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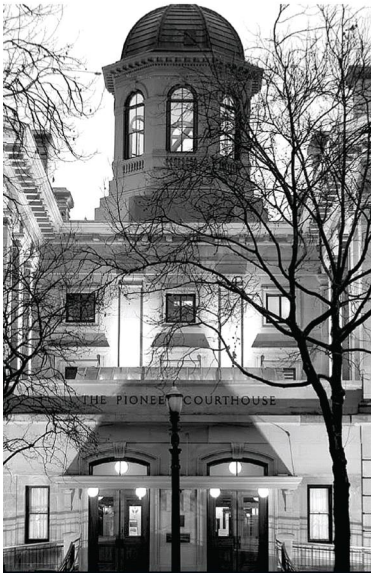
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STATE OF HAWAII

LAND USE COMMISSION

Meeting held on May 25, 2022

Commencing at 9:00 a.m.

Held at

Airport Conference Center

Hawaiian Airlines Terminal Building

400 Rodgers Blvd., IIT Suite 700, Room 1

Honolulu, HI 96819

I. CALL TO ORDER

II. ADOPTION OF MINUTES

May 19, 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. DISCUSSION AND ACTION ON ELECTION OF LUC OFFICERS

VI. EXECUTIVE SESSION

Pursuant to HRS Section 92-5(a)(2) to consult with the Commissioners' Attorney regarding LUC personnel matters where considerations of matters affecting privacy will be involved.

VI. ADJOURNMENT

BEFORE:

1 **APPEARANCES :**

2

3 **COMMISSIONERS PRESENT :**

4 Jonathan Scheuer, Chair (Via Zoom)

5 Dan Giovanni, Vice-Chair

6 Nancy Cabral

7 Gary Okuda

8 Dawn Chang

9 Kuike Kamakea-Ohelo

10 Lee Ohigashi

11 Arnold Wong

12

13 **COMMISSIONERS EXCUSED :**

14 Edmund Aczon

15

16 **STAFF PRESENT :**

17 Daniel Orodener, Executive Officer (Via Zoom)

18 Scott Derrickson, Chief Planner

19 Riley Hakoda, Staff Planner

20 Martina Segura, Staff Planner

21 Natasha Quinones, Chief Clerk

22 Dan Morris, Esq. Deputy Attorney General (Via Zoom)

23

24

25

1 **APPEARANCES (CONTINUED)**

2

3 **PETITIONER:**

4 Jennifer Lim, Esq., Counsel for KS Waiawa

5 Onaona Thoene, Esq. Counsel for KS Waiawa

6 Derrick Simon, Esq. Counsel for KS Waiawa

7 Nick Molinari, Kamehameha Schools

8

9 **CITY AND COUNTY OF HONOLULU**

10 Duane Pan, Esq., DPP Corporation Counsel

11

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

13 Bryan Yee, Esq., Deputy Attorney General

14 Lorene Maki, Planner

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1 **CHAIRMAN SCHEUER:** Aloha mai kakou and
2 good morning. This is the May 25th, 2022 Land Use
3 Commission meeting. It is a hybrid meeting which is
4 being held at the Honolulu Airport Conference Center
5 where it is open to the public and also by
6 interactive technology which lets the conference
7 participants and other interested individuals of the
8 public via the Zoom webinar platform in order to
9 comply with state law.

10 Members of the public are able to attend
11 in person or view the meeting via the Zoom webinar
12 platform. For all meeting participants, and this
13 works for both virtual and in person, I'd like to
14 stress for you the importance of speaking slowly,
15 clearly, and directly into the microphone. It is
16 helpful, because we do the transcripts for this
17 hearing from the Zoom recording, if you identify
18 yourself prior to speaking.

19 Please be also aware that if you are
20 participating in this meeting via Zoom, all meeting
21 participants are being recorded, and your continued
22 participation is your implied consent to be part of
23 the public record of this event.

24 This technology, as we know, allows the
25 parties and individual participating commissioners

1 individual remote access to the meeting via our own
 2 digital devices. Due to matters outside of our
 3 individual control, occasional disruptions to
 4 connectivity may occur from time to time. If this
 5 happens, please be patient and let us know as we try
 6 to restore audio-visual signals.

7 I would much prefer to be physically in
 8 person with all of you today, but I am recovering
 9 from Covid. I got caught in this current wave. And
 10 while I am now out of isolation, it's the last day
 11 in which I would have to wear a mask all the time
 12 while indoors, which would make chairing the meeting
 13 more difficult.

14 We will take breaks from time to time
 15 approximately ten minutes every hour. My name is --
 16 sorry, I'm just going to check. Is my audio not
 17 coming through well?

18 **MS. THOENE:** It's soft.

19 **COMMISSIONER GIOVANNI:** No, it's coming
 20 through okay.

21 **(Simultaneous speaking.)**

22 **CHAIRMAN SCHEUER:** Okay. Is there a way
 23 to increase the volume at the airport?

24 **COMMISSIONER CABRAL:** Jonathan might be
 25 louder on his phone. You know, have the Zoom for

1 his picture and -- I did that on one of my meetings,
2 and the phones come through and we can pick up the
3 phone.

4 **CHAIRMAN SCHEUER:** Okay. How's the audio
5 now?

6 **COMMISSIONER GIOVANNI:** Better.

7 **CHAIRMAN SCHEUER:** Okay. I'll do my best
8 to project. Thank you for that.

9 So my name is Jonathan Likeke Scheuer. I
10 currently have the honor and pleasure of serving as
11 the Land Use Commission Chair. We have nine seated
12 commissioners.

13 Commissioner Nancy Cabral, Dawn Chang,
14 Commissioner Kamakea-Ohelo, Commissioner Giovanni,
15 Commissioner Ohigashi, Commissioner Okuda, and
16 Commissioner Wong are all at the Airport Conference
17 Center along with our staff, Scott Derrickson, who's
18 our Chief Planner; our Staff Planner, Riley Hakoda;
19 our Staff Planner, Martina Segura; and our Chief
20 Clerk Natasha Quinones.

21 Also participating remotely, along with
22 me, from the island of Oahu, are our Executive
23 Officer, Daniel Orodener, and our Deputy AD du
24 jour, Dan Morris. As I said earlier, court
25 reportings are being done from this Zoom recording

1 -- court transcriptions.

2 Commissioner Aczon is excused from today's
3 meeting.

4 With all that said, our first order of
5 business is the adoption of the May 19th, 2022
6 minutes. Ms. Quinones, the minutes for the last
7 meeting are not ready, is that correct?

8 **MS. QUINONES:** Good morning, Chair. That
9 is correct, the minutes are not ready for this --
10 for May 19th.

11 **CHAIRMAN SCHEUER:** Okay. Then we'll move
12 on to our next agenda item. Our tentative meeting
13 schedule.

14 Mr. Orodénker.

15 **MR. ORODENKER:** Thank you, Mr. Chair. On
16 June 23rd, we will be on -- if necessary, taking up
17 a continuation of this matter and an adoption of
18 order is necessary.

19 On July 27th and 28th, we will be having
20 an orientation for new commissioners. This is not
21 going to be -- take up any -- all petitions. This
22 is just an effort to educate the new commissioners
23 on Land Use Commission procedures and policy.

24 August 25th is our next confirmed date to
25 take up the City and County of Honolulu Storm Water

1 issue. And then that leaves us open until HCPO.
 2 However, we would once again caution the
 3 commissioners know that there are a couple of
 4 special use permits and 201-H projects that are
 5 presently in works at the county, and they could be
 6 submitted at any time. So we would caution the
 7 commissioners not to release those dates until such
 8 time as we get confirmation on those. Thank you.

9 **CHAIRMAN SCHEUER:** Thank you, Dan.

10 Commissioners, are there any questions for
 11 Mr. Orodener regarding our schedule? Seeing none.

12 Our next agenda item -- our main agenda
 13 item is a continued action for Docket Number A87-
 14 610, Kamehameha Schools Waiawa, Oahu, to consider
 15 the petitioner's motion for modification, time
 16 extension and release and modification of the
 17 conditions of an order granting a motion for an
 18 order amending the findings of fact, conclusions of
 19 law and decision and order issued by the commission
 20 on February 11, 2020, to allow for modification of
 21 the phase 1 and phase 2 of the solar farm and to
 22 modify and release various conditions under the
 23 commission's 2014 and 2020 decisions and orders
 24 concerning requirements of the submission of a
 25 master plan, archaeological sites and plans, burial

1 plans, historic resources, aircraft hazards,
2 traffic, development plans and schedules, and
3 decommissioning of the solar farm phases.

4 Will the parties please identify
5 yourselves for the record, starting with the
6 petitioner?

7 **MS. LIM:** Good morning, Chair and Members
8 of the Commission. This is Jennifer Lim
9 representing petitioner, Kamehameha Schools.

10 **MS. THOENE:** Good morning, Chair, Members
11 of the Commission. Onaona Thoene on behalf of
12 petitioner, Kamehameha Schools. With me today is
13 Derrick Simon. Thank you.

14 **CHAIRMAN SCHEUER:** County?

15 **MR. PANG:** Good morning, Mr. Chair,
16 Members of the Commission. Duane Pang, Deputy
17 Corporation Counsel on behalf of Department of
18 Planning and Permitting.

19 **CHAIRMAN SCHEUER:** OPSD?

20 **MR. YEE:** Good morning. Deputy Attorney
21 General, Bryan Yee representing the Office of
22 Planning and Sustainable Development. With me is
23 Lorene Maki from OPSD.

24 **CHAIRMAN SCHEUER:** Thank you very much.
25 Now let me update the record. On April

1 12th, 2022 --

2 **COMMISSIONER KAMAKEA-OHELO:** Chair?

3 **CHAIRMAN SCHEUER:** Yes.

4 **COMMISSIONER KAMAKEA-OHELO:** This is

5 Commissioner Kamakea-Ohelo. In all transparency, I

6 have something to disclose at this moment.

7 **CHAIRMAN SCHEUER:** Okay. I will -- I have

8 space for disclosures later, but I'm more than happy

9 to do them right now, if you wish. Commissioner?

10 **COMMISSIONER KAMAKEA-OHELO:** Yes, Chair.

11 As early as two weeks ago, I met with the Director

12 of Community, Aina Resiliency, as well as the

13 Director of Sustainable Industries for Kamehameha

14 Schools, with the interest of leasing the 1,800

15 acres for agricultural purposes just (indiscernible)

16 of the parcel that is in discussion today. That is

17 all.

18 **CHAIRMAN SCHEUER:** Thank you for your

19 disclosure, Commissioner. You were participating in

20 this as seeking personally to lease this parcel?

21 **COMMISSIONER KAMAKEA-OHELO:** Correct.

22 Yes, for farming.

23 **CHAIRMAN SCHEUER:** Okay.

24 **COMMISSIONER KAMAKEA-OHELO:** I just don't

25 -- at this moment, I just wanted to make it clear

1 that I met with Kamehameha Schools with the interest
2 of farming in the Waiawa ahupua'a.

3 **CHAIRMAN SCHEUER:** Thank you very much,
4 Commissioner.

5 So the normal standard that we have in the
6 last Friday clarifications from Mr. Morris and Mr.
7 Orodenker is that one should not participate in a
8 docket where there is a potential of them -- an
9 individual commissioner having a personal financial
10 benefit from.

11 This normally -- if that's the case, the
12 commissioner recuses from the matter entirely if
13 there's not -- or the commission does not believe
14 that there's a personal financial benefit to him or
15 his immediate family member, then that individual
16 would declare that they believe that there's no
17 direct financial benefit, that they believe they can
18 be fair and impartial in this matter, and then I
19 would ask the parties to see whether or not there is
20 an objection to the commissioner's continued
21 participation.

22 So let me first check with Mr. Morris and
23 Mr. Orodenker. Have I stated our rules of
24 participation correctly? Mr. Morris and then Mr.
25 Orodenker?

1 **MR. ORODENKER:** Yes, that's correct, Mr.
2 Chair.

3 **MR. MORRIS:** Yes, Chair Scheuer.
4 Although, I will point out that the decision whether
5 to recuse is on his -- from his individual
6 perspective as opposed to my representation of the
7 LUC as a body.

8 **CHAIRMAN SCHEUER:** Yes. Thank you very
9 much for that.

10 So having said that, is the nature of the
11 relationship that you're disclosing, Commissioner,
12 one in which you would personally financially -- you
13 or your family would -- immediate family would
14 personally financially benefit from the decision
15 that we are to make today?

16 **COMMISSIONER KAMAKEA-OHELO:** Chair, very
17 clearly, the answer is no.

18 **CHAIRMAN SCHEUER:** Okay. With that said,
19 do you feel that you can remain fair and impartial
20 in participation in these proceedings today?

21 **COMMISSIONER KAMAKEA-OHELO:** Yes.

22 **CHAIRMAN SCHEUER:** Okay. I will now offer
23 the opportunity for any of the parties to object to
24 your continued participation. If they do, then we
25 will take that into deliberation.

1 Starting with the petitioner.

2 **MS. LIM:** Thank you, Chair. Thank you,
3 Commissioner. May I just ask a question for
4 clarification?

5 **CHAIRMAN SCHEUER:** Please.

6 **MS. LIM:** When you indicated a discussion
7 about leasing, this is news to me, but I just want
8 clarification. The 1,800 acres, that's not within
9 the urban district land that's before the commission
10 today, is that correct?

11 **COMMISSIONER KAMAKEA-OHELO:** Yes, that's
12 correct.

13 **MS. LIM:** Okay. Then after conferring
14 with my client as well via text, we don't have any
15 objection whatsoever to his participation. Thank
16 you.

17 **CHAIRMAN SCHEUER:** City and County of
18 Honolulu, DPP?

19 **MR. PANG:** Thank you. Duane Pang. Based
20 on the last response by the commissioner, we have no
21 objections.

22 **CHAIRMAN SCHEUER:** Okay. Thank you.

23 OPSD, Mr. Yee?

24 **MR. YEE:** OPSD would have no objections,
25 although we think it may be prudent to also

1 represent that any decision reached in the case
2 today or even in this matter, you do not reasonably
3 believe will affect your negotiations as to your
4 ability to receive a lease for the 1,800 acres?

5 **CHAIRMAN SCHEUER:** Commissioner, did you
6 understand the assurance that Mr. Yee was seeking
7 you to make?

8 **COMMISSIONER KAMAKEA-OHELO:** Yes.

9 **CHAIRMAN SCHEUER:** And do you make it?

10 **COMMISSIONER KAMAKEA-OHELO:** The short
11 answer is yes.

12 **CHAIRMAN SCHEUER:** Okay. Anything
13 further, Mr. Yee?

14 **MR. YEE:** Nothing further. Thank you.

15 **CHAIRMAN SCHEUER:** Okay. Thank you very
16 much. Thank you for that disclosure.

17 Are there any -- just to jump to that
18 portion of these proceedings, do the commissioners
19 have any further disclosures to make at this time?
20 Okay.

21 Going back. On April 12th, to update the
22 record, DPP filed its notice of appearance of
23 counsel for Brianna Weaver. On May 2nd, petitioner
24 filed supplemental memorandum in support of its
25 December 10th, 2021 motion, its third list of

1 exhibits, and declaration of Derrick Simon, a
 2 certificate of service, and Exhibits 48 through 57.

3 On May 16th, the LUC mailed an email of
 4 the agenda for the May 25th, 2022 meeting to the
 5 parties and the statewide and county mailing lists.
 6 On May 17th, the county filed its proposed revisions
 7 to conditions 10 and 11. And On May 24th,
 8 petitioner filed a second stipulated proposed
 9 conditions of approval.

10 Having now updated the record, let me go
 11 over the procedures for today. We've already dealt
 12 with disclosures. I will then recognize any written
 13 testimony that has been submitted in this matter
 14 identifying the individual organization.

15 We have concluded oral testimony on this
 16 matter from the general public, so following noting
 17 any written testimony, where we left off was that on
 18 April 14th, OPSD had both presented some of its oral
 19 argument and then also asked for the opportunity to
 20 brief the commissioners on issues raised during the
 21 questioning of the parties.

22 So I will begin our proceedings today with
 23 OPSD continuing its presentation, followed by
 24 parties and commissioner's comments and questions
 25 for the OPSD.

1 Following OPSD's presentation and
2 questions thereon, the commission will consider any
3 new exhibits that any of the parties are wishing to
4 offer into evidence. Following that, the petitioner
5 will be given the opportunity to provide any
6 rebuttal or closing arguments, with questions from
7 the parties.

8 And then finally, after all parties have
9 presented closing arguments, the commission will
10 conduct formal deliberations and, hopefully, issue a
11 decision on the motion.

12 As I noted before, from time to time,
13 approximately ten minutes every hour, we will take a
14 break as well as a longer break for lunch.

15 Are there any questions with our
16 procedures for today, starting with Ms. Lim?

17 **MS. LIM:** Chair, no questions. But just
18 to remind the commissioners, pursuant to a request
19 from last hearing, we do have Ms. Sato and certain
20 other witnesses available if there are questions
21 from the commissioners directed to them. Thanks.

22 **CHAIRMAN SCHEUER:** Thank you very much,
23 Ms. Lim, for that reminder. That's very helpful.

24 Clarity on our procedures, Mr. Pang?

25 **MR. PANG:** No questions, Mr. Chair.

1 **CHAIRMAN SCHEUER:** Okay. Mr. Yee?

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

3 **CHAIRMAN SCHEUER:** Okay. Thank you very
4 much.

5 **COMMISSIONER GIOVANNI:** Chair?

6 **CHAIRMAN SCHEUER:** Yes, Commissioner
7 Giovanni -- Vice-Chair Giovanni?

8 **COMMISSIONER GIOVANNI:** Yeah. First a
9 question. Is there any hard stop on today's
10 hearing?

11 **CHAIRMAN SCHEUER:** I -- commissioners, do
12 you have any details?

13 **COMMISSIONER WONG:** Chair, this is
14 Commissioner Wong.

15 **CHAIRMAN SCHEUER:** Uh-huh.

16 **COMMISSIONER WONG:** I need to leave by 3
17 o'clock, if possible.

18 **CHAIRMAN SCHEUER:** Okay.

19 **COMMISSIONER GIOVANNI:** Thank you.

20 Secondly, Ms. Lim, you just mentioned you
21 have some of your evidence witnesses available.

22 Does that include the developers of the solar farm?

23 **MS. LIM:** Commissioner Giovanni, we have
24 Mr. Nick Molinari. He's available via Zoom. He's
25 on the Mainland today. And then we have the KS

1 witnesses, and also there are technical consultants.

2 So to answer your question, yes, but he's
3 going to be participating remotely if there are
4 questions --

5 **COMMISSIONER GIOVANNI:** Yeah. I have a
6 couple questions for him. Thanks.

7 **MS. LIM:** Yes.

8 **CHAIRMAN SCHEUER:** Thank you. Any other
9 questions about our procedures today, Commissioners?
10 Seeing none.

11 Ms. Quinones, has there been any further
12 written testimony submitted on this docket?

13 **MS. QUINONES:** No, Chair, no testimony has
14 been received on the docket.

15 **CHAIRMAN SCHEUER:** Since our last hearing?

16 **MS. QUINONES:** Since -- yes, since April
17 14th.

18 **CHAIRMAN SCHEUER:** Okay. So we will now
19 continue with the presentation from Mr. Yee.

20 **MR. YEE:** Thank you, Commissioners. In
21 light of the presentation provided at the last
22 meeting, I think we're satisfied with the
23 presentation we made, and we will rest on it.

24 If there are any questions about this or
25 other matters, of course we'd be happy to answer

1 them. I think it would probably be best at this
2 time to simply rest and address any questions which
3 the commissioners may have.

4 **CHAIRMAN SCHEUER:** Sorry, Mr. Yee. So
5 just -- you're just available for questions?

6 **MR. YEE:** Yes.

7 **CHAIRMAN SCHEUER:** Okay. Commissioners --
8 or sorry, parties, starting with the petitioner.
9 Questions for Mr. Yee?

10 **MR. YEE:** I'm sorry.

11 **CHAIRMAN SCHEUER:** Sorry.

12 **MR. YEE:** Normally, this is not a -- I'm
13 happy to answer questions, but normally, we don't
14 subject the arguments (inaudible).

15 **CHAIRMAN SCHEUER:** You are correct, Mr.
16 Yee. Sorry.

17 Commissioners, questions?

18 **COMMISSIONER OKUDA:** Chair, this is Gary
19 Okuda. If I may?

20 **CHAIRMAN SCHEUER:** Please, Commissioner.

21 **COMMISSIONER OKUDA:** Mr. Yee, did you
22 review the petitioner's filing which was
23 supplemental memorandum which was filed May 2, 2022?

24 **MR. YEE:** I did.

25 **COMMISSIONER OKUDA:** Do you have any

1 comment either in support or against or no position
 2 with respect to what the petitioner filed in its
 3 supplemental filing?

4 **MR. YEE:** I think OPSD is not prepared to
 5 support the ultimate conclusion, but we also think
 6 it is both -- it is, frankly, premature as this
 7 matter has not -- (inaudible) has not been filed.
 8 And we also think it's premature because we believe
 9 this will probably be a much bigger issue when the
 10 district boundary amendment and the motion to amend
 11 is filed.

12 So this may all go away and become moot if
 13 the Land Use Commission, for example, imposes a
 14 condition after the motion to amend to substantially
 15 comply with the representations and to substantially
 16 commence within a certain time period.

17 So we think it is unnecessary to address
 18 the issue today on this motion but certainly feel it
 19 will be a much more important issue to be raised
 20 later.

21 **COMMISSIONER OKUDA:** Let me ask just a
 22 couple of follow-up questions related to the
 23 supplemental memorandum followed by the petition.
 24 The first question, and maybe both questions, go to
 25 the issue of whether or not there's a risk or no

1 risk that public notice requirements, or sunshine
2 requirements, have been met.

3 First of all, do you believe that there is
4 sufficient -- let me rephrase that and withdraw the
5 question.

6 Do you believe that there is a risk that
7 there's potentially insufficient notice given if the
8 commission intends to have a deliberation or
9 discussion about anything to do with reversion?

10 **MR. YEE:** It's certainly not on your
11 agenda, and so I think any discussion towards
12 deciding some issue regarding reversion would not be
13 consistent with sunshine law.

