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LAND USE COMMISSION
STATE OF HAWAI'I

PAGE

CONT'D HEARING AND ACTION)	
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A87-610 TOM GENTRY and)	3
GENTRY PACIFIC, LTD. (O'ahu))	
)	
A92-683 HALEKUA DEVELOPMENT CORP.)	19
(O'ahu))	
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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing at the Airport Conference Center, 400 Rodgers Blvd,. Suite 700, Room #3, Honolulu, Hawai'i, commencing at 9:00 a.m. on November 13, 2014, pursuant to Notice.

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

A P P E A R A N C E S

COMMISSIONERS:

EDMUND ACZON
BRANDON AHAKUELO
KENT HIRANAGA
AARON MAHI
CHAD McDONALD, (Chair)
JONATHAN SCHEUER
SANDRA SONG
ARNOLD WONG

EXECUTIVE OFFICER: DAN ORODENKER
CHIEF CLERK: RILEY HAKODA
STAFF PLANNER: SCOTT DERRICKSON/BERT SARUWATARI
DEPUTY ATTORNEY GENERAL: RUSSELL SUZUKI
AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A87-610

For the Petitioner: STEVEN LIM, ESQ.
JENNIFER BENCK LIM, ESQ.

For the City and County DPP RICHARD D. LEWALLEN, ESQ.
Deputy Corporation Counsel
& MIKE WATKINS

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI
Director Office of Planning

Docket A92-683 Halekua Dev. Corp

For the Petitioner: STEVEN LIM, ESQ.
ONAONA THOENE, Atty. at Law
For Ho'Ohana Solar Inc. ANN BOUSLOG

For HRT Realty, DEL WONG, ESQ.
300 Corporation &
Honolulu, Ltd.

1 CHAIR McDONALD: (gavel) Morning. I'd
2 like to call the Land Use Commission meeting to order.
3 Before we get started I'd like to introduce our newest
4 Commissioner, Sandy Song, who's on an interim
5 appointment from Hawai'i Island.

6 COMMISSIONER SONG: Right.

7 CHAIR McDONALD: Welcome. Welcome, Sandy.
8 Okay. This is a continued hearing and action meeting
9 to consider Motion for Order Amending Findings of
10 Fact, Conclusions of Law and Decision and Order dated
11 May 17, 1988.

12 2. Issue an order modifying Commission's
13 Findings of Fact, Conclusions of Law and Decision and
14 Order dated May 17, 1988 as amended by the
15 Commission's November 30, 1999 Order amending
16 Condition No. 6 of the D&O dated May 17, 1988 to
17 expressly authorize the use of a portion of the
18 Kamehameha Schools property for solar farm development
19 for an interim period not to exceed 35 years.

20 Will the parties please identify
21 themselves for the record.

22 MS. LIM: Good morning, Chair. This is
23 Jennifer Lim representing successor Petitioner
24 Kamehameha Schools. And with me today from Kamehameha
25 Schools is Catherine Camp and Nicola Doss and one

1 other person.

2 CHAIR McDONALD: 'Morning.

3 MR. LEWALLEN: Good morning, Chair,
4 Commissioners. Richard Lewallen, Deputy Corporation
5 Counsel, the City and County of Honolulu on behalf of
6 the Department of Planning and Permitting. With me is
7 Matt Higashiga.

8 CHAIR McDONALD: Good morning.

9 MR. YEE: Good morning. Depty Attorney
10 General Bryan Yee on behalf of the Office of Planning.
11 With me is Rodney Funakoshi from the Office of
12 Planning.

13 CHAIR McDONALD: Good morning. Let me
14 update the record. On October 29, 2014 the Commission
15 conducted the initial hearing on Petitioner's Motion
16 for Order Amending Findings of Fact, Conclusions of
17 Law and Decision and Order dated May 17, 1988 and
18 concluded the evidentiary and oral argument portion of
19 the proceedings and began its deliberations on this
20 matter.

21 During deliberations the Commission
22 unanimously voted 6/0 to recognize Kamehameha Schools
23 as successor Petitioner with standing to seek and
24 obtain the relief requested by the motion and set the
25 filing date of November 15, 2014 for the parties to

1 submit their proposed Decision and Orders to assist
2 the Commission in completing its decision making in
3 this matter.

4 On November 3rd, 2014 the Commission
5 mailed the agenda for the November 12 and 13, 2014
6 meeting to parties and statewide and O'ahu mailing
7 lists.

8 On November 5th, 2014 the parties
9 submitted their stipulated proposed Findings of Fact,
10 Conclusions of Law and Decision and Order to the
11 Commission. Between November 5 and November 12, 2014
12 the parties timely filed their respective comments,
13 exhibits, responses, joinders, stipulations,
14 objections, and replies with the Commission.

15 Let me briefly describe our procedures for
16 today on this docket. First, I'll call those
17 individuals desiring to provide public testimony to
18 identify themselves. All such individuals will be
19 called in turn to our witness box where they will be
20 sworn in prior to their testimony.

21 After public testimony the Commission will
22 resume its deliberations and decision-making. The
23 Parties will be given an opportunity to make
24 concluding remarks on the motion in regards to their
25 roles in the stipulated findings.

1 At the conclusion of the remarks on the
2 motion and stipulated filing, and after questions from
3 the Commissioners and answers thereto, the Commission
4 will conclude its deliberations. Are there any
5 questions on the procedures for today?

6 MR. LIM: No.

7 CHAIR McDONALD: For those that are
8 providing public testimony the Commission would
9 appreciate it if you could confine your testimony to
10 issues consistent with this matter and avoid
11 repetitive testimony. Are there any individuals in
12 the public wishing to provide public testimony?
13 Seeing none, Ms. Lim, do you have any remarks
14 regarding the motion at hand?

15 MS. LIM: If I may I'll just take a couple
16 minutes. We've already expressed our appreciation but
17 I want to express it again 'cause I know it was a lot
18 to get through, a lot to get through quickly,
19 especially for a new Commission. And we and
20 Kamehameha Schools obviously very much appreciate the
21 time and the effort.

22 Two weeks ago we were before you and you
23 ordered us to file a Stipulated Proposed Findings of
24 Fact, Conclusions of Law and Decision and Order. That
25 was pretty breathtaking. That's a lot to stipulate

1 to, a lot of details. It took a lot of work on
2 Holly's part just to get the transcript; and a lot of
3 real close work both with Kamehameha Schools in making
4 sure that we were reciting the facts correctly.
5 'Cause as you might remember you folks asked a lot of
6 detailed questions. We wanted to make sure we
7 captured all that in these findings.

8 And then a tremendous amount of effort
9 with the City, especially with the State Office of
10 Planning and working together to come to the point
11 where I can say to you this is the first time I ever
12 filed a fully... stipulated.... D&O.

13 And, granted, the City isn't a party to
14 the stipulation and Mr. Lewallen can discuss that.
15 But to have that done in just a little over 2 weeks
16 was a pretty big deal. So I hope that the
17 Commissioners looking through this document believe
18 that it accurately reflects not only the record but
19 also provides the good cause which is the criteria for
20 passing a Motion to Amend.

21 I mean as Mr. Yee had said at the last
22 hearing, it's a little bit of a fuzzy concept 'what is
23 good cause'. But I think that in these 50 or some odd
24 pages of findings and conclusions demonstrate that
25 good cause. It's a solar Project on urban. It's not

1 a District Boundary Amendment. That decision was made
2 decades ago. This is a simple motion to let
3 Kamehameha Schools make good use of this property, a
4 portion of this property for 35 years by having a
5 solar farm which doesn't create traffic, doesn't
6 create any sort of bad environmental impacts and gives
7 Kamehameha Schools an opportunity to figure out what
8 it is they want to do with the property going forward.

