

LAND USE COMMISSION

STATE OF HAWAII

October 24, 2018

Commencing at 10:00 a.m.

Courtyard by Marriott

King Kamehameha's Kona Beach Hotel
Ballroom #1

75-5660 Palani Road, Kailua-Kona, Hawaii 96740

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. Action-A06-767 Waikoloa Mauka LLC, (Hawai'i)
Hear evidence, deliberate and take action on
order to show cause issued June 4, 2018

VI. Recess

BEFORE: Jean Marie McManus, CSR #156

APPEARANCES

COMMISSIONERS:

JONATHAN SCHEUER, Chairperson
NANCY CABRAL, Vice Chair
LEE OHIGASHI
EDMUND ACZON
GARY OKUDA
DAWN N.S. CHANG

RANDALL S. NISHIYAMA, ESQ.
Deputy Attorney General

STAFF:

DANIEL ORODENKER, Executive Officer
RILEY K. HAKODA, Chief Clerk/Planner
SCOTT A.K. DERRICKSON, AICP
RASMI AGRAHARI, Planner

STEVEN LIM, ESQ.
NATALIA BATICHTCHEVA
JOEL LaPINTA
For A06-767 Waikoloa Mauka

DAWN APUNA, ESQ.
RODNEY FUNAKOSHI, Planner
Deputy Attorney General
State of Hawai'i

RON KIM, ESQ.
JEFF DARROW, Planning Program Manager
Deputy Corporation Counsel
County of Hawai'i

IRINA McGRIFF
Russian interpreter

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1 CHAIRPERSON SCHEUER: Good morning. This
2 is the October 24th, 2018 Land Use Commission
3 meeting.

4 Our first order of business is the adoption
5 of September 27th, 2018 minutes. Are there any
6 corrections or comments on the minutes? Is there a
7 motion to adopt the minutes?

8 COMMISSIONER OHIGASHI: So moved.

9 VICE CHAIR CABRAL: Seconded.

10 CHAIRMAN SCHEUER: Moved by Commissioner
11 Ohigashi and seconded by Commissioner Cabral to adopt
12 the minutes. Any discussion on the motion? All in
13 favor say "aye". Any opposed? The minutes are
14 unanimously adopted.

15 Next agenda is the tentative meeting
16 schedule. Mr. Orodener.

17 EXECUTIVE OFFICER: Thank you, Mr. Chair.

18 Tomorrow we will be here for continuation
19 of this hearing, if necessary, and to adopt the order
20 on the Kualoa Ranch's Important Agricultural Land
21 designation.

22 On November 14th, we will be on Oahu for
23 the Kapolei motion to amend, and the adoption of
24 order in the Hale Mua matter.

25 On November 28th, we will be again here on

1 the Big Island in Kona for the HHFDC Lanihau and
2 Shopoff status report. There's also another matter
3 that will be on the agenda that day, Church Motion to
4 Amend.

5 On 29th, we will be on Maui for Emmanuel
6 Lutheran, and any other matters that require adoption
7 of orders.

8 On December 12th, we have status report on
9 Ka'ono'ulu Ranch and continuation of the Church
10 matter that I previously mentioned. We will be on
11 Maui.

12 On the 13th, we will be on Oahu for site
13 visit for the Kapolei, Maui Kahana and Robinson.

14 That takes us through the end of the year.

15 CHAIRPERSON SCHEUER: Commissioners, are
16 there any questions for Dan? Thank you, Dan.

17 Our next agenda hearing and action meeting
18 on Docket A06-767 Waikoloa LLC to hear evidence,
19 deliberate and take action on the Order to Show Cause
20 as to why approximately 731.581 acres of land in the
21 South Kohala District, Island of Hawaii, tax map key
22 number (3)6-8-02:016, a portion thereof, should not
23 revert to its former land use designation or be
24 changed to a more appropriate classification issued
25 on June 4th, 2018.

1 Will the parties please identify themselves
2 for the record. I'll remind you to press your
3 buttons down so they light to make sure that your
4 microphone is on.

5 MR. LIM: Good morning, Mr. Chairman,
6 members of the Commission. Steven Lim representing
7 the Applicant and Petitioner Waikoloa Highland
8 Incorporated.

9 With me today are Mr. Valery Grigoryants,
10 who is the Vice President of Arch Limited, 100
11 percent shareholder, who is the in turn 100 percent
12 owner of Waikoloa Highlands, Inc., Natalia
13 Batichtcheva who is the President of Waikoloa LLC,
14 and Joel LaPinta who is our Project Manager.

15 CHAIRPERSON SCHEUER: I believe you also
16 have a translator with you.

17 MR. LIM: I was going to introduce her just
18 prior to the testimony of Mr. Grigoryants.

19 CHAIRPERSON SCHEUER: Hawaii County.

20 MR. KIM: Good morning, Chairperson and
21 Commissioners, Ron Kim appearing on behalf of Hawaii
22 County, and accompanying me is Planning Program
23 Manager for the Planning Division of the Planning
24 Department for the County, Jeff Darrow.

25 CHAIRPERSON SCHEUER: Office of Planning.

1 MS. APUNA: Good morning Chair, members of
2 the Commission, Deputy Attorney General Dawn Apuna on
3 behalf of Office of Planning. Here with me is Rodney
4 Funakoshi.

5 CHAIRPERSON SCHEUER: I'm going to take one
6 minute to ask Dan to introduce our new staff member
7 who some of you may not recognize.

8 EXECUTIVE OFFICER: Thank you, Mr. Chair.

9 With us today I would like to introduce our
10 later member of our staff, Planner 4. Her name is
11 Rasmi Agrahari. We would like to welcome her. She
12 has only been here for two weeks, so she is
13 completely lost, but we will get her there.

14 CHAIRPERSON SCHEUER: Thank you very much.
15 Now let me update record.

16 COMMISSIONER OKUDA: Mr. Chair, before we
17 proceed, may I ask or request the Chair ask that the
18 interpreter identify herself by name, number one;
19 number two, identify the language she is
20 interpreting. And if you could swear the interpreter
21 to promise to accurately interpret what is being said
22 from English into whatever language she is
23 interpreting, and from the language she is
24 interpreting back to English, just so we have it for
25 the record.

1 CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.
2 I was going to proceed in that matter later, but I'm
3 happy to take it up now.

4 Mr. Lim, please introduce by name the
5 translator whom you are using and what their
6 expertise in translation is, and then I'll swear her
7 in.

8 MR. LIM: The translator is Irina McGriff,
9 M-c-G-R-I-F-F, and I'll ask her a broad question and
10 she can go into qualifications.

11 Ms. McGriff, can you please tell the
12 Commission your experience in interpretation of
13 Russian to English and English to Russian?

14 THE INTERPRETER: Good morning. As the
15 attorney said, my name is Irina McGriff and I'm court
16 appointed qualified interpreter of Russian language,
17 and federal immigration court certified interpreter
18 in the State of Hawaii.

19 CHAIRPERSON SCHEUER: I'm going to swear
20 you in.

21 Do you swear or affirm that any testimony
22 you give will be the truth and that you will
23 accurately and truthfully translate from Russian into
24 English the matters that translate?

25 THE INTERPRETER: I do.

1 -o0o-

2 IRINA McGRIFF

3 Was called as an interpreter to translate English
4 into Russian and Russian to English to the best of
5 her ability.

6 CHAIRPERSON SCHEUER: Thank you.

7 CHAIRPERSON SCHEUER: Does that address
8 your concern, Mr. Okuda?

9 COMMISSIONER OKUDA: Not to be too
10 technical, I would request that she also promise to
11 translate accurately English to Russian and Russian
12 to English both ways.

13 MR. LIM: I'll go ahead and do that just
14 for the short questions.

15 Irina, when was the first time that you met
16 the principals of Waikoloa Highlands?

17 THE INTERPRETER: Today at 8:00 o'clock in
18 the morning.

19 MR. LIM: How many times have you
20 translated Russian to English and English to Russian
21 in the courts of the State of Hawaii?

22 THE INTERPRETER: I've been interpreter
23 since 2004, and I have interpreted over 300 cases.

24 MR. LIM: Do you promise and affirm to the
25 Commission today that your translation to English to

1 Russian and Russian to English will be true and
2 correct to the best of your ability?

3 THE INTERPRETER: Yes, I do.

4 CHAIRPERSON SCHEUER: Mr. Lim, I'm also
5 going to ask that you include a resume or some
6 qualification for inclusion into the record later.

7 Let me proceed in updating the record.

8 On September 6, 2018, this Commission held
9 a meeting to consider and act on A06-767 Waikoloa
10 Highlands, Inc's Motion to continue the hearing on
11 Order to Show Cause. The Commission voted in favor
12 of the motion and we set October 24th-25th, 2018 as
13 the new hearing date.

14 On September 14th, 2018, the Commission
15 mailed or emailed an Order Granting Waikoloa
16 Highlands Inc.'s Motion to Continue to the parties.

17 On September 20th, the Commission mailed an
18 agenda notice of the October 24th to 25th meeting
19 with a copy of the legal advertisement and Exhibit A.

20 On September be 25th, 2018, the Commission
21 mailed an agenda notice of the October 25th through
22 25th meeting with copy of the legal advertisement and
23 Exhibit A by certified mail.

24 On October 12th, the Commission received
25 Statement of Position of the Office of Planning on

1 the Order to Show Cause dated October 12th and
2 Waikoloa Highlands Supplemental Statement of Position
3 on the Order to Show Cause dated October 12th, along
4 with Exhibits 18 through 37.

5 On October 15th, and LUC meeting agenda
6 notice for the October 24th and 25th was sent to the
7 Parties and the Statewide, Oahu and Hawai'i Island
8 mailing lists.

9 Also on the same day, the Commission
10 received a digital copy of WHI's Supplemental
11 Statement of Position and Exhibits 18 through 37.

12 On October 23rd, the Commission received an
13 email from the County containing an electronic copy
14 of its Statement of Position, but it failed to meet
15 the filing requirement of HAR 15-15-37 and is
16 therefore not considered as part of the record.

17 Let me briefly run over our procedure for
18 the day.

19 First -- and will all members of the
20 audience and public remember to please silence your
21 telephones and electronics devices.

22 First in our procedures I will call those
23 desiring to provide public testimony for the Order to
24 Show Cause to identify themselves. All such
25 individuals will be called in turn to our witness box

1 and I will swear them in prior to their testimony.

2 Second, we will consider the exhibits that
3 the Parties wish to offer into evidence in the Order
4 to Show Cause.

5 Next the Commissioner will then begin
6 proceedings on the Order to Show Cause Docket A06-767
7 beginning with Petitioner presenting its case,
8 followed by County Planning Department and then the
9 Office of Planning.

10 Petitioner may reserve a portion of their
11 time to respond to comments made by the Office of
12 Planning and the County.

13 It is my intent, as the Chair, to close the
14 evidence in this docket and deliberate on this matter
15 during the remainder of today and tomorrow. If we do
16 not complete the proceedings tomorrow, the next
17 meeting on will be at NELH on this island on
18 November 28, 2018.

19 I'll also note for the parties and the
20 public from time to time, I will be calling for short
21 breaks.

22 Are there any questions from the parties on
23 our procedure?

24 MS. APUNA: Yes, Chair, Office of Planning.
25 Actually not with regard to the procedures, but I

1 would like to submit that there is an error in the
2 Statement of Position of the Office of Planning that
3 I would like for the Commission to take note of.

4 On page 6, paragraph 3, and page 8 of our
5 Statement of Position there is an error. We refer to
6 Condition No. 9, which should actually be Condition
7 No. 4.

8 CHAIRPERSON SCHEUER: Thank you for that
9 clarification.

10 Are there any other questions on our
11 procedures from any other parties. Mr. Lim, No.
12 County, no.

13 Before we get started on public testimony,
14 I would like to ask for any disclosures from any of
15 the members of the Commission. I understand you have
16 a disclosure, Ms. Cabral?

17 VICE CHAIR CABRAL: Yes. And I apologize
18 to the Commission and that for what is in part my
19 error here also.

20 I wanted to let you know, Mr. Chair, that
21 for the record I would like to disclose that I do
22 know Mr. Joel LaPinta as real estate agent, and that
23 I did receive an unsolicited phone call from him last
24 week.

25 Mr. LaPinta informed me that he was calling

1 regarding the Waikoloa matter, and he continued to
2 talk in what could appear to be an attempt to
3 influence my vote in this matter. He made statements
4 regarding the ownership of the property, and that
5 ownership was distinguishable from the old former
6 ownership.

7 He also indicated he was part of the
8 current management group. He impressed upon me the
9 need for Hawai'i to have additional housing that has
10 been proposed that this project should be able to
11 move forward.

12 I had repeatedly instructed Mr. LaPinta
13 that he should contact the LUC staff, and that his
14 attorney would be able to work with him and work with
15 the staff on this matter.

16 I would also -- indicated that I should not
17 have discussed anything with him, and I informed Mr.
18 Orodener, our Executive Director who would be the
19 one to discuss this matter with him.

20 I'm making this disclosure and bringing it
21 to the attention of the Commission to ensure that
22 full disclosure has been taken place with the public
23 and that all parties and that has not been any
24 ex-parte communication influencing the Commission's
25 decision. Thank you.

1 CHAIRPERSON SCHEUER: Thank you,
2 Commissioner Cabral.

3 Mr. Lim, I would like to ask you a few
4 questions regarding this disclosure.

5 Are you familiar with HRS Chapter 91, the
6 Hawai'i Administratives Procedure Act?

7 MR. LIM: Yes, I am.

8 CHAIRPERSON SCHEUER: Are you also familiar
9 with Hawai'i Administrative Rules 15-15, the Land Use
10 Commission Administrative Rules?

11 MR. LIM: Yes, I am.

12 CHAIRPERSON SCHEUER: I'm going to note for
13 the record that a member of your client new
14 management team, Mr. Joel LaPinta, attempted to have
15 ex-parte communication with the Commission's Hawai'i
16 Island representative, Nancy Cabral, which is in
17 violation of HRS Chapter 91 and the LUC
18 Administrative Rules.

19 These interactions appear to have been
20 intended to provide information to the Commissioner
21 outside of scheduled public hearings in order to
22 influence her vote.

23 This is an extremely serious matter and
24 should not be taken lightly. The Commission is
25 taking notice of this on the record and warning that

1 you need to advise your clients to avoid any further
2 ex-parte contact with any of the Commissioners.

3 Any and all future communications need to
4 be through the Commission's Executive Officer, or
5 staff or the Deputy Attorney General.

6 Is that understood, Mr. Lim?

7 MR. LIM: That's understood you.

8 CHAIRPERSON SCHEUER: Now, I'm going to
9 proceed with public testimony.

10 Is there anybody desiring to provide public
11 testimony?

12 Sorry, are there any other disclosures from
13 any of the other members of the Commission? Hearing
14 none.

15 Are there any individuals desiring to
16 provide public testimony on the Order to Show Cause?

17 I have a list in front of me.

18 First is Ms. Julia Alos? Excuse me if I've
19 mispronounced your name. Come forward. Sit in the
20 chair, turn on the microphone. I'll swear you in and
21 then you will proceed to say your name, your address
22 and continue with your testimony.

23 Good morning, and thank you for being here.

24 Do you swear or affirm that the testimony
25 you are about to give is the truth?

1 MS. ALOS: I do.

2 CHAIRPERSON SCHEUER: Thank you, please
3 proceed.

4

5

6 -o0o-

7 JULIA ALOS

8 Was called as a public witness, was sworn to tell the
9 truth, and examined and testified as follows:

10 THE WITNESS: Good morning everyone on the
11 Commission and other people in the room. My name is
12 Julia Alos. I'm a resident of the South Kohala
13 District in Waikoloa Village and testifying in person
14 and on my own behalf regarding Docket A06-767
15 Waikoloa Mauka LLC's Order to Show Cause.

16 I'm an active and engaged community
17 volunteer and feel that this developer's lack of
18 progress and diligence that our community -- has our
19 community very concerned on a host of levels that I
20 will address, as well as my findings from the
21 research on the matter.

22 In addition to my previously submitted
23 testimonies, electronically for August 21st and
24 orally September 4th hearing and presented on my
25 behalf by Cindy Kester, I wish to submit this

1 additional information regarding my community's
2 concern about the intersection improvement at
3 Waikoloa Road, Paniolo Avenue and Pua Melia Street.

4 I want to thank the LUC for the exhibits
5 that were provided on their website, which was a
6 great amount of information for me to garner this
7 testimony today.

8 My humble opinion deduces that the
9 hibernating bear, Waikoloa Highlands, has been poked
10 and awakened by the LUC, hence the hearings.

11 Please afford me this occasion to direct
12 you to some of these exhibits on my stance on this
13 issue.

14 CHAIRPERSON SCHEUER: Ms. Alos, we have
15 your written testimony, which is lengthy. Can I ask
16 you, for now at least, to summarize your main points
17 for us so that the parties, and if the Commissioners,
18 if they are inclined, to have opportunity to ask you
19 questions.

20 THE WITNESS: Thank you.

21 I just wanted to address the energy
22 conservation measures with their design. I also feel
23 that with respect to -- what's important here --

24 CHAIRPERSON SCHEUER: I didn't mean to
25 throw you off. Take your time. We want to get to

1 the main points.

2 THE WITNESS: Very fine.

3 I put in here that I feel that the
4 sustainable Hawai'i initiative should be taken into
5 consideration as they're moving forward with their
6 developments as there has been such delays in
7 compliance with the 2045 goals for the State of
8 Hawai'i.

9 I also mentioned that I feel that -- with
10 regards to the intersection, it seems from exhibits
11 that I've seen that the Work Order and Agreement,
12 Exhibit 22a, that the Plaintiff has paid a lot of
13 money already towards this development, this part of
14 the work, and I'm hoping that that will be considered
15 as you make your decision moving forward. And I've
16 listed the invoices on that.

17 Also included was Julian Ng's traffic
18 analysis that he did for this intersection that we're
19 concerned about.

20 Let's see, Carlsmith Ball stated the
21 Waikoloa Deed for Plumeria LLC was on May 1st, but it
22 was noted June 1st, a little discrepancy there. Now,
23 I guess, Plumeria LLC is now Peaceful Ventures. They
24 changed their name.

25 Also so in addition Waikoloa Mauka said it

1 intends to provide affordable housing under County
2 Rules, which requires 20 percent of the units to be
3 affordable low to moderate income household.

4 The developer has also planned to open
5 space for hiking and biking, et cetera. And I wanted
6 to address that.

7 My comment is, according to what I've read,
8 20 percent of the total units amounts to 400 homes
9 equates to 80 credits. I believe Plumeria, which is
10 not Pua Melia, when it transferred over, is only
11 planning on doing 32 units on the 11.8 acres, and
12 includes almost a quarter of the property that's
13 being conveyed to commercial zoning for possibly
14 A hardware store.

15 And let's see. In summary, based on the
16 aforementioned, I want to stress that I'm greatly
17 concerned about the safety of our are intersection,
18 the future development of Waikoloa Plaza and a
19 Waikoloa library land which is on Pua Melia Street,
20 southwest side of Waikoloa Road.

