

LAND USE COMMISSION

STATE OF HAWAII

Hearing held on December 13, 2018

Commencing at 9:05 a.m.

Airport Conference Center

400 Rodgers Blvd., Suite 700, Room #IIT#2

Honolulu, Hawaii 96819

AGENDA

I CALL TO ORDER

II ADOPTION OF MINUTES

III TENTATIVE MEETING SCHEDULE

IV ACTION

A06-763 KAPOLEI PROPERTY DEVELOPMENT, LLC
(Oahu)

To Consider Kapolei Properties LLC's Motion for
Extension of Time to Complete Project and to
Change Petitioner's Name and Amend Caption

V EXECUTIVE SESSION

To consult with the Board's attorney on
questions and issues pertaining to the Board's
powers, duties, privileges, immunities, and
liabilities regarding the Sunshine Law and the
Office of Information Practices complaint dated
November 28, 2018

VI Adjournment

1 APPEARANCES:

2 COMMISSIONERS:

3 JONATHAN SCHEUER, Chairperson

NANCY CABRAL, Vice Chair

4 AARON MAHI, Vice Chair

GARY OKUDA

5 EDMUND ACZON

LEE OHIGASHI

6 DAWN N.S. CHANG

7 RANDALL S. NISHIYAMA, ESQ.

Deputy Attorney General

8 STAFF:

9 DANIEL ORODENKER, Executive Officer

RILEY K. HAKODA, Chief Clerk/Planner

10 BURT SARUWATARI, Planner

11 JENNIFER A. LIM, ESQ.

Carlsmith Ball

12 Attorney for Kapolei Property Development, LLC

13 DINA WONG, Acting Planning Division Chief

NOELLE COLE, Acting Policy Branch Chief

14 Department of Planning and Permitting

City and County of Honolulu

15 DAWN APUNA, ESQ.

16 Deputy Attorney General

RODNEY FUNAKOSHI, Planning Programming Administrator

17 LORENE MAKI, Planner

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1 CHAIRPERSON SCHEUER: Good morning, aloha.
2 This is the December 13, 2018 Land Use
3 Commission meeting.

4 The first order of business is the adoption
5 of the November 28-29 minutes. Any comments or
6 corrections on the minutes? I will comment that it
7 was painful to relive those two days.

8 VICE CHAIR CABRAL: And time consuming.

9 COMMISSIONER ACZON: Mr. Chair, move to
10 approve.

11 VICE CHAIR MAHI: Second.

12 CHAIRPERSON SCHEUER: Motion to approve by
13 Commissioner Aczon, seconded by Commissioner Mahi.
14 Any further discussion?

15 Hearing none, all in favor say "aye". Any
16 opposed? The motion carries.

17 Our next agenda item of business is the
18 tentative meeting schedule. Mr. Orodénker.

19 EXECUTIVE OFFICER: Thank you, Mr. Chair.

20 After some confusion to our Chief Clerk who
21 provided us with a new format, if everybody take a
22 look. It's not the usual calendar.

23 On January 9th we will be here in Honolulu
24 for Robinson-Kunia site visit. That's an IAL
25 petition.

1 On January 10th we will also be on Oahu for
2 another IAL Malaekahana site visit. Those will be at
3 the sites.

4 January 23rd will be in Hilo for the Ken
5 Church matter and a trust matter.

6 On January 24th, we'll be here in Honolulu
7 for Robinson-Kunia IAL hearing.

8 February 6th will be Courtyard Marriott on
9 the North Shore, on Oahu for Malaekahana IAL
10 petition.

11 February 7 we will be in Kona for HHFDC
12 Lanihau and Shopoff status updates.

13 February 20th and 21st on Maui in Kihei for
14 Kihei High School's status report.

15 On March 13th and 14th we will be Honolulu
16 for Hawai'i Memorial Park matter.

17 March 27 to be determined; and March 28th
18 on Kaua'i for Kealia matter.

19 CHAIRPERSON SCHEUER: Commissioners, are
20 there any questions?

21 Next agenda item, Action Meeting on A06-763
22 Kapolei for extension of time to complete the project
23 and to change the Petitioner's name and amend the
24 caption.

25 Will the parties please identify

1 themselves?

2 MS. LIM: Jennifer Lim representing the
3 Petitioner Kapolei Properties LLC. With me to my
4 left is Mr. Stephen Kelly, who is the vice president
5 of James Campbell Corporation, and he will be one of
6 our witnesses today.

7 If I can, I would also like to identify Mr.
8 Robby Field who is in the audience who will not be
9 testifying today, but he is also with Kapolei
10 Properties, Manager of Finance Operations.

11 CHAIRPERSON SCHEUER: Thank you.

12 Will the County please identify themselves
13 for the record?

14 MS. WONG: My name is Dina Wong with City
15 and County of Honolulu Department of Planning and
16 Permitting and Acting Planning Division Chief.

17 MS. COLE: Noelle Cole with Department of
18 Planning and Permitting, Acting Policy Branch Chief.

19 CHAIRPERSON SCHEUER: Office of Planning.

20 MS. APUNA: Good morning, Chairman, members
21 of the Commission, Deputy Attorney General Dawn
22 Apuna. Here with me today is Lorene Maki and Rodney
23 Funakoshi.

24 CHAIRPERSON SCHEUER: Are there any
25 disclosures for anybody on the Commission?

1 For purpose of transparency, I will note
2 that I know Steve Kelly socially because he used to
3 work at the same firm as my wife a number of years
4 ago.

5 Let me update the record. On August 8,
6 2018, the Commission received Petitioner's Motion for
7 Extension of Time to Complete the Project and to
8 Change the Petitioner Name and Amend the Caption,
9 Exhibits A through M, a Copy of the Motion, Digital
10 Copy of the motion and \$1,000 filing fee.

11 On August 9th the Commission received
12 signed signature page for Petitioner's Motion and
13 corrected digital copy of the Motion.

14 On August 15th, the Commission received
15 Office of Planning's request for extension of time to
16 respond to the motion.

17 October, 23rd the Commission received OP's
18 Statement of Position on the Motion.

19 On November 5th, the Commission received
20 Petitioner's List of Exhibits, Exhibits N through V,
21 and Petitioner's List of Witnesses.

22 On November 7th, the Commission received a
23 digital copy of the Petitioner's November 5th
24 filings.

25 On November 15, the Commission received the

1 Petitioner's 2018 annual report.

2 On November 28, the Commission received
3 OP's revised Statement of Position.

4 On November 30th, the Commission received
5 City and County of Honolulu Department of Planning
6 and Permitting's Position Statement.

7 On December 3rd, the LUC meeting agenda
8 notice for the December 13 LUC meeting was sent to
9 the Parties and the Statewide and O'ahu mailing
10 lists.

11 On December 4th, the Commission received
12 Petitioner's Memorandum in Response to the Revised
13 Statement of Position of the Office of Planning on
14 Petitioner's Motion filed on November 28th, Exhibits
15 W through Y, and Petitioner's First Amended List of
16 Exhibits.

17 This morning we received Office of
18 Planning's Exhibit E, Proposed Revision to Condition
19 8, I believe. Office of Planning, please clarify.

20 MS. APUNA: Yes, that's correct.

21 CHAIRPERSON SCHEUER: Let me please now run
22 over the procedure.

23 First, for the purpose of the transcript,
24 I'll note all the dates I mentioned were 2018.

25 First, I will be calling those desiring to

1 provide public testimony for the Petitioner's Motion
2 to identify themselves. I'll bring them forward,
3 swear them in in the witness box.

4 Please be aware that if anybody wants to
5 provide testimony at this juncture, it's going to be
6 limited to testimony on the Motion for the Extension
7 of Time.

8 We will then commence proceedings on the
9 Motion for Docket A06-763, beginning with the
10 Petitioner presenting its case, followed by County
11 Planning Department and Office of State Planning.
12 Petitioner may reserve a portion of their time to
13 respond to the comments made by the County and the
14 State.

15 I will also note for the parties and the
16 public that from time to time I'll be calling for
17 short breaks.

18 Any questions on our procedures?

19 MS. LIM: No questions.

20 CHAIRPERSON SCHEUER: City and County,
21 aloha, welcome. It would help if you would orally
22 respond for the purpose of the transcript.

23 MS. WONG: No questions.

24 CHAIRPERSON SCHEUER: Thank you.

25 MS. APUNA: No questions.

1 CHAIRPERSON SCHEUER: Are there any
2 individuals desiring to provide public testimony
3 today?

4 EXECUTIVE OFFICER: We have no one on the
5 list.

6 CHAIRPERSON SCHEUER: Seeing there is no
7 one, we will now address Petitioner's Motion.

8 MS. LIM: Good morning, again. Thank you.
9 Today we would like to present two witnesses.

10 We don't intend on keeping the Commission
11 here for too long. I think our request is clearly
12 laid out in our Motion, and the request is really a
13 simple time extension. And it's a time extension to
14 allow the completion of the backbone infrastructure
15 of the project to be completed by 2035. The current
16 deadline is December 2018.

17 We filed this Motion several months ago,
18 fully aware of the fact that completion would not be
19 done by the end of this year, and there's several
20 reasons why there's been a delay in that completion.

21 So the two witnesses I would like to call,
22 one is Mike Hamasu, who is the professional who
23 prepared the Market Demand Assessment that was filed
24 as Petitioner's Exhibit J.

25 And then after him, I'll have Mr. Kelly, as

1 I already said, Vice President at James Campbell.
2 And he's the project representative. And he will be
3 able to describe more about the project; what they
4 have done on the property since the time of the D&O,
5 and why the request for time extension is being made.

6 If there are no further questions, I'll
7 bring up Mr. Hamasu.

8 CHAIRPERSON SCHEUER: Any questions at this
9 point from the Commissioners?

10 Please proceed.

11 Mr. Hamasu, proceed to the witness box and
12 I'll swear you in and I would like you to state your
13 name and address for the record.

14 Good morning. Do you swear or affirm that
15 the testimony you're about to give is the truth?

16 THE WITNESS: That is correct.

17 CHAIRPERSON SCHEUER: Thank you, please
18 proceed.

19 MIKE HAMASU

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

23 DIRECT EXAMINATION

24 BY MS. LIM:

25 Q Good morning, Mike.

1 I'm going to start out by asking you
2 questions, and then these other folks will most
3 likely have questions for you, and then maybe the
4 Commissioners might have questions as well.

5 First, I want to go over some of the
6 materials that we have already filed, because it's
7 important to read through all the materials. And we
8 have the benefit of having a real live expert here on
9 the stand.

10 So the first step I would like to do is
11 identify your resume.

12 Do you affirm that the document we filed as
13 Petitioner's Exhibit N is in fact your resume?

14 A That is correct.

15 Q Thank you.

16 And what is it that you do, Mike?

17 A I'm the Consulting Research Director for
18 Colliers International here in Honolulu. We actually
19 do market demand studies, development feasibility
20 studies, forecast and analysis for real estate.

21 Q What is the business address of Colliers
22 International?

23 A It's located at 220 South King Street, 18th
24 Floor in Honolulu, Hawai'i.

25 Q Thank you.

1 So how long have you been a Director of
2 Consulting and Research at Colliers?

3 A Colliers, I've been there for about 17,
4 going on 18 years now.

5 Q Have you had positions similar to your
6 position at Colliers before you came to Colliers?

7 A Yes. I actually cut my teeth in San
8 Francisco Bay Area working for Cushman & Wakefield as
9 well as Crestman, which are both commercial real
10 estate brokerages located in San Francisco.

11 Q What is your educational background?

12 A I graduated from the University of Hawai'i
13 with a Bachelor's degree, and I got my Master's in
14 business administration from San Francisco State
15 University.

16 Q Now, in discussions you indicated to me
17 that when you got to Colliers you actually started
18 the real estate consulting division, something like
19 that.

20 Can you clarify or expand upon that?

21 A That is correct.

22 When I started in 2001, Colliers had not
23 had a research consulting group. And when I came on
24 board is when I established it.

25 Q What is the purpose of research consulting

1 work that you do?

2 A Well, it's multidimensional. Initially,
3 our goal was to provide analysis on where market
4 conditions are, and where they're heading in terms of
5 the commercial and industrial sectors in terms of
6 economy.

7 We also provide material support for
8 brokerage and property management divisions.

9 And lastly, we conduct consulting work for
10 everywhere from investors to developers to financiers
11 in regards to developments or their investment
12 activity.

13 Q Have you ever testified as an expert
14 witness in any judicial or administrative proceeding
15 in the State of Hawaii?

16 A Yes, I have. On several occasions I've
17 been called in to provide expert witness testimony
18 for market trends, rental rate analysis and
19 forecasts.

20 MS. LIM: At this point, I would like to
21 stop and ask if the Commission would consider
22 acknowledging Mr. Hamasu as an expert in real estate
23 market analysis in the State of Hawaii?

24 CHAIRPERSON SCHEUER: One moment.

25 Are there objections from either the City

1 or Office of Planning?

2 MS. WONG: No objection.

3 MS. APUNA: No objection.

4 CHAIRPERSON SCHEUER: Commissioners?

5 VICE CHAIR CABRAL: Do you specialize more
6 in commercial comparisons or residential?

7 THE WITNESS: Colliers is principally a
8 commercial real estate brokerage firm, so we don't
9 really focus on residential analysis, although we
10 have worked on a number of master-planned communities
11 where there's mixed use development activities.

12 VICE CHAIR CABRAL: Okay, thank you.

13 CHAIRPERSON SCHEUER: Commissioners, any
14 questions or objections to have the witness qualified
15 as an expert as proposed by Ms. Lim?

16 Hearing none, he's qualified.

17 MS. LIM: Thank you very much.

18 Q Let's get back at it.

19 Your written direct testimony we filed as
20 Petitioner's Exhibit O. Would you confirm to the
21 Commission that you prepared this written direct
22 testimony, and that it is in fact your signature on
23 that written direct testimony?

24 A That is correct.

25 Q So I'm not going to go question by question

1 through this, but we are going to touch on some
2 highlights. And really what I want the Commission to
3 hear from you is a summary of the report that you
4 prepared.

5 What is the report you prepared?

6 A Principally it's a market demand analysis
7 regarding industrial land sales for the Kapolei area.

8 Q So I'm going to read the title and I'm
9 going to ask you to confirm if this is in fact a
10 report you prepared?

11 Industrial Land Market Assessment for the
12 Kapolei Harborside Project Area. It was filed. It's
13 dated February 27, 2018. And we filed this as
14 Petitioner's Exhibit J?

15 A That is correct.

16 Q Thank you very much, Mike.

17 What is your understanding about a reason
18 why you're here before the Commission today? What I
19 mean by that, what is your understanding about what
20 it is that Kapolei Properties is requesting this
21 Commission's approval for?

22 A From my understanding, they're asking for
23 an extension in regards to, I guess, putting in
24 infrastructure for the development going forward.

25 Q For the completion --

1 A The completion.

2 Q -- of the backbone infrastructure of the
3 project?

4 A That is correct.

5 Q And the current deadline is 2018. And your
6 report looked at various different models?

7 A That is correct.

8 The purpose that I was hired for was
9 Kapolei Property Development approached me to
10 determine how quickly the 250-planned acres of
11 industrial development would actually be absorbed
12 into our marketplace.

13 We conducted a market demand study which
14 actually evaluates market conditions, historical land
15 sales, current market conditions to figure out
16 whether or not this planned development would
17 actually -- at what point in time in the future would
18 all the lands actually be absorbed or sold.

19 Q Now, just for point of clarification. You
20 mentioned about 250 acres.

21 Now, some of the Commissioners, some of the
22 parties may be thinking, but wait, the Petition Area
23 is actually 344 acres. Can you explain the
24 discrepancy?

25 A I believe there is also preservation land,

1 as well as additional lands, preservation zoned lands
2 that weren't included in the industrial park, that
3 was originally planned.

4 Q And roadways and drainage features?

5 A That's correct. The 250 acres, they're
6 actual lands that will likely be sold. Whereas,
7 there are additional lands that include roadways and
8 sewers that are not a part of the overall plan that I
9 was hired for.

10 Q When Kapolei Properties retained you, were
11 you given instructions or even suggestions on what
12 the projected demand should be?

13 A No, not at all.

14 Usually for us, as a consultant, we want to
15 keep independence from the client telling us what it
16 is. Otherwise, there would be no reason to hire us.

17 The objective was to actually use the
18 quantitative evidence and the information that we
19 compiled on a historical basis to help figure out how
20 long it would take for this land actually to be
21 absorbed.

22 Q So, thank you, Mike.

23 With that, I'm going to stop asking some
24 questions, because I want you to explain the four
25 models that are in the report. I want you to explain

1 to the Commission, how you came up with those; what
2 elements go into them.

3 And I may interrupt you if there are some
4 points that I think are important that maybe you
5 haven't expressed, but please just explain to the
6 Commission the rationale in your study.

7 A Sure.

8 Initially what we did was we took the
9 historical information that we've compiled over the
10 past 17 years. And 17 years is not an arbitrary
11 number, that's actually when I got hired at Colliers.
12 So that's when I started compiling this data.

13 We tracked historical land sales that are
14 industrial zoned land. We also look at historical
15 cyclical patterns in regards to the performance of
16 the commercial and industrial market.

17 So taking this into account, we created
18 four demand models. The first demand model took into
19 account that there were no changes in terms of the
20 annual average of sales. So assuming that it's a
21 straight line average over a period of time, with
22 that same amount of acreage which sold, and that
23 historically is not the case.

24 We also incorporated things like cyclical
25 pattern in the industrial market in terms of land

1 sales, because we know that during strong economic
2 periods, there is typically a significant amount of
3 land sales, versus during a recession or a downturn,
4 where there is a lot less sales.

5 So there is always a cyclical pattern to
6 the industrial market. So that was one of the major
7 factors we included in our demand model.

8 And the second major factor that we
9 included in our demand model was the fact that there
10 was about 450 acres of proposed or planned industrial
11 parks planned for or proposed for Oahu.

12 We had to take into account the probability
13 of these industrial parks moving forward with the
14 developments. So by taking into account the cyclical
15 patterns in the industrial land sales market, as well
16 as what competitive industrial parks could enter the
17 market, we created four demand models taking into
18 account these various factors, and then we came up
19 with a concluded model, which is actually a weighted
20 average model that took those four elements into
21 effect to come up with our recommendation that 2035
22 would be the period for absorption.

23 Q In those demand models, recognizing that
24 real estate is cyclical, but nevertheless, what was
25 your estimation of annual absorption, annual demand

1 for industrial property in this part of Oahu?

2 A Typically, it was roughly in the low
3 20 acres, so 21 to 24 acres were actually the numbers
4 that we came up with in terms of on an annual basis
5 how much acreage would actually be absorbed by
6 acquisition.

7 Q There was a market study that had been done
8 for this project several years ago. Are you familiar
9 with that study?

10 A Yes. That was Robert Charles Lesser --

11 Q Robert Charles Lesser & Company, LLC.

12 And that study was analyzing the same exact
13 project, or has the project changed in terms of the
14 components of this project as far as you know?

15 A There are no material changes in the
16 development itself.

17 Q But, nevertheless, the Robert Charles
18 Lesser study was projecting a somewhat different
19 absorption and buildout timeframe?

20 A That is correct. I believe they forecasted
21 by 2018 this park would actually have been sold out.

22 Q And about what was, if you recall, the
23 absorption that the Robert Charles Lesser study was
24 anticipating?

25 If your, Colliers, after doing all of your

1 analysis, came up with 20, 21 acres a year, do you
2 recall what the prior study had determined?

3 A I believe it was fairly close, was roughly
4 about 26 acres a year.

5 Q That's correct.

6 So there's not too much of a variation,
7 however -- I mean, over the course of years, you
8 know, five acres here, five acres there, sure, it
9 makes a difference.

10 But we're requesting the Commission's
11 approval to 2035 based on the Collier's analysis. So
12 what happened between the time of the Robert Charles
13 Lesser study, which was predicting something a little
14 more aggressive, but not terribly more aggressive
15 than yours, and your study which is now giving a very
16 rational projection of 2035?

17 A Well, a big event happened. It was
18 actually a major Black Swan Event of the great
19 recession occurred in 2007, 2008, which was actually
20 a significant so-called monkey wrench into the
21 development, because it resulted in a sizeable
22 downturn in land sales, as well as investment and
23 development of industrial parks.

24 Q So talk more about that. I mean, are
25 there -- is the Harborside project sort of anomalous

1 in that what was projected a few years back in terms
2 of demand, absorption, and didn't come to fruition.
3 Have you seen that in other industrial properties?

4 A That's correct. Actually the market
5 conditions changed significantly. We had between
6 2007, which was at the outset of the recession to
7 2009, vacancy rates actually tripled in the
8 industrial market.

9 Similar to that, what we have was rental
10 rates for warehouse spaces actually declined over
11 30 percent from roughly about \$1.31 average, down to
12 \$0.92. So because of the great recession and the
13 impact to the real estate marketplace, the industrial
14 market significantly faced a downturn.

15 Now, in terms of competitive or other
16 developments that had occurred between 2007 and 2009,
17 we had two very notable bankruptcies that occurred
18 amongst the Waipio Business Center and the Kapolei
19 Commerce Trade Center, both were industrial condo
20 developments that had entered the market and resulted
21 in bankruptcy for those developers.

22 Q So this was the widespread great recession.
23 Has there been a recovery since that time? In other
24 words, have you seen an uptick in demands for
25 industrial property?

1 A Absolutely. Subsequent to the great
2 recession, it took a couple years before the
3 industrial market started to pick up momentum.

4 Currently we are at sub two percent vacancy
5 rate, and rents have escalated to about \$1.20, \$1.30
6 a square foot. So we have had positive growth in the
7 industrial market, and land sales in particular have
8 stepped up and started to increase.

9 Q But now something else happened in the
10 vicinity of the project. While industrial demands
11 have increased, there has also been some introduction
12 of maybe smaller, lighter projects, meaning projects
13 that aren't quite so overburdened with infrastructure
14 cost that have maybe to some extent beat us to the
15 starting gate.

16 A Well, actually it's an indication of the
17 strength of the market it is. You had Malakole. And
18 then you had Kapolei Business Park Phase I and Phase
19 II, all of those projects had started subsequent to
20 the recession, and currently I believe most of them
21 have been sold out.

22 So that's an indication of the current
23 strength of the industrial market at this point.

24 Q But, likely, due to the size, those
25 projects may not have quite the same infrastructure

1 burdens that this project has?

2 A That is correct. They are significantly
3 smaller than the Harborside development.

4 Q I know you didn't do cost estimates, but
5 are you familiar with the approximate cost estimates
6 for the infrastructure for this project, the
7 remaining costs?

8 A I believe the figure that I've seen is
9 between 215 and 260 million for infrastructure cost.

10 Q Would you say that's a significant figure?

11 A Yes, very significant figure.

12 Q In light of your just 18 years of
13 experience in Hawai'i alone, and even drawing back on
14 your experience in California, when you look at a
15 project of this scale and scope and this cost, have
16 you -- can you recall any project that front-loaded
17 all of the infrastructure and then waited for the
18 market to show up?

19 If you build it, they would come; or is it
20 usually more of an iterative process that happens
21 with the development of infrastructure?

22 A I have never seen a large scale development
23 just build the infrastructure, because the capital
24 cost up-front is so significant, without having any
25 kind of return, makes it very difficult for that to

1 happen.

2 Q You've done analysis for lenders as well,
3 is that correct?

4 A Yes, I have.

5 Q Do you imagine -- can you recall any
6 situation where a lender was considering funding a
7 project that would front-load a project of this size
8 and scale, front-load all the infrastructure cost?

9 A I'm not aware of any.

10 Q Thank you.

11 I know from your direct testimony that
12 you're familiar with the phasing plan that was filed,
13 I believe, as Petitioner's Exhibit G.

14 Go ahead and confirm that for the
15 Commission.

16 A Yes, I've seen it.

17 Q So that phasing plan, just if you would
18 briefly explain how that phasing plan meshes with the
19 demand models that you have presented.

20 And what I mean by that is, anticipating
21 the infrastructure going in phase by phase, is that
22 correspondent to the demand that you see coming
23 throughout the years between now and 2035?

24 A Yes, it is.

25 Basically what it is, is that these phases

1 allow for the park to be developed and demand to
2 absorb, you know, the acreage that is allocated, and
3 the next phase is not built until significant
4 absorption has occurred in that phase, which is
5 actually prudent moving forward, because then you can
6 recapitalize through land sales. The money you
7 generate from the land sales can actually help you
8 pay for the infrastructure going forward.

9 Q Do you believe that there is a good demand
10 for this project at this time?

11 A Absolutely, absolutely.

12 At this point in time the market still
13 remains very hot. There is a shortage of industrial
14 land out there on the market for sale, and it's
15 representative of the current market vacancy rate of
16 less than two percent.

17 If you had a lot of land out there, and it
18 was a saturation point, you wouldn't have such tight
19 market conditions in the industrial sector.