9 And Kamehameha Schools agreed to the
10 conditions requested by Office of Planning including
11 that Kamehameha Schools submit a Master Plan within X
12 number of years of this Commission's Order.

13 So I think you've got the full package
14 here, a good Project, certainly good cause, and
15 something that's not only compliant with the Land Use
16 Commission rules but also with the State Plan. So
17 those are my concluding remarks. Thank you.

18 CHAIR McDONALD: Thank you, Ms. Lim. Any
19 questions for the parties?

20 MR. LEWALLEN: No.

21 MR. YEE: I have no questions. I just
22 wanted to say that I'm sorry we weren't able to get
23 the stipulation in on the schedule the Commission
24 asked for. I know that the LUC staff had to work
25 particularly hard in this matter. I just want to

1 assure you we really worked very hard to get you a
2 stipulation. I know it came in sort of close to this
3 hearing date. But it was not through lack of effort.
4 Thank you.

5 MR. LEWALLEN: I've just spoken with the
6 Department of Planning and Permitting about this.
7 They ultimately tell me they have no objection to the
8 proposed decision and conditions. Their only concern
9 was the level of detail specific to the Project on
10 this. I thought it may cause some difficulties down
11 the line through permitting.

12 I discussed this with Ms. Lim. She and I
13 agreed to disagree as a matter of philosophy. It's a
14 matter about the ultimate Project that they want to
15 do. So the City not being a part of the stipulation
16 shouldn't be read as an objection to the Project. It
17 was just, like I said, a matter I think a
18 philosophical debate on the amount of language in
19 there, she felt strongly should be included and the
20 Department did not. But I just wanted to make that
21 clear. So thank you.

22 CHAIR McDONALD: I'd like to personally
23 express my appreciation for you folks all working
24 together. Mr. Yee, I understand how much you have on
25 your plate. I do appreciate your folks coming

1 together and providing the Commission with a complete
2 document that we could review. There was some clarity
3 that the document did provide to the Commission. I'd
4 just like to express my sincere appreciation for your
5 hard work on such a short deadline.

6 Commissioners, any questions or remarks to
7 the Petitioner or parties at this point? Commissioner
8 Scheuer.

9 COMMISSIONER SCHEUER: Aloha. I want to
10 thank you all also for working so expeditiously on
11 this matter. I know it was in your interest and your
12 clients' interest, but this body also gets the keys to
13 drive next week. It's nice to see that we're all
14 working together to move expeditiously.

15 I'm intending to vote in favor of the
16 motion. I wanted to make sure that in the Findings of
17 Fact, the stipulated Findings that I reviewed it
18 talks about the Master Plan. But both Mr. Caldarone
19 and Ms. Camp spoke very clearly not just about doing
20 the Master Plan, but the process in which they would
21 do a Master Plan with community consultation,
22 comparing the Master Plan versus the strategic plan of
23 Kamehameha Schools and the regional plan that they're
24 developing there.

25 And to me that was, like, some of the most

1 significant that this new, whatever they propose
2 finally to do with the property is really going to be
3 much more in accordance with the needs of the client
4 as well as with the community's needs and desires.

5 I'm hoping to see those reflected in the
6 Findings of Fact and detail just directly from the
7 statements made by Ms. Camp and Mr. Caldarone about
8 the planning process that they go through. So that
9 when one reads the Decision and Order in context with
10 the final Findings of Fact you can say: Okay. It's
11 not just a plan. Here's a 5-page document, but here's
12 the planning process that the school is intending to
13 and has representing to go through. Thank you.

14 CHAIR McDONALD: Commissioners, any other
15 questions for the parties? Seeing none --

16 COMMISSIONER HIRANAGA: Chair, a couple of
17 comments. Since this matter was deferred to this
18 meeting I had an opportunity to come up with a couple
19 more questions. It's not of substance but just for
20 the record. Was there any concern about hoary bats
21 nesting habitats in that area? Just from reading the
22 next application or Petitioners file they mentioned
23 possible hoary bat habitation areas. I was just
24 wondering if there was any concern for this area.

25 MS. LIM: The EIS that was done for this

1 property was done several, several years ago. But
2 that didn't identify any Hoary bats or any other
3 species of interest. That hasn't been revisited. But
4 as far as I know there's no concerns regarding any
5 kind of threatened or endangered species on the
6 property.

7 COMMISSIONER HIRANAGA: One other thing.
8 There's concerns of the migratory water fowls and
9 shore birds mistaking a solar field array as water,
10 which I guess there's been occasions on the mainland
11 when birds have flown into solar -- solar fields. I
12 was just wondering just for the record if you'd be
13 looking at that down the road, if that's a concern.

14 MS. LIM: You know, I could turn to
15 Ms. Doss, if that's okay. I will say, Commissioner,
16 that's not something that's expressed in these
17 findings. We -- at the last hearing there were
18 questions about could somehow these solar panels do
19 something that would attract birds and cause 'em to
20 fry.

21 You might recall Ms. Doss said: No, in
22 fact the reflectivity, the point of the solar panels
23 is to attract not to reflect the reflectivity from
24 these panels is less than the windows on your house.

25 So that's something that we know we have

1 on the record. And in terms of it being an attractive
2 for waterfowl really, I don't even know that there's
3 waterfowl flying across this property.

4 COMMISSIONER HIRANAGA: Neither do I. I
5 just wanted to state that concern for the record.

6 MS. LIM: Well, it's certainly something
7 that can be looked at during the Conditional Use
8 process too with the City. I'm sorry to turn my head.
9 I was looking to get concurrence from Ms. Doss.
10 (Ms. Doss approaching the table.)

11 CHAIR McDONALD: Please state your name.

12 MS. DOSS: Nicola Doss.

13 CHAIR McDONALD: Thank you.

14 MS. DOSS: We actually are commissioning
15 an updated biological assessment of the site to update
16 on the EIS work that was done previously. And that
17 will be submitted to DPP as part of our application.
18 So I will look at an updated biological assessment.

19 COMMISSIONER HIRANAGA: Thank you. Just
20 one general comment. I understand there's some
21 urgency regarding this item because of some federal
22 tax credits. But being relatively new to this
23 Commission, receiving documents one or two days before
24 the hearing date really makes me uncomfortable in
25 decision-making 'cause it just puts a lot of pressure

1 on me to be reading these things the day before the
2 item is to be heard.

3 For the record I hopefully will have more
4 time to digest these documents. Some of these are
5 quite lengthy and detailed. It's just difficult for
6 me to comprehend this information that quickly.

7 CHAIR McDONALD: Thank you, Commissioner.
8 Actually I'll take responsibility for that. I
9 actually imposed the deadlines on the parties.
10 Understanding that we have a full meeting agenda to
11 take us through the end of the year that was the
12 reason for the shortness of deadline. I do understand
13 you folks are under some pressure with regards to the
14 federal tax credit deadlines. Those deadlines were
15 imposed by me. So I'll take responsibility and,
16 Commissioner, I'll note that in the future.

17 Anything else, Commissioners? The
18 Commission will now resume formal deliberations
19 concerning whether to grant the Petition, whether in
20 whole or in part, or to deny the Petition. If the
21 Commission decides to grant the Petition in whole or
22 in part, it needs to determine what conditions of
23 approval to impose.

