHAIR SCHEUER:** Commissioners, starting  
18 with the ones physically here?

19 Commissioners Giovanni or Okuda, any  
20 objections?

21 Seeing none, petitioner's additional  
22 exhibits are entered into the record.

23 County, any additional exhibits?

24 **MS. WEAVER:** We don't have any.

25 **CHAIR SCHEUER:** I can no longer hear you.

1 I don't know what has happened.

2 **MS. WEAVER:** No additional exhibits.

3 **CHAIR SCHEUER:** Thank you. OPSD?

4 **MR. YEE:** No additional exhibits.

5 **CHAIR SCHEUER:** Okay. With that, we can  
6 continue, Ms. Lim, with your presentation.

7 **MS. LIM:** Thank you, chair. So when we  
8 broke from the last meeting, my recollection is that  
9 Mr. Jason Jeremiah, our expert in traditional and  
10 customary Hawaiian practices, had gone through  
11 direct examination, and I don't believe the other  
12 parties had questions for him.

13 But commissioners had questions, and there  
14 might be the possibility for redirect, so therefore,  
15 I would ask that Mr. Jeremiah would continue in  
16 questioning from commissioners.

17 **CHAIR SCHEUER:** Thank you, Ms. Lim. And  
18 my recollection jives with yours.

19 Mr. Jeremiah? Even though we could say  
20 that you are still under oath, I'm just going to  
21 swear you in again. Do you swear or affirm the  
22 testimony you're about to give is the truth?

23 **MR. JEREMIAH:** Yes.

24 **CHAIR SCHEUER:** Okay. Let's see whether  
25 we can get the mic -- you and the mic closer

1 together. Let's just -- please, Mr. Jeremiah, if  
2 you could just do a test. You're almost kissing it.  
3 There you go. That's better. Okay.

4 Are there questions for the witness,  
5 starting with DPP?

6 **MS. WEAVER:** We have no questions for him.  
7 Thank you.

8 **CHAIR SCHEUER:** OPSD?

9 **MR. YEE:** No questions. Thank you.

10 **CHAIR SCHEUER:** Commissioners, questions  
11 for Mr. Jeremiah?

12 Commissioner Chang?

13 **COMMISSIONER CHANG:** Good morning, Mr.  
14 Jeremiah. Good to see you this morning.

15 **MR. JEREMIAH:** Good morning.

16 **COMMISSIONER CHANG:** I just have just a  
17 few questions. And I appreciated the work that was  
18 done. There was a lot of good work, a lot of  
19 reaching out to the kupuna. (Unintelligible.)

20 These questions deal with if you could  
21 describe for me the use of the property prior to the  
22 plantations as far back as pre-contact, if you could  
23 describe that, because I did not see a lot of  
24 descriptions about that.

25 I know there was a lot of discussion there

1 as we turn to the plantations. A lot of the  
2 resources may have been as far as -- there was no  
3 evidence of -- if you could describe the activities  
4 on the property prior to western contact.

5 **MR. JEREMIAH:** Thank you, Commissioner  
6 Chang. You know, when you look into the written  
7 record, the oral record from our kupuna through  
8 various archival sources, and just understanding  
9 traditional land uses of Waiawa, especially in the  
10 Ewa moku, the area of the proposed project, this  
11 middle area of Waiawa, was not an area that was  
12 heavily inhabited. It wasn't heavily used.

13 There was traditional, like, trails that  
14 were documented by John Papa Ii in some of his work  
15 that they have been pretty close to the area, but  
16 they were trails that kind of where the present-day  
17 Kamehameha Highway would have been, and kind of  
18 there would have been a thoroughfare that went up to  
19 the North Shore, another royal center at the mauna  
20 areas, so roughly the areas.

21 But then we looked into the land  
22 commission's awards that were awarded and claimed  
23 during the mahele in the 1850s. We see the  
24 concentration of the habitation, the use of the  
25 ahupua'a, the lower area below the current Leeward

1 Community College. There were lokoi'a, loi kalo,  
2 loko wai in those areas. And you didn't see any  
3 claimants in the area of this, of the area we're  
4 talking about in this petition.

5 So that's generally my understanding  
6 through my research of the area, that there, you  
7 know, through our archaeological work, we haven't,  
8 you know, uncovered any significant Hawaiian sites  
9 in this area.

10 We've gone through there. We've talked to  
11 archaeologists about plantation. But I would say  
12 that we wouldn't suspect a lot of traditional  
13 Hawaiian sites the area of the petition area.

14 **COMMISSIONER CHANG:** Thank you for that  
15 description. In many instances, traditional and  
16 customary practices is the right to access. It may  
17 not be, like you say, a place where there was  
18 habitation or where there may have been actual use.  
19 But it may have been -- especially with your mention  
20 of trails, it may have been access with porters  
21 running mauka to makai so that people could get  
22 access from where they live, perhaps a compound.

23 Could you elaborate further on this trail  
24 system? You said there was one that is currently  
25 present, Kamehameha Highway. Any other trails

1 within this property?

2 **MR. JEREMIAH:** Within the property, I  
3 haven't seen any documented trails specifically in  
4 the property. And, you know, there have been trails  
5 more north of the ahupua'a Waiawa that are where a  
6 lot of the kind of the public hunting area is  
7 located. But within the specific ahupua'a, I  
8 haven't seen any documented trails in those areas.

9 **COMMISSIONER CHANG:** My final question is  
10 within this area, are there known to be any  
11 resources that may have been used for gathering,  
12 whether they're for medicinal purposes or  
13 subsistence? Are you aware of any kinds of  
14 resources that may have at one time been located in  
15 this area?

16 **MR. JEREMIAH:** I'm not aware of any of  
17 those traditional resources, whether it be plants  
18 and so forth, in this area. It's -- and as you've  
19 kind of mentioned as well -- the plantation came in,  
20 and there's been a lot of impact, and we haven't  
21 seen any Hawaiian plants in this area.

22 **COMMISSIONER CHANG:** And this is just to  
23 confirm that Kamehameha Schools has not received  
24 requests by, you know, Hawaiian practitioners or  
25 families to access the area since the time that --



1 as far as that you're aware of?

2 **MR. JEREMIAH:** As far as I'm aware of, you  
3 know, we took back more control and management of  
4 this property area around 2010, 2011, and we haven't  
5 to my knowledge received any requests of that  
6 nature.

7 **COMMISSIONER CHANG:** I'm notorious for  
8 asking my last question, kind of, but I think this  
9 is my last one. And I have greatly appreciated just  
10 your ability to respond to the questions I've asked.  
11 So clearly you have a good understanding of this  
12 property.

13 However, in the future, if a family member  
14 comes forth and asks Kamehameha Schools to have  
15 access or can demonstrate that they have a  
16 relationship to the property, would Kamehameha  
17 Schools be adverse to meeting with the family to  
18 discuss reasonable access to the property?

19 **MR. JEREMIAH:** No. We would not be  
20 adverse to that. You know, I think we want to  
21 support our Native Hawaiian communities and families  
22 and individuals and practitioners. And, yeah, we  
23 would kind of discuss that with them, if they would  
24 come forward.

25 **COMMISSIONER CHANG:** And I appreciate that

1 as well, because as land stewards, especially  
2 Kamehameha Schools, where you have such a special  
3 kuleana to always keep that door open in the event  
4 that there is a family member who can demonstrate  
5 activities on the property. So mahalo for that.  
6 And I have no further questions. Thank you so much,  
7 Mr. Jeremiah.

8 **MR. JEREMIAH:** Thank you, Commissioner  
9 Chang.

10 **CHAIR SCHEUER:** Thank you, commissioner.  
11 Commissioners, any further questions for  
12 Mr. Jeremiah?

13 Seeing none at this time, any redirect,  
14 Ms. Lim?

15 **MS. LIM:** No redirect. Thank you.

16 **CHAIR SCHEUER:** Okay. Thank you very  
17 much.

18 Thank you, Mr. Jeremiah, for your  
19 testimony.

20 **MR. JEREMIAH:** Thank you, chair.

21 **CHAIR SCHEUER:** Please feel free to call  
22 your next witness.

23 **MS. LIM:** So, chair, commissioners, our  
24 next witness is Michelle Swartman. And to let the  
25 cat out of the bag, Michelle is going to walk the

1 commissioners through the PowerPoint that we filed.  
2 I think that's Exhibit 46. So I do want to be  
3 mindful of Commissioner Okuda's exit time, which is  
4 going to be in about 10 minutes, so we'll run  
5 through as much as we can.

6 **CHAIR SCHEUER:** That's what I was going to  
7 suggest.

8 **MS. LIM:** Okay. Exhibit 47 is the  
9 PowerPoint.

10 **CHAIR SCHEUER:** Okay. So, okay. So,  
11 sorry, in virtual land, how are we getting the  
12 PowerPoint? Are we putting the PowerPoint up on the  
13 screen?

14 **MS. LIM:** I'll be sharing it on Zoom.

15 **CHAIR SCHEUER:** Thank you, Ms. Lim. Okay.  
16 And, Ms. Swartman, good morning.

17 **MS. SWARTMAN:** Good morning. Aloha.

18 **CHAIR SCHEUER:** Do you swear or affirm the  
19 testimony you're about to give is the truth?

20 **MS. SWARTMAN:** I do.

21 **CHAIR SCHEUER:** Okay. Thank you.

22 **MS. LIM:** Michelle, for the record, would  
23 you please tell us --

24 **CHAIR SCHEUER:** Ms. Lim, talk into your  
25 microphone, if you can.

1           **MS. LIM:** Would you please tell the  
2 commissioners your business address for the record?

3           **MS. SWARTMAN:** Sure. It's 567 South King  
4 Street, Suite No. 200, Honolulu, Hawaii 96813.

5           **MS. LIM:** Thanks. And I know you work at  
6 Kamehameha Schools, but would you let the  
7 commissioners know, please, what your position is  
8 there?

9           **MS. SWARTMAN:** Sure. I work in the  
10 planning and development of the Commercial Real  
11 Estate Division at Kamehameha Schools.

12           **MS. LIM:** And how long have you been  
13 there?

14           **MS. SWARTMAN:** I've been there for the  
15 last six years, and I've been working in that  
16 capacity across -- and working on different land  
17 projects across the Ewa Moku for Kamehameha Schools  
18 for about the last six years.

19           **MS. LIM:** Okay.

20           **MS. SWARTMAN:** Including Waiawa.

21           **MS. LIM:** And, Michelle, what is your  
22 professional educational background? I just -- I  
23 know you haven't testified before this commission in  
24 the several hearings we have had on Waiawa, so let  
25 the commissioners know a little bit more about you.

1           **MS. SWARTMAN:** Sure. So I was born and  
2 raised in Hawaii on Oahu. I attended Punahou School  
3 and received my bachelor degree from University of  
4 Hawaii, and I'm very happy to be working with  
5 Kamehameha Schools.

6           I have been in the real estate industry  
7 for the last 32 years, and I have been in land  
8 development and planning for the last 16 years.

9           **MS. LIM:** Thanks for that. And, Michelle,  
10 you know the reason we're here today is because we  
11 filed a motion. And when I say "we", I mean your  
12 counsel filed a motion on behalf of Kamehameha  
13 Schools for a motion for modification, time  
14 extension, release and modification of some  
15 conditions. We filed that in December 2021. Would  
16 you let the commissioners know if you're familiar  
17 with the contents of that motion?

18           **MS. SWARTMAN:** Yes. I am familiar with it  
19 and have reviewed the files along with the  
20 appendices that were attached to them.

21           **MS. LIM:** Now, Michelle, for the record,  
22 did you attend the hearing that we had on March  
23 23rd, the first hearing on this motion?

24           **MS. SWARTMAN:** I did, but I did not  
25 provide any --

1           **MS. LIM:** So you were in the audience.

2           **MS. SWARTMAN:** I was.

3           **MS. LIM:** What was your takeaway as you  
4 listened to the hearing, and especially questions  
5 that came from the commissioners?

6           **MS. SWARTMAN:** I guess as I was listening  
7 to the testimony and hearing, it became apparent to  
8 me that there was some confusion over the Waiawa  
9 master plan and solar uses as an interim use.

10                   I think there was a little bit of  
11 confusion as to whether or not these solar projects  
12 would hinder the development of future homes at  
13 Waiawa. And I hope this presentation that I'm  
14 hoping to present to you will, you know, add more  
15 clarity to that. And instead describe how in fact,  
16 the solar development is in synergy with the Waiawa  
17 master plan that we presented in 2020.

18           **MS. LIM:** I see with that, Michelle, I  
19 know we have Exhibit 46 up on the screen. Why don't  
20 you -- excuse me, I've done it again. Exhibit 47 is  
21 the PowerPoint presentation. Why don't you go ahead  
22 and walk the commissioners through that? And I'll  
23 ask you some questions as we go through it as well.

24           **MS. SWARTMAN:** Okay, then.

25           **CHAIR SCHEUER:** Don't be afraid to

1 project.

2 **MS. SWARTMAN:** Okay.

3 **CHAIR SCHEUER:** Both of you, please.

4 **MS. SWARTMAN:** So I also want to note that  
5 we have submitted Exhibit 48, the GANTT chart, as  
6 requested, I think, by the commissioner last time.  
7 So we have submitted that as well.

8 **MS. LIM:** And, you know, Michelle, you and  
9 I, I think, have mind meld, because we keep messing  
10 up exhibit numbers.

11 **MS. SWARTMAN:** Yes. Sorry.

12 **MS. LIM:** But for the record, the GANTT  
13 chart is actually Exhibit 46.

14 **MS. SWARTMAN:** Oh, okay.

15 **MS. LIM:** And the PowerPoint is Exhibit  
16 47.

17 **MS. SWARTMAN:** Correct.

18 **MS. LIM:** But it's noted. A Gantt chart  
19 was submitted in response to comments from  
20 commissioners.

21 **MS. SWARTMAN:** Yes. I think we can start.  
22 Turning to the next slide, though. So, you know,  
23 you may recall in 2020, my colleague and managing  
24 director for commercial real estate -- really, my  
25 boss -- Walter Thoemmes presented to this commission

1 in January, I believe, of 2020, and he presented our  
2 Waiawa master plan.

3 And the master plan vision has not changed  
4 since then, and we continue to pursue. And while  
5 it's ambitious and it will be a long and arduous  
6 process, we are continuing to strive for the vision  
7 of Waiawa community to include culture, to include  
8 housing, the much-needed housing, and rail as well  
9 as solar as an interim use.

10 So collectively, you know, we do think  
11 that there's an opportunity using our lands and our  
12 aina at Waiawa.

13 **MS. LIM:** So, Michelle, you mentioned  
14 Walter and --

15 **MS. SWARTMAN:** Can I add one more thing?

16 **MS. LIM:** Of course.

17 **MS. SWARTMAN:** I'm sorry. I also want to  
18 just note that, you know, Kamehameha Schools has an  
19 obligation to our beneficiaries, and in all  
20 decisions that we make with our aina Hawaii, we have  
21 to make sure that it makes economic sense, and so  
22 through those lands we're able to provide in  
23 perpetuity for our beneficiaries.

24 So it's not for our beneficiaries today,  
25 but it's really the kinds of decisions that we make



1 that are hard and long really affect our  
2 beneficiaries in the long term. So it's not for  
3 just today. It's for generations to come.

4 Sorry about that.

5 **MS. LIM:** No. Those are important points.  
6 I'm glad you interrupted me.

7 Coming back to sort of the technical  
8 details, why did Kamehameha Schools submit a master  
9 plan to the commission? I believe it was submitted  
10 in 2019, and then a presentation was done, like you  
11 said, by Mr. Thoemmes in January 2020. Why was that  
12 done?

13 **MS. SWARTMAN:** In the 2014 decision and  
14 order authorizing Kamehameha Schools to use our  
15 lands for solar as an interim use required that we,  
16 Kamehameha Schools, goes back to the commission with  
17 a revised master plan within five years of that  
18 approval, which in 2014, five years from then was  
19 2019.

20 So I believe it was condition 1 that we  
21 were satisfying, and that was the reason why we sent  
22 it to the commission in 2020. I believe we  
23 submitted our motion in October of 2019, but  
24 eventually made our presentation in 2020, January of  
25 2020.

1           **MS. LIM:** That's correct. And just for  
2 the record, the master plan submittal that was made  
3 in October 2019, another copy of that's been filed.  
4 That's Exhibit 42; is that correct?

5           **MS. SWARTMAN:** That's correct.

6           **MS. LIM:** And Mr. Thoemmes' PowerPoint  
7 that he gave to this very commission in January, we  
8 filed as Exhibit 43.

9           **MS. SWARTMAN:** Yes. That's correct.

10          **MS. LIM:** So, Michelle, you're going to do  
11 this way better than I can. Why don't you give the  
12 commissioners a refresh? I mean, they've already  
13 heard all about the master plan. Will you give them  
14 a refresh going back to your opening point, which is  
15 there seemed to be some confusion. We just haven't  
16 explained things well enough.

17          **MS. SWARTMAN:** Yeah. Well, what you see  
18 on the screen here is an overview of our Waiawa  
19 master plan. It may seem familiar to you. The  
20 actual map that you see to the right was presented  
21 to the commission in 2019, and Walter did speak to  
22 it.

23                 But so just to kind of give folks a  
24 reminder, another overview of the land plan, you  
25 know, our land plan remains the same today. It

1 covers approximately 2,010 acres. There's going to  
2 be various uses across the lands here that you see.  
3 It will include housing, open space, schools, parks,  
4 commercial uses. And what you see as the star, that  
5 location there marks the area where we intend to  
6 start our land plan and our Waiawa community.

7 **MS. LIM:** Michelle, I'm going to stop you  
8 there. I know we've always indicated since 2014  
9 that Kamehameha Schools was intending to start  
10 development from the south, but let the  
11 commissioners know why.

12 What's the thinking behind that? Why is  
13 it important, and why was the decision made to  
14 pursue development starting from the south?

15 **MS. SWARTMAN:** True. So our plan differs  
16 from the previous plans that have been approved in  
17 the past. Primarily, the reason why we are starting  
18 at the southern or makai side of our land plan is  
19 because, one, it's closer to the Pearl Highlands  
20 transit station.

21 And so -- and secondly, it's closer to the  
22 existing infrastructure.

23 **MS. LIM:** By infrastructure, do you mean  
24 --

25 **MS. SWARTMAN:** Well, sewer, roadways, and

1 water as well.

2 **MS. LIM:** So there's a better ability to  
3 actually connect to existing sewer infrastructure as  
4 you start building roads?

5 **MS. SWARTMAN:** And we felt that it was  
6 just -- you know, we constantly look for ways to be  
7 more efficient in our planning process. So, you  
8 know, instead of bringing all our infrastructure up  
9 to the mauka side through the Kula area, up that  
10 area, starting where, you know, our existing  
11 infrastructure makes more sense to us.

12 **MS. LIM:** And certainly, the transit --

13 **MS. SWARTMAN:** Yes. Obviously, yes.

14 **MS. LIM:** -- component.

15 **MS. SWARTMAN:** Yeah.

16 **MS. LIM:** Michelle, the slide says interim  
17 solar, Phase 1 and Phase 2. And it's going to be 66  
18 megawatts with a combined 384 megawatt-hour of  
19 storage. What are you talking about when you say  
20 interim solar? Where is Phase 1 and where is Phase  
21 2?

22 **MS. SWARTMAN:** I don't feel like you can  
23 see it as clearly on the screen, but if you follow  
24 along, my apologies, it's a little small, but.

25 So there are two solar projects at Waiawa,

1 which was approved in 2014. And the area to the  
2 right, which is dashed in pink, where the hand is  
3 encircling right now, that is what we call the  
4 Waiawa Solar Phase 2. That's the Solar Phase 2  
5 site, and that currently is being constructed by  
6 Clearway, and where this commission approved that  
7 solar project in 2020.

8 **MS. LIM:** I'm just going to interrupt you  
9 again. I want to make sure that we're very, very  
10 clear. So the site that you're calling the Phase 2  
11 solar, where the hand is on the screen right now,  
12 that was approved by the commission for solar use in  
13 2014?

14 **MS. SWARTMAN:** Yes. That was -- both  
15 projects were approved in 2014 as an interim use.

16 **MS. LIM:** And then, the Phase 2 solar site  
17 was approved again in 2020?

18 **MS. SWARTMAN:** That's correct. I think  
19 they were somewhat patient. The solar, Waiawa Solar  
20 Phase 2 site where that hand is, is to be  
21 decommissioned by 2059.

22 **MS. LIM:** At the latest.

23 **MS. SWARTMAN:** At the latest, based on --  
24 with the caveat that there's conditions to that.  
25 But I believe it's at 2059.

1           **MS. LIM:** What is --

2           **COMMISSIONER OKUDA:** Chair, I'm sorry,  
3 chair. This is Gary Okuda. May we take a break at  
4 this point?

5           **CHAIR SCHEUER:** Yes. Reconvene in 25  
6 minutes, half hour?

7           **COMMISSIONER OKUDA:** Yes. Hopefully,  
8 sooner than then. Thank you, chair.

9           **CHAIR SCHEUER:** Okay. We're going to  
10 pause right now. We're take a recess. I'm not  
11 going to at this time announce how long our recess  
12 is going to be. I'm going to be texted by  
13 Commissioner Okuda when he's done with his court  
14 hearing. I'm going to give people a five-minute  
15 warning that we're ready to start again.

16           **(Recess taken from 9:55 - 10:58 a.m.)**

17           **CHAIR SCHEUER:** We're back in session. We  
18 are joined in person by Commissioner Okuda. I  
19 apologize to everybody for the unexpectedly long  
20 delay, and thank you. It is 10:58. My intention is  
21 that we go until noon, or perhaps if we need to go  
22 slightly beyond an hour to conclude any cross and  
23 rebut of the witness, we will. So then we will take  
24 a half-hour break for lunch and resume our  
25 proceedings.

