

LAND USE COMMISSION
STATE OF HAWAII

Hearing held on November 20, 2019
Commencing at 9:30 a.m.
Airport Conference Center
400 Rogers Blvd., Suite 700, Room 2
Honolulu, Hawaii 96819

AGENDA

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. Adoption of Order

DR19-67 KU'ULEI HIGASHI KANAHELE and AHIENA
KANAHELE (Hawaii)

* Adoption of the Form of the Order

V. ACTION

DR19-66 POMAIKA'I PARTNERS LLC (Oahu)

* Consider Amended Petition for Declaratory
Order to Designate Important Agricultural
Lands

VI. STATUS REPORT AND ACTION (If Necessary)

A87-610 Tom Gentry and Gentry Pacific, Ltd
(Successor Petitioner-Kamehameha Schools (Oahu))

VII. ACTION

A87-610 Tom, Gentry, Gentry Pacific, Ltd

(Successor Petitioner-Kamehameha Schools (Oahu))

* Motion for Modification of Decision and
Order and Time Extension

XI Recess

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair
3 NANCY CABRAL, Vice Chair
4 EDMUND ACZON
5 GARY OKUDA
6 ARNOLD WONG
7 DAN GIOVANNI

8 STAFF:

9 WILLIAM WYNHOFF, ESQ.
10 LORI TANIGAWA, ESQ.
11 Deputy Attorneys General

12 DANIEL ORODENKER, Executive Officer
13 RILEY K. HAKODA, Planner/Chief Clerk
14 SCOTT A.K.DERRICKSON AICP/planner
15 BERT SARUWATARI, Planner
16 RASMI AGRAHARI, Planner

17 DAWN APUNA, ESQ.
18 Deputy Attorney General
19 AARON SETOGAWA, Planner
20 LORENE MAKI, Planner
21 RODNEY FUNAKOSHI, Planner
22 For State Office of Planning

23 DINA WONG, ESQ.
24 RAY YOUNG, Planner
25 City and County of Honolulu
Department of Planning and Permitting

EARL YAMAMOTO
Department of Agriculture

CALVERT CHIPCHASE, ESQ.
CHRISTOPHER GOODIN, ESQ.
Cades Schutte
Attorney for Pomaika'i Partners

JENNIFER LIM, ESQ.
ONAONA THOENE, ESQ.
Carlsmith Ball, LLP
Attorneys for Petitioner

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1 CHAIRPERSON SCHEUER: Aloha mai kakou.

2 Good morning. This is the November 20th,
3 2019 Land Use Commission meeting. Our first order of
4 business is the adoption of the minutes from the
5 November 6th and 7th, 2019 meeting.

6 Are there any corrections or comments,
7 Commissioners? Seeing none, is there a motion to
8 adopt?

9 VICE CHAIR CABRAL: So moved.

10 CHAIRPERSON SCHEUER: Moved by Commissioner
11 Cabral and seconded by Commissioner Aczon to adopt
12 the minutes of the November 6th and 7th, 2019
13 meeting.

14 Is there any discussion on the motion?
15 Hearing none, all in favor say "aye". Is there
16 anybody opposed? The minutes are unanimously
17 adopted.

18 Our next agenda item is our tentative
19 meeting schedule.

20 Mr. Orodénker?

21 EXECUTIVE OFFICER: Thank you, Mr. Chair.

22 Tomorrow, November 21st, we will be at the
23 State Office Tower, second floor conference room for
24 the Hawaii Memorial Life Plan Matter and motion for
25 intervention; and we will also be having a site visit

1 at Hawaii Memorial Park at 1:00 o'clock tomorrow
2 afternoon.

3 Wednesday, December 4th, we will be on Maui
4 for the Pulelehua matter. That's also scheduled for
5 December 5th.

6 December 17th, we will be on Kaua'i for the
7 Hokua matter, December 17th and 18th actually for
8 that one.

9 January 8th, we will be in Kona for the
10 University of Nations matter and HHFDC, and also
11 SP01-396.

12 January 22nd, we will be back on Oahu for
13 -- 22nd and 23rd for the Hawai'i Memorial Park
14 matter. The 22nd we will be in the Ko'olau Ballroom
15 and on the 23rd we will be here at the airport
16 conference room.

17 And that takes us to February.

18 CHAIRPERSON SCHEUER: Thank you, Dan. Are
19 there any questions for our Executive Officer on our
20 tentative meeting schedule? Thank you very much.

21 DR19-67:

22 Our next agenda item is an action meeting
23 on Docket No. DR19-67 Ku'ulei Higashi Kanahale and
24 Ahiena Kanahale adopting the Form of The Order.

25 On October 22nd, 2019, the Commission

1 mailed an agenda notice to the parties and to the
2 statewide Kaua'i, Oahu, Maui and Hawai'i island
3 mailing lists.

4 The Commission met in Hilo, Hawai'i on
5 October 24th and 25th, 2019; and prior to voting, all
6 the attending Commissioners affirmed that they had
7 reviewed the record in this docket.

8 The Commission then considered Docket No.
9 DR19-67 and voted five to two to deny the Petition.

10 The Land Use Commission and staff was
11 instructed to prepare a proposed Declaratory Order
12 consistent with its decision for consideration,
13 deliberation and adoption.

14 On October 31st, 2019, the Commission voted
15 to defer the adoption of the order to today due to an
16 internet outage preventing the preparation of the
17 order in time for the meeting and Chapter 92
18 "Sunshine Law" noticing requirements.

19 There is one party in this proceeding, the
20 Petitioner, and I believe due to other legal matters,
21 they are not present here today. Is that correct?
22 Nobody is here on behalf of the Kanaheles?

23 No one stepped forward to say they were
24 here on behalf of the Petitioner. Is there any
25 member of the public wishing to provide public

1 testimony on this matter? Seeing none.

2 I want to confirm that the Presiding
3 Officer and all the present Commissioners and the
4 Chair did attend the October 24th and 25th meeting on
5 this matter and are prepared to participate in these
6 proceedings.

7 Commissioner Cabral?

8 COMMISSIONER CABRAL: Yes.

9 CHAIRPERSON SCHEUER: Commissioner Aczon?

10 COMMISSIONER ACZON: Yes.

11 CHAIRPERSON SCHEUER: Commissioner Okuda?

12 COMMISSIONER OKUDA: Yes.

13 CHAIRPERSON SCHEUER: Commissioner Wong?

14 COMMISSIONER WONG: Yes.

15 CHAIRPERSON SCHEUER: Commissioner

16 Giovanni?

17 COMMISSIONER GIOVANNI: Yes.

18 CHAIRPERSON SCHEUER: And as the Chair, I'm
19 also prepared to participate.

20 So we will now consider adoption of the
21 order. Commissioners, before you for your
22 consideration, deliberation and adoption are the
23 proposed Declaratory Order prepared by staff as
24 instructed at the last meeting on this docket.

25 Is there any discussion on this matter?

1 Commissioner Okuda.

2 COMMISSIONER OKUDA: Chair, I move that the
3 Form of the Order be adopted with two revisions to
4 the form.

5 Number one, in the appropriate part of the
6 order, I move that the order be amended to include a
7 reference to the case Citizens Against Reckless
8 Development versus Zoning Board of Appeals of City
9 and County of Honolulu. That's found at 114 Hawai'i
10 184, the specific sections to be included is what's
11 found at 195 dash page 97, a 2007 Hawaii Supreme
12 Court case.

13 The section that I asked to be included in
14 the order is the section I believe I quoted during
15 the hearing which deals with whether or not a
16 declaratory action type of petition is an appropriate
17 means to bring the issue forward in this case.

18 The second modification with the indulgence
19 of you, Mr. Chair and Commissioner Giovanni is, I
20 would also ask or move that the form of the order be
21 amended to include a section which would spell out in
22 detail the opposition and the basis for the
23 opposition that you, Mr. Chair and Commissioner
24 Giovanni, stated as far as reasons why the Petition
25 should not be granted.

1 If my motion is seconded, I'll go into the
2 reasons why I'm making those requests.

3 CHAIRPERSON SCHEUER: Thank you.

4 Commissioner Giovanni?

5 COMMISSIONER GIOVANNI: Your motion that we
6 voted on was to deny the Petition?

7 COMMISSIONER OKUDA: Yes, that's correct.
8 The motion is to approve the Form of the Order
9 denying the Petition.

10 COMMISSIONER GIOVANNI: Thank you.

11 CHAIRPERSON SCHEUER: With two proposed
12 amendments as stated, is there a second on
13 Commissioner Okuda's motion?

14 VICE CHAIR CABRAL: I'll second that.

15 CHAIRPERSON SCHEUER: The motion has been
16 seconded by Commissioner Cabral.

17 Commissioner Okuda, you wish to speak to
18 the motion?

19 COMMISSIONER OKUDA: Yes.

20 First of all, I believe for matters of
21 completeness, we should have a citation and reference
22 to the Citizens Against Reckless Development case,
23 also known as the CARD, C-A-R-D, case. But more
24 importantly, because this issue is one of community
25 importance, and, you know, but for the CARD case, the

1 decision of the Commission might have come out
2 differently.

3 I believe it's important that the record be
4 complete and the order be complete setting forth the
5 well thought out and good faith reasons that people
6 on the Commission had in favor of granting the
7 Kanahele's Petition. I believe democracy works best
8 if all sides have their positions clearly documented
9 and presented, especially in an order which might be
10 subject to further discussion not only in the court
11 system up to and including the Hawaii Supreme Court,
12 but perhaps in the legislative branch, and also in
13 the community as a whole.

14 So this was not a simple issue that one
15 side should clearly win; the other side should
16 clearly lose. I think the community benefits from
17 having all facts placed clearly on the record, and
18 that's the reason why I'm asking that we kind of add
19 this section that spells out the -- I don't want to
20 call it a dissenting opinion, but the opinions and
21 the facts that better complete the record.

22 CHAIRPERSON SCHEUER: Thank you,
23 Commissioner Okuda.

24 Members, there is a motion before us to
25 adopt the Form of the Order with the two amendments

1 specified by Commissioner Okuda. Is there discussion
2 on this matter?

3 Commissioner Okuda?

4 COMMISSIONER OKUDA: Yeah. And for
5 completeness, I would ask that Chair either you
6 and/or Commissioner Giovanni state generally what
7 would be contained in the section.

8 CHAIRPERSON SCHEUER: Commissioner
9 Giovanni, do you wish to go first?

10 COMMISSIONER GIOVANNI: Sure. The
11 dissenting vote to the -- that I cast was in -- was
12 from the perspective that but for the legal arguments
13 regarding jurisdiction, it seemed that there was a
14 legitimate concern expressed by the Kanahelles, and in
15 their Petition. And I would have liked to have been
16 able to vote in support of that Petition but for
17 these legal arguments.

18 And as such, I think it's important that we
19 go on record identifying this conundrum that we were
20 in, that in my view kind of put the Commission in a
21 box from a legal perspective that was very well
22 articulated by Commissioner Okuda at the time when he
23 made the Motion to Deny the Petition.

24 So I respect that that position, but still
25 on the basis of, in my view right and wrong, the

1 Kanahelles had a good point to bring forward, and I'm
2 sympathetic to their point of view.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Giovanni.

5 I have personally reviewed the transcripts
6 for the second day of the hearing to review in
7 particular the closing remarks that I made, and I've
8 reviewed those and made a couple of very minor
9 corrections where it was very clear the
10 transcriptionist misheard what I stated.

11 For instance, I stated in one of my
12 statements whether maoli, M-A-O-L-I, or haole,
13 H-A-O-L-E. And it came across in the transcript
14 Maui, which is then the Island of Maui. So I made
15 small corrections to that.

16 What I would like to see happen is that a
17 finding of facts would be added that would simply say
18 the Chair made these closing remarks during the
19 proceedings.

20 But otherwise, the form of the order is to
21 reject the Petition.

22 Is there further discussion, members?

23 Commissioner Cabral?

24 VICE CHAIR CABRAL: I have a question, and
25 I don't have maybe enough history being on the

1 Commission, but are we going to extraordinary lengths
2 to do something one certain way because of the
3 emotional whatever, are we setting now ourselves a
4 precedent that every time we're going to vote one way
5 or another, we need to provide all kinds of
6 additional explanations or excuses or something so
7 that way then we carve ourselves out a better
8 defense? I mean, you know, what are we doing?

9 Are we doing something -- it seems like
10 we're doing something different than we normally do.
11 And if so, do we want to do it that way? It's not
12 subject matter as much as I'm concerned about the
13 precedents that we're setting now, doing a change in
14 how we're going to behave in the future. I just
15 would like to make sure we're considering what we're
16 doing, why we're doing it, if that's the -- and is
17 that what we want to do on all matters or just some
18 matters? I'm just concerned about the action.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Cabral.

21 I will recognize Commissioner Okuda in a
22 moment. I'll just say while I cannot say to
23 particular cases that I recall over my six years, I
24 do remember modifying forms of the order at the table
25 to clarify certain points that have been raised

1 during deliberations on other matters. So it's not
2 in that sense without precedence.

3 Commissioner Okuda.

4 COMMISSIONER OKUDA: Thank you, Mr. Chair.

5 In addition to joining what you said about
6 the fact that forms of the orders have been modified
7 at the table, the reason for my seemingly nonstandard
8 motion here to include all the reasons, is the fact
9 that, first of all, this does not really add to the
10 record, because the reasons that people have given in
11 favor or against a decision are reflected in the
12 transcript. And if there were further proceedings in
13 the case such as an appeal, the transcript would
14 contain everything that everybody said.

15 So by adding this to the Form of the Order,
16 it doesn't add anything really to the decisionmaking
17 process.

18 But the reason why I made the motion to
19 include the statements of Commissioner Giovanni and
20 the Chair is because in this particular case, because
21 of the interest and the interest of the community, I
22 think it's important that we document in what you
23 could call the single go to document, the order, just
24 to demonstrate what the Commission normally does is
25 we really do take to heart what everybody says. We

1 take to heart and consider everyone's opinions, and
2 everyone's views on the Commission, and that there
3 truly was a considered and vigorous consideration of
4 the matter.

5 So the idea here is not to create a
6 negative precedent or anything like that, but it's
7 just to make clear what we normally do, which is have
8 everything stated for the record. But I think this
9 issue is one of community importance, and it's
10 important to show that there was good faith rational
11 thoughtful issues on both sides, and perhaps even the
12 points of, I hate to call it a dissent because
13 sometimes it makes us sound too much conflict, too
14 much negativity.

15 But those points really should be
16 considered perhaps by other policy makers, you know,
17 in the government, and in the community going
18 forward, so I think it's important to have it in the
19 single document which reflects what the Commission is
20 doing with this Petition.

21 CHAIRPERSON SCHEUER: Thank you,
22 Commissioner Okuda.

23 Members, we have a motion before us made by
24 Commissioner Okuda and seconded by Commissioner
25 Cabral to adopt the Form of the Order with two

1 modifications.

2 Is there further discussion?

3 Commissioner Aczon?

4 COMMISSIONER ACZON: I just share
5 Commissioner Cabral's concerns that we might be
6 venturing to something that you might regret later,
7 and based on Commissioner Okuda's statements that
8 this, the amendment doesn't add to anything, you
9 know, on the record.

10 Also we thought it was the record, we have
11 the transcript of the -- everything that happens in
12 the hearing is on the transcript already; it's on the
13 record. So if it is not going to add to anything,
14 why you do it? That's my only concern.

15 CHAIRPERSON SCHEUER: Commissioners? Is
16 there further discussion on the motion?

17 We have eight members of the Commission of
18 the current nine possible.

19 Commission Aczon?

20 COMMISSIONER ACZON: Just one minor
21 clarification, are we voting with a full motion
22 without amendments or should we first vote on the
23 amendments?

24 CHAIRPERSON SCHEUER: The motion was made
25 to approve the Form of the Order with amendments, so

1 that is the motion before us.

2 COMMISSIONER ACZON: Thank you, Chair.

3 CHAIRPERSON SCHEUER: So if I -- to finish
4 what I was stating before Commissioner Aczon asked to
5 be recognized.

6 We have eight sitting Commissioners, two
7 are absent, we have six with us today.

8 Is there further discussion? If not, Mr.
9 Orodenker, will you poll the Commission?

10 EXECUTIVE OFFICER: Thank you, Mr. Chair.
11 The motion is to adopt the Form of the Order with two
12 revisions: One, cite applicable case law; and second
13 is to add reasons for the opposition.

14 Commissioner Okuda?

15 COMMISSIONER OKUDA: Yes.

16 EXECUTIVE OFFICER: Commissioner Cabral?

17 VICE CHAIR CABRAL: Yes.

18 EXECUTIVE OFFICER: Commissioner Giovanni?

19 COMMISSIONER GIOVANNI: Yes.

20 EXECUTIVE OFFICER: Commissioner Aczon?

21 COMMISSIONER ACZON: No.

22 EXECUTIVE OFFICER: Commissioner Wong?

23 COMMISSIONER WONG: Yes.

24 EXECUTIVE OFFICER: Commissioner Ohigashi
25 and Commissioner Chang are recused.

1 Chair Scheuer?

2 CHAIRPERSON SCHEUER: Yes.

3 EXECUTIVE OFFICER: Thank you, Mr. Chair.

4 The motion passes with five "yes" votes and one "no."

5 CHAIRPERSON SCHEUER: Thank you.

6 Let's now take a five-minute recess and
7 allow the parties on our next agenda item, DR19-66
8 Pomaika'i Partners, LLC, to come forward.

9 (Recess taken.)

10 DR19-66 Pomaika'i Partners

11 CHAIRPERSON SCHEUER: Our next agenda item
12 is action DR19-66 Pomaika'i Partners, LLC's Petition
13 to issue Declaratory Order to designate Important
14 Agricultural Lands for approximately 810 acres on
15 Oahu, Hawai'i, identified by TMK Nos. 1-6-4-001-001
16 portion thereof, 6-4-001-005 and 6-4-001-012.

17 Will the Petitioner please identify
18 yourselves for the record?

19 MR. CHIPCHASE: Yes, Chair.

20 Good morning. Good morning, Chair, and
21 good morning, members of the Commission. Cal
22 Chipchase and Chris Goodin for the Petitioner,
23 Pomaika'i Partners, LLC.

24 CHAIRPERSON SCHEUER: Also at the table we
25 have who?

1 MS. WONG: City and County of Honolulu,
2 Dina Wong.

3 MR. YOUNG: And Raymond Young.

4 MR. YAMAMOTO: Department of Agriculture,
5 Earl Yamamoto.

6 MS. APUNA: Good morning. Deputy Attorney
7 General Dawn Apuna for Office of Planning. Here with
8 me is Aaron Setogawa.

9 CHAIRPERSON SCHEUER: Thank you very much.

10 I'll ask everyone to bear with me. I have
11 to update the record, and it's long and gotten longer
12 over the last 24 hours.

13 On May 25th, 2019, the Commission mailed
14 the June 6, 2019 site visit agenda and notice to the
15 Parties, Statewide and Oahu mailing lists.

16 On June 6, 2019, the Commission performed a
17 site visit for this docket.

18 On June 24th, the Commission received the
19 Petitioner's Petition for Declaratory Order to
20 designation Important Agricultural Lands, and
21 Exhibits A, B and D with a hard copy and digital
22 file. (Exhibit C then is still being under
23 construction), and Petitioner's \$1,000 filing fee.

24 On July 1st, 2019, the Commission mailed
25 the July 10th and 11th, 2019 agenda notice to the

1 Parties and Statewide, Hawaii and Oahu mailing lists.

2 On the same day, the Petitioner notified
3 the Commission they still had not secured the
4 necessary agreement with Dole Foods over the use of a
5 section of the Petition Area and could not proceed
6 with the scheduled hearing and a tentative August
7 meeting date was scheduled.

8 On July 3rd, the Commission received DPP's
9 comments on the Petition.

10 On July 22nd, the Commission received the
11 Department of Agriculture's comments on the Petition.

12 On August 21st, the Commission received The
13 Petitioner's Amended Petition for Declaratory Order
14 to designate Important Agricultural Lands and
15 Exhibits A through D.

16 On August 30th, the Commission mailed
17 correspondence to the Petitioner regarding the
18 County's comments.

19 On November 12th, the Commission mailed the
20 November 20th and 21st agenda meeting notice to the
21 Parties and to the Statewide, Kaua'i and Oahu mailing
22 lists.

23 On November 13th, the Commission received
24 the Petitioner's Amended Petition for Declaratory
25 Order to designate Important Agricultural Lands and

1 Exhibits A through D.

2 On November 14th, we received Petitioner's
3 Exhibit E, Errata to Amended Petition for Declaratory
4 Order and Exhibits A through D.

5 Also on the same day, the Commission
6 received comments from the Department of Agriculture.

7 On November 18th, the Commission received
8 comments from the Office of Planning.

9 On November 19th, the Commission received
10 Exhibit D filed as a second errata to the Amended
11 Petition for Declaratory Order.

12 Today on November 20th, the Commission
13 received a letter of support from the Amended
14 Petition from Dole Food Company, Incorporated.

15 Now, let me quickly describe our procedures
16 for today on the docket.

17 First, I will give an opportunity for the
18 Petitioner to comment on the Commission's Policy
19 governing reimbursement of hearing expenses.

20 I will then offer an opportunity for any
21 individual members of the public desiring to give
22 public testimony.

23 After the completion of public testimony,
24 the Petitioner will make their presentation.

25 After the Petitioner's presentation, we

1 will receive public comments from the County, the
2 Office of Planning and the Department of Agriculture.

3 And thereafter the Commission will conduct
4 its deliberations. And from time to time, I will
5 call for short breaks.

6 Are there any questions on our procedures
7 for today?

8 MR. CHIPCHASE: No, Chair.

9 CHAIRPERSON SCHEUER: Questions? Dina, any
10 questions on our procedures?

11 MS. WONG: No questions.

12 MR. YAMAMOTO: No questions.

13 MS. APUNA: No questions.

14 CHAIRPERSON SCHEUER: Thank you.

15 Mr. Chipchase, have you reviewed HAR
16 15-15-45 with regard to reimbursement of hearing
17 expenses?

18 MR. CHIPCHASE: Yes, Chair.

19 CHAIRPERSON SCHEUER: And could you please
20 state your client's position with respect to the
21 policy?

22 MR. CHIPCHASE: We accept the policy.

23 CHAIRPERSON SCHEUER: Thank you.

24 Mr. Chipchase, as Chair, I intend to
25 declare that the documents submitted by the

1 Department of Agriculture, the Office of Planning,
2 the City and County of Honolulu, Department of
3 Planning and Permitting, the documents from Dole
4 Foods, and any written public testimony and
5 Petitioner's response as part of the record in this
6 matter.

7 Do you have any objections to this?

8 MR. CHIPCHASE: None, Chair.

9 CHAIRPERSON SCHEUER: Since there are none,
10 those documents are made a part of the record.

11 Is there anybody in the audience wishing to
12 provide public testimony on this matter?

13 There is none.

14 So we may proceed directly with your
15 presentation, Mr. Chipchase.

16 Do you want to give us a sense of your
17 overall plans for presenting and timing?

18 MR. CHIPCHASE: Absolutely, Chair.

19 So intend to present five witnesses as part
20 of the Petition, Chair --

21 COURT REPORTER: Can you speak right into
22 the microphone, please?

23 MR. CHIPCHASE: I can do that. I'll start
24 over.

25 COURT REPORTER: Thank you.

1 MR. CHIPCHASE: Chair, we intend to present
2 five witnesses; we have six witnesses if questions
3 from the Commission are required to address
4 additional information.

5 CHAIRPERSON SCHEUER: Sorry, I also I need
6 to make a personal disclosure.

7 My wife works for a firm G70 which is one
8 of the, I think, multitude of consultants who are
9 part of this project.

10 She has not personally participated in any
11 of this, and there is no financial relationship
12 between the approval or denial of this Petition and
13 my family.

14 I believe I can be fair and impartial in
15 this matter.

16 Is there any objection to my participation
17 in this matter from either my fellow Commissioners or
18 the Petitioner?

19 MR. CHIPCHASE: None from the Petitioner,
20 Chair.

21 CHAIRPERSON SCHEUER: Commissioners?

22 Are there any further disclosures from the
23 Commission? If not, thank you.

24 Do you want to proceed?

25 MR. CHIPCHASE: Very good, Chair.

1 The first witness will be Justin Alexander.
2 He will explain the property and project overview.

3 We will also hear from Denise Albano, who
4 is a -- one of the consultants working on the project
5 and has helped with interface with both the farmers,
6 which is an important component of this project.

7 Jeff Overton prepared the agricultural
8 assessment, and he will present that and walk through
9 most of the reasons that this Petition Area meets the
10 standard for designation for the cultural IAL.

11 Paul Wong will discuss the water and the
12 availability of it.

13 And finally Kauahi Ching will discuss the
14 relationship between the property and traditional
15 native Hawaiian agricultural such as kalo and ulu.

16 I expect the entirety of the Petition,
17 depending on the Petitioner's -- or the
18 Commissioners' questions, I should say, is less than
19 an hour and a half. Probably closer to an hour and
20 15 minutes.

21 Before we begin with witnesses, I did want
22 to clarify a couple of things for the Commission.
23 The reasons we had so many Amendments to the Petition
24 and corrections to some of the items in the Petition
25 largely had to do with acreage both under ownership

1 and for the Petition Area.

2 The property was acquired from Dole and a
3 majority of the property to be completely acquired
4 required a subdivision approval by City and County of
5 Honolulu under which the Petitioner was going to take
6 two parcels and Dole was going to take one.

7 As that process was completed, the acreage
8 changed pursuant to a survey, so that was corrected.
9 And in addition to that, the TMKs were updated to
10 assign new TMKs. Those new parcels were created,
11 lots were created through the subdivision, so those
12 corrections were made as part of our Petition Area --
13 as part of our filings.

14 In addition to that, we expected that
15 following the subdivision sale of the property would
16 be complete, in that the Petitioner for Pomaika'i
17 would take complete fee simple ownership of two of
18 the parcels, and Dole would take complete ownership
19 of the third parcel, not part of the Petition Area at
20 least as amended.

21 That sale component has not happened yet.
22 We expected it to happen this week which is why Dole
23 provided the statement of consent for the parcel,
24 it's a fraction, I think four percent ownership.
25 There was no question of the authority to proceed

1 with the petition.