24 I'll note for the parties and the public
25 that during the Commission's deliberations I will not

1 entertain additional input from the parties or the
2 public unless those individuals or entities are
3 specifically requested to do so by the Chair. If
4 called upon, I would ask that any comments be limited
5 to the questions at hand.

6 The Commission held a hearing on the
7 merits of this Petition and oral arguments have just
8 concluded. Commissioners Ahakuelo, Aczon, Scheuer,
9 Hiranaga, Wong and myself have confirmed that they are
10 prepared to deliberate on this docket. Commissioner
11 Mahi, would you please signify with either an aye or
12 nay that you're prepared to deliberate on this matter.

13 COMMISSIONER MAHI: Aye.

14 CHAIR McDONALD: Commissioner Song, would
15 you please signify with either an aye or a nay that
16 you're prepared to deliberate on this matter?

17 COMMISSIONER SONG: Nay.

18 CHAIR McDONALD: So noted. The goal today
19 is to determine by way of motion, the Commission's
20 decision on whether to grant in whole or in part
21 Petitioner's request to modify the Commission's
22 Findings of Fact, Conclusions of Law and Decision and
23 Order dated May 17, 1988 as amended by the
24 Commission's November 30, 1999 Order amending
25 Condition No. 6 of the D&O dated May 17, 1988 to

1 expressly authorize the use of portion of the KS
2 property for solar farm development for an interim
3 period not to exceed 35 years with regard to the
4 subject property, or to deny the motion. If a
5 decision is reached today, and based upon the
6 Commission's guidance, staff will be directed to draft
7 appropriate Findings of Fact, Conclusions of Law and
8 Decision and Order reflecting the Commission's
9 decision.

10 Commissioners, is there any further
11 discussion on this matter? I just have a final
12 statement. I'd just like to commend Kamehameha
13 Schools for their efforts in support of the State's
14 initiative with renewable energy. I 100 percent
15 support the Project. If this Commission so decides to
16 allow the motion to move forward, I wish you all the
17 best of luck. Okay, Commissioners, what's your
18 pleasure on this matter?

19 COMMISSIONER WONG: Chair, I move to
20 grant the motion in this case with applicable
21 conditions based on the record and Petitioner's
22 representations, condition should include Petitioner
23 and OP's proposed conditions as may be amended by
24 staff for clarity; the LUC's standard conditions where
25 applicable, a condition limiting the interim use to

1 utility scale solar development. The interim use
2 shall not exceed 35 years. The use shall only be
3 allowed on the areas described by the Petitioner and
4 metes and bounds description will be required; that
5 the facilities will be responsibly decommissioned at
6 the end of 35 years. And any subsequent use of the
7 property will be subject to environmental review and
8 approval of this Commission through a properly filed
9 Motion to Amend.

10 COMMISSIONER ACZON: Mr. Chair, I second
11 the motion.

12 CHAIR McDONALD: We have a motion by
13 Commission Wong that's been seconded by Commissioner
14 Aczon. Any discussion? (pause) Mr. Orodenger, please
15 poll the Commission.

16 MR. ORODENKER: Thank you, Mr. Chair. The
17 motion is to grant the Motion to Amend with applicable
18 conditions as stated. Commissioner Wong?

19 COMMISSIONER WONG: Aye.

20 MR. ORODENKER: Commissioner Aczon?

21 COMMISSIONER ACZON: Aye.

22 MR. ORODENKER: Commissioner Mahi?

23 COMMISSIONER MAHI: Aye.

24 MR. ORODENKER: Commissioner Scheuer?

25 COMMISSIONER SCHEUER: Aye.

1 MR. ORODENKER: Commissioner Hiranaga?

2 COMMISSIONER HIRANAGA: Aye.

3 MR. ORODENKER: Commissioner Ahakuelo?

4 COMMISSIONER AHAKUELO: Aye.

5 MR. ORODENKER: Commissioner Song has
6 abstained?

7 COMMISSIONER SONG: I've abstained.

8 MR. ORODENKER: Chair McDonald?

9 CHAIR McDONALD: Aye.

10 MR. ORODENKER: Mr. Chair, the motion
11 passes unanimously.

12 CHAIR McDONALD: Thank you, Mr. Orodenker.
13 And thank you to the parties for working so hard and
14 diligently to get your findings in on time. We really
15 appreciate you folks collaborating together. As
16 mentioned, good luck with your Project. And thank you
17 to the LUC staff for your hard work in getting the
18 Commission all the necessary documentation for review.

19 MS. LIM: Thank you, Commissioners.

20 CHAIR McDONALD: We'll take a 5-minute
21 recess to get our next agenda item situated. Thank
22 you.

23 (Adjourned at 9:30 a.m.)

24

25

1 CHAIR McDONALD: Good morning. This is a
2 continued hearing on A92-683 Halekua Development
3 Corporation to consider Successor Petitioner's Motion
4 for Order to Bifurcate the Amended Findings of Fact,
5 Conclusions of Law and Decision and Order filed on
6 October 1st, 1996. Will the parties please identify
7 themselves for the record.

8 MR. LIM: Good morning, Mr. Chairman,
9 Members of the Commission. My name is Steven Lim.
10 I'm here with my associate Onaona Thoene and
11 representative of our client Ho'ohana Solar 1, LLC,
12 Ms. Ann Bouslog to my left.

13 MR. LEWALLEN: Good morning, again.
14 Richard Lewallen, deputy corporation counsel, City and
15 County of Honolulu on behalf of the Department of
16 Planning and Permitting. With me with that department
17 is Mike Watkins.

18 CHAIR McDONALD: Good morning.

19 MR. YEE: Good morning. Deputy Attorney
20 General Bryan Yee on behalf of the Office of Planning.
21 With me is Rodney Funakoshi from the Office of
22 Planning.

23 CHAIR McDONALD: Good morning. Mr. Lim,
24 seeing that this is a continuance, are you ready to
25 proceed with your presentation?

1 MR. LIM: Yes. We are. We'd like to
2 start this morning with a short presentation and
3 request --

4 CHAIR McDONALD: I'm sorry, Mr. Lim,
5 Commissioner Scheuer has a disclosure.

6 COMMISSIONER SCHEUER: I believe one of
7 your witnesses is with Group 70 International. My
8 wife is an employee at Group 70 International, a
9 planner.

10 CHAIR McDONALD: Do you feel that your
11 participation will have any bearing on your
12 decision-making ability in this meeting?

13 COMMISSIONER SCHEUER: I do not feel that.
14 She has had no involvement in this Project.

15 CHAIR McDONALD: Parties, any objection to
16 Commissioner's participation?

17 MR. LIM: No objection.

18 MR. LEWALLEN: No objection from the City.

19 MR. YEE: No objection.

20 CHAIR McDONALD: Thank you, Commissioner
21 Scheuer. Mr. Lim, please proceed.

22 MR. LIM: Aloha. My name is Steven Lim
23 representing the successor Petitioner Ho'ohana Solar
24 1, LLC. First of all, to begin with, on behalf of my
25 client I want to, again, apologize to the Commission

1 for the fits and starts in this proceeding, a
2 situation which we would have wanted to avoid but
3 could not.

4 There's a very narrow window of
5 opportunity for this Project, which window became
6 unexpectedly narrower with the Commission's time out
7 this summer. We were ready to file but we held off
8 filing. Then the deadline at the back end of the
9 process which is the HECO waiver Project deadlines for
10 payment of monies, and the federal tax credit which
11 you heard about in the prior proceeding.