21 I'm wanting compliance with the affordable
22 housing which is desperately needed. These are big
23 issues and topics and the Waikoloa Village
24 Association, and extending community at large, and
25 there are many electronic footprints on apps next

1 door, Facebook and community meetings that include
2 Waikoloa Community Leadership Council, South Kohala
3 Traffic Safety Committee. Recent candidate forums,
4 political campaign meetings, and it's currently being
5 addressed as a Subcommittee members with the South
6 Kohala Development Action Planning Committee since
7 April.

8 Workforce and affordable housing are so
9 critical, now more than ever, with homeless rates
10 rising, and home prices rising, and casualties of
11 Pele. It is paramount that the County stand firmly
12 on the 20 percent minimum so as not to price our
13 keiki out of paradise.

14 Mahalo for your time to allow my testimony
15 to be entered today, and your patience for listening
16 to me.

17 These developers have a lot of documents.
18 It was very confusing to follow as you can see. I
19 did my best as I said to do with all the information
20 I had to better understand this case, and I hope that
21 my testimony, as reflected today, is clearly
22 understood to be true in front of you.

23 CHAIRPERSON SCHEUER: Thank you.

24 Does the Petitioner have any questions for
25 the testifier?

1 MR. LIM: Thank you.

2 CROSS-EXAMINATION

3 BY MR. LIM:

4 Q Good morning, Ms. Alos.

5 A Good morning.

6 Q So the things that are important to you
7 that could be provided by this project are the
8 roundabout intersection at Waikoloa Road and Paniolo
9 Drive?

10 A Correct.

11 Q And the development of more workforce and
12 affordable housing?

13 A As well as -- I don't think I mentioned
14 also a promise of some common areas as well.

15 Q Some common areas?

16 A Yeah, for bike and hiking trails, et
17 cetera. I think that was where the golf course was
18 supposed to be.

19 Q You understand that if the Commission
20 reverts the project down from agricultural -- excuse
21 me -- from Rural to Agricultural, that the project is
22 not likely to proceed and those benefits to the
23 community won't be happening?

24 A I do.

25 Q No further questions.

1 CHAIRPERSON SCHEUER: Hawaii County?

2 MR. KIM: Hawaii County has no questions.

3 CHAIRPERSON SCHEUER: Office of Planning.

4 MS. APUNA: No questions.

5 CHAIRPERSON SCHEUER: Commissioners? Ms.
6 Chang.

7 COMMISSIONER CHANG: Good morning, Ms.
8 Alos. Just a few questions.

9 How long have you lived in Waikoloa?

10 THE WITNESS: 18 years.

11 COMMISSIONER CHANG: So you've lived there
12 since this project was approved in 2008?

13 THE WITNESS: Yes.

14 COMMISSIONER CHANG: Did you participate in
15 the 2008 proceedings?

16 THE WITNESS: I did not.

17 COMMISSIONER CHANG: As a resident of
18 Waikoloa, do you pass by this property every day?

19 THE WITNESS: Nearly every day.

20 COMMISSIONER CHANG: Can you tell me what
21 kind of improvements or how has the property has been
22 used since 2008?

23 THE WITNESS: I've seen nothing.

24 COMMISSIONER CHANG: Thank you very much.

25 CHAIRPERSON SCHEUER: Commissioners?

1 Nothing further. Thank you very much.

2 I'll next call Anita Glass.

3 MS. GLASS: The last testifier covered my
4 points, so thank you.

5 CHAIRPERSON SCHEUER: Anybody else from the
6 public wishing to provide testimony on this matter?

7 We're completed the public testimony.

8 I'll now move on to exhibits. Mr. Lim,
9 will you please describe exhibits you wish to have
10 admitted to the record?

11 MR. LIM: Thank you, Mr. Chair. We'd ask
12 that the Commission enter into the record the
13 pleadings submitted by the Petitioner to include the
14 exhibits that are listed with the Motion to Continue
15 filed with the Commission. Also with our Statement
16 of Position filed with the Commission. And the last
17 was the October 12th, 2018 Supplemental Statement of
18 Position.

19 And we ask that that be entered into the
20 evidence, into the record?

21 CHAIRPERSON SCHEUER: Are there any
22 objections on this from the County or Office of
23 Planning?

24 MR. KIM: No objection from the County.

25 MS. APUNA: No objection.

1 CHAIRPERSON SCHEUER: Commissioners?
2 Hearing none, Petitioner's exhibits are submitted
3 into the record.

4 (Petitioner's Exhibits were received into
5 evidence.)

6 County, do you have any exhibits you wish to
7 enter into the record?

8 MR. KIM: No, thank you.

9 CHAIRPERSON SCHEUER: And, Ms. Apuna.

10 MS. APUNA: Yes, Office of Planning would
11 like to submit Exhibits 1 through 4 as part of our
12 Statement of Position.

13 CHAIRPERSON SCHEUER: Are there any
14 objections to Office of Planning's exhibits from the
15 parties?

16 MR. LIM: No objection from the Petitioner.

17 MR. KIM: No objection from the County.

18 CHAIRPERSON SCHEUER: From the Commission?
19 Hearing none, Office of Planning's exhibits are
20 admitted into the record.

21 (OP Exhibits 1-4 were received into
22 evidence.)

23 And, again, I'll mention, Mr. Lim, it would
24 be good to have some written documentation of the
25 qualification of your translator. If you can bring

1 that forward at later time for consideration of
2 inclusion into the record.

3 MR. LIM: We will do that.

4 CHAIRPERSON SCHEUER: Thank you.

5 Why don't we start with your case, Mr. Lim?

6 MR. LIM: Thank you. We will have two
7 witnesses. One is Mr. Valery Grigoryants, and that's
8 V-A-L-E-R-Y G-R-I-G-O-R-Y-A-N-T-S. We will be
9 utilizing the services of Irina McGriff as the
10 Russian to English and Russian to English translator.

11 CHAIRPERSON SCHEUER: I'm going to swear
12 you in.

13 (Irina McGriff interpreted.)

14 Do you swear or affirm that the testimony
15 you are about to give is the truth?

16 THE WITNESS: I do, yes, I do.

17 CHAIRPERSON SCHEUER: Please proceed.

18 State his address on the record and please
19 proceed.

20 VALERY GRIGORYANTS

21 Was called as a witness by and on behalf of the
22 Petitioner, was sworn to tell the truth, was examined
23 and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. LIM:

1 Q State your full name and address.

2 A My name is Valery Grigoryants. I reside in
3 Moscow. And I'm vice president of the company Arch
4 LLC, Limited. My address is Malaya Gruzinskaya
5 Street, house number 25, unit one.

6 MR. LIM: Again, for the record, as I
7 stated at the Commission initial hearing for Motion
8 to Continue Waikoloa Highlands, Incorporated would
9 like to reiterate that all pleadings and statements
10 made by Waikoloa Highlands, Inc.'s witnesses and
11 counsel relating to Stefan Martirosan, the former
12 director are allegations that he has not been
13 adjudicated to date, however, we wish stress that
14 Waikoloa -- I'll refer to it as Waikoloa for short --
15 Waikoloa strongly believes in the strength of the
16 allegations of fraud and other mismanagement against
17 Mr. Martirosian, and that we are taking this
18 precaution to not expose ourselves to any claims by
19 him.

20 So I will proceed with that caveat now.

21 CHAIRPERSON SCHEUER: About how long do you
22 think you have with this witness, Mr. Lim?

23 MR. LIM: Ordinarily without translator
24 probably no more than an hour.

25 CHAIRPERSON SCHEUER: So we will go for

1 about 20-30 minutes and then take breaks.

2 MR. LIM: See how it goes. Just for the
3 Commission's information, Mr. Grigoryants does
4 understand some English, but because of the severity
5 and seriousness of this proceeding, he wanted to make
6 sure that his words were very clear and precise and
7 thus he engaged the Russian interpreter for testimony
8 today.

9 I'm commencing with the questions.

10 BY MR. LIM:

11 Q Can you please state your involvement with
12 Waikoloa Highlands, Incorporated?

13 A Yes. I'm the Vice President of the company
14 Arch, and the company Arch is owner of Waikoloa
15 Highlands. Was owned -- was the owner.

16 So all decisions made by Waikoloa Highlands
17 company, actually were made by me, otherwise
18 President of Arch, together with my brother who's the
19 president of the company.

20 But today I would like to affirm all
21 members of the committee that I have the full
22 authority to make any decision in connection with
23 Waikoloa.

24 At this time the company Arch is no longer
25 the owner of Waikoloa, but this is just different

1 story.

2 Q So the does Vitoil Corporation now own
3 Waikoloa Highlands, Incorporated?

4 A Yes.

5 Q Are you familiar with Mr. Stefan
6 Martirosan?

7 A Yes.

8 Q Was he a director for Waikoloa Highlands or
9 Waikoloa Mauka during the period in question?

10 A Yes. He was not only the director, he was
11 also chief financial officer and secretary at the
12 same time.

13 Q Does Mr. Martirosian today have any
14 shareholder interest or other management control of
15 any of the Waikoloa companies?

16 A I would like to confirm with members of the
17 committee, just because there were so many gossips
18 and speculations before. I would like to let you
19 know that Mr. Martirosian was never owner of the
20 company or any other companies I'm involved in United
21 States as well as abroad.

22 He was just a hired manager. He was not
23 and is not the owner of the companies. And now he's
24 fired from all the positions.

25 Q Please explain to the Commission who

1 managed the Waikoloa Highlands project during the
2 years that Mr. Martirosian was the officer of
3 Waikoloa Highlands, Incorporated?

4 THE INTERPRETER: Interpreter ask to repeat
5 the question.

6 Q Please explain to the Commission who
7 managed the Waikoloa Highlands during the years that
8 Mr. Martirosian was an officer of the company.

9 A Stefan was the director of the company as
10 well as the manager of the company. He received all
11 the permits. He met with engineers and architects.
12 He conducted all business activity in the United
13 States.

14 Q Approximately when did you become aware
15 that Mr. Martirosian was not pursuing the best
16 interest of the company to fulfill the conditions
17 imposed by the Land Use Commission?

18 A It was in summer of 2017. In summer 2017
19 we started to have concerns about him and we stopped
20 trusting him.

21 Q The issue of the owner's trust in Mr.
22 Martirosian has come up from the Commissioners, and
23 the natural question is, why did you trust him?

24 A It's a long story, but I will try to be
25 short.

1 Well, we -- in America we are called
2 Russians, but we are not Russians we are Armenians.
3 We attend not Russian church but Armenian church.

4 So we had a goal to differentiate,
5 diversify risks in business, like if you know, there
6 is a huge Armenian community in Los Angeles. And
7 this is how it happens in life, Jewish people help
8 Jewish people; Armenian people help Armenian people
9 and look for connections. That's how I met Stefan
10 Martirosian.

11 It was at end of the '90's, beginning of
12 2000. He seemed to me and my brother as a very
13 intelligent, smart man. But we didn't let him to
14 come too close to us, but he wanted. After all he
15 reassured us to start to do some small investments in
16 the United States. That's what we did.

17 And over time we developed a trustful
18 relationship, I would say, like brothers
19 relationship.

20 Our relationship became so close that when
21 his mother passed away, we came to the funeral,
22 flying 13 hours. And when my mother passed away, he
23 flew all the way from Los Angeles to Moscow to
24 funeral. That's it.

25 Q One of the other issues has been the

1 suspicion, I suppose, the suspicion that this Russian
2 company came to Hawai'i to buy land with a lot of
3 money, and because of that, they must be Russian
4 gangsters or illegal money.

5 A I understand. You know, I often hear this,
6 and from on one hand I get angry, on other hand I
7 get -- I start to laugh. Because this is just a
8 typical stereotyping.

9 You know, I would like to tell you that at
10 the beginning of the '90's, my brother and I started
11 business by selling shoes. Then we started to sell
12 alcoholic drinks. Then we started to sell other
13 things, all different, all different types of things.
14 We started to open stores.

15 And then it's just we were lucky to have
16 opportunity to be introduced to oil business. And
17 then we started to explore, not immediately, but
18 started to explore oil and oil materials abroad.

19 We are very hard working people, and we
20 achieved what we achieved through hardship. And I'll
21 tell you that my first vacation was after ten years
22 of hard work, and that was only one week of vacation.

23 Then my company were manufacturing --

24 THE INTERPRETER: Interpreter needs
25 clarification from the Petitioner.

1 A I will explain in English. Well, open
2 companies, and we produced clean balance sheet for
3 last 20 years. Everything is clear, and if possible
4 to check how we earn money, if possible, if it need.

5 CHAIRPERSON SCHEUER: A clean balance
6 sheet?

7 THE WITNESS: (No interpreter.)

8 Balance sheet, yes, for each year of Arch
9 Company from our auditor in London. We have clean
10 balance sheet and it's not a problem to provide with
11 such documents. That's why I'm smiling. I'm not
12 banded.

13 COURT REPORTER: Excuse me. Can I suggest
14 that we not have him speak any English? It's
15 difficult for me to separate that.

16 Q At the last hearing, the Commission was
17 concerned that somehow Mr. Martirosian was somehow
18 still involved with the Waikoloa Highlands project.

19 A No, he is not involved in with company.

20 Q Have any of the entities related to
21 Waikoloa Highlands, Incorporated taken any legal
22 action against Mr. Martirosian for his fraudulent
23 acts?

24 A Yes, filed some claims.

25 First I would like to explain in short that

1 in 2017, we discovered some bad acts by Martirosian.
2 For example -- I'll give you one example.

3 I not going to even talk about the history
4 with the movies. Without having authority from us,
5 he would apply for money by putting land as a
6 collateral. And he took pocket money. There were
7 many cases like this in California and U.S. Virgin
8 Islands as well. We have some land there too.

9 Therefore, we filed a lawsuit with Supreme
10 Court in Los Angeles. Also the company Pulham filed
11 a fraud claim against Martirosian in Armenia.

12 Q What is the status of that proceeding in
13 Armenia?

14 A So the status is there lawsuit, criminal
15 lawsuit was initiated because of the fraudulent
16 activity by Martirosian. That was in September 2017.

17 And Armenian court in Armenia heard his
18 case while he was absent, and made decision to
19 sentence him. It was in October 2017.

20 When Martirosian arrived to Moscow because
21 there was a warrant for extradition, he was arrested
22 at the Moscow airport. Then prosecution office in
23 Russia reviewed all their extradition paperwork and
24 they extradited him to Armenia.

25 Martirosian appealed the decision made by

1 Russia, and Moscow court held the public hearing.
2 Held the hearing with the presence of three attorneys
3 and their interpreter. And the court made decision
4 that expediting him to Armenia is the right decision.

5 He again disagreed and appealed with the
6 Supreme Court of Russia. So the Supreme Court of
7 Russia considered the complaint. Again the decision
8 of Moscow City Court, and made decision that decision
9 on detention -- on extradition came enforce. It was
10 in July 2018.

11 And in August he was extradited until the
12 papers became full in force. And now Armenia
13 investigator conduct investigation.

14 Q Is Mr. Martirosian currently in prison in
15 Armenia?

16 A Yes, he's in prison.

17 Q So turning back --

18 CHAIRPERSON SCHEUER: I think this might be
19 a good time. We will take a ten-minute break
20 reconvene at 11:08 a.m.

21 (Recess taken.)

22 CHAIRPERSON SCHEUER: We're back on the
23 record.

24 Mr. Lim, you can continue your questioning
25 of your witness. I want to take a break, a lunch

1 break for one hour sometime between 12:00 and 12:30.

2 Please proceed.

3 MR. LIM: Thank you, Mr. Chairman.

4 Q Moving to the present, what steps has
5 Waikoloa Highlands, Incorporated taken after removing
6 Mr. Martirosian from his position in fulfilling the
7 conditions of the Commission's decision in this
8 matter?

9 A We appointed a new director of the company,
10 Natalia Batichtcheva, N-A-T-A-L-I-A,
11 B-A-T-I-C-H-T-C-H-E-V-A. And Joe LaPinta as project
12 manager.

13 Also we made arrangements with bank
14 Armbusinessbank, A-R-M-B-U-S-I-N-E-S-S-B-A-N-K, for
15 financing in the amount of \$45 million to complete
16 the project.

17 Q Is Waikoloa currently able and willing to
18 see the project through to completion?

19 A Yes. As already explained, we received the
20 financing to complete the project. Also we don't
21 have office in Hawai'i, that's why we have intention
22 to invite a local developer for mutual cooperation on
23 the project.

24 And as I mentioned before, I am one of
25 those people who help make all the decisions, and I

1 will make sure that their project is completed.

2 Q Are you aware of any recent discussions
3 with the County's Office of Housing and Community
4 Development?

5 A Do you mean affordable housing?

6 Q That's correct.

7 A Yes, and I would like to confirm that we
8 have intention to start negotiation in good faith to
9 transfer three or four acres for affordable housing.

10 Q Would this be to the proposed developer of
11 the affordable housing project next to Waikoloa
12 Highlands?

13 A Yes. We have some land next to Waikoloa,
14 and we would like to start negotiations with the
15 County. So if the committee will give us a chance to
16 return and refresh and start to go back to negotiate
17 rezoning with the County, so we can take care of
18 that, and then we can come back to talk about zoning.

19 Q Do you have anything in the form of a
20 personal statement to make to the Commission?

21 A Yes, I would like. Yes, there's something
22 I wanted to tell.

23 I actually wanted to tell you at the
24 beginning of the hearing, but just because it's my
25 first time to be in front of such respected

1 committee, so I was nervous and I forgot.

2 I would like to apologize for being absent
3 during the first couple hearings, for being absent
4 for the May hearing. I didn't realize the
5 seriousness of this situation, as well as there was a
6 very short notice.

7 I would like to say that, yes, we are
8 investors, and we invest here in Hawai'i. We would
9 like to ask you committee to protect us the same way
10 as you would protect any other investors from Japan
11 or China. You can consider us as Japanese investors.

12 I also would like to say that we already
13 lost a lot of money here in Hawai'i. And out of
14 14,000 acres that we had, now we only have 3,000
15 acres.

16 And it's you who will decide if we have to
17 lose everything, or if you give us opportunity to
18 develop the project.

19 Q I would like to reserve a short time for
20 rebuttal and we will close now.

21 CHAIRPERSON SCHEUER: County, do you have
22 questions for the witness?

23 MR. KIM: County did not have questions for
24 the witness.

25 CHAIRPERSON SCHEUER: Office of Planning?

1 MS. APUNA: Yes, Chair, I have a few
2 questions.

3 CHAIRPERSON SCHEUER: Please proceed.

4 CROSS-EXAMINATION

5 BY MS. APUNA:

6 Q Thank you for your testimony.

7 I was wondering, were you involved in the
8 original boundary amendment, the reclassification for
9 the project back in 2008?

10 A No, the staff of Martirosian was involved.

11 Q So were you aware of the proposed project
12 for Waikoloa Mauka?

13 A I didn't know the details on the project
14 and that was one of the problems with him, that he
15 never informed us, never told us details.

16 Q And so was it just Mr. Martirosian that was
17 involved in the boundary amendment and the project,
18 or were there other people, part of the company that
19 were involved in the boundary amendment?

20 A As far as I know, it was only Mr.
21 Martirosian.

22 Q So when did you become aware of the
23 boundary amendment and the proposed project for the
24 area?

25 A I found out about that at the end of 2017,

1 but that was too late to do anything. So the only
2 thing I could do was to transfer 11,000 acres for
3 affordable housing -- sorry, 11.7 acres for
4 affordable housing.