1 Ms. Lim, please continue with the direct  
2 testimony of your witness, Ms. Swartman.

3 **MS. LIM:** Thank you, chair. And my co-  
4 counsel, Ms. Onaona Thoene, is putting the  
5 PowerPoint back up on the screen, Exhibit 47. And I  
6 believe we left off on slide 3. We'll just let  
7 Michelle get started once that's pulled up.

8 **MS. SWARTMAN:** So thank you. I just  
9 wanted to kind of clarify also the various phases of  
10 our Waiawa master plan that we presented to you  
11 folks in 2020. And I know this is just kind of a  
12 recap of what we had presented then.

13 But the colors that you see correlate with  
14 the various phases, and it's chronologically. So  
15 what you see in yellow is Phase A. Green is Phase  
16 B. C is in brown to the left where those springs  
17 are. D is the pink area, and then E is in the most  
18 mauka region and in purple.

19 And I think where I left off was right  
20 between the two different solar projects that were  
21 approved in 2014. And the area in the pink dashed  
22 area is what we refer to as site of Solar Phase 2  
23 site. And that is in construction right now by  
24 Clearway, which you folks approved in 2020.

25 And then in the area that you may see as

1 the hashed red area and blue, that boundary  
2 identifies what the current motion is in front of  
3 you. And that land area is that area, refers to  
4 what we call Solar Phase 1.

5 And so Solar Phase 1 project occurs in two  
6 different phases, if you will, and it correlates  
7 with the rollout of our master plan development.

8 So in the red dashed area, we refer to  
9 that as Parcel A, and the area in the blue dashed  
10 area that covers portions of Phase D in our master  
11 plan is what we refer to as Parcel B.

12 So this map, you know, kind of shows  
13 graphically how the Waiawa master plan and the solar  
14 uses as an interim use is an integral part of our  
15 master plan.

16 **MS. LIM:** Michelle, just for  
17 clarification, because you're using the term  
18 "interim use", but I look at this map of the master  
19 plan, and I see over in Phase C and Phase D of the  
20 master plan a solar farm. So is that what you mean?  
21 The master plan and the solar farms are going to co-  
22 exist from --

23 **MS. SWARTMAN:** Actually, they -- the solar  
24 uses are an interim use. So as we develop from the  
25 makai for our Waiawa community, as we rollout into



1 the latter phases, the solar uses in Waiawa solar  
2 site 1 or Solar Phase 1 will then be decommissioned  
3 and roll out. They will go away.

4 Solar Phase 2 in the pink dashed area,  
5 that will remain as we continue with our master  
6 plan, working our way from the makai side up. So it  
7 is timed with what we think is the absorption rate  
8 for homes and commercial uses. And that's how we  
9 created our agreements with the solar developers.

10 **MS. LIM:** So in your view, is there going  
11 to be competition between the Phase 1 solar project,  
12 which is what we're here about today -- is there  
13 going to be competition between Phase 1 solar  
14 project and the ability to construct homes on this  
15 land?

16 **MS. SWARTMAN:** No, none of that. No, not  
17 at all. There's no competition. It's just part of  
18 the overall plan where we optimize the ability to  
19 use our lands for renewable energy projects. And as  
20 they roll off, the master plan will continue to move  
21 upwards.

22 **MS. LIM:** Maybe it would be more clear if  
23 you'd help the commissioners understand the  
24 estimated timing of the master plan, which I think  
25 is on the next slide.

1           **MS. SWARTMAN:** Yes. If we could change to  
2 the -- turn to the next slide there.

3           Okay. So this slide speaks directly to  
4 our phasing again. Just as a reminder, renewable  
5 energy sources create an opportunity for Kamehameha  
6 Schools and has a -- is a revenue source. And so,  
7 we think that -- we believe that renewable energy at  
8 Waiawa as an interim use is just very aligned to,  
9 you know, our values at Kamehameha Schools.

10           So back to the slide. Phase A you'll see  
11 in the pink there.

12           **MS. LIM:** I'm sorry. Can I just correct  
13 you? Phase A in the master plan, that's in yellow.  
14 Is that what you --

15           **MS. SWARTMAN:** Yes. Yeah. So if I go  
16 back to the red boundary bold line that you see  
17 here, identifies the urban uses or the urban  
18 district at Waiawa. And you'll see just below that  
19 big chunk a number 1 looking boundary. That, too,  
20 is within the urban district.

21           And you'll see here, again, on both the  
22 Ewa side and Diamond Head side of our master plan,  
23 you'll see where we intend to have our renewable  
24 energy projects, our solar projects.

25           **MS. LIM:** So please, again explain to the

1 commissioners what these timeframes are, where it  
2 says Phase A in yellow and it lists the number of  
3 homes, and then it's got years. What do those years  
4 represent?

5 **MS. SWARTMAN:** So the numbers that you see  
6 in parentheses this time around, because this, to  
7 kind of note, we presented an exhibit that had these  
8 kinds of timelines in the 2020 presentation. But  
9 this year, I'd like to highlight the fact that these  
10 timelines are in response to this commission's  
11 requirement for us to -- KS to complete the Phase A  
12 backbone infrastructure by 2030.

13 So these dates here, as in Phase A in  
14 yellow, 2031 to 2040, respond directly to -- they  
15 reflect the vertical construction of homes. So  
16 obviously, we have to complete the backbone  
17 infrastructure, as you folks required in 2020, by  
18 2030. So we anticipate starting vertical  
19 construction in 2031.

20 **MS. LIM:** So then, explain from Phase A of  
21 the master plan, vertical construction starts --  
22 it's estimated in 2031. Then what happens after  
23 that, Michelle, in terms of the phasing?

24 **MS. SWARTMAN:** So in terms of the phasing,  
25 we roll up into Phase B, where we anticipate

1 delivering 2,300, approximately, homes and starting  
2 construction, vertical construction, in 2038. And  
3 that will be throughout Phase B up to 2048.

4 And then the same goes with Phase C. And  
5 again, just as a reminder, Solar Phase 1 Parcel A  
6 will decommission by 2044, and then Phase 1 solar  
7 Parcel B will be decommissioned by 2054 that you see  
8 in pink in that D area of the master plan.

9 **MS. LIM:** So just to be real clear, the  
10 solar farm that we're here about today, the Phase 1  
11 solar, the portion that's within Phase C of the  
12 master plan, that's going to be decommissioned no  
13 later than the end of 2044. And you anticipate  
14 vertical construction in Phase C of the master plan  
15 to begin when?

16 **MS. SWARTMAN:** In 2045. I'm sorry. I can  
17 just barely see that --

18 **MS. LIM:** I think it says 2048.

19 **MS. SWARTMAN:** 2048. Yes. Sorry. 2048,  
20 2060. Sorry. It's so light on that.

21 **MS. LIM:** It is light on the screen. So  
22 again, do you see that there's any competition? Is  
23 the solar farm, Phase 1 solar farm, in any way  
24 delaying, inhibiting, restricting the master plan?

25 **MS. SWARTMAN:** No, not at all. Not at

1 all.

2 **MS. LIM:** You know, keeping track of all  
3 the phasing and names and developer names is a  
4 little bit confusing. You've managed it real well.  
5 I guess maybe we'll just acknowledge that it's  
6 difficult when there's different phases, different  
7 parcels, and maybe assure the commissioners that  
8 you're prepared to answer questions in that regard.

9 **MS. SWARTMAN:** Yes. I think anytime in  
10 planning, there's difficulty in proper labeling. I  
11 mean, we just review that so many times and often,  
12 but, yes, you know, I think it's a little confusing  
13 with regard to the phasing numbers.

14 But just to be clear, the motion for Phase  
15 1 solar, that's the 387 acres in this -- in the 287-  
16 acre area that this commission approved for the  
17 interim uses in Solar Phase -- excuse me, interim  
18 uses in 2014.

19 So both areas for Solar Phase 1 and Solar  
20 Phase 2 were both authorized in the 2014 decision  
21 and order.

22 **MS. LIM:** Is this motion requesting any  
23 additional land for the solar farm than what was  
24 already approved by the commission in 2014?

25 **MS. SWARTMAN:** No. Not for the solar farm

1 at all. No.

2 **CHAIR SCHEUER:** If I may, some of your  
3 points are on slide 6 of your exhibit? What you're  
4 talking about doesn't seem to be a little more --

5 **MS. LIM:** We'll continue. We do want to  
6 make sure that everybody can follow the facts, even  
7 if sometimes it seems like they're a bit redundant.

8 So coming back to what we have in front of  
9 us, which is, I believe -- now I've lost my track;  
10 are we on slide 3 or slide 4?

11 **MS. SWARTMAN:** Slide 4.

12 **MS. LIM:** Slide 4. Okay. Now, the -- can  
13 you explain to the commissioners why Phase 1 solar,  
14 the one that we're here about today, is split into  
15 Parcel A and Parcel B? And that's to make way for  
16 the master plan.

17 **MS. SWARTMAN:** Correct.

18 **MS. LIM:** Now, I see that the Phase 2  
19 solar, which we're not here about today, but we want  
20 to be sure everybody has a complete picture, what's  
21 going on in this property. Why isn't that split  
22 into Parcel A or Parcel B or somehow split up into  
23 different little pieces?

24 **MS. SWARTMAN:** So Solar Phase 2 sits  
25 within the zone of contribution, and so there's no

1 urban uses that are contemplated within the area, so  
2 there was no need for them to make way for our  
3 master plan development.

4 You know, they were -- the commission  
5 authorized them to be there until 2059 and again,  
6 you know, should they meet the various conditions of  
7 that D&O from 2020.

8 **MS. LIM:** Gotcha. So, I mean, there's not  
9 going to be, at this point, anticipated development  
10 going on in that area whereas for Phase 1 solar,  
11 that is planned for development.

12 **MS. SWARTMAN:** That is correct.

13 **MS. LIM:** Michelle, switching gears, also  
14 on this slide, though, you explained what the red  
15 bold line means. And that's the 1,395-acre existing  
16 urban district land.

17 But then up at the top, you've got some  
18 other notations about land, and you said the master  
19 plan itself covers about 2,000 acres, so I don't  
20 know if you want to talk to that issue on this slide  
21 or the next slide. Just explain that for the  
22 commissioners, please.

23 **MS. SWARTMAN:** Yes. So the 2,010 acres  
24 that I mentioned earlier that the Waiawa master plan  
25 covered consists of the 1,395 acres that we have

1 currently in the existing urban lands.

2 And we will seek, based upon the existing  
3 master plan, an additional 476 acres for  
4 reclassification. And then the lands to be retained  
5 in ag is about 130 -- again, I can't see that well  
6 -- about 139 acres.

7 But, okay, thank you. Let's move to the  
8 next slide. I think this helps to describe  
9 graphically what I'm talking about.

10 So this slide, slide number 5, again  
11 speaks to the various lands that are urban district.  
12 So the red bold line that you see there indicates  
13 the current 1,395 acres that are in the urban  
14 classified district.

15 The areas that you see in hashed and  
16 labeled where it says there are portions of Phase A  
17 of 71 acres that we would need to reclassify in  
18 Phase C of our master plan, where we need to  
19 reclassify approximately 114 acres.

20 And then in the upper areas of our master  
21 plan, our proposed master plan today, we're looking  
22 at reclassifying 251 acres from ag to urban. So,  
23 yes.

24 **CHAIR SCHEUER:** 291?

25 **MS. SWARTMAN:** 291 would be reclassified.



1 Yes. So collectively, that makes about 476 acres.

2 **MS. LIM:** So, Michelle, I know we're  
3 discussing the master plan, and yet you're talking  
4 about reclassification.

5 Now, I heard one of the commissioners  
6 raise a question at the last hearing. If this  
7 master plan is premised upon a reclassification, you  
8 know, how do we know they can go forward? So what  
9 happens if the commission decides not to grant that  
10 reclassification?

11 **MS. SWARTMAN:** You know, we have a very  
12 long road ahead of us. We have a number of steps to  
13 take before we even ask the commission to grant a  
14 reclassification. So, you know, I think the biggest  
15 step for us at this point would be satisfying the  
16 environmental impact statement for the entire Waiawa  
17 master plan. I think it's premature at this point  
18 to really know what the alternatives are that we,  
19 you know, evaluate in the EIS process.

20 But, you know, one of the possibilities is  
21 that we could have an alternative that shows a  
22 smaller Waiawa master plan than what we show today.  
23 We just need to go through the process of  
24 understanding the impacts of the various  
25 alternatives through our EIS process. We just

1 haven't gotten there yet.

2 **MS. LIM:** Understood. So whether  
3 ultimately this commission is asked to reclassify  
4 additional lands or not, it's not known at this  
5 point. But in an effort to be transparent, you're  
6 describing, you know, this sort of master desired  
7 vision for Waiawa, and then the hard work needs to  
8 get done.

9 **MS. SWARTMAN:** Yes. And what -- I mean,  
10 assuming that this is the land plan that we select  
11 and we go through our EIS, we obviously will have to  
12 look for reclassification of lands. But at this  
13 point, we don't really know what all those  
14 alternative plans look like.

15 **MS. LIM:** And even setting aside a  
16 question about reclassification, but, let's say  
17 ultimately, the Waiawa master plan is retained  
18 entirely within the existing urban district plans,  
19 and maybe some adjacent agricultural lands that you  
20 plan on keeping in the agricultural district, would  
21 Kamehameha Schools have to return to this commission  
22 to get permission to go forward with that project?

23 **MS. SWARTMAN:** Yes. So there are, I  
24 think, actually kind of -- I think the next slide  
25 will describe to you -- maybe we can jump to the

1 next slide first before I answer that question.

2 **MS. LIM:** Sure.

3 **MS. SWARTMAN:** That's slide number 6.

4 This is just kind of a reminder of -- again, I'm  
5 sorry if I'm repeating myself over and over again,  
6 but we just want to be crystal clear that, you know,  
7 this is again -- just this line, number 6, describes  
8 the urban boundary. It shows where the Phase 1  
9 solar, which is who, through our partner AES, would  
10 develop these areas of Parcel A and Parcel B, and  
11 Phase 2 solar as Clearway, so.

12 And just as a reminder again, Solar Phase  
13 1 of Parcel B is to be decommissioned in 2044, and  
14 then Parcel B decommissioned by 2054, and then  
15 lastly, Phase 2 Clearway Solar will be  
16 decommissioned in 2059, per the LUC 2020.

17 So I'm sorry. Again, my apologies for  
18 being repetitive, but thank you for bearing with me.  
19 We can turn to the next slide, if you don't mind.

20 So this slide describes in chronological  
21 order the solar approvals. And again, this might be  
22 a little redundant, but I just wanted to remind you  
23 all in 2012, KS regained control of our Waiawa lands  
24 from the Gentry Development. And then just two  
25 years later, we went to the State Land Use

1 Commission, and they approved the solar as an  
2 interim use until 2049.

3 And then even two years after that,  
4 unfortunately, Sun Edison, who was a merged company,  
5 filed bankruptcy, and the Waiawa lands returned back  
6 to KS once again.

7 **MS. LIM:** They were a publicly traded  
8 company; is that right?

9 **MS. SWARTMAN:** That is correct.

10 **MS. LIM:** So had KS done its due diligence  
11 to determine if SunEdison appeared to be a reputable  
12 and capable developer?

13 **MS. SWARTMAN:** Yes. At that time, we were  
14 definitely confident in their ability to deliver the  
15 solar as an interim use of that land.

16 **MS. LIM:** I think a lot of people were  
17 surprised.

18 **MS. SWARTMAN:** Yes.

19 **MS. LIM:** Thank you.

20 **MS. SWARTMAN:** Unfortunate. However,  
21 though, in 2018, HECO distributed a request for  
22 information, and KS responded to that request,  
23 because we felt that there was an opportunity for KS  
24 to use our aina for renewable energy and to support  
25 the state in their goals for renewable energy by

1 2050 -- 100 percent by 2050, so.

2 And then we went back to you folks again  
3 in -- we submitted our motion to amend in 2019.  
4 This commission approved and reauthorized the use of  
5 our lands at Waiawa for solar as an interim use once  
6 again.

7 **MS. LIM:** In the 2019, 2020 motion on the  
8 Phase 2 solar, did Kamehameha Schools alert this  
9 commission that we would be coming back in fairly  
10 short order to request reauthorization for the Phase  
11 1 solar site?

12 **MS. SWARTMAN:** Yes. In 2020, we did  
13 notify the LUC of our intent to come back for the  
14 use of the other solar site and for their  
15 authorization again. And thus, here we are today.

16 But I also want to note here that you'll  
17 see in the slide that in 2020, the commission also  
18 imposed a condition on Kamehameha Schools to  
19 complete all backbone infrastructure for our Phase A  
20 by 2030.

21 **MS. LIM:** And going back to 2014, and this  
22 goes to a question I asked while you were on a prior  
23 slide, but I think you justifiably wanted to move  
24 ahead. But my question was even if Kamehameha  
25 Schools elects ultimately not to pursue a district

1 boundary amendment so the master plan stays entirely  
2 within the existing urban land, does Kamehameha  
3 Schools need to return to the Land Use Commission to  
4 get authorization to go forward with their master  
5 plan?

6 **MS. SWARTMAN:** Yes. The answer is yes.  
7 We do intend to come back to the State Land Use  
8 Commission for a couple of reasons. One is, well,  
9 you know, what was authorized in 2014 -- or, excuse  
10 me, what was authorized for Gentry's urban  
11 reclassification is quite different. What they  
12 represented back then is quite different from what  
13 our land plan shows.

14 You know, at that time, Gentry proposed  
15 two golf courses. They also proposed use of the  
16 lands for age-restricted housing, and whereas our  
17 land plan is quite different.

18 One of the ways that we're quite different  
19 from the Gentry plan that is in place today is that  
20 we intend to start at the very makai area, which is  
21 one. Two, we envision a place where we have multi-  
22 generational homes and residents living there. And  
23 three, it's just something that's very different  
24 than what was proposed by Gentry.

25 And our land plan also is really in sync

1 with, honestly, the solar, but also, we wanted to  
2 have a connection to the rail transit station there  
3 at Pearl Highlands.

4 **MS. LIM:** And correct me if you think I'm  
5 wrong on this, but in 2014, did the commission not  
6 impose a condition on Kamehameha Schools that it  
7 couldn't do anything other than interim solar until  
8 such time as they filed a motion to amend and got  
9 approval from this commission to do so?

10 **MS. SWARTMAN:** Yes. So I believe one of  
11 the conditions is that we need to present a revised  
12 master plan upon decommissioning. However, you  
13 know, our plan was never to just sit on this land,  
14 even though there was solar being used, being  
15 constructed and developed on this land.

16 Our land plan, you know, Kamehameha  
17 Schools' plan was always to evaluate these lands for  
18 opportunities for housing and commercial uses. So  
19 we anticipate, given -- assuming that it's the land  
20 plan that we presented already, we would need to  
21 come back to the Land Use Commission for a district  
22 boundary amendment, and then shortly after that, we  
23 would have to come back and make a motion to amend,  
24 based on the different projects and what was  
25 represented by Gentry and what we propose today.

1           **MS. LIM:** Shall we turn to the next slide,  
2 which will give the commissioners, like, sort of a  
3 high-level walkthrough on the next steps, kind of a  
4 short-term plan? And then we can talk more about  
5 the longer-term plan after.

6           **MS. SWARTMAN:** Yes.

7           **MS. LIM:** We're now on -- I believe it's  
8 slide 8.

9           **MS. SWARTMAN:** Yes. And I won't read each  
10 box here, but this is our road map of the Waiawa  
11 master plan entitlements and our process. I think  
12 -- well, the entitlements are what they are.  
13 There's no way to avoid or accelerate the  
14 entitlements process.

15           But we expect it to be long and ambitious  
16 and costly and arduous but, you know, again, we plan  
17 to go back to the State Land Use Commission at the  
18 very milestones that you see here marked in the red  
19 star. These are the initial steps that we need to  
20 take to even consider any -- delivering any houses.

21           **MS. LIM:** What are those steps? I'm sorry  
22 to interrupt you. And I agree. I don't think  
23 anybody wants to hear you read everything in every  
24 little box, but we keep talking about a motion to  
25 amend and possibly a district boundary amendment.



1 At a high-level, what are a couple of external steps  
2 that would have to happen before a motion to amend  
3 gets filed?

4 **MS. SWARTMAN:** Well, you're asking what  
5 happens before that second star?

6 **MS. LIM:** That's right.

7 **MS. SWARTMAN:** So we have to go through  
8 our EIS process. You know, we've identified -- PBR  
9 is our consultant to guide us through this process.  
10 So obviously, with the EIS process, we have to do  
11 community outreach, and that plays a huge role in  
12 that EIS process. And then that will start and be  
13 continuous and ongoing for quite a number of years.

14 And then we have to understand who our  
15 next -- who the appropriate EIS-accepting authority  
16 is. And so, we have to coordinate with various  
17 agencies to understand, you know, who that agency  
18 will be accepting our EIS.

19 And then, you know, we also need to file  
20 our prep notice and the publication of it, and then  
21 anticipate a 30-day comment period. And then, you  
22 know, I think you guys can all read the individual  
23 boxes and the different steps in each of these  
24 milestones, but.

25 And then, of course, we need to go through

1 the draft EIS, public comments again, and then  
2 prepare the final EIS and submit the EIS to the  
3 accepting authority for action.

4 So we have a long road ahead of us and, I  
5 mean, again, like I mentioned before, there's no way  
6 that we want to accelerate this entitlements  
7 process. I mean, we'd love to, if we could do that  
8 right, if we could get right to it. And, I mean,  
9 and that's the plan is, you know, right after these  
10 proceedings, we plan to get into our EIS and satisfy  
11 the entitlements milestones.

12 **MS. LIM:** For clarification, PBR Hawaii  
13 has been retained.

14 **MS. SWARTMAN:** Yes. They have been --  
15 they have actually helped us identify what those  
16 next steps. They're helping us to create a plan for  
17 outreach and engagement. You know, we selected them  
18 based on their experience on a number of EISs across  
19 the state. So, I mean, we're satisfied with their  
20 work.