14 I'm not sure if I answered your question,
15 but that's --

16 **COMMISSIONER OKUDA:** Yeah. Okay. And
17 based on your answer, I have no further questions.

18 Thank you, Mr. Chair.

19 **CHAIRMAN SCHEUER:** Thank you, Commissioner
20 Okuda.

21 Commissioners? Commissioner Chang?

22 **COMMISSIONER CHANG:** Sorry. Commissioner
23 Giovanni had his hand raised up first.

24 **CHAIRMAN SCHEUER:** Okay. So I apologize.
25 The way the camera is, I cannot see Commissioner

1 Giovanni, so all I could see was that you were
2 reaching for your microphone. And I apologize.

3 Commissioner Giovanni followed by
4 Commissioner Chang.

5 **COMMISSIONER GIOVANNI:** Thank you, Chair.
6 This is Commissioner Giovanni.

7 In that filing that was just referenced by
8 Commissioner Okuda, there's a condition number 9
9 that's restated, which is, if you recall -- I'll
10 just read it. "Petitioner shall complete
11 construction of the backbone infrastructure for
12 proposed Waiawa master plan, phase A, consisting of
13 primary roadways, access points, internal roadways,
14 on- and offsite water and electrical system
15 improvements, and stormwater/drainage and other
16 utility system improvements by December 31st, 2030."

17 Do you remember that condition that was
18 placed on the phase 2 solar project?

19 **MR. YEE:** I do.

20 **COMMISSIONER GIOVANNI:** it's my
21 recollection that that condition was actually
22 originally put forth by OPSD. And at our meeting --
23 or our hearing on April 14th, the petitioner
24 acknowledged that they would be amenable to a
25 similar condition on phase B should we approve the

1 solar phase 1.

2 Would OPSD support such a condition?

3 **MR. YEE:** We would with the understanding
4 that all of these conditions are subject to review
5 and reconsideration on the motion to amend as a DBA.
6 If I may explain.

7 One of the reasons OP didn't push for some
8 of these dates, et cetera is we think we will have a
9 better idea of the appropriate dates to set. If we
10 were to set it now, OPSD was concerned we would be
11 forced to be conservative and cautious in setting a
12 date too soon.

13 But we would have a better set of
14 information to set a more appropriate date closer
15 to, you know, construction. So in other words, when
16 they come back again for a DBA, we wouldn't expect a
17 rigor -- you know, a somewhat more rigorous review
18 as well as analysis by the petitioner on the dates
19 that they accept.

20 Right now, they're really creating -- I
21 need further cross-examination by me of their -- of
22 their -- of their (indiscernible) chart dictates.
23 You know, the charts are fine. I -- I think they
24 could be titans, quite frankly.

25 I think for our purposes of whether or not

1 to move forward with the motions today, they are --
 2 they are fine. When we get to the district boundary
 3 amendment procedure and the motion to amend, we may
 4 analyze it more closely, and they may have a more
 5 rigorous analysis close as we are -- us to arrive
 6 there more closely.

7 So we think we could probably get a better
 8 date with certainty as to what's the appropriate
 9 date. So while we conceptually have no problem with
 10 the imposition of a -- of a date now for phase B, we
 11 certainly want to leave open the possibility of
 12 revisiting this when we have better information
 13 later. So I'm sorry, that's a long explanation to
 14 your answer.

15 **COMMISSIONER GIOVANNI:** No. I understand.
 16 Conceptually, if we include such a condition for
 17 phase B and a date, that date can be reviewed at
 18 time of this commission takes under consideration a
 19 DBA for the property. Is that -- and revise those
 20 dates, correct?

21 **MR. YEE:** Then we'd have no objection.

22 **COMMISSIONER GIOVANNI:** Thank you.

23 **CHAIRMAN SCHEUER:** Thank you, Commissioner
 24 Giovanni.

25 Commissioner Chang?

1 **COMMISSIONER CHANG:** Thank you, Mr. Chair.

2 Mr. Yee, at the last hearing we did ask
3 the question regarding substantial commencement. If
4 it's not in the -- if as -- as argued by the
5 petitioner, if it's not a condition in the order,
6 then it is -- then the commission has no power to
7 revert the property for substantial -- failure to
8 substantially commence, and that is their argument.

9 And I guess what I heard you say today is
10 that you think it's premature and moot or you think
11 it's premature at this time to raise the question.
12 But if the commission acts on the motion to amend,
13 which permits the development, although it's an
14 interim solar farm, wouldn't that then -- I mean,
15 isn't that why the question is ripe, because we have
16 a situation where there is -- there will be use,
17 even if it's interim and temporary.

18 So I'd like to hear what your opinion --
19 because it -- it's not only this -- this particular
20 case before us but Office of Planning's position
21 when the condition is not in the original order.

22 **MR. YEE:** There are multiple responses, so
23 if you'll permit me. One, the Office of Planning is
24 certainly not prepared to admit that LUC has no
25 authority to revert if there's a violation of the

1 condition.

2 If there's a violation of a condition,
 3 Office of Planning certainly wants to reserve the
 4 right to argue the property can be reverted. So
 5 we're not prepared to admit and agree.

6 Two, we don't think it should affect --
 7 I'm sorry. Two, we think this issue will be
 8 resolved on the motion to amend and DBA. So we
 9 think it -- it will go away because we think this is
 10 going to be dealt with later. So we don't have to
 11 engage in the analysis that petitioner has brought.

12 Three, I understand the argument of but
 13 the LUC has to decide today whether or not to allow
 14 the solar farm to move forward, and so should we
 15 address this question now?

16 I think our response is twofold. A, we're
 17 -- we are -- we believe there is a very strong
 18 likelihood that the motion to amend and the DBA is
 19 going to happen because it such an enormous piece of
 20 property that would be affected by the inability to
 21 amend the conditions. The solar farm in and of
 22 itself is not going to be a barrier to them moving
 23 forward on this.

24 And B, we think the solar farm is a good
 25 thing. (Inaudible) to move forward with this. And

1 so we don't -- we don't think -- because we think
 2 the risk is low that this issue that solar farm --
 3 that because we think the risk is low that this
 4 issue is somehow going to escape LUC review.

5 In other words, there's a strong
 6 likelihood it will come back to you on the DBA. And
 7 because we think it's a good project to move
 8 forward, we don't think this question of substantial
 9 commencement should affect your decision on granting
 10 this amendment to allow the solar farm to move
 11 forward.

12 It's -- it's an issue of risk and
 13 judgments, admittedly, but it's also combined with
 14 this is not a simple question. This is not one in
 15 which, you know, I can guarantee a result.

16 So you know, sort of taking all of those
 17 factors together, OPSD believes it's really just
 18 better to be willing to grant the motion today and
 19 then to address the question in which you would have
 20 absolute authority, right, because you could always
 21 just deny the motion for remand if you're unhappy
 22 with their willingness to comply -- substantially
 23 comply with the representations and to commence or
 24 complete within a certain amount of time.

25 And in which case, the entire parcel will

1 be effectively unworkable because the -- I would be
2 hard- pressed for me to imagine that they can
3 develop this based upon the prior representations
4 and prior uses that were made.

5 So for those reasons -- those are the
6 reasons that we thought it would be best not to
7 consider the question or not to decide the question
8 today and, instead, to (inaudible) the motion and
9 address it on a later date.

10 **COMMISSIONER CHANG:** I guess, Mr. Yee, my
11 concern -- I understand your position. I find it
12 somewhat unsatisfactory because, one, I guess I'm
13 not looking at the merits of the project or what
14 they're proposing. It is just the time period and
15 how we have treated other projects similarly
16 situated where they have not substantially commenced
17 work, and we have actually taken action to revert.

18 And they've raised meritorious projects as
19 well, but in my view, your -- OPSD's opinion or
20 their rationale, assuming that we grant the motion
21 to amend, which would permit the solar use, I think
22 it takes away the ability for the Land Use
23 Commission to make that argument on the DBA or on a
24 motion to -- a motion to amend during the DBA,
25 because it's -- I mean, they will argue that they've

1 already commenced. They've actually started using
2 -- using the property.

3 So I understand the position. Again, find
4 it a little bit less -- especially coming from
5 Office of Planning, I -- because this is going to be
6 -- this may be a -- a recurring issue that comes up,
7 so I would have hoped to have gotten guidance from
8 OPSD.

9 But that's fine. No other questions.
10 Thank you.

11 **MR. YEE:** If I could just add, if this
12 issue comes up, if there is -- if you have another
13 case -- let's put this one aside -- in which there
14 is no requirement to substantially commence -- you
15 know, to revert unless you substantially commence,
16 the Office of Planning will have a position.

17 We will look for a way that reaches the
18 best equitable solution and the best argument to
19 reach that equitable solution to ensure that the
20 conditions of the LUC are complied with. We just
21 don't think this is the case to deal with -- to deal
22 with it.

23 **COMMISSIONER CHANG:** Thank you.

24 **CHAIRMAN SCHEUER:** Thank you, Commissioner
25 Chang.

1 Commissioner Okuda?

2 **COMMISSIONER OKUDA:** Thank you very much,
3 Mr. Chair. This is Gary Okuda.

4 Mr. Yee, following up on Commissioner
5 Chang's question. Can you point to any legal
6 authority that indicates or shows that if the solar
7 project commences construction, that that would not
8 be considered substantial commencement as the term
9 is used in the Bridge Aina Le'a case?

10 And just to put it in layman's terms for
11 people who aren't bored like you and I are to read
12 these cases. Bottom line is the only real
13 enforcement power the Land Use Commission has is
14 reversion. And if there's substantial commencement
15 of use of the property in accordance with the
16 representations we lose that ability.

17 So my -- my narrow question is a legal
18 question. What legal authority can you point to,
19 citation of either statute or case, which indicates
20 that the use of the property for the solar farm
21 would not be considered substantial commencement,
22 which would thereby negate the ability of the Land
23 Use Commission to do reversion, as those terms are
24 defined in the Aina Le'a case?

25 **MR. YEE:** So if the issue came up

1 hypothetically, I think an argument can be made that
2 given the size of the property, enormous amount of
3 money that would have to be spent --

4 **COMMISSIONER OKUDA:** I don't mean to
5 interrupt you, but I'm not looking for the argument.
6 I'm looking for the citation to legal authority or
7 -- or do you agree that there really is no legal
8 authority one way or the other to answer that
9 question.

10 **MR. YEE:** The only legal case I'm aware of
11 is Bridge Aina Le'a, which looked at a monetary
12 amount, which, frankly, I think is -- we should ask
13 the Supreme Court to reconsider whether a base
14 monetary amount is sufficient basis; that, rather,
15 it should have been a percentage of the total
16 monetary amount required. But that's the only case
17 that I'm aware of that addressed whether or not
18 something has or has not substantially commenced.

19 If --

20 **COMMISSIONER OKUDA:** Okay.

21 **MR. YEE:** -- argue -- mention to you. The
22 argument from the petitioner, as far as I can tell,
23 is not that they have or have not substantially
24 commenced. It's that there is no -- there is no
25 condition --

1 **COMMISSIONER OKUDA:** Mr. Yee, I don't mean
2 to cut you off because mine was just a simple narrow
3 question, what's the legal authority.

4 Okay. My same question is hopefully
5 similarly simple and narrow. What evidence is there
6 in the record that indicates the better use of this
7 property should be something other than urban?

8 **MR. YEE:** I'm not -- I don't know that I
9 could cite to you something that will say that
10 property is better used as (indiscernible). You
11 would have to address that in a subsequent matter.

12 **COMMISSIONER OKUDA:** Okay. I just want to
13 make sure there isn't something that indicates in
14 the record that a designation other than urban would
15 be a better designation. So I just want to make
16 sure that I'm not clearly erroneous in my vote for
17 purposes of appeal if I were to, you know, see the
18 facts that way.

19 Thank you, Mr. Yee.

20 Thank you, Mr. Chair. No further
21 questions.

22 **CHAIRMAN SCHEUER:** Thank you, Commissioner
23 Okuda.

24 Commissioners, are there further questions
25 for Mr. Yee? I cannot see hands, so verbal would

1 help. Further questions for Mr. Yee at this time?

2 Sorry, was that somebody?

3 **COMMISSIONER GIOVANNI:** This is
4 Commissioner Giovanni. I see no hands raised.

5 **CHAIRMAN SCHEUER:** Okay. Thank you.

6 I have a quick question for Mr. Yee. Mr.
7 Yee, if I recall correctly, in your presentation to
8 us on April 14th one of the matters that you pointed
9 out to us is that there was no condition in the
10 original docket that required the petitioner to
11 stand by any representations made. Am I recalling
12 that correctly?

13 **MR. YEE:** That's correct.

14 **CHAIRMAN SCHEUER:** Okay. Do they have to
15 -- does that lack of that condition carry forward to
16 now so they can say anything to us now and we don't
17 -- we can't hold them to their representations?

18 **MR. YEE:** I'm sorry. I think I might have
19 misstated. There is a position on the
20 representation made regarding the solar farm.
21 There's not one regarding represent -- the original
22 DBA. So I think representations made today about
23 the solar farm are enforceable.

24 **CHAIRMAN SCHEUER:** But only
25 representations made about the solar farm?

1 **MR. YEE:** Well, representations made in
2 furtherance of the motion for the solar farm.

3 **CHAIRMAN SCHEUER:** Okay. That actually
4 still gets to it. Not what I expected you to say,
5 but it still gets to where I'm wanting to go.

6 We have dealt with a large number of
7 dockets in front of this commission, sometimes when
8 you were with us, sometimes not, for solar farms.
9 Not all those have panned out.

10 Even ones where folks came up to us and
11 they said, you know, you have to rush this, you
12 absolutely need to do this now. If you don't give
13 us this, we're not going to meet our state
14 sustainability goals. And then the solar farms, for
15 whatever reason, internal reasons, global supply
16 chains, are not panning out.

17 I have to say it's sort of like the dates
18 you go on where you don't even get a call afterward
19 that it wasn't a good date. You just never hear
20 from them again. It's like Mahi -- Mahi Solar. I
21 read about it in the paper, didn't hear about it
22 from them.

23 What's the standard that this commission
24 should use in terms of assessing the credibility of
25 the representations of these solar developers?

1 Because they always say, yeah, solar's a great
 2 thing, but then we say aye to everybody, and a whole
 3 bunch of them aren't built.

4 **MR. YEE:** That's a difficult question.
 5 It's true, both solar as well as sort of every
 6 element forward. There is technically, for DBAs, a
 7 requirement to demonstrate financial capacity.

8 It's been well thought that a party
 9 wouldn't go through the effort of getting all of
 10 these approvals if there wasn't money to be made.
 11 But you're right, Stoner Farms, in particular, have
 12 come to the LUC, got their approval, and then were
 13 never built, for a variety of reasons.

14 **CHAIRMAN SCHEUER:** So given our duties,
 15 right, our kuleana, other than just like, well, I'm
 16 trusting this date's going to go better than the
 17 last, what are the -- what are the tools or options
 18 available to this commission, particularly when, as
 19 has come up in the earlier questions from my fellow
 20 commissioners, there's questions about the
 21 relationship between this project and the overall
 22 project?

23 **MR. YEE:** -- conditions imposed, you know,
 24 need to be reasonably related to the impacts and
 25 have a nexus to between the condition itself and the

1 impact. You know, you can -- basically, you can do
2 things to limit, I guess -- you know, to say, you
3 have to build within a certain period of time is one
4 thing we do, so if you don't, then, you know, you're
5 back to square one.

6 In terms of requiring developments, it's a
7 frustration I just don't know there's much you can
8 do.

9 **CHAIRMAN SCHEUER:** Thank you, Mr. Yee. I
10 have nothing further.

11 Commissioners, anything further?

12 Commissioner Chang?

13 **COMMISSIONER CHANG:** I always have one
14 last comment. Mr. Yee, I want to give you the
15 benefit of the doubt in your responses to me. And
16 I'm not asking for a -- a response at this time.

17 But the second stipulated proposed
18 conditions -- well, that was circulated and I'm
19 hoping you got a chance to look at that. But I'd
20 like you to think about what would be an appropriate
21 condition to place -- if we were to accept and
22 approve this, what would be an appropriate condition
23 that would position -- that would protect the Land
24 Use Commission? Because, as you say that, you know,
25 this is premature. Wait until it comes to the DBA,

1 the motion to amend because this is just a very
2 small portion of the larger project.

3 So I'd like you to think about what would
4 be an appropriate condition to, one, permit the
5 solar projects to move forward, but at the same
6 time, preserve the Land Use Commission's ability to
7 argue or at least to raise the issue of substantial
8 commencement for the rest of the project -- the rest
9 of the property.

10 So I'd like you to think about that. I
11 want to challenge you on that because I think my --
12 my responses were maybe a little too -- rushed too
13 quickly. So I want to be constructive because you
14 seem to -- you know, to -- OPSD seems to -- seems to
15 take the position that we can do both. We can still
16 let them proceed with the solar, but yet, it's --
17 the Land Use Commission -- OPSD may not necessarily
18 agree with the arguments by the petitioner regarding
19 -- of substantial commencement.

20 So if you can, when that comes up, I'd
21 like to hear from OPSD a proposed condition that
22 you'd recommend. All right?

23 **MR. YEE:** If I may. I think this is going
24 to be my only opportunity to address you.

25 **COMMISSIONER CHANG:** Okay.

1 **MR. YEE:** May I only suggest that OPSD
2 might have an opportunity to submit maybe not a
3 condition but language for the order which preserves
4 LUC's rights or which perhaps simply determines that
5 the issue of substantial commencement is not
6 determined, and nothing in this case limits the
7 LUC's ability to make that determination at a later
8 date.

9 **COMMISSIONER CHANG:** All right. Thank you
10 very much, Mr. Yee. I have no other questions, Mr.
11 Chair.

12 **CHAIRMAN SCHEUER:** Thank you very much,
13 Commissioner Chang.

14 Anything further, Commissioners? Seeing
15 none, we're close enough to a break time, so it is
16 9:47 a.m. We will resume at 10 a.m. with admission
17 of additional information into evidence and
18 questioning of the parties regarding that
19 information.

20 We will break for 13 minutes, reconvening
21 at 10 a.m.

22 **(Recess taken 9:47 - 10:00 a.m.)**

23 **CHAIRMAN SCHEUER:** It's 10 a.m. We are
24 back on the record. We are now going to move on to
25 the admission of new evidence into the record.

1 Ms. Kim, do you have additional evidence
2 you wish to enter into the record?

3 **MS. LIM:** The exhibits that were
4 previously mentioned, which are Exhibits --

5 **CHAIRMAN SCHEUER:** I cannot hear you.

6 **MS. LIM:** -- as well as -- I mean,
7 yesterday we filed that three-party --

8 **CHAIRMAN SCHEUER:** I still can't hear you.

9 **MS. LIM:** Can you not hear me? I feel
10 like my voice is booming in here. Can you not hear
11 me, Chair?

12 **CHAIRMAN SCHEUER:** One more time. There
13 we go.

14 **MS. LIM:** So to repeat the additional
15 exhibits that we filed on May 2nd, which are
16 Exhibits 48 through 57, as well as the three-party
17 stipulation that was filed yesterday. That's three
18 parties, KS, OPSD, NDPP. It's an admitted
19 stipulation. It amends the stipulation that was
20 previously filed, Exhibit 40, and fully replaces
21 that with this new three-party stipulation.

22 And just this morning, in the interest of
23 trying to provide clarity for commissioners if there
24 were questions, my co-counsel submitted a Redline
25 demonstrating the changes that were made from the

1 original stipulation, which was only a two-party
2 stipulation to the new stipulation, which is now a
3 three-party stipulation.

4 And that's the extent of the additional
5 evidence, as well as, of course, the supplemental
6 memorandum we filed.

7 **CHAIRMAN SCHEUER:** Thank you. Ms. Lim,
8 does that final document, the Redline, have an
9 exhibit number?

10 **MS. LIM:** We did not put an exhibit stamp
11 on it, but that would bring it to Exhibit 58.

12 **CHAIRMAN SCHEUER:** Okay.

13 Are there any objections from the parties
14 for these matters to be admitted into the record?
15 County?

16 **MR. PANG:** The county has no objections.
17 Thank you, Mr. Chair.

18 **CHAIRMAN SCHEUER:** OPSD?

19 **MR. YEE:** No objection. Thank you.

20 **CHAIRMAN SCHEUER:** Commissioners,
21 objections or questions? Commissioner Wong?

22 **COMMISSIONER WONG:** Just only one thing.
23 It's -- it's not about -- it's about the exhibit.
24 Why is it a -- what is Raleigh, North Carolina?

25 **MS. LIM:** I'm sorry. Could you repeat

1 that?

2 **COMMISSIONER WONG:** So in the signature
3 line --

4 **MR. YEE:** I'm in Raleigh, North Carolina.

5 **COMMISSIONER WONG:** Oh, okay. That's why.
6 I just was wondering why it says Raleigh, North
7 Carolina.

8 That's all, Chair. Thank you.

9 **CHAIRMAN SCHEUER:** Thank you.

10 Any other concerns? Hearing none,
11 petitioner's exhibits, as enumerated by Ms. Lim, are
12 entered into the record.

13 County, Mr. Pang, do you have any
14 additional evidence you wish admitted?

15 **MR. PANG:** The DPP has no further --
16 additional evidence. Thank you, Mr. Chair.

17 **CHAIRMAN SCHEUER:** Okay. Just your one
18 filing that I already noted when I went over
19 updating the record. OPSD?

20 **MR. YEE:** We have nothing further. Thank
21 you.

22 **CHAIRMAN SCHEUER:** Okay. So we've
23 admitted all other things into the record.

24 Ms. Lim, before we move on to final
25 arguments, do you want to provide any further

1 summary about the additional evidence that you've
 2 submitted?

3 **MS. LIM:** Well, I'd be happy to do so. I
 4 would also weave it into closing comments, but --
 5 but let me take this opportunity.

6 So the first, let's say, from Exhibit 48
 7 and 49, those are the original Waiawa orders.
 8 That's what the commission issued when they
 9 originally reclassified this land in 1988.

10 Then there was an amendment in 1990, and
 11 those are relevant because of the absence of certain
 12 conditions that we've spoken about earlier and most
 13 specifically developed in timeframe conditions, use
 14 it or lose it, substantial commencement kind of
 15 condition, and even no requirement for compliance
 16 with substantial representations.

