

## 1 LAND USE COMMISSION

2 STATE OF HAWAI'I

3  
4 HEARING AND ACTION )5 A87-617 BRIDGE 'AINA LE'A, LLC )  
6 & DW 'AINA LE'A DEVELOPMENT, LLC )  
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9  
10 TRANSCRIPT OF PROCEEDINGS11  
12 The above-entitled matter came on for a Public Hearing  
13 at Ballroom #1 and 2, King Kamehameha's Kona Beach  
14 Hotel, 75-5660 Palani Road, Kailua-Kona, Hawai'i  
15 commencing at 9:10 a.m. on Thursday, November 18, 2010  
16 pursuant to Notice.  
1718  
19  
20  
21 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
22 Certified Shorthand Reporter  
23  
24  
25

## A P P E A R A N C E S

## COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES (Presiding Officer)

RONALD HELLER

CHARLES JENCKS

LISA M. JUDGE

DUANE KANUHA

NORMAND LEZY

EXECUTIVE OFFICER: ORLANDO DAVIDSON

ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A87-617 Bridge 'Aina Le'A, LLC & DW 'Aina  
Le'a Development, LLC.

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

For the Co-Petitioner: BRUCE VOSS, ESQ.  
MICHAEL CARROLL, ESQ.,.

For the County: WILLIAM BRILHANTE, ESQ.  
Deputy Corporation Counsel  
DARYN ARAI Planning Dept.

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
ABBIEY MAYER  
Office of Planning

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1           PRESIDING OFFICER CONTRADES: Let's call the  
2 meeting back to order. Good morning, everyone. This  
3 is a meeting of the Land Use Commission. We are at  
4 the King Kamehameha's Kona Beach Hotel, 75-5660 Palani  
5 Road, Kailua-Kona, Hawai'i.

6           And this is a hearing and action meeting  
7 regarding A87-617 DW 'Aina Le'a Development LLC and  
8 Bridge 'Aina Le'a's Order to Show Cause issued  
9 December 9, 2008, rescinded upon condition precedent  
10 August 27, 2009, reinstated by Order finding failure  
11 of condition precedent filed July 15, 2010; and to  
12 consider DW 'Aina Le'a's Motion to Amend Conditions 1,  
13 5, and 7.

14           Will the parties please identify themselves  
15 for the record.

16           MR. OKAMOTO: Good morning, members of the  
17 Commission. I'm Alan Okamoto, attorney for DW 'Aina  
18 Le'a Development, LLC. Mr. Yamamoto from my office is  
19 with me today and so is Mr. Robert Wessells of DW.

20           PRESIDING OFFICER CONTRADES: Thank you.

21           MR. VOSS: Good morning, Chairman. This is  
22 Bruce Voss and Mike Carroll on behalf of Co-petitioner  
23 Bridge 'Aina Le'a LLC.

24           PRESIDING OFFICER CONTRADES: Thank you.

25           MR. BRILHANTE: Good morning, Vice Chair and

1 Commissioners. William Brilhante, deputy corporation  
2 counsel, county of Hawai'i. Also present is Mr. Daryn  
3 Arai from the Planning Department of the county of  
4 Hawai'i.

5 MR. YEE: Good morning. Deputy Attorney  
6 General Bryan Yee on behalf of the Office of Planning.  
7 With me is Abbey Mayer, director of the Office of  
8 Planning.

9 PRESIDING OFFICER CONTRADES: Thank you.  
10 Let me first explain our procedure for today. The  
11 Commission will hear evidence and argument on the Show  
12 Cause Order, both substantive and procedural. After  
13 hearing such evidence and argument, decision-making on  
14 the Show Cause Order in A87-617 will be deferred due  
15 to the limited number of Commissioners available today  
16 and pending advice from our legal counsel. There will  
17 be a subsequent opportunity to present arguments on  
18 this matter.

19 In addition, the Motion to Amend Conditions  
20 will be deferred so no arguments will be heard on this  
21 matter today. Are there any questions regarding this  
22 procedure? Hearing none... on July 26, 2010 the  
23 Commission mailed its July 15, 2010 Order Finding  
24 Failure to Meet Condition Precedent for Rescinding  
25 Order to Show Cause to Parties.

1           On August 31st, 2010 the Commission received  
2           Petitioner's Motion to Amend Conditions 1, 5 and 7.

3           On September 8th, 2010 the Commission  
4           received OP's Memorandum in Opposition to Petitioner's  
5           Motion to Amend Conditions 1, 5 and 7.

6           Also on September 8th the Commission  
7           received Petitioner Bridge 'Aina Le'a LLC's Statement  
8           of Position regarding DW 'Aina Le'a Development's  
9           Motion to Amend Conditions 1, 5 and 7.

10          On September 10, 2010 the Commission  
11          received County of Hawai'i Planning Department's  
12          Statement of No Opposition to Petitioner's Motion to  
13          Amend Conditions 1, 5 and 7 filed August 31st, 2010.

14          On September 28th, 2010 the Commission  
15          received OP's Supplemental Memorandum in Opposition to  
16          Petitioner's Motion to Amend Conditions 1, 5 and 7.

17          On October 6, 2010 the Commission received  
18          County of Hawai'i's progress report on DW 'Aina Le'a  
19          Development LLC.

20          On November 1st, 2010 the Commission  
21          received a response to its comments letter from J.M.  
22          Leonard Planning, LLC regarding the Villages of 'Aina  
23          Le'a Draft EIS and a copy of the Final EIS.

24          On November 8th, 2010 the Commission  
25          received Co-Petitioner DW 'Aina Le'a Development LLC's

1 Exhibit 2 to Motion to Amend Conditions 1, 5 and 7.

2 On November 10, 2010 the Commission received  
3 written correspondence from Michelle Kerr.

4 On November 12, 2010 the Commission received  
5 Bridge 'Aina Le'a LLC's Motion re: Order to Show  
6 Cause; Memorandum in Support.

7 On November 16, 2010 the Commission received  
8 Co-Petitioner DW 'Aina Le'a Development LLC's Joinder  
9 in Bridge 'Aina Le'a LLC's Motion re: Order to Show  
10 Cause.

11 First, we will call all individuals desiring  
12 to provide public testimony to identify themselves.  
13 All such individuals will be called in turn to our  
14 witness box where they will provide their testimony.  
15 Let me remind you that all of the public testimony  
16 from previous hearings was transcribed and is part of  
17 the record.

18 For those who are testifying again the  
19 Commission would appreciate if you could confine your  
20 testimony to new information. There will be a  
21 3-minute time limit on testimony that will be  
22 enforced. So are there any individuals desiring to  
23 provide public testimony on this docket? Dan, will  
24 read out the names for us.

25 MR. DAVIDSON: First is Byron Harris



1 followed by Philip Harris. So first Byron Harris  
2 followed by Philip Harris.

3 BYRON HARRIS

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

6 THE WITNESS: Yes.

7 PRESIDING OFFICER CONTRADES: Would you  
8 please identify yourself and give us your address.

9 THE WITNESS: My name is Byron Harris. My  
10 address is 73-456 Waipahi Street, Kailua-Kona, Hawai'i  
11 96740.

12 PRESIDING OFFICER CONTRADES: Go ahead.

13 THE WITNESS: I work with PA Harris  
14 Electric. We'll be installing a solar PV system on  
15 the carports over at the 'Aina Le'a Project. And one  
16 of the things we just wanted to convey is the fact  
17 that as being part of, like, a new emerging technology  
18 we understand that this particular Project is gonna be  
19 kind of in the forefront.

20 So not only are they going to be providing  
21 metered homes and the affordability for the people of  
22 Kona, but also jobs for those that need it, as things  
23 are pretty slim right now. And that this is just  
24 going to be another feather in the cap for Kona and  
25 the people of Kona in all regards.

1           And I believe that was basically it. So I  
2 was just hoping to convey, hoping to express my hope  
3 that the Commission would grant the extension for the  
4 Project. Thank you.

5           PRESIDING OFFICER CONTRADES: Thank you.  
6 Any questions? Commissioners? Thank you.

7           MR. DAVIDSON: Philip Harris followed by  
8 Olithia Lai.

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

12           THE WITNESS: Yes.

13           PRESIDING OFFICER CONTRADES: Would you  
14 please state your name and address.

15           THE WITNESS: My name is Philip Harris. I  
16 reside in Captain Cook, P. O. Box 709. I am the owner  
17 with my sons of PA Harris Electric. We have been in  
18 business for 40 years. Close to 20 of those years  
19 here in Kona.

20           We, two and-a-half years ago we employed 46  
21 people on our payroll. Today we have 26 people. And  
22 so I'm here today not only to speak for myself but to  
23 speak for the individuals we employ and for their  
24 families.

25           I don't have to tell you that we are in a

1 very difficult time. And to limit the opportunities  
2 for employment I think is counterproductive for the  
3 people of this Big Island.

4 We recognize that this Project is more than  
5 just a condo project. And because of the diverse  
6 nature of this Project that there'll be opportunities  
7 for not only union but non-union contractors to work  
8 on this Project.

9 And so we humbly ask that you approve the  
10 Petition that's being put before you because it will  
11 be an opportunity for further employment for all of  
12 those concerned here on the Big Island. Thank you.

13 PRESIDING OFFICER CONTRADES: Thank you.  
14 Questions? Commissioners? Thank you.

15 MR. DAVIDSON: Olithia Lai followed by  
16 Corina Salmo.

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

20 THE WITNESS: I do.

21 PRESIDING OFFICER CONTRADES: Please state  
22 your name and your address.

23 THE WITNESS: My name is Elithia Lai and I  
24 live at 66-1455B Ala Kahakai in Wailea Bay.  
25 Technically it's Kamuela, Hawai'i. I've been in the

1 Puako area for 10 years. I'm president of the condo  
2 association. I run a nonprofit garden in Waimea. And  
3 I've seen a lot of development go up in our area and  
4 our community which is right across the street from  
5 Puako. Originally it was called Puako Mauka.

6 And I've been championing for a project that  
7 would bring sustainable development to the Big Island.  
8 I think that this Project is one of the first examples  
9 that I've seen. It hits the three important bottom  
10 lines, the triple bottom line which is: The planet,  
11 people, and profit.

12 They have provided great opportunities for  
13 the community, with their connection road, with the  
14 stop light that hopefully will go in, the affordable  
15 housing. It's good for the planet. They're the first  
16 development that I've seen that's environmentally  
17 friendly with their solar rays, their wastewater  
18 treatment plant and obviously, as everyone's been  
19 hitting, the profits.

20 Construction has definitely dried up in our  
21 area. And it's offering a lot of opportunity. So I'm  
22 here to say -- for speaking for a lot of the community  
23 that's across the street from Puako, that this is a  
24 supported development. So I recommend that the  
25 council give them the extension that they're asking

1 for. Thank you.

2 PRESIDING OFFICER CONTRADES: Thank you.

3 Any questions? Commissioners? Thank you.

4 MR. DAVIDSON: Corina Salmo followed by  
5 Walter Fullerton.

6 CORINA SALMO

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

9 THE WITNESS: Yes I, do.

10 PRESIDING OFFICER CONTRADES: Would you  
11 please state your name and address for the record?

12 THE WITNESS: Corina Salmo, 77-151 Koakoa  
13 Street, Kailua-Kona. I'm here representing the ILWU  
14 Local 142 today and its members.

15 I would like to read what we had prepared  
16 because I want to make sure we cover all the bases and  
17 the concerns that we have for ourselves and our  
18 members and our communities.

19 I represent the West Hawai'i units, namely  
20 the Sheraton Keauhou Bay Resort and Spa and the Hilton  
21 Waikoloa Village. The ILWU represents at least 3,500  
22 workers along the Kohala Coast and in West Hawai'i  
23 whose jobs classifications range from stevedores to  
24 waitresses.

25 The Hawai'i division of the ILWU would like

1 to reiterate its support for the extension of the  
2 urban classification for this property, and request  
3 that the Commission favorably grant the Applicant's  
4 time extension request.

5 This Project is important for us for a  
6 number of reasons. For one, where there have been  
7 questions whether this Project would ever get off of  
8 the ground, we feel reasonably confident that it will  
9 proceed.

10 True, they have not completed 385 units.  
11 However, in about two years and in spite of difficulty  
12 in securing the desired finances, DW 'Aina Le'a has  
13 completed 16 units and are well on their way to  
14 completing the balance. Among other things, it has  
15 completed the needed EIS and construction plans for  
16 the much needed traffic lights in the Mauna Lani  
17 intersection.

18 DW has done more for this Project in a short  
19 period of time than any other developer or former  
20 developers have. Additionally, DW 'Aina Le'a has  
21 renewed the commitment to work with us on the  
22 workforce housing project. It's very important to us  
23 and to our members because many of them commute long  
24 distances from East Hawai'i and Ka'u.

25 And since becoming the developer that they

1 have updated the housing needs -- I'm sorry -- we are  
2 presently updating our housing needs study. And upon  
3 completion will be meeting with them to finalize the  
4 workforce housing program.

5 More importantly, DW is working on financing  
6 programs to allow our workers to live in the area in  
7 which they work. We at the ILWU desire the Land Use  
8 Commission to extend the building and -- I'm sorry --  
9 to extend the time for the building and the sale of  
10 the homes to allow our members to obtain financing to  
11 buy the homes in the Project. Additionally, this  
12 Project will be providing much needed --

13 MR. DAVIDSON: Excuse me. Thirty seconds.

14 THE WITNESS: Okay. More importantly this  
15 job will create a lot of construction and  
16 construction-related jobs for the people of the Big  
17 Island, which we need desperately. So please our last  
18 plea is to please allow this extension for DW 'Aina  
19 Le'a. Thank you.

20 PRESIDING OFFICER CONTRADES: Thank you.  
21 Any questions? Commissioners? Thank you.

22 MR. DAVIDSON: Walter Fullerton followed by  
23 Kevin Woods.

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

1 and testified as follows:

2 THE WITNESS: Yes, I do.

3 PRESIDING OFFICER CONTRADES: Would you  
4 state your name and address for the record please.

5 THE WITNESS: My name is Walter Fullerton.  
6 I'm the Project architect for 'Aina Le'a LLC. My  
7 address is 75-5656 Kuakini Highway, just a few minutes  
8 from here. I am a local architect.

9 PRESIDING OFFICER CONTRADES: Go ahead.

10 THE WITNESS: I think this is a very, very  
11 good project. I think the developers have done a  
12 fantastic job under some of the most difficult  
13 circumstances of getting this Project together. One  
14 of the most important aspects of it is they are using  
15 all local people. There are no crews coming out of  
16 the mainland or anything of that nature.

17 We need the housing or affordable housing in  
18 this area because if you go across the street and find  
19 a condominium for less square footage, you'll find it  
20 for a million to \$2 million. Most of the people that  
21 service this area come, as mentioned earlier, from the  
22 Hilo side, from south of the island, some traveling as  
23 much as two hours one way to get to this Project.

24 If you come into Kailua-Kona you'll find  
25 that there are projects here that aren't as affordable



1 as the 'Aina Le'a Project right now. I think the  
2 developers have done very well, far beyond what I  
3 expected. They've done a much better job of putting  
4 this thing together under some of the most extreme  
5 circumstances. And I thank you for your attention.

6 PRESIDING OFFICER CONTRADES: Thank you.  
7 Questions? Commissioners? Thank you.

8 MR. DAVIDSON: Kevin Woods followed by Pua  
9 Correa.

10 KEVIN WOODS  
11 being first duly sworn to tell the truth, was examined  
12 and testified as follows:

13 THE WITNESS: Yes.

14 PRESIDING OFFICER CONTRADES: State your  
15 name and address for the record.

16 THE WITNESS: Kevin Woods, 78-623 Ihilani  
17 Place, Kailua-Kona. As I said, my name is Kevin  
18 Woods. And I'm the general manager of Honsador Wood  
19 here in Kona. We have been providing building  
20 materials for the past 30 years.

21 And I would like to say we are 100 percent  
22 in favor of this Project and have made a commitment  
23 from our branch. We have ramped up our levels of  
24 inventory to accommodate this Project. And this  
25 Project, based on the timeframe and the materials that

1 have gone out, could easily represent 50 percent of my  
2 annual business.

3 And with that it also has been stated,  
4 creates job opportunities. We have the ability to  
5 ramp up our personnel and add bodies to accommodate  
6 this Project. Also like to say over the past years  
7 we've developed a strong working relationship with DW  
8 'Aina Le'a and True Style. And that has carried over  
9 to other projects on other islands as well.

10 And with that, very proud to say that we've  
11 provided quality materials in all phases of the  
12 Project which, bottom line, is going to provide the  
13 end user with an excellent dwelling. That's it.

14 PRESIDING OFFICER CONTRADES: Thank you.  
15 Questions? Commissioners? Thank you.

16 MR. DAVIDSON: Pua Correa followed by John  
17 Harner.

18 PRESIDING OFFICER CONTRADES: Good morning.

19 THE WITNESS: Good morning. Aloha.

20 PUA CORREA

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

23 THE WITNESS: I do.

24 PRESIDING OFFICER CONTRADES: Please state  
25 your name and address for the record.

1 THE WITNESS: I'm Pua Correa, P. O. Box 55  
2 Kamuela, Hawai'i 96743.

3 PRESIDING OFFICER CONTRADES: Go ahead.

4 THE WITNESS: Okay. I can start? Okay.  
5 I'm born and raised in Hawai'i. And I must say I went  
6 to the Project. And although I'm a realtor here with  
7 Hawai'i Brokers I'm not hear on that behalf. Although  
8 that so many people reiterated that we need new  
9 affordable homes, didn't say "new" but it is new  
10 affordable homes.

11 The thing is I'm here because I do a lot of  
12 community work with Kulakai Aupuni, Punanaleo o  
13 Hawai'i. We opened up the Waimea Branch. And I also  
14 do Pop Warner. We have 3,000 kids in our Pop Warner  
15 Association here on the Big Island from the whole  
16 island.

17 And the thing is when I read his plan -- and  
18 he has 300 or more acres of greenway parkways and call  
19 of the above -- if he only knew how much our program  
20 needs another field. Because we are trying our best  
21 to keep our youth off of the streets.

22 And when I saw that they are willing to do,  
23 like, a stadium style park, I really wish you  
24 Commissioners would come to some of our Pop Warner  
25 games. And you could actually see the needs and

1 they're actually going to perform the ability for us  
2 to keep our kids off the street. And that, too, is  
3 really important for us.

4 So that's why I'm here to support the  
5 community aspect, not only the building or the jobs  
6 that are created off of this 'cause there's many on  
7 the list regarding what 'Aina Le'a is planning to do.  
8 I'm looking at also the benefits of the community.  
9 Any questions?

10 PRESIDING OFFICER CONTRADES: Any questions?  
11 Commissioners? Thank you.

12 THE WITNESS: I hope you say yes. Please  
13 say yes. Extend them. (Laughter)

14 MR. DAVIDSON: John Harner followed by  
15 Gretchen Lambeth.

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

19 THE WITNESS: Yes.

20 PRESIDING OFFICER CONTRADES: Please state  
21 your name and address for the record.

22 THE WITNESS: John Harner, 71-1679  
23 Pu'ukamana Loop Kailua-Kona. I'm here -- I'm probably  
24 going to sound a little redundant. I can't see what  
25 anything but an approval by the committee would

1 benefit, how that would benefit the community  
2 whatsoever.

3 The people involved 'Aina Le'a and TrueStyle  
4 Pacific have shown a great commitment to the community  
5 as well as this Project. The amount of work they were  
6 able to achieve in a very short amount of time under  
7 great financial stress and circumstances was  
8 incredible.

9 I know a lot of people in the construction  
10 industry that didn't think that could be accomplished.  
11 So I think they have proven their commitment to this  
12 job.

13 The number of jobs that would be created by  
14 this Project is obviously pretty immense. Not just  
15 dozens but hundreds. So my suggestion is that you  
16 approve this. I can't see of a better way to use that  
17 land. Agriculture I'm sure would be difficult. So my  
18 plea is for approval from the committee.

19 PRESIDING OFFICER CONTRADES: Thank you.  
20 Any questions? Commissioners? Thank you.

21 MR. DAVIDSON: Gretchen Lambeth followed by  
22 Ed Brown.

23 GRETCHEN LAMBETH  
24 being first duly sworn to tell the truth, was examined  
25 and testified as follows:

1 THE WITNESS: I do.

2 PRESIDING OFFICER CONTRADES: Please state  
3 your name and address for the record.

4 THE WITNESS: Gretchen Lambeth, P. O. Box  
5 5076 Kailua-Kona, 96745. I'm a 20-year resident of  
6 Kona. I come out of the construction industry  
7 formerly. I was part of the projects at Four Seasons  
8 and Hokuli'a. I'm a realtor here in Kona now. I'm an  
9 avid watcher of development, and I did doubt that DW  
10 'Aina Le'a could even make it as far as they have.