20 Q Thank you, Mike. I'm going to now turn you
21 over to the City, if that's okay with the Chair. I
22 don't have any further questions.

23 CHAIRPERSON SCHEUER: You're done? Okay.

24 Are there questions for the witness from
25 the City?

1 MS. WONG: No questions from the City.

2 CHAIRPERSON SCHEUER: Office of Planning?

3 MS. APUNA: Yes.

4 CROSS-EXAMINATION

5 BY MS. APUNA:

6 Q Thank you, Mr. Hamasu, for your testimony.
7 I just have a few questions.

8 You talked about when the market went down,
9 but at what point did it start going up?

10 A Probably 2011, 2012 was when the market
11 actually started generating some positive growth.
12 Generally what we call it is positive absorption,
13 which is occupancy growth in the marketplace, and the
14 industrial market started to pick up at that point.

15 Q So did your analysis take into account a
16 project cost, or is it just looking at absorption
17 generally for the project?

18 A The principal objective of the study was to
19 measure demand for the land acreage. We did not
20 actually evaluate infrastructure cost, although we
21 did look at construction cost overall through some
22 cost analysis studies that we acquired.

23 Q And so the analysis, it's not necessarily
24 looking at the sell-off at different phases to help
25 fund the further construction of the later phases,

1 that's not what your study does; correct?

2 A No, that is not what the study was for.

3 Q And then I just want a clarification. I
4 think you said something about roadways and sewers
5 were not -- you weren't hired to look at the
6 infrastructure, is that correct? That you were just
7 looking at the basic absorption of the industrial
8 lots over time?

9 A That is correct.

10 Q One more question.

11 So if the infrastructure for this project
12 was in or complete today, would the developer be able
13 to sell the lots today, do you think?

14 A I believe, yes. I believe they have that
15 opportunity to sell. There are other competitive
16 industrial parks out there that are selling parcels.

17 Q Thank you, Mr. Hamasu.

18 CHAIRPERSON SCHEUER: Commissioners, are
19 there questions for the witness? Ms. Cabral.

20 VICE CHAIR CABRAL: On that same line of
21 questioning from the Office of Planning, you
22 commented that the land itself, it's hot land and
23 there's a lot of demand.

24 So kind of based on that, and I know it
25 takes a lot of time to get land ready for sale, roads

1 and infrastructure, but if this land were ready
2 today, about how long do you think it would take to
3 be able to get those lots sold off?

4 THE WITNESS: Well, that's a very difficult
5 question, because I had not planned on this
6 particular park to be readily available. But
7 250 acres, if no changes in terms of annual
8 absorption would occur, would take about 12 years.

9 VICE CHAIR CABRAL: Thank you.

10 CHAIRPERSON SCHEUER: Are there other
11 questions, Commissioners?

12 Mr. Hamasu, help me understand one point,
13 and I apologize if you at least thought you made this
14 clear, but it didn't get through to me on this one.

15 The absorption rate is really a function --
16 when you talk about absorption rate and vacancies of
17 less than two percent, that's for built industrial
18 space, not for vacant industrial land; correct?

19 THE WITNESS: That's correct.

20 CHAIRPERSON SCHEUER: So how do you take
21 the step between recognizing that what this project
22 is offering is not built industrial space, but rather
23 vacant land, to follow through with your analysis, if
24 you understand what I'm trying to say?

25 THE WITNESS: I believe I'm understanding.

1 Hopefully I understand. Maybe you can clarify if I
2 don't get it correctly.

3 The relationship between land sales and,
4 say, built buildings, which is the warehouse
5 industrial buildings that are built, are directly
6 tied from the standpoint that a significant portion
7 of the occupants within the buildings are your
8 prospective buyers of the land.

9 So for instance if I -- I'm in a 5,000
10 square foot building, and I need to expand, and there
11 are no other properties out there in terms of
12 availability, my next option would be consider
13 building my own facility.

14 And if that was the case, and that there
15 was available land out there where I could secure the
16 land and build, that would be an option that I would
17 consider. So that's kind of what I would evaluate as
18 being the relationship between the two.

19 CHAIRPERSON SCHEUER: Thank you.

20 Anything further, Commissioners?

21 You're done with this witness?

22 MS. LIM: Just one question for
23 clarification.

24 REDIRECT EXAMINATION

25 BY MS. LIM:

1 Q Reflecting on one of the questions that
2 came from the Office of Planning, if the project,
3 meaning all 250 industrial acres that would be
4 available for sale or lease, if that project was
5 complete, could it be absorbed, I mean immediately?

6 You had responded that, yes, there is a
7 demand, but is there an immediate demand for all 250?

8 A Not possible. I don't see how.

9 Historically if you average about 25 acres
10 or 30 acres a year in terms of land sales, that you
11 could have ten times the amount all sold within a
12 year or so, that would be --

13 Q Again, the average that you had projected
14 in your report was closer to 21 acres?

15 A That is correct.

16 Q Thank you for that clarification. I don't
17 have any further questions.

18 CHAIRPERSON SCHEUER: Thank you.

19 You can now proceed with Mr. Kelly.

20 MS. LIM: If we can just have a quick
21 minute. We need to plug the computer in so Mr. Kelly
22 can --

23 CHAIRPERSON SCHEUER: Let's take a
24 five-minute break.

25 (Recess taken.)

1 CHAIRPERSON SCHEUER: We are back on the
2 record. Ms. Lim.

3 MS. LIM: Thanks very much for that break.

4 In the interim, Mr. Steve Kelly has taken
5 the stand if the Chair wishes to swear him in.

6 CHAIRPERSON SCHEUER: I do wish.

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

9 THE WITNESS: I do.

10 CHAIRPERSON SCHEUER: Can you state your
11 address for the record and then Ms. Lim can proceed.

12 THE WITNESS: Steve Kelly, Vice President
13 of Development with the James Campbell Company, 1001
14 Kamokila Boulevard, Suite 250, Kapolei 96707.

15 STEPHEN KELLY

16 Was called by the Petitioner, was sworn to tell the
17 truth, was examined to tell the truth and testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. LIM:

21 Q Good morning, Steve.

22 A Good morning.

23 Q Petitioner's Exhibit P is your resume, or
24 at least a summary of your professional experience.

25 I don't know, have you ever testified

1 before the Land Use Commission?

2 A In a prior career I was an expert witness
3 from the planning standpoint on several projects.

4 Q I don't know if the Commission in those
5 opportunities got to know much about your background,
6 particularly, clearly not your background with James
7 Campbell Company.

8 Would you just take a few minutes and let
9 them know what it is you do; who it is you work for;
10 and what your connection is to the Harborside
11 project, please?

12 A Sure.

13 As I mentioned, I'm Vice President of
14 Development for the James Campbell Company, which
15 includes several affiliated companies including the
16 Petitioner Kapolei Properties LLC.

17 I've been with the James Campbell Company
18 for 13 years now. And I've overseen development
19 related activities for a large land portfolio which
20 is the remainder of what used to be the Estate of
21 James Campbell. Most of you may be familiar with the
22 estate.

23 And then it transitioned to James Campbell
24 Company in 2007, upon the termination of the estate,
25 so I oversee all manner of development related

1 activity, including entitlements, all the way through
2 infrastructure development and sales of our assets as
3 well as our operating assets in the Kapolei area.

4 Q What is your relationship to the Harborside
5 project specifically?

6 A Sure.

7 As one of our key assets, I oversee all
8 activities related to the ongoing developments, and
9 ultimately future leasing and sales within the
10 property.

11 Q I don't know if the Commissioners -- well,
12 we know that we didn't have a site visit before this
13 hearing. So we filed a Petitioner's Exhibit Q, a
14 PowerPoint slide, that will give some history on the
15 property, and they also really update the
16 Commissioners on what's gone on on the property since
17 2007.

18 With that, would you please walk the
19 Commissioners through what you see as the highlights
20 in the PowerPoint slides?

21 CHAIRPERSON SCHEUER: One moment. Is it
22 possible to dim the lights? A request from one of
23 the Commissioners.

24 MS. LIM: Yes.

25 CHAIRPERSON SCHEUER: Please proceed.

1 THE WITNESS: I won't go through much of
2 the background of the company or the estate, but
3 needless to say, it's a long-standing history of our
4 involvement as the master developer dating back to
5 the original Campbell land purchase in 1877, the
6 43,000 acres of the ahupua'a of Honouliuli.

7 As we transitioned from a trust to the
8 James Campbell Company in 2007, but development
9 activity in Kapolei started many years prior with the
10 key moment being in 1977 when the City and County of
11 Honolulu adopted the Oahu General Plan which we still
12 are operating under, which designated a secondary
13 urban center in the Ewa/Kapolei area.

14 And that directed growth to an area that
15 today includes the City of Kapolei, Kapolei Business
16 Park, the James Campbell Industrial Park and the Ko
17 Olina Resort.

18 It designated that secondary Urban center
19 to help balance out the island's growth patterns to
20 create an employment center, a job center out on the
21 west side, closer to where the future residential
22 development on the island would occur.

23 So part of our legacy mission is to fulfill
24 the master plan vision, and really the public policy
25 of a secondary urban center and a directed growth

1 policy, as instituted by the City and County of
2 Honolulu.

3 What you see in front of you is an aerial
4 view from 1977, which is that milestone year of the
5 adoption of the Oahu General Plan and the Petition
6 Area right in the center of the Secondary Urban
7 Center as defined by the Oahu General Plan.

8 That's 344-acre Petition Area, 360-acre
9 Project Area which represents a substantial amount of
10 the job growth that will continue within the
11 secondary urban center.

12 Q You're showing your planner background.

13 A All coming back to me now.

14 Today we have experienced a significant
15 amount of growth in Kapolei. In fact, it's the
16 fastest growing area in the State of Hawaii. The
17 population across the larger Ewa/Kapolei region is at
18 about 125,000 folks relatively young median age
19 operation representing the fact that most of the
20 island's affordable housing has been built in Kapolei
21 for the last 25, 30 years.

22 We have over 40 active major project areas
23 across the region, so clearly the most active area in
24 the State of Hawaii in terms of ongoing development
25 activity representing billions of dollars of

1 investment poring into the region.

2 I'll now go to a couple of aerial views in
3 lieu of a site visit. Hopefully these can give you a
4 sense of the property, its location, and what's gone
5 on over the last several years.

6 Kapolei Harborside sits immediately to the
7 west of the City of Kapolei. And we're looking over
8 the City of Kapolei, including our office building
9 complex in the foreground of this photo.

10 So it's located just to the west of
11 Kaleiloa Boulevard, which is the major thoroughfare
12 in and out of James Campbell Industrial Park, which
13 is the State's largest heavy-industrial park,
14 including the two refineries, as well as the H-Power
15 facility, and a number of other heavy industrial
16 users.

17 It's sandwiched between the rapidly growing
18 Kapolei Business Park and Kaleiloa Harbor, which is
19 the State's second busiest commercial port behind
20 Honolulu Harbor, handling most of the State's bulk
21 cargo facilities and fuel coming in and out of the
22 State.

23 This was our Exhibit B of our Motion, which
24 is the land use designation, State Land Use
25 designations in and around the property.

1 So as you can see mostly urbanized,
2 reflecting the Secondary Urban Center designation,
3 and the fact that there has now been the better part
4 of 30 years of entitlement in this area.

5 We get a sense, aside from a couple of Ag
6 District outparcels, including one owned by DHHL, the
7 rest of the area is essentially in the Urban
8 District.

9 This is a busy photo, aerial photo, but it
10 gives you a sense there's a lot going on in the
11 Petition Area, even though vertical development has
12 not yet commenced in it. So Kapolei Harborside is a
13 361 project, 344 of which is the subject of this
14 Petition.

15 In following the urbanization before this
16 Commission in 2007, we moved immediately into the
17 City and County Zoning process, zoning the bulk of
18 the property I2, intensive industrial, and a 53-acre
19 piece, IMX-1, which is industrial mixed use, a
20 slightly more flexible zoning category.

21 There is six acres at the very southern end
22 of the property that was heavily debated through this
23 Commission at the time. It's actually a sinkhole and
24 preserve, it's a natural resource preserve that has,
25 since the time of our docket passing through the

1 Commission, has been renamed the Alan C. Ziggler
2 Sinkhole Preserve, and Margery Zigler, who is the
3 Executive Director of the Conservation Council of
4 Hawai'i was a leading proponent of getting that
5 particular six acres preserved, and we worked with
6 her over a number of years. She unfortunately just
7 recently passed away. That is now preserved in
8 perpetuity as a natural resource area.

9 A couple other project features. In Mike's
10 testimony he mentioned the difference between gross
11 and net acreage, how do you get from 360 or 344 acres
12 down to the 250 acres of net developable lots.

13 And that's through subtracting out
14 infrastructure, subtracting out the preserve area,
15 subtracting out a major hazardous waste site that
16 resides in the middle of the Project Area, which has
17 now been repurposed into a solar installation. As
18 well as a major drainage feature that runs through
19 the middle of the property, that totals about 35 or
20 40 acres of area to retain and transmit drainage.

21 So this 360-acre Project Area represents
22 the largest undeveloped piece of industrially zoned
23 property, really, in the State, much less on the
24 island. And, again, represents the future of job
25 creation in the Kapolei area and the Secondary Urban

1 Center.

2 Q I want to stop you there for a second.

3 You mentioned this represents the largest
4 undeveloped zoned property, but, in fact, when I look
5 at this slide, there's actually quite a bit of
6 development.

7 A Sure. And when I say "undeveloped", I mean
8 vertical development in terms of buildings coming out
9 of the ground as we'll touch upon in the next few
10 slides.

11 There has been a significant amount of
12 infrastructure development and grading activity
13 within the project infrastructure development
14 surrounding the property that serves this property.

15 You can see the white solid and dashed
16 lines which are the roads coming up to the project
17 and the planned roads through the project, including
18 a major new State highway, but the underlying aerial
19 gives you a sense of a lot of the grading work that
20 has gone on within the Petition Area.

21 Some restoration associated with a former
22 quarry area that are within the Petition Area. And
23 some remediation for some of the environmental sites
24 within the Petition Area that were referenced in our
25 Motion.

1 So there is a lot of activity happening in
2 the Petition Area. What is also highlighted on this
3 map is a potential acquisition area, that's DOT
4 Harbors, we're in discussion with DOT Harbors.

5 Harbors acquired 53 acres from us just to
6 the west of the Petition Area. This 53 acres here in
7 2012, that was through a friendly condemnation. And
8 what's proposed conceptually right now is another
9 86 acres as a friendly condemnation, which would
10 essentially square off the harbor's property boundary
11 and allow for additional expansion areas of harbor's
12 operations at Kaleiloa.

13 We are generally supportive of the
14 continued growth of Kaleiloa Harbor, because it's
15 such an important economic driver for the region.
16 And so we work closely with DOT Harbors through the
17 years on supporting the development of the harbor.

18 Q Just one other question.

19 In the bottom left corner of the property
20 is a HART option area?

21 A Sure.

22 We are in an option agreement with HART for
23 the potential license of 35 acres of the Petition
24 Area for a second precast facility, precast concrete
25 facility for the City Center segment of rail -- knock

1 on wood -- provided that actually moves forward. So
2 should there be the need for a second precast
3 facility, existing HART's precast facility is located
4 on about 35 acres immediately to the east of the
5 Petition Area on a property line adjoining the
6 Petition Area.

7 This would be a second one representing the
8 fact that there may be a new rail contractor coming
9 in to build the last segment of rail, that would need
10 a second yard.

11 As I mentioned, there is a lot going on in
12 the Petition Area, including some short-term lessees,
13 some baseyard activity, as well as all of our ongoing
14 grading operations, including excavation of the
15 regional drainage channel.

16 This gives you a view looking southwest
17 across the Petition Area. What you see on the
18 left-hand side of the slide is Kapolei Business Park
19 West, so that's the next active industrial project
20 area that's in the midst of its development.
21 Actually they've just begun lot sales on that
22 property.

23 The roads that go through that property
24 essentially stub out to the Kapolei Harborside
25 Petition Area, so that's generally where the

1 development of Kapolei Harborside will flow from,
2 from north to south, then east to west.

3 You get a sense of some of the grading
4 activity across the Petition Area, including the
5 restoration of the former Hawaiian Cement quarry,
6 that's in the Petition Area as well as our excavation
7 of the large regional drainage channel through it.

8 Now, another view looking from the opposite
9 angle up northwest, you see in the center here a
10 12-acre site that was actually a superfund site due
11 to Hawaiian Western Steel's dumping of lead, cadmium
12 and other steel waste products in the '60s and '70s.

13 Ultimately, we, as the property owner,
14 entered into an EPA consent decree that left the
15 contaminated material in place, and covered it with
16 an asphalt cap, which is how it sat for a couple of
17 decades now.

18 In 2011 we partnered with a solar developer
19 to repurpose that site and to create a one megawatt
20 solar facility with panels across that asphalt cap.
21 So that's what you see in this photo, the panels.

22 Other features here is a major whole
23 conveyor that transmits coal that's offloaded at
24 Kaleiloa Harbor, across the Petition Area, down to
25 the AES power generating facility in the industrial

1 park, as well as the drainage channel through the
2 middle of the Petition Area here.

3 So there really isn't any portion of the
4 Petition Area that's untouched at this point, either
5 through tenant activity, through our own development
6 activity, through the roadways that exist through the
7 Petition Area, albeit it's all unimproved largely.
8 And then through past activities such as Hawaiian
9 Cement and the environmental contaminated areas.

10 Another view. This gives you a sense of
11 the active industrial areas, including expansion of
12 Kapolei Business Park. You have Kapolei Business
13 Park I up here, which is a project that we built in
14 the early '90s, and is now largely built out.

15 Kapolei Business Park II, which is a
16 54-acre expansion, which is approaching sellout of
17 the lots, the industrial lots in that project. And
18 then Malakole Industrial Park down here at the bottom
19 which some of you may recall was the former raceway
20 park, Hawaii Raceway Park. That project is now sold
21 out of industrial lots.

22 So you start to see these projects
23 progressing and Kapolei Harborside being the likely
24 progression of Kapolei Business Park's expansion over
25 the coming years.

1 So in our Motion we referenced the amount
2 of money that has already gone into the ground in
3 infrastructure development. And that includes a
4 large amount of offsite infrastructure that serves
5 the Petition Area.

6 So with all the industrial development that
7 you just saw, that engenders the need for
8 infrastructure development.

9 So these are projects such as a major
10 regional sewer pump station that we just finished off
11 this past year, that's a \$24 million project which
12 serves all of the areas that I just mentioned, the
13 active industrial park areas, as well as the Petition
14 Area, and as well as State Harbor's properties.

15 So that was put in the ground upfront to
16 serve all of those properties. It also includes the
17 expansion of Kaleiloa Boulevard from four to six
18 lanes. Another project we have just finished off.

19 So that improvement runs from the H-1
20 Freeway, down to Malakole Street, the expansion of
21 that road. That totals about \$40 million of cost.

22 Then you see from there on down -- it also
23 includes the first phase of what is known as the
24 Harbor Access Road. That's up between the freeway
25 and Kapolei Parkway. We just finished that off in

1 the last few months as well.

2 And then our contributions to the Kapolei
3 Interchange Complex.

4 In terms of the onsite development. When
5 the project was zoned in September of 2008, literally
6 within weeks of Lehman Brothers' event, we set about
7 trying to satisfy as many of the conditions of zoning
8 as possible, which largely revolved around
9 infrastructure master planning.

10 So we now have all of the infrastructure
11 master plan for the project approved through City and
12 County. That totaled about \$500,000 of investment.

13 And then you see the remainder of the
14 projects, including the Hawaiian Cement restoration
15 and grading to the final project grades, hazardous
16 site remediation and some of the mass grading
17 operation.

18 The Kapolei Sustainable Energy Park, which
19 is that solar installation on top of the hazardous
20 waste site was a \$6.7 million reused project for that
21 property.

22 Q If I may. You've been filing annual
23 reports with the Land Use Commission and also the
24 City and County Department of Planning and
25 Permitting?

1 A Yes.

2 Q Every year you've filed reports reporting
3 on the status of the condition?

4 A Every year for all of our properties.

5 Q So all of the funds that you have listed on
6 this Slide No. 11, this money was spent in reliance
7 of the conditions as they are today?

8 A Yes. In reliance of both the State and
9 City and County approvals.

10 Q Thank you.

11 A In terms of going forward, in Mike's
12 testimony he referenced the overall infrastructure
13 cost, which is a range between 215 and \$260 million
14 depending on how far roadways go and such. It also
15 includes a certain amount of contingency and soft
16 cost assumptions in that.

17 As I mentioned, the project generally is
18 phased from north to south and then east to west
19 representing where the infrastructure is coming from,
20 which is generally from the east, the developed areas
21 of Kapolei to the east.

22 So what is represented here is a phase by
23 phase breakdown of the infrastructure cost by phase.
24 The tie into Mike's work in terms of what -- how
25 absorption affects infrastructure development is

1 fairly straight forward. You're not going to open up
2 a land area before the prior land area has
3 sufficiently been absorbed. And so the only thing
4 funding this infrastructure is essentially the
5 revenue generated out of this project. There isn't a
6 magical pool of money out there to fund
7 infrastructure on a speculative basis.

8 So we looked at this phase-by-phase,
9 cost-by-cost, and then you try to match that with the
10 revenue side in terms of how quickly the land can be
11 absorbed, and the revenue generated to help support
12 the next phase, and that's how we get to our 2035
13 request that's before us here today.

14 So in a very expensive project -- the other
15 projects in the Kapolei area, including the ones in
16 development, Kapolei Business Park II, Malakole
17 Industrial Park, and Kapolei Business Park West are
18 either one or two phased projects, two phases at the
19 most. Much smaller in scale. They run from the 30
20 to \$60 million range.

21 This is a much larger long-term project.
22 But, again, it bridges the gap between the growing
23 business park, the heavy industrial park to the
24 south, and the rapidly growing Kaleiloa Harbor. So
25 an important piece of property in terms of the

1 continued economic development of the Kapolei.

2 Another view. This is looking out to the
3 east with a view of Diamond Head way in the
4 background there.

5 Kapolei Business Park West, and the HART
6 precast facility is shown in the foreground here.
7 And then just across Kaleiloa Boulevard, which is
8 this now six-lane thoroughfare running down to
9 Campbell Industrial Park. Just off of that is the
10 business park development.

11 So, again, as the master developer of the
12 region, we retain the responsibility to construct
13 these regional infrastructure projects, including
14 Kaleiloa Boulevard, the \$24 million pump station I
15 mentioned in support of projects that may no longer
16 be in our hands in terms of the business park
17 developments.

18 We developed Kapolei Business Park I, but
19 there have been other groups involved in the
20 development of the other phases of the business park.

21 You get a sense of the HART operation, and
22 what's going on there. All of the little white dots
23 in the bottom there are the rail stanchions, the
24 pieces that will be laid in place to form the
25 guideway of the airport segment of rail. So what is

1 being built from Aloha Stadium to Middle Street.

2 And then that second site I mentioned would
3 potentially pick up the City Center segment from
4 Middle Street to Ala Moana.

5 This is that gold-plated sewer pump station
6 I mentioned, that \$24 million, who knew it was going
7 to be that expensive? But actually most of the work
8 on this was underground, including three stories
9 actually underground, this building shown in this
10 photo.

11 And because of where the groundwater table
12 exists, the floors of those three stories were
13 actually poured underwater. So quite an engineering
14 feat in terms of getting this built.

15 But this serves all of the sewer for
16 Kapolei Business Park, the heavy industrial park of
17 James Campbell Industrial Park, so below Malakole
18 Street, which is this street here, is not on the
19 municipal sewer system, that's an individual
20 treatment or septic sewer.

21 But this facility was sized and is deep
22 enough to potentially accommodate the sewerage of
23 James Campbell Industrial Park, which is an immense
24 area, should the transmission systems ever be built
25 to connect all the properties to the municipal

1 system.

2 Q So, Steve, one of the conditions that the
3 Commission put on this Petition in 2007 was requiring
4 the Petitioner to provide wastewater system
5 improvements for the Petition Area in compliance with
6 Department of Health and City and County agencies.

7 Is this pump station consistent or
8 compliant with that condition?

9 A It is. It's the biggest part of that
10 condition. It's the pump station where all of the
11 Petition Area's wastewater will flow to and then
12 pumped up to the regional interceptor sewer systems,
13 eventually take it to Hono'uli'uli Wastewater
14 Treatment Plant.

15 This is looking east across the Petition
16 Area and up into the Kapolei West project area, which
17 is another infrastructure initiative that we've been
18 involved in over the last year.

19 So essentially the 2700 acres of land
20 draining through the Petition Area, which includes
21 the Hillside project known as Makaiwa Hills, down
22 through the Kapolei West project area, and into the
23 Petition Area.