12 Those are immovable deadlines which, if
13 they are exceeded, will make the Project infeasible.
14 I'll have much more testimony on that from our witness
15 from Ho'ohana Solar Mr. Larry Green. But at this time
16 I have a request.

17 You've had a series of filings by the
18 State Office of Planning regarding the enforcement of
19 the Commission's Condition 19 relating to the offsite
20 infrastructure that's to be provided by the landowners
21 in the area, at least pursuant to the Memorandum of
22 Understanding that's mentioned in Condition 19.

23 I hope to answer your questions about all
24 of those issues as we go through these proceedings,
25 but I want to explain to you a little bit about how

1 Ho'ohana Solar -- we call them Ho'ohana Solar, and the
2 Robinson Kunia Land, LLC which is the landowner --
3 I'll refer to them sometimes as Robinsons -- how they
4 fit in with the rest of the Project.

5 As you could see from our graphic that's
6 in the middle board and that's Petitioner's exhibit
7 relating to the overall Project Area. Up at the top
8 portion of the board is Royal Kunia Phase 2 Increment
9 3. That is the Robinson lands. Among those other
10 lands in the area are the increments Phase 2,
11 Increments 1 and 2 which are closer to Kunia Road
12 which is on the left side of that diagram.

13 CHAIR McDONALD: Excuse me. Mr. Lim, are
14 you going to proceed with your evidentiary portion of
15 the proceeding?

16 MR. LIM: No, not now. I'm going to go
17 ahead and just overall make the argument hopefully the
18 Commission will grant our interim relief to
19 consolidate the proceedings for our presentation.
20 Then I'll go into the Group 70 witness.

21 CHAIR McDONALD: Okay. If we're going to
22 be referencing exhibits, I think we should admit your
23 exhibits into the record.

24 MR. LIM: I'll go ahead and wait on that
25 for the formal proceedings. And I'll refrain from

1 referring to that.

2 COMMISSIONER SONG: Excuse me, Chairman.
3 I would appreciate it if Mr. Lim can clarify what he's
4 making an argument for right now. I'm not really
5 clear.

6 MR. LIM: Sure. Part of the issue for us
7 and the reason why I wanted to do a preliminary
8 explanation, is that this proceeding is different in
9 kind and nature from the proceeding you just got
10 through deliberating on.

11 In that proceeding there's one landowner
12 and a solar developer. In this proceeding we have six
13 separate landowners and one solar developer who's
14 developing only a portion of the land which is the
15 Robinson lands.

16 So we have different problems and
17 different ability to do things within the context of
18 the Project as requested. So we hope that the
19 Ho'Ohana Solar can be a catalyst for solving the
20 problems with the State Ag Park. And as a result
21 we've been in discussions with the Department of
22 Agriculture and the parties here.

23 We have an agreement that I would make at
24 this time on our oral motion to consolidate the
25 hearings, records and files on Ho'Ohana's Motion to

1 Bifurcate with the Motion to Amend pursuant to
2 Commission Rule 15-15-54. It's warranted as the
3 motion involves the same parties and issues. And
4 consolidation will be conducive to the proper dispatch
5 of business and justice as stated in Rule 15-15-54.

6 I will represent to you that we have a
7 stipulation between the successor Petitioner, the
8 Office of Planning and DPP to consolidate the hearings
9 on those motions to allow us to, then, proceed with
10 the presentation of evidence.

11 The stipulation includes the reservation
12 that all parties reserve all rights to call witnesses
13 and cross-examine witnesses and present argument after
14 the presentation of the Petitioner's case in chief.

15 There are tactical and legal and
16 procedural reasons for the request to consolidate.
17 The primary reason is that it will allow us, the
18 Successor Petitioner, to proceed with providing the
19 evidence to the Commission today as much as we can on
20 the record, while we also are able to work out the
21 negotiations with the State and the County and the
22 City and County on the issues that they have including
23 the Department of Agriculture offsite infrastructure.

24 That way we can proceed with presentation
25 of evidence. We can use this valuable day and then

1 come back, we hope, on November 21st to conclude our
2 presentation and any cross-examination if need be.

3 At that time it's our hope that we can
4 come back with an agreement between the parties on the
5 issues on proceeding forward.

6 So, therefore, I make that oral motion to
7 consolidate the hearings and request that we be able
8 to do that. If we are able to do that then we'll
9 proceed with our first witness.

10 CHAIR McDONALD: So the request is to
11 consolidate the motion to bifurcate.

12 MR. LIM: For hearing purposes, yes.

13 CHAIR McDONALD: Parties, any objection
14 with the request?

15 MR. LEWALLEN: We have no objection. That
16 was our agreement. Mr. Lim said that he would, should
17 we need to cross-examine any -- Mr. Lim said should we
18 need to cross-examine the witnesses at a later time
19 that he would secure the presence of them.

20 CHAIR McDONALD: Office of Planning?

21 MR. YEE: The Office of Planning has no
22 objection to the consolidation. Just so that we're
23 clear. I think I understood what Mr. Lim was saying.
24 Mr. Lim will basically be presenting his case, his
25 witnesses, his direct. The Office of Planning at this

1 time will not be cross-examining -- I think neither
2 will DPP, cross-examining the witnesses until the
3 21st.

4 And Mr. Lim will bring back any and all
5 witnesses that the parties or perhaps the Commission
6 would want to cross-exam. Quite frankly, because it
7 seems odd and I'm not sure everyone's followed the
8 rationale why we're doing it this way. We had -- we
9 inconvenienced the Commission yesterday. I
10 acknowledge that. I understand that. And I apologize
11 for it. Certainly I regret it.

12 It was because we met for settlement. I
13 won't get into the discussions. But we had some
14 movement. So the thought was perhaps we might be able
15 to reach -- or at least narrow the issues and
16 hopefully reach an agreement by the 21st.

17 But just the time schedule was such that
18 we weren't sure we were going to get everything done
19 in one day, so we couldn't put off this hearing
20 completely. So in order to allow us to move forward
21 with some of the time requirements for this hearing,
22 Mr. Lim will be presenting his case for both motions,
23 take everything and bring all the witnesses that he
24 needs. And we can get that finished.

25 And then on the 21st we either will have

1 an agreement, in which case it makes things much
2 simpler, or we don't, in which case the parties will
3 then proceed with its cross-examination and obviously
4 oral argument at the end. So with that understanding
5 that we'll be able to withhold our cross-examination
6 at this time until the 21st, that is the stipulation.

7 CHAIR McDONALD: Thank you. Commissioners,
8 do you folks have any question with regards to
9 Mr. Lim's request?

10 MR. WONG: Chair McDonald, Vice Chair
11 Wong, members of the Commission. My name is Del Wong
12 and I represent HRT Realty, 300 Corporation, and
13 Honolulu Ltd. which are other landowners in the
14 Petition Area. I'm here today because, frankly, we've
15 been blind-sided by what is supposed to occur today.

16 We were told back in October that there
17 were discussions taking place between Ho'ohana and the
18 Office of Planning in order to resolve any concerns
19 that the Office of Planning had with respect to the
20 Motion to Amend, which is the underlying Motion in
21 Chief. We were told: Hold off from filing an
22 opposition; we're going to be discussing this with the
23 Office of Planning.

24 And as late as Sunday, November 9th, I
25 received, and I believe that Mr. Orodener received,

1 an e-mail from Petitioner's counsel stating that today
2 we would have a hearing on the Motion to Bifurcate.
3 And if the Motion to Bifurcate is granted, we would
4 then begin presentation of evidence on the Motion to
5 Amend.