21 **MS. LIM:** Thanks, Michelle. And just a  
22 couple of more questions on this slide, and then I  
23 don't know if you'll have anything that you'll want  
24 to add.

25 But I note that at the bottom there's a

1 discussion about rezoning. Going to the Planning  
2 Commission and then eventually going to City  
3 Council.

4 Now, this commission and all the parties  
5 know that Exhibit 3 that we filed shows that this  
6 property is rezoned. So when Gentry had it, they  
7 pursued the reclassification, and then they went and  
8 they got it completely rezoned from the city. So  
9 why is there rezoning listed here?

10 **MS. SWARTMAN:** So what Gentry proposed as  
11 zoning, again, like I mentioned, is very different  
12 from what we propose. They in their plan included  
13 industrial as well as residential but, you know, the  
14 locations of where those uses are proposed from  
15 Gentry is, again, different because we're starting  
16 at the lower region.

17 And our plan, our Kamehameha Schools plan  
18 today, is much more dense. We look to find more  
19 efficiencies and increased density within the Waiawa  
20 plan.

21 **MS. LIM:** Got you. So the land already  
22 has zoning for development which, in pursuit of the  
23 master plan, that zoning needs to be changed.

24 **MS. SWARTMAN:** Yes. And granted, I'll  
25 also note that Gentry also completed an EIS.

1           **MS. LIM:** Right.

2           **MS. SWARTMAN:** But we don't -- I mean, we  
3 plan to complete our own EIS, go through our own  
4 zoning process, to ensure that we are doing it the  
5 right way and that it's relevant to what Kamehameha  
6 Schools is proposing versus another project or  
7 developer before us.

8           **MS. LIM:** Thanks, Michelle. Last question  
9 on this slide, and it's not really something that we  
10 need to sit on the slide for, but you've got 2027  
11 for subdivision. So that's actions through the  
12 Department of Planning and Permitting.

13           So 2027, estimated date. Then what,  
14 construction happens 2028?

15           **MS. SWARTMAN:** Actually, we can -- if you  
16 don't mind, we can turn to the GANTT chart that we  
17 submitted. That's the one that's our design one  
18 that is developed.

19           **MS. LIM:** Exhibit 46, that is.

20           **MS. SWARTMAN:** Yes. Sorry, Exhibit 46.

21           **MS. LIM:** A challenge. Sorry. Just, if I  
22 could, we do have large printed hardcopies, if  
23 there's anyone, the parties or commissioners.

24           **CHAIR SCHEUER:** If the witness would  
25 specify what you're -- are we straight on the GANTT

1 chart?

2 **MS. SWARTMAN:** So what I was trying to  
3 share with you all is how shortly after our zoning  
4 in -- completing our zoning process in 2027 -- I  
5 can't even see that myself, I'm sorry.

6 I was hoping to share with you all how  
7 shortly after that, we would be starting our  
8 construction of our backbone infrastructure and how  
9 it rolls into the vertical construction and timed  
10 with the Phase A.

11 I think just kind of a big overview, this  
12 GANTT chart shows our overall planning and the  
13 various milestones of our EIS process, the petition  
14 for a district boundary amendment, and then the --  
15 file for a motion to amend.

16 **CHAIR SCHEUER:** Sorry to interrupt.

17 **MS. SWARTMAN:** Yes.

18 **CHAIR SCHEUER:** As we're studying the  
19 GANTT chart, which are challenging to read even if  
20 you have it physically in front of you, could you  
21 just jump to what specifically are you trying to  
22 commend to the commission?

23 **MS. SWARTMAN:** I guess what I'm trying to  
24 say is that this process is going to be long and  
25 arduous. We're going to meet -- we're planning to

1 meet our milestones shortly after our subdivision,  
2 going straight into our backbone infrastructure, and  
3 starting vertical construction shortly thereafter in  
4 2030.

5 **CHAIR SCHEUER:** Okay. I think I have -- I  
6 just wanted to hear your words, and perhaps better  
7 to hear words than the GANTT chart.

8 **MS. SWARTMAN:** Okay. I just wanted to make  
9 sure that we acknowledge this GANTT chart that was  
10 requested by one of the commissioners in the past  
11 hearing, and we satisfied that.

12 **CHAIR SCHEUER:** Thank you very much.

13 **MS. LIM:** And again, I think part of the  
14 GANTT chart communicates that people will view  
15 things differently. Some people are words; some  
16 people are pictures; some people are charts.

17 But if there are any lingering concerns  
18 that this Phase 1 solar would delay the building of  
19 homes in the area where the Phase 1 solar has been  
20 approved, that's communicated in the GANTT chart as  
21 well. You can see where the solar is and how the  
22 Phase C development doesn't even get underway until  
23 after the solar is removed.

24 **CHAIR SCHEUER:** Thank you.

25 **MS. LIM:** But we won't beat that horse any

1 further.

2 Is there anything you want to bring the  
3 commissioners back to within the PowerPoint,  
4 Michelle? I know you've got that slide, an update  
5 on the diligence.

6 **MS. SWARTMAN:** Yes. If we can go to slide  
7 9, I just wanted to speak to this presentation and  
8 share with the commissioners all the different  
9 things that Kamehameha has done over the last couple  
10 of years.

11 **MS. LIM:** The diligence slide we're going  
12 to see in a moment when we can get it on the screen.  
13 Is this the collective diligence efforts, or is this  
14 just merely what has been done since Mr. Thoemmes'  
15 presentation in January 2020?

16 **MS. SWARTMAN:** Yes. So --

17 **MS. LIM:** It's an update.

18 **MS. SWARTMAN:** This is an update. So  
19 since the 2020 hearing and the presentation by  
20 Walter, my colleague Walter Thoemmes, these are all  
21 the different steps that we've had that we've  
22 completed over the last two years over COVID.

23 The last time we were here, we submitted a  
24 long list of actions, but this time, all these tasks  
25 that we've been addressing over the last two years

1 really is we heard you folks and the importance of  
2 meeting that 2030 deadline of all our infrastructure  
3 for Phase A.

4 And so, we took it upon ourselves to get  
5 right to it, and we started working with different  
6 agencies and addressing infrastructure capacity and  
7 agreements with the state. And, you know, these are  
8 all the things, obviously, that we need to provide  
9 even before we considered -- started considering  
10 delivering any homes.

11 It describes various actions, who we've  
12 been working with, who our consultant is to help  
13 guide us through that process, and some of the  
14 outcomes over the last years -- two years since we  
15 presented to you folks in January 2020.

16 Aside from the things that you don't see,  
17 we've also updated our residential demand study.  
18 We've engaged a traffic engineer, Wilson Okamoto,  
19 for updated regional traffic impact assessment. And  
20 then we've also worked on de-registering a portion  
21 of our wAIAWA lands from land court to the regular  
22 system.

23 So we haven't been sitting idly over the  
24 last two years while the world adjusted to COVID and  
25 the impacts from COVID. We've been quite busy



1 addressing access and sewer and water. And again,  
2 we've also worked internally to refine our own  
3 master plan that we proposed in 2020 to ensure that  
4 it is fiscally sustainable and viable at the same  
5 time.

6 And then what you see here we've  
7 completed, but we've also engaged EIS. I added that  
8 to the list as well.

9 **MS. LIM:** So, Michelle, I see -- I know,  
10 also what I see here from this slide, and what you  
11 just said, is that work toward the master plan has  
12 been underway, but a lot of this is technical work.  
13 It's figuring out how to make the infrastructure  
14 feasible. It's, you know, where can you connect the  
15 sewer and how can you connect the sewer. But I'm  
16 not seeing community consultation here.

17 Now, I know in the last presentation,  
18 there was a long list of meetings that had taken  
19 place with stakeholders. How come we aren't seeing  
20 community consultation on this chart?

21 **MS. SWARTMAN:** Yes. I guess before Walter  
22 Thoenmes presented in 2020, we had completed  
23 significant community engagement and consultation  
24 with the state and city agencies, some of which are  
25 here today.

1 But we knew that while we anticipated the  
2 report, by the time we came back to your folks for  
3 solar approvals for the re-authorization of Solar  
4 Phase 1, we knew that through our EIS process, we  
5 would again do a huge amount of community  
6 engagement.

7 As you know, that process is going to be  
8 involved and lengthy and, you know, we anticipate  
9 getting right to it as soon as we're done with these  
10 proceedings. Have we done as much as we expected  
11 and anticipated? No. But we do anticipate that,  
12 you know, a much more accelerated outreach once we  
13 start our EIS.

14 **MS. LIM:** And by the master plan  
15 refinement and financial feasibility work that's  
16 been done with DPI, that was really trying to figure  
17 out how to make the master plan pencil.

18 **MS. SWARTMAN:** It was really about looking  
19 for ways to be way more efficient with our  
20 infrastructure, with our roadways, our wastewater.  
21 You know, we met with the City Environmental  
22 Services to look for opportunities for existing  
23 capacity that they may have.

24 So, yes, every step of the way. And it is  
25 our obligation to make sure that what we present to

1 our own leadership and our beneficiaries makes  
2 sense.

3 And I think I might have mentioned -- I  
4 mentioned in the very beginning, is that whatever we  
5 do and however we assess our lands and how we  
6 propose our lands to be used, we have a fiscal  
7 responsibility to make sure that we make the best  
8 decisions for our beneficiaries.

9 **MS. LIM:** You don't want to run off kind of  
10 half-cocked doing consultation until you've done  
11 some of the hard homework.

12 **MS. SWARTMAN:** No. And the work that  
13 we've done through this whole process of working in  
14 order to find new efficiencies working with the  
15 different agencies is to make sure that we have that  
16 information when we're asked by our alumni  
17 association who are some of our stakeholders or the  
18 Native Hawaiian community organizations.

19 When they ask us questions about our  
20 proposed, you know, master plan, we want to make  
21 sure we have the correct answers to the best of our  
22 ability and have those facts clear.

23 **MS. LIM:** So this kind of maybe not very  
24 sexy but important internal diligence work is -- you  
25 called it a necessary prerequisite.

1           **MS. SWARTMAN:** I find planning quite sexy,  
2 but.

3           **MS. LIM:** So just, you know, I've come  
4 just about to the end of my questions. I just -- I  
5 do want to touch on estimated cost figures because  
6 as the commissioners and other parties may recall,  
7 Mr. Thoemmes estimated that the infrastructure alone  
8 would cost, like, \$630 million for this project. Is  
9 that number is still ringing true, Michelle?

10           **MS. SWARTMAN:** I wish it were. The more  
11 we are delayed, the higher the cost escalates. And  
12 today we anticipate upwards of \$664-665 million for  
13 infrastructure. And that includes onsite and  
14 offsite improvements of the roadways or upsizing of  
15 wastewater facilities. So that includes all the  
16 infrastructure for the entire project on and offsite  
17 -- what we know today.

18           **MS. LIM:** Thanks, Michelle. I feel we've  
19 gone through a lot of the master plan, and I guess I  
20 just want to bring it back to what we are here about  
21 today, which is the motion that we filed in December  
22 for the re-authorization of Phase 1 solar. Do you  
23 have any final comments on that?

24           **MS. SWARTMAN:** You know, I've reiterated  
25 -- I hope that I've cleared up the confusion that

1 there might have been with regards to solar, you  
2 know, taking place as being in competition, if you  
3 will, as Jennifer mentioned, with the master plan.  
4 But on the contrary, the solar plan -- the solar  
5 developments on our project sites at Waiawa has  
6 always been a complementary use and as an interim  
7 use for our master plan.

8           So, you know, I respectfully hope, you  
9 know, request that this commission approve the  
10 motion before you folks and approve the request to  
11 modify the 2014 decision and order to authorize the  
12 use of Waiawa Solar Phase 2, LLC's -- AES' project  
13 over our solar site 1.

14           **MS. LIM:** And just to be real clear, in  
15 2014, the commission already approved the use of the  
16 Phase 1 solar site until November 2049, I think it  
17 is. So when I look at your slide, you're saying  
18 that Parcel A is actually going to be decommissioned  
19 five years earlier than what the commission has  
20 authorized. So it's Parcel B that's going to be  
21 decommissioned five years later.

22           **MS. SWARTMAN:** Correct.

23           **MS. LIM:** I don't have any further  
24 questions for Ms. Swartman.

25           **CHAIR SCHEUER:** Thank you, Ms. Lim. I'm

1 sure that, having listened to the presentation and  
2 knowing my commission, I'm sure we're probably going  
3 to need time with Ms. Swartman beyond what we can do  
4 before lunch, so let's go through what we can, and  
5 then try to take a break at noon for half an hour.

6 Questions for the witness from the  
7 Department of Planning and Permitting?

8 **MS. WEAVER:** No questions. Thank you.

9 **CHAIR SCHEUER:** Questions from the Office  
10 of Planning and Sustainable Development?

11 **MR. YEE:** I have a few.

12 **CHAIR SCHEUER:** Okay. Thank you.

13 **MR. YEE:** Thank you. I do have a few  
14 questions, and hopefully, there'll only be a few. I  
15 want to make sure I understand. Any solar that will  
16 be constructed will be outside of Phase A; correct?

17 **MS. SWARTMAN:** Yes. That's correct.  
18 There's no solar uses within the master plan Phase  
19 A.

20 **MR. YEE:** And would the commissioning or  
21 decommissioning of the solar have any impacts or any  
22 direct impact on the timing of development within  
23 Phase A?

24 **MS. SWARTMAN:** No impact at all.

25 **MR. YEE:** Okay. But you will need to come

1 -- in order to develop in Phase A, I think you've  
2 testified that you will need to come back before the  
3 Land Use Commission at least for an amendment to the  
4 conditions, if not also for an additional amendment,  
5 district boundary amendment for additional lands.

6 **MS. SWARTMAN:** That is correct.

7 **MR. YEE:** Okay. And in order for you to  
8 come back before the commission, you also need --  
9 you need an EIS completed before that.

10 **MS. SWARTMAN:** Absolutely.

11 **MR. YEE:** Okay. And let me focus on the  
12 EIS. I understand that, moving forward, sometimes  
13 it's difficult to tell exactly what's going to  
14 happen, so let me focus on this year. What do you  
15 plan to do this year to move forward with the EIS?

16 **MS. SWARTMAN:** So this year, in that last  
17 slide that I shared with you all, we're looking at  
18 presenting our outreach, community outreach  
19 engagement.

20 And then the next step would be, you know,  
21 obviously, we have to understand who the accepting  
22 authority is for our EIS, and so working with the  
23 various agencies, you folks or LUC or DPP, to  
24 understand which of you are going to be the  
25 accepting authority of our EIS.

1 And then shortly thereafter, we would be  
2 drafting our prep notice.

3 **MR. YEE:** And if you could be a bit more  
4 concrete, what do you mean by outreach? What do you  
5 intend to do for outreach this year?

6 **MS. SWARTMAN:** So there are a lot of  
7 stakeholders that we've already identified. Aside  
8 from, you know, working with the state agencies on  
9 pre-consultation, we look to working and meeting  
10 with our neighbors at Waiawa. Those would include  
11 the various neighbors within Mililani, Wahiawa,  
12 Pearl City Highlands, because they look directly at  
13 our properties, and then Waipio.

14 There are a number of stakeholders, and I  
15 think included in that would be the Native Hawaiian  
16 communities. I mean, we really need to vet any kind  
17 of development at Waiawa through the community, so  
18 neighborhood boards, business associations,  
19 practitioners, alumni.

20 We want to talk to others about the  
21 various demands and what they see. What are their  
22 concerns? What are some of the issues that they may  
23 have? I mean, these are all the processes that we  
24 have to go through as part of our EIS anyways, and  
25 understand what those impacts are.



1           You know, we'll have to talk to some of  
2 our subconsultants. Obviously, you know, we have to  
3 complete our traffic impact assessment. We have to  
4 do a biological study, you know, engineering.

5           And not only will we be engaging a number  
6 of consultants for those reports and studies that  
7 make up the EIS but, you know, we'll be doing that  
8 to assess a number of alternative plans, a number of  
9 different variations of what our plans are.

10           So it's an extensive process that I think  
11 you may already know but, you know, just to  
12 highlight it, like I said, it's a long -- we have a  
13 long road ahead of us.

14           **MR. YEE:** So prior to the publication of  
15 the preparation notice, this year -- I want to make  
16 sure I understand -- you intend to have a meeting  
17 with all of the relevant neighborhood boards?

18           **MS. SWARTMAN:** No. No, no, no. That's  
19 over the course of many -- but we're in the course  
20 of the whole process. This year I think it's about  
21 kind of laying the groundwork for ourselves,  
22 identifying who are all those stakeholders, you  
23 know, that we should be consulting with. That's  
24 first and foremost.

25           And then we just get going, and we work on

1 that list. I can't say that, you know, I can't say  
2 we're going to have 100 meetings by December 31st of  
3 2022, but I can state that we're using -- we would  
4 be making good faith efforts to talk to as many  
5 people as we can in the next eight months.

6 **MR. YEE:** Are you not yet ready to -- do  
7 you not yet have a plan for community outreach for  
8 2022? Is that something that's still to be done?

9 **MS. SWARTMAN:** That is in -- that's in  
10 draft form right now. That's one of the scopes of  
11 work that we've engaged PBR to help us identify what  
12 does that outreach plan look like.

13 **MR. YEE:** Okay. So in the remaining,  
14 roughly, eight months of the year, you will have to  
15 finalize that community outreach plan and then begin  
16 the meetings that you have described?

17 **MS. SWARTMAN:** Yes. Absolutely. I mean,  
18 even for the 2020 presentation that we had  
19 completed, we did speak to a number of different  
20 stakeholders. We've met with our 'Aina Ulu  
21 education partners that exist in the lower regions  
22 of our lands. We've met with the various UH  
23 chancellors at LCC and their staff and their  
24 administration. We've met with UH West Oahu. We've  
25 met with the Pearl City Highlands Neighborhood Board

1 president.

2 And so we've met with -- we've given our  
3 presentation already once before to our Kamehameha  
4 Schools Alumni Association representatives, so. And  
5 we have a long list of stakeholders that Kamehameha  
6 Schools already relies on for input on anything that  
7 we do.

8 But that said, we have -- you know, we  
9 anticipate a much more exhaustive round and outreach  
10 program.

11 **MR. YEE:** And after you finish this, then  
12 you intend to issue the prep notice; is that right?

13 **MS. SWARTMAN:** Once we know who we're  
14 submitting it to, yes. And, yes.

15 **MR. YEE:** And do you anticipate that prep  
16 notice won't come out until 2023?

17 **MS. SWARTMAN:** We're hoping that it will  
18 be -- we'll be able to draft that by the end of this  
19 year, if not early 2023. That is correct.

20 **MR. YEE:** In the GANTT chart, it seemed to  
21 indicate you have allocated up to four years for the  
22 EIS. You have 2022, '23, '24, and '25, I think.  
23 The GANTT chart, however, lists them in total years,  
24 so it might not be all of 2025, for example. And if  
25 I misread this, let me know.

1 Do you think this is -- let me put it this  
2 way. It seems a little long to me, even for an EIS  
3 of this scope. Can you explain why it came out this  
4 long?

5 **MS. SWARTMAN:** This is our best guess as  
6 far as how long it would take. If we could  
7 accelerate that, we definitely would want it to be  
8 accelerated. I mean, obviously, we are being --  
9 satisfying the condition to complete our backbone  
10 infrastructure by 2030, and before we do that, we  
11 have to prepare the EIS.

12 So, yes, you know, does it look long?  
13 Does it -- would we hope that it takes four years?  
14 No. But, you know, a project of this magnitude to  
15 deliver over 11,000 homes we don't take lightly at  
16 all.

17 **MR. YEE:** Do you anticipate hiring your  
18 subconsultants this year?

19 **MS. SWARTMAN:** We do. PBR is our prime,  
20 and who they -- and the subconsultants are a  
21 subconsultant to PBR, not to Kamehameha Schools.

22 **MR. YEE:** Sorry. Do you anticipate PBR  
23 will hire their subconsultants by the end of this  
24 year?

25 **MS. SWARTMAN:** Yes.

1           **MR. YEE:** And then you anticipate that the  
2 subconsultants will begin their work, their studies  
3 that will be necessary for the EIS.

4           **MS. SWARTMAN:** Yes. That's correct.

5           **MR. YEE:** And you think they will start in  
6 this calendar year?

7           **MS. SWARTMAN:** No. By 2023, they should  
8 -- they would be engaged, but I really don't think  
9 that they would start their actual studies until the  
10 early beginnings of 2023.

11           **MR. YEE:** Okay. So they will start their  
12 studies, you think, after the preparation notice.

13           **MS. SWARTMAN:** Correct.

14           **MR. YEE:** Okay. When you get back to the  
15 Land Use Commission, do you anticipate that you will  
16 then have a revised master plan, a revised table for  
17 the various phases in this project?

18           **MS. SWARTMAN:** I think the answer is yes.  
19 I mean, we would have gone through our EIS process  
20 and assessed the various alternatives that we will  
21 have in that process, and then who knows what comes  
22 out of that? And who knows what kind of feedback  
23 that the community had that we respond to and adjust  
24 the master plan?

25           So, you know, at this point, I don't know

1 if they will accept what we've already proposed. It  
2 really is up to the community and what their  
3 feedback is, based on the alternatives that we put  
4 out there.

5 **MR. YEE:** Well, the master plan you  
6 created was in 2019. I guess what I'm trying to say  
7 is when you get to the EIS and draft the EIS, you  
8 will have in that drafted EIS a proposal, obviously,  
9 that has to be analyzed, and that would presumably  
10 be the master plan, whatever master plan you're  
11 proposing at that time; correct?

12 **MS. SWARTMAN:** That is correct.

13 **MR. YEE:** And do you think that probably  
14 at that point, whatever that master plan is -- we  
15 don't know what the details are and we have to be  
16 open to the alternatives -- whatever that master  
17 plan is, there will be some revision of what you've  
18 -- than the 2019 plan.

19 **MS. SWARTMAN:** Correct.