5 Q So he was -- you weren't aware of the whole
6 Waikoloa Mauka project until 2017?

7 A I didn't know about subdivision or
8 requirements that we were supposed to fulfill.

9 Q Were you aware of the Decision and Order
10 for this matter that set forth the conditions? And
11 when were you made aware of the conditions that were
12 required?

13 A What decision order do you refer to?

14 Q The Decision and Order that this Commission
15 adopted back in June 10th, 2008, and it provides
16 20-something conditions, including that the project
17 would be completed by 2018.

18 A As I mentioned before to you, I found out
19 about all this in 2017.

20 Q And when was Mr. Martirosian fired?

21 A He was fired from Waikoloa Highlands 2016.
22 I think so, let me check.

23 Q In 2016. And is there any documentation by
24 Waikoloa that would show that?

25 A What documentation?

1 Q Any documentation that would show, that
2 would demonstrate or show that he was fired by
3 Waikoloa?

4 A Yes. All documents were presented to the
5 committee.

6 Q Among your exhibit there is Exhibit 32, I
7 believe, there is a resignation letter in 2017,
8 Exhibit 32, June 19th, 2017 of Mr. Martirosian
9 resigning his position. But you say that he was
10 fired rather than that he resigned; is that correct?

11 A What company, because we have several
12 companies?

13 Q I'm sorry, from Waikoloa.

14 I'm sorry, let me clarify.

15 A It was the oil company, not Waikoloa.

16 Q So he resigned from Vitoil 2017, but he was
17 fired from Waikoloa Highlands from the project also
18 in 2017?

19 A No, in 2016. Yes, the committee has the
20 documents.

21 Q He resigned, he wasn't fired, is that
22 correct, from Waikoloa?

23 A As far as I remember, he was fired.

24 Q And from 2008 when the boundary amendment
25 was approved until 2017 when you said that you

1 started to learn of his bad acts, what type of
2 oversight was there by you or others over Mr.
3 Martirosian and the Waikoloa project?

4 THE INTERPRETER: Interpreter needs
5 clarification. Can you restate your question?

6 Q From 2008 when the Decision and Order --
7 when the boundary amendment was made, and 2017 when
8 you became aware of the bad acts of Mr. Martirosian,
9 what type of oversight did you have, or anyone else
10 in this Vitoil Company over Mr. Martirosian and the
11 Waikoloa project?

12 A So the problem, me and my brother
13 communicated to him almost every day. And so when we
14 communicated, he never told us details on actually
15 what was going on with the project. He would tell us
16 that everything is good. That he worked with Sidney
17 Fuke, that everything was good.

18 And then in 2010 that things happened, why
19 he is in prison now. That he sought to be involved
20 in movies and completely forgot about the project.

21 Q Okay, thank you. No further questions.

22 CHAIRPERSON SCHEUER: Commissioners?
23 Commissioner Aczon.

24 COMMISSIONER ACZON: I just need some
25 simple clarification. Thank you very much, Mr.

1 Grigoryants for coming all the way down here to join
2 us.

3 THE WITNESS: (No interpreter). My
4 pleasure.

5 COMMISSIONER ACZON: You mentioned you have
6 100 percent to make decisions for this project.

7 THE WITNESS: Yes. When I was leaving to
8 come here, we agreed with my brother that I would
9 have 100 percent authority to make decision.

10 COMMISSIONER ACZON: You also mentioned
11 that Waikoloa Highlands is owned by Arch, Limited,
12 which you are the vice president.

13 THE WITNESS: I just want to just clarify
14 that Arch Company was their owner of Waikoloa
15 Highlands. Now Vitoil is owner.

16 COMMISSIONER ACZON: I'm coming to THAT.
17 Later on you mentioned that now Vitoil is
18 the owner of Waikoloa Highlands?

19 THE WITNESS: Yes, 100 percent.

20 COMMISSIONER ACZON: What is your
21 relationship with Vitoil? What is your position with
22 Vitoil?

23 THE WITNESS: I don't have any position
24 with Vitoil. I'm owner of Arch Company, which is the
25 owner of Vitoil Company.

1 COMMISSIONER ACZON: So you still have 100
2 percent authority for this project?

3 THE WITNESS: Yes.

4 COMMISSIONER ACZON: So I kind of noticed
5 that there's several change of plans on this project.

6 Was the Commission notified of these
7 changes in a timely manner?

8 THE WITNESS: What changes do you refer to?

9 COMMISSIONER ACZON: All the changes of
10 ownership.

11 THE WITNESS: We produced all the documents
12 of ownership, and the committee should have those
13 documents.

14 COMMISSIONER ACZON: What about in a timely
15 manner?

16 THE WITNESS: I think, yes.

17 COMMISSIONER ACZON: That's all, Mr. Chair.
18 Thank you.

19 CHAIRPERSON SCHEUER: Thank you.
20 Commissioners? Commissioner Cabral.

21 VICE CHAIR CABRAL: I'm suffering from some
22 confusion, and I would like to know if, as the
23 100 percent owner of this project, if you have a way
24 that you can provide us written verification and
25 backup of that ownership, and of all of the

1 principals involved with the company that is going to
2 be involved companies involved with Waikoloa
3 Highlands?

4 THE INTERPRETER: It's very simple. We
5 produced before a diagram who is who and who owns
6 what. So the company Arch is the owner of the
7 company Vitoil, 100 percent owner of company with
8 Vitoil. And Vitoil company is 100 percent owner of
9 Waikoloa Highlands company.

10 So Arch Company is owned my brother as
11 well, me and my brother, we both decision-makers.

12 And the director of Waikoloa Highlands
13 company is present here. Her name is Natalia. And
14 we have complete understanding with each other, and
15 she fulfills all the tasks we ask her to do.

16 VICE CHAIR CABRAL: Thank you.

17 CHAIRPERSON SCHEUER: Commissioners?
18 Commissioner Okuda, then Commissioner Chang.

19 COMMISSIONER OKUDA: Thank you.

20 Mr. Grigoryants, thank you so much for
21 coming so far from Moscow.

22 THE WITNESS: (No interpreter). Pleasure
23 is mine.

24 COMMISSIONER OKUDA: Let me assure you
25 about how the Commission makes its decisions. We do

1 not have any preconceptions about anyone's
2 background, ethnicity or what country they come from.
3 I personally do not view you or anyone connected with
4 this project as being connected with any type of
5 criminal activity or anything like that.

6 I'm not an expert in Eastern European
7 history, but I do know the Armenian people have
8 suffered at the hands of many people who have
9 oppressed, and in fact attempted to exterminate
10 Armenian people.

11 That is the reason why our Commission
12 follows American legal principles, which is basically
13 that cases should be decided based on the law and the
14 facts, and not on anyone's background or ethnicity.
15 We neither favor nor disfavor people whether they
16 come from Europe, Eastern Europe or Asia.

17 In fact, let me assure you that I
18 personally, as a lawyer, am very aware of the
19 infamous United States Supreme Court case called
20 Korematsu versus United States, which allows
21 Japanese-Americans to be in prison even though they
22 did no wrong during World War II.

23 So let me again assure you, we are just
24 looking at the facts and the application of the law
25 here, and nothing else.

1 There were questions that were asked about
2 the organizational structure and chain of command
3 involved here.

4 May I ask your attorney to possibly assist
5 us by showing you what was submitted as Exhibit 28 of
6 your submittal? Do you have Exhibit 28 in front of
7 you?

8 THE WITNESS: Yes.

9 COMMISSIONER OKUDA: Have you seen
10 Exhibit 28 before today?

11 THE WITNESS: Yes, I saw.

12 COMMISSIONER OKUDA: Exhibit 28, in the box
13 at the top indicates that you are the ultimate
14 beneficial owner. Is that -- is what I'm saying
15 correct?

16 THE WITNESS: Yes, correct.

17 COMMISSIONER OKUDA: Are you in fact the
18 ultimate beneficial owner, or is your brother also an
19 additional ultimate beneficial owner with you?

20 THE WITNESS: The owner is, as you can see,
21 is my brother. We have a separate agreements where
22 we make all decisions together.

23 COMMISSIONER OKUDA: I'm just trying to
24 determine the accuracy of Exhibit 28.

25 THE WITNESS: Yes.

1 COMMISSIONER OKUDA: Is the first block at
2 the top, which indicates Vitaly Grigoryants as the
3 ultimate beneficial owner. Is that first block
4 completely accurate or is there additional
5 information that needs to be added to that block?

6 THE WITNESS: No, everything is correct.
7 No additional information needed to be added.

8 COMMISSIONER OKUDA: And is all the
9 information in Exhibit 28 a 100 percent accurate?

10 THE WITNESS: Yes.

11 COMMISSIONER OKUDA: Did you and your
12 brother know back in 2008, or around that time, when
13 the property was purchased that you and your brother
14 intended to develop the property?

15 THE WITNESS: First I would like to clarify
16 that the project was purchased in 2005 not 2008. And
17 when we were purchasing, we had intention to develop
18 the project.

19 COMMISSIONER OKUDA: And you mentioned the
20 name of Mr. Sidney Fuke, F-U-K-E, correct?

21 THE WITNESS: Yes.

22 COMMISSIONER OKUDA: Did you know that one
23 of the companies that you were either owning or
24 controlling had hired Mr. Fuke?

25 THE WITNESS: Yes, Stefan told me about it.

1 COMMISSIONER OKUDA: And you knew that Mr.
2 Fuke had expertise or knowledge in dealing with
3 government here in Hawai'i, correct?

4 THE WITNESS: I didn't know. He
5 communicated with Stefan Martirosian always.

6 COMMISSIONER OKUDA: What did you
7 understand Mr. Fuke's role to be?

8 THE WITNESS: I understood that Mr.
9 Martirosian was not a specialist and he needed
10 someone who could assist him and give him guidance
11 what to do.

12 COMMISSIONER OKUDA: And what type of
13 guidance did you understand Mr. Fuke was to provide?

14 THE WITNESS: I don't know. I can only
15 guess. And if guessing is sufficient for the
16 committee, I can tell you.

17 COMMISSIONER OKUDA: I'm just trying to
18 find out your understanding. So let me ask a few
19 more questions.

20 At the time that Mr. Fuke was hired, did
21 you understand, or was it your intention that you
22 intended to have some type of development of the
23 property?

24 THE WITNESS: Well, how I would say? I
25 would say that we had intention to develop, but we

1 didn't know where to start, how to start at that time
2 just because we didn't have any experience of
3 development in the United States.

4 So the role of Fuke was to guide us, to
5 explain -- Fuke was supposed to tell, advise Stefan
6 on what stages to go through, and then Stefan was
7 supposed to inform us.

8 COMMISSIONER OKUDA: But in any event, you
9 understood that certain approvals and certain things
10 would have to be done with respect to government
11 entities regarding the development, correct?

12 THE WITNESS: Well, everybody knows about,
13 it's common knowledge.

14 COMMISSIONER OKUDA: And you do agree that
15 if people working for your company have made promises
16 to any of the government entities here in Hawai'i,
17 that your company is supposed to live up to those
18 promises, correct?

19 THE WITNESS: I do not waive any
20 responsibility. I except full responsibility. I
21 just regret that we discovered things too late.

22 COMMISSIONER OKUDA: And right now, as of
23 today, what is the property being used for?

24 THE WITNESS: As far as I know, as of
25 today, it's not being used.

1 COMMISSIONER OKUDA: Thank you. I have no
2 further questions.

3 CHAIRPERSON SCHEUER: Thank you.
4 Commissioner Chang.

5 COMMISSIONER CHANG: Good morning, Mr.
6 Grigoryants. Thank you again for being here this
7 morning.

8 I'm going to follow up on some of the
9 questions that Commissioner Okuda asked.

10 When you bought the property, you said in
11 2005, what was your intention?

12 THE WITNESS: My intention was simple, just
13 like anyone else has just to make some money, develop
14 a project.

15 COMMISSIONER CHANG: When you say develop
16 the project, what was your intention? How did you
17 propose to develop the project?

18 THE WITNESS: Well, my understanding was
19 that this is a huge part of the land that might be
20 not enough my life to completely develop. So I
21 understood that we needed to talk to specialist and
22 get some information on how to start.

23 My intention was to start with a small park
24 and talking to the specialist, getting their advices.
25 That's why my understanding that was Sidney Fuke was

1 supposed to do. And as far as I know, he supposed to
2 be a very good specialist.

3 COMMISSIONER CHANG: And you trusted Mr.
4 Martirosian to provide you information based upon his
5 discussions with Mr. Fuke?

6 THE WITNESS: Yes, we trusted him
7 completely. But the problem that -- the questions
8 what he told us, and how sufficient that information
9 was. At this time now I understand that he didn't
10 have any intention to develop the project, he just
11 wanted to make money to pocket them.

12 COMMISSIONER CHANG: So what are you doing
13 now to ensuring -- because you're saying that you
14 have the authority to make decisions. So what are
15 you doing different now to ensure that the
16 development proceeds that you didn't do when Mr.
17 Martirosian was in charge?

18 THE WITNESS: As I mentioned earlier, first
19 of all, we hired a new director, Natalia.

20 Second, we hired a new project manager,
21 LaPinta.

22 We secured financing in the amount of
23 \$45 million.

24 We are planning, since we are not local, we
25 are planning to invite a local developer for mutual

1 cooperation.

2 COMMISSIONER CHANG: You said you secured
3 \$45 million. Did you secure any money for
4 development during -- when Mr. Martirosian was
5 involved, did you secure any financing to do the
6 development at that time?

7 THE WITNESS: Yes. We received several
8 financing from several banks. But because of the
9 crisis of 2008 in the United States, we were not able
10 to return money to the banks, so we lost a lot of
11 land that was sold by the bank.

12 COMMISSIONER CHANG: So how much financing
13 did you secure for the initial development that you
14 got approvals in 2008?

15 THE WITNESS: In 2008 we didn't know about
16 the subdivision and that we had to make the project.

17 COMMISSIONER CHANG: Did you secure any
18 financing in 2008?

19 THE WITNESS: Well, at the time in 2010 we
20 had money for financing, and we invested \$19 million
21 in movie industry. If we knew, we could have invest
22 those money into this project.

23 COMMISSIONER CHANG: So how much money did
24 you invest in this project?

25 THE WITNESS: It's hard for me to tell the

1 exact numbers right now, but based on the documents
2 in this, as far as I can tell, so we purchased the
3 property for \$60 million and invested 1.2.

4 COMMISSIONER CHANG: So was it ever your
5 intention to build the development after the 2008
6 approval?

7 THE WITNESS: We always had intention, but
8 at the beginning we just didn't know about
9 requirements that supposed to be met in 2008.

10 COMMISSIONER CHANG: What is your
11 understanding now as far as the requirements that
12 need to be met?

13 THE WITNESS: Well, one of them we already
14 fulfilled, that was with affordable housing. And
15 then also as I mentioned before, we are willing to
16 consider additional three or four acres for
17 affordable housing.

18 And I think that this question you should
19 ask our specialist LaPinta who will testify.

20 COMMISSIONER CHANG: One of the conditions
21 is that you're supposed to have completed the
22 build-out by 2018. Were you aware of that condition?

23 THE WITNESS: I learn about that at the end
24 of 2017.

25 COMMISSIONER CHANG: So, Mr. Grigoryants,

1 you have told the Commission that you have
2 100 percent authority to make decisions.

3 THE WITNESS: Yes.

4 COMMISSIONER CHANG: What assurances do we
5 have that you're going to complete the project in a
6 timely fashion when it's not clear that you
7 understand what all the conditions are?

8 THE WITNESS: I know the requirements.
9 It's not that I don't know. I just mention that it
10 would be more appropriate to ask the specialist about
11 the requirements.

12 I know that one of the requirements is
13 about road, water, park.

14 Well, as far as assurance, I'm not the bank
15 to give you a reassurance, but because we already
16 transferred some part of the land, it should show
17 that we do have intention.

18 COMMISSIONER CHANG: If for some reason the
19 land gets -- and as Mr. Okuda said, no decision has
20 been made -- but if for some reason the land gets
21 reverted, will you take the land back? The acres
22 that you gave to the County, will that be taken back?

23 THE WITNESS: You mean 11 or 8?

24 COMMISSIONER CHANG: How much acres were
25 given to the County?

1 THE WITNESS: 11.

2 COMMISSIONER CHANG: So 11 for affordable
3 housing?

4 THE WITNESS: Yes, 11.

5 COMMISSIONER CHANG: So if -- because
6 today's hearing is whether to revert the land, if the
7 land gets reverted back to agriculture, will you
8 withdraw or take the land back, the 11 acres that you
9 gave to the County?

10 THE WITNESS: Well, that's a very difficult
11 question. And it's better if it will never happen.
12 It's better let's just work together. Let us go back
13 to the County, talk to them and make it work.

14 COMMISSIONER CHANG: I appreciate that, but
15 I guess it's important for me as a commissioner to
16 understand. Your intention is that was this
17 conveyance to the County of the 11 acres that if you
18 don't get, if the land gets reverted back to
19 agriculture, that you'll take that land back from the
20 County?

21 THE WITNESS: It's hard for me to tell you.
22 I think it will be -- it is difficult to say, maybe
23 yes, maybe not. I would just suggest, let's just
24 move forward.

25 COMMISSIONER CHANG: This is my last

1 question.

2 As the owner, what do you understand is
3 your responsibility as the owner of this property to
4 proceed with the development? What is your
5 responsibility as the owner?

6 THE WITNESS: Well, I understand my
7 responsibility is to complete the project, and it
8 will be good for everyone. It will be good for
9 County, and hopefully it will help us to recover some
10 losses.

11 COMMISSIONER CHANG: Thank you very much.

12 CHAIRPERSON SCHEUER: It is 12:11. How's
13 our court reporter? You're okay. We can do one
14 more. Commissioner Ohigashi.

15 COMMISSIONER OHIGASHI: I'm looking at
16 Exhibit No. 5, and in that exhibit it was exhibit
17 that said that Natalia, whatever her last name is,
18 she would become -- working for the company, Waikoloa
19 Highlands, Inc., and dismiss Stefan Martirosian.

20 MR. LIM: Try Exhibit 31, there may be
21 duplicate exhibits. I think the most recent one --

22 THE WITNESS: We are talking about retail
23 company?

24 COMMISSIONER OHIGASHI: I'm asking you
25 about that exhibit. That's the one dated May 9th,

1 2016.

2 THE WITNESS: I did not find, but I'll try
3 to understand.

4 COMMISSIONER OHIGASHI: I'm just asking,
5 since that time, has Natalia been the person making
6 the signing and binding Waikoloa Highlands, Inc?

7 THE WITNESS: I did not understand the
8 question. Purchase of what?

9 COMMISSIONER OHIGASHI: I'm asking, since
10 that date, May 9, 2016, has Natalia been the person
11 in charge or signing on behalf of Waikoloa Highlands,
12 Inc?

13 THE WITNESS: She was authorized to sign.

14 COMMISSIONER OHIGASHI: And on that same
15 exhibit it says that Arch Corporation owns 80 percent
16 of Waikoloa, and I believe it was Vitoil owned
17 20 percent.