6 But if the Motion to Bifurcate is denied,
7 Ho'ohana will request that the hearing on the Motion
8 to Amend is *deferred* until November 21st. So let's
9 just put this into context. My clients are told:
10 Don't oppose. Do not file in opposition in these
11 proceedings until we can have an opportunity to
12 discuss this with Office of Planning.

13 We received an e-mail November 9th:
14 Here's what's gonna happen. We're going to have --
15 we're gonna have the hearing on the Motion to
16 Bifurcate. If that's granted *then* we'll put on
17 evidence. If it's denied we're going to continue the
18 matter until the 21st to give you, HRT, Honolulu Ltd.
19 and 300 Corporation, more time to present any
20 opposition that you may have to the substance of the
21 matter in writing.

22 So we have not filed in opposition in this
23 case....based upon that reliance. Relying on their
24 representation that this Motion to Amend will not be
25 heard today.

1 At 4:00 yesterday the senior attorney in
2 my office calls me as I'm headed out of the office to
3 my daughter's basketball game. "Oh, by the way, just
4 so you know there's going to be a change in plans
5 tomorrow. We're going to be consolidating the motion.
6 We're going to be hearing both of 'em."

7 This is the worst example of trial by
8 ambush that I've ever seen. Frankly, it taints the
9 entire proceeding. I can't believe that this
10 happening. My clients were not in the room when there
11 was this supposed stipulation between Ho'Ohana and
12 Office of Planning. We were not party to that. We
13 were only informed of that at 4:00 in the afternoon
14 yesterday. At the 11th hour the day before the
15 hearing today we're told, "By the way, everything that
16 we told you before, cancel that. We're not doing it
17 that way."

18 I respectfully submit that no evidence
19 should be put on on the Motion to Amend based upon the
20 representation from counsel that this was not going to
21 occur. You can't just switch things and change the
22 process at the eleventh hour without the agreement of
23 interested parties.

24 CHAIR McDONALD: I understand there's some
25 changes that have been requested. At this time I'm

1 going to entertain a motion to enter into executive
2 session to discuss this matter with our attorney
3 general.

4 COMMISSIONER WONG: I move.

5 COMMISSIONER AHAKUELO: Second.

6 CHAIR McDONALD: All those in favor?
7 "Aye". Any opposed? The Commission will now enter
8 into executive session. If you folks could all remove
9 yourselves from the room. And our chief clerk will
10 come and get you once our executive session is
11 concluded. (9:54 to 10:30)

12 CHAIR McDONALD: We're back on the record.
13 There's some questions that the Commission will get
14 to. But before we get to that, Mr. Wong, can you
15 please reclarify your position as to the participation
16 of this hearing in this matter before us.

17 MR. WONG: Certainly. As I stated
18 previously we were only given notice that the Motion
19 to Amend was gonna be heard today at 4:00 yesterday
20 afternoon, after being told specifically that it was
21 not going to be heard today. So I had voiced my
22 concerns with that on behalf of my clients, that we
23 had not had the proper opportunity to file in
24 opposition or to brief the Commission as to our
25 position in writing.

1 For the record that remains our
2 opposition. However, I understand from speaking with
3 Mr. Lim and Mr. Yee that there are some scheduling
4 issues that the Commission in its wisdom may choose to
5 override whatever objections we have because of
6 scheduling matters.

7 CHAIR McDONALD: And who is your client?

8 MR. WONG: My clients are HRT Realty, LLC;
9 300 Corporation and Honolulu Limited.

10 CHAIR McDONALD: Thank you. Mr. Lim,
11 there were representations made yesterday by your
12 associate that all the parties, landowners that have
13 interest in this parcel had been reached out to with
14 their filings. However, in this particular case the
15 response was you have not received any type of
16 response or objection from Mr. Wong or his client.
17 Can you please clarify that for us.

18 MR. LIM: We started the initial outreach
19 on this matter in April of this year. We made
20 telephone contact and particular e-mail contact. At
21 one point in time we did receive an e-mail from
22 Mr. Wong's office saying that they understood what we
23 were proposing and had no objections. We submitted
24 our draft Motion to Amend to all the landowners in
25 July and received no response.

1 We sent another follow-up e-mail to them
2 approximately 2 weeks afterwards and received no reply
3 and so we filed. We believe we've tried to do the due
4 diligence before filing of the motion. You've seen me
5 here before. I don't want to bring problems to the
6 Commission if I don't have to. If we had time to work
7 all these issues out before coming we would, of
8 course, would have done that. We just got this
9 financial cliff that we're dealing with that doesn't
10 allow us any additional time.

11 So, again, we apologize for that. I hope
12 the Commission can see fit to allowing us to present
13 our direct testimony subject to the reservation to the
14 rights of the parties to cross examine. We request
15 that the Commission allow us to consolidate the
16 Motions for Hearing so that no one is prejudiced in
17 terms of what they want to object to.

18 And hopefully we can come back at the
19 November 21st hearing with a much smoother sail for
20 you.

21 CHAIR McDONALD: I guess procedurally,
22 Mr. Wong, seeing that you do have interest in the
23 property, you'll be admitted as a party to the
24 proceedings. And I guess I'm curious, as Mr. Lim had
25 stated, the filing for a Motion to Amend has been on

1 the table for a while. He has not, nor the
2 Commission, have received any type of objection or
3 response to the filing.

4 MR. WONG: That is correct. We do not
5 necessarily -- or at the time we did not object to the
6 Motion to Amend in substance. We had no problem with
7 the idea of Robinson's land being used for a solar
8 development.

9 Our objections arose subsequent when OP
10 filed its response which would in effect impose new
11 conditions or what we view as new obligations on the
12 Petition Area. That's when our objections accrued.
13 So Mr. Lim is correct that we had seen the Motion to
14 Amend and substantively we do not have a problem with
15 it. Our objections, our concerns arise because of
16 OP's response.

17 CHAIR McDONALD: Mr. Yee, can you please
18 respond. Go ahead.

19 MR. YEE: If I could just respond. Thank
20 you. 1. OP's objections are on the record. HRT did
21 have an opportunity to file their comments or
22 responses to OP's pleadings. They have not yet done
23 so. We have no objection. I guess our thought was
24 all that's gonna happen today is a presentation of
25 evidence. There's no intention to give argument by

1 any of the parties. Any of the parties, including HRT
2 I believe, may ask to cross-examine on the 21st. If
3 HRT would like to file a further pleading soon, very
4 soon, we wouldn't -- we wouldn't object. Although I
5 will note, that if the Motion to Bifurcate had been
6 denied today, then HRT's comments and objections to
7 the OP's objections would have been, you know,
8 frankly, rather late.

9 But with the understanding that they have
10 an interest in this case, we certainly don't want to
11 prejudice their ability to bring forward any
12 information to you and present their arguments to you
13 in some reasonable fashion.

14 So in sum I think I believe HRT's rights
15 are not being prejudiced by moving forward today. As
16 I said they can still oppose. They can still
17 cross-examine. They can do whatever they could have
18 done before. Admittedly they're not going to know
19 whether or not the bifurcation is going to be granted
20 or not, but that is a decision I think that really is
21 a procedural question up to the Commission.

22 It's not up to the parties to represent.
23 It's not up to the parties to make a determination of.
24 That's a decision solely held by the Commission. So,
25 I believe it's appropriate to move forward today.