2 With those corrections, Chair, I'm prepared
3 to call my first witness.

4 CHAIRPERSON SCHEUER: Please go ahead.

5 MR. CHIPCHASE: Thank you.

6 Justin?

7 CHAIRPERSON SCHEUER: So you'll come up and
8 sit -- and I will swear you in. You have to almost
9 kiss the mic to be heard.

10 THE WITNESS: Okay.

11 CHAIRPERSON SCHEUER: Do you swear or
12 affirm the testimony you're about to give is the
13 truth?

14 THE WITNESS: Yes.

15 JUSTIN ALEXANDER

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

19 DIRECT EXAMINATION

20 CHAIRPERSON SCHEUER: Mr. Chipchase.

21 MR. CHIPCHASE: Thank you, Chair.

22 BY MR. CHIPCHASE:

23 Q Good morning.

24 A Good morning.

25 Q Would you please introduce yourself for the

1 record?

2 A Yes. My name is Justin Alexander, and I'm
3 one of the partners, members of Pomaika'i Partners.

4 Q And, Justin, would you describe for the
5 Commission your relationship to Pomaika'i, what it
6 means to be one of the partners, your role?

7 A Yes, I'm one of the members. I put this
8 project together, and one of the founders of it
9 pushing it forward.

10 Q And have you been with Pomaika'i since the
11 beginning of the company?

12 A Yes, 2017.

13 Q How did you and Pomaika'i become interested
14 in this property?

15 A I do various development and have some
16 other projects on the North Shore, and been watching
17 this property. It's was the market through CBRE for
18 a while and ended up making an offer to go on, move
19 it forward.

20 Q Subject to the comments that I had earlier
21 about portions of the property still requiring
22 further transaction, when did you first acquire the
23 property?

24 A December of 2018 we closed.

25 Q I want to put into the record some of the

1 comments that I made about the subdivision. So we
2 put up on the screen an image from, and as part of
3 the record, I believe, the subdivision of the
4 property.

5 Do you recognize that?

6 A Yes.

7 Q And this was for the subdivision for parcel
8 6-4-001-001, correct?

9 A Correct, yes.

10 Q And as we surveyed, am I correct that
11 parcel was 1,395.61 acres?

12 A Correct.

13 Q And was the subdivision of parcel one
14 completed?

15 A Yes. But we are still waiting on
16 reconveyance.

17 Q So is part of the subdivision -- how many
18 lots were created?

19 A Three lots.

20 Q And is one of those lots designated Lot B
21 182.849 acres?

22 A Yes.

23 Q Is that the lot that Dole will acquire?

24 A Correct, that is the property farm.

25 Q So is that a lot that Pomaika'i will

1 continue to own?

2 A No.

3 Q Is that lot part of the Petition Area?

4 A No.

5 Q Is there another lot designated Lot B2?

6 A Yes.

7 Q Does that lot have 1,304.988 acres?

8 A Yes.

9 Q And is that lot a lot that Pomaika'i will
10 own completely in fee simple?

11 A Correct, yes.

12 Q And is that lot -- a portion of that lot
13 part of the Petition Area?

14 A Yes.

15 Q And finally, and I know this is painfully
16 technical, is lot B3 one of the lots that was
17 created?

18 A Correct.

19 Q And is that lot 7.79 acres?

20 A Yes.

21 Q And is that lot one of the lots that
22 Pomaika'i will own completely in fee simple?

23 A Yes.

24 Q And am I correct that that lot, that's Lot
25 B3, is not part of the Petition Area?

1 A Correct, yes.

2 Q Justin, when do you expect the complete
3 conveyance of these lots to Dole and to Pomaika'i
4 respectfully to be completed?

5 A I spoke with Dan Nellis yesterday, and
6 we're hoping this week, maybe early next week, but it
7 is in process.

8 Q Pending the completion of the conveyance,
9 it is correct that Dole has consented to the Petition
10 for Designation of Important Agricultural Lands?

11 A Yes.

12 Q And so, Justin, I'd like to put up on the
13 screen the subdivision map. And confirm the total
14 area that you're seeking to designate following the
15 subdivision is 689.69 acres?

16 A Yes.

17 Q Is that a majority of the property that
18 Pomaika'i will own in fee simple?

19 A Yes.

20 Q All right. That technical stuff out of the
21 way. I wanted to take it back to the property.

22 We had a site inspection of the property
23 with the Commission, but I wanted to refresh
24 everyone's recollection and help you to orient us to
25 the property and in particular to the portion that

1 you're seeking to designate. And so we put up on the
2 screen one of the photographs taken from a drone of
3 your property.

4 Would you orient us to what we're seeing in
5 the photo?

6 CHAIRPERSON SCHEUER: Mr. Chipchase, are
7 these part -- are these images that are elsewhere in
8 the Petition that you've given to us?

9 MR. CHIPCHASE: They are not, Chair. But
10 at the conclusion, as I always do, I will make the
11 slide show a portion of the record.

12 CHAIRPERSON SCHEUER: Thank you very much.

13 THE WITNESS: Yes. This is drone footage
14 of a portion of the property. It's about a quarter
15 of the -- a third of the way up looking towards
16 Kamehameha Schools, so that would be east, northeast.

17 MR. CHIPCHASE: Would it help if we dimmed
18 the lights?

19 CHAIRPERSON SCHEUER: I think we're trying.

20 MR. CHIPCHASE: That's much better.

21 Q (By Mr. Chipchase): Okay. And, Justin,
22 would you talk to us about the use of the property at
23 the time that you acquired it?

24 A Yes, we -- when we purchased the property
25 from Dole, it had been leased to Pioneer Seed for

1 over 16 years and was solely used and cultivated for
2 GMO seed corn.

3 Q Are what are the uses of the property
4 today?

5 A We have terminated Pioneer's lease, and we
6 have two tenants, Twin Bridge Farms and Vespucci
7 Collective, and we are -- we will be farming the
8 property various ag uses.

9 Q Okay. We'll talk a little bit more about
10 the long-term plans in a minute. I wanted to have
11 you take us through a couple more, three more photos
12 of the property.

13 Justin, what are we looking at here?

14 A We call this the V-shape parcel. This is
15 at the top of the property where hemp cultivation
16 will be. And as you can see, it looks straight down
17 into Haleiwa. And that's 147 acre flat V-shaped
18 parcel.

19 Q And in this photograph?

20 A This photo is looking up the -- or looking
21 down the tip of the V-shaped parcel into -- this is
22 the tip of the V-shaped parcel and the gulches,
23 ravines.

24 Q And finally?

25 A Yeah, it's the Board of Water Supply well.

1 That's Haleiwa's main potable water sources located
2 on the property. They have an easement for Haleiwa.

3 Q And then surrounding it is the property
4 that will be part of the Petition Area?

5 A Yes, absolutely, yes.

6 Q And so, Justin, you mentioned your
7 long-term plans.

8 Would you describe those for us?

9 A Yes. We are creating an ag community, an
10 ag park. I want to be explicitly clear that we are
11 not subdividing, we are not doing a ranch Kunia. Ag
12 parks, they are great examples when they work. But
13 there has not been an example that has been executed
14 on Oahu. So what we are putting together is we are
15 going to have some larger acre tenants, farming, but
16 we know that there is a demand for small and medium
17 farmers that need facilities. They're very good at
18 farming, but they lack on the business side.

19 So we want to have common shared facilities
20 for farmers where they can come in and process,
21 package, and we're going to help them distribute. So
22 part of this plan is to the governor's initiative to
23 double food production. This property is right
24 outside Haleiwa, and it is just a great location to
25 continue perpetual ag use in this ag park.

1 Q While I know that the kinds of crops that
2 may be grown will depend in part on your tenants,
3 what kinds of crops have Pomaika'i envisioned for the
4 property?

5 A We are looking at various crops. We have
6 done some market analysis. We don't want to over
7 flood the market, but we are -- we will be
8 diversified. We are going to have everything from
9 sandalwood and lavender up to native Hawaiian plant
10 nursery.

11 We are looking at miscellaneous small
12 crops, sweet potatoes, sweet melon, cabbage, mangos
13 that -- we have a whole list of different crops that
14 we believe we can help distribute into the market.

15 Q You mentioned the native Hawaiian plant
16 nursery. What is your vision for that nursery?

17 A The vision is we will be working with Rick
18 Barbosa who has a nursery outside Kailua, and he was
19 looking for space. He's a cultural practitioner, and
20 he -- the soil, our ag water, it fits perfectly with
21 his plans, and he will just be offering -- he
22 specializes in native Hawaiian plants.

23 Q Why has Pomaika'i pursued important ag land
24 designation for a portion of its property as part of
25 this ag community?

1 A We believe in keeping ag on ag. Like I
2 said, we are not a Dillingham Ranch. These are lands
3 that can be used that are suitable for perpetual ag
4 use, and we believe the incentives that were proposed
5 by the state are very attractive for our ag plans and
6 our tenants.

7 Q How did Pomaika'i select the lands that it
8 has for designation?

9 A Based on analysis and study, various pH,
10 the existing irrigation system. And it was an
11 analysis and study put together for the most suitable
12 and best lands.

13 Q So is part of that, do you recall being in
14 discussions with the City concerning its initial
15 proposed designation of the property?

16 A Right. Initially, the State had put the
17 entire property into IAL designation which we believe
18 isn't -- is not a correct analysis. So we would like
19 to -- we're volunteering, and our -- the land that we
20 are dedicating is based upon the areas that we will
21 be farming and have ag production.

22 Q Did you meet with the City to discuss the
23 designation of the property?

24 A Correct, yes.

25 Q Did the City Council ultimately agree to

1 remove all of the property from its designation?

2 A Yes.

3 Q So am I correct that at present the
4 property is not subject to any designation of
5 important ag lands by the City and County of
6 Honolulu?

7 A Correct.

8 CHAIRPERSON SCHEUER: Mr. Chipchase, is
9 there going to be further reference to the screen?

10 MR. CHIPCHASE: No, Chair.

11 CHAIRPERSON SCHEUER: Okay. Can we bring
12 the lights up?

13 MR. CHIPCHASE: Very good, Chair.

14 Q (By Mr. Chipchase): Justin, my final
15 question is: What benefit do you see for the tenants
16 and owners that you expect to have as part of this
17 Petition from the IAL designation?

18 A The incentives are a -- under IAL are very
19 compelling. And to keep the land in perpetuity ag on
20 ag, and those are the main reasons.

21 MR. CHIPCHASE: Thank you, Chair. No
22 further questions.

23 CHAIRPERSON SCHEUER: Okay. I'm pausing
24 for a moment. So normally on a DR when witnesses are
25 put forward, would normally just be for DR questions

1 solely from the Commissioners for the Petitioner.

2 But since you brought forward a witness, my
3 inclination is, if you're not objecting, to offer
4 opportunity for the other parties who are at the
5 table to ask questions.

6 MR. CHIPCHASE: No objection, Chair. I
7 expect that.

8 CHAIRPERSON SCHEUER: Okay. Any questions
9 by the City and County?

10 MR. YOUNG: Yes. This is Raymond Young.

11 CROSS-EXAMINATION

12 BY MR. YOUNG:

13 Q Thank you very much for clarifying the
14 latest subdivision and parcels involved.

15 At this time, is any of the Pomaika'i land
16 undergoing further subdivision?

17 A No.

18 Q And since the subdivision was approved by
19 the City and County, has all of those lots been
20 assigned tax map key parcel numbers?

21 A The three lots that were subdivided have
22 been assigned, and I'll give you a little historical
23 context on why a subdivision was completed.

24 We wanted to buy the coffee farm, but David
25 Murdock wouldn't sell it. The only way he would sell

1 the land is if we subdivided out the coffee farm.
2 And then that was a major inconvenience for us, but
3 we did wait for him to finalize that. That was the
4 purpose for the subdivision, so he could keep the
5 coffee, the 80-plus acres.

6 Q The letter from Dole Food Company received
7 on the 20th, letter of support. It talks about tax
8 map key number 6-4-001-004, Lot B. That is not part
9 of the important ag lands designation being proposed,
10 right?

11 A No, Lot B is -- Lot B is the large -- the
12 1300-acre plus parcel.

13 Q So that would include the coffee farm?

14 A No, the coffee farm is Lot A.

15 Q I see.

16 A There are three lots that were subdivided,
17 the coffee farm, the large parcel of 1300 plus, and
18 then the 7.7 acres below on other side of the
19 highway.

20 Q So in this Exhibit A, Lot B-1, it looks
21 like is not part of the proposed designation?

22 A No, Lot B is. Can I see the map? It's
23 hard to see.

24 Q Yes, it is.

25 A So which --

1 Q Lot B-1 located down in this area here, it
2 looks like its labeled Lot B-1.

3 A The very bottom you're talking about?

4 Q Yes.

5 A Yeah, No, that's the 7.7 acres on other
6 side of the Kamehameha Highway; that is not included.

7 Q As of today, is any of your Pomaika'i
8 properties undergoing a map designation for a
9 condominium property regime?

10 A Yes, we are going through CPR.

11 Q Has the map been filed with the DLNR?

12 A No, it's been filed with DPP with a
13 compliance letter.

14 Q Could you verify for me whether -- and I'm
15 not sure if that's the same TMK today, but in our
16 letter, and I'm not sure why the Commission did not
17 receive it, we had a letter prepared and dated
18 November 13th, I assume it was mailed on the 13th of
19 November, indicating basically that we did not have
20 any -- I mean, we supported the Petition, but we had
21 some clarifications request on the particular tax map
22 key numbers and the acreage. And one of the tax map
23 keys that we found was 6-2-010 parcel 006
24 constituting 8.25 acres.

25 So my question is whether or not that

1 parcel is owned by Pomaika'i and is being included or
2 not in the proposed IAL?

3 A When we purchased the land, there were 11
4 different TMKs and kuleanas that were part of the
5 purchase. Some are contiguous, some are not
6 contiguous.

7 Q So this is not part of the IAL but still
8 owned by Pomaika'i?

9 A Yes, I would have to see which one of the
10 maps because I don't have the TMK numbers -- I don't
11 remember them by heart.

12 CHAIRPERSON SCHEUER: Mr. Young, sorry,
13 what are you handing to the witness?

14 MR. YOUNG: It is a map I produced
15 yesterday based on our database as to what properties
16 or parcels, tax map key parcels that were owned by
17 the Petitioner. Notwithstanding that it's possible
18 our data is not up-to-date, but I just wanted to get
19 clarification.

20 CHAIRPERSON SCHEUER: One moment. So if
21 you're going to be introducing information, are
22 you -- we need to introduce that as an exhibit and
23 have it entered into the record.

24 MR. YOUNG: Yeah, sorry.

25 MR. CHIPCHASE: And available to all the

1 parties for the examination, Chair.

2 CHAIRPERSON SCHEUER: Yes. So do you have
3 extra copies of it?

4 MR. YOUNG: I'm sorry, I don't, but I can
5 pass it around.

6 THE WITNESS: This parcel 006 is actually
7 not contiguous. It's on the other side of the river,
8 and it's landlocked in KS land. It's owned by
9 Pomaika'i.

10 CHAIRPERSON SCHEUER: Hold on. I really
11 don't want to start off with a procedural error here.
12 If you have an exhibit you're going to be referring
13 to and asking witnesses about, maybe you can make it
14 available to all of the parties at the time that
15 you're asking questions. Is it possible for you to
16 ask him questions without reference to that map?

17 MR. YOUNG: Yes, I can.

18 CHAIRPERSON SCHEUER: Please do.

19 And just for the record, responding to a
20 comment you made posted on the Commission's website
21 is a letter from City and County dated November 13,
22 2019.

23 MR. YOUNG: Thank you.

24 Q (By Mr. Young): Same line of questioning
25 on the other parcels that appear to be owned by

1 Pomaika'i, if you can confirm for me tax map key
2 number 6-2-006-001?

3 A Is that the one about the parcel you just
4 showed me, 14 acres?

5 Q No, it's down by Kamehameha Highway between
6 the large parcel and the highway.

7 A Yeah, there are numerous TMKs down by the
8 highway that were part of the purchase, yes.

9 Q Yes. And that would also be tax map key
10 6-2-006-004, and also 6-2-006-002 all down by the
11 highway and between the large parcel and the highway,
12 same as the previous one you confirmed?

13 A Right. Like I said, I don't remember all
14 those TMKs by heart, but I can definitely point them
15 out on the map. If you can go by acreage, it makes
16 it a lot easier for me. And some are contiguous and
17 some are not.

18 Q Yes, I can give the first parcel's acreage
19 which is across the river, and that acreage was 8.25.

20 A So perfect, thank you.

21 COMMISSIONER WONG: Chair? Excuse me,
22 Chair.

23 CHAIRPERSON SCHEUER: Commissioner Wong.

24 COMMISSIONER WONG: The question I have is
25 we're going about the IAL that the Petitioner is

1 requesting and the acreage that they have put on, you
2 know, on our files for the Petition. It appears that
3 some of the acreage or TMKs that he's asking about is
4 not on the -- not part of the IAL.

5 CHAIRPERSON SCHEUER: I'm actually at this
6 point really confused as to what the County is asking
7 about so...

8 MR. YOUNG: All we're trying to do is --

9 CHAIRPERSON SCHEUER: Can you please give
10 some indication where you're going?

11 MR. YOUNG: Yes. All we're trying to do is
12 confirm the exact TMKs involved in the IAL request
13 and whether or not it exceeds the majority, if the
14 Petitioner were to invoke --

15 CHAIRPERSON SCHEUER: I believe the
16 reference you might be searching for is the portion
17 of the IAL law that says that if a landowner
18 voluntarily designates over 50 percent of their
19 acreage as Important Agricultural Lands, it is not
20 subject to further designation by the County.

21 MR. YOUNG: Thank you very much. That's
22 Section 205-49, subsection (3).

23 CHAIRPERSON SCHEUER: So you're trying to
24 determine, based on the information in the record,
25 whether it is before or after -- excuse me -- below

1 or above that level, and how is that -- respectfully
2 how is that relevant to the County's concerns?

3 MR. YOUNG: We just want to be sure that
4 the remaining lands is untouchable based on this
5 section of the law, because the whole intent of the
6 IAL designation was supposed to be the majority of
7 all lands owned by Pomaika'i.

8 MR. CHIPCHASE: If I might, Chair, because
9 I'm also confused.

10 The City has no pending designation
11 approved by the City Council. Their claim was pulled
12 out without an objection from DPP, so there is really
13 nothing DPP could do anyway. I could come in with
14 less than majority, could not have come in at all, we
15 came in voluntarily because we agreed with City
16 Council that some designation is appropriate, but
17 that we should select the lands for designation.

18 So the City's line of question not only has
19 no point, but it is stated in the record which
20 parcels we own and which parcels are subject to the
21 designation. From there it's just a matter of math.

22 MR. YOUNG: If I may clarify, I just have
23 one question pending.

24 Does the Petitioner intend to impose the
25 section of the law which Mr. Chair just stated?

1 MR. CHIPCHASE: Justin, he's asking whether
2 you're intending to invoke the majority incentive.

3 THE WITNESS: Well, yeah, according to the
4 maps and what we proposed are the areas that we are
5 designating to IAL.

6 Q (By Mr. Young): And, Justin, is that the
7 majority of land that Pomaika'i will own once the
8 sale to Dole is complete?

9 A Yes.

10 CHAIRPERSON SCHEUER: If I may, let me just
11 clarify, too.

12 If, you know, for some reason DPP wishes
13 any concluding remarks to disagree with anything,
14 you're not prohibited from making those remarks.

15 Department of Agriculture, any questions
16 for the witness?

17 MR. YAMAMOTO: No questions.

18 CHAIRPERSON SCHEUER: Office of Planning?

19 MS. APUNA: Yes, Chair.

20 CROSS-EXAMINATION

21 BY MS. APUNA:

22 Q Mr. Alexander, thank you for your testimony
23 today. I just have a few questions about the Wahiawa
24 Irrigation System.

25 A Yes.

1 Q And we understand by the Petition that it
2 requires repair.

3 Is there any estimate as to when these
4 repairs may be completed?

5 A Yes. We are working with Wai Engineering,
6 and we are working on scheduling those because of the
7 closing last year had put us back. We are in the
8 process now of setting up our schedule and moving
9 forward with repairs and development for that
10 irrigation system.

11 Q And is there an estimated cost of those
12 repairs?

13 A I believe they range and vary. I mean,
14 we've had some bids and -- from four-and-a-half
15 million, it depends on exactly what we're going to
16 do and what type of improvements in the drip irrigation.
17 So it varies. That even includes drilling a new
18 well, which is very expensive.

19 Q And who would be responsible for paying for
20 the cost of these repairs?

21 A Pomaika'i.

22 Q And so --

23 A Because we actually -- when we purchased
24 the land from Dole where the irrigation system hits
25 our property, except for the side vents and the

1 irrigation ditch on the top, we own that now.

2 Q And so it's going to take some time to get
3 more specific estimates and scheduling or timing of
4 the repairs; is that correct?

5 A Correct. We have a master plan from Group
6 70, a water plan, but we are still in the process of
7 soliciting bids and looking at options and cost
8 analysis.

9 Q Do you think that a more specific estimate
10 of cost and scheduling of the repairs would be
11 finalized within 180 days from today?

12 A I think that's possible. The issue we have
13 is the R-2 water is not suitable for most of our ag
14 needs. So the existing system and just the
15 incompatibility of R-2 on what we want to grow
16 doesn't work for us, so we're under the gun to make
17 improvements ourselves so we can start the ag -- our
18 ag plan.

19 Q Okay. And are you aware of the condition
20 that the department of ag has asked for with regard
21 to this Petition that the Petitioner would provide
22 this information as far as cost estimate and schedule
23 for the repairs of the Wahiawa Irrigation System
24 within 180 days of approval?

25 A Yeah, I'm not aware of all the details on

1 that, but I do know that our consultants and the
2 water plan we have, we are moving forward.

3 Q Okay. So do you think that you would be
4 agreeable to the DOA's condition to provide that
5 information within 100 --

6 A Yes, yes.

7 Q Okay.

8 A It falls in line with our -- we need to
9 move forward anyway.

10 Q Okay. And then --

11 A To be honest, because of the subdivision,
12 it's taken a lot longer than we thought. We actually
13 closed before subdivision was complete and we're
14 tenants in common with Dole, so the subdivision
15 hasn't been finalized that long. And that's why the
16 reconveyance still hasn't been finalized, but we
17 moved forward anyway and purchased the property
18 tenants in common with Dole. We're waiting for a
19 subdivision, and we all know that can be a lengthy
20 process.

21 Q And then will the allocation from the Pump
22 17 Well be dedicated to serving the fallow lands or
23 will it also serve the Wahiawa Irrigation System, if
24 you know?

25 A Well, we can't mix those waters, so the

1 infrastructure that is for the R-2 water has to stay
2 R-2, and the system for the well has to be a new
3 system for the water allocation.

4 Q Okay. So and then you have -- you said
5 that you have developed other properties.

6 Have you done other agriculture
7 developments?

8 A Yes, I have; this is my second agricultural
9 development.

10 Q No further questions, thank you.

11 CHAIRPERSON SCHEUER: Representatives from
12 the Department of Ag, are you now wishing to ask a
13 question of the witness or make a statement related
14 to the questioning?

15 MR. YAMAMOTO: Earl Yamamoto, Department of
16 Agriculture. I'm sorry, Chair, I must have
17 misunderstood the instructions about what was being
18 presented by the parties here other than the
19 Petitioner. You know, we did submit two letters at
20 least, and --

21 CHAIRPERSON SCHEUER: Let me go over the
22 procedures before if you will allow me to interrupt
23 you for a second.

24 The Petitioner will make his presentation,
25 present six or possibly seven witnesses.

1 MR. CHIPCHASE: Five or possibly six,
2 Chair.

3 CHAIRPERSON SCHEUER: After that, then a
4 presentation of public witness comments can made by
5 the City, then by the Department of Agriculture and
6 then by the Office of Planning. Then we go to final
7 deliberations.

8 So you will have an opportunity to fully
9 present, but you also in addition will have the
10 opportunity to ask questions of any of the witnesses
11 called by other parties.

12 MR. YAMAMOTO: In that case, I withdraw.
13 The Office of Planning's -- representative of Office
14 of Planning has mentioned a lot of content of our
15 concerns. Thank you.

16 CHAIRPERSON SCHEUER: We look forward to
17 hearing from you. Thank you.

18 Commissioners, are there questions for the
19 witness?

20 Commissioner Giovanni.

21 COMMISSIONER GIOVANNI: Mr. Alexander, do
22 you contemplate the possibility of any energy or
23 power projects on the subject land?

24 THE WITNESS: We had looked at various
25 energy crops. We are growing hemp. We're working

1 with hemp at the top of the property, but we believe
2 that most of this, because we do have another
3 property contiguous that will be used for possible
4 energy crops, but we've more or less phased that out
5 on this parcel.

6 COMMISSIONER GIOVANNI: So other than
7 crops, no energy-related considerations?

8 THE WITNESS: No, except hemp, but there
9 are some byproducts of processing hemp and the
10 biomass from hemp, but we have no explicit plans
11 right now.

12 COMMISSIONER GIOVANNI: Thank you.

13 CHAIRPERSON SCHEUER: Commissioners,
14 further questions?

15 Commissioner Cabral.

16 VICE CHAIR CABRAL: I've read a lot of
17 stuff very recently about this property, but some of
18 the information you reference has got me a little
19 confused.

20 So you have recently purchased it, but
21 you've done -- you're still in the middle between you
22 and Dole, I guess, as joint owners now are doing a
23 consolidation and resubdivision of the parcels?

24 THE WITNESS: No. It was just a straight
25 subdivision.

1 VICE CHAIR CABRAL: Okay. So now I'm more
2 confused. So you bought parcels from Dole, period,
3 you bought that tax map key. And you are now trying
4 to subdivide that into smaller parcels?

5 THE WITNESS: No, no. We initially put an
6 offer in 2017 for the property. Actually, the very
7 beginning of 2017. Dole accepted our offer. But
8 because they wanted to keep the coffee farm, they
9 weren't going to -- they didn't want to sell without
10 subdividing the coffee farm. We made an agreement in
11 the beginning of 2017, that we would put money down,
12 and as soon as the subdivision was completed, we
13 would purchase the property. The subdivision has
14 taken a long time, so we decided at the end of 2018
15 just to purchase the property and be tenants in
16 common because Dole believed in December 2018 the
17 subdivision was just around the corner and they're
18 using our Intel, but we are still in the process of
19 subdivision and reconveyance.