17 Exhibit 50, 51, and 52 are legislative
 18 history. I trust this commission is pretty familiar
 19 with its powers of reversion and how that was
 20 granted to the commission in 1990, but 1972 -- from
 21 as early as 1972, the commission did have the
 22 authority to impose a condition requiring compliance
 23 with substantial representations.

24 However, it wasn't until 1990 that the
 25 commission was actually delegated power to revert

1 land to do a failure to substantially commence. Of
 2 course, the commission would have always had the
 3 power to actually pursue a boundary amendment, but
 4 that's a different kind of procedure than doing a
 5 reversion.

6 The excerpts from the city and county's
 7 Central Oahu Sustainable Communities Plan material
 8 that you've heard about both from Ms. Ketley, one of
 9 our consultants or consultant for the solar farm
 10 developer, but you also heard from Ms. Wong and her
 11 counsel, Ms. Weaver before, this land has long been
 12 and continues to be identified.

13 And by "this land," I mean the petition
 14 area of the 1,395 acres identified for urban uses.
 15 And in fact, under the most recent version that the
 16 city council passed just last year by ordinance, the
 17 Central Oahu Sustainable Communities Plan not only
 18 identifies this land for the urban uses but also
 19 identifies it for the two solar uses that this
 20 commission already approved in 2014.

21 Exhibit 54, again, it speaks for itself.
 22 But to perhaps reflect on some of the confusion that
 23 still seems to maybe be in the air, the solar farm
 24 that these two solar farms is substantially
 25 complete. Those photographs were provided because

1 there were questions about substantial completion or
2 substantial commencement. That project is
3 essentially done. They're well on target to hit the
4 commercial operations date onto their agreement with
5 HECO.

6 And then Exhibits 56, 57, 58 -- excuse me
7 -- 55, 56, and 57 are all related to EIS issues.
8 And this was directly -- when I talked to you about
9 Exhibit 55 and 56, some of you commissioners raised
10 excellent questions at our last meeting. And I know
11 you've had a lot of meetings between our last
12 meeting and today, but just to refresh you.

13 There were questions about, gosh, I hope
14 you understand at this point that we're not even
15 ready to do the EIS. The EIS has yet to come
16 forward, but that is in the works.

17 And when we do an EIS, some commissioners
18 were saying, "Well, wait, this is an awfully big
19 project. How is it going to be covered in one EIS
20 and is there a risk that that EIS may go stale?"
21 And those are great questions.

22 Other commissioners said, "You have what
23 you" -- "you know, you can't just do a little bite-
24 size EIS." That's segmentation. That's against the
25 law. You've got to do what you know, you know, and

1 disclose as best you can at the earliest practicable
 2 time.

3 Our intention in filing Exhibits 55 and 56
 4 were to alleviate some of those concerns the
 5 commissioners expressed. Those are the new EIS
 6 rules, EA rules, Chapter 343 rules. Not everybody
 7 is as familiar with those as we all were with the
 8 old rules.

9 Those rules actually contemplate something
 10 called a programmatic EIS. So the idea is, okay,
 11 there are going to be some big projects. There are
 12 going to be projects that take years. There's going
 13 to be projects that, you know, there's new
 14 components coming up all the time.

15 The entire project can be looked at in a
 16 programmatic or program EIS with the understanding
 17 that if and when required, there can be subsequent
 18 environmental reviews that maybe don't have to look
 19 at the entirety of the project, the same level that
 20 was analyzed initially as there's -- I didn't phrase
 21 that very well.

22 As a project progresses over time, in an
 23 EIS you can present what you know, and you can
 24 project a certain time forward. Sometimes the
 25 circumstances change. Traffic changes. What

1 happened to Turtle Bay? Monk seals came up on the
2 beach, right?

3 So there's an opportunity to do a further
4 EIS review where you look at now the more specific
5 component of the project that you're going to build
6 and what are the impacts from that, and how has that
7 been changed from what's going on in the surrounding
8 environment.

9 So it's a long description, but you can
10 see that the environmental council, and the public
11 was quite involved as well, and I look at my co-
12 counsel, Ms. Thoene because, of course, as the Chair
13 of the Environmental Council, she's extremely
14 familiar on this.

15 There's a need for just the kind of EIS
16 rule that you guys were articulating without
17 expressly articulating it. So that was our interest
18 in filing those materials, to demonstrate that there
19 is such a tool, and it's very likely that that's the
20 kind of EIS that would be done here.

21 And then, finally, Exhibit 57 was to
22 address some questions that came out in the
23 discussion about the four- year timeframe that
24 Kamehameha Schools has on its Gantt chart. Now, we
25 know that Gantt chart is, at this point, a best

1 guess.

2 What do we know? We know that we have
3 your infrastructure deadline, and we know KS wants
4 to get moving on developing this master plan. But
5 that Gantt chart is still a best guess scenario
6 because the additional work has to be done,
7 including primarily as a first step of that EIS.

8 EISs can take a couple years. They can
9 take several years. And so we filed Exhibit 57 just
10 to demonstrate that having a four-year timeframe --
11 and that's from the start, which KS has already
12 started -- to actually completing an EIS within four
13 years is not out of the bounds of what we've seen
14 from EISs and even, in fact, some EAs over the last
15 few years.

16 So I'll stop there on the exhibits. The
17 stipulated conditions, if I can just mention
18 quickly, when DPP sent its letter raising questions
19 about the EIS condition, the language that we had
20 stipulated to with OP back in February, I was a
21 little surprised because we had discussed it.

22 Ms. Weaver and I had discussed it, and I
23 understood that DPP had understood that KS's intent
24 was never to try to avoid environmental review. Our
25 intent was simply to say this condition alone won't

1 require an environmental review. And that's because
2 environmental reviews, like the air you breathe,
3 it's the law. You've got to comply with it with or
4 without a condition.

5 So why should we start putting in
6 conditions that could perhaps create an ambiguity
7 and say, well, the condition -- you know, there's no
8 trigger. There's no reason to do an environmental
9 review, but look, this condition says you have to,
10 so you better do it. See, that creates a problem.
11 That actually creates a legal problem under Chapter
12 343.

13 However, as the -- as I spoke more with
14 Ms. Weaver and we looked at the letter that they --
15 that she submitted here earlier this month, it gave
16 us -- when I say "us," I mean Kamehameha Schools --
17 an opportunity to revisit the language that we were
18 trying to tweak to make fit into present
19 circumstances.

20 And you know why that is? Because you
21 folks issued that condition in 2014 when you
22 approved the two solar farms, the one that's already
23 built and the one that AES really wants to hurry up
24 and start building if you approve this motion.

25 When you folks issued that order in 2014,

1 you had a condition that said, "You can't do
2 anything but solar. Solar and nothing but solar and
3 only in these two places. And before you do
4 anything with solar, you've got to come back to the
5 Land Use Commission with a motion to amend, and that
6 motion to amend has to have an environmental impact
7 statement and various related studies.

8 So in 2014, that condition made a lot of
9 sense. Come along to 2020, when you folks issued an
10 order that we did not appeal, as you know, and as
11 Mr. Yee raised, you issued an order requiring
12 construction of the master plan. And that was a
13 little disturbing because the master plan evidence
14 really wasn't before you.

15 I mean, it is a contested case hearing,
16 and your rulings, as well as your conditions, have
17 to be based on substantial evidence. I mean, that's
18 what the Department of Environmental Services versus
19 Land Use Commission decision said, right?

20 So there really wasn't substantial
21 evidence about the master plan because it's just a
22 conceptual master plan. But you issued that order,
23 and it now requires the development of the -- the
24 infrastructure development by a time certain.

25 So KS wants to be compliant, and what that

1 means is we had to go back and look at the condition
2 and say, well, we can no longer say what you said in
3 2014, which is do an EIS when it's all over, after
4 the solar farms are gone. Obviously, an EIS will
5 have to be done sooner because the master plan has
6 to come along sooner along with that motion to
7 amend.

8 So in any event, trying to nibble around
9 the corners and edges of the 2014 conditions just
10 became unworkable, and I think -- I'm actually
11 grateful the DPP pointed that out, and they gave us
12 an opportunity. And when I say "us," again, it's
13 the three-party stipulation to come up with language
14 for that condition.

15 And I'm talking about condition 10 that
16 both makes it clear that KS is going to be subject
17 to Chapter 343 like anybody would be subject to
18 Chapter 343. And then that also includes the
19 Department of Health decommissioning language that
20 OPSD had requested in that initial stipulation.

21 The second significant change in that
22 stipulation -- excuse me -- through the amended
23 stipulation is the additional language about the
24 landscaping plan approval. If a landscaping plan is
25 required, the DPP would have to approve it.

1 Condition 11 is another example of how the
 2 2014 conditions have been substantially modified,
 3 because you might recall, those of you who were on
 4 the commission in 2014, you never imposed a wildlife
 5 protection condition. Nothing, nada.

6 This time around, OPSD said we think that
 7 kind of condition should be imposed. KS said, okay,
 8 and we stipulated to it. So that's one of the
 9 changes from 2014 to today. And when DPP suggested
 10 that additional language about the landscaping plan,
 11 that was acceptable not only to KS but -- well, it's
 12 up there. It was acceptable to KS, and KS intends
 13 to have the solar farm developer comply with the
 14 language in the condition.

15 So that's -- I'll stop there, Chair, just
 16 going over the exhibits. I'm happy to answer
 17 questions, but, again, I know commissioners want to
 18 speak to our witnesses as well.

19 **CHAIRMAN SCHEUER:** Thank you very much,
 20 Ms. Lim.

21 Commissioners, questions for Ms. Lim or
 22 her witnesses?

23 Commissioner Giovanni?

24 **COMMISSIONER GIOVANNI:** Thank you, Chair.
 25 Ms. Lim, let me start off by thanking you

1 for the aerial photographs of the solar farms being
 2 built, which is phase 2, I believe. I think you
 3 referred to that as completed. It looks to me by
 4 the aerial photographs to be 80-90 percent complete,
 5 which I would advise our Chair that it looks like
 6 this date is going to materialize, the prom date you
 7 were referring to for the solar farm. So that's
 8 good news and thank you for affirming that with the
 9 photographs.

10 I'd like to have some confidence-building
 11 regarding the phase 1 solar farm, so I don't know if
 12 your witness for KS is available now.

13 **MS. LIM:** Excuse me. I believe he is,
 14 Vice-Chair. I'm looking to his counsel. Okay.

15 So, as you just heard Mr. Kubota that Mr.
 16 Kubota represents the solar farm development
 17 company, and Mr. Nick Molinari, who I mentioned
 18 earlier, he's in the public participant Zoom.

19 **CHAIRMAN SCHEUER:** Okay. I can admit him.
 20 It helps when there's not a lot of people there, so
 21 -- I'm going to promote Mr. Molinari to be a
 22 panelist.

23 Mr. Molinari, when you come in, if you can
 24 enable your audio and video.

25 I appreciate everybody's working with us

1 on trying to do hybrid meetings.

2 Mr. Molinari, I'm going to swear you in
3 again. Do you swear or affirm the testimony you're
4 about to give is the truth?

5 **NICK MOLINARI:** I do.

6 **CHAIRMAN SCHEUER:** Okay. Thank you. You
7 might speak slightly louder. There are questions
8 for you from Commissioner Giovanni.

9 **COMMISSIONER GIOVANNI:** Mr. Molinari,
10 great to see you again albeit by Zoom. I don't know
11 if you can see. I'll wave my hand so you can see
12 where I'm at.

13 What we're really looking for, the
14 Commission's looking for assurances that you're
15 going to build this project and which is what you
16 represented to us on April 14th, when you were
17 before us.

18 Can you provide us an update? We're
19 particularly concerned, you know, with recent
20 inflation in costs that are being experienced
21 throughout the world with the removal or with the --
22 with two other projects similar to yours that were
23 competitively bid in approximately the same
24 timeframe and awarded contracts by HECO which were
25 approved by the PUC. Those developers are saying

1 they can -- they can no longer honor those projects
2 because they're out of the money.

3 What about your project?

4 **NICK MOLINARI:** Thank you, Commissioner
5 Giovanni. Is my audio okay?

6 **COMMISSIONER GIOVANNI:** Yes.

7 **NICK MOLINARI:** Is that good? Okay.
8 Good.

9 Yeah, thank you for the question. And I
10 apologize for not being able to be there in person.

11 You know, I fully understand your concern,
12 and I think it's been, you know, a top headline in
13 the news recently on a regular basis.

14 I would say that, you know, we have -- you
15 know, our photographs weren't included in this -- in
16 this most recent supplement, but we, unlike many of
17 our competitors, have actual operating projects that
18 are similar to the Waiawa project in the state, two
19 operating projects on Kauai that have been, you
20 know, internationally recognized and have been up
21 and running for a few years now.

22 Looking at kind of the stuff -- the
23 projects that HECO had awarded, you know, in the
24 phase 1 RFP and then in the phase 2 RFP, we have
25 three that are under construction right now. And

1 there should be publicly available information.

2 We have a project on the Big Island that
 3 was in that first RFP that is fully under
 4 construction, solar panels, racking, substation
 5 inverters, batteries being constructed.

6 Our West Oahu project that this Commission
 7 approved for a special permit in June of last year
 8 has commenced construction. And then our Kuihelani
 9 project, which will represent 15 percent of the load
 10 for the island of Maui, has recently commenced
 11 construction as well.

12 So we're in. We're moving forward. I
 13 can't speak to, you know, other companies and why
 14 they have made the decisions that they've made or
 15 they've had to make the decisions that they've had
 16 to make.

17 I will say that, you know, AES, as you
 18 know, Commissioner, has been in the state for a very
 19 long time, operating the power plant at Barbers
 20 Point as well as the renewable energy projects on
 21 Oahu and Kauai that I mentioned before.

22 We also have the, you know, geographical
 23 diversity and also technological diversity that a
 24 lot of our peers don't. We don't just do solar,
 25 although it's, you know, solar and batteries is

1 really my focus and now some hydro, too.

2 Our company has diversified across the
3 world in many different markets and also many
4 different types of technologies, which I think puts
5 us in a better position to weather these storms.

6 I'm not going to, you know, stand up here
7 and say that we're immune from all of the supply
8 chain disruptions that are impacting everything,
9 frankly, from consumer goods to electronics to solar
10 to everything. But I will say that we have taken
11 some steps, specifically for Waiawa, to try to get
12 out ahead as much as we can.

13 We've invested a significant amount, you
14 know, in the order of millions of dollars in
15 sourcing components and advancing engineering. And
16 really, that's at risk because we don't have the
17 assurance of a commission approval. You know, we're
18 kind of moving forward at risk because that's what
19 we think we need to do, and we're a big enough
20 company that we're fortunate where we can do that.

21 So again, I don't have a crystal ball. I
22 don't know -- you know, it seems like every day
23 there's a new headline of some sort of macro-
24 economic catastrophe, but I would say that we're
25 better positioned than most to be able to execute

1 this project.

2 **COMMISSIONER GIOVANNI:** Thank you for that
3 explanation. Can you confirm or share with us, have
4 you secured materials that you need for the Waiawa
5 project at price points that will deliver for you a
6 feasible project, or are you still shopping for
7 materials?

8 **NICK MOLINARI:** Thank you, Commissioner.
9 We have secured a number of materials. I will say
10 we've not secured all materials for the project. A
11 lot of it is -- you know, there's the standard stuff
12 that we have master supply agreements in place with
13 major vendors.

14 Some of the stuff has to be custom -- you
15 know, custom built, and so until engineering is far
16 enough along, we -- even though we have a master
17 supply agreement, we can't officially, you know,
18 make a payment on that order.

19 So we had secured some of the overall --
20 the components that we need. We have not secured
21 all.

22 **COMMISSIONER GIOVANNI:** Fair enough.
23 Should there -- on your master schedule for this
24 project, does there exist a go/no-go deadline before
25 you make a final commitment to follow through and

1 build the project?

2 **NICK MOLINARI:** Thank you, Commissioner.

3 I mean, our intent is -- is not whether it's a
4 go/no-go. It's how much pain are we willing to live
5 with. You know, I don't know that there's a -- you
6 know, if I can point to a specific date, all I know
7 is that the end date is October 2023, when we want
8 to be up and running.

9 If we go beyond that for whatever reason,
10 you know, we -- there's liquidated damages that
11 aren't deal-killing but certainly don't feel good.
12 So we're -- again, it's not a necessarily a go/no-
13 go. The company is very committed to transitioning
14 Hawaii from fossil fuels to renewables. I don't see
15 -- you know, so I'll leave it at that.

16 I think it's -- we want to move forward on
17 it. I can't point to a specific date.

18 **COMMISSIONER GIOVANNI:** Not for completion
19 but for commencement of field activities, physical
20 construction, pending approval of this Commission,
21 when do you expect to put a shovel in the ground?

22 **NICK MOLINARI:** We'd like to put the first
23 shovel in the ground no later than the end of the
24 year.

25 **COMMISSIONER GIOVANNI:** Okay. Mr.

1 Molinari, thank you very much. Let me acknowledge
2 from my fellow commissioners the important role that
3 AES has played in the state with your projects that
4 you mentioned, the very successful projects that
5 have moved this state in the direction of renewable
6 energy, so thank you.

7 **NICK MOLINARI:** Thank you, Commissioner
8 Giovanni.

9 **CHAIRMAN SCHEUER:** Thank you, Commissioner
10 Giovanni.

11 Commissioners, questions for Ms. Lim or
12 any of her witnesses?

13 **COMMISSIONER GIOVANNI:** I have another one
14 for Ms. Lim.

15 **CHAIRMAN SCHEUER:** Please continue,
16 Commissioner Giovanni.

17 **COMMISSIONER GIOVANNI:** Yeah. I want to
18 go back to, I think it's condition 9 in your
19 stipulated -- the most recent stipulated agreement,
20 which is the infrastructure deadline.

21 **MS. LIM:** That's correct.

22 **COMMISSIONER GIOVANNI:** Yeah. And
23 reaffirm that you would be amenable to a similar
24 condition for phase B for a date of 2035, 12/31/35
25 for development of infrastructure, backbone

1 infrastructure for parcel B by 2035, should you --
2 is there an additional condition?

3 **MS. LIM:** Commissioner Giovanni, that's a
4 difficult question, so give me a couple of minutes,
5 please. You heard my client. You heard Ms. Sato
6 say at our hearing in -- was it back in March, that
7 yes, KS would be amenable, would accept such a
8 condition. And I'm certainly not in a position to
9 back away from that commitment, but there was no
10 decision on the proper time for the phase B
11 infrastructure --

12 **CHAIRMAN SCHEUER:** Sorry. Let me -- for
13 some reason, I've lost your video, Ms. Lim. Thank
14 you.

15 **MS. LIM:** That was my fault before, the
16 camera was faced -- I had two cameras on me, and I
17 just thought not that much of me. I don't want to
18 look at me twice. I'm sorry.

19 **CHAIRMAN SCHEUER:** I noted it but did not
20 complain, for the record, Ms. Lim, so --

21 **MS. LIM:** Okay. So coming back to 2035,
22 that's very, very soon. In 2035, again, I would
23 say, the same way that my friend Mr. Yee expressed,
24 that this is a premature point within which to
25 really get into the nitty-gritty on the master plan,

1 because we have not yet filed the proper evidence.
2 We have not gone through the hard work of putting
3 together that proper evidence.

4 So for you to be able to make a deliberate
5 and thoughtful and not arbitrary decision on the
6 timeframe for the backbone infrastructure for yet
7 another phase of the master plan when the master
8 plan isn't even before us, I would say five years
9 seems pretty soon.

10 This is a matter for the Commission's
11 discretion. And I also know and I know you all know
12 that whatever order you issue today is -- and let me
13 not say this in a way that imposes any kind of
14 disrespect, but it's going to go out the window,
15 right? Because my client has to come back with a
16 motion to amend to get permission to do anything but
17 solar. That's all you've given us permission to do,
18 solar and nothing but solar. So we have to come
19 back to you.

20 So knowing that, I mean, whatever
21 conditions you lay on this order will certainly
22 impact the solar farm developer, should have a
23 somewhat short-term impact on Kamehameha Schools
24 because of our requirement to come back to you to
25 actually get permission to build the master plan.

1 So I think that the end of 2035 is
 2 extremely premature. It doesn't even mesh with the
 3 very sort of conceptual Gantt chart development
 4 timeline represented to you. But at the end of the
 5 day, this is a matter for Commissioner discretion.

6 **COMMISSIONER GIOVANNI:** So I have a
 7 response, but you confused me with your remark about
 8 five years being very -- what do you mean by five
 9 years?

10 **MS. LIM:** Well, didn't you say -- right
 11 now we have an infrastructure deadline for phase A
 12 of the end of 2030.

13 **COMMISSIONER GIOVANNI:** Correct.

14 **MS. LIM:** And as you know, the master plan
 15 is going to be developed sequentially. It's going
 16 to be a phase development. It will go from phase A
 17 to phase B. And what I heard you say is we have
 18 five years after completing phase A to do all of the
 19 infrastructure for phase B.

20 **COMMISSIONER GIOVANNI:** I didn't invoke
 21 that at all. I would -- are you suggesting that you
 22 will not commence -- infrastructure development,
 23 including any engineering work, design work,
 24 permitting work, any of that up front three to four
 25 years, with the work that occurs within a nominal

1 ten-year period, wouldn't even commence that until
2 phase A is completed?

3 **MS. LIM:** I don't think that that's
4 correct. I think that that kind of preliminary --
5 again, the most preliminary work will be through the
6 EIS --

7 **COMMISSIONER GIOVANNI:** Correct.

8 **MS. LIM:** -- but it's got to get out of
9 the way, right, before even phase A, and that's
10 where the more concrete expectations on timing based
11 on actually information that we have. But do I
12 think that -- if you were saying the start of the
13 infrastructure versus the completion -- and maybe I
14 didn't hear you correctly --

15 **COMMISSIONER GIOVANNI:** So let me explain
16 where I'm coming from.

17 **MS. LIM:** Please.

18 **COMMISSIONER GIOVANNI:** The derivation of
19 the condition for phase A was based on a nominal
20 ten-year period that looked out from a decision that
21 was made to approve the phase 2 solar farm, which
22 gave ten-plus years to completion of backbone.