11 With both hands tied behind their back they  
12 have done an amazing job of getting out of ground in a  
13 horrific economic time that they were even willing to  
14 put the money on the line.

15 That said, the Department of Business and  
16 Economic Tourism projects that the Hawai'i County do  
17 in years we are going to have a 51 percent increase in  
18 our residents. If you do this the math with the 2008  
19 census, that's 90,000 new people to this island. If  
20 only 25 percent of them move to the west side that's  
21 20,000 people that need housing.

22 In 2004 Chris Yuen, our current planning  
23 commissioner at that time, suggested that the only way  
24 to solve our horrific traffic problem was either to  
25 build Southern California style highways or more

1 houses where workers work. His suggestion was  
2 obviously to build the houses where the workers are.  
3 And that's exactly what this Project proposes to do.

4 If they've missed a deadline, shame on them.  
5 But maybe the deadline was too tight to start with.  
6 And I think we need to evaluate the bigger need for  
7 our community. The state doesn't have money to build  
8 giant highways between here and Ocean View where  
9 they're commuting from or to Puna. We need them here  
10 in our communities.

11 Their quality of life depends on living  
12 close to where they work or they spend hours on the  
13 road. None of us want to do that. All of us probably  
14 have some sort of commute. But the lowest economic  
15 people shouldn't have the longest commute.

16 We need to address that issue. We need the  
17 cohesion that Pua talked about with our families to be  
18 able to do the sports. If parents have to drive two  
19 hours to the kid's baseball game they're never going  
20 to make it. We need the community. We need it in the  
21 resort areas. And I ask you urgently to approve this  
22 extension. Thank you.

23 PRESIDING OFFICER CONTRADES: Questions?  
24 Commissioners? Thank you.

25 MR. DAVIDSON: Ed Brown followed by Robert

1     Martinson.

2                             EDWARD BROWN

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

5             THE WITNESS:   I do.

6             PRESIDING OFFICER CONTRADES:   Could you  
7     please state your name and address for the record.

8             THE WITNESS:   My name's Edward Brown.   I  
9     live at 68-35 Akaka Way, Waikoloa, 96738.   My name's  
10    Ed Brown.   I'm the regional manager for Goodfellow  
11    Brothers.   We're also the design/build contractor for  
12    all the site infrastructure for 'Aina Le'a.   We've  
13    made some huge progress since we started.   I know  
14    today we are supposed to come in here and be able to  
15    turn over all infrastructure to the client.

16            But because of some hiccups with financing  
17    through these bad times we've lost a little bit of  
18    momentum.   But now that we've got a good positive cash  
19    flow coming in from Capital Asia, I think that we  
20    really need to support this Project.   We need to give  
21    it an extension give some time.   It's going to employ  
22    about 60 to 70 of my employees that live here.   We  
23    support the Project.   And I think having the burden of  
24    this land being reverted back to ag in such a short  
25    timeframe is a big burden for the owner.



1           So I would support, please, granting this  
2 extension and give us an opportunity to finish what  
3 we've started. I think you guys will be pleased when  
4 we're done.

5           PRESIDING OFFICER CONTRADES: Thank you.  
6 Questions? Bryan.

7           MR. YEE: Has Goodfellow Brothers been  
8 completely paid for the work it's done?

9           THE WITNESS: No, we've not. Right now we  
10 get funds from Capitol Asia, which is about 700,000 a  
11 month.

12          MR. YEE: And how much is the current debt  
13 that's still owing?

14          THE WITNESS: 4.3 million.

15          MR. YEE: And is Goodfellow Brothers  
16 extending further credit beyond that 4.3 million to do  
17 additional work?

18          THE WITNESS: What we're hopin' is because  
19 the Capital Asia funds have been really consistent and  
20 the sales have been great, we're hopin' to build up  
21 reserve and to reschedule the work based on the  
22 reserve that's coming in.

23          MR. YEE: So you will be providing work as  
24 the money comes in?

25          THE WITNESS: Correct.

1           MR. YEE: But you won't be extending further  
2 credit if the money is not present?

3           THE WITNESS: That's something I would have  
4 to discuss. But, um, every two weeks there's another  
5 handful of money that comes in. So it's been very  
6 consistent. So we're hoping that -- it will slow the  
7 schedule down a little bit but I think it's something  
8 that's doable.

9           MR. YEE: Okay. Thank you.

10          PRESIDING OFFICER CONTRADES: Commissioners,  
11 any questions? Thank you.

12          MR. DAVIDSON: Robert Martinson followed by  
13 Karen Grimp.

14          THE WITNESS: Good morning.

15          PRESIDING OFFICER CONTRADES: Good morning.

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

19          THE WITNESS: I do.

20          PRESIDING OFFICER CONTRADES: Please state  
21 your name and address for the record.

22          THE WITNESS: Robert Martinson, 75-1027  
23 Henry Street, Kailua-Kona 96740. My name is Robert  
24 Martinson. I'm the retail sales manager for Bank of  
25 America home loans in the Kailua-Kona branch here on

1 the Big Island.

2 My team has been working with DW and the  
3 'Aina Le'a Project for the better part of a year to  
4 provide guidance for the future financing of homes  
5 within the community. I'm here to address any  
6 concerns that the Commission may have regarding the  
7 financing of the units within the Project.

8 PRESIDING OFFICER CONTRADES: Could you slow  
9 down just a little bit.

10 THE WITNESS: Surely. Bank of America has  
11 worked to ensure that the Project meets the  
12 established guidelines of Fannie Mae, the Federal  
13 Housing Authority, the Department of Veteran Affairs  
14 and the U.S. Department of Agriculture. Through our  
15 reviews we have found that the Project is approvable  
16 through all these programs and we'll be able to  
17 provide the appropriate financing for the individuals  
18 and the families buying in 'Aina Le'a.

19 While being able to handling future  
20 residents from all backgrounds, we are set up to  
21 provide financing to first-time buyers, particularly  
22 those in need of affordable housing, as soon as these  
23 homes are available for sale. The programs we look to  
24 use require little or no money down to give hard  
25 working families a chance to own homes without having

1 to dig deep into their savings.

2 We are also able to accommodate residents in  
3 many income categories according to their needs. Bank  
4 of America is committed to a high level of service to  
5 our clients and we are awaiting the opportunity to  
6 approve the future residents of the 'Aina Le'a  
7 community as soon as those properties come online.  
8 Thank you.

9 PRESIDING OFFICER CONTRADES: Thank you.  
10 Questions? Go ahead.

11 COMMISSIONER HELLER: You mentioned being  
12 able to provide financing as soon as units are  
13 available for sale. I believe there were 16 units  
14 that were represented to be completed. Are those  
15 available for sale?

16 THE WITNESS: We cannot lend until we have  
17 at least 51 percent of those with contracts available.  
18 Then we can start closing on those. So that's what I  
19 mean. The regulations state that 51 percent of each  
20 phase has to be pre-sold before we can close on those  
21 loans. But once they are available and once they have  
22 sold then we can start closing.

23 COMMISSIONER HELLER: So from your  
24 perspective there are no units that are available yet.

25 THE WITNESS: There are no units that I can

1 finance yet. But that's because I don't have nine  
2 pre-sold contracts in my hand.

3 COMMISSIONER HELLER: Okay. Thank you.

4 PRESIDING OFFICER CONTRADES: Any other  
5 questions? Thank you.

6 MR. DAVIDSON: Karen Grimp followed by  
7 Keolani Keawe. (no response) Keolani Keawe followed  
8 by Peter Dahlberg.

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

12 THE WITNESS: Yes.

13 PRESIDING OFFICER CONTRADES: Could you  
14 please state your name and address for the record.

15 THE WITNESS: Keolani Keawe, 76-5990  
16 Mamalahoa Highway, Holualoa. I wasn't prepared to  
17 speak today. I was just coming to listen to everyone.  
18 I've been a realtor on the west side of the Big Island  
19 for 10 years, born and raised here. I pretty much  
20 want to just reiterate what everyone was saying about  
21 the commute. That's the biggest thing I see.

22 You see the people that are struggling the  
23 most having to drive from Ka'u from the east side  
24 coming to work at the hotels. I mean it's unsafe  
25 driving. It's all that time with parents away from

1 their children. Giving them the opportunity to live  
2 closer to where they work to me is just one of the  
3 biggest priorities.

4 Also I've been learning a little bit about  
5 the 'Aina Le'a Project, just their community gardens,  
6 the energy efficiency, really trying to, coming,  
7 asking what the local people want culturally and being  
8 here to support it.

9 So I just think their focus is in the right  
10 direction and their heart is also not just for making  
11 the profits, but making it a better living for the  
12 people here. Mahalo.

13 PRESIDING OFFICER CONTRADES: Thank you.  
14 Questions? Commissioners? Thank you.

15 MR. DAVIDSON: Peter Dahlberg followed by  
16 Christian Reve.

17 THE WITNESS: Good morning.

18 PETER DAHLBERG  
19 being first duly sworn to tell the truth, was examined  
20 and testified as follows:

21 THE WITNESS: Good morning. I do.

22 PRESIDING OFFICER CONTRADES: Please state  
23 your name and address for the record.

24 THE WITNESS: Peter Dahlberg, 74-4290 Kiwi  
25 Street, Kailua-Kona. I'm a civil engineer assisting

1 DW with the wastewater design. In short, the  
2 wastewater design proposed is a MBR system, membrane  
3 filtration membrane bioreactor specifically is what  
4 MBR stands for. It is designed specifically suited to  
5 deliver high quality effluent, which is the water  
6 that's released from the wastewater treatment plant,  
7 primarily to be used for irrigation reuse and to have  
8 minimal impacts to the environment.

9 I'm in favor of the extension from the Land  
10 Use Commission. And if it would be beneficial to the  
11 LUC I have prepared a fact sheet on MBR technology.  
12 That's all I have.

13 PRESIDING OFFICER CONTRADES: Thank you.  
14 Questions? Bryan.

15 MR. YEE: Is the proposed sewage treatment  
16 facility sized for 385 units?

17 THE WITNESS: Not at the moment. It's sized  
18 for the Phase I development only.

19 MR. YEE: How many would that be?

20 THE WITNESS: It's sized to receive  
21 25,000 gallons per day.

22 MR. YEE: It would not be sized, then, for  
23 the entire Project over the 1,000 acres then?

24 THE WITNESS: Not currently. It's  
25 expandable to 40,000 gallons but not to receive the

1 entire flow from the proposed buildout.

2 MR. YEE: Thank you. Nothing further.

3 PRESIDING OFFICER CONTRADES: Go ahead.

4 COMMISSIONER JENCKS: I'm just curious.

5 What is the status of the MBR plant today in terms of  
6 its installation and ability to serve the Project?

7 THE WITNESS: The design has been submitted  
8 partially to the Department of Health for an approval  
9 to construct. And the Phase I a temporary plant is in  
10 transit to be delivered to DW.

11 COMMISSIONER JENCKS: What's your expected  
12 permit issuance from the Department of Health  
13 timeframe-wise?

14 THE WITNESS: That could be anywhere from a  
15 few months to 6 months to a year.

16 COMMISSIONER JENCKS: When did you submit to  
17 DOH?

18 THE WITNESS: Last week.

19 COMMISSIONER JENCKS: Last week. The plant,  
20 physical plant is on its way.

21 THE WITNESS: To my understanding.

22 COMMISSIONER JENCKS: And you have the  
23 permits to install the plant on the property, not to  
24 operate it -- that's the DOH responsibility -- but you  
25 have the permits to install the plant?



1 THE WITNESS: Not yet.

2 COMMISSIONER JENCKS: Thank you.

3 PRESIDING OFFICER CONTRADES: Anyone else?

4 Thank you.

5 THE WITNESS: Would you like to receive the  
6 fact sheet?

7 MR. DAVIDSON: You can give it to this  
8 gentleman over here. Christian Reve followed by  
9 George Richard.

10 CHRISTIAN REVE  
11 being first duly sworn to tell the truth, was examined  
12 and testified as follows:

13 THE WITNESS: Yes.

14 PRESIDING OFFICER CONTRADES: Could you  
15 please state your name and address for the record.

16 THE WITNESS: Christian Reve, 69-1010 Kiano  
17 Place Unit A103, Waikoloa, 96738.

18 I'm here as a first time home buyer. And I  
19 believe that Luana Gardens has a great opportunity for  
20 both first time homebuyers and then also under  
21 affordable housing as well. And I'm very interested  
22 in purchasing a unit there.

23 I feel that it has a great potential of  
24 opportunity as a community and also in the long-term  
25 scheme of things helping out the community in this

1 South Kohala district as well.

2 I would please ask for the reconsideration  
3 of cutting off the Project and giving an extension.  
4 Thank you.

5 PRESIDING OFFICER CONTRADES: Thank you.  
6 Questions? Commissioners? Thank you.

7 MR. DAVIDSON: George Robertson followed by  
8 Randy Vitousek.

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

12 THE WITNESS: I do.

13 PRESIDING OFFICER CONTRADES: Please state  
14 your name and address.

15 THE WITNESS: George Robertson, P. O Box  
16 4490 Kamuela, Hawai'i 96743.

17 PRESIDING OFFICER CONTRADES: Go ahead.  
18 Thank you.

19 THE WITNESS: Good morning, Commissioners.  
20 I've been before you many times regarding this  
21 Project. I represent the Puako Community Association.  
22 We've watched this development for 20 or more years  
23 from the days of Signal Oil to Nansay, Bridge 'Aina  
24 Le'a, and now DW 'Aina Le'a. And it's just caused our  
25 community a tremendous amount of stress over the years

1 watching what has turned out to be, for us, a really  
2 bad development above our small community at Puako.

3 We see threats to the use of resources, the  
4 beaches and so on. And we're not at all impressed by  
5 the folks that have come down on the line all the way  
6 particularly with Bridge and DW 'Aina Le'a.

7 We're very upset about the design and  
8 construction of the affordable homes that were once  
9 promised to be interspersed throughout the  
10 development. Right now they're clustered. And  
11 fortunately not that many units are up so there's hope  
12 that maybe it won't continue for us. Because we think  
13 it's just a little affordable ghetto.

14 And in our opinion the Land Use Commission  
15 has given enough extensions already. Those 385 units  
16 should have been built and been available for  
17 occupancy yesterday, the 17th of November. That  
18 hasn't happened.

19 It seems to me like we, including the folks  
20 in this audience, have been enabling a drug addict  
21 that constantly comes back for more. And we keep  
22 giving him more and more extensions.

23 It's concerning for us that the Land Use  
24 Commission, the Land Use Commission's integrity and  
25 credibility's at stake when you keep doing this,

1 granting extensions year after year without a lot of  
2 proof on the other side of performance.

3 So anyway that's what the community, the  
4 Puako Community Association feels. I just want to  
5 reiterate that today. Thank you.

6 PRESIDING OFFICER CONTRADES: Questions?  
7 Thank you.

8 AUDIENCE MEMBER: She had a question.

9 PRESIDING OFFICER CONTRADES: I'm sorry.  
10 You don't get to ask questions.

11 (Audience laughter).

12 MR. DAVIDSON: Randy Vitousek followed by  
13 Bill Campbell. That's the last of the signed up  
14 witnesses.

15 THE WITNESS: Good morning, Commissioners.

16 PRESIDING OFFICER CONTRADES: Good morning.

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

20 THE WITNESS: Yes.

21 PRESIDING OFFICER CONTRADES: State your  
22 name and address for the record.

23 THE WITNESS: My name's Randy Vitousek. I'm  
24 attorney for the Mauna Lani Resort Association. The  
25 Resort Association doesn't take any position with

1 respect to the request to amend the conditions, nor  
2 does it take any position -- hasn't taken any position  
3 with respect to the Order to Show Cause.

4           The Resort Association is concerned that if  
5 there is any action by the Commission to continue to  
6 extend the Decision and Order approving the  
7 reclassification, that the conditions be amended to  
8 require the developer to complete construction of the  
9 signalized intersection before any certificates of  
10 occupancy are issued on any portion of the program.

11           That's been a consistent issue on the part  
12 of the Association. We support the intersection being  
13 built. We understand the developer has committed to  
14 do that. We just would like to see it included in a  
15 specific condition if there's any extension of the  
16 permit.

17           The Mauna Lani Resort Association is also  
18 concerned that we don't think there's been adequate  
19 attention given to the impact that residents of the  
20 Aina Le'a area will have on the natural and cultural  
21 resources of the surrounding area. If you look at  
22 'Aina Le'a's brochure it contains photographs of the  
23 Mauna Lani golf course, the beach at Mauna Lani and  
24 the pool at Mauna Lani. It doesn't contain any  
25 pictures of the Project itself.

1           And so what we ask the Commission to  
2   consider, and we commented on the EIS in this regard,  
3   but we ask the Commission to consider some further  
4   offsite mitigation with respect to recreational,  
5   cultural resources in the area, in other words,  
6   offsite improvements to mitigate the impacts that  
7   additional population will have on these areas.  
8   Because they're advertising these areas and people are  
9   going to use these areas. So we ask that that be  
10  addressed. That's it.

11           PRESIDING OFFICER CONTRADES: Thank you.  
12  Any questions? Commissioners? Thank you.

13           MR. DAVIDSON: Bill Campbell.

14           THE WITNESS: That's me Bill Campbell.

15                   WILLIAM CAMPBELL  
16  being first duly sworn to tell the truth, was examined  
17  and testified as follows:

18           THE WITNESS: I do.

19           PRESIDING OFFICER CONTRADES: Would you  
20  state your name and address for the record.

21           THE WITNESS: My name is William Campbell.  
22  I live at 68-1845 Waikoloa Road, Waikoloa. I am a  
23  resident of Waikoloa of course. I actually live at  
24  the end of the golf course. My neighbors are 'Aina  
25  Le'a.

1 I've been in Waikoloa for a number of years.  
2 I've just stepped down from the Board of Waikoloa  
3 Village Association, which at that time, supported the  
4 development, probably still does.

5 I have a very selfish interest in 'Aina Le'a  
6 being developed. I have a 14-year-old boy who doesn't  
7 have anything do to at nights because the Village at  
8 Waikoloa itself has very little to do. It hasn't got  
9 a pharmacy, hasn't got community center. It's got no  
10 cinema. It's got one reasonable store. It's got no  
11 urgent care. It's got nothing.

12 What it lacks is massive people to support  
13 these things. 'Aina Le'a brings along a lot of  
14 support for it. It brings in the community center  
15 that we really want and need. It also brings in,  
16 which is tremendously important to the Village, it  
17 brings in a relief road which a lot of people are  
18 very, very worried that there's very little access and  
19 ingress into the Village as it is.

20 The point being with an emergency -- and, of  
21 course, there was an emergency just a few months ago  
22 and nobody could move -- we were stuck because the  
23 fire surrounded the village, both sides of the core of  
24 the village.

25 So as a resident of the village, if 'Aina

1 Le'a had been actually built before I purchased in  
2 Waikoloa I'd have bought in 'Aina Le'a. It just  
3 offers so much more. It offers my children -- child  
4 so much more.

5 And it saves them somewhat of a commute to a  
6 school, 10 minutes up to the wherever the high  
7 school's going to be built is much better than the 40  
8 minutes commute he's got at the moment.

9 And the other things with 'Aina Le'a it  
10 brings some employment. The Village of Waikoloa is  
11 really in a poor state of employment, lot of  
12 foreclosures, a lot sadness. We need that input into  
13 the economy. We need some vital new stores, new  
14 facilities. I'm really hoping that you will extend  
15 the deadline for, for the building of 'Aina Le'a; that  
16 you will work with these people that have been very,  
17 very brave.

18 I'm a civil engineer actually, similar as  
19 Peter Dahlberg. And I see a lot of developments  
20 throughout the islands and throughout the mainland are  
21 not doing so well. And here these guys are trying  
22 their best to make something happen. They're trying  
23 to bring employment. They're trying to provide  
24 housing. And I just don't know how anybody could sit  
25 there and suggest that they're not trying, they're not



1 bringing something worthwhile to the community.

2 That's all I got to say. Thank you.

3 PRESIDING OFFICER CONTRADES: Thank you.

4 Questions? Commissioners? Thank you. Is there  
5 anyone else who wishes to testify? Please come  
6 forward.

7 DAISY MITCHELL

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

10 THE WITNESS: Yes.

11 PRESIDING OFFICER CONTRADES: Please state  
12 your name and address for the record.

13 THE WITNESS: Daisy Mitchell, P. O. Box 2627  
14 Kailua-Kona. It's me again. I'm a realtor. So I  
15 come with the same sentiments as my fellow realtors in  
16 the room. But I'm also an ex-banker. And when I used  
17 to work for the bank I did consumer mortgage and  
18 commercial lending.

19 And at the time I was at the bank it was not  
20 the economic times that we have now. But even back  
21 then to close a commercial deal there are extensions.  
22 There are extensions. And I'm just talking from the  
23 bank side.