1 CHAIR McDONALD: Commissioners, any
2 questions for the parties at this point? Commissioner
3 Scheuer.

4 COMMISSIONER SCHEUER: I have a question
5 for Mr. Wong. When the Chairperson asked you to
6 restate your concerns you said that you had no idea
7 that the Motion to Amend would be considered today.
8 If I heard you correctly, the agenda that was timely
9 filed for this hearing, clearly states that there is 2
10 possible motions, one for the Order to Bifurcate and
11 one for the amendment. So, you know, based on the
12 sort of public notice this was clearly on the table.

13 So can you clarify again, please, what
14 you're saying when you had no idea that the amendment
15 might be considered today.

16 MR. WONG: Right. Because based upon the
17 November 9th e-mail that I received on Sunday from
18 Mr. Lim's office, we were given the representation
19 that the Motion to Amend would be continued to a later
20 time if the Motion to Bifurcate was denied.

21 COMMISSIONER SCHEUER: So just for the
22 record you're not -- you're suggesting that there
23 might have been some representation from another party
24 but not from this Commission.

25 MR. WONG: That is correct.

1 COMMISSIONER SCHEUER: Thank you.

2 CHAIR McDONALD: Anybody else?

3 Commissioner Song.

4 COMMISSIONER SONG: Mr. Lim, you
5 previously talked about your efforts prior to filing
6 this motion with the landowners. But that's not the
7 issue Mr. Wong raised. Have there been discussions
8 with the landowners since you filed this Petition? Or
9 what is your comment to Mr. Wong's statement that he's
10 been blind-sided?

11 MR. LIM: The statements by him as to our
12 representations are correct. And we're dealing, like
13 I said, a multi-party arrangement here. So we learned
14 only yesterday that one of the parties wouldn't
15 stipulate to bifurcate the proceedings. And it was a
16 critical party to our interest.

17 So we had to back down. That's why we
18 sent the e-mail as soon as we knew that. We had hoped
19 through the parties discussion with OP and DPP that
20 the mechanism by which we've chosen, which is the
21 Motion to Consolidate, the motions for hearing, and
22 proceed with the evidence would give everybody the
23 opportunity to still make their objections before the
24 next hearing. And I'll represent to the attorney for
25 HRT that successor Petitioner does not have any

1 objections to their filing of any motions or pleadings
2 in opposition to what we're requesting. But we
3 believe that -- we strongly believe that we have the
4 workings of a settlement in place. And it's just a
5 matter of trying to get the parties all to agree.
6 That's why we're requesting the Commission's
7 indulgence. I know this is not common. We had that
8 financial cliff that we're trying to avoid. And we
9 request your consideration and allow us to proceed.

10 COMMISSIONER SONG: Mr. Chairman, I have
11 just a couple more questions. Mr. Wong, are you ready
12 to proceed today?

13 MR. WONG: I'm not.

14 MR. LIM: We are specifically reserving
15 the parties' rights to present evidence and
16 cross-examine witnesses at the November 21st hearing.
17 This would only be a presentation of Petitioner's
18 direct presentation in chief.

19 COMMISSIONER SONG: Mr. Lim, what you're
20 proposing -- my background is in litigation -- what
21 you're proposing is very unusual. I understand that
22 Office of State Planning has agreed and the City and
23 County has agreed, but there's another landowner here
24 who says they're not ready to proceed. And I'm
25 concerned about prejudice, the prejudice by continuing

1 this proceeding, allowing this proceeding to continue.

2 If, in fact, you're so close to a
3 settlement, wouldn't it make sense to defer this
4 hearing and come back to this Commission with a
5 settlement rather than doing this in such a piecemeal
6 fashion.

7 MR. LIM: We would love to do that. I
8 worry that we don't have enough time to do that before
9 the cliff comes. So that's why we're taking this very
10 unusual request to the Commission. We were talking to
11 Mr. Wong on the break. And I understand that he was
12 not able to reach his client. And that's why he can't
13 say that he's okay to go forward. But he's willing to
14 let the Commission make the decision on that.

15 He said that he's not ready to proceed,
16 but I don't think that he means that he can't sit and
17 listen to the testimony as long as he reserves his
18 right to cross-examine. We are willing to bring back
19 all the witnesses on the 21st of November if any party
20 requires, or the Commission, of course.

21 COMMISSIONER SONG: Mr. Chairman, just one
22 thing further. I'm just really concerned with the
23 procedural error. This is subject to reversal if we
24 proceed with starting this hearing today. That's my
25 feeling on the subject.

1 CHAIR McDONALD: Thank you, Commissioner
2 Song. Commissioner Wong.

3 COMMISSIONER WONG: Mr. Wong, sorry, I'm
4 still confused. I'm real slow. Sorry about that.
5 Okay. You have no problems with the Motion to Amend,
6 is that correct?

7 MR. WONG: I would say that during the
8 timeframe that Mr. Lim was referring to when he stated
9 that we did not file in opposition, at that time I did
10 not have any opposition to the Motion to Amend. With
11 the procedural issues that have arisen today, and
12 based upon, depending upon what the Commission rules,
13 my client may have an opposition in substance to the
14 Motion to Amend. I don't know.

15 COMMISSIONER WONG: Okay. But you could
16 have talked to your client in August, approximately,
17 or when it was served, right, the Motion to Amend?

18 MR. WONG: What's changed since the filing
19 of the Motion to Amend is the fact that OP has placed
20 conditions or seeks to place conditions on the
21 approval of the motion. And it is with respect to
22 those conditions that my client may have reservations.
23 We don't know at the end of the day what the final
24 form of those conditions will be. That is subject to
25 the Commission's decision as well as the parties may

1 have the opportunity to resolve them prior to coming
2 back on the 21st. But as we sit here today I don't
3 think anybody can, with a hundred percent certainty,
4 represent to the Commission what those conditions
5 would be.

6 COMMISSIONER WONG: Let me get this
7 straight then. The Commission in its wisdom can put
8 any conditions on and approve it, correct?

9 MR. WONG: Yes, sir.

10 COMMISSIONER WONG: The landowner or
11 whoever that comes, the Petitioner that comes in front
12 of us, must follow that conditions, is that correct?

13 MR. WONG: Yes.

14 COMMISSIONER WONG: Even, let's say, we
15 put some conditions on, the landowners or the
16 Petitioner must follow those directives, orders and
17 conditions -- statements, right?

18 MR. WONG: The procedural issue that we're
19 raising today is that we don't know -- HRT 300
20 Corporation and Honolulu Limited don't even know and
21 haven't had the opportunity to present its position on
22 those conditions 'cause we don't know what they are.

23 COMMISSIONER WONG: But let's say at the
24 end of all the motions, witnesses and all that, you
25 wouldn't even know what conditions -- I could have

1 said, you know, "shoot for the moon". Isn't that
2 correct? And that'd be a condition? That's at the
3 last point, isn't that correct? As you representing
4 your clients they wouldn't know until that point when
5 I say, you know, you have to run and put out a fire or
6 something. Isn't that -- wasn't that true?

7 MR. WONG: I'm only responding to what OP
8 has put on the table. What we know today is that they
9 are requesting certain conditions. I'm not going to
10 engage in a hypothetical about shooting to the moon or
11 putting out fires.

12 What I am responding to are the conditions
13 that OP has indicated they want in order to allow the
14 Motion to Amend to be subject to their -- to their
15 approval. So that's what I'm reacting to.

16 COMMISSIONER WONG: So how long would it
17 take for you to talk to your client and get their
18 feedback on these conditions?