23 I'm looking for a similar condition that
24 says, if you want to start on phase 1 of the solar,
25 let's go ten-plus years from now to develop the

1 backbone infrastructure for phase -- for parcel B,
 2 and I actually have it a few years beyond the ten
 3 years, and I said 2035.

4 So it seems to me to be more than adequate
 5 enough time, and you surely, if you're sincere at
 6 developing this overall property, would look to be
 7 doing things on parcel A and parcel B in parallel.
 8 You wouldn't wait for one to be fully complete
 9 before you even did preliminary work on the second
 10 one, in my view.

11 Having said all that, I think it's
 12 important that we put some hard dates in at
 13 conditions such as this even though it would be
 14 subject to review and revision when we go to a DBA,
 15 as Mr. Yee and I were talking earlier today.

16 **MS. LIM:** And again, a DBA is likely but
 17 not certain, but what is certain is a motion to
 18 amend. I want to make sure that's very, very clear,
 19 because some commissioner said, well, maybe we don't
 20 say yes to a DBA, and that's right. Maybe you don't
 21 --

22 **COMMISSIONER GIOVANNI:** Maybe we don't say
 23 yes to a motion to amend.

24 **MS. LIM:** Exactly. This is all going to
 25 be highly discretionary, and it's going to be based

1 on the substantial evidence that we have before you
2 at that time.

3 **COMMISSIONER GIOVANNI:** And what I'm
4 saying is that consideration of the motion to amend,
5 in my view, would be appropriate to consider in a
6 condition that is consistent with how we did this
7 for the phase 2 solar farm you want to say is one
8 solar farm.

9 What this Commission is really interested
10 in, and you've heard our frustration over and over
11 at these hearings, is housing. When are you going
12 to start on the housing?

13 Solar farms are great. It gets some
14 revenue. It helps pay for everything. We get that.
15 It helps with energy transformation in this state.
16 We get that. You've got some really good solar
17 developers. We get that. We support it. These are
18 great projects. I'm wholeheartedly in support.

19 But I cannot lose sight of the importance
20 of the development of housing on this important
21 land. We've been talking about it -- not me, but
22 this Commission has been talking about it since
23 1987.

24 So we want to move forward, okay? And
25 it's all -- so that's where I'm coming from.

1 **MS. LIM:** So let me make sure I'm being
2 clear. I'm giving you a position to say that
3 putting an additional timeframe for development on
4 phase B of the master plan won't really accelerate
5 things, right, because the acceleration is that
6 condition is already on phase A.

7 And darn it, once you put in the millions
8 of dollars it takes to go through the entitlements
9 process and the multiple millions of dollars to put
10 in that infrastructure, you don't just stop.

11 So what I'm saying is that the phase B
12 infrastructure seems not only not really tied to the
13 evidence here --

14 **COMMISSIONER GIOVANNI:** I don't think I
15 saw any of that in your Gantt chart for phase B.

16 **MS. LIM:** Any of?

17 **COMMISSIONER GIOVANNI:** You're suggesting
18 they want to start, don't stop, and this should have
19 showed up in your Gantt chart for phase B
20 infrastructure development.

21 **MS. LIM:** Well, it is in there. We can
22 pull it up, if you'd like.

23 **COMMISSIONER GIOVANNI:** Let's move on.

24 **MS. LIM:** Okay. But like I said, I want
25 to be very clear. You heard my client -- and by "my

1 client," I'm referring to Ms. Sato -- say at the
2 hearing in March, after an initial reaction, I
3 think, reflective of some of the thoughts that I'm
4 saying to you now, our initial reaction was, whoa,
5 whoa, no, we shouldn't have another condition about
6 timing.

7 But then you heard her say, upon
8 reflection, a condition would be acceptable, so --

9 **COMMISSIONER GIOVANNI:** I clearly heard
10 that.

11 **MS. LIM:** -- so if that is -- I mean, I
12 represent Kamehameha Schools --

13 **COMMISSIONER GIOVANNI:** I --

14 **MS. LIM:** -- of course my position is
15 consistent with Kamehameha Schools' position.

16 **COMMISSIONER GIOVANNI:** Of course. Of
17 course.

18 **CHAIRMAN SCHEUER:** Sorry. Just for the
19 record, you're both talking over each other at
20 certain points, so --

21 **COMMISSIONER GIOVANNI:** Sorry.

22 **MS. LIM:** And the timeframe would, of
23 course, be at your discretion. I think five years
24 past the completion of the phase A master plan
25 infrastructure seems extremely fast. At the same

1 time, to repeat myself, I think all or most of these
 2 conditions are going to be substantially revised
 3 when you're actually asked to deliberate on the
 4 master plan.

5 So if the Commission thinks that five
 6 years is going to somehow -- excuse me -- the 2035
 7 deadline is going to somehow make things move faster
 8 and that makes the Commission, from a policy
 9 perspective, think that it's doing what it needs to
 10 do, then so be it.

11 **COMMISSIONER GIOVANNI:** So I did hear Ms.
 12 Sato's two comments at the last hearing, one for
 13 which she said she was not amenable, and then after
 14 reflection over the noon hour, she came back and
 15 said that Kamehameha Schools was amenable. We were
 16 very pleased with that response.

17 We can debate whether that is a reasonable
 18 amount of time. I particularly think that looking
 19 out 13 years from now is a reasonable amount of
 20 time, if you're serious about doing housing on
 21 parcel B. That's my position.

22 **MS. LIM:** Understood, Commissioner. And I
 23 know it's -- it continues to be very difficult to
 24 see the Gantt chart.

25 **COMMISSIONER GIOVANNI:** Very difficult and

1 very high-level, I might add.

2 **MS. LIM:** It is. It -- again, because
3 we're not at the point of actually bringing forth
4 the master plan for your approval, that will be done
5 via the motion to amend. But if you can see -- and
6 I've got to move it --

7 **COMMISSIONER GIOVANNI:** You have to
8 increase the percent.

9 **MS. LIM:** I'm just -- I'm pulling up
10 another copy on my own computer, and you can see
11 here that phase B design and permitting is starting
12 in 2036-2038. And I believe vertical construction
13 -- in the gray box vertical construction is
14 projected to start in 2038 for phase B. So we're
15 not wildly off from the timeframe that you're
16 proposing, Commissioner Giovanni. It's a little bit
17 different.

18 And like I said, this is all going to be
19 much further refined. Ultimately, it's your
20 discretion. My client has already said that if an
21 infrastructure deadline on phase B of the master
22 plan seems appropriate to the Commission, then so be
23 it.

24 **COMMISSIONER GIOVANNI:** So it seems like
25 we have two choices. One is to accept this

1 timeframe, and then when the master plan comes
2 before us, to argue to accelerate it, or for us to
3 put in a time that we think is reasonable today,
4 which I happen to think is to be completed by 2035.
5 And then when you present the master plan, give you
6 the opportunity to argue to revise it accordingly to
7 a later date. Those are our two choices.

8 **MS. LIM:** I wouldn't disagree with what
9 you said.

10 **COMMISSIONER GIOVANNI:** Thank you.

11 Chair, I have no further questions.

12 **MS. LIM:** Should we take down the Gantt
13 chart or no?

14 **CHAIRMAN SCHEUER:** Yes.

15 Commissioners, questions for Ms. Lim?

16 Mr. Yee, you haven't been elevated to be a
17 commissioner yet, though. In your retirement, I
18 would encourage it strongly. But do you have a
19 procedural matter?

20 **MR. YEE:** I was wondering, in light of the
21 questions of Mr. Molinari, if we might get to cross-
22 examine him, at least upon the questions that were
23 given --

24 **CHAIRMAN SCHEUER:** I'm having a hard time
25 hearing you.

1 **MR. YEE:** I'm sorry. I was speaking
2 softly. I was wondering, given -- if we could
3 cross-examine Mr. Molinari based upon the questions
4 he gave today, obviously to the Commission's
5 decision.

6 **CHAIRMAN SCHEUER:** You know, I believe it
7 would, in the fullest sense, facilitate our
8 deliberations interaction on this matter. Any
9 objection, Ms. Lim?

10 **MS. LIM:** No objection. Thank you.

11 **CHAIRMAN SCHEUER:** So let's do that right
12 now, and then we'll go back to Commissioner's
13 questions for Ms. Lim and any other witnesses.

14 Mr. Molinari, you're under oath.

15 Mr. Yee?

16 **MR. YEE:** Thank you.

17 Mr. Molinari, you were asked various
18 questions about the viability of the projects, and I
19 think all of us have read the Civil Beat article.

20 So let me just see if I can ask a few direct
21 questions about it.

22 AES has PUC approval for this project, is
23 that correct?

24 **NICK MOLINARI:** Yes. AES has PUC approval
25 for the 20-year power purchase agreement.

1 **MR. YEE:** And did AES ask for a
2 modification to increase the rate?

3 **NICK MOLINARI:** AES did not request a
4 modification to increase the rate.

5 **MR. YEE:** AES did ask for a rate increase
6 for another project, though, is that right?

7 **NICK MOLINARI:** Yes.

8 **MR. YEE:** And in the other project, the
9 argument -- or at least one of the arguments being
10 made was that AES needed the higher rate in order to
11 make the project financially viable, is that right?

12 **NICK MOLINARI:** Not exactly, Mr. Yee. The
13 circumstances, I would say, of that particular
14 project were fairly unique and different than, you
15 know, the motion before us right now.

16 I don't know how much -- well, this is
17 what I can share about that. The request was driven
18 by a completely unforeseen force majeure event where
19 AES had basically secured solar panels. A new
20 policy was put in place by the federal government,
21 enforced by the U.S. Customs and Border Patrol,
22 which basically put a stop on solar panels that were
23 alleged to have raw materials coming from a certain
24 region in China.

25 As a result of that matter, the solar

1 panels -- the manufacturer of the solar panels for
2 that project essentially pulled out. And it was a
3 very clear force majeure event. So we came with
4 kind of two options which was we had an alternative,
5 panels that had already cleared customs that were in
6 the United States that were not subject to the
7 allegations and the impacts of that event. They
8 would come at a slightly higher cost.

9 We could secure those with approval of a
10 rate increase and keep the project on, you know --
11 while there was a -- there was a disruption, a
12 delay. It was not as significant as it could have
13 been if we elected to, you know, just wait it out
14 and wait for full resolution on the matter.

15 So the -- you know, the -- our
16 counterparty, Hawaiian Electric, the Public
17 Utilities Commission, you know, had to kind of weigh
18 the matter, which was we can secure the panels --
19 secure these alternative panels and bring them now
20 or we can -- which comes at a cost increase, or we
21 can, you know, wait for the event to clear itself
22 out.

23 That is not the -- you know, it's not the
24 same issue here at Waiawa.

25 **MR. YEE:** But -- so basically, were it to

1 proceed with the other project without delay, you
2 needed a higher rate in order to secure the panels
3 that were available now?

4 **NICK MOLINARI:** Correct.

5 **MR. YEE:** And you have not asked for a
6 rate increase for this project, correct?

7 So would that then be an indication that
8 AES believes that without -- that it does not need a
9 rate increase at this time in order to make this
10 project viable and to proceed with this project?

11 **NICK MOLINARI:** Mr. Yee, at this time, AES
12 believes that it does not need a rate increase.
13 That being said, you know, I -- I get -- like I said
14 in my response to Commissioner Giovanni, you know, I
15 don't have a crystal ball, and I don't --

16 **MR. YEE:** I --

17 **NICK MOLINARI:** -- understand --

18 **MR. YEE:** I'm not asking you to predict
19 the future. I'm only asking you to explain what the
20 situation is today.

21 **NICK MOLINARI:** Yes, understood. And I
22 would also add that, you know, while I certainly
23 appreciate the line of questioning, absolutely, I
24 understand and share, you know, many of the
25 commissioners' and your, you know, anxiety around

1 the recent headlines around these projects.

2 Any project that has to propose a rate
 3 increase, you know, would be -- you know, as the
 4 Chair of the Public Utilities Commission has pointed
 5 out, would be heavily scrutinized by that body as
 6 well as the consumer advocate before any potential
 7 approval was granted for a rate increase.

8 **MR. YEE:** My final point is simply -- or
 9 question is, so then the situation in the -- in this
 10 project is different than the situation in the other
 11 project regarding questions about financial
 12 viability, is that right?

13 **NICK MOLINARI:** I would say the situation
 14 is different. I'm not sure -- maybe can you reword
 15 the question just so I understand?

16 **MR. YEE:** There are concerns that were
 17 raised in the Civil Beat article as to whether the
 18 solar projects are still financially viable. And in
 19 your other projects you got a rate increase, and
 20 you're proceeding with that project, correct?

21 **NICK MOLINARI:** Correct.

22 **MR. YEE:** And in this case, you don't feel
 23 that you need a rate increase at this time and are
 24 proceeding -- and are prepared to proceed with this
 25 project, correct?

1 **NICK MOLINARI:** Correct.

2 **MR. YEE:** So the concerns raised by the
3 Civil Beat article about solar farms generally would
4 not be applicable to this project. Would that be
5 your opinion?

6 I'm sorry, not to -- I shouldn't say -- so
7 generally about our concerns. The -- the -- because
8 I think everything you have a concern. But this
9 project is, in your opinion, ready to move forward
10 despite the concerns raised in the Civil Beat?

11 **NICK MOLINARI:** Yes, that's correct.

12 **MR. YEE:** That's it. Thank you very much.

13 I have no further questions.

14 **CHAIRMAN SCHEUER:** Thank you, Mr. Yee.

15 I'm trying to assess procedurally where we
16 are here. Ms. Lim, any redirect before we go back
17 to the commissioners' questioning of you? Any
18 redirect for Mr. Molinari?

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

20 **CHAIRMAN SCHEUER:** Okay. Commissioners --
21 well, we're actually at 10:49. I'm going to propose
22 that we take an 11-minute break, reconvene at 11
23 a.m. for continued questions of Ms. Lim regarding
24 her additional evidence that was put into the
25 record.

1 Does that sound good, Commissioners?

2 Okay. I see heads nodding. We are going
3 into recess until 11 a.m.

4 **(Recess taken 10:49 - 11:00 a.m.)**

5 **CHAIRMAN SCHEUER:** It's 11 a.m. Let's go
6 back on the record. We're continuing with questions
7 for Ms. Lim, following the introduction of her
8 additional exhibits. Questions from the Commission?

9 Commissioner Chang?

10 **COMMISSIONER CHANG:** Thank you, Mr. Chair.

11 Thank you, Ms. Lim. I may end up having
12 to apologize in advance, but I looked -- saw your
13 Exhibit 54, which was the -- which was the aerial of
14 the solar project that's currently -- it's actually
15 almost looks completed. Is that correct?

16 **MS. LIM:** That's correct.

17 **COMMISSIONER CHANG:** Is that -- is that
18 parcel within the area, the original petition area,
19 or is that -- is that land needs to be subject to a
20 new DBA?

21 **MS. LIM:** So that is within this petition
22 area. It is within the existing 1,395-acre urban
23 district area that that reclassified in 1988. That
24 area where the solar farm is completed, that's the
25 same location, the phase 2 location that this

1 Commission approved for solar farm uses in 2014.

2 And that was a motion, you recall, we
3 filed in 2019. And then we had hearings both in
4 2019 and then concluding in early 2020, right before
5 the pandemic. To get permission to refresh the
6 permission because the original solar farm
7 developer, SunEdison, ran into difficulties, and in
8 fact, there were some changes between the kind of
9 solar farm that SunEdison wanted to build and the
10 kind of solar farm that Clearway wanted to build,
11 most significantly, a battery storage.

12 **COMMISSIONER CHANG:** The reason I asked
13 the question is it was not clear during the original
14 present -- at least to me, that the degree to which
15 that project has proceeded. I -- and I'm -- I
16 apologize. I'm certain the representations made by
17 you and others were that it was under construction.

18 Because in my mind, it does go to my
19 concerns about substantial commencement. I mean,
20 you have started to use that portion of the project.

21 Is -- the petition is the area for the
22 second solar farm being proposed by AES, is that
23 also within the existing petition area?

24 **MS. LIM:** It is. The area for the current
25 project, the one that we brought the motion that

1 we're here about today, that's the phase 1 site.

2 It's about 387 acres. Again, it's the same area
3 that you folks approved for solar in 2014.

4 **COMMISSIONER CHANG:** All right.

5 **MS. LIM:** And it's all within the existing
6 urban district lands.

7 **COMMISSIONER CHANG:** All right. Okay.

8 Thank you. I appreciate that clarification. And I
9 apologize, like I said, in advance. It was -- I was
10 not -- it was not clear in my mind that there had
11 actually been substantial commencement of use of the
12 property to the degree that your Exhibit 54 shows.

13 **MS. LIM:** Apologies for failing to make
14 that more clear.

15 **COMMISSIONER CHANG:** Thank you.

16 **MS. LIM:** We threw a lot of information at
17 you.

18 **COMMISSIONER GIOVANNI:** Chair, this is
19 Giovanni.

20 **CHAIRMAN SCHEUER:** Please proceed.

21 **COMMISSIONER GIOVANNI:** I have just a
22 quick clarification on that last point.

23 Ms. Lim, can you confirm that parcel A and
24 parcel B are not at all affected by either of the
25 two solar farms on phase 1 or phase 2?

1 **MS. LIM:** So I'm going to answer a little
2 bit of a different question from what you asked,
3 because you use the term parcel A and parcel B. If
4 you remember, the solar farm that we're here about
5 today, we actually have bifurcated into two pieces,
6 parcel A and parcel B, for reasons that I'll explain
7 in a second.

8 But I think what you meant to ask me --
9 and perhaps we can pull up an exhibit. I'll suggest
10 an exhibit in a second. I think what you meant to
11 ask me is the master plan, phase A and phase B?

12 **COMMISSIONER GIOVANNI:** I do.

13 **MS. LIM:** So phase A is at the most
14 southern point of the Kamehameha Schools urban
15 district land, is not impacted whatsoever by either
16 of the two solar farms. Phase B, similarly, not
17 impacted whatsoever by either of the two solar
18 farms.

19 **COMMISSIONER GIOVANNI:** That's an adequate
20 response. I don't need anything more. That's
21 consistent with my understanding.

22 **MS. LIM:** Okay. Okay. Thank you. So I
23 won't pull up any exhibits to facilitate.

24 **COMMISSIONER GIOVANNI:** In essence, you're
25 saying that you can proceed on development of

1 infrastructure for those two parcels without having
 2 to modify, tear down, or affect the solar farms?

3 **MS. LIM:** It -- that -- that is correct.
 4 That is exactly correct. And recall, with the
 5 current solar farm, the reason why this piece, this
 6 387-acre area -- and again, it's all -- it's not a
 7 separate parcel at this point, but the reason why
 8 it's bifurcated into what we're calling parcel A and
 9 what we're calling parcel B is because KS wants AES
 10 to get out of there.

11 They want parcel B solar farm
 12 decommissioned and gone, so that it doesn't impede
 13 Kamehameha Schools' progress with the master plan.

14 So we start at the south of the master
 15 plan with phase A. Then it goes into phase B. Then
 16 it's going into phase C. Well, AES, you know, has
 17 got to get out of there. The timing works such that
 18 they would need to be off of the -- fully
 19 decommissioned on the parcel A portion of the solar
 20 farm by the end of 2044.

21 And then on the parcel B portion of this
 22 solar farm, 2054. And again, that's so that the
 23 solar never impedes developments of the master plan.

24 **COMMISSIONER GIOVANNI:** Understood. Thank
 25 you.

1 **COMMISSIONER CHANG:** Mr. Chair, can I ask
2 a follow-up question?

3 **CHAIRMAN SCHEUER:** Yes, go ahead,
4 Commissioner Chang.

5 **COMMISSIONER CHANG:** Sorry. Thank you.

6 So Ms. Lim, just to put in my mind a
7 closure to what Commissioner Giovanni -- the line of
8 questioning and the -- the infrastructure.

9 The infrastructure deadline -- or your
10 constraints is really based upon the completion of
11 the EIS, is that correct?

12 **MS. LIM:** Largely. It's also based upon
13 not only the EIS, which --

14 **CHAIRMAN SCHEUER:** We're getting a lot of
15 feedback. I apologize. I'm not sure where it's
16 coming from.

17 **MS. LIM:** I hear it, too.

18 **CHAIRMAN SCHEUER:** It might be a
19 commissioner's microphone that's on that doesn't
20 need to be on. Okay.

21 Go ahead, please. Sorry.

22 **MS. LIM:** It's completion of the EIS, and
23 then, as I aid earlier, we need to return to you to
24 get permission through a motion to amend to do
25 anything on this property other than solar

1 development. That's the condition that you put on
2 us on -- in 2014.

3 So -- so what is precluding us from moving
4 ahead on the master plan is following the law, doing
5 a Chapter 343 EIS, then coming back to this
6 commission to get permission to build the master
7 plan. And at that time, we fully expect that issues
8 of timing, issues of infrastructure, all kinds of
9 issues will be raised as they typically would be
10 when you're really looking at a development
11 proposal.

12 Then with that motion to amend, it's
13 likely at this point that there will be an
14 accompanying district boundary amendment. But
15 again, the district boundary amendment may or may
16 not be pursued, whereas the motion to amend must be
17 pursued before they develop.

18 And then recall Ms. Swartman explained
19 last time we want to return to the city and actually
20 redo the zoning. So the property has been rezoned.
21 There are zoning ordinances that have rezoned it for
22 development.

23 But the development that is permitted
24 under those rezoning ordinances is development that
25 was conducive to what Gentry wanted to do with the

1 two golf courses and the leisure village and
2 everything, which is very different from what
3 Kamehameha Schools wants to do. They're looking at
4 a much more compact development.

5 So it's EIS, Land use Commission, city and
6 county zoning, subdivision, you know, building
7 permits, but those are the hurdles we have to jump
8 through before we can stick a shovel in the ground.

9 **COMMISSIONER CHANG:** I guess my -- my
10 point -- my only point is that those are all within
11 the control of Kamehameha Schools. It does not
12 require -- although the motion to amend to permit
13 you to proceed is -- would come before the Land Use
14 Commission, the rate and the speed upon which you
15 proceed, that's really up to Kamehameha Schools. So
16 the deadline for the infrastructure, while it may
17 appear to be ambitious, is really -- is really
18 controlled by Kamehameha Schools.