20 COMMISSIONER CABRAL: So you bought the
21 whole can of worms and now with agreement that you're
22 subdividing off one section to go back to Dole?

23 THE WITNESS: Yeah, we were tenants in
24 common, 96 percent, however the math breaks down, and
25 Dole -- actually Dole is the one that initiated and

1 has completed the subdivision.

2 VICE CHAIR CABRAL: Okay. Okay. That was
3 my first question; I think I've got the picture.

4 Now, my second question is: The question
5 came up about you converting some of the land into a
6 condominium -- into condominiumizing some of the land.
7 I don't recall seeing too much about that, so what is
8 it your plan is in the future in condominiumizing
9 because that would allow you then to sell parcels,
10 section it off in condominium units in some form?

11 THE WITNESS: Yes. Yeah, we have a map, a
12 compliance we're going through DPP right now, and we
13 are looking at about, I believe it's 28 CPR lots.
14 Some are smaller lots. We have a couple five acres
15 lots, but most are 40, 50, 100 acres. We needed that
16 because for our development plans for the native
17 Hawaiian nursery and the hemp the asset protection of
18 having individual parcels and individuals who were
19 willing to put in the necessary capital to invest.
20 It's much better with individual CPR parcels.

21 VICE CHAIR CABRAL: Okay. So you're
22 CPR-ing these lands and then putting -- going to --
23 are you now able to do that as vacant land, or are
24 you putting some type of a tool shed on it --

25 THE WITNESS: No, our CC&Rs are very

1 restrictive. There will not be anyone up there in a
2 bus or a container. Everything has to be approved
3 through a design committee. If you are building an
4 ag structure or whatever it might be, processing or
5 storage, it has to go through our committee and be
6 approved. So there will not be people up there in
7 buses, there won't be a Kunia.

8 But we understand if like the native
9 Hawaiian nursery, they're going to need facilities up
10 there, green houses, and all that will go through our
11 approval process, which we have submitted to DPP in
12 the compliance, our CC&Rs in our documents.

13 VICE CHAIR CABRAL: And it's all still
14 zoned agriculture?

15 THE WITNESS: Absolutely, yes.

16 VICE CHAIR CABRAL: Okay, thank you.

17 CHAIRPERSON SCHEUER: Thank you,
18 Commissioner Cabral.

19 Are there Further questions for this
20 witness?

21 Mr. Alexander, if I may?

22 THE WITNESS: Yes.

23 CHAIRPERSON SCHEUER: I also had a question
24 about the relationship between the proposed CPR, the
25 CC&Rs that might be associated with the CPR and the

1 Important Agricultural Lands designation.

2 Specifically we have the Important Agricultural Land
3 designation process in the state to protect Important
4 Agricultural Lands, but we also have a process for
5 reverting designation of IAL status when sometimes
6 what's anticipated in the law, I believe, there can
7 be a compelling public interest where we say, you
8 know what, we really actually want to urbanize the
9 area and a super majority required to urbanize it.

10 How have you incorporated into the draft
11 CC&Rs the required necessary agreement between all
12 members of the condominium to take action on
13 reversion of IAL matters?

14 THE WITNESS: Well, if, I guess, if the
15 property were to be reverted from IAL status, we
16 would lose our incentives, but it wouldn't change our
17 strategy moving forward.

18 CHAIRPERSON SCHEUER: That's not my
19 question. If I may.

20 So I'm presuming that there's not a single
21 member of the condominium board that could
22 voluntarily go on their own to try and remove IAL
23 status for the property --

24 THE WITNESS: Correct.

25 CHAIRPERSON SCHEUER: -- that was initiated

1 by the landowner?

2 THE WITNESS: Right.

3 CHAIRPERSON SCHEUER: There is some process
4 laid out in your CCRs -- or CC&Rs on how this would
5 be done, how agreement among the landowners would be
6 made?

7 THE WITNESS: Well, since we're going to
8 control most of the land and not -- it will always be
9 our say. And there will not be -- we don't envision
10 any landowners -- or would we accept that, because we
11 will always have control of the project. We'll
12 always be the majority, and we'll control the CC&Rs
13 and any development or design or whatever happens on
14 the property.

15 And I guess it's not your explicit
16 question, but even if the land were to be pulled from
17 IAL, which we don't want that because we want the --
18 there's a lot of great incentives, but our ag plan is
19 still going to be based on the State's allowed
20 statutes for what we can do on ag land.

21 CHAIRPERSON SCHEUER: Okay. Can I ask you
22 about the name of your entity?

23 THE WITNESS: Yes.

24 CHAIRPERSON SCHEUER: What is the name of
25 your entity?

1 THE WITNESS: Pomaika'i Partners, LLC.

2 CHAIRPERSON SCHEUER: Pomaika'i?

3 THE WITNESS: Pomaika'i.

4 CHAIRPERSON SCHEUER: Pomaika'i?

5 THE WITNESS: Well, I'm not saying it
6 correctly, but, yes.

7 CHAIRPERSON SCHEUER: And I believe when
8 you initially filed you actually filed as Pomaika'i?

9 THE WITNESS: It was filed incorrectly,
10 correct.

11 CHAIRPERSON SCHEUER: Okay. What is the
12 meaning of the word that you have chosen for your
13 company?

14 THE WITNESS: It is unity and an umbrella
15 of unity, and that's what the partners are. All the
16 partners to this project are -- have a long history
17 and connection with the Hawaiian islands.

18 CHAIRPERSON SCHEUER: Okay. Do you have an
19 experience -- does the firm have experience in
20 developing agricultural subdivisions or agricultural
21 ag parks?

22 THE WITNESS: This is a first ag park of
23 this scale, but there have been other agricultural
24 projects, but they vary differently, because they
25 were just solely with one tenant based on producing

1 one value added item.

2 CHAIRPERSON SCHEUER: Thank you. Is there
3 anything further, Commissioners? If not, it's 10:48,
4 we've been going a little bit over an hour. Let's
5 break until 11:00.

6 (Recess taken.)

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

9 Commissioners, was there anything further
10 for the first witness?

11 Commissioner Cabral?

12 OP had concluded, right? No?

13 MS. APUNA: Yes, OP did, but we -- after --
14 during the break, speaking to the clients here, we
15 did have a few more questions if allowed.

16 MR. CHIPCHASE: No objection, Chair.

17 CHAIRPERSON SCHEUER: Okay. Go ahead and
18 then Ms. Cabral.

19 VICE CHAIR CABRAL: Okay --

20 CHAIRPERSON SCHEUER: Let's here from OP
21 and then you.

22 VICE CHAIR CABRAL: Okay.

23 MS. APUNA: Thank you.

24 CROSS-EXAMINATION CONTINUED

25 BY MS. APUNA:

1 Q You spoke about some of the structures that
2 might be allowed on the different lots, CPR areas,
3 but that they would have to go through a committee to
4 determine if those uses are allowed.

5 Do you know if farm dwellings could be
6 allowed by the committee?

7 A No, farm dwellings are not allowed on CPR.
8 I believe that property, the entire 1300-plus acres
9 is allowed to farm dwellings only.

10 Q Okay. There was an errata that was sent
11 out yesterday afternoon, I believe, and we actually
12 didn't receive or maybe we have, but we didn't see
13 it.

14 Do you know what that errata spoke to or
15 what the change was?

16 A I would have to see it. I don't know.

17 Q Okay.

18 MR. CHIPCHASE: I can clear that up for OP.
19 It corrected tables and ag assessment that had not
20 reflected the updated acreage subdivision
21 correction --

22 MS. APUNA: Does the errata change any of
23 the percentages of the --

24 MR. CHIPCHASE: No, the percentages are
25 stated in the second Amended Petition. The errata

1 simply corrected tables in the agricultural
2 assessment as an exhibit in the Petition.

3 MS. APUNA: Thank you.

4 CHAIRPERSON SCHEUER: Is that it, OP?

5 MS. APUNA: Yes, thank you.

6 CHAIRPERSON SCHEUER: Okay. Commissioner
7 Cabral?

8 VICE CHAIR CABRAL: Condominiums. So
9 you're going to have -- the condominium association
10 is going to fall under all of the rules and
11 regulations of the IAL; and therefore, each of the
12 CPR units inside your condominium are going to have
13 to comply with those -- these regulations if it's
14 under IAL?

15 THE WITNESS: Yes, there are -- and I would
16 like to -- if you would like to look at our CC&Rs and
17 our documents, they're 120 pages, so they're
18 substantial.

19 But all CPR lots will be subject to CC&Rs
20 and IAL except for what is included in our
21 designation.

22 VICE CHAIR CABRAL: The reason I have
23 concerns over that is that we've seen it -- I keep
24 feeling like we're seeing it not that we need more
25 job security here on the Land Use Commission, but,

1 you know, it's a big parcel and then you sell off ten
2 acres and ten acres and ten acres, now you take
3 100 acres and make ten-acre CPR units inside of that.
4 Well, now all of those things are under 15. So while
5 they were protected by State to not be able to be
6 change of usage, all of a sudden they don't have to
7 comply to the land use, and they can go from being ag
8 to being -- I mean, the most profitable crop I know
9 is houses.

10 So, you know, at some point in time, I'm
11 just concerned about what starts to become a slipping
12 away of the intent of protecting our agricultural
13 lands and that concern.

14 So what you told Ms. Apuna is that there
15 is -- there will be no houses, no actual living
16 dwellings will be allowed on it, but other farm
17 structures would be allowed?

18 THE WITNESS: Right. So a couple
19 questions, hemp cultivation and processing is much
20 more lucrative than houses by far even on this
21 island. And then also that there is one TMK, the
22 1300-plus acres, so there will be two home sites on
23 that one property when it's CPR. But other than
24 that, there are no other farm dwellings.

25 We understand, and we will adhere to the

1 State 205 all the rules and regulations for Ag-1
2 land. And we are going to -- that's key to us,
3 because our plan is ag. And to be able to control
4 what is being built there is key.

5 VICE CHAIR CABRAL: Okay. Because
6 otherwise once you have a condominium, so many
7 changes can be made with your -- within your
8 condominium documents with a 67 percent vote of that
9 membership, so I think you've just got to use your
10 attorneys and make sure you keep yourself protected
11 so we don't see you in some other format here.

12 And while you plan on -- forever, life is
13 really long, and I manage 36 condominium associations
14 and subdivisions, and trust me, things change with
15 time. So make your documents really, really clear is
16 my recommendation. Thank you for trying to help
17 clarify my concerns.

18 CHAIRPERSON SCHEUER: Thank you,
19 Commissioner Cabral.

20 Anything further?

21 MR. CHIPCHASE: I would just ask some
22 follow-up questions.

23 CHAIRPERSON SCHEUER: Please, go ahead.

24 REDIRECT EXAMINATION

25 BY MR. CHIPCHASE:

1 Q Justin, when you were speaking with counsel
2 for the Office of Planning you talked about
3 anticipated cost of water improvements. I believe
4 counsel was focused on the WIS system, but that your
5 answer reflected cost not only for WIS, but also for
6 potable and well water.

7 So my question is: When you reference a
8 figure of anticipated cost of about four-and-a-half
9 million dollars for water infrastructure
10 improvements, was that both to WIS and for well
11 water?

12 A Yeah, that was -- it was one proposal. So
13 Board of Water Supply sits on the property, and DWS
14 has confirmed that they can supply certain portions
15 of the property with water. Our processing centers
16 need potable water. We would rather use Board of
17 Water Supply. It would be easier for liability
18 reasons, better than using our own well.

19 So we'll have three water sources on the
20 property. The R-2 which is very little use to us,
21 the water allocation from CWRM and then Board of
22 Water Supply.

23 Q And so when you focus on the cost of
24 improvements, you're looking at the improvements for
25 all of those sources?

1 A Correct, yes.

2 Q The next point that I wanted to make sure
3 was clear is related to Commissioner Cabral's
4 concerns.

5 Would it be possible for any owner of a CPR
6 unit to seek to have that unit removed from the IAL
7 designation?

8 A No. No, we will not allow. It's not our
9 -- the way that the documents are set up, no.

10 Q And is it the expectation of Pomaika'i
11 Partners that all of the land remain in ag and
12 therefore subject to Chapter 205 building and zoning
13 rules for ag?

14 A Yes.

15 MR. CHIPCHASE: No further questions.

16 CHAIRPERSON SCHEUER: Thank you. I think
17 we're done, and you can call your next witness.

18 MR. CHIPCHASE: Yes, Chair. We call Denise
19 Albano.

20 CHAIRPERSON SCHEUER: Good morning. We're
21 still in the morning.

22 THE WITNESS: Good morning.

23 CHAIRPERSON SCHEUER: Do you swear or
24 affirm the testimony you're about to give is the
25 truth?

1 THE WITNESS: Yes.

2 DENISE ALBANO

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

6 DIRECT EXAMINATION

7 BY MR. CHIPCHASE:

8 Q Ms. Albano, would you state your name for
9 the record?

10 A Denise Albano.

11 Q And where do you currently work?

12 A Currently a project consultant for
13 Pomaika'i Partners.

14 Q And as a project consultant, what is your
15 role for Pomaika'i?

16 A Given that my experience and history in
17 Hawai'i, my role is to look at Pomaika'i Partners'
18 project as an ag project and see what role they can
19 play in agriculture for the State. Not only with
20 what State plans or regional plans are for
21 agriculture, but what the small community of farmers
22 and stakeholders have -- say they need to be
23 successful in agriculture.

24 Q And what is your experience with
25 agriculture, your prior experience?

1 A Sure. I am the founder and former
2 president for Feed the Hunger Foundation which
3 provides micro loans, agricultural loans
4 internationally also in Central California and also
5 in Hawai'i. In Hawai'i not only did we provide loans
6 but looked at how we could use our capital to fill
7 the gaps in local agriculture and fruit system.

8 Q Did you also work for the Department of
9 Agriculture here?

10 A Yeah, also the agricultural coordinator for
11 the Chair and I also serve on the Board for the
12 Agribusiness Development Corporation.

13 Q And would you describe the work that you've
14 done for Pomaika'i on this project?

15 A It's a lot of outreach, ensuring that this
16 remains an agricultural project. So I go out and
17 speak with individuals, stakeholders, nonprofit
18 organizations, other big ag stakeholders to see what
19 role Pomaika'i can play, to not only help the tenant
20 but also to help the region increase the local
21 production of food.

22 Partnerships are very important when you do
23 this, and the reason that this -- I feel this could
24 be a very successful ag park is because it provides
25 opportunities for all varieties of farmers.

1 Q And so can you tell us a little bit about
2 why that's important?

3 A Because agriculture and farming is very
4 difficult. That is your farmers are great farmers,
5 but they also need other resources. And in a project
6 like this, there are opportunities to have farmers
7 work together and to also provide shared resources
8 such as processing or packaging plans such as have
9 the farmers work together.

10 We're talking to collaborators, work
11 together in getting certified for -- requirements and
12 also work together for distribution of marketing.

13 Q So then would it be correct to say that the
14 project, as envisioned, allows economy of scale
15 because you've got farmers grouping together in a
16 larger area of land, but it also allows smaller
17 farmers to acquire either through lease or purchase
18 individual lots?

19 A Yeah, right, which is very important point
20 because sometimes the leasing agreements for these
21 farmers are untenable for future financing for
22 capital. And also some of the lack of resources is
23 very -- it restricts what farmers can grow.

24 Q I know you're familiar with the State's
25 policy goals for agriculture.

1 Can you tell us how this community of
2 agriculture that Pomaika'i envisions aligns with
3 those State policies?

4 A As everybody knows, we are looking to
5 increase the production of local food. But that
6 entails many details, and I feel that this is a
7 private project, so it can move a little faster.
8 When I look at some of the strategies that the
9 Department of Ag has in the Agribusiness Development
10 Corporation or even for the North Shore, farmers will
11 need extra shared resources.

12 So we're looking at this project as not
13 only providing shared resources for tenants, but for
14 also the greater regional farming in the North Shore
15 and also for the State.

16 Q Is the designation of the Petition Area as
17 Important Agricultural Lands consistent with those
18 goals?

19 A Absolutely. The history of this property
20 in agriculture, it needs to continue. It's a region
21 where farming is very supportive, and I believe that
22 it could also help move those needles on to that
23 local ag production.

24 Q In your outreach work that you've done,
25 what has been the reaction from the community and

1 from farmers?

2 A The reaction has been basically very
3 positive. They need these resources. Small farmers
4 need the opportunity, like I said, to own their own
5 land, so they can dictate their own business but also
6 have the ability to lease land and also really what
7 is very important here is the shared resources. So
8 there is the North Shore EVP, there's Agribusiness
9 Development Corporation. That's all about a very big
10 strategy for farms to process ing, to distribution,
11 and we have the ability to just perhaps form a pilot
12 project which is why I'm talking to different
13 collaborators to possibly be the first step for that
14 to happen.

15 MR. CHIPCHASE: Thank you. I have no
16 further questions, Chair.

17 CHAIRPERSON SCHEUER: Thank you.

18 Are there questions from the City and
19 County, Ms. Wong?

20 MS. WONG: No questions.

21 CHAIRPERSON SCHEUER: Department of
22 Agriculture?

23 CROSS-EXAMINATION

24 BY MR. YAMAMOTO:

25 Q Quick, perhaps questions or clarification.

1 The term of "agricultural park", I've heard you and
2 Mr. Alexander mention that. I'm not familiar with --
3 I'm familiar with the State program, Agricultural
4 Park Program, but not agricultural parks outside of
5 the State's programs.

6 Could you explain that?

7 A Sure. You know, we've worked -- I've
8 worked with agricultural projects internationally
9 also in California and Hawai'i. Essentially, it is a
10 project where land is essentially set aside for
11 farming practices, but also there will be
12 agribusiness supported facilities and services for
13 the tenants, so that it's vertically coordinated
14 versus everybody trying to just do their work in
15 silence.

16 Q Okay. It sounds like that you did mention
17 the North Shore EVP?

18 A North Shore Economic Vitality Project.

19 Q And they perform a function that resembles
20 a concept of a food hub.

21 Is that what you seek to emulate at
22 Pomaika'i?

23 A I don't know that we can fulfill all of
24 those parts, but we would like to play a role in
25 their strategy.

1 MR. YAMAMOTO: Thank you.

2 CHAIRPERSON SCHEUER: Thank you.

3 Office of Planning?

4 MS. APUNA: I have no questions, thank you.

5 CHAIRPERSON SCHEUER: Commissioners? None.

6 If not, thank you very much.

7 MR. CHIPCHASE: Jeff Overton, Chair.

8 THE WITNESS: Good morning, Chair,

9 Commissioners.

10 CHAIRPERSON SCHEUER: Do you swear or
11 affirm the testimony you're about to give is the
12 truth?

13 THE WITNESS: I do.

14 CHAIRPERSON SCHEUER: Thank you.

15 JEFF OVERTON

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

19 DIRECT EXAMINATION

20 BY MR. CHIPCHASE:

21 Q Good morning, Jeff. Would you please
22 introduce yourself?

23 A I am Jeff Overton. I am the principal with
24 G70. We're architects, planners, civil engineers
25 based in Honolulu.

1 Q And what are your responsibilities at G70?

2 A I am principal at the company in charge of
3 land use and environmental planning involved with
4 land use master plans, permitting, entitlement
5 documents, departmental testing with EIS and work in
6 that area.

7 Q Would you briefly describe for us your
8 educational background?

9 A Yes. I have a bachelors in science and
10 zoology from Duke University and a masters in
11 environmental science from state university in New
12 York, Stony Brook.

13 Q Can you describe for us your experience in
14 Hawai'i in the areas of planning?

15 A Yeah, a little over 31 years in Hawai'i.
16 35 years total professionally in the field of land
17 use and environmental planning, permitting as I've
18 described, site selection studies, urban design
19 plans, various county and state land use approvals.
20 A lot of work in the area of environmental impact
21 statements.

22 Q Have you, in your capacity as a planner,
23 testified before any agencies or boards in the State
24 of Hawai'i?

25 A Yes. Each of the county Planning

1 Commissions, County Councils, State Land Use
2 Commission and the Board of Land and Natural
3 Resources.

4 Q Have you in any of those prior testimonies
5 been qualified as an expert in land use planning?

6 A Yes, I have. I believe 2014 was the last
7 time before the Land Use Commission.

8 Q Do you believe that your testimony today
9 will assist the LUC in rendering its decision?

10 A Yes.

11 MR. CHIPCHASE: Mr. Chair, on the basis of
12 Mr. Overton's experience and qualifications, I would
13 move to have him qualified as an expert in the field
14 of environmental and land use planning.

15 CHAIRPERSON SCHEUER: Any objections? If
16 not.

17 MR. CHIPCHASE: Thank you, Chair.

18 Q (By Mr. Chipchase): Jeff, in your work for
19 Pomaika'i Partners, you prepared the agricultural
20 land assessment that was attached to the Second
21 Amended Petition as Exhibit D, correct?

22 A Yes.

23 Q How long have you been working with
24 Pomaika'i to identify lands for the IAL designation?

25 A Since 2017 we've been meeting consistently

1 with Pomaika'i to develop the Petition.

2 Q Can you describe for us the approach that
3 you and Pomaika'i have taken to selecting the lands
4 for designation?

5 A Yes. It's a very deliberative process that
6 we've undertaken with the landowners, excluding lands
7 on the -- this property that didn't meet the
8 designation criteria. We met with agencies as well
9 as some members in the community and took comments
10 into account before filing.

11 We believe the lands in the Petition meet
12 the standards for designation. We studied the
13 property closely and looked at those areas that met
14 the standards.

15 Q Thank you, Jeff.

16 I'd like to take us through -- have you
17 take us through those standards now. So I put up on
18 the board just the eight standards, if any one of
19 those is met, we can be eligible for IAL designation.

20 So I'd like to start with the standard that
21 relates to lands currently used for agricultural
22 production.

23 Go to our next slide. Can you walk us
24 through this Figure 2 from your ag assessment?

25 A Yes. The majority of the proposed IAL

1 areas currently agricultural use are historically
2 been used for agricultural purposes. This is Figure
3 2 from our assessment. You can see areas that are
4 kind of yellowish/green. Those are the areas that
5 were at least roughly 500 acres for the seed corn
6 with Pioneer DuPont.

7 Fallow areas are more in that gray/brown in
8 the mauka portion or right hand of the two main
9 plateaus there. The more level areas, these plateaus
10 are the ones, of course, that were used very
11 successfully for the seed crop roughly 500 acres.

12 You can see that purplish/violet color
13 there, the horse ranch and grazing area, and other
14 parts of this fallow land that's in the mauka or
15 right-hand part are really good opportunities for
16 broader agricultural use in the future.

17 Q Were those fallow lands historically in
18 agricultural production?

19 A Yes, they were. This is all under the
20 Waialua Sugar Plantation.

21 Q I'd next like to have you take us through
22 the topography. So here's Figure 3 from your
23 agricultural assessment.

24 Would you orient us to this figure and help
25 us understand what you're testifying?

1 A Testing out the laser pointer, I don't
2 know -- yeah, okay, that's -- so largest -- let's
3 see.

4 It's really gentle graze for -- that are
5 best for crop production across the ridges in these
6 areas in here. You can see the larger gulch here and
7 auala forming in the upper areas in here, so the
8 broader plateau areas, you know -- trying not to hit
9 Riley with the laser pointer -- are the areas that
10 are in the lighter green shades.

11 At the time of the aerial photograph, these
12 were, you know, different vegetation character than
13 in the gulches. So we do have significant area that
14 is in these plateau areas, less than 10 percent,
15 roughly 39 percent of our IAL area 10 to 20 percent
16 at 26 percent of the area, and then 20, 25, percent
17 another five percent, so there is roughly 30 percent
18 that falls into the greater than 25 percent category
19 in here.

20 So we do have -- just the way the gulches
21 run and the plateaus in Hawai'i, it's unavoidable.

22 Q If we could next look at the soil qualities
23 for the Petition Area.

24 Jeff, we put up on the screen Figure 5 from
25 your assessment.

1 Can you help us understand the soil quality
2 classification that we're looking at here?

3 A So this is the Land Study Bureau
4 designation or land classification, table
5 demonstrates the petition lands that are classified
6 under each of the LSB categories, from UH and the
7 productivity range. We have very high percentage, 60
8 percent roughly of A and B lands which are the
9 highest category. These are very are very good lands
10 within the Petition Area.

11 Q And then if we can look at the next rating
12 system, slide 14 ALISH, does that correspond with the
13 A and B classifications?

14 A Yes, it does.

15 Q So help us understand the classification of
16 prime lands.

17 A Okay. You know, ALISH has -- it's kind of
18 bigger buckets with ALISH and prime applies to over
19 60, almost 62 percent of the Petition Area in here,
20 the remainder in the area of unclassified.
21 Unclassified doesn't mean it's not used for ag. It
22 just didn't hit the different prime criteria when
23 they established ALISH back in the '70s, but it's
24 still been used historically as part of the
25 plantation and other farming since.

1 Q And in your experience, is it inconsistent
2 with IAL to include unclassified lands?

3 A No.

4 Q I'd next like to look at this solar
5 radiation map that you prepared Figure 7 from your
6 assessment.

7 Can you help us understand the availability
8 of sunshine and how that relates to growing
9 conditions on the property?

10 A Yes. The property receives sufficient
11 solar radiation to support a wide brand of
12 agricultural production on the site.

13 MR. CHIPCHASE: Commissioner Cabral was
14 watching TV. (Laughter)

15 CHAIRPERSON SCHEUER: There's an Apple
16 watch. I apologize.

17 MR. CHIPCHASE: Not at all. It is a first.

18 Q (By Mr. Chipchase): Sorry, Jeff, you were
19 telling us about the solar radiation.

20 A Yes. So the lands just above Haleiwa Town
21 and Waialua, they receive sufficient solar radiation
22 to support agricultural production.

23 Q And then let's take a look at the
24 consistency of the proposed designation with State
25 and County planning, so Figure 9 of your assessment

1 what are we looking at?

2 A This is State Land Use, and this medium
3 green color here is Agricultural District within the
4 State Land Use, so it's entirely within the state ag
5 district.

6 Q Okay. So next, the City zoning so Figure
7 11 reflects the City zoning.

8 What is the zoning designation for Petition
9 Area?

10 A It's the highest or most restricted, AG-1,
11 Restricted Agricultural District.

12 Q We'll turn to the City General Plan. Can
13 you tell us the relationship between the proposed
14 designation and the City General Plan?