20 **MR. YEE:** Okay.

21 **MS. SWARTMAN:** I mean, very little.

22 **MR. YEE:** It might contain, for example,  
23 earlier constructions of housing in Phase A;  
24 correct?

25 **MS. SWARTMAN:** Well, the construction of

1 Phase A is going to be based on how quickly we can  
2 get our EIS and the district boundary amendment and  
3 then the motion to amend and then zoning completed.

4 I mean, that order of entitlements, it is  
5 what it is, and so if we can get through those  
6 entitlements quicker, then yes.

7 **MR. YEE:** Those are all the questions I  
8 have. Thank you.

9 **CHAIR SCHEUER:** Thank you, Mr. Yee.

10 Commissioners? We have a few who want to  
11 start. I'm going to start with Commissioner Cabral.  
12 We will try and end in a few minutes, and a 30-  
13 minute break.

14 **COMMISSIONER CABRAL:** Thank you.  
15 Hopefully, my questions are really for  
16 clarification. So two sets of glasses to read all  
17 this. And thanks to Mr. Yee for some clarification  
18 your answers provided with his questions.

19 So your land is divided by phases A  
20 through E, but your projects are phases 1 and 2 at  
21 this point.

22 **MS. LIM:** For clarification, when we speak  
23 to our Solar Phase 1 and Solar Phase 2, that just  
24 refers to solar.

25 **COMMISSIONER CABRAL:** Okay. And Solar

1 Phase 2 is already under construction and permitted,  
2 so you put 2 before 1?

3 **MS. SWARTMAN:** And the reason -- yes,  
4 that's correct.

5 **COMMISSIONER CABRAL:** Okay. No, I'm okay  
6 with that. I just want to make sure it was clear.  
7 I'm just a simple-minded country girl. Okay.

8 **MS. SWARTMAN:** Me, too.

9 **COMMISSIONER CABRAL:** You're not as  
10 country as I.

11 So the next thing is right now, though, in  
12 all of this talk, I mean, and so much of these  
13 wonderful plans and stuff really are talking about  
14 all these future houses. But the petition you have  
15 before us right now is only really obligating you  
16 and allowing us to work with the details about Phase  
17 1 of your solar; correct?

18 **MS. SWARTMAN:** That is correct.

19 **COMMISSIONER CABRAL:** Okay. So nothing  
20 that we're really considering has anything to do  
21 with building a house.

22 **MS. SWARTMAN:** Not at all.

23 **COMMISSIONER CABRAL:** Okay. My concern is  
24 that -- and I've seen all your plans, and God knows  
25 you're honorable, et cetera, but so was the people



1 that sat in my chair 34 years ago when we thought by  
2 now there'd be 8,000 houses on that land or more by  
3 now. And so I got the -- and I might not to have to  
4 worry about 2070. By then you'll have 11,100  
5 planned homes.

6 But that's our concern, is that we have no  
7 ability to obligate Kamehameha Schools to even one  
8 house with what you're moving forward with under  
9 this petition for the additional solar. And so  
10 that's the only question I have or concern I have.  
11 Okay. Thank you.

12 **MS. SWARTMAN:** Thank you.

13 **CHAIR SCHEUER:** Commissioners, you're not  
14 obligated now, but there's a sense of who has  
15 questions. Commissioner Ohigashi? Commissioner  
16 Chang? You all have some? Commissioner Okuda?

17 **COMMISSIONER OKUDA:** Yes. I do.

18 **CHAIR SCHEUER:** Okay. Commissioner Wong  
19 as well?

20 **COMMISSIONER WONG:** Yes, chair.

21 **CHAIR SCHEUER:** Commissioner Giovanni as  
22 well.

23 So okay. So did you want to try and  
24 squeeze one in before the bell, Commissioner  
25 Ohigashi?

1           **COMMISSIONER OHIGASHI:** Yeah, because I  
2 just want to make sure I get this one out of my  
3 mind.

4           **CHAIR SCHEUER:** That should be amazing, if  
5 that's going to happen, but okay.

6           **COMMISSIONER OHIGASHI:** The backbone  
7 infrastructure that you're planning for Phase A, is  
8 that -- and you're estimating it taking two years  
9 for you to build, according to this. Is that based  
10 upon the existing lines or what you project to be  
11 the total Phase A?

12           In other words, you need a boundary  
13 amendment to expand here to take all of Phase A. So  
14 the backbone infrastructure you're planning to  
15 finish by 2030, the projected two years, is that for  
16 the entire Phase A, or is that for that portion?

17           **MS. SWARTMAN:** I think I get your  
18 question. The answer is, yes, the backbone  
19 infrastructure that we plan to complete for Phase A  
20 by 2030 includes the lands within the area that we  
21 would need to reclassify -- or, excuse me, to  
22 reclassify as well. So it is based on the  
23 assumption that we would need to complete all the  
24 backbone infrastructure for the entire Phase A,  
25 including the lands that we need to reclassify as

1 urban.

2 **COMMISSIONER OHIGASHI:** That probably will  
3 lead me to more questions, but I'll reserve that.

4 **CHAIR SCHEUER:** Okay. We'll continue with  
5 questions from Commissioner Ohigashi at 12:31.

6 **(Recess taken from 12:01 - 12:35 p.m.)**

7 **CHAIR SCHEUER:** It is 12:35. Sorry for  
8 the short delay. We are resuming cross-examination  
9 of Kamehameha Schools' witness, Michelle Swartman,  
10 with continued questioning from Commissioner Lee  
11 Ohigashi.

12 Please continue, Commissioner.

13 **COMMISSIONER OHIGASHI:** Thank you. I lost  
14 all my stuff on my computer, but from memory my  
15 question is this, is that within the solar project  
16 here before us today, has there been any  
17 infrastructure development there?

18 **MS. SWARTMAN:** No. There has not been any  
19 type of infrastructure development within the solar  
20 boundary at all.

21 **COMMISSIONER OHIGASHI:** Even for the solar  
22 items themselves, the solar panels themselves?

23 **MS. SWARTMAN:** Yup. Exactly. They don't  
24 rely on any wastewater. They bring in their own  
25 water. We've created roadways for access.

1           **COMMISSIONER OHIGASHI:** There is some,  
2 then. There's roadways for access.

3           **MS. SWARTMAN:** They're dirt roads to  
4 access their site; correct.

5           **COMMISSIONER OHIGASHI:** And is there any  
6 infrastructure being planned for that area?

7           **MS. SWARTMAN:** As I mentioned in the  
8 earlier part of the presentation, there is no  
9 infrastructure being planned for future of the  
10 master plan -- for the future master plan within the  
11 Clearway project development, because there is no  
12 contemplation for urban uses at all.

13           However, with regards to your question  
14 relevant to Phase 1, there is just our existing ag  
15 roads, which today they continue, as well as our own  
16 KS operations folks that keeps those open and  
17 maintained for fire or whatever, if we need to get  
18 access to our own lands.

19           **COMMISSIONER OHIGASHI:** What I'm -- my  
20 real question, I guess, what I want to get at is  
21 this. Is that in the solar event that we're in  
22 front of today -- it would be easier if I had it up  
23 on my screen that I was referring to. But the ones  
24 that we are concerned with today, will any of the --

25           **MS. SWARTMAN:** Infrastructure for future

1 use?

2 **COMMISSIONER OHIGASHI:** Infrastructure for  
3 that area, for the solar panels, be utilized in --

4 **MS. SWARTMAN:** I don't --

5 **COMMISSIONER OHIGASHI:** Let me finish my  
6 question. In the development of the total area.  
7 The total area?

8 **MS. SWARTMAN:** So I would say the only  
9 infrastructure that our Phase 1 would remain in  
10 place for the future development of the Waiawa master  
11 plan is the main arterial road.

12 So we have worked with AES in identifying  
13 our future roads, and they are to retain that road  
14 through their project site.

15 **COMMISSIONER OHIGASHI:** And my question,  
16 then, would be to our attorney general, whether or  
17 not developing that infrastructure, if that  
18 constitutes beginning of substantial plans?

19 **CHAIR SCHEUER:** Commencement? Is that a  
20 question you're directing to Mr. Morris?

21 **COMMISSIONER OHIGASHI:** Yes.

22 **MR. MORRIS:** Well, it's not a question  
23 that can just be answered on a description like  
24 that, really. As you know, the courts have  
25 struggled with the idea of what substantial

1 commencement is. And I can certainly provide the  
2 board, you know, more detailed advice.

3 It's not a black and white question. And  
4 so, it's a nuanced question based on some of the  
5 criteria or discussions that we have in some  
6 published cases -- Bridge Aina Le'a, for example.  
7 It's a fairly low bar for substantial commencement.  
8 I will say that.

9 **CHAIR SCHEUER:** Commissioner Ohigashi?

10 **COMMISSIONER OHIGASHI:** I'm not clear what  
11 the answer would be, but I'm all over it.

12 **CHAIR SCHEUER:** Commissioner? Mr. Morris?

13 **MR. MORRIS:** And I apologize for referring  
14 to the board; I meant the commission.

15 But again, it's a nuanced question, and I  
16 think I don't have enough information to answer the  
17 question completely now. I can certainly lay out  
18 the legal framework for you, or if you have a  
19 request to go into executive discussion, we can  
20 discuss it in that context. So on that limited basis  
21 of information, I can't answer that one way or the  
22 other.

23 **CHAIR SCHEUER:** Thank you, Mr. Morris.  
24 Commissioner Wong?

25 **COMMISSIONER WONG:** Chair, question. This

1 is probably one for Commissioner Ohigashi. Does he  
2 want us to go into executive session to talk about  
3 this at this time?

4 **CHAIR SCHEUER:** Sorry. The pronoun. Who  
5 are you referring to?

6 **COMMISSIONER WONG:** Commissioner Ohigashi.

7 **COMMISSIONER OHIGASHI:** I already  
8 mentioned I would like to go to, but I was just  
9 thinking of some questions.

10 **CHAIR SCHEUER:** Okay. No further  
11 questions for the witness at this time,  
12 commissioner?

13 **COMMISSIONER OHIGASHI:** Not at this time.

14 **CHAIR SCHEUER:** Thank you.  
15 Commissioner Chang?

16 **COMMISSIONER CHANG:** Thank you so much,  
17 Ms. Swartman.

18 **CHAIR SCHEUER:** Commissioner Chang, could  
19 you speak directly into the microphone, please?

20 **COMMISSIONER CHANG:** I really appreciated  
21 your very thoughtful presentation. It helped to  
22 clarify some issues, but it also raised some other  
23 additional issues for me.

24 I am looking at the exhibit that you had.  
25 I think it was with the different phases. And it

1 showed that 476 acres Kamehameha Schools is going to  
2 pursue a reclassification.

3 **MS. SWARTMAN:** Correct.

4 **COMMISSIONER CHANG:** Seventy-one acres is  
5 in Phase 1; is that correct?

6 **MS. SWARTMAN:** Correct. Phase A.

7 **COMMISSIONER CHANG:** I'm sorry. Phase A.  
8 You're right. Phase A. Phase A.

9 **MS. SWARTMAN:** I know. I, too, was  
10 getting confused.

11 **COMMISSIONER CHANG:** Phase A. Is the 71  
12 acres critical and necessary for the development of  
13 Phase A?

14 **MS. SWARTMAN:** I would say yes. If you  
15 notice, between -- on that same exhibit on page 4,  
16 or slide 4, you'll see the red bold line that  
17 demarcates the boundary of the urban district area.

18 We have two separated urban district  
19 areas, so connecting the boundary so it's one  
20 cohesive urban district area would make a lot more  
21 sense in that we could have a lot more congruent  
22 development.

23 **COMMISSIONER CHANG:** So your Waiawa master  
24 plan that you presented, the 476 acres that has yet  
25 to be submitted to the LUC for a reclassification,



1 those acres are critical for the implementation of  
2 the master plan that you presented.

3 **MS. SWARTMAN:** That is correct.

4 **COMMISSIONER CHANG:** And this master plan,  
5 the implementation of this master plan, specifically  
6 Phase A infrastructure, is dependent upon the  
7 approval of the LUC DBA for the 476 acres?

8 **MS. SWARTMAN:** I wouldn't say it's  
9 dependent on. The infrastructure is not dependent on  
10 the reclassification. They work in sync together, I  
11 would say, because what we build in infrastructure  
12 would accommodate whatever is approved within that  
13 Phase A.

14 **COMMISSIONER CHANG:** Let me try to  
15 rephrase it. So according to your timeline, you are  
16 presenting -- or coming to the Land Use Commission  
17 for a DBA for the 476 acres.

18 **MS. SWARTMAN:** Correct.

19 **COMMISSIONER CHANG:** And that is the only  
20 -- that would be the only jurisdiction -- I  
21 shouldn't say jurisdiction, but -- and the EIS that  
22 you're preparing is for this master plan; is that  
23 correct?

24 **MS. SWARTMAN:** That is correct.

25 **COMMISSIONER CHANG:** And this master plan

1 is -- is it dependent upon the 476 acres being  
2 reclassified? I guess that's my question.

3 **MS. SWARTMAN:** Yes. Yes. As -- you know,  
4 the master plan that we propose is dependent on the  
5 476 acres for reclassification. However, I'd like  
6 to add that, as I mentioned earlier, in our EIS  
7 process, we could possibly be looking at a smaller  
8 land plan, or land concept plan, where we wouldn't  
9 need as much reclassification. So instead of the  
10 476, it might be less than that. We just don't  
11 know, as we still have yet to go through and  
12 analyzing what those alternatives look like.

13 **COMMISSIONER CHANG:** So that might be an  
14 alternative. An alternative may be we go with the  
15 existing 1,300-plus acres that is currently zoned  
16 under -- would not require any additional LUC DBA?  
17 That could be an alternative, or the alternative to  
18 include that?

19 **MS. SWARTMAN:** Possibly. However, in  
20 order to get to implement our land plan starting  
21 from the bottom, we would need to at least connect  
22 the two urban pieces that we are now looking -- the  
23 bigger looking permitted land. The larger group.  
24 The larger piece of land.

25 **COMMISSIONER CHANG:** And that is in Phase

1 A.

2 **MS. SWARTMAN:** Correct.

3 **COMMISSIONER CHANG:** So, I mean just that  
4 is -- that's sort of kind of critical to my overall  
5 -- one of my fundamental concerns.

6 LUC's conditions of building that  
7 infrastructure by 2030 is -- that's an existing  
8 condition. But what I'm also hearing today is that  
9 the 71 acres for the DBA is also critical to Phase  
10 A. So if you do not time -- if we do not get a  
11 timely approval of at least the 71 acres for the DBA  
12 from the LUC, will you still be able to complete the  
13 infrastructure for Phase A?

14 **MS. SWARTMAN:** We would most certainly  
15 try. I mean, we would definitely -- if this  
16 commission did not grant us approval of, you know,  
17 reclassifying the lands into urban, we would then  
18 have to reassess it, take a look at what can we do.

19 **COMMISSIONER CHANG:** Because this, your  
20 master plan, there's a lot of assumptions in the  
21 plan, that each phase is going to move in a  
22 chronological way, that you're going to get the DBA  
23 approved for the 476 acres, that the decommissioning  
24 will occur.

25 So a lot of this is -- it seems to be a

1 great plan, but it also seems to be sort of  
2 conditioned upon certain things happening that you  
3 may or may not have any control over. Do you kind  
4 of agree with me?

5 **MS. SWARTMAN:** I would agree with you.

6 **COMMISSIONER CHANG:** I guess we're looking  
7 at this was originally approved in 1987. And I know  
8 you said Kamehameha Schools regained control of the  
9 Waiawa land in 2012. And that appears to be the  
10 time when Kamehameha Schools had a lot of commitment  
11 and adopted this master plan. Prior to that, you  
12 were leaving it up to the previous developer?

13 **MS. SWARTMAN:** Yes. That's correct.

14 **COMMISSIONER CHANG:** So the first housing  
15 may or may not -- well, the first housing, based  
16 upon your plans, is not anticipated to be built  
17 until after 2030.

18 **MS. SWARTMAN:** Yes. Shortly after we  
19 complete the 2030 infrastructure or meet that  
20 deadline, we anticipate starting vertical  
21 construction in 2031 and anticipate delivery of  
22 homes 2032 to 2034, in that area.

23 **COMMISSIONER CHANG:** And your master plan,  
24 your EIS or your master plan, I mean, this is really  
25 a plan development over the next 15 years. So where

1 would your EIS also contemplate, for example, your  
2 traffic study? Will your traffic study include the  
3 whole buildout, or are you looking at doing updates  
4 of those traffic studies throughout the planning  
5 process?

6 **MS. SWARTMAN:** So our EIS plans to assess  
7 the impacts over the entire buildout of the master  
8 plan. So, however, that said, you know, if there  
9 are updates to be made, amendments in the later --  
10 in the future, we would obviously have to do that as  
11 well.

12 But what we contemplate today is to ensure  
13 that our EIS addresses the entire master plan over  
14 the full buildout and understand what those impacts  
15 are.

16 **COMMISSIONER CHANG:** And I would just -- I  
17 would assume from a planning perspective, and that  
18 is a very difficult position to be in, because you  
19 are contemplating full buildout on your project, but  
20 you are not necessarily -- is your EIS also going to  
21 contemplate proposed buildout all along the TODs,  
22 all the composed development in that entire border  
23 ahupua'a of Kunia and beyond to Kapolei?

24 **MS. SWARTMAN:** So I think, well, Waiawa is  
25 an ahupua'a of itself, and I believe, you know, as

1 Central Oahu's sustainable communities plan, which  
2 was revised and approved in March, I believe, of  
3 2021, it identified the Waiawa master plan of  
4 residential commercial uses and solar as an  
5 acceptable use and part of the long-term plan for  
6 that region.

7 As far as taking into account other  
8 development from surrounding neighborhoods, I think  
9 there is -- our consultants need to consider the  
10 overall impacts facing the things that are in the  
11 pipeline, if you will, when we look at traffic. And  
12 obviously, I'm not a traffic engineer, but, you  
13 know, our consultants will have to take into  
14 consideration other developments that have approvals  
15 that file as well in their assessment of the  
16 impacts.

17 **COMMISSIONER CHANG:** And I appreciate  
18 that. I think there's a whole question of whether  
19 the EIS would even be stale at the time that it's  
20 approved, given that you've got proposed development  
21 in Phase E.

22 So hopefully, your consultants will take  
23 this into consideration, and perhaps those could be  
24 future conditions of any kinds of approvals.

25 Let me move on to ask you about community

1 consultation, because I know that in previous  
2 presentations, there has been a lot of consultation.  
3 I think there was talk with alumni, with the various  
4 stakeholder groups.

5           Could I ask you was the question ever --  
6 was the presentation to these various stakeholders  
7 -- did it present the solar project as an interim  
8 project? And was the community asked whether they  
9 wanted to have housing done as soon as possible, or  
10 they were willing to wait for the solar projects to  
11 be decommissioned?

12           **MS. SWARTMAN:** If I understand you  
13 correctly, that's a couple of questions.

14           **COMMISSIONER CHANG:** Right. Sorry.

15           **MS. SWARTMAN:** Number one, to address the  
16 first, in our presentations to our stakeholders, did  
17 we share with them how solar is an interim use of  
18 the master plan? The answer is yes.

19           We have been transparent with our  
20 community stakeholders from the very beginning. I  
21 think it is very aligned with all of the things that  
22 Kamehameha Schools, you know, focuses on in various  
23 initiatives.

24           So the short answer is, yes, we have  
25 included in our outreach the use of solar as an

1 interim use. And --

2 **COMMISSIONER CHANG:** I'm sorry. Go ahead  
3 and please answer.

4 **MS. SWARTMAN:** And then can you repeat?

5 **COMMISSIONER CHANG:** It was kind of an  
6 evolving question, so I think the best way is let me  
7 ask you another question based upon your response.

8 Based upon the presentations to the  
9 stakeholders and the transparency, was the question  
10 asked if the community had a choice of whether -- a  
11 choice -- in other words, is it to them reasonable  
12 to have a solar project as an interim use or, no,  
13 we'd rather have housing done?

14 **MS. SWARTMAN:** So I guess, if I may, we  
15 have -- obviously, we've been transparent, and there  
16 was never any kind of feedback from the community  
17 that we presented to that we shouldn't do solar  
18 because we want the houses first. Because in  
19 reality, we have the housing going on as solar is  
20 already being built at the same time. So they're  
21 coming on board concurrently. So this Phase A and B  
22 are moving forward; right?

23 And then we -- and then, so the answer is,  
24 no, there has not been any feedback from any of the  
25 outreach that instead of solar, we want housing



1 first, because they understood the long-term vision  
2 for Kamehameha Schools was to have both.

3 **COMMISSIONER CHANG:** Let me ask you this  
4 question. Is Kamehameha -- the implementation of  
5 the master plan, specifically the housing, and even  
6 in Phase A, is that dependent upon the approval of  
7 -- is that dependent upon the revenue produced by  
8 the two solar projects?

9 **MS. SWARTMAN:** No, not necessarily.

10 **COMMISSIONER CHANG:** What do you mean by  
11 not necessarily?

12 **MS. SWARTMAN:** So we are not dependent on  
13 the revenue from the two solar projects to, in  
14 effect, be able to financially build the master  
15 plan. The master plan will be in partnership with a  
16 number of partners. I mean, we consider the LUC as  
17 a partner.

18 You know, in order for the KS to complete  
19 this master plan, we need to work with the  
20 community, we need to work with the LUC and the  
21 various agencies that are sitting here, and we also  
22 need to work with a development partner and  
23 homebuilders. So we see this as an opportunity for  
24 a lot of partnerships to make this happen.

25 **COMMISSIONER CHANG:** And I appreciate

1 that, and I realize that there are numerous entities  
2 that will be working with you.

3 But the estimated cost I think you said  
4 was about \$665 million for infrastructure. And I  
5 also recognize that Kamehameha Schools has got --  
6 and you're looking at perpetuity, and so you weren't  
7 -- you don't have -- you don't have a blank check.  
8 Somebody has got to pay for this. And I know you  
9 also mentioned that some of your considerations are  
10 economic.