24 So today, listening to what's been happening  
25 with this Project, with what we face with

1 economically, an extension sounds like it's inevitable  
2 in order for this thing to take off.

3 I kinda want to comment on the gentleman  
4 that was from Puako that said that this is a ghetto  
5 project. Well, I beg to differ. I got to sit with  
6 people who are running it on the real estate side and  
7 got to see the planning. And for us being here all my  
8 life, born and raised, it's refreshing to see a  
9 community project.

10 And like Pua Correa, I'm also Pop Warner,  
11 very active in our community. And to see our kids  
12 split between Kohala and Waimea and the kids from  
13 Waikoloa, it's very difficult to have such an  
14 opportunity to have more available for them to visit.

15 So I just, I am a supporter of 'Aina Le'a  
16 for many reasons. I am a mother as well. I just  
17 encourage you guys to do grant them their extension.

18 PRESIDING OFFICER CONTRADES: Thank you.  
19 Any questions? Commissioners? Thank you, Daisy.  
20 (Applause)

21 AUDIENCE MEMBER: Hi. My name is Lily  
22 Singer. And I'm an independent business consultant.

23 PRESIDING OFFICER CONTRADES: Could I please  
24 swear you in first.

25 LILY SINGER

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

3 THE WITNESS: Yes, I do.

4 PRESIDING OFFICER CONTRADES: State your  
5 name and address for the record.

6 THE WITNESS: My name is Lily Singer. I  
7 live at 75-673 Pualena Street, Kailua-Kona 96740. I'm  
8 an independent business consultant. And I've lived  
9 here for two and a half years.

10 It's a beautiful community. I've been doing  
11 work up at the Mauna Lani area so I have a 40-minute  
12 commute every day, minimum 40 minutes, behind trucks,  
13 tourists, lollygagers. And it's very frustrating  
14 driving up and down the highway.

15 There's affordable housing that will be  
16 available to people that are in the area where there  
17 isn't any affordable housing. I beg to differ on the  
18 tenement type comment because I've been in the units.  
19 They are beautiful.

20 I live in an over a million dollar home  
21 overlooking Kailua-Kona. And I will tell you my  
22 cabinets aren't as nice as the ones that are in the  
23 units that are up there. I'm sorry. I'm nervous.

24 Anyway, I think because of -- I moved here  
25 when the economy started to downturn. My boyfriend's

1 in the construction industry. We have seen many of  
2 our friends laid off on unemployment.

3 I think this Project going forward will  
4 employ many people in the area, not just in the  
5 construction industry, but for all the businesses  
6 surrounding, not to mention supporting the local  
7 merchants and everything.

8 Because once there is, once that development  
9 starts it creates a confidence in the island that will  
10 bring people here and know that we're a thriving  
11 island, that we're not dying out. And I think it's  
12 really an important, viable community. And I think if  
13 you'll look to the future of the families, I grew up  
14 in a neighborhood very similar with parks, recreation,  
15 shopping.

16 And I have the most wonderful memories of  
17 where I grew up and how I was able to live. I mean I  
18 can name off all my friends that I grew up in the  
19 neighborhood with.

20 So I think if you think about the families  
21 and how it will impact, everything up in that area is  
22 revolving around tourists and resorts. This  
23 development is for families to live in, to work in, to  
24 play in and to grow in. And I think it's a very, very  
25 important Project. Thank you.

1           PRESIDING OFFICER CONTRADES: Thank you.  
2 Any questions? Commissioners? (Applause. Audience  
3 member approaching microphone)

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

7           THE WITNESS: Yes, I do.

8           PRESIDING OFFICER CONTRADES: Please state  
9 your name and address for the record.

10          THE WITNESS: My name is Keith Winnie. And  
11 I'm a local architect. I live at 7563 Makapono Place,  
12 Kailua-Kona. And I don't know who the developers are.  
13 I've only met them recently. My point I wanted to  
14 bring to your attention is the biggest obstacle to  
15 affordable housing in most places, including this  
16 place, is the hurdles that are placed in front of the  
17 developer.

18          And in order to get to the point where you  
19 can actually build something it takes as long time.  
20 You might consider that. These people want to build  
21 affordable housing as part of their Project. So I'd  
22 be in favor of that. And it's hard to find affordable  
23 housing sites. So if they have one it's probably good  
24 that you let them build one. Thank you.

25          PRESIDING OFFICER CONTRADES: Thank you.

1 Any questions? Thank you. Anyone else wishing to  
2 testify? Okay. Thank you very much. We will now  
3 move on to presentations by the parties. But before  
4 we do, the parties have any exhibits that they want to  
5 introduce? Petitioner?

6 MR. OKAMOTO: Chair Contrades, we have  
7 previously submitted, I think it was Exhibit II which  
8 was the planning director's letter to the Office of  
9 Environmental Quality Control. This is the EIS for  
10 this Project.

11 We are submitting Exhibits JJ and KK which  
12 are the publication in OEQC Bulletin for the Final  
13 EIS. And I believe KK is the report on a moth survey  
14 that was done by Reggie David involving this Project.  
15 Those will be associated with the testimony we would  
16 offer of Mr. James Leonard, who is the person who  
17 prepared the EIS for this Project.

18 We'll also be introducing a Petition which I  
19 just saw this morning through Mr. Wessels, who will  
20 testify after Mr. Leonard. The remaining exhibits are  
21 for demonstrative purposes only. We will not  
22 introduce those. They are the photographic blowups  
23 that are on poster board in the back of this room  
24 right now. There are five of those photographs.  
25 Before Mr. Wessels testifies we ask those be marked.

1 But they are simply to have him use during his  
2 testimony.

3 PRESIDING OFFICER CONTRADES: County?

4 MR. BRILHANTE: No submittals.

5 MR. YEE: No submittals, no objection.

6 PRESIDING OFFICER CONTRADES: All right  
7 then. Before we proceed could we please take a 5  
8 minute break.

9 (Recess was held.)

10 PRESIDING OFFICER CONTRADES: (10:25) Back  
11 on the record. Mr. Okamoto, you're going first?

12 MR. OKAMOTO: Yes, sir. We would like to  
13 call Mr. James Leonard to testify please.

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 PRESIDING OFFICER CONTRADES: Please state  
19 your name and address for the record.

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

22 DIRECT EXAMINATION

23 BY MR. OKAMOTO:

24 Q James, did you prepare an EIS for the 'Aina  
25 Le'a Project?

1           A       Yes, I did.

2           Q       Okay. That includes that the Phase 1 area,  
3 the 61-acre area that the affordable housing is on?

4           A       That's correct.

5           Q       Okay. I've left with you copies of what's  
6 been marked Exhibit II, which is a letter from the  
7 planning director to OEQC.

8           A       Yes.

9           Q       I'm sorry. Before I do that, Mr. Leonard,  
10 can I ask you for a little background as to your  
11 professional experience in preparing EIS's.

12          A       Yes. I've been preparing EIS's for over 20  
13 years. I started out actually specializing in  
14 environmental impact reports and environmental  
15 statements, and have done EIS statements, have  
16 prepared them for large developments around the state  
17 and, in particular, Maui and on the Big Island done  
18 several of them.

19          Q       At the present time you are an independent  
20 consultant in this area.

21          A       Yes, I am.

22          Q       Previously were you associated with another  
23 company that did this type of work?

24          A       Yes. Previously I was with the planning and  
25 landscape architectural firm of PBR Hawai'i. I worked



1 at PBR for over 15 years. And was, when I left PBR,  
2 was a principal with that firm. And now I'm an  
3 independent planning consultant.

4 Q Okay. And the work that you've done, the  
5 projects that you've done, have those been on this  
6 island?

7 A By and large they've been on this island.

8 Q Are you familiar with the Waikoloa area and  
9 the South Kohala resort areas?

10 A Very familiar with it.

11 Q Now, going back to Exhibit II, can you tell  
12 us what that is?

13 A Exhibit II is a letter from the planning  
14 director to Katherine Kealoha, director of OEQC  
15 stating that "The Planning Department accepts the  
16 Final environmental impact statement for the subject  
17 project and requests publication in the next issue of  
18 the Environmental Notice." And they're transmitting  
19 with this letter the CD and the required copies of the  
20 Final EIS.

21 Q Under the EIS process what is the effect of  
22 that letter?

23 A That's the accepting agency's letter of  
24 acceptance of the Final EIS.

25 Q I also left you Exhibit JJ. Can you tell us

1     what that is? Exhibit?

2           A     Exhibit JJ is the Environmental Notice from,  
3     published November 8th, 2010 published by the Office  
4     of Environmental Quality Control.

5           Q     What's the significance of that publication?

6           A     In this publication the Environmental Notice  
7     includes the notification of the Final EIS, the  
8     availability of the Final EIS for the Villages of  
9     'Aina Le'a.

10          Q     Mr. Leonard, earlier this year, I think it  
11     was July, we had provided information to the  
12     Commission about what we expected in the way of  
13     completing the Final Environmental Impact Statement.  
14     And it would appear from Exhibit II, it did take a bit  
15     longer than we had expected.

16          A     That's correct.

17          Q     Okay. Can you explain to us what was  
18     involved in getting to the point at which you could  
19     get the October 20th letter issued by the director?

20          A     Yes. Well, it wasn't just responding to the  
21     comments that come in, which is sometimes the case  
22     where you receive the comments that come from agencies  
23     and from individuals. But there was issues that were  
24     raised that needed to be addressed.

25                     One of the issues had to do with some

1 technical aspects of the Traffic Impact Assessment  
2 Report that was prepared for the Project. And one of  
3 the comments was that it wasn't complete in that it  
4 didn't address the potential development of the  
5 surrounding area.

6 On the surface it appeared that it did. But  
7 when you looked very deep into the tables and how it  
8 was calculated, we realized that those figures for the  
9 surrounding development were not part of that  
10 calculation. And the Traffic Impact Assessment Report  
11 needed to be updated.

12 Q The area you're talking about, is that area  
13 that Bridge 'Aina Le'a still has title to, the 2,000  
14 areas around the thousand acres of urban?

15 A That's correct.

16 Q So what was done as far as updating that  
17 information?

18 A They took the potential development of the  
19 surrounding lands, the Bridge 'Aina Le'a lands that  
20 surround the Project, and factored that into their  
21 calculations for the traffic impacts.

22 Q Okay. And that would be the engineering  
23 firm SSFM?

24 A That's correct.

25 Q Okay. And did they generate a supplementary

1 study of some sort?

2 A They did. They updated the Traffic Impact  
3 Analysis Report with that analysis as part of it. The  
4 conclusions in terms of recommendations for  
5 improvements did not change as a result of that but it  
6 included that as part of the overall analysis.

7 Q Okay. So when you got the supplementary  
8 study what did you do with it?

9 A When I received it I went through it  
10 thoroughly to see what difference there was in the  
11 conclusions. There were no differences in the  
12 conclusions but it was included. And it replaced the  
13 previous traffic impact report with the updated  
14 report. And that's included as part of the Final EIS.

15 Q So the traffic study as supplemented is a  
16 part of the Final EIS.

17 A That's correct.

18 Q Okay. Now, was there anything else that had  
19 to be resolved in terms of coming to the point at  
20 which we could get a Final EIS accepted?

21 A Yes, there was. One of the requests that  
22 was made by the U.S. Department of Fish and Wildlife  
23 Service was to do a survey of the property to  
24 determine if there were any plants that might support  
25 the Blackburn's sphinx moth, which is an endangered

1 species in Hawai'i that's of concern to the U.S. Fish  
2 and Wildlife. And they asked that this survey be done  
3 as part of the Final EIS.

4 Q Was there a citing of the moth?

5 A No, there was no citing of the moth but  
6 there was suspicion that some plants -- it's a  
7 common -- there's a family of plants, the Solanaceae  
8 family of plants. It's a common plant. And you'll  
9 see -- tree tobacco, for instance, is a member of that  
10 family. And you'll see that along the roads in West  
11 Hawai'i and other disturbed areas.

12 So there was a chance that it might have  
13 become established on the property as well. And  
14 that's a secondary support plant to the Blackburn's  
15 sphinx moth.

16 Q Okay. So what was done to address those  
17 concerns of the Fish and Wildlife?

18 A They agreed to -- this is the developer DW  
19 'Aina Le'a development -- agreed to do a survey of the  
20 complete property to determine if any of those plants  
21 were present on the property. And if they were  
22 present, part of the reason that it took so much time  
23 to go ahead and do this survey is that we needed to  
24 work out with U.S. Fish and Wildlife Service the  
25 protocols that would be used to implement that survey.

1           So we hired or DW 'Aina Le'a hired Reggie  
2 David to conduct that survey.

3           Q     And what is Mr. David's background?

4           A     Mr. David is a biologist. He's well  
5 respected. He has a long history of doing biological  
6 surveys in West Hawai'i and throughout the islands.

7           Q     Okay. I understand there were some  
8 practical problems of getting hold of the Fish and  
9 Wildlife people that were involved.

10          A     That's true too. The key person at U.S.  
11 Fish and Wildlife Service who originated their letter  
12 was away at the time. He was put on temporary  
13 assignment to the Gulf and was actually offshore in  
14 the Gulf when we finally got ahold of him to discuss  
15 the nature of the protocols that would be used for the  
16 survey.

17          Q     Now, at some point in the very recent past I  
18 take it Mr. David was able to go out and do the  
19 survey?

20          A     Yes. He conducted the survey of the whole  
21 property. He actually did that yesterday.

22          Q     And that was arranged ahead of time?

23          A     Yes.

24          Q     But it was done yesterday.

25          A     Yes. That's true.

1           Q       Could you look at Exhibit KK and tell me  
2 what that is?

3           A       Exhibit KK is the report from Reggie David  
4 from RANA Biological Consulting, Incorporated giving a  
5 summary and the results of his survey of the property.

6           Q       And what were the results?

7           A       The results were that he found no members of  
8 that particular family and in particular any  
9 species -- any plants of the tree tobacco which was  
10 the one member of that family that was suspected to be  
11 found there.

12                   He found no evidence of that on the  
13 property. He said that it's not unlikely that he  
14 would -- it wasn't surprising that he didn't find it  
15 considering the rather dry and sparse vegetation  
16 that's found throughout that property.

17           Q       With respect to the concerns of Fish and  
18 Wildlife are those reflected in the Final EIS?

19           A       Yes, they are.

20           Q       So as far as we can determine at this point  
21 what further would DW have to be doing in terms of the  
22 moth and the tree tobacco?

23           A       Well, they've agreed to provide a copy of  
24 this survey report to U.S. Fish and Wildlife Service.  
25 And as part of that there's ongoing monitoring for

1    should this plant reappear or appear on the property,  
2    then a biologist would be called in and surveyed again  
3    to determine if there's any moths present on those  
4    plants.

5           Q       Just to be clear, Mr. Leonard, the tree  
6    tobacco plant, it sounds like it's a weed.

7           A       It is. It's a rather common weed and other  
8    members of that family, it's a very broad family of  
9    plants. And gypsum weed belongs to it, tomatoes,  
10   tobacco, cucumbers, very common garden varieties are  
11   all part of that same family of plants.

12               MR. OKAMOTO: At this point in time, Chair  
13   Contrades, I would offer Exhibits II, JJ and KK into  
14   evidence.

15               PRESIDING OFFICER CONTRADES: Any  
16   objections?

17               MR. BRILHANTE: No objection.

18               MR. YEE: No objection.

19               MR. OKAMOTO: I have no further questions of  
20   Mr. Leonard.

21               PRESIDING OFFICER CONTRADES: County?

22               MR. BRILHANTE: No questions.

23               PRESIDING OFFICER CONTRADES: Bridge?

24               MR. VOSS: No questions, Chairman.

25               PRESIDING OFFICER CONTRADES: OP?



1 MR. YEE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. YEE:

4 Q Regarding Exhibit KK, do you have a copy  
5 with you, which is the letter?

6 A Yes.

7 Q Can I ask you do you see on the fourth  
8 paragraph where it says, "On November 17th, 2010 I  
9 conducted an on-ground survey?" Do you see that?

10 A Yes.

11 Q And on the top of the letter the letter is  
12 dated November 16, 2010. Can you explain that  
13 discrepancy?

14 A I think that's a typo error on his part.

15 Q What's the correct?

16 A It should be November 17.

17 Q So he did the site visit and did the letter  
18 on the same day.

19 A Yes, he did.

20 Q And this was done subsequent to the  
21 acceptance of the -- subsequent to the submittal and  
22 acceptance of the EIS, is that correct?

23 A Yes. the agreement with the U.S. Fish and  
24 Wildlife -- and this is through a number of  
25 discussions with the Planning Department and U.S. Fish

1 and Wildlife -- was that the survey was to be done  
2 prior to any further land alteration on the site.

3 So there would be no further grading,  
4 grubbing or any land alteration on the site 'til this  
5 complete survey was done to determine if any of these  
6 plants were present.

7 Q Then with respect to the -- the Final EIS  
8 contains a number of responses, response letters dated  
9 September 30th, 2010 correct?

10 A That's correct.

11 Q And one of the requirements of an EIS is  
12 that you respond to people who submitted comments and  
13 that you include those responses to the EIS. That's  
14 one of the requirements, correct?

15 A That's correct.

16 Q How many of those responses were sent before  
17 the EIS was submitted to the county?

18 A Um, none of them were sent out before.

19 Q So each of the responses are dated  
20 September 30th, but were not sent until sometime in  
21 November, correct?

22 A October 30th I think.

23 Q So none of the people who had comments would  
24 have known what the responses were until after the  
25 Final EIS, until they were notified of either received

1 that letter or got a copy of the Final EIS.

2 A That's true.

3 Q Do you consider the fact that you didn't  
4 send a letter to be a response?

5 A I'm not sure I understand the question.

6 Q I will rephrase. Because you did not send a  
7 letter to the people who submitted comments, do you  
8 believe you've responded to them prior to the EIS?

9 A I believe that we responded to all the  
10 comments that were received commenting on the EIS.

11 Q But you responded after the submittal of the  
12 EIS to the county, correct?

13 A The county had a copy of all those response  
14 letters.

15 Q Which were never sent to the people who sent  
16 the comments, correct --

17 A They were sent.

18 Q -- until after the EIS was given to the  
19 county.

20 A That's correct.

21 Q So the people who gave you comments never  
22 had a response at the time the EIS was approved.

23 A It was submitted to the Planning Department  
24 and they accepted the EIS. And we then distributed  
25 the letters to those who had commented.

1           Q       One of the comments from the Office of  
2 Planning was with respect to the geographic area of  
3 environmental impact statement study. Do you remember  
4 that?

5           A       Yes.

6           Q       As I understand, and you can correct me if  
7 I'm wrong, the EIS covered essentially 1,000 acres of  
8 the Petition Area.

9           A       A little over 1,000 acres.

10          Q       Initially the Environmental Impact Statement  
11 Preparation Notice stated that it would cover the  
12 3,000 acres of the entire Villages of 'Aina Le'a,  
13 correct?

14          A       In the environmental impact --

15          Q       EISPN.

16          A       Yes, the preparation notice.

17          Q       So initially it was going to be 3,000 acres  
18 that covers the entire Villages of 'Aina Le'a.

19          A       That's correct.

20          Q       When you did the Draft EIS you only  
21 covered -- well, you covered 1,000 acres which  
22 constitute -- approximately 1,000 acres which  
23 constitute the Petition Area.

24          A       And the Petition Area was a part of that  
25 3,000, yeah.

1 Q Okay. And it's correct that the Office of  
2 Planning argued to you that the EIS should cover the  
3 entire 3,000 acres to avoid parceling the survey.

4 A That was one of their comments.

5 Q That was one of the comments. And the  
6 traffic impact statement supplement was, I assume,  
7 partly in response to that by including that analysis  
8 of the entire 3,000 acres for the traffic impact  
9 analysis?

10 A Yes. And with the traffic impact analysis  
11 it typically looks at the development that may occur  
12 in the area to make a projection on future traffic  
13 conditions.

14 Q Typical EIS's look at the impact on sewer,  
15 electrical and landfill, correct?

16 A That's correct.

17 Q Did this EIS cover the impact to sewer,  
18 electric and landfill for the entire 3,000 acres or  
19 just the 1,000 acres?

20 A In the Draft EIS it just looked at the  
21 Project itself, the Villages of 'Aina Le'a.

22 Q What about the Final EIS?

23 A And the same with the Final EIS.

24 Q Would the same be true with respect -- well,  
25 let me ask the question. The Archaeological Impact

1 Survey, was there a walk-through done of 3,000 acres  
2 or 1,000 acres?

3 A It was done initially of the full  
4 3,000 acres.

5 Q The flora and fauna study, was that done of  
6 the entire 3,000 acres?

7 A That's correct.

8 Q Was a cultural impact analysis done of the  
9 entire 3,000 acres?

10 A I believe so.

11 Q Did you look at drainage for the entire  
12 3,000 acres and what would be required for the entire  
13 3,000 acres for drainage?