18 THE WITNESS: Yes.

19 COMMISSIONER OHIGASHI: When did Vitoil
20 become 100 percent owner?

21 THE WITNESS: I think it was in 2017, but I
22 don't remember exact date.

23 COMMISSIONER OHIGASHI: Was that about the
24 same time that -- I'm have a hard time with these
25 names -- Stefan was dismissed from Vitoil?

1 THE WITNESS: Maybe, maybe. I just can't
2 find the document to compare the dates, but it's
3 possible.

4 COMMISSIONER OHIGASHI: But in 2016 he
5 represented Vitoil Corporation in the signing of that
6 document?

7 THE WITNESS: Who?

8 COMMISSIONER OHIGASHI: Stefan.

9 THE WITNESS: Yes, because he was fired
10 from Vitoil Company 2017.

11 COMMISSIONER OHIGASHI: Vitoil Corporation,
12 was he able to sign documents on behalf of Vitoil?

13 THE WITNESS: Yes.

14 COMMISSIONER OHIGASHI: Until he was
15 dismissed?

16 THE WITNESS: Yes.

17 COMMISSIONER OHIGASHI: And the reason you
18 said the dismissal from Waikoloa, the reason for that
19 dismissal May 9th of 2016 was because you discovered
20 that there were problems with the development and his
21 use of money from that development?

22 THE WITNESS: Yes.

23 COMMISSIONER OHIGASHI: And my last
24 question.

25 I just wanted to be clear. At that time,

1 May 9th, 2016, did Arch Corporation own all of
2 Vitoil?

3 THE WITNESS: Yes, it owned -- Arch owned
4 Vitoil from the beginning.

5 COMMISSIONER OHIGASHI: My next set of
6 questions, I'm kind of curious.

7 Is it correct that Natalia signed the
8 housing agreement between the County and the
9 Petitioner in this case?

10 THE WITNESS: Yes.

11 COMMISSIONER OHIGASHI: And if I remember
12 correctly, that was about November 30th of 2016
13 after --

14 THE WITNESS: December.

15 COMMISSIONER OHIGASHI: December of 2016.

16 And you met -- and we were talking about
17 11 acres and 8 acres. What was the acres that was
18 transferred to Paradise -- I forgot, Paradise. What
19 was the acreage of that?

20 MR. LIM: Perhaps we can have Mr. LaPinta
21 cover that.

22 COMMISSIONER OHIGASHI: I just wanted to
23 know.

24 THE WITNESS: I don't know.

25 COMMISSIONER OHIGASHI: No further

1 questions.

2 CHAIRPERSON SCHEUER: I think it is time to
3 break for lunch, and we will continue with the
4 witness after lunch. I want to start in exactly one
5 hour at 1:20 p.m. Thank you.

6 (Noon recess taken.)

7 CHAIRPERSON SCHEUER: We're back on the
8 record. I'll remind the witness that you're still
9 under oath.

10 Commissioners, we're continuing with
11 questioning of the first witness. I have a series --
12 Commissioner Aczon. Please, go ahead.

13 COMMISSIONER ACZON: I just want to follow
14 up, clarification.

15 You mentioned your new management thing is
16 composed of Mr. LaPinta and Natalia Batichtcheva?

17 THE WITNESS: Yes, and LaPinta.

18 COMMISSIONER ACZON: When was Mr. LaPinta
19 brought into the project?

20 THE WITNESS: I think the end of 2017,
21 maybe beginning of 2018.

22 COMMISSIONER ACZON: So was he involved
23 during Martirosian time?

24 THE WITNESS: No.

25 COMMISSIONER ACZON: What about

1 Batichtcheva, Natalie, when did her involvement
2 begin?

3 THE WITNESS: As I mentioned before, she
4 became a director of Waikoloa in 2016.

5 COMMISSIONER ACZON: So she wasn't involved
6 during Martirosian time?

7 THE WITNESS: She was, I think, a chief
8 financial officer, but she was not involved in the
9 development of the project.

10 COMMISSIONER ACZON: So what was her role
11 exactly besides the financial? Does she report to
12 Mr. Martirosian or she report to Mr. -- to the
13 owners?

14 THE WITNESS: What period of time? What
15 period of time are you asking?

16 COMMISSIONER ACZON: From the time she got
17 involved in the project.

18 THE WITNESS: From the time when she became
19 involved in the project, she reports directly to me.

20 COMMISSIONER ACZON: So Ms. Batichtcheva
21 didn't tell you what's going on in the project?

22 THE WITNESS: I feel like we misunderstood
23 each other. Are we talking about the time when she
24 became a director?

25 COMMISSIONER ACZON: I'm talking at the

1 time from she got involved with the project while Mr.
2 Martirosian was, I believe, in charge.

3 THE WITNESS: She was not involved in the
4 project.

5 COMMISSIONER ACZON: When Mr. Martirosian
6 was there?

7 THE WITNESS: Yes, when Martirosian was the
8 director.

9 COMMISSIONER ACZON: I thought what I read
10 was she was there during Mr. Martirosian.

11 THE WITNESS: No, no.

12 MR. LIM: Just to clarify. I think there's
13 maybe a misunderstanding, because I get what you're
14 asking. I believe you're asking was Natalia
15 Batichtcheva ever involved in developing the project
16 while Stefan Martirosian was running the project.

17 COMMISSIONER ACZON: That's correct.

18 MR. LIM: And you're centering only on when
19 she became the director, but she was working for the
20 company before that.

21 THE WITNESS: Before. Before she worked in
22 the company. So she was accountant of the company.

23 COMMISSIONER ACZON: During Martirosian's
24 time?

25 THE WITNESS: Yes.

1 COMMISSIONER ACZON: So, again, does she
2 report to Martirosian or --

3 THE WITNESS: At that time she reported
4 only to Martirosian.

5 COMMISSIONER ACZON: And by any other time
6 that Ms. Batichtcheva mentioned anything about the
7 project to you directly?

8 INTERPRETER: Interpreter ask for
9 repetition.

10 COMMISSIONER ACZON: During any of the time
11 that she was accountant or Ms. Batichtcheva didn't
12 mention anything to you directly about what's going
13 on in the project?

14 THE WITNESS: No.

15 COMMISSIONER ACZON: Okay.

16 During your earlier testimony you mentioned
17 about trying to involve local developers to help on
18 this project.

19 THE WITNESS: Yes.

20 COMMISSIONER ACZON: What was the outcome?
21 Is there any solid discussions or agreement with a
22 local developer?

23 THE WITNESS: Not yet, but I will take full
24 responsibility to control of the project to make sure
25 that the project is complete.

1 COMMISSIONER ACZON: So there's no
2 potential help from local developers? Are you still
3 pursuing that?

4 THE WITNESS: Yes, we continue to look for
5 local developer, but I can't tell you right now
6 anything concrete.

7 COMMISSIONER ACZON: One last question, Mr.
8 Chair.

9 Regarding the 11 acres that you said was
10 dedicated to affordable housing, who owns the
11 11 acres now?

12 THE WITNESS: I don't know. We fulfilled
13 our only obligation and we transferred the land for
14 affordable housing. There were different newspaper
15 publications, but I can't say.

16 MR. LIM: Mr. LaPinta can answer the
17 question about the 11.7 that were conveyed for
18 housing.

19 COMMISSIONER ACZON: Maybe I can ask the
20 next question to Mr. -- thank you, Mr. Chair.

21 CHAIRPERSON SCHEUER: Commissioners?
22 I have an a few questions.

23 First, and I share thanks with the rest of
24 the parties for your being here.

25 I want to make sure I heard you correctly

1 earlier. You testified that Mr. Martirosian has no
2 ownership interest in any of the entities involved in
3 this development. Did I understand that correctly?

4 THE WITNESS: Yes.

5 CHAIRPERSON SCHEUER: So I'm trying to
6 understand, it's an exhibit that Commissioner
7 Ohigashi referenced before, Exhibit 5, which is the
8 May 9th, 2016 Resolution signed by Mr. Ovasafyan
9 Aykz, as well as Stefan Martirosian appointing
10 Natalia Batichtcheva as the Director for Waikoloa
11 Highlands, Inc?

12 THE WITNESS: (No interpreter) I can't
13 answer. I see what you mean.

14 CHAIRPERSON SCHEUER: So this Exhibit 5,
15 aid couple questions about it. Can you explain who
16 Mr. Ovasafyan Aykz -- and excuse me for
17 mispronouncing.

18 THE WITNESS: No problem. Ovasafyan is a
19 director for of Arch Company. And also is nominal
20 owner of Arch, but actual beneficial owner of Arch is
21 Vitaly.

22 CHAIRPERSON SCHEUER: Can you please
23 further clarify the difference you're making between
24 the nominal and beneficial ownership of the
25 companies?

1 THE WITNESS: There is a trust agreement
2 between Vitaly Grigoryants and Ovasafyan where
3 Ovasafyan, he is nominal owner where he keeps his
4 shares in the trust for the benefit of Vitaly.

5 CHAIRPERSON SCHEUER: Thank you.

6 Has that trust agreement been entered into
7 the record?

8 THE WITNESS: No, but we can send to you.

9 CHAIRPERSON SCHEUER: I would like to have
10 that trust agreement entered into the record, Mr.
11 Lim.

12 So a number of my questions really get to
13 -- well, to a vocal part of your early testimony when
14 you talked about how you met Mr. Martirosian, that
15 you shared community ties and cultural ties and there
16 was a trust.

17 Fundamentally, a lot of what this
18 Commission has to grapple with is trust that a
19 developer is going to follow through on what they've
20 promised to do. So my questions are motivated by
21 that.

22 On that Exhibit 5, I read Exhibit 5 as
23 listing Stefan Martirosian as owning 20 percent of
24 the property through Vitoil; is that incorrect?

25 THE WITNESS: Incorrect, by mistake,

1 happened by mistake only.

2 That was a mistake, you can check, review
3 the files and records of the company Vitoil, and you
4 can see that Arch was always the only owner.

5 CHAIRPERSON SCHEUER: And does Mr.
6 Martirosian have any interest in Vitoil? Any
7 ownership?

8 THE WITNESS: He never had any interest
9 before, and he still -- and now he doesn't have any
10 interest as well.

11 CHAIRPERSON SCHEUER: So immediately
12 regarding Exhibit 5, it was given to us as an exhibit
13 by the Petitioner, by you, as a basis for our
14 decision-making, but you're stating now that it's
15 erroneous in regards to Mr. Martirosian's ownership
16 and role?

17 THE WITNESS: Yes, and I can explain.

18 Well, we give you what we had. There was a
19 mistake on this document but this is the only
20 document we had. So you asked us for document, we
21 gave it to you. We didn't make any changes on that
22 document.

23 CHAIRPERSON SCHEUER: Thank you.

24 Is there any written documentation
25 otherwise provided to us that explains the error in

1 this record that you've just described?

2 THE WITNESS: As far as I know, no.

3 CHAIRPERSON SCHEUER: Thank you.

4 It was a pleasure to meet you today.

5 Are you listed in any of the documents that
6 have been provided to us? There were 30-plus
7 exhibits. I see your brother's signature and name
8 but not yours. Are you pointed to anywhere in these
9 documents?

10 THE WITNESS: There is a document that
11 verifies that I'm the vice president of the company,
12 document signed by Ovasafyan, the director of the
13 company.

14 CHAIRPERSON SCHEUER: Do you know the
15 exhibit number of that, either or your counsel?

16 THE WITNESS: Maybe our attorney will help
17 me.

18 MR. LIM: I don't have the immediate
19 reference.

20 CHAIRPERSON SCHEUER: When you can.

21 Does that document make it clear in writing
22 that you have the ability to bind the company before
23 this Commission as to your commitment?

24 THE INTERPRETER: Interpreter needs
25 repetitions.

1 CHAIRPERSON SCHEUER: Does the document
2 referenced just now naming our witness as the vice
3 president clarify that he has the legal authority to
4 bind Waikoloa Highlands, Inc., in any commitment made
5 to this Commission?

6 THE WITNESS: This letter states that I'm
7 holding the position of vice president, and my
8 brother holds the position of the president.

9 CHAIRPERSON SCHEUER: Which document or
10 exhibit are you referring to, please?

11 THE WITNESS: I'm looking at Exhibit 33,
12 but I think we have different numbers on the
13 exhibits.

14 CHAIRPERSON SCHEUER: No, this is
15 Exhibit 33. Thank you.

16 So do you have any documentation that would
17 be normally accepted in a court in the State of
18 Hawaii showing that you have an authority to bind the
19 company?

20 THE WITNESS: I don't have such document
21 with me today, but I do have, so it's not a problem
22 to show.

23 CHAIRPERSON SCHEUER: Thank you.

24 Did I understand your testimony earlier
25 correctly to say part of the problem beyond fraud was

1 that Mr. Martirosian was not qualified to be running
2 the business to develop this property?

3 THE WITNESS: Not exactly. What I was
4 trying to say that he was a director of the project,
5 and he ran business with the help of specialist Fuke.

6 CHAIRPERSON SCHEUER: Thank you.

7 Can you explain to me what the
8 qualification of Ms. Batichtcheva are for helping
9 this project to proceed?

10 THE WITNESS: First, the most important we
11 have the trust. And second, she has education in
12 accountant finances that is very important, so she
13 understand.

14 CHAIRPERSON SCHEUER: So her training is as
15 an accountant?

16 THE WITNESS: Her main training and
17 experience is accounting, but she does any task I ask
18 her to do.

19 CHAIRPERSON SCHEUER: Thank you.

20 And I want to talk just a little bit about
21 another thing that I heard you say. And correct me
22 if I misunderstood you.

23 I believe I understood you to say that you
24 believe that we have a duty or responsibility to look
25 out for the -- protect the interest of investors.

1 THE WITNESS: Yes, I said that. But I
2 meant that any committee have interest in protecting
3 investors.

4 CHAIRPERSON SCHEUER: Are you familiar with
5 any of the other duties of this Land Use Commission?

6 THE WITNESS: I know that the committee can
7 make any decision in connection with the land use.
8 Can change zoning or can keep it the same.

9 CHAIRPERSON SCHEUER: Are you familiar with
10 any of our duties regarding the protection of
11 environment or Native Hawaiian rights or water
12 resources?

13 THE WITNESS: Yes, absolutely. It's a duty
14 of any committee.

15 CHAIRPERSON SCHEUER: So you're similarly
16 familiar with our duties to look out for affordable
17 housing, traffic concerns as well?

18 THE WITNESS: I know that Batichtcheva does
19 take care of such concern as you mentioned, but
20 that's why I feel like we fulfilled our obligation
21 with affordable housing, and we do intend to
22 negotiate for extra three or four acres for
23 affordable housing.

24 CHAIRPERSON SCHEUER: Since you mentioned
25 affordable housing, are you aware in the letter that

1 was not accepted into the record, at least yet from
2 the County, that they do not believe you have
3 fulfilled your obligation as to affordable housing?

4 THE WITNESS: I heard, but on other side,
5 it's kind of strange. We do have agreement of
6 release signed by the County of fulfillment of all
7 obligations. It looks strange we have such document.

8 CHAIRPERSON SCHEUER: Thank you. Have you
9 been to the property?

10 THE WITNESS: Yes.

11 CHAIRPERSON SCHEUER: Have you been all
12 across the property?

13 THE WITNESS: Practically, yes. We even
14 went to their area where they had the cows.

15 CHAIRPERSON SCHEUER: Has there been
16 physical improvements to the property since the time
17 that the Decision and Order was passed ten years ago?

18 THE WITNESS: I did not notice any changes,
19 but what I would like to add is that I do not take
20 off responsibility for myself. I am completely
21 responsible, and otherwise I wouldn't be here today.
22 And what else I can say?

23 I was betrayed by Mr. Martirosian. I was
24 betrayed by my brother because I trusted him, and he
25 just did not do what he promised.

1 CHAIRPERSON SCHEUER: Thank you. I just
2 have one more question about your testimony regarding
3 how much has been invested in the property.

4 When you testified that the acquisition
5 price of the land was \$60 million, that was for a
6 much larger property of which this is a part,
7 correct?

8 THE WITNESS: Yes, that was for the 14,000
9 acres.

10 CHAIRPERSON SCHEUER: And how many of the
11 \$1.5 million that you said was invested was spent
12 after the point at which the Decision and Order was
13 passed, but before the point to which this Order to
14 Show Cause hearing began?

15 THE INTERPRETER: Sorry, can you rephrase
16 for the interpreter?

17 CHAIRPERSON SCHEUER: Yes. I can break it
18 up.

19 The witness testified that \$1.5 million had
20 been invested in the property. How much of that was
21 spent after the Decision and Order but before these
22 Order to Show Cause proceedings began?

23 THE WITNESS: I do not really understand
24 the question. To what time?

25 CHAIRPERSON SCHEUER: Don't have exact

1 dates in front of me.

2 MR. LIM: The majority of the money was
3 spent previous to -- Petitioner will stipulate that
4 the majority of the money was spent prior to the 2008
5 reclassification by the Commission.

6 CHAIRPERSON SCHEUER: I will still have the
7 question, but we cannot address it now. I will still
8 have the question of how much was spent during that
9 particular period of time. And I said that was my
10 last question. I forgot one.

11 Armbusinessbank is also owned by your
12 brother?

13 THE WITNESS: Yes.

14 CHAIRPERSON SCHEUER: So the commitment of
15 additional funding is not from an outside entity who
16 necessarily did their own due diligence on this
17 transaction, correct?

18 THE WITNESS: I wouldn't put question this
19 way. But I would say that it was a very important
20 decision for us to invest this money. That was the
21 duty diligence, that decision was made through due
22 diligence.

23 CHAIRPERSON SCHEUER: Thank you very much.

24 Commissioners, any further questions for
25 this witness? Commissioner Chang.

1 COMMISSIONER CHANG: Thank you. I would
2 like to thank you very much. I would like to just
3 follow up on some of the questions by Chair Scheuer.

4 Mr. Grigoryants, you seem to be a business
5 person that is involved in many different business
6 ventures, oil, movies and development. Is that true?

7 THE WITNESS: I try.

8 COMMISSIONER CHANG: And is your brother
9 also involved with you in many of those business
10 opportunities?

11 THE WITNESS: Yes, he also tries.

12 COMMISSIONER CHANG: So this \$45 million
13 that has been set aside or committed by your
14 brother's bank, if you have different opportunities
15 other than this Waikoloa development, will you
16 withdraw that money for this project?

17 THE WITNESS: First of all I wouldn't do
18 that, because this 45 million planned for ten years.
19 And the rest of other opportunities for financial, if
20 we have other opportunities for investments and we
21 have our own money.

22 COMMISSIONER CHANG: Because I think your
23 previous testimony was when Mr. Martirosian was
24 managing, he used the \$19 million for the movies that
25 was supposed to be for this project; is that correct?

1 THE WITNESS: Yes, I said. But I meant if
2 we knew that in 2008 there would be an act, at that
3 time we had money for development in 2009/2010, so
4 instead of movie business.

5 COMMISSIONER CHANG: So what assurances do
6 we have now that you have the \$45 million, your
7 brother has committed to this project, that something
8 else won't come up?

9 THE WITNESS: It's no brother, it's a bank,
10 two different things.

11 COMMISSIONER CHANG: Would you put that
12 money in an escrow account to assure that it's
13 dedicated to this project?