11 But I am wondering, because, well, if the  
12 Land Use Commission has approved the two solar  
13 projects -- I think this kind of goes back to the  
14 question by Commissioner Ohigashi.

15 If there hasn't been substantial  
16 commencement, could the property be reverted to  
17 rezone? I don't think anybody wants rezoning. I  
18 shouldn't speak on behalf of anyone else. I don't  
19 think it's my desire to revert, but I am looking at  
20 the realities of how critical is this solar project  
21 to the implementation of the master plan,  
22 specifically Phase A, the housing, and the backbone  
23 infrastructure?

24 **MS. SWARTMAN:** So again, to restate, the  
25 solar projects don't dictate what the master plan

1 does, or the timing of our master plan. I mean, the  
2 delivery of homes is going to run concurrently with  
3 Clearway.

4 So we have Phase A coming up along with  
5 our Clearway development projects, and then as we --  
6 and then, of course, granted you folks reauthorize  
7 the use of those lands in Phase 1 today, based on  
8 this motion in front of you, as they roll off, once  
9 they have decommissioned, the future additional  
10 homes.

11 By then we would have already about, you  
12 know, 4,500 to 5,000 homes in place. So just between  
13 Phase A and B, we're looking at 4,000 to 5,000  
14 homes. And that's a chunk of demand that we sure  
15 could use.

16 So do I think that this commission has a  
17 right to revert the lands back to ag? I think you  
18 do. I think that's your kuleana. I just don't  
19 understand how that affects or how that helps our  
20 housing demand in Hawaii.

21 **COMMISSIONER CHANG:** I think we  
22 understand. I guess we just -- it's just we're also  
23 bound by legal precedent and how we've treated other  
24 landowners, and this was approved in 1987. But it  
25 is not -- what you presented to this date is an

1 extremely appealing and necessary project for the  
2 future, so I'm not going to try to stand in -- but  
3 I'm also trying to balance those other issues that  
4 come before us.

5 Let me ask you a question about the  
6 estimate. You have said the estimated cost of  
7 infrastructure was about \$665 million.

8 **MS. SWARTMAN:** That's correct.

9 **COMMISSIONER CHANG:** And I personally have  
10 -- this has been sort of a mission for me,  
11 obviously, and you don't have to answer that  
12 question today, but at some point in time, if I  
13 still sit on the commission and this matter comes  
14 up, I will ask if Kamehameha Schools is willing to  
15 put up a bond that reflects that infrastructure  
16 cost. Because too often we have representations,  
17 and they aren't necessarily full.

18 Now, I know where Kamehameha Schools  
19 lives. I know where you live, so, I mean, we will  
20 go back and we will haunt you. So I know you guys  
21 are good for it. I do. But I also -- I mean, I have  
22 -- that's been a point I've consistently made with  
23 other developers about its performance bonds to  
24 ensure that those commitments are either met by the  
25 applicant or by somebody else.

1 So again, you don't have to answer that  
2 now, but that is something I will ask about.

3 Those are my questions. I do greatly  
4 appreciate your presentation. It really helped me  
5 understand and clarified some of the questions we  
6 had from the last hearing.

7 **MS. SWARTMAN:** Thank you.

8 **COMMISSIONER CHANG:** Thank you very much.

9 **CHAIR SCHEUER:** Thank you, Commissioner  
10 Chang.

11 Commissioner Giovanni?

12 **COMMISSIONER GIOVANNI:** No questions,  
13 chair.

14 **CHAIR SCHEUER:** Thank you.

15 Commissioner Okuda?

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

17 I can't help myself, but a follow-up question to the  
18 lines of questions that Commissioner Chang and  
19 Commissioner Ohigashi raised.

20 And, you know, I do recognize, and we all  
21 recognize, that there's no issue or petition  
22 regarding reversion or anything of that sort pending  
23 in front of us right now, but that's, like, the  
24 proverbial elephant or rat in the room that seems to  
25 be scurrying around.

1           So let me ask you this; okay? And this  
2 question -- and let me preface it by saying this;  
3 okay? I don't want this question to be taken that  
4 I'm an automatic friend of the Bishop Estate or  
5 anything like that. I think the record would show  
6 that one of your trustees was a consultant in a case  
7 where I was the lone vote against what he was  
8 advocating. So, you know, the fact -- and I know  
9 one of the counsel in the audience can verify that  
10 fact.

11           So, you know, this question is not  
12 intended to reflect any type of bias or inclination  
13 one way or the other. It's just to clarify what the  
14 standard is.

15           And so, you know, we all know that the  
16 reversion standard comes from a number of cases.  
17 One of them is DW 'Aina Le'a Development versus  
18 Bridge 'Aina Le'a. And for people who were really  
19 interested, the Pacific 3rd citation is 339 P.3d  
20 685. The Hawaii report citation I can give you, but  
21 I've had -- oh, I'm sorry. I believe it's 134  
22 Hawaii.

23           And where I'm going to quote to you is  
24 from 187, just so that we can see what the Hawaii  
25 Supreme Court was concerned about. And so, after I

1 read this section, I'm going to ask you whether or  
2 not -- if you have just one or two-sentence comment  
3 on whether or not that's really the situation that  
4 is being faced here with this specific request, this  
5 specific applicant, this specific landowner, and  
6 this specific situation.

7 And I'll ask the same question of the  
8 community watchdogs, meaning the DPP and the Office  
9 of Planning.

10 But this is what the Hawaii Supreme Court  
11 said, quoting the Senate Committee on Energy and  
12 Natural Resources about the danger of having land  
13 which is given entitlement and nobody does anything  
14 to go and, you know, make sure infrastructure or  
15 housing is really built.

16 It says here the senate committee -- I  
17 quote -- specifically noted that, quote, vacant land  
18 with the appropriate state and county land use  
19 designation is often subjected to undesirable  
20 private land speculation and uncertain development  
21 schedules and that such speculation and untimely  
22 development inflates the value of land, increases  
23 development cost, and frustrates federal, state,  
24 county, and private coordination of planning  
25 efforts, adequate funding, public services, and

1 facilities.

2           Okay. That's the admonition or warning  
3 the Hawaii Supreme Court has given. So along that  
4 line, can I ask you this? Has there -- have you  
5 heard, during your entire career at the Bishop  
6 Estate, any discussion, no matter how small or  
7 manini that discussion might be, that the intention  
8 of the Bishop Estate is to flip or sell or, for lack  
9 of a better term, speculate on the value of this  
10 land?

11           **MS. SWARTMAN:** That's an easy answer for  
12 me. Absolutely not.

13           **COMMISSIONER OKUDA:** Okay. And you  
14 already talked about the long-range planning that  
15 you folks intend to do; correct?

16           **MS. SWARTMAN:** Yes.

17           **COMMISSIONER OKUDA:** As far as the master  
18 plan, I'm sorry, for that question.

19           **MS. SWARTMAN:** Yes.

20           **COMMISSIONER OKUDA:** So I won't go over  
21 that. Okay. I just wanted to make sure that it  
22 wasn't something which, you know, we might have  
23 overlooked as far as some type of tension, you know,  
24 speculate on the land -- although I might say this.  
25 And this is a question I will ask also to the



1 community guardians, the DPP and city Office of  
2 Planning.

3 Does the Bishop Estate, because it serves  
4 disadvantaged communities, does it somehow -- or do  
5 we take that into account when applying the  
6 standards that are laid out in the Bridge 'Aina Le'a  
7 case? But I'll leave that for them.

8 Thank you very much, Mr. Chair. No  
9 further questions.

10 **CHAIR SCHEUER:** Thank you, commissioner.

11 Commissioners?

12 Commissioner Wong?

13 **COMMISSIONER WONG:** Thank you.

14 **CHAIR SCHEUER:** So easy to see you in  
15 person. It's great. I'm not looking for a waving  
16 hand trying to speak.

17 **COMMISSIONER WONG:** Thank you, chair.

18 Several questions. First off, good  
19 afternoon.

20 **MS. SWARTMAN:** Hello.

21 **COMMISSIONER WONG:** Okay. So going back  
22 to your Exhibit 47 -- the one with the phases and A,  
23 B, C, D and solar?

24 **MS. SWARTMAN:** The GANTT chart?

25 **COMMISSIONER WONG:** Yeah, the -- no, not

1 the GANTT chart; the one after that.

2 **MS. SWARTMAN:** The PowerPoint outline?

3 **COMMISSIONER WONG:** So there are some  
4 questions I have.

5 **CHAIR SCHEUER:** Would you like to have it  
6 put on the screen?

7 **COMMISSIONER WONG:** Yes, please. Let's go  
8 to page 3 for now. I'm going to use that one for a  
9 couple of questions, so if you don't mind showing  
10 slide 3?

11 **MS. SWARTMAN:** Slide 3.

12 **COMMISSIONER WONG:** That starts with the  
13 2,010 acres. Okay.

14 So one of the first questions I have is I  
15 know you talked about , after the EIS you'll be  
16 coming back for a DBA; correct? For those things  
17 not in red. Like, first off, Phase A, and then also  
18 Phase C; correct?

19 **MS. SWARTMAN:** Correct. I think there's a  
20 slide that speaks directly to that one.

21 **COMMISSIONER WONG:** Oh, no, it's one of --  
22 it's going to --

23 **MS. SWARTMAN:** Okay. Okay.

24 **COMMISSIONER WONG:** So the question I have  
25 on this issue is two parts. The first question I

1 have is we have two connections to H2 and I guess  
2 down on the bottom by the TOD there; correct?

3 **MS. SWARTMAN:** Two connections meaning  
4 access points to the --

5 **COMMISSIONER WONG:** No, just access points  
6 to the --

7 **MS. SWARTMAN:** -- community?

8 **COMMISSIONER WONG:** Yes.

9 **MS. SWARTMAN:** Yes. We actually have  
10 three access points for the entire project. And  
11 they're demarcated in the blue kind of stars or  
12 asterisk.

13 **COMMISSIONER WONG:** Okay. You're not in  
14 the Koa Ridge. You're on the side of Koa Ridge.

15 **MS. SWARTMAN:** That is the Ka Uka  
16 Boulevard, and that is planned for the latter phases  
17 of -- actually, it's in the early phase of Phase C.

18 **COMMISSIONER WONG:** Okay. The reason I  
19 have that is I'm looking at this, just thinking out  
20 loud, for 2,000 something homes in Phase A and 2,338  
21 homes in Phase B. Is that enough access points?

22 **MS. SWARTMAN:** Yes. That is correct. We  
23 -- yes. So we have engaged a number of consultants,  
24 traffic consultants, to help us analyze what are the  
25 capacities of those different access points. And in

1 fact, as I mentioned here in one of my slides, in  
2 fact the Department of Transportation has also  
3 concurred that -- and with their support, they have  
4 concurred that connecting one of those access to  
5 Waipahu Street and Kamehameha, they agree with it,  
6 and they concur that as an access.

7 So I guess the short answer is, yes, those  
8 access points that we've identified would have  
9 enough capacity for those -- for our project.

10 **COMMISSIONER WONG:** And I guess later on  
11 for the LUC to come with a TIAR.

12 **MS. SWARTMAN:** That is correct. With the  
13 specific studies and outcomes.

14 **COMMISSIONER WONG:** So the next one I have  
15 is looking at this diagram again, now you said in  
16 Phase 2 solar farm, right, on the righthand side by  
17 Phase B.

18 **MS. SWARTMAN:** Yup.

19 **COMMISSIONER WONG:** Okay. So I'm looking  
20 for a little bit questioning of this. So we're  
21 looking at shutting down the solar farms eventually;  
22 correct? Both sites, Phase 1 and Phase 2.

23 **MS. SWARTMAN:** Correct.

24 **COMMISSIONER WONG:** And I'm just thinking  
25 -- and Phase 2 would not even be touched, because

1 you're saying we're not going to do any housing in  
2 there.

3 **MS. SWARTMAN:** That is correct.

4 **COMMISSIONER WONG:** Don't you think we  
5 should look into the future, as you say, and say we  
6 still need alternative energies, and there's going  
7 to be more houses here. Have you ever thought about  
8 looking into the future for what's next to help, you  
9 know, charge up or keep the electricity going for  
10 these houses instead of looking at -- was that ever  
11 thought about?

12 **MS. SWARTMAN:** So if I understand  
13 correctly, the Phase 2 project or solar development  
14 which is being done by Clearway today, they have a  
15 decommission date of 2059, and I think your question  
16 is what about extending that beyond?

17 So they have a PPA that expires in -- I  
18 believe it's 2049, and they're looking -- and this  
19 commission approved up to 2059 if they were able to  
20 get an extension from the PUC on their PPA.

21 I think Clearway would be happy if we were  
22 to extend that area for continued use of solar. I  
23 do think, though, however, today in 2022 and in  
24 2059, the technology for solar I think would have  
25 made huge leaps and bounds. And if at some point

1 later down the road, that land would be appropriate  
2 for continued use of solar given the new  
3 technologies, that could be contemplated.

4 But we really haven't thought of that, and  
5 that -- we really haven't thought of continued use.  
6 Who knows? I mean, we may have reached our goals by  
7 2050, and the entire island is -- or state is on  
8 renewable energy 100 percent by then.

9 **COMMISSIONER WONG:** We hope so.

10 **MS. SWARTMAN:** Right.

11 **COMMISSIONER WONG:** I mean, just thinking  
12 ahead, you know. Right now it's gas crisis and  
13 everything that -- we do need alternative energy.

14 **MS. SWARTMAN:** Correct.

15 **COMMISSIONER WONG:** To reach that goal.  
16 So I'm just thinking about it, you know.

17 All this thing I'm going to ask, then, is,  
18 you know, I know Phase 2 solar and Phase B of the  
19 housing -- Phase B housing; right? -- is --

20 **MS. SWARTMAN:** So --

21 **COMMISSIONER WONG:** So Phase A is going to  
22 be housing first, and Phase B is the next set of  
23 housing. Phase C is the next set of housing.

24 **MS. SWARTMAN:** Correct.

25 **COMMISSIONER WONG:** Okay. So is there a

1 reason or rationale not to use Phase C instead of  
2 Phase B, or that's --

3 **MS. SWARTMAN:** Well, the reason why we  
4 identified those lands for AES, also known as Waiawa  
5 Solar Phase 2 LLC, is because it's based upon the  
6 approvals of the boundaries that the commission  
7 approved in 2014.

8 So instead of going before the commission  
9 and asking for a whole new area to approve, we  
10 thought that because the commission has already  
11 approved this area for solar use, it makes more --  
12 it makes sense to use the boundaries for solar.

13 **COMMISSIONER WONG:** Yeah. So what I'm  
14 saying is Phase A, you still have to come back to  
15 the LUC for a DBA; correct?

16 **MS. SWARTMAN:** For the entire project;  
17 correct.

18 **COMMISSIONER WONG:** And then Phase 1 of  
19 AES solar finishes in 2044; correct? And the start  
20 of the homes for Phase C starts in 2048.

21 **MS. SWARTMAN:** Correct.

22 **COMMISSIONER WONG:** I guess I was thinking  
23 out loud why we cannot switch the Phase B and Phase  
24 C homes if you're going to --

25 **MS. SWARTMAN:** Because it actually -- it

1 aligns with our road network.

2 **COMMISSIONER WONG:** Okay.

3 **MS. SWARTMAN:** And knowing the topography  
4 of that area makes all the difference as well. And  
5 so, you know, there -- it just makes more sense  
6 based on how our roadways occur and the phasing of  
7 our development, that they would use their Phase A  
8 within that portion that we have identified here  
9 instead of switching them out.

10 **COMMISSIONER WONG:** Okay. That's all the  
11 questions. I just wanted to share that. Thank you.

12 Thank you, chair.

13 **CHAIR SCHEUER:** Thank you, Commissioner  
14 Wong.

15 Commissioners, further questions for the  
16 witness?

17 Commissioner Giovanni, you good still?

18 Okay.

19 The chair has a few. Because you have the  
20 PowerPoint up, I guess I'm going to just jump into  
21 -- there was one, at least, where I want to refer to  
22 the PowerPoint. So if you go to slide 9,  
23 particularly the third row with content and then  
24 having water.

25 Back on the update and outcome cells,



1 please.

2 This update is "worked with CWRM to test  
3 and monitor for existing potable water wells  
4 approved for the Waiawa Master Plan." And the  
5 outcome was "confirmed existing water use permits."

6 Can you explain specifically when  
7 Kamehameha Schools did that in that regard?

8 **MS. SWARTMAN:** Yes. So we have an  
9 existing -- four existing potable well permits. And  
10 to be compliant with those permits, we've been  
11 working with state CWRM, state Commission of Water  
12 Resource Management, on testing of those wells. And  
13 so, we've been working quite closely with them and  
14 have capped them as well.

15 So they confirmed that indeed we are in  
16 compliance with their standards for their -- of  
17 those four water use permits.

18 **CHAIR SCHEUER:** Okay. So to what use were  
19 those water use permits issued?

20 **MS. SWARTMAN:** So if I understand  
21 correctly, the four wells were intended for the use  
22 of our Waiawa water master plan.

23 **CHAIR SCHEUER:** So I believe, having  
24 commented on those permits, they were for golf  
25 course use.

1           **MS. SWARTMAN:** I don't believe so. But I  
2 could be wrong.

3           **CHAIR SCHEUER:** This is a factual matter  
4 that would be great to have. Your master plan did  
5 not get permitted -- or presented to us until 2020;  
6 correct?

7           **MS. SWARTMAN:** There were a number of  
8 wells along -- within the Waiawa area. But I  
9 believe those four wells --

10          **CHAIR SCHEUER:** To repeat my question,  
11 your master plan that you're referring to did not  
12 get in front of this commission until 2020; correct?

13          **MS. SWARTMAN:** Oh, that is correct. Yes.

14          **CHAIR SCHEUER:** Okay. When were your  
15 wells permitted?

16          **MS. SWARTMAN:** They were permitted with  
17 the Gentry plan.

18          **CHAIR SCHEUER:** Okay. So it's actually  
19 for a different proposed use.

20          **MS. SWARTMAN:** Yes. And as we retained  
21 the lands back and regained control of the lands,  
22 everything, including those well permits, then came  
23 back to Kamehameha Schools.

24          **CHAIR SCHEUER:** Are you familiar with the  
25 provisions of the state law code that allowed the

1 Water Commission to revoke water use permits if the  
2 water is not used within four years?

3 **MS. SWARTMAN:** I would have to confer with  
4 my counsel, but I believe you.

5 **CHAIR SCHEUER:** Okay. And are you  
6 familiar with the requirement that if you are  
7 proposing a change in use, you actually have to get  
8 a modification to your water use permit?

9 **MS. SWARTMAN:** Yes.

10 **CHAIR SCHEUER:** Okay. So I'm confused by  
11 -- what the slide seems to be suggesting is that  
12 you're all good; you have four confirmed water use  
13 permits for the uses that you're preparing in front  
14 of us. But that's not actually the case; is it?

15 **MS. SWARTMAN:** We actually have a number  
16 of other wells that we need to drill for. We have,  
17 you know, at different water elevations, we have a  
18 -- which will serve the various areas within that  
19 elevation.

20 So right now we're working with the BWS on  
21 a 228 well to help with their own water master plan,  
22 which won't serve our -- any of our required usage.  
23 And then we have another well site that we have yet  
24 to drill and get permitted.

25 So I'm not implying that those are the

1 only wells that we need for the entire master plan,  
2 but those are some of the wells that we need for the  
3 water master plan.

4 **CHAIR SCHEUER:** But you actually -- my  
5 point is you don't actually have the permits in  
6 place that would allow you to any the less modify to  
7 use those for this master plan.

8 **MS. SWARTMAN:** You know, I would have to  
9 go back. I don't have the answer for that. I would  
10 have to go back and double-check, but I was -- I had  
11 the understanding that those wells, if not all, were  
12 allowed for use of potable uses.

13 **CHAIR SCHEUER:** I can assure you the state  
14 water code, if you were proposing a change in use,  
15 some of the proposed uses of those wells were for  
16 the proposed golf courses that -- at least I would  
17 advise you that action from the commission is going  
18 to be necessary, so that I'm not actually convinced  
19 that you have necessarily any permits in place that  
20 would fully allow you to do what you're planning to  
21 do, or even partially allow you to do what you want  
22 to do.

23 Can you go to slide -- the slide with the  
24 vision on it? I think it's slide 2 or slide 3.  
25 That's the one.

1 And really, if I had one set of questions  
2 for you really around this, it's a beautifully  
3 stated vision, but I don't see the connection  
4 between the vision and what has been presented and  
5 reiterated as the master plan. So can -- broadly,  
6 can you help me understand that?

7 **MS. SWARTMAN:** Yes. So our vision for  
8 Waiawa, obviously, aside from the granular uses that  
9 we've been talking about today of housing and  
10 commercial uses and solar, this is really about how  
11 Kamehameha Schools looks at our lands from a much  
12 more holistic view.

13 In Waiawa we have a total of almost 9,000  
14 acres along which a significant part of it falls  
15 within the preservation area and is a part of the  
16 very important watershed.

17 So in our land span from Pu'uloa all the  
18 way up to the Koolau mountain range and within -- if  
19 you can imagine within this ahupua'a of Waiawa, we  
20 have approximately, you know, these lands that we  
21 have visions for use of inhabitants and for life and  
22 for studying and for education and for cultural  
23 celebration and educational opportunities.

24 Our vision, while it's difficult to see  
25 how it extrapolates into the master planning of

1 things, it's where we start with. It's our approach  
2 of how we manage our lands and how smart we are with  
3 our lands.

4 So we know there are opportunities within  
5 the Waiawa ahupua'a, and so our vision is based on  
6 using all those opportunities to deliver a community  
7 for residents and shoppers and people to recreate  
8 and folks to jump on the transit station, attend  
9 schools, and other aina opportunities.

