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2	STATE OF HAWAI'I		
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	(BRIDGE 'AINA LE'A))	
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9 TRANSCRIPT OF PROCEEDINGS

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11 The above-entitled matters came on for a Public
 12 Hearing at Conference Room 405, 4th Floor, Leiopapa A
 13 Kamehameha, 235 S. Beretania Street, Honolulu,
 14 Hawai'i, commencing at 9:40 a.m. on Thursday, July 1,
 15 2010 pursuant to Notice.

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21 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
 Certified Shorthand Reporter

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1 A P P E A R A N C E S

2 COMMISSIONERS:
KYLE CHOCK
3 THOMAS CONTRADES
VLADIMIR DEVENS
4 RONALD L. HELLER
LISA M. JUDGE
5 DUANE KANUHA
RANSOM PILTZ (Chairman)
6 NICHOLAS TEVES, JR.

7 EXECUTIVE OFFICER: ORLANDO DAVIDSON
8 ACTING CHIEF CLERK: RILEY HAKODA
STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON
9 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

10 AUDIO: HOTAI ZERBA

11

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13 Docket No. A87-617 Aina Le'a (Bridge 'Aina Le'a)

14 For the Petitioner: ALAN K. OKAMOTO, ESQ.
JEREL YAMAMOTO, ESQ.

15

16 For the Co-Petitioner: BRUCE VOSS, ESQ.

17

18

19 For the County: GERALD TAKASE, ESQ.
Deputy Corporation Counsel
20 Dept. of Corporation Counsel

21

22 For the State: BRYAN YEE, ESQ.
Deputy Attorney General
23 ABBEY MAYER, ABE MITSUDA
Office of Planning
24

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1 A P P E A R A N C E S cont'd

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3 Docket No. A09-782 TROPIC LAND LLC

4 For the Petitioner: WILLIAM YUEN, ESQ.
 ERIC YANAGIHARA, Proj. Mgr.

5

6 For the County: DAWN TAKAHASHI-APUNA, SQ.
 MIKE WATKINS, DPP

7 For the State: BRYAN YEE, ESQ.
 Deputy Attorney General
8 ABBEY MAYER, ABE MITSUDA
 Office of Planning

9

10 Concerned Elders of Wai'anae: MARTHA TOWNSEND, ESQ.
 ALICE GREENWOOD

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1 July 1, 2010

2 CHAIRMAN PILTZ: Good morning. This is a
3 LUC meeting, July 1st. We're in the conference room
4 405, on the 4th floor Leiopapa A Kamehameha, Beretania
5 Street. At this time we'd like to adopt the minutes
6 from June 16, 17th. Any corrections or additions to
7 those minutes? Seeing none, all those --

8 COMMISSIONER CONTRADES: So moved.

9 CHAIRMAN PILTZ: We have a motion to accept.
10 Do I have a second?

11 COMMISSIONER TEVES: Second.

12 CHAIRMAN PILTZ: Okay. All those in favor
13 signify by saying yea.

14 VOICE VOTE: Aye.

15 CHAIRMAN PILTZ: Any nays in the group? No.
16 Thank you. For all of you, we have a new Commissioner
17 today, Ron Heller. Thank you. Thanks for joining us.

18 And at this time our tentative meeting
19 schedule, Executive Director.

20 MR. DAVIDSON: Thank you, Chair. You all
21 have the tentative meeting schedule pretty well filled
22 in with major items through the first meeting in
23 September. So as always any conflicts or concerns
24 contact either Riley or myself.

25 Thank you.

1 DOCKET NO. A87-617

2 CHAIRMAN PILTZ: Okay. We'll move on with
3 the docket, our first item on our docket. This is a
4 hearing regarding the status report received on
5 A87-617 DW Bridge 'Aina Le'a Development, LLC.

6 On September 28, 2009 the Commission issued
7 the Order Rescinding Order to Show Cause Upon
8 Condition Precedent and Accepting DW 'Aina Le'a
9 Development, LLC as Co-Petitioner.

10 On December 16, 2009 the Commission received
11 Hawai'i County's first progress report for DW 'Aina
12 Le'a Development, LLC.

13 On December 28, 2009 the Commission received
14 a copy of the Warranty Deed from Bridge 'Aina Le'a to
15 DW 'Aina Le'a.

16 Then on February 19, 2010 the Commission
17 received a CD containing construction progress photos
18 from DW 'Aina Le'a Development, LLC.

19 Then April 6th, 2010 the Commission received
20 Hawai'i County's Second Quarterly Progress Report of
21 DW 'Aina Le'a Development, LLC.

22 On May 4th, 2010 the Commission received a
23 copy of the State Office of Planning Abbey Mayer's
24 comment letter regarding Petitioner's progress.

25 On May 6th, 2010 the Commission made a site

1 visit.

2 Then on June 6th, 2010 the LUC wrote a
3 letter to the Petitioner's attorney requesting a
4 current written status report on progress being made
5 by DW 'Aina Le'a towards fulfillment of the existing
6 conditions applicable to this docket.

7 Then on June 14, 2010 the LUC received DW
8 'Aina Le'a Development, LLC's Status Report.

9 Then on June 24, 2010 the LUC received
10 Hawai'i County's Third Quarterly Progress Report.

11 On June 30, 2010 the LUC received Office of
12 Planning's memorandum regarding July 1st, 2010 Status
13 Conference; Exhibits A-G.

14 On July 1st, 2010 the LUC received written
15 correspondence from Peter Hackstedde, president Puako
16 Community Association.

17 Let me briefly describe our procedure for
18 today. First, we will have the parties identify
19 themselves for the record. Then I will call
20 individuals desiring to provide public testimony to
21 our witness stand where they will be sworn in.

22 After completion of the public testimony the
23 Commission will hear the presentation of the
24 Co-Petitioner DW Aina Le'a's Status Report followed by
25 Hawai'i County and the Office of Planning.

1 Are there any questions on our procedures
2 today? Hearing none, will the parties please identify
3 themselves.

4 MR. OKAMOTO: Good morning, Chair Piltz and
5 Members of the Commission. I'm Alan Okamoto, attorney
6 for DW 'Aina Le'a, LLC. With me today is Mr. Robert
7 Wessels, the principal of DW, and also my partner
8 Jerel Yamamoto.

9 CHAIRMAN PILTZ: Thank you.

10 MR. TAKASE: Good morning, Mr. Chairman,
11 members of the Commission. I'm Gerald Takase
12 representing the county of Hawai'i.

13 CHAIRMAN PILTZ: State?

14 MR. YEE: Good morning. Deputy Attorney
15 General Bryan Yee on behalf of the Office of Planning.
16 With me is Abbey Mayer from the Office of Planning.

17 MR. VOSS: Good morning, Commissioners.
18 Bruce Voss on behalf of Co-petitioner Bridge 'Aina
19 Le'a, LLC.

20 CHAIRMAN PILTZ: Are there any persons in
21 the audience that would like to provide public
22 testimony? Have you signed up? First person is Bill
23 Campbell. Please take the witness seat there and
24 followed by Del Brilhante.

25 BILL CAMPBELL

1 being first duly sworn to tell the truth, was examined
2 and testified as follows:

3 THE WITNESS: I do.

4 CHAIRMAN PILTZ: Would you state your name
5 and address for the record and proceed.

6 THE WITNESS: Hi. My name is Bill Campbell.
7 I live at 68-1884 Waikoloa Road, Waikoloa. I'm a
8 board member of the Waikoloa Village Association. The
9 reason I'm here today is to represent the association
10 in support of 'Aina Le'a's development.

11 What the association would like to represent
12 is that we're looking forward to 'Aina Le'a continuing
13 and completing development. We're very short on
14 amenities in the village. We haven't got a pharmacy.
15 We haven't got a cinema, we've got very few stores or
16 shops.

17 And 'Aina Le'a brings opportunity to fulfill
18 7,000 people -- 7,000+ people's needs for daily
19 living. So we're kind of excited and encouraging
20 'Aina Le'a to progress as quickly as possible.

21 We also need a relief road in Waikoloa
22 Village, we're desperately in need of a relief road.
23 And with the completion of 'Aina Le'a that relief road
24 I understand will come. So we're very pleased to be
25 able to do that, if that was -- if that gets that far.

1 We're hoping it will.

2 Also the other thing is in Waikoloa Village
3 there's only a middle school and a junior school.
4 There's no high school. And 'Aina Le'a brings the
5 prospects of a high school. So with that being said
6 that's what we -- that I was sent along to tell you
7 today.

8 CHAIRMAN PILTZ: Petitioners, questions?

9 MR. OKAMOTO: No questions of Mr. Campbell.

10 CHAIRMAN PILTZ: County?

11 MR. TAKASE: No questions.

12 CHAIRMAN PILTZ: State?

13 MR. YEE: No questions.

14 CHAIRMAN PILTZ: Commissioners, do you have
15 any questions? Co-petitioner?

16 MR. VOSS: No questions.

17 THE WITNESS: Thank you.

18 CHAIRMAN PILTZ: Next person is Bill
19 Brilhante and followed by Frank DeLuz.

20 THE WITNESS: My name is Bill Brilhante.

21 BILL BRILHANTE

22 being first duly sworn to tell the truth, was examined
23 and testified as follows:

24 THE WITNESS: I do, sir.

25 CHAIRMAN PILTZ: Name and address for the

1 record.

2 THE WITNESS: Bill Brilhante, 1342 Kilauea
3 Avenue in Hilo, Hawai'i.

4 CHAIRMAN PILTZ: Go ahead.

5 THE WITNESS: We are the immediate adjacent
6 landowner to DW's Project. And we're totally in
7 support. We've been doing cattle and we've been doing
8 some real estate on the east side in Hilo.

9 I'm sure all of you are very aware that for
10 any developer these are very trying, trying times.
11 And when I heard of these gentlemen coming in and
12 undertaking this Project at this time, I was very
13 negative, like most people were, because there was a
14 history of people failing on the Project.

15 And my partner and I went up there, and we
16 met the people, and we looked at the progress. And we
17 actually see a lot of progress. We see a great
18 attitude. The Big Island needs it.

19 Yesterday's morning paper said 20 percent
20 increase in food stamps. People don't want food
21 stamps. They're getting food stamps 'cause they have
22 to. They'd rather work.

23 So whatever you can do you have to give
24 these people a little leeway. You have to give 'em a
25 break. In business there's always going to be

1 unforeseen things that come up. But these aren't --
2 they don't seem to me to be fly-by-night people. I
3 think they're putting their money where their mouth
4 is. And I'm very enthusiastic in support of them.

5 CHAIRMAN PILTZ: Okay. Petitioner,
6 questions?

7 MR. OKAMOTO: No questions of Mr. Brilhante.

8 CHAIRMAN PILTZ: Okay. County, any
9 questions for the testifier?

10 MR. TAKASE: No questions.

11 MR. YEE: No questions.

12 CHAIRMAN PILTZ: Commissioners, anything?
13 Thank you. Okay. Next person is Frank DeLuz.

14 THE WITNESS: Yes, I'm Frank DeLuz III.

15 CHAIRMAN PILTZ: Let me swear you in, sir.

16 FRANK DELUZ

17 being first duly sworn to tell the truth, was examined
18 and testified as follows:

19 THE WITNESS: I do.

20 CHAIRMAN PILTZ: Proceed.

21 THE WITNESS: I'm Frank DeLuz III. I live
22 in Hamakua, Hilo. My address is 330 Huale Place in
23 Hilo.

24 I've been a landowner and our family been on
25 the Big Island since 1878. We treasure land. My dad

1 bought Puako something like 1951. It was 70 years ago
2 and felt that was a place that we could see nice
3 resorts and nice development of the dry weather.

4 I been through the Mauna Kea Beach when
5 Rockefeller came in. They did good employment. We
6 went to see the property with D&W (sic) and all this
7 time nothing happened.

8 Go down there, saw all those buildings
9 coming up. And we were excited. We have land down
10 there. And we'd like to see employment continue and
11 also these are bare lands that's not been used. So I
12 really want to come here, support the program and see
13 that our island can prosper a little more. Thank you.

14 CHAIRMAN PILTZ: Thank you. Petitioners?

15 MR. OKAMOTO: No questions of Mr. DeLuz.

16 CHAIRMAN PILTZ: County?

17 MR. TAKASE: No questions.

18 CHAIRMAN PILTZ: State?

19 MR. YEE: No questions.

20 CHAIRMAN PILTZ: Okay. Commissioners,
21 anything? Thank you. All right. Do we have anybody
22 else that'd like to testify on this? Please take the
23 stand there. Let me swear you no.

24 PHILLIP HARRIS

25 being first duly sworn to tell the truth, was examined

1 and testified as follows:

2 THE WITNESS: Yes, I do.

3 CHAIRMAN PILTZ: Your name and address.

4 THE WITNESS: My name is Phillip Harris. I
5 reside at 82-5844 Mamalahoa Highway in Captain Cook on
6 the Big Island.

7 CHAIRMAN PILTZ: Go ahead.

8 THE WITNESS: I'm the owner of P.A. Harris
9 Electric. I have been in business for 40 years, 19 of
10 which on the Big Island.

11 Two years ago I employed over 48 people.
12 Now I employ 22 people. This Project is the only
13 project of its size and magnitude on the Kona side.

14 So while I sit here by myself, but I
15 respectfully ask that you look around me because I'm
16 here not only representing myself, but I represent the
17 hundreds, perhaps thousands of people who are small
18 contractors and subcontractors who will be working on
19 this Project. This is the only Project of this size
20 on the Kona side.

21 I believe that we need to provide every
22 opportunity and assist the contractor or the developer
23 so that this Project can move forward because it means
24 the influx or cash flow into not only the community
25 but provide employment for those that we employ as

1 small contractors.

2 I believe to limit the growth of this
3 development in my humble opinion is shortsighted and a
4 lack of vision. We look to people such as yourself in
5 these type of commissions and committees to be
6 visionary to people who provide opportunities for
7 growth and in development so that we have as
8 individuals, as families, can have an opportunity to
9 provide livelihoods for our families.

10 This is the only Project of this size, of
11 this type, that is ongoing on the Big Island on the
12 Kona side. In the last two years I've had several
13 million dollars worth of projects or contracts either
14 canceled or put on hold.

15 Hence, the reason I have less than
16 50 percent or less employees that I have had two years
17 ago than I have now.

18 So implore you, be visionary. Be bold.
19 Allow this to move forward and give them the leeway to
20 provide this opportunity. I don't have to tell you
21 that some of the most prestigious banks and investment
22 corporations in this country has had the most
23 difficult time in their history.

24 So it is with this developer. He's had some
25 challenges. He's had some commitments of financing

1 that has fallen through. But now he has the
2 opportunity to have that type of financing to move
3 forward. I'm reminded of the words of Shakespeare in
4 his writings of Measure for Measure, when he said,
5 "Our fears and doubts are our enemy because we fail to
6 receive the good by fearing to attempt."

7 And so I ask you today to be bold, to be
8 fearless and to allow this Project to move forward so
9 that the people in the community of the Big Island can
10 receive the good therefrom. Thank you.

11 CHAIRMAN PILTZ: Questions, Petitioner?

12 MR. OKAMOTO: Yes, I have a few.

13 Mr. Harris, you've been on the Big Island working for
14 19 years you said?

15 THE WITNESS: Yes.

16 MR. OKAMOTO: I take your business would
17 cover most of West Hawai'i?

18 THE WITNESS: Yes. We also work in Hilo.

19 MR. OKAMOTO: And how have the other small
20 contractors in West Hawai'i been doin'?

21 THE WITNESS: They're struggling because --

22 MR. OKAMOTO: Would you say -- I'm sorry.
23 Go ahead.

24 THE WITNESS: -- because there isn't that
25 much work. This is the only Project of this size and

1 magnitude that is ongoing right now.

2 MR. OKAMOTO: So for their employees are
3 they still workin'? Are they out of work?

4 THE WITNESS: They're out of work. Even the
5 22 employees that I have are drawing partial
6 unemployment because we don't have the full capacity
7 to be able to employ them full time.

8 So I implore you. Allow this to move
9 forward so that we can have the opportunity of
10 providing employment for the individuals that we
11 employ and to support their families.

12 MR. OKAMOTO: Thank you, Mr. Harris.

13 THE WITNESS: Thank you.

14 CHAIRMAN PILTZ: County?

15 MR. TAKASE: No questions.

16 CHAIRMAN PILTZ: State?

17 MR. YEE: No questions.

18 COMMISSIONER DEVENS: I have a question.

19 CHAIRMAN PILTZ: We have a question, sir.

20 One more question, Mr. Harris.

21 COMMISSIONER DEVENS: Mr. Harris, if I may,
22 do you know when the Decision and Order was first
23 filed in this case?