24 So we have been creating the drain channel
25 and retention basins that serve this project area,

1 which is essentially a 300-foot wide corridor running
2 down through the Petition Area.

3 A large portion of that system has now been
4 fully excavated through Kapolei West and through the
5 Petition Area, and you get a sense of how that has
6 been phased through the years.

7 In the foreground is the Hawaiian Cement
8 quarry area, which was actually a 60 or 70-foot deep
9 canyon in the ground which we worked to restore to
10 the ultimate project grades, and reached a settlement
11 with Hawaiian Cement on that about eight years ago.

12 Another view of the drainage. What you see
13 in the center here is a large culvert system
14 transmitting that 2700 acres of drainage under the
15 OR&L, the railroad right-of-way.

16 Interesting side story. You see a big
17 railroad detour here, which was built for our friends
18 at the Hawaii Railway Society, for those of you
19 familiar with the railroad, to keep them operating
20 while we built this culvert system. That since has
21 gone away, and the track has been put back to its
22 place.

23 But you get a sense in these lower pictures
24 of the size of the culverts and the amount of water
25 passing through there. Because this system is

1 designed for 100-year storm event, because that's the
2 City and County of Honolulu's design standard, so at
3 2700 acres, there is potentially 4800 cubic feet per
4 second, and I'm not an engineer, but it sounds like a
5 lot of water to me, of water passing through this
6 system into the Petition Area.

7 Q When the Commission -- the Finding of
8 Facts, Conclusions of Law, and Decision and Order in
9 2007, Finding of Fact 145 describes that there is a
10 drainageway, a former irrigation ditch, continues to
11 parallel the freeway for a short distance before
12 heading makai through abandoned canefields, crosses
13 under the OR&L right-of-way into the Petition Area,
14 and winds its way toward Malakole Street.

15 So is the drainageway, the irrigation ditch
16 that was on the property back in 2007, is that what
17 you're showing us in this slide?

18 A No. What was referenced there was the
19 former Oahu Sugar Ditch, which was an old
20 irrigation/drainage ditch built by Oahu Sugar while
21 that land was in sugar. So that was built in the
22 '20s and '30s.

23 It doubled as drainage for storm events,
24 but was nowhere near the capacity to handle storm
25 events, so consequently you had a lot of flooding in

1 the area in large storm events.

2 That ditch has now since largely gone away
3 and no longer serves as a drainage function because
4 it's been replaced with the large permanent drainage
5 improvements.

6 So through the Kapolei West Project Area,
7 there is no more ditch. That's completely filled in
8 and graded.

9 Through Kapolei Harborside it's been
10 disconnected from a drainage purpose, and now only
11 segments remain, and ultimately those will be graded
12 and gone away in favor of the larger regional
13 channel.

14 Q Thanks.

15 Even with that former drainage ditch, which
16 I understand now is gone from the Petition Area, does
17 that mean that there were areas of standing water on
18 the Petition Area at the point that the Commission
19 reclassified the Petition Area?

20 A Yeah. I mean, because there were no
21 standard drainage improvements through the Petition
22 Area, there's always been areas of standing water,
23 ponding and such in storm events.

24 I mean, Ewa generally is dry. So the
25 normal condition is a dry landscape, but in storm

1 events, and we do have some big storm events, and
2 they seem to be coming increasingly more frequent,
3 there are areas of standing water that takes some
4 time dissipate, given the amount of water coming down
5 from the hillside.

6 Because this is an infrastructure focused
7 discussion, we tried to work on infrastructure
8 partnerships as much as possible. One of those
9 partnerships is a public private partnership that we
10 have with State DOT to build out what's known as the
11 Kapolei Interchange Complex, which is a multi-phased
12 interchange complex serving the H-1 Freeway.

13 The Phase I of that project was opened in
14 2011. The public private partnership aspect of this
15 is we do all of the design and we provide the land
16 and get the project, these phased projects ready to
17 go, and then handoff that as a ready to go project to
18 DOT who then construct it with federal monies.

19 Phase I was constructed entirely with
20 federal earmarked dollars, when earmarked dollars
21 were still flowing into the State.

22 Phase II is under construction now. It's
23 about 70 percent complete, and that is being
24 constructed with formula federal monies that flow
25 into the State.

1 As we look to the west, and more directly
2 related to the Petition Area, are Phases III and IV
3 of the interchange complex which will connect to
4 what's known as the Harbor Access Road, which is this
5 new State Highway, which will serve as a connection
6 between the freeway and the harbor, which we just
7 recently completed the first segment of that.

8 There is a picture of Phase II in
9 construction. So half of the overpass has been built
10 at this point. And they'll be finishing up, my
11 understanding, by July of this year with all the loop
12 ramps and overpass to connect up to Wakea Street in
13 the City of Kapolei.

14 I mentioned that new State highway here is
15 brand spanking new segment of the Harbor Access Road,
16 about \$11 million project that we constructed as
17 first the phase. That will ultimately connect to a
18 set of freeway ramps Phase III and IV of the
19 interchange complex, and then continue on down to the
20 south to connect up to Kaleiloa Harbor. And at this
21 point in time this will be the designated State
22 highway between the freeway and the harbor.

23 And you get a sense in terms of the
24 discussion of Kaleiloa Harbor, the amount of growth
25 that's happening there.

1 So this becomes a pretty important route,
2 not only to serve the harbor, but also the parallel
3 route in and out of the industrial park area
4 complementing Kaleiloa Boulevard.

5 Q Is access available to the harbor right now
6 in the interim while you're still building out the
7 road?

8 A It is. It's recently expanded through the
9 expansion of Kaleiloa Boulevard from four to six
10 lanes, again about \$40 million of investment to
11 expand that road, and then improve it to City and
12 County standards for dedication to City and County.

13 This will be built to State standards as a
14 State highway and dedicated to State DOT upon its
15 completion.

16 Another view across the harbor. DOT Harbor
17 has just recently wrapped up its long-term master
18 plan for Kaleiloa Harbor which identified about \$340
19 million of potential projects going in to expand
20 Kaleiloa, which includes a dedicated fuel pier for
21 fuel offloading in the harbor.

22 So, again, this is the second busiest
23 commercial port in the State, and a lifeline to the
24 State's economy, both through the import of products
25 into Kaleiloa and then the export of products out to

1 neighbor islands.

2 And then just a view across the region and
3 where the Petition Area sits in the region's
4 development.

5 I mentioned the 40 or so active project
6 areas across the region and those are generally
7 highlighted here.

8 Again, the fastest growing area in the
9 State of Hawaii, and we're pretty proud of our
10 involvement as the master developer of the region
11 through the years.

12 Q So what are you here asking the Commission
13 to authorize today?

14 A So the simplest level is the extension of
15 the condition that required the backbone
16 infrastructure to be complete by 12/31/18, which is
17 coming up in a couple weeks here to 12/31/2035, a
18 17-year extension which flows from the work that Mike
19 has done, and looks at when the last phase of
20 industrial land would be warranted in Kapolei
21 Harborside to, again, try to match the infrastructure
22 development to when the market would warrant the
23 industrial land to come to market.

24 Q Thanks. I'm going to switch a little bit
25 now, but I would like to keep the lights dim, because

1 we may need to look at some other exhibits.

2 What I would like to talk about now is the
3 OP Exhibit E that we received this morning.

4 Do you have a copy of that, Steve?

5 A Yeah, I do.

6 Q Okay, great.

7 Before we get into that, I would like to
8 first ask you if you can tell the Commission about
9 how close the property is to Kaleiloa Airport?

10 A Sure.

11 As we've measured it, it's about 1.2 miles
12 away from the runway. So it's Kaleiloa Airport, just
13 across the Kapolei Business Park area and the eastern
14 sections of James Campbell Industrial Park, as well
15 as several unoccupied or vacant DHHL and State of
16 Hawaii owned properties.

17 Q And do you know about how close the
18 Petition Area is to this airport?

19 A I believe it's about ten miles.

20 Q That's correct.

21 Let's go back to this exhibit, Petitioner's
22 Exhibit W.

23 Can you describe to the Commission what
24 this exhibit is showing, please?

25 A So it's a look across Kaleiloa, the runway

1 to Kaleiloa Airport, with the regional drainage ditch
2 serving the industrial park area, the James Campbell
3 Industrial Park drainage outfall shown running across
4 the middle of the property.

5 So this runs down from the City of Kapolei
6 through the industrial area, and then ultimately
7 outfalls to the ocean just west of the airport
8 runways.

9 Q Thanks, Steve.

10 So I recognize that this is well outside of
11 the Petition Area, but I know you're familiar with
12 this ditch.

13 A Yes, we own it.

14 Q Is this a ditch that flows like a roaring
15 river, or is this a ditch that has -- well, you know
16 what? Describe what is the flow mauka, not right at
17 outfall, but how does this ditch function?

18 A Well, nothing flows like a roaring river in
19 Ewa unless it's raining real hard. So that's the
20 short answer.

21 The ditch is generally dry until there is a
22 storm event. The ditch has been improved over the
23 years to get closer to the 100-year storm standard
24 that the City and County requires downstream
25 properties to handle from drainage from upstream

1 properties.

2 When you get down to the lower elevations
3 of the ditch, it becomes tidal, and so there is a
4 tidal inflow and outflow of water, and it's low
5 enough to where there is groundwater seeping up
6 through the caprock.

7 So there's a mixture of groundwater and
8 tidal water in the channel.

9 Q Thanks, Steve.

10 Let's go to this exhibit now, Exhibit X.

11 Now, one of the concerns that the Office of
12 Planning has raised, and that concern is coming from
13 the Department of Transportation and the Airports
14 Division is whether the development on the Petition
15 Area as proposed, which has long been proposed, could
16 somehow generate new wildlife attraction that would
17 put the airport at some risk.

18 Now, we prepared this exhibit to identify
19 elements that are around the airport that are in fact
20 closer to the airport than the Harborside property.

21 Could you call out to the Commission some
22 of the details that you think are pertinent to the
23 discussion?

24 A Yeah. So the request left us scratching
25 our head a bit, because this is a property that is

1 currently in the midst of its development that is
2 only going to become less and less suitable for bird
3 habitat, which I understand is the concern here.

4 Whereas there are a whole host of properties in the
5 area, and many actually closer to the airport, that
6 are better candidates to serve as habitats.

7 So in terms of singling out the Petition
8 Area as a potential habitat area, and an issue for
9 bird habitat, it's a bit curious in our minds.

10 Just a couple of the open areas, there is a
11 large slough of DHHL open space that bridges that
12 regional drainage channel, I mentioned, and cosies up
13 right next to the airport.

14 Interestingly enough, there is the U.S.
15 Fish and Wildlife Reserve right on the airport
16 property boundary, and that, albeit is a flora
17 reserve, but it could potentially be a leading
18 candidate for bird habitat as well.

19 There is a State of Hawaii owned -- what is
20 known as the feed lot, 110-acre lot that I believe
21 the Department of Agriculture is looking to put into
22 use for cattle production.

23 There's various open space areas in and
24 around the shoreline, including a habitat area within
25 what was formerly a Chevron refinery, now the Island

1 Energy Refinery.

2 And then some open space areas buffering
3 the refinery areas just on the property boundary of
4 the Kaleiloa redevelopment area.

5 So there is a lot of different vacant and
6 habitat conducive properties out there. Whereas, the
7 Petition Area is a developing project that will
8 become more and more urban over the coming years.

9 The key feature of the Petition Area is
10 it's handling a tremendous amount of stormwater. So
11 when we get down to the kind of nuts and bolts of the
12 FAA guidance, this standing water condition kind of
13 stands out as a key one, given the amount of
14 stormwater that the Petition Area has.

15 Q Thanks, Steve.

16 Let's go ahead and take a look at
17 Petitioner's Exhibit Y, which is almost the same
18 picture, but it gives more of a Diamond Head looking
19 Ewa perspective.

20 Are there areas of standing water in the
21 vicinity of Kaleiloa Airport that are better seen on
22 this exhibit?

23 A Yeah. So from the opposite angle, about
24 1.2 miles away from the airport in the other
25 direction is Huakalei, which in addition to the now

1 infamous lagoon in Huakalei, there is about ten or 12
2 golf course lakes in there. So when we talk about
3 standing water, there's plenty of examples to point
4 to around the region.

5 There's also a large slough of open space
6 within Kaleiloa itself, which has been conveyed to a
7 number of different property owners, including the
8 City and County of Honolulu, as a park.

9 Again, we are here to do the right thing
10 and to abide by all the regulations and do what we
11 can, but at the same time to single out the Petition
12 Area in this larger complex of potential areas that
13 could be conducive for habitat struck us as a bit
14 curious.

15 Q Thanks, Steve.

16 In Petitioner's Memorandum in Response to
17 the Revised Statement of Position of the Office of
18 Planning, we included a table, Table 1, describing
19 the takeoffs and landings at Kaleiloa Airport, and
20 the number of wildlife strikes.

21 Do you have that, or may I give you our
22 page number five from our motion?

23 A Yeah, I've got it somewhere.

24 CHAIRPERSON SCHEUER: Ms. Lim, I just want
25 to ask you timing-wise where we're at now, because we

1 are coming up for time for a break.

2 MS. LIM: To wrap up with Mr. Kelly, under
3 five minutes.

4 CHAIRPERSON SCHEUER: Thank you.

5 Q (By Ms. Lim): If you could indicate to the
6 Commission, if you are aware, based on these FAA
7 records and the State of Hawaii Department of
8 Transportation records, if there has been a
9 significant change in either the number of flights at
10 Kaleiloa Airport, or the bird strikes at Kaleiloa
11 Airport in the timeframe that you're looking at?

12 A No. I don't see a significant change.

13 Q What is the timeframe that you're looking
14 at?

15 A 2001 to 2016.

16 Q So when the Commission reclassified the
17 property in 2007, the number of flights was?

18 A At Kaleiloa 123,184.

19 Q And the number of bird strikes?

20 A Two.

21 Q Thank you.

22 And let's just pick a random year between
23 then and now as you've been working on the drainage
24 channel, there continue to be areas of standing
25 water. Previously it was the Oahu Sugar drainage

1 ditch, and now that's being replaced by the drainage
2 channel that you're constructing.

3 Please identify if there's been -- what
4 were the number of flights and the number of bird
5 strikes, let's say, in 2013?

6 A 139,124 flights, five bird strikes.

7 Q How about the most recent year on that
8 table?

9 A 2016 is 126,630 flights, two bird strikes.

10 Q So the numbers are fairly stable, aren't
11 they?

12 A Yeah.

13 Q Thanks.

14 So looking now at OP's Exhibit E that we
15 received this morning, but we do acknowledge that in
16 discussion with OP's counsel yesterday, we did have a
17 preview of this condition, and we appreciate that OP
18 was in communications with us about that.

19 But, Steve, this condition is no longer
20 requesting that the Commission impose a navigation
21 easement on the property, so it's no longer possibly
22 an outright taking of a property interest, but it is
23 requesting a Memorandum of Agreement with DOT to
24 comply or include measures, I suppose, that are
25 consistent with the FAA advisory circular.

1 Have you looked at that FAA advisory
2 circular?

3 CHAIRPERSON SCHEUER: Ms. Lim, I just want
4 to, because this was provided to us today, I just
5 want to make sure that we are clear on procedures.

6 Are there any objections for this being
7 included?

8 MS. LIM: Thank you for asking. No.
9 Petitioner has no objection.

10 CHAIRPERSON SCHEUER: City and county?

11 MS. WONG: No objection.

12 CHAIRPERSON SCHEUER: Members don't have
13 any objections either. OP's Exhibit E is included in
14 the record. Just to be clear, it's part of the
15 record when you're referring to it.

16 MS. LIM: Thank you for that, Chair.

17 Q Going back to the question I just left with
18 you, Steve, OP's Exhibit E refers to the FAA Advisory
19 Circular 150. Have you reviewed that circular?

20 A I have, yeah.

21 Q And are there measures that are recommended
22 to address areas that have standing water?

23 A Yeah. It seems like there's a number of
24 measures for on-airport property, and then some
25 recommendations for off-airport properties.

1 The one that sticks out is standing water,
2 the requirement that there be no standing water for
3 longer than 48 hours, which, again, strikes us as
4 problematic for the Petition Area, given the amount
5 of stormwater that is being handled, and ideally
6 retaining as much of that stormwater as possible for
7 infiltration and water quality purposes.

8 Q So obviously prohibiting or limiting
9 standing water on the property is problematic.

10 The FAA advisory circular also identified
11 certain measures that on airports should be
12 implemented in the event that there are areas of
13 standing water, like large netting or bird balls,
14 actual physical barriers that go over the bodies of
15 water.

16 Do you recall seeing those?

17 A Yeah, uh-huh.

18 Q Now, the James Campbell Company owns and
19 has owned a lot of property in the State of Hawaii.
20 And you're also familiar with a lot of the
21 development out in the Kapolei area.

22 With all of the project areas that we
23 looked at on these past couple of exhibits, have you
24 ever seen any private property where the water bodies
25 are covered by bird balls or nettings or some other

1 covering as recommended in the FAA circular?

2 A I'm not familiar with any.

3 Q So what is Kapolei Properties' position on
4 OP's recommended addition to Condition 8?

5 A We have an issue with a separate agreement
6 that specifically references the FAA circular,
7 because it would seem to be the more striking feature
8 of that FAA advisory circular would be the standing
9 water provision, which is problematic to the Petition
10 Area.

11 Again, depending on how the wording gets
12 worked out in the MOA, we could be facing sort of an
13 immediate noncompliance issue on the standing water
14 provision for the Petition Area.

15 The other objection is just more the spot
16 zoning issue. I'm not familiar with any other
17 properties in the area that have got such an MOA or
18 that have been required to have such an MOA. So now
19 you're signaling out this particular property even
20 though it may not have any greater relationship to
21 bird strikes or hazardous wildlife areas than the
22 neighboring properties in the area.

23 Q Last couple of questions, Steve. Thank
24 you.

25 You and I discussed, notwithstanding

1 Kapolei Properties' objections to any new conditions
2 that are not tied to the request for time extension.
3 You and I have discussed language that Kapolei
4 Properties would consider to demonstrate in good
5 faith a willingness to work with the State and
6 implement measures to address what may not be very
7 realistic, but some wildlife concerns.

8 I'm going to read you that language, and
9 I'm going to ask you to confirm that I read it
10 correctly.

11 So this would be something where OP's
12 Exhibit E, the last paragraph that they've added,
13 that underlined paragraph, we object to that. But
14 I'm going to read an alternative that we would offer
15 the Commission to impose on the property should they
16 feel that any additional condition is appropriate.
17 And that language is:

18 Petitioner shall coordinate with DOT
19 Airports Division on practicable property management
20 measures within the Petition Area to discourage avian
21 wildlife from interfering with flight safety
22 operation at the Kaleiloa and Daniel K. Inouye
23 Airports as a result of the development of the
24 project. Petitioner shall incorporate such property
25 management measures in the project's conditions,

1 covenants and restrictions and shall run with the
2 land.

3 Is that a correct recitation of the
4 condition that you and I discussed?

5 A Yes.

6 Q And so is Kapolei Properties receptive to
7 having that added as a condition on this Petition,
8 notwithstanding the fact that the project is midway
9 through development, and we have been relying on the
10 conditions as drafted since 2007?

11 A Yeah. We thought a general coordination
12 with airports, which we're more than happy to do, and
13 have been continuing to coordinate with DOT over last
14 decade, was appropriate.

15 And that best management practices related
16 to avoiding overt wildlife provocation areas could be
17 implemented through the CC&Rs of the project, which
18 this project would be subject to, and that would be
19 the most informative in terms of the subsequent
20 property owners or lot owners that come into the
21 project as to being aware to do things like maintain
22 landscaping in an appropriate way to limit
23 overgrowth; to not include any overt water features,
24 that type of thing.

25 So there are a set of best management

1 practices that could be incorporated into the CC&Rs
2 to meet the intent of minimizing the potential for
3 bird habitat, however remote that seems as a
4 possibility in terms of developing an industrial
5 park.

6 Q Thank you, Steve.

7 I don't have any further questions.

8 CHAIRPERSON SCHEUER: I think it's actually
9 time for a break -- we will go to questions for other
10 parties -- for ten minutes. We will reconvene at
11 10:46 a.m.

12 (Recess taken.)

13 CHAIRPERSON SCHEUER: I apologize for one
14 minute late, 10:47.

15 While, the collective billing rate of the
16 members of this Commission as serving on this
17 Commission realize that other people are paid
18 handsomely for the services of counsel, I try to run
19 this as efficiently as possible.

20 Ms. Lim, are you done with questions for
21 now?

22 MS. LIM: Yes, Chair.

23 CHAIRPERSON SCHEUER: Ms. Wong, do you have
24 questions for the witness?

25 -o0o-

CROSS-EXAMINATION

BY MS. WONG:

Q I have one question.

You mentioned that as an option to the Exhibit E language, you would be putting in this, I guess, measures to mitigate the impacts on wildlife in restrictive covenant.

Are you going to be keeping in the language --

COURT REPORTER: I'm having a hard time hearing you. Please speak into your microphone.

Q (By Ms. Wong): My question is: Will you be keeping in the language on the prior to final subdivision approval that the covenant would need to be recorded?

A Typically CC&Rs would be in place at or around the time you're subdividing property, because you need to have those subdivided lots subject to CC&Rs, so we viewed incorporation of the CC&Rs as sort of inherent in timing.

MS. WONG: No more questions.

CHAIRPERSON SCHEUER: Office of Planning.

MS. APUNA: Thank you, Chair.

CROSS-EXAMINATION

BY MS. APUNA:

1 Q Thank you, Mr. Kelly, for your testimony.
2 I just have a few questions.

3 Can you confirm that the Decision & Order
4 was based on a Finding of Fact that stated the
5 project will have a drainage channel crossing the
6 Petition Area from the OR&L right-of-way to Malakole
7 Road; this channel will collect and convey runoff
8 from the Petition Area, as well as off-site runoff to
9 the ocean?

10 A Sounds generally familiar, yeah.

11 Q Finding of Fact 148, on page 39 of the
12 Decision & Order.

13 A Well, I take your word for it.

14 Q So consistent with that Finding of Fact No.
15 148, will the drainage for the Petition Area outfall
16 into the ocean?

17 A That is something we are currently looking
18 at as to whether an outfall is the best solution, or
19 whether it's more of an onsite retention solution.
20 We did proceed with permitting for the outfall
21 through the Honolulu City Council in 2013 and
22 obtained a SMA Permit.

23 Then we have been in discussion with both
24 Army Corps of Engineers as well as state DLNR about
25 further permitting, and we're continuing to look at

1 options for that.

2 In the meantime, the drain channel
3 alignment through the Petition Area serves as a
4 retention function to handle drainage without a
5 passthrough function.

6 Q So is that based on DLNR's, I guess,
7 position on the outfall of that drainage condition?

8 A No formal position, but in discussions, and
9 our permitting efforts with staff, there were some
10 concern expressed about an ocean outfall and a
11 request to look at additional alternatives, which is
12 what we have been doing for the last couple of years
13 now.

14 Q Do you know some of the reasons why DLNR
15 objected to the outfall to the ocean?

16 A Well, one was, are there any available
17 alternatives? Because DLNR/OCCL is looking at a very
18 narrow sliver in terms of its mandate which is
19 Conservation District makai of the certified
20 shoreline. And they view any impact to that
21 Conservation District as potentially problematic.

22 So sort of leaving the larger picture aside
23 that the fact that this outfall serves 2700 acres and
24 is really a flood control measure, because there's
25 flooding that occurs in large storm events. They

1 expressed some concern about for us to go back and
2 look at alternatives, as well as just sort of the
3 perceptual issue of affecting the Conservation
4 District and discharging water.

5 Q Were there issues about sea level rise and
6 some potential archaeological issues with that
7 DLNR's --

8 A On the archaeology, this was -- we were in
9 discussions about Conservation District Use Permit
10 right after some Supreme Court cases which required a
11 higher level of archaeological inventory survey be
12 done.

13 So we actually went back and did that. And
14 that seemed to be satisfied.

15 On sea level rise -- well, few different
16 ways to look at that. If climate change results in
17 higher level storm events, the need for additional
18 flood control is probably greater, and the ability to
19 retain water becomes less. So that would speak in
20 favor of an outfall.

21 At the same time, I don't know -- I guess,
22 maybe that's the only potential issue. But that
23 would speak in favor. But those are discussions that
24 we can have with DLNR.

25 Q So you applied for a Conservation District

1 Use Permit for the outfall?

2 A Yeah. I should say these permits at both
3 State, County and Federal levels were granted in the
4 early '90s for this outfall, and the outfall was
5 never built because the upstream or upland properties
6 were not yet entitled through this body as well as
7 through the City and County zoning.

8 So the decision was made not to build that
9 at that point in time. So we have circled back and
10 tried to reinstitute those permits. Times changed
11 and the permitting regimes have become more
12 difficult. So that's sort of what leads us here.