15 A Yes. So the designation of the property
16 for IAL voluntary dedication would help to ensure
17 continuation of agriculture and encourage active use
18 of this high quality agricultural land preserving
19 this high productivity potential and contribute
20 towards lessening urbanization of agricultural lands
21 located outside the City's growth boundaries, as
22 Denise had mentioned, encourage investment to improve
23 and expand agricultural infrastructure.

24 Q Turning to the community plan of the area.
25 We put up your Figure 10 which has an overlay from

1 the North Shore Sustainable Community plan.

2 Is the designation of the Petition Area
3 consistent with that plan as well?

4 A Yes, it is. How so? Encourages the active
5 use of high quality agricultural land for ag
6 purposes, preserves open space in ag land in the
7 region and helps to ensure continuation of
8 agricultural as an important component of the
9 region's economy.

10 Q And so, Jeff, we talked a little bit about
11 Justin -- with Justin about the City's proposed
12 designation. And so if we can turn to our next
13 figure, your Figure 13. Help us to understand what
14 we're looking at here.

15 A Okay. This is the City's Final IAL map,
16 and the reference to -- again, Riley, duck -- the
17 property boundary on the outside as well as the
18 Petition Area that we've been looking at. You can
19 see the orange-ish overlay here of the City's IAL
20 lands that were approved under the Council.

21 Q And so is it correct that no portion of
22 Pomaika'i property is currently subject to city's
23 final designation?

24 A That's correct. All the area that we
25 designated was previously designated by the city but

1 is no longer within that.

2 Q Okay. So our entire Petition Area was
3 formally part of the City's proposed designation?

4 A Correct.

5 Q Jeff, if we could talk a little bit about
6 how these lands contribute to critical mass. One of
7 the goals, of course, of IAL is to maintain a
8 critical mass.

9 In what way would improving this position
10 contribute to that goal?

11 A Well, these are lands that were in a --
12 historically been used for agriculture and currently
13 used for agriculture. Planned long-term under County
14 and State guidance for agriculture and IAL will
15 contribute to maintaining a critical land mass for
16 continued agricultural operations, and it's also a
17 contiguous area.

18 Q Finally, Jeff, in a moment we'll call up
19 your colleague Paul Matsuda to talk about water
20 infrastructure.

21 So leaving water aside, does this property,
22 in your opinion, have sufficient infrastructure to
23 support agriculture?

24 A Yes. Ideally, you'll hear more on water
25 resources, so I won't speak to that. But it does

1 have sufficient infrastructure in terms of
2 agricultural roadways, a good backbone from the
3 plantation days and improvements since, and then
4 Kamehameha Highway is capable of supporting farming
5 equipment and direct road transportation to and from
6 the markets.

7 Q In your opinion, is the designation of this
8 property as IAL, Petition Area as IAL consistent with
9 the statutory criteria?

10 A Yes. The proposed land meet the statutory
11 criteria in such designation will further the
12 objectives and policies set forth in Hawaii's IAL
13 laws including Article XI, Section 3 of the
14 constitution.

15 MR. CHIPCHASE: Thank you. No further
16 questions, Chair.

17 CHAIRPERSON SCHEUER: Thank you.

18 Are there questions for Mr. Overton from
19 the County?

20 MS. WONG: Yes, I have a question.

21 CROSS-EXAMINATION

22 BY MS. WONG:

23 Q Jeff, Mr. Chipchase's earlier presentation,
24 if I could, one of the parcels is currently
25 undergoing subdivision, and three lots are going to

1 be created, one of which will be -- well, it's owned
2 currently as tenants in common, and will be retained
3 by Dole, and that's the coffee farm; is that correct?

4 A Correct.

5 Q And that's 82.493 acres.

6 MR. CHIPCHASE: I will confirm that for you
7 in a moment.

8 THE WITNESS: That's very close, or
9 essentially that 83 acres.

10 Q (By Ms. Wong): My question is: Is that
11 lot, the one that will be reconveyed to Dole,
12 included in the total acreage today that we're
13 considering that's owned by Pomaika'i?

14 A No. We've eliminated it in the errata or
15 the revised filing that Cades made updated the
16 acreage figures, and I can understand the confusion,
17 because we, you know, we had filed something
18 different earlier so. The update, the recent filing
19 corrects all the acreages, and it is not included as
20 part of the Petition Area.

21 Q But is it included in Pomaika'i's total
22 landholdings?

23 A It does not. It's excluded from that. So
24 the map, the 51 percent excludes the coffee in the
25 calculation.

1 Q Okay, thank you.

2 MR. CHIPCHASE: And if I could just clarify
3 for the City, Chair, the subdivision has been
4 completed.

5 MS. WONG: Thank you.

6 CHAIRPERSON SCHEUER: Nothing further?

7 MS. WONG: Nothing further.

8 CHAIRPERSON SCHEUER: Mr. Yamamoto?

9 MR. YAMAMOTO: No questions.

10 CHAIRPERSON SCHEUER: Office of Planning?

11 MS. APUNA: I have one question.

12 CROSS-EXAMINATION

13 BY MS. APUNA:

14 Q Thank you for your testimony, Mr. Overton.

15 In the Petition with regard to the -- I
16 think you said 30 percent sloped areas, it says that
17 these types of areas enhance land stewardship, soil
18 conservation, cohesion and continuity of agricultural
19 uses.

20 Can you explain how these proportions do
21 those things?

22 A Yeah, it's a very fair question. The way
23 the land falls in Hawai'i everyone knows how we kind
24 of have the stream channels and the plateaus and the
25 steep gulches and the ravines. And so when we go

1 through defining an area that would be appropriate
2 here for IAL in terms of boundaries and continuity,
3 contiguous lands in here, we, of course, are focused
4 on the productivity on the plateaus.

5 But knowing that these lands are
6 interconnected with each other, and that the
7 stewardship of the property from a soil conservation,
8 vegetation, all those aspects that tie into a
9 holistic sustainable approach to the property have to
10 account for all these pieces. So we can't ignore
11 those.

12 You would not have a -- I'd say a clean map
13 or a, you know, fair representation of this IAL
14 Petition Area if we, you know, excluded each of those
15 small fingers in there. So unfortunately we do have
16 some steep land in there, and it does represent
17 roughly 29.7 percent greater than 25 percent slope.
18 But it is part of the overall picture, and we have to
19 manage it as an overall agricultural management of
20 the property.

21 MS. APUNA: Okay. Thank you.

22 CHAIRPERSON SCHEUER: Commissioners?

23 Commissioner Giovanni.

24 COMMISSIONER GIOVANNI: Mr. Chipchase, I'm
25 not sure. I think this is the right witness for this

1 question but if not, just let me know.

2 It's just a matter of curiosity. The total
3 acreage under Pomaika'i that was shown in Figure 1, I
4 think 1300-plus acres, approximately 51 percent is
5 subject to this Petition?

6 What was the logic for excluding or drawing
7 that line? Why wasn't more acreage considered in the
8 proposed IAL?

9 MR. CHIPCHASE: I think Mr. Overton is a
10 good witness for that. And if there's further
11 clarification, I'll recall Mr. Alexander, but I
12 invite Mr. Overton to address that.

13 THE WITNESS: Well, when we started the
14 process, the County had the entire property painted
15 for IAL, and we brought that to the attention of the
16 owners. I think they had very honest and robust plan
17 for agricultural use of the property. They felt --
18 understanding more about IAL voluntary dedication,
19 they felt it appropriate to designate a significant
20 portion of the property, but they also wanted to keep
21 a significant portion available, flexible for future
22 uses, particularly the portions that are steep and
23 not good soils. You have that large gulch that I
24 pointed out before.

25 It really would be inappropriate to include

1 those areas in IAL. It just doesn't make sense. I
2 know the County has painted large swatches of the
3 North Shore and other areas, including many steep
4 gulch areas in their IAL direction.

5 But in this case, we wanted to, of course,
6 exclude those areas. There are sections that have
7 been excluded from voluntary dedication, more to your
8 point, that are not core areas for the growing of
9 crops. We wanted to have a central contiguous area
10 and supporting what Witness Albano had spoke about
11 that's related to the processing and marketing and
12 sort of the shared resources. It made sense to
13 cluster them in a contiguous area.

14 Certain uses need to have flexibility even
15 though we don't have urban development or conversion
16 plans on the board here, we're still not seeking a
17 boundary amendment in the future, but these areas you
18 can see to the -- let me get this -- so we're
19 referring to Figure 1, or no, what figure are you
20 putting up?

21 MR. CHIPCHASE: We'll put Figure 1 up.

22 THE WITNESS: Okay. Okay. That's great.
23 Hope you can see this pointer. Okay.

24 So the crosshatched area obviously is the
25 Petition Area. This is the steep gulch in here. Had

1 we included that as the County had proposed, that
2 probably would have been over 300 acres of steep
3 lands that made no sense.

4 So if I can walk through the section here
5 on the makai or far left side, the Haleiwa Town, the
6 lower elevation portion of this. This portion has
7 been excluded just because it's really not part of
8 this core area for agriculture that we had talked
9 about. We do have this finger of steep land that
10 goes more to OP's question of steep lands included.

11 There are some unfortunately for -- to
12 establish a contiguous area, we had to include some
13 steep land. This piece here which was very actively
14 used for seed corn fronts along Kamehameha Highway.
15 The owners would like to retain some flexibility
16 thinking here long term for this piece of the
17 property as well as this portion at the upper edge.

18 This is the border of the irrigation ditch,
19 here the Wahiawa Ditch System, and this is the
20 location of the currently approved industrial 10-acre
21 pilot farm on the top side. Certain flexibility for
22 uses there in the future for processing elements.

23 And then this notch in here which is a
24 little awkward, I'd like to say, but this is one
25 portion that would be central to the property where

1 agricultural processing. And once ag uses are
2 established on the property and operating, they have
3 contemplated the idea of agri-tourism-type visits to
4 the property and other allowable uses for, say,
5 outdoor recreational.

6 That would require additional entitlement
7 through the County but are allowable under 205A. So
8 certain flexibility in these pockets of the property
9 is what is intended.

10 I hope that answers your question.

11 COMMISSIONER GIOVANNI: It does. That's
12 sufficient. Thank you.

13 CHAIRPERSON SCHEUER: Thank you,
14 Commissioner Giovanni.

15 Other questions, Commissioners?

16 Yes, Commissioner Okuda?

17 COMMISSIONER OKUDA: So to follow-up on
18 Commissioner Giovanni's questions, and, you know,
19 there's nothing wrong with this, too. But one of the
20 flexibilities or options that you're trying or your
21 client is trying to keep open is a potential future
22 boundary amendment to urban?

23 THE WITNESS: That's not in our thinking at
24 this time.

25 COMMISSIONER OKUDA: But that would be an

1 option that would be kept open, correct?

2 THE WITNESS: As Commissioner Cabral had
3 mentioned earlier, you know, time passes and, you
4 know, 50 years from now whether it's appropriate but
5 it's not in any of our planning, and it would be
6 contrary to the sustainable community plan for the
7 North Shore to contemplate an urban reclassification
8 on this site outside the rural community boundary.
9 So we're not contemplating that at all.

10 COMMISSIONER OKUDA: Okay. Thank you.

11 CHAIRPERSON SCHEUER: Thank you,
12 Commissioner Okuda.

13 Commissioners?

14 Mr. Overton, can you address the -- there's
15 an excluded island in the middle or towards --

16 THE WITNESS: This piece?

17 CHAIRPERSON SCHEUER: So I have questions
18 about that piece as well as the piece within the IAL
19 area. That piece appears to be excluded. It's a
20 small, rectangular piece along Twin Bridge Road, the
21 BWS site.

22 THE WITNESS: Well, here's the BWS site
23 right here. This is further up. And so when you
24 drive down Kamehameha Highway, you'll see four palms
25 in the distance if you look across the property.

1 This is where there's an ag reservoir in this
2 location. It would be under a long-term vision for
3 the property.

4 Probably the best place to bring people
5 together, if you were doing agricultural tourism
6 gathering place and things like that, that might
7 potentially involve additional entitlements at the
8 county level to approve for, say, a visitor center or
9 things like that.

10 So it would not -- it's not central to our
11 cultivation area under the agricultural plan, and we
12 wanted to leave that part open as well as for some of
13 the processing elements that we're talking about. So
14 we purposely excluded that.

15 CHAIRPERSON SCHEUER: And then the part
16 that is not contiguous?

17 THE WITNESS: This one parcel here which is
18 part of their total holdings but is across the bypass
19 road, and it fronts on what's known as Weed Circle
20 named for the Weed family not for the plant. That's
21 roughly seven-and-a-half acres in there. It is still
22 I believe zoned for agricultural, would require
23 rezoning for its use, but it is within the Haleiwa
24 Town Plan and North Shore Plan as an area that could
25 be used for other uses.

1 We're looking at that as potentially a
2 great place for the agribusiness product interface
3 with the community and also kind of book ending the
4 Haleiwa Town. When we met with the council member
5 for the district, Cathleen Pahinui, Thomas Shirai,
6 others we've talked about that as being kind of the
7 touch place where the community could -- the farmers
8 could bring their products to market there and
9 complement what is the overall plan for the Haleiwa
10 Town vision going forward.

11 CHAIRPERSON SCHEUER: And then may I ask
12 you a couple questions about the interface between
13 your area of expertise and water issues.

14 The first one has to do with, you know,
15 there's a BWS well on the site, drinking water well.
16 And it's my understanding that sugar historically was
17 actually very low use of pesticides, and it's one of
18 the reasons why you could have a drinking water well
19 successfully in former sugar areas.

20 But now that this area is being proposed
21 for other crops, is there going to be any necessary
22 restrictions in place on what could be grown above
23 the -- in the catchment area for this well --

24 THE WITNESS: So --

25 CHAIRPERSON SCHEUER: -- that's going to be

1 effective and agricultural possibilities on at least
2 a portion of the land?

3 THE WITNESS: As an environmental planner,
4 it makes sense that we pay attention to that. I
5 think we've not developed a strict regimen of what
6 can and cannot be used on the property. Of course,
7 we've got to meet what are the laws in terms of
8 allowable uses, but paying attention to that, working
9 with the Board of Water Supply to understand that
10 better, and avoid any potential threats to that would
11 make a lot of sense.

12 I'll defer to Paul Matsuda, my partner, to
13 talk more about water supply. We do not have a
14 specific plan laid out that would address your
15 concern there, so it's good that you raise that.

16 CHAIRPERSON SCHEUER: Maui County -- I
17 realize it does not apply -- but Maui County has a
18 well protection ordinance that seeks to protect and
19 prohibit certain kinds of land uses within the area
20 of influence of well sites, so that's one thing that
21 occurs to me.

22 The second thing that occurs to me and I'm
23 trying to understand some of the testimony from the
24 first witness of the Petitioner. Help me understand
25 why the statements aren't contradictory.

1 There is still a high level of uncertainty
2 about which crops might be grown, but there seems to
3 be a high level of certainty that our two waters are
4 unsuitable.

5 THE WITNESS: So, of course, the water that
6 comes from the ditch can't be used for contact crops
7 and such. For the crop, the seed corn crops on the
8 property, for example, they've been routing the water
9 down and using it successfully for the seed corn
10 crops for many years. So that's been productively
11 used, and we talked about, and Paul can -- Paul
12 Matsuda can explain further how we would have
13 multiple water systems on the property and try to
14 capitalize as much as possible on the water from the
15 ditch.

16 The problem with ditch water is there's
17 virtually no -- no guarantee of zero flow, that when
18 the water flows, your water will be made available to
19 you, but they cannot guarantee water, and so that's
20 kind of a problem for many of the different types of
21 crops.

22 And I think you had a two-prong question
23 about certainty of different crops that are going to
24 be raised here. I'd say it's very much in the
25 developmental phase here about who would be the

1 tenants.

2 They do have a couple of leases in the
3 works, but they're still working on attracting the
4 tenants for the property and the details on that.

5 CHAIRPERSON SCHEUER: Okay. So I guess
6 I -- Mr. Overton, I understand that really the
7 concern that I had understood from Mr. Alexander was
8 that R-2 had limitations on its use, but the real
9 concern is the reliability, availability of R-2 water
10 from what you just said.

11 THE WITNESS: So I'm going to defer to our
12 water experts to help answer that question better.

13 CHAIRPERSON SCHEUER: That's fine. Thank
14 you.

15 Anything further, Commissioners? If not, I
16 think we're done with Mr. Overton.

17 Did you have redirect?

18 MR. CHIPCHASE: I had two questions.

19 REDIRECT EXAMINATION

20 BY MR. CHIPCHASE:

21 Q Jeff, one is the -- you're mapping out the
22 IAL area.

23 Would it have been possible to make the
24 parcels contiguous without including that smaller
25 gulch area?

1 A Not really. I believe that you're calling
2 out this central area in here that does add to the
3 acreage but, no, is the answer.

4 Q Okay. So last question, Jeff.

5 In drawing the boundaries, would it have
6 been possible to follow the property line without
7 including some of the seed areas on that end of the
8 property?

9 A Practically speaking, no. You could do a
10 real, you know, super specific mapping that would
11 eliminate a little bit of steep land say on the north
12 side or the Kamehameha Schools boundary up along the
13 side, but it would just be a chopped up map. It'd be
14 really an unclear dedication area.

15 MR. CHIPCHASE: No further questions,
16 Chair.

17 CHAIRPERSON SCHEUER: Thank you. It's
18 11:29. Do you want to do one more witness --

19 MR. CHIPCHASE: Sure, Chair.

20 CHAIRPERSON SCHEUER: -- before the lunch
21 break? Where are we at here?

22 MR. CHIPCHASE: So depending on questions
23 from the Commission, from the other parties, I could
24 actually finish both witnesses very quickly. Their
25 scope of testimony is narrow.

1 CHAIRPERSON SCHEUER: Okay. Let's go for
2 it.

3 MR. CHIPCHASE: All right. I'll try,
4 Chair. Paul Matsuda.

5 CHAIRPERSON SCHEUER: We are still in the
6 morning. Good morning, Paul.

7 THE WITNESS: Good morning.

8 CHAIRPERSON SCHEUER: Do you swear or
9 affirm the testimony you're about to give is the
10 truth?

11 THE WITNESS: I do.

12 PAUL MATSUDA
13 Was called as a witness by and on behalf of the
14 Petitioner, was sworn to tell the truth, was examined
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CHIPCHASE:

18 Q Paul, the first thing I would like to say
19 is, I'm sorry for referring to you as Paul Wong.

20 Mr. Matsuda, would you introduce yourself?

21 A Paul Matsuda.

22 Q And what's your current position?

23 A I'm a principal at G70.

24 Q And what are your responsibilities at G70?

25 A I oversee the civil engineering division.

1 Q And so are you a licensed professional
2 civil engineer?

3 A Yes.

4 Q And would you briefly describe your
5 educational background and your experience in the
6 field of civil engineering?

7 A I have a bachelor's degree from the
8 University of Washington. I've been practicing as a
9 consulting civil engineer for 25 years, involved in a
10 number of different site development and
11 infrastructure projects.

12 Q Has any of your work involved water
13 infrastructure projects?

14 A Yes. We've done dozens of water
15 infrastructure projects specific to planning, design
16 and construction throughout my 25 years.

17 Q And in your capacity as a civil engineer,
18 have you ever testified before any boards or
19 commissions in this state?

20 A Yes. Most recently the Land Use Commission
21 in 2014.

22 Q In any of those prior experiences, were you
23 recognized as an expert in the field of civil
24 engineering?

25 A Yes.

1 MR. CHIPCHASE: Chair, on the basis of Mr.
2 Matsuda's experience and education, I would ask that
3 he be recognized as an expert in the field of civil
4 engineering in water infrastructure planning.

5 CHAIRPERSON SCHEUER: Any objections?

6 MR. CHIPCHASE: Thank you, Chair.

7 Q (By Mr. Chipchase): Mr. Matsuda, what
8 infrastructure or water infrastructure planning have
9 you done for Pomaika'i for the property it acquired
10 from Dole?

11 A We are currently working on a water
12 infrastructure assessment that looks at the existing
13 infrastructure available and looks at what will need
14 to be done to improve it to serve the proposed
15 project.

16 Q Okay. And along those lines, I'd like to
17 talk about the IAL standard, the IAL criteria that
18 relates to sufficiency of infrastructure and water.

19 Would you please describe for us the
20 current water infrastructure on the proposed Petition
21 Area?

22 A Yes. The project site, Petition Area has
23 multiple water sources available. As has been
24 mentioned worked, there is a Board of Water Supply
25 tank down below that services Haleiwa. It is a

1 limited source in that the Board of Water Supply will
2 not typically allow irrigation use of their water.
3 So other than that, our primary sources of water will
4 be the Wahiawa Irrigation System as well as
5 groundwater resources on the property.

6 Q And I'd like to take those one at a time as
7 we talk about the availability of water and water
8 infrastructure. You mention that the BWS water is
9 not expected to be available for agriculture.

10 Is there an anticipation that some BWS
11 water may be available for other uses such as
12 processing on the property?

13 A Yes. It's possible that the BWS will allow
14 us to use the water for nonagricultural use or even
15 agricultural processing subject to their -- with
16 their approval.

17 Q Okay. And then turning to the WIS system,
18 there is some discussion earlier that that is R-2
19 water.

20 Can you help us to understand that?

21 A So the Wahiawa Irrigation System is R-2
22 water sourced from Lake Wilson that is actually
23 functional on the property. So Dole owns and
24 operates and maintains the system conveying water to
25 the property including the siphon across the gulch

1 and the ditch that enters the property on the
2 uppermost part.

3 And as far as I know, the system is fully
4 functional at the moment, and the irrigation system
5 on the property is actually serving water from the
6 R-2 system directly to the seed corn areas.

7 Q So there were two concerns or two issues
8 potentially with R-2 water. It was mentioned by Mr.
9 Overton and Mr. Alexander. The first was the
10 relation to the crops on which R-2 may be used.

11 Can you help us understand what those
12 limitations are?

13 A The R-2 water is recycled water
14 essentially. It's actually from Lake Wilson, but the
15 water will be constricted to use for probably
16 nonedibles. It will definitely be used on the farm
17 depending which farmers come and what they want to
18 grow.

19 Q And the second concern that Mr. Overton
20 mentioned was the availability of water.

21 Is a certain amount of this R-2 water
22 guaranteed by Dole?

23 A Dole will give you the water and promise to
24 give you the water if it's available, and they can
25 deliver it to you. So it is somewhat variable in

1 terms of the source, however.

2 And the way that Dole had worked this in
3 the past was they had reservoirs on the property that
4 would collect the water for use as-needed by the
5 farmers.

6 Q And so given the limitations and use of R-2
7 and the fact that BWS won't supply water typically
8 for agricultural needs, is there a need for a third
9 source of water for this project?

10 A Yes. And we currently -- the property
11 currently has a water use permit for 2.5 million
12 gallons per day for groundwater use and that
13 groundwater source will be used for potable and
14 nonpotable use I suppose throughout the project.

15 Q Based on your review of the materials that
16 Pomaika'i has prepared in the ag assessment and
17 anticipated uses, do you believe that that 3.5 MGD
18 allocation will be sufficient for the potable uses
19 that aren't furnished by BWS?

20 A Yes.

21 Q And we didn't talk about one other water
22 source, Paul, and that is the mean annual rainfall.

23 What is the mean annual rainfall for the
24 Petition Area?

25 A The mean annual rainfall is from 35 to

1 45 inches per year.

2 Q And does that amount of rainfall also
3 provide a material source of irrigation and water for
4 crops?

5 A Yes.

6 Q So taking into account the potential for
7 BWS water, the uses that may be made of the R-2, the
8 water use allocation from the Commission and the
9 rainfall, is it your opinion that there is sufficient
10 water available on the property to support the
11 proposed uses in the Petition Area?

12 A Yes.

13 Q I'd like to talk a little bit about the
14 existing and planned improvement, and so I'm going to
15 pull up Table 6 from the Agricultural Assessment.

16 The table contemplated certain improvements
17 to the WIS system, and I was hoping you could walk us
18 through the table and help us understand the status
19 of those improvements.

20 A Yes. So the table that we have on the
21 screen is actually an excerpt from the 2007 study
22 done by, commissioned by ADC that looked at the
23 Wahiawa Irrigation System and identified items that
24 needed to be basically improved.

25 Since that time, I believe Dole has

1 actually completed or addressed many of these items.
2 And at this point, you know, the siphon, for example,
3 has been relined and is functional.

4 Q Mr. Alexander talked about generally
5 improvements that are planned for the property. Can
6 you tell us a little bit about the expectation for
7 future improvements for water delivery understanding
8 that until the tenants and tenant mix is finalized,
9 we can't be certain what those infrastructures
10 improvement will be?

11 A Correct. For example, the Helemano 11
12 Reservoir has been decommissioned, is not -- no
13 longer exists. The Helemano 9 as identified as a
14 former reservoir. That reservoir may be reinstated
15 if the farmers need to have a reservoir storage, and
16 so that needs to be evaluated. The Opaepala siphon is
17 actually not on the property. It services the
18 neighboring properties so that project is -- it
19 doesn't affect the Petition Area at all.

20 The filter stations themselves will be
21 upgraded as farmers need them to be upgraded, and I
22 believe that the seed corn folks have been doing that
23 as they need to to continue to deliver R-2 to their
24 seed corn.

25 Q In terms of water delivery for the

1 groundwater, are future improvements anticipated for
2 that system as well?

3 A Yeah, so we will look at either upgrading
4 the existing well, Pump 17 Well, or we will drill a
5 new well maybe a combination of both to basically
6 pump water out of the ground, and we would have them
7 store it in a storage tank of some type and then
8 deliver it down to the users below.

9 Q So based on the current and planned
10 improvements to the property, you believe that there
11 will be sufficient infrastructure to deliver water to
12 farmers in the Petition Area?

13 A Yes.

14 Q I have no further questions, Chair.

15 CHAIRPERSON SCHEUER: Thank you.

16 Are there questions for the witness from
17 the County?

18 MS. WONG: No questions.

19 CHAIRPERSON SCHEUER: Department of
20 Agriculture?

21 MR. YAMAMOTO: Yes, thank you. Earl
22 Yamamoto, Department of Agriculture.

23 CROSS-EXAMINATION

24 BY MR. YAMAMOTO:

25 Q Thank you, Paul.

1 Your last statements about the groundwater
2 delivery and the possibility of upgrading Pump 17,
3 and storage of the groundwater in a reservoir.