24 THE WITNESS: No, I do not.

25 COMMISSIONER DEVENS: Would it surprise you

1 to know that it was approximately 20 years ago that
2 the Decision and Order was first filed in this case?

3 THE WITNESS: Ah, yes. But then when it
4 comes to situations like this nothing surprises me.

5 COMMISSIONER DEVENS: How much more time do
6 you propose the Commission wait? How much more leeway
7 do you suggest the Commission give to this Project?
8 Because it's been over 20 years.

9 THE WITNESS: Okay. I don't think it's been
10 20 years since this contract or this development has
11 been involved, has it?

12 COMMISSIONER DEVENS: It's been 20 years
13 since this Commission granted the Decision and Order.

14 THE WITNESS: I understand that. But I'm
15 asking when has this developer been involved?

16 COMMISSIONER DEVENS: I'm not even sure we
17 know who owns this property right now, to be honest
18 with you. My question is --

19 THE WITNESS: Well, obviously the person who
20 owns, who has been paying the bills.

21 COMMISSIONER DEVENS: Do you know who owns
22 the property right now?

23 THE WITNESS: From what I understanding Bob
24 Wessels and Company.

25 COMMISSIONER DEVENS: What's the name of the

1 company?

2 THE WITNESS: DW 'Aina Le'a.

3 COMMISSIONER DEVENS: So going back to my
4 question. How much more leeway do you suggest this
5 Commission give to whoever owns the property at this
6 point in time?

7 THE WITNESS: As much time as is needed to
8 move it forward.

9 COMMISSIONER DEVENS: Thank you.

10 THE WITNESS: Okay?

11 CHAIRMAN PILTZ: Any other questions by
12 Commissioners? Thank you.

13 THE WITNESS: Thank you.

14 CHAIRMAN PILTZ: Any other person wishing to
15 testify at this time on this particular docket? Okay.
16 Seeing none, Petitioner.

17 MR. OKAMOTO: Thank you, Chair Piltz. I
18 have a few comments. But basically what we've done
19 we've submitted our June 10 letter which the
20 Commission received June 14. It specifically
21 addresses items that the executive officer had asked
22 us to address. We submitted photographs showing the
23 site work and showing the buildings that have been
24 constructed.

25 I will be asking Mr. Wessels to give you a

1 little more detail as far as what has been done on the
2 Project. But I would like to note initially that this
3 Commission had imposed a condition precedent back in
4 August about completing 16 units. It is our
5 understanding, based on what we presented to the
6 Commission and what was done, that we have
7 substantially completed that requirement.

8 I note that the Office of Planning had
9 talked about certificates of occupancy. We knew at
10 the time that it would take some time to get the
11 processing through. What we had presented to the
12 Commission was a construction schedule of buildings.
13 And that is what DW focused on to get done.

14 It also processed the EIS at the same time.
15 But if the Commission will review the record there is
16 no indication that we had told the Commission that
17 we'd have certificates of occupancy by March 31.

18 Mr. Wessells will address the challenges
19 that DW continues to face, although it's done, I think
20 a lot as far as construction and it has done it in
21 really tough economic times. There are a lot of
22 challenges. That's why you need people with the
23 experience to take this on and get the job done.

24 With respect to the delays, one of the ones
25 that's happened to us is the EIS processing. That was

1 a combination of the former planner deciding that she
2 just did not want to take on something like this with
3 that type of timeframe.

4 D.W had to ask Mr. James Leonard, who's
5 present today, to step in and help get that complete.
6 Mr. Leonard, when he did so, found that there was a
7 need for some supplemental studies. That resulted in
8 some of those studies not coming in until January of
9 this year.

10 As a result we do have issues that we'd like
11 the Commission to consider at a later time once we
12 have the EIS processing further determined.

13 And with that, if I could I'd like to have
14 Mr. Wessels describe for you the construction process,
15 where he is, where the outstanding issues are right
16 now that we're facing.

17 COMMISSIONER KANUHA: Mr. Chairman? Before
18 we go into this portion of the status report, I think
19 I have a question as to who's the real Petitioner in
20 this application at this time. I believe it was our
21 understanding there was supposed to be some assignment
22 between Bridge and DW. And yet we still have
23 Co-Petitioners on the table. So, you know, before we
24 even get into the presentation I'd really like to
25 find out who's representing who. And, you know,

1 because the way it's set up it's supposed to be
2 assigned to DW.

3 CHAIRMAN PILTZ: Yeah. Can you make that
4 clarification for us?

5 MR. OKAMOTO: Sure. The 60-acre parcel,
6 which is Phase I, title transferred to DW last year.
7 We reported on that to the Commission. We've got the
8 appropriate notices filed.

9 The balance of the urban area title is still
10 under Bridge 'Aina Le'a. Bridge is -- under the
11 agreement Bridge is not doing any of the development
12 work, nor is it involved in any of those activities.

13 There are financing issues. And because of
14 that Bridge has retained legal title to protect his
15 economic interest in the property. It's basically
16 like an agreement of sale. The purchase and sale
17 agreement gives Bridge 'Aina Le'a the right to be paid
18 all of the money when it's time.

19 The equitable and development interests are
20 those of the DW Development 'Aina Le'a. That's where
21 we are right now.

22 CHAIRMAN PILTZ: Okay. So the portion that
23 DW owns is just the 60 acres out of a total of?

24 MR. OKAMOTO: A thousand.

25 MR. YEE: Can we just, to address that

1 particular issue in ownership, can we briefly comment?
2 The amended and restated purchase and sale agreement,
3 as well as the notification of intent to transfer,
4 specified that this sale would close by October 2009.
5 That obviously has not occurred.

6 And so one of our concerns is that the
7 Petitioner, whoever that may be, is not communicating
8 with the LUC or the parties as to the proper ownership
9 of this.

10 I mean the allowance of Bridge 'Aina Le'a
11 and DW 'Aina Le'a to be Co-Petitioners occurred
12 because there was a transition period where both would
13 be owning property -- different parts of the property
14 at different times.

15 So that's why, frankly, I was surprised when
16 I initially sent out our May letter. And I never sent
17 a copy to Bridge 'Aina Le'a because in my mind the
18 sale was supposed to have gone through and Bridge
19 'Aina Le'a should not have had any further interest in
20 this.

21 So if there is a continuing interest,
22 especially where that interest is so large, quite
23 frankly, especially when this Commission I think was
24 persuaded by, very importantly, by the fact that there
25 was a new person in town. They were very persuaded by

1 the fact that there was going to be someone else who's
2 going to be handling this.

3 This delay, this significant delay in the
4 transfer needs an explanation. What was the problem?
5 Why hasn't it gone through? What's the new agreement?
6 Thank you.

7 COMMISSIONER KANUHA: Mr. Chairman, if I
8 could can I ask the county: Does it make any
9 difference to you at this stage in the development?

10 MR. TAKASE: I don't think so. We've been
11 watching what's happening. My understanding is
12 they're having financing problems. But they are
13 working towards getting financing and acquiring the
14 rest of the properties.

15 And obviously if they had all the money to
16 purchase it they would have. But, hopefully, as any
17 other projects, financing comes along and when sales
18 take place. So we're still optimistic that they will
19 be in place and that they will move forward.

20 From what we've seen at least they are
21 moving forward with construction and putting money
22 into the ground. So we are optimistic that they will
23 follow through with their plan at this point.

24 CHAIRMAN PILTZ: Yes, go ahead, Commissioner
25 Judge.

1 COMMISSIONER JUDGE: Thank you, Chair. I
2 just had one question too. There was something in the
3 document that the Office of Planning filed on, that
4 was received by us on June 30th that stated that, I
5 believe, it's the 60 acres the one that DW 'Aina now
6 owns has 333 owners?

7 MR. OKAMOTO: Could I respond?

8 COMMISSIONER JUDGE: Yes.

9 MR. OKAMOTO: Yeah. As we have covered in
10 our reply letter, the June 10 letter, there is a group
11 called Capital Asia that was involved with getting
12 investors into this Project. In order to make that
13 work they have set up undivided interests in the
14 property in exchange for an investment of money.

15 That's the extent of the investors'
16 involvement. They do not call the shots on the
17 development of the Project. They will get a return in
18 a specified period. In 30 months if the units are not
19 sold then they will get their money back from DW and
20 from Redwood Capital.

21 I did try to lay it out in the letter, but
22 if more details are needed Mr. Wessels can provide
23 them. It's basically a financing arrangement. It's a
24 bit unusual, but right now there isn't much capital
25 available for real estate development.

1 CHAIRMAN PILTZ: Was that satisfactory to
2 you, Commissioner Judge? Commissioner Heller.

3 COMMISSIONER HELLER: Just following up on
4 that. In the June 10 letter where you describe that,
5 you talk about the undivided real estate interest to
6 investors. And it says they also entered into joint
7 venture agreements with the contractor.

8 Can you elaborate a little bit more on what
9 those joint venture agreements are?

10 MR. OKAMOTO: I may have to pass this one to
11 Mr. Wessels. I've looked at the general structure.
12 It's a bit intricate. Commissioner Heller, you can
13 follow it with no trouble. But I would have a lot
14 more problems, I think.

15 COMMISSIONER HELLER: Well, I'm wondering is
16 what rights the investors have if there's actually
17 some sort of partnership or joint venture agreement of
18 place.

19 CHAIRMAN PILTZ: Do you want your answer
20 before Mr. Wessels comes up? Or do you think we can
21 allow him to come up and maybe explain, clarify some f
22 this?

23 MR. YEE: I don't object to having
24 Mr. Wessels testify about this. I guess I would only
25 want to make clear or ask whether Mr. Wessels will be

1 testifying again later. It deals with I may have
2 other questions. But if he's going to testify twice I
3 will restrict my questions solely to any issues raised
4 on this one issue.

5 CHAIRMAN PILTZ: Let's clarify this one
6 issue first with Mr. Wessels and keep it at that. And
7 don't go any further than this one particular issue.
8 Mr. Wessels, take the stand let me swear you in.

9 ROBERT WESSELS
10 being first duly sworn to tell the truth, was examined
11 and testified as follows:

12 THE WITNESS: I do.

13 CHAIRMAN PILTZ: Go ahead. Name and
14 address, please.

15 THE WITNESS: My name is Robert Wessels. I
16 live at 1802 North Kanuha in Mauna Lani.

17 CHAIRMAN PILTZ: Go ahead. Questions?

18 THE WITNESS: To address specifically or
19 hopefully specifically: In order to get upfront
20 financing on this Project we went to a group in
21 Singapore to -- and one of the things -- and it's a
22 land bank financing is what it's referred to in
23 Singapore -- one of the requirements of Singapore
24 after the Lehman Brothers and some of the other
25 securities real estate things failed, was that the

1 owner, the lender basically has to have title to the
2 property.

3 So we went through a procedure of creating
4 undivided land interests so that those -- each time a
5 investor records, sends his money to the escrow
6 company, the escrow company then will record a
7 fractional interest in the overall property in that
8 person's name. That creates its 333 current people
9 that are listed in the, in owning the 60 acres.

10 The second step, and it's done at the same
11 time as the documents are signed, is to sign a joint
12 venture agreement. That joint venture agreement is
13 between 'Aina Le'a as the developer, TrueStyle
14 Pacific Builders as the builder and the owner of that
15 fractional interest.

16 They turn all of their rights -- they have a
17 thing there that says they have no rights to occupy
18 the land, things like this, they have turned all their
19 rights to that land ownership to the TrueStyle in
20 order to build the townhouses on it.

21 They receive -- when the townhouses are sold
22 they received the return of their money. It's the
23 equivalent of about a 1 percent per month return to
24 them, but it is not an interest return. They actually
25 buy their undivided interest and they resell their

1 undivided interest.

2 CHAIRMAN PILTZ: Questions, Commissioners?
3 Tom.

4 COMMISSIONER CONTRADES: So when were you
5 guys going to notify the Land Use Commission that you
6 were doing this type of financing?

7 THE WITNESS: I thought we had at the
8 hearing when we discussed the Capital Asia. And then
9 we, of course, filed with the Department of Commerce
10 and Consumer Affairs the public offering statement
11 with the escrow instructions, the complete details of
12 that back in October -- well, we filed it earlier but
13 the DCCA approved it back in October.

14 So I think from our standpoint we believed
15 we had notified with both the discussions of it in
16 terms of the funding and the follow up with the public
17 notification.

18 COMMISSIONER CONTRADES: I don't recall ever
19 being told that you were going about your fundraising
20 in this manner. And, you know, the more I read the
21 worse it gets. And I was one of them that supported
22 giving you guys a chance.

23 Because when you came to us everything
24 seemed like you had financing, you were going to do
25 all those things. We explained to you it was a really

1 tight schedule. You said you could do it.

2 I'm really concerned that Bridge 'Aina Le'a
3 is still involved. I thought they were gone. I
4 thought it was no longer there. Yet they still own
5 the majority. So it seems like they don't have too
6 much confidence either that this is going to go about.

7 And this is really beginning to bother me.
8 And I understand that people want jobs and everything.
9 But for 20 years this Commission has been dealing with
10 this property. We've heard the same thing over and
11 over and over.

12 It's like we're hearing the same thing
13 again. And I will not hesitate to tell you and
14 everybody else can hear this. I would not hesitate to
15 vote to revert this land. I wouldn't. 'Cause I was
16 told something and so far it hasn't been lived up to.

17 And that really bothers me because I'm tired
18 of hearing this. The very first time I stepped into
19 this building as a Commissioner the first hearing we
20 had was on Bridge 'Aina Le'a.

21 And it has continued for almost six years
22 that I've had to listen to it. And I still don't see
23 things go the way we were told they were going to go.
24 And I'm very concerned about that, very concerned.
25 And I want you to know that and everybody else to know

1 it too.

2 CHAIRMAN PILTZ: Any other questions,
3 Commissioners? Yes.

4 MR. YEE: Just a few questions and I will
5 try to restrict myself to the question of ownership.

6 CHAIRMAN PILTZ: Thank you.

7 MR. YEE: If I understand correctly, then,
8 you have an agreement of sale with Bridge 'Aina Le'a,
9 right?

10 THE WITNESS: That's correct. It's contract
11 of deed that we performed on to some degree. We had
12 to get an extension, which we had. We got an
13 extension to this October.

14 MR. YEE: Okay. But that document was never
15 filed with the LUC?

16 THE WITNESS: I believe the original one
17 was.

18 MR. YEE: Right. And the original one
19 indicated an October 2009 closing date for the last
20 parcel.

21 THE WITNESS: That's correct.

22 MR. YEE: And I take it the reason you're
23 having trouble to close it is because of the
24 financing.

25 THE WITNESS: That's correct.

1 MR. YEE: So you can't pay Bridge 'Aina
2 Le'a. And so because you can't pay Bridge 'Aina Le'a
3 they're not transferring the property to you?

4 THE WITNESS: That's correct.

5 MR. YEE: So you're prepared to move
6 forward -- well, let me restrict myself to the
7 ownership question. What is your plan on how you're
8 going to get financing to close the deal for a
9 thousand acres by October?

10 THE WITNESS: We have -- when our first --
11 when our lender has not performed we went obviously
12 started looking for additional funds. We have a
13 commitment from a company called Exim Corporation --
14 it's related to the export/import bank -- for
15 \$98 million.

16 Of that 98 million the \$12 million that's
17 necessary to release the balance of the thousand acres
18 of residential is included in that as well as the
19 balance is construction financing for the townhouses
20 and the site of D1B. They've done their due
21 diligence. We have a firm commitment. We're working
22 towards getting that closed in the next 45 days.

23 MR. YEE: So it's a deal that you've
24 negotiated but not yet fully executed?

25 THE WITNESS: I'm sorry, I didn't...?

1 MR. YEE: It's a financing arrangement that
2 you've negotiated but have not yet fully executed.

3 THE WITNESS: That's correct. They
4 execute -- they give us an executed commitment. We
5 have accepted the commitment, but it is not, you know,
6 the documents are not finalized and it's not funded.

7 MR. YEE: And you're looking to them because
8 the Capital Asia that you were originally looking for
9 financing just hasn't come through.

10 THE WITNESS: No. This is in addition.
11 Capital Asia is coming through in a little slower
12 terms, but it's coming through. But just to do the
13 townhouses requires a capital investment of over
14 \$120 million. So it's a combination of Capital Asia
15 and this financing.

16 MR. YEE: Actually just so that I'm clear.
17 The deal with -- I'm sorry, what was the name of the
18 company again, the new deal, the new capital?

19 THE WITNESS: Exim, Exim Corporation.

20 MR. YEE: Exim. The money that you're going
21 to get from Exim, does that cover construction costs
22 for Phase I primarily or does it cover all financing
23 throughout the entire remaining 1,000 acres?