13 Q So that permit, is it pending or withdrawn?

14 A We submitted twice for Conservation
15 District Use Permit, withdrew both times before it
16 went to DLNR.

17 Q Thank you.

18 So what is the status of the drainage
19 improvement on design plans?

20 A There's a couple layers. There's a
21 regional drainage master plan, which deals with the
22 entire 2700 acre watershed. And that was approved by
23 the City and County in 2012; and I believe submitted
24 to the State DOT for concurrence consistent with the
25 original D&O conditions.

1 And then for the project area, there's a
2 project level drainage master plan which was also
3 approved by City and County of Honolulu, which deals
4 with things more at the subdivision level.

5 Both of those plans are approved and were
6 included and approved within the 2012 timeframe.

7 Q Going back to the CDUP. So at what -- when
8 did DLNR notify you that they were not really
9 agreeable to the outlet or the outfall? Was it
10 recently?

11 A No, this was -- the first submittal we went
12 through in 2013/2014. And then there was a
13 subsequent submittal about a year later.

14 And what ensued was a discussion with staff
15 and ultimately the withdrawal of the permit
16 application because of their desire to see additional
17 information, including a full range of potential
18 alternatives, which is what we continue to look at
19 and discuss with both City, State and the Corps at
20 the Federal level.

21 Q And so potentially you're looking at
22 retaining that water within the Petition Area rather
23 than having it flow into the ocean?

24 A If DLNR ultimately exercises its discretion
25 and says we are not going to approve something across

1 the Conservation District, there are two
2 alternatives: Let flooding continue, or retain and
3 develop the facilities to adequately retain.

4 Q Thank you.

5 And when did you first start working with
6 DOT Airports on this project?

7 A We had not worked very much with DOT
8 Airports, because the airport's considerations always
9 seem to be height-related, and given the fact that
10 there's been no vertical development on this project,
11 it didn't strike us that there was a need or a real
12 airports' concern there.

13 We have had discussions over the last week
14 in conjunction with the proposed conditions about
15 what would be required and what the intent was.

16 Q And are you willing to work with DOT as far
17 as providing your drainage design plans for them to
18 review, DOT Airports Division?

19 A Yeah. We have worked extensively -- well,
20 with DOT Harbors on drainage, because of the fact
21 that we share a property line, and we've closely been
22 coordinating with DOT Harbors on the fact that the
23 property that they have acquired from us drains into
24 our property.

25 So with Harbors, that coordination has

1 continued for the better part of the last decade.

2 On airports, as it relates to the concern
3 for standing water, which I guess is the tie-in to
4 drainage, why airports would be concerned with
5 drainage.

6 We are fine with continuing to coordinate
7 with them, we're just objecting to the fact that the
8 circular, advisory circular, seems to rely, or seems
9 to have the primary criteria for off-airport
10 properties as being the standing water provision,
11 which is problematic in a retention scenario.

12 Q And has there been any physical
13 construction on the Petition Area?

14 A Well, there's been a lot of construction in
15 terms of grading, excavation. The solar installation
16 I mentioned, and restoration and environmental
17 remediation.

18 But if you mean vertical construction other
19 than the solar installation, no.

20 Q And then Mr. Hamasu had mentioned that the
21 market started to go up in 2011 and 2012.

22 At that time did Petitioner -- were they
23 able to do more as far as building the project?

24 A Yeah, at that point, the project that had
25 been shelved through the recession, and a couple that

1 had gone into foreclosure, were reinvigorated.

2 So that included some of the projects that
3 I touched upon, Kapolei Business Park Phase II was
4 foreclosed upon in the midst of its development.

5 So it had already gotten underway with
6 grading and roadway construction operations.

7 Kapolei Business Park West, 122 acres was
8 foreclosed upon, and ultimately got underway on its
9 development over the last couple years.

10 So there were -- Malakole Industrial Park
11 was another one.

12 So there were a grouping of projects that
13 were ahead of the Petition Area that are still
14 continuing their development and their industrial
15 land absorption, which puts Harborside behind it from
16 a market standpoint.

17 Q As far as the backbone infrastructure, that
18 has not been completed at this time, correct?

19 A No, that's why we're here.

20 Q I asked this question of Mr. Hamasu.

21 So the reason for the phasing of the
22 project is dependent on the revenue that is generated
23 in the first two phases in order to move forward with
24 the remaining phases, is that correct?

25 A Yeah. Building infrastructure on a

1 speculative basis and all at once, as Mike mentioned,
2 is not financeable, so you would never be able to
3 gain access to the capital to build that.

4 And it's highly unadvisable, and actually
5 not feasible, because you're generally looking at
6 things through a rate of return perspective, or
7 ability to access capital perspective, you can get
8 too far out in front of sales, which are the revenue
9 that's been generated to support that infrastructure
10 development and to support its financeability.

11 Q Was this concept of building and selling in
12 order to build more, was that contemplated when the
13 Decision & Order was made?

14 A Yeah, I believe in the D&O, it was a
15 nine-year buildout timeframe based on the best
16 available market information at the time, and that
17 was a higher absorption rate, as Mike referenced in
18 his testimony.

19 And it was also sort of a steady state, not
20 predicting a recession in the midst of it. And it
21 was also looking at fewer project areas at that point
22 in time. So the Petition Area commanding a greater
23 percentage of the industrial market absorption that's
24 available out there.

25 So a number of different factors. The

1 infrastructure was always going to be phased, and it
2 was always going to be phased over an extended period
3 of time.

4 Our approach in coming up with the 17 years
5 was to be as realistic and upfront with the
6 Commission as possible. We don't want to stick our
7 head in the sand and pick an arbitrary date out of
8 the sky. That's not going to make the infrastructure
9 be built any sooner.

10 The reality of the situation, it can only
11 be built as it can be financed. And we have one of
12 the best experts in town saying it's going to take 17
13 years to get to the last phase of the project. We
14 realize that doesn't necessarily mesh with the
15 Commission's kind of normal MO in terms of looking at
16 a ten-year timeframe.

17 But we wanted to be as much up-front as
18 possible with the Commission on the 17 years we think
19 it's going to take to buildout the project.

20 Q Will there be further subdivision of the
21 Petition Area?

22 A Yeah. It exists right now as a 330-acre
23 lot. So in order to get to the typical one to
24 three-acre lots that are built in the business park
25 area, there will be a lot of subdivision activity.

1 Q And how much of the infrastructure cost are
2 attributable to just your project? Will other
3 Campbell projects benefit as well?

4 A Yeah. I believe we referenced in our
5 motion \$84 million offsite infrastructure that's been
6 constructed, so if you look at it from a benefitted
7 land standpoint, or infrastructure allocation
8 standpoint, about 21 million is allocable to the
9 Petition Area itself.

10 So for that sewer pump station I mentioned,
11 it's measured through wastewater flow coming from the
12 Petition Area versus other areas. On the roadways
13 it's measured based on traffic count, et cetera.

14 So that's the off-site infrastructure, and
15 then you have what we submitted in the motion what's
16 been expended onsite as well.

17 Q And how much of cost are for the backbone
18 infrastructure?

19 A That's kind of a tough one to quantify. A
20 lot of the work that's gone on onsite has been
21 grading, so nothing happens without the grading. So
22 if you want to consider that backbone as a precursor
23 to actually building the roads, water, sewer and
24 drainage systems, you can look at that 12 million or
25 so as going towards backbone.

1 On offsite infrastructure, I would consider
2 all of those to be backbone. Those are regional in
3 nature, and the project doesn't happen without those
4 regional improvements.

5 Q So does the drainage master plan approval
6 rely on outlet to the ocean?

7 A They contemplate an outlet. And so whether
8 or not, as we continue to look at alternatives, and
9 the outlet changes, there will need to be potentially
10 amendments to those master plans, which is not
11 uncommon to amend master plans over the course of a
12 project's development.

13 Q And then for your phasing, the four phases,
14 so from infrastructure for each phase is what's going
15 to happen. You're going to build infrastructure in
16 that area in Phase I, and sell it off; Phase II
17 infrastructure specific for Phase II?

18 A No. There will be overlap there. Part of
19 the special sauce is the timing on that. So how far
20 do you get into sales on a phase before you break
21 ground on the next phase?

22 Generally there's a two or three overlap.
23 I think we put some numbers to it in our motion. I
24 probably don't need to refer to that specifically,
25 but there is generally overlap between when -- you

1 don't wait for sellout of one phase before beginning
2 a next phase, because then you'll have a gap of years
3 before you can begin sales on the next phase.

4 So you kind of play it by ear, and so that
5 you're never -- you never go dark on sales. You want
6 to keep things flowing, especially in a good market.

7 Q And the infrastructure, it doesn't -- like
8 roads and sewers, those type of things can be
9 isolated to one phase or one area? They wouldn't
10 necessarily span the whole Petition Area?

11 A No. Generally infrastructure was phased
12 subdivision application by subdivision application,
13 because you just can't get too far out in front of
14 any one infrastructure project, especially if it's
15 larger or backbone in nature, because that means
16 you're putting more money into the ground to serve
17 property that is not yet ready for sale; therefore,
18 not capable of generating revenue; therefore, you're
19 carrying the cost of having put that infrastructure
20 in the ground.

21 And what that means is that you're paying
22 interest on it, and servicing debt on projects that
23 you are not seeing any revenue on. So that's the
24 whole philosophy behind the phasing.

25 Q Thank you.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioners?

3 Commissioner Aczon.

4 COMMISSIONER ACZON: Good morning, Mr.

5 Kelly. I understand that your organization has put
6 in substantial amount of commencement that's -- not
7 only the Petition Area, but the surrounding areas. I
8 just have a question.

9 You are requesting a 17-year extension; is
10 that right, 2035? OP is recommending ten years,
11 seven-year difference.

12 What would happen if the Commission granted
13 you a ten-year extension? What would the harm be to
14 not only the Petition Area, but the overall Kapolei
15 area?

16 THE WITNESS: Well --

17 COMMISSIONER ACZON: What would happen?

18 THE WITNESS: Short story is we would see
19 you back here in ten years, not you necessarily, but
20 the Commission back here in ten years asking for
21 another extension.

22 Again, the best available information that
23 we have, that we have been able to put together, says
24 it's going to be 17 years.

25 So if the Commission sees fit to extend

1 only ten years, which is -- I haven't seen any
2 rationale behind that ten years, other than it's ten
3 years, and that's normally how the Commission
4 operates. We'll have to come back and seek another
5 extension in all likelihood.

6 COMMISSIONER ACZON: In other words, you
7 will be proceeding with the project no matter what?

8 THE WITNESS: Right.

9 COMMISSIONER ACZON: Thank you.

10 CHAIRPERSON SCHEUER: Commissioners, are
11 there other questions?

12 Commissioner Chang.

13 COMMISSIONER CHANG: Good morning. I just
14 wanted to confirm what I thought I heard your
15 testimony, that while the recession may have affected
16 the market, Kapolei Properties Development continues
17 to pursue all of the design and permitting for the
18 necessary backbone infrastructure?

19 THE WITNESS: Different levels of design.
20 We pursued all of the infrastructure master planning
21 which is a prerequisite at City and County to
22 reviewing more detailed plans or construction level
23 plans.

24 Typically construction level plans would be
25 prepared phase by phase, and that you wouldn't do it

1 all at once because standards change over time and
2 things change.

3 So all of the master plans for the project,
4 which was a bulk of work, have now been approved and
5 that now sets the stage for more detailed
6 construction level plans for the phased
7 infrastructure.

8 COMMISSIONER CHANG: And that master
9 planning process was started soon after the 2007 LUC
10 approval?

11 THE WITNESS: It started about six months
12 or a year after the City and County zoning process.
13 So from the Commission in 2007, we moved into City
14 and County zoning. And in September of 2008, we were
15 unanimously approved at the Honolulu City Council for
16 the rezoning from the prior designations to
17 industrial.

18 And at that point the conditions of that
19 rezoning were largely based on the infrastructure
20 master plan, submitting those infrastructure master
21 plans prior to any subdivision activity for the
22 project. And we implemented those between -- 2009
23 and 2012 was when we received our last approval on
24 those.

25 COMMISSIONER CHANG: It appears as if you

1 operated in a very methodical way to implement the
2 provisions of the LUC conditions.

3 THE WITNESS: Yeah. We, as a legacy
4 landowner in the region, and having -- I think we
5 submit the better part of a dozen annual reports on
6 different properties and holdings. So we take this
7 very seriously in terms of standing up to conditions
8 that we have agreed to overtime, at both the State
9 and County levels.

10 COMMISSIONER CHANG: And in Mr. Hamasu's
11 expert opinion -- so your request for 17 years is
12 based upon a well-reasoned expert opinion that it
13 would take 17 years to complete the infrastructure
14 and buildout?

15 THE WITNESS: Yeah, per Mr. Hamasu's
16 testimony. He looked at four different models that
17 arrived at a weighted average, which put us at the
18 2035 timeframe for when the last phase of Harborside
19 would be warranted, which then equates to the last
20 phase of Kapolei Harborside infrastructure
21 development.

22 COMMISSIONER CHANG: And the issue, Office
23 of Planning's issue regarding Condition 10, do you
24 know whether the facts are the same today as they
25 were in 2007 so that -- let me ask you this.

1 Does FAA circular, do you know when that
2 was adopted?

3 CHAIRPERSON SCHEUER: For the record,
4 Commissioner Chang, are you referring to Condition 8
5 rather than Condition 10?

6 COMMISSIONER CHANG: Yes, I'm sorry. It
7 was OP's Exhibit E. Thank you very much.

8 THE WITNESS: Yes. August 28, 2007 is the
9 date on the advisory circular.

10 COMMISSIONER CHANG: I'm sorry, I don't
11 recall specifically --

12 THE WITNESS: I believe it was
13 November 2007.

14 COMMISSIONER CHANG: So the circular was
15 available at the time of the original hearing?

16 THE WITNESS: Yeah. And I believe a number
17 of the issues that have come up today specific to
18 aviation were raised by OP at the time, and we ended
19 up with Condition 8 in the form based on discussions
20 through that proceeding.

21 COMMISSIONER CHANG: Thank you very much.

22 CHAIRPERSON SCHEUER: Are there other
23 questions, Commissioners?

24 Commissioner Okuda.

25 COMMISSIONER OKUDA: Thank you, Mr. Chair.

1 Mr. Kelly, thank you for your testimony.

2 Besides having to come back to the
3 Commission if the Commission only gives a ten-year
4 extension of time, can you please tell me what other
5 detriment your company would face?

6 And let me just preface my question with
7 this. I'm not assuming that it should be ten years
8 or not; and my question to the other parties later
9 will be what evidence in the record justifies a ten
10 year or justifies only a ten-year extension. So
11 please don't prejudge my question.

12 So the question to you is: Besides having
13 to come back to the Commission, what other detriment
14 would your company suffer by having to come back to
15 the Commission if you need a further extension beyond
16 ten years?

17 THE WITNESS: Thank you, Commissioner
18 Okuda. I appreciate the question to clarify my last
19 response to Commissioner Aczon's question.

20 Uncertainty is never good. That's probably
21 one way to put it. And so as we are out developing
22 the property, and whether it's talking to our lender
23 partners about financing the continued development of
24 the property, or talking to folks who are interested
25 in investing in the project, coming into the project

1 either through sale or lease, and they look at sort
2 of an uncertain date out there that everybody knows
3 isn't going to be met, that doesn't leave a good
4 feeling with a lot of folks, especially if you're
5 advising those folks as counsel, and are raising the
6 issue and, say, this is a bogey out there that the
7 landowner is going to have to deal with at that point
8 in time, do you really want to be mixed up -- so it
9 creates a sense of uncertainty knowing what we know
10 and what we have now presented to the Commission,
11 that in the reality of things, it's going to take
12 17 years, in all likelihood.

13 These things are not down to the year, but
14 in all likelihood, it's going to take that range of
15 time to complete the project. And it's hard to put a
16 number to what that uncertainty is, but it certainly
17 is an impact out there, that it raises a question as
18 to the underlying entitlements that we and others
19 will come to rely upon at that time that this project
20 can continue to develop as planned.

21 COMMISSIONER OKUDA: One follow-up question
22 related to that.

23 You testified, or used the term that the
24 developer, or the property owner would not like to
25 see sales go dark.

1 So along that line of your testimony, does
2 that mean, like, for example, if you find that demand
3 is stronger than what Mr. Hamasu's report anticipated
4 because, you know, nobody, however qualified they
5 are, really has 100 percent accurate crystal ball.

6 But if demand is stronger than what's
7 anticipated, it may be more likely than not that the
8 property owner would accelerate the development of
9 the subject parcel.

10 THE WITNESS: We love those types of market
11 conditions for sure.

12 And, again, Kapolei is the fastest growing
13 area in the state, has got the potential to see that
14 kind of increase, and at that point you ramp up
15 operations and you start building in a quicker
16 fashion.

17 That would be an opportunity that we would
18 like to capitalize upon.

19 COMMISSIONER OKUDA: My final question,
20 just so the record is clear is that, given your
21 experience as reflected in your resume and the
22 testimony you have given, was the great recession
23 reasonably foreseeable when the original Decision &
24 Order was entered?

25 THE WITNESS: I'm sure there's a whole host

1 of folks around the world that would have liked to
2 have foreseen that, sitting here, this Commission in
3 the fall of 2007, not knowing what was going to
4 happen in fall of 2008, but no.

5 COMMISSIONER OKUDA: Thank you very much
6 for your testimony.

7 CHAIRPERSON SCHEUER: Commissioner
8 Ohigashi.

9 COMMISSIONER OHIGASHI: With regard to your
10 proposal for Condition No. 8, is that offered as
11 Petitioner's compromise or Petitioner's --

12 THE WITNESS: Yeah, we view DOT as a
13 partner, and we recognize that this is a concern of
14 theirs as handed down from the FAA.

15 And we think that there are reasonable
16 measures, best management type measures that we could
17 put in place in the CC&Rs so that all property owners
18 are put on notice that, hey, measures conducive to
19 bird habitat are not appropriate in this project.

20 That's very reasonable, and that's just a
21 kind of a best management practice that would be
22 incorporated to the property owner documents.

23 That was the compromise to recognize DOT's
24 concern, recognize our long-standing relationship in
25 coordination with DOT. And to recognize the fact

1 that this is in fact an issue for them.

2 COMMISSIONER OHIGASHI: Has this condition
3 been offered to Office of Planning and the City and
4 County of Honolulu?

5 THE WITNESS: I believe we traded emails
6 yesterday with the Office of Planning on our proposed
7 language. I don't think the City and County was in
8 the loop on that.

9 COMMISSIONER OHIGASHI: Would it be
10 possible, Ms. Lim, to get an idea of the exact
11 wording of it, since I didn't take good notes when
12 you stated that?

13 Would it be possible to get it in writing
14 before the email portion to our --

15 MS. LIM: Of course, Commissioner, and your
16 Executive Officer has my handwritten depiction of the
17 condition I read into the record.

18 COMMISSIONER OHIGASHI: Thank you.

19 CHAIRPERSON SCHEUER: Commissioners, are
20 there other questions? Commissioner Chang.

21 COMMISSIONER CHANG: Chair, just one
22 clarification.

23 In light of Commissioner Ohigashi's
24 question about this potential language, in the
25 absence of having a specific condition, LUC amending

1 that, would you still incorporate those best
2 management practices in your CC&Rs and cooperate with
3 DOT?

4 THE WITNESS: Typically they would be
5 related, so at least the best management practices
6 that we are thinking of in terms of appropriate
7 landscape maintenance, avoidance of nuisance areas,
8 avoidance of large water features, given that we're a
9 dry area, those types would be incorporated.

10 There may be some others that are kind of
11 specific to this bird issue that I'm not thinking of.
12 What we are trying to avoid is sort of the very
13 expensive, and as we say, the unnecessary-type
14 measures, and having to come to terms on an agreement
15 to incorporate those types of measures, given this
16 Petition Area's position in the larger region,
17 surrounded by really a lot of like-kind property, and
18 signaling out the Petition Area.

19 So, yeah, there would be these things
20 typically incorporated in the CC&Rs. And then we
21 would enter into a discussion with DOT Airports about
22 whether we could craft additional ones to help meet
23 the intent of the FAA guidelines.

24 COMMISSIONER CHANG: Thank you.

25 CHAIRPERSON SCHEUER: Commissioner Cabral.

1 VICE CHAIR CABRAL: Thank you very much for
2 the information.

3 I will have to somewhat share. I should
4 maybe have disclosed. Nothing to your magnitude, but
5 I have sold a light industrial business park in Hilo,
6 and I was the listing agent for several years of
7 their different phases, so I understand the concept
8 on a very mini-scale, certainly not your price tag.
9 And I am sometime in real estate and I do lease a lot
10 of warehouse spaces out.

11 In your Phase, I'm looking at you have
12 approximately 55 acres that you hope to have in Phase
13 I, and you're hoping to sell those out or have that
14 absorbed between 2021 and 2022.

15 While I'm fully certain you would gladly
16 sell 55 acres to one client if they wanted to buy it;
17 if that doesn't happen, what size lots are you
18 anticipating that you're going to start preparing
19 those for listing and selling at?

20 THE WITNESS: The typical lot size that we
21 have seen in Kapolei Business Park has been half to
22 three acres, some cases five-acre sizes. So five
23 acres and below, but it's generally a mix to provide
24 different users different opportunities.

25 VICE CHAIR CABRAL: I know that that was in

1 some of your backup information.

2 And then also isn't it also a problem that
3 if you were to sell, have let's say 20 lots for sale
4 in Phase I, if you suddenly put in your 63 acres, and
5 the next one, 30 lots for sale, you would also flood
6 your own market place? I mean you would become -- it
7 would be more difficult to sell if you have too much
8 of a supply for a limited demand?

9 THE WITNESS: Right. You don't want to
10 start cannibalizing yourself, because at that point
11 you're carrying the land and the improvements for
12 longer and there's greater debt service, and et
13 cetera.

14 VICE CHAIR CABRAL: I wanted to make sure
15 you understand that. Thank you very much. I think
16 I've got that clear. Thank you.

17 CHAIRPERSON SCHEUER: Commissioners, other
18 questions?

19 If I may, Mr. Kelly, can you briefly update
20 the Commission on the Petitioner's compliance with
21 the condition related to the (indecipherable)
22 preserve?

23 THE WITNESS: So the preserve continues to
24 be a fenced area that was actually downzoned in the
25 2008 City and County zoning from Agricultural zoning

1 to Preservation.

2 And, again, we worked in concert with the
3 Conservation Council of Hawai'i on that downzoning.
4 There are no active uses of the preserve area other
5 than it being fenced and available.

6 Every so often we will get a request from a
7 group to go in there and we're more than happy to
8 guide them in there. There is a small plaque
9 honoring Dr. Ziggler in there, but beyond that, not
10 much activity in the preserve area.

11 In the original Commission proceeding we
12 had approached DLNR, and DLNR expressed a willingness
13 to potentially accept the property into its Natural
14 Reserve Area system upon subdivision and the ability
15 to convey that property.

16 The property is not yet subdividable,
17 because you need the infrastructure systems around it
18 to be able to carve it off.

19 But it would be our intention to convey it
20 to DLNR if still willing at the time.

21 CHAIRPERSON SCHEUER: What is the timing --
22 excuse me.

23 What is the relationship between the
24 phasing of lot sales that you refer to, and the
25 timing of subdividing this parcel out and getting

1 more active management and use of the reserve?

2 THE WITNESS: So it falls in Phase II, as
3 we presented them in the motion. Phase II has got a
4 timeframe that runs out to the 2025-26 timeframe. So
5 conceivably subdivision would be an early part of
6 that.

7 And then upon subdivision, it would be
8 conveyable. Whether or not there is any more active
9 use after that is probably a separate issue depending
10 on whether DLNR takes it or not.

11 CHAIRPERSON SCHEUER: Is DLNR the entity
12 that you're solely committed to conveying it to, or
13 it could be any other suitable --

14 THE WITNESS: It could be any other
15 suitable. My general understanding of these things
16 is that non-profits are generally reluctant to take
17 on property.

18 I sat on the Board of the Trust for Public
19 Land. I know there's a debate of whether or not to
20 put even that group into a landownership. So DLNR
21 would seem to be the likeliest candidate.

22 But we have no standing commitment to them
23 on that.

24 CHAIRPERSON SCHEUER: Thank you. I have
25 nothing further. Anything more from the

1 Commissioners? Any redirect?

2 MS. LIM: No.

3 CHAIRPERSON SCHEUER: Thank you, Mr. Kelly.

4 Ms. Lim, anything further on your
5 presentation?

6 MS. LIM: Not on presentation. I'll
7 reserve time to make closing remarks.

8 CHAIRPERSON SCHEUER: City and County of
9 Honolulu, it's your turn to present.

10 MS. WONG: Thank you.

11 We submitted our testimony on a letter
12 dated November 27, 2018. So we stand by our
13 position. We have no objection to the Motion to
14 Extend the Timeframe to buildout the backbone
15 Infrastructure to 2035.