10 And, of course, what we're here today for  
11 is for the solar uses. So, you know, I'm not sure  
12 if that helps. I guess it's hard to envision what  
13 we envision. But we do think that Waiawa has a huge  
14 opportunity to meet the demands of many needs of our  
15 community.

16 **CHAIR SCHEUER:** I guess I have a couple of  
17 responses. And we could stop the screenshare.

18 One is that the solar uses are not the  
19 only reason why you're here, at least according to  
20 the petition that you filed with us. You also asked  
21 for the waiver of a number of conditions; is that  
22 correct?

23 **MS. SWARTMAN:** That is correct.

24 **CHAIR SCHEUER:** Okay. So second is, I  
25 guess -- again, it's a beautiful vision. It's a

1 vision that I think is appropriate for Kamehameha  
2 Schools. But what's in front of us is -- while it's  
3 certainly distinguishable from what Gentry proposed,  
4 I'm not seeing how it's particularly distinguishable  
5 from Koa Ridge across the gulch.

6 **MS. SWARTMAN:** And we do have to do  
7 considerably a lot more studies. I mean, I don't  
8 have any of those glossy photos or renderings for  
9 you folks, because we just haven't gotten there yet.  
10 You know, we have a vision. We have some  
11 entitlements that we want to modify. We have an  
12 interim use for those lands.

13 And really, the trigger for us to start  
14 getting into the weeds of things and how we expect  
15 to deliver on our vision is getting to our EIS  
16 process.

17 **CHAIR SCHEUER:** So then, I guess that's a  
18 great transition for my next question. Since you're  
19 a real estate professional, can you describe for me  
20 what you understand, the difference between a master  
21 plan and an EIS?

22 **MS. SWARTMAN:** Yes. So the EIS is an  
23 environmental impact statement, and it is part of  
24 the HRS 343 process. And that process evaluates the  
25 proposed uses and the impact of those proposed uses

1 based on community feedback and public comments.

2 And so, there are a number of different  
3 milestones within the EIS process from the scoping  
4 to the prep notice to the draft EIS to the final  
5 EIS. And so that's what that EIS is about.

6 The actual master plan is a concept plan  
7 of proposed uses. It's not the study of the impacts  
8 of proposed uses. That's the defining difference, I  
9 think, between a master plan and an EIS.

10 **CHAIR SCHEUER:** How do they differ in  
11 terms of community engagement?

12 **MS. SWARTMAN:** Well, the EIS is a  
13 requirement based on our discretionary permitting  
14 process. The master plan is just a plan, and a  
15 master plan is a just concept plan that hasn't been  
16 vetted through the requirements of an EIS.

17 **CHAIR SCHEUER:** Hmm. So maybe this is  
18 where we either differ or just don't understand, but  
19 in my experience, the kind of engagement you can get  
20 with the community in the EIS process, because it's  
21 structured under 343 deadlines, tends not to be the  
22 deep level of engagement that you would try and get  
23 when you say, hey, here's our vision for this entire  
24 ahupua'a; how are we going to see that play out on  
25 this parcel?



1           **MS. SWARTMAN:** So actually, before we even  
2 presented in 2020, we did exactly that with the  
3 master plan without a pretense of needing an EIS.  
4 We actually went to our own stakeholders and  
5 submitted to -- I guess it's not, you know, a much  
6 broader community.

7           We did go and seek some comments and  
8 feedback of our overall vision of Waiawa for  
9 Kamehameha Schools. You know, that's part of our  
10 responsibility is understanding, you know, we want  
11 to know that, you know, we understand what these  
12 lands mean to us, and what are the opportunities  
13 that we can see for the benefit of not just our own  
14 beneficiaries, but for the community at large?

15           So I guess that's your question, is  
16 whether or not we've used exhaustive measures for  
17 outreach for just our vision versus being able to do  
18 that for our EIS. I think --

19           **CHAIR SCHEUER:** Are you referring to the  
20 list of people consulted on Exhibit 43?

21           **MS. SWARTMAN:** Some of those, and then  
22 some.

23           **CHAIR SCHEUER:** Who are the "and then  
24 some"?

25           **MS. SWARTMAN:** I think I mentioned earlier

1 that Commissioner Dawn for sure had mentioned or  
2 stated back to us. So we've met with a number of  
3 stakeholders, which include the alumni association,  
4 our representative group. We've met with cultural  
5 groups. We have -- Kamehameha Schools has a number  
6 of stakeholders that we have identified as the, you  
7 know, young generation of leaders, that we've  
8 presented to them as well.

9 So -- and then we've also presented to our  
10 'Aina Ulu partners in Waiawa down along the Pearl  
11 Harbor shoreline. So those are just some of the  
12 folks that, outside of, you know, department  
13 agencies and state agencies, that we've presented  
14 to.

15 **CHAIR SCHEUER:** That was helpful. Was  
16 there was a reason I wasn't included as part of the  
17 outreach which you described in your materials?

18 **MS. SWARTMAN:** No, no specific reason why  
19 you weren't included in our written materials.

20 **CHAIR SCHEUER:** Were they -- did they tend  
21 to be supportive of --

22 **MS. SWARTMAN:** Yes. Yes. And we've  
23 actually -- I think I also mentioned this earlier in  
24 the presentation or in my testimony that we also  
25 presented to, you know, various University of Hawaii

1 state chancellors as well.

2           You know, we plan to partner with even  
3 education facilities or systems that are in the  
4 ahupua'a, like Leeward Community College, and we  
5 have done that with the chancellor already. And, in  
6 fact, we have other plans that we'd like to share  
7 with the various educational leaders from the  
8 university system as well.

9           **CHAIR SCHEUER:** But other than your own  
10 testimony on that, that's just information for us, I  
11 guess.

12           **MS. SWARTMAN:** Yes.

13           **CHAIR SCHEUER:** Okay. This is a small  
14 point, but I just wanted to clarify a statement,  
15 because I think if you read the record and just read  
16 your statement, it may appear unusual.

17           You referenced the Gentry EIS. You said  
18 we're not relying on the Gentry EIS. We're doing a  
19 new EIS. Were you trying to suggest that the Gentry  
20 EIS is deficient and you couldn't rely on it if you  
21 wanted to?

22           **MS. SWARTMAN:** No.

23           **CHAIR SCHEUER:** Okay. Then are you -- I  
24 guess, could you clarify why you referenced the  
25 Gentry EIS?

1           **MS. SWARTMAN:** I think it was in the  
2 context of, I think, the entitlements. I can't  
3 recall why we were talking -- what we were talking  
4 about at the time, but I believe we were talking  
5 about the various entitlements that are currently in  
6 place with the 1,395 urban classified lands and  
7 zoning. I think it was in the context of that.

8           **CHAIR SCHEUER:** Okay. You made a couple  
9 of references during your oral direct testimony, and  
10 then on cross-examination, to your duties to  
11 beneficiaries. But I believe -- correct me if I'm  
12 wrong -- what I only heard you refer to was  
13 financial commitments, the duty to derive revenue  
14 from your lands.

15           Perhaps the strategic direction of  
16 Kamehameha Schools has changed since I worked there,  
17 but are there other returns that you seek from your  
18 lands?

19           **MS. SWARTMAN:** Yes. Absolutely. And my  
20 apologies if it implied in any way that that was the  
21 only obligations that we have for our beneficiaries.  
22 I mean -- and I stand corrected if you folks don't  
23 already understand that our mission is education for  
24 Kamehameha Schools. That is our primary business at  
25 Kamehameha Schools.

1           However, we are very fortunate to have the  
2 ability to expand our reach within the extent of our  
3 community to provide other benefits to our  
4 beneficiaries and use our lands for agricultural  
5 purposes, for renewable energy, for housing, and  
6 even for commercial.

7           I mean, I work for the Commercial Real  
8 Estate Division, and we are charged with  
9 understanding not just that we have a fiscal  
10 responsibility, but we have a responsibility for all  
11 the other things.

12           It's not like, in this case, not solar or  
13 the master plan. It's we have a financial  
14 responsibility, we have an educational  
15 responsibility, we have a cultural responsibility to  
16 our beneficiaries. It's not one or the other. It's  
17 how they coexist together so that we do the best job  
18 we can.

19           **CHAIR SCHEUER:** Okay. Thank you. That's  
20 very helpful.

21           To get at how you manage to do these  
22 things simultaneously, you briefly referenced an  
23 absorption rate and an absorption study for housing.  
24 Could you expand on what that study was and how, if  
25 at all, it informed the phases that you have in your

1 current master plan?

2 **MS. SWARTMAN:** Sure. So we did a market  
3 demand study in, I believe, 2018. And in 2021, we  
4 updated the residential demand study. And what that  
5 told us is that the demand for housing is even  
6 greater. The type of housing -- in that study we  
7 considered the impacts of the existing Koa Ridge and  
8 D.R. Horton's Hoopili developments and how that  
9 impacts the demand.

10 What we have learned and understand is  
11 that we cannot keep up with the pace. In fact, we  
12 need to try even harder to keep up with the pace.  
13 Even though we may never meet the total demand of  
14 housing in Hawaii, at least we know that through  
15 Waiawa, we certainly can take a chunk off of that.  
16 You know, we can --

17 So we've also learned that within the  
18 Waiawa proposed master plan, there is a dire need  
19 for an intense increase in density. We've also  
20 learned that segmentation is important to what we  
21 deliver. And by segmentation, I mean that there are  
22 different types of houses or homes that are needed  
23 across our lands and in Hawaii in general --  
24 anything from rental to single-family, multi-family.

25 There are a number of different types of

1 products that is in demand. And what our market  
2 demand studies told us is that we need to bring on a  
3 multitude of housing and different types of housing.

4 **CHAIR SCHEUER:** So I guess this is the  
5 part where I continue to be confused about the  
6 phases and other questions from my fellow  
7 commissioner, Commissioner Chang, about whether or  
8 not there's competition between solar and the  
9 delivery of housing. Because certainly, like, one  
10 of the cudgels that is used to beat the LUC every  
11 year is the quota, like, we need 10,000 homes, we  
12 need 50,000 times a year.

13 Nothing I'm hearing in your direct  
14 testimony suggests that there is a limit to the  
15 absorption rate that's very meaningful. You could  
16 produce all 11,000 of these homes in the next three  
17 years, if you could, and they'd get absorbed into  
18 the market.

19 **MS. SWARTMAN:** Actually, as far as  
20 absorption rate, absorption rate, you know, what  
21 we've looked at is anywhere from 300 to 400 units a  
22 year. So --

23 **CHAIR SCHEUER:** So that's actually very  
24 different.

25 **MS. SWARTMAN:** Than?

1           **CHAIR SCHEUER:** If really all you're  
2 targeting and willing to deliver into the market is  
3 300 to 400 units per year --

4           **MS. SWARTMAN:** I think a large part of it  
5 has to do with the amount of regulation that  
6 developers and landowners have to go through. Do I  
7 think that -- what we have heard from D.R. Horton is  
8 that they can't build them fast enough in order to  
9 meet the demand.

10           So because there's -- the entitlements are  
11 what they are and we -- there's no way for us to,  
12 you know, obviously, not shirk our responsibilities  
13 or permits or entitlements, we just -- there are a  
14 lot of buyers out there that are willing to buy  
15 homes, but we can't build them fast enough.

16           **CHAIR SCHEUER:** That's what I'm getting  
17 at. It's right. I mean, one of the number one  
18 reasons why people say that you can't build enough  
19 homes is there's not a lot of land in the urban  
20 district.

21           This is all an urban district. That  
22 barrier is overcome. But you're saying you still  
23 can't deliver more than 300 to 400 homes per year.

24           **MS. SWARTMAN:** Well, what we've seen  
25 through our market study is that, based on the



1 trends today, that's what they're seeing, is 300 to  
2 400 because based on how fast they build it.

3 **CHAIR SCHEUER:** Sorry. I'm not following  
4 what you're trying to convey to me.

5 **MS. SWARTMAN:** So I guess, you know, so  
6 the construction rate is anywhere from 300 to 400,  
7 and that's what we've been using as our absorption  
8 rate for our projected timeline in the master plan.

9 What we're hearing in the market today is  
10 that other builders or other developers continue to  
11 build, but they have long lists of folks that are on  
12 a list to buy a home. So while we have, you know,  
13 urban lands today, that doesn't mean we can build  
14 without any of our permits. I mean, we still have  
15 to go through our EIS process and our DBA and all  
16 the different entitlements and milestones that I  
17 outlined today.

18 **CHAIR SCHEUER:** I understand. But that  
19 GANTT chart could be considerably compressed, not  
20 over decades, if you wanted to deliver more than 300  
21 to 400 homes per year.

22 **MS. SWARTMAN:** If we could, we would.  
23 We'd want to.

24 **CHAIR SCHEUER:** If you could.

25 **MS. SWARTMAN:** Correct.

1           **CHAIR SCHEUER:** So what's the -- what's  
2 the constraint?

3           **MS. SWARTMAN:** The constraint is that  
4 we're not using the plan that was represented by  
5 Gentry. We instead have a whole different plan,  
6 which triggers the need to come before you folks in  
7 the next five to six years a couple more times for  
8 your approval.

9           So if we can, you know, work together to  
10 accelerate that approval process based on all these  
11 things that we've presented, that would be  
12 wonderful. We would -- I mean, like I mentioned,  
13 you know, we need you folks as partners to make it  
14 happen. So I guess --

15           **CHAIR SCHEUER:** But what you're proposing  
16 for us right now conceptually is still not -- it's  
17 still stretched out over decades.

18           **MS. SWARTMAN:** Correct.

19           **CHAIR SCHEUER:** It's still stretched out  
20 over 300 to 400 units per year, not actually on a  
21 level of production that would start to impact the  
22 market in a sort of tangible way.

23           **MS. SWARTMAN:** That is absolutely correct.  
24 Right now, we have to still go through this process  
25 of the EIS to understand what the impacts are before

1 we even land on a single master plan.

2           **CHAIR SCHEUER:** Okay. Couple more. And  
3 this goes back to my questions to you about the  
4 difference between a master plan and EIS. And you  
5 described it as really two different kinds of  
6 documents.

7           But the proposed stipulated agreement says  
8 that we could accept it either -- we can take your  
9 EIS in lieu of accepting a master plan?

10           **MS. SWARTMAN:** I'm sorry. Can you repeat  
11 that?

12           **CHAIR SCHEUER:** So I will -- let me pull  
13 up petitioner's Exhibit 40 -- or perhaps, Ms. Thoene  
14 can pull up Exhibit 40. And that's your proposed  
15 stipulation with the Office of Planning and  
16 Sustainable Development, proposed condition 1.  
17 "Revised Master Plan. Petitioner shall submit to  
18 the commission a revised master plan and schedule  
19 for development for the approximately 1,395-acre  
20 Petition Area by February 11, 2025; provided,  
21 however, that this condition may be satisfied by the  
22 publication of a Draft Environmental Impact  
23 Statement."

24           So this, when I read it, seems to say  
25 you're thinking that, oh, a master plan or an EIS is

1 interchangeable, but your earlier testimony seemed  
2 to draw a distinction between the two.

3 **MS. SWARTMAN:** Yes. So I guess my reading  
4 on this is that if we were -- we're proposing to  
5 keep you folks apprised of our progress of our  
6 master plan. But, however, if the EIS happens  
7 sooner than 2025, then that would satisfy this  
8 condition.

9 **CHAIR SCHEUER:** Okay. I guess I'm curious  
10 -- maybe we're moving towards opining, but I don't  
11 see them as the same. I agree with your earlier  
12 testimony. And this would also only work for -- you  
13 referenced in your earlier testimony that you're not  
14 sure about who the accepting authority would be.

15 **MS. SWARTMAN:** Correct.

16 **CHAIR SCHEUER:** I don't see a meaning or a  
17 power of this condition if there's another body whOs  
18 the accepting authority on the EIS and it's simply  
19 handed over to us and saying here's what we came up  
20 with. I only think this works if the LUC is the  
21 accepting authority. But you haven't made that  
22 commitment yet?

23 **MS. SWARTMAN:** Well, no. We have not  
24 identified who -- I mean, right now, I think my best  
25 guess on who the accepting agency would be, it would

1 be you. It would be the State Land Use Commission,  
2 as that's the next discretionary permitting process  
3 now.

4 **CHAIR SCHEUER:** I don't see this proposed  
5 condition working unless we are also the accepting  
6 authority.

7 Because if we're supposed to have this as  
8 a meaningful condition to see that indeed the master  
9 plan has considered alternatives, the EIS impacts  
10 have been evaluated, and we're getting the housing  
11 that's been promised, if somebody else is accepting  
12 it, what are we supposed to do? Like, okay, they  
13 accepted it. Do you see any other meaningful  
14 alternative to make this operable?

15 **MS. SWARTMAN:** I guess I can confer with  
16 my counsel, if you don't mind?

17 **CHAIR SCHEUER:** Please. So a short  
18 recess, please.

19 **(Recess taken from 1:46 - 1:57 p.m.)**

20 **CHAIR SCHEUER:** Thank you for taking the  
21 time to consult with your counsel. Did you have a  
22 response to my question?

23 **MS. SWARTMAN:** Yes. Just wanted to make  
24 it clear that with regards to the Exhibit 40  
25 proposed stipulation, proposed conditions for

1 approval, condition number 1, a little bit of  
2 context for that.

3 The original 2014 condition 1 required us  
4 to come back within five years with a revised master  
5 plan. Therefore, we came back to you folks in 2019.  
6 And that condition we wanted to remove because we  
7 satisfied it.

8 However, I believe another -- OP wanted us  
9 to come back to the LUC with a revised master plan,  
10 but instead of just saying the revised master plan  
11 within another five years, we instead proposed to  
12 add language that we could come back to you folks  
13 with the draft EIS by that as well. So that's kind  
14 of, I guess, how that condition was formed.

15 As far as the accepting agency or  
16 authority, I don't think that, after conferring with  
17 counsel, that it is up to us as far as who is the  
18 accepting authority. I believe, if I understand  
19 correctly, that is something to be discussed and, I  
20 guess, agreed to between DPP and the State Land Use  
21 Commission. I don't believe we can make that call  
22 as the petitioner.

23 **CHAIR SCHEUER:** I believe your earlier  
24 testimony was that you were working on determining  
25 the proper accepting authority. I might be

1 misquoting you, however, per their --

2 **MS. SWARTMAN:** No. That would be our next  
3 step, once we've completed these proceedings for the  
4 Waiawa solar site 1.

5 **CHAIR SCHEUER:** Okay. I believe my last  
6 question for you, at least for now, is that  
7 typically in our proceedings, one of our standard  
8 terms of conditions are that the applicant is bound  
9 by the representations made before us. Are you able  
10 to bind Kamehameha Schools as to the representations  
11 you have made today?

12 **MS. SWARTMAN:** Yes.

13 **CHAIR SCHEUER:** Okay. Great.

14 Commissioner Wong, followed by, I believe,  
15 possibly Commissioner Giovanni.

16 **COMMISSIONER WONG:** Chair, do you want to  
17 give Commissioner Giovanni, since he didn't ask any  
18 questions, follow up, you know, just real fast.

19 **CHAIR SCHEUER:** Commissioner Giovanni?

20 **COMMISSIONER GIOVANNI:** I didn't have any  
21 questions at this point. Thank you.

22 **CHAIR SCHEUER:** Okay.

23 **COMMISSIONER WONG:** Just a follow-up. Can  
24 you go to Exhibit 46, please, the GANTT chart? And  
25 thank you again for giving us the GANTT chart. It

1 helps to -- I don't know. Can we -- If you can  
2 adjust it a little bit.

3 So on the top portion, you have the EIS  
4 process that will be done in 2022, approximately,  
5 through 2025, depending on all these issues that may  
6 arise; right? So I'm not --

7 But looking at the whole project itself --  
8 and by the way, this is Commissioner Chang's, but  
9 she really helped me think about. Looking at Phase  
10 E, that will be done in around -- approximately for  
11 a start of approximately in 2060, approximately. Do  
12 you -- tell me when you're ready.

13 You know, again, I'm worried about things  
14 can change, as you said, even with solar. So I'm  
15 wondering about the staleness of the EIS. You know,  
16 just because things change in our lifetime, you  
17 know, from rotary dial phones to push phones to  
18 iPhones, you know, and actually, I should say the  
19 party lines for me. Sorry. I'm showing my age.

20 But anyway, what I'm just saying is EIS  
21 can get stale. Things does change. You know, your  
22 whole master plan can change, you know, like that.  
23 So don't you think maybe you should look at maybe  
24 doing phased EIS with a phase development instead?  
25 Would that be a possibility?



1           **MS. SWARTMAN:** So we have not contemplated  
2 it to date, but I guess we could take a look at that  
3 as a consideration.

4           **COMMISSIONER WONG:** Yes. So just I'm  
5 worried just because of the Turtle Bay issue with  
6 the EIS and others, that eventually things does  
7 change. And, you know, let's say we find out, hey,  
8 you need more roadways because Koa Ridge is going to  
9 have all these projects, all these cars coming in  
10 from a TIAR, and you may need more roadways or  
11 something that you have to do in, you know, more  
12 TIAR or, you know, more infrastructure or, as chair  
13 said, you may have to do more wells for water. But  
14 he didn't say that, but I was thinking about that.

15           But, you know, those things may come up --  
16 or more sewer lines because -- so I was just  
17 thinking that you may want to think about that, that  
18 you may have to do a phase EIS that's phased with,  
19 let's say, first one is Phase A and B, second one  
20 is, you know, C and D. And I forgot what letters  
21 after that, but that's what I'm just saying. So  
22 thank you.

23           **MS. SWARTMAN:** Thank you.

24           **COMMISSIONER WONG:** Thank you, chair.

25           **CHAIR SCHEUER:** Thank you, Commissioner

1 Wong.

2 Commissioners?

3 Commissioner Chang?

4 Ms. Thoene, will you stop screensharing,  
5 please?

6 **COMMISSIONER CHANG:** Thank you. The chair  
7 raised some questions that I wanted to just follow  
8 up on. You know, with all due respect to  
9 Commissioner Wong -- I really love Commissioner  
10 Wong, but I do hope that you're not going to do a  
11 phased EIS.