24 THE WITNESS: What it does it has
25 \$12 million to pay off Bridge to turn the thousand

1 acres over to us. That's the balance to pay on on the
2 thousand acres. And the rest of it is construction
3 financing for the development of D1B, the property
4 that we own right now where we're building the
5 townhouses on.

6 MR. YEE: So you'll have the construction
7 money for phase 1 of the affordable units but you will
8 then need to look for additional money to construct
9 the remaining thousand acres.

10 THE WITNESS: That's correct.

11 MR. YEE: That's it. That's all I have on
12 ownership.

13 CHAIRMAN PILTZ: Commissioners, any other
14 questions? We can go on now.

15 MR. OKAMOTO: Okay. If I could,
16 Mr. Chairman, I'd like to have Mr. Wessels cover some
17 things about what has been built on this Project since
18 the Commission last looked at this last August. To do
19 that I've handed Mr. Wessels copies of photographs
20 which were attached to the status report that I
21 submitted. If I could proceed.

22 CHAIRMAN PILTZ: Go ahead.

23 MR. OKAMOTO: Thank you.

24 DIRECT EXAMINATION

25 BY MR. OKAMOTO:

1 Q Mr. Wessels, as far as the 60-acre site D1B,
2 what work has been done on that site since last
3 August?

4 A Since last August the Goodfellow Brothers
5 has gone in and graded the lava, created, cut the
6 roads into, into the site, brought it down to the
7 entrance. That's the physical work that was done on
8 that.

9 They blasted and dug the utility trenchings.
10 They've delivered the sewer lines. And basically
11 they've built the dust water collection ponds, the
12 various things to do the construction of the site and
13 prepare for the infrastructure. Not all of it's
14 finished but they've prepared that.

15 They've identified the location and staked
16 out the offsite easement corridors and the location
17 for the wastewater treatment plant and prepared for
18 the wastewater treatment plant.

19 In addition, then, the contractors came in
20 under TrueStyle Pacific and built. They built and
21 completed 16 townhouses. They've constructed another
22 24 that are constructed up to the roof. They have
23 constructed another 16, and with the underground
24 another 32 that are in various forms of construction
25 in term of the vertical coming up.

1 Goodfellow finished the pads for 24 of the
2 27 townhouse complexes or condominium of which there's
3 16 townhouses in each condominium pod. So they've
4 done, they've done a yeoman's amount of work. The
5 contractor's doing a really, really good job.

6 Q So, Mr. Wessels, if you look at Exhibit KK,
7 which is the third photograph, is that D1B site?

8 A That is the D1B site. And as you can see
9 the terracing for the -- and the pads where the
10 concrete footings will be or are being prepared, was
11 done before they started the townhouses on that.

12 Q Okay. And about how much of that 60-acre
13 site will that construction require?

14 A This is, this is roughly 40 acres of the
15 61 acres.

16 Q Would that be sufficient to put up all 432
17 units?

18 A Yes. And they are laid out and the county
19 planning has approved and issued the building permits
20 for all the 432 units.

21 Q If I can refer you to Exhibit II. That
22 looks like, is that two buildings there?

23 A Yes.

24 Q And are those the two buildings that were
25 completed?

1 A Yes.

2 Q And were those done by March 31st of this
3 year?

4 A They were. All of the contractors really
5 shipped in and they, they really, really -- on the
6 30th, in the evening of the 30th they finished
7 everything and we're very, very proud of their work.

8 Q Mr. Wessels, looking at Exhibit JJ, what is
9 that showing us?

10 A JJ is the interior of one of the 3-bedroom
11 townhouses.

12 Q If we look at the bottom photo it appears
13 that there's cabinets and appliances in that unit.

14 A Everything on these units are finished.
15 This is actually just bringing some model furniture in
16 to decorate it from the standpoint of being able to
17 show first-time homebuyers how it would lay out with
18 the furniture.

19 Q Okay. So the units themselves will be
20 unfurnished units but with appliances.

21 A That's correct.

22 Q Now, as far as the status of these two
23 buildings and the building -- I'm sorry, the building
24 permits, what's the status as far as building, the
25 final building inspections?

1 A All of the inspections on these 16 units
2 have been completed. Because we do not have them
3 connected to the utilities we will not -- until we can
4 connect them we will not be able to pick up the
5 certificate of occupancy. But the inspections are
6 done.

7 Q And I think we have reported on what the
8 expected delivery date of the wastewater treatment
9 plant is in the status report letter.

10 A Yes.

11 Q What is going to hold -- well, what would be
12 the critical factor in getting the approval for that
13 system from the Department of Health?

14 A The engineering work has been done. We
15 submitted it to the Department of Health and gotten
16 preliminary comments back. The biggest single thing
17 is that a wastewater treatment plant requires a
18 special use permit.

19 And in order to file for that special use
20 permit the EIS had to be completed and accepted. And
21 so that's the controlling factor.

22 Q Now, now that you've gotten some buildings
23 up and two completed do you have a better idea of what
24 it's going to take, how long it would take to complete
25 one of these buildings?

1 A Basically, as they proved on these and there
2 was a couple little things that they had delays and
3 changes, it takes approximately 45 days to build, to
4 build these buildings from the time they pour, start
5 pouring the concrete or set the plumbing to handing
6 the keys to the, to the owner.

7 Q How many of these buildings could TrueStyle
8 handle in any give time?

9 A Well, it's a combination. They're broken up
10 into 27 separate pods at 16 houses per pod. The
11 materials are all standard materials. They're on the
12 island. So that they can do almost any number of
13 these as far as starting.

14 What they can do is with the concrete and
15 the framing contractors they can start each one of the
16 pads as a separate contractor and finish 'em all in 45
17 days. Logistically it's possible. Is it probable
18 that they would do that? No. But it is logistically
19 possible based on what they've proven on these first
20 ones.

21 Q Okay. Now, we also have to deal with the
22 approval and construction of the intersection with
23 Queen Ka'ahumanu Highway for this Project, do we not?

24 A That's correct.

25 Q What is the status as far as that's

1 concerned?

2 A That has been submitted to the Department of
3 Transportation. We have not gotten comments back.
4 Wilson Okamoto, the engineering company, prepared it,
5 submitted it.

6 The intersection, the access to that
7 intersection is staked on our property so that the
8 Department of Transportation can look at it and make
9 sure that they are comfortable with the access and the
10 backup of traffic.

11 And there is a, there is a requirement --
12 all the traffic studies have been done and they're
13 part of the EIS -- there's a requirement, as I
14 understand, that the EIS has to be accepted before
15 it's, before they will grant the permit for this.

16 Q Now, the Draft EIS Notice was published, I
17 think, May 23 or 24 of this year. Have you gotten an
18 idea of when the planning director could give final
19 approval for the Final EIS in this matter?

20 A We did get some estimates. I need to refer
21 to James Leonard's notes.

22 MR. LEONARD: (off mic) Yes, it would be in
23 August sometime we expect it to be accepted.

24 THE WITNESS: In August would be the time
25 that they could do the acceptance.

1 Q (By Mr. Okamoto): Okay. And that's subject
2 to the Planning Department's schedule and whatever
3 else they do with this process.

4 A That's correct.

5 Q So I take it we're looking at probably the
6 first week in September to publish in the Bulletin,
7 the OEQC Bulletin.

8 A Okay.

9 Q If we have that kind of a timeframe what's
10 that going to do to the construction of the
11 intersection?

12 A It's going to take the most rapid estimate
13 that Goodfellow's has given, it will take 60 to 90
14 days to do the intersection.

15 Q And I take that that's also going to drive
16 our ability to get a certificate of occupancy.

17 A Yes.

18 Q I don't want to go back over all the
19 financing details. But I noticed when we covered this
20 we also had not gotten into the rest of the Project
21 very much as far as where the financing would come
22 from.

23 What sources have you been working on for
24 that?

25 A We've been -- we've worked with the

1 consultants with the county in finalizing and with the
2 investment banker that the county selected in
3 finalizing the tax apportionment methods so that they
4 could move forward on the community facility district
5 bond financing. That is the, that is the primary
6 focus for the infrastructure for the balance of the
7 property.

8 We've also had a number of conversations
9 with investors that could -- such as Green Town out of
10 China, about coming in and working and funding and
11 developing with us the golf course and other things.
12 But we don't have those in place yet.

13 We have been primarily concentrating -- the
14 first thrust has been this. We have had our hands
15 pretty full on just getting the townhouses portion
16 finished.

17 Q Okay. And if the CFD financing goes through
18 as I recall one of the items would be the Hulu Street
19 extension to Queen Ka'ahumanu.

20 A That's correct.

21 MR. OKAMOTO: Thank you. I have no further
22 questions.

23 CHAIRMAN PILTZ: County, questions?

24 MR. TAKASE: Thank you.

25 CROSS-EXAMINATION

1 BY MR. TAKASE:

2 Q Mr. Wessels, when did you take over this
3 Project?

4 A We turned over the money and signed the
5 contract for deed on February 9th -- I believe it's
6 February 9th -- of 2009. We paid the final payment
7 for the 61 acres on December 11, which is the land
8 that we're currently building on of 2009.

9 Q Okay. You talked about what you hope is
10 your financing package will come together soon. Is
11 there any hesitation by these lenders in lending you
12 this money? Or is it just a matter of time before it
13 comes?

14 A The lender that we've got -- the first
15 lender had certain requirements with the way the
16 economy went. They kind of, they haven't said they
17 won't do it but they haven't done it. You can't build
18 without money.

19 So that we have accomplished this with a
20 loan from Goodfellow and a lot of cooperation on the
21 part of people to move it forward.

22 In terms of the Exim Corporation, they came
23 over. They've done their due diligence. We have sat
24 and gone through it. The reason why the commitment is
25 \$98 million is that is what that I believe is

1 necessary to fund the entire building of the
2 townhouses and to pay off the remaining balance that's
3 due to Bridge. And that's why it's structured.

4 So I feel like they're, it's a matter of
5 just getting the legal documentation and being in
6 position. They will take a first mortgage on all
7 thousand acres as part of their security even though
8 the bulk of the money comes into this first 61 acres.

9 Q Are these proceedings and the Order to Show
10 Cause affecting your ability to get funding?

11 A There's been a couple of lenders that said,
12 "We're interested but, you know, we can't have the
13 risk that you're going to lose the Project and your
14 zoning to be able to build it out." Because obviously
15 this first 61, the townhouses, the affordable
16 townhouses are lost.

17 And so the net effect is we look to amortize
18 and recover that and to amortize, have the margins for
19 the loan over the whole Project.

20 Q So this Exim Corporation is aware of these
21 proceedings and they're still willing to work with
22 you.

23 A Yes, they are.

24 Q Can you give us a timeframe of when you
25 expect, I guess, the first affordable housing to be

1 available to the public?

2 A We're filing with the, on the condominium
3 regime it took a little longer to get the
4 documentation to file with the state. But we're
5 hoping within the next 30 to 45 days to be able to
6 market and actually sign the sales contracts.

7 Then when, obviously, we have the
8 intersection and the wastewater we can close the
9 sales. But we're expecting to be able to sign
10 contracts with a closing in October/November.

11 Q Now, you talked about the CFD funding for
12 the infrastructure. I know the County's been working
13 with you on that. When are you projecting to put that
14 out to bid?

15 A It should go, according to the schedule, go
16 back before the county council within the next two
17 weeks on the first, two to three weeks on the first
18 thing. But the schedule the County's consultants
19 takes us into October before it's actually funded.

20 MS. TAKEUCHI-APUNA: Okay. Thank you. I
21 have no further questions.

22 CHAIRMAN PILTZ: Commissioners, questions on
23 behalf of the county? In case they have some
24 questions ask the county. If not, go ahead.

25 CROSS-EXAMINATION

1 BY MR. YEE:

2 Q So you're requiring the financing from Exim
3 because Capital Asia has not accomplished what they
4 said they were going to accomplish?

5 A Capital Asia's accomplishing. They're
6 moving forward with a couple million dollars a month.
7 The construction between Goodfellows and TrueStyle
8 they've just done a fantastic job in moving forward.

9 So the funding from Capital Asia is not
10 adequate to keep up with the construction. That's why
11 we want the second.

12 The other thing is that with the large
13 number of units that we're going to have to hold prior
14 to closing and the delays in closing, we need more
15 than just the infrastructure and the vertical.

16 There won't be the normal turn that you get
17 as a typical builder when you start construction, when
18 you have the sales contract and you close it when you
19 finish.

20 Q My recollection is at the last hearing you
21 had gone -- or prior to the last hearing you had gone
22 to the county and had said you had financing. And
23 they went -- in fact didn't Capital Asia go and talk
24 to the county, talk about this issue, that they were
25 prepared to finance the affordable housing component?

1 A Well, as the -- yes -- as the planning
2 director spoke to the Land Use Commission, she said
3 she had met with some of the doctors from Singapore.
4 They were, in fact, providing financing.

5 And I think explained a little bit about
6 that these were real people and that's exactly what
7 they're doing. They're funding, they're funding on a
8 regular basis. They didn't fund in a block, but it
9 was never intended they would fund in a block.

10 Q But weren't they supposed to be the source
11 of your financing for this Phase I?

12 A No. Redwood Capital was providing through,
13 was providing \$20 million.

14 Q Right.

15 A Then also the TrueStyle through its lender
16 FT was providing \$10 million of their construction
17 working capital. So it was a combination.

18 Q Fair enough. But you were not expecting or
19 you never represented to anyone that you needed
20 additional financing from Exim or someone else in
21 order to complete Phase I.

22 I mean didn't you represent to this
23 Commission that you had the financing available and
24 that you had all the money you needed in order to
25 complete Phase 1 affordable housing units?

1 A I don't know that I made that exact
2 representation, but I certainly thought that we had it
3 set up that we could do it because we expected to have
4 the CFD money available to take out, the Redwood to be
5 able to roll that working capital loan.

6 And I mean I don't know that I represented
7 that to the Commission. But we certainly didn't enter
8 the Project with the intention that we weren't going
9 to be able to finish it.

10 Q Without the money from Exim, I take it you
11 need that money in order to continue construction.

12 A We need the money -- yes, we need borrowings
13 to be able to continue, of course.

14 Q So if it takes you 45 days to get the money
15 or longer, if something else happens, then there's
16 going to be a further delay in construction for lack
17 of funds?

18 A Actually some of our contractors, as they
19 have up to this point, have believed in the Project
20 enough that they have, they have advanced funds,
21 advanced their own work in anticipation of the closing
22 of the loan.

23 Q Is Goodfellow Brothers still on site?

24 A Yes. They still have their bond and they
25 still have equipment on site.

1 Q Are they still working on site?

2 A No.

3 Q Is that because of a financing problem that
4 you don't have enough money to pay them?

5 A I borrowed \$5.5 million dollars from
6 Goodfellow. But the bulk of it is they've reached a
7 certain point and they need certain permits to finish
8 the rest of it which they're in the process of
9 getting, including the intersection permit.

10 Q So you owe Goodfellow Brothers 5.5 million.

11 A Yes.

12 Q And you'll need to pay them more money if
13 they're to continue working on this site.

14 A Absolutely.

15 Q How much construction activity is currently
16 going on?

17 A Well, ah, there's, you know, there's, um,
18 they're continuing on, on doing some of the work on
19 the townhouses. A lot of it is being done in terms of
20 getting, waiting for releases and things back. Is it
21 going as fast as it was prior on March 30th? Of
22 course not.

23 Q We understand or we have been told there's
24 been a significant slow-down in construction. Is that
25 correct?

1 A That's correct.

2 Q How long has that slow-down been going on?

3 A I would say probably almost 60 days.

4 Q You seem to be indicating that the slow-down
5 is due to a lack of releases rather than a lack of
6 money.

7 A It's due to both.

8 Q Due to both. So you need both in order to
9 speed up the construction process.

10 A Yes, we do.

11 Q And the releases you're referring to, is
12 that the EIS, the Department of Transportation
13 approval, the Department of Health sewage treatment
14 permit and the county SMA permit? Are those the
15 releases you're talking about?

16 A Yes.

17 Q And the money that we're talking about that
18 you also need, that would be the money you're supposed
19 to be getting for Exim?

20 A That's correct.

21 Q And you talked about the EIS as coming as
22 early as August. Is August the date you intend to or
23 hope to submit the Final EIS to the county for
24 approval?

25 A I need to defer that to our EIS consultant.

1 Q I'm just trying to figure out what you mean
2 by you'll "get an approval in August." I'm trying to
3 figure out when -- so you don't know -- you don't know
4 anyway when you're going to submit or when you hope to
5 submit the Final EIS to the county?