16 CHAIRPERSON SCHEUER: Are there questions
17 for City and County on your position?

18 MS. LIM: No questions. Petitioner
19 appreciates the City's support.

20 CHAIRPERSON SCHEUER: Office of Planning?

21 MS. APUNA: No questions.

22 CHAIRPERSON SCHEUER: Commissioners?
23 Commissioner Ohigashi.

24 COMMISSIONER OHIGASHI: According to the
25 Petitioner's Condition No. 8 proposal, they want to

1 incorporate whatever property management measures
2 into the project CC&Rs that run with the land.

3 Would this be something that can be handled
4 as a condition of final subdivision approval?

5 MS. WONG: Our subdivision approval process
6 is an administerial process, but conditions can be
7 placed before final subdivision approval is granted.

8 COMMISSIONER OHIGASHI: Is this type of
9 condition part of any of the permitting process that
10 James Campbell Company has to go through in regard to
11 this particular project?

12 MS. WONG: They would need to come in for
13 the subdivision approval, I think the other is
14 entitlement zoning is in place.

15 COMMISSIONER OHIGASHI: So the answer is
16 there is, other than subdivision approval, there is
17 no other permits are required that this condition can
18 be placed on?

19 MS. WONG: To have the CC&Rs in place
20 prior.

21 COMMISSIONER OHIGASHI: Petitioner shall
22 coordinate with DOT, the Airport Division on
23 practical property and management.

24 Essentially what they offered as part of
25 the Condition No. 8, I'm wondering if this condition

1 can be attached or part of the City's approval
2 process to either permit?

3 MS. WONG: Unless they come in for any
4 other discretionary permit, I believe it's just
5 subdivision.

6 CHAIRPERSON SCHEUER: Are there other
7 questions for Ms. Wong of the City? Thank you.

8 Office of Planning, how long do you
9 anticipate being?

10 MS. APUNA: Maybe about 20 minutes.

11 CHAIRPERSON SCHEUER: Is it divided into
12 parts?

13 MS. APUNA: We have two witnesses, so we
14 can take one.

15 CHAIRPERSON SCHEUER: Please proceed.

16 MS. APUNA: OP has two witnesses today that
17 will help explain OP's position.

18 First, Rodney Funakoshi will summarize OP's
19 position and testify as to why a ten-year rather than
20 17-year extension is appropriate.

21 And then Jeff Chang, Airports, will testify
22 why DOT is asking Petitioner to work with DOT
23 regarding hazardous wildlife attractants.

24 OP calls Rodney Funakoshi to the stand.

25 CHAIRPERSON SCHEUER: Without a subpoena.

1 Mr. Funakoshi, do you swear or affirm that
2 the testimony you're about to give is the truth?

3 THE WITNESS: Yes.

4 CHAIRPERSON SCHEUER: Please proceed.

5 RODNEY FUNAKOSHI

6 Was called as a witness by and on behalf of the State
7 Office of Planning, was sworn to tell the truth, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. APUNA:

11 Q Thank you.

12 Rodney, can you please state your job title
13 and provide some background on your work experience?

14 A Yes. I'm with the State Office of
15 Planning. I'm Land Division Planning Program
16 Administrator, 235 South Beretania Street. And I've
17 been employed there for the past seven years. But
18 prior to that, extensive experience in private, as
19 planning consultant.

20 Q Would you like to summarize OP's position?

21 A Okay. Yeah.

22 Our position is basically outlined in our
23 Revised Statement of Position, but I'll kind of call
24 out some highlights, as well as explain what we most
25 recently submitted in terms of modification.

1 CHAIRPERSON SCHEUER: Can you make sure
2 you're speaking into your microphone?

3 THE WITNESS: OP supports an extension of
4 time, but not to the extent requested by the
5 Petitioner. OP also requests a modification of
6 Condition 8 to address concerns raised by the DOT.

7 So OP doesn't support the Petitioner's
8 request, which proposes a 17-year extension, but a
9 modified timeframe which imposes an additional ten
10 years.

11 We acknowledge that it will be many years
12 before all the lots within the development are sold,
13 however, Condition 17 does not require that all the
14 lots be sold, but rather that the backbone
15 infrastructure -- which is limited to Hanua Street
16 improvements, now referred to as the Harbor Access
17 Road, drainage improvements, primarily a drainage
18 channel that runs through the site, and sewer
19 improvements, and primarily it seems like the primary
20 sewer regional improvements have already been
21 constructed -- be concluded by December 2018, this
22 year, and this amounts to already 11 years since the
23 project was approved in 2007.

24 What they are requesting is an additional
25 17 years, and we feel that that is not justified,

1 given that there already has been substantial time to
2 have made significant progress, which they have done
3 but still does not warrant 17 additional years.

4 So we have our proposed Condition 17 in our
5 Statement of Position. I'll just read it quickly
6 that:

7 Petitioner shall complete the backbone
8 infrastructure consisting of the Harbor Access Road
9 improvements, drainage improvements, and sewer
10 improvements by December 31st, 2028.

11 And that Petitioner shall coordinate with
12 DOT on the location, alignment and features of all
13 such improvements.

14 Some of the other requests from Petitioner
15 were to change the name and amend the caption, for
16 which we have no issues with, although we have
17 recommended that the Petitioner revise and amend all
18 the current agreements that have been made with DOT.

19 The primary new one is an amendment to
20 Condition 8, and we have noted that since there has
21 been a significant passage of time from when the
22 original action was taken by LUC in 2007, that
23 although coordination was indicated back then and not
24 imposed as a condition, there have been increasing
25 concerns relative to hazardous wildlife in

1 particular, but aviation in general, that prompts us
2 to request a further modification on this condition.

3 And we've done some in consultation with
4 DOT. Initially we had requested an avigation
5 easement in consultation with Petitioner. You know,
6 we have modified it to reflect a Memorandum of
7 Agreement. We still feel that would be a viable and
8 enforceable tool.

9 So essentially we have that reflected in
10 our revised Condition 8 that is reflected in OP
11 Exhibit E, which was distributed.

12 And I'll just read the final section which
13 is the change:

14 Prior to final subdivision approval,
15 Petitioner shall execute and comply with a Memorandum
16 of Agreement with the State of Hawaii, Department of
17 Transportation Airports Division with respect to
18 avigation and wildlife management requirements
19 including FAA Advisory Circular 150-5200 33B to
20 address safety concerns for flight operation at
21 Kalaeloa and Daniel K. Inouye International Airport.

22 So that basically reflects OP's
23 recommendation.

24 Q (By Ms. Apuna): Can you just -- so based
25 on OP's most recent proposed draft of Condition 8,

1 can you explain what we mean by "backbone
2 infrastructure"?

3 A That is specifically described in the
4 condition. And so we are not talking about full
5 development of all the lots in terms of providing,
6 you know, more roadways, sewer, drainage to the
7 individual lots, which is kind of outlined by the
8 Petitioner, but simply talking about the backbone
9 infrastructure which typically precedes the major
10 development, so like a spine road.

11 And in this case a spine road and a
12 drainage channel that normally is difficult to
13 complete incrementally with phases. So it's
14 possible, but we still feel that ten years is more
15 than a reasonable enough time to do that, actually
16 ten more years.

17 Q I have no further questions.

18 CHAIRPERSON SCHEUER: Petitioner.

19 MS. LIM: Yes, please.

20 CROSS-EXAMINATION

21 BY MS. LIM:

22 Q Good morning, Rodney.

23 A Good morning.

24 Q Thanks for your testimony today.

25 We appreciate that you acknowledge the

1 Petitioner has made significant progress on
2 development of the property.

3 You mentioned something in your testimony
4 about that coordination with DOT was required but it
5 wasn't imposed as a condition on Petitioner. And I'm
6 curious if you could explain what you're referring
7 to?

8 What coordination was suggested if not
9 required? And what is it that you allege Petitioner
10 has not done with respect to that coordination?

11 A Well, coordination -- well, originally the
12 OP in 2007 did discuss and request an avigation
13 easement.

14 Q That's correct.

15 A That was not imposed by the Commission at
16 the time. And so there has been coordination with
17 DOT Highways and Harbors, but not necessarily with
18 the Airports Division to date, any significant
19 coordination. And so that is what I was referring
20 to.

21 Q So you're saying that Petitioner failed to
22 comply with something that was never required in the
23 first place?

24 A Well, I think coordination was always
25 required with DOT, and that has been done with

1 Highways and Harbors, but not with Airports.

2 Q Okay, but it's not coordination that was
3 imposed by the Commission, a condition. So rather
4 than peppering you with questions, maybe I'll direct
5 you to -- and please tell me if I'm off base in
6 understanding what you're referring to, but are you
7 referring to Finding of Fact 103 in the Decision and
8 Order?

9 A I'm not sure what that finding is.

10 Q I'll read it to you: Petitioner will
11 coordinate with the State Department of
12 Transportation Airports Division as the project
13 progresses to examine appropriate height
14 consideration as it relates to aviation and airport
15 operations at Kalaeloa Airport.

16 That's the only reference to any kind of
17 coordination with Department of Transportation
18 Airports Division.

19 So that's what you were referring to?

20 A Okay, I believe so.

21 Q Is your counsel --

22 MS. APUNA: I can't locate that. I thought
23 there was another Finding of Fact. Sorry, don't have
24 that available right now.

25 MS. LIM: Finding of Fact 103 is the one

1 that we've identified, and it's about height
2 consideration as it relates to airport operations.
3 And it's a suggestion that that happens as the
4 project progresses.

5 Q So height considerations would come into
6 play at the ground infrastructure level, or at
7 vertical construction?

8 A Right, it's for vertical construction.

9 Q Okay. So it's a bit early, in light of the
10 fact that we haven't engaged in vertical construction
11 at this point.

12 Thank you.

13 I want to switch now to the timeframe. We
14 understand OP's position. I mean, it's well written
15 and it's clear in your Revised Statement of Position,
16 but could you offer the rationale, the sort of
17 evidentiary substantial evidence that would justify
18 the ten-year request or ten-year addition that OP is
19 advocating for? Because we didn't see anything, any
20 sort of expert evidence.

21 A OP's not developing the project. It's
22 really a -- the timeframe is really for the
23 Petitioner to do. But if you were to simply consider
24 what it would take to develop say a spine road and
25 drainage improvements to serve the project, then that

1 should certainly not take ten years.

2 Q Do you often find that development isn't
3 tied to financial considerations?

4 A It can and it can not. It depends on how
5 they phase it initially. For example, if this was
6 phased then to begin with, I would say more than a
7 ten-year development, then that would be at the start
8 indicating that this would take 20 years or something
9 like that, but this is not outlined as such
10 initially.

11 Q That's correct, it wasn't. It was outlined
12 as something that would be completed in ten years,
13 but there was an event of kind of worldwide
14 significance, an event that took place between the
15 reclassification and now.

16	A	Understood.
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17 Q Does OP acknowledge that that had an affect
18 on the development schedule?

19	A	Yes, but not a 17-year effect.
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20	Q	But a ten-year effect?
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21 A It has some effect, I can't state to give a
22 year, but it's probably less than ten.

23 Q We hesitated too, that's why we retained
24 someone to assist on that.

25 I've got a couple of questions about the

1 drainage and airport condition. And I know you spoke
2 to that, but I also know you have a DOT Airport
3 witness. So what I'll do is I'll raise this question
4 and if you think they're more appropriate for the
5 airport witness, just let me know.

6 A Yes, that's good.

7 Q I don't know, it doesn't look like you have
8 all the exhibits in front of you. I'm just going to
9 whip out Petitioner's Exhibit X, which you saw in the
10 PowerPoint slide.

11 So, Rodney, you've got Petitioner's Exhibit
12 X, which is the shot that showed the Petition Area
13 and then a whole lot of projects around it,
14 identified a couple of wildlife areas, Campbell
15 Industrial Park drainage canal, so forth.

16 Looking at that exhibit, could you please
17 identify for us any privately-owned properties that
18 are subject to, whether it's an avigation easement or
19 MOU or MOA with Department of Transportation to deal
20 with the wildlife management issues that OP has
21 raised?

22 A I'm not aware of any that are on here.

23 Q And then I'll pass you Exhibit Y, which
24 that is that shot that showed more looking Ewa. And
25 I'll ask you the same question. I don't need to

1 repeat it.

2 A I'm not sure. Probably Airports would be
3 able to address it more carefully. I know there were
4 concerns raised with Honouliuli Wastewater Expansion
5 and also the Huakalei Lagoon Area. So whether those
6 were subject to the similar specific requirements,
7 but it also depends on whether there was a
8 discretionary permit as a vehicle through which they
9 could request such condition.

10 Q And so at least, as far as you know, there
11 is no property that's been subject to either an
12 avigation easement or memorandum of agreement to
13 address wildlife?

14 A I'll defer that to department of --

15 Q We will turn to them.

16 You know, looking at some of the OP
17 exhibits, and I'll pass those to you as well, we had
18 a couple of questions -- I'm going to pass you OP
19 Exhibit C. OP Exhibit C is an overview of the
20 Petition Area and the surrounding areas.

21 When we looked at this, and when we're
22 comparing it to our own exhibits, a couple of things
23 struck us.

24 One is, you know, on our Petitioner's
25 Exhibit W, as well as X and Y, we clearly call out

1 the Campbell drainage channel, which is that
2 significant area of somewhat standing water that
3 becomes more flowing water as it gets close to the
4 ocean, as Mr. Kelly described earlier.

5 Is that called out on OP Exhibit C?

6 A No, not necessarily. This is more simply
7 reflective of what is on -- currently what is on our
8 GIS.

9 Q Was OP aware that there is a drainage area
10 immediately adjacent to Kaleiloa Airport that
11 contains standing water? Looking at that exhibit, it
12 wasn't clear to me.

13 A No. We did not look at it for that
14 purpose. I don't see that.

15 Q I'm going to ask you one other question
16 about OP Exhibit C, and it's the blue line, there's a
17 blue line that's called out as a stream.

18 A Yes.

19 Q So, you know, when we looked through our
20 information, and I just -- we had a question about
21 that, because -- what is the name of that stream? We
22 don't think it is a stream.

23 A Okay. No, I mean, this is a GIS map that
24 we use, different layers, and so I'm not particularly
25 sure -- not sure what that stream layer is from.

1 Q Fair enough.

2 I would like to highlight, as you saw
3 through the PowerPoint presentation that Mr. Kelly
4 offered earlier -- well, that area is no longer
5 visible on the property. That was actually the
6 former Oahu Sugar drainage ditch, is that correct,
7 Mr. Kelly? And that has since been filled and is now
8 being replaced by the current drainage channel. So
9 OP's Exhibit C is a bit obsolete.

10 A Could be.

11 Q And I actually was going to ask, Mr.
12 Funakoshi, the same question that Commissioner Chang
13 asked about the date of the FAA circular, but that's
14 already on the record that it was published in fact
15 before the Commission made its final decision on the
16 D&O?

17 A That's right.

18 MS. LIM: I don't have any further
19 questions for Rodney, thank you.

20 CHAIRPERSON SCHEUER: City, do you have any
21 questions for Mr. Funakoshi?

22 MS. WONG: No questions.

23 CHAIRPERSON SCHEUER: Commissioners?
24 Commissioner Aczon.

25 COMMISSIONER ACZON: Good morning, Mr.

1 Funakoshi.

2 You acknowledged earlier that the
3 Petitioner had done substantial progress in the
4 project. And you also heard Mr. Kelly's testimony
5 that if they were given a ten-year extension, they
6 would be back again over here in ten years and we
7 would start all over again.

8 So my question is, if the Commission
9 decided to grant them the 17-year extension, what
10 would be the harm to the State, or what would be the
11 consequences to the State?

12 THE WITNESS: It's more, I would say, the
13 uncertainty of development. And I think ten years
14 provides both a reasonable extension as well as a
15 little bit more assurance relative to the progress of
16 development.

17 COMMISSIONER ACZON: So you don't see any
18 major consequences for the State or any damages or
19 money-wise or things like that?

20 THE WITNESS: Well, if the backbone
21 infrastructure is not completed until 17 years from
22 now, and say, for example, DOT Harbors is more
23 reliant on that access road to be completed, then
24 that's a long time to wait.

25 COMMISSIONER ACZON: So I guess what I'm

1 hearing is you would rather give them ten years, and
2 then for them to come back again, knowing that they
3 are admitting that they're not going to be able to do
4 it in ten years?

5 THE WITNESS: Well, deadlines aren't set
6 for applicants to then automatically be able to come
7 back and get an extension of time. It's really a
8 deadline that they should meet.

9 And so like in this case, for example, or
10 even going, you know, back further, if we had known
11 at the start that this project would have taken
12 27 years to develop, then they might not have been
13 granted full approval at the time, might have been
14 granted incremental districting approval.

15 So it's kind of along the lines of how we
16 kind of seeing approvals being given and granted. So
17 it's not with an expectation that they would be
18 coming back.

19 And lot of times when you do have
20 incremental districting, or in this case, you know,
21 they were -- and we have been looking imposing
22 additional conditions or modifications to additional
23 conditions as may be warranted.

24 So that may be a consequence of their
25 coming back ten years from now.

1 COMMISSIONER ACZON: So let me go back to
2 Commissioner Okuda's question to Mr. Kelly that
3 nobody can really predict the economy.

4 You said -- Mr. Kelly said nobody has a
5 crystal ball on economy. So because you're referring
6 to the economy right now --

7 THE WITNESS: Well, again, I say that we
8 are not looking at the full development of the
9 property. We're looking at the backbone
10 infrastructure which is normally the first thing you
11 put into a development, not the thing you finish --
12 complete at the end.

13 COMMISSIONER ACZON: Thank you, Mr. Chair.

14 CHAIRPERSON SCHEUER: Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you, Mr. Chair.

16 Mr. Funakoshi, thank you for your
17 testimony.

18 You heard -- or you reviewed Petitioner's
19 Exhibit J, which was the market study, correct or not
20 correct?

21 THE WITNESS: Yes.

22 COMMISSIONER OKUDA: Did you find or see
23 any factual statements in Exhibit J which you believe
24 were not correct are erroneous or misleading?

25 THE WITNESS: No.

1 COMMISSIONER OKUDA: In reviewing Exhibit
2 J, the Petitioner's submitted expert report, did you
3 find any conclusions in that report which you found
4 were erroneous, misleading or for lack of a better
5 word, just simply wrong?

6 THE WITNESS: No.

7 COMMISSIONER OKUDA: You know, regarding
8 whether it should be a ten-year extension or no
9 extension or 17 years or even to be outrageous 100
10 years, you do agree that the Commission cannot act
11 arbitrarily or capriciously, correct?

12 THE WITNESS: Yes.

13 COMMISSIONER OKUDA: In other words,
14 whatever timeframe we pick, it's got to be based on
15 some type of admissible evidence, right? Or evidence
16 in the record here? In other words, we cannot just
17 pull a number out of thin air.

18 THE WITNESS: Okay.

19 COMMISSIONER OKUDA: I know this sounds
20 like silly questions, but I want to make sure, at
21 least you and I are kind of on the same page here.

22 What then would justify in the record us
23 just saying, well, let's just have a five-year
24 extension instead of ten years? Or are we simply
25 choosing between five and ten years by just pulling

1 that number out of thin air?

2 THE WITNESS: Well, since I'm not the
3 developer, it would be hard for me to tell you. Like
4 if you were to ask how long would it take to develop
5 a drainage channel and a spine road, notwithstanding
6 market, then that's probably a separate question; but
7 even then, you know, it's probably not for me to
8 answer, but it certainly would be less than ten
9 years.

10 COMMISSIONER OKUDA: But I understand your
11 testimony about looking at evidence in the record.
12 You've heard the testimony of Mr. Kelly that he gave
13 here, correct?

14 THE WITNESS: Yes.

15 COMMISSIONER OKUDA: Did you come to a
16 conclusion or opinion that anything Mr. Kelly had
17 said was factually incorrect, wrong or misleading?

18 In other words, can you point to anything
19 that Mr. Kelly testified about which you believe was
20 wrong factually? In other words, did he tell any
21 facts that you say, hey, that's fake facts?

22 THE WITNESS: I think the start of the --
23 you know, like -- you pointed out that it seemed like
24 you were -- that this project was being singled out,
25 but that's not really the case. It's simply that

1 it's a legitimate State concern that we feel should
2 be addressed, and this is an opportunity to address
3 it. And, you know, the law allows for it, we
4 believe.

5 And so it's an important safety concern, so
6 therefor it's not a matter of being singled out and
7 other properties have not been subjected to.

8 We do not have authority to go back into
9 projects that either are developed or not subject to
10 approval to impose any kind of condition like this.

11 COMMISSIONER OKUDA: Mr. Funakoshi, let me
12 just clarify. And I apologize if my question was
13 wrong, but let me say this.

14 At least for me, I don't view the Office of
15 Planning's arguments or participation not only in
16 this hearing, or any the other hearings, singling out
17 anyone or doing anything contrary to the public
18 interest.

19 In fact, I believe the statute makes very
20 clear that the Office of Planning is frankly one of
21 the guardians and gatekeepers of Hawaii's precious
22 resources, and that's why we really rely on you folks
23 to raise these issues, because sometimes we don't see
24 it.

25 So we recognize the important point of the

1 Office of Planning. My question is more limited.

2 Can you point to anything that Mr. Kelly
3 testified which, besides singling out, but besides
4 that, can you point to anything else in his testimony
5 which you believe is factually incorrect?

6 THE WITNESS: I can't think of any offhand.

7 COMMISSIONER OKUDA: And same question for
8 Mr. Hamasu. You heard Mr. Hamasu's testimony. Can
9 you point to anything in his testimony oral and also
10 regarding Exhibit O which was factually incorrect?

11 THE WITNESS: No.

12 COMMISSIONER OKUDA: Thank you, Chair. I
13 have no further questions.

14 CHAIRPERSON SCHEUER: Commissioner
15 Ohigashi.

16 COMMISSIONER OHIGASHI: I just have a
17 question about the definition, backbone
18 infrastructure under No. 17, Condition No. 17 says
19 it's consisting of Hanua Street improvements,
20 drainage improvements and sewer improvements.

21 Is that right?

22 THE WITNESS: Yes.

23 COMMISSIONER OHIGASHI: When you say sewer
24 improvements, you describe that as not being the
25 network of sewer types required to service every

1 single --

2 THE WITNESS: Typically it would be like a
3 trunk line or --

4 COMMISSIONER OHIGASHI: Is that what is
5 meant in here by sewer improvements, trunk line?

6 THE WITNESS: That would be considered the
7 backbone, like either trunk line or sewer pump
8 station.

9 COMMISSIONER OHIGASHI: Similarly with
10 drainage improvements, right? Drainage improvements
11 would be the single drainage ditch or single drainage
12 area?

13 THE WITNESS: The reference here is to the
14 main drainage channel that's been described and
15 proposed.

16 COMMISSIONER OHIGASHI: So that's our
17 definition of what we are going to be working with
18 backbone infrastructure?

19 THE WITNESS: That's what we would
20 consider, yes.

21 COMMISSIONER OHIGASHI: I'm a little bit
22 kind of confused, because according to Condition 17,
23 the Petitioner shall complete buildout of the project
24 including all these backbone --

25 THE WITNESS: We modified it.

1 COMMISSIONER OHIGASHI: Let me finish my
2 question before you answer.

3 So it would imply that December 31st, 2018
4 will be the complete buildout, including the backbone
5 infrastructure. So in addition to the backbone
6 issue?

7 THE WITNESS: Yes.

8 COMMISSIONER OHIGASHI: So if that is the
9 case, and you're proposing ten years for the backbone
10 improvements and sewer improvements, backbone
11 infrastructure consisting, would there be --
12 shouldn't there be additional time added to that for
13 the completion of the project, or completion of the
14 total buildout?

15 THE WITNESS: Typically when backbone
16 infrastructure is provided there is reasonable
17 assurance that the project can and will continue, so
18 that's why it's not necessarily -- typically, the
19 Land Use Commission does not require conditions to
20 the extent of full buildout. In this case full
21 buildout --

22 COMMISSIONER OHIGASHI: It says complete
23 buildout --

24 THE WITNESS: -- or complete buildout --

25 CHAIRPERSON SCHEUER: It's hard for our

1 court reporter when two people are speaking at the
2 same time.

3 COMMISSIONER OHIGASHI: Just trying to
4 figure out what this condition means.

5 THE WITNESS: Yeah, that's fine, complete
6 buildout. It depends on what the project is. In
7 this case, I don't believe vertical construction is
8 included. It's really improved industrial lots are
9 being developed, and so, you know, complete buildout
10 would imply that, you know, you have all of your
11 network of roads, sewer, drainage, power lines that
12 lead into the individual lots, because they would be
13 sellable. But then individual, I believe, lot owners
14 could then purchase and develop what they want.