14 A In terms of drainage improvements in the  
15 preliminary engineering report they looked at what  
16 improvements would be required for the development of  
17 the Project itself, for the Villages of Aina Le'a, not  
18 for the -- although the drainage report does consider  
19 offsite impacts to drainage conditions, what might be  
20 occurring in the current time in terms of the impact  
21 to the natural drainage-ways.

22 But it looked specifically at what drainage  
23 improvements would be feed within the Project itself.

24 Q In your answer you used the term both  
25 "Project" and "Villages of 'Aina Le'a". My

1 understanding is the Project covers a thousand acres  
2 and the Villages of 'Aina Le'a covers 3,000 acres.  
3 Would that be --

4 A That's not --

5 Q That's not how you understood --

6 A The Project is the Villages of 'Aina Le'a.

7 Q Okay. Do you have a term you're using for  
8 the 3,000 acres?

9 A Well, there's the Project, which is the  
10 Villages of 'Aina Lea and then there's the surrounding  
11 Bridge lands.

12 Q The Villages of 'Aina Le'a include lands  
13 owned by Bridge 'Aina Le'a, correct?

14 A Yes, that's my understanding that they're  
15 owners of that.

16 Q They own the majority of the Petition Area,  
17 currently, correct?

18 A Well, I understand that there's a purchase  
19 agreement for purchasing those lands.

20 Q But at the moment is it your understanding  
21 that Bridge 'Aina Le'a owns the majority of the  
22 Petition Area?

23 A Um, I'm not really, ah, that versed in terms  
24 of the ownership.

25 Q Okay. Did the societal impacts look at the

1 development of the entire 3,000 acres or just the  
2 1,000 acres?

3 A The social impact assessment really looked  
4 at the Villages of 'Aina Le'a, the Project impact.

5 MR. YEE: Okay. Thank you very much.

6 PRESIDING OFFICER CONTRADES: Any questions,  
7 Commissioners? Commissioner Lezy.

8 COMMISSIONER LEZY: Thank you, Chair. Just  
9 one question, Mr. Leonard. Why weren't the letters  
10 responding to the comments made on the EIS sent on the  
11 date that the letters were dated?

12 THE WITNESS: Um, because we needed to  
13 first -- and this is standard operating procedure --  
14 is first submitting the EIS and gaining acceptance of  
15 the EIS from the accepting agencies before those  
16 letters are sent out.

17 COMMISSIONER LEZY: Thank you.

18 PRESIDING OFFICER CONTRADES: Any other  
19 questions? Any redirect?

20 MR. OKAMOTO: No.

21 PRESIDING OFFICER CONTRADES: Thank you.

22 MR. OKAMOTO: Our second and last witness  
23 would be Mr. Robert Wessells.

24 PRESIDING OFFICER CONTRADES: Mr. Wessells,  
25 could I please swear you in?



1 THE WITNESS: Yes.

2 ROBERT WESSELS

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

5 THE WITNESS: Yes, I do.

6 PRESIDING OFFICER CONTRADES: Could you  
7 please state your name and address for the record.

8 THE WITNESS: Robert Wessels, 1802 North  
9 Keniku (sp) in Mauna Lani.

10 DIRECT EXAMINATION

11 BY MR. OKAMOTO:

12 Q Mr. Wessels, you've testified before this  
13 Commission before from last year.

14 A Yes, I have.

15 Q And today what I would like you to do is  
16 summarize for us where you are on this Project right  
17 now. For these purposes and for demonstrative  
18 purposes only we've brought in five photographs. One  
19 is, I believe, an aerial. The second one shows  
20 buildings and foundation slabs. And the other three  
21 are for showing the interior of a model unit.

22 Mr. Wessels, if you could, can you briefly  
23 describe for us what's been done to get to the stage  
24 at which there's buildings on the 61-acre parcel we  
25 refer to as DW-1B.

1           A       Yes. Within the last year, as the  
2 Commission knows, we entered into a purchase contract  
3 for the entire 1062 acres in February of 2009. When  
4 we got the right to go ahead as a Co-Petitioner and  
5 move forward on it, we subdivided out lot D1B, which  
6 is 61.37 acres on which we are moving forward to build  
7 the affordable units.

8                   We retained an architect to design a unit  
9 that we were very familiar with. And I believe we  
10 discussed with the Commission when we were discussing  
11 it, those plans were prepared. We had done the  
12 background to make sure there was a consumer  
13 acceptance for that type of family unit. We did a  
14 survey.

15                  We had SMS do a survey of the Big Island to  
16 determine the support for the Project of which we had  
17 a 74 percent support as long as we complied with the  
18 South Kohala Planning, which we have in terms of what  
19 we're doing.

20                  We also had a -- 9 percent of the island was  
21 looking for housing. And to a great extent part of  
22 that is family housing. So we went, moved forward on  
23 releasing and hired Goodfellows to coordinate the  
24 construction of the infrastructure and coordinate the  
25 engineering. We used Tom Nance on the water

1 engineering, SSFM on the civil engineering.  
2 Wastewater -- excuse me -- Waterworks initially on the  
3 sewer plant, and Phil Dahlberg on the actual  
4 installation of the first phase of the MBR plant.

5 We moved forward on the EIS and retained all  
6 the consultants. And James Leonard, as you just  
7 heard, did the correspondence. We made some  
8 adjustments to our plans based on the comments that  
9 came in to the initial EIS.

10 The Health Department had recommended the  
11 MBR system. It was in one of the -- in their letters  
12 on the EIS it was one of the systems that we were  
13 considering. We finalized the implementation of that.

14 We awarded a construction contract to True  
15 Style Pacific Builders. And they went out and  
16 constructed the first 16 units. Actually they  
17 constructed -- I guess they have pretty much 40 units  
18 at the roof top at this point. But they constructed  
19 the first 16 units that we felt were the requirements  
20 for meeting March 31. And they retained the  
21 subcontractors and that too to complete that.

22 Q So, Mr. Wessels, looking at the aerial do  
23 you know when that was taken?

24 A That aerial was taken by HELCO as part of  
25 its flyover and design. It was taken approximately, I

1 would say -- we just received it about a week  
2 and-a-half ago. But I believe it was taken about a  
3 month ago.

4 Q Okay. Does that show the buildings that are  
5 up right now?

6 A Yes, it does.

7 Q How much of the area that's going to be  
8 developed in Phase I was graded out?

9 A All of the Phase I, which is the 432  
10 townhouse units is graded. There's still a little bit  
11 of work that needs to be done on some of the lots and  
12 that. But primarily the infrastructure on that part  
13 of the work is done.

14 The installation of the in-road lines for  
15 the sewer and water still have to be -- some of the  
16 blasting and that on the trenching is completed but  
17 that still has to be completed.

18 Q Is that on a construction schedule at this  
19 point as far as getting it done?

20 A Yes.

21 Q Okay. And the minimum 385 affordable units  
22 is that within the 432 townhomes?

23 A Yes, it is.

24 Q And as far as the buildings that are now up  
25 -- in order to finish those buildings where are the

1 materials for those buildings?

2 A Well, the buildings that are up are either  
3 in the buildings. There are actually materials. As  
4 you'll see the lumber in that picture there are  
5 materials, wall sections that were built on site for  
6 an additional 24 townhouses. So those materials are  
7 primarily there.

8 There's some -- the cabinets are stored in  
9 one of the buildings that would complete the units  
10 that are there. So I would say on the 40 units all  
11 the material's on site are effectively on site.

12 For the next 24 units, um, most of the  
13 framing lumber is on site and much of the -- almost  
14 all the plumbing, the rough-in plumbing is on site. I  
15 don't believe there's electrical for those 24 on site  
16 yet.

17 Q Okay. And just looking at that and the next  
18 photo which shows the exterior of the buildings, how  
19 many of those foundation slabs are waiting framing?  
20 How many foundations do you have in that don't have  
21 buildings on 'em?

22 A We have three that don't have buildings on  
23 them. If you consider that a foundation because  
24 that's got the wire that just has to be unrolled and  
25 the concrete poured in the concrete forming. So

1     there's three like that in the basic condition.

2     That's 24 townhomes.

3           Q     What is the status as far as landscaping  
4     goes on these buildings?

5           A     The landscaping around -- the landscaping's  
6     designed. There's been quite a bit of input based on  
7     the comments that we received on the EIS. Basically a  
8     very extensive modification on the zero-landscaping  
9     for that, putting a lot more of the garden-type things  
10    in. It's designed -- some of the plants for the  
11    models are on order. The balance of 'em will be  
12    there. So we expect to landscape the models in the  
13    month of December.

14          Q     Where is the irrigation water coming from?

15          A     The irrigation water in the long run comes  
16    from our R1 water. As you will recall, and I'm sure  
17    the Commission will recall, part of what our  
18    agreements were or are with California Water is that  
19    we would take the 200,000 gallons a day from their  
20    Waikoloa plant and do the upgrade to R1 water and use  
21    that, combine it with our water.

22                   Initially we have, we'll use some of the  
23    brackish water from our well that we're also using on  
24    our road dust control, whatever.

25          Q     So as I recall you have a pond of some sort

1 that was used to store the water for the dust control.

2 A Yes. The initial, the initial -- initially  
3 we did what is about a 700 -- I believe it's a  
4 750,000 gallons pond. It's fairly deep and lined.  
5 And that's where they pull out the dust control water.

6 It's also where the first stage of our  
7 wastewater treatment plant will be pumped into to mix  
8 with the brackish water as part of the initial  
9 landscaping.

10 Q Now, if I could briefly go over with you the  
11 wastewater treatment plant. I think we had the  
12 engineer appear during the public testimony. And I  
13 thought you had mentioned something about that plant  
14 when you were referencing the EIS.

15 A Yes.

16 Q How was it that you selected that particular  
17 plant?

18 A Waterworks Engineering out of California  
19 submitted the initially draft for the entire  
20 wastewater treatment facility in the entire plan, and  
21 submitted it to the Department of Health. And they,  
22 the Department of Health, reviewed it.

23 And responding to the EIS they specifically  
24 said that they recommended and liked what we were  
25 using in terms of the MBR system both because of the

1 financial tightness of us and of the economy we are  
2 getting that plant in pieces.

3 When I say "getting it in pieces", each one  
4 is a modular component of the total. It allowed us to  
5 bring the first component in. We can do it as the  
6 equipment under a finance lease that basically we  
7 lease it for a period. And at the end of 5 years it  
8 becomes ours.

9 As we add units to it it will take care of  
10 and -- I think the engineer talked about -- the amount  
11 of water when you relate that back to the 4-bedroom  
12 and 3-bedroom homes it takes care about 110 townhomes  
13 to begin with. The next component will be added on,  
14 take care of approximately the same amount.

15 If this board, if this Commission authorizes  
16 us to use the agricultural property, where we  
17 eventually would like to use the wastewater treatment  
18 plant, then the second phase will be moved on. It  
19 will be phased into there. If it is denied we will  
20 continue to add to the plant in this location.

21 Q So just so we're clear. The plant that is  
22 going to go in first is that within the urban  
23 classified area of the property?

24 A Yes, it is, yeah. It's within the urban  
25 classified area. It's in kind of a hollowed out area



1 in the lava that provides for no visual sight. I'm  
2 told that because it's the state-of-the-art that there  
3 will be no odor. It's away from the townhome Project  
4 to a great extent. So we're hoping that it isn't but  
5 we've taken precautions to do it on the -- to build it  
6 on the urban land but to be certain that it complies.

7 Q But you are asking the Commission as one of  
8 the items in the conditions to be able to move it  
9 elsewhere.

10 A That's correct.

11 Q And why is that?

12 A There's always the appearance. No one wants  
13 to live next to a wastewater treatment plant no matter  
14 how good, how everybody, the manufacturer, say how  
15 wonderful it is, if nothing more than just the  
16 appearance of it. There's is also always -- there's  
17 always the possibility of a malfunction which could  
18 produce odor. It's just an abundance of caution.

19 Q Now, this MBR plant, is it a package type of  
20 plant?

21 A Yes, it is.

22 Q So in terms of when the materials get here  
23 what's going to get involved in getting this thing  
24 operational?

25 A We'll need to pull -- the engineer and our

1 construction people will pull the various permits that  
2 are necessary to put in the concrete pads. There will  
3 be some connections to the piping, blowers. There  
4 will be the solar panels and generator to run the  
5 electrical on the plant.

6 Those will all require permits, but they're  
7 pretty standard. And the engineering from the  
8 manufacturer is in great detail. It comes in books  
9 about this thick. It's a plant that's used routinely  
10 and approved here in Hawai'i regularly.

11 Q So to your knowledge this is a plant that  
12 the Department of Health is familiar with.

13 A Yes.

14 Q This type of plant.

15 A This is -- this particular type is  
16 specifically what they recommended.

17 Q And right now where is this plant  
18 physically?

19 A Um, as it was supposed to be shipped from  
20 Austin, Texas about three, four days ago, I believe  
21 it's en route to being loaded at the port, on the  
22 port. It's somewhere en route. The leasing company  
23 issued the standby letter of credit. And the plant  
24 was finished. And it's my understanding it's been  
25 shipped. But it was supposed to arrive here on the

1 20th of November. I don't expect it to be here by the  
2 20th but it will be within the next couple weeks  
3 following it.

4 Q So I take it your hope is also by the time  
5 it gets here you'll have the Department of Health's  
6 approval?

7 A Yes. Some of the inspections in the  
8 approval process will be the way that the R1 water is  
9 reused. So there's a number of things that will  
10 relate to approvals as it's being installed and before  
11 it's turned on for operations. So it's a -- it'll  
12 take a -- once it's finally approved it will be  
13 operational.

14 Q Have you got estimates on how long it will  
15 take once we have the Department of Health approvals  
16 to physically install this plant?

17 A According to the manufacturer the  
18 installation and the phasing in operations, other than  
19 the permitting, is 30 days or less because it pretty  
20 much comes on skids and they attach to each other.

21 And because it's a pre-approved engineering  
22 package that should be a fairly, a fairly consistent  
23 situation. But, um, there's -- we have, we have  
24 planned on, um, phasing it in so that we could  
25 actually turn it on in the first quarter of the year.

1           Q       Okay. And what is the status on connecting  
2 it up to get potable water to these units?

3           A       We have the -- from Blue Water Tanks we have  
4 the 250,000-gallon tank which is the long lead time  
5 item. Was shipped on the 7th of November from a port  
6 in Australia. It is due to arrive the first week of  
7 December.

8                   And the crew from the California office or  
9 whatever, is due to arrive here, scheduled at this  
10 point to arrive here on the 13th of December to do the  
11 installation so that the tank will be available by the  
12 end of December.

13                   Now, we still have and it's somewhat  
14 dependent upon the cash flow from Capital Asia  
15 alternate financing, we still have the trenching to do  
16 in that. The piping, the water piping has been  
17 located so that we have that. The sewer piping is on  
18 site and manholes are on site. Many of the long lead  
19 time items are en route or at the site at this time.

20           Q       Okay. And what is the status on the  
21 utilities that will service this Project?

22           A       HELCO was finishing -- I shouldn't say  
23 finish -- they're in the process of their design on  
24 the individual towers to bring their line into it.  
25 But we are starting. We have the solar panels and

1 battery pack are being shipped. They will be in our  
2 facility.

3 I'm told by the manufacture they will be in  
4 the facility, because of the tax credits that there  
5 are there, they will be in our facility by the end of  
6 December.

7 The installation for the first 16 units, the  
8 solar's being installed on the carports. The battery  
9 pack is related to those 16 units. And I think the  
10 Commission heard testimony from Brian -- or Byron, I'm  
11 sorry, Harris that they can install and they're moving  
12 forward to do the installation. They've done the  
13 engineering on it. There's still some permits that'll  
14 have to be pulled on that.

15 So we're hoping to have and anticipating  
16 that we'll have the power from the solar functioning  
17 in January or by the first week of February. That's  
18 on the first 16 units.

19 And it is our intent to be able to roll  
20 through all of the 432 units with solar carports,  
21 depending on the finance/leasing and the arrangements  
22 on the carports and the power purchase agreements with  
23 HELCO as to exactly how the whole Project runs out.  
24 We still don't have that finished but it's in the  
25 start.

1           The HELCO line is a -- they don't have to  
2 bring a substation in. They're bringing the power in  
3 directly. And so that will come in and tie in. And  
4 we will be able to both sell, feed it into the system  
5 through the battery packs and be able to draw down.

6           But we still have a number of negotiations  
7 and contracts to do with HELCO on that part of it.  
8 But in terms of the payment and the money to bring the  
9 line, the HELCO line in to connect and provide  
10 services, the payment's been made and the engineering  
11 is being completed.

12          Q       Okay. And when these, the solar system is  
13 set up, I mean how much power is it going to provide  
14 to the units themselves?

15          A       The solar system on the carports provides  
16 about 25 percent more power than it's estimated that  
17 the units will consume because of the size and the  
18 number of panels.

19               The batteries that we, that would go into  
20 the system, um, will provide 8 hours of storage at  
21 full usage of the homes. So then we have a 200-amp or  
22 200-kilowatt, I'm sorry, generator as a backup to that  
23 if it's necessary.

24               For instance, it's several cloudy days in a  
25 row or something like that so it's there. But we

1 don't anticipate that that'll be used very often.

2 Q What would the impact of putting in this  
3 solar generating facility be on the homeowners of the  
4 affordable units?

5 A We still have to work with the PUC to work  
6 out what we eventually want. We actually want to do  
7 it like a co-op where the homeowners will get a  
8 dividend of the power that's sold to HELCO. But it's  
9 a substantial reduction in the power costs.

10 Again, it's one of the many ways like the  
11 exterior metal roofs and the stucco, one of the many  
12 ways that we're trying to make sure that these units  
13 are affordable and they stay affordable for people.  
14 This has been a real challenge for us, one that we've  
15 really focused on.

16 I think we're well on our way to probably  
17 having our windows, our insulation and things like  
18 this put in the units, bring us to a LEED program.  
19 And I believe that we will have the quote "greenest"  
20 project in Hawai'i, and probably the least cost of  
21 operations, certainly in the resort area, but  
22 hopefully one of the least cost of homeownership in  
23 Hawai'i.

24 Q Okay. Have you looked at what the monthly  
25 costs would be for a unit owner in this Project?

1           A       We have had Armstrong work with Hawaiiana on  
2 the reserve study. And that our maintenance cost of  
3 the, of the units will run approximately -- it will  
4 run -- right now it runs at about \$143 a month. We're  
5 still working on trying to reduce that down. But  
6 that's what it basically works out at the moment.

7           Q       The next questions I have for you have to do  
8 with the Queen Ka'ahumanu intersection, which is  
9 right opposite Mauna Lani. We heard from Mr. Vitousek  
10 from the Association.

11                   What's the status on that intersection?

12           A       The intersection is designed by Wilson  
13 Okamoto, one of the engineers under Goodfellows'  
14 direction. And they have submitted to the Department  
15 of Transportation. It has not, as I understand it  
16 there haven't been any significant comments to it, but  
17 it has not been approved.

18           Q       And when it is approved what arrangements  
19 have been made to actually build the intersection?

20           A       It's part of the contract with Goodfellows.  
21 They will -- they will move on it and do the  
22 installation. We do not have -- and one of the  
23 reasons why the Mauna Lani Homeowners Association has  
24 got Mr. Vitousek pounding on the table saying, "Get it  
25 in," and I respect it, is that we're the only ones



1 putting it in. It's not being shared by the Mauna  
2 Lani Association. It's our cost.

3 Q And that intersection design, does that  
4 include a stop light?

5 A It includes, you know, the stop lights, the  
6 full signalization.

7 Q Then all the normal lanes for  
8 acceleration/deceleration?

9 A It's got -- yeah, the  
10 acceleration/deceleration lanes, I think they, yeah  
11 acceleration/deceleration and the turn lanes. Coming  
12 into the property there's a couple of extra lanes that  
13 we have away from the intersection on the property  
14 just to improve the appearance of the entrance and  
15 widen the appearance of the entrance.

16 Q Okay. I'd now like to ask you about what  
17 the status is on the construction financing for the  
18 first phase. We were here before. We told the  
19 Commission about the EXIM application. So I think we  
20 should start there.

21 A Okay. Well, we have continued to work with  
22 EXIM. We have provided a lot of information to them.  
23 They've had some additional questions on cash flows.  
24 We actually paid an additional extension fee on that.  
25 And they say they're going to make the loan.

1           We have advised them that to take -- if  
2 they're gonna do it, to go ahead, take \$20 million of  
3 the 98 million, put it into a CD because we've  
4 actually accomplished more than that in work that was  
5 originally going to be funded while they've been  
6 working on this.

7           It's out of the Service Corporation for the  
8 Export Import Bank. It's a syndication of, I guess, a  
9 Korean and Italian investment group. But they have  
10 not disbursed it. We haven't drawn a dime of that.