6 A Well, the final. There's a difference, I
7 guess, between the draft which we submitted in May and
8 the final.

9 Q Yes.

10 A But if you could, if you could direct those
11 to James Leonard.

12 Q Why don't we wait. I'll put that to one
13 side. Let's finish, Mr. Wessels, and we can deal with
14 that hopefully with a different witness.

15 You talked about the condo property regime.
16 Who are you filing -- what approval -- I'm sorry --
17 what agency would approve the condo property regime?

18 A I believe that's the Department of Commerce
19 Consumer Affairs. The attorney is finishing, is
20 handling that.

21 Q Is that dependent upon or are they aware of
22 the lack of a Final EIS, DCCA's process for approving
23 condo property regime?

24 A I believe he's got the information in there
25 that there are certain things that have to be done

1 before a certificate of occupancy can be done. But
2 I'm not sure how it's worded.

3 Q Okay. Within the condo property regime
4 application the information is there.

5 A (No response).

6 Q I just ask because I notice you had said you
7 thought the LUC was aware of the issue on the transfer
8 because you had filed the document with DCCA. You
9 know they're different state agencies, and filing with
10 one is not notification to the other, right?

11 A I do. I've been on the other side of it.
12 Somebody has said to me, "Well, if we file a public
13 document it's your obligation to go read it." So I
14 didn't mean that.

15 But I did, we did discuss the fact of
16 individuals were investing in Capital Asia. And then
17 later on we filed the public offering statement as
18 part of the, our requirements with the state.

19 Q Okay. What would happen -- when you said
20 after you filed the condo property regime you're
21 looking 30 to 45 days for approval, is that right?

22 A We're hoping, yes.

23 Q Do you anticipate you're going to be getting
24 that before the FEIS is accepted?

25 A I would hope so.

1 Q Do you plan to begin sales of the units
2 without an accepted EIS?

3 A If we are approved to start sales,
4 absolutely.

5 Q You know, at the last hearing do you recall
6 you submitted a construction schedule? You had a GANT
7 chart, I think, explaining here's what's going to
8 happen when and here's how we're going to reach the
9 November 17, 2010 deadline?

10 A Yes, the big chart we had, yes.

11 Q I take it you're behind schedule on that
12 chart.

13 A We're actually still ahead of schedule on a
14 couple of items. A couple items we're behind.

15 Q Each item had to be accomplished as I
16 remember. Your schedule was so tight, is my
17 recollection, that each of them had -- each of them
18 was a potential log jamb, each one of those items. So
19 they all had to be completed in order to get the
20 November 17, 2010 deadline, right?

21 A Right.

22 Q Which ones are you behind on?

23 A Ah, the, ah, the special use permit. We
24 filed -- we filed everything that's necessary. We
25 don't have the Department of Transportation's approval

1 back yet. I'd have to look at it. I'm trying to do it
2 off the top of my head.

3 And I -- some of which we found ways around
4 to be able to handle it while we're getting approvals.
5 We've had some good help in terms of our consultants
6 and our contractors in overcoming some of the, when we
7 have had a delay.

8 Q But you don't have a revised GANT chart
9 showing your new construction schedule to accomplish
10 your November 17, 2010 deadline, do you?

11 A No.

12 Q You had indicated that you had trenching
13 done for the utility lines. Is that completed or is
14 that just started?

15 A It's just -- it's -- they have went in -- in
16 order to put the utility lines in in the lava they
17 blasted. They blasted in the roadways. They blasted
18 in between the units.

19 They needed to do that before they did the
20 vertical construction because of the blasting. So the
21 trenches is blasted and cracked and some cases taken
22 out. But in most cases it is just the lava is broken
23 in place.

24 Q Did you need a permit for the blasting?

25 A Goodfellow has permits for the blasting,

1 yes.

2 Q My understanding is you need to put in
3 utility lines before you can asphalt over the road
4 because the utility lines are following the road,
5 correct?

6 A That's correct, yes.

7 Q Do you have the trenching done along all the
8 roads that now -- I mean are you just ready to put in
9 the asphalt?

10 A No, no. We still have to put the utility
11 lines in the roadway. We're still a ways off from the
12 asphalt.

13 Q And I understand you said you're
14 anticipating building 432 affordable housing units.
15 That's the number of units you anticipate --

16 A No. We're building 385 affordable units
17 that're required. We're building 432 units that are
18 townhouse units on this site. So we have 40, 47 units
19 that we can sell at market rate.

20 Q In your mind 16 are complete, 24 are
21 built-to-roof. Is what I have written down. Is that
22 correct?

23 A That's correct.

24 Q What is 'built-to-roof' mean?

25 A They have the roof on. And 16 of 'em have

1 the sheetrock in. They have all the wiring and stuff
2 in the walls, and they have sheetrock in. The other
3 eight have the walls still open, but they're in the
4 process now of putting in the doors and windows to do.
5 It's got the blue paper on the roof for it to weather
6 it in.

7 Q Okay. Then an additional 13 are in various
8 other stages of completion?

9 A Sixteen.

10 Q Oh, 16 are?

11 A Sixteen have the pads and all the bolts and
12 tie-downs done. Another 16 have the plumbing and
13 they're ready for pouring the pads.

14 Q I count that as 72 units that are in some
15 stage of construction. You had 16 that were
16 completed, 24 built-to-roof, 16 with pads and bolting
17 and 16 with some plumbing done.

18 A Okay.

19 Q Is that -- those numbers are correct?

20 A Those numbers are correct.

21 Q If they add up to 72 you then have your
22 additional 314 more to go, is that right?

23 A That would be correct.

24 Q You had said that you could do 45 -- you
25 could build the townhouses in 45 days, but you

1 acknowledge the likelihood you could build 314
2 townhouses within 45 days is not really practical.

3 A Not practical, yes.

4 Q Do you have a practical construction
5 schedule for the 314 houses?

6 A Our desire would be to build approximately
7 32 units a month. That's a real smooth, easy flow
8 both of materials and capital. And we believe that we
9 can, as long as we don't have too large a backlog,
10 that we can market them into the, into the local
11 market with the intent of the County's affordable
12 housing guidelines.

13 Q When you say "32 units", that does not
14 include, I take it, the sewage or the traffic
15 improvement. When you say "completed" you're not
16 referring to hooked up to all the utilities?

17 A Well, that's what I'm saying is the ideal
18 would be is to be able to continue to build, build an
19 inventory and build 32 units a month going forward.

20 Q And if I understand you correctly as we talk
21 about utilities, you need the EIS accepted, then you
22 need the SMA completed and then you can get your DOH
23 sewage permit?

24 MR. OKAMOTO: I'm sorry, Mr. Yee. But I
25 think he referred to special permit not SMA.

1 MR. YEE: I'm sorry. Thank you.

2 Q You need the EIS, the special permit, then
3 the DOH permit. Is that the order?

4 A Yes, I believe it is.

5 Q And did you give me an estimate of how long
6 you think the special use permit would take?

7 A I don't have a set estimate. We're hoping
8 that it can be, it can be processed while we are in
9 the final processing of the EIS.

10 Q And with respect to the wastewater treatment
11 schedule, at what point in this schedule would the DOH
12 special permit be needed?

13 A They've submitted the engineering and gotten
14 comments back from DOH. That has to be resubmitted
15 with the modified comments. And I don't know, I'd
16 have to defer to the engineer, whether or not we'd get
17 final approval from DOH before the special permit or
18 not. I don't know the exact procedure. That's an
19 area that we have hired the engineer to accomplish.

20 Q Do you need the special permit in order to
21 construct the sewage treatment plant?

22 A Yes, we do.

23 Q Do you anticipate getting the DOH permit
24 before you deliver the equipment to site?

25 A That's my understanding, yes.

1 Q So when you submitted your June 10th, 2010
2 letter you completed certain things but the equipment
3 delivered to site is still pending. I take it that --
4 this special use permit I take it you mean special
5 permit.

6 A It's called an SUP, special use permit.

7 Q Special use permit. I'm confusing, I think,
8 myself. I'm sorry. You need a special use permit
9 before you deliver the equipment to site, is that
10 correct?

11 A I don't know the answer to that. I know we
12 need it before we turn it on for certain.

13 Q All right. One last question. The 333
14 owners are in parcel or portion 37 of the TMK -- 36 of
15 the TMK?

16 A Thirty-six, yes.

17 Q Is that right. Is portion 36 where all the
18 affordable housing units are built?

19 A Yes.

20 Q Okay. I'm not sure that's reflected in the
21 EIS but that can be clarified. And your attorney --
22 I'm sorry. I did say "one last question" but I have
23 one more question.

24 Your attorney indicated that might be
25 something else requested of this Commission at another

1 date. Is that a reference to an extension of the
2 November 17, 2010 deadline?

3 A Well, as we had said before this is our plan
4 and we have come here. We now see, and we haven't
5 found a way around some of the, couple of the delays
6 that we have. So as we, as we resolve those and have
7 definite things it's our obligation to come to this
8 Commission and advise them of where we stand. So we
9 will be -- as we get absolute definition on things we
10 will be coming back and notifying them.

11 Q And are you going to be asking for an
12 extension of the November 17th deadline?

13 A I believe we prob -- I think we would
14 probably have to advise them that we won't have all
15 the units, but we're, you know -- if it was denied
16 we'd have to get 27 contractors over there to build
17 buildings in 45 days.

18 So, you know, in answer to your question we
19 had said as we ran into problems we would come to the
20 Commission. At this point we have. We know we have
21 had difficulty in getting 385 by November.

22 It's still -- if everything worked just
23 right and we wanted to put 27 crews in there building,
24 we could still make it but it's not a practical thing.
25 We're notifying the Commission that we do have more

1 hurdles but they're not hurdles that we can't overcome
2 because they're in process.

3 Q So your best -- when do you anticipate
4 filing this document? Do you have an estimate?

5 A One of the things that our attorney has
6 advised is "be absolute accurate on everything that
7 you submit to this Commission." And until I've got
8 some absolute dates I don't know when we'll file it.

9 Q So you don't have an absolute date. But
10 you -- if I'm hearing you correctly you are
11 anticipating, maybe not absolutely certain, but you're
12 anticipating that you are not going to meet the
13 November 17, 2010 deadline. So you're anticipating
14 filing something before this Commission telling then
15 that.

16 A We're advis -- yes, we're advising the
17 Commission that it's going to be difficult.

18 Q All right.

19 MR. YEE: I have no further questions.
20 Thank you.

21 CHAIRMAN PILTZ: Commissioners, any
22 questions? Let's take a 5 minute break.

23 (Recess was held.)

24 CHAIRMAN PILTZ: We're back on the record.
25 Just an announcement that we will conclude DW's

1 portion this morning by noon. Your complete item we
2 will conclude it by noon. And we will take our lunch
3 break. We will return at 1:30 where we will take up
4 Tropic Land. So, okay. Petitioner.

5 MR. OKAMOTO: Given that, Chair Piltz, I
6 would like to have Mr. James Leonard submit a brief
7 amount of testimony as far as the EIS process.
8 Because I think Mr. Wessels is having a hard time with
9 that.

10 CHAIRMAN PILTZ: All right. Go ahead, bring
11 him up.

12 MR. OKAMOTO: Mr. Leonard, could you come up
13 and stand to be sworn.

14 JAMES LEONARD,
15 being first duly sworn to tell the truth, was examined
16 and testified as follows:

17 THE WITNESS: I do.

18 CHAIRMAN PILTZ: Your name and address for
19 the record.

20 THE WITNESS: My name is James Leonard. My
21 address is 1100 Ainalaka Road, Hilo, Hawai'i.

22 CHAIRMAN PILTZ: Go ahead.

23 DIRECT EXAMINATION

24 BY MR. OKAMOTO:

25 Q Mr. Leonard, could you tell us what your

1 involvement is with the DW 'Aina Le'a Project.

2 A Yes. I'm responsible for the preparation of
3 the EIS for the Project. Right now we're in the
4 process -- we've submitted the Draft EIS and that's
5 been -- the availability of the Draft EIS has been
6 published in the OEQC Notice that was published on May
7 23. The review period for that ends on July 7th.

8 Soon afterwards we'll complete the Final EIS
9 and submit it to the county for their review and
10 acceptance. We expect roughly a month for that
11 process. So somewhere towards the latter part of
12 August we expect to see acceptance of the Final EIS,
13 and then with publication of the availability of the
14 Final EIS in September, hopefully by the September 8th
15 Bulletin.

16 Q Mr. Leonard, your reference to the Bulletin
17 is the OEQC Bulletin.

18 A That's correct. The Environmental Notice,
19 as it's called.

20 MR. OKAMOTO: Okay. Thank you. I have no
21 further questions.

22 CHAIRMAN PILTZ: Let me ask a question. You
23 waited until May of this year? Is that when you
24 started the EIS process or your draft?

25 THE WITNESS: No. We started this sometime

1 back in '09, actually in October-November of '09. But
2 in going through that and looking through the reports
3 that had been done, the studies that had been done, we
4 realized they didn't cover the full scope of the
5 development and additional studies were needed to make
6 sure that that EIS was a complete document and fully
7 covered the scope of the Project, including its
8 utility development.

9 CHAIRMAN PILTZ: Thank you for the
10 clarification. Questions, Commissioners? County, any
11 questions?

12 MR. TAKASE: No questions.

13 CHAIRMAN PILTZ: OP?

14 MR. YEE: Just briefly.

15 CROSS-EXAMINATION

16 BY MR. YEE:

17 Q When was the Draft EIS submitted for
18 publication?

19 A It was submitted by the Planning Department
20 on May 10th to OEQC.

21 Q And published when?

22 A On the 23rd.

23 Q Mr. Sidney Fuke testified on behalf of
24 Petitioner in this case that it takes on the average
25 about six months from the time of the EIS, Draft EIS

1 submittal to the time of final approval. Does that
2 sound as an average matter to be about right?

3 A Yeah. It can very often take five to six
4 months from that time.

5 Q And the length of time has a variety of
6 factors in it, one would be the complexity of the
7 issues involved, is that right?

8 A That's correct.

9 Q Another you would have to take into account
10 obviously the comments that you receive.

11 A That's correct.

12 Q And you have not yet received those comments
13 in this case, correct?

14 A We've received some comment letters.

15 Q You've not received -- the comment period is
16 not over, though, correct?

17 A The comment period is not over.

18 Q So you have not reviewed all the comments on
19 this Draft EIS.

20 A That's correct.

21 Q So until you receive those comments you
22 don't really know or have a good idea of how long it's
23 going to take to complete this EIS process.

24 A Um, we don't have a firm idea until we see
25 all those comments.

1 Q You anticipate one month that the county
2 would take in order to review your draft, I'm sorry,
3 your final proposed EIS, in order for them to come to
4 a decision on approval?

5 A Yes.

6 Q Is that normal?

7 A That's about the time that it took for us to
8 go through the review of the Draft EIS. So we're
9 using that roughly the same timetable for the final.

10 Q Very often it takes longer than a month,
11 though, from the time of submittal to the time of
12 final approval?

13 A It varies greatly.

14 MR. YEE: That's all I have. Thank you.

15 CHAIRMAN PILTZ: Commissioners? Thank you.
16 our next witness.

17 MR. OKAMOTO: That's my last witness.

18 CHAIRMAN PILTZ: Okay. County?

19 MR. TAKASE: We have no witnesses. And we
20 just submitted the third progress report that's been
21 published to the board.

22 CHAIRMAN PILTZ: Okay. Go ahead,
23 Commissioner Judge.

24 COMMISSIONER JUDGE: I have just two quick
25 questions for the county, if you know the answers.

1 I'm just curious about this community financing. I
2 think we've heard about this for as long as I can
3 recall this development.

4 So I guess my questioning is: Is there a
5 reality to this? Is there a timeline for this? Can
6 you give us, like, it's oh, there's a 50/50 chance?
7 It's 20/80 chance?

8 MR. TAKASE: I haven't been attending the
9 meetings, but I know they have been having monthly
10 meetings. We've got experts from the mainland that
11 are helping also draft documents. And I think it's
12 really up to the landowner to commit the land in the
13 end that will, I guess, move the process forward.

14 So, as he said, the bonds should be coming
15 up before the council shortly. And once those are
16 approved by the council, then the county can move
17 forward with putting the bonds out to bid. So, yeah,
18 it has taken a long time but it's kind of complex.

19 And I think because we have had a change in
20 ownership that probably set the process back awhile,
21 you know. I think, just like the Commission, you
22 know, we were working with Bridge previously.

23 Now DW 'Aina Le'a has come on board. May
24 not have to start the process all over again but a lot
25 of it you have to because it's a whole new party. You

1 gotta get them up to speed as to what's taken place
2 and what's going to be required of them.