19 That the -- the deadlines placed by the
20 Land Use Commission, while they may appear to be
21 arbitrary or too ambitious, is -- because I -- I --
22 I guess I just would like there to be -- and I know
23 -- I -- I know you realize this, too, that the
24 Commission's frustration, while Kamehameha Schools
25 has just recently come upon this property and

1 developed it, it has really been pending for many
 2 years.

3 So we're really not trying to give
 4 Kamehameha Schools a hard time. We would have
 5 required this of anyone. But these are all things
 6 within the control of Kamehameha Schools at this
 7 point in time.

8 Assuming that this motion gets granted and
 9 you're able to build the solar, there's nothing to
 10 preclude Kamehameha Schools to proceed aggressively
 11 with the -- the environmental documents to permit
 12 you to proceed. Is that correct?

13 **MS. LIM:** Commissioner Chang, I absolutely
 14 agree with you on that. This motion needs to get
 15 resolved, because to engage in the proper
 16 environmental review, we need to know what's going
 17 on, on the property.

18 So we know we have this approval from 2014
 19 that allows a solar farm, okay? But the approval
 20 that we're seeking right now would actually allow a
 21 portion of that solar farm to stay on for five years
 22 longer and a portion actually has to get removed
 23 five years earlier.

24 So we need to get through this hurdle to
 25 be able to engage more fully on the EIS, but that's

1 not to say that that work hasn't already begun. You
2 heard Ms. Swartman report to you all at the last
3 hearing. PBR has been engaged. Subconsultants to
4 Kamehameha Schools have been engaged. PBR hasn't
5 yet engaged their subconsultants on the EIS.

6 I mean, there's work happening, but we
7 kind of just need to move past this kind of impasse
8 that we're at right now. And then the EIS, it will
9 take as long as it takes, but you're correct. I
10 mean, if people are committed, it becomes a matter
11 of how overwhelming are the public comments; how
12 complex is the alternative analysis --

13 **COMMISSIONER CHANG:** So -- so let me ask
14 you this question. If the Commission does not
15 approve -- based upon what you were just sharing
16 with me, if the Commission does not approve the --
17 this motion to modify, is that going to stop
18 Kamehameha Schools from proceeding forward with
19 their master plan?

20 **MS. LIM:** I don't think it's going to do
21 anything one way or the other with the master plan.
22 In the same way that the solar is not impeding
23 development of the master plan, lack of solar --
24 while it would be extremely unfortunate for a number
25 of reasons that I'm happy to discuss, but the lack

1 of solar would not necessarily impede development of
 2 the master plan.

3 Obviously, there's financial impacts and
 4 renewable energy impacts, but --

5 **COMMISSIONER CHANG:** And I'm not
 6 suggesting that I'm -- that's the position I've take
 7 -- I guess I just wanted to respond to -- until we
 8 resolve this, we can't move forward with that. So I
 9 just want to be really clear that this -- the
 10 Commission's addressing the petition that's the
 11 motion that's been before us, the time period that
 12 we spent on this should not in any way delay
 13 Kamehameha Schools from moving forward on their
 14 master plan.

15 And as you said, representations are that
 16 they have been, so I just want to be very clear that
 17 we're not necessarily holding up the master plan.

18 **MS. LIM:** I'm not saying you are, although
 19 for a proper environmental review -- and by that, I
 20 mean when something is published, you do have to
 21 describe the facts on the ground, so there is that
 22 question mark.

23 But in terms of the preliminary work, I
 24 wouldn't disagree with anything you said.

25 **COMMISSIONER CHANG:** All right. Thank

1 you.

2 **CHAIRMAN SCHEUER:** Commissioners, further
3 questions for Ms. Lim at this time?

4 **COMMISSIONER CABRAL:** Yes. Commissioner
5 Cabral here has a question, if I can ask it.

6 **CHAIRMAN SCHEUER:** Thank you. Please,
7 Commissioner Cabral.

8 **COMMISSIONER CABRAL:** Okay. I know you
9 can't see us all waving over here. Yes.

10 Petitioner Lim, thank you very much for
11 all this wonderful information. What I -- I keep my
12 stuff, and I brought my pictures from last month and
13 my charts. And so I want to just verify, because in
14 those, of course, they're big, and they're -- and I
15 -- I'm so familiar with them. And you have a large
16 number of timelines that it laid out, but yet, since
17 then, you've submitted a couple more documents,
18 including the unnamed Exhibit 58 today that we
19 received.

20 Have any -- has any of the new information
21 you've given us since we were together in mid-April
22 changed any of those timelines on what you were
23 planning on doing or to what areas you are planning
24 on doing any of this development for solar and/or
25 for future housing?

1 **MS. LIM:** No, Commissioner Cabral.

2 **COMMISSIONER CABRAL:** Okay. Thank you
3 very much. I just don't want to be looking at the
4 old data. Thank you.

5 **CHAIRMAN SCHEUER:** Thank you, Commissioner
6 Cabral.

7 Commissioners, further questions?

8 Ms. Lim? I'm seeing none, but you're all
9 very, very tiny on my screen on audio. Any
10 questions?

11 Commissioner Wong?

12 **COMMISSIONER WONG:** Chair, I would like to
13 make a motion to move to executive session to
14 consult with the board's attorney on questions and
15 issues pertaining to the board's powers, duties,
16 privileges and immunities and liabilities regarding
17 substantial commencement and any other appeals that
18 may occur?

19 **CHAIRMAN SCHEUER:** Thank you for the
20 motion, Commissioner. I'd like to know -- I do have
21 a short line of questions for Ms. Lim as well. I'm
22 happy to take those now or later.

23 **COMMISSIONER WONG:** Chair, I'll hold it
24 until after your questions.

25 **CHAIRMAN SCHEUER:** Okay.

1 **COMMISSIONER WONG:** I may cancel my
2 motion.

3 **CHAIRMAN SCHEUER:** Okay. If there's
4 nothing else from the Commissioners, I'll go over
5 this fairly quickly, and then we'll take up
6 Commissioner Wong's motion.

7 Ms. Lim, you heard my questions and
8 comments at earlier hearings about my concerns about
9 the differences between an environmental impact
10 statement under 343 and our real community-based
11 master plan, is that correct?

12 **MS. LIM:** I did hear your comments, yes.

13 **CHAIRMAN SCHEUER:** And the stipulated
14 condition, now a three-way stipulated condition does
15 allow for the EIS to substitute for a master plan.
16 So I guess my broad first question is: Was there
17 consideration of, perhaps, separating out the master
18 plan process with the EIS process, and if not, why
19 not?

20 **MS. LIM:** To be perfectly frank that there
21 wasn't discussion about separating those out, and
22 I'll explain why. Notwithstanding the -- your
23 comments that a master plan is somehow more robust,
24 we know that for this EIS, we have to do an awful
25 lot of analysis, as well as community consultation,

1 as well as just the purely public process that
2 starts from the scoping meetings and goes forward
3 from there on the EIS.

4 It seems to me that if an EIS is going
5 forward, and you heard from Ms. Swartman the kind of
6 community consultation that they intend to engage in
7 to start off that EIS, that it would provide the
8 kind of information that I think you would be
9 seeking in a master plan.

10 For instance, I've worked on several 343
11 documents. I often consult with clients as they're
12 going through that process. And certain clients
13 have whole appendices describing community meetings,
14 describing groups that they've met with, feedback
15 that's been received.

16 And why is that? Because ultimately,
17 although it's a technical disclosure document, and
18 it's a legal disclosure document, nobody wants to
19 get bopped over the head at a final decision on an
20 EIS and find out that, you know, because we didn't
21 beat the bushes well enough, there are people who
22 are really objecting to the exceptions of this EIS,
23 so there's people who are going to challenge the
24 validity of this EIS.

25 So to me, it's quite a -- quite a back-

1 and-forth kind of interactive process, because if
2 you don't beat those bushes, especially on an EIS
3 that covers a project of this size, chances are
4 you're going to find out some -- you're going to get
5 some pretty bad surprises later in the game. So
6 that's the perspective.

7 I don't know that we would be opposed to
8 breaking out a master plan from an EIS, but when you
9 know that the EIS is being done because we have to
10 come to you with a motion to amend to get your
11 approval of the master plan, and you, of all people,
12 you know, being on this Commission for eight years,
13 know how substantial those kinds of proceedings are.

14 There could easily be rooms or screens of,
15 you know, hundreds of people who want to
16 participate, who want to provide testimony, et
17 cetera, et cetera. To me, the EIS, because it feeds
18 into the motion to amend, is actually going to be,
19 by necessity, an extremely comprehensive document
20 that involves, you know, a lot of community
21 involvement.

22 **CHAIRMAN SCHEUER:** Thank you for that
23 response. So I'll just preface my reaction to you
24 to say like, this is ultimately not for me. This is
25 for future commission. I'm going to be off the

1 commission when you guys come back. I'm presumably
2 not put back on because I think I might say no even
3 if they ask, after eight years.

4 But it will be before another commission.
5 And I want this Commission to have the best possible
6 experience. I think when our EISs have gone
7 smoothly, it has been when -- you know, and I hold
8 up Waikapu Country Town as an example. They spent a
9 lot of time and a lot of community engagement before
10 they started the EIS process, to figure out what was
11 going on.

12 I have the sense here that Kamehameha
13 Schools is starting the EIS process and then waiting
14 to sort of do some of the more robust community
15 engagement as part of that process, based on the
16 testimony from Ms. Swartman and others.

17 And it just gives me pause, and I'll just
18 use this brief opportunity, right. My engagement
19 with this project, I mean, it was approved -- it was
20 applied for the year I graduated from high school,
21 which is now 35 years ago, was approved my first
22 year in college. My first engagement with it was
23 when I was working for Kamehameha Schools.

24 Kamehameha Schools had unsuccessfully
25 argued in front of the State Water Commission that

1 they should get water from the Waiahole ditch in
2 order to feed the development here. I was tasked
3 with working with particular community members on
4 revising Kamehameha Schools' water policy to
5 actually reflect more than just a raw ownership
6 claim to water, which KS had pursued, but instead, a
7 recognition that water resources have educational,
8 cultural, economic, community values.

9 I then, working for the Office of Hawaiian
10 Affairs, despite the fact that it was Gentry's
11 development, represented the Office of Hawaiian
12 Affairs when Kamehameha Schools tried to get its
13 water use permits for their golf courses, which they
14 eventually did get. And now it's come in front of
15 me on multiple times on this thing.

16 I've said this before, so I'll just touch
17 on my earlier remarks in response to one of the KS
18 witnesses. This continues to be kapulu. This
19 continues to be sloppy and difficult because of the
20 failure, in my mind, for Kamehameha Schools to
21 meaningfully engage with all the stakeholders who
22 are appropriately involved.

23 So this condition gives me great pause.
24 It does not necessarily accomplish the robust,
25 thriving ahupua'a that we want to all see here.

1 I'll give you an opportunity to react, but
 2 that's all I have to say about that first stipulated
 3 condition. I don't think it achieves what we need
 4 it to achieve.

5 **MS. LIM:** Well, obviously, I mean, your
 6 thoughts, as somebody, especially, with the history,
 7 the professional history that you have, are very
 8 meaningful. And I also go back to what you just
 9 said about the Waikapu properties docket.

10 Some of these Commissioners know that some
 11 of us have had a very hard time on an EIS that came
 12 before this Commission. We have the scars of
 13 knowing what happens when we work with clients who
 14 had the very best of intentions, but there was some
 15 failure with community consultation at some point,
 16 and those scars teach us a lot.

17 Kamehameha Schools has been public about
 18 this. If I remind you -- and we've refiled a copy
 19 of it, but Exhibit 42 in this docket is actually a
 20 copy of the master plan and schedule for development
 21 that we filed in October 2019. It does have a long
 22 list of stakeholder meetings that had taken place at
 23 that point.

24 **CHAIRMAN SCHEUER:** I'm familiar with it.

25 **MS. LIM:** And that list was not quite

1 duplicated on the Power Point that Ms. Swartman
 2 walked you all through at the last hearing. More
 3 work has to be done. There's doubt about that. I
 4 don't -- I struggle to think how the stipulated
 5 condition would be changed to encourage what is
 6 already going to have to happen if we want to be
 7 successful before this Commission.

8 And no matter who's the chair, we're going
 9 to need support not only from the Commission but
 10 from the community. We're going to need people who
 11 are willing to come before this Commission and say,
 12 "This is a good one. Please vote yes on this one."
 13 And that's only going to happen if that kind of
 14 meaningful engagement takes place.

15 So I struggle to think about how
 16 conditions should be changed to tell us what we need
 17 to do if we want to be successful. If there's a
 18 proposal, I would be happy to confer with my client
 19 on suggested language.

20 But just know that with or without a
 21 condition, if we want to be successful, we got to do
 22 that work, and we know it. And a condition isn't
 23 going to make it happen any better or any worse. We
 24 need to do it no matter what.

25 **CHAIRMAN SCHEUER:** Thank you, Ms. Lim.

1 Commissioners, anything further before we
2 take up Commissioner Wong's motion? Seeing none.

3 There's a motion made by commissioner Wong
4 to move into executive session to consult with a
5 Commission's attorney on our powers, duties,
6 liabilities, and immunities related to our ability
7 to revert.

8 Is there a second?

9 **COMMISSIONER OHIGASHI:** Second.

10 **CHAIRMAN SCHEUER:** Seconded by
11 Commissioner Ohigashi.

12 Is there any discussion?

13 **COMMISSIONER OKUDA:** Chair -- oh, this is
14 Gary Okuda.

15 **CHAIRMAN SCHEUER:** Commissioner Okuda?

16 **COMMISSIONER OKUDA:** This is one of the
17 few times I'd like to speak against the motion to go
18 into executive session.

19 **CHAIRMAN SCHEUER:** Please proceed.

20 **COMMISSIONER OKUDA:** Thank you, Mr. Chair.
21 Unless the Deputy Attorney General, Mr. Morris, is
22 going to tell us that he has anything additional to
23 add to Mr. Yee's responses to my questions about the
24 effect of substantial commencement in context of the
25 Bridge Aina Le'a case.

1 I'm just concerned that when we go into
2 executive session, it's just going to involve
3 deliberations on how that rule would be applied to
4 this specific case. And I think that type of
5 discussion should be out in the open, so everybody
6 can hear the reasoning.

7 So for that reason, unless Mr. Morris
8 intends to give advice contrary to what Mr. Lee has
9 -- Yee has testified to, I'll be voting against this
10 motion.

11 **CHAIRMAN SCHEUER:** Thank you.
12 Commissioners, further discussion on the motion to
13 go into executive session?

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

16 **CHAIRMAN SCHEUER:** Commissioner Wong.

17 **COMMISSIONER WONG:** Just one thing. If we
18 do go into executive session, for everyone here,
19 just because my stomach is getting hungry, can we
20 have lunch at the same time so everyone can have
21 lunch if we do go into executive session?

22 **CHAIRMAN SCHEUER:** I'm ahead of you on
23 that one. I was going to suggest that, Commissioner
24 Wong, but let's deal with the substantive.

25 Anything further on the substantive

1 motion? Commissioners, we're in discussion.

2 **COMMISSIONER OHIGASHI:** Mr. Chair.

3 **CHAIRMAN SCHEUER:** Commissioner Ohigashi.

4 **COMMISSIONER OHIGASHI:** Supporting the
 5 motion to go into executive session. I hear Mr. --
 6 Commissioner Okuda's concerns; however, I don't know
 7 what Mr. Morris will say.

8 I've been in executive sessions throughout
 9 this commissions, and it would seem that the
 10 Attorney General, as well as our Executive Director,
 11 would put the kibosh or would stop us from making
 12 any kind of deliberations and (indiscernible) the
 13 commission -- commissioners, I don't think that any
 14 kind of deliberations would take place, so
 15 therefore, I think it's helpful to get Mr. Morris's
 16 -- and besides the fact, I don't think Mr. Morris
 17 can (indiscernible) his advice to us. So that if he
 18 did, then we wouldn't need to go into executive
 19 session.

20 **COMMISSIONER OKUDA:** Mr. Chair, this is
 21 Gary Okuda.

22 **CHAIRMAN SCHEUER:** Commissioner Okuda.

23 **COMMISSIONER OKUDA:** Yeah. Commissioner
 24 Ohigashi has convinced me that I should reconsider
 25 what I said, so I withdraw my objection.

1 **CHAIRMAN SCHEUER:** Okay. Is there further
2 discussion, Commissioners?

3 So I'm going to ask Mr. Orodenker to do a
4 roll call vote on the motion to go into executive
5 session, and I will suggest that we encompass lunch
6 -- the lunch break within executive session.

7 So I will need some assistance with
8 somebody who's physically in the room in -- at the
9 airport, to advise them how -- where the
10 Commissioners will gather for executive session and
11 how the virtual link for executive session will be
12 distributed. Who can advise us on that?

13 Mr. Orodenker or who? Scott? Riley?

14 **MR. ORODENKER:** Thank you, Mr. Chair. I
15 believe that Natasha Quinones, the Chief Clerk, has
16 already sent a link for executive session to -- at
17 least, I've received one. She sent it just a few
18 moments ago.

19 So what -- yourself and Dan Morris and
20 myself will link in by Zoom, and the remaining
21 commissioners will stay in the room. You're going
22 to have to ask the parties and any public to leave
23 the meeting room at the airport.

24 **CHAIRMAN SCHEUER:** Okay. So the room at
25 the airport will be cleared except for the

1 commissioners and counsel. And then -- and staff.

2 Okay.

3 And then -- sorry -- timing wise, it's
4 11:30. 12:15?

5 **COMMISSIONER CABRAL:** Yes.

6 **CHAIRMAN SCHEUER:** Okay. Okay. Should
7 this succeed, that will be our plan.

8 Mr. Orodenger, please poll the Commission.

9 **MR. ORODENKER:** Thank you, Mr. Chair. The
10 motion is to go into executive session.

11 Commissioner Wong?

12 **COMMISSIONER WONG:** Aye.

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

14 **COMMISSIONER OHIGASHI:** Yes.

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

16 **COMMISSIONER OKUDA:** Yes.

17 **MR. ORODENKER:** Commissioner Kamakea-

18 Ohelo?

19 **COMMISSIONER KAMAKEA-OHELO:** Aye.

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

21 **COMMISSIONER GIOVANNI:** Aye.

22 **MR. ORODENKER:** Commissioner Chang?

23 **COMMISSIONER CHANG:** Aye.

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

25 **COMMISSIONER CABRAL:** Aye.

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

3 Chair Scheuer?

4 **CHAIRMAN SCHEUER:** Aye.

5 **MR. ORODENKER:** Thank you, Mr. Chair. The
6 motion passes unanimously with eight votes.

7 **CHAIRMAN SCHEUER:** Okay, people. We are
8 going into executive session. It is 11:30. We will
9 reconvene at 12:15. Thanks to all the parties.

10 So this -- just to be clear, what should
11 also happen logistically is this Zoom link should
12 remain up and some of us will leave this and go into
13 a different virtual room and then come back to this
14 room.

15 **MR. YEE:** Sorry. Just so I'm clear,
16 should we leave the Zoom link?

17 **CHAIRMAN SCHEUER:** You may stay in the
18 Zoom link.

19 **MR. YEE:** So I won't be able to hear --
20 I'm just --

21 **(Whereupon, executive session was held.)**

22 **CHAIRMAN SCHEUER:** It's 12:20. We're back
23 on the record. I apologize for the five-minute
24 additional delay.

25 We have exited the executive session and

1 are leaving -- are continuing questions for Ms. Lim
2 on her evidence, if any.

3 Commissioners, is there anything further
4 for Ms. Lim at this time? Commissioners? If I'm
5 seeing none, then what we would do is we would move
6 on to any -- to closing argument and final rebuttal.

7 We'll go through the parties, and I'll
8 give you a final bite at the apple after that, Ms.
9 Lim, so closing argument? Ms. Lim?

10 **MS. LIM:** Thank you, Chair.

11 Commissioners, thanks for all of the time and hard
12 work that you've put into this motion. I hope you
13 come to the right decision, which is please approve
14 this motion.

15 You know that this is an important solar
16 farm project. It's not going to be the one and only
17 answer to Hawaii's renewable energy needs, but it's
18 a step in that direction. And it's a renewable
19 energy form that's located in an area that this
20 Commission has already approved for renewable energy
21 just in 2014.

22 All we're looking for is, as I said
23 before, five years longer for part of the project
24 and actually five years shorter for part of the
25 project. That's what the motion is before you.

1 Now, there's also been some comments or
2 suggestions that this motion is also looking to get
3 relief from conditions that were imposed in 2014. I
4 take issue with the characterization of what we're
5 doing as seeking relief, because that implies, at
6 least in my head, that we're trying to get away from
7 prior commitments or obligations.

8 In fact, the conditions that we're seeking
9 to change are essentially clean up those conditions
10 from 2014 because several of them have already been
11 satisfied. In 2014, when you told us that we had to
12 have an approved -- an SHPD-approved archaeological
13 inventory survey in place, that was a condition.

14 That archaeological inventory survey has
15 been done. All 1,395 acres have been surveyed. And
16 in fact, not only has the AIS been done, but a
17 preservation plan has been prepared, and that's been
18 accepted by SHPD. And in fact, as the record shows,
19 the interim preservation measures for the two solar
20 farms have already put into place.

21 So the conditions that we're seeking to
22 modify through our motion are not -- that's just one
23 example, but they're not conditions that we're
24 saying, "Hey, we can't do it. It's too hard." It's
25 really just looking to clean up things that made

1 sense in 2014 but no longer quite make sense the
 2 same way because progress has been made on the solar
 3 farm.

4 Now, some of the conditions are not
 5 reflected in our motion, but some of the conditions
 6 that we're asking for your approval of are those
 7 that are shown in the three- party amended
 8 stipulation that we filed yesterday.

9 I already mentioned those, but I'll just
 10 briefly touch on them again. Those stipulated
 11 conditions retain the condition that you all imposed
 12 in 2020, saying that the backbone infrastructure has
 13 to be in place in the phase A of the master plan.

14 Even though we're not looking for your
 15 approval of the master plan yet, that condition
 16 would remain in place for this solar farm. In other
 17 words, KS has accepted that condition and proposes
 18 to have that be part of your order on this motion.