15 COMMISSIONER OHIGASHI: I'm just trying to
16 figure out what this condition means. And because we
17 had a similar condition in another case recently, I
18 believe in Kona where it implied that saying that
19 buildout meant the infrastructure improvements being
20 in it. And it's different from this particular
21 definition that is placed in here.

22 In this definition it talks about complete
23 buildout, which means, I guess, the branches into
24 the -- which means more than what you describe as
25 sewer improvements, and more than what your

1 definition of drainage improvements. So it would
2 appear that this talks about the complete buildout,
3 versus just the backbone infrastructure.

4 So any modification, whether it be ten or
5 17 years, would be for the complete buildout, which
6 would include this backbone; is that right?

7 THE WITNESS: Well, OP's recommending
8 condition strikes "complete buildout".

9 COMMISSIONER OHIGASHI: I see.

10 So you are requiring us to modify the
11 condition and change the definition of what complete
12 buildout requirements are?

13 THE WITNESS: Right.

14 COMMISSIONER OHIGASHI: So there is no --
15 so as long as they finish the backbone, you're
16 saying, within the ten years, that would be
17 sufficient for you?

18 THE WITNESS: Yes.

19 COMMISSIONER OHIGASHI: They don't have to
20 complete buildout?

21 THE WITNESS: Yes.

22 COMMISSIONER OHIGASHI: Is there any
23 particular part of the record that supports that
24 distinction so that we can -- so we have a basis to
25 make that change?

1 THE WITNESS: No, aside from our
2 recommendation.

3 COMMISSIONER OHIGASHI: Okay.

4 CHAIRPERSON SCHEUER: Commissioner Aczon.

5 COMMISSIONER ACZON: I just want to follow
6 up on Commissioner Ohigashi's questioning.

7 You are saying that the ten-year
8 recommendation is just for the infrastructure
9 buildout, not complete buildout?

10 THE WITNESS: Yes.

11 COMMISSIONER ACZON: So if we say complete
12 buildout, how long more do you think they going to
13 need to complete buildout? Because the Commission
14 stated complete buildout. So if you said don't want
15 complete buildout, ten years for the infrastructure,
16 but you want to say, hey, we want the complete
17 buildout, can you tell me how long more? Is seven
18 years enough for complete buildout?

19 THE WITNESS: Presumably, based on their
20 updated market study that that would be, yes, that
21 would be 17 years.

22 COMMISSIONER ACZON: Thank you.

23 CHAIRPERSON SCHEUER: Commissioner Chang.

24 COMMISSIONER CHANG: So continuing the line
25 of questioning, so if we did not change the Condition

1 17, and it says, completion of the project,
2 Petitioner shall complete buildout of the project
3 including completion of the backbone infrastructure
4 consisting of Hanua Street improvements, drainage
5 improvements and sewer improvements by December 21st,
6 2018, and their request is to extend it for an
7 additional 17 years, based upon, I guess, what I'm
8 hearing you say now, if we didn't change the
9 condition, and you're saying that they could complete
10 the backbone in ten years, and based upon
11 Commissioner Aczon's testimony, would you agree with
12 the seven years, and you said you agreed with Mr.
13 Hamasu's market study, then would you agree that the
14 condition, as it is now, is consistent -- your
15 testimony is consistent with what the Petitioner is
16 asking? It's not just for the backbone, but it's for
17 the entire project.

18 But would you agree that what you're saying
19 is now consistent with what the Petitioner is asking
20 without changing the condition other than adding an
21 additional 17 years?

22 THE WITNESS: Well, what I'm saying is
23 that, you know, the market study, you know, is really
24 a projection. It can be faster or slower. And it
25 does seem like they are saying full buildout. It

1 would depend on market demand ultimately, even though
2 I don't dispute Mr. Hamasu, I don't have any reason
3 to dispute him. So it may take that long. And if
4 they do, for example, not buildout the individual lot
5 areas in their phases, yeah, it could take that long
6 or longer or shorter.

7 COMMISSIONER CHANG: But you don't have any
8 independent basis to dispute Mr. Hamasu?

9 THE WITNESS: No.

10 COMMISSIONER CHANG: So if you accept Mr.
11 Hamasu's expert opinion, he's been qualified that it
12 would take 17 years, and if we even take your
13 testimony that it would take ten years for the
14 backbone infrastructure, then would you agree that
15 what the Petitioner is asking for without changing
16 the condition other than the time extension, that you
17 agree that that is -- that you would not dispute what
18 they're asking?

19 THE WITNESS: Yeah. Only to the extent
20 that typically we do not grant longer than ten years,
21 or there is no -- it's a long time to grant a
22 development. That is not typical.

23 COMMISSIONER CHANG: But based upon
24 Commissioner Okuda's line of questioning about
25 rational basis, based upon what you've heard today,

1 and your own testimony, wouldn't you agree that the
2 17 years is reasonable?

3 THE WITNESS: For --

4 COMMISSIONER CHANG: For the completion of
5 the project, including completion of the backbone
6 infrastructure?

7 THE WITNESS: It could be.

8 COMMISSIONER CHANG: I want to ask you a
9 question about Condition No. 8, what OP is asking
10 for.

11 Similar to this condition, the FAA's
12 circular was available prior to LUC's decision, and
13 based upon the filings, it appears as if that was an
14 issue that was discussed.

15 My concern is, you are asking for condition
16 modification that was -- that I would like to assume
17 was considered when LUC made the original -- heard
18 the original petition, but you said it was not
19 included in the condition.

20 THE WITNESS: I think the issue has gotten
21 more serious since then.

22 COMMISSIONER CHANG: And I wanted to ask
23 you follow-up questions.

24 What do you mean by gotten "more serious"?
25 What is the documentation or evidence that you have

1 that it's gotten more serious?

2 THE WITNESS: I'll defer to the next
3 witness.

4 COMMISSIONER CHANG: All right. Very good.
5 Thank you so much.

6 CHAIRPERSON SCHEUER: Commissioners, are
7 there further questions?

8 I will have two hopefully brief questions
9 for you.

10 Following up on Mr. Okuda's question of
11 you, whether you believe anything was incorrect in
12 the two witnesses and their testimony, or anything
13 you disagree with.

14 One of the witnesses, Steve Kelly,
15 suggested that having a ten-year requirement rather
16 than a 17-year requirement would put a chilling
17 affect on potential buyers for lenders of the
18 project.

19 Do you disagree with that?

20 THE WITNESS: I don't have an opinion on
21 that. That would be speculation.

22 CHAIRPERSON SCHEUER: My second question
23 has to do with the issue of speculation.

24 Is it your understanding that one of the
25 reasons why the Land Use Commission places timing

1 conditions on development is to limit speculation?

2 THE WITNESS: It's to provide assurances
3 that development will proceed in a certain timeframe.

4 CHAIRPERSON SCHEUER: Are you aware that
5 there is, in the legislative history, concerns about
6 limiting speculation on land as one of the reasons
7 for placing time conditions?

8 THE WITNESS: Yes.

9 CHAIRPERSON SCHEUER: Is there anything
10 that you see in this docket that indicates that the
11 Petitioner is acting as a speculator?

12 THE WITNESS: I don't have any opinion on
13 that.

14 CHAIRPERSON SCHEUER: You don't have any
15 opinion on whether or not you see anything in this
16 docket that indicates that?

17 THE WITNESS: Well, I mean, there's not
18 been on-ground progress in developing. And, of
19 course, they own lots of other properties, so maybe
20 in the bigger context, you know, this may be lagged
21 in terms of that, but that's a separate issues.

22 CHAIRPERSON SCHEUER: Do you dispute that
23 they have invested in this project through
24 infrastructure improvements?

25 THE WITNESS: In a regional context they

1 have. So the investments they have made do benefit
2 this property, but also properties mauka and on
3 surrounding as well. So, yes.

4 CHAIRPERSON SCHEUER: Yes, they have?

5 THE WITNESS: They have, yeah. They have
6 developed but, you know, not exclusively for this
7 project.

8 CHAIRPERSON SCHEUER: I have nothing
9 further. Anything else from the Commissioners?
10 Redirect from Office of Planning?

11 MS. APUNA: Yes, Chair.

12 REDIRECT EXAMINATION

13 BY MS. APUNA:

14 Q Rodney, from OP's perspective generally
15 that if the backbone infrastructure is in place, does
16 OP consider that substantially commencement of the
17 project?

18 A Yes.

19 Q And so if the project has substantially
20 commenced at that time, the Commission no longer has
21 any more enforcement powers once the backbone
22 infrastructure is in place and substantial
23 commencement has occurred?

24 A Generally the thinking is that there's
25 reasonable assurance then that the development will

1 proceed based on primarily market conditions, I would
2 imagine.

3 Q And then I think you mentioned that there
4 is some State roads or State is relying on the
5 project to move forward, is that correct, DOT, based
6 on certain improvements that will occur and within
7 the Petition Area?

8 A Yes.

9 Q And then that -- those parts are part of
10 the backbone infrastructure, is that correct?

11 A Yes.

12 Q And so the department or DOT would want
13 those things to happen within ten years as opposed to
14 17, is that correct?

15 A Presumably.

16 Q Thank you.

17 CHAIRPERSON SCHEUER: Okay, I'm going to do
18 a time check on where we are at.

19 OP has one more witness?

20 MS. APUNA: Yes.

21 CHAIRPERSON SCHEUER: We have to have time
22 for any response -- oh, excuse me, final statements
23 by the Petitioner. We have to also have time for
24 executive session. I would love to be done with this
25 and not have to take a long lunch break.

1 Are people okay with taking a ten-minute
2 break, give our court reporter some rest for her
3 hands, and proceeding through to the end?

4 MS. LIM: Petitioner is fine with that, but
5 may request when we come back from the break that I
6 have an opportunity to recross on redirect, because
7 there was some very surprising statement in that last
8 exchange.

9 CHAIRPERSON SCHEUER: Concerns?

10 MS. APUNA: That's fine.

11 CHAIRPERSON SCHEUER: We need to take a
12 break. It's 12:21. Come back in ten minutes 12:31.

13 (Recess taken.)

14 CHAIRPERSON SCHEUER: Thank you, everybody.
15 We are back on the record, and happily caffeinated
16 due to Commissioners Ohigashi and Chang.

17 There was a request to recross prior to
18 break. Ms. Lim.

19 MS. LIM: Thank you, Chair.

20 RE CROSS-EXAMINATION

21 BY MS. LIM:

22 Q Rodney, in the back and forth with Ms.
23 Apuna, with Dawn, there was a question asked that you
24 answered regarding whether the definition or
25 understanding of OP's definition or understanding of

1 "substantial commencement" means completion of
2 backbone infrastructure, and you responded
3 affirmative.

4 Is that correct? Did I hear that right?

5 A Not that that would mean, but would we
6 consider it to be, yes.

7 Q Well, what is the term "substantial
8 commencement" -- where does the term come from?

9 I mean from statute, I don't mean random.

10 A I'm not sure of the statutory citation, but
11 it is in Chapter 205.

12 Q You're absolutely right, it's 205-4
13 subsection (g), and the words are: Substantial
14 commencement of the use of the land.

15 And so is OP's position that that phrase,
16 that clause I just read means completion of backbone
17 infrastructure?

18 A Well, since -- yeah, I did make a statement
19 to that effect, but that's sort of a legal conclusion
20 as well. And that's -- I would rather not swear by
21 it.

22 Q I understand that you wouldn't want to make
23 a legal conclusion.

24 At the start of your testimony you
25 indicated that the Petitioner had made substantial

1 progress on development of the Petition Area.

2 So does "substantial progress" in the words
3 you use, mean something different than "substantial
4 commencement"?

5 A Well, substantial progress relative to
6 offsite improvements.

7 Q And what is it -- the \$12 million they
8 spent on onsite improvements does not rise to the
9 level of substantial progress?

10 A Does not rise to the level of the amount of
11 money that you're quoting in terms of what was
12 expended. No, but, I would not want to opine on
13 whether that would be considered substantial
14 commencement or not.

15 Q But you're comfortable opining that we've
16 made substantial progress?

17 A Right. In the regional context, yes.

18 Q Let's dismiss the regional context from
19 this part of conversation.

20 I acknowledge that you acknowledge that
21 we've made substantial progress regional. But what
22 about onsite work, and specifically I'll just direct
23 you to one of the tables in our motion. That's Table
24 3, it doesn't appear that you have that in front of
25 you -- excuse me, it's not Table 3, it's Table 1.

1 CHAIRPERSON SCHEUER: Commissioner Chang.

2 COMMISSIONER CHANG: Can I ask, is it OP's
3 position, the motion, the Petition before us is for
4 time extension. Are we addressing the issue of
5 whether there's been substantial commencement of the
6 project? So that's what appears to apply in this
7 line of questioning. And I know you are responding
8 to his testimony.

9 CHAIRPERSON SCHEUER: Your question is for
10 the Petitioner?

11 MS. APUNA: I can answer that.

12 Thank you, Commissioner Chang. We're not
13 opining or making any determination whether they have
14 substantially commenced the project.

15 I think what my question was to Mr.
16 Funakoshi, was generally speaking, if there's a
17 project that had put in and completed all the
18 backbone infrastructure, does OP generally find that
19 to be substantial commencement.

20 I think that's what we are talking about as
21 far as the jurisdiction of the Commission at that
22 time as opposed to after substantial commencement
23 when the County really has the enforcement power.

24 So that's what I was speaking to, not that
25 the Petitioner has or has not substantially commenced

1 the project.

2 COMMISSIONER CHANG: Thank you.

3 MS. LIM: I'll continue if I may. I just
4 passed Mr. Funakoshi a couple pages from our motion,
5 I think it's pages 10 and 11.

6 Q There are several grading permits listed
7 there in that table. Starts at the bottom of the
8 page.

9 When you read through those permits, and
10 I'm sure you did before you were sitting here today,
11 as you read through our motion that we filed in
12 August identifying the onsite work that has gone on
13 in this property, in addition to the solar farm that
14 Mr. Kelly mentioned, and the digging out of the
15 drainage channel, I am asking for your opinion on
16 whether this is substantial commencement of the use
17 of the land, because this has now become a matter of
18 dispute, and notwithstanding Ms. Apuna's attempt at
19 clarification, what I'm still hearing is that
20 completion of the backbone infrastructure is
21 substantial commencement, and that's contrary to
22 statute and contrary to the Supreme Court's decision.

23 So I do feel like I really want to hear
24 OP's position on that.

25 A Relative to this project?

1 Q Just relative to this project.

2 A I've not evaluated relative to this
3 project. I do see a number of projects undertaken,
4 true.

5 Q Undertaken onsite?

6 A Yes. I never did say that there has not
7 been substantial commencement.

8 Q Thank you for that, Rodney. That's really
9 the clarification I was seeking. No further
10 questions.

11 CHAIRPERSON SCHEUER: Any additional, Ms.
12 Apuna?

13 MS. APUNA: No, thank you.

14 CHAIRPERSON SCHEUER: Thank you, Mr.
15 Funakoshi.

16 Ms. Apuna, you may call your second
17 witness.

18 MS. APUNA: Thank you, Chair. OP calls Mr.
19 Jeff Chang to the stand.

20 CHAIRPERSON SCHEUER: Mr. Chang, I'm going
21 to swear you in. Thank you for your patience with us
22 this morning.

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

25 THE WITNESS: Yes.

1 CHAIRPERSON SCHEUER: Please state your
2 name and address.

3 THE WITNESS: Jeffrey Chang, 400 Rogers
4 Boulevard, Suite 700, Honolulu, Hawai'i 96819.

5 JEFF CHANG

6 Was called as a witness by and on behalf of the State
7 Office of Planning, was sworn to tell the truth, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. APUNA:

11 Q Thank you, Mr. Chang, for being here.

12 Can you provide your title, professional
13 title and give some background on your experience?

14 A Yes. I am the Engineering Program Manager
15 for the Airports Division. So I've been in this
16 position for the last ten years, and with DOT for
17 24 years. And prior to that I worked in the private
18 construction industry for ten years.

19 So under my watch is all the construction
20 you see at all our 15 airports. And part of my
21 responsibility also is to oversee the planning for
22 all those projects, and that relates to what we're at
23 issue today, oversight of development adjacent to the
24 airports.

25 Q Thank you.

1 So we have OP's Exhibit C, which is a map.
2 And this is basically to show the Petition Area,
3 which is in yellow, and then Kaleiloa Airport.

4 Do you know what the distance is between
5 Kaleiloa Airport and Petition Area?

6 A Yes, a little over a mile, 1.1 or
7 1.2 miles.

8 Q And so DOT Airports has a concern with this
9 project. What is that concern?

10 A The concern is the creation of any
11 additional possible wildlife attractants to the area,
12 in particular, the potential for standing water due
13 to retention basins.

14 I would like to add, the Airports Division
15 does appreciate the Petitioner's willingness to work
16 with us on this issue.

17 Q Thank you.

18 And so the standing water, what does it
19 attract or what is the hazard that it attracts?

20 A It attracts birds. So this has been --
21 it's a scientific fact. It's documented in the FAA
22 advisory circular that we've been talking about
23 previously.

24 Q Then the circular is dated August of 2007.
25 And the Decision & Order was made a couple months

1 later, I believe.

2 Was there some event or something that
3 happened that made the requirements of the FAA
4 circular more, I guess, DOT'S priority in enforcing?

5 A We did see more FAA scrutiny, and I guess
6 you could say, pressure on the airport sponsors to
7 pay attention to potential wildlife attractants
8 adjacent to airports.

9 And this was primarily brought by the
10 incident "Miracle on the Hudson" in New York.

11 So it just takes one incident. And in my
12 dealings with the FAA through all these years, their
13 primary, I guess, part of their concern is safety,
14 that's their number one concern. So this falls in
15 line with that.

16 But I would say that is why maybe at that
17 time it was not brought up, or it was not quite so
18 much in the limelight.

19 Q And then "Miracle on the Hudson", I think
20 you're referring to the bird strike in New York.

21 Do you know what year that was or when that
22 occurred?

23 A Yeah, that was in 2009.

24 Q And so what specifically with regard to the
25 retention basin is problematic?

1 A This was discussed earlier by the
2 Petitioner. But one of the potential outcomes,
3 depending on the outfall issue, is water may have to
4 be retained on site, so that could result in standing
5 water that could be there more than 48 hours, which
6 has been recognized to potentially attract birds, and
7 then that's an issue given aggregation of birds.
8 It's a potential safety risk for the flight path
9 there.

10 Q So with regard to the FAA advisory
11 circular, does it prohibit the detention of standing
12 water for 48 hours, is it a strict prohibition?

13 A No, it's not a strict prohibition. The FAA
14 advisory provides guidance to support sponsors.
15 There are options if you cannot control the standing
16 water that has to be there, there are options to
17 mitigate that. Those are options that were discussed
18 earlier.

19 And it's up to, I guess, the Petitioner in
20 this case, they have options available that they can
21 pursue to mitigate risk. If what is listed in the
22 guidance is not practicable, they can propose other
23 things that -- I guess best management practices were
24 cited earlier, that they would consider when they
25 mitigate their risk, and they can propose that to us.

1 Airports Division and FAA will comment on
2 it also to see if it would satisfactorily mitigate
3 the risk.

4 Q So the circular provides some guidance for
5 this proposed MOA between DOT and Petitioner. And
6 it's what you guys come up with that's practical to
7 the Petitioner?

8 A Yes, I should give some background on how
9 the advisory circular plays into.

10 So Airports Division receives sizeable
11 amount of federal grants every year, anywhere from 25
12 to \$50 million to help improve our airports. So
13 along with these grants come assurances that we have
14 to provide to FAA to receive this money.

15 So part of it is that we will try to abide
16 by the things like this advisory circular. So the
17 Airports basically has a mandate to try to implement
18 the recommendation of the advisory circular on our
19 own lands, and also on adjacent lands being
20 developed.

21 Q And then the circular -- what does the
22 circular say about the appropriate distance for
23 hazardous wildlife attractant?

24 A I'm sorry, could you repeat that?

25 Q What does the circular say about the

1 appropriate distance for hazardous wildlife
2 attractant from the airport?

3 A If you have a wildlife attractant, if it is
4 further than five miles from the airport, it's okay;
5 but anything within five miles of the airport we
6 would need to address it with recommendations in the
7 advisory circular. So this development falls within
8 five miles.

9 Q And then the -- and so even though the
10 advisory circular says "advisory", you're saying that
11 DOT is required to abide by the requirements of the
12 advisory, of the circular?

13 A Yes. The advisory circular mentions -- and
14 I can read it, basically, the advisory circular is
15 required to be implemented by the Airports Division
16 under a code of federal regulations.

17 So it's Code of Federal Regulations, Part
18 139, and it goes over what I just said. Because
19 Airports have received federal grant needed
20 assistance, we must use these standards. That's
21 basically what the advisory circular says.

22 So it's basically a requirement for us to
23 try and implement the guidance.

24 Q And does the circular in a way cover the
25 adjacent landowners or developers of adjacent land?

1 A Yes. On that same first page of the
2 Advisory Circular No. 2, it says:

3 FAA also recommends the guidance in this AC
4 for land use planners/ operators of noncertificated
5 airports and developers of projects/facilities on or
6 near airports.

7 Q What does DOT want Petitioner to do to
8 mitigate wildlife attractants?

9 A As I stated before, we are really
10 appreciative of Petitioner willing to work with us on
11 this. The language the Petitioner proposed is a good
12 first step.

13 We would -- again, our position was stated
14 by Office of Planning. We would like a little bit
15 more enforcement to be involved in the, in
16 particular, citation of the advisory circular. So
17 the language proposing MOA with citation of the
18 advisory circular is what we would ask for.

19 Q I think that Mr. Kelly had mentioned in his
20 testimony that there's neighboring properties that
21 have habitat areas.

22 Are we asking for the Petitioner to create
23 a habitat area? Is that what DOT is asking for?

24 A No. We were just asking for mitigation or
25 prevention of any improvements that might cause

1 standing water and result in a wildlife attractant.

2 I know the Petitioner has kind of moving
3 parts he's trying to address so, again, as I said
4 before, we can work with them. We can -- there's
5 options available if, for example, the Petitioner
6 begins to start his design, we can work with the
7 Petitioner on the design. And perhaps there's
8 options such that the water can percolate, and there
9 is no standing water for 48 hours.

10 I also need to mention that our
11 implementation does not apply to 100-year storm. So
12 if there is a 100-year storm and flood all over, we
13 are not going to hold the Petitioner to that.

14 So we would like to, through our proposed
15 language, work with the Petitioner to come up to some
16 kind of solution that would work for DOT in order to
17 comply with our requirements, and also work for the
18 Petitioner.

19 Q Thank you.

20 And then Mr. Kelly also mentioned that
21 there is surrounding landowners or parcels of land
22 that do have standing water, or like Huakalei that
23 you mentioned.

24 What is DOT's program or procedure for
25 those other areas around the airport?

1 A We can only comment on developments that
2 are brought before us for comment, and that
3 particular development was not.

4 That pond that you saw in that photo
5 earlier was not brought to us for comment. So we can
6 only comment on what we're asked to comment on.

7 I know there's a lot of areas around there
8 that have -- they look like wildlife refuges, or if
9 there are areas of standing water, and we recognize
10 that -- but we don't see them as significant.

11 And this development has -- I mean it's
12 trying to gather a lot of water, and it's a
13 significant structure that is going to be built, so
14 we just want to make sure that it doesn't result in
15 something that could be a new wildlife attractant
16 that would make the situation worse in the area.

17 Q And the fact that the Petitioner mentioned
18 that they were denied by DLNR to have the outfall
19 into the ocean affect -- do you think it would affect
20 the 48 hour detention period for standing water on
21 the Petition Area?

22 A Yes, it could, because if they're not
23 allowed to outfall, they will have to somehow store
24 the water. There is a lot of ways that could be
25 done, but one would result in standing water for more

1 than 48 hours, so that's our concern.

2 Q Thank you. That is all I have. Thank you.

3 Mr. Chang is open for any questions.

4 CHAIRPERSON SCHEUER: Thank you.

5 Petitioner.

6 CROSS-EXAMINATION

7 BY MS. LIM:

8 Q Hi, Mr. Chang. Thanks for being here
9 today.

10 You've been with DOT for 24 years?

11 A Yes.

12 Q That's a long time.

13 A Yes.

14 Q This project, as I'm sure you've gathered
15 sitting here today, this project came before the
16 Commission a little over ten years ago.

17 At that time Airports had submitted a
18 letter to the Office of Planning, similar to what's
19 happening here, although that was actually the
20 decision on whether or not to reclassify the
21 property.

22 I'm going to read you a section from that
23 letter. This was in testimony of the Office of
24 Planning in support of the Petition that was filed
25 January 8th, 2007 in this docket. And the Airports

1 letter says:

2 Actual uses: Activity construction of
3 industrial facilities of the project that can impact
4 aircraft flight need to be identified and reviewed.
5 Examples are: Tall towers, smoke or heat emissions,
6 and wildlife attractants.