3 So I won't say that I know exactly what
4 their schedule is. That's why I asked him. But I
5 know, I see e-mail messages every month of their
6 meetings and they have been meeting for a while.

7 COMMISSIONER JUDGE: Okay. My second
8 question goes to, I think it's the special use permit
9 for the wastewater facility. I don't know how long
10 those things take on Maui County. Just from your
11 experience on the county of Hawai'i how long does a
12 permit of that nature take?

13 MR. TAKASE: I guess depends if there's
14 going to be problems with it. It really goes through
15 the Planning Commission. So it could be, you know --
16 I'm assuming they're submitting shortly. Once it's
17 agendized usually one or two meetings. So a month or
18 two to get approved.

19 COMMISSIONER JUDGE: So your best guess is
20 from start to finish from when they apply to when they
21 get it.

22 THE WITNESS: I would say two to three
23 months unless they run into some problems.

24 COMMISSIONER JUDGE: Okay. Thank you.

25 CHAIRMAN PILTZ: Commissioner Kanuha.

1 COMMISSIONER KANUHA: Thank you,
2 Mr. Chairman. Gerald, earlier I asked if it made any
3 difference to the county who the Petitioner was. And
4 you kept saying 'they', that you're optimistic that
5 'they are going to deliver'. What's the answer?

6 MR. TAKASE: Well, from what we understand
7 we're dealing with DW 'Aina Le'a. I understand Bridge
8 is still there holding the hand but, you know, from
9 what we understand the plan is they will more and more
10 take over.

11 We realize that Bridge is still there. They
12 seem to be, I guess, according to Bruce, the entity
13 that nobody wants to deal with anymore. We are
14 hopeful at this point that we have a live body in
15 place proceeding. And that's why we are still
16 supportive of the Project. And, you know, we want to
17 give them every opportunity to succeed.

18 I realize that the state and the Land Use
19 Commission is holding their feet to the fire. We
20 understand that. We just hope they don't throw them
21 in before it's necessary.

22 COMMISSIONER KANUHA: Okay. Thank you. You
23 know, the reason this came before us and it's still
24 before us is because the Petitioner originally had a
25 housing requirement of 60 percent. And he wanted that

1 reduced to 20 percent. They have zoning in place for
2 the Project Area, is that correct?

3 THE WITNESS: That's correct.

4 COMMISSIONER KANUHA: Is there an affordable
5 housing condition in that zoning that's reflective of
6 what the Commission's requirements are?

7 THE WITNESS: Yes, I believe there is. I
8 don't know the exact numbers at this point. But they
9 are working in -- and I did talk to our housing
10 office. They're close to finalizing the agreement
11 with DW 'Aina Le'a. I think they're kind of in their
12 final draft as to the housing agreement. So it should
13 be, I was told by Housing yesterday it hopefully will
14 be done shortly.

15 COMMISSIONER KANUHA: Can you explain more
16 what that housing agreement is?

17 THE WITNESS: Just like the state, the
18 county requires that any project coming on board will
19 have an affordable housing component to it. And we
20 require the developers to enter into an affordable
21 housing agreement with the county that they will
22 provide X amount of housing for the county, I believe.

23 At one point it was 60 percent. We have
24 since backed off those numbers as being unrealistic.
25 That it was, I guess, optimistic at the time.

1 But we realize that for a project to proceed
2 if we saddled with them too much affordable housing
3 they're not going to be able to make any money.
4 Therefore the projects have died. We have had
5 problems with our housing.

6 Therefore, the council has scaled back its
7 requirements for affordable housing, to what we feel
8 is best for our uses, but is still allowing the
9 developers to move forward. Because if it's too high
10 we don't get anybody to develop any affordable housing
11 that means really both sides are losing and nobody's
12 making any progress.

13 COMMISSIONER KANUHA: Finally, just some
14 clarification on the question that Commissioner Judge
15 just asked. This use permit, whatever it is, that's
16 for the sewer treatment plant, is that correct?

17 MS. TAKEUCHI-APUNA: Yes.

18 COMMISSIONER KANUHA: Is that going to be in
19 the urban area or is it going to be in the ag area?

20 MR. OKAMOTO: Commissioner Kanuha, if I
21 could make a correction. When I did the letter I
22 stuck in the word "use" that doesn't belong there.
23 It's a special permit because the treatment plant will
24 be in the ag, the state land use ag area. I apologize
25 if I created the confusion. So it's a special permit

1 application.

2 COMMISSIONER KANUHA: Thanks. That's all I
3 have. Thank you.

4 CHAIRMAN PILTZ: Let me ask you a question
5 with regards to the affordable housing. Is it now
6 your standard practice on the Big Island that it moved
7 from 50 percent to 20 percent or where was it?

8 MR. TAKASE: It was 50 or 60 percent. I
9 think it's all 20 percent.

10 CHAIRMAN PILTZ: Okay. So it's not just for
11 this particular project. It's for all projects coming
12 online that it will be 20 percent then.

13 MR. TAKASE: Correct. In fact some of the
14 older projects have come back in to modify their
15 requirement.

16 CHAIRMAN PILTZ: Okay. Good. Thank you.
17 Commissioner Heller.

18 COMMISSIONER HELLER: Thank you. If I could
19 just follow up on the wastewater treatment plant issue
20 for a minute. It's already been mentioned that one of
21 the conditions for a certificate of occupancy is
22 having the utilities actually hooked up.

23 MR. OKAMOTO: Yes, sir.

24 COMMISSIONER HELLER: Does that mean also
25 that the wastewater treatment plant has to be built

1 and functioning for the utilities to be in place?

2 MR. OKAMOTO: Yes.

3 COMMISSIONER HELLER: So that's another
4 requirement that going to have to be met before
5 there's any certificate of occupancy.

6 MR. OKAMOTO: Yes.

7 COMMISSIONER HELLER: Okay.

8 CHAIRMAN PILTZ: Commissioners, any other
9 questions? Yes, Vlad.

10 COMMISSIONER DEVENS: Just a quick question.
11 What is your understanding as to what it means to
12 complete the 16 affordable units? What is
13 "completion" in your folks' mind?

14 MR. OKAMOTO: Get the building done, get it
15 ready. It can be hooked up as soon as the utilities,
16 the wastewater is ready you can use the unit. That's
17 what we did.

18 The structure is ready. We could not get
19 the wastewater treatment plant. We could not get the
20 intersection built, which is what we understand is
21 needed to get the certificates of occupancy.

22 COMMISSIONER DEVENS: So in your mind are
23 those 16 units complete at this point in time?

24 MR. OKAMOTO: Yes, sir.

25 COMMISSIONER DEVENS: Thank you.

1 CHAIRMAN PILTZ: Question earlier there was
2 talk about Goodfellow's had -- well, DW has a loan of
3 \$5.5 million from Goodfellow. Does that buy them a
4 position into the Project? Or what is that?

5 MR. WESSELS: That's a note with interest
6 that they advanced for the work that, some of the work
7 that they've done.

8 CHAIRMAN PILTZ: Okay. Thank you.
9 Commissioners, any other questions?

10 COMMISSIONER DEVENS: Just make a comment.

11 CHAIRMAN PILTZ: Yes, go ahead.

12 COMMISSIONER DEVENS: You know, I wasn't
13 able to attend that meeting where we voted to rescind
14 and vacate. But in my mind we're going down a very
15 bad and dangerous road as far as precedent is
16 concerned. We have a decision and order that was
17 filed 20+ years ago.

18 And at this point we're talking about 16
19 units that don't have any hookups, nobody can move in.
20 And if I had been at that hearing I would not have
21 been in favor of rescinding, vacating that OSC. I'm
22 open to see how much more we're going to be patient
23 with this Project.

24 But at this point in time I think there's
25 been misrepresentations made to this body. There's

1 always new things popping up that we haven't been told
2 about before. I think there's some very good points
3 that concern me made by OP that I was not aware of
4 prior to this point.

5 And, like Commissioner Contrades, I'm very
6 troubled by this entire Project and the precedent it
7 sets for other petitioner that comes before us that
8 may ask for extra time or come here and tell us that
9 there's other reasons why they can't proceed in an
10 expeditious fashion. So I just make those comments
11 for the record. Thank you.

12 CHAIRMAN PILTZ: Okay. Thank you.
13 Commissioner Kanuha.

14 COMMISSIONER KANUHA: Thank you,
15 Mr. Chairman. I too would also like to make some
16 comments regarding what has gone on with this. As I
17 stated, this originally came before us to get relief
18 from the previous affordable housing requirement.

19 It has since gotten to the point where --
20 and I think I've stated this in one of our proceedings
21 several years ago, that I was not inclined to be
22 looking over a petitioner's shoulder and approving
23 grading plans or construction plans for a particular
24 project.

25 Even though this petition has been around

1 for a long, long time, nevertheless it's already been
2 entitled by the county. The county has issued various
3 approvals for construction purposes. They've issued
4 subdivision approval, they've issued building permits,
5 they've inspected facilities that has met their
6 approval.

7 And we're still as a Commission going back
8 and trying to see whether or not that's enough to meet
9 what we thought were our standards of performance.

10 We can't issue those kinds of things, nor
11 can OP. That's strictly on the administrative side.
12 The zoning itself is legislative.

13 So as much as you know there are concerns as
14 to how this Project has gone forward or not gone
15 forward, either timely or untimely, my greatest
16 concern is as in the role of the Commission how far
17 down and how long are we going to hang on to a
18 particular petition.

19 In my mind this is not a petition -- or this
20 was a petition that was in a stage, a lot of empty
21 promises and nothing was done. I also feel at that
22 point in time even the county itself was somewhat luke
23 warm to it.

24 But at the stage it's at now, and given what
25 the Commission's role is in the whole land use

1 process, which is basically to make some decisions
2 whether or not the petition that we approve or was
3 approved was consistent with our criteria that's
4 spelled out in our rules and the statute.

5 And that criteria also gives a lot of weight
6 to whether or not the Petition Area is consistent with
7 the County's General Plans, and other kinds of plans.

8 To me the county has demonstrated that it's
9 consistent by the issuance of these administrative
10 permit.

11 So I would say that we really need to take a
12 look at our role in how far our role we want to go in
13 monitoring these particular petitions especially from
14 the standpoint of if there's consideration for
15 reverting this, what kind of situation we're going to
16 create.

17 Let's talk about that for a second. If we
18 feel that there's been noncompliance with whatever
19 conditions we impose, we vote to revert this back to
20 the agricultural district, what have we created? We
21 have created a non-conformance situation of immense
22 proportions.

23 We have a multiple residential zoned area
24 that's going to be in the Ag District. We're gonna
25 have multi-family structures, you know, that's gonna

1 be in the Ag District.

2 It's -- I think what I want to say in my
3 mind at some point in sometime we're just going to
4 have to decide we've made the best decision we could
5 at the time.

6 Once the county gets ahold of it, gets ahold
7 of it to this extent, I think we just gotta let it go
8 and move on. Thanks, Mr. Chairman.

9 CHAIRMAN PILTZ: Thank you. Any other
10 comments, Commissioners? Commissioner Judge.

11 COMMISSIONER JUDGE: Thank you. Just in the
12 line of comments. One of the things that I find very
13 disturbing is we haven't been privy to the Draft EIS,
14 but in looking through the letter that we received
15 from the Puako Community Association and some of their
16 comments on the Draft EIS, seems to indicate to me
17 that the Draft EIS has -- proposes -- how do I say it?
18 The information contained in the Draft EIS is directly
19 in conflict with the conditions of the D&O.

20 So right then and there I see an issue
21 proposing to put the wastewater plant outside the
22 urban area, which was a condition of the original D&O.
23 Put a school outside the urban area, which was a
24 condition of the original D&O, all those things that
25 are being proposed in this EIS, which are in direct

1 conflict with the proposed D&O.

2 We brought this up, I can't remember how
3 many years ago, to the previous Petitioner. And yet
4 it's still before us today. So to me that, again, is
5 of enormous concern to me.

6 CHAIRMAN PILTZ: Any more comments from the
7 Commissioners? Okay. Office of Planning.

8 MR. YEE: Thank you. The Office of Planning
9 is asking for three things:

10 1. That you not rescind the reversion order
11 because the condition precedent, a requirement of the
12 recision has not been met, namely that the 16
13 affordable housing units are not complete.

14 2. That you reopen the issue of recision
15 either on November 17, 2010 to determine whether or
16 not all certificates of occupancy for all 385
17 affordable housing units are completed, if not earlier
18 if you believe that the concerns expressed by the
19 Office of Planning and others rise to that level of
20 concern.

21 And I want to take some time -- and I know
22 many of you have been involved in this case for a
23 while. Some of you were even at the 2005 hearing on
24 this. But I do want to take some time to go back, go
25 over the history to give a context why we're listening

1 to this information, why the information that's being
2 presented is important.

3 As we have set forth in 1989, 21 years ago
4 the Decision and Order was issued changing the
5 classification of 1,060 acres from agriculture to
6 urban.

7 In 1991 there was a First Amended Decision
8 and Order. That change is not relevant to this
9 particular matter at this time.

10 Most importantly, in November 2005 the LUC
11 issued its Second Amended Decision and Order. As
12 discussed at that time the request from the Petitioner
13 was to ask to reduce the affordable housing
14 requirement from 60 percent to 20 percent.

15 Now, 1989 a 60 percent affordable housing
16 requirement wasn't unusual. The market was very
17 different. Golf courses, luxury homes, et cetera, had
18 a different dynamic to it. So in 1989 60 percent
19 affordable housing component was reasonable.

20 But by 2005 the market had changed. And
21 different counties, for example, even today, have
22 different percentages that they require for affordable
23 housing. But they came to you and said, "Reduce it."
24 And the giveback that they gave -- and it was a major
25 part of their case -- the giveback that they told you

1 was, "We are going to put people to work immediately
2 and we're going to have houses on the land right now."

3 And they told you that they had financing
4 from Cole Capital and Westwood Development; that
5 Architects Hawai'i had designed the affordable units;
6 the Goodfellow Brothers was ready to begin the
7 infrastructure construction.

8 All of the contracts with the general
9 contractor, subcontractors as well as the construction
10 consultants, they were all negotiated; they were ready
11 to be executed within 30 days.

12 And they said that they had all of their
13 discretionary approval, that they didn't need any more
14 discretionary approval to begin and that the
15 affordable housing units would be completed within
16 three...years. Three...years.

17 So the Land Use Commission approved their
18 motion. But they said the affordable housing units
19 have to be completed within five years: We'll give
20 you two extra years. Things can happen. So instead
21 of -- you said you can do it in three years but the
22 requirement is you get it done within five years by
23 November 17, 2010.

24 Based on those representations to you you
25 agreed to reduce that requirement.

1 As Commissioner Kanuha noted, it's unusual
2 for this Commission to pay particular attention to
3 individual cases after the decision and order. This
4 is an unusual case because you held status conferences
5 on this matter on numerous years.

6 And at each status conference I recall the
7 question was asked of them: "Are you sure you can
8 meet this November 17, 2010 deadline?" Each time they
9 represented to you, "Yes, we can."

10 And scepticism was expressed. They said the
11 construction schedule was too tight. At that point we
12 have found problems with financing. Each time they
13 vigorously represented, "It's not a problem. We're
14 going to get this done. We are able to meet that
15 deadline."

16 And they talked about a joint venture. They
17 lost Cole Capital. So they talked about a joint
18 venture with something called Bridge Capital. They
19 talked about these millions of dollars that Bridge
20 'Aina Le'a had with First Hawaiian.

21 They talked about some potential
22 negotiations with Innovative Housing Solutions. They
23 showed you a critical pathway, as they have in this
24 case, showing how the infrastructure was going to get
25 done and how the affordable housing was gonna get

1 built.

2 And by July 24, 2008 at that status
3 conference the Petitioner still had not constructed
4 any of the housing. And at that point they talked
5 then about a project district zoning.

6 So that instead of integrating the
7 affordable housing units with all of the homes that
8 they represented they would do, they would put all the
9 affordable housing units in one parcel, in one area.

10 So they said this is what they were going to
11 do so they need to get a project district zone to do
12 so. But then that got denied because the EIS had
13 never been done.

14 So by the 2008's annual status report, which
15 was submitted in October of 2008, the Petitioner said
16 at that time they anticipated the EIS would be
17 completed at the end of 2008 and submitted in
18 February 2009 to the Planning Department. That's what
19 they had said in 2008.

20 But by that point the LUC realized this was
21 a problem and they actually issued an Order to Show
22 Cause in December of 2008. And the Petitioner's
23 response in January of 2009 was to file a Motion to
24 Amend saying: "Well, okay, yes, it's a problem. So
25 now what I want to do I want to change the

1 conditions."