19 The stipulated conditions also include an
 20 extensive wildlife protection measure that was never
 21 requested by the commission in the past but
 22 certainly Kamehameha Schools and the solar farm
 23 developer are prepared to go forward with the terms
 24 of that condition.

25 There's also a condition that --

1 initially, we thought why should we prepare yet
2 another master plan when a master plan has already
3 been presented. What we really need to do is get to
4 you with the real stuff that -- the harder stuff,
5 the EIS stuff, and hurry up and get to you with a
6 motion to amend.

7 Right now, the stipulated condition that
8 all three parties agreed to says, "Well, we want to
9 see that draft EIS by a time certain. And if not
10 that, a revised master plan. But darn it, let's go
11 toward that draft EIS if not even sooner than the
12 date in the stipulated condition."

13 In other words, what I'm trying to say is
14 that the conditions that we're seeking modification
15 of are not modifications, as I said, because we're
16 trying to get away from something, we're trying to
17 give -- have you give us a break and excuse us for
18 noncompliance, nonperformance.

19 We're simply looking for edits to change
20 conditions to reflect the current conditions and, in
21 fact, have voluntarily accepted additional
22 conditions through that stipulation.

23 This is a 30-megawatt solar farm. Now,
24 like I said, that's not going to solve every
25 sustainable energy problem in the world, but it's,

1 what, about one -- a little over one percent of the
2 renewable energy contribution on this island. I
3 think that's what Commissioner Giovanni corrected me
4 on at the first hearing in response to what Cameron
5 Black of the State Energy Office had said.

6 State Energy Office is in support of this
7 project, and I think for good reason. Not only is
8 it a clean renewable energy project, it's a project
9 that is proposed by a strong developer with a proven
10 track record. It is a project that in no way is
11 going to impede development of this master plan, as
12 we've indicated to you before, and it's a project
13 that is going to, in fact, help fulfill, I believe,
14 this Commission's public trust duties.

15 Even though some people may view the most
16 recent In Re: Maui Electric Company decision from
17 the Hawaii Supreme Court as not an especially
18 scintillating decision, there's language in that
19 decision reminding -- from the Hawaii Supreme Court,
20 reminding us that public trust also includes using
21 our natural resources in beneficial ways to promote
22 the sustainability of the people of Hawaii. And I
23 think allowing this land to be used for -- as -- on
24 an interim basis, for renewable energy will help
25 fulfill those public trust duties and will in no way

1 impede the development of housing.

2 I've spoken so much about the exhibits,
3 and I'm very happy to respond to questions, but I
4 want to be respectful of your time, and I'm not
5 going to repeat myself.

6 I just ask that you please give us a fair
7 hearing, understand that we came in good faith, with
8 the understanding that this land has already been
9 approved for solar, and we're really just trying to
10 make a few little changes so that this particular
11 solar farm, which is a little bit different from
12 what you already approved in 2014, can go forward.
13 And I hope that this Commission can make the right
14 decision. I'll stop there.

15 **CHAIRMAN SCHEUER:** Thank you.

16 Any final questions for Ms. Lim?

17 If not, Mr. Pang, any closing?

18 **MR. PANG:** Thank you, Mr. Chair. Very
19 briefly, the City and County of Honolulu Department
20 of Planning and Permitting does not oppose the
21 motion; supports the interim use. And should the
22 Land Use Commission approve the motion, we do
23 request that the conditions in the stipulated -- the
24 stipulation be attached to the decision. Thank you
25 very much.

1 **CHAIRMAN SCHEUER:** Thank you, Mr. Pang.

2 Any questions for City and County of
3 Honolulu DPP?

4 Mr. Yee.

5 **MR. YEE:** Thank you. Honestly, I had made
6 final arguments, essentially, at the last hearing,
7 so I'm not going to repeat myself.

8 We basically were arguing that the motion
9 to amend should be granted, that there were a number
10 of very difficult issues, but we believe that they
11 should be dealt with on a motion to amend and not
12 today.

13 I won't repeat myself, and I won't go into
14 the arguments on why. (Indiscernible) answer any
15 questions about that.

16 There were three particular issues that
17 were raised today. I just want to touch upon them
18 briefly. One was the issue of substantial
19 commencement. Perhaps Commissioner Chang is
20 satisfied with the issue. So I am as well.

21 She was asking for language. If you
22 wanted language, I'd be happy to provide it. But as
23 I said, if you are satisfied with the response, I
24 will leave it there.

25 The second issue was raised, I thought, by

1 the Civil Beat article. I just wanted to point out
2 that I believe Mr. Molinari demonstrated that this
3 particular project is an actually viable and that
4 the concerns raised in the Civil Beat article aren't
5 applicable to this particular project and that it is
6 -- no one has a crystal ball. No one knows for
7 sure, but based upon the information we have now,
8 this project is reasonably capable of moving
9 forward.

10 And finally, there was the issue of
11 whether or not an EIS is an appropriate substitute
12 for master plan. I understand the issue. It's a
13 fair question to raise.

14 The Office of Planning's judgment was
15 somewhat -- while we certainly agree a well-done
16 EIS, robustly vetted through the public, leads to
17 smoother district boundary amendments or, in this
18 case, the motion to amend.

19 We believe that it is important to get
20 that -- this project moving forward, and an
21 important part of that was the EIS. That's the
22 reason we wanted to make sure that EIS has a
23 deadline.

24 So we understand the argument about the
25 importance of the master plan, and that the two

1 things are not the same, but it was important to us
2 to get this project back before the LUC and that an
3 EIS was important to have a deadline for.

4 We stipulated to the conditions for it.
5 We stand by that stipulation. And with that, I will
6 stop and be happy to answer any questions.

7 **CHAIRMAN SCHEUER:** Thank you, Mr. Yee.

8 Any questions for the Office of Planning
9 and Sustainable Development, Commissioners?

10 Commissioner Chang?

11 **COMMISSIONER CHANG:** Thank you.

12 Mr. Yee, thank you for remembering the
13 question that I posed to you. I went back and
14 looked at 205-4(g) and Bridge Aina Le'a, so --

15 **CHAIRMAN SCHEUER:** The staff might need to
16 -- or you might need to turn down the mic slightly.
17 I'm getting feedback.

18 **COMMISSIONER CHANG:** All right. Let's see
19 if this --

20 **CHAIRMAN SCHEUER:** There you go.

21 **COMMISSIONER CHANG:** Better? All right.
22 Thank you so much.

23 So Mr. Yee, I am still interested in
24 hearing some proposed language, because I think I,
25 like you, really would like to support Kamehameha

1 Schools' ability to do this solar project. But I am
2 -- what -- and I am -- I appreciated the aerial
3 photo, as that did reassure, in my mind, that
4 there's been use of the land, commencement of use of
5 the land.

6 But in reading through the specific
7 language in Bridge Aina Le'a, as well as in HRS
8 205(4)(g), "Substantial commencement of use of the
9 land in accordance with such representations," "such
10 representations," in my mind, go back to the
11 original project -- the original DBA that was
12 approved, which was a housing development.

13 The solar projects were not part of that.
14 I do recognize -- so I mean, I am -- I would like
15 your assistance in -- if you have language as a
16 condition that recognizes that the solar projects,
17 as indicated by the petitioners, are interim,
18 temporary use. They're not associate -- they're not
19 the (indiscernible) on the master plan.

20 The master plan can move separately, but
21 yet, if the deadlines are not met, do we still have
22 the option to revert? So I am curious to hear your
23 language.

24 **MR. YEE:** So as you may recall, my
25 suggestion was simply to defer the question and to

1 make clear -- I think you have a concern that the
2 decision today would prevent you from moving forward
3 in the future, so why I proposed the following
4 language to make sure that you had the freedom to
5 make an appropriate decision in the future rather
6 than make a particular finding today.

7 The language, if I could just read it,
8 because I worked on it, you know, would be "One,
9 there is no pending allegation that petitioner is in
10 violation of any condition or representation. Two,
11 it is premature to determine whether the Commission
12 should or has the authority to revert the petition
13 area and violations are going to be condition or for
14 representation. "And three, nothing in this
15 decision order shall limit the Commission's ability
16 to determine whether the petition area may be
17 reverted, if there is a violation of any condition
18 or representation."

19 It simply makes clear that the issue is
20 not resolved, okay, and will be resolved if the
21 matter ever comes up.

22 I will also represent to you that although
23 I cannot commit OPSD to a position in the future, I
24 will say that my recommendation would be that if
25 Kamehameha Schools just out and out violates one of

1 these conditions, my recommendation would be to
2 fight for reversion if it occurs prior to the motion
3 to commence.

4 **COMMISSIONER CHANG:** Thank you. I
5 appreciate the proposed language. Would it be
6 helpful to include in there that the approval of the
7 solar farms are really -- they're an interim
8 temporary use, and they are not -- they are not part
9 of the represent -- the original representation?

10 **MR. YEE:** I think it would be important to
11 say that this is temporary and reduced, and that it
12 is separate and different from the proposed
13 construction -- definitely different from the
14 original construction proposed.

15 **COMMISSIONER CHANG:** Okay.

16 **MR. YEE:** What is being substantially
17 commenced is not the original construction.

18 **COMMISSIONER CHANG:** Okay. Thank you.

19 **CHAIRMAN SCHEUER:** Thank you, Commissioner
20 Chang.

21 **COMMISSIONER CHANG:** Mr. Chair, I'm really
22 sorry. I don't know if anybody else has any other
23 questions for Mr. Yee. I have one -- one -- one
24 question for Ms. -- for the petitioner --

25 **CHAIRMAN SCHEUER:** Okay. I have a

1 question for Mr. Yee. Any other questions for Mr.
2 Yee?

3 Mr. Yee, I just want to make sure -- I
4 appreciate your comments and your reflecting on my
5 concerns about the difference between an EIS and a
6 master plan. I just wanted to confirm from your
7 statements that you're not suggesting that due to
8 your client's desire to have an EIS commence, so
9 that the project can commence -- you're not saying
10 that this is mutually exclusive.

11 It should be possible for the petitioner
12 with the stipulated condition to have an excellent
13 master plan that meets the kinds of stakeholder
14 engagement that we have discussed, as well as meet
15 the deadline for having a draft EIS as stipulated?

16 **MR. YEE:** They're not mutually exclusive,
17 if that was your question. You can certainly have
18 both.

19 **CHAIRMAN SCHEUER:** Within this deadline,
20 you believe it's possible? Sorry.

21 **MR. YEE:** I will stay quiet. Could you
22 repeat the question?

23 **CHAIRMAN SCHEUER:** Do you believe both are
24 possible within the deadline that has been
25 stipulated?

1 **MR. YEE:** Yes, I do. But I just have to
2 say OPSD stipulated to a condition, and we stand by
3 the stipulation.

4 **CHAIRMAN SCHEUER:** Okay. Thank you.

5 Ms. Lim, do you want to answer one more
6 question from Commissioner Chang?

7 **MS. LIM:** I welcome any questions.

8 **CHAIRMAN SCHEUER:** Commissioner?

9 **COMMISSIONER CHANG:** Thank you, Ms. Lim.
10 Actually, this is in -- it's an additional
11 condition, and it's specifically related to the
12 protection and preservation of Native Hawaiian
13 traditional and customary practices.

14 So this is the proposed language I'm --
15 I'm going to ask if you have any objections.
16 "Petitioners conducted an AI -- an archeological
17 inventory survey, archeological preservation plan,
18 cultural impact assessment, cultural resources
19 preservation plan, and an ethno-historic study that
20 included the petition area." "Although no culture
21 resources or practices have been identified within
22 the petition area that would be adversely impacted
23 by the proposed solar farm, this finding is limited
24 to parcel A and parcel B of the petition area."

25 I did -- I -- you addressed the

1 archaeological issues, but you didn't -- the
2 stipulation didn't address the Ka Pa'akai or the
3 traditional customary practices.

4 **MS. LIM:** Right. So just to be clear,
5 when you're talking about parcel A and parcel B of
6 the petition area, are you talking about the phase 1
7 solar farms --

8 **COMMISSIONER CHANG:** Right, right.

9 **MS. LIM:** Right. And then, of course,
10 before you issued your decision in 2020 for the
11 phase 2 solar farm site, you had made findings that
12 -- that included the Ka Pa'akai analysis.

13 **COMMISSIONER CHANG:** Okay. So my only
14 point is I just would like that finding to be
15 limited just to these two parcels and not to the
16 entire -- the entire project -- the entire petition
17 area.

18 **MS. LIM:** So as you notice, I just turned
19 to look at my client. He gave me the thumbs up, but
20 I would say, of course, because we have to do --
21 excuse me -- not we, but my clients do a cultural
22 impact assessment as part of the EIS for the motion
23 to amend, so --

24 **COMMISSIONER CHANG:** So yes, you and I are
25 on the same page.

1 **MS. LIM:** No problems.

2 **COMMISSIONER CHANG:** Okay. I just wanted
3 it to be very clear, so yeah. Because you've done a
4 lot of really good work, as it is, already, and you
5 assessed it specifically in relationship to the
6 solar project, so I just wanted to make sure that in
7 the future somebody else is picking up this order,
8 they know that that finding is limited only to those
9 two areas.

10 **MS. LIM:** That would be fine.

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

12 **COMMISSIONER OHIGASHI:** Could I ask a
13 question, chair?

14 **CHAIRMAN SCHEUER:** Please, go ahead.
15 Commissioner Ohigashi?

16 **COMMISSIONER OHIGASHI:** I just -- I just
17 want to be clear. Are we talking -- we're always
18 talking about phase 1, phase 2, parcel A and B,
19 phase A and B. So what I -- what my question is, is
20 for the purposes of the record, can we settle on one
21 description or one firm description that will stick
22 with that motion? I just want to be sure.

23 **MS. LIM:** So your point is very much well
24 taken. The current motion that's in front of you
25 has to do with the phase 1 solar project or the

1 phase 1 project or phase 1 solar.

2 Now, as long as the findings of fact
3 clearly reflect what's meant by the phase 1 solar
4 project, which is described not only in our motion
5 but also in our proposed findings and conclusions
6 that we filed back in February. That's what I
7 understand your conditions will be applicable to.

8 **COMMISSIONER CHANG:** Yeah. I mean, I used
9 the language in the motion. It says parcel A and
10 parcel B, which is separate and apart of phase A and
11 phase B.

12 **MS. LIM:** You are correct.

13 **COMMISSIONER CHANG:** So I recognize it's
14 kind of confusing, although I tried to stay --
15 maintain the way that you have identified these
16 properties.

17 **MS. LIM:** And you're spot on.

18 And I also do point to -- perhaps to
19 address Commissioner Ohigashi's concern, but if you
20 look at the amended stipulation that we filed, it
21 says that the approximately 370 -- excuse me -- 387-
22 acre portion of the petition area identified as the,
23 quote, "phase 1 site," close quote, comprised of
24 parcel A, consisting of approximately 151 acres, and
25 parcel B, consisting of approximately 236 acres may

1 be used as a solar farm, blah, blah, blah," okay?

2 But I mean, we're very, very clear that that's the
3 areas that we're talking about.

4 Does that address the concern you raised,
5 Commissioner?

6 **COMMISSIONER OHIGASHI:** Yes. I just want
7 to make sure that we're all talking about the same
8 thing.

9 **MS. LIM:** I appreciate that.

10 **CHAIRMAN SCHEUER:** Thank you, Commissioner
11 Ohigashi.

12 Commissioner Chang, have your questions
13 been answered?

14 **COMMISSIONER CHANG:** Yes, they have.
15 Thank you.

16 **CHAIRMAN SCHEUER:** Okay. Any further
17 questions?

18 Any final rebuttal, Ms. Lim?

19 **COMMISSIONER CABRAL:** This is Commissioner
20 Cabral. I have a --

21 **CHAIRMAN SCHEUER:** Commissioner Cabral?

22 **COMMISSIONER CABRAL:** Yeah, thank you,
23 Chair.

24 Okay. Same thing with the clarification.
25 Me, I bring my mask, remember? So you really have

1 your interim solar phase 1 and phase 2, located in
2 land mass phase A and land mass phase B?

3 **MS. LIM:** No, Commissioner Cabral. And I
4 see that you're looking at the Power Point
5 presentation --

6 **COMMISSIONER CABRAL:** Yes.

7 **MS. LIM:** -- which is Exhibit 47. Would
8 it be acceptable if Ms. Thoene brings that up?
9 There are a few different maps, but that way we can
10 make sure that there's no confusion.

11 **CHAIRMAN SCHEUER:** Please, go ahead.

12 **MS. LIM:** Okay. So I think -- yeah --

13 **CHAIRMAN SCHEUER:** This is Exhibit, again,
14 47.

15 **MS. LIM:** 47, and I believe it's slide 5

16 --

17 **CHAIRMAN SCHEUER:** Thank you.

18 **MS. LIM:** -- at least on the pdf. So what
19 you see here, you see all this, the master plan
20 development is shown in those multi-colors. So you
21 have phase A in yellow, phase B is north of that,
22 and phase C -- exactly. Exactly. So I won't
23 continue because you can see the colors and you can
24 see the progress.

25 And to the left of the Power Point slide

1 you see the approximate timeframes for vertical
 2 construction. Again, this is very estimated because
 3 we have yet to do the real nitty-gritty work on the
 4 master plan.

5 But to come directly to your question,
 6 Commissioner Cabral, the solar farm that we're
 7 talking about today is up in the areas that Ms.
 8 Thoene is moving the hand around on. So there's the
 9 -- that's the phase -- what we call the phase 1
 10 solar farm or the phase 1 site.

11 And you can see that phase 1 site is
 12 broken up into two different pieces. There's the
 13 solar 2044, parcel A and, again, white. And then
 14 there's the solar 2054, parcel B. Again, why did we
 15 break up AES's solar farm site into two pieces? We
 16 did that so that as the KS master plan development
 17 progresses up to the north, AES has to get out of
 18 there, out of parcel A, fully decommissioned by the
 19 end of 2044, so it doesn't impede progress of the
 20 master plan.

21 And similarly, the parcel B solar farm
 22 will need to be removed no later than 2054 for that
 23 same reason, so that it doesn't impede the ongoing
 24 progress of the KS master plan.

25 So phase A of the master plan, phase B of

1 the master plan. They have absolutely no impact
2 whatsoever on this solar farm that we're here to
3 talk about today.

4 **COMMISSIONER CABRAL:** Okay. So they're
5 located -- the one's you're talking about are
6 located in phase C and phase D of your colored chart
7 here?

8 **MS. LIM:** Correct. And you can see
9 there's a little bit in phase E as well.

10 **COMMISSIONER CABRAL:** Okay. Gotcha.
11 Okay. Thank you.

12 **MS. LIM:** Thank you for asking. And
13 again, between the letters and phasing itself, it is
14 challenging.

15 **COMMISSIONER CABRAL:** Yeah. Thank you.

16 **CHAIRMAN SCHEUER:** Okay. Let's -- yeah.
17 Commissioner Ohigashi?

18 **COMMISSIONER OHIGASHI:** Would the
19 petitioner be amenable to a condition asking that
20 they file a boundary amendment to -- a motion to
21 amend the boundary amendment prior to 2030, when the
22 infrastructure should be completed by?

23 **MS. LIM:** So the condition would simply
24 say file that motion to amend before the December
25 31st, 2030 infrastructure deadline?

1 **COMMISSIONER OHIGASHI:** Yes.

2 **MS. LIM:** I would have to confer with my
3 client. I will -- just let me stop there. I'll
4 have to confer with my client, but I think if I can
5 have your indulgence to do that, I think this would
6 be a very quick discussion.

7 **CHAIRMAN SCHEUER:** Go ahead.

8 For purposes of efficiency, I'm not asking
9 that we go into recess. I'm just asking that we
10 just hang tight for a moment.

11 Ms. Lim?

12 **MS. LIM:** Thank you. Thanks for that
13 indulgence. So my client confirmed what went
14 through my mind when I heard Commissioner Ohigashi,
15 which is that that condition would be fine.

16 **COMMISSIONER OHIGASHI:** Okay.

17 **CHAIRMAN SCHEUER:** Okay.

18 **COMMISSIONER OHIGASHI:** I'm not trying to
19 hide anything. I just trying to say that it's a
20 commitment that you're bringing it back to the
21 Commission. And the only date I can see is sometime
22 before the 2030 deadline, which probably you have to
23 do anyway.

24 **MS. LIM:** That's correct. To meet that
25 2030 deadline, we're going to have to be back before

1 you anyway. But if you want to articulate it in a
2 condition, my client confirms we have no objection
3 to that.

4 **CHAIRMAN SCHEUER:** Commissioner Ohigashi,
5 are you proposing it to be numbered condition?

6 **COMMISSIONER OHIGASHI:** This is what I'm
7 thinking about.

8 **CHAIRMAN SCHEUER:** Okay. Commissioners,
9 any further questions for Ms. Lim?

10 Any chance to rebut? Are you done, Ms.
11 Lim?

12 **MS. LIM:** I am, Chair.

13 **CHAIRMAN SCHEUER:** Okay.

14 **MS. LIM:** Yeah. If there are questions --
15 but I think I've taken a lot of time and energy from
16 this Commission already.

17 **CHAIRMAN SCHEUER:** With that said, the
18 Commission will now conduct formal deliberations on
19 whether to grant or deny the motion for
20 modification.

21 For the parties and for the public, I note
22 that during the Commission's deliberation I will not
23 entertain any additional input from the parties or
24 the public unless those entities or individuals are
25 specifically requested to do so by me as the Chair.

1 And if called upon, any comments will be limited to
2 the particular question at hand.

3 Commissioners, let me confirm orally with
4 each of you that you have reviewed the record and
5 are prepared to deliberate on today's docket. After
6 I call your name, please signify with either an
7 "aye" or a "nay" that you are prepared to deliberate
8 on this matter.

9 Commissioner Cabral?

10 **COMMISSIONER CABRAL:** Aye.

11 **CHAIRMAN SCHEUER:** Commissioner Chang?

12 **COMMISSIONER CHANG:** Aye.

13 **CHAIRMAN SCHEUER:** Commissioner Giovanni?

14 **COMMISSIONER GIOVANNI:** Aye.