14 THE WITNESS: Well, it's not a business
15 approach, nobody would put 45 million in their escrow
16 for ten years. But we don't need 45 million every
17 year. So if we breakdown 45 million by ten years, it
18 comes to we need about 4.5 million each year.

19 COMMISSIONER CHANG: Is that based upon the
20 full build-out, that the \$4.5 million, that's the
21 cost every year to build out the project?

22 THE WITNESS: It's very approximate. One
23 year may be less, one year can be more.

24 COMMISSIONER CHANG: Let me just ask
25 another question.

1 How much money have you actually spent?
2 You said 1.5 million, and I know I heard your counsel
3 that most of that money was spent prior to 2008.

4 So could you tell us approximately how much
5 money has actually been spent on this development
6 since 2008?

7 THE WITNESS: So the only work we managed
8 to do since 2008 was transferring 11 acres for the
9 affordable housing. And then since 2017, just
10 because only in 2017 that's when we learned that
11 nothing were happening.

12 COMMISSIONER CHANG: I appreciate the
13 honest answer. I want to ask you one final question.
14 Did you work with your lawyer in preparing
15 the documents that were filed?

16 THE WITNESS: I was in contact with the
17 attorney and was getting advice.

18 COMMISSIONER CHANG: So your papers, the
19 statement that was filed, it says Mr. Martirosian
20 committed fraud, misrepresentation and breach of
21 duty. Is that true?

22 THE WITNESS: Yes.

23 COMMISSIONER CHANG: What was the fraud?

24 THE WITNESS: A lot. If I start to talk
25 about it, I can talk till morning.

1 COMMISSIONER CHANG: I only ask because
2 your papers say there's more than enough evidence for
3 the Commission to find that these things were
4 committed.

5 I don't see that in the record, so I'm just
6 asking.

7 THE WITNESS: Okay, I can give you couple
8 examples if you want.

9 COMMISSIONER CHANG: Yes, I would like.

10 THE WITNESS: We have land on U.S. Virgin
11 Island. We purchased 3,000 acres for 25 million.
12 And Stefan was the director and he ran the entire
13 project.

14 And in 2017 when we received title report,
15 we sold that. The entire land was put as collateral
16 for the amount of 7,900 -- interpreter ask
17 permission -- 7 million, 900. We were very
18 surprised.

19 COMMISSIONER CHANG: Are there any
20 fraudulent acts for this project?

21 THE WITNESS: Also the same Waikoloa
22 project, there was put collateral for the amount 1
23 million, 200. Maybe because of the title report --
24 you can see that on the title report. Yeah, the
25 title report shows that there's a collector for 1

1 million, 200, and another one for 1 million, and we
2 didn't give him the authority.

3 COMMISSIONER CHANG: Have you filed any
4 action against Mr. Martirosian for these acts?

5 THE WITNESS: We plan, but so far we only
6 filed for the Malibu. Now, when I come back, I will
7 be take care of this.

8 In 2005 he announced that land is for sale.
9 We paid 1 million, 625,000. Vitoil got 35 acres.
10 But then in 2017 we found out that for that price,
11 two lots were sold, 35 acres and 17, and apparently
12 he put title for 17 acres into his name.

13 COMMISSIONER CHANG: Thank you.

14 But you have taken no action at this time.

15 THE WITNESS: So this is the Malibu case,
16 that's what I mentioned earlier. This is the one we
17 already filed.

18 COMMISSIONER CHANG: So it's not the
19 Hawai'i?

20 THE WITNESS: The other cases are still
21 pending.

22 COMMISSIONER CHANG: But nothing in
23 Hawai'i?

24 THE WITNESS: Soon.

25 COMMISSIONER CHANG: Are any of your

1 companies registered to do business in Hawai'i?

2 THE WITNESS: Waikoloa Highlands is
3 registered.

4 COMMISSIONER CHANG: Thank you.

5 CHAIRPERSON SCHEUER: Commissioners, any
6 further questions of this witness? Hearing none, I
7 think we're at a good time for a break. Then after
8 the break you can bring your second witness, Mr. Lim.

9 MR. LIM: Maybe a short wrap up rebuttal.

10 REDIRECT EXAMINATION

11 BY MR. LIM:

12 Q Mr. Grigoryants, you testified that there
13 are discrepancies in the corporate documents that you
14 submitted, correct?

15 A Yes.

16 Q Can you tell the Commission who makes the
17 final decisions and who owns the companies that
18 you've been talking about today?

19 A I just want to reconfirm that my brother
20 Vitaly is the owner of the company, and we together
21 run the business. And it's only two of us make all
22 the decision in connection with all American
23 companies, and all the companies in other countries.

24 We understand our responsibilities for
25 decisions we make. And I would like to say one more

1 time that I know that all the responsibility is on
2 me, and because I am here, and because also trusted
3 Mr. Martirosian, and he betrayed us.

4 Q Last question. Can you personally commit
5 to the Commission that you will be taking charge of
6 development of the project along with Ms.
7 Batichtcheva and Mr. LaPinta?

8 A I promise that I will be personal control
9 this project, and if committee makes a favorable
10 decision, I promise that we will complete the
11 project.

12 Q Do you have any more statements for the
13 Commission before you leave?

14 A I would like to thank all the members of
15 the committee for your patience, for your excellent
16 questions, and I hope that now you have more clarity
17 on this issue. And, again, I apologize for not being
18 here in May.

19 CHAIRPERSON SCHEUER: No further questions?

20 MR. LIM: No further questions.

21 CHAIRPERSON SCHEUER: Sorry, Mr. Okuda
22 indicated he might have one last question.

23 COMMISSIONER OKUDA: Counsel can answer
24 this question also just to speed things up.

25 Since in response to your question, Mr.

1 Lim, about discrepancies in the documents, can you
2 identify by specific exhibit number documents which
3 contain discrepancies or erroneous information?

4 MR. LIM: The ones I'm aware of are
5 Exhibit 5, our last filing which was May 9th, 2016,
6 where I think Mr. Grigoryants already testified that
7 that was in error by identifying Mr. Martirosian as a
8 shareholder.

9 And I don't know if it's in error or not,
10 but the other issue was the organizational chart
11 which showed his brother as being the ultimate
12 decisionmaker, and I think he's clarified today that
13 they have an agreement to share both control and
14 ownership.

15 CHAIRPERSON SCHEUER: Yes, Mr. Okuda.

16 COMMISSIONER OKUDA: If I can ask a
17 follow-up question.

18 Were there any -- or can you tell us --
19 strike that.

20 First question is: Are there any documents
21 in the record correcting these erroneous documents?

22 CHAIRPERSON SCHEUER: I asked that question
23 earlier.

24 COMMISSIONER OKUDA: I forgot the answer.

25 MR. LIM: There's no documents, but I think

1 Mr. Grigoryants's testimony today has corrected
2 errors in the documents.

3 COMMISSIONER OKUDA: Thank you, Chair. I
4 have no further questions.

5 CHAIRPERSON SCHEUER: We are now going to
6 take a ten-minute recess.

7 (Recess taken.)

8 CHAIRPERSON SCHEUER: Aloha. We're back on
9 the record.

10 Before we proceed, Mr. Lim, I have received
11 by us today a submission of a copy of a Irina Frances
12 McGriff, Certificate of Service. Did you want to
13 make this an exhibit?

14 MR. LIM: That's correct. This would be
15 Petitioner's Exhibit No. 38.

16 CHAIRPERSON SCHEUER: Are there any
17 objections from the County or Office of Planning or
18 the Commissioners for the inclusion of this as
19 Exhibit 38? Hearing none it's included in the
20 record. Thank you.

21 (Petitioner's Exhibit 38 was received into
22 evidence.)

23 Now you may proceed with your second and
24 final witness.

25 MR. LIM: Petitioner will call Joel

1 LaPinta.

2 CHAIRPERSON SCHEUER: Mr. LaPinta, good
3 afternoon.

4 Do you swear or affirm that the testimony
5 you're about to give is the truth?

6 THE WITNESS: Yes, I do.

7 CHAIRPERSON SCHEUER: Thank you. Please
8 state your name and address for the record and then
9 Mr. Lim can proceed.

10 THE WITNESS: Joel LaPinta, and my address
11 is 255 Puia Road, Hilo, Hawai'i.

12 CHAIRPERSON SCHEUER: You don't have to go
13 that close to the mic. You can be slightly back.
14 Normally people are too far away, including your
15 counsel.

16 MR. LIM: I was trying to correct my.

17 Prior --

18 CHAIRPERSON SCHEUER: Please proceed.

19 MR. LIM: At this time the Petitioner would
20 like to offer Joel LaPinta as an expert witness in
21 the area of real estate development and sales. His
22 curriculum vitae is attached as Petitioner's Exhibit
23 No. 23. And I can ask him some more qualifying
24 question, if the Commission would like.

25 CHAIRPERSON SCHEUER: Please go ahead.

1 -o0o-

2 JOEL LaPINTA.

3 Was called as a witness by and on behalf of the
4 Petitioner, was sworn to tell the truth, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. LIM:

8 Q Mr. LaPinta, how long have you been
9 employed -- let me back up.

10 What is your line of business at this time?

11 A Currently I'm doing development land
12 consultant with a number of developers. I'm doing
13 development modeling so that their projects can
14 financed with debt and equity sources, and a number
15 of projects.

16 And also I worked for Kennedy Wilson for
17 seven years. We acquired a project in Kaua'i. I
18 was -- and I was in charge of the development in
19 completing the development of that project that was
20 partly finished and did not have all of its
21 subdivision infrastructure done.

22 I also was one with -- when the CEO did the
23 investment for Kennedy Wilson.

24 MR. LIM: This is Petitioner's Exhibit 6.

25 CHAIRPERSON SCHEUER: I don't know why

1 we're getting a lot of static, whether the mic is too
2 high --

3 THE WITNESS: How's that?

4 So I'm involved in the working with
5 developers and people and plans that are suited for
6 development. And myself, I have a project in Kaua'i,
7 I bought out the interest in a project in Kaua'i.

8 Q (By Mr. Lim): I'll be following some of
9 the information that's on Petitioner's Exhibit 6.

10 What is your education as it relates to
11 this particular subject?

12 A My background in undergraduate was science.
13 I was premed student. I studied history, science.

14 COURT REPORTER: I can hear you.

15 THE WITNESS: My background was in science
16 and math. And when I got into real estate, I
17 immediately went through a program which a Commercial
18 Investment Real Estate Institute has which provides
19 educational opportunities.

20 And also I have a background in course work
21 in doing development review, project review, projects
22 for analyzing high-rise, multi-family development,
23 that type of thing.

24 Q Can you please identify some of your
25 professional training with regard to the subject

1 matter?

2 A My professional training with regard to
3 this subject matter?

4 Q Yes. Regard to real estate, what kind of
5 training did you have in real estate?

6 A I was describing the Commercial Investment
7 Real Estate Institute training. Also, I don't have
8 it in front of me, but I've taken a number of courses
9 over the years in, like I said, multi-family
10 development, and taken courses in land acquisition
11 and development analysis.

12 And I'm a fairly -- I also actually
13 developed real estate and subdivision here in County
14 of Hawaii.

15 Q For how many years has that been that
16 you've been developing real property in the County of
17 Hawaii?

18 A First subdivision I did was in 1986.

19 Q Have you done any projects that are similar
20 to the Waikoloa Highlands project?

21 A Yes. In the '90's I acquired a piece of
22 land, went through the zoning change, did everything
23 from having the subdivision approved, engineering
24 done, to in process of dedicating the streets to the
25 County of Hawai'i and provided 28 gap-housing

1 residential sites.

2 Q So currently your primary job now is to act
3 as budget consultant, project manager?

4 A Yes.

5 Q That would be what you've been retained to
6 do for Waikoloa Highlands?

7 A Correct.

8 MR. LIM: I would offer Mr. LaPinta as
9 expert witness in the area of real estate development
10 and sales.

11 CHAIRPERSON SCHEUER: Are there questions
12 on this matter from the County of Hawai'i?

13 MR. KIM: No questions.

14 CHAIRPERSON SCHEUER: Office of Planning?

15 MS. APUNA: No questions.

16 CHAIRPERSON SCHEUER: Commissioners?

17 I just want to know, Mr. LaPinta, you
18 mentioned one project that you took through
19 entitlements?

20 THE WITNESS: Yes.

21 CHAIRPERSON SCHEUER: What was the size of
22 that project?

23 THE WITNESS: 28 lot residential
24 subdivision.

25 CHAIRPERSON SCHEUER: Where was that.

1 THE WITNESS: Pepekeo. I bought land from
2 C. Brewer Company, who also I did consulting work
3 for.

4 CHAIRPERSON SCHEUER: That was solely under
5 County zoning?

6 THE WITNESS: Yes, it had already been
7 urbanized, correct.

8 CHAIRPERSON SCHEUER: Does anybody object
9 to Mr. LaPinta being qualified as proposed? Hearing
10 none.

11 Please proceed.

12 MR. LIM: Thank you.

13 Q Can you give the Commission a brief
14 background of your work on the Waikoloa Highlands
15 project and when it was that you started work on this
16 project?

17 A I started --

18 Q Approximately.

19 A Approximately I started in June on this
20 project.

21 Q Of this year?

22 A Yeah, June of this year. But I had been
23 talking to the ownership for sometime before that. I
24 don't know exactly how long.

25 Q From June of this year, what have you done

1 with respect to development of the project.

2 A To begin with I reviewed the engineering.
3 And I at my insistence I told the client that we
4 first need to proceed with reviewing the project and
5 see if it's viable as a project economically.

6 And so I reviewed the engineering. That
7 was done so far by RM Towill on the project. And
8 quite a bit of engineering was done.

9 In fact, to date, the roundabout plans were
10 completed to the point that they were first submitted
11 to the County, and the County had actually done its
12 first review of the roundabout plans.

13 The drainage study, topographic surveys
14 were done on the first phase. They had completed
15 civil engineering plans with grading plans, and
16 erosion control plans as well. We reviewed those.

17 At my insistence, the client, there were
18 some outstanding bills. And to get cooperation and
19 to work with RM Towill, those had to be paid. It was
20 about \$43,000.

21 I had numerous meet -- I had a
22 three-and-a-half, four-hour meeting going over the
23 plans alternative ways in which we can develop the
24 project, and what was work was done.

25 I've come up with -- I have an estimate of

1 how much the remaining engineering will cost. And I
2 confirmed with RM Towill that the work they have done
3 so far, it can be used, and they will work from where
4 they are now with the grading plan that they have,
5 with the flood control plans that they have with
6 street design. So that was good to know.

7 And we can also work from the roundabout
8 plans as well.

9 I also then had contact with the West
10 Hawaii Water Company and discussed the issues
11 concerning the service. The area is within the
12 service area of West Hawaii Water Company talking to
13 Stephen Green. We went over the tariffs and cost and
14 discussed the issues concerning this specific project
15 because the contribution and aid of a construction,
16 if you're familiar with that, to get water, the
17 developer needs to contribute to the capital cost of
18 the system.

19 So the acronym CIAC fees were discussed and
20 how are they based because they're based on a formula
21 about the amount of water each lot would use.

22 So in Waikoloa, a residential lot, they
23 consider residential lot will use 600 gallons a day,
24 that's their measure; 400 gallons for potable use and
25 200 gallons a day for landscaping.

1 Because of these proposed to be one-acre
2 lots, they want an additional agreement and
3 additional fees to be paid for the anticipation that
4 people with one acre lots would use more water.

5 So we come to an estimate of about what
6 they will cost, and a procedure for getting our
7 commitment.

8 And also investigated the cost and
9 calculated whether County fair share, what
10 contributions will be on the project.

11 Also reviewed and discussed it with -- you
12 know, did a market analysis of what I think the price
13 points will be. And I built the business model and
14 estimated what the cash flows would be to model what
15 the cash flows will be from a project to be developed
16 at that site.

17 I've also a reviewed the affordable
18 housing, and you may have questions about affordable
19 housing. I can go over that with you as well.

20 Q Can you please give the Commission an
21 overview of the project itself and how many lots, et
22 cetera? Then go into a description of the
23 subdivision process that will be necessary to get to
24 final subdivision approval and sales of the lots.

25 A What this stage -- the project would be

1 developed in increments and the increments would be
2 sized based on market and demand. I'm looking at
3 doing somewhere between 50 to 80 lots in the first
4 increment.

5 In order to proceed at this point, assuming
6 we can go back and get rezoning and extension on the
7 conditions from the County. We would go forward and
8 get the tentative approval on a preliminary plat map.
9 And I would work with RM Towill to finalize the
10 engineering for the streets. And we are also looking
11 at ways to reengineer to make them more cost
12 effective. Looking at doing, rather than County
13 dedicated streets, doing private streets using -- and
14 I've also discussed using native plants that use very
15 little water for the landscaping on the shoulders of
16 those streets.

17 One of our concerns if the project would
18 need to be fenced to keep out goats and feral
19 donkeys, because that's a major problem if we were to
20 landscape our streets. So I've looked at the
21 possibility of doing that and the cost.

22 I met with and toured the Waikoloa drive
23 force initiative and did a write-up on that. And I
24 think it's possible we can use a lot of their
25 knowledge towards coming up with the program for

1 landscaping along the shoulders of the project.

2 So we would have a very nice project that
3 would reduce the amount of water. And if you haven't
4 seen the Waikoloa dryland initiative, it's quite a
5 beautiful environment when you look at the ground
6 cover that is generated by promoting the native
7 plants.

8 So to meet those criteria, at that point
9 prior to construction, we would register the project
10 under Uniform Land Sales Practices Act, and we would
11 register under the Uniform Lands Sales Practices Act
12 and we would do pre-sales on a preconstruction basis
13 after bonding for completion on the first phase of
14 subdivision improvements.

15 Q So the project already has some level of
16 construction drawings for the subdivision
17 infrastructure and water system and roundabout?

18 A Yes, it's quite far along.

19 Q Do you have an estimated percentage of how
20 complete those are at this point?

21 A I guess we could do it by the numbers.
22 It's about, I estimate that we have \$670,000
23 additional work to do with the engineering. And to
24 date there was close to maybe 900,000 spent on the
25 engineering for this particular space of the first

1 phase of the project.

2 Q How long, if you were given the go-ahead,
3 how long would it take the engineers to -- I know
4 that you are not in charge of that -- but your
5 estimated time frame for getting the project plans up
6 to snuff so that they could pass muster with the
7 County's Department of Public Works and Department of
8 Water Supply?

9 A After one year going through the County
10 rezoning, after the one-year County rezoning, we
11 would be there in about 14 months.

12 Q And that's to final construction drawings?

13 A Yeah, really, 26 months with the County
14 rezoning.

15 Q Once you have the final construction
16 drawings approved by the County, what happens next in
17 terms of going towards --

18 A To get the construction drawings we go out,
19 get competitive bids from a number of contractors who
20 are qualified contractors. We enter into a
21 subdivision agreement with the County, and as part of
22 that agreement they will have to post a bond to bond
23 for the bid price of the improvements. And then we
24 can register under the Uniform Land Sales Practices
25 Act with Department of Commerce and Consumer Affairs,

1 and we can proceed to take actual binding contracts
2 prior to starting construction.