19 MR. WONG: I think what we would need to
20 have is some sort of a discussion in its reasonably a
21 final form as possible between OP, Canyon, HRT, and
22 Ho'Ohana and presumably Robinson as well, essentially
23 all of the landowners and interested parties in the
24 Petition Area.

25 Once that -- once a position has been

1 reached, then we would have the opportunity to either
2 oppose or support. We're not at that point yet.

3 COMMISSIONER WONG: And how long, again,
4 would it take do you think?

5 MR. WONG: I don't know because I'm not
6 the one -- I'm not the Movant. I'm not the Petitioner
7 in this matter. The Petitioner is Ho'Ohana. They're
8 the ones dealing directly with Office of Planning.
9 And Office of Planning is proposing certain
10 conditions. So I would not be able to unilaterally
11 tell you that.

12 COMMISSIONER WONG: So let's say we take
13 another three meetings, or let's say another month or
14 so for you to work on something. We give you a set
15 deadline. Do you think it would be finished by then?

16 MR. WONG: I think that the parties would
17 work with all due speed and good faith in order to try
18 to reach an amicable resolution. But I cannot give
19 you an answer with a hundred percent certainty that
20 would be the case.

21 CHAIR McDONALD: Commissioner Mahi.

22 COMMISSIONER MAHI: It seems to me,
23 Chairman, that we are being placed into a position
24 where we're standing outside an oven trying to decide
25 whether the lasagna was baked or not. And we get the

1 feeling that it's not gonna be baked. It's going to
2 be partially baked. The mozzarella is not going to be
3 melting. And then the sausage is not going to be all
4 nice and warm. You know, I hate to eat things or make
5 decisions on things when they're half baked.

6 So I would suggest that you all get
7 together so that be cognizant of what the Commissioner
8 has shared with us about the fact that if we're going
9 to hear about what the lasagna is gonna look like, but
10 you haven't decided what you're going to put in the
11 lasagna yet, I best not hear it at all because we'll
12 be, again, asked to make certain decisions and
13 feelings. And we don't know what we have yet.

14 So I know we've taken a long time. I
15 talked about yesterday. Hey, did you camp outside his
16 door, knock on the door waiting for some kind of
17 answer? Just short of that, right? So I had a funny
18 feeling about that. I think now this is my feeling:
19 Let's get the whole pie baked and we can make a good
20 decision. Let's not go on half baked stuff.

21 COMMISSIONER SCHEUER: Mr. Chair?

22 CHAIR McDONALD: Commissioner Scheuer.

23 COMMISSIONER SCHEUER: Sorry. I want to
24 go back again to something the Chair made. Really I
25 understood our discussion yesterday's motion when the

1 Petitioner asked for the continuance. I was under the
2 clear impression when we talked about how many
3 companies there were, how many had been in agreement,
4 and your attempts to contact the others, that there
5 was going to be an agreement today for most 6. Is it
6 now my understanding that the meeting that was held
7 with the Department of Agriculture yesterday, nobody
8 from HRT was there or part of that discussion?

9 MR. LIM: That's correct.

10 COMMISSIONER SCHEUER: So why were we
11 given the impression that they were?

12 MR. LIM: I don't know exactly what was
13 said yesterday. But if that was the impression given
14 then I apologize. We have been in discussions with
15 all the parties through the proceedings. The big
16 issue for this proceeding and the reason why we are
17 having such difficulty -- and I'll step back a little
18 bit -- is Ho'Ohana Solar is not one of the landowners
19 we are proposed lessee of the Robinson lands.

20 So it's like we came into a -- it's like
21 we came into the party late and are now dealing with
22 problems that were already existing. We're trying to,
23 through Ho'Ohana's efforts, we're trying to propose a
24 fix to the problem. I think the Department of
25 Agriculture wisely chose to use the solar farm

1 Petition as a reason to bring all the parties to the
2 table. That has happened. So that's a good sign.

3 We think we're at the point where we've
4 discussed it with them. And that I think or we
5 thought we had everybody on board in terms of the
6 proposal for settlement. I myself believe that the
7 issues that we're dealing with today are going to be
8 worked out before next Friday. I'm hopeful that the
9 other parties, including the HRT group, is able to
10 join us on that.

11 MR. YEE: Could I just give hopefully a
12 brief clarification?

13 CHAIR McDONALD: Mr. Yee.

14 MR. YEE: Thank you. We'll certainly
15 defer to whatever the Land Use Commission decides to
16 do procedurally on the hearing schedule. I just want
17 to be clear about something. I think what's happening
18 is the landowners had no opposition to the Motion to
19 Amend as filed by Ho'Ohana because all they said is,
20 "I want to put solar. No new conditions." So the
21 landowners didn't care. They're okay with that.

22 On October 8th the Office of Planning
23 filed its response. We said, "No, you should have
24 conditions." We layed that out. The landowners might
25 not be all that happy with imposing new conditions,

1 but nobody filed any opposition. Now, that may have
2 been partly because they thought a bifurcation would
3 be decided first. If it's bifurcated they were
4 thinking "it won't apply to me. So if it doesn't
5 apply to me I don't care."

6 The Office of Planning opposed the
7 bifurcation as we also filed. And we said, "No don't
8 bifurcate."

9 Now, at that point the landowners had a
10 choice of what to do. And apparently based upon in
11 the e-mail, I'm not sure what the basis was, there was
12 a statement made about the order of the motions to be
13 heard. But I just want to be clear where the
14 opposition comes from and where the agreement came
15 from. So there's agreement on *their* Motion to Amend
16 but not agreement on the Office of Planning's
17 comments. So I just want to be clear about that.
18 Thank you.

19 CHAIR McDONALD: Appreciate that, Mr. Yee.
20 Commissioner Wong.

21 COMMISSIONER WONG: I have a question for
22 Mr. Lim. Mr. Lim, do you think you can get agreement
23 by December 10th with everyone, all parties?

24 MR. LIM: Yes, I'm confident we can get
25 agreement. We believe that the negotiations,

1 especially yesterday's meeting -- that's why I wasn't
2 here -- went very well, as well as we could have
3 expected. We appreciate the cooperation of the
4 Department of Agriculture and the Office of Planning
5 and the Department of Planning and Permitting in
6 getting to that point.

7 Of course some of the landowners may not
8 be on board yet, but I think that once we are able to
9 work with them further that we can get them on board.
10 The problem that we have, like I said, is one of the
11 cliff. If we do not get a final action by the
12 Commission by a vote at the December 10th/11th meeting
13 I believe it is, then the Project will be withdrawn.

14 COMMISSIONER WONG: Mr. Wong, do you
15 believe also that you could get some sort of agreement
16 by December 10th?

17 MR. WONG: Well, I don't have -- I don't
18 have settlement Authority from my client. So I cannot
19 speak with any certainty. But I would represent to
20 the Commission that my clients would come to the table
21 in good faith and work with everybody to see that, to
22 try to reach an amicable resolution.

23 COMMISSIONER WONG: Okay. This is what
24 I'm thinking. I'm going to tell you the truth.
25 Because Commissioner Mahi talked about lunch, (general

1 laughter) I'm getting hungry. But anyway, what I'm
2 thinking is why don't you guys talk about it, because
3 I want to continue this process. Because we do have,
4 you know, the Petitioner said we do have a deadline.
5 Talk about it. See if we can continue this process
6 after lunch. And if not then we go to talk it out
7 from there. That's my feeling right now, Chair.