15 **CHAIRMAN SCHEUER:** Commissioner Kamakea-

16 Ohelo?

17 **COMMISSIONER KAMAKEA-OHELO:** Aye.

18 **CHAIRMAN SCHEUER:** Commissioner Ohigashi?

19 **COMMISSIONER OHIGASHI:** Aye.

20 **CHAIRMAN SCHEUER:** Commissioner Okuda?

21 **COMMISSIONER OKUDA:** Aye.

22 **CHAIRMAN SCHEUER:** Commissioner Wong?

23 **COMMISSIONER WONG:** Aye.

24 **CHAIRMAN SCHEUER:** Chair is also prepared
25 to deliberate on this matter.

1 Commissioners, the Chair will entertain a
2 motion that the LUC grants or denies the
3 petitioner's motion for modification/time extension
4 and release and modification of conditions of the
5 order granting the motion for the order amending the
6 findings of fact, conclusions of law, and decision
7 and order issued by this Commission on February 11,
8 2020.

9 The motion should state the reasons for
10 acceptance or nonacceptance of the motion and the
11 conditions that will apply.

12 Commissioners, what is your pleasure?

13 **COMMISSIONER GIOVANNI:** Giovanni.

14 **CHAIRMAN SCHEUER:** Commissioner Giovanni?

15 **COMMISSIONER GIOVANNI:** I'd like to make a
16 motion, Chair.

17 **CHAIRMAN SCHEUER:** Please proceed.

18 **COMMISSIONER GIOVANNI:** I move that we
19 approve or grant the motion to amend subject to
20 conditions, and that those conditions include all of
21 those which are in the second stipulated proposed
22 conditions for approval that we received, which are
23 dated May 24th, 2022, subject to an amendment of one
24 of the conditions and inclusion of additional
25 conditions as follows:

1 Condition number 9 is the Waiawa master
 2 plan infrastructure deadline. I'm going to read the
 3 whole thing because I want it in the record.
 4 "Petitioner shall complete construction of the
 5 backbone infrastructure for the proposed Waiawa
 6 mater plan phase A consisting of the primary
 7 roadways and access points, internal roadways, on-
 8 and offsite water and electrical system improvements
 9 and storm water drainage and utility system
 10 improvements by December 31, 2030."

11 The additional is the amendment to that
 12 condition, which will state, "In addition, the
 13 petitioner shall complete construction of similar
 14 backbone infrastructure for the proposed Waiawa
 15 master plan, phase B by December 31st, 2038."
 16 That's the end of the amendment.

17 I'd like to add to the conditions the one
 18 that was described by Commissioner Chang regarding
 19 the cultural impact assessment. I don't remember
 20 the exact wording, and so I will defer to
 21 Commissioner Chang to make that clear.

22 I would be happy to provide supporting
 23 reasoning for my motion at the appropriate time.

24 **CHAIRMAN SCHEUER:** Commissioner Giovanni,
 25 before I ask Commissioner Chang for her wording,

1 which is going to be incorporated into your motion,
2 was that the entirety of your motion? Were you also
3 going to try and incorporate Commissioner Ohigashi's
4 concern?

5 **COMMISSIONER GIOVANNI:** I will defer to
6 Commissioner Ohigashi if he wants to make a friendly
7 amendment.

8 **CHAIRMAN SCHEUER:** Okay. So before I ask
9 for a second, would you read into the record,
10 Commissioner Chang, the proposed language that
11 Commissioner Giovanni is including in his motion?

12 **COMMISSIONER CHANG:** Yes, Mr. Chair. I
13 guess it would be -- it would have been next
14 condition -- numbered condition. It will read,
15 underscore, "Protection of Preservation of Native
16 Hawaiian traditional customary practices, paren,
17 (Articles 12, Section 7), closed paren, and end of
18 the underscore."

19 And the paragraph reads, "Petitioner has
20 conducted an archaeological inventory survey, an
21 archaeological preservation plan, cultural impact
22 assessment, cultural resources preservation plan,
23 and ethno-historic study that included the petition
24 area." "Although no cultural resources or practices
25 have been identified within the petition area that

1 would be adversely impacted by the proposed solar
2 farm, this finding is limited to parcel A and parcel
3 B of the petition area."

4 **COMMISSIONER OHIGASHI:** Mr. Chair, I
5 second the motions.

6 **CHAIRMAN SCHEUER:** Okay. A motion has --

7 **COMMISSIONER GIOVANNI:** And when
8 Commissioner Chang referred to parcel A and B, that
9 was of the phase 1 solar area, not of the total
10 petition area of the master plan A and B, correct?

11 **CHAIRMAN SCHEUER:** Yeah.

12 So okay. A motion has been made as
13 articulated by Commissioner Giovanni with the
14 assistance of Commissioner Chang.

15 Commissioner Ohigashi has seconded the
16 motion.

17 I will ask the movant and the seconder to
18 speak to the motion, and then we'll go into broader
19 deliberation.

20 **COMMISSIONER GIOVANNI:** I'm in favor of
21 the solar farm B and any interim use as proposed by
22 the petitioner. I think it's a very important
23 project, and it's being conducted by a reputable and
24 proven developer in Hawaii.

25 And I think that they have adequately set

1 aside my concerns as expressed by the Office of --
 2 also by the Office of -- State Office of Development
 3 and Planning and Sustainable Development regarding
 4 the issues raised in the Civil Beat issue article.

5 So I think it's an important project. I
 6 want to move it forward. And hopefully, it will put
 7 a shovel in the ground pretty soon, and it will be
 8 up and running. So great project.

9 I have the second -- the amended
 10 conditions, condition number 9, consistent with what
 11 was proposed and is on the record here that the
 12 backbone infrastructure is expected to be done by
 13 2038. So all I'm doing is reflecting that as
 14 important consideration for us.

15 And then I support the condition added by
 16 Commissioner Chang because it's appropriate and it
 17 was missing. So I encourage my fellow commissioners
 18 to support this important project.

19 **CHAIRMAN SCHEUER:** Thank you, Vice-Chair
 20 Giovanni -- First Vice-Chair Giovanni.

21 Commissioner Ohigashi, do you wish to
 22 speak to your second?

23 **COMMISSIONER OHIGASHI:** Yes, Mr. Chair. I
 24 find that the solar projects that were -- that has
 25 been already approved that they are interim and

1 temporary nature. What supports that type of
 2 finding even more would be that they're required to
 3 decommission and revert -- the land reverted back to
 4 its original state.

5 I do not view that as commiserate of any
 6 type of infrastructure that has been relating to the
 7 original DBA. And therefore, I think that you're
 8 going to (indiscernible) interim use that I can
 9 support the motion.

10 I did contemplate, and I'm -- after this
 11 second, I would like to contemplate a motion that we
 12 add a condition to require the petitioner to file a
 13 motion to amend the DBA prior to the deadline period
 14 for the infra -- for the phase A infrastructure,
 15 which is December 31st, 2030. December 31st, 2030.

16 And the reason for that motion that I
 17 intend to make would be so that we realize there's a
 18 commitment to the development of housing, and that
 19 the Commission has in its grasp a specific condition
 20 to say that, yeah, we got to do this before that
 21 date. Otherwise, there may be significant
 22 repercussions.

23 Finally -- and I'm taking this out of
 24 order because I -- I don't have my notes in front of
 25 me, but finally, the reason why I'm supporting the

1 motion is that basically, solar projects are allowed
2 on agricultural land.

3 So given the fact that this is urban land
4 does not necessarily negate -- or given the fact
5 that this is a project that's allowable on
6 agricultural land, that even if for some reason
7 there is a reversion, the solar project would still
8 afford because it is permitted on agricultural use.

9 And that's my reasoning. And with that,
10 Mr. Chair, if you -- I would like to make a motion
11 that -- to amend and add the condition that the
12 petitioner file a motion to amend the boundary
13 amendment prior to December 31st, 2030.

14 **CHAIRMAN SCHEUER:** To be appropriately
15 numbered. Okay. So this is where we're right at
16 the edges of my parliamentary procedure. Normally,
17 it would be that somebody who's not the movant or
18 the seconder who makes such a motion, but I don't
19 think it's material.

20 Does the movant object to the addition of
21 that?

22 **COMMISSIONER GIOVANNI:** The movant will
23 approve it.

24 **CHAIRMAN SCHEUER:** And clearly,
25 Commissioner Ohigashi would agree with amending the

1 motion, so we have an amended motion in front of us,
2 with the stipulated conditions and, I believe, three
3 additional conditions, as have been articulated.

4 We are in discussion. Commissioners?

5 **COMMISSIONER CHANG:** Mr. Chair, can I --

6 **CHAIRMAN SCHEUER:** Commissioner Chang?

7 **COMMISSIONER CHANG:** I'm going to speak in
8 favor of the motion, but I'd like to see if I can
9 address specifically some of the points that were
10 raised by Commissioner Ohigashi and probably make
11 another friendly amendment.

12 This is going to be -- I'd like to propose
13 some changes to the stipulated proposed conditions,
14 paragraph 7. So what I'm proposing is that the
15 paragraph would read --

16 **CHAIRMAN SCHEUER:** Hold -- hold on one
17 moment, Commissioner Chang. I'm going to ask the
18 petitioner's co-counsel to throw this up so that we
19 can all see it easily.

20 Ms. Thoene, are you able to do that?
21 Thank you.

22 **COMMISSIONER CHANG:** Chair, so what I'm
23 proposing is paragraph 7 after the word "interim,"
24 insert "and temporary." Interim and temporary use
25 of the petition area. Likewise, the next one. The

1 interim, insert "temporary" use of the approximately
 2 387-acre portion of the petition area as shown in
 3 Petitioner's revised master plan and schedule for
 4 development filed October 7 shall be limited to a
 5 utility scale solar energy development or solar
 6 farm, insert "the proposed solar farm and previously
 7 approved solar farm is not" -- no. Okay. Sorry.

8 Start off the sentence with "However, the
 9 proposed solar farm and previously approved solar
 10 farm is not in accordance" -- I actually had it
 11 written down. Is not a -- is not "substantial
 12 commencement of use of the land in accordance with
 13 such representations." And then the remaining
 14 paragraph.

15 So then it's very clear that this solar
 16 farm is not to be considered substantial
 17 commencement of the representations. I think it's
 18 substantial commencement, but I think if you read
 19 each -- and I'd like to also insert after that
 20 sentence "HRS 205-4(g)," because it specifically
 21 says, "Substantial commencement of use of the land
 22 in accordance with such representations. And the
 23 representations by Gentry at the time it was
 24 approved was for a housing project, not a solar
 25 farm."

1 And the solar farm, as described by
2 Commissioner Ohigashi, is a temporary use. So I
3 think that kind of clarifies -- and that addresses
4 in my mind some of the language or thoughts that
5 were provided by Mr. Yee.

6 **CHAIRMAN SCHEUER:** Okay. So Commissioner
7 Chang, we're going to try and restate back what you
8 have proposed.

9 Condition 7 would now read as follows:
10 "Interim and temporary use of the petition area,"
11 and that phrase is underscored, period. "The
12 interim and temporary use of the approximately 387,"
13 and then that sentence continues to the word "farm."

14 Following that, there is insertion of a
15 new sentence that says, "However, this" -- and
16 you'll have to give me the phrase. "This shall not"
17 --

18 **COMMISSIONER CHANG:** No. I have this --
19 the proposed solar farm and previously approved
20 solar farm, because there's two farms, parcel A and
21 parcel B --

22 **COMMISSIONER GIOVANNI:** Phase 1 and phase
23 2.

24 **COMMISSIONER CHANG:** Phase 1, phase 2 --
25 oh, two solar farms is -- but not be considered

1 some, quote, "substantial commencement of use of the
2 land" -- I should -- "in accordance with such
3 representations," close quote.

4 **CHAIRMAN SCHEUER:** And then a citation to
5 --

6 **COMMISSIONER CHANG:** HRS 205-4(g).

7 **CHAIRMAN SCHEUER:** Okay. I think we're
8 clear with the amendments, the first and second
9 sentence. Can you restate for the record that third
10 sentence?

11 **COMMISSIONER CHANG:** Okay. I'm going to
12 try again. It says, "However, the proposed solar
13 farm and previously approved solar farm" -- oh -- is
14 not, quote, 'substantial commencement of use of the
15 land in accordance with such representations,' close
16 quote, HRS 205-4(g)."

17 **CHAIRMAN SCHEUER:** Okay. I'm going to ask
18 the movant, Commissioner Giovanni, and the seconder,
19 Commissioner Ohigashi, whether they are fine with
20 the proposed amendment to the main motion?

21 **COMMISSIONER GIOVANNI:** Commissioner
22 Giovanni accepts the friendly amendment from
23 Commissioner Chang.

24 **CHAIRMAN SCHEUER:** Commissioner Ohigashi?

25 **COMMISSIONER OHIGASHI:** I guess so, yes.

1 **COMMISSIONER CHANG:** If you've got better
2 language, I'm open. I think I'm trying to get to
3 the intent.

4 **CHAIRMAN SCHEUER:** Commissioner Ohigashi,
5 is that a yes?

6 **COMMISSIONER OHIGASHI:** Yes.

7 **CHAIRMAN SCHEUER:** Okay. We are on -- we
8 are in discussion on the amended motion to approve.
9 Commissioners?

10 Commissioner Wong --

11 **COMMISSIONER WONG:** Thank you --

12 **CHAIRMAN SCHEUER:** -- if that's your arm.

13 **COMMISSIONER WONG:** Yes, that is my arm.

14 First, can we take the wording down.

15 **CHAIRMAN SCHEUER:** Yes. Thank you.

16 Thank you, Ms. Thoene.

17 **COMMISSIONER WONG:** Do we need -- can I

18 ask or can you ask the petitioner and whoever

19 approved -- asked -- support the stip, the second

20 stip, if they're okay with that -- Commissioner

21 Chang's statement?

22 **CHAIRMAN SCHEUER:** Solely Commissioner

23 Chang's statement?

24 **COMMISSIONER WONG:** Yes. Or even

25 Commissioner Ohigashi's statement.

1 **CHAIRMAN SCHEUER:** Sorry.

2 **COMMISSIONER WONG:** I think Commissioner
3 Ohigashi's statement was okay. It was just
4 Commissioner Chang's.

5 **CHAIRMAN SCHEUER:** Okay. I'm going to ask
6 each of the parties one by one whether there's any
7 concern with the proposed and accepted amendment to
8 the motion made by Commissioner Chang just now,
9 beginning with the petitioner.

10 **MS. LIM:** Thank you, Chair and
11 Commissioners. So when I hear it, a couple of
12 thoughts went through my mind, which is it sounds
13 like a finding and not a condition, so it seems sort
14 of odd to put into a condition. And then it's a wee
15 bit confusing what representations we're referring
16 to.

17 And so I know I have to limit my comments
18 to just responding to the question, but I'll just
19 get in there. I think that the proposed findings
20 that Mr. Yee articulated possibly achieve the goal
21 that I believe you're trying to achieve without
22 maybe making some confusing language in conditions.

23 **CHAIRMAN SCHEUER:** Is that the totality of
24 your comments in response to the question, Ms. Lim?

25 **MS. LIM:** It is. Thank you.

1 **CHAIRMAN SCHEUER:** Thank you.

2 Mr. Pang, DPP?

3 **MR. PANG:** Thank you, Mr. Chair. With
4 respect to the phrase and language, the City did not
5 have any objection; however, we did have the same
6 knee-jerk reaction that the petitioner had, that
7 perhaps the reference to substantial commencement
8 should be in a finding rather than a condition.
9 Just a suggestion.

10 **CHAIRMAN SCHEUER:** Thank you, Mr. Pang.

11 Mr. Yee?

12 **MR. YEE:** OPSD has no objection to
13 Commissioner Chang. Also, nor do we have an
14 objection to the insertion of a finding.

15 **CHAIRMAN SCHEUER:** Commissioner Wong?

16 **COMMISSIONER WONG:** Yeah, Chair. Yeah, I
17 -- you know, the statement that Commissioner Chang
18 brought up I do agree with. I'm just also have that
19 concern if it's a finding or is it part of the
20 condition. That's all I wanted to know.

21 I don't know if we -- can I ask the -- our
22 AG if that's what his thoughts are on this?

23 **CHAIRMAN SCHEUER:** Please.

24 **COMMISSIONER WONG:** Wherever he is. Oh,
25 there.

1 **CHAIRMAN SCHEUER:** Mr. Morris. You are
2 muted, Mr. Morris.

3 **MR. MORRIS:** I think a condition can be
4 imposed with a certain understanding, as
5 Commissioner Chang has articulated. But I don't
6 think it's defective for not calling it a finding.
7 It could be treated as a finding. But I think it's
8 really an understanding of the LUC in connection
9 with a condition they're imposing.

10 **CHAIRMAN SCHEUER:** Commissioner Wong?

11 **COMMISSIONER WONG:** Okay. That's good
12 enough for me. I can live with it. Thank you.

13 **CHAIRMAN SCHEUER:** Okay. Commissioners,
14 we are in deliberations in our motion to approve as
15 amended.

16 **COMMISSIONER WONG:** Chair?

17 **CHAIRMAN SCHEUER:** I couldn't --
18 Commissioner Wong.

19 **COMMISSIONER WONG:** I'll support the
20 motion, then, the friendly amendments. Yeah.

21 So I just wanted to say that, you know, I
22 -- solar farm is very important to us, as we all
23 know, and also affordable housing.

24 Like, for example, I want to make sure
25 that my kids and grandkids have affordable housing.

1 Hopefully, I have grandkids. But I just wanted to
2 say for the record that I hope that Kamehameha
3 Schools makes sure that we do have affordable
4 housing in the future for our kids. That's all.
5 Thank you.

6 **CHAIRMAN SCHEUER:** Commissioners -- thank
7 you, Commissioner Wong.

8 Commissioners, we are in deliberation.

9 **COMMISSIONER OKUDA:** Chair, it's Gary
10 Okuda, if I may?

11 **CHAIRMAN SCHEUER:** Please proceed.

12 **COMMISSIONER OKUDA:** To follow up on my
13 dear friend and commissioner's statements so I can
14 disagree with him slightly. As I mentioned at the
15 earlier hearing, I don't believe that the duty of
16 Kamehameha Schools/Bishop Estate is to provide
17 affordable housing. It would be nice if they did
18 so, but that's not the duty of their trustees.

19 But be that as it may, we do have a
20 concern about providing housing, and that's the
21 reason -- and let me just preface this by stating
22 I'm speaking in favor of the motion, but I'd like to
23 give some additional reasons.

24 We are in favor of housing. No question
25 about it. And I believe this Commission is in favor

1 of housing which is affordable, which is directed to
2 the extent possible by law for residence and
3 citizens of the State of Hawaii, of course not
4 excluding anybody who has a constitutional right to
5 move to Hawaii.

6 And we take seriously the admonition and
7 warning of the Hawaii Supreme Court about why we
8 don't want to have property which is allowed to be
9 used for speculation where we grant entitlements and
10 development doesn't take place.

11 And I think it's worth repeating the
12 admonition or the warning from the Hawaii Supreme
13 Court in the Bridge Aina Le'a case. And you know,
14 I'm reading from 339 Pacific Third. The case
15 appears at 685. That's the unofficial reporter, but
16 this is at pages 709 of the Pacific Third to 710.

17 And the reason why you have this -- you
18 know, this restriction or warning by the Hawaii
19 Supreme Court -- and if you can give me a second to
20 get back to my page here -- is basically a warning
21 by the court that as a matter of public policy, we
22 don't want to have land speculation which seems to
23 take place more easily if the -- if property is
24 allowed to stand here with entitlements and no
25 development takes place, because that just allows

1 the potential for the properties to be flipped, to
 2 be resold, and the promised housing, especially the
 3 promised affordable housing never, never occurs.

4 And as you know what this Commission has
 5 done, at least the present members of the
 6 commission, is we have had no problem reverting
 7 property back to its prior designation where the
 8 evidence has shown the landowner has not shown any
 9 real movement towards providing housing or
 10 fulfilling its promises and representations made to
 11 the commission.

12 So we have no problem to revert the
 13 property to basically comply with this direction of
 14 the Hawaii Supreme Court and the direction of the
 15 legislature not to have speculation.

16 But I would like to say this. Even though
 17 -- and this is just my personal view and personal
 18 conclusion from the record and the evidence
 19 presented.

20 Even though this has been a long-delayed
 21 development, as the Chair pointed out, dating back
 22 to when people were almost in adolescence, this is
 23 not the same factual or legal situation that we've
 24 had in our other cases.

25 I am not advocating or saying that the

1 Kamehameha Schools or the Bishop Estate are to be
 2 treated any differently like anybody else. Everyone
 3 who appears in front of this Commission is subject
 4 to the same scrutiny, the same requirement. They
 5 follow all the requirements of the law.

6 But without getting into the entire record
 7 of the case, I'd just like to state for the
 8 evidentiary or the record in the event that this
 9 case is subject to further review.

10 You know, I incorporate by reference the
 11 history of the Bishop Estate/Kamehameha Schools,
 12 which was set forth in the en banc, meaning the
 13 entire panel, of the Ninth Circuit Court of Appeals
 14 in the case Doe versus Kamehameha Schools, Bernice
 15 Pauahi Bishop Estate, which is found at 470 F.3d
 16 827, a 2006 Ninth Circuit Court case.

17 I don't have to repeat the history of
 18 Hawaii or the history of the Kamehameha Schools
 19 which the Ninth Circuit Court explained in great
 20 detail, with very clear citation to legal precedent
 21 and historic record.

22 But the Kamehameha Schools, with its
 23 present mission, affirmed by the Ninth Circuit
 24 Court, a case which was not subject to a petition
 25 for writ of certiorari to the U.S. Supreme Court,

1 those facts, I believe, have to be taken into
2 account. And because of that, I'm less worried or
3 scared that we are dealing with a land speculator
4 here.

5 And frankly, if I can be a little bit
6 facetious about it, but it's not really that
7 facetious, if one of the Alee (phonetic) trust can
8 make money from land speculation to educate Native
9 students, hey, that's okay with me. So for those
10 reasons, I will be supporting the motion.

11 **CHAIRMAN SCHEUER:** Thank you, Commissioner
12 Okuda.

13 Commissioners, we are in deliberation.

14 **COMMISSIONER CHANG:** Mr. Chair?