11           We've had some backup lenders that have  
12 worked -- that have looked at it. And we have  
13 basically said: If you guys are -- if you don't have  
14 to grow corn on this land then you're going to grow  
15 people, we will move forward on it. So I think we've  
16 got some alternatives.

17           But what we've done is we have managed and  
18 we will continue to manage, if given the time  
19 extension, the Capital Asia money is very consistent  
20 at about a million and a half dollars a month.

21           And so we have been able to use that to get  
22 caught up, not totally, but to get caught up to pay  
23 some of the subcontractors on site that have advanced  
24 their funds to carry us to that first phase. We'll  
25 continue to do that.

1           Then, of course, as soon as we can get the  
2 first units into sales contracts, since we haven't had  
3 any financing, all of that cash flow from closing can  
4 roll back into the property.

5           So we're still looking and we're still  
6 hoping for the construction financing. But we have  
7 now, through a lot of effort on a lot of people from  
8 the Big Island, have been able to bring this Project  
9 where with the continuation of the Capital Asia  
10 financing we can actually build the 432 units without  
11 any outside financing other than Capital Asia.

12           But it would be -- we would need a good part  
13 of the two years to be able to roll the cash flow to  
14 be able to do that.

15           Q     So, Mr. Wessels fair to say you still feel  
16 that you would need to have the construction  
17 financing?

18           A     We are still looking. We still requested  
19 it. We're in very serious negotiations for  
20 construction financing. And it will allow us to do  
21 some of the things that we want to do for the entire  
22 Project faster. And it will also allow us, hopefully  
23 will allow us the funds to be able to pay the balance  
24 off on our purchase contract.

25           Q     At this point, however, without that loan

1 financing are you able to proceed?

2 A Yes.

3 Q And I take it if this Commission were to  
4 give you an extension that will be a considerable help  
5 as far as loan financing is concerned.

6 A That will be a tremendous help. There is no  
7 question.

8 Q All right. Now, Mr. Wessels, in the process  
9 of getting this Project ready to move forward I  
10 understand you've done a fair amount as far as  
11 marketing, contacting of prospective buyers and  
12 realtors.

13 A That's correct. I mean there's several  
14 reasons for that. One is just to make sure that the  
15 product we were building that there was, in fact, a  
16 real market.

17 And that the people that we were aiming and  
18 that the county was requesting wanted these units and  
19 wanted the privacy of the gardens and things like this  
20 that were related and would pay for it. So there was  
21 that.

22 The other thing is almost every construction  
23 lender in today's economy one of the first questions  
24 is, "How many pre-sales do you have?" You know,  
25 that's kind of their first question out of the box.

1 So we -- what we've done is we prepared our brochures.  
2 We actually went out to the real estate community. We  
3 held seven seminars that we invited real estate agents  
4 to come to.

5 We've had conversations and discussions with  
6 over 300 realtors on the Big Island, both in Hilo and  
7 different areas on the west side and up in Kamuela.

8 We have -- we have, I think it's 128 that we  
9 have in hand and some additional signed reservations  
10 from people saying they want to buy. Not all of them  
11 will qualify as first-time home buyers. Some of them  
12 may not even qualify as the income qualified buyers  
13 under the county programs.

14 But we looked at it because we have some  
15 market rate units as well in here, to find out people  
16 that want this location that want the product. So  
17 we've had a -- we've had what we feel is a good, a  
18 good success.

19 We've run, I think it is nine ads in the  
20 newspaper and asking people to -- giving them some  
21 idea of what the financing costs are. They can  
22 actually own these units with the financing from  
23 Hawai'i Credit Union or by the Bank of America  
24 financing programs and whatever, they can own the  
25 units for a very low downpayment.

1           And their total cost including maintenance  
2           and everything is less than \$2,000. The current  
3           county housing for the 120 percent, their rental is  
4           just at 2300. So they actually can own the house for  
5           about \$300 a month less than what the county is  
6           authorizing for a rental at this level.

7           And I'm not saying that all of them are  
8           paying 2300, but in this particular case there's a  
9           very solid, very solid economic.

10          And what we've done is the ones that signed  
11          reservations by the 3rd of November, we agreed to --  
12          and we worked with Bank of America to protect the  
13          interest rates on that so that they could keep their  
14          payment the same, provided they were in a position to  
15          close, provided that we were ready to close the units,  
16          provided they were in a position to close by March 31.

17          A number of them have started working with  
18          the financial institutions to get themselves in  
19          position to do that.

20          Q       Do you recall what the interest was?

21          A       Four percent.

22          Q       So on the affordable scale I think we're up  
23          to 140 percent of median?

24          A       No. We're 120 percent of median.

25          Q       One hundred twenty. What would the monthly

1 look like for a 3-bedroom unit?

2 A The monthly is just under \$2,000 a month  
3 with everything. That's the taxes, that's the monthly  
4 maintenance fees and the mortgage principal and  
5 interest.

6 Q Now, the reference to reservations, before  
7 we both get into trouble, this is a non-binding  
8 reservation.

9 A This is a non-binding reservation. We have  
10 not -- we're very close to filing the condominium  
11 documents and then the public report. But we are  
12 not -- until that's done we are not allowed to take a  
13 hard purchase and sale contract.

14 Q All right. So we've heard from Bank of  
15 America. You've been working with them on certain  
16 loan programs. And you've also referenced Hawai'i  
17 First Credit Union?

18 A Yes.

19 Q Okay. Those are the folks that have  
20 offices, I think, in Waimea and Waikoloa?

21 A Yes, they do.

22 Q Have you been able to work out a program  
23 with them that you think would help the sales of these  
24 units?

25 A Yes. They have a Hawai'i homeownership

1 program where they train first-time homebuyers in all  
2 the costs related to the homes and whatever. They set  
3 up a savings program while they're going through that.

4 We have agreed and we're working with them  
5 on that program providing both the information and  
6 providing the funding. Once those people finish the  
7 program Hawai'i Federal Credit participates with them  
8 in the down payment, provides a conventional financing  
9 of 90 percent, and lends the balance to it if they --  
10 provided that they have done what's necessary for it.

11 I know there are five persons in that  
12 program right now. There may be more because there's  
13 been several that have asked to go up. But I'm only  
14 aware that five have actually signed and started the  
15 program.

16 Q My last series of questions, and there won't  
17 be too many, has to do with our Motion to Amend  
18 Conditions. I'm going to take the quickest ones, I  
19 think, which would be the condition having to do with  
20 wastewater. I think we've already addressed that to  
21 the Commission on why you want that.

22 A Yes.

23 Q And the other one is the condition for the  
24 Department of Education site?

25 MR. YEE: Mr. Chair, I believe the Motion to



1 Amend has been deferred for another day. So...

2 PRESIDING OFFICER CONTRADES: Yes.

3 MR. YEE: So unless it's relevant to the OSC  
4 I believe it's better taken up on a different day.

5 PRESIDING OFFICER CONTRADES: I agree.

6 MR. OKAMOTO: Okay. I will not get into  
7 that line. Well, Chair Contrades, what I intended to  
8 do was have Mr. Wessels present his thoughts on the  
9 extension period. Would that be out of order?

10 PRESIDING OFFICER CONTRADES: I think it  
11 would be, yes.

12 MR. OKAMOTO: It is. (Pause) In that event  
13 I'm going to have to stop. Oh, I'm sorry, there's one  
14 more. I'm sorry, Chair Contrades.

15 Q Mr. Wessels, did DW circulate a petition  
16 among various people asking to see if they were in  
17 support of your Project?

18 A We did. A number of people that -- business  
19 owners primarily initially and then we added  
20 individuals -- had said, "Look, we can't come and  
21 speak because we're working and whatever, but don't  
22 you have something that we can sign to represent that  
23 we want you to continue with this Project?"

24 So we did. We have about 1200 names in  
25 these petitions, these are double sided, that have

1 business owners and individuals both in Hilo and here  
2 on West Hawai'i that have signed a petition. I'll  
3 read the petition so that I don't make a mistake:

4 "The undersigned support DW 'Aina Le'a  
5 Development LLC and Luana Gardens at the Villages of  
6 'Aina Le'a. We ask the LUC to approve the extension  
7 request coming before them on November 18, 2010.  
8 Thank you."

9 And these are signed and some of them are,  
10 were done via the Internet. But many of them, the  
11 original ones were done specifically with the  
12 individual signing the form.

13 MR. OKAMOTO: Mr. Chairman, at this time we  
14 would ask, I believe we're going to mark it MM, the DW  
15 petition. I made a mistake, Mr. Chairman. I did not  
16 have them prepare enough copies. I have original and  
17 15 in the room right now.

18 So if the Commission would indulge me I  
19 would have to make additional copies today and submit  
20 to the parties.

21 MR. YEE: I don't believe I have an  
22 objection. But would I be able to see the document?

23 MR. OKAMOTO: Yes. And I apologize. The  
24 error was mine. It's not my client's.

25 MR. DAVIDSON: Give each to the parties and

1 give us an original and 12. You can supplement that.

2 MR. OKAMOTO: All right.

3 (Pause)

4 MR. YEE: OP has no objection.

5 MR. BRILHANTE: County has no objection.

6 PRESIDING OFFICER CONTRADES: Thank you.

7 MR. OKAMOTO: Thank you, sir.

8 PRESIDING OFFICER CONTRADES: We have JJ and  
9 KK. You're going to make this MM. What happened to  
10 LL? (Laughter)

11 MR. OKAMOTO: Chair Contrades, it's the next  
12 exhibit in order. I'm sorry. I'm pretty bad at this.  
13 I lose track of exhibit numbers. We're into the  
14 double alphabets now.

15 PRESIDING OFFICER CONTRADES: LL. We'll  
16 make it LL.

17 MR. OKAMOTO: Okay. Yeah. Thank you.

18 PRESIDING OFFICER CONTRADES: County, do you  
19 have any questions?

20 MR. BRILHANTE: Yes, sir, just a couple.

21 CROSS-EXAMINATION

22 BY MR. BRILHANTE:

23 Q Mr. Wessels, as it relates to your financing  
24 I notice or I read in the transcripts of previous  
25 hearings that you have submitted a request with the

1 county in order to determine availability of CFD  
2 funding for the Project.

3 Can you give us a brief update as to how  
4 that process is moving along?

5 A Yes. We submitted -- we have worked with a  
6 number of the consultants for the county. We did a  
7 tax apportionment review. I think they've hired a --  
8 well, I know they have hired an appraiser to look at  
9 the overall to make sure the evaluations.

10 In going through it because of the very high  
11 cost of the infrastructure on this first phase, we  
12 have rearranged the phases. And the first phase  
13 includes the commercial and a couple of the pads,  
14 although we won't be able to build on them initially,  
15 but some of the higher end pads. So the evaluation,  
16 the ability to do the first phasing of the CFD  
17 bonding.

18 We've also had conversations both with the  
19 Piper Japhray Meryl, the underwriters and also with  
20 the Wisconsin Teachers Pension Fund about taking down  
21 some of that.

22 We also have some interests both from Hong  
23 Kong and from Kuala Lumpur, and possibly taking down  
24 part of that depends to a great extent on the interest  
25 rates.

1           The interest rates that were being quoted to  
2 begin with in this were high. They were -- they were  
3 almost 7 percent or right at 7 percent. It looks like  
4 we will, in fact, be able to bring those down on a  
5 40-year bond and have buyers somewhere in the 5, 5 and  
6 a quarter percent. We don't have that locked in yet.  
7 We still have some work that we have to finish.

8           We are moving forward on it. There was a  
9 delay partially because of the concern of the  
10 underwriters and ours on the high interest rate. But  
11 we have to put the infrastructure in before we can  
12 draw the bonds anyway. So we were -- we were looking  
13 at the doing some analysis on it and going back and  
14 forth.

15           There also was some delay on the part of the  
16 county. There is a roughly, because of the connector  
17 road that's part of it, there's some county things.  
18 The issue was where and when and how, that we still  
19 need some final input on to complete.

20           But I believe that we will have that  
21 completed within the next 30 days. And this is --  
22 this is, as you're aware, this is a bond that attaches  
23 on our property.

24           It has no, takes no credit whatsoever from  
25 any governmental authority. So it just simply

1 facilitates it on a tax free nature.

2 Q Could you also -- as part of the conditions  
3 was the connector road or the Waikoloa Village access  
4 road. Do you have any updated information as it  
5 relates to the status of that component of the  
6 Project?

7 A Basically we were waiting for the final  
8 determination. It still looks like it will come out  
9 of Hula Street. We have actually had some  
10 conversations with the Waikoloa Village Action  
11 Committee that's part of the South Kohala Planning.  
12 There still -- there isn't a final determination. In  
13 some cases they want to connect it to our commercial  
14 center.

15 Some of the members up there would like it  
16 moved over to where the County's housing project is  
17 and quite away to the other side.

18 So there's still, there's still some  
19 decisions on that road that have to be made before it  
20 can be finalized. But I'm hoping to get those  
21 decisions made in the next 30 to 60 days.

22 Q To your knowledge has there been any  
23 on-the-ground actual work done, whether it be grading  
24 or the like, as it relates to the Waikoloa access road  
25 or is that still to be determined?

1           A       The county and the prior owners, and I'm not  
2       sure how they participated, but there was the blading  
3       of the fire access road from the Hula Street to the  
4       Queen K. That road, if they chose that road that road  
5       could be just expanded and prove to be able to create  
6       that.

7                       The residents on Hula Street are the ones  
8       that are objecting the most to that becoming a major  
9       thoroughfare road because it obviously goes right past  
10      the front of their homes. So there's still some  
11      evaluation and consideration being given as to whether  
12      it is purely an emergency or whether it becomes a  
13      permanent road.

14          Q       Okay. Just the final area's some questions  
15      regarding Queen K improvements. It's my understanding  
16      that the Queen K -- completion of the Queen K  
17      improvements is a condition of the county prior to the  
18      signing off of the Certificate of Occupancy. Is that  
19      your understanding as well?

20          A       Yes. We were hoping, 'cause the  
21      intersection will take a period of time, we were  
22      hoping, like a lot of things, we could do, if  
23      necessary, we could do a temporary road while it's  
24      being cut because of the -- but we don't have -- we  
25      know that we have to have that as a condition.

1           MR. BRILHANTE: Thank you very much. That's  
2 all I have, Vice Chair.

3           PRESIDING OFFICER CONTRADES: OP?

4                   CROSS-EXAMINATION

5 BY MR. YEE:

6           Q       During your testimony I heard you say that  
7 the onsite infrastructure was almost done. Is that a  
8 correct statement or...?

9           A       I don't know. If I said "almost done," I  
10 may have made -- the engineering is done. Some of the  
11 trenching, some of the blasting for the trenching and  
12 that is done.

13                   The sewer piping and manholes are on site.  
14 The easements and the surveying for the easements both  
15 offsite and onsite are there.

16                   The legal descriptions for the roadways to  
17 carve out for the condominium and things are done. So  
18 there's a lot of work that has been done, but I don't  
19 want to misrepresent that it's completed.

20           Q       I take it, then, are the lines for the sewer  
21 finished?

22           A       No.

23           Q       The same for water and electricity?

24           A       That's correct.

25           Q       So since those aren't done I assume the



1 roads can't be finished out either because you need to  
2 finish that.

3 A As long as those lines are put in the  
4 roadway that would be correct, yes. And that will be  
5 done -- just for your information, that will be done  
6 in phases.

7 One of the reasons why in the longer we have  
8 16 units per phase, is that we started at, well, as  
9 you can see we started at this end and we will work  
10 our way back so that the front end, the blasting and a  
11 lot of work is already done to tie into it.

12 And we will work our way back on the  
13 property. So it will be done in phases. We won't  
14 have all 432 connected at the same time until we're  
15 done.

16 Q Do you have an estimate of when that's going  
17 to be done for phase 1 or the affordable housing  
18 component?

19 A At this point we're hoping and under our  
20 current cash flows it will take us till probably March  
21 if we're able to --

22 Q March of which year?

23 A -- get some, you know, one of these  
24 construction loans it will speed that up a little.

25 Q March of 2011?

1 A Yes.

2 Q So that'd be the infrastructure, onsite  
3 infrastructure will be completed for all 385 units by  
4 March 2011.

5 A No. No, no. It will be completed in  
6 phases.

7 Q My question was related to the entire phase.  
8 When will the entire phase --

9 A Oh, okay. The entire phase will take us, I  
10 would say, at least through, if we have our  
11 construction financing it will take us through  
12 probably June. And...

13 Q June 2011?

14 A June 2011.

15 Q And if you don't have your construction  
16 financing?

17 A It could take us till September, October.

18 Q Of 2011?

19 A Of 2011.

20 Q With respect to the sewage treatment plant,  
21 as I understand the prior testimony it's being sized  
22 for the affordable housing component, not for the  
23 entire Project, not for the 1,000 acres; is that  
24 correct?

25 A Yes. The original design is for the whole

1 plant. Then we have the modules that go into that  
2 whole plant. This is the first module. Then as we  
3 add more of the affordable housing to it we'll add  
4 another module to it. The plant's designed in that  
5 manner.

6 Q I understood the testimony to be that it's  
7 expandable to 40,000 gallons but that that would not  
8 be enough for the entire 1,000 acres of the Project.

9 A That's the first module, that's correct. It  
10 actually will be, by adding the modules it will go to,  
11 I believe it's a million or a million quarter gallons  
12 but I would have to check the -- but it is in modules.

13 Q At one time in the documents you were  
14 anticipating building a new sewage treatment plant and  
15 then perhaps mothballing this current sewage treatment  
16 plant. Is that still your plan?

17 A I actually -- we, you know, as technology  
18 has improved we will be moving, if this Commission  
19 approves our locating in the agriculture, we will take  
20 the second module and start it in the agriculture.  
21 Then we will take this module and move it to that  
22 location so move 'em all to one location.

23 Q I did want to ask about that. Because at  
24 the last hearing you were proposing to build this  
25 first module in the agriculture district, correct?

1           A       We were hoping to, yes.

2           Q       You needed a special permit at the time.

3           A       It was pointed out we needed the  
4 Commission's approval and a special permit.

5           Q       So at this point are you saying you're  
6 proposing to build it within the Petition Area?

7           A       Yes, we are.

8           Q       Is that reflected in the EIS?

9           A       You know, I don't -- I can't -- I don't know  
10 the answer to that.

11          Q       You talked about your potable water, you're  
12 getting a 250,000-gallon tank. Is that sized for the  
13 entire Project or just this first affordable housing  
14 component?

15          A       Just the first phase.

16          Q       You talked about a connection to HELCO and  
17 where you're on that process. Do you have a date by  
18 which that connection would be completed?

19          A       I'm sorry? Pardon me?

20          Q       You talked about a connection to the HELCO  
21 grid. Remember that?

22          A       Yes.

23          Q       Did you have a date by which that connection  
24 would exist?

25          A       They haven't given us a date for certain

1 yet.

2 Q Is that sized for the entire Project or just  
3 the affordable housing component?

4 A That's sized just for the affordable  
5 housing.

6 Q Now, you talked about the need for  
7 construction financing. And I just wanted to be clear  
8 in my mind about what that meant. Is the EXIM  
9 Corporation considered to be construction financing?

10 A It's a combination. Their commitment is  
11 \$98 million of which roughly 15 million is used to pay  
12 off the balance of our purchase contract on the  
13 residential. About 3 million is engineering for the  
14 thousand acres to lay out and complete, rearrange the  
15 engineering and the sewer lines and on that. And the  
16 balance is construction financing.

17 Q Would you need additional monies for  
18 construction financing if you got the \$98 million from  
19 EXIM Corporation?

20 A I'm sorry. I didn't understand.

21 Q Will you need additional financing,  
22 additional construction financing if you get the  
23 \$98 million from EXIM Corporation?

24 A No. Well, on the first phase not at all. I  
25 mean in terms of the affordable and that. The reason

1     why it was set up that way is the entire construction  
2     financing, hard construction financing other than the  
3     land is \$73 million. So that was the -- so it's  
4     included in that. It's a roll. We'll never draw that  
5     much money on the first phase.

6           Q     So it will be enough for construction  
7     financing the first phase. And if you wanted to  
8     develop the remaining 1,000 acres you'll need  
9     additional construction financing.

10          A     That's correct.

11          Q     Okay. Now, have you signed the contract  
12     with EXIM Corporation?

13          A     Oh, yes. I think -- I think we provided a  
14     copy of the commitment in the past. Then we have done  
15     an extension and additional things. But we do have --  
16     we don't have loan documents in escrow yet.

17          Q     Then you said that EXIM Corporation was  
18     somehow connected to the Export Import Bank. Could  
19     you explain that?

20          A     As I understand it's one of the service arms  
21     or *the* service arm of the Export Import Bank, thereby  
22     they're "EXIM" shortened.

23          Q     Are there any preconditions or conditions to  
24     the loan for getting that construction financing from  
25     EXIM?