2 They eventually withdrew that Motion to
3 Amend at the hearing after the Office of Planning
4 filed its opposition to it.

5 But in March of 2009 the Petitioner notified
6 the LUC then of its intent to assign its interest in
7 the Petition Area to DW 'Aina Le'a.

8 So after the Order to Show Cause was issued
9 they then said, "Well, we're going to change the
10 ownership from Bridge 'Aina Le'a to DW 'Aina Le'a."

11 And on April 30th of 2009 the LUC issued its
12 oral decision to revert the Petition Area. And you
13 may recall that hearing which was, with all due
14 respect, a little chaotic in the presentation from
15 Petitioner. But, nevertheless, at the end of the day
16 the LUC issued its Order reverting the property.

17 Then DW 'Aina Le'a filed a series of
18 motions. And there was a lot of back and forth, a lot
19 of filing. On a June 5, 2009 hearing the LUC said:
20 Well, we're going to delay the issuance of the Order
21 to Rescind and we're going to schedule this and we're
22 going to give them one more chance to come back to us
23 and to explain what's going on, to convince us not to
24 rescind.

25 So in August of 2009 we held a hearing. And

1 by Order dated September 2009 the LUC decided to
2 rescind the reversion order subject to a condition
3 precedent. The condition precedent was that the
4 Petitioner complete 16 affordable units by March 31st,
5 2010.

6 Just for the record the Office of Planning
7 did disagree with this decision. We had represented,
8 we had given to you a variety of representations that
9 had been made and that were not being met. We had
10 argued that that was sufficient basis to rescind.
11 Nevertheless, the LUC issued its order.

12 So we are here today in a very unusual case
13 because, as I've said, we don't normally look at
14 individual cases once the decision and order is
15 reached. But the history of this case indicates this
16 particular Project has had problems that we have seen
17 over and over and over again.

18 And they keep coming back with
19 representations, "We're going to get financing. We're
20 gonna get the construction done." Even, "We have
21 financing." Each time we have discovered that there's
22 problems with the representations that they made, that
23 it's just not going to be met.

24 So today the Office of Planning wants to
25 present to you seven particular concerns. Then I will

1 try to go over them fairly quickly.

2 Concern No. 1: The condition precedent has
3 not been met.

4 The 16 homes are not completed. Put aside
5 the certificate of occupancy, the formal recognition
6 by the county. Just look at the actual construction
7 of what's available. Can you live in those homes?
8 The answer is no.

9 Because even if you believe that the
10 portable electrical generator that they set up for
11 those 16 affordable homes was sufficient, or that the
12 unfinished road without utility lines laid or asphalt
13 over them was okay.

14 Even if you think that a connection to a
15 tank of non-potable water was good enough to provide
16 water to that place, they clearly did not have a legal
17 connection for sewage.

18 Now, they had connected it to a leach field.
19 They had represented at the time that they had a DOH
20 permit. But in fact that was not true. In fact a
21 field citation was subsequently issued finding that
22 they were in violation of the law.

23 And we also note that this leach field was
24 in violation of the condition 14 of the original
25 Decision and Order which said you had to meet these 8

1 DOH conditions.

2 One of those DOH conditions was you connect
3 up these homes to a wastewater treatment plant. So
4 the connection to a leach field is a violation of the
5 DOH rules which means it's a violation of your
6 original condition.

7 But in the final analysis our argument is
8 that the condition precedent has not been met and
9 therefore at this time the reversion that was
10 previously issued should not be rescinded.

11 The second issue is the environmental impact
12 statement. We expressed concerns at the last hearing.
13 We expressed concerns in our filings. The EIS is so
14 far behind schedule that compliance with the
15 November 17, 2010 deadline is going to be impossible
16 as a practical matter.

17 As you remember at the August hearing the
18 LUC relied upon the representation of the Petitioner
19 that the Draft EIS would be submitted by December 2009
20 or January 2010.

21 And based upon that acceptance of the Final
22 EIS in the first quarter of 2010, an assumption that
23 we had questioned as being unrealistic to begin
24 with, Mr. Fuke had opined that Goodfellow Brothers
25 would then have enough time to do the intersection and

1 other infrastructure improvements.

2 But, in fact, the Draft EIS was not
3 submitted in December or January. It was submitted in
4 late May. And public comments are going to be due in
5 July? And Petitioner has to look at all those
6 comments. They have to consider whether there's any
7 additional analysis that's needed. They have to
8 respond to each of the comments. And they have to
9 amend the Draft EIS as appropriate.

10 The Final EIS, proposed EIS is then
11 submitted to the county who then has to read this
12 document and all of the changes and then make their
13 analysis as to whether that Final EIS is sufficient.

14 Normally, before you do that you'll have
15 submitted your sort of draft proposed Final EIS to the
16 county to get their review ahead of time. But the
17 point is simply that it takes a long time. It takes a
18 while. It takes time at least between the receipt of
19 the comments to the time of the submittal and then for
20 the county to approve.

21 Mr. Fuke testified that the average time it
22 takes for an EIS to be accepted is six months from the
23 date the Draft EIS is submitted. Now, this would
24 take, then, the Draft EIS acceptance, which was done
25 in May 2010 into November of 2010. That would be when

1 the Final EIS is accepted. Clearly that's going to
2 make the November 17th deadline for construction, for
3 certificates of occupancy for the 385 homes
4 impossible.

5 We also note, as noted earlier, that the
6 Draft EIS suggests that the -- or the Draft EIS says
7 that the affordable houses would be constructed on a
8 schedule that will last into February 2012. So the
9 Draft EIS suggests that the November 17, 2010 deadline
10 is not going to be met.

11 I also want to note briefly that even if the
12 EIS was submitted and accepted in August 2010, and it
13 takes two months, that will take into October of 2010
14 for the special permit. And then they need more time
15 to do the actual approval for the Department of Health
16 for the sewage.

17 Then you look at their schedule. They need
18 additional time to actually construct the sewage
19 treatment plant and then get final approval from the
20 Department of Health. This also clearly takes them
21 beyond the November 17th, 2010 deadline much less the
22 certificate of occupancy.

23 We are also concerned, No. 3, with the
24 slowdown and the absence of Goodfellow Brothers. We
25 understand and they've said that Goodfellow Brothers

1 is no longer working on site and the infrastructure
2 and vertical construction is proceeding on a limited
3 basis at best.

4 The problem apparently is the lack of -- is
5 lack of approvals and it's also the lack of money. We
6 have talked about the lack of approvals previously.
7 The lack of money is equally important. Both are
8 needed for them to proceed.

9 And we note that this proposal, when they
10 came to you at the last hearing, had a very aggressive
11 construction schedule. The Office of Planning had
12 suggested that that was just also impossible to meet.
13 And was unrealistic.

14 So any slowdown from their construction
15 schedule also makes the compliance with the
16 November 17, 2010 deadline problematic.

17 The fourth issue is the advertisement used
18 in the financing available for the Project. We have
19 submitted to you a copy of the advertisement that
20 Capital Asia was apparently using. And we were
21 troubled by the fact that they were assuring a
22 30 percent return over 30 months. And that they were
23 using words like "certainty" in this type of
24 advertisement for selling which is essentially a
25 security.

1 Conventional financing would obviously be
2 cheaper. And we noted that the County's original
3 support was based very heavily upon the existing of
4 financing.

5 That Capital Asia and Petitioner had gone to
6 the county and had convinced the county that they had
7 all the financing for this Project. And based upon
8 that Ms. Leithead-Todd today came to you and said she
9 believes that this has a very good chance of working
10 because they had their financing.

11 As we know that financing is going to be
12 inadequate. And now, as they have each time that we
13 have looked at this, they need more financing. They
14 don't yet have the financing. They say they're going
15 to get the financing. But each time we're heard that
16 the financing has never appeared.

17 The fifth issue is the failure to give
18 notice. We have noted for you that the county of
19 Hawai'i's property tax website contains 333 owners on
20 parcel 36. These appear to be primarily from
21 Singapore as we reviewed the names and addresses.
22 And they apparently are those who believed that they
23 were assured of a 30 percent return over 30 months.

24 The LUC never received notice of the change
25 in ownership as required by condition 14. And we

1 noted that this is Petitioner's second violation of
2 this requirement. Because when the transfer occurred
3 between Bridge 'Aina Le'a to DW 'Aina Le'a we noted
4 that at the time. And that that required the notice.
5 That notification was the impetus, I think for the
6 March 2009 filing of the Notification of Intent to
7 Assign. So clearly the Petitioner should be aware of
8 this condition. And yet they continue to violate.

9 The sixth issue was, I think, explained,
10 which was Bridge 'Aina Le'a's continuing interest.
11 You know, you form expectations based on
12 representations that they make. They don't tell you
13 that these representations have changed or the
14 conditions have changed.

15 So based on all the records that we had this
16 entire deal should have been closed in October 2009
17 and Bridge 'Aina Le'a should no longer be a part of
18 this case.

19 Apparently that didn't happen because DW
20 'Aina Le'a didn't have the money to pay them, a
21 representation that was not, that we thought they did
22 have the money. And our only representation now is
23 maybe in 45 days they will then have the money and
24 Bridge 'Aina Le'a will be gone.

25 But our concern about that is they're not

1 informing the LUC. They're not keeping the people
2 informed of representations that they made and then
3 turn out to be no longer true.

4 The seventh and the last issue which is
5 great importance to the Office of Planning is that the
6 November 17th, 2010 deadline is a requirement not a
7 goal. I cannot emphasize more strongly how forcefully
8 we are urging you to keep that November 17th, 2010
9 deadline.

10 And I won't go over the various arguments
11 we've made in the past over the importance of
12 integrity of the process, of how important it is when
13 you make a condition that you hold them to that
14 condition. And if they can't meet it and they violate
15 it that is a grounds for reversion.

16 It is particularly important in this case
17 because the November 17, 2010 deadline was an
18 essential factor which induced this Commission to
19 change the affordable housing requirement. And in the
20 status reports that they have submitted they are now
21 referring to November 17th as a goal. And the Draft
22 EIS, as I said, refers to the completion date as
23 February 2012.

24 We are hopeful that the LUC will be equally
25 forceful on this issue. We're hoping that you will

1 note very clearly for them that the November 17, 2010
2 deadline is a requirement not a goal. That the
3 Petitioner should not rely upon the LUC for any
4 additional time.

5 That the LUC relied upon the Petitioner's
6 representations that it was gonna meet that deadline.
7 And the Petitioner will face reversion if that
8 deadline is not met.

9 We hope you take our concerns seriously. We
10 think they're important. This is an unusual case. We
11 don't take reversion lightly. But we do take the
12 conditions seriously. And you either schedule a
13 hearing on the reversion on November 17, 2010, if not
14 earlier, if you believe the concerns are serious
15 enough. Thank you.

16 CHAIRMAN PILTZ: Petitioner, you have heard
17 our Office of Planning. You have heard the feelings
18 of the Commissioners. You have a deadline. And
19 you've heard it all. Performance has got to be No. 1.

20 MR. OKAMOTO: Mr. Chair, could I address
21 some very brief response?

22 CHAIRMAN PILTZ: You can share what you
23 want.

24 MR. OKAMOTO: I understand 12:00 is when
25 this ends.

1 CHAIRMAN PILTZ: Go ahead.

2 MR. OKAMOTO: What I would ask the
3 Commissions to consider on this docket is that we are
4 dealing with an area that's been in play for a long
5 time, Waikoloa. That whole area I think the
6 Commissioners individually know the history of this
7 area.

8 We are now at a point in which it makes all
9 the sense in the world for this area to remain urban
10 to fill in the gaps that there still are. We've got
11 water supply issues. We have electrical issues. We
12 have basic human need issues for people in the area.

13 I understand the whole frustration with long
14 history of this thing. But the Commission has now
15 been able to get some positive action. There is
16 construction on the ground. It's being done when,
17 frankly, I disagree very strongly with Mr. Yee, there
18 is no conventional financing right now. You're going
19 to scramble to make this possible, to make
20 construction possible.

21 They've done it. Mr. Wessels has shown you
22 that he's perfectly prepared if he has to put up
23 buildings that are going to be vacant. That's going
24 pretty far.

25 I'm hoping that the Commission does not feel

1 that DW is going to disregard its obligations and that
2 it's not going to try. What we cannot do, we cannot
3 tell you we control the financial market or we control
4 the real estate markets. That's just not true.

5 But it does make sense to allow this
6 property to develop so it can play its part in this
7 area.

8 I would hope the Commission feels that we
9 complied with the condition precedent. If the Order
10 to Show Cause remains, the financing situation, I
11 think you heard Mr. Wessels, is gonna get very
12 difficult. We understand. We welcome the Commission
13 and the county to keep close track of us. That's only
14 sensible at this point. That's common sense.

15 But taking this property back into ag,
16 Mr. Chairman, and members of the Commission, it's
17 gonna create a whole huge number of problems. Then we
18 may not see affordable housing on this property for
19 the next 20 or 30 years. So with that I'll close.
20 And thank you, Mr. Chairman.

21 CHAIRMAN PILTZ: Understood. But I'm
22 rounding out five years. And this Project has
23 remained. And it's too bad that some of the people
24 that were involved in this Project prior to
25 Mr. Wessels coming online gave us a lot of bull.

1 And we really -- I feel strongly that Mr.
2 Wessels is doing his utmost best to get this thing off
3 dead center and trying to complete it. But you've
4 heard the feeling and we will just look towards that
5 date.

6 MR. TAKASE: Mr. Chairman.

7 CHAIRMAN PILTZ: Yes.

8 MS. TAKEUCHI-APUNA: I guess if we could
9 make a closing. I didn't realize we were doing our
10 presentations. But, you know, the county is involved
11 in the Project. We rely on the Land Use Commission to
12 set forth what our lands are going to be done with.

13 This whole area -- you've heard the people
14 from the Waikoloa area it's integral to the growth of
15 that area. They will provide access roads out of the
16 Waikoloa Village area.

17 To take this Project back from an urban to
18 an agricultural use is creating a big hole in the
19 whole General Plan of the County's use of this area.
20 We realize that, you know, I guess State Planning, the
21 LUC is, you know, tired of this Project and it's not
22 moving forward.

23 But we are here today to support this
24 Project because we finally have a person that's
25 willing to move forward; rather than just talk is

1 putting money into the Project. We would like to give
2 him that opportunity to continue to proceed.

3 State Planning says the deadlines were not
4 achievable. But I think, you know, we have sat
5 through it. And I don't know -- he makes it sounds
6 today like I was going to give you more time to do it
7 but you said you could do it. I don't know that
8 that's exactly how it came forward.

9 It was more like, "If you don't do it by
10 this time we are going to rescind your order." So
11 naturally what is the developer left to do? He will
12 agree to whatever he can to keep his project moving
13 forward.

14 I think Mr. Wessels has been very candid
15 with you today. It is going to take some time. But
16 we finally see a developer that's moving forward. He
17 has put something in the ground.

18 You know, there's, there's many, many facets
19 to doing a development. The County's project -- not
20 affordable housing but the workforce planning we have
21 run into problems. We should be better able than most
22 to get through all the permitting process. But we
23 have run into financing problems, just as I think the
24 other projects have.

25 I realize in a perfect world things would

1 happen on schedule, on budget, at the right time. But
2 unfortunately, you know, there's things that happen.
3 I don't know if anybody could have predicted this
4 downturn in the economy.

5 But to have a person that's willing to try
6 and proceed during this time, you know, I think it's
7 our firm belief that we would like to give them that
8 opportunity to proceed. What does it cost us? What
9 does it cost the state? It's merely time.

10 There's no other pending use for this land
11 at the current time. So taking it back to ag, you
12 know, we don't see what the net effect is gonna be.

13 It's gonna -- it's gonna cut off whatever
14 hopes a lot of people from this island have come
15 forward to express to you. Our people are out of
16 work. We don't have affordable housing.

17 Maybe it is a pie in the sky. But it
18 provides us with at least an opportunity to go
19 forward. It gives us some hope that something can be
20 done. And to shut them off at this point in time when
21 they are still making an effort would be like pulling
22 the plug on a patient that's still trying to survive.
23 I think we should give it every opportunity to
24 resuscitate itself and give them the opportunity to
25 move forward.

1 I think we will know very shortly whether
2 they can proceed or not. They have given us an
3 ambitious timeline, yes.

4 But I think if they move anywhere within
5 that timeline I would hope that this Commission would
6 give them that opportunity to proceed. That's, I
7 guess, the message I bring from the county.

8 CHAIRMAN PILTZ: I think one of the big
9 messages that comes through is that they would own the
10 land. Right now they own 60 acres out of a thousand
11 acres. We have waited for that. You understand where
12 we're coming from. We have heard a lot "Yes, we're
13 gonna do, yes, we're gonna do." But that's not a
14 decision that we're going to be making today. Any
15 other comments, Commissioners?