15 **CHAIRMAN SCHEUER:** Commissioner Chang?

16 **COMMISSIONER CHANG:** Thank you for the
17 opportunity. You know, this has not been easy, and
18 I realize that. I think petitioners came in
19 thinking that this was just the motion to amend and
20 addressing the solar farm. But I think, as you've
21 heard from all the other commissioners, it's a much
22 -- there's a lot more at stake than just taking this
23 in isolation, but I am extremely optimistic.

24 I think the Kamehameha Schools, their
25 vision, I do believe that they are going to do

1 community outreach. I am -- I know the leadership
2 that's with this team, and I -- I'm extremely
3 confident that they're going to ensure that that
4 happens.

5 I'm also confident that there will be --
6 that they will make sure that there's protection and
7 preservation of traditional customary practices not
8 only for today but for the future generations.

9 So that optimism is what makes this really
10 hard is because, you know, Commissioner Okuda says,
11 you know, we have to treat everybody the same, but
12 there is an expectation of Kamehameha Schools, and I
13 don't -- you know, please don't -- please don't take
14 offense if, you know, anything that I've said has,
15 you know, been taken the wrong way.

16 The spirit on which for me it was to
17 ensure that we are -- oh, thank you -- that -- you
18 know, we have the ability -- we are treating all the
19 petitioners that come before us from a policy
20 standpoint and from -- as Commissioner Okuda read
21 and from Bridge Aina Le'a, treating them the same.

22 However, I think there is -- based upon
23 the representations that have been made by those
24 representatives of Kamehameha Schools, again, is
25 what gives me optimism that that -- while we've been

1 pushing you hard, I think you will come through. I
2 am confident that you will bring -- you will -- you
3 will do good. You will make us proud that you are
4 going to build the housing that you're representing.

5 And for those reasons, I'm supporting this
6 temporary use, but I'm also anticipating that you've
7 heard us and that you'll be coming -- you'll be
8 moving in a timely fashion the environmental review
9 process, the community engagement process, and I am
10 -- I probably won't be on the commission at that
11 time but looking forward to reading about it. And I
12 am hoping the best for this project and the team
13 that you have.

14 So thank you very much, Mr. Chair.

15 **CHAIRMAN SCHEUER:** Thank you, Commissioner
16 Chang.

17 Commissioners, we are in deliberation.
18 The way the camera is, I cannot see except only
19 three of the commissioners.

20 **COMMISSIONER KAMAKEA-OHELO:** Chair?

21 **CHAIRMAN SCHEUER:** Commissioner, please
22 proceed.

23 **COMMISSIONER KAMAKEA-OHELO:** I'd like to
24 mahalo the petitioners today and, you know, I know
25 this is my first hearing involved on this matter;

1 however, I've received the entire record in this
2 matter, and I'm ready to proceed. And with that, I
3 just want to say that I'm in support. Mahalo nui.

4 **CHAIRMAN SCHEUER:** Thank you,
5 Commissioner.

6 Commissioner Cabral?

7 **COMMISSIONER CABRAL:** Yes. I will say a
8 few words. I want to thank my fellow commissioners
9 for the work they've done to try and help move this
10 along because I think everyone's in favor of saving
11 our environment and having energy-efficient devices
12 to help us do so.

13 I appreciate that, and we've had our
14 concerns that I think the motion has been able to
15 address. So as much as I'm okay with this and I
16 understand that six or seven votes will move this
17 forward, I have lately become very outspoken about
18 housing.

19 Not affordable housing, not that I'm not
20 for affordable housing, but affordable housing -- I
21 manage HUD affordable housing projects, so I
22 understand what that means in terms of what that
23 does to our community and how that brings outsiders
24 in to fill up our federally subsidized housing
25 projects, so that's a separate entity. I'm very,

1 very much in favor of more houses, more sticks on
 2 the ground, more housing.

3 My dream would be that instead of talking
 4 about photovoltaic often is in land with nothing
 5 else around it. I would very much like to have us
 6 making a motion that we'd have photovoltaic on the
 7 11,000 houses that would be going up very rapidly.

8 So for that reason, I'm going to just go
 9 on the record of voting against it, because I'm very
 10 much in favor of housing. But spiritually, I'm with
 11 you. Thank you.

12 **CHAIRMAN SCHEUER:** Thank you, Commissioner
 13 Cabral. Anything further from my fellow
 14 commissioners?

15 **COMMISSIONER GIOVANNI:** Giovanni.

16 **CHAIRMAN SCHEUER:** Commissioner Giovanni.

17 **COMMISSIONER GIOVANNI:** Yeah. I want to
 18 just thank my fellow commissioners for the positions
 19 they've expressed both in favor and not in favor of
 20 the motion. I understand them all, but I want to
 21 add a little more commentary, if I may.

22 This is not a simple hearing about a solar
 23 project. All the consternation, all the
 24 frustration, all the dialogue that was shared
 25 between the parties and the commission was about the

1 frustration because we haven't seen a house in 35
2 years since this original property was deemed and
3 approved as such.

4 So that's what it's about to us, so it's
5 kind of like a -- if this was just simple, "We want
6 to put a solar project on agricultural land," pretty
7 much a slam-dunk because the project is so viable.

8 I -- as my fellow commissioners have
9 expressed, have great admiration of the greater
10 vision and mission of Kamehameha Schools.
11 Tremendous support. However, I do not share
12 Commissioner Chang's optimism.

13 In fact, I'm an absolute pessimist when it
14 comes to this specific piece of property and whether
15 or not you'll ever build a house on it. And I
16 challenge you to prove me wrong. Please, prove me
17 wrong. Thank you. Nothing further.

18 **CHAIRMAN SCHEUER:** Thank you,
19 Commissioner.

20 Anything further? If not, I will share my
21 remarks. I have a lot on my mind right now today at
22 this hearing. We've recently lost a former member
23 of this commission, Commissioner Colette Machado,
24 who led a remarkable career in serving the Hawaiian
25 people and Hawaii.

1 And one of her first areas of service, as
 2 I think like barely out of her teens, was on the
 3 State Land Use Commission. So I kind of have her
 4 lead an example in my mind, and she never shirked or
 5 scared -- got scared from challenging any entity or
 6 party about what she thought was best.

7 So as I thoughtfully considered all the
 8 remarks from my fellow commissioners and the good
 9 presentations from the petitioner and the parties, I
 10 come back to a question I've raised before during
 11 these hearings. Why are we here? Why is this so
 12 hard for what should be so easy?

13 There were some -- and I will call from
 14 this point in 2022, looking backwards, some really
 15 bad decision made by former trustees to hand this
 16 over from former developer to propose something that
 17 was just not a great idea, from former fellow
 18 commissioners for approving it, from the City for
 19 then going along with it and agreeing to the zoning
 20 for it.

21 So we are, unfortunately, stuck in this
 22 particular position. We don't get to choose to work
 23 from a blank slate at this point. We have to move
 24 from where we are. And that means a lot of things
 25 are not optimal.

1 I don't even actually share the sort of
 2 great excitement over the proposed solar project and
 3 let me be really clear as to why. It's not that we
 4 don't need more solar energy in Hawaii. We do.

5 But when the push for renewables in Hawaii
 6 started, very heavily under the administration of
 7 Governor Lingle, one of the things that she pointed
 8 out was like, hey, we're sending off 10, \$12 billion
 9 a year to foreign companies for fuel. Are we
 10 benefitting from that? We should be generating this
 11 energy ourselves.

12 And now we're like generating a lot of
 13 this energy ourselves, but all that money is still
 14 going offshore. The amount of wealth that we're
 15 exporting when we turn to these outside companies,
 16 no matter how good and critical they may be, is
 17 significant, and it doesn't necessarily, I think,
 18 get to the larger vision of not just a renewable,
 19 but a just Hawaii that we want.

20 And so we are where we are. This is the
 21 best we can do going forward. I am probably caught
 22 somewhere between Commissioner Chang's optimism and
 23 Commissioner Giovanni's pessimism about what might
 24 happen next.

25 I urge and implore Kamehameha Schools to

1 clearly and deeply ask this land what it wants, but
2 it's on people, the Hawaiian people need and want
3 and can offer to this land and what the neighboring
4 community and all of Hawaii can benefit from this
5 land as they pursue a master plan.

6 I really look forward to one that does
7 come together that's really a representation of all
8 these stakeholders in that order, their needs and
9 desires.

10 The one comfort I have, and this will be
11 the conclusion of my remarks, I had the opportunity
12 of working before I worked for Kamehameha Schools,
13 for Kamehameha Schools lessee, what is now known as
14 the Waipa Foundation on the North Shore of Kauai.

15 When they first managed to beg a lease out
16 of Kamehameha Schools, because they wanted to
17 restore an ahupua'a and restore a taro, and it was
18 at the time when Kamehameha Schools looked at them
19 askance and said, "Well, no, that's not what we do
20 with our land. What we do with our land is make
21 money to educate kids in classrooms." And these
22 folks on Kauai said, "No. We want this land to
23 educate kids here."

24 One of the things they -- when they
25 finally got their lease, they asked the trustees for

1 a simple machinery to clear land. And the trustees,
 2 the schools would not give this, at that time,
 3 small, struggling non-profit any -- or actually a
 4 for-profit at that time -- any money for basic
 5 equipment.

6 But reflecting a decade later as they
 7 started their land use master plan, Kawekas people
 8 said, you know, thank God we didn't get it because
 9 we didn't know this land the way we do now. And if
 10 we had just started in at that point, we wouldn't
 11 have done what's best for this property.

12 So I'm hoping that all these missed steps,
 13 all these mistakes, all these bad decisions to this
 14 point might allow us this one now to go forward in a
 15 way that really honors this place, honors the
 16 institution and its beneficiaries, and honors all of
 17 Hawaii.

18 I have nothing further. If there's
 19 nothing further from my fellow commissioners, I'd
 20 ask Mr. Orodenger to please poll the Commission.

21 **MR. ORODENKER:** Thank you, Mr. Chair.
 22 I'll do my best to be concise on this.

23 The motion is approve or grant the motion
 24 to amend, subject to conditions, including those
 25 contained in the proposed stipulation with

1 amendments to condition 9 with regard to phase B,
2 and add a condition using Commissioner Chang's
3 suggested language with regard to protecting the
4 Hawaiian traditional practices in condition 9, and
5 an amendment with condition 7 with regard to
6 substantial commencement, as well as Commissioner
7 Ohigashi's motion in a petition -- condition that a
8 petition for -- petition or motion to amend be filed
9 prior to 2030.

10 Commissioner Giovanni?

11 **COMMISSIONER GIOVANNI:** Aye.

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

13 **COMMISSIONER OHIGASHI:** Aye.

14 **MR. ORODENKER:** Commissioner Chang?

15 **COMMISSIONER CHANG:** Aye.

16 **MR. ORODENKER:** Commissioner Kamakea-

17 Ohelo?

18 **COMMISSIONER KAMAKEA-OHELO:** Aye.

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

20 **COMMISSIONER OKUDA:** Yes.

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

22 **COMMISSIONER WONG:** Aye.

23 **MR. ORODENKER:** Commissioner Cabral?

24 **COMMISSIONER CABRAL:** No.

25 **MR. ORODENKER:** Commissioner Scheuer?

1 **CHAIRMAN SCHEUER:** Chair votes aye.

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

4 Chair, the motion passes with eight
5 affirmative votes.

6 **CHAIRMAN SCHEUER:** Thank you very much.
7 Congratulations to the petitioner. Thanks
8 to the parties.

9 **COMMISSIONER WONG:** Chair?

10 **CHAIRMAN SCHEUER:** Yes.

11 **COMMISSIONER WONG:** I think the number is
12 wrong. It's supposed to be seven and one.
13 Commissioner Cabral voted no.

14 **MR. ORODENKER:** Oh, I'm sorry. I didn't
15 hear -- I thought she said yes.

16 **CHAIRMAN SCHEUER:** No. She said no.

17 **MR. ORODENKER:** Thank you for the
18 correction.

19 **CHAIRMAN SCHEUER:** Please restate the
20 final tally.

21 **MR. ORODENKER:** The final tally is seven
22 ayes and one no.

23 **CHAIRMAN SCHEUER:** Thank you.

24 **COMMISSIONER CABRAL:** I'd also like to
25 just applaud our Chair Scheuer for his last

1 comments, which likely is the last, so thank you for
2 the great job you've done.

3 **CHAIRMAN SCHEUER:** Thank you.

4 Thanks so much to the petitioner and to
5 OPSP and the County for your participation in these
6 proceedings. It is 1:36. We have a little
7 remaining business to do before we close.

8 Ms. Lim, you wish to say something?

9 **MS. LIM:** I want to thank you, Chair, and
10 your fellow commissioners. And then for
11 clarification, will we be returning for a hearing on
12 approval of an adoption of the final order?

13 **CHAIRMAN SCHEUER:** That is correct, yeah.
14 And that should be sometime in the month of June.

15 **MS. LIM:** Okay. Thank you.

16 **CHAIRMAN SCHEUER:** Anything further on
17 this docket? If not, it's 1:36. Let's reconvene in
18 nine minutes at 1:45 to take up the final two
19 matters on our agenda, though I think we're going to
20 be deferring the matter on the election of officers
21 and simply moving on the matter related to LUC
22 employment.

23 Recess until 1:45.

24 **(Recess taken 1:37 - 1:46 p.m.)**

25 **CHAIRMAN SCHEUER:** It is 1:46. We are

1 back on the record. The recording has started
 2 again. Our next agenda item was discussion and
 3 action on election of LUC officers. At the last
 4 meeting, commissioners appointed permitted
 5 interaction group of Commissioners Wong, Aczon, and
 6 myself. We haven't had a chance to meet.

7 Is there any public testimony that's been
 8 submitted on this, Ms. Quinones?

9 **MS. QUINONES:** No, Chair. No testimony
 10 was received.

11 **CHAIRMAN SCHEUER:** Okay. Commissioners,
 12 with your permission, I'd like to defer this until
 13 our next meeting. Any objection?

14 **COMMISSIONER CHANG:** Mr. Chair, they may
 15 have something to say.

16 **COMMISSIONER GIOVANNI:** No.

17 **(Simultaneous speaking.)**

18 **COMMISSIONER CHANG:** (Indiscernible.)

19 **COMMISSIONER GIOVANNI:** So Chair, can we
 20 tie that date down? I know that our Executive
 21 Director gave us the calendar, but I think it's June
 22 23rd is the only meeting I see before everybody --
 23 the three of you go off.

24 **CHAIRMAN SCHEUER:** Commissioner -- Mr.
 25 Orodenker?

1 **MR. ORODENKER:** That's correct. June 23rd
2 is the next scheduled date for a meeting.

3 **COMMISSIONER GIOVANNI:** This will be
4 agendized through June 23rd?

5 **MR. ORODENKER:** Yes. That is correct.
6 May I suggest that since we're going to have a June
7 23rd meeting, is it all right that we defer the
8 personnel matter as well?

9 **COMMISSIONER WONG:** Chair, I'm still not
10 finished with all the reviews yet, so if you don't
11 mind, we can push that off, too.

12 **CHAIRMAN SCHEUER:** Okay. Well, so let's
13 -- okay. Let's just -- for a clear record, with the
14 understanding it would be agendized for the 23rd, is
15 there any objection to deferring the agenda item
16 regarding election of LUC officers? Seeing no
17 objection, it's deferred.

18 Now, the second item, it's been suggested
19 that we also defer to the meeting on the 23rd
20 executive session regarding personnel matters.

21 Commissioner Wong, was this what you
22 wished to speak to when we got back into session?

23 **COMMISSIONER WONG:** The only other item
24 that I wanted to bring up for the next meeting, if
25 possible, is the one that is going in front of the

1 AG, the appeals thingy?

2 **CHAIRMAN SCHEUER:** The -- not Rodenhurst,
3 the --

4 **MR. ORODENKER:** Rosehill.

5 **CHAIRMAN SCHEUER:** The Rosehill appeal?

6 **COMMISSIONER WONG:** Yeah.

7 **MR. ORODENKER:** We can agendize that for
8 the next meeting as well.

9 **CHAIRMAN SCHEUER:** Okay. I would also
10 seek to agendize for the next meeting, though it
11 might be -- we might need an earlier meeting if --
12 to meet the appeal deadlines on the -- the recent
13 ICA decision regarding an overturning of the -- a
14 Circuit Court decision that overturned our decision
15 regarding a special use permit on the island of
16 Maui.

17 **MR. ORODENKER:** I have not received any --
18 we haven't officially received that from the AG's
19 office, to be honest with you. I don't know what
20 their intentions are with that.

21 **CHAIRMAN SCHEUER:** But it's been
22 published?

23 **MR. ORODENKER:** Yep.

24 **COMMISSIONER GIOVANNI:** What case is that?

25 **CHAIRMAN SCHEUER:** Let me get you the

1 exact citation.

2 (Indiscernible simultaneous speaking.)

3 CHAIRMAN SCHEUER: Just so you know, I
4 can't really hear who's talking.

5 (Indiscernible simultaneous speaking.)

6 COMMISSIONER OKUDA: Chair, it's Ho'omoana
7 Foundation versus Land Use Commission.

8 CHAIRMAN SCHEUER: Yes. Thank you.

9 (Indiscernible simultaneous speaking.)

10 CHAIRMAN SCHEUER: It's an ICA decision
11 filed May 23rd, 2022, at 8:40 a.m., CAAP-17-0000173
12 and same number as 181. Ho'omoana Foundation,
13 appellant/appellee versus LUC, State of Hawaii, and
14 Punua Homeowner's Association and Ross Scott.

15 (Indiscernible simultaneous speaking.)

16 MR. ORODENKER: I would caution that this
17 matter wasn't agendized.

18 CHAIRMAN SCHEUER: Yeah, so I'm just
19 noting that we will place this on the next agenda
20 for discussion.

21 MR. ORODENKER: I do have one announcement
22 to make.

23 CHAIRMAN SCHEUER: Okay.

24 MR. ORODENKER: We just received notice
25 during this hearing that the DW Aina Le'a case --

1 let me back up.

2 If you recall, Bridge Aina Le'a was heard
 3 and done. And then there was another party to the
 4 whole Aina Le'a debacle by the name of DW Aina Le'a.
 5 And they had filed a lawsuit against the State
 6 pretty much mirroring the Bridge Aina Le'a lawsuit.

7 Our -- the appellate division at the
 8 Attorney General's Office had filed a motion for
 9 summary judgment with the court, the federal courts,
 10 and that motion was granted today. So that's good
 11 news.

12 If anybody wants any more information on
 13 that, they can contact me directly, and I can
 14 provide you with what I know.

15 **CHAIRMAN SCHEUER:** And Mr. Orodenger, your
 16 caution about the commissioners needing to keep
 17 their calendar open for reserved dates includes
 18 those dates in June?

19 **MR. ORODENKER:** Well, we have -- we have
 20 the 22nd and 23rd.

21 **CHAIRMAN SCHEUER:** Okay.

22 **MR. ORODENKER:** The 22nd, however, is the
 23 Native Hawaiian Law Training Course, which will
 24 require at least one of our commissioners to attend,
 25 which is why we moved our hearing for the June -- to

1 June 23rd.

2 If the -- there is a need, we do have June
3 8th and 9th. I will not be available for those
4 meetings, I don't believe, but they can still be
5 held, and Scott can serve as Executive Officer.

6 **CHAIRMAN SCHEUER:** June 8th and 9th are
7 not released, is what I'm asking.

8 **MR. ORODENKER:** I thought we released
9 them, actually, but if the commission feels it needs
10 to meet on the Rosehill petition before then, we can
11 do that.

12 **CHAIRMAN SCHEUER:** Commissioner Ohigashi?

13 **COMMISSIONER OHIGASHI:** The only problem
14 is I have a doctor's appointment at 8:00, but it's
15 by telephone, so --

16 **CHAIRMAN SCHEUER:** Okay. Is there any
17 further business, Commissioners, or any questions or
18 comments, announcements?

19 Commissioner Chang?

20 **COMMISSIONER CHANG:** Yes. Thank you. I
21 guess this is for Dan. Is there a way that the
22 commission can get a brief, can get updated on
23 appeals or cases that have either been appealed or
24 are under appeal? I think Diane Erickson used to
25 provide us updates.

1 **MR. ORODENKER:** Yeah. Yeah.

2 **COMMISSIONER CHANG:** -- finding out the
3 day of the decision or -- I mean, this is -- we are
4 the Commissioners, and I'm -- I think, at a minimum,
5 we should be provided some -- whether it's by email
6 or -- but some notice when an appeal has been filed
7 or when there's an update on the status of an
8 existing case.

9 **MR. ORODENKER:** Yeah. I will talk to our
10 Attorney General -- Deputy Attorney Generals about
11 that.

12 **COMMISSIONER CHANG:** Thank you. I know
13 it's not agendized, but it's -- but due to the time
14 concerns, the Rosehill appeal, but I never did get
15 anything from Julie China.

16 **MR. ORODENKER:** Neither -- but you --

17 **COMMISSIONER CHANG:** Dan Morris --

18 **MR. ORODENKER:** Okay. You were on the
19 email string, but apparently, their meeting --

20 **CHAIRMAN SCHEUER:** I just want to caution
21 us that we're not talking about an agendized item
22 here.

23 **MR. ORODENKER:** Yep. I know. It's just
24 the only thing -- the only thing as to -- it got
25 moved to 2 o'clock. That's all.

1 **COMMISSIONER OKUDA:** Either Dan, so we are
2 supposed to be there at 2 o'clock, because -- is
3 that correct? And then my next question is if you
4 say "yes," we're supposed to be there.

5 **MR. ORODENKER:** I'm going to call Julie
6 immediately after this or Lynda and find out what's
7 going on, because we haven't gotten confirmation
8 that you're allowed to attend yet.

9 **CHAIRMAN SCHEUER:** I think we need to wrap
10 this up, given the failure to agendize this
11 particular item.

12 Is there anything further on our agenda,
13 Commissioners? Seeing none, thank you very much. I
14 declare this meeting adjourned.

15 **(Meeting concluded at 1:56 p.m.)**

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1 CERTIFICATE

2
3 I, Jodi Dean, 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
13 hand this 28th day of June, 2022.

14
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17 

18
19 _____
20 Jodi Dean
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