7 We recommend the proposed development of
8 the project go through a screening process
9 implemented by the Petitioner that can involve our
10 Airports Division or condition for an aviation
11 easement. And it goes on.

12 I just wanted to get to that relevant part,
13 which was, it appears that DOT acknowledged concerns
14 about wildlife attractants in the original proceeding
15 here before the Commission.

16 Is that correct? Is that your
17 recollection?

18 A I wasn't involved with that letter, but
19 what you're saying is correct.

20 Q Thank you.

21 So at that point in time, Office of
22 Planning sought an aviation easement presumably to
23 address the various concerns that the DOT Airports
24 had raised, but Office of Planning, although they
25 sought that in their testimony, they never raised it

1 again. They never objected when the Petitioner filed
2 conditions that didn't include the avigation
3 easement, or when Commissioner Teves, one of the
4 decision-makers here, filed a proposed Decision &
5 Order and Office of Planning didn't object to that.

6 I recognize that you weren't involved in
7 the drafting of that letter, but I'm wondering if you
8 can explain for us, if it is uncommon that Department
9 of Transportation Airports Division would perhaps
10 make that recommendation for any number of different
11 reasons to the Office of Planning, and that the
12 Office of Planning would pursue it, but then if not
13 successful, Department of Transportation would be
14 able to continue to operate its airports or whatever
15 other essential facilities that it operates?

16 A So if for some reason it's not pursued
17 further, that's what you're saying?

18 Q Yeah.

19 A And there is still a problem -- let's say
20 the development proceeded and became a problem,
21 there's a big huge pond there, we would then try to
22 work with the landowner and see if there can be
23 something done even if it didn't go through that
24 process. But it still be would a concern for us.

25 Q I understand. But, okay, even without a

1 condition, this -- even without an expressed
2 condition imposed on a project, Airports would know
3 how to get ahold of the particular landowner if there
4 was any developments of concern?

5 A Yeah. If there was a significant concern,
6 we would contact the landowner and try to work with
7 them and try to mitigate it.

8 Q That's good to hear.

9 Now, I want to talk about the development
10 of concerns, because we did some research, in light
11 of the fact that the Petition Area had standing water
12 on it for years, predating this Petition, the Oahu
13 Sugar Company had a drainage ditch -- irrigation
14 ditch, excuse me -- and that would have standing
15 water in it. Right now water just sheet flows across
16 the property in some places.

17 So there can be lots of water when it's
18 wet, granted it's not terribly wet terribly often.
19 So when we did our research to see if there was any
20 change in the number of bird strikes that were being
21 experienced at Kalaeloa Airport, because when OP
22 raised this issue, we wanted to look into it.

23 In our research -- it's Table 1 in our
24 response to OP's Motion. And Mr. Kelly addressed
25 some of the elements in that table earlier -- our

1 research shows that there's not been any change in
2 the number of wildlife strikes, notwithstanding the
3 fact that the ditch has been filled, drainage channel
4 being constructed, that whole standing water.

5 So do you have any different indication
6 that indicates that Kaleiloa Airport is experiencing
7 greater bird strikes now than it experienced ten
8 years ago, or even 15 years ago?

9 A I do not.

10 But we need to look to the future. So we
11 don't know if there will be more flights. I mean,
12 obviously there will be growth at Kaleiloa Airport.
13 There could be more flights.

14 What we don't want to do is, from the
15 existing condition of the whole area, create worse
16 conditions. That's the whole point.

17 So even if there is not additional bird
18 strikes, we don't want to create a situation where
19 there might be, that's the point.

20 Q I can appreciate that.

21 When you look at the number of bird strikes
22 at Kaleiloa Airport, and then you compare that to the
23 number of bird strikes at this airport, do you have
24 an appreciation of the orders of magnitude
25 difference?

1 A Yes. From what was spoken about earlier, I
2 do.

3 Q I don't think we talked about the strikes
4 at Honolulu Airport. Do you presume they're much
5 higher number at Honolulu Airport?

6 A Yeah. It's more than Kaleiloa from what
7 was testified earlier.

8 Q Like, for instance, 2015, the number of
9 bird strikes, according to the FAA bird strike
10 database citation that's in our memo, in 2015 the
11 number of bird strikes around Daniel K. Inouye
12 Airport were 91 compared to Kaleiloa where it was
13 four. That's a considerable number of bird strikes.

14 And then in 2014 the number at this airport
15 was 82, compared to five.

16 So I'm just trying to kind of put on some
17 parameters around the differences. So with that,
18 what measures has DOT airports imposed on private
19 landowners surrounding this airport that is somehow,
20 you know, preventing bird strikes? Are there
21 memorandums --

22 I'm sorry, please answer the question.

23 A If there is potential development, we will
24 put a condition in the comment that we would like a
25 condition in the approval process, the LUC approval

1 process. Does that answer your question?

2 Q Not exactly, but I didn't ask it clearly
3 enough.

4 Are there memorandum of agreement with
5 landowners surrounding this airport, private
6 landowners surrounding this airport of the nature of
7 the memorandum of agreement that the Department of
8 Transportation is requesting my client to execute?

9 A No, but if you -- I think a strict
10 condition of LUC, of Planning Commission approval, is
11 harsher I would say. We are -- in this case we're
12 trying to limit our memorandum of agreement versus
13 avigation easement.

14 We do have avigation easements on a lot of
15 developments around the airport. That is a less
16 strict measure of trying to work with the Petitioner.

17 Q Do you use avigation easements to address
18 wildlife strikes?

19 A We do. We do.

20 Q The avigation easements I've seen has
21 always been for noise.

22 A Right. Usually they're for noise. But we
23 would use -- if the question is -- we would use one
24 for.

25 Q How many of those have been executed?

1 A Probably none to date around this airport.

2 Q What about around Kaleiloa Airport?

3 A No.

4 Q I'm going to ask you a couple more
5 questions. These are the same questions I asked
6 Rodney Funakoshi, but he wasn't familiar with it.

7 So I'm passing you Petitioner's W, X and Y.
8 I take that back, just X and Y. And those are the
9 pictures that show the airport and surrounding area.
10 You saw them on the PowerPoint before.

11 So this is at Kaleiloa Airport. You've
12 already acknowledged that there aren't any avigation
13 easements or memorandum of agreement with any private
14 landowner around this airport dealing with bird
15 strikes.

16 And my question now is, looking around the
17 Kaleiloa Airport, are there any private agreements
18 with landowners to deal with wildlife strikes?

19 A No.

20 Q Does Department of Transportation
21 anticipate requiring the DLNR, Department of Land and
22 Natural Resources or Department of Ag, when the
23 Department of Ag takes over the 100-acre DLNR feed
24 lot, which you can see there is kind of closer to the
25 water labeled, I think, "DLNR feed lot"?

1 That's going to be a cattle feed lot, which
2 according to the FAA circular would be a major
3 attractant to wildlife because of the food source.

4 Does DOT Airports have an arrangement right
5 now with the Department of Ag to impose an aviation
6 easement to deal with wildlife?

7 A I'm not aware of one. But it would be a
8 good idea to do that. I'm not aware where we are in
9 the process with that.

10 Q Just going to ask maybe one or two more
11 questions. I know you've been up there awhile and
12 other people want to talk to you too.

13 The FAA advisory circular that we're
14 talking about, it recommends a couple of measures to
15 be used in areas where there are standing water. The
16 FAA advisory recognizes that the FAA doesn't have the
17 authority to impose this on lands outside of
18 airports, but you explained this is advisory.

19 As somebody who works for the airport, you
20 are under an obligation to at least raise the issue,
21 and I understand that.

22 On page six of the advisory circular, and
23 I'm looking at the advisory circular dated August 28,
24 2007. The last paragraph says:

25 When it's not possible to place these

1 ponds -- you know, stormwater detentions -- away from
2 the airport, airport operators -- obviously we are
3 talking about airport property, not private
4 property -- should use physical barriers, such as
5 bird balls, wires, grids, pillows or netting to
6 prevent access of hazardous wildlife to open water.

7 My question with that is: Are there
8 examples around Kaleiloa Airport where there are, you
9 know, areas of standing water where there are bird
10 balls, grids or pillows or netting?

11 A Not in that area.

12 Q Let's go bigger. Even around this airport
13 on private land?

14 A Not on private land.

15 Q But you do -- thank you.

16 But you do acknowledge that there are other
17 best management practices that could be employed
18 other than bird balls or wires or grids?

19 A Yes.

20 Q Do you know what -- I'll stop there. Thank
21 you very much for your time, Mr. Chang.

22 CHAIRPERSON SCHEUER: City and County, do
23 you have any questions for the witness?

24 MS. WONG: Thank you, no questions, Mr.
25 Chair.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Commissioner Okuda.

3 COMMISSIONER OKUDA: Thank you, Mr. Chair.

4 Thank you, Mr. Chang, for giving your
5 testimony. As I mentioned earlier to Mr. Funakoshi,
6 we really appreciate the input of government
7 officials who hold the public trust.

8 The Petitioner here is asking for an
9 extension of time to do certain things for 17 years,
10 and that's what we're looking at.

11 Do you see, or can you point to any
12 evidence in the record -- because as a semi-judicial
13 kind of board, we have to just rely on the record and
14 evidence.

15 Can you point to anything in the record
16 which indicates that by extending the deadline for
17 completion of certain things to 17 years, just the
18 extension of time to 17 years, is going to increase
19 the risk of bird strikes?

20 THE WITNESS: I would say not.

21 COMMISSIONER OKUDA: Thank you, I have no
22 further questions.

23 CHAIRPERSON SCHEUER: Commissioners?

24 Commissioner Chang.

25 COMMISSIONER CHANG: Good afternoon, Mr.

1 Chang. Thank you so much for your testimony. Just a
2 few questions.

3 If OP's condition, request to place this
4 additional condition on this Petition is not granted,
5 would DOT jeopardize federal funding?

6 THE WITNESS: If we -- let's say it wasn't
7 granted and we go with the Petitioner's proposal and
8 that's agreed upon, and we go with that, if in the
9 future we're not able to get mitigation that's
10 satisfactory to FAA technical advice -- and like I
11 wouldn't make the decision myself that that
12 mitigation is good or not good, we would rely on
13 experts.

14 Of course, we would get FAA's comment. And
15 we are agreeable to negotiation, we're not
16 unreasonable. But if they in their technical
17 viewpoint thought the mitigation was not adequate,
18 and through the measure that is being proposed by the
19 Petitioner we weren't able to get them to do
20 something that maybe was more -- provided better
21 mitigation, and then the FAA saw it as a large risk,
22 they have the right to basically close the airport.

23 I mean, that's the worst-case scenario.
24 Likelihood of that happening is small, but if you're
25 asking what could happen, I mean that's the very

1 worst-case scenario.

2 COMMISSIONER CHANG: That's helpful to
3 know.

4 But I also heard your testimony, you're
5 only requiring these conditions when a permit or
6 matter comes before DOT for comment; is that correct?

7 THE WITNESS: Yes. Because if we don't
8 know about the development, we can't comment. We
9 aren't afforded the opportunity. If it's not sent to
10 us, we can't comment on it.

11 COMMISSIONER CHANG: So you don't take any
12 proactive measures to identify where there may be
13 standing water within this five-mile radius that
14 could be contrary to the FAA circular?

15 THE WITNESS: What we do -- we do actually.
16 So because this is a bigger issue now, and the
17 "Miracle on the Hudson" and bird strikes, there is
18 more diligence on the FAA's part. And they are
19 putting more pressure on us to be proactive.

20 Some what we've done is we've done a
21 technical advisory program. Basically it's outreach
22 to all the other state agencies. We had a so-called
23 conference where we brought them all in. We
24 explained to them about the five-mile radius,
25 standing water, landfills, any type of potential bird

1 attractants. We tried to educate them. This is all
2 state executive branch agencies. If they heard of
3 something or saw something or a development request
4 has come into them, to please notify us, and to
5 please note that, put it on their checklist or
6 whatever, so they can advise us, and work with us.

7 You know, better to work in the beginning
8 before it's all built, advise us and we can work with
9 whoever the developer and work with our agency try to
10 be proactive and mitigate before it's built. Do
11 something to prevent creating an attractant.

12 COMMISSIONER CHANG: That's helpful to
13 know.

14 So even what you just said, it's better to
15 work at the beginning. But back at 2007, this
16 advisory was in existence. But at that point in
17 time, what I heard your testimony was even DOT did
18 not think it was a serious matter until this Hudson
19 incident, that FAA became much more stringent about
20 compliance with the circular?

21 THE WITNESS: Yes. And it relates to just
22 air traffic in general across the nation. There's
23 way more flights. Way more people flying. So just
24 the increase in volume. And then, you know, there is
25 more chance because there are more flights. That's

1 basically it, more chance of contact with birds.

2 The other thing is birds are being --
3 because in general there's increased development
4 everywhere, those developed areas are less -- you
5 know, birds are being basically pressured to go into
6 smaller areas.

7 So if you create an area in the development
8 that's an attractant and everywhere else is concrete,
9 they will go to that area.

10 So part of the FAA's push is just that
11 because of the increased traffic and less -- you
12 don't want to aggregate birds in the area.

13 COMMISSIONER CHANG: I don't want to
14 belabor this point much longer, but I guess my
15 concern is amending conditions after they have
16 already been approved, when they could have been
17 approved at that time.

18 But what I'm also hearing you say is that
19 you and the landowner, the Petitioner, you're willing
20 to work something out together, and you have started
21 to engage in that discussion. Is that true?

22 THE WITNESS: Yes.

23 COMMISSIONER CHANG: Thank you very much.

24 CHAIRPERSON SCHEUER: Commissioners,
25 anything further for this witness?

1 Any redirect, Ms. Apuna?

2 MS. APUNA: Just one question.

3 REDIRECT EXAMINATION

4 BY MS. APUNA:

5 Q So avigation easements, just to clarify,
6 they can include provisions for wildlife attractants?

7 A Yes. In the past they haven't, but as we
8 discussed, it's now more of a pressing issue. We are
9 actually pursuing one on Kaua'i, a development
10 adjacent to the airport. So we're going to try and
11 implement that.

12 Q Wasn't there one in Hono'uli'uli Wastewater
13 Treatment Plant that came before this Commission last
14 year, there's an avigation easement condition?

15 A Yes.

16 Q And just what is the potential effect of a
17 bird strike?

18 A This wasn't introduced, but I have
19 pictures. I mean these are -- I don't know if I'm
20 supposed to show this, but this is the potential.

21 Q So that's a visual. So airplanes crash
22 basically?

23 A Yes. The big risk is if it hits the
24 windshield, that's a problem. But ingesting in the
25 engine, the last one was the Hawaiian Airline's

1 flight coming from Sacramento ingested one in their
2 engine, and had to turn back.

3 There was another one before that coming
4 from Guam -- going to Guam, was ingested and had to
5 turn around.

6 Q So DOT is not going to wait for a certain
7 amount of bird strikes before it acts?

8 A Yeah, hopefully it never happens, but it
9 just takes one. So it's kind of our mission to do
10 what we can to prevent it.

11 MS. APUNA: Thank you. No further
12 questions.

13 CHAIRPERSON SCHEUER: Thank you.

14 Commissioner Okuda.

15 COMMISSIONER OKUDA: Thank you, Chair. Can
16 I just ask a question of the counsel for Office of
17 Planning?

18 CHAIRPERSON SCHEUER: Please proceed.

19 COMMISSIONER OKUDA: Talking about
20 procedure, if what OP is looking for is an amendment
21 of a condition, isn't the proper procedure for OP to
22 file a motion or a petition or something to amend the
23 condition, and state what the specific changes are if
24 that's part of the good cause analysis, instead of
25 trying to do it through an add-on where the current

1 Petition is simply to extend the time?

2 I mean, wouldn't a more appropriate
3 procedure would be OP or the State of Hawaii file a
4 Petition or Motion to Amend the existing condition so
5 that all these issues about whether or not we're
6 bound by the prior condition, and things like that,
7 are more fully and completely adjudicated?

8 MS. APUNA: I think that the motion
9 provides ample opportunity for us to present the
10 issue to the Commission and to allow the other
11 parties to vet it.

12 I think under HAR 15-15-78 I think that the
13 Commission alone has the authority to make
14 modifications to the condition if the Petitioner has
15 not substantially completed within ten years of the
16 date of Commission's approval.

17 So I think that the authority of the
18 Commission is already there, it wouldn't need to have
19 OP or another party to come in and make a change to
20 the condition.

21 CHAIRPERSON SCHEUER: Commissioner
22 Ohigashi.

23 COMMISSIONER OHIGASHI: Just a followup on
24 Commissioner Okuda.

25 Assuming that we do not address this issue

1 that was brought up by OP, isn't it correct that OP
2 is free to file a motion?

3 MS. APUNA: Yes, I think so, but we're
4 already here.

5 COMMISSIONER OHIGASHI: Maybe you might
6 want to get some pictures in showing devastating
7 crashes or additional record to make your point. But
8 what I'm just trying to follow through is on the
9 procedural questions that he asked.

10 So if you want to respond to me that way,
11 then that's fine, I can respond to you the same way
12 by saying maybe you want to have your record better.

13 CHAIRPERSON SCHEUER: Anything further from
14 the Office of Planning?

15 MS. APUNA: Nothing further. Just reserve
16 time for closing.

17 CHAIRPERSON SCHEUER: Okay.

18 MS. APUNA: Will we have time to present
19 closing argument?

20 CHAIRPERSON SCHEUER: Do it now.

21 MS. APUNA: Do it now.

22 So in closing, for Condition No. 17, the
23 Harbor Access Road, OP asks that the word "State"
24 preceding Harbor Access Road be removed as a more
25 appropriate reference to the road.

1 For Condition No. 17, with regard to the
2 time extension, OP recommends ten years rather than
3 17 years. This is based on a few things.

4 First, in conjunction with a shorter
5 extension of ten years, OP has recommended that
6 Condition No. 17 be amended to require Petitioner to
7 complete the backbone infrastructure rather than the
8 buildout of the project within the ten-year
9 extension. Completion of backbone infrastructure is
10 less than full buildout of the project, and should
11 not require the full 17 years.

12 Petitioner's argument for 17 years, when a
13 market study showing the absorption rate of the
14 improved lots. The district boundary amendment
15 process generally sets as milestones the physical
16 construction of the project, not the sale of the lots
17 or the project units. The current or original
18 language of Condition No. 17 states that Petitioner
19 shall complete buildout of the project, including
20 completion of the backbone infrastructure, not the
21 sale or absorption of the improved lots.

22 Also, under incremental districting, ten
23 years is the standard timeframe contemplated by the
24 Commission under HAR 15-15-78, which states: If it
25 appears to the commission that full development of

1 the subject property cannot substantially be
2 completed within ten years after the date of the
3 commission's approval -- then the commission may,
4 grant the petitioner's request to amend the boundary
5 for the entire subject property; or amend the land
6 use boundary for only that portion of the subject
7 property which the petitioner plans to develop first
8 and upon which it appears that substantial
9 development can be completed within ten years.

10 Finally, with a ten-year extension, there
11 is also nothing preventing Petitioner from coming
12 back in ten years, should they not have completed the
13 backbone infrastructure, to ask for more time.

14 With regards to Condition No. 17,
15 coordination with DOT, OP recommends that Condition
16 17 be amended to include the statement: Petitioner
17 shall coordinate with DOT on the location, alignment
18 and features of all such improvements. This serves
19 as a reminder that Petitioner coordinate with DOT to
20 ensure that all improvements are properly made.

21 With regard to the change of name and
22 amendment of caption, OP has no objection to the
23 change to that amendment.

24 For Condition No. 8, OP recommends
25 Condition No. 8 be amended to require a memorandum of

1 agreement between DOT and Petitioner regarding
2 hazardous wildlife attractants. OP had originally
3 asked for an avigation easement, but based on
4 Petitioner's objections and discussions with DOT, OP
5 believes a MOA would better tailor the concerns and
6 actions toward hazardous wildlife attractants. The
7 purpose of this proposed OP condition is to minimize
8 the potential for a very dangerous hazardous health
9 and safety concern.

10 Petitioner contends that OP and this
11 Commission are estopped from imposing new conditions
12 on Petitioner and the project at this time. OP
13 disagrees. Under HAR 15-15-79, the Commission may
14 act to amend, nullify, change, or reverse its
15 decision and order if the Petitioner fails to perform
16 as represented to the Commission within the specified
17 period.

18 Additionally, there has been substantial
19 change in circumstances since the D&O was adopted
20 back in November 2007, which was not accounted for or
21 litigated during the original boundary amendment. In
22 particular, the drainage for the project can no
23 longer make outfall to the ocean. This means that
24 the Petition Area will retain more standing water
25 than originally contemplated by the Commission that

1 will attract hazardous wildlife that can interfere
2 with airport operations.

3 Also, since the D&O in 2007, DOT has
4 enforced more vigorously the advisory circular of
5 that FAA.

6 For these reasons we ask you, the
7 Commission, to adopt OP's proposed amended language
8 to Condition 8 to require an MOA between DOT and
9 Petitioner.

10 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.
11 The Petitioner reserved time to respond to comments
12 from the County and OP. Proceed.

13 MS. LIM: And I'll try to keep this brief,
14 although I promised that, and I keep on breaking my
15 promise.

16 The Petitioner filed this motion in August
17 to request a time extinction. Mr. Kelly and I
18 started talking about this motion way before August,
19 because he works for a company that has long deep
20 roots in the State of Hawaii, and takes his
21 commitments and representations very seriously.

22 And he knew the time condition was coming
23 up. And how do we begin to put our hands around what
24 would be an appropriate extension to request from
25 this Commission.

1 Obviously, it's a massive, massive project.
2 It's well over \$200 million just to build the
3 infrastructure alone.

4 To get our arms around what would be the
5 timeframe needed, Mr. Kelly retained Colliers
6 International, and you heard from Mike Hamasu. That
7 happened with really an open mind and just looking,
8 searching for information because the ten-year
9 timeframe that was originally proposed was pre great
10 recession. The entire world changed, and we all know
11 it.

12 And trying to fit into these artificial
13 ten-year blocks isn't realistic, particularly when
14 we're talking about a piece of property that you saw
15 is completely surrounded by urban land.

16 We have to step back and say, what is this
17 Commission being asked to do? The property has
18 already been reclassified. It's clearly Urban
19 property. It's zoned for industrial use. It's
20 already zoned for industrial use. What else could
21 happen there?

22 I don't think that we could reasonably
23 expect that this would be a situation where the
24 Commission would engage in an involuntary reversion.
25 Work has started on the property, and it's obviously

1 urban.

2 So one option would be, well, let's not
3 even file a motion to amend because the Aina Le'a
4 decision came out, substantial commencement has
5 clearly begun. Why go through the effort and the
6 expense and the worry that filing a motion could
7 bring? And it's because, as I said, Kapolei
8 Properties takes its commitments very, very
9 seriously. It is only that kind of company that can
10 make the hundreds of millions of dollars of
11 investment in infrastructure in this whole Kapolei
12 region.

13 So Mr. Kelly said, yes, we have to file a
14 motion, but we have to figure out what's the right
15 timeframe to request from the Commission. We can't
16 just pull out ten years. That would have been the
17 easiest thing to do, because we're all familiar with
18 the ten-year rule under the Commission administrative
19 rules, ten years for reclassification.

20 But ten years just didn't provide enough
21 time, at least that is what Colliers determined. So
22 we had a choice. We could stick our head in the sand
23 and say let's just say ten years anyway, or let's
24 really be transparent and clear with the Commission,
25 explain, expecting that the Commission understands

1 that this is a business, and it's a business that is
2 reputable and has demonstrated compliance on numerous
3 other occasions that this is a company that will
4 continue to invest in the infrastructure, but that it
5 will take some 17 years in order to justify
6 completing the \$200-some-odd million of
7 infrastructure that is required for this project.

8 So that's what we did. We filed a motion
9 requesting 17 years. And we really believe we have
10 provided both evidence to support that request, that
11 good cause has been shown, not only through that
12 evidence, but also through the sort of historical
13 economic effects of the great recession. And there's
14 nothing contrary to that evidence.

15 All that we heard today from other parties
16 was a blind adherence to a ten-year timeframe. If
17 you look through the record of the filings, even the
18 other State agencies like Department of
19 Transportation Highways Division did not express
20 concern about this time extension.

21 Why? Because they know that they have an
22 agreement with this landowner, the Master Kapolei
23 Highways Agreement, that requires development of
24 roadways outside of requirements under the D&O.

25 Department of Transportation Harbors

1 Division, they too didn't express concerns. They
2 wanted to know that the drainage improvements that
3 they have been counting on have been completed. And,
4 in fact, drainage improvements were completed this
5 month to support their interim drainage improvement
6 system for highways.