12 I mean, I'm hoping that we would be able  
13 to do, like we have considered this, is within the  
14 conditions of any approval, you could come in for a  
15 DBA, that it contemplates that there will be -- that  
16 there will be updates.

17 But I think there should be full  
18 disclosure, as you say, on your entire development.  
19 I think the Kamehameha Schools are being -- to  
20 comment on them. But I think we all appreciate the  
21 concern about a stale EIS.

22 But let me just follow up. I think -- I  
23 read this morning's paper. I had a chance to take a  
24 look at it. Hawaii has the highest number of  
25 regulations. So I appreciate the sort of comment

1 that you had, your comment to the chair's questions  
2 about the regulatory challenges.

3 I'd like to ask you, based upon your own  
4 schedule or timing, by 2027, if all goes as  
5 Kamehameha Schools envisions and hopes, by 2027, all  
6 entitlements should be obtained.

7 What would be the constraint at that point  
8 in time to expedite the development of housing  
9 rather than spanning out over 40 years to build  
10 another 1,000 homes, that you were accelerating the  
11 development of homes? Because I would suspect there  
12 is going to be a next generation of young  
13 beneficiaries who need homes.

14 So what would be the constraint to keep  
15 this to 40 years for 11,000 homes?

16 **MS. SWARTMAN:** And, you know, I think I  
17 don't want to speculate on -- I don't know the  
18 answer to that question directly. But there are a  
19 number of things that could happen that could impact  
20 -- you know, everything from a natural disaster  
21 could occur or timely delivery of, you know, the  
22 rising cost of fuel and building materials to the  
23 extent where it's out of control and it will have a  
24 severe negative impact on not just the homebuilders,  
25 but the homeowners and the purchasers or the buyers

1 of those different communities.

2           Those are just a few. We can have a huge  
3 -- another economic downturn. We anticipate another  
4 economic cycle between now and then. However, based  
5 on the plans and the cost estimates that we've had,  
6 that's our timeline. That's our projected timeline.

7           As far as speculating what could happen  
8 between now and then to deliver, who knew COVID  
9 would hit and impact us in a way that was so  
10 drastically changing? No one could have predicted  
11 COVID and its impact on us.

12           **COMMISSIONER CHANG:** I totally appreciate  
13 that. I think many people got squandered two years  
14 during COVID, so a much better plan. So I think  
15 that there are opportunities notwithstanding  
16 extraordinary catastrophes.

17           But I'm going to share with you my concern  
18 is -- and I'm going to ask this to the Office of  
19 Planning -- how do we as the Land Use Commission  
20 evaluate competing state interests, competing state  
21 policies?

22           We have an affordable housing crisis. We  
23 are short 40,000 homes. We have sustainable ag. We  
24 are shipping in 95 percent of our goods. We have a  
25 renewable energy goal. All of these interests on a

1 limited amount of resources. And I think our time  
2 is accelerating, given climate change.

3 So it concerns me that this very ambitious  
4 project from 1987 to 2070 -- that is 83 years, 83  
5 years from the time that the DBA was approved to the  
6 time that 11,000 homes were built.

7 I understand that there are -- there were  
8 circumstances beyond Kamehameha Schools' control.  
9 But there were -- not all of those could have -- I  
10 think there were some that could have happened.

11 This was always your land. Gentry was --  
12 they were the developer, but it was always  
13 Kamehameha Schools' lands. So it does -- I am very  
14 troubled by the length of time, and I am --

15 Forty years to build 11,000 homes, all the  
16 entitlements that you made and assuming that the  
17 backbone infrastructure should be built, seems to be  
18 an extraordinary amount of time. I would hope that  
19 by the time that this goes out for public review and  
20 stakeholder review, that you are considering  
21 accelerating that schedule.

22 So that's probably more of a comment than  
23 a question, because I realize you can't answer that,  
24 but that is going to be a real concern for me  
25 because of the length of time and the plan beneath

1 that we have.

2 My second question is do you believe that  
3 Kamehameha Schools has a different kuleana,  
4 responsibility of other developers?

5 **MS. SWARTMAN:** Yes. I do.

6 **COMMISSIONER CHANG:** Could you explain to  
7 me what that difference consists of?

8 **MS. SWARTMAN:** I don't believe that the  
9 builders that we have today are a whole lot  
10 different in that they want to deliver communities  
11 to our island. There are a lot of good developers  
12 out there that have a lot of history in Hawaii and  
13 on Oahu, and they have done a great job so far in  
14 delivering communities that you and I both -- all of  
15 us live in today.

16 However, as a Hawaiian trust and Native  
17 Hawaiian education organization, I think we -- I  
18 don't think we are any better per se, but I do think  
19 that we have a much bigger impact in terms of all of  
20 the different values that I mentioned before as far  
21 as culture, education, energy, and agriculture.

22 I mean, Kamehameha Schools is charged with  
23 a lot of responsibility, and I appreciate your  
24 statement about the LUC navigating through competing  
25 interests, state interests. We, to, at Kamehameha

1 Schools go through that as well, and it's not an  
2 easy job. And we try the best that we can.

3 And at this point in the life of the  
4 Waiawa community under the direction of Kamehameha  
5 Schools since 2020, that's what we're trying to do,  
6 is just do the best that we can and do what needs to  
7 be done to set up our development partners who are  
8 going to actually build the communities for success.

9 **COMMISSIONER CHANG:** I appreciate that. I  
10 think there is a heightened expectation, in  
11 particular by the Hawaiian community, for  
12 Kamehameha. But it is the competing interest that  
13 you talked about when you were asked what is your  
14 kuleana. It is education. It's culture. It's all  
15 of these things, and the trust that you made to  
16 beneficiaries that continues in perpetuity.

17 So I understand the very difficult  
18 challenges that you face. But I do believe that you  
19 have the opportunity -- not only kuleana;  
20 opportunity -- to be different from other  
21 developers, to be more than just putting up a sign  
22 with a Hawaiian name.

23 So this is, I believe, a harder question.  
24 How do you ensure that these homes that you are  
25 proposing to build will be built to length and use

1 of your beneficiaries?

2 **MS. SWARTMAN:** That's a good question.

3 And my apologies, so.

4 **COMMISSIONER CHANG:** No. This is fine.

5 **MS. SWARTMAN:** Those two explain Waiawa.

6 You know, one of the things that we strive for or

7 aspire to, and one of our goals at Kamehameha

8 Schools, is to really -- it's about having a Native

9 Hawaiian identity.

10 And in so many ways that plays out in our

11 community, in our everyday life, from the moment we

12 wake up to how we wake up our children in Hawaii,

13 whether it's the way we say, you know, rise, rise,

14 ala, rise today, because right now I have to get up

15 and go to school, to how we address our kupuna and

16 our treatment of Hawaii's own --

17 **COMMISSIONER CHANG:** Are you okay?

18 **MS. SWARTMAN:** Yeah. It's like, you know,

19 but in Waiawa there's an opportunity, as you

20 mentioned, for the Native Hawaiian identity to

21 flourish.

22 And while we may not be doing the greatest

23 job of translating how we envision that happening, I

24 mean, there's different ways of honoring a sense of

25 place and doing the research and understanding the



1 historical context that all of our olelo that Jason  
2 and his team understand, that preserving all our  
3 cultural places that are important and, you know,  
4 kind of bringing that to life in a built urban  
5 development.

6           And you'll see that in places that we've  
7 done in Kamehameha Schools, like Kaka'ako, you know.  
8 Even when you get out of the car, you know what  
9 floor you are in Hawaiian. And that has some  
10 meaning to us, because everywhere you see in a  
11 community that has the olelo Hawaii is a way or a  
12 small measure of perpetuating our culture.

13           And even in our approach that we deliver  
14 our homes or even in the way we negotiate contracts  
15 or easements, in every aspect that we do business at  
16 Kamehameha Schools -- I'm not even a graduate, but I  
17 feel that deep, deep kuleana in all that we do. And  
18 so -- I'm sorry.

19           **COMMISSIONER CHANG:** Do not apologize.  
20 Don't apologize. And I greatly appreciate that. I  
21 appreciate your passion and that it is a personal  
22 kuleana that you've accepted. So don't ever  
23 apologize.

24           You know, I think Kamehameha Schools is in  
25 a very difficult position. You are viewed as the

1 synergy for all Hawaiians. They see you as a deep  
2 pocket, and you should be doing and -- but you also,  
3 you know, and I recognize that you have other  
4 responsibilities, you know, other considerations.  
5 Make sure that the trust continues.

6 But I look around, and it is very -- it's  
7 painful, because our local kids, they cannot stay.  
8 They are living in multi-generations. And so, I  
9 will -- frankly, I do have a higher expectation of  
10 Kamehameha Schools.

11 I expect Kamehameha Schools to find a way  
12 to prioritize our beneficiaries, not only for  
13 education, but to sustain us as a people. And that  
14 means housing. And that means finding ways that  
15 you're not just building so that people from around  
16 the world can buy some place in Kaka'ako. I mean,  
17 that's not kuleana.

18 In Waiawa, you have that opportunity. So  
19 I know you would take my heart there, but I -- we do  
20 look to Kamehameha to find a way. We have a housing  
21 problem, especially of our -- I will say young  
22 people. And that this master plan that's going to  
23 be designed the day --

24 When the chair asked you what's different  
25 about this, and I know you said you're still in the

1 planning stages, but I'd like to see from your  
2 community engagement that you are taking to heart  
3 those considerations that make us unique, that  
4 you're incorporating them.

5           And I didn't get a sense of that, but I  
6 know you're in the planning stage. That to me is  
7 community engagement when you're doing a master  
8 plan. What are you hearing? What are we listening?  
9 And how are you integrating that within your plan?

10           But so I apologize. I am just -- mine is  
11 just so much more -- less of a question and more of  
12 an appeal to you, that you do have -- this is me  
13 personally. I feel that you have an obligation to  
14 be different. So, you know, with that in  
15 consideration, accelerating these homes.

16           Forty years to build 11,000 homes, finding  
17 a way to make this so that it is -- so that our  
18 local people can stay here to live and that --  
19 defining a way to reconciling your own kapili just  
20 as we try to navigate our own. It's on a larger  
21 scale. But I understand the challenges that you  
22 have, and I greatly appreciate how serious, and I  
23 know how generally you would be.

24           So I'm sorry for just going on and on and  
25 on. I apologize. Thank you very much.

1           **CHAIR SCHEUER:** Thank you very much,  
2 commissioner.

3           Commissioners?

4           Commissioner Okuda?

5           **COMMISSIONER OKUDA:** Thank you, Mr. Chair.  
6           And I really do appreciate your testimony.  
7 If I can just slightly disagree with my dear friend  
8 Dawn Chang here.

9           **COMMISSIONER CHANG:** Of course.

10          **COMMISSIONER OKUDA:** Kamehameha Schools is  
11 a trust, which means the trust controls the duties  
12 of the trustees. And I think I know a little bit  
13 about Kamehameha Schools, because I teach -- to  
14 graduate students, I'm teaching this year higher  
15 education law. And one of the cases that I, you  
16 know, sent to our doctoral and master students was  
17 the John Doe case out of the Ninth Circuit Court.

18          As far as I can tell, there's nothing in  
19 the will of Princess Bernice Pauahi Bishop which  
20 charged the trustees with providing affordable  
21 housing to the community.

22          Now, that's a really good goal, and if the  
23 KSBE can work it into their plans, that's fine. But  
24 we should not forget the fact that it's a trust, and  
25 it's a charitable trust with specific duties and

1 obligations with identified beneficiaries.

2           And as much as maybe I might be criticized  
3 for saying this, yeah, you know, when development  
4 stretches out over time, it cuts against what many  
5 of us have a goal as providing additional supply of  
6 housing which, hopefully, might not drive down  
7 prices, but might moderate the increase in prices so  
8 that maybe our kids can stay in Hawaii and not have  
9 to feel like they move to the mainland.

10           But frankly speaking, if the trustees in  
11 their discretion -- not being bribed or anything  
12 like that -- in their discretion come to the  
13 conclusion that stretching out the development  
14 timetable maximizes the assets to provide education  
15 to the designated beneficiaries of the alii trust, I  
16 don't see that contrary to the law. And, in fact,  
17 if the trustees did anything other than that, they  
18 might themselves be breaching their fiduciary duties  
19 to the beneficiaries.

20           Now, if for some reason, the federal  
21 courts overturn the Ninth Circuit Court controlling  
22 case which upheld the admissions policy of the  
23 Kamehameha Schools, I might have a different view of  
24 that.

25           And by the way, my statements aren't based

1 on the fact that there's any racial or ethnic  
2 purpose or anything like that. You know, my  
3 statements aren't based on the fact that there might  
4 be a so-called constitutional suspect classification  
5 involved.

6 It's based on the fact that the record  
7 shows that there's at least a recent history of KSBE  
8 looking out for disadvantaged individuals,  
9 disadvantaged families and things like that.

10 So again, I don't disagree with what my  
11 dear friend Dawn Chang had to say, but I would just  
12 like to point out that the primary fiduciary  
13 obligations of the trustees, as far as I can tell,  
14 does not include providing affordable housing to the  
15 community.

16 That job rests with us at the Land Use  
17 Commission, with -- what's it -- 301-H housing  
18 projects, whatever else we can do.

19 And if the trustees can help out, that's  
20 fine, but that's not their obligation, and I don't  
21 look to them as being, you know, taking that on,  
22 where that's not stated as a part of the trust.

23 **CHAIR SCHEUER:** Commissioner?

24 **COMMISSIONER OKUDA:** Okay. Thank you, Mr.  
25 Chair.

1           **CHAIR SCHEUER:** Thank you, commissioner.

2           Commissioners, questions for the witness?

3 With the deepest of affection for my fellow  
4 commissioners, these aren't, according to public  
5 policy, considerations for Hawaii. But questions  
6 for the witness at this time?

7           Redirect, Ms. Lim?

8           **MS. LIM:** Thank you, chair.

9           Just a couple of quick questions,  
10 Michelle. I know it's been a long afternoon. So I  
11 just want to clear up a couple of things, because I  
12 think I might have heard a few different answers.

13           I understand that the master plan, as  
14 currently envisioned, contemplates a district  
15 boundary amendment for a portion of it. But it also  
16 contemplates a motion to amend; is that correct?

17           **MS. SWARTMAN:** That's correct.

18           **MS. LIM:** And I also heard you say that  
19 through the EIS process, it may -- you may come to  
20 the conclusion that the most appropriate land plan  
21 to actually pursue to entitlement would not involve  
22 400-some odd acres of reclassification.

23           **MS. SWARTMAN:** That is correct.

24           **MS. LIM:** It may include no acres for  
25 reclassification. It may include some number

1 between 0 and 476.

2 **MS. SWARTMAN:** Correct.

3 **MS. LIM:** So but no matter what, does  
4 Kamehameha Schools understand that it will need to  
5 come back to this commission with a motion to amend,  
6 to request whatever the significance differences are  
7 between your ultimate plan and what was approved as  
8 the Gentry plan?

9 **MS. SWARTMAN:** Yes. That is correct.  
10 Even if we decided not to go to the State Land Use  
11 Commission for a district boundary amendment, we  
12 would still have to go before the commission to  
13 motion to amend.

14 **MS. LIM:** And is it your understanding  
15 that at the point in time when this commission is  
16 considering that motion to amend and they have all  
17 of the information from the EIS plus all the witness  
18 testimony at that point, that the commission would  
19 have the ability to weigh in on timeframes for  
20 development of that master plan?

21 **MS. SWARTMAN:** I would imagine everything  
22 they would have a chance to speak or make comments  
23 to.

24 **MS. LIM:** Thanks, Michelle. And then my  
25 last question for you, and I just -- this is more I



1 don't want it to get lost. We were talking about  
2 Exhibit 40 of the stipulated proposed conditions of  
3 approval -- and I take that back; I have two  
4 questions.

5 First question is with respect to  
6 condition 1 on the revised master plan, is it your  
7 position that no matter who the ultimate EIS  
8 accepting authority is, that pursuant to this  
9 condition, Kamehameha Schools' representation and  
10 commitment is that a draft EIS or revised master  
11 plan, but hopefully a draft EIS, would be submitted  
12 no later than February 11, 2025?

13 **MS. SWARTMAN:** Yes. That is correct.

14 **MS. LIM:** So it doesn't matter who the  
15 accepting authority is. That's your representation.

16 **MS. SWARTMAN:** Yes.

17 **MS. LIM:** Thank you, Michelle. And now  
18 this is truly my last question. With respect to  
19 condition 9 in that stipulated proposed -- the  
20 conditions of approval, I just want to hear you  
21 affirm or deny that Kamehameha Schools has  
22 committed, pursuant to this condition, that the  
23 master plan Phase A infrastructure would be in place  
24 by the end of 2030.

25 **MS. SWARTMAN:** Yes. That is correct.

1           **MS. LIM:** And so this would be -- if the  
2 commission were to accept these conditions, this  
3 would now be a condition that would be imposed on  
4 this solar farm.

5           **MS. SWARTMAN:** Correct.

6           **MS. LIM:** Whereas, the existing condition  
7 is really only imposed on the other solar farm.

8           **MS. SWARTMAN:** The first one. Yes.

9           **MS. LIM:** Okay. Thank you. I don't have  
10 any further questions.

11           **CHAIR SCHEUER:** Thank you, Ms. Lim.

12           Thank you for your testimony.

13           It is 2:29. I want to confirm with  
14 Commissioner Giovanni. Are you good until -- for  
15 the next half hour, and then you're not available?

16           **COMMISSIONER GIOVANNI:** I'm good until the  
17 top of the hour. And then I have to go.

18           **CHAIR SCHEUER:** Okay. Yeah, 30 minutes.  
19 So with the forbearance of my fellow commissioners,  
20 we will plow through without a break.

21           Commissioner Ohigashi?

22           **COMMISSIONER OHIGASHI:** Thank you. Being  
23 old and infirm, you know, pushing the button. I was  
24 wondering. I would like to see if we could go into  
25 executive session to discuss the issue that remains

1 about substantial commencement and take it as our  
2 decision today. I believe that that kind of  
3 discussion should take place in executive session.  
4 If there isn't time today, then I would probably  
5 move that we move forward at the beginning of the  
6 next session.

7           **CHAIR SCHEUER:** Thank you, commissioner.  
8 We could do it one of two ways. We could do that  
9 now, knowing that we would go until 3 and no longer.  
10 Or what I would suggest we might do, not knowing how  
11 long we might need for that discussion, we move it  
12 to the next time we take up this agenda item, which  
13 I believe is going to be -- Mr. Orodener? -- on May  
14 25th. Which would also give our deputy attorney  
15 general additional time to prepare for that  
16 discussion. Is that acceptable, commissioner?

17           **COMMISSIONER OHIGASHI:** Fine with me.

18           **CHAIR SCHEUER:** Ms. Lim, are we done? Are  
19 we moving on to DPP?

20           **MS. LIM:** I'm done with witness  
21 examination. I have some closing remarks that I'll  
22 keep very brief, but I'm done with the witnesses.

23           **CHAIR SCHEUER:** Okay. So let's use if the  
24 next 29 minutes together to see how far we get  
25 through the Department of Planning and Permitting

1 and the Office of Planning and Sustainable  
2 Development.

3 **COMMISSIONER WONG:** Mr. Chair?

4 **CHAIR SCHEUER:** Commissioner Wong?

5 **COMMISSIONER WONG:** I know at the last  
6 meeting we requested that if any witnesses can come  
7 -- if Ms. Lim's witnesses can come back if we have  
8 any questions after the presentation. I just want  
9 to confirm that.

10 **CHAIR SCHEUER:** Ms. Lim?

11 **MS. LIM:** The witnesses who are present  
12 today, Ms. Swartman is here. Mr. Jeremiah has  
13 stayed, and Ms. Sato as well as Mr. Nick Molinari,  
14 so all of the witnesses. Are you referring to the  
15 ones that you've heard as live witness testimony or  
16 the consultants who we've had sitting in the waiting  
17 room in Zoom?

18 **COMMISSIONER WONG:** That was, I guess, the  
19 one we had in Zoom the last time we had a Zoom.

20 **CHAIR SCHEUER:** Ms. Sato, I believe.

21 **COMMISSIONER WONG:** Ms. Sato.

22 **MS. LIM:** Ms. Sato is here in the room,  
23 and she would be available for questions today.

24 **COMMISSIONER WONG:** I don't think it would  
25 be -- it may be after I hear from DPP and OPSD, if I

1 have any, yeah.

2 **CHAIR SCHEUER:** And what I understood the  
3 commissioner to ask is after we are done with  
4 hearing from DPP and OPSD, would the commissioners  
5 -- would you make your witnesses available to  
6 commissioners if we can?

7 **MS. LIM:** Of course.

8 **CHAIR SCHEUER:** Thank you.

9 Is that it, commissioner?

10 **COMMISSIONER WONG:** Yes, chair. Thank  
11 you.

12 **CHAIR SCHEUER:** Any further matters on our  
13 proceedings for the next half-hour, commissioners?

14 Seeing none, Department of Permitting for  
15 the City and County of Honolulu?

16 **MS. WEAVER:** Good afternoon. The  
17 Department of Planning and Permitting, DPP, would  
18 just like to clarify the letter that it sent in  
19 response to KS' 2021 motion.

20 All right. So in a February 3rd letter to  
21 the State Land Use Commission, DPP objected to the  
22 proposed modification of condition 10, because it  
23 believes that the petitioner did not want to provide  
24 a supplemental environmental impact statement, the  
25 EIS. And so, condition 10 in the stip says that the

1 petition area would be subject to Hawaii Revised  
2 Statutes Chapter 343.