16 MR. MAYER: Chair Piltz?

17 ABBIEY MAYER
18 being first duly sworn to tell the truth, was examined
19 and testified as follows:

20 THE WITNESS: I do.

21 CHAIRMAN PILTZ: Name and address, please.

22 THE WITNESS: Abbey Mayer, director of the
23 State Office of Planning, 235 South Beretania, sixth
24 floor. Thank you. And I'll be very brief.

25 I just wanted to clarify. It's not so much

1 that the Office of Planning is tired of it, and we are
2 tired of it, but I think a couple of Commissioners
3 have portrayed the essential question very clearly in
4 that on the one hand what is the role -- basically
5 what is the role of this Commission?

6 If the Commission was still functioning in a
7 quasi-legislative manner and simply voting on zoning
8 changes and issuing decisions that did not have
9 conditions, then I would be certainly inclined to give
10 the Petitioners all the time in the world.

11 But we spend an incredible amount of time,
12 energy, taxpayer money in an effort to mitigate
13 impacts of proposals, of determining whether proposals
14 are even warranted in the area that they're proposed.

15 And that without being able to hold
16 Petitioners to those conditions that are in the end an
17 attempt to mitigate impacts, an attempt to designate
18 what's appropriate and what's not appropriate, without
19 that essential function then what we do here in my
20 mind loses all meaning.

21 So after the vote to rescind the reversion,
22 typically I'm a good loser. If I lose something, if I
23 come before you and make an argument and it doesn't
24 fly I cut my losses. But this one stuck with me.
25 Because this one of every petition I come back and I

1 say: Man, I'm spending all this time making an effort
2 on crafting these conditions, on mitigating these
3 impacts, on determining whether this project is
4 appropriate or not to go forward, and all of that
5 hinges on a future Commission enforcing that.

6 And I would -- I don't say it lightly. I
7 say it with full knowledge of the severe economic
8 conditions on the Island of Hawai'i, the severe
9 unemployment in the construction industry. I know
10 this is the only major project goin' on there. I know
11 this is a good place for a project to happen.

12 What we suggest is revert. We get a bona
13 fide landowner, a bona fide petitioner, a bona fide
14 developer to come back, make a bona fide proposal and
15 move forward in a way that we can all feel comfortable
16 with.

17 I know it's asking a lot. It's not
18 something that we ask very often. But we really don't
19 feel like there is any other choice that we can back
20 with integrity in this case. So thanks for giving me
21 my two seconds.

22 CHAIRMAN PILTZ: Thank you.

23 (Mr. Harris standing up): Chair?

24 CHAIRMAN PILTZ: I'm sorry, we've already
25 had public testimony. I appreciate you --

1 MR. DAVIDSON: You're out of order. Sit
2 down.

3 (Mr. Harris) Please.

4 CHAIRMAN PILTZ: No, I'm sorry.
5 Commissioners? At this time we're gonna break for
6 lunch. And thank you very much. Vlad.

7 COMMISSIONER DEVENS: If I may, Mr. Chair,
8 with your permission I'd like to make a motion in this
9 matter.

10 CHAIRMAN PILTZ: Okay. Go ahead.

11 COMMISSIONER DEVENS: Move to keep the Order
12 to Show Cause pending; that we schedule a hearing on
13 or after September 17th, 2010 on the Order to Show
14 Cause. And affirm that the November 17, 2010 date is
15 a deadline and not a goal.

16 That we also enter a finding that the
17 condition precedent requiring 16 affordable homes be
18 completed by March 31st, 2010 has not been met.

19 COMMISSIONER CHOCK: Second.

20 CHAIRMAN PILTZ: We have a motion on the
21 floor and we also have a second. Discussion? Any
22 other comments? Go ahead, Commissioner Judge.

23 COMMISSIONER JUDGE: This is just a question
24 to Commissioner Devens. I'm understanding -- I
25 believe I'm understanding your motion to schedule the

1 hearing. But at that time we would be looking at all
2 the conditions of the D&O to determine the Order to
3 Show Cause. It's not simply this just one condition.
4 Is that your intent? Or is it simply to look --

5 COMMISSIONER DEVENS: Yes, that's correct,
6 Commissioner Judge.

7 COMMISSIONER JUDGE: Okay. Thank you.

8 CHAIRMAN PILTZ: Any other comments by the
9 Commissioners? Executive Director, call the roll.

10 MR. DAVIDSON: Motion by Commissioner
11 Devens as stated. Who was the second? Was that
12 Commissioner Teves?

13 CHAIRMAN PILTZ: No.

14 MR. DAVIDSON: Contrades? Chock.
15 Commissioner Chock.

16 Commissioner Judge?

17 COMMISSIONER JUDGE: Yes.

18 MR. DAVIDSON: Commissioner Teves?

19 COMMISSIONER TEVES: Yes.

20 MR. DAVIDSON: Commissioner Lezy? Oh, I'm
21 sorry. Absent.

22 Commissioner Contrades?

23 COMMISSIONER CONTRADES: Yes.

24 MR. DAVIDSON: Commissioner Kanuha?

25 COMMISSIONER KANUHA: Yes.

1 MR. DAVIDSON: Commissioner Heller?

2 COMMISSIONER HELLER: Yes.

3 MR. DAVIDSON: Commissioner Teves,

4 Commissioner Contrades --

5 CHAIRMAN PILTZ: Chock.

6 MR. DAVIDSON: Chock and Devens. I did
7 Chock and Teves. The motion passes 8/0 -- and Chair
8 -- sorry about that. I made a mess of this. Chair
9 Piltz.

10 CHAIRMAN PILTZ: Yes.

11 MR. DAVIDSON: Motion passes 8/0. Sorry,
12 the paper didn't make any sense. Okay. Thank you.

13 CHAIRMAN PILTZ: We're in recess.

14 (Recess was held.)

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1 CHAIRMAN PILTZ: Good afternoon. This is an
2 action meeting on Docket No. A09-782 Tropic Land, LLC
3 to consider the Concerned Elders of Wai'anae, which is
4 to Motion to Waive Commission Rule HAR 15-15-52(e) and
5 Petition to Intervene.

6 On May 28, 2010 the Commission mailed copies
7 of the findings of fact, conclusions of law and
8 decision and order accepting the final environmental
9 impact statement to Petitioner, Office of Planning,
10 Department of Planning and Permitting, City and County
11 of Honolulu.

12 On June 17, 2010 the Commission received
13 Petitioner's Affidavit of Publication of Notice of
14 Hearing and a Petition to Intervene from the Concerned
15 Elders of Wai'anae.

16 On June 21, 2010 the Commission received a
17 Motion to Waive Commission Rules HAR 15-15-52(e) from
18 the Concerned Elders of Wai'anae and position
19 statements from the City and County of Honolulu and
20 the State of Hawai'i Office of Planning.

21 On June 23rd, 2010 the Commission received
22 Tropic Land, LLC's Memorandum in Opposition to the
23 Concerned Elders of Wai'anae Motion to Waive
24 Commission Rule HAR 15-15-52(e) and Tropic Land, LLC's
25 Memorandum in Opposition to a Petition to Intervene

1 from the Concerned Elders of Wai'anae.

2 Then on June 29, 2010 the Commission
3 received the Concerned Elders of Wai'anae's reply to
4 the Opposition to a Petition to Intervene.

5 Let me briefly describe our procedure for
6 today. First, we'll have the parties identify
7 themselves for the record. I will then call for those
8 desiring to provide public testimony to identify
9 themselves.

10 And all such individuals will be called in
11 turn to our witness box where they will be sworn in
12 before their testimony.

13 After completion of the public testimony
14 portion of the proceedings, the Concerned Elders of
15 Wai'anae will make its presentation regarding the
16 Motion to Waive Commission rule.

17 After the completion of this presentation,
18 we will receive any comments from the Petitioner
19 Tropic Land, LLC, the City and County of Honolulu and
20 the State Office of Planning.

21 After we have received the comments of the
22 Petitioner, the City and the State we will conduct our
23 deliberations. If Concerned Elders of Wai'anae Motion
24 to Waive Commission Rule is granted, we will follow
25 the same procedure for the Petition to Intervene.

1 Are there any questions on our procedure for
2 today? Hearing none, will the parties please identify
3 themselves for the record.

4 MR. YUEN: Good afternoon, Mr. Chairman and
5 Commissioners. My name is William Yuen appearing on
6 behalf of Tropic Land, LLC. With me is Eric
7 Yanagihara, project manager of Tropic Land.

8 CHAIRMAN PILTZ: City.

9 MS. TAKEUCHI-APUNA: Good afternoon. Deputy
10 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
11 the Department of Planning and Permitting. Here with
12 me today is Mike Watkins.

13 MR. YEE: Good afternoon. Deputy Attorney
14 General Bryan Yee on behalf of Office of Planning.
15 With me is Abbey Mayer from the Office of Planning.

16 MS. TOWNSEND: Good afternoon. Martha
17 Townsend, attorney of the Concerned Elders of Wai'anae
18 With me is their director Alice Greenwood.

19 CHAIRMAN PILTZ: Okay. The first witness is
20 Ka Makani Kai Olu o Wai'anae.

21 MR. DAVIDSON: Is this everyone together,
22 just for our information? Or is this different?

23 (Students speaking, inaudible)

24 CHAIRMAN PILTZ: Okay. He's going to be
25 testifying on behalf of everybody. Will you all raise

1 your right hands, please. Do you swear to tell the
2 truth before this Commission?

3 STUDENTS RESPONDING IN UNISON: "I do."

4 CHAIRMAN PILTZ: Thank you. And you will be
5 their spokesman?

6 MR. PINERO: Yes.

7 CHAIRMAN PILTZ: Would you please state your
8 name and address and then also the organization you're
9 representing.

10 THE WITNESS: My name is Kahaku Pinero. And
11 I live at 89-332 Palikea Street in Wai'anae. And I'm
12 speaking on behalf of Ka Makani Kai Olu o Wai'anae.

13 CHAIRMAN PILTZ: Go ahead.

14 THE WITNESS: Welina mai e na malahini, na
15 kama'aina, a ku'u 'ohana o ka lahui kanaka. He mau
16 kama'aina o Wai'anae makou. He hui -- o ka hui -- o
17 Ka Makani Kai Olu o Wai'anae, kahi hui aloha 'aina. E
18 ho'olohe i ka'u 'olelo a me ku i ka na'u.

19 We are Ka Makani Kai Olu O Wai'anae, which
20 is an environmental justice group founded in Wai'anae
21 made up of youth from the ages of 13 to 19.

22 As a group we are trying to promote a
23 healthy environment for our community because we
24 believe that health and happiness of our people is
25 greatly affected by our surroundings including the

1 physical environment.

2 We stand before you today in support of the
3 Concerned Elders of Wai'anae to be involved in
4 discussion leading to decision-making for our
5 community in the present and future affairs involving
6 land use and the environment.

7 As youth our dream is to show everyone that
8 our voice can and does matter. The Concerned Elders
9 of Wai'anae are our kupuna. Kupuna are not just
10 grandparents or elders but all of our ancestors, those
11 who came before us, those who seeded and sustained our
12 lands and culture to preserve it for us in the
13 present.

14 These kupuna have passed through us stories
15 and knowledge that can only be promulgated through the
16 generations by the preservation of historical lands.
17 The Concerned Elders of Wai'anae have given us the ike
18 that we voice.

19 We ask that you respect our kupuna as they
20 have respected theirs and so on into the generations
21 that have sustained Hawai'i. To malama the 'aina is
22 our kuleana as people of Hawai'i, all of us. Please
23 allow our kupuna to aid you and inspire you to keep
24 our island and state healthy and beautiful.

25 We love Wai'anae. We love Hawai'i. And we

1 would like to be able to sustain our community and
2 unique lifestyles. Waianae has such rich culture and
3 terrain. It would be a tragedy to lose it to what we
4 feel are just money-making projects. The
5 industrialization of even the least put stress on us.

6 Please don't harm our home with more
7 industrial advances. For we fear that one day
8 Wai'anae will become the dumping ground of the state.
9 And we hope you will help us prevent that. Mahalo.

10 CHAIRMAN PILTZ: Thank you. Thank you very
11 much. Questions from the Petitioner?

12 MR. YUEN: No questions.

13 CHAIRMAN PILTZ: City?

14 MS. TAKEUCHI-APUNA: No questions.

15 CHAIRMAN PILTZ: State?

16 MR. YEE: No questions.

17 CHAIRMAN PILTZ: Kupuna?

18 MS. TOWNSEND: No questions, thank you.

19 CHAIRMAN PILTZ: Thank you very much. Let
20 me put into the record the names that I have here.

21 Kahaku Pinero, Kuaika Ka'eo, Christopher Strickland,
22 Aikake Delacruz, Deroylnn Perry, Kimie Korenaga,
23 Janikkah Akiona, Jordan DeCambra, Brenda Perry, Naomi
24 Korenaga. Did I miss anyone? Thank you very much.
25 Appreciate that. We do also have another person

1 testifying, which is Walterbea Aldeguer.

2 FEMALE SPEAKER: Aloha. My name is
3 Walterbea Aldeguer.

4 WALTERBEA ALDEGUER
5 being first duly sworn to tell the truth, was examined
6 and testified as follows:

7 THE WITNESS: I do.

8 CHAIRMAN PILTZ: Go ahead. State your name
9 and address for the record.

10 THE WITNESS: Aloha. My name is Walterbea
11 Aldeguer. And I am a resident of Ma'ili, Wai'anae.
12 I've lived on the Wai'anae Coast all my life.

13 My reason for being here is to ask you to
14 please give our Concerned Elders a chance to, to --
15 how do we say it? -- to, um, well, I don't want to say
16 prove to you, but to share our concerns about the
17 changes that are taking place on Wai'anae and how it
18 impacts the community and the people in our community,
19 especially on the cultural level.

20 In the EIS it's very thin as far as the
21 culture concerns. So there's so much more that needs
22 to be said. Also there's issues with traffic
23 concerns.

24 I mean that has been a big problem. The
25 Neighborhood Board has been bringing that up over and

1 over and over again for years. So that kinda concerns
2 need to be addressed.

3 The land use for the property I think can be
4 put to better use than light industrial. And the
5 reason I say that is because I have had family that
6 worked on the property, that very same property, back
7 in the '70s, '76, '77. They were the farmhands. They
8 worked the crops, you know.

9 So there is better use for the place more
10 conducive to Lualualei and the surrounding properties
11 there. I also have -- it's a personal thing for me
12 'cause I've lived in Ma'ili, like I said, my, all my
13 life. The first thing I see in the morning when I
14 walk out that door is Pu'u Heleakala.

15 So it's not only me but there's other people
16 in our community that have that view. So it's, you
17 know, it'll be -- to me it's not the right thing to be
18 put there.

19 Like I said there's better use for the
20 property. It's been a long day. I'm sorry I can't
21 think of much more to say. If you any questions I'd
22 be more than happy to answer them.

23 CHAIRMAN PILTZ: Okay. Petitioner?

24 MR. YUEN: No questions.

25 CHAIRMAN PILTZ: City?

1 MS. TAKEUCHI-APUNA: No questions.

2 CHAIRMAN PILTZ: State?

3 MR. YEE: No questions.

4 CHAIRMAN PILTZ: Intervenor?

5 MS. TOWNSEND: If I could.

6 CHAIRMAN PILTZ: Sure.

7 MS. TOWNSEND: Aloha, Walterbea. Are you a
8 member of the Concerned Elders?

9 THE WITNESS: I am a member of the Concerned
10 Elders, yes.

11 MS. TOWNSEND: How often do the Concerned
12 Elders of Wai'ananae meet?

13 THE WITNESS: We meet once a month.

14 MS. TOWNSEND: Where do they meet?

15 THE WITNESS: Well, right now we are
16 utilizing the local campus of Leeward Community
17 College.

18 MS. TOWNSEND: In what way do the Concerned
19 Elders make decisions?

20 THE WITNESS: Well, what we do is we meet.
21 And a lot of times -- well, certain concerns come to
22 us because we have people that are attending
23 Neighborhood Board meetings. They know of projects
24 that are coming through. So we get wind of this.

25 And there was one, well, the Concerned

1 Elders were involved when SPHERE Aggregate wanted to
2 put up a, what do you call it, a construction/
3 demolition site behind of Ma'ili Elementary School and
4 Kamehameha Preschool.

5 So we intervened. We asked for intervention
6 to stop that project. Because it was too close to the
7 school. It wasn't even a block away.