3 Q So at that point in time you're selling the
4 lots essentially and there's no construction on the
5 ground?

6 A That's correct. And I will say that I did
7 that in the subdivision in Pepeekeo 6789.

8 In fact, in order to close the loan with
9 First Hawaiian Bank and Isimoto (phonetic) as my
10 partner, I had to do that, because the pink wouldn't
11 finance until we had preconstruction sales in place.

12 This is not -- this is how we have been
13 doing this in the state for 40, 50 years, so it's not
14 new.

15 Q When you say "we" --

16 A General real estate, yeah, land developers.

17 This has been the process of doing land
18 subdivision and development for decades.

19 Q In during consulting work, do you have
20 occasion to speak with various developers,
21 purchasers, sellers in terms of feasibility of
22 projects as they are looking at them?

23 A Yes. I'm in contact with many developers,
24 engineers and contractors in the industry, and have
25 been for -- I started selling and developing land

1 back in the '90's, so I've known a lot of them and
2 I'm in contact with them today. I'm in contact --
3 actually I am talking to one contractor about the
4 project, working with a contractor as partner on
5 development has its advantages.

6 Q Based on your experience on evaluating
7 projects, do you think that the Waikoloa Highlands
8 project is a feasible development?

9 A Yeah. That was the first step that I
10 analyzed it and believe it's feasible.

11 Q One of the concerns that has been raised by
12 the Commissioners is that the fear is that having had
13 the District Boundary Amendment to Rural for the last
14 ten years will lead to private land speculation.

15 Is that a concern for the Waikoloa
16 Highlands project?

17 A Okay, should I mention -- okay.

18 You know, that thinking, the land uses or
19 the law that was passed that created -- what the Land
20 Use Commission does is what's called conditional
21 zoning, right?

22 Conditional zoning, there's nowhere in the
23 literature that I can find where the statement of the
24 legislative committee that reclassifying land to
25 Urban results in land speculation.

1 In fact, all the research that I've seen in
2 urban -- in urban economics is basically saying a
3 land speculator is a farmer. You do not hold -- it's
4 a very bad business of model to hold lands as
5 speculation. The industry has changed. Since the
6 '90's the industry of funding real estate development
7 to private equity markets don't award anyone for
8 doing a land speculation business. There's just no
9 money in it, and it's been proven to be a way to lose
10 money.

11 In fact, what I have find, and if you want
12 to know in urban economics, is peer-reviewed studies
13 showing that land regulations is positively
14 correlated. Levels of land regulation is positively
15 correlated, positively correlated with high housing
16 prices and with homelessness.

17 I have a study here from the Journal of
18 Urban Economics. It's peer-reviewed. It's published
19 by University of California Los Angeles and
20 University of California Berkeley and University of
21 Netherlands, comes to the conclusion that higher
22 levels of approval on land use results in high
23 housing cost.

24 And I can also give you another study that
25 Homeless Advocacy Organization located in the bay

1 area. This is published in University of California
2 Berkeley.

3 CHAIRPERSON SCHEUER: Mr. Lim, can you
4 please help explain how witness' testimony on this
5 point is relative to this?

6 THE WITNESS: It's relevant because there
7 is no --

8 CHAIRPERSON SCHEUER: I was addressing
9 counsel.

10 MR. LIM: The other of proof is that one of
11 the issues here, and maybe one of the biggest issues
12 is the issue of whether the Petitioner here is
13 engaging in speculative land banking.

14 CHAIRPERSON SCHEUER: I understand that
15 point, but I was trying to draw the connection
16 between a discussion of apparently two peer-reviewed
17 articles finding correlation between real estate
18 prices and homelessness.

19 THE WITNESS: I agree, I went off course
20 there. In fact, what I would go back to is in the
21 industry the capital does not finance speculation.
22 That's the whole point, cannot finance speculation.

23 What you can finance is a viable business
24 model. And the underwriting criteria for that
25 business model includes economic analysis, also

1 includes in-depth market analysis. They are party
2 groups. It includes that you can show -- of course,
3 you have the entitlement. Entitlement comes into the
4 business model as a risk that has to be valued if
5 it's risk, or as an uncertainty.

6 If it is an uncertainty then it can kill
7 the business model and its ability to be funded.
8 That's basically what happens.

9 But they don't fund land speculation.
10 There's no capital out there. If you guys can find
11 some, give me a call, because it's just an absurdity
12 frankly in the market today to say that there's a
13 capital source to speculate land.

14 Q So in conclusion, is it your opinion that
15 Waikoloa Highlands, Incorporated is or is not engaged
16 in land speculation?

17 A It appeared from the amount of work done in
18 the engineering, and steps taken to get the
19 archaeological inventory review approved, getting the
20 drainage plan, all the cost put in the engineering,
21 that is not speculation, that's proceeding with the
22 business plan to use the property for the subdivision
23 and lots to be sold to the open market.

24 Q Moving to another subject.

25 The Commission has discussed, through other

1 witnesses, the conveyance of 11.7 acres by the
2 Petitioner for the purpose of satisfying an
3 affordable housing agreement.

4 Can you please describe for the Commission
5 how that came down, and whether or not there have
6 been any current discussion on the affordable housing
7 issue?

8 A Well, it's -- to begin with I want to draw
9 your attention to the letter from Paul Sulla. Have
10 you read that letter?

11 That letter gives an explanation of the
12 transaction. Today I called Sidney Fuke. I asked
13 him about the transaction from Waikoloa Mauka to
14 Plumeria, Plumeria at Waikoloa who's manager is Paul
15 Sulla.

16 Sidney said he did not know who Plumeria at
17 Waikoloa is. And I asked him -- and he also said
18 that the Office of Housing and Community Development
19 of the County instructed him to have his client deed
20 the property to that entity in order to satisfy the
21 affordable housing requirement. Other than that he
22 doesn't know who the owner of that company is, and he
23 only knows that Paul Sulla is the attorney and
24 manager of that company.

25 Q Did Waikoloa Highlands, Inc., subsequently

1 get a release of the Affordable Housing Agreement?

2 A Yes. They received a release, which
3 basically ratifies that they completed their
4 requirement for affordable housing per the agreement
5 with the Office of Housing and Community Development.

6 And they followed the instructions of that
7 office and fulfilled that obligation.

8 MR. KIM: If I may object to the witness'
9 testimony. It's a legal effect of a document. He
10 was qualified as real estate and investment expert,
11 not as legal expert.

12 CHAIRPERSON SCHEUER: I'm going to sustain
13 that.

14 Q (By Mr. Lim): You're aware that the
15 release of the Affordable Housing Agreement was filed
16 -- excuse me -- dated July 20th, 2017?

17 A Yes.

18 Q And signed by the Housing Administrator of
19 the Office of Housing and Community Development by
20 Natalia Batichtcheva, the Director of Waikoloa
21 Highlands, Incorporated, approved as to formal
22 legality by Amy Self, Deputy Corporation Counsel and
23 signed by County of Hawaii Managing Director?

24 MR. KIM: Again, I need to object. If the
25 witness has any direction knowledge of this document

1 other than looking at it.

2 THE WITNESS: Yes, I have. I saw the
3 document that's recorded and it was part of my due
4 diligence.

5 MR. LIM: The document we are talking
6 about, for the Commission's benefit, is the
7 Petitioner's Exhibit 11 on that last filing.

8 CHAIRPERSON SCHEUER: This document has
9 been included as an exhibit, correct?

10 MR. LIM: That's correct.

11 CHAIRPERSON SCHEUER: Moving along.

12 MR. LIM: I wanted to set the basis for
13 that.

14 Q In talking to Mr. Grigoryants about the
15 project, and about the affordable housing issue, are
16 you of the opinion that the Petitioner believes that
17 their affordable housing requirements for the
18 Waikoloa Highlands project has been fully satisfied?

19 A Yes.

20 Q Moving on to more current days. Were you
21 part of a meeting, recent meeting with these County's
22 Office of Housing and Community Development regarding
23 assistance by Waikoloa Highlands, Incorporated, with
24 County of Hawaii sponsored Affordable Housing
25 Project?

1 A Yes.

2 Q When was that?

3 A Well, I have notes from the meeting. It
4 was on the 19th, Friday, October 19th at the Office
5 of Housing and Community Development with Neil
6 Gyotoku, Alan Rudo, Duane Hosaka, Malia Hall.

7 Q And Malia, and the first three where Office
8 of Housing and Community Development. And the last
9 was who? Who was Ms. Hall?

10 A Their legal counsel.

11 CHAIRPERSON SCHEUER: I'm getting a little
12 uncomfortable, but you can clarify. We're talking
13 about a meeting that nobody else in this room was a
14 party to. Where you are going?

15 MR. LIM: Offer of proof is the Petitioner
16 was requested just last week by the County Office of
17 Housing and Community Development to assist their
18 project developer who is developing the project on
19 that 11.7 acres that we're talking about.

20 The developer apparently needs more land
21 area because there's a mauka-makai drainage channel
22 that runs through the property, so he doesn't have
23 enough land area to develop his affordable housing
24 units. And I'm trying to -- the reason why we're
25 talking about this for this proceeding, is we're

1 trying to show the Commission that the Petitioner in
2 good faith on a voluntary basis is trying to assist
3 the County in developing its Affordable Housing
4 Project.

5 CHAIRPERSON SCHEUER: Thank you. Please
6 proceed.

7 Q (By Mr. Lim): Can you -- who called the
8 meeting? Was it the Petitioner or you or who called
9 the meeting?

10 A The Office of Housing called the meeting,
11 asked us to come and meet with them to discuss them
12 acquiring more land in order to accommodate 80
13 affordable apartments on the site.

14 Q Can you detail for the Commission the
15 substance of that meeting?

16 A Basically the substance was that they had
17 been -- that the owner of Pua Melia did not have
18 enough space to put his True Value Hardware store and
19 commercial use, plus 80 affordable apartments unless
20 they go high, like three stories, and do stacked
21 plats, and they prefer not to do that.

22 They prefer to do a two-story town home
23 design. So the footprint would be much larger than
24 the parcel would allow.

25 And the parcel is inefficiently shaped,

1 being very triangular and shaped at one point because
2 of other landowners.

3 So we talked about the reconfiguring the
4 parcel with lands owned by my client in order to
5 accommodate 80 apartments.

6 Q When you spoke of Pua Melia, is this the --
7 I'll ask you to explain the chain of conveyances from
8 Waikoloa Highlands, 11.7 acres?

9 A The conveyance?

10 Q Who was the land conveyed to?

11 A I got to pull up the chart. It was
12 conveyed from Waikoloa Highlands to Plumeria at
13 Waikoloa. And then there was a warranty deed to Pua
14 Melia, which is owned by Danny Joseph Julikowski of
15 Cook, Minnesota.

16 Q Pua Melia, LLC is the current owner of the
17 parcel?

18 A Pua Melia, LLC is the current owner. And
19 through using 201H approval through the County's
20 Office of Housing and Community Development, he plans
21 to do a mixed use project on the site.

22 Q What was the ultimate outcome of the
23 meeting?

24 A That we would like to accommodate them. We
25 would like to talk with -- they're talking about

1 working with a nonprofit. I don't know the name.

2 They're talking to a nonprofit. The
3 executive director I think is Delene Osorio. And
4 they would like to do the 80 town homes there as
5 affordable rentals. And they need a better
6 configuration site to have a footprint for that
7 project.

8 And we talked about working with them,
9 their architects and engineers coming up with a
10 better footprint, and after that, us doing a boundary
11 adjustment in order to accommodate that. And we
12 ended it with we're willing to work with them.

13 Q What were the drivers that were represented
14 to you during the meeting in terms of why it's a good
15 time to do the affordable housing project right now?

16 A The available affordable tax credits from
17 the state, they would like to be able to take
18 advantage of those at this time. I don't know
19 exactly what the quantity is, but, yeah.

20 Q Was there also discussion of why the
21 County's nearby Kamakoa Nui workforce housing project
22 was stalled, and why the Waikoloa Highlands land was
23 better suited for conclusion in this particular --

24 CHAIRPERSON SCHEUER: One moment.
25 Commissioner Chang.

1 COMMISSIONER CHANG: I'm sorry. In all due
2 respect, I'm a little confused and I'm trying to
3 understand. Is this transaction related to the
4 affordable housing condition in the matter before us?
5 Or is this a separate private transaction between
6 Waikoloa and the County for a project?

7 I guess I'm a little confused. Maybe you
8 can clarify.

9 MR. LIM: We think it's a separate
10 transaction, but I don't know what the County thinks.
11 For the first time yesterday they filed a document
12 saying that they although we conveyed the 11.7 acre
13 irrevocably to a third-party per their instruction,
14 and got an release of agreement, they're now telling
15 us that maybe that wasn't good. And frankly that
16 surprised us.

17 That's why we're discussing the fact that
18 we feel like we have satisfied the Affordable Housing
19 Agreement by conveyance of this land which we can't
20 get back, I don't think. We will have to file
21 litigation or something to get it back.

22 But it relates in part to the current
23 effort by the County Housing and Community
24 Development. Because if the County is going to end
25 up taking the final position that we haven't fully

1 satisfied the agreement, then this will become very
2 relevant.

3 CHAIRPERSON SCHEUER: Sorry, just at this
4 point, about how long do you think you have with this
5 witness?

6 MR. LIM: Not very much longer.

7 CHAIRPERSON SCHEUER: I'm assuming there
8 will be some questions for the witness. Please
9 proceed.

10 COMMISSIONER OHIGASHI: Mr. Chair.

11 CHAIRPERSON SCHEUER: Commissioner
12 Ohigashi.

13 COMMISSIONER OHIGASHI: Are you going to
14 ask the same question again, because I didn't hear an
15 answer?

16 THE WITNESS: Could I finish answering the
17 question of why they want to do the affordable
18 housing there and not on the County land? I can
19 answer that.

20 What we were told is that the County land
21 hasn't been cleared of unexploded ordinance to the
22 level that's required under HUD rules. So they can't
23 do the affordable housing until they do go to a
24 second clearance done. The Army Corps of Engineering
25 has done the clearance, but now they need a

1 clearance -- a report done to the Department of
2 Health. I believe that's the case, right?

3 So they don't have clearance to build
4 housing on that. It involves tax credits and federal
5 money, they can't do it.

6 So our site that we're talking about is
7 cleared, so we can clear that and be done. And then
8 they can use the tax credits, and they can develop
9 housing on this site. That's the reason. Is that
10 clear? Anybody have a question?

11 CHAIRPERSON SCHEUER: Respectfully, you
12 need to not ask us questions. I only mention it
13 because you asked us before whether we had read a
14 document in this case or not.

15 I ask you to reserve that urge to ask us
16 questions. I understand the urge, believe me.

17 THE WITNESS: I apologize.

18 MR. LIM: I would like to reserve time for
19 rebuttal.

20 CHAIRPERSON SCHEUER: Thank you. County of
21 Hawaii.

22 MR. KIM: County has no questions for this
23 witness.

24 CHAIRPERSON SCHEUER: Thank you. State
25 Office of Planning.

1 MS. APUNA: Thank you, Chair. I do have a
2 few questions.

3 CROSS-EXAMINATION

4 BY MS. APUNA:

5 Q So basically you're kind of stepping in the
6 shoes of Mr. Martirosian with respect to the project
7 manager at this point?

8 A With respect to that, yes. But I will be
9 capable of doing more, because I know more about what
10 to do than he did apparently. I have seen the
11 correspondence. He was relying heavily on Sidney
12 Fuke's work.

13 Q And so you're familiar with the Petition
14 Area at this point in time?

15 A Yes.

16 Q Are there any roads for infrastructure or
17 utilities built on the Petition Area at this time?

18 A There's quite a bit of utility
19 infrastructure on the property, and there roads on
20 the property as well.

21 Q But were they built by the Petitioner since
22 the Decision and Order?

23 A Maybe you should ask your question again.
24 It's not a clear question. Your question should be
25 clearer.

1 Q The road infrastructure and utilities that
2 you claim are on the Petition Area at this time, were
3 they placed there by the Petitioner since the
4 Decision and Order was made?

5 A No.

6 Q Are there any other structures on the
7 property that were built by the Petitioner since the
8 Decision and Order?

9 A Not that I'm aware of.

10 Q And to confirm the backbone infrastructure
11 has not been built out on the Petition Area, is that
12 correct?

13 A The definition of "backbone infrastructure"
14 is ambiguous. But there is no infrastructure that I
15 see that was built since the 2008 Petition.

16 Q Has an agreement been reached with DOT with
17 regard to Condition No. 6 highway improvements?

18 A Condition No. 6 satisfied by the
19 intersection improvement that was done down at the
20 Queen Kaahumanu intersection I understand.

21 Q That wasn't my question.

22 Was there agreement between the Petitioner
23 and DOT with regard to the improvement required under
24 Condition No. 6? Is there a document that says that
25 DOT and Petitioner agree?

1 A I don't know of a mutual document, no.

2 Q A unilateral agreement? I mean unilateral
3 document? No agreement, is that correct?

4 A Steve Lim's office reviewed that and
5 cleared it. I, right now, can't hold out a document
6 or what the basis of that was, but they cleared that
7 it had been satisfied by the improvements at the
8 intersection.

9 Q But you can't point to a written agreement?

10 A No.

11 Q With regard to archaeological Site No. 22,
12 has Petitioner consulted with SHPD, State Historic
13 Preservation Division on Site 22 directly?

14 A May I consult with counsel, because it was
15 ordered and it's in process. Did we receive that?

16 Yeah, we're in compliance. I think we have
17 one last report that has to be approved, right?

18 CHAIRPERSON SCHEUER: Counsel can answer
19 that, if you have the information.

20 MR. LIM: We made application for SHPD site
21 number, and we are awaiting for their reply.

22 THE WITNESS: That's the answer.

23 CHAIRPERSON SCHEUER: You can continue.

24 Q (By Ms. Apuna): Was a timeline for
25 development by major task and phases prepared?

1 A Are you talking about construction?

2 Q For development, for construction, for
3 anything as far as --

4 A Yes.

5 Q And was it submitted to the Land Use
6 Commission?

7 A No.

8 Q When is the full project expected to be
9 fully complete?

10 A I did a ten-year projection.

11 Q And isn't it true that earnest efforts to
12 pursue development occurred only after the Land Use
13 Commission decided to issue an Order to Show Cause?

14 A No. I don't think so, because Sidney Fuke
15 was working on the affordable housing condition prior
16 to my being involved in the project.

17 Q With regard to affordable housing
18 condition, what is your understanding -- is that
19 affordable housing condition the same as the
20 requirement under Chapter 11, Article 1 of the Hawaii
21 County Code?

22 A I believe so.

23 Q And do you know --

24 A I believe that's the right citation. I am
25 familiar with that.

1 Q That's the affordable housing chapter?

2 A Right.

3 Q Do you know what the requirement is for
4 residential lots as far as what the affordable
5 housing requirement is?

6 A 2020 -- it's like 20 points for the number
7 of units. It's a point system, not a number of units
8 exactly. So depending on how those units are priced,
9 and to what income levels, you get different points.

10 So let's say we have 400 units, we need
11 80 points.

12 Q Right. And so --

13 A But the points can be accomplished by
14 40 units. They're priced or designed for like a
15 60 percent, I think, income level, yes.

16 Q So generally it's 20 percent, there's a
17 20 percent requirement. So for this project, we
18 have --

19 A Well, that's not accurate. It's 20 points,
20 not 20 percent of the project. 20 of the percent of
21 the unit in account, is 20 points based on the point
22 table.