3 And the DPP would also like the condition  
4 to state that it would be subject to HAR, which is  
5 Hawaii Annotated -- no, sorry, Hawaii Administrative  
6 Rules Chapter 11-200.1 as applicable, because  
7 especially in 200.1-30, it talks about the  
8 supplemental EIS. So we would just want to make  
9 sure that that's followed.

10 And then also for condition 11, if  
11 landscaping is involved, condition 11 talks about  
12 wildlife protection. We would like -- or DPP would  
13 like the petitioner to submit a landscape plan to  
14 DPP for review and approval.

15 **CHAIR SCHEUER:** It's a lengthy condition.  
16 Do you have a particular area that you wanted that  
17 included in?

18 **MS. WEAVER:** Yes. "8. If landscaping is  
19 installed as part of the solar farm project, non-  
20 invasive plant species and native plant species."  
21 So if that happens, then DPP would like the plan  
22 submitted to them.

23 **CHAIR SCHEUER:** Okay. You have  
24 (indiscernible) ready?

25 **MS. WEAVER:** We can provide that. That's

1 it.

2 **CHAIR SCHEUER:** Okay.

3 **MS. WEAVER:** Thank you.

4 **CHAIR SCHEUER:** Commissioners, questions  
5 for the Department of Planning and Permitting?

6 Commissioner Chang?

7 **COMMISSIONER CHANG:** Thank you.

8 Ms. Weaver, I just have one question.

9 Have you had an opportunity to review Kamehameha  
10 Schools' proposed master plan?

11 **MS. WEAVER:** Yes.

12 **COMMISSIONER CHANG:** Is it consistent with  
13 the county's general plan and community sustainable?

14 **MS. WEAVER:** It is.

15 **COMMISSIONER CHANG:** Thank you very much.

16 **CHAIR SCHEUER:** Further questions for Ms.  
17 Weaver?

18 Commissioner Wong?

19 **COMMISSIONER WONG:** You heard my question  
20 about the EIS. What is your opinion about, you  
21 know, their phasing and that length of EIS? What is  
22 DPP's thoughts on that? Do you think the EIS will  
23 be stale or would it be just enough to -- for that  
24 whole four phases to 2060? What is DPP's idea or  
25 knowledge of that?

1           **MS. WEAVER:** HAR requires a new  
2 environmental impact statement if the effect of the  
3 project is substantial. So as long as petitioner  
4 complies with that.

5           So at the moment, we haven't received  
6 anything, so we do not know.

7           **COMMISSIONER WONG:** Okay. Yeah, I just  
8 was wondering about that just because I understand  
9 HRS and HAR, but what is -- if there are any city  
10 ordinances, ROH, dealing with that, or DPP's rules  
11 on that, because of the Supreme Court decision on  
12 Turtle Bay?

13           **MS. WONG:** For the record, this is Dina  
14 Wong with Department of Planning and Permitting.  
15 I'm the chief planner with the Planning Division.  
16 There is no -- oh.

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

19           **MS. WONG:** Yes.

20           **CHAIR SCHEUER:** Thank you. Please  
21 continue, Dina.

22           **MS. WONG:** Yes. I am not aware of any  
23 city ordinance or administrative rules. We follow  
24 Chapter 343 and the related administrative rules on  
25 that.



1           **COMMISSIONER WONG:** So the second question  
2 I have on -- you know, I guess, because of Red Hill,  
3 and Board of Water Supply is under the purview of  
4 the city, what is the feeling of the city regarding  
5 this whole project and the water wells? Do you have  
6 any ideas or any knowledge of anything about that?

7           **MS. WONG:** This project is consistent with  
8 our Central Oahu sustainable communities plan. The  
9 petition area is all within the community growth  
10 boundary. And as Michelle pointed out, the plan  
11 does recognize the Waiawa master plan and the solar  
12 farms.

13           With respect to the long-term water supply  
14 for the island, it's hard to answer that, because  
15 there are so many unknowns on, you know, what the  
16 Board of Water Supply can do in terms of increasing  
17 supply of water, what conservation measures can do.  
18 It's hard to answer.

19           This area is not part of urban Honolulu,  
20 where the shortage of water is, but it could be  
21 affected if water is diverted from other regions,  
22 but I can't answer that.

23           **COMMISSIONER WONG:** Okay. That's all.  
24 Thank you.

25           Thank you, chair.

1           **CHAIR SCHEUER:** Thank you, Commissioner  
2 Wong.

3           Commissioners?

4           Commissioner Okuda?

5           **COMMISSIONER OKUDA:** Thank you, Mr. Chair.

6           A question for DPP. Even though it's not  
7 the kuleana or the duty of the trustees of KSBE to  
8 provide affordable housing or housing in general,  
9 does the DPP have any concern with the fact that if  
10 you look at the master plan and the schedule, a lot  
11 of this housing seems to be -- or going to be  
12 delayed to a point where many of us are not going to  
13 be alive when the last house is built? Is that a  
14 concern?

15           **MS. WONG:** Well, I think we all like to  
16 see housing built sooner rather than later, but I  
17 understand that these are really long-term projects,  
18 and if you looked at Koa Ridge and Hoopili and the  
19 length of time it took to get those started, it just  
20 seems to be the nature of these master plan  
21 developments.

22           You know, the city has other efforts  
23 underway to get more housing built. We're focusing  
24 growth more in the primary urban center, secondary  
25 city in Kapolei. So it's not all putting everything

1 in Waiawa or Hoopili or Koa Ridge, but throughout  
2 the island.

3 **COMMISSIONER OKUDA:** Because housing is  
4 such a concern, are there things that the DPP could  
5 do within the bounds of the law -- not asking for  
6 special treatment or anything like that, but are  
7 there things that DPP could do within the existing  
8 framework to assist developers such as KSBE to move  
9 forward with their development?

10 In other words, to cut the red tape, if  
11 there is red tape, or to find out where the tape is  
12 that nobody can figure out where the tape is.

13 **MS. WONG:** One thing that the department  
14 could do, and we are looking at, is expediting  
15 building permit processing. But that will be  
16 further down the line when they come in for actual  
17 permits.

18 **COMMISSIONER OKUDA:** Okay. Last question.  
19 The state at great expense once sent me --  
20 periodically sends me off to learn new things, and I  
21 actually try to pay attention. There was this one  
22 city in -- on the San Francisco Bay that actually  
23 designated somebody to be, like, the concierge to  
24 cut through the red tape.

25 Just so that we don't have an amorphous

1 question here, would the DPP commit itself today to  
2 have somebody work with KSBE to expedite, where  
3 possible, this development?

4 In other words, so there's a commitment on  
5 the record here that the DPP will have a designated  
6 person to work with KSBE and its planners who, I  
7 think we can make a finding, seem to have the  
8 community interest at heart, to try to move this  
9 development forward in an expeditious manner? Can  
10 we get that commitment from the DPP?

11 **MS. WONG:** I think we can give a  
12 commitment that, you know, everybody at the  
13 department, and if it comes -- it will touch many  
14 divisions within the department. When they come in  
15 for the zone change, it will be in the Planning  
16 Division. When it comes in for the building permit,  
17 it will go through Building Division.

18 **COMMISSIONER OKUDA:** Yeah, I don't mean to  
19 interrupt, because time's getting short, but so let  
20 me just ask a more pointed question.

21 Would it be okay if you state on the  
22 record that you would be the person that -- yeah,  
23 I'll ask about this -- that you would be the person  
24 that KSBE can call if there seems to be a problem,  
25 just so that we don't have unnecessary bureaucracy

1 get in the way of a project?

2 This is not to say you have to approve it,  
3 but at least there's a live body with a telephone  
4 number and an address where, you know, contact can  
5 be made. Would that be okay?

6 **MS. WONG:** There will always be a person  
7 that they can contact, a live body, but I wouldn't  
8 be able to commit to say who that would be.

9 **COMMISSIONER OKUDA:** Wouldn't be able to  
10 commit? Okay. Well, let me just urge that, you  
11 know, that we -- when everybody's responsible, like  
12 I tell our staff at our office, nobody's  
13 responsible, so just consider that to try to move  
14 things forward.

15 Thank you very much, Mr. Chair.

16 **CHAIR SCHEUER:** Thank you very much for  
17 that valiant yet unsuccessful attempt.

18 Further questions for DPP?

19 **CHAIR SCHEUER:** So I just want to know.  
20 Are you taking a position or not taking a position  
21 as to the length of time over which the housing  
22 production is stretched out as proposed in their  
23 master plan?

24 **MS. WONG:** No. We don't take a position  
25 on that.

1           **CHAIR SCHEUER:** But the city does sort of  
2 generally take a position that you want more housing  
3 production?

4           **MS. WONG:** Yes.

5           **CHAIR SCHEUER:** But just not necessarily  
6 here on this project.

7           **MS. WONG:** I think once -- it's sort of  
8 out of our control. I mean, we do the processing of  
9 the permits and the approvals, but whether it comes  
10 down to their financing or conditions that we don't  
11 have any control over, it might just be the nature  
12 of these long-term, larger master plan  
13 developments.

14           **CHAIR SCHEUER:** I will forego the  
15 dissection of why some other master plan  
16 developments took longer, but thank you for your  
17 comment.

18           Anything further, commissioners?

19           OPSD? You have 15 minutes. How far do  
20 you want to go? And we actually want to reserve a  
21 couple of minutes at the end for procedural matters.

22           **MR. YEE:** We have an argument to make, and  
23 we can make it that length of time to finish that on  
24 time.

25           **CHAIR SCHEUER:** Okay.

1           **MR. YEE:** The Office of Planning has no  
2 objections to this motion to amend in order to allow  
3 a solar farm to be developed. The impact reviews we  
4 think were well done. The requested accommodations  
5 for more time is reasonable for a solar project that  
6 has already been approved by this commission under  
7 somewhat different circumstances. And we also think  
8 the impacts from this solar farm were adequately  
9 addressed.

10           So in the particular motion before you,  
11 the Office of Planning has no objection that that  
12 motion be granted.

13           I do have -- I want to address probably A  
14 larger question of what's going to happen with the  
15 housing development. Before I go there, though, I  
16 do want to address some particular questions that I  
17 think the commissioners had asked or indicated they  
18 were going to ask me. So let me just assume they're  
19 going to ask me this and try to address it now.

20           The first was how do we evaluate  
21 conflicting or competing state interests? This is a  
22 particularly difficult question, because there are  
23 really two different issues that are going on,  
24 because no one single piece of property can satisfy  
25 all of the different conflicting needs of the state

1 to both sustain and develop.

2           The problem is you need to look at a  
3 particular piece of property in a larger context,  
4 but you are doing so in a contested case hearing  
5 that looks at the facts of one particular piece of  
6 property.

7           There is a much, much longer discussion on  
8 this, but let me give you the 30-second reply, which  
9 is the City & County of Honolulu has done a larger  
10 review of the various uses of all of its lands in  
11 the county, and they have determined the various  
12 uses that would best be able to meet those balancing  
13 and -- that would best balance those conflicting  
14 purposes.

15           What area should be reserved for  
16 agriculture? How do you keep the country country?  
17 What areas should be preserved and what areas should  
18 be developed? Because development is important.  
19 You can't keep the country country if you don't have  
20 a strong urban core. You need a place for that  
21 demand to go. And that is done at the county level  
22 through their sustainable communities plan.

23           And this particular project, including the  
24 solar, is part of the community -- part of the  
25 sustainable community development plan for this



1 area.

2 That still means you need to look at the  
3 particular facts of any particular request and the  
4 timing, because the sustainable community plan does  
5 not mean every single piece of property that's  
6 designated for urban use should be developed all at  
7 once.

8 So you do still need to do a case-by-case  
9 analysis of the particular request before you as to  
10 whether that particular urban use in that  
11 particular way would be appropriate and should be  
12 granted.

13 So there's a much longer discussion, but  
14 that's sort of my best 30-second reply.

15 You also asked how do we evaluate  
16 motions. Do we look at matters differently if  
17 petitioner is a charitable organization or does good  
18 for the world?

19 In its basic element, the answer is no.  
20 Every petition is evaluated on its merits, not who  
21 brings it, with some exceptions with respect to if  
22 you have to evaluate petitioner themselves -- for  
23 example, financial capacity.

24 You do, however, evaluate different uses.  
25 So one use is for luxury condos, and another use is

1 for single and multi-family housing. You might look  
2 at those uses -- or you would look at those uses  
3 differently, because they fulfill different uses in  
4 the community.

5           You also asked about I think what you  
6 referred to as a phasing, EIS phasing. And I think  
7 maybe I would reframe that to ask how do you account  
8 for the need for supplemental EIS as time moves on?  
9 And that's an interesting question in this project  
10 because of the length. And I think it does need to  
11 get addressed.

12           The Office of Planning, I think, believes  
13 that needs to be addressed in the motion to amend  
14 the conditions and the potential district boundary  
15 amendment that will come before you. That and many,  
16 many, many, frankly, other questions.

17           When you asked about do you have concerns  
18 about the length of time, this plays into the exact  
19 same question, which is we do have -- it does make  
20 things very complicated when you come to the Land  
21 Use Commission on a particular case-by-case analysis  
22 for something that's going to take so long to  
23 develop, because our ability to predict the needs of  
24 the state, or the ability to predict what the  
25 conditions will be over that length of time is very,

1 very difficult. Which doesn't mean we will say no,  
2 but it means the analysis does become more difficult  
3 to do and, frankly, a little more tricky.

4 It may need to account for the need for  
5 updated studies. It may be we approve it as a --  
6 not phase, interim --

7 **MS. LIM:** Incremental.

8 **MR. YEE:** Incremental. Incremental  
9 redistricting. And I'm not saying we will -- I'm  
10 not saying this is what we should do here. What I'm  
11 saying is these are some of the difficult questions  
12 we're going to have to face when this comes back to  
13 the commission.

14 I've actually made a list of several other  
15 issues that will have to be addressed, so I'm just  
16 going to take the opportunity to let everyone know  
17 at Kamehameha that these things are going to have to  
18 be addressed when you come back, particularly the  
19 water permits, the adequate traffic analysis, issues  
20 involving substantial commencement, issues involving  
21 compliance with your representations, future solar  
22 uses, the absorption rate of housing, and, frankly,  
23 many other things.

24 So these are relevant questions. They are  
25 vital to the larger project. But for the Office of

1 Planning, we believe these are issues that should be  
2 addressed -- not today -- which we think should be  
3 approved, because it's just for the solar part, but  
4 in that larger question.

5 Let me, as quickly as I can, because I  
6 know I'm running out of time, try to address the  
7 questions that have been raised regarding the  
8 dilemma that occurs involving housing and what is  
9 the extent of the Land Use Commission's power to  
10 require development. This came up, as you may  
11 recall, many months ago involving an affordable  
12 housing project.

13 How do you force a developer to develop,  
14 rather than allow the developer to revert back? And  
15 it's tricky. It's hard. There are limits to the  
16 Land Use Commission's power. There just are. And  
17 if a private landowner doesn't want to spend the  
18 money to develop a project, what other choice do you  
19 have other than revert the property back to  
20 agriculture?

21 I want to let -- and so when we look at  
22 this particular case, what we have to remember is  
23 this was approved in 1988. If you look back at that  
24 decision, there was no condition for compliance with  
25 their representations. None whatsoever.

1           There was no condition for substantial  
2 commencement of backbone infrastructure or  
3 substantial commencement of the project within any  
4 period of time. None. That's simply what the LUC  
5 decided in 1988.

6           Subsequent to that, they came back in  
7 2014. Actually, let me take a moment just -- and  
8 what's important about that is if you look --  
9 because this will come up in your discussions with  
10 your attorney -- is if you look at HAR Section 205-  
11 4, one of the first thing it says the Land Use  
12 Commission may -- not a condition -- require  
13 substantial commencement of the property. And if  
14 they do not, then you may revert.

15           And the question is what happens if you  
16 don't have a condition, if they -- whether they  
17 substantially commence or not? You know, so whether  
18 or not this does or doesn't constitute substantial  
19 commencement, the more important question might be  
20 what can you do even if they do substantially  
21 commence, when there is no condition to do so?

22           Subsequent to that, although this will --  
23 as I indicated, will be an issue we will need to  
24 address when they come back. The subsequent issues  
25 have come in. In 2014, they came for an amendment,

1 as you know. And there was a fight back then. I'm  
2 not sure if everyone remembers here, but there was a  
3 fight over the requirement to submit a revised  
4 master plan and their development for that.

5 It was something OP held very firm about,  
6 that, you know, without it, OP was not going to  
7 support solar, a solar permit, which in and of  
8 itself was something that was good to do.

9 We did require that they substantially  
10 comply with the representations of the development  
11 and operation of the solar farm, because at the time  
12 that's all we could get, you remember, because it's  
13 only with relation to the solar farm. But we  
14 thought for that, at least, we could link it there.

15 As you may recall, conditions have to be  
16 both roughly proportional to the impact as well as  
17 connected to the impacts of a project in order to be  
18 constitutional and not constitute a taking. So we  
19 got that from that.

20 Subsequently, they did submit a revised  
21 master plan, but it's just submittal of a revised  
22 master plan. It's not a house. It's just a piece  
23 of paper. An important piece of paper, and a piece  
24 of paper that involves consultation with many  
25 people. That's an important thing to do, but it's

1 still a piece of paper, not a house.

2           And then in 2020, they came in again,  
3 because stuff again happened. And at that point,  
4 what was -- one of the important parts of that, and  
5 there was a big fight, you may remember, or a big  
6 discussion about the backbone infrastructure  
7 requirement. And you specifically required, and  
8 they agreed -- at least they didn't appeal -- the  
9 requirement to complete construction of the backbone  
10 infrastructure for Phase A by 12/31/30.

11           And that was important, because we knew  
12 that they were going to have to come back to the  
13 Land Use Commission at some point, because based  
14 upon the uses in 1988, we knew it was not going to  
15 be the same as it was going to be in certainly 2030.

16           So much of what we have looked at in this  
17 particular motion has been what can we do to require  
18 them to come back to the Land Use Commission as soon  
19 as possible? Because that's what's going to have to  
20 happen in order for those houses to be built.

21           So we knew they had a sort of a general  
22 idea. They were looking at a district boundary  
23 amendment for a certain piece of property on the  
24 southern or the makai section, because that was  
25 important to -- let me try to finish this and then

1 summarize.

2 That was important, because that was their  
3 connection to other infrastructure and the houses.  
4 We thought they were going to have come back to you  
5 for something, and the question was how do we force  
6 them to come back.

7 And so, condition 1 was part of that.  
8 That is, the environmental impact statement was not  
9 put in there as a replacement because we thought  
10 that was a way to connect with the public. It was a  
11 way to make sure they came back to the Land Use  
12 Commission, because in order to do a draft EIS, you  
13 have to hire consultants, and you have to pay a lot  
14 of money, which you will never get any money back  
15 from until you proceed with development and the  
16 sale.

17 So the reason we wanted -- and because in  
18 order to do an EIS, you have to know what you're  
19 planning. So it might not have maybe the same  
20 consultation process with the public, but it gets  
21 them back to the LUC. It puts a deadline by which  
22 it will encourage them to come to the LUC, because  
23 the EIS is such an important and expensive element  
24 which would have to be completed for that process.  
25 So it put a time deadline on that important



1 provision.

2 I know I'm running out of time, so let me  
3 just conclude by saying this particular matter  
4 before you, we think, is not a difficult question,  
5 because it's involving solar.

6 The second issue before you is going to be  
7 much more complicated. All we're asking is you not  
8 conflate those two things. Approve this, and then  
9 let's move on to the next step as soon as possible.  
10 Thank you.

11 **CHAIR SCHEUER:** Thank you, Mr. Yee. We  
12 will reserve our opportunity to ask you questions at  
13 our next meeting on this matter.

14 It is 2:58 p.m. I thank everybody for your  
15 forbearance as we went through our first hybrid  
16 meeting.

17 Ms. Lim?

18 **MS. LIM:** Chair, commissioners, in light  
19 of the request to your AG to provide some kind of  
20 analysis on substantial commencement, petitioner  
21 Kamehameha Schools would ask for the opportunity to  
22 provide a simple brief to be filed to provide our  
23 analysis for the substantial commencement issue if,  
24 in fact, that's still an issue.

25 **CHAIR SCHEUER:** We certainly wouldn't

1 object to any briefs that you want to file with us  
2 on that matter.

3 **MS. LIM:** Thank you very much.

4 **CHAIR SCHEUER:** Same goes for DPP and OP,  
5 if you chose to.

6 Thanks for everybody's forbearance in the  
7 virtual and physical worlds. For this, what I  
8 wanted to make sure to make space for is that,  
9 including a very long and successful career as the  
10 administrator of the State Land Use Division of the  
11 Office of Planning and Sustainable Development,  
12 Rodney Funakoshi is no longer going to grace us with  
13 his presence. This is his last meeting before his  
14 incredibly well-deserved retirement.

15 And I will say as somebody who -- it would  
16 be no secret -- while I've not always agreed with  
17 Mr. Funakoshi on every stance he has taken before  
18 the commission, I have no question about his  
19 commitment to do what he believes is right for the  
20 state, and I know everybody would join me in  
21 thanking Rodney for his service to us, and wish him  
22 the best.

23 At this point, do you want to say  
24 something?

25 **MR. FUNAKOSHI:** Yeah. I appreciate your

1 statement.

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

4           With that, I believe there's no further  
5 business to attend to, and our meeting is adjourned.  
6 Mahalo.

7           **(Meeting adjourned at 3:00 p.m.)**

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1 CERTIFICATE

2  
3 I, Davilyn Payne, do hereby certify that the  
4 proceeding named herein was professionally transcribed on  
5 the date set forth in the certificate herein; that I  
6 transcribed all testimony adduced and other oral  
7 proceedings had in the foregoing matter; and that the  
8 foregoing transcript pages constitute a full, true, and  
9 correct record of such testimony adduced and oral  
10 proceeding had and of the whole thereof.

11  
12 IN WITNESS HEREOF, I have hereunto set my hand this  
13 3rd day of May, 2022.

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20 Davilyn Payne  
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