8 There was another case where one of us were
9 hiking and came across an illegal dump site on the
10 Department of Hawaiian Home Lands of Wai'anae Valley.
11 I know it made the papers. So we were also involved
12 with that. Matter of fact I took the photographs.

13 But this is the kind of things we watch out
14 for because, you know, once this decision is made it's
15 gonna be hard for us to change it back. And a lot of
16 times we've had projects come through and somehow they
17 kind of forget why they were there. The purpose kinda
18 changed.

19 So we're trying to keep an eye on this one
20 because the last thing we want to do is have another
21 landfill or be disappointed.

22 MS. TOWNSEND: Thank you.

23 CHAIRMAN PILTZ: Thank you. Commissioners,
24 any questions? Thank you. Any other person wishing
25 to testify at this time? Okay.

1 KIMIE KORENAGA

2 being first duly sworn to tell the truth, was examined
3 and testified as follows:

4 THE WITNESS: I do.

5 CHAIRMAN PILTZ: Please state your name and
6 address for the record.

7 THE WITNESS: My name is Kimie Korenaga. I
8 live at 86-093 Farrington Highway in Wai'anae.

9 CHAIRMAN PILTZ: Go ahead.

10 THE WITNESS: I'm part of the Ka Makani Kai
11 Olu O Wai'anae. But I'd like to say on a personal
12 note we've gone out with some of the elders that have
13 shown us the area that Tropic Land is planning to
14 build on.

15 I think it would be a positive thing for
16 them to be in the discussion, be allowed to help you
17 guys just to see a different side, the more cultural
18 side.

19 Because personally they have relayed so much
20 information to me in just one day where we went to
21 Pu'u Heleakala. And their stories such as the demigod
22 Maui and other things that should be taken into
23 consideration when thinking about building industrial
24 lands.

25 I'd just like to say they have so much

1 knowledge I hope that they can share it with you too.
2 I hope you guys can appreciate how Hawaiians' history
3 and culture has so much effect on our whole state.
4 That's all. Thank you.

5 CHAIRMAN PILTZ: Petitioner, questions?

6 MR. YUEN: No questions.

7 CHAIRMAN PILTZ: City?

8 MS. TAKEUCHI-APUNA: No questions.

9 CHAIRMAN PILTZ: State?

10 MR. YEE: No questions.

11 CHAIRMAN PILTZ: Intervenor?

12 MS. TOWNSEND: No questions, thank you.

13 CHAIRMAN PILTZ: Commissioners? Thank you.

14 Okay. Ms. Townsend, make your presentation. Speak
15 into the microphone.

16 MS. ERICKSON: Can you also turn a little
17 bit sideways so the court reporter can hear you.

18 MS. TOWNSEND: We feel that the Concerned
19 Elders should be admitted as a party and the interest
20 of justice warrant waiving our failure to file on
21 time. The Elders have demonstrated through our
22 various filings that we provide a perspective that's
23 totally lacking from the current proceeding. The
24 members are directly and immediately affected by the
25 outcome of this decision.

1 The Petitioner did cite a case as an example
2 of the petitioner filing late and being denied,
3 Kamehameha Development Corporation. We really feel
4 that that case is distinguishable from this current
5 case.

6 In that situation the Commission was faced
7 with an absentee intervenor. That intervenor filed
8 several days late; failed to appear at pre-hearing
9 conference meetings, and did not file any sort of
10 reply in opposition of the day of the public hearing.

11 The Elders, by contrast, have demonstrated
12 their willingness, their commitment to fully and
13 fairly participate in these proceedings. We
14 immediately remedied our untimely filing as soon as we
15 were notified. And we have made every effort to
16 participate in a timely way since that.

17 We would note that even the U.S. Supreme
18 Court and Hawai'i Supreme Court has recognized that
19 procedural rules are meant to create a fair playing
20 field and to facilitate the conclusion of a proper
21 decision.

22 They're not meant to create some sort of
23 game of skill where one slip determines the outcome
24 whether it's based on the merits or not.

25 As Tropic Land knows it is difficult to

1 properly serve people. So we really hope that the
2 Commission will seriously consider our Motion to Waive
3 the Rule and give us one-day extension for our
4 untimely filing. Thank you.

5 CHAIRMAN PILTZ: Petitioner?

6 MR. YUEN: Tropic Land opposes the motion.

7 CHAIRMAN PILTZ: City?

8 MS. TAKEUCHI-APUNA: The city has no
9 objections to the motion.

10 CHAIRMAN PILTZ: State?

11 MR. YEE: The office of Planning has no
12 objection. There's been no prejudice to the Office of
13 Planning's position in this case.

14 CHAIRMAN PILTZ: Commissioners?

15 COMMISSIONER DEVENS: Chair, one question.

16 CHAIRMAN PILTZ: Yes.

17 COMMISSIONER DEVENS: Just one question,
18 Counsel, because we need to find a good cause. What
19 was the reason for the one-day delay?

20 MS. TOWNSEND: It was my mistake. I didn't
21 count correctly. So the notice was filed on June 1st
22 with the public. And I counted from June 2nd, added
23 15 days and said that was June 17. And it was made
24 painfully apparent to me when you actually count the
25 days that it's June 16.

1 I actually thought we were filing early by
2 mailing the petition on the 16th. And it was just by
3 chance that I noticed we forgot the check that I
4 called the Land Use Commission and found out that in
5 fact it was due the day.before.

6 And we scrambled to make sure all the
7 parties received new amended filings immediately so as
8 to prevent prejudice to the parties.

9 COMMISSIONER DEVENS: Okay. So you were
10 trying to make the deadline. It was just a matter of
11 calendaring.

12 MS. TOWNSEND: Yes. I miscounted. Thank
13 you.

14 CHAIRMAN PILTZ: Commissioners, we need a
15 motion to accept.

16 COMMISSIONER CHOCK: So moved. Move to
17 waive the time limit, Mr. Chairman.

18 COMMISSIONER HELLER: Second.

19 CHAIRMAN PILTZ: We have a motion on the
20 floor and a second. Call the roll, please.

21 MR. DAVIDSON: Thank you, Chair. Motion to
22 waive the rules to allow the filing. Commissioner
23 Chock?

24 COMMISSIONER CHOCK: Yes.

25 MR. DAVIDSON: Commissioner Heller?

1 COMMISSIONER HELLER: Yes.

2 MR. DAVIDSON: Commissioner Judge?

3 COMMISSIONER JUDGE: Yes.

4 MR. DAVIDSON: Commissioner Kanuha?

5 COMMISSIONER KANUHA: Yes.

6 MR. DAVIDSON: Commissioner Teves?

7 COMMISSIONER TEVES: Yes.

8 MR. DAVIDSON: Commissioner Contrades?

9 COMMISSIONER CONTRADES: Yes.

10 MR. DAVIDSON: Commissioner Devens?

11 COMMISSIONER DEVENS: Yes.

12 MR. DAVIDSON: Chair Piltz?

13 CHAIRMAN PILTZ: Yes.

14 MR. DAVIDSON: Motion passes 8/0, Chair.

15 CHAIRMAN PILTZ: Intervenor, go ahead.

16 MS. TOWNSEND: Thank you very much,

17 Commissioners, for this opportunity to support our

18 Petition to Intervene. The outcome of this boundary

19 amendment will determine the fate of this community.

20 And we urge you to grant this community the

21 opportunity to at least participate in the shaping of

22 that outcome.

23 The Elders represent a breadth of the

24 community interest that are distinct from the general

25 public and would be harmed by the approval of this

1 boundary amendment.

2 For the Concerned Elders, the interest of
3 the Concerned Elders represent from the very beginning
4 of the Hakimo Road at the Princess Kahanu Estate, all
5 the way to the very top of Hakimo Road and the
6 property owned by Ms. Stacks.

7 There are more than 470 homes and farms in
8 that corridor that would be directly affected in
9 various ways by this proposed industrial park. And
10 for the Petitioner to suggest that the Concerned
11 Elders' interests are not distinct from the public
12 would mean to say that it would just be impossible.

13 Not every member of the public lives on
14 Hakimo Road. Not every member of the public practices
15 traditional Native Hawaiian customary practices or
16 religion.

17 And not every member of the public is a
18 beneficiary of the Department of Hawaiian Home Lands.

19 So the Elders, while presenting a diverse
20 group of interests, are nonetheless unique from the
21 general public. And the unique perspective that the
22 elders bring are overlooked and marginalized by the
23 Tropic Land EIS.

24 The Commission really would benefit from
25 having this group and the unique information that they

1 have to inform your decision. Moreover, the residents
2 have been organizing since January 2009 when they
3 first got word that this proposal was actually coming
4 before the Land Use Commission.

5 And they met amongst themselves. And they
6 chose to for, to use the Concerned Elders of Wai'anae
7 as the vehicle for making sure that their interests
8 were represented.

9 All of them acknowledged that coming before
10 the Land Use Commission is a burden, something that
11 they would not be able to commit to individually. So
12 they were looking towards the group to be able to
13 fulfill their needs to make sure their interests were
14 represented.

15 Today's a classic example where there were
16 several members from Princess Kahanu Estates, up the
17 road, who were here in the morning to testify but
18 could not stay all day.

19 This, I think, demonstrates the importance
20 of having the Concerned Elders intervene as a group
21 and to intervene as broadly possible. To narrowly
22 define the scope of the Elders' intervention would
23 further marginalize the importance of the perspectives
24 that they bring to this hearing.

25 The questions of the merits of the

1 industrial park are all inter-related. The impacts on
2 traffic have to do with the amount and types of
3 activities that are allowed at the top of Hakimo Road
4 at the actual industrial park.

5 The impacts to cultural practice have to do
6 with viewplane as much as it has to do with how the
7 industrial park itself is the aesthetics of the
8 industrial park, how it looks and things of those
9 nature.

10 So there is -- the inter-related nature of
11 their interests warrant in addition that their
12 intervention not be limited to scope. Thank you.

13 CHAIRMAN PILTZ: Mr. Yuen, your comments.

14 MR. YUEN: Tropic Land objects to the
15 Petition to Intervene.

16 CHAIRMAN PILTZ: City?

17 MS. TAKEUCHI-APUNA: The city has no
18 objections to the Petition to Intervene.

19 CHAIRMAN PILTZ: Okay. Thank you.

20 MR. YEE: The Office of Planning has no
21 objections and actually supports the Petition to
22 Intervene at least with respect to cultural and
23 historical impacts, traffic impacts, agricultural
24 impacts and such direct impacts to nearby and
25 adjoining properties which would include viewplanes,

1 noise, dust and environmental impacts to them.

2 We would take issue, I think, with one
3 asserted interest. That's as a DHHL beneficiary. The
4 argument on that, as I understand, it runs that the
5 current Naval property, should they ever decide to
6 leave, DHHL would have the right of first refusal.
7 And if DHHL exercises that right then DHHL could have
8 the property. Then beneficiaries of DHHL could have
9 some interest.

10 The problem we have with that is the
11 speculative nature of that interest. Because, first,
12 there's no plans for the Navy to leave.

13 Second of all it's not clear what DHHL would
14 do with the property. So if they use it for
15 residential, they could use it for commercial, they
16 could use it for agricultural.

17 And depending which choice they make
18 determines what the impact of whatever they do would
19 occur.

20 So it's really a little too speculative at
21 this point, I think, to assert an interest as a DHHL
22 beneficiary. Certainly if DHHL wants to provide
23 comments the Office of Planning would facilitate that.
24 But I think to intervene on that basis, at least based
25 on the information we have, would be speculative. But

1 on all those other issues we think they've made a
2 valid case and would support the Petition to
3 Intervene.

4 CHAIRMAN PILTZ: Commissioners, comments for
5 the Petition to Intervene, anyone? Commissioner
6 Devens.

7 COMMISSIONER DEVENS: For the potential
8 intervenor, I'm just wondering if you could -- if I
9 missed this earlier I apologize -- just a little more
10 information on the group.

11 How many members do you have? Is it like a
12 nonprofit organization or just a volunteer group? If
13 you'd just provide a little more information on that
14 I'd appreciate it.

15 MS. TOWNSEND: The Concerned Elders were
16 formed in 2005. They're an all-volunteer group. They
17 are unincorporated. They have several hundred
18 members. On short notice I tried to provide a list
19 for you of the signup sheets that people filled out to
20 become members of Concerned Elders.

21 Unfortunately, it's not an exhaustive list.
22 I couldn't get ahold of everyone on such short notice.
23 But those are the majority of the Hakimo Road
24 residents, the ones who'd be most directly affected.

25 But as Walterbea described there are a

1 number of issues the Concerned Elders work on. So
2 there are members in the Concerned Elders that stretch
3 the entire Wai'anae Coast who live and work in the
4 Wai'anae area and feel impacted by those kinds of
5 decisions.

6 MR. YEE: Can I ask one more issue? That is
7 we did ask they could represent that they will be
8 represented by an attorney through these proceedings.
9 I noticed in the declaration that Ms. Townsend said
10 she was currently the attorney. We did want
11 clarification on the issue. Because if she's not
12 there is a different analysis to apply.

13 MS. TOWNSEND: Yes. I'm currently the
14 attorney of record, but I won't hide the fact that we
15 are looking for another more experienced attorney to
16 participate in these proceedings.

17 This would be my first real anything
18 remotely related to litigation. So I don't have
19 necessarily experience with the Land Use Commission or
20 litigation in general to adequately represent them.

21 So if you guys have any suggestions we're
22 open. But I have made the commitment to stand with
23 the Concerned Elders this entire proceeding if no one
24 else is able to stand up.

25 CHAIRMAN PILTZ: Very good. Thank you.

1 Thank you for the clarification. Commissioners, do we
2 have a motion to accept the Petitioner as an
3 Intervenor or any comments?

4 COMMISSIONER HELLER: I think the comment by
5 the Office of Planning makes sense. That as far as
6 standing as a beneficiary of DHHL that's both
7 speculative and I think probably kind of a standing
8 question because DHHL itself could appear and
9 intervene if it saw a reason to do so. I don't think
10 another group needs to appear on their behalf.

11 But otherwise I think having additional
12 information and additional viewpoint is fine.

13 CHAIRMAN PILTZ: Okay. Commissioner Devens.

14 COMMISSIONER DEVENS: Move to grant the
15 Petition to Intervene.

16 CHAIRMAN PILTZ: We have a motion on the
17 floor by Commissioner Devens. Do I have a second?

18 COMMISSIONER CONTRADES: Second.

19 CHAIRMAN PILTZ: We have a second by
20 Commissioner Contrades. Executive director.

21 MR. DAVIDSON: Motion to grant the Petition
22 to Intervene of Concerned Elders of Wai'anae.
23 Commissioner Devens?

24 COMMISSIONER DEVENS: Yes.

25 MR. DAVIDSON: Commissioner Contrades?

1 COMMISSIONER CONTRADES: Yes.

2 MR. DAVIDSON: Commissioner Heller?

3 COMMISSIONER HELLER: Yes.

4 MR. DAVIDSON: Commissioner Judge?

5 COMMISSIONER JUDGE: Yes.

6 MR. DAVIDSON: Commissioner Chock?

7 COMMISSIONER CHOCK: Yes.

8 MR. DAVIDSON: Commissioner Kanuha?

9 COMMISSIONER KANUHA: Yes.

10 MR. DAVIDSON: Commissioner Teves?

11 COMMISSIONER TEVES: Yes.

12 MR. DAVIDSON: Chair Piltz?

13 CHAIRMAN PILTZ: Yes.

14 MR. DAVIDSON: Motion passes 8/0, Chair.

15 CHAIRMAN PILTZ: All right. Thank you.

16 MR. YUEN: Chairman, we would like to
17 reserve the right to ask for appropriate procedural
18 safeguards at the pre-hearing in order to make sure
19 that the petition is handled in an expedited and
20 smooth manner.

21 CHAIRMAN PILTZ: So noted.

22 MR. DAVIDSON: If I could also indicate to
23 all the parties, and a letter will be forthcoming, a
24 pre-hearing is going to be scheduled for July 13, time
25 to be determined. I'll get a letter out. Thank you.

1 CHAIRMAN PILTZ: Thank you. We'll take a
2 short recess before we go on to our next item.

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4 (Recess was held 2:10. The court reporter was excused
5 from reporting the discussion regarding pending
6 administrative rules amendments.)

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I, HOLLY HACKETT, CSR, RPR, in and for the State
of Hawai'i, do hereby certify;

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That I was acting as court reporter in the
foregoing LUC matter on the 1st day of July 2010

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9

That the proceedings were taken down in
computerized machine shorthand by me and were

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thereafter reduced to print by me;

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That the foregoing represents, to the best
of my ability, a true and correct transcript of the
proceedings had in the foregoing matter.

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DATED: This _____ day of _____ 2010

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HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