4 Where do you anticipate that reservoir to
5 be located within the property?

6 A We were contemplating putting the reservoir
7 on the uppermost boundary so that we can get gravity
8 service to the entire property. There could be more
9 than one reservoir site depending on what the farmers
10 desire and where they will need potable water.

11 Q So it will be an enclosed versus an open
12 ditch system like what the -- like WIS?

13 A Correct.

14 Q And these costs for these improvements, not
15 the ones that have been already done by Dole but the
16 ones that you anticipate to be done in -- from this
17 point forward and -- who will bear the cost of these
18 improvements?

19 A I believe Pomaika'i will bear the cost of
20 some initial improvements. However, beyond that
21 point, it may be subject to negotiation as part of
22 the land sale or as part of the farmer to improve
23 irrigation systems maybe on their lot or to the point
24 of connection.

25 MR. YAMAMOTO: I have no further questions.

1 CHAIRPERSON SCHEUER: Thank you.

2 MR. YAMAMOTO: Thank you.

3 CHAIRPERSON SCHEUER: Office of Planning?

4 CROSS-EXAMINATION

5 BY MS. APUNA:

6 Q Thank you for your testimony.

7 So other than the improvement on Table 6,
8 are there additional repairs that are needed for the
9 system?

10 A The existing water irrigation system is
11 functional today. I think at this point in time to
12 keep it in its current state would be just standard
13 operation use of the existing system. So at this
14 point, no further improvements will be required to
15 serve the current use on the property, it would just
16 be improvements needed to serve future uses.

17 Q And how far out in the future do you
18 anticipate that further improvements would be needed?

19 A I think it depends on the land sales and
20 which farmers desire R-2 water. If a farmer doesn't
21 desire R-2 water, we wouldn't build a system for no
22 reason.

23 Q Okay. And I think you stated, I wasn't
24 listening, but did you say that there was a tenant or
25 the landowners until you can -- until you know what

1 their -- what crops they'll be, that they will have,
2 you can't determine what the water needs are of the
3 Petition Area?

4 A Correct. We would, and as part of our
5 assessment, we are going to look at a range of water
6 use expecting that we're going to have a range of
7 people asking for different amounts of water, and so
8 we are using some very rough, tiny numbers for the --
9 at the moment to do some sizing but -- and I think
10 the facilities would be phased in so you would start
11 with a smaller facility and add onto it as the land
12 increases.

13 MS. APUNA: Okay. Thank you. No further
14 questions.

15 CHAIRPERSON SCHEUER: Questions from the
16 Commissioners?

17 I have a question about the discussion of
18 water in the Petition itself. On page 14 of your
19 Amended Petition filed on November 13th, there's a
20 statement that the property has been granted a water
21 allocation of 3.5 million gallons a day from the
22 Commission on Water Resources Management, and it
23 refers to Exhibit E.

24 But if I understood your testimony
25 correctly, and the submittals from the Petitioner,

1 Well 17 to which this permit applies will not
2 actually be the source used, correct, of groundwater?

3 THE WITNESS: It could be the source used.
4 I think it may determine on how we design the system,
5 and either source could be used. Either the water
6 irrigation source or the groundwater source.

7 CHAIRPERSON SCHEUER: Okay. So right above
8 the part where I quoted, it says: My company intends
9 to obtain a permit from the Commission on Water
10 Resource Management to allow the drilling of a new
11 water well.

12 THE WITNESS: Correct, it's contemplated
13 that if Pump 17 Well, which is a large under shaft,
14 cannot be appropriately used due to condition of,
15 percentage of reasons that a new well may be a more
16 viable option.

17 CHAIRPERSON SCHEUER: And how far along is
18 the analysis of that?

19 THE WITNESS: I didn't do that analysis, so
20 I don't have that information available.

21 CHAIRPERSON SCHEUER: So you don't know
22 whether that's going to be necessary or not just that
23 it might be necessary, and a new well might be
24 required?

25 THE WITNESS: I think it's highly likely

1 that we'll drill a new well, if not, because 17 --
2 Pump 17 well is not viable but only -- maybe also
3 because of redundancy, but that would be part of our
4 assessment that we are working on currently.

5 CHAIRPERSON SCHEUER: Okay. And do you
6 understand that although the applicant has a water
7 use permit from the Commission for Well 17, the
8 allocation of nontransferable to a new well is an
9 entirely new permitting process?

10 THE WITNESS: Yes, we are aware of that.
11 And if we didn't -- if we determine we need a new
12 well, we'll go through the appropriate process to get
13 that water use permit.

14 CHAIRPERSON SCHEUER: So there's not any
15 guaranteed allocation of a new well in the location
16 that you would want a new well to exist?

17 THE WITNESS: Not at this point.

18 CHAIRPERSON SCHEUER: Okay. Thank you.

19 Anything else, Commissioners?

20 Anything further, Mr. Chipchase, from this
21 witness?

22 MR. CHIPCHASE: I have nothing further for
23 Paul. And at this point would not intend to call
24 another witness to address water allocation unless
25 the Commission has further questions on water

1 allocation.

2 CHAIRPERSON SCHEUER: Not at this time.

3 MR. CHIPCHASE: Okay. And, Paul, you may
4 step down, and I'll call my last witness, which will
5 be I hope very short. Kauahi Ching.

6 CHAIRPERSON SCHEUER: Aloha, Ms. Ching.
7 Welcome to the Land Use Commission.

8 THE WITNESS: Thank you.

9 CHAIRPERSON SCHEUER: Do you swear or
10 affirm the testimony you're about to give is the
11 truth?

12 THE WITNESS: I do.

13 KAUAAHI CHANG

14 Was called as a witness by and on behalf of the
15 Petitioner, was sworn to tell the truth, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CHIPCHASE:

19 Q Kauahi, would you please introduce
20 yourself?

21 A My name is Britny Chang, but I go by
22 Kauahi.

23 Q Would you please identify your current
24 position for us?

25 A I am an architectural designer and also a

1 cultural advisor at G70.

2 Q Would you talk to us a little bit about
3 first your formal education?

4 A Sure. I graduated with my bachelor's in
5 environmental design from the University of Manoa,
6 and I minored in Hawaiian language.

7 Q And I know you have extensive traditional
8 or less formal experience in education, would you
9 help us understand your background and your family
10 background?

11 A Sure. Most of my training as a researcher
12 and cultural land investigator comes from my father,
13 Kihei de Silva, who is a prominent Hawaiian scholar
14 of mele, hula and other topics regarding Hawaiian
15 knowledge.

16 I also have an extensive background as a
17 cultural practitioner for Halau Mohala 'Ilima Hua
18 under the direction of my mother Mapuana de Silva,
19 and I'm currently undergoing formal training to uniki
20 olapa, which is a graduated hula dancer in our
21 lineage of hula.

22 Q And prior to working at G70, where were you
23 employed?

24 A I began working for two years at the Office
25 of Hawaiian Affairs in the Legacy Lands Division

1 which is the division that handles Oahu's most
2 culturally important and significant land assets. I
3 worked on preservation plans, management plans and
4 master plans for lands like Wao Kele o Puna and
5 Kukaniloko. And then I left OHA to private practice,
6 and I work at G70.

7 Q And focusing on the cultural aspects and
8 historical resource portion of your job, what kind of
9 work have you done at G70?

10 A I do a lot of cultural landscape assessment
11 which dives into the cultural history use of
12 particular project parcels, natural resources that
13 are in the area, and most of the time to inform
14 design, sometimes on planning projects. Mostly it's
15 land research.

16 Q And, Ms. Ching, do you read and speak
17 Hawaiian?

18 A Yes.

19 MR. CHIPCHASE: Chair, based on Ms. Ching's
20 training and experience, both formal education and
21 traditional experience and education, I'd ask that
22 she be recognized as an expert in the field of
23 cultural research and history and cultural
24 environmental design and management.

25 CHAIRPERSON SCHEUER: Any objection?

1 MR. CHIPCHASE: Thank you, Chair.

2 Q (By Mr. Chipchase): Kauahi, can you tell
3 us a little bit about the work you've done in
4 connection with Pomaika'i's property?

5 A Yes. So I did a similar assessment for
6 Pomaika'i regarding cultural landscape history and
7 cultural resources associated with the area and the
8 region and the land in question.

9 Q And can you talk a little bit about your
10 research methodology in approaching those issues?

11 A I look at many Hawaiian language resources
12 including Mahele documentation, other primary source
13 accounts for Hawaiian language newspapers. If any
14 western sources are used, I usually corroborate them
15 with either Hawaiian language resources or items that
16 were written by Hawaiian historians. I will get a
17 lot of historic maps and Mahele documentation also.

18 Q So as part of your work and for our
19 purposes today, I wanted to focus on the criterion in
20 the IAL designation that looks at traditional Native
21 Hawaiian agricultural uses.

22 And so does this property historically have
23 use types or agriculture types associated with
24 traditional Native Hawaiian practices?

25 A Yes. There was extensive traditional

1 agriculture such as lo'i cultivation happening
2 through this region into the valleys and gulches as
3 well as dryland farming.

4 And particularly in this area, there was
5 shrimp gathering in the stream north of the project
6 parcel from which it derived its name Opaepala.

7 Q So then looking at the future and
8 considering the uses that Pomaika'i has planned for
9 the property, are any of those consistent with
10 traditional native Hawaiian crops?

11 A As a few of the other witnesses mentioned
12 before, there is a plan use for a Native Hawaiian
13 plant nursery in the fallow areas and in addition the
14 cultivation of culturally recognized significant
15 agricultural crops.

16 Q And I believe Justin talked about one of
17 those crops may be ulu.

18 Can you maybe tell us a little bit about
19 the cultural significance of growing ulu?

20 A Ulu was talked about in relationship to
21 this project because there were actual records of it
22 being grown in this region and being cultivated. It
23 also had important on the cultural side for its
24 metaphorical significance like relating to growth.

25 Q Thank you, Kauai.

1 MR. CHIPCHASE: I have no further
2 questions, Chair.

3 CHAIRPERSON SCHEUER: Are there questions
4 for the witness from the department -- from the City
5 and County?

6 MS. WONG: No questions.

7 CHAIRPERSON SCHEUER: Department of
8 Agriculture?

9 MR. YAMAMOTO: No questions.

10 MS. APUNA: No questions.

11 CHAIRPERSON SCHEUER: Commissioners?
12 Commissioner Cabral?

13 VICE CHAIR CABRAL: I'll try and be short.
14 Ulu, we're talking about the water and water concerns
15 and stuff. I don't know how much water it uses. And
16 I'm from Hilo, we have lots of water. But water --
17 is that something that would need a lot of water?
18 I'm sure that you're going to -- before things are
19 planted, but, you know, it's nice to be metaphorical,
20 but you've also got to be practical and make sure
21 you've got enough water for ulu if it needs a lot. I
22 don't know.

23 But I just was curious if any actual
24 studies that you've done so far to know whether
25 that's going to be a viable crop with the amount of

1 water -- or limited water resources that are
2 available.

3 THE WITNESS: It's not within my expertise
4 to speak on the growing of ulu, but anecdotally and
5 experientially, we grow a lot of ulu at the beach
6 without any problem of water use, just natural
7 occurring.

8 VICE CHAIR CABRAL: Okay. Thank you.

9 CHAIRPERSON SCHEUER: Commissioners?

10 Commissioner Okuda.

11 COMMISSIONER OKUDA: Thank you, Mr. Chair.

12 Ms. Ching, based on your research and
13 investigation with respect to the subject parcel, did
14 you see any evidence which would indicate that the
15 designation of the property or the granting of this
16 Petition to designate a portion of the property as
17 Important Agricultural Lands would in any way
18 negatively affect Hawaiian cultural practices or
19 cultural resources?

20 THE WITNESS: It's my understanding given
21 the use of the lands that are to be designated, the
22 use isn't changing, and there wouldn't be any
23 significant impact in restricting native Hawaiian
24 gathering rights or cultural practices, and it's also
25 my understanding the landowner has committed to

1 working with any cultural groups should they come
2 forward with concerns or desire to practice culture
3 in -- within their holdings.

4 COMMISSIONER OKUDA: Did your study or
5 investigation indicate any impact on any existing, if
6 there are any, historic sites, cultural site or
7 anything else that might be of native Hawaiian
8 cultural significance?

9 THE WITNESS: To my knowledge, we weren't
10 able to identify any specific sites on record. There
11 are no archaeological studies done in this particular
12 parcel. There are in the region in close proximity,
13 but none of them identified any sites on the record
14 that would be associated with this project.

15 COMMISSIONER OKUDA: Through your study and
16 investigation regarding this parcel of property, did
17 you find any evidence which would indicate the
18 existence of any burials or anything of that nature
19 on the property?

20 THE WITNESS: None of the literature that I
21 reviewed or any of the research that I encountered
22 suggested that there were specific located burials
23 within this project.

24 COMMISSIONER OKUDA: Okay. Thank you very
25 much. And the only thing I might take issue is, I

1 grew up in Kailua, and I don't recall seeing any ulu
2 in Kailua, but that's not relevant to this matter
3 here. Thank you.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Okuda. The Chair has seen many ulu
6 trees in Kailua, for the record, including near the
7 shoreline.

8 Is there anything further, Commissioners?

9 So just to be -- follow-up on Commissioner
10 Okuda's questions, with the research that you did on
11 behalf of Pomaika'i Partners orientating towards
12 identifying any existing valued natural or cultural
13 resources that might be used on the property?

14 THE WITNESS: The resources was mainly
15 geared toward just the designs of a master plan, but
16 portions of that research informed the agricultural
17 assessment and crops that would later be cultivated
18 on the property.

19 CHAIRPERSON SCHEUER: But it was not
20 oriented towards most specifically satisfying any
21 kind of Ka Pa'akai analysis?

22 THE WITNESS: No.

23 CHAIRPERSON SCHEUER: I have nothing
24 further. Anything else? Anything, any redirect?

25 MR. CHIPCHASE: No, Chair.

1 CHAIRPERSON SCHEUER: Okay. Thank you very
2 much.

3 THE WITNESS: Thank you.

4 CHAIRPERSON SCHEUER: No further witnesses.
5 Okay. So it is 12:20. We are ready for a break and
6 eat lunch. I don't think we'll be able to go through
7 discussions from the parties and Commission
8 deliberation including -- do you have further sort of
9 concluding remarks?

10 MR. CHIPCHASE: Maybe three minutes of
11 concluding remarks.

12 CHAIRPERSON SCHEUER: Okay. So I think we
13 need to take a lunch break. It's 12:19, I suggest
14 reconvening at 1:00 p.m. Does that work?

15 MR. CHIPCHASE: You said, 1:00 p.m., Chair?

16 CHAIRPERSON SCHEUER: 1:00 p.m., 40
17 minutes. We will reconvene at 1:00 p.m.

18 (Noon recess taken.)

19 CHAIRPERSON SCHEUER: Good afternoon. We
20 are reconvening.

21 Did you have some concluding remarks at
22 this time, Mr. Chipchase?

23 MR. CHIPCHASE: Briefly, Chair, thank you.

24 And so what I want to focus the Commission
25 on, of course, the only question before the

1 Commission is whether to recognize --

2 COURT REPORTER: Can you speak into the
3 microphone? I'm sorry.

4 MR. CHIPCHASE: Oh, I'm sorry.

5 I want to focus the Commission on the issue
6 before it which is really just should these lands be
7 recognized -- the Petition Area, be recognized as
8 Important Agricultural Land. The statutory standard
9 with eight criteria, any one of those -- meaning any
10 one of those can support designation of IAL.

11 Here, I believe, we've shown through the
12 testimony both lay and experts, the Petition, the
13 mapping that we submitted, the land that we seek to
14 designate meets a number of those standards.

15 We respectfully suggest they meet all of
16 those criteria, and they are appropriately recognized
17 as Important Agricultural Lands.

18 The other parties in the proceeding from
19 the DOA, the City, OP have all submitted comments
20 that are supportive of the designation. They had
21 questions; I think we've answered those questions.
22 The bottom line is they were all supportive of the
23 Petition.

24 Typically when I come before this Board and
25 Petition on an IAL matters, there has been either

1 existing or a potential competing City designation
2 for the land as IAL that may or may not be in
3 conflict with the Petition that I present on behalf
4 of the landowner.

5 In this matter, uniquely for me anyway,
6 there is no competing City designation, because the
7 City pulled all of these lands out of its IAL map and
8 has filed with the Commission.

9 So we're not in a situation where these
10 lands are not designated IAL, they might be in the
11 future City designation, and we're making this
12 designation truly voluntarily because that's what we
13 told the City what we would do when we discussed
14 their designation why we thought, come up with the
15 designation that's more appropriate for our property,
16 and I believe we presented the appropriate definition
17 to you.

18 The last thing that I wanted to discuss
19 with the Commissioners, present the Commission is
20 that the DOA, although supportive of the Petitioner,
21 had asked for certain further details regarding water
22 infrastructure and plain water capability which is
23 180 days. I don't believe that that kind of
24 condition is appropriate for Declaratory Petition if
25 we opposed it. In discussion with DOA just now, we

1 would support such a condition if the time limit were
2 270 days. I believe that would give us a really good
3 time frame to further develop with our tenant who's
4 obviously -- are important component of determining
5 exactly which water we use and how we use it and how
6 it's delivered. 270 days gives us enough time to
7 present it.

8 And so with that clarification, we would
9 not oppose the DOA's position if the Commission were
10 inclined with that. With that I would just say that
11 these things, these IAL designations are a good
12 thing. It's a good thing for the community, and this
13 particular use, this really unique use of an ag park
14 or an ag community where you have centralized
15 processing and economy of scale. It can only get
16 bigger ag operations, but you are able to diversify
17 tenant. It's an important component of Hawai'i's
18 agricultural future. I appreciate your time today.

19 CHAIRPERSON SCHEUER: Thank you, Mr.
20 Chipchase.

21 Commissioners, are there questions for the
22 Petitioner at this time?

23 Commission Okuda.

24 COMMISSIONER OKUDA: Thank you, Chair.

25 Mr. Chipchase, with respect to any proposed

1 conditions which any of the other parties might be
2 asking to be attached to any approval by the Land Use
3 Commission, and I'm asking the same questions to
4 everybody else, what statute or rule authorizes the
5 Land Use Commission to attach any set of conditions
6 on an order with respect to designation of lands as
7 IAL?

8 MR. CHIPCHASE: Commissioners, it's a
9 question we visited on other projects, and I believe
10 the answer is there is no specific statute
11 authorizing the Land Use Commission to attach
12 conditions other than its standard -- their use shall
13 be consistent with the representations to the
14 Commission to an IAL designation.

15 And in the past, the Commission has
16 designed to attach conditions for that reason. If
17 the Commission reaches that same conclusion today,
18 obviously we don't oppose it, but I wanted to make it
19 clear to the Commission that with the concurrence of
20 DOA, we would accept 270 days as an appropriate
21 deadline for submission of the water plan. We don't
22 oppose that kind of clarity or certainty that the
23 department is seeking.

24 COMMISSIONER OKUDA: Thank you.

25 CHAIRPERSON SCHEUER: Thank you,

1 Commissioner Okuda.

2 Commissioners?

3 So, Mr. Chipchase.

4 MR. CHIPCHASE: Yes, Chair.

5 CHAIRPERSON SCHEUER: What I'm struggling
6 with, and I mean actually I stated before more than
7 once publicly in deliberation in front of the LUC, I
8 am very strongly supportive of agriculture, but do
9 not find the IAL statute particularly useful in
10 promoting agriculture in our state. It proposes
11 other things, certainly attorneys hours, but --

12 MR. CHIPCHASE: Is that your only comment,
13 Chair?

14 CHAIRPERSON SCHEUER: I have more. I
15 believe that the Petition is inaccurate in some of
16 its statements about water, the ones that I addressed
17 with the witness in particular implying that somehow
18 a well would be automatically granted a water use
19 permit application for a new well.

20 I think that the water demand and the water
21 supply available for successful farming on the
22 property, while on a global sense it looks like,
23 yeah, there probably is, has not really -- it's still
24 very loose. And the problem I really have that I'm
25 struggling with is if in sometime in the future the

1 landowner wishes to remove IAL designation from this
2 land, it is automatic if they show that there's no
3 longer sufficient water available to successfully
4 economically farm on the property.

5 So if we don't have a clear standard at the
6 outset of what we felt was a sufficient water now to
7 designate it, I don't understand why we then turn to
8 later in the future if we say -- if the landowner
9 comes in front of us and says, there's no longer
10 enough water.

11 So help me through this.

12 MR. CHIPCHASE: I'll do my best, Chair, and
13 if I don't forgot, I'd also like to -- I drafted in
14 my remarks comment on the Chair's questions regarding
15 the Ka Pa'akai which may or may not be something in
16 the Chair's mind. I did want to say a couple of
17 things.

18 In terms of the errors in the application,
19 you know, obviously I take responsibility for any
20 misstatements in the Petition, and if I misstated the
21 relationship between the -- an application for a new
22 well and the availability of well water then that
23 falls on me. But I do believe that Mr. Matsuda
24 clarified that in his testimony and explained that we
25 may not seek, although he thinks likely we will, a

1 further well permit application, and utterly respect
2 the idea that that does not guarantee that you'll get
3 the same allocation the second time that you present
4 before the Water Commission.

5 That said, we do have an existing
6 allocation for an existing well 3.5. And if that use
7 or a portion of it is available through that well, we
8 can use that well and that sets a standard for the
9 water that we think is appropriate for the uses that
10 we have planned. That's the use I believe they
11 actually sought 4.1 MGD; they were awarded 3.5. And
12 as Mr. Matsuda explained, that is sufficient to meet
13 their potable need for the property.

14 So I think we do have clear standards even
15 if a future proceeding before the Water Commission
16 may be necessary if they choose to relocate the well
17 and the designation that the Commission may issue may
18 differ from what is available today.

19 You also had testimony before you regarding
20 the availability of BWS water for nongrowing, at
21 least agricultural uses, and that the expectation is
22 that that water may be part of the overall water plan
23 for the project as well, and testimony regarding the
24 availability of R-2 water for uses appropriate for
25 R-2 in addition to rainfall. So with respect, I

1 would not say that there's any uncertainty as to the
2 availability or sufficiency of water for the project.
3 Rather the question is which source of water will we
4 draw from to support the particular crops and uses
5 that are planned.

6 That will always be the case when you have
7 a new operation like this ag park idea, this ag
8 community idea. Rather than a single tenant or fixed
9 tenants for ongoing operations, their use -- your
10 water needs and uses will vary, and they varied on
11 the other petitions that I've been involved in, one
12 that included 9,000 acres, much of which can vary
13 depending upon who is the user.

14 And so with respect, Chair, I don't think
15 that there is significant uncertainty with respect to
16 the availability of water, our need for water or uses
17 that will be applied to that water.

18 And I would add to that that the adequate
19 supply of water in the designation is only one of
20 eight criteria. So even if they don't -- have not
21 carried their burden with respect to the availability
22 of water and water infrastructure, we certainly
23 understand, including the land historically in
24 agricultural production. Currently, it has good soil
25 and other things, and so the land would still be

1 appropriate for designation.

2 With respect to the condominiums, I'm
3 actually glad you raised that because I had forgotten
4 to make a small comment on that as well.

5 The condominium structure on the property
6 does not change that it is one lot. All right. So
7 if we look at the 1300 acres at the largest chunk of
8 the property that Pomaika'i owns and a portion of it
9 being the largest percentage of IAL designation.
10 Something like 670 of 690 acres more or less that we
11 seek to designate. It remains one zoning lot. The
12 condominium is simply an ownership overlay so that
13 you can fractionalize your ownership of that lot into
14 units and common areas. It does not change that it's
15 one lot, that it's subject to 205, that it's subject
16 to county zoning.

17 And so -- or change that a portion of it,
18 those portions that are in IAL are in the IAL.

19 As you heard Mr. Alexander explain, there
20 is no expectation. No way really I believe he said
21 for any individual owner of a condominium unit of
22 this larger piece to come in and say I would like to
23 remove my land from IAL. Much less to say, I would
24 like to change my land to urban, and change my
25 zoning, because it remains one zoning lot, and that,

1 all of that, all of the condominium remains under the
2 control of the board.

3 And so I understand the concerns that
4 you've expressed and Commissioner Cabral initially
5 expressed regarding the condominium.

6 I don't believe that structure has any real
7 basis or any real reason for concern here because of
8 the way that it's done and because of really the
9 limited nature that condo overlay makes or does for
10 the property.

11 I said I wanted to comment at least briefly
12 on Ka Pa'akai. And from time to time, Ka Pa'akai has
13 come up, and, you know, the essential answer to that.
14 The IAL designation doesn't change the use. It
15 remains ag land. It was not a situation where you
16 move it into urban. It's really just an overlay
17 recognizing these are important agricultural lands
18 within the meaning of the statute. And so because
19 the uses doesn't change, there isn't that need for Ka
20 Pa'akai analysis because there's no impact just in
21 the designation of the property as IAL. It doesn't
22 change the use in any way.

23 The other things that are contemplated on
24 the property don't effect -- they are related to that
25 designation, that change, or that overlay. In

1 addition to that, is you heard Kauahi explaining the
2 owner has committed to recognizing and protecting any
3 cultural practices that may be identified even though
4 to date none have.

5 So we believe that not only is there not a
6 need for Ka Pa'akai analysis, we would need it in any
7 event because of the owner's commitment.

8 CHAIRPERSON SCHEUER: Thank you.

9 Anything further for the Petitioner?

10 If not, we can move on to public comments
11 from the City and County.

12 MS. WONG: We don't have any comments.

13 CHAIRPERSON SCHEUER: Agriculture? Mr.
14 Yamamoto?

15 MR. YAMAMOTO: Yes, thank you, Earl
16 Yamamoto, Department of Agriculture.

17 As Mr. Chipchase mentioned with respect to
18 the condition that we posed, the Department of
19 Agriculture has posed in its initial letter to the
20 Land Use Commission, dated July 18th of this year, we
21 did have 180-day expectation that the three items be
22 addressed. And we do agree that 270-days -- and
23 extension to 270 days is acceptable.

24 Shall I read what the condition is, or is
25 there no need for that?

1 CHAIRPERSON SCHEUER: I think the
2 Commission is familiar with the submittal, both
3 submittals from the Department of Agriculture
4 including your proposed condition.