23 Q Well --

24 A Well, what?

25 Q Well, according to the housing code --

1 A Well --

2 CHAIRPERSON SCHEUER: Excuse me. I would
3 encourage both of you not to interrupt each other,
4 and encourage the witness to use a respectful tone in
5 this meeting room.

6 Please continue with the Office of Planning
7 and then you can respond.

8 Q (By Ms. Apuna): As I read -- well, so
9 there's a 20 percent of total number of units
10 proposed at the project.

11 So this is a 398 lot that are proposed, so
12 20 percent of 398 would be the 80-unit that you had,
13 so 80 would be the affordable housing requirement for
14 this project?

15 A 80 points.

16 Q 80 points, 80 units.

17 And you said that for -- the developer has
18 put in 201H application for 32 units for the
19 11.7-acre lot?

20 A Which developer?

21 Q I think it's Plumeria -- Pua Melia.

22 A This is what I'm told by -- this is what I
23 was told by the Office of Housing and Community
24 Development and the County and their officials. But
25 we're not really involved in that. Our meeting was

1 to discuss them acquiring more land to complete their
2 project.

3 Q But as far as you know, the 11.7 or .8-acre
4 lot that was transferred from Petitioner to Plumeria
5 and then was sold to Pua Melia, on that lot it is
6 proposed to have 32 units of affordable housing; is
7 that correct?

8 A Where did you get that information? I
9 don't have that information.

10 Q Well, I think one of our exhibits from the
11 Hawai'i Housing and Finance Department said there is
12 an application.

13 A I can't really -- I'm not -- that's not
14 part of something I need to work on, because that's
15 their project.

16 Q Thank you.

17 CHAIRPERSON SCHEUER: It is 3:28 p.m. What
18 I would like to propose doing is taking a break, ten
19 minutes. We will then go for one further hour and
20 then call it a day for the day.

21 I suspect we might have a full hour of
22 questions for Mr. LaPinta, I don't know. If not, we
23 can begin with the County.

24 Is that acceptable to the parties and my
25 fellow Commissioners? Let's take ten minutes. Thank

1 you.

2 (Recess taken.)

3 CHAIRPERSON SCHEUER: Okay, we're back.
4 Thank you for your patience.

5 Commissioners? OP, you were done?

6 MS. APUNA: Yes.

7 CHAIRPERSON SCHEUER: Commissioners?
8 Commissioner Aczon and then Commissioner Chang.

9 COMMISSIONER ACZON: Like my fellow
10 Commissioner Wong always says, we're just laymen,
11 just simple questions.

12 Mr. LaPinta, who do you report to?

13 THE WITNESS: I report to Natalia
14 Batichtcheva and to Valery Grigoryants.

15 COMMISSIONER ACZON: So your immediate
16 supervisor is Natalia?

17 THE WITNESS: Yes.

18 COMMISSIONER ACZON: She has the power
19 to --

20 THE WITNESS: But I'm an independent
21 contractor. But anything that I do, I get clearance
22 from them. They don't want to have me appear to be
23 an agent or a person who has rights to enter into
24 contracts or contractually bind them.

25 So everything I run by them before I have

1 meetings or interactions with the utility company,
2 for example, or with RM Towill, engineering
3 companies.

4 COMMISSIONER ACZON: So you cannot do
5 anything without --

6 THE WITNESS: Without authority from the
7 owner, correct.

8 COMMISSIONER ACZON: Natalia's permission;
9 and Natalia can't do anything without the owners --

10 THE WITNESS: The owners, yes.

11 COMMISSIONER ACZON: -- permission?

12 THE WITNESS: Correct.

13 COMMISSIONER ACZON: Maybe I'm kind of
14 losing it. I'm still not -- not fully understand
15 what is your core responsibility for this project?

16 THE WITNESS: My core responsibility for
17 the project is to manage the development, to
18 initially to do a feasibility study to see if
19 developing these lots, and given the potential market
20 for them and the price points that we could sell them
21 at, and giving the anticipated cost and steps and the
22 time to develop that it would be a profitable
23 enterprise rather than lose money.

24 COMMISSIONER ACZON: So from start to
25 finish?

1 THE WITNESS: Yeah, correct.

2 COMMISSIONER ACZON: What would you do
3 differently from the previous management?

4 THE WITNESS: Excuse me?

5 COMMISSIONER ACZON: What would you do
6 differently from the previous management for the ten
7 years that went by?

8 THE WITNESS: What would I do differently?
9 Move quicker, one.

10 Work with designing a product that the
11 market will accept.

12 Three, work in finding ways to do cost
13 engineering with the engineers. And that's what my
14 discussions with them and meetings have been, and
15 they believe there's ways in which we can do that.

16 We don't believe this is a high-end luxury
17 development. It's going to be pretty much, you know,
18 modestly priced in line with Waikoloa Village
19 residential, but with a larger lot. And actually
20 pricing similar to one-acre lots, maybe a bit higher,
21 but in a price range that we think we can move the
22 lots. And we're looking at the price range for
23 places around Kailua-Kona, Hilo and in Waimea.

24 And in this area of the island there are
25 very few to no one acre or even half to one-acre

1 lots, little larger lots that people want a bigger
2 site.

3 COMMISSIONER ACZON: Maybe you answered
4 this before, but do you have an overall financial
5 plan for the project, or is that your responsibility
6 or Natalia's responsibility?

7 THE WITNESS: My responsibility.

8 COMMISSIONER ACZON: And my question is --

9 THE WITNESS: I do the financial modeling
10 for the project.

11 COMMISSIONER ACZON: So you have an overall
12 financial planning for what the whole project is
13 going to cost?

14 THE WITNESS: Yes, correct.

15 COMMISSIONER ACZON: Do you think that the
16 45 million that is borrowed is enough to finish the
17 project?

18 THE WITNESS: Actually it's way more than
19 we need. Like for my model in here -- let me look at
20 the spreadsheet.

21 What happens is this is done in increments,
22 the project is done in increments. And as the
23 increments go forward, we sell lots and that reduces
24 the capital cost.

25 So based on -- I have this particular model

1 here. It's for the 398 lots. The peak, we call peak
2 capital during the entire sellout of the project
3 towards the development cost, comes to 15 million,
4 790. 15,800,000 would be peak capital.

5 COMMISSIONER ACZON: Just give me a minimum
6 dollar amount from minimum to maximum.

7 THE WITNESS: This is a model using
8 strictly equity capital, so there's no enhancement
9 using dead capital, because if you have a project
10 like this, you have assets that banks would lend on,
11 especially finished lots. You have an inventory
12 finished lots, or if you have future increments that
13 are finaceable, and bank knows they're good
14 collateral. You can get some enhancement by
15 borrowing money.

16 COMMISSIONER ACZON: I'm not going to hold
17 you to it.

18 THE WITNESS: We're talking about cost
19 that, you know, in the early stage, you want up-front
20 cost because of infrastructure up-front, so those
21 numbers get to be high. So in the early stage we get
22 a high --

23 COMMISSIONER ACZON: So --

24 THE WITNESS: What I said, I told you --
25 I'm sorry.

1 What I mean by -- if you're going along,
2 the max, in this model, the maximum amount of capital
3 the developer will have out is 15 million, 800,000?

4 CHAIRPERSON SCHEUER: Does that answer your
5 question?

6 COMMISSIONER ACZON: That's the maximum?

7 THE WITNESS: That's the maximum amount,
8 yes.

9 COMMISSIONER ACZON: What is the minimum?

10 THE WITNESS: Well, it starts out in the
11 first month that -- the first months they're putting
12 in a million one to million six every month to do.
13 But as that goes along, they will be selling lots and
14 lots will help pay.

15 COMMISSIONER ACZON: I understand.

16 Just to follow up with Ms. Apuna's question
17 about the time.

18 So you have a overall timeline for the
19 project, correct?

20 THE WITNESS: Correct, yeah.

21 COMMISSIONER ACZON: When do you think is
22 the project's shovel ready?

23 THE WITNESS: My timeline has us out 26
24 months, which would be at a point to --

25 COMMISSIONER ACZON: Talking about ten

1 months for the whole project -- ten years for the
2 whole project?

3 THE WITNESS: Yeah, but in 26 months we
4 will be at a point where we can start pre-sales,
5 because we have to go through a zoning, 12 months
6 with the County zoning, get that in place. Then get
7 our civil plans done, approved, reviewed. And we
8 have a number of other agreements that need to be
9 finalized with the utility companies.

10 So at that point I think we would be ready
11 to register the project and then go to
12 preconstruction sales.

13 COMMISSIONER ACZON: So when do you think
14 Mr. Grigoryants can come down over here to break the
15 ground; looking forward to it?

16 THE WITNESS: Well, if the market's right,
17 it would be about 30 months. Because you've got to
18 -- it might be earlier than that, because once you
19 start the preconstruction -- preconstruction sales
20 have to be cash sales, and once you start that, you
21 want to complete your streets and deliver lots,
22 because then you can sell to people who can build
23 houses right away.

24 COMMISSIONER ACZON: So after all the
25 infrastructure is finished, the model for this

1 project is to sell individual lots?

2 THE WITNESS: Right. During
3 preconstruction -- during preconstruction sales
4 pretty much will have to be cash sales because banks
5 will not finance unless you can build the house. And
6 you need to complete the streets to be able to get a
7 loan to build the house.

8 So we'd start out with the preconstruction
9 sales. Probably be a lower price, give people
10 incentive to buy preconstruction. And then once
11 construction --

12 COMMISSIONER ACZON: You're not answering
13 my question. My question is the model for this
14 project is to sell the lots individually?

15 THE WITNESS: Right. Sell lots
16 individually, correct.

17 COMMISSIONER ACZON: So it's going to be
18 all owner builder?

19 THE WITNESS: Yes. Yeah, in the beginning,
20 that's our plan is to sell lots.

21 COMMISSIONER ACZON: The 11 acres, going
22 back to the 11 acres that I asked earlier. I
23 understand it was conveyed to Plumeria, correct? Was
24 Plumeria, they understand the conditions by the
25 Commission for affordable, how many affordable

1 housing do they have to supply?

2 THE WITNESS: Ask the question again. I'm
3 sorry.

4 COMMISSIONER ACZON: So does the -- did the
5 Petitioner gave Plumeria instruction on how to comply
6 with our condition?

7 THE WITNESS: No.

8 COMMISSIONER ACZON: My point is just
9 barely giving 11 acres to this one entity, it
10 doesn't -- for me it doesn't -- the Petitioner
11 doesn't necessarily comply with the Petition. It has
12 to be, you know, ultimately the Petitioner is
13 responsible to make sure the conditions are met, not
14 when they turn over the land.

15 THE WITNESS: That's a legal question
16 beyond my expertise. That's beyond my expertise
17 technically how the condition -- you're asking about
18 the State's condition and how it works with the
19 County's condition and management of affordable
20 housing, and I'm not qualified to answer that
21 question.

22 CHAIRPERSON SCHEUER: Sorry, you were
23 qualified as a development expert before this
24 Commission. It's kind of a core part of doing
25 development before this Commission. So if you could

1 at least try and answer the question.

2 THE WITNESS: My understanding is that the
3 conditions are on the land, on the order, the
4 boundary amendment, conclusions of law that these
5 then are, at least authority, actually is with the
6 County and the County agencies in charge from that
7 point on to work with the developer, so the developer
8 is in compliance. That's how I understand it's being
9 done.

10 COMMISSIONER ACZON: Well, I beg to differ,
11 but let's move on.

12 MR. LIM: Perhaps I can -- the Decision and
13 Order for this project has Condition No. 9 on
14 affordable housing, basically requires that the
15 Petition shall provide affordable housing
16 opportunities for residents of the State of Hawaii in
17 accordance with applicable affordable housing
18 requirements of the County.

19 Location and distribution of affordable
20 housing, or other provisions for affordable housing
21 shall be under such terms as may be mutually
22 agreeable between Petitioner and the County.

23 THE WITNESS: Correct. That's my
24 understanding.

25 MR. LIM: Goes onto say that we would

1 provide the Commission (indecipherable) copy of the
2 affordable housing agreement within 30 days.

3 I do not know whether that happened or not.

4 THE WITNESS: I'm sorry, I could have
5 looked it up, but I was trying to go by memory.
6 Probably a bad idea.

7 COMMISSIONER ACZON: So let me understand.
8 So still the Petitioner's responsibility to meet the
9 compliance?

10 MR. LIM: Of the County.

11 COMMISSIONER ACZON: One last question, Mr.
12 Chair.

13 Condition No. 6. In your opinion, who has
14 the final say that the condition has been met, the
15 Petitioner or Department of Transportation, or the
16 Commission? That's the Department of Transportation?

17 THE WITNESS: What is your question? I
18 just reviewed --

19 COMMISSIONER ACZON: Condition 6.

20 THE WITNESS: Yes, my understanding.

21 COMMISSIONER ACZON: The Petitioner is
22 claiming that they complied with Condition 6 by --

23 THE WITNESS: Yeah.

24 COMMISSIONER ACZON: So who has the final
25 say? DOT is saying that Petitioner didn't comply.

1 So my question is, who has the final say to say, yes,
2 the Petitioner complied or did not comply?

3 Petitioner, DOT or Commission?

4 MR. LIM: Petitioner will stipulate that
5 Condition 6 on the DOT intersection requires that
6 Petitioner shall reach an agreement with the State
7 Department of Transportation.

8 I'll represent to you that no agreement was
9 made, although the improvement did get built.

10 COMMISSIONER ACZON: Thank you, Mr. Chair.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Aczon. Commissioner Chang.

13 COMMISSIONER CHANG: Thank you.

14 Good afternoon, Mr. LaPinta, I just have a
15 couple questions.

16 First one, I just wanted to make sure I
17 heard you correctly. Was it your testimony that this
18 project to build approximately 398 rural lots and all
19 of the infrastructure would cost \$15 million? Did I
20 hear that correctly?

21 THE WITNESS: No, that's not my testimony.

22 COMMISSIONER CHANG: Make sure I
23 understand.

24 THE WITNESS: I'm describing that during
25 the process of developing the project, you would

1 develop it in increments, so you wouldn't subdivide
2 and put streets in for 398 lots and have them sit
3 empty. You do it in increments. So each increment
4 would be done as sales occur. And the proceeds from
5 the sales would then come back to help fund the
6 project.

7 And at that point -- so when I describe
8 that number, that's based on a model of certain rate
9 of sales per month and per year, certain rate of
10 doing the development incrementally. So that would
11 be called the peak -- in the model it's the peak
12 capital that the owner has to put in to fund the
13 project. So that's the maximum amount he would get
14 to.

15 COMMISSIONER CHANG: And a lot of that is
16 based upon presumption?

17 THE WITNESS: Yeah. I wish I could project
18 the future, you know. There's major risks in real
19 estate development, and not just entitlement risks,
20 obtaining entitlement. Also the risk of market.
21 There's macroeconomics that as we know 2008 great
22 recession. There's all kinds of risk involved.

23 COMMISSIONER CHANG: Currently the
24 condition is you have to build within ten years.

25 Can you give me, based upon your expert

1 opinion as a real estate developer, what is the total
2 estimated cost to build this project, not in phases,
3 not based upon certain assumptions, but what is the
4 total cost?

5 THE WITNESS: About that \$45 million
6 number. That's where that came from. And my client
7 put up that letter, because he said, well, if you
8 were to fund the whole thing all at once, but no one
9 does that. That's not how you would do it.

10 COMMISSIONER CHANG: So I'm going to take
11 this in phases. So I'm going to look at what the
12 current proceeding before us is an Order to Show
13 Cause why the property should not be reverted because
14 there has been substantial noncompliance.

15 So based upon your expert opinion to do
16 this project that was approved in 2008 to have been
17 completed by 2018, it would have cost \$45 million; is
18 that correct?

19 THE WITNESS: That's an estimate, yeah,
20 that's an estimate. It's an estimate.

21 COMMISSIONER CHANG: And my understanding
22 is you have -- your testimony has also been today
23 that approximately \$900,000 has been spent on -- I
24 think you called it first phase of the project,
25 pre-engineering. Is that correct?

1 THE WITNESS: I wouldn't call it
2 pre-engineering. It's engineering that's been done,
3 and a lot of work was done. And topographic surveys,
4 drainage studies, a drainage plan was done. And the
5 civil engineering on the first phase. And the civil
6 engineer meaning design of the road. These are plans
7 that can be construction plans bid by a contractor
8 for the roundabout.

9 COMMISSIONER CHANG: You said that was
10 about 60 percent, so 40 percent more would need to be
11 done.

12 THE WITNESS: Yeah.

13 COMMISSIONER CHANG: So up-to-date,
14 \$900,000 in your opinion has been spent to date?

15 THE WITNESS: Yeah, yeah. That's based on
16 detail analysis of the billings from RM Towill in my
17 meetings with them, and discussion -- and then my
18 goal there was not to come up with this figure for
19 this purpose. Actually my goal was to come up with a
20 figure what we anticipate the future cost will be.
21 That's why I did that.

22 COMMISSIONER CHANG: Well, our goal is from
23 LUC is to determine whether there has been
24 substantial compliance.

25 So the estimated cost to build this

1 development is approximately \$45 million. To date,
2 approximately \$900,000 has been spent.

3 In your opinion -- and I take you've
4 actually gone out on the site -- has there been any
5 -- what kind of use of the land has been done on the
6 acreage, actual land use? What kind of improvements
7 to the land have been done other than engineering?

8 THE WITNESS: The engineering work has been
9 done. And the conveyance of the parcel for
10 affordable housing.

11 COMMISSIONER CHANG: So in your opinion
12 there has been no land use on the property?

13 THE WITNESS: No, not the land.

14 COMMISSIONER CHANG: Okay, no land use.

15 In your expert opinion as a real estate
16 developer, looking back, this was approved in 2008.

17 Do you believe that the environmental work,
18 the environmental studies that were completed, are
19 they still viable or are they stale?

20 THE WITNESS: I believe they're still
21 viable.

22 COMMISSIONER CHANG: In your opinion, are
23 the archaeological work still viable or are they
24 stale?

25 THE WITNESS: Viable.

1 COMMISSIONER CHANG: And so that, in your
2 opinion, you feel confident that you could proceed
3 based upon the existing environmental studies that
4 were completed prior to 2008, prior to the approval
5 of the boundary amendment, you feel confident that
6 those studies are still relevant and pertinent to
7 today?

8 THE WITNESS: Yes.

9 CHAIRPERSON SCHEUER: You can take a break
10 for other Commissioners, and come back to you.
11 Commissioner Ohigashi.

12 COMMISSIONER CHANG: Yes, thank you.

13 COMMISSIONER OHIGASHI: Can you tell me the
14 difference between the rural designation that they
15 have now, and state ag land, can both be subdivided?

16 THE WITNESS: Both could be subdivided into
17 one-acre lots. And there's zoning for family
18 agriculture in the County of Hawaii zoning ordinance
19 allows zoning of one-acre lots in the State
20 Agricultural District.