1           A       There was a very large one that we had. I  
2       don't know if you looked at the commitment or had a  
3       chance, but they required a standby letter of credit  
4       for \$25 million, or we had to agree to put out of the  
5       first draw a \$20 million, set aside a \$21 million out  
6       of the first draw as a CD.

7                   It took us a very long time to be able to  
8       get in position to put up the million dollars and the  
9       other things that were necessary to get the standby  
10      letter of credit. And the cost of that in today's  
11      banking world is rough.

12                  So we have now, because of the investments  
13      that we've made, we actually have enough that we have  
14      told them to go ahead and complete the documents  
15      setting aside \$20 million.

16           Q       So with respect to Phase I you then have  
17      construction financing without any type of  
18      pre-condition because you've met whatever  
19      pre-condition exists; is that right?

20           A       In today's lending world that's my  
21      understanding. They haven't given us any additional  
22      but they haven't put the money in the escrow account.  
23      So the only one that I absolutely can count is Capital  
24      Asia. And that's a million -- roughly a million and a  
25      half dollars a month.

1           Q     I understand that some of the investors in  
2 Capital Asia have been paid off. Is that your  
3 understanding?

4           A     No. (Laughing) No. That's -- there was a  
5 couple of people actually, and I don't mean to laugh,  
6 but there was a couple of people that saw kind of a  
7 promotion out of Kuala Lumpur office of Capital Asia  
8 or True North.

9                     The program is when they buy into it they  
10 turn and enter immediately into a joint venture  
11 document with True Style to be able to subordinate the  
12 land that provides the equity base for their, the  
13 construction financing for the townhouses.

14                    And so when they do that there is a lease  
15 payment. And that lease payment is very important for  
16 two reasons. One, it binds -- it's a lease payment  
17 that's \$5,000 a lot. It binds the -- it binds the  
18 owner of the land at that point to the joint venture  
19 agreement.

20                    It also gives them a U.S. income to be able  
21 to file under the U.S. taxes. So it does two things  
22 for them. They become a U.S. taxpayer as part of  
23 that. But it's a \$5,000.

24                    The picture of the gentleman holding the  
25 check, it's a lease check. And I don't even know what



1 the amount is but it wasn't a significant amount. But  
2 it was, it was used because he's one of the, one of  
3 the people on the financial advisors in Kuala Lumpur.  
4 So that was the -- that was the -- that was the basis  
5 of it. But I did have several phone calls from people  
6 saying, "What are they doing? Taking their money  
7 back?"

8 That's not it. It truly is the form of the  
9 commercial transaction that subordinates their  
10 ownership to the builder.

11 Q I guess my question, though, is -- I mean I  
12 assume there's no income coming in from this Project  
13 at this point. You're not generating a revenue  
14 because you need to sell a house first, don't you?

15 A No. We're actually selling lots first that  
16 generates the income. So there is income, paper  
17 income. But I mean -- well, it's cash income but it  
18 goes right back into the Project. So it's not -- it's  
19 not coming out of the Project but that's what's  
20 funding the Project.

21 Q I see. So you're selling lots. And then  
22 they're leasing it back to you.

23 A That's correct.

24 Q Or just someone?

25 A Yeah.

1 Q And they're getting lease payments on that  
2 lot, that undivided interest?

3 A They're getting one lease payment for 30  
4 months. That lease payment is \$5,000 a lot which they  
5 have bought for 96,000.

6 Q They get one lease payment. So they don't  
7 get it every so often. They just get once.

8 A They get one for the 30-month period.

9 Q So was there a real estate agent involved in  
10 the transaction?

11 A Ah, it depends. In Singapore there are some  
12 real estate but most of the investing are financial  
13 advisors.

14 In Hong Kong they all come through Century  
15 21, ERA, they're real estate agents.

16 I don't know in Kuala Lumpur whether it is,  
17 whether True North is just a financial advisor or a  
18 real estate agent. I'm not aware of that. They all  
19 have their licenses and are in compliance with the  
20 local, the local codes for whatever license they need.

21 Q No local real estate agents, though?

22 A Pardon me?

23 Q No local real estate agents are involved.

24 A The only one that we have is our, um, the  
25 John Bansemer, our local license holder for 'Aina

1 Le'a. He really isn't -- they give him power of  
2 attorney to execute any minimal documents that may  
3 need to be completed if there's anything. But, no,  
4 there's not a local real estate agent involved in it.

5 Q I take it there are no local investors under  
6 this process.

7 A Pardon me?

8 Q There are no local investors --

9 A No.

10 Q -- in this process.

11 A We're actually prohibited from local  
12 investors because of the exemption that we have under  
13 the public offering statement.

14 Q Is that public offering statement that was  
15 submitted to DCCA that you referenced in July of 2010?  
16 Or is that something different?

17 A Yes. It was the -- it's a public offering  
18 statement I think was approved in October I believe.  
19 I'd have to look, I think it was October 16, 2009.

20 Q And at the time in July of 2010 you talked  
21 about filing a condo property regime. And today I  
22 think you said you were going to be close to filing  
23 it, is that right?

24 A We were. We thought we were. Couple of  
25 things that came up. But the biggest single problem

1 that we had was our attorney was working on it had a  
2 heart attack, a triple bypass. So there was a period  
3 that it was delayed. So we, we didn't move. Even  
4 though he's with a firm, he's one of the few that  
5 actually does it. So we didn't move. He's back very  
6 close.

7 One of reasons we were hoping that the, that  
8 Commission could find their way to lift the Order to  
9 Show Cause is so we don't have to have that as an  
10 additional public disclosure on our own condominium  
11 filing. But we're very close on the condominium and  
12 public offering filings.

13 Q You talked about presale meetings, and their  
14 nonbinding discussion, I suppose. Were their  
15 nonbinding documents signed? I'm just trying to get a  
16 sense of the presale meeting, whether it was just an  
17 informative meeting. Did money change hands? What  
18 happened in the presale meeting?

19 A No money changed hands. We actually  
20 conducted the seminars. We invited the real estate  
21 agents in. A couple of them were on our, directly  
22 just for our property. A couple of 'em we shared with  
23 Bank of America.

24 We went through what we have. We gave them,  
25 of course, the brochures; gave them the type of

1 financing and people that would work with their  
2 clients and the pricing structure.

3 So it was -- it was more to educate the  
4 realtor to be able to communicate with their clients.  
5 We didn't have direct clients in at all. The realtors  
6 went out and collected the nonbinding reservations  
7 from their clients. It's part of the, part of the way  
8 to get started on the, um, on the financing process in  
9 today's difficult world.

10 PRESIDING OFFICER CONTRADES: Excuse me,  
11 Bryan, how much more do you have?

12 MR. YEE: Five minutes?

13 PRESIDING OFFICER CONTRADES: Holly, you  
14 okay with that? Okay. Go ahead.

15 Q (By Mr. Yee): You mentioned CFD financing.  
16 What's the amount?

17 A It's allocated for \$125 million is what  
18 we're working at. Of that we will net, after we set  
19 aside the money for the road and things like this, we  
20 will net just under \$90 million towards the  
21 infrastructure on the property.

22 Q Is that for the Phase I projects? Or is  
23 that --

24 A No.

25 Q -- for the rest of the Project?

1           A       That amount is for the entire Project.

2           Q       And you mentioned a 30-day period. Is that  
3 the 30 days by which you're going to get approval or  
4 30 days by which you're going to submit something? Do  
5 you remember?

6           A       The 30 days is primarily -- no, we have to  
7 go to the county council with the ordinance. I think  
8 we've got -- we have one of them authorized, the  
9 resolution. But we have to then go through the  
10 ordinance of formation. Then we have to go through  
11 underwriting.

12                   The 320 days is basically what we expect  
13 that we will have as a commitment back from the county  
14 on the decisions of what additional cash public  
15 benefits that we have included in the CFD.

16           Q       I forgot to ask one question regarding the  
17 Singapore investors, the investors from Capital Asia.  
18 When they give you the money and they get a lease  
19 interest or undivided interest in the portion, I take  
20 it then they get an ownership interest in the property  
21 but control remains in someone else. Is that my  
22 understanding?

23           A       That's correct.

24           Q       But they do have an ownership interest in  
25 the actual land.

1           A       They actually have -- they're a multi- a  
2       tenant in common but there's a lot of 'em.

3           MR. YEE:   Okay.   Thank you.   That's all the  
4       questions of.

5           PRESIDING OFFICER CONTRADES:   Thank you.  
6       Let's take a 5 minute break, please.

7                       (Recess was held. 12:00)

8           PRESIDING OFFICER CONTRADES:   (12:15) Okay.  
9       Let's get back to work.   Co-Petitioner, I understand  
10      you have some questions.

11          MR. VOSS:   Yes, I appreciate the indulgence,  
12      Vice-Chair.   Two or three quick questions.

13                       CROSS-EXAMINATION

14      BY MR. VOSS:

15          Q       Mr. Wessels, following up on some of the  
16      questions regarding financing.   If the Commission were  
17      to lift the existing Order to Show Cause, from your  
18      experience with this Project would that assist DW in  
19      obtaining long-term construction and/or take out  
20      financing?

21          A       Yes, I believe it would.

22          Q       And how would it assist DW?

23          A       Well, we've had both in terms of our first  
24      finance lease for the wastewater treatment plant, when  
25      they realized we had an Order to Show Cause possible

1 reversion overhanging, they declined. We have also  
2 had other lenders that weren't interested in finishing  
3 the processing until this was, the entitlements were  
4 firm and solid.

5 Q And in your testimony previously you  
6 reported or talked about some lenders being concerned  
7 that you would be growing corn on this property rather  
8 than people. So I take it from that that the existing  
9 Order to Show Cause has, in fact, been a deterrent to  
10 lenders being willing to provide long-term  
11 construction or take-out financing?

12 A Yes, yes. As you can imagine in this type  
13 of economy the value of the asset that's used to  
14 secure a loan is very important. And with the  
15 entitlements that are there the value of the asset is  
16 one number. It's significantly lower if it was  
17 unentitled.

18 Q The spectre, if you will, of the Order to  
19 Show Cause and the impacts it's had on financing, was  
20 that one of the factors that made it a challenge to  
21 complete 385 units by November 17, 2010?

22 A It certainly was a factor. The economy, the  
23 fact that most of the banks were bankrupt was a big  
24 issue. And then the ones that did have money weren't  
25 interested in getting into anything that in any way



1 had any controversy. So, yes, it had a factor.

2 MR. VOSS: Thank you. That's all the  
3 questions I have, Chair.

4 PRESIDING OFFICER CONTRADES: Thank you.  
5 Commissioners, questions? Commissioner Lezy.

6 COMMISSIONER LEZY: Thank you, Chair. Good  
7 afternoon, Mr. Wessels. Thank you for your testimony.  
8 Just a few clarifying questions for you. The 16 units  
9 that have been built out in the first phase, when do  
10 you expect the certificates of occupancy to be issued  
11 for those?

12 THE WITNESS: I would hope that they would  
13 be issued in the -- during the first quarter of next  
14 year. And the condition, of course, is if we can't  
15 find a way around to do a temporary access through the  
16 intersection, it could be delayed. But it's our  
17 intent and our belief that we, that one way or the  
18 other we can -- and we hope that DOT will give the  
19 approval of the plans to move forward quickly so that  
20 we don't have an issue on that. But that's a  
21 controlling factor on it.

22 COMMISSIONER LEZY: So by March 31, that  
23 area?

24 THE WITNESS: That's really what we're  
25 talking to the realtors about. That we are looking

1 for the first unit sales to be in position to close by  
2 March 31st.

3 COMMISSIONER LEZY: You had testified  
4 earlier about non-binding reservations in connection  
5 with the first increment of the development. How many  
6 of those non-binding reservations did you folks  
7 actually take?

8 THE WITNESS: We have 128 as of -- and the  
9 realtors have said they have a few more. We have 128  
10 that qualify for the interest, interest lot that we  
11 offered if they were in by a certain date, the  
12 November 5th date.

13 How many of those will actually qualify into  
14 converting into a purchase and sale agreement that  
15 qualifies under the county housing program in terms of  
16 first-time home buyers or qualified home buyers, we  
17 haven't -- we haven't sorted that all out. That's  
18 part of what we've got our lender team working on at  
19 the moment.

20 COMMISSIONER LEZY: When do you expect that  
21 this process will matriculate to the presale process?

22 THE WITNESS: I'm hoping that we have the  
23 condominium documents and the public report filed. As  
24 I understand from our attorney on that, once we have  
25 it filed we can actually go forward and take the

1 purchase and sale agreement. And I'm expecting that  
2 to be filed very shortly.

3 I mean the attorney that had the medical  
4 problem is still working on it. There's certain -- he  
5 only works a certain number of hours each week. But  
6 he's pretty well done.

7 And there was a couple of final things that  
8 he wanted to have us do which have been done now. So  
9 I believe it will be very shortly that that will be  
10 filed.

11 COMMISSIONER LEZY: You believe you'll move  
12 into the presale process before the end of the year?

13 THE WITNESS: I do, yes.

14 COMMISSIONER LEZY: The improvements to the  
15 intersection with Queen Ka'ahumanu Highway, what is  
16 the estimated costs to make those improvements?

17 THE WITNESS: It's right at about 2 million.  
18 We originally estimated or Goodfellows originally  
19 estimated it at 2.9 million. There's been some  
20 modifications on it. The last estimate I saw was  
21 about \$2 million.

22 COMMISSIONER LEZY: And speaking of  
23 Goodfellows, as things stand right now what is  
24 Goodfellows currently owed?

25 THE WITNESS: Ed said when he testified it

1 was 4.3 million. I think he's looking at not having  
2 credited the last \$400,000 increment. But it's  
3 roughly between 4 and 4.3 million.

4 COMMISSIONER LEZY: Is Goodfellows currently  
5 providing services on the Project? Or are they  
6 holding back until they've received full payment on  
7 the amount owed?

8 THE WITNESS: They are providing some  
9 services obviously for your permits and your  
10 communication, stuff like this. But there's not heavy  
11 equipment out there pushing, pushing lava around. And  
12 realistically, there was some engineering and things  
13 that had to be finished.

14 They still are -- they're still active with  
15 us in the thing. They haven't -- they haven't  
16 abandoned. But they're not spending a lot of money  
17 right now, waiting 'til we get them caught up.

18 COMMISSIONER LEZY: Based on the Goodfellows  
19 representative's testimony it sounds like about half  
20 of what you're taking in monthly from Capital Asia is  
21 going to Goodfellows, is that correct?

22 THE WITNESS: Actually it's higher than  
23 that. I think he's averaged what it was over a couple  
24 months. It's actually increased a little bit. So I  
25 think it's closer to about a million dollars a month.

1           As I say there's a \$400,000 payment that  
2 they either have just received from Title or will  
3 receive this week from Title. So it's averaging up  
4 and down, but it's averaging about between 2- and  
5 \$300,000 a week now.

6           COMMISSIONER LEZY: With regard to this --  
7 and I'm not exactly sure how to characterize it -- but  
8 this scheme with Capital Asia, how many current  
9 investors are there in that scheme?

10          THE WITNESS: We have -- and because this is  
11 a weekly process -- of there are about, the last count  
12 was about 619 current investors from Hong Kong and  
13 Singapore and Kuala Lumpur.

14          COMMISSIONER LEZY: I assume because you're  
15 continuing to receive money from Capital Asia that  
16 that requires new investors periodically, correct?

17          THE WITNESS: Every week.

18          COMMISSIONER LEZY: And at what point will  
19 the scheme close to new investors?

20          THE WITNESS: Either when we have built all  
21 the lots and we're going into the sales thing, or  
22 until the lots are all sold.

23          COMMISSIONER LEZY: So there is no set  
24 number of investors who may take this undivided  
25 interest in the Petition Area, correct?

1           THE WITNESS: There's not -- there's been a  
2 couple of large investors that have been negotiating.  
3 But this is an all-cash transaction because we need  
4 the money for the infrastructure. So no, it will  
5 continue, I think it will continue primarily with the  
6 smaller investors because they look at it as an  
7 investment for them.

8           COMMISSIONER LEZY: How does the investor in  
9 the end analysis, how are they paid for their  
10 investment? How will they realize some sort of return  
11 on their investment?

12          THE WITNESS: When the townhome is sold to a  
13 third-party buyer there's \$125,000, less the \$5,000  
14 for the -- that's already been paid in the lease  
15 payment. So there's 120,000 out of the purchase  
16 price, out of the closing from escrow is paid. And if  
17 there's more than one owner in that portion of the  
18 condominium lot, then it will be divided amongst them.

19          Basically if you look at it per townhouse  
20 \$120,000 out of each townhouse is repurchasing the  
21 land to sell to the buyer of the townhome.

22          COMMISSIONER LEZY: So do I understand  
23 correctly, then, that the investment that's made is  
24 actually tied to the individual townhomes? Is  
25 that...?

1 THE WITNESS: When they make it they know  
2 where their investment is. It's a tenant in common.  
3 And as we get to a certain number -- and right now.

4 We've got approximately a third of all the  
5 lots are being transferred into a trust that's managed  
6 by a subsidiary of Hill International -- and they will  
7 then receive from that trust when they sell the  
8 townhouse in batches of 16 townhomes. When those 16  
9 townhomes are sold, then those funds are disbursed to  
10 those investors that are in that, in those lots.

11 COMMISSIONER LEZY: And I presume that the  
12 16 townhome lots doesn't necessarily transfer to 16  
13 investors. You must have multiple numbers of  
14 investors.

15 THE WITNESS: We do. We have multiple  
16 numbers.

17 COMMISSIONER LEZY: Is there a minimum  
18 investment amount to participate in this?

19 THE WITNESS: Yes.

20 COMMISSIONER LEZY: What is that?

21 THE WITNESS: The minimum is \$9600 or one  
22 tenth of one lot.

23 COMMISSIONER LEZY: And you testified  
24 earlier, Mr. Wessels, if I understood you correctly,  
25 that this Capitol Asia scheme now is the principal

1 mode of financing for the Project, is that correct?

2 THE WITNESS: That's correct.

3 COMMISSIONER LEZY: And that you are relying  
4 on the continuation of the receipts from the Capitol  
5 Asia scheme in order to continue the development, is  
6 that correct?

7 THE WITNESS: That's correct.

8 COMMISSIONER LEZY: So fair to say if for  
9 some reason investor confidence dropped or disappeared  
10 that would leave you at this juncture no form of  
11 financing for the Project.

12 THE WITNESS: I'm not saying that would be  
13 the only form, but it's only way I'm totally sure of  
14 right now. In terms of we're committed, we're working  
15 with lenders. But I looked at it as a fallback  
16 situation.

17 Capital Asia we can count on because we've  
18 got a year of consistent progress. And there's been  
19 some pretty bad newspaper articles on this Project.  
20 And it affects them to some degree, but they all  
21 understand that they're getting an interest in a piece  
22 of land, which is very important to them.

23 And they understand the overall. And to be  
24 honest with you most of investors, especially out of  
25 Singapore, investing because it is a community thing.



1 It is something that they are, they look at as doing  
2 for us to be able to meet our commitments to the  
3 community. And so it's not as hard nosed as I guess  
4 most U.S. investors would be.

5 But, yeah, if something was done -- if it  
6 was converted to agriculture it would have a major  
7 impact on us. There's no questions.

8 COMMISSIONER LEZY: And this investment is  
9 not open to U.S. citizens, is that correct?

10 THE WITNESS: That's correct.

11 COMMISSIONER LEZY: And that's because it's  
12 not a legal -- it's not a legal securitization of the  
13 interest in this property under U.S. law. Is that  
14 accurate?

15 THE WITNESS: No, that's not accurate. It  
16 is because of the number of investors and the fact  
17 that there's a fixed return it would fall under, and  
18 we would have to register it, under the Securities and  
19 Exchange Commission.

20 But there's a specific regulation, and the  
21 lawyers have documented it, and that for the title  
22 company and whatever the specific regulation called  
23 Regulation S that is a foreign investment -- or that  
24 the investment is made and done, the sale is done of  
25 the, as a foreign, out of the United States basically,

1 out of the jurisdiction of the SEC.

2 So it's not an illegal transaction at all.  
3 There is a specific SEC regulation in it. If we were  
4 to move it to the United States we would then have to  
5 register it because there is a fixed return. And we'd  
6 have to register with the SEC or the Interstate Land  
7 Sales or both.

8 COMMISSIONER LEZY: Was there consideration  
9 given to making this investment available to U.S.  
10 investors?

11 THE WITNESS: We didn't on this basis for a  
12 number of reasons, not the least of which is with all  
13 the turmoil we didn't -- there wasn't a marketing arm  
14 to be able to approach it.

15 Now that we've got buildings and things like  
16 this we're starting to get real estate firms that are  
17 saying: "Gee, we'd like to do this." Getting a lot  
18 more investment banking firms that want to tag on and  
19 participate because of the fact that there's a large  
20 number of Asian investors that have made an investment  
21 here.