5 MR. YAMAMOTO: Thank you.

6 I would like to make a comment about the
7 irrigation water. The current irrigation water
8 obviously when the Pioneer -- Pioneer Seed was the
9 principal agricultural activity on the makai side
10 more towards Kaiaka Bay. There obviously was
11 sufficient water to carry to meet the irrigation
12 needs for that operation. Even though if they have
13 that odd crop rotation of like one acre in use and
14 three acres not, the water -- irrigation water for
15 that area which is I believe much of it is out of the
16 Petition Area, further makai of the Petition Area.
17 The water supply from the Wahiawa Irrigation System
18 which supplies the R-2 water was sufficient to meet
19 those needs over a sustained period of time.

20 Our concern as expressed in our letter to
21 the Land Use Commission was whether or not the water,
22 irrigation water availability source, distribution,
23 storage and so forth and so on, but the mauka side,
24 the 390-plus acres that are identified as fallow
25 agricultural lands, further towards the Wahiawa, what

1 that source, and, you know, it was not clear to us
2 from the original Petition and then the subsequent
3 Amended Petition sent to us, did not make that clear
4 to us.

5 So and we are concerned because when farm
6 agricultural operation, whether the license, lease
7 was -- particularly the lease and fee ownership start
8 to -- begin to take possession of their lands within
9 the Petition Area, especially the land that currently
10 do not have any irrigation lands, they would need
11 that certainty, not a hope, a certainty that there
12 would be coincidence between their plans to undertake
13 cultivation of their properties, and the availability
14 of sufficient amount of irrigation water. If this
15 doesn't occur, it could be quite problematic.

16 That's one thing -- well, obviously
17 ultimate importance to the farming operators, and
18 that brings up to the other point I believe we --
19 yeah, that it's inescapable that the management part,
20 the -- to redevelop or improve infrastructure is one
21 thing, but everybody knows the most difficult thing
22 in any kind of separate project or homeownership or
23 anything like that is maintenance, ongoing
24 maintenance, and that that part of organization -- I
25 mean, that part of the use of the land is for

1 agricultural purposes is fundamentally dependent upon
2 the ability of whatever entity that will be managing
3 the -- and, you know, managing and be responsible for
4 the maintenance and operation of the water irrigation
5 system which includes wells and pumps and reservoirs,
6 and collaterals and primarily life and so forth and
7 so on. Things that are common -- will be commonly
8 held improvements.

9 That part is kind of invisible but also
10 very important to the establishment and maintenance
11 of agricultural activity on -- well, within the
12 Petition Area.

13 Other than that, that concludes my
14 comments.

15 CHAIRPERSON SCHEUER: Thank you, Mr.
16 Yamamoto.

17 Other questions for the Department of
18 Agriculture?

19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Thank you, Mr. Chair.
21 Thank you, Mr. Yamamoto.

22 Same question I kind of posed to Mr.
23 Chipchase. Are you able to point to any specific
24 legal authority, statute or administrative rule which
25 would authorize the Land Use Commission to place

1 conditions such as this water infrastructure
2 condition on an approval or order approving or
3 granting the Petition here to designate the subject
4 lands IAL?

5 MR. YAMAMOTO: No, I am not.

6 COMMISSIONER OKUDA: Okay. And related to
7 what you brought up, which are important points,
8 wouldn't the marketplace kind of take care of this
9 need for the infrastructure? In other words, if the
10 developer here or the owner cannot show a plan or
11 have in place infrastructure or the things that would
12 make farming a viable alternative, frankly people who
13 want to buy in or get financing to buy these lots,
14 these farmers, they simply wouldn't get financing
15 because a bank would come to the conclusion that,
16 hey, there isn't sufficient water. Your business
17 plan is not going to make it. So the marketplace
18 would take care of these issues. I mean, is that one
19 possibility?

20 MR. YAMAMOTO: That certainly is, and
21 ideally perhaps that would be the case if everyone
22 reads the things that matter, you know. With respect
23 to this particular issue that they read all the fine
24 print, but, you know, I can't really speak to that.
25 But we -- I just want to make sure that I make that

1 point, whether or not the -- that could be part of
2 something that the Commission has to take into
3 consideration with respect to the IAL designation.
4 You know, that's not -- it's not one of the eight
5 criteria, but eventually going down the line like say
6 management, these are things that are important for
7 the continued agricultural use of the property, which
8 is in line, in sync with the purpose and intent and
9 the policy of the Important Agricultural Land
10 statute.

11 COMMISSIONER OKUDA: Yes. And, Mr.
12 Yamamoto, I think you're absolutely correct about the
13 need for infrastructure and the infrastructure
14 support that has to be given to farming. I think
15 you're absolutely correct about that, and that's
16 really something that if we want sustainable
17 agriculture in this community, I think everyone from
18 the private and public sector has to put their
19 support behind, because without adequate
20 infrastructure, it just makes farming even more
21 difficult and perhaps impossible. Thank you.

22 MR. YAMAMOTO: You're welcome.

23 CHAIRPERSON SCHEUER: Anything further for
24 Mr. Yamamoto?

25 If not, Office of Planning?

1 MS. APUNA: Thank you, Chair.

2 Actually, Aaron Setogawa, the planner for
3 OP, will present OP's position on the Petition.

4 CHAIRPERSON SCHEUER: I think I have to
5 swear you in.

6 THE WITNESS: Okay.

7 CHAIRPERSON SCHEUER: Do you swear or
8 affirm the testimony you're about to give is the
9 truth?

10 THE WITNESS: I do.

11 CHAIRPERSON SCHEUER: Thank you.

12 AARON SETOGAWA

13 Was called as a witness by and on behalf of the
14 Office of Planning, was sworn to tell the truth, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 THE WITNESS: The Office of Planning
18 reviewed the Amended Petition filed with the Land Use
19 Commission on November 13, 2019, and the errata sheet
20 submitted to the Commission on November 14, 2019, and
21 evaluated according to the eight standards and
22 criteria for the identification of IAL lands under
23 HRS Section 201-44(c). We believe the Petition Area
24 satisfied six of the eight criteria, failed to meet
25 one, and potentially meets another.

1 The Petition Area failed to meet Criteria
2 No. 4, regarding land types associated with
3 traditional native Hawaiian agricultural uses or
4 unique agricultural crops.

5 There is no evidence of such land types or
6 uses despite the statement in the Agricultural Land
7 Assessment that a portion of the Petition Area is
8 being cultivated as a coffee plantation.

9 As for Criteria No. 5, regarding land with
10 sufficient quantities of water to support viable
11 agricultural production, 135 acres of Petition Area
12 currently leased for seed corn production has access
13 to irrigation water from the existing irrigation
14 system. Water comes from Lake Wilson and flows to
15 the Wahiawa Ditch controlled by Dole Food Company.

16 However, Petitioner says Dole Food has
17 been -- is willing to provide us water if it is
18 available. Therefore, your long-term availability of
19 this source, and its capacity is uncertain.

20 394.7 acres or 57 percent of Petition Area are fallow
21 lands with no apparent access to irrigation water.

22 Petitioner stated their intent to install a
23 new agricultural water system, including the
24 possibility of drilling a new well once it has
25 obtained an allocation and permit from the State

Commission on Water Resource Management.

Petitioner also stated that they have groundwater allocation of 3.5 million gallons per day from the Commission from Pump 17 located within the Petition Area.

However, the -- whether a new well will be required or water be taken from 17, it has not yet been determined and Petitioner stated it depends on the need for the farmers that would be -- the land would be leased to.

An adequate and stable water source distribution network is critical to agricultural use of the Petition Area. Uncertainty on this not only undermines the ability to meet criteria 5, but also jeopardizes the Petition Area status to satisfy several of the other criteria under HRS Section 205-44(c).

In other words, it's not just one criteria but a very critical component supporting other criteria as well.

In summary, we believe the Petition Area meets six of the eight criteria and has potential to fully meet Criteria No. 5. Approval of the Amended Petition would add almost 670 acres, 59 percent of which is A or B rated lands to the state stock of

1 Important Agricultural Lands. But because of the
2 uncertainty regarding the availability of sufficient
3 water and its critical ways in determining the IAL
4 status, OP recommends the approval of the Amended
5 Petition subject to the conditions recommended by the
6 Department of Agriculture and with our suggested
7 amendments.

8 And what we are suggesting, we have agreed
9 with Petitioner's request to extend it to 270 days,
10 and we would add that not only should the information
11 be provided to the Department of Agriculture, but the
12 Office of Planning, and the Land Use Commission
13 should also be provided with this information. Thank
14 you.

15 CHAIRPERSON SCHEUER: Thank you very much.

16 Are there questions for the Office of
17 Planning?

18 Mr. Okuda.

19 COMMISSIONER OKUDA: Thank you, Chair.
20 Same question.

21 What statute or rule authorizes the Land
22 Use Commission to attach conditions to an order
23 approving the designation of IAL?

24 MS. APUNA: HRS Section 205-45(e) below
25 subsection (3) it says: The Commission may include

1 reasonable conditions in the Declaratory Order.

2 COMMISSIONER OKUDA: But doesn't that
3 paragraph deal with a situation where there's a
4 designation and reclassification, because the
5 paragraph starts out, and I quote:

6 If the Commission, after its review, finds
7 that the designation and, if it's applicable,
8 reclassification sought in the Petition should be
9 approved. Then it goes on: The Commission shall by
10 approval of certain things.

11 Is this paragraph simply limited to
12 situations where there's not only the approval but a
13 reclassification?

14 MS. APUNA: I would think the term "if
15 applicable" would mean if applicable when there is a
16 classification.

17 COMMISSIONER OKUDA: Okay, but -- oh, okay.
18 I see what you're saying that -- I see what you're
19 saying. Okay, thank you.

20 CHAIRPERSON SCHEUER: Anything further,
21 Commissioners?

22 Commissioner Wong? No?

23 COMMISSIONER WONG: It's about something
24 else.

25 CHAIRPERSON SCHEUER: Okay. Anything

1 further?

2 Commissioner Wong?

3 COMMISSIONER WONG: I would like to move to
4 go into executive session to consult with the Board's
5 attorney on questions or -- and issues pertaining to
6 the Board's powers, duties, privilege, immunities and
7 liabilities regarding adding conditions to the IAL.

8 CHAIRPERSON SCHEUER: There is a motion to
9 move into executive session made by Commissioner
10 Wong. Is there a second?

11 VICE CHAIR CABRAL: Second.

12 CHAIRPERSON SCHEUER: It's been seconded by
13 Commissioner Cabral.

14 Is there discussion on the motion? If not,
15 all in favor say "aye". Is anybody opposed? Motion
16 carries. The Commission will go into executive
17 session.

18 (Executive session.)

19 CHAIRPERSON SCHEUER: We're back in
20 session.

21 Are there any further questions for any of
22 the parties? The Petitioner, the Office of Planning,
23 Department of Agriculture or City and County of
24 Honolulu?

25 Commissioner Cabral.

1 VICE CHAIR CABRAL: I have a question of
2 Petitioner Chipchase.

3 You earlier represented that you folks felt
4 that you could come up with a viable water plan,
5 water supply plan, for lack of a better language, in
6 270 days.

7 Are you saying that that's being added to
8 your Petition?

9 MR. CHIPCHASE: Oh, no, Commissioner. I
10 appreciate the opportunity to clarify that. And if I
11 may say, just more broadly to get to your specific
12 question, take a step back and take a step forward.
13 That as a party to the proceeding, of course, I would
14 be entitled to cross-examination of any witness that
15 testifies including OP.

16 In the interest of time, I met with OP on
17 the break, and what we had agreed to instead of
18 cross-examination is to resolve those comments in
19 this way. And that is that, based on the evidence
20 that we've presented regarding the availability of
21 water and planned infrastructure improvements, OP
22 agrees that the Petition meets that criteria and that
23 there is adequate water.

24 OP would like the condition that DOA has
25 proposed to ensure that those improvements basically

1 move forward in that understanding of the time frame
2 in which they will progress. And so we, if the
3 Commission includes that it may in part condition,
4 acquiesces in that condition, we're perfectly
5 prepared to comply with that -- the DOA's condition
6 on the 270-day timeline.

7 I would not say that that is part of our
8 Petition, or that we believe there's anything unclear
9 about even the availability of water or the
10 infrastructure improvements. We simply are
11 recognizing that OP and DOA wanted greater clarity or
12 at least clarity that these things are moving
13 forward, and we would agree to it.

14 VICE CHAIR CABRAL: Thank you.

15 MR. CHIPCHASE: Did that help?

16 VICE CHAIR CABRAL: Yeah, I'm slow.

17 CHAIRPERSON SCHEUER: Commissioner Wong.

18 COMMISSIONER WONG: So, Mr. Chipchase,
19 question: In your Petition, are you willing to do a
20 verbal amendment to add that?

21 MR. CHIPCHASE: To add the --

22 COMMISSIONER WONG: The water issue that
23 you just talked about?

24 MR. CHIPCHASE: To add DOA's condition? I
25 will say, yes, Commissioner Wong. To make things

1 easy for the Commission, we would be pleased to amend
2 our Petition if the Commission feels appropriate to
3 add those items.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Wong.

6 Are there further questions? If not,
7 Commissioners, what's your pleasure on this matter?

8 Commissioner Cabral.

9 VICE CHAIR CABRAL: I would like to move
10 that we accept the Petition with the understanding
11 that they're going to work with the Department of
12 Agriculture as-needed for water supply.

13 CHAIRPERSON SCHEUER: To clarify the motion
14 to accept the condition that has been proposed by the
15 Department of Agriculture -- to accept the Petition
16 with the condition proposed by the Department of
17 Agriculture with the amendment that it be applied for
18 270 days?

19 VICE CHAIR CABRAL: Yes.

20 CHAIRPERSON SCHEUER: Is there a second?

21 COMMISSIONER WONG: Second.

22 CHAIRPERSON SCHEUER: A motion has been
23 made by Commissioner Cabral and seconded by
24 Commissioner Wong.

25 Is there any discussion on the motion?

1 Commissioner Aczon.

2 COMMISSIONER ACZON: Just to clarify so we
3 are adding a condition based on the motion?

4 CHAIRPERSON SCHEUER: Would the movant wish
5 to comment?

6 VICE CHAIR CABRAL: Yes. My motion was
7 that they work together with the Department of
8 Agriculture as the Department of Agriculture has
9 agreed for a water -- a plan to be able to have a
10 water plan in place in 270 days.

11 So I'm not giving that condition, except
12 that they work together. That would be my only
13 condition is that they work with the Department of
14 Agriculture and the 270 days is now what the
15 Agriculture Department and they have discussed.

16 CHAIRPERSON SCHEUER: Commissioner Aczon.

17 COMMISSIONER ACZON: It is my understanding
18 that Petitioner is willing to amend the Petition to
19 include that. Yes?

20 MR. CHIPCHASE: Yes, Commissioner.

21 COMMISSIONER ACZON: So why are we putting
22 a condition on that, because his Petition is being
23 amended?

24 MR. CHIPCHASE: And if I may, since I do --
25 I have no objection to it.

1 CHAIRPERSON SCHEUER: Please proceed.

2 MR. CHIPCHASE: Thank you.

3 I have no objection to what DOA has
4 requested. It's not actually a plan. It's just an
5 estimate when certain repairs will be completed, the
6 ultimate cost of the improvement, the identification
7 of parties who may be responsible for the operation
8 and maintenance. So it's not that there was a lack
9 of clarity on water, it's just they want these items.
10 I have voluntarily amended the Petition in response
11 to future water claim question to include these items
12 as part of our Petition, and so with respect I might
13 view it not so much as imposing condition on the
14 Petition, but granting the Petition as amended.

15 VICE CHAIR CABRAL: Thank you. I'd like to
16 move to grant the Petition as amended.

17 CHAIRPERSON SCHEUER: There is a motion
18 that you already made, but you're clarifying what
19 your motion was; is that correct?

20 VICE CHAIR CABRAL: Yes, I'm clarifying my
21 motion.

22 CHAIRPERSON SCHEUER: Mr. Wong, and you're
23 in agreement with that second?

24 COMMISSIONER WONG: Yes.

25 CHAIRPERSON SCHEUER: Okay. Is there

1 further discussion on the motion?

2 May I ask, this would also include the two
3 standard conditions that we placed on IAL petitions,
4 Commissioner Cabral?

5 VICE CHAIR CABRAL: Yes.

6 CHAIRPERSON SCHEUER: Is there further
7 discussion on the motion?

8 If not, Mr. Orodenker please poll the
9 Commission.

10 EXECUTIVE OFFICER: Thank you, Mr. Chair.

11 The motion is to grant the Petition as
12 amended with the addition of the standard conditions
13 that we usually place on IAL petition.

14 Commissioner Cabral?

15 VICE CHAIR CABRAL: Yes.

16 EXECUTIVE OFFICER: Commissioner Wong?

17 COMMISSIONER WONG: Yes.

18 EXECUTIVE OFFICER: Commissioner Aczon?

19 COMMISSIONER ACZON: Yes.

20 EXECUTIVE OFFICER: Commissioner Okuda?

21 COMMISSIONER OKUDA: Yes.

22 EXECUTIVE OFFICER: Commissioner Giovanni?

23 COMMISSIONER GIOVANNI: Yes.

24 EXECUTIVE OFFICER: Chair Scheuer?

25 CHAIRPERSON SCHEUER: Yes.

1 EXECUTIVE OFFICER: Thank you, Mr. Chair.
2 The motion passes with six affirmative votes.

3 CHAIRPERSON SCHEUER: Thank you very much.
4 Congratulations.

5 MR. CHIPCHASE: Thank you, Commissioners, I
6 appreciate your time.

7 CHAIRPERSON SCHEUER: We will take a brief
8 recess in order to have our next agenda item ready.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: Aloha, good
11 afternoon. Commission is reconvening for the next
12 two agenda items, but I understand the Petitioner has
13 a request.

14 Ms. Lim.

15 MS. LIM: Thank you, Chair. Good afternoon
16 Commissioners, Commission staff and Parties.
17 Jennifer Lim representing Bishop Estate doing
18 business as Kamehameha Schools. With me is my
19 partner Onaona Thoene, Kamehameha Schools.

20 And as Chair indicated, we do have a
21 request. In light of the time of day and the fact
22 that the earlier matters went a bit longer than we
23 had anticipated, which is not the Commission's fault,
24 but a bit longer than we had anticipated in light of
25 the fact there are two matters on the agenda relating

1 to Kamehameha Schools. One is a status report on a
2 Master Plan presentation, and the other is a Motion
3 to Amend related solar project.

4 For our Motion to Amend matters, we have
5 seven live witnesses. We can abbreviate the
6 presentation, but a couple of them have come from out
7 of town to be here today to present testimony.

8 So with the Commissioner's indulgence and
9 indulgence of the other parties, we would ask if we
10 can please present our motion case in chief first
11 before proceeding with the status report.

12 CHAIRPERSON SCHEUER: So the Chair will
13 entertain a Motion to Amend the Agenda to take up
14 Item VII prior to Item VI.

15 COMMISSIONER GIOVANNI: So moved.

16 CHAIRPERSON SCHEUER: It's been moved by
17 Commissioner Giovanni. Is there a second?

18 VICE CHAIR CABRAL: Second.

19 CHAIRPERSON SCHEUER: Seconded by
20 Commissioner Cabral.

21 Is there discussion on the motion? If not,
22 all in favor say "aye". Is anybody opposed? The
23 motion carries. We will take up Action Item VII.

24 Now, I have to find my right place in the
25 script.

1 A87-610 Tom Gentry and Gentry Pacific, Ltd.

2 Our next agenda item is Action meeting on
3 Docket No. A87-610 Tom Gentry and Gentry Pacific,
4 Ltd. (Successor Petitioner-Kamehameha Schools),
5 (Oahu) to consider the Petitioner's Motion for
6 Modification and Time Extension.

7 The procedures that we will follow is first
8 I will provide for any individuals who wish give
9 public testimony an opportunity to provide testimony.

10 After that, if any, the Petition will make
11 its presentation.

12 After the completion of the Petitioner's
13 presentation, we will receive any comments from the
14 County Planning Department and the Office of
15 Planning.

16 After we received the positions of the
17 Petitioner, the County and the State, we will conduct
18 our deliberations.

19 Are there any questions on our procedures
20 for today?

21 MS. LIM: None from the Petitioner.

22 MS. WONG: No questions.

23 MS. APUNA: No questions.

24 CHAIRPERSON SCHEUER: Okay, thank you.

25 Is there anybody in the audience wishing to

1 give public testimony on this matter? And, again,
2 this is agenda Item VII, A87-610 Tom Gentry and
3 Gentry Pacific, Ltd.

4 Seeing none, Ms. Lim, you may proceed with
5 your presentation.

6 MS. LIM: Thank you very much, Chair.

7 So as I mentioned, we do have seven live
8 witnesses in the audience today. We don't intend on
9 calling them all, but we do want to make sure that
10 the Commission has as much information as it feels
11 appropriate to make the decision, but we want to be
12 respectful of everybody's time.

13 Before I start calling witnesses, I'd like
14 to take just a few quick minutes to give sort of
15 orientation or briefing to bring the Commission up to
16 speed on what it is that we are doing here, what the
17 Commission approved five years ago, and what it is
18 that we are currently requesting.

19 In 1988, the Land Use Commission
20 reclassified 1,395 acres of land owned by Kamehameha
21 Schools to reclassify from the Agricultural District
22 to the Urban District. The property was owned by
23 Kamehameha Schools then and still is owned by the
24 Kamehameha Schools, but the Petitioner at the time
25 was Tom Gentry. They had a development agreement

1 with Kamehameha Schools. They planned on developing
2 a significant Master Plan.

3 Fast forward several years, for a variety
4 of reasons that we can get into through these
5 proceedings, that project did not go forward. Five
6 years ago, Kamehameha Schools came before this
7 Commission because the development agreement it had
8 with Gentry had, in fact, terminated.

9 Kamehameha Schools had full control of the
10 property at that point in time. They hadn't up until
11 even late 2012, 2013, Kamehameha Schools had made a
12 decision that it wanted to pursue solar energy
13 development on this property.

14 So five years ago in November 2014, the
15 Commission authorized the use of about 655 acres of
16 the Petition Area for the development of a utility
17 scale solar farm.

18 So the solar farms are planned for two
19 specific areas on the KS property. If you look at KS
20 Exhibit 6 which was in our filings, we filed I
21 believe it's 48 exhibits with this motion. But we
22 also have KS Exhibit 6 which is this board closest to
23 me, shows the Petition Area outlined in black and all
24 in pink. That's all Kamehameha Schools, and it's
25 pink and it's Urban.

1 There are two areas there; one is 387 acres
2 on the northwestern portion of the property that the
3 Commission authorized five years ago for utility
4 scale solar development.

5 And then one is about at 268 acres of the
6 property over in the central eastern portion that was
7 also authorized for a large solar development
8 project.

9 And the Commission said this is interim
10 use. We're authorizing it because we understand KS
11 hasn't been in control of the property for several
12 decades. You have some time to figure out what
13 you're going to do next, and ultimately this is
14 beneficial for the State's renewable energy goal.

15 Unfortunately, although this Commission
16 made the right decision and did bring us that much
17 closer to a renewable energy goal, the solar farm
18 developer who Kamehameha Schools had an agreement
19 with at the time was called SunEdison.

20 SunEdison, as did several other solar
21 developers around this point in time, I'm talking the
22 2015, 2016 time range, had to go to the Public
23 Utility Commission to get approval of their power
24 purchase agreement. The power purchase agreement is
25 actually agreement between --

1 CHAIRPERSON SCHEUER: I'm sorry, Ms. Lim.
2 When you get to a natural or maybe a break in your
3 presentation, what I neglected to do is a disclosure
4 at the beginning of this matter when we switched the
5 agenda item.

6 In relationship to that agenda item, I just
7 want to disclose for the record that my wife is an
8 employee of Group 70 International. It is one of the
9 subconsultants on this project. She has not worked
10 on this project whatsoever and has no financial
11 interest in the project, but I wanted to make that
12 disclosure and give the chance to have you or any of
13 the other parties object to my participation in this
14 proceeding.

15 MS. LIM: Thank you, Chair. Petitioner
16 would have no objection.

17 MS. WONG: No objections.

18 MS. APUNA: No objections.

19 CHAIRPERSON SCHEUER: Thank you.

20 Are there any other disclosures?

21 Commissioner Giovanni?

22 COMMISSIONER GIOVANNI: Yeah, I need to
23 disclose that in my former capacity as Senior Vice
24 President for Operations at Hawaiian Electric I was
25 responsible for negotiations of some of those power

1 purchase agreements and worked with the entities
2 SunEdison and Kamehameha Schools.

3 I don't think that -- my former association
4 was back in the 2012 to 2015 timeframe, but I don't
5 believe that that will affect my judgment or my
6 decisionmaking in this matter, but I wanted to
7 disclose that.

8 CHAIRPERSON SCHEUER: Thank you.

9 Are there any objections to Commissioner
10 Giovanni's continued participation?

11 MS. LIM: Not from Petitioner.

12 MS. WONG: No.

13 MS. APUNA: No objection.

14 CHAIRPERSON SCHEUER: Okay, thank you.

15 Any there any further disclosures?

16 If not, sorry to have interrupted your flow
17 of presentation, Ms. Lim, but I had neglected to make
18 those disclosures.

19 MS. LIM: Thank you for taking care of that
20 procedural matter.

21 So I'll get back into this and some of this
22 may be familiar to several of the Commissioners
23 because Kamehameha Schools has been timely with its
24 annual reports.

25 And when I say some of us may be familiar,

1 what we're talking about is that the Public Utilities
2 Commission ultimately declined to approve the power
3 purchase agreement between SunEdison and HECO.

4 Again, the solar developer that we -- that Kamehameha
5 Schools had been under contract with and that was
6 going to develop the two solar farms that you see on
7 Exhibit 6 was SunEdison entity.

8 This Commission approved the project, but
9 that was an approval before the Public Utilities
10 Commission had made a decision on the power purchase
11 agreement. Ultimately, the Public Utilities
12 Commission decided not to approve, so we at KS
13 notified the Land Use Commission, and I think it was
14 in the June 2016's annual report, hey, things didn't
15 work out with SunEdison, but we're still committed to
16 having solar on this property. We're still looking,
17 keeping our eyes open.

18 Fortunately, although it took some time,
19 fortunately Hawaiian Electric remained, it appears,
20 very committed to the development of solar energy or
21 just renewable energy in general. But it took
22 several years.

23 So we're talking your approval was five
24 years ago, that's late 2014. The decision by the
25 Public Utilities Commission came about I think

1 18 months or so after that, then put the kabash on
2 the front end project.