7 So we believe that the State's concerns are
8 a straw man because the actual state agencies that
9 are most affected by this have not objected to the
10 requested timeframe.

11 We're very grateful that the City
12 acknowledges that the requested timeframe is
13 acceptable. Progress has been shown. Evidence has
14 been presented that there are tremendous costs
15 involved, and there is a very real and measured plan
16 to complete the development according to the schedule
17 that we have provided.

18 If it can happen sooner, great. You heard
19 Mr. Kelly, they're ready to go. But we did not in
20 good faith come before the Commission and present a
21 ten-year timeframe because it's just not realistic.

22 The other issue I'll touch on in this
23 closing is the idea of there being nexus in
24 proportionality between conditions that are imposed,
25 and the request that is before this quasi-judicial

1 body. That's a basic constitutional law concept. If
2 we are making a request for a time extension, and
3 there's going to be conditions imposed on that time
4 extension, they need to be conditions that both have
5 a nexus to the time extension, and that are
6 reasonably proportional to that time extension.

7 But the only conditions that we're really
8 hearing are conditions requiring a MOA with
9 Department of Transportation Airports Division.

10 For the reasons set forth extensively in
11 our Memorandum in Response to that Revised Statement
12 Position of OP, that train has left the station.
13 That was fully litigated in 2007. And there has been
14 no probative reliable evidence presented by Office of
15 Planning to suggest that there's really good cause
16 for a new condition to be imposed.

17 And to Commissioner Okuda's point, wouldn't
18 that be more appropriate if OP really wished to
19 pursue that for them to file a motion? In fact, OP
20 would have to file a motion to say, for an order to
21 show cause, that's what OP's power is, a motion for
22 Order to Show Cause under 15-15-93. Obviously we
23 have substantially commenced. There would be no
24 grounds for an Order to Show Cause.

25 So at the end of the day, the legal theory

1 of equitable estoppel, the landowner has spent
2 millions and millions in reliance on the conditions
3 as they are now.

4 The legal theory of res judicata, which is
5 when a matter has been fully litigated between the
6 same parties, they can't revisit those matters later
7 on in subsequent litigation, and that applies to
8 administrative proceedings as well as judicial
9 proceedings.

10 The theory of collateral estoppel or issue
11 preclusion. This is actually an issue that was
12 raised. You heard Mr. Chang acknowledge that it was
13 an issue that was raised in the 2007 proceeding. We
14 are going over the same territory that we went over
15 ten years ago, and if the Commission didn't impose a
16 condition then, we would hope and expect that the
17 Commission would not impose a condition now.

18 Notwithstanding our numerous objections,
19 also based on the practicalities of it, there are
20 plenty of other areas that are far more attractive
21 for wildlife than this industrial property.

22 And you heard the Petitioner explain that
23 there are measures that he could implement in the
24 CC&Rs, so notwithstanding our objection to any new
25 conditions being imposed on the property, Petitioner

1 has offered something that we would accept
2 voluntarily to demonstrate good faith. To be
3 perfectly frank, those are measures in the CC&Rs that
4 would be measures that I believe Kapolei would impose
5 in any event, because they're nuisance mitigation.
6 They're appropriate conditions to make the property
7 function well for the people who are going to be
8 owning or renting lots on that property.

9 So in summary, we believe that we provided
10 more than adequate good cause for the Commission to
11 authorize our requesting a 17-year extension. To be
12 very clear, this is an industrial lot project. So
13 there was a lot of discussion earlier about whether
14 we're talking about backbone infrastructure or
15 completion of the project. To be clear, that's
16 almost the same thing in this project, almost the
17 same thing, because the backbone infrastructure,
18 Kapolei Properties may never develop vertically
19 because these are for industrial lot buyers.

20 Maybe Kapolei will, but there's never been
21 a commitment that they will. Very likely other
22 industrial buyers or lessees who acquire the
23 property, they build the warehouse that they're
24 looking for.

25 The phasing plan, Exhibit G, I believe,

1 identifies the infrastructure phasing plan that is
2 also the subdivision phasing plan. So for all
3 intents and purposes, as the backbone infrastructure
4 is done per each subdivision phase, Kapolei
5 Properties will be done on development within that
6 phase.

7 We wanted to clarify that point. But even
8 with that understanding, the 17 timeframe that Mr.
9 Hamasu presented was based upon that understanding.
10 It wasn't contemplated there would be additional
11 vertical construction.

12 So we really appreciate the attention and
13 the long morning, it's early afternoon, that the
14 Commission has put up with here, and we request that
15 you please grant the time extension that we are
16 seeking, and that the Commission not add these
17 additional obligations that the Office of Planning is
18 requesting. Thank you.

19 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.

20 Commissioners, what is your pleasure?

21 Commissioner Aczon.

22 COMMISSIONER ACZON: If it's appropriate, I
23 want to make a motion.

24 CHAIRPERSON SCHEUER: You may.

25 COMMISSIONER ACZON: Mr. Chair, I want to

1 make a motion to amend Condition 17 to change the
2 name of Hanua Street to the Harbor Access Road; and
3 that the deadline to complete buildout of the
4 project, including the backbone infrastructure, be
5 amended to December 31st, 2035.

6 And Kapolei Properties LLC be acknowledged
7 as successor Petitioner in Docket A06-763, and the
8 caption in the docket be amended accordingly.

9 And also amend Condition No. 8 to require
10 Petitioner to continue to work with DOT as
11 represented by the Petitioner regarding discouraging
12 avian wildlife from interfering with flight
13 operations, and incorporate such into the CC&Rs.

14 COMMISSIONER MAHI: I second.

15 CHAIRPERSON SCHEUER: Are you done,
16 Commissioner Aczon?

17 COMMISSIONER ACZON: Yes.

18 CHAIRPERSON SCHEUER: A motion has been
19 made by Commissioner Aczon and seconded by
20 Commissioner Mahi.

21 Is there discussion on the motion?

22 Commissioner Okuda.

23 COMMISSIONER OKUDA: Mr. Chair, even though
24 I personally appreciate the offer by the Petitioner
25 to work on those matters, I would move to amend the

1 motion to delete any modification of the condition
2 regarding avian bird activity, or what have you.

3 I'm okay with the other provisions of the
4 motion. That would be my motion to amend. If
5 there's a second to that, and there's further
6 discussion, I'm willing at that point in time to give
7 my reasons for that.

8 CHAIRPERSON SCHEUER: So I believe, and I
9 will turn to Executive Officer to correct me if I'm
10 wrong -- if somebody also wants to say that -- to
11 find out if the movant and second are amenable to
12 that?

13 COMMISSIONER ACZON: Can you repeat the
14 amendment?

15 COMMISSIONER OKUDA: Yes. As we have
16 described it in other meetings, my friendly
17 amendment, is to delete the last part of the motion
18 which would have required a cooperation or action by
19 the Petitioner with the Department of Transportation
20 with respect to the issue of, for lack of a better
21 term, bird mitigation.

22 CHAIRPERSON SCHEUER: So somebody first has
23 to second what Gary is proposing, and then the movant
24 and -- the original movant and second, namely
25 Commissioner Aczon and Commissioner Mahi, has to

1 agree.

2 Does somebody want to second that?

3 COMMISSIONER CHANG: Mr. Chair, I'll second
4 the motion.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Chang.

7 CHAIRPERSON SCHEUER: Mr. Aczon, are you
8 amenable to the amendment?

9 COMMISSIONER OKUDA: Mr. Chair, can I give
10 my reasons first?

11 CHAIRPERSON SCHEUER: Please proceed, Mr.
12 Okuda.

13 COMMISSIONER OKUDA: The reason for that,
14 and I do appreciate the concerns being raised by
15 Department of Transportation Airports Division and
16 Office of Planning, and these are important concerns,
17 but what I'm weighing this against is the fact that
18 there has to be an ability to rely on orders that
19 have been entered by the Land Use Commission, and
20 orders which have not been modified.

21 I think that's an equal concern and
22 objective we have to follow, because if we don't have
23 a process where there's ability to rely on orders and
24 decisions that have been entered by prior Commission,
25 then frankly, aside from the fact that I think that

1 violates a number of legal principles, the technical
2 terms res judicata, law of the case, estoppel, or
3 what have you.

4 But I think it also leads to an inability
5 of parties to plan their future, including government
6 planning, based on what we have here. So I'm not
7 saying there isn't any opportunity to try to correct
8 these things, but I think there is a process if any
9 party wants to modify an existing condition.

10 But if a condition, and a decision has been
11 entered by the Land Use Commission, and there has
12 been no appeal, and there has been no modification,
13 then I believe we are bound to follow it and adhere
14 to those conditions even if ten years before we were
15 on the Commission we might have decided differently.

16 COMMISSIONER OHIGASHI: Mr. Chair.

17 CHAIRPERSON SCHEUER: Commissioner
18 Ohigashi. What are you speaking to?

19 COMMISSIONER OHIGASHI: I'm speaking
20 against the amendment, and my reasoning is that
21 apparently the Petitioner has placed on the record
22 that this is the condition the Petitioner shall
23 coordinate with DOT Airports Division on practical
24 property management measures within the Petition Area
25 to discourage avian wildlife from interfering with

1 flight safety operations at Kaleiloa, Oahu.

2 And I don't think DKI applies here. It's
3 outside of the five-mile radius. But as a result of
4 the development of the project, Petitioner shall
5 incorporate such property management efforts into the
6 project CC&Rs that shall run with the land.

7 And I think that that is an offer by the
8 Petitioner to memorialize their understanding that
9 they have with the Department of Transportation in
10 order to proceed in this matter to assist the State
11 in making sure that they follow their advisory.

12 So as well as I believe in the concepts
13 that Mr. Okuda said, I believe the Petitioner has
14 offered this as a mechanism to stipulate that they
15 would amend that portion of the amendment. And
16 therefore, I'll be voting against the motion to
17 amend.

18 CHAIRPERSON SCHEUER: Commissioner
19 Ohigashi, in response to that, I believe where we are
20 procedurally, and I'm turning to my attorney general
21 for further opining on this.

22 Because a motion was made and then
23 seconded, and now there has been a friendly amendment
24 proposed and seconded, the correct procedure is to
25 see whether or not Mr. Aczon and Mr. Mahi agree to

1 the friendly amendment.

2 If they disagree, then we take a vote on
3 the motion that was made. If they agree, then we
4 take a vote on the amendment motion.

5 MR. NISHIYAMA: That is correct.

6 CHAIRPERSON SCHEUER: So we won't be taking
7 a vote on the proposed amendment, but I will, in the
8 spirit of free discussion among this body, allow
9 anybody else who wants to speak towards the friendly
10 amendment.

11 COMMISSIONER ACZON: Mr. Chair.

12 CHAIRPERSON SCHEUER: I want to first check
13 if Commissioner Chang wishes to speak towards the
14 friendly amendment.

15 COMMISSIONER CHANG: Yes, I do.

16 I, like Commissioner Okuda, believe in the
17 integrity of the LUC's decision. And notwithstanding
18 what appears to be -- and I don't know how voluntary
19 this potential stipulation was about the FAA
20 including that as an attempt to accommodate OP.

21 But I too, like Commissioner Okuda, feel
22 very strongly that there is a process, and that this
23 is not an appropriate process to make amendments to
24 the decisions by the LUC.

25 And so for those reasons, notwithstanding

1 the merits of whether we should be protecting birds,
2 but it is more of the process issue. So I support
3 Commissioner Okuda's amendment for those reasons.

4 CHAIRPERSON SCHEUER: Any other
5 Commissioners who want to speak about the proposed
6 amendment?

7 Mr. Aczon, do you accept the proposed
8 amendment?

9 COMMISSIONER ACZON: Mr. Chairman, I would
10 like to put it to a vote.

11 CHAIRPERSON SCHEUER: I don't believe
12 that's possible. I think it's up to you whether or
13 not you wish to accept or --

14 COMMISSIONER ACZON: I don't accept.

15 CHAIRPERSON SCHEUER: So the friendly
16 amendment has not been accepted by the movant.

17 We will then have to proceed to discussion
18 of the motion as originally made. Is that correct,
19 Mr. Attorney General?

20 MR. NISHIYAMA: Yes.

21 CHAIRPERSON SCHEUER: Is there further
22 discussion on the motion that was made by
23 Commissioner Aczon and seconded by Commissioner Mahi?

24 Commissioner Cabral.

25 VICE CHAIR CABRAL: I'm going to speak in

1 favor of the motion as it stands, because I'm looking
2 at the big picture, and I've been -- I do some of
3 that. So I have a feeling that when you look at the
4 whole big picture, and potentially you might have 150
5 to 300 lots that you might be trying to sell that it
6 might take 17 years.

7 I also have experience as a managing agent
8 for subdivisions and building out areas or roadways
9 or even sewer lines or water pipes, or anything, fire
10 hydrant, roadways, curbs, anything that is not going
11 to be used, kept track of.

12 You don't want to build out infrastructure
13 before you actually need it, and you're actually
14 going to have people or businesses populating the
15 area, because those buildout areas become attractive
16 nuances, not for birds, but for undesirable people
17 who use them for undesirable activities, and then you
18 have to increase your expenses at the subdivision to
19 patrol them.

20 And in addition, you're going to have
21 extensive amounts of deterioration, wear and tear to
22 those infrastructure pieces.

23 So I think that, as a developer, you're
24 going to make the wisest choice of how you spend your
25 money, when you spend your money to make sure you

1 build it out as fast as possible and you can get it
2 sold.

3 And I do believe that the CC&Rs, to have
4 them include any level of protection for any and
5 everything in the community that might be desirable,
6 and clearly protection of the airport or airplanes,
7 and that is certainly an item that could easily
8 become part of a CC&R document and enforcement,
9 because I'm sure that this developer and this
10 subdivision will have a fairly extensive design
11 review contingencies and requirements that they can
12 make all of the water features, or anything else, a
13 part of that design review.

14 So I'm going to speak in favor of it,
15 because as much as we may all be worried that
16 developers are very self-serving, they're going to do
17 all these things right because they are their own
18 competition and they want to make sure they do it
19 right, get it sold, and get out of there fast as
20 possible. So I'm in favor. Thank you.

21 CHAIRPERSON SCHEUER: Thank you,
22 Commissioner Cabral.

23 Commissioner Aczon.

24 COMMISSIONER ACZON: As we heard earlier --
25 well, we heard earlier that the Petitioner made a

1 substantial investment in this project, and I know
2 that they're not going to go away because of that.
3 And based on Mr. Kelly's testimony and also as
4 developer, even though we extend the order to
5 17 years, it behooves a developer to finish the
6 project earlier to get their return of investment
7 earlier.

8 So I think it benefits to finish the
9 project less than 17 years rather than more than
10 17 years because of, you know, business-wise it's
11 proper.

12 For the Condition No. 8, I believe the
13 Petitioner had opportunity to respond to what OP's
14 recommendation, and they came out with an appropriate
15 compromise, and that's the reason why I put it in,
16 because there was -- Petitioner was in agreement,
17 that was their proposal, and I cannot see why they
18 would propose that.

19 CHAIRPERSON SCHEUER: Further comments,
20 Commissioners? Commissioner Okuda.

21 COMMISSIONER OKUDA: Notwithstanding my
22 friendly amendment, I'm inclined to vote in favor of
23 the motion for the reasons stated and good cause on
24 the record, but specifically I believe Exhibit J, the
25 expert report was unrebutted by any real admissible

1 or considered evidence in the record, and so for
2 those reasons, I'll vote in favor.

3 Let me just say this. I don't believe,
4 however, that the sole existence of the great
5 recession itself alone creates good cause to modify
6 conditions.

7 I would find that the facts of this case,
8 plus the existence of the great recession taken
9 together provides good cause.

10 CHAIRPERSON SCHEUER: Commissioner Chang.

11 COMMISSIONER CHANG: I am extremely
12 troubled by this, by the motion, because I have -- I
13 believe the evidence fully supports the 17 years. I
14 think even Mr. Funakoshi's own testimony, if we kept
15 the condition as it is, completion and infrastructure
16 buildout, but I believe even he would agree 17 years
17 is reasonable.

18 However, I have a real concern with
19 modifying the amendment. One, it's the second bite
20 of the apple, when that was fully discussed at the
21 original hearing. It permits -- talk about
22 uncertainty.

23 It creates greater uncertainty in our
24 conditions that -- and this wasn't as if there is a
25 new law that applied, it's the same circular. And it

1 was fully discussed, and it was not included as a
2 condition, that it does concern me that we are
3 modifying amendments because it's sort of like, oh,
4 we didn't get it the first time, so we want to get --
5 so I am really troubled by this, and I am probably
6 going to vote against it.

7 CHAIRPERSON SCHEUER: Commissioner Okuda.

8 COMMISSIONER OKUDA: Yeah, if I can just
9 comment on that.

10 Like Commissioner Chang, you know, I am
11 personally troubled with going back and modifying
12 conditions where I don't think the record supports
13 the modification, and that deals with this bird or
14 avian issue.

15 However, taking the record as a whole, I
16 would just ask my colleague to just reconsider that,
17 because I believe even though that is a very
18 troubling issue, I don't think that in itself should
19 holdup granting the motion to give the developer or
20 the owner the full 17 years.

21 And so life's not perfect, I guess. And so
22 weighing the different things, including the legal
23 issues here, I would urge my dear friend, Ms. Chang,
24 to reconsider.

25 CHAIRPERSON SCHEUER: Are there other

1 Commissioners who wish to comment on this? I will
2 reserve the right to comment.

3 Commissioner Mahi.

4 COMMISSIONER MAHI: I was going to wait for
5 Edmund to decide what he was going to do, because I
6 suppose to speak for or against the friendly motion.
7 I believe in the friendly motion only because I
8 believe that this whole avian thing about protecting
9 the bird and the planes that fly from Kaleiloa
10 Airport aren't a whole lot.

11 And the fact that the, you know, that the
12 Department of Transportation, even though they want
13 to put this rule into effect by the FAA, they haven't
14 done their due diligence for Makalena Golf Course and
15 all the other golf courses over there. They have
16 water available 48 hours. What is that? They cannot
17 take care of the fact that those, you know, the water
18 there that's there all the time. Because I have
19 breakfast sometimes over there. Hey, that's not
20 right.

21 And here they going to hit the Campbell
22 Estate guys. It was not even there. So I think
23 that's unfair. You're not treating these guys
24 fairly, Department of Transportation. You going hit
25 them, you better hit everybody that has water over

1 there. Even the guys that have lo'i over there, you
2 going hit them too? Come on. You got to be
3 equitable.

4 But I'm still going to vote for it. My
5 brother, I support him. I second Edmund's, what you
6 call it, motion. But I just wanted you to know how I
7 feel. If we going to hit the gong on one guy, got to
8 hit the gong on everybody. And they didn't do that.
9 They didn't do that. It's not right.

10 CHAIRPERSON SCHEUER: Thank you,
11 Commissioner Mahi.

12 Commissioner Chang, anything further?

13 COMMISSIONER CHANG: Just a final response.

14 I think for me it is precedent setting.
15 And that notwithstanding what may appear to have been
16 stipulations by the parties, if they could do that
17 outside of modifying the amendment, they could agree
18 on their own that we're going to include this on the
19 CC&R's, I'm comfortable with that.

20 I'm uncomfortable with modifying
21 amendments, only because in my view it establishes a
22 precedent that all other decisions that we make may
23 be open, may be reopened.

24 So I hear what you're saying, Commissioner
25 Okuda, but I am probably very unlikely to change my

1 vote because I do believe this is a bad precedent.

2 CHAIRPERSON SCHEUER: Commissioner Aczon.

3 COMMISSIONER ACZON: I just want to
4 clarify.

5 Amendment Condition 8, if there is nothing
6 really substantial, and it just says over here that
7 Petitioner continue to work with DOT. So whatever
8 they decide that's between the Petitioner and the
9 DOT. So still I don't see any much revision in the
10 modification.

11 CHAIRPERSON SCHEUER: Commissioner
12 Ohigashi.

13 COMMISSIONER OHIGASHI: I'm going to speak
14 for the motion.

15 The reason why I'm speaking for the motion,
16 and specifically Condition No. 8, is I would agree if
17 this was a contested matter by the Petitioner saying
18 that they don't want any further amendment to the
19 condition. The persons who can appeal this matter
20 are the persons who agreed to the conditions.
21 Therefore, if they're agreeable to the condition and
22 we take their word at face value that they're good
23 citizens, and we believe they're good citizens and
24 going to follow through, and they're offering this as
25 a good citizen, then I see no problem in including it

1 in our D&O motion, and that's why I'm going to vote
2 for this.

3 CHAIRPERSON SCHEUER: Anything further,
4 Commissioners?

5 I'll say a few things before I ask Mr.
6 Orodenker to poll the Commission.

7 And actually the first thing I was going to
8 say regarding the amendment, I did not support the
9 amendment, and Mr. Ohigashi has just articulated why.

10 Ms. Lim is a fierce advocate for the
11 interest of her clients and she has agreed to this
12 motion. I'm not afraid that somehow they have been
13 duped into agreeing to something or forced into
14 agreement to something.

15 I do want to say in relationship to
16 something Ms. Lim said in her closing remarks that I
17 don't think the ten-year timeframe is an artificial
18 timeframe. I think the reason why it's in the law
19 and the reason why we implement it is that it is a
20 reasonable balance between the needs for some
21 assurance for developers in most situations, and the
22 needs for the State, compelling State interest to be
23 served, and having a chance to relook at things.

24 The reason why I'm comfortable in this
25 case, however, in extending it beyond ten years to

1 17 years has to do with the particular nature of this
2 project, it being an industrial development rather
3 than a residential development where clearly there is
4 an unlimited demand for residential products of all
5 kinds in Hawai'i that doesn't even change that much
6 with cycles. It goes up and down, but it's always
7 there.

8 And I also believe that in this particular
9 case, what probably would have been the best to do,
10 the train that has left the station, if you will, is
11 that the Land Use Commission might have considered
12 doing it in incremental districting when this matter
13 was first in front of it, given the large nature and
14 high cost of it, but we can't impose incremental
15 redistricting at this time. That would probably be
16 the best solution, but we are not able to do it.

17 So I have nothing further. I'm intending
18 to vote for the motion. Mr. Orodener, will you
19 please poll the Commission?

20 EXECUTIVE OFFICER: Thank you, Mr. Chair.

21 The motion is to grant Petitioner's Motion
22 for Extension of Time to complete backbone
23 infrastructure, and change the name of the roadway,
24 to 12-31-35 and to formally recognize Kapolei
25 Properties LLC as the Petitioner on the condition

1 that Condition No. 8 of the Decision & Order is
2 amended to require Petitioner to work with DOT to
3 discourage avian wildlife from interfering with
4 flight operations and incorporating such into the
5 CC&RS.

6 Commissioner Aczon?

7 COMMISSIONER ACZON: Aye.

8 EXECUTIVE OFFICER: Commissioner Cabral?

9 VICE CHAIR CABRAL: Yes.

10 EXECUTIVE OFFICER: Commissioner Okuda?

11 COMMISSIONER OKUDA: Yes.

12 EXECUTIVE OFFICER: Commissioner Ohigashi?

13 COMMISSIONER OHIGASHI: Yes.

14 EXECUTIVE OFFICER: Commissioner Chang?

15 COMMISSIONER CHANG: No.

16 EXECUTIVE OFFICER: Commissioner Mahi?

17 VICE CHAIR MAHI: Aye.

18 EXECUTIVE OFFICER: Chair Scheuer?

19 CHAIRPERSON SCHEUER: Aye.

20 EXECUTIVE OFFICER: Chair, we six
21 affirmative votes and one no.

22 CHAIRPERSON SCHEUER: Thank you, very much.
23 So for everybody in the room, including our court
24 reporter, we are going to go into executive session.
25 I assure everybody we will not conduct any further

1 public business, so everybody can feel free to leave.
2 By my count this is our 23rd meeting of 2018, and our
3 final one, and I remain incredibly grateful to those
4 who appear in front of us.

5 Is there a move to go into executive
6 session?

7 COMMISSIONER ACZON: I will move.

8 VICE CHAIR CABRAL: Second.

9 CHAIRPERSON SCHEUER: Just to be clear,
10 particularly given the reason why we are going into
11 executive session, is the motion to consult with our
12 attorney on questions and issues pertaining to the
13 board's powers, duties, privileges, immunities and
14 liabilities regarding the Sunshine Law and the Office
15 of Information Practices complaint dated November 28,
16 2018. Is that the motion?

17 COMMISSIONER ACZON: Yes.

18 VICE CHAIR CABRAL: Second.

19 CHAIRPERSON SCHEUER: All in favor say
20 "aye"; any opposed?

21 (Executive session.)

22 (The proceedings adjourned at 2:13 p.m.)
23
24
25

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on December 13, 2018, at 9:05 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 13th day of December, 2018, in
Honolulu, Hawaii.

/s/ Jean Marie
JEAN MARIE McMANUS, CSR #156