22 Because obviously -- well, not obviously,  
23 but we believe and it appears that from this we are  
24 really creating. And we're getting some very strong  
25 investments, evaluations being done on the hospital

1 and on some of the other things we are considering for  
2 this. And it's coming out of Asia where they have.

3 So it's a combination for us. It's a  
4 marketing for the whole Project. And most importantly  
5 it's a funding vehicle so that we can meet our  
6 commitments.

7 COMMISSIONER LEZY: Thank you.

8 PRESIDING OFFICER CONTRADES: Commissioner  
9 Heller.

10 COMMISSIONER HELLER: In follow up for a  
11 minute on the financing questions. You said that the  
12 condominium documents are close to being completed and  
13 filed, right?

14 THE WITNESS: That's correct.

15 COMMISSIONER HELLER: So as of today there  
16 is no condominium property regime in effect obviously.

17 THE WITNESS: That's correct.

18 COMMISSIONER HELLER: Now, when an investor  
19 gets this undivided interest in the land, what exactly  
20 is he getting an undivided interest in? Is it the  
21 1142 acres?

22 THE WITNESS: No. He gets on undivided  
23 interest in the 61.37 acres.

24 COMMISSIONER HELLER: Okay.

25 THE WITNESS: And I'm sure you haven't had a

1 chance 'cause it's kind of boring to read the public  
2 document. Once we have a section of that, that also  
3 gets carved out. So basically he will -- eventually  
4 he will own a piece of roughly 41 acres.

5 COMMISSIONER HELLER: Okay. And you said  
6 that he is somehow assigned to a specific condominium  
7 unit or specific townhouse unit.

8 THE WITNESS: Yes. And what we did was --  
9 and it's part of our marketing or their marketing --  
10 is that the entire property -- well, we don't have  
11 the -- but basically the civil engineering broken up  
12 so the property and what the addresses are gonna be  
13 and that is submitted.

14 So there's a number that relates to the  
15 address of the, of where the condominium is going to  
16 be built.

17 So as soon as the condominium is filed they  
18 will then be transferred into the trust in assignment  
19 to that. Right now they're part of the whole.

20 COMMISSIONER HELLER: So what they get as of  
21 today is an undivided interest in 61 acres?

22 THE WITNESS: That's correct.

23 COMMISSIONER HELLER: And once there's a  
24 condominium regime in effect they will have an  
25 interest in a particular condominium unit.

1 THE WITNESS: That's correct.

2 COMMISSIONER HELLER: And how many investors  
3 can have an interest in a particular condominium unit?

4 THE WITNESS: A maximum of 10. In most  
5 cases it's averaging that there's just a couple of,  
6 couple of investors per condominium lot. But it can  
7 be -- in answer to your question, can be a maximum of  
8 10.

9 COMMISSIONER HELLER: Okay. And so maybe I  
10 misunderstood your answer to Commissioner Lezy's  
11 question. But wouldn't there then be a fixed number  
12 of total undivided interests you can sell? Because if  
13 each one is going to be assigned to a condominium unit  
14 and you've got a finite number of condominium units,  
15 then you --

16 THE WITNESS: Yes, there is. I guess I  
17 misspoke when I answered. Because I said when we sell  
18 out all the townhouse lots. But if you look at that  
19 that's 432. If you take 10 it's 4,320 potential  
20 investors. It's nowhere near that the way it's coming  
21 in. But in hypothetical you could have 4,320  
22 investors in those 432 townhome lots.

23 COMMISSIONER HELLER: 4,320 based on the  
24 1/10 tenth unit for each one.

25 THE WITNESS: That's correct.

1           COMMISSIONER HELLER: Based on a full unit  
2 for each one you could have 432 investors.

3           THE WITNESS: 432.

4           COMMISSIONER HELLER: I think you said  
5 earlier that you actually had approximately 619  
6 investors as of today.

7           THE WITNESS: That's correct.

8           COMMISSIONER HELLER: So they must be  
9 averaging less than a full unit a piece.

10          THE WITNESS: They are averaging less than a  
11 full unit. We have some -- we have a couple of  
12 doctors from Raffles Hospital, one of which has, I  
13 think, bought six lots at different times, full lots.  
14 But we also have, you know, some people that work for  
15 the Singapore Airlines, and stuff like this that put  
16 in \$9,600, and sometimes have come back and put in  
17 another \$9,600 in. So it varies. On that we have  
18 roughly 200 lots sold in those 619 buyers.

19          COMMISSIONER HELLER: That would be 200 out  
20 of the 432 that you can ultimately sell.

21          THE WITNESS: That's correct.

22          COMMISSIONER HELLER: So you're a little bit  
23 less than half way to the maximum that you could sell.

24          THE WITNESS: That's correct.

25          COMMISSIONER HELLER: In terms of expenses

1 that have been incurred to date, are you at a similar  
2 percentage? In other words, are you a little bit more  
3 than half way to having everything paid for?

4 THE WITNESS: Part of the reason for doing  
5 the finance lease on the wastewater treatment plant  
6 and on the tank is to bring that in balance. If we  
7 sell out all the lots under the townhomes, and with  
8 the wastewater treatment plant being under the finance  
9 lease and the water tank, we're in balance. Actually  
10 we have a little bit extra.

11 But if we were to build the whole wastewater  
12 treatment plant we would have to -- we would have to  
13 find additional financing to do that, which is why I  
14 went to the finance lease.

15 COMMISSIONER HELLER: So, in other words, if  
16 you sell all of the 432 chunks that you can  
17 potentially sell, you're still going to have to borrow  
18 money to finish the Project.

19 THE WITNESS: Well, we have the finance  
20 lease to do it now.

21 COMMISSIONER HELLER: Okay. Let me shift  
22 gears a little bit and ask about the 16 units that are  
23 quote, unquote "completed". I think we've talked  
24 about a number of things that have to be done before  
25 people can actually move in and live in those units.

1           And I was trying to make sure I understand  
2 the timeframes for all of those things to happen. One  
3 of the things you mentioned, and I don't think I heard  
4 you say the timeframe, was for HELCO to bring in  
5 transmission lines and actually hook up to their grid.

6           THE WITNESS: We don't -- we didn't have a  
7 date that they're going to do that. Part of the  
8 reason why we've accelerated the solar program on the  
9 carports and the battery backup so that we actually  
10 can sustain the units electrically off of the grid  
11 until they catch up.

12           Now, the engineering is done. It depends on  
13 the delivery of the -- I was unaware until we worked  
14 with them that every pole that they bring in is  
15 specially engineered. So there's a delivery time on  
16 the poles and things like this. So I don't have a  
17 date yet.

18           Running the line is relatively easy. But  
19 it's the delivery of the poles and putting the poles  
20 in. They've indicated they will drill the poles and  
21 things like that to set the poles but they just are in  
22 the process of finishing the engineering for the  
23 poles.

24           COMMISSIONER HELLER: Do you have any  
25 estimate of the time when the Project, at least the 16



1 units, are actually going to be actually connected to  
2 the HELCO grid?

3 THE WITNESS: Again, I really don't. I mean  
4 I -- it's in our planning. We've basically figured  
5 that we would, we would be doing probably the first at  
6 least 64, maybe the first 96 units with solar and  
7 battery packs before the grid is fully connected.

8 COMMISSIONER HELLER: So your plan is you  
9 would actually sell the units and people would move in  
10 before there was a connection to the HELCO grid.

11 THE WITNESS: That's correct.

12 COMMISSIONER HELLER: Okay. On the sewer  
13 lines and wastewater treatment plant, if I understood  
14 correctly, the steps are you have to get -- you still  
15 have to get a Department of Health approval on the  
16 wastewater plant, correct?

17 THE WITNESS: That's correct.

18 COMMISSIONER HELLER: Okay. And I think the  
19 engineer said that was going to take three to six  
20 months, possibly longer?

21 THE WITNESS: I'm not quite certain why he  
22 set the date out that far. But I defer to -- he's the  
23 person that's got the responsibility to do it. It  
24 appeared from the early comments on the engineering  
25 for the entire wastewater plant that it wouldn't take

1 that long.

2 In our planning we expected we will be  
3 connected to it by February, by January/February which  
4 is really saying it's less -- in our planning we're at  
5 the low end of what his estimate is.

6 COMMISSIONER HELLER: You need to get the  
7 Department of Health approval and then you need to  
8 physically assemble the plant and connect up to it,  
9 right?

10 THE WITNESS: The plant comes on a skid. So  
11 the connection -- the connection to the plant is  
12 relatively literally very quick.

13 But the lines in terms of where the R1 water  
14 goes and what the -- and I'm not sure, I'm not a  
15 wastewater plant -- but basically they were explaining  
16 there's a chlorine mixing that goes through the line  
17 before it gets in and a number of other things that  
18 are part of that.

19 Those lines have to be, have to be installed  
20 and they have to be tested. They actually have to be  
21 before the Department of Health will give a final  
22 approval on the permit.

23 COMMISSIONER HELLER: Okay. And then you  
24 also need a permit to put in the solar panels on the  
25 16 units, right?

1 THE WITNESS: That's correct.

2 COMMISSIONER HELLER: So as you sit here  
3 today are you actually prepared to state, to commit to  
4 a firm date by which people could move into the 16  
5 units?

6 THE WITNESS: Because there's three state  
7 agencies that require this to give a firm date, I'm  
8 uncomfortable doing a firm date.

9 I can tell you when we will file for it.  
10 And a reasonable estimate of when it is, because we're  
11 doing very standard things with people that do it all  
12 the time, we think we have got a pretty good handle on  
13 it.

14 But having the situation where yesterday I  
15 didn't meet a deadline by a very major amount, I'm a  
16 little hesitant to say a drop dead date. But we're  
17 very comfortable and we have obviously invested a lot  
18 of money on the basis that we can start closing units  
19 at the end of the first quarter.

20 So I'm quite confident that we're looking at  
21 by March 31st. But I don't have -- I don't have  
22 absolute control over the situations to be able to say  
23 that. The major items like the EIS and stuff are now,  
24 are now behind us. But they're still things that we  
25 don't have control over.

1 COMMISSIONER HELLER: Well, since you  
2 brought up the EIS, there's a period of time in which  
3 the public can object to the acceptance of the EIS,  
4 correct?

5 THE WITNESS: I think so. But on the, on  
6 the notice it said on there that it wasn't, it wasn't  
7 -- I believe what I was told is there was 60 days from  
8 when it was published. So I believe that's the  
9 correct amount.

10 COMMISSIONER HELLER: So that would be 60  
11 days that started from November 8th?

12 THE WITNESS: November 8th, yes.

13 COMMISSIONER HELLER: That's all the  
14 questions I have.

15 PRESIDING OFFICER CONTRADES: Commissioner  
16 Jencks.

17 COMMISSIONER JENCKS: Mr. Wessels, how you  
18 doin?

19 THE WITNESS: Good.

20 COMMISSIONER JENCKS: Been up here a long  
21 time. Couple questions. Commissioner Lezy was asking  
22 you about a deadline or timeframe for closings and  
23 occupancy. And you said "end of the first quarter".

24 THE WITNESS: Yeah.

25 COMMISSIONER JENCKS: And Mr. Heller was

1 just asking you just to discuss the same general  
2 timeframes with Mr. Heller. I have a few questions  
3 relative to that.

4 THE WITNESS: Okay.

5 COMMISSIONER JENCKS: You haven't yet  
6 submitted condominium documents for the Project.

7 THE WITNESS: That's correct.

8 COMMISSIONER JENCKS: Those have to be  
9 submitted and reviewed by the DCCA, and I think also a  
10 local reviewer here in the county of Hawai'i.

11 The wastewater treatment plant isn't here  
12 yet. It's on a skid. It's a multiphase installation.  
13 The plans for that plant have been submitted to the  
14 Department of Health. They have yet to review and  
15 approve those plants, correct?

16 THE WITNESS: That's correct.

17 COMMISSIONER JENCKS: You're going to need  
18 to go to the PUC for their approval on what you're  
19 going to charge for the plant, correct?

20 THE WITNESS: Yes.

21 COMMISSIONER JENCKS: Have you made that  
22 application yet?

23 THE WITNESS: No.

24 COMMISSIONER JENCKS: Okay. The domestic  
25 water supply will come from who?

1 THE WITNESS: From Californ -- initially  
2 from California Water Supply.

3 COMMISSIONER JENCKS: Okay. So the tank for  
4 that is on its way. You're going to need to apply for  
5 the PUC for that fee structure as well, correct?

6 THE WITNESS: Correct.

7 COMMISSIONER JENCKS: Have you done that  
8 yet?

9 THE WITNESS: No.

10 COMMISSIONER JENCKS: To get a certificate  
11 of occupancy I would suspect at least the increment  
12 that you're going to occupy will need to be fully  
13 landscaped. And County of Hawai'i would require you  
14 to have landscaping probably substantially complete.

15 THE WITNESS: Yes.

16 COMMISSIONER JENCKS: And that work, has  
17 that started yet?

18 THE WITNESS: No. Just the drafting and the  
19 design. But other than the design, no.

20 COMMISSIONER JENCKS: So the plans haven't  
21 been submitted for review and approval yet for the  
22 landscaping.

23 THE WITNESS: No.

24 COMMISSIONER JENCKS: Okay. The access onto  
25 the highway I would suspect would need to be completed

1 and accepted by State for a certificate of occupancy  
2 as well. Don't you expect the same?

3 THE WITNESS: I believe so, yes.

4 COMMISSIONER JENCKS: So have you authorized  
5 the ordering of any signal mechanisms or anything to  
6 facilitate the construction of that intersection in  
7 the absence of any State DOT approval?

8 THE WITNESS: No, I haven't.

9 COMMISSIONER JENCKS: Okay. It seems to me  
10 that to be fair to everybody, based upon my practical  
11 experience with regard to this type of project, it  
12 would seem to me you're probably looking at close to a  
13 year before you could have a certificate of occupancy  
14 and be able to close these units for sale.

15 You know, I'm just -- given all the things,  
16 the questions I just asked you and truthfully what is  
17 the lack of submittals to these agencies and the time  
18 it take?

19 They're all unknowns, they're all  
20 discretionary, a significant amount of time and effort  
21 needs to be put in place plus construction time for  
22 all these regulatory authorities, I think you're  
23 talking about a significantly longer period of time  
24 than the end of the first quarter of next year.  
25 Wouldn't you agree?

1           THE WITNESS: You know, when you go through  
2 it that way, yes, I do. I mean we've had -- we've had  
3 tremendous help from everybody here on the Big Island  
4 moving things much faster than anybody has, can  
5 imagine.

6           COMMISSIONER JENCKS: I understand.

7           THE WITNESS: But to me it has somewhat  
8 spoiled me from the reality of things.

9           COMMISSIONER JENCKS: But to be realistic  
10 about the time it takes to get this kind of work done  
11 and to actually be able to close and occupy a unit.

12          THE WITNESS: Mm-hmm.

13          COMMISSIONER JENCKS: Given all the things  
14 we have just discussed, it sounds to me you're looking  
15 at a year. I just, I caution you. But just the way  
16 it lines out to me and the timeframes we're talking  
17 about with the agencies, I think you're talking about  
18 a much greater period of time than the end of the  
19 first quarter next year.

20          THE WITNESS: And I very much appreciate  
21 that comment. We are very, very committed not only  
22 with the amount of money that we've got invested but  
23 equally as importantly to the community and what we've  
24 said to move forward with it.

25               I very much respect your timeline and what's



1 there. We will do everything that we can possibly do  
2 to speed that up. But, you know, you may be, you may  
3 be correct. I guess, like Mr. Heller asked in terms  
4 of a deadline, I was kind of wishy-washy about saying  
5 March 31st. And after you just kind of went through  
6 that, you know, I have a tendency to be a little too  
7 optimistic sometimes.

8 And I would much rather have a time, a  
9 performance as we go along kind of thing as a  
10 guideline to this committee or, you know, a longer  
11 extension with some performance on it.

12 We want -- we want to do exactly what's in  
13 the Order. But I also would like the Order to be  
14 something that we don't have to come back to do.

15 COMMISSIONER JENCKS: I just want to be  
16 realistic on the timeframes.

17 THE WITNESS: Yeah.

18 COMMISSIONER JENCKS: Thank you.

19 PRESIDING OFFICER CONTRADES: Any further  
20 questions? Mr. Okamoto, do you have any redirect?

21 MR. OKAMOTO: I think we've been here long  
22 enough, sir.

23 PRESIDING OFFICER CONTRADES: Thank you.

24 THE WITNESS: Thank you very much.

25 PRESIDING OFFICER CONTRADES: Co-Petitioners

1 your turn.

2 MR. VOSS: We have no additional witnesses,  
3 but would offer argument when given the opportunity by  
4 the Commission.

5 PRESIDING OFFICER CONTRADES: Thank you.  
6 County?

7 MR. BRILHANTE: County of Hawai'i has no  
8 witnesses either.

9 MR. YEE: Office of Planning has no  
10 witnesses. Thank you.

11 PRESIDING OFFICER CONTRADES: Arguments.  
12 Would 10 minutes be enough for each of you to make  
13 your arguments?

14 MR. VOSS: Is that 10 minutes apiece?

15 PRESIDING OFFICER CONTRADES: 10 minutes  
16 apiece.

17 MR. VOSS: As long as we don't have to  
18 divide it amongst us.

19 PRESIDING OFFICER CONTRADES: No, no, no,  
20 no.

21 MR. VOSS: 10 minutes would be fine for  
22 Co-Petitioner.

23 PRESIDING OFFICER CONTRADES: Mr. Okamoto.

24 MR. OKAMOTO: I would have to note in the  
25 beginning of this that, you know, I've gone through

1 Mr. Voss' motion. And it relates directly to the  
2 Order to Show Cause. Having gone through it, and I  
3 did learn quite a bit when I went through his detailed  
4 breakdown, we have had to conclude that we think he's  
5 correct. That will not make me perhaps the most  
6 popular person with this Commission.

7 But procedurally we think there's  
8 significant irregularities in what has taken place.  
9 It is understandable. It's very confusing. I've  
10 never been through one where the Commission was  
11 considering reclassifying the property or reverting it  
12 as it's commonly called.

13 One of my concerns in this is -- and I went  
14 back and I looked at the record of what you had -- and  
15 it seemed to me that the basic part of the OSC  
16 initially was a lack of progress. If you look around,  
17 you went to the property you didn't see much of  
18 anything.

19 I believe when this all started the concern  
20 of the Commission was it just hadn't gotten started.  
21 You were three and-a-half years, four years down the  
22 line and there was nothing going on.

23 And having looked at the record it seems to  
24 me that really the issue was whether or not we had any  
25 real commencement of this Project.

1           I would submit to you over and above the  
2 procedural problems, the due process problems, that's  
3 changed. You now have something on the ground. As  
4 has been pointed out, yes, there is lots of things to  
5 be done. There's lots of work to be done. DW might  
6 have been too optimistic about how quickly they could  
7 get things done.

8           But without a conventional lender, with  
9 problems with the financing that was lined up, they've  
10 got five buildings up; they've got materials on site.  
11 Pretty much they can roll if they're given an  
12 opportunity.

13           I believe that changes materially the  
14 situation that's before the Commission. We may still  
15 get in trouble. You may still have to get us in line  
16 if we don't comply. But it does seem to me that  
17 really the thrust of this OSC as it started was no  
18 substantial commencement under the statute. Yes, that  
19 is a statutory ground for reversion of this property.

20           But the circumstances have changed. You now  
21 have a Petitioner who's gone forward. Whether or not  
22 he could get conventional financing or not he's  
23 managed to get enough money to get this thing forward.  
24 And I believe that there's no reasonable view of this  
25 thing that would say we don't have a commencement

1 going.

2 I can't speak to the Condition 1 today  
3 because that's not on the agenda. But I think it's  
4 fair to say that they've come a long way in a very  
5 short period of time.

6 So it seems to me at this point the OSC  
7 really should be lifted. We have the other issues. I  
8 realize that the Commission will, I'm sure, press us  
9 very hard. There will be lots of questions. But as  
10 far as maintaining an OSC at this point I think it is  
11 appropriate that the Commission say: "Okay. That is  
12 history that should at this point be lifted." And I  
13 think I will stop there.

14 MR. VOSS: I'm aware I'm also not the most  
15 popular man in the room here. So with that I also  
16 went back and looked at the transcript. And I'd like  
17 to go back to September 18th, 2008 when this  
18 Commission first voted to approve the OSC.

19 Commissioner Kanuha said he supported the  
20 OSC because he hoped it would, quote, "light a fire  
21 under Bridge's butt." If that was the original intent  
22 of the OSC well, it worked. Bridge entered into the  
23 agreement with DW to sell the land. Sixteen  
24 affordable homes have been completed. Twenty-four are  
25 nearing completion.