3 HECO came out with a second request for a
4 proposal or RFP in February 2018. So, of course,
5 from -- thank you, Commissioner.

6 My point is that there was a point, you
7 know, we sought an approval. This Commission granted
8 the approval. And then because of the unfortunate
9 things that happened at Public Utilities Commission,
10 there was just a lack of time.

11 Kamehameha Schools are recommitted to solar
12 energy development.

13 CHAIRPERSON SCHEUER: Commissioner
14 Giovanni.

15 COMMISSIONER GIOVANNI: Just to clarify for
16 my fellow Commissioners. I believe SunEdison went
17 into bankruptcy about that time, and that was a
18 complicating factor on the original project. And
19 yes, it's true that Hawaiian Electric has continued
20 its drive for utility scale solar project, so there
21 was a second RFP and now a third RFP which is
22 ongoing.

23 CHAIRPERSON SCHEUER: Okay. Thank you.

24 Please proceed, Ms. Lim.

25 MS. LIM: So as Commissioner Giovanni has

1 explained, a second RFP came out and that second RFP
2 was, as I said, February 2018. Kamehameha Schools
3 had indicated that there is property the Land Use
4 Commission had already agreed was suitable for solar
5 energy development on an interim basis, that its
6 property was still available. You know, we wanted to
7 pursue solar there.

8 Fortunately, the entity that Kamehameha
9 Schools was under agreement with which is called
10 Waiawa Solar Power, LLC, which is a subsidiary of
11 Clearway Energy Group.

12 So throughout this proceedings, sometimes
13 I'll use the word Clearway, sometimes I'll say Waiawa
14 Solar, sometimes WSP. I'm always talking about the
15 same entity. So Waiawa Solar Power was selected by
16 HECO through a second RFP process.

17 A significant advantage to the current
18 Waiawa Solar Power project is that the Public
19 Utilities Commission has already approved the power
20 purchase agreement, so the RFP process is completed,
21 PUC approved the power purchase agreement in March of
22 2019, and we filed our solar motion in July of 2019.

23 So the difficulties that we faced the first
24 time around, well, the path looks that much smoother
25 this time around.

1 So what is it that we're talking about in
2 terms of project? Essentially it's very much similar
3 to the project that the Commission already approved
4 five years ago. The project by Waiawa Solar is 36
5 megawatt, 144 megawatt hour battery energy storage
6 solar farm with related electrical improvements, an
7 overhead utility line and the utility line -- or
8 Gen-Tie lines.

9 You can see on KS Exhibit 8, just to be
10 clear, is the location of the Waiawa Solar Power
11 project. Well, as you can see it's very similar to
12 the project that was previously approved by the
13 Commission. It's actually a slightly different
14 footprint, a smaller footprint. Five years ago
15 268-acre area was approved. The project that Waiawa
16 Solar Power is planning is within that 200-acre area
17 that you see on KS Exhibit 8, and ultimately that
18 should actually be about 185 acres within that
19 crosshatched area that you see on the far left of
20 that picture.

21 And the utility line or the Gen-Tie is
22 going to run from the project site up by where that
23 black rectangle is you can see in the upper corner of
24 the solar farm site, across the property to a HECO 46
25 KV line that is just over by the highway.

1 So when we talk about the project that's
2 the project we are talking about. We have people
3 with a great deal of knowledge about the project in
4 this room who can answer more technical questions,
5 but this is giving a general overview. That's the
6 project that we're here to talk about.

7 The key differences between what the
8 Commission approved five years ago and what we're
9 presenting to you today: First of all, as I've said,
10 there's a size difference. It's not a big size
11 difference. It's actually a smaller project, but a
12 size difference.

13 There's a change in timing. When the
14 Commission authorized these two areas on KS Exhibit 6
15 five years ago, the Commission said you can do solar
16 here, but we want these projects decommissioned
17 within 35 years of the date of our decision. Your
18 decision was November 2014; that brings it to
19 November 2049.

20 The project that Waiawa Solar is presenting
21 remains in effect, as advocated for by Kamehameha
22 Schools, would have a decommissioning deadline no
23 later than December 31st, 2059.

24 So it's about the same operational period
25 because there has been a delay, right? There's been

1 at least a five-year delay since we were last before
2 the Commission, and then there will be another year
3 or two while Waiawa Solar completes its, you know,
4 construction plans, gets permitting through the City
5 and actually gets the project up and running in a
6 commercial operation, so we are seeking a ten-year
7 extension to the prior 2049 deadline.

8 The other thing, the most significant
9 change that we're presenting to the Commission today
10 is that the project in KS Exhibit 6 didn't anticipate
11 that there was going to be battery storage or
12 substation within this area in the central eastern
13 portion of the property. If you look on KS
14 Exhibit 8, you can see kind of a pink thumbprint.
15 Okay.

16 That pink thumbprint is the outline of
17 something called the Waiawa Shaft Zone of
18 Contribution, and we have various people in the
19 audience who can talk much more knowledgeably than I
20 can about that, but Zone of Contribution for Waiawa
21 Shaft is an area where extra protection for the
22 underlying groundwater are called for.

23 Five years ago, because SunEdison was going
24 to do both of the solar farms, SunEdison planned on
25 putting in a battery substation improvements over in

1 the western project area. It didn't matter to them.
2 They didn't need to have anything in the Zone of
3 Contribution, and so that's what we presented and
4 that's what the Commission approved.

5 In this case, the Waiawa Solar folks, in
6 fact, need to put battery and substation improvements
7 within the easement area. As I said, it shows about
8 200 acres, ultimately it's going to be about
9 185 acres. In that area where those improvements are
10 going to be is at most three acres.

11 Before coming to this Commission with that
12 kind of request, as you'll find out through our
13 witnesses, Kamehameha Schools, Clearway, Waiawa Solar
14 Power in a very collaborative joint effort went both
15 to the State Department of Health, and then later to
16 the Navy, because the Waiawa Shaft actually belongs
17 to the Navy, to say this is what we're looking at
18 doing, these are the measures that we plan on putting
19 into place. We believe that this will be adequate
20 safety for the Zone of Contribution. And as you'll
21 see in the record, both the Navy and the Department
22 of Health said that looks fine.

23 So with that we felt that it a was
24 appropriate to come and say, yes, we do need to put
25 these improvements within the Zone of Contribution.

1 Those are the two key differences between
2 what was approved five years ago and what we're
3 asking for today. Time extension, some tweaks to the
4 project in terms of the footprint, and then that
5 there would be additional improvements within the
6 Zone of Contribution.

7 Although we didn't expressly request it in
8 our motion, we did address the fact, as Commissioner
9 Giovanni said that at the time we filed our motion in
10 July, we knew that HECO wouldn't be issuing the third
11 RFP -- I mean, that was known, but they hadn't yet
12 issued the third RFP.

13 And so at that point, KS just didn't feel
14 comfortable asking formally for approval to take the
15 time extension that we're requesting for the eastern
16 side and say please extend it to the western side as
17 well.

18 In the past few months, the RFP has been
19 issued. KS has gotten under contract with somebody
20 who has submitted in response to HECO's request for
21 proposal, you know, their intention to develop a
22 solar farm within generally the area that's shown on
23 KS Exhibit 6, so generally the same area the
24 Commission approved five years ago.

25 So it's -- with the Commission's

1 indulgence, we would be most appreciative if the
2 motion today could also be extended to allowing a
3 time extension for the other solar farm. If not,
4 we'll have to come back before you when HECO makes
5 its final decision and so be it.

6 So that's the general background of what
7 we're here to do. As I said, we've got several live
8 witnesses in the audience. You've already had a long
9 day, and I think ultimately it's a fairly simple
10 matter. We're very grateful that the Office of
11 Planning has expressed support for our motions, so we
12 don't want to drag out the proceedings any longer
13 than necessary, but we do want to put on a few
14 witnesses, and we're going to keep a few in the
15 audience, and we just want to let you know that
16 they're here if there are questions.

17 So I'm going to quickly go over the order
18 of witnesses and then we'll call our first witness.
19 So our first witness is Mr. Patrick Sullivan, he's
20 the Vice President of Development at Clearway Energy
21 Group.

22 He will be followed by Mr. Jason Jeremiah
23 from Kamehameha Schools. He's their natural and
24 cultural resources manager.

25 Then we will go, and just looking at my

1 time, because I believe the Commission has to end at
2 4:00 o'clock today; is that right.

3 CHAIRPERSON SCHEUER: 4:30.

4 MS. LIM: Oh, okay, thank you very much, so
5 we'll go from --

6 CHAIRPERSON SCHEUER: Don't feel compelled
7 to use every single minute.

8 MS. LIM: We'll go from Patrick to Jason
9 Jeremiah to Dan Ford who is somebody who can address
10 at least some of the Commissioner's questions about
11 the Zone of Contribution and the mitigation measures
12 that Clearway will put in place. These are four who
13 will be able to address that.

14 And then Dana Sato from Kamehameha Schools,
15 and then we will wrap up with Dan von Allmen to the
16 extent the Commission wants to hear from him. And
17 Dan is the project manager for the Clearway project,
18 and he has technical knowledge on the project if the
19 Commission is interested in that level of detail.

20 The two witnesses we have in the audience,
21 and they've been here all day so thank you, guys.
22 We're not going to call them unless the Commissioners
23 want to hear from them. It's Mr. Jeff Overton from
24 Group 70 who prepared a view study analysis. He can
25 also talk about the city permitting process that we

1 have after this Land Use Commission process, and then
2 we also have Mr. Paul Matsuda who is also from Group
3 70 civil engineer, who prepared the civil engineering
4 report that's in the record, and he can respond to
5 questions about that if you have any questions.

6 So with that, I would call Mr. Patrick
7 Sullivan to the stand.

8 CHAIRPERSON SCHEUER: Commissioner
9 Giovanni.

10 COMMISSIONER GIOVANNI: Ms. Lim, for
11 questions pertaining to your purchase agreement
12 and/or -- and the proposal that's been put forth for
13 the third proposal for the land on the west, which
14 those proposals also included a power purchase
15 agreement to be submitted as part of that. Which of
16 your witnesses would be the one to ask?

17 MS. LIM: So for the current power purchase
18 agreement, it would be Mr. Sullivan.

19 COMMISSIONER GIOVANNI: Okay.

20 MS. LIM: Okay. For anything having to do
21 with the round three RFP, it would be Ms. Sato from
22 Kamehameha Schools, and I just have a caveat that
23 some of those matters are still somewhat
24 confidential, so there may be limitations on what it
25 is that Ms. Sato can talk about at this point because

1 HECO hasn't made its announcement --

2 COMMISSIONER GIOVANNI: My question is
3 primarily about your request for the time extension.

4 CHAIRPERSON SCHEUER: Is there anything
5 else, Commissioners, before we proceed? Okay.

6 Mr. Sullivan, do you swear or affirm the
7 testimony you're about to give is the truth?

8 THE WITNESS: I do. Thank you.

9 CHAIRPERSON SCHEUER: So make sure that the
10 light is on and you are practically kissing the
11 microphone when you're speaking into it.

12 THE WITNESS: How's that?

13 CHAIRPERSON SCHEUER: Much better.

14 Ms. Lim.

15 PATRICK SULLIVAN

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

19 MS. LIM: I'll be asking Mr. Sullivan to
20 swear, get sworn in.

21 CHAIRPERSON SCHEUER: I just did.

22 MS. LIM: Oh, I'm sorry. It's been a long
23 day for me, too, excuse me.

24 CHAIRPERSON SCHEUER: He has affirmed that
25 the testimony he will give is the truth, so you may

1 proceed.

2 MS. LIM: Thank you very much, Chair.

3 DIRECT EXAMINATION

4 BY MS. LIM:

5 Q Mr. Sullivan, may I call you Patrick?

6 A Please.

7 Q I understand you're Vice President of
8 Development for Clearway.

9 A I am.

10 Q And you submitted your resume as part of
11 the record?

12 A It is, yes, part of the record.

13 Q And for the Commission and for all the
14 witnesses, we do have a binder, that large white
15 binder just next to Mr. Sullivan, those are just
16 copies of all of the exhibits that Kamehameha Schools
17 filed so that we can look to them, just something to
18 refresh themselves.

19 And so that's Exhibit 34, if you needed to
20 refresh yourself on your resume.

21 Mr. Sullivan, would you let the
22 Commissioners know both about your educational
23 background and then let them know what it is you do
24 at Clearway.

25 A Sure. So first of all, it's good to be

1 back in front of this group to talk about another
2 Clearway solar project on Oahu. Thank you for taking
3 the time, especially after a long morning.

4 My name is Patrick Sullivan, and I am vice
5 president of project development for Clearway Energy
6 Group. Clearway Energy Group is one of the largest
7 developer/owners and operators of renewable energy
8 projects in the country, and I oversee the project
9 development team for the entity.

10 Today that is 29 full-time employees around
11 the country to include folks here in Hawai'i
12 developing projects. We're currently developing
13 projects in around 25 states around the country, just
14 around a nine gigawatt portfolio of wind, solar, plus
15 battery solar project.

16 In terms of background, I have an
17 undergraduate degree from Princeton University and a
18 master's in business administration from the
19 University of Virginia.

20 I've been with Clearway Energy and its
21 predecessor company NRG, the renewable energy
22 division of the publicly traded company NRG Energy
23 for seven years. Most of that time in the capacity
24 as head project development.

25 And then prior to my time at Clearway and

1 NRG, I worked for a solar thermal project developer
2 named BrightSource Energy. And before that in sort
3 of a mistake, I was an investment banker for a couple
4 of years.

5 Q Thank you, Patrick.

6 You mentioned that it's nice to be back
7 before the Commission.

8 Can you remind the Commission of the
9 projects that Clearway has in Hawai'i?

10 A Sure. So we have finished the construction
11 and, as of last night, officially achieved commercial
12 operation on all three of our first phase projects
13 here on Oahu. That is the Waipio Solar project, the
14 Lanikuhana or otherwise known as Mililani Solar
15 Project, and then the Kawaiiloa Solar project.

16 And we were before the Commission I believe
17 in mid-2017 to talk about the Special Use Permit for
18 both Waipio and Kawaiiloa.

19 And then in addition to the project, the
20 Waiawa Solar project we're talking to you about
21 today, we are under contract with Hawaiian Electric
22 and finishing the development of a second phase at
23 Lanikuhana which ironically we refer to as our
24 Mililani one project. And that totals about 185
25 megawatts once fully constructed all here on the

1 island, about enough power for 49,000 Hawaiian homes
2 per year.

3 Q Thanks, Patrick.

4 So the term of the project that we're here
5 today, the Waiawa Solar project, what is the term of
6 the project in your understanding?

7 A Sure. So the term of the power purchase
8 agreement that we have with Hawaiian Electric is a
9 20-year term, and we have negotiated lease
10 arrangements with Kamehameha Schools to run sort of
11 contemporaneous with the term of that power purchase
12 agreement, but with both in the power purchase
13 agreement itself as well as in our lease with
14 Kamehameha Schools have the opportunity to extend
15 both the lease and just as importantly that agreement
16 with Hawaiian Electric.

17 The idea being that these solar project --
18 battery storage project have a useful life
19 significantly longer in some cases than the initial
20 contract period and that we would hope to recontract
21 with Hawaiian Electric for addition -- the additional
22 useful life of the project which in this case would
23 be another 15 years.

24 Q Does that mean you're anticipating the
25 total operational period to be about a 35-year

1 period?

2 A 35 years. That's correct.

3 Q And then there's a period needed to build
4 the project, and then decommission it?

5 A Yeah, that's correct. So where we are
6 right now in the development of this project, first
7 of all, we've been working on it with Kamehameha
8 Schools since 2018, and that was to prepare the RFP
9 response to HECO alongside KS to go through the
10 multistage selection process with HECO.

11 And now we're working through the detailed
12 interconnection study requirement and all the
13 technical and electrical work to try to design the
14 project.

15 We would hope, and with the receipt of this
16 Commission's approval, and then subsequently going
17 through the county permitting process, providing
18 those happen according to our schedule, we'll look to
19 start construction on the project end of 2020 I
20 believe, October 2020 is when we would be starting
21 construction.

22 Construction would last about a year.
23 Currently, in our contract with HECO, we have to have
24 the project on-line by the end of 2021.

25 Q And the decommissioning deadline what we

1 requested in the motion is December 31st, 2059; is
2 that correct?

3 A That's correct.

4 Q And let's be upfront now, is there any
5 reason to expect that we'd be back in front of this
6 Commission, you know, shortly before then requesting
7 another extension?

8 A I mean, it's tough to say 35 years into the
9 future what this technology will look like, but that
10 is a possibility, I think, based on the number of
11 solar and wind projects that we operate around the
12 country today. Many solar projects have a useful
13 life of between 35 and 45 years.

14 Q But at this point, is it your
15 representation that this project, unless future
16 approval from the Commission is granted, sought and
17 granted, that this project will be fully
18 decommissioned by December 31st, 2059?

19 A Yes, it is.

20 Q Can you explain -- and I know your
21 expertise is less on the technical side and more on
22 the business term and strategy side. But to the
23 extent, can you explain what you mean by
24 decommissioning as it applies to this project?

25 A Sure. And this is specified very clearly

1 between Clearway and Kamehameha Schools in our option
2 to the agreement to grant easement, and then
3 ultimately will be in the land agreement -- or excuse
4 me -- in the agreement to grant the easement and the
5 granted easement itself, but decommissioning in this
6 case means removal, restoration and revegetation of
7 the project site back to the state that it was in
8 prior to temporary and permanent disturbance by the
9 solar project.

10 Q So everything will be removed?

11 A Yes, ma'am. Yes.

12 Q I want to switch gears a little bit if we
13 can. This motion was filed in July, but your power
14 purchase agreement had been approved in March of
15 2019. I know from the work we've done together that
16 Waiawa Solar or Clearway did considerable community
17 work, made various presentations, but could you let
18 the Commissioners know about the work that has been
19 done?

20 A Absolutely, and the only reason I'm turning
21 my page is so I can attempt to not butcher the
22 pronunciation of some of these names myself. As
23 mentioned in this requirement by Hawaiian Electric as
24 part of the RFP and subsequent PPA work process, we
25 felt that frankly just good development habit to

1 engage proactively and broadly with members of the
2 community. Both the community where the project is
3 sited and the community boards and schools, but just
4 as importantly the local elected and appointed
5 officials that have to support the project. So over
6 the past year, we've met with Senator Kidani, Senator
7 Dela Cruz, Representative Roy Takumi, Representative
8 Roy Yamane, Representative Lauren Matsumoto, various
9 Honolulu City Council members, the Pearl City
10 Neighborhood Board, Mililani/Waipio Neighborhood
11 Board.

12 And we also had, per the terms of our
13 arrangement with HECO, under the terms of the PPA,
14 had a neighborhood community board meeting on
15 November 13, 2018. I attended that meeting in person
16 as did several members of my team and several of the
17 folks here. And I believe we have another
18 neighborhood board meeting, if I'm not mistaken,
19 tomorrow.

20 Q Okay. And through all of that outreach,
21 has anybody expressed concerns or opposition to the
22 project?

23 A No. We have had very strong support for
24 the project throughout.

25 Q Thank you.

1 Do you know approximately how many homes
2 can be powered by the project?

3 A I do, yes. And I'm going to make sure I
4 quote the accurate number here.

5 Q The 39 megawatt project?

6 A Yes. So the project is 39 megawatts with a
7 four-hour battery. And in total, as I mentioned, the
8 total amount of generation that we have on the island
9 is enough for about 49,000 typical Hawaiian homes per
10 year. I would have to figure out exactly how much it
11 is from this project, but it would be I think on the
12 order of 13,000 Hawaiian homes per year from this
13 project due to the battery.

14 Q We'll check in with Mr. von Allmen later
15 on.

16 A Yeah, I'm looking at Dan to make sure he
17 has the specifics.

18 CHAIRPERSON SCHEUER: And you're referring
19 to Hawai'i homes?

20 THE WITNESS: Yes, I am, to typical Hawai'i
21 homes. Yeah, and this is based on --

22 CHAIRPERSON SCHEUER: As opposed to the
23 Department of Hawai'i Homelands, Hawaiian homes?

24 THE WITNESS: Correct, yes, the typical
25 Hawaiian homeowner.

1 CHAIRPERSON SCHEUER: Thank you.

2 THE WITNESS: And the measurement for that,
3 by the way, is consistent with what Clearway and
4 Hawaiian Electric had to cite under protective order
5 for purposes of the Public Utility Commission's
6 approval of the power purchase agreement.

7 Q (By Ms. Lim): And I think I just have one,
8 maybe two or more questions but -- and maybe this
9 question would flow a little bit better if I hadn't
10 received the Commission's indulgence and taken this
11 motion out of order, but this question actually has
12 to do with the master plan.

13 A Sure.

14 Q And so although this isn't before the
15 Commission right now, the area that is urbanized will
16 be eventually developed into a master plan
17 residential community. That's not there right now,
18 Patrick, but your project will be built should the
19 Commission grant the approval we seek today, your
20 project will be built within the next couple of
21 years.

22 Are there concerns that as homeowners are
23 moving into this new project, that the solar farm may
24 be, I don't know, an eyesore or somehow disrupt their
25 ability to enjoy their new home?

1 A The short answer is that, no, it will not.
2 It will not. As mentioned earlier, we did do visual
3 studies and simulations for the project. I believe
4 that those are part of the record here.

5 In general, given the topography of this
6 particular site as well as some of the natural
7 vegetative screening that exists already, that this
8 is going to be not really noticeable for the
9 community. And I think also based on the topography
10 and the ditches and gulches around the more broadly
11 defined property area, some natural geographics that
12 pass from where you would have (indecipherable).

13 Q And is it your understanding that the -- if
14 this Commission grants the authorization we're
15 seeking today, that you would still need a permit
16 from the City Department of Planning and Permitting?

17 A We will, yes.

18 Q And that's a conditional use permit minor?

19 A That's correct.

20 Q Is it your understanding that it's a
21 reasonable expectation that there will be some sort
22 of landscaping requirements?

23 A I would anticipate that, although I can't
24 comment because we haven't seen their conditions.
25 But in the past with the DPP, we received -- we

1 received for the projects that we recently finished
2 construction there were requirements.

3 Q Thank you, very much. I don't have any
4 further questions for Mr. Sullivan.

5 CHAIRPERSON SCHEUER: Are there questions
6 for the witness from the County?

7 CROSS-EXAMINATION

8 BY MR. YOUNG:

9 Q Good afternoon, Mr. Sullivan.

10 Just a clarification. You mentioned you
11 started commercial operations on some of your
12 projects, which ones were those exactly?

13 A Sure. And commercial operations in this
14 case is defined under the power purchase agreement
15 with Hawaiian Electric, and so that's as of last
16 night all three projects, so Mililani, Lanikuhana,
17 Waipio and as of last night Kawaihoa solar.

18 Q And Waipio and Kawaihoa are covered under a
19 special permit granted by the Land Use Commission?

20 A They are, yes.

21 CHAIRPERSON SCHEUER: Anything further from
22 the County?

23 MS. WONG: Nothing further.

24 CHAIRPERSON SCHEUER: Office of Planning?

25 MS. APUNA: No questions.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Commissioner Giovanni.

3 COMMISSIONER GIOVANNI: Thank you.

4 Let me just say up-front that these are the
5 types of projects the State of Hawaii needs to meet
6 its energy goals and by statute 100 percent renewable
7 energy by 2045. So from the land use perspective,
8 that might be a different question, but from energy
9 policy decisions these are the types of projects we
10 need, so thank you for that.

11 My questions are mostly about timing. So
12 what is the commercial operation date specified in
13 your purchase power agreement for this project?

14 THE WITNESS: December 31st, 2021.

15 COMMISSIONER GIOVANNI: And what is the
16 initial term of the agreement?

17 THE WITNESS: 20 years.

18 COMMISSIONER GIOVANNI: What are the
19 provisions for extension in more detail than just you
20 would like to have 15 more years?

21 THE WITNESS: Yeah, so in both the power
22 purchase agreement -- and I apologize, I do not have
23 the language in front of me, although I did obtain
24 emails to me, so I can pull it up if necessary.

25 But in both the power purchase agreement as

1 well as in the granted easement with Kamehameha
2 Schools, let's start with the PPA. There is language
3 in the PPA to suggest that no sooner, or maybe no
4 later than six months before the expiration of the
5 first term that -- yeah, that the parties will meet
6 and discuss an extension, and then the language,
7 again, broadly and commercially as described here in
8 the granted easement mirrors that, so such that if
9 the parties in this case Waiawa Solar Power and HECO,
10 have agreed to an extension or modification of the
11 contract to extend it, that that would be granted by
12 Kamehameha Schools.

13 COMMISSIONER GIOVANNI: Does it specify in
14 the 15 years you refer to?

15 THE WITNESS: It does not, no.

16 COMMISSIONER GIOVANNI: It's just
17 open-ended?

18 THE WITNESS: Right.

19 COMMISSIONER GIOVANNI: But if you want to
20 extend the term, then no later than six months before
21 the expiration and PPA will initiate negotiations
22 with HECO for an extension?

23 THE WITNESS: That's correct. And I think
24 the reason from a development perspective, and this
25 also ties into the eventual financing of this

1 project. The reason that from development and
2 financing perspective that we're comfortable with
3 that as an assumption given, as you mentioned,
4 Hawai'i and HECO's long-term goals for 100 percent
5 renewal energy. The fact that in 2041 there will
6 continue to be a need for this type of renewable
7 generation, and presumably HECO will be looking for
8 all possible sources of electrical generation that
9 are cost competitive.

10 COMMISSIONER GIOVANNI: So let's talk a
11 little bit about this. What you refer to as the life
12 or the natural life of the primary components of this
13 facility. In terms of the electrical interconnection
14 infrastructure, I have no question 35 years is
15 appropriate and reasonable time to think about.

16 In terms of the photoelectric --
17 photovoltaic panels, what is your company's approach
18 to sustaining 35-year life of an installation?

19 THE WITNESS: It's a little bit difficult
20 to characterize installation broadly, so let's talk
21 about -- start with modules and solar modules, PV
22 modules and inverters.

23 So photovoltaic modules, as it's
24 well-documented, do degrade over time, and so simple
25 thing about that is the energy output on the PV

1 modules is that's the first day that PV modules goes
2 in the sun and typically overtime degrades.

3 We have modeled into the energy output for
4 the project that degradation that's part of -- a
5 significant part of the contract we have with HECO is
6 determining how that's tested.