21 COMMISSIONER OHIGASHI: So if this matter
22 is reverted, would they still be able to develop the
23 one-acre lots?

24 THE WITNESS: The property -- because in
25 order for this property to be classified Rural, the

1 owners went through a process with their consultant
2 and --

3 COMMISSIONER OHIGASHI: I understand that.
4 My question is different. My question is, State
5 ag --

6 THE WITNESS: I'm sorry --

7 COMMISSIONER OHIGASHI: Can still be
8 divided into one-acre lots?

9 THE WITNESS: In ag you can sub -- no,
10 because the general -- we would have to change the
11 General Plan. The General Plan of the County of
12 Hawaii supports Rural classification for this site.

13 COMMISSIONER OHIGASHI: But in each case,
14 whether it's a Rural designation or State Land Use
15 Designation, it would be ag? It would be one-acre
16 lots, right?

17 THE WITNESS: Under Rural it's possible to
18 do half acre lots.

19 COMMISSIONER OHIGASHI: Maybe even denser.

20 THE WITNESS: You could do smaller lot
21 size. But we wouldn't be able to increase the number
22 of lots. So by density, if you mean number of lots,
23 I don't believe that's possible because the County
24 will not allow that.

25 COMMISSIONER OHIGASHI: The 11 acres, they

1 were originally part of the 730 some-odd acres that
2 were designated from Agriculture to Urban, right?

3 THE WITNESS: Right, right, correct.

4 COMMISSIONER OHIGASHI: And it was
5 subdivided to a three lot subdivision --

6 THE WITNESS: Yeah.

7 COMMISSIONER OHIGASHI: -- sometime in
8 2016?

9 THE WITNESS: Correct.

10 COMMISSIONER OHIGASHI: And then the
11 Petitioner transferred 11 acres, approximately, a
12 little bit over 11 acres, to the Plumeria?

13 THE WITNESS: Plumeria Waikoloa is the name
14 of the LLC.

15 COMMISSIONER OHIGASHI: If it reverts back
16 to Agricultural designation, how many homes would be
17 built on that property, on that 11-acres? How many
18 units can be built on that property for low-cost
19 housing?

20 THE WITNESS: None.

21 COMMISSIONER OHIGASHI: None?

22 THE WITNESS: Right.

23 COMMISSIONER OHIGASHI: And if it reverts
24 back, you can still have the one-acre ag lots, but
25 you don't get any low cost housing, correct?

1 THE WITNESS: That's correct, yeah.

2 COMMISSIONER OHIGASHI: So if we decide to
3 revert it back, we wouldn't get any low cost housing;
4 is that right?

5 THE WITNESS: Right.

6 COMMISSIONER OHIGASHI: Now, the three-acre
7 -- you know, I'm not -- my concern is not necessarily
8 these people are bad people or good people or
9 wonderful people. I'm just trying to look at what
10 the practical effects of what we are trying to do
11 today.

12 THE WITNESS: I appreciate that.

13 COMMISSIONER OHIGASHI: That's all I'm
14 trying to do.

15 So the other question I have is that
16 because the subdivision was done to meet a County
17 requirement, if you revert it back to Agriculture,
18 wouldn't that negate, or be a basis to try to negate
19 the subdivision itself?

20 THE WITNESS: I don't know how to answer
21 that question.

22 COMMISSIONER OHIGASHI: You don't have to.
23 That was a query that I had. I'm sure the County --

24 THE WITNESS: If reverting it from
25 Agriculture to Rural --

1 COMMISSIONER OHIGASHI: From Rural to Ag.

2 THE WITNESS: From Rural to Ag creates a
3 lot of cascading contingent problems. One is that
4 the General Plan of the County supports Rural
5 classification, not Agriculture. So in order to do
6 the Agriculture zoning, we would have to go back and
7 change the General Plan to support the Agriculture,
8 and that's a problem.

9 COMMISSIONER OHIGASHI: I'm not worried
10 about that.

11 CHAIRPERSON SCHEUER: It's totally
12 impossible for our court reporter to transcribe to
13 people speaking simultaneously.

14 COMMISSIONER OHIGASHI: I apologize. I'm
15 trying to ask a simple question so my simple mind can
16 get ahold of this thing.

17 Now, if it was reverted back to
18 Agriculture, what requirements, besides changing the
19 General Plan or amending of the General Plan, would
20 be -- would the County get to require upon this
21 particular subdivision?

22 THE WITNESS: It would be the same thing.
23 There would be pretty much the same list of
24 requirements and conditions can be put there. We
25 really don't need the Land Use Commission's

1 conditions at all, because the County can impose the
2 same conditions, like putting one hat on top of
3 another.

4 COMMISSIONER OHIGASHI: And the only
5 missing part would be affordable housing, which they
6 can fight among themselves?

7 THE WITNESS: Right, we'd have to deal.

8 COMMISSIONER OHIGASHI: I have no further
9 questions.

10 CHAIRPERSON SCHEUER: Commissioner Okuda.

11 COMMISSIONER OKUDA: Thank you, Mr. Chair.

12 Frankly, any of the parties can answer this
13 question. What in the record shows or can assure the
14 Commission that if we do not revert the property and
15 rely on representations ten years from now, whoever
16 is on the Commission then, might find itself in the
17 very same position as this Commission finds itself
18 today.

19 And I don't mean to be blunt about it, but
20 it's like we're being told, hey, take our word for
21 it.

22 CHAIRPERSON SCHEUER: Commissioner Okuda, I
23 think it's a good question to perhaps ask during
24 closing arguments, rather than necessarily directly
25 in front of this witness.

1 COMMISSIONER OKUDA: Okay, than can be
2 reserved for closing arguments, if I can give a
3 heads-up for closing argument, I would ask all
4 parties to tell us whether or not the following is an
5 accurate statement of the law.

6 In other words, quote, "where the LUC
7 issues an OSC and seeks to revert property based on a
8 Petitioner's failure to substantially commence use of
9 the land in accordance with its representation. The
10 LUC is not required to follow the procedures
11 otherwise applicable to boundary changes under HRS
12 Chapter 205. And that's from Bridge Aina Le'a 339
13 Pacific 3rd at 710.

14 The other question is, whether that's an
15 accurate statement of the law. Thank you.

16 CHAIRPERSON SCHEUER: Commissioners? I'm
17 ready to go if no one else is.

18 THE WITNESS: Is that a question to me?

19 CHAIRPERSON SCHEUER: I believe it was
20 stated by Commissioner Okuda as something that he
21 wanted the parties to address in closing arguments.

22 THE WITNESS: Can you give me the reference
23 in the Aina Le'a case?

24 COMMISSIONER OKUDA: It's found at volume
25 339 of Pacific 3rd at page 710. I don't have the

1 Hawai'i report citation in front of me.

2 THE WITNESS: It doesn't refer to just 205,
3 it refers to specific clauses in 205.

4 CHAIRPERSON SCHEUER: Again --

5 THE WITNESS: I don't know if your quote is
6 correct.

7 CHAIRPERSON SCHEUER: Commissioner Cabral.

8 VICE CHAIR CABRAL: Yes, I do thank my
9 fellow Commissioners. You've asked all my questions
10 I think so far except for one. And I apologize. I
11 don't think I've heard it and we've had some
12 intermittent ability to not hear in my old age.

13 You're looking at approximately 398, 400
14 lots, vacant lots at the initial onset of this with a
15 possibility of later maybe building out some as life
16 goes on, but initially they will be probably an acre
17 or half acre to an acre.

18 And you said you referenced doing some
19 market analysis in order to do your cost analysis. I
20 don't recall if you've given us any numbers as to
21 what you feel like you were able to be able to sell
22 those.

23 If you have those ready today, have you
24 analyzed what they might sell for at a half acre to
25 an acre in general?

1 THE WITNESS: Around 200, 225.

2 VICE CHAIR CABRAL: Thank you.

3 CHAIRPERSON SCHEUER: Thank you, Mr.
4 LaPinta.

5 THE WITNESS: The spreadsheet requires a
6 number, so that's the --

7 CHAIRPERSON SCHEUER: I have a set of
8 questions for you that are sort of widely dispersed
9 on different subjects.

10 One is referring to your resume. It states
11 that in 2003 you were the exclusive -- from 2003 to
12 2004 you were the exclusive broker for Waikoloa
13 Heights.

14 Can you explain the relationship between
15 that project and the history of these many
16 interlocking projects?

17 THE WITNESS: Okay, I can do that.

18 Waikoloa Heights is the half of Waikoloa
19 that is to the north. I think it was 898 acres zoned
20 Residential Urban. Its original Urban
21 classification, so there is no Sunset, no annual
22 reports, no conditions, it's just Urban, and it was
23 zoned by the County for residential.

24 I represented Oak Tree Capital who acquired
25 the property in a settlement with a dispute with Bill

1 Mills. And then I sold the property for them.

2 CHAIRPERSON SCHEUER: So it had nothing to
3 do with Mr. Martirosian or any of the other corporate
4 entities --

5 THE WITNESS: Are you are familiar with the
6 company Oak Tree Management?

7 CHAIRPERSON SCHEUER: I am familiar but
8 that's not question that I asked you.

9 THE WITNESS: That was the client. It had
10 nothing to do with Martirosian.

11 CHAIRPERSON SCHEUER: Do you have any
12 previous dealings with Mr. Martirosian regarding this
13 project at all?

14 THE WITNESS: No, not at all.

15 CHAIRPERSON SCHEUER: Thank you.

16 You testified in relationship to
17 questioning from Commissioner Chang about you believe
18 your ability that we could rely on the existing
19 archaeological studies as a sufficient analysis at
20 this point in time that they remained fresh.

21 THE WITNESS: I've seen the study, and it's
22 being handled by Steve Lim's staff, and to be
23 finalized. And SHPD has reviewed it apparently
24 does -- the archaeological site has been identified,
25 I know where it is.

1 CHAIRPERSON SCHEUER: What is the basis of
2 your concluding that from a real estate development
3 perspective that that's a sufficient analysis?

4 THE WITNESS: It's a very open site, so the
5 archeologist would have had opportunity to go through
6 all the property and see.

7 But, you know, there will be a need if
8 there's an incidental find during construction to
9 stop construction and, of course, have those
10 incidental finds to be analyzed and determined.

11 So we would have an archeologist working
12 for that purpose during construction.

13 CHAIRPERSON SCHEUER: What year was the
14 original archaeological study completed?

15 THE WITNESS: I don't know.

16 CHAIRPERSON SCHEUER: Do you know when SHPD
17 revised its rules for archaeological surveys?

18 THE WITNESS: No.

19 CHAIRPERSON SCHEUER: Are you aware that
20 they revised their rules since that study was done?

21 THE WITNESS: No, I wasn't aware of that.

22 CHAIRPERSON SCHEUER: You testified that
23 you have spoken to water companies for providing
24 water to this development.

25 What's the aggregate amount of water that

1 would be needed for full buildout?

2 THE WITNESS: I would just inquire for the
3 first phase, which is what I'm focusing on.

4 CHAIRPERSON SCHEUER: So you did no inquiry
5 as to the amount of water needed for the entirety of
6 the development?

7 THE WITNESS: No. We would have to
8 negotiate an extension agreement to improve the
9 system and build storage tanks and pumps, was my
10 understanding. And I don't have -- I would rely on
11 an engineer when the time comes for doing that.

12 CHAIRPERSON SCHEUER: Do you know what
13 aquifer this development is in?

14 THE WITNESS: I don't know the name of it,
15 but I know it's in a specific aquifer.

16 CHAIRPERSON SCHEUER: Do you know whether
17 the water source is in the same aquifer?

18 THE WITNESS: I'm relying on the West
19 Hawaii Water Company. That's their business. That's
20 not within the purview of my work.

21 CHAIRPERSON SCHEUER: Sorry, I had
22 understood as an expert in development that you would
23 be able to testify as to the availability of water
24 for the entirety of the project.

25 THE WITNESS: For the entirety of the

1 project.

2 CHAIRPERSON SCHEUER: That is what is
3 before us.

4 THE WITNESS: Well, I started working on
5 this a few months ago, and I believe my
6 communications with the West Hawaii Water Company,
7 they believe they can supply water to the project.

8 CHAIRPERSON SCHEUER: For the first phase
9 alone is all that you spoke to them about?

10 THE WITNESS: Talking about the first
11 phase, yeah.

12 CHAIRPERSON SCHEUER: You have not spoken
13 about water availability for the entirety of the
14 project?

15 THE WITNESS: I have not discussed that
16 with them. But they are aware how many units are
17 there, and they didn't say there was no red flag.

18 CHAIRPERSON SCHEUER: You are not aware of
19 the aquifer, you're not aware of what the sustainable
20 yields are for this aquifer?

21 THE WITNESS: No, I'm not.

22 CHAIRPERSON SCHEUER: Are you aware of the
23 fact the Water Commission is about to go out with
24 revised sustainable yields for the two aquifers in
25 this area?

1 THE WITNESS: No.

2 CHAIRPERSON SCHEUER: Do you know that
3 those numbers are going to be reduced?

4 THE WITNESS: No.

5 CHAIRPERSON SCHEUER: Are you aware the
6 Water Commission is preparing to revise downward
7 sustainable yields for two aquifers in this area?

8 THE WITNESS: No, I'm not.

9 CHAIRPERSON SCHEUER: Are you aware that
10 revision downward of sustainable yields in this area
11 could result in proceedings to designate these areas
12 as groundwater management areas?

13 THE WITNESS: I'm familiar with the
14 process, but I'm not aware of the specific instance.

15 CHAIRPERSON SCHEUER: Are you aware that
16 that could slow the development of water sources for
17 this project?

18 THE WITNESS: I could infer that it could.

19 CHAIRPERSON SCHEUER: So are you familiar
20 with -- and this is going again to your testimony in
21 response to Commissioner Chang about the freshness of
22 documents -- are you familiar with the Hawai'i
23 Supreme Court case Unite Here versus City and County
24 of Honolulu?

25 THE WITNESS: No.

1 CHAIRPERSON SCHEUER: That court case dealt
2 specifically with for how long an EIS is actually an
3 adequate basis for decisionmaking, but you're not
4 familiar with that case?

5 THE WITNESS: No.

6 CHAIRPERSON SCHEUER: So that actually does
7 provide a standard by which documents and analysis
8 can be considered to be fresh.

9 Do you know how old the transportation
10 impact analysis study was?

11 THE WITNESS: No, but that we know we need
12 to redo that.

13 CHAIRPERSON SCHEUER: So you acknowledge
14 that that --

15 THE WITNESS: That that component needs to
16 be redone, I know that.

17 CHAIRPERSON SCHEUER: That's usually part
18 of an EIS, correct?

19 THE WITNESS: Right.

20 CHAIRPERSON SCHEUER: You testified earlier
21 about -- I'm sorry, I'm jumping around a lot of
22 subjects you testified on.

23 You testified earlier about your very
24 recent last week conversations with the County of
25 Hawaii Housing Department, I believe.

1 Are you aware of what period of time this
2 Commission is legally obligated to look at in terms
3 of whether or not substantial commencement has
4 occurred?

5 Can we look at things that happened last
6 week, or do we look at it from the period of time
7 before we issued an Order to Show Cause?

8 THE WITNESS: I'm not aware of that.

9 CHAIRPERSON SCHEUER: Finally, I want to
10 talk to you about articles that were referenced both
11 orally by Mr. Lim, as well as in the briefings from
12 Environment Hawai'i.

13 And I think you actually started at one
14 point in your testimony to talk about some -- one of
15 the transactions for transferring land to the various
16 affordable housing entity.

17 Did you want to respond to that a little
18 bit more?

19 THE WITNESS: Well, I want to say, I
20 appreciate your volunteering and taking the time to
21 go through the details to get the true story about
22 this project and about the owners involved in it this
23 morning.

24 Because the Environment Hawai'i articles
25 were full of a lot of false statements that were

1 prejudicial to our client, my client.

2 CHAIRPERSON SCHEUER: Could you identify
3 those false statements on the record?

4 THE WITNESS: I will identify one
5 particular right now.

6 CHAIRPERSON SCHEUER: You said pleural, so
7 if you can do more than one that would be great.

8 THE WITNESS: Well, to begin with, the
9 statement that Steve Lim was working for Stefan
10 Martirosian in one of the articles. She could have
11 called Steve and gotten -- and ask Steve if he was
12 actually working for Stefan Martirosian. He was not.

13 Here's a specific statement from the
14 July 2018 Environmental Hawai'i, page 9 through 10.
15 It says under the heading, belated filings. It says,
16 in other words, thanks to the County affordable
17 housing agreement, the last obstacle to Martirosian
18 holding clear title to more than 2,800 acres of Waiko
19 land was are cleared away.

20 This statement is based on her analysis
21 that the sale from Plumeria to Plumeria Waikoloa for
22 \$1.5 million, the money was used to pay off a loan
23 that Stefan Martirosian had taken out and mortgaged
24 the property for. This is not what happened. This
25 is a false statement. It's a false inference. And

1 you have a copy of Paul Sullu's affidavit stating
2 what the events were.

3 I had also contacted the person who made
4 the loans. The loans were paid before. It was
5 simply a matter of clearing title by recording the
6 leases of mortgages.

7 CHAIRPERSON SCHEUER: You said there were
8 other --

9 THE WITNESS: There is a -- in that same
10 section of related filings, it says: Nearly nine
11 months past the required deadline, insinuating that
12 the owner was in default of the subdivision agreement
13 because it went beyond 180 days.

14 And she's referring to the date that the
15 deeds were recorded. That's not the same as the date
16 the conveyance -- you do not have to record a deed to
17 have a conveyance.

18 So that I would say is not a strictly false
19 statement, but it's misleading. I think that's
20 enough. The articles were so full of -- I mean, the
21 level of away from the truth and the salacious
22 connections made were easy to see.

23 CHAIRPERSON SCHEUER: I've never personally
24 used the word "salacious" in reference to
25 Environmental Hawai'i. It's not my kind of salacious

1 literature.

2 THE WITNESS: Those articles were.

3 CHAIRPERSON SCHEUER: I have nothing
4 further. Commissioners?

5 So I would just like to notice, since they
6 have already been referenced, at least one reference,
7 one article was specifically cited in Mr. Lim's
8 testimony as well as -- or Mr. Lim's pleadings, as
9 well as orally referenced to Environmental Hawai'i.

10 I would just like to note these articles
11 for the record, as part of the record.

12 So I'm done. Anything more from the
13 Commissioners? Okay.

14 Do you want to redirect, Mr. Lim, before we
15 leave for the day?

16 MR. LIM: No. I just reserve rebuttal
17 either by two witnesses depending on what's said in
18 the coming witnesses. Thank you.

19 CHAIRPERSON SCHEUER: Okay. I'm looking
20 for my cheat sheet, but what we are going to do is go
21 into recess until I believe 8:00 a.m.

22 COMMISSIONER OHIGASHI: (Indecipherable).

23 CHAIRPERSON SCHEUER: Commissioner Ohigashi
24 needs to be here by 7:30.

25 My apologies.

1 We are recessed for the day and we will
2 reconvene these hearings here tomorrow at 8:00 a.m.

3 (The proceedings recessed at 4:39 p.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 24, 2018, at 10:00 a.m., the
proceedings contained herein was taken down by me in
machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct copy of the proceedings had in the foregoing
matter.

I further certify that I am not of counsel for
any of the parties hereto, nor in any way interested
in the outcome of the cause named in this caption.

Dated this 24th day of October, 2018, in
Honolulu, Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156