1           Much of the infrastructure work has been  
2 done. The grading and site work is nearly done. The  
3 Final EIS has been approved. And the sewage treatment  
4 plant is on its way. In all more than \$20 million has  
5 been expended here.

6           Has it gone perfectly? No, it hasn't gone  
7 perfectly. But under the circumstances and given the  
8 financing environment I think it's a pretty amazing  
9 accomplishment.

10           So why are we here? It seems to me that at  
11 some point at the urging of the Office of Planning the  
12 purpose of this Order to Show Cause changed. It  
13 changed in that someone decided that they were going  
14 to use this case to set an example.

15           Before we talk about the constitutional and  
16 procedural problems with that I want everyone here to  
17 be clear what example is being set.

18           Because in here, my former life I've been  
19 coming to the Land Use Commission since 1984. This  
20 Commission has never revoked a project's entitlements  
21 because that developer has not met all the deadlines  
22 that he originally promised.

23           Take a step back and look at all the  
24 projects in this state that have not met their  
25 original promised timelines.

1           West Beach. Some of you remember when it  
2 was called West Beach before Ko Olina. Kuilima, Royal  
3 Kunia Phase 2. None of them met any of their original  
4 deadlines and this Commission did not revert. Go five  
5 minutes up the road, Kaloko Heights. This Commission  
6 reclassified 400 acres for 1400 homes in 1982. Not  
7 one home has been built. This Commission didn't  
8 revert, didn't even issue an OSC.

9           And I commend the Commission for that. I'm  
10 not criticizing the Commission for any of that.  
11 Because in those cases the Commission understood its  
12 role and understood that major projects like 'Aina  
13 Le'a take a lot of time, a lot of money and, yes, a  
14 lot of patience.

15           Today, and whenever we reconvene, for the  
16 first time this Commission will consider killing a  
17 project because it did not meet what this Commission  
18 ruled on July 1st was a deadline to build 385 homes.  
19 And that will be an example. But it's not the example  
20 I think you want to send.

21           It will be an example to every developer in  
22 this state and out of this state that unless and until  
23 you finish every single unit in your project your  
24 entire capital investment is at risk.

25           It will be an example to every lender

1 nationwide and internationally that the security for  
2 your loan could vanish if every single proposed  
3 timetable is not met. And those lenders, they won't  
4 know the specifics of this case. They won't know what  
5 Bridge supposedly said or did or didn't do. They'll  
6 just know the result. They'll know that this Project  
7 was wiped out after \$20 million was invested.

8           And the message that will be given is this  
9 is not a place to put your money. Those units over  
10 there, if this Commission rescinds and revokes this  
11 classification, they will be a symbol up on the hill.  
12 You'll see them over and over again in the news media,  
13 on the Internet. And it will be an example to  
14 everyone why you shouldn't do business in Hawai'i, why  
15 you shouldn't invest in Hawai'i, why you shouldn't try  
16 to build affordable homes in Hawai'i.

17           And I know some of you have strong feelings  
18 about this Project, and many of you have strong  
19 feelings about Bridge. I understand that, and I  
20 respect that. But you have to understand that what  
21 you do, the decision you make in this case could have  
22 long-term ramifications for lenders across this  
23 country and the building of thousands of homes and  
24 yes, thousands of jobs in this state.

25           As Alan said, there are procedural problems.



1 I respectfully renew my motion regarding the Order to  
2 Show Cause and incorporate by reference. And I won't  
3 repeat all of it here in the interest of time in the  
4 10 minutes.

5 But if we're talking about timeframes, the  
6 original OSC said unambiguously that this proceeding  
7 was subject to Subchapter 7 of the Commission's rules.  
8 And it's not disputed.

9 Subchapter 7 says that this proceeding, any  
10 proceeding must be completed within 365 days. And we  
11 are now almost two years from the date that this OSC  
12 was issued. And with all due respect, the OSC is  
13 invalid as a matter of law and cannot be acted upon.

14 The motion goes on to detail the other  
15 problems and they are in brief summary: This  
16 Commission has made factual findings. It has imposed  
17 additional orders without following the contested case  
18 procedures, and without giving full notice and  
19 opportunity to be heard.

20 This Commission has never given legally  
21 sufficient and valid notice of the OSC. That's hard  
22 to hear but it's a fact. It never was given. And,  
23 yes, there also have been violations of the Sunshine  
24 Law repeatedly in this docket but more egregiously for  
25 the July 1st hearing when the action the Commission

1 took simply was not on the docket.

2           Procedural issues are particularly important  
3 here, Commissioners, because we're talking about here  
4 is vested property rights. Some of you on the  
5 Commission are attorneys and have read Allen and have  
6 read the Nukoli'i decision and know what I'm talking  
7 about.

8           You need only look at those pictures there  
9 to know that any court as a matter of common sense is  
10 going to rule that these property rights have vested.  
11 And what the constitution says you cannot take vested  
12 property rights without due process and you cannot  
13 take them without paying just compensation.

14           This is not a threat. This is just a  
15 reality. If the Commission reverts there will be  
16 litigation and the damages claims will be well into  
17 the eight figures. I think we all would wish to avoid  
18 that.

19           Now, Office of State Planning no doubt is  
20 going to say: Well, we're just acting on a condition  
21 here. There's no constitutional problems.

22           But the problem with that is the  
23 constitution says, the equal protection clause is  
24 that: A state agency cannot create a class of one  
25 when it's dealing with a developer or someone else

1 seeking a relief in front of that agency. And that's  
2 what's happened here.

3 As our response details there's no doubt  
4 that this Project has been treated differently and  
5 less favorably than other projects here on this island  
6 and throughout the state. Again, you need only  
7 consider the projects that are up and down this Kohala  
8 Coast: Kohanaiki, Kaloko Heights, Palamanui, Waikoloa  
9 Mauka, just to name a few.

10 None of those projects have built a single  
11 home. And none of those projects have faced the same  
12 level of scrutiny, the same level of questioning that  
13 we hear today. Those are all good questions. I'm not  
14 disputing that.

15 All I'm saying is the constitution says you  
16 can't treat one project differently than another and  
17 take away its entitlements.

18 Section 205-4 is clear that six affirmative  
19 votes are necessary for this Commission to change the  
20 boundaries of this land. It is currently classified  
21 for urban lands. And if the Commission were to revert  
22 based on the OSC that would be a reclassification.

23 If the Commission does revert, that would be  
24 directly contrary to the County General Plan, directly  
25 contrary to the County Development Plan, and with all

1 due respect would violate this Commission's duties  
2 under HRS 205-17.

3 I say all these things not to be  
4 objectionable, not to poke a finger in anyone's eye,  
5 although I know some of you probably feel that I am.  
6 I'm trying to do this to avoid litigation, to avoid  
7 years and years of huhu and heartache and unnecessary  
8 fighting to get this Project back where it should be.

9 The practical reality is that this Project  
10 will never get long-term construction or take-out  
11 financing as long as the Order to Show Cause is in  
12 place. That's just the reality of the financing  
13 world. Some of you on the Commission who are  
14 developers, who have assisted developers know that's  
15 the case.

16 So I would ask you here when you consider  
17 this motion, to work with DW, to work with Bridge to  
18 make this Project a success, to lift the Order to Show  
19 Cause. Because with all due respect, it is void as a  
20 matter of law. And help the people get the affordable  
21 homes that they want.

22 One last point. Hope is a funny thing.  
23 It's a fragile thing. This community has hope in this  
24 Project. They believe it represents something to them  
25 in terms of sustainable development, in terms of jobs,

1 in terms of the ability of the community to resurrect  
2 itself and become financially viable again. I ask you  
3 not to kill that hope. Thank you very much.

4 MR. BRILHANTE: Good afternoon,  
5 Commissioners. Yes, it is afternoon. As I've --  
6 since my assignment to this case I've been taking a  
7 crash course in the development and the historical  
8 perspective of what we have in front of us here today.

9 It harkens back to the late 1980s, early  
10 1999 where application was made in this Project. I  
11 understand that that's one of the primary concerns  
12 that this Commission has is the long time, the tenuous  
13 time it's taken to get to this point.

14 But I'll put this in front of you. From  
15 that moment 'til today we have seen progress with this  
16 Project. We have. We've gotten testimony that now  
17 there's possibly 40 units on the ground. Majority of  
18 the Project for the affordable housing component has  
19 been graded and it's ready for construction.

20 I think it's been very informative for me to  
21 hear the testimony from the representative from  
22 Honsador Lumber where we indicated approximately  
23 50 percent of his construction material supply is  
24 coming from his business. I think that's what we're  
25 talking about here today. Talking about two things:

1           One, we're talking about the ability and the  
2           opportunity to provide affordable housing for the  
3           people, for the citizens in the County of Hawai'i in a  
4           place that historically and presently has no  
5           affordable housing component or option for it.

6           And two. We're talking about the continued  
7           economic stimulation that this Project is providing to  
8           the community. When I was preparing for today's  
9           hearing, I went back and I read the transcripts of the  
10          July 1st hearing that this Commission had.

11          I was taken aback by a statement made by the  
12          Director of the State Office of Planning, Ms. Mayer.  
13          (sic) In there she said, "I know this --"

14          PRESIDING OFFICER CONTRADES: "Him". Him  
15          right there. (indicating Mr. Mayer)

16          MR. BRILHANTE: Oh, I'm sorry, Mr. Mayer.  
17          He stated, "I know this is the only major project  
18          going on there." That's an admission. I agree with  
19          that. "I know this is a good place for the Project to  
20          happen." I agree with that as well.

21          "What we suggest is to revert," which I  
22          disagree. "We get a bona fide landowner, a bona fide  
23          petitioner, a bona fide developer to come back, make a  
24          bona fide proposal and move forward in a way that we  
25          can all feel comfortable with."

1 I pose to you if that was the route we were  
2 to take what timeframes are we looking at? I agree  
3 with Mr. Voss from 'Aina Le'a. If we are to move  
4 forward with reversion at this point, I can assure you  
5 that litigation will follow. It will follow a path  
6 that is incredibly long, incredibly taxing both  
7 resources and expenses for all parties involved.

8 If we were to follow the Office of  
9 Planning's directive we would never -- I would harken  
10 to say probably in my lifetime -- never find a bona  
11 fide investor, never find a bona fide petitioner,  
12 never find a bona fide developer to take over this  
13 Project.

14 And where does that leave us? That leaves  
15 us with continued absence of affordable housing in the  
16 Waikoloa area. And it also will significantly hurt  
17 the fragile business economy of the Island of Hawai'i.

18 We are in unprecedented economic times. In  
19 my 40+ years of existence I've never seen an economy  
20 that we have. And I think historically that supports  
21 that statement.

22 Is it correct, is it appropriate for this  
23 Commission to make such a significant finding, such a  
24 significant ruling to revert the Petition in this  
25 matter during these economic times? I think not.

1           If anything, and since financing is such a  
2 key component from what we heard from Mr. Wessels,  
3 since financing and continued financing is such a key  
4 component of this Project, I think it would be unfair  
5 for the Commission to revert at this time.

6           I say if the Commission should be  
7 anything -- and we have that ability -- the Commission  
8 has the ability to continue to monitor the progress,  
9 to continue to call DW Aina Le'a in front of us to get  
10 status reports, to continue to hold them to the fire  
11 until this Project moves forward. We have that  
12 opportunity and this Commission has that ability.

13           And that is what I request that we do.  
14 Thank you very much for your time. Again, I spent a  
15 lot of time prepping for this case. And I appreciate  
16 your entertaining the County's position. Thank you  
17 very much.

18           MR. YEE: Good afternoon. Let me make a few  
19 comments. And I will try to restrict myself, given  
20 the fact that we are going to have another opportunity  
21 for argument. But I want to at least comment on a  
22 few things.

23           First, litigation or the potential for  
24 litigation should never be a basis for your  
25 decision-making. Whether or not there is or won't be



1 litigation should play no part in what you decide.

2 Second. I appreciate the fact that the  
3 County referred to Mr. Mayer's statements because I  
4 did want to provide a public clarification. Because  
5 there's been a press release out.

6 And I just wanted to say for the record that  
7 what the Office of Planning was saying is that this  
8 property should be reverted for the failure to keep  
9 their promises, for their misrepresentations and for  
10 their violations of conditions.

11 We acknowledged that the area is appropriate  
12 for urban expansion. We acknowledged the need for  
13 jobs and the need for people to have a place to work.  
14 But that was not a sufficient basis by which we were  
15 to ignore the significant and problematic issues with  
16 this particular Project, because you have to examine  
17 the particular petitioner before you and the  
18 particular circumstances.

19 And you can't justify that just upon the  
20 general basis of a theoretical -- that in general the  
21 area is appropriate for expansion or that in general  
22 people need jobs.

23 And we just wanted -- that was not the  
24 County's point, but apparently that quotation  
25 regarding the Office of Planning's acknowledgment of

1 the need for jobs and it's an appropriate place for  
2 expansion was taken to imply as if the Office of  
3 Planning was in support of the Project.

4 I just wanted to be clear that would be a  
5 quote taken just horrendously out of context and would  
6 in fact, be misleading.

7 Procedurally I wanted to note that there is  
8 a motion regarding Order to Show Cause that is  
9 pending. And I do have a suggestion and a request  
10 that either the Commission or that it asks its  
11 executive director to set a briefing schedule for  
12 that.

13 I ask this because the last time the Motion  
14 to Amend Conditions 1, 5 and 7 was filed, I did note  
15 that your rules require our opposition within seven  
16 calendar days. And while I certainly could provide  
17 the memo in opposition -- fortunately Friday's a  
18 furlough day so I'd have until Monday, I would,  
19 frankly, appreciate some additional time to give you a  
20 comprehensive explanation.

21 And since the fact we don't yet know what  
22 the hearing date is I think would make sense as well  
23 to give DW -- I'm sorry Bridge 'Aina Le'a an  
24 opportunity to then give some additional time for  
25 their response. So I just wanted to note that at the

1 beginning.

2 On another procedural point I just wanted to  
3 note that the Order to Show Cause -- I just want to be  
4 clear what we mean by an Order to Show Cause. The  
5 Land Use Commission issued the Order to Show Cause.

6 And we had a hearing and the Commission  
7 reverted the property. It then went back and decided  
8 to say: Well, if you build, complete these 16 units,  
9 then we will lift the reversion.

10 And you then decided, no, those 16 units  
11 were not completed. And because that was a  
12 precondition the status of the land at this point is  
13 there's an Order which has reverted the Bridge Aina  
14 Le'a Petition Area.

15 So there is really no further decision to  
16 make per se. Although I understand that you're  
17 hearing this to make your own decisions as to whether  
18 or not you want to change your minds.

19 But the current procedural posture of the  
20 case is that the land has been reverted to  
21 agriculture, at least there's an Order to revert the  
22 land to agriculture.

23 So the complaints about the notice of the  
24 Order to Show Cause and all those procedural issues in  
25 my mind are made too late. They're made after the

1 decision.

2           There's been no showing of prejudice in any  
3 of those issues. And some of the issues, quite  
4 frankly, that they raised, were frivolous. The idea  
5 that you have to make a decision within 365 days, that  
6 rule is completely inapplicable to the Order to Show  
7 Cause. But we'll have another opportunity to argue  
8 that more comprehensively later.

9           What I do want to say is that if you  
10 decide -- well, you're continuing this hearing and  
11 you're taking the matter under advisement. And you're  
12 going to allow for additional argument.

13           If you're concerned about the procedural  
14 issues raised by Bridge 'Aina Le'a, I did want to make  
15 clear what we believe the violations are. If you so  
16 choose you could always issue a second or an  
17 additional Order to Show Cause.

18           The violations in our minds are as follows:  
19 Condition 1B has been violated which required  
20 certificates of occupancy for a minimum of 385  
21 affordable units by November 17, 2010. To date there  
22 have been no certificates of occupancy submitted.

23           At least initially Condition 5 was to be  
24 violated in that they were going to locate the sewage  
25 treatment plant outside of the Petition Area. And

1 Condition 5 required them to minimize the impact to  
2 adjacent properties. Instead, they actually located  
3 it on adjacent properties.

4 Condition 7 required that 16 acres be  
5 provided to the Department of Education. And those  
6 16 acres had to be within the property. And they're  
7 proposing to provide those -- I'm sorry.

8 They also stated in 2005 and noted by you in  
9 Finding of Fact 32 in your November 25, 2005 Decision  
10 and Order that the Petitioner had committed to provide  
11 DOE with 30 acres.

12 So their proposal to locate it outside the  
13 Petition Area would also be in violation of Condition  
14 7.

15 Condition 9 requires the Petitioner to  
16 comply with the eight conditions applicable to this  
17 golf course development prepared by the Department of  
18 Health and the development of a leach field, which was  
19 unpermitted and found to be in violation by the  
20 Department of Health violated Condition 9.

21 Condition 13 is the requirement that the  
22 Petitioner shall develop the property in substantial  
23 compliance with the representations made to the  
24 Commission.

25 We wanted to bring to your attention at

1 least three particular representations all of which  
2 are made on September 30th, 2005 at the time they came  
3 to you, asked you to amend or change your Decision and  
4 Order.

5 The first is on Page 95 lines 10 to 12 which  
6 stated, "We are here today saying we're going to build  
7 these homes," referring to the affordable homes, "on  
8 site and integrate the affordable housing with the  
9 rest of the development."

10 The Office of Planning believes that the  
11 affordable housing is located in one particular area.  
12 It is being built separate from rather than integrated  
13 into the development.

14 On Page 127 lines 22 to 24.

15 "Q. Is the Project Area entitled? Is it  
16 zoned and ready to be built upon?

17 "A. Yes, it has all the appropriate  
18 zoning." Unquote.

19 Clearly Petitioner had to go back to the  
20 county for a variety of approvals. And so the Project  
21 zoning was not all there and they violated that  
22 representation as well.

23 And the last representation that we'll note  
24 for you is on Page 105 line 22 through Page 106 line  
25 1.

1           "Q. And that infrastructure is going to be  
2 sized for the rest of the Project? Or is it just  
3 designed to get the affordable housing component  
4 underway?

5           "A. No. We're going to bring everything in  
6 sized for the entire Project."

7           As the testimony today has shown the sewage  
8 treatment plant is not zoned for the entire Project.  
9 The water, potable water, 250-gallon tank is not sized  
10 for the entire Project.

11           They are building these just to get the  
12 affordable housing component underway. And they  
13 violated that representation as well.

14           Finally, Condition 14 requires that  
15 Petitioner provide notice of any intent to voluntarily  
16 alter the ownership interest in the property prior to  
17 development.

18           As they have said over 600 individual  
19 investors have received an ownership interest in this  
20 property and notice has not been provided to the Land  
21 Use Commission.

22           We have a variety of other concerns and  
23 argument. We are, in particular, objecting or  
24 disagreeing with their constitutional provision. In  
25 fact, I've been before you arguing certainly Kuilima

1 case in particular. We came and we looked at the  
2 specific language in the Decision and Order and we  
3 said there was no language for a deadline.

4 And based upon that we had to come to the  
5 conclusion our position was you couldn't issue the  
6 Order to Show Cause. Instead, we recommended you  
7 change the order to put in such a deadline.

8 That's not true here. Here there is a  
9 condition. The concern is not that they -- the  
10 concern is not only that they haven't developed. The  
11 concern is that they made a promise to develop.

12 And that promise was so important that the  
13 Commission created that as a particular condition of  
14 this case. That's not true for all of the cases.

15 Many of the cases, certainly the older  
16 cases, there were no particular deadlines put into the  
17 condition.

18 But when it was important enough to you, and  
19 it was important, it was essential the deadline for  
20 construction of these affordable housing components  
21 was the reason why you decided to reduce the  
22 percentage of affordable housing from 60 percent to  
23 20 percent.

24 So that wasn't just *an* issue. It was *the*  
25 issue in that decision. And based upon that you



1 specifically decided to put in a deadline as a  
2 condition.

3 So it is the violation of the condition  
4 which differentiates this from the other cases that  
5 are referenced by the Petitioner.

6 As I said we have other arguments, we have  
7 other concerns. We have spoken to you about these  
8 concerns in the past. I'm going to try to restrict  
9 myself and avoid the temptation of going through all  
10 of them.

11 But the Office of Planning, as it has  
12 consistently said, believes that this Project should  
13 be reverted to its original classification. Thank  
14 you.

15 PRESIDING OFFICER CONTRADES: Okay. Thank  
16 you. Commissioners, do you have any further  
17 questions? Anybody? All right.

18 As noted previously, deliberation and action  
19 on this matter is being deferred. We will schedule a  
20 briefing as you requested. I will leave that up it  
21 you, Dan.

22 MR. DAVIDSON: Fine.

23 PRESIDING OFFICER CONTRADES: Okay. There  
24 being nothing else the meeting is adjourned.

25 (The proceedings were adjourned at 1:20 p.m.)

## C E R T I F I C A T E

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

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

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

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

DATED:    This \_\_\_\_\_ day of \_\_\_\_\_ 2010

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