8 CHAIR McDONALD: So noted, Commissioner.
9 It seems to me we have a procedural issue. It's been
10 brought up by a few of our Commissioners. And I think
11 it's been brought up -- well, it's been brought up in
12 our discussions with our attorney general with regards
13 to the procedural matter at hand.

14 Mr. Lim, I'm not sure why the request for
15 consolidation has been requested at such a late date.
16 Would you consider withdrawing that motion for the
17 purpose of moving forward with our agenda before us so
18 that we can proceed with your presentation and
19 entering your exhibits and hearing your witnesses?

20 MR. LIM: That would assume that the
21 Motion to Bifurcate is deferred? Or...

22 CHAIR McDONALD: It's actually to hear
23 your motion to bifurcate first.

24 MR. LIM: The Motion to Bifurcate, I would
25 like to talk to my client, take 5 minutes on that. We

1 could consider that. I'd like to talk to the other
2 parties because we have an informal agreement on
3 procedure today. The parties may not agree to
4 handling this as a separate matter. So if we could
5 have 5 minutes or so.

6 CHAIR McDONALD: Mr. Yee, do you have a
7 comment?

8 MR. YEE: Yeah. We talked about being
9 prepared to move forward. The Office of Planning
10 understood that we would not have to present our case
11 or to cross examine witnesses today. We would move
12 forward with the bifurcation, but we just, you know --
13 we had not prepared our witness for testimony today.
14 So we can move forward with their witnesses, perhaps,
15 is our offer. I'm not sure we can even get to our
16 witnesses.

17 But in our minds the bifurcation, the
18 Motion to Amend, one, involves the exact same issues.
19 So it's not so much the consolidation is what I'm
20 thinking of as much as hearing the evidence. So we
21 would still ask that their witnesses be heard and that
22 subject to their stipulation that we not be required
23 to do cross-examination today.

24 CHAIR McDONALD: I bring this up because
25 Mr. Wong is coming before us in objection to what's

1 being requested by Mr. Lim. Prior to this I think we
2 can all agree that no response has been provided.
3 Right. So trying to move forward with what's
4 currently on the agenda. And that is the motion to
5 hear the order for bifurcation. I'm asking Mr. Lim if
6 he's prepared to proceed in that fashion.

7 So if you want to have a discussion with
8 your client, Mr. Lim, we'll take a 5-minute recess.

9 MR. LIM: Thank you very much.

10 (Recess 11:00-11:30)

11 CHAIR McDONALD: Okay. We're back on the
12 record. Mr. Lim, have you had a chance to talk to
13 your client?

14 MR. LIM: Yes, we did, Mr. Chair, members
15 of the Commission. Thank you, again, for your
16 patience with us. I talked with my client. We also
17 talked to the State Office of Planning and the
18 Department of Planning and Permitting. We have
19 collectively agreed to request that the Commission
20 defer the hearing today until Friday, November 21st in
21 Honolulu, as I understand you're next meeting is held.

22 We anticipate, I being the internal
23 optimist, I anticipate coming back to you with a much
24 cleaner presentation. We will be continuing both the
25 Motion to Bifurcate and Motion to Amend so nobody

1 loses any rights. We request that the Commission
2 grant that continuance. We expect to prepare and
3 submit before then by no later than Tuesday of next
4 week what we call written direct testimony.

5 It's in writing question/answer
6 question/answer. You'll see that in various petitions
7 that you see primarily on the larger projects. That
8 will give you an idea of the testimony that's to be
9 coming. We're hopefully getting that draft testimony
10 to the parties over the weekend to have them look at
11 it with their clients and get it finally submitted to
12 the Commission no later than Tuesday.

13 The reason for that is that in that way
14 hopefully we can -- at least the successor Petitioner
15 can shorten our presentation and our questioning of
16 the witnesses. I can ask them to present summaries of
17 their testimony on the stand and then the parties can
18 open up for cross-examination.

19 CHAIR McDONALD: Parties, is that the
20 agreement between the Petitioner and City as well as
21 the State OP?

22 MR. YEE: Yes.

23 MR. LEWALLEN: Yes.

24 MR. WONG: My clients agree as well, HRT,
25 300 Corporation and Honolulu Limited.

1 CHAIR McDONALD: To further elaborate, any
2 filing whether it be the briefs, any objections from
3 the different parties, need to be filed with the LUC
4 staff by next Tuesday. This is an order for the
5 Commission to prepare itself for next Friday's
6 hearing. Commissioners, anything else to add?
7 Commissioner Scheuer.

8 COMMISSIONER SCHEUER: Just to make sure.
9 So we now have four of the six landowners?

10 MR. LIM: Five of the six.

11 COMMISSIONER SCHEUER: Five of the six.

12 MR. LIM: Mr. Wong represents three of the
13 landowners.

14 COMMISSIONER SCHEUER: I think you know
15 where I'm going, Mr. Lim. Are we going to go down
16 this road again when the other party shows up and
17 says, "Oh, wait. I just heard about this."

18 MR. LIM: We have been in contact with
19 them the most, actually. So we're going to see if we
20 can get them on board the next session.

21 CHAIR McDONALD: Who is that sixth?

22 MR. LIM: Kam Partners 4 Realty Company.
23 They were the ones that last appeared before the
24 Commission in 2013 to amend the traffic condition for
25 the Kunia Interchange from a regional -- from a local

1 to a regional traffic improvement. So they're known
2 to the Commission. And we have been in constant
3 contact with them also. So I will reach out to them
4 again. I was going to inform them of the proceedings
5 in any event. And hopefully we can get the parties
6 closer aligned. We're in a different position.
7 We're not one of the landowners, but we're trying to
8 bring everybody with us if we can.

9 COMMISSIONER SCHEUER: Mr. Chair, if I can
10 continue. My concern is, first of all, the staff has
11 worked extremely hard. We had staff members working
12 on a holiday to try and get us the summary. There's
13 also a consequence now with 2 days of hearings.
14 There's other parties with their own deadlines, their
15 own concerns in front of the Land Use Commission were
16 not scheduled for these last 2 days.

17 So I really hope that there's some
18 assurance before we actually get to the 21st that
19 there will actually be a substantive non-sloppy issue
20 before us. That's my concern, Chair.

21 CHAIR McDONALD: So noted, Commissioner
22 Scheuer. Any further comments, Mr. Lim?

23 MR. LIM: No. Just that we really, really
24 appreciate the Commission's patience. Like I said the
25 final date that we have for the Commission's vote on

1 the motions is the December 10th and 11th hearings.
2 Because right after that the HECO waiver process
3 requires our client and the other solar providers that
4 are in the waiver process, to come up with a, what
5 we're trying to negotiate down from a 7 figure number.
6 So that's why we say if we don't get the final action
7 by that date we have to withdraw because we cannot
8 risk putting that money down. So I appreciate it very
9 much.

10 CHAIR McDONALD: Thank you.
11 Commissioners, any further discussion? Hearing all
12 that's transpired this morning I think it's in the
13 best interest of this Commission to approve the
14 continuance and take the matter up on November 21st.

15 I trust, Mr. Lim, that you and your party
16 will be prepared and have whatever stipulated
17 agreements with the Office of Planning. So that we're
18 adjourned.

19
20 (The proceedings were adjourned at 11:30 a.m.)

21 --oo00oo--
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23
24
25

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 matters on the 13th day of November
2014;

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 matters.

DATED: This _____ day of _____ 2014

HOLLY M. HACKETT, HI CSR #130, RPR #5910
Certified Shorthand Reporter

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