7 It is the power expectation that pending
8 sort of any warranty-related issue or
9 under-performance of the modules that these modules
10 will still be productive solar equipment in year 20.
11 They're not going to be producing a hundred percent
12 of the kilowatt hours they would produce on day one,
13 but that you would still have a significant amount of
14 useful life from PV modules themselves.

15 Regarding the inverters of either
16 these --

17 COMMISSIONER GIOVANNI: Before you go on to
18 the inverters, I'm not concerned with the first
19 20 years. I'm concerned about year 20 to 35.

20 THE WITNESS: Right.

21 COMMISSIONER GIOVANNI: So how do you
22 sustain that performance of the panels for years 20
23 to 35?

24 THE WITNESS: So the ongoing maintenance
25 throughout the entire project life can extend this

1 equipment pretty significantly, and that can be
2 things as simple as keeping up with a regular module
3 washing regiment, to periodically or more than
4 periodically looking on the back of the modules to
5 make sure there's no cables being down. There's any
6 number of preventive things you can do during the
7 first useful life similar to keeping a car running
8 for 20 years to have them be in as good a shape as
9 possible at that 20th year.

10 Contractually you can negotiate around
11 slightly less efficient or productive modules in your
12 arrangement with Hawaiian Electric at that time, or
13 contractually depending upon what Hawaiian Electric's
14 rate of service is and what there're looking at
15 trying to replicate in terms of an economic cost of
16 service from this power plant, you might achieve an
17 arrangement with Hawaiian Electric where you could
18 replace the modules with newer state of the art
19 modules.

20 COMMISSIONER GIOVANNI: Do you have any
21 warranties from the panel manufacturers from whom
22 you're purchasing the panels --

23 THE WITNESS: We do.

24 COMMISSIONER GIOVANNI: -- that extend
25 beyond 25 years?

1 THE WITNESS: No. It is not standard
2 industry practice for module manufacturers for tier 1
3 crystalline modules typically to provide warranties
4 beyond ten years.

5 COMMISSIONER GIOVANNI: Okay. Inverters?

6 THE WITNESS: Yeah, so inverters, it's a
7 little more nuanced. Usually, these are the pieces
8 of equipment throughout the project that convert the
9 energy from direct current to alternating current
10 energy. And in the case of inverters for our project
11 throughout the useful life of -- throughout the
12 plant's operational life, we periodically will either
13 replace or do major maintenance on the inverters.
14 Those cycles -- and, Dan, if you have specifics, you
15 can amend the record when you get up to correct me.

16 But typically an inverter replacement or
17 major maintenance cycle is every eight to 12 years,
18 and in our project pro forma and in the assumptions
19 that we have made for the output of this project,
20 that's codified in our agreement with Hawaiian
21 Electric.

22 Theses are inverter maintenance and
23 refurbished during the functions there that are
24 included, and that would include sort of going beyond
25 the first 20-year term.

1 COMMISSIONER GIOVANNI: Okay. Battery?

2 THE WITNESS: Sure. So the battery storage
3 components, we have planned for the first 20-year
4 contract period augmentations of the battery, and I
5 believe we are planning during the first 20-year life
6 of the -- the 20-year contract life, I should say, of
7 the project for free such battery augmentation, in
8 similar to photovoltaic module over time everybody in
9 here has an iPhone or something similar, you sort of
10 wonder why when you take your iPhone out of the box
11 it lasted forever, and three years later doesn't last
12 quite as long.

13 Well, on a much larger scale, the same
14 thing with lithium ion batteries.

15 And so based, again, on the terms of our
16 power purchase agreement with Hawaiian Electric, we
17 had guaranteed a certain amount of capacity from the
18 system to Hawaiian Electric.

19 And as those batteries degrade over time,
20 we will augment the battery's storage system by
21 adding additional battery, so not taking batteries
22 away, adding additional batteries to the location
23 where they will be which is adjacent to the project
24 site.

25 COMMISSIONER GIOVANNI: I'm good with that.

1 So the question, back to the master plan, that I
2 think you said what is the timing, you know, you're
3 going to see more details later.

4 What is the timing of the residential
5 development that would be in the Urban area adjacent
6 to this? Would it earn in its first 20 years or
7 would it come to pass later?

8 MS. LIM: It would be occurring within the
9 first 20 years. I mean, the master plan development
10 is necessarily conceptual for reasons that we'll
11 discuss when we're doing that presentation, but the
12 time line that Kamehameha Schools has put together
13 does anticipate that development will start from the
14 south. So you see where that funny little finger is
15 down at the bottom?

16 COMMISSIONER GIOVANNI: Little finger is --
17 oh, like an island?

18 MS. LIM: Right. This is Urban land here,
19 so Kamehameha Phase A. Again, when we were doing the
20 master plan presentation, it became more clear the
21 development will start down here in the southern
22 portion of the property and then move up, so there
23 will be residences. Again, timing, we're projecting
24 falling into this area is probably 2050 timeline.

25 I have to refresh myself from my notes for

1 specifics, but because development is coming from the
2 south and because there --

3 COMMISSIONER GIOVANNI: Let's go back to
4 the other map. So in the area in the isthmus between
5 the two solar developments, the residential in that
6 area, so it would be in that central area?

7 MS. LIM: Okay. So it will really be clear
8 when we do the master plan.

9 COMMISSIONER GIOVANNI: I understand, but
10 you're asking for time extension now.

11 MS. LIM: Yes. So this project, Kamehameha
12 Schools is actually taking this area which again was
13 approved 387 acres for solar, and has said we are
14 really committed to seeing our master plan built out,
15 so as the project develops, we start with Phase A,
16 Phase B. Up here we get into phase C, D and E, so
17 the Phase B and C areas, we do not have the demand
18 for that part of the project. It will not be
19 triggered until, if I'm remembering the dates,
20 infrastructure would start --

21 CHAIRPERSON SCHEUER: Ms. Lim, I think a
22 laser pointer has been brought up for you so it will
23 allow you to speak into the microphone and point to
24 the map.

25 MS. LIM: Okay. Thank you.

1 COMMISSIONER GIOVANNI: Could you start by
2 clarifying the land that will be set aside for the
3 solar project that's currently under consideration by
4 HECO? It's Phase 3.

5 MS. LIM: Okay. Phase 3 is -- so it's
6 within this general area. To be very frank,
7 Commissioner, I don't know exactly how many acres are
8 being presented. It is not in excess of what was
9 already approved by the Commission five years ago,
10 and that is because Kamehameha Schools recognizes
11 that this was approved as an interim use of this
12 property. So to go back in doing the master plan
13 development, coming from the south, as we get -- as
14 Kamehameha Schools anticipates getting up to the
15 Phase C area and the Phase D area, the projects that,
16 should HECO select the development that Kamehameha
17 Schools has identified, or let's say HECO does a
18 round four RFP, those projects will need to be
19 decommissioned prior to the point when development
20 would hit that portion of the master plan.

21 COMMISSIONER GIOVANNI: They wouldn't be
22 extended like this one?

23 MS. LIM: No. I mean, that would not --
24 that is not the intention. The date that we're
25 requesting is December 31st, 2059. And, again, as I

1 said of the master plan, it was very intentional and
2 before Kamehameha Schools agreed to allow somebody to
3 submit this property as part of a response to the
4 current HECO RFP, it was understood that this land is
5 anticipated to be needed for master plan development,
6 and so those projects would actually have to be out
7 of there.

8 And I believe, again, I'm not looking at my
9 master plan material, but I believe it's 2054 and
10 2056 are the deadlines, so that's our internal
11 deadlines for having those projects completed so that
12 they don't impede development of the master plan.

13 Now, the difference with this project over
14 here is this area, is that this area because of the
15 Zone of Contribution is not anticipated to be
16 developed, and the master plan doesn't anticipate it
17 being developed for anything.

18 I mean, who knows, if technology changes
19 and people learn more, and better ways to protect
20 groundwater, maybe that area will eventually get
21 developed for something more intensive than solar
22 farm, but that's not the intention right now.

23 And when you see the master plan
24 presentation, you won't see any development plans for
25 there other than the solar. So although we're only

1 asking for 2059 on this, as Mr. Sullivan said, I
2 mean, who knows what technology may bring. We're not
3 asking for anything beyond 2059, but this area is an
4 area that will -- won't impede development of the
5 master plan one way or the other.

6 COMMISSIONER GIOVANNI: But you're also
7 asking for 2059 on the property on the west?

8 MS. LIM: Yes, we are.

9 COMMISSIONER GIOVANNI: The terms of that
10 RFP are those, I believe, have to reach commercial by
11 2022, so it's pretty much only one year behind the
12 project you're talking about?

13 MS. LIM: I believe that the period that
14 those projects, whether it's one or two projects, but
15 within this area will windup being shorter than the
16 commercial operation period of 35 years that Waiawa
17 Solar is seeking.

18 COMMISSIONER GIOVANNI: So currently we've
19 approved the interim use on those west properties
20 through what date?

21 MS. LIM: Through 2049, November 2049.

22 COMMISSIONER GIOVANNI: So if by terms of
23 this competitive RFP, you have to be commercial by
24 the end of 2022, and then the 20-year proposal was
25 2042.

1 Why do you need 2059 for those properties?

2 MS. LIM: We may not, but we're requesting
3 it first because there is some symmetry. Second
4 because we don't know that HECO will select the
5 particular developer that Kamehameha Schools is under
6 contract with right now to develop that solar farm.
7 We do know that for the law that was passed in 2015
8 we've got to hit renewable -- 100 percent renewable
9 by 2045.

10 So even if this developer who we're under
11 contract with now is selected, this area has been
12 identified as being very good for solar. I mean,
13 it's been selected by HECO in the past, you know,
14 unrelated to the quality of the property or the solar
15 infiltration of the property, that project didn't go
16 forward.

17 So if HECO selects the developer who we're
18 with right now under the current RFP, well, then
19 those projects would go forward. If they do not,
20 Kamehameha Schools would still like to retain the
21 ability to have that area in use for solar.

22 And, again, the 2059 date we are picking
23 what we think is a reasonable outside date, and when
24 you look at the master plan presentation, you'll see
25 that the 2059 date wouldn't in any way impede the

1 timely development of the master plan.

2 COMMISSIONER GIOVANNI: I'm good for now.

3 CHAIRPERSON SCHEUER: Thank you,
4 Commissioner Giovanni.

5 Are there further questions for this
6 witness from the Commissioners? No.

7 Who is your next witness, Ms. Lim?

8 MS. LIM: Jason Jeremiah from Kamehameha
9 Schools.

10 CHAIRPERSON SCHEUER: I'm trying to assess
11 -- we have been going about an hour now. Let's take
12 a ten-minute break before the next witness.
13 Reconvene at 3:11.

14 (Recess taken.)

15 CHAIRPERSON SCHEUER: Back on the record.

16 Ms. Lim, your next witness is Jason
17 Jeremiah.

18 Good afternoon.

19 THE WITNESS: Good afternoon.

20 CHAIRPERSON SCHEUER: Do you swear or
21 affirm the testimony you're about to give is the
22 truth?

23 THE WITNESS: Yes.

24 CHAIRPERSON SCHEUER: Mr. Lim or Ms.
25 Thoene?

1 MS. THOENE: Thank you.

2
3 -o0o-

4 JASON JEREMIAH

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

8 DIRECT EXAMINATION

9 BY MS. THOENE:

10 Q Do you think you could state your name and
11 address for the record?

12 A Jason Jeremiah. My business address 567
13 South King Street, Honolulu, Hawai'i.

14 Q And what is your current occupation?

15 A I work for Kamehameha Schools as the
16 Director of Natural and Cultural Resources.

17 Q And how long have you worked in that
18 capacity?

19 A I've worked at Kamehameha Schools for just
20 about ten years, and previously I worked at the
21 Office of Hawaiian Affairs for about two-and-a-half
22 years.

23 Q And what did you do at OHA when you were
24 there?

25 A At OHA I was a policy advocate for historic

1 preservation matters.

2 Q Did you provide a copy of your resume for
3 this proceeding?

4 A Yes.

5 Q And that would be KS Exhibit 33; is that
6 correct?

7 A Yes.

8 Q Can you briefly describe your educational
9 background?

10 A I have a bachelor's in Hawaiian studies and
11 a master's in urban and regional planning from the
12 University of Hawai'i at Manoa.

13 Q What does your work at Kamehameha Schools
14 entail?

15 A So at Kamehameha Schools, I'm in charge of
16 the Natural and Cultural Resource Management projects
17 across all of our landholdings statewide on five
18 islands.

19 We take care of any of the ecosystems. We
20 take care of cultural sites and cultural resources.

21 Q And what is your role for the Waiawa Solar
22 Project?

23 A I consult on historic preservation
24 compliance issues related to the Waiawa Solar
25 Project.

1 Q Have you ever been qualified as an expert
2 witness before the Land Use Commission?

3 A Yes, in our previous motion in 2014.

4 Q And what about at any other state agencies?

5 A I've been an expert witness with the
6 Commission on Water Resources on a contested water
7 case for Na Wai 'Eha.

8 Q And what are you qualified in, what area?

9 A I'm qualified in GIS mapping and kuleana
10 land research.

11 Q And for this matter back in 2014, you were
12 qualified as an expert in traditional cultural
13 resource management; is that correct?

14 A Yes.

15 MS. THOENE: We would like to offer Mr.
16 Jeremiah as an expert witness in this proceeding if
17 there are no objections.

18 CHAIRPERSON SCHEUER: Are there any
19 objections?

20 MS. WONG: No objection.

21 MS. APUNA: No.

22 Q (By Ms. Thoene): Mr. Jeremiah, are you
23 generally familiar with the project area and what
24 will be built (indecipherable) -- the solar farm
25 located in the area on Exhibit 8?

1 A Yes, I'm generally familiar.

2 Q And are you familiar with what
3 archaeological and historic and cultural resources
4 are within that area?

5 A Yes.

6 Q Can you explain what studies were prepared,
7 archaeological, historic and cultural resource
8 studies were prepared for the Petition Area?

9 A Yeah. So previously as Gentry did a lot of
10 archaeology for their larger project with our last
11 solar project in like 2014, we did an archaeological
12 study of the two solar areas that was mentioned
13 earlier through some consultation with SHPD.

14 They asked us to do an Archaeological
15 Inventory Survey of the entire Petition Area, which
16 includes the current 200-acre solar project we're
17 here for.

18 Q And when you say "Petition Area", do you
19 mean the entire 1,395 acres shown on KS Exhibit 8,
20 correct?

21 A Correct.

22 Q So in addition to the archaeological
23 inventory survey that was done, were there any other
24 studies prepared by TCP Hawai'i?

25 A Yeah, so TCP did those two archaeological

1 studies, and then as part of the determination by the
2 State Historic Preservation Division, the mitigation
3 commitment that were agreed upon were an
4 archaeological site preservation plan for the two
5 sites.

6 Q And so the AIS is KS Exhibit 18, and the
7 archaeological preservation plan is KS Exhibit 19?

8 A Yes.

9 Q And can you briefly describe what the
10 findings are for the -- in the archaeological
11 inventory survey? You mentioned that there were two
12 sites that were recommended for preservation.

13 A Yes, so the findings of the archaeological
14 inventory survey were within the Petition Area, the
15 1300-acre area. There were no traditional Hawaiian
16 sites that were identified within that Petition Area.

17 There were more of historic era, historic
18 properties or sites that were related to the use for
19 sugar and pineapple and other industrial ag uses.

20 Q And so for the two sites that were
21 recommended for preservation, can you describe what
22 the measures -- what measures were recommended?

23 A The measures were to -- for those two sites
24 was to create, you know, basically during
25 construction create an interim buffer for those sites

1 and then create a permanent buffer after construction
2 with -- so that the interim would be more of
3 construction fencing, and we'd put in a more
4 permanent site buffers once the project was built.

5 Q What are those permanent buffers? What do
6 they typically consist of?

7 A You know, I think in this case we wanted to
8 match that historic character of the history of that
9 project area with the agriculture. And so it was,
10 you know -- I think the buffers -- I'm trying to
11 remember what the buffers were. I think it was
12 generally around the ten feet, and, you know, they're
13 going to do some wooden posts with some rope kind of
14 making it more fit into the character versus like the
15 stone rock walls that you basically like in a resort
16 development.

17 Q Are there any features of the sites that
18 need to be preserved within the project area for the
19 solar farm?

20 A Yes. I think there were two features, part
21 of Site 2273 features 22 and 23 which were like water
22 retention basins and associated ditch in consultation
23 with the State Historic Preservation Division
24 archeologist. It was agreed upon by our consultant,
25 TCP Hawai'i, recommending that site to be preserved

1 when looking at the whole Petition Area, so that was
2 chosen, and it's within that 200-acre for the solar
3 project.

4 Q Can you indicate where the --

5 A On the right exhibit.

6 Q KS Exhibit 8, for the record.

7 A It would be the -- kind of most mauka
8 eastern portion of the project area. Yeah, right
9 about there (indicating).

10 Q And has the temporary construction fencing
11 been installed?

12 A Yes. It was installed by TCP Hawai'i. I
13 think I got the right date about a few months ago in
14 anticipation.

15 Q And when do you typically put the permanent
16 preservation measures in?

17 A You know, typically we would put it in,
18 but, you know, for a typical construction project
19 post construction, once that construction happens,
20 then, you know, usually it kind of gets -- it would
21 be built into any kind of design. So I think, you
22 know, it's a good practice for when -- to put in
23 those permanent preservation measures.

24 Q And in this case, who will be the entity
25 responsible for installing the permanent preservation

1 measures?

2 A It would be Waiawa Solar.

3 Q And as a requirement under the KS Land
4 Agreement with Waiawa Solar?

5 A Yeah, typically we would pass that onto
6 the -- to our lessee that holds our land agreement.

7 Q Great. In addition to the archaeological
8 surveys that were done for the property, were there
9 any cultural impact assessments or cultural surveys
10 done?

11 A Yeah. So in 2003, Gentry did a cultural
12 impact assessment as part of their development
13 entitlements. They interviewed about 66 informants
14 and went through the process of identifying cultural
15 resources, cultural practices, traditional practices
16 related to that larger area so -- and then in 2011,
17 Kamehameha Schools did what we call an
18 ethnohistorical study of all of our Ewa region lands.
19 Where kind of like a -- it's very similar to a CIA,
20 but it was a proactive measure for our land
21 management and land development to really look at and
22 interview community members, people knowledgeable
23 about our lands in Ewa to identify those same
24 resources and practices.

25 Q All right. And just to be clear, the

1 cultural impact assessment that was done for the
2 property in 2003, it wasn't just limited to the solar
3 project or Petition Area, or did it cover a much
4 larger area?

5 A It covered 3,600 acres, so it's a much
6 larger area.

7 Q So all of the Petition Area was included
8 within that 3600 acres?

9 A Yes.

10 Q Based on all the studies that were done for
11 the KS property and beyond, are you aware of any
12 traditional customary practices or cultural resources
13 that are located within the Petition Area?

14 A No. We're not aware of any of those
15 traditional and customary practices within the
16 Petition Area. To our outreach, through the CIA like
17 was done by Gentry for -- to our more current work
18 engaging with the community in identifying any
19 possible traditional and customary practices and
20 resources, we did not identify anyone that had those
21 practices or those types of resources.

22 Q Thank you.

23 Are you familiar with the Hawaii Supreme
24 Court requirements --

25 COURT REPORTER: Ms. Thoene, could you

1 start that again?

2 Q (By Ms. Thoene): Are you familiar with the
3 Hawaii Supreme Court requirements under Ka pa'akai o
4 ka aina v Land Use Commission and how --

5 A Yes.

6 Q And can you generally state what it
7 requires?

8 A It requires, you know, like agencies like
9 the Land Use Commission or bodies like this to really
10 look at the adverse impacts of a project or
11 development on traditional and customary practices
12 and resources.

13 Q Okay. And in order to do that, you need to
14 have a good inventory of what practices and resources
15 might be within the area; is that correct?

16 A Yes.

17 Q And in your opinion and your years of
18 experience, do you believe that these studies provide
19 enough to the Commission in order to make that
20 assessment of identifying what important traditional
21 customary practices or resources are located within
22 the Petition Area?

23 A Yes, I do. I believe there has been a good
24 faith effort done to identify and inventory these
25 practices, the extensive interviews with the

1 community members identifying -- trying to identify
2 these practices.

3 A lot of times they identified more on the
4 makai land or in the mountainous region. So I think
5 the extensive use of historic agriculture in the
6 Petition Area has really impacted, you know, the
7 community gathering in those areas, and we were not
8 able to identify any of those practices of gathering
9 in the Petition Area.

10 Q What about kuleana land claims? Have there
11 been any of those in the Petition Area?

12 A There is no kuleana land claims within the
13 Petition Area. They're located in the makai areas of
14 the ahupua'a.

15 Q So in your professional opinion, will the
16 Waiawa Solar project adversely impact any of the
17 traditional cultural practices or cultural resources
18 within the Petition Area?

19 A No, I don't think the Waiawa Solar project
20 will have had adverse impact to any, you know,
21 cultural practices or existing cultural resources
22 within the Petition Area.

23 Q Thank you, Jason.

24 CHAIRPERSON SCHEUER: Are there any
25 questions from the City and County?

1 MS. WONG: No questions.

2 CHAIRPERSON SCHEUER: Office of Planning?

3 MS. APUNA: No questions.

4 CHAIRPERSON SCHEUER: Commissioners?

5 Thank you.

6 THE WITNESS: Thank you, Chair.

7 MS. LIM: Chair, Commissioners, if we can,
8 although I indicated earlier that our order of
9 witnesses after Mr. Jeremiah would come Daniel Ford,
10 who's our expert in environmental contamination.

11 In light of the hour, I'd like to change
12 that and request that Dana Sato from Kamehameha
13 Schools come forward, and then we will skip through
14 her testimony and see what time is available. And
15 see if the Commissioners do, in fact, have questions
16 for Mr. Ford or Mr. von Allmen who is also quite
17 familiar with the mitigation measures required to do
18 the zone of contribution portion, if he would be
19 sufficient to address Commission questions.

20 CHAIRPERSON SCHEUER: Commissioners, any
21 concerns with that order? No, okay.

22 Aloha.

23 THE WITNESS: Aloha.

24 CHAIRPERSON SCHEUER: Do you swear or
25 affirm the testimony you're about to give is the

1 truth?

2 THE WITNESS: Yes.

3 CHAIRPERSON SCHEUER: Thank you.

4 DANA SATO

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

8 DIRECT EXAMINATION

9 BY MS. LIM:

10 Q Would you go ahead please and tell the
11 Commissioners your full name and what it is that you
12 do for a living?

13 A Yes. My name is Dana K.N. Sato. I'm with
14 Kamehameha Schools. I'm the Director of Asset
15 Management for Oahu, Maui, Molokai and Kaua'i. I'm
16 sorry.

17 Q No, go ahead.

18 A I was going to say what that means is that
19 I manage a team that overlooks Kamehameha Schools ag,
20 conservation and residential lands on those islands,
21 of which the -- almost all of our utility scale
22 renewable energy projects are managed by my team.

23 Q That's a big area of responsibility, a lot
24 of property.

25 A Yes.

1 Q Would you let the Commissioners know what
2 your educational background is briefly?

3 A Bachelor's of Arts in political science at
4 Gonzaga University. Came back to work because I was
5 flat broke.

6 Then went to the William S. Richardson
7 School of Law, got my juris doctorate licensed to
8 practice law since 1989. Went into private practice
9 until -- 1989 until March of 2003, where I was doing
10 real estate, real property work in condo and
11 residential work, and a little bit of commercial
12 space leasing, and then I joined Kamehameha Schools
13 as a senior legal counsel.

14 I was in that position until March of 2015.
15 And since then, now the Director of Asset Management.

16 Q Thank you, Dana.

17 So your involvement with the proceedings
18 that took place before the Commission five years ago
19 where the Commission approved the two solar farm
20 sites, at that point you were one of the in-house
21 counsel attorneys at Kamehameha Schools.

22 Were you directly involved in that?

23 A I was not directly involved in that.
24 Another senior counsel was working on that.

25 Q Thank you.

1 But you are very familiar with the project
2 that we're here about today?

3 A Yes, I am.

4 Q And you, during the break, brought to my
5 attention that when I described the project that I
6 said 39 megawatts, and that is incorrect. It is a
7 36-megawatt project, and I'm very appreciative that
8 you called it to my attention. I guess I still get a
9 little bit flustered sometimes.

10 So otherwise the project generally is as I
11 described in my opening statement?

12 A Yes, it is.

13 Q Would you go ahead, unless the
14 Commissioners have specific questions about the
15 project itself, from your perspective, could you
16 explain both why renewable energy is important to the
17 State of Hawai'i, and then more specifically, whether
18 or why renewable energy is important to Kamehameha
19 Schools.

20 A I think Commissioner Giovanni actually
21 answered that, a good part of that for us when he
22 pointed out that we have probably -- we have the most
23 loftiest goals, energy -- renewable energy goals in
24 the nation, which is we have a law that's passed in
25 2015 just a few months after our 2014 LUC Decision

1 and Order was issued to approve the solar farm
2 operations on these very lands that we're talking
3 about today, and that lofty goal is 100 percent
4 renewable energy by 2045.

5 And then we see in 2018, another lofty goal
6 was to become carbon neutral as quickly as possible
7 but no later than 2045.

8 So it's a recognition I think that we
9 definitely at Kamehameha Schools share with our state
10 government and with the communities which is all
11 about sustainability. It's about getting ourselves off
12 of reliance on oil and coal that we are doing today,
13 and looking at other opportunities.

14 And so there's no reason why we wouldn't
15 want to support that.

16 When we look at land at Kamehameha Schools,
17 we don't look at it as one might think others do. We
18 look at it through the lens of five values.

19 Our five values is education; obviously, we
20 are a charitable education trust. We look at it
21 economically as well. We look at it from an
22 environment perspective, from a community
23 perspective, and from a cultural perspective.

24 And so when we look at renewable energy and
25 a project like this one for a solar farm project,

1 from an educational perspective, in our agreement
2 with Waiawa Solar Power, we specifically put in there
3 language conditions related to providing educational
4 programs and opportunity for our local kids.

5 So they're actually a part of this
6 agreement putting in \$200,000 worth of funding to
7 support educational programs.

8 And so those educational programs we
9 haven't gotten to the fine detail. I can tell that
10 on our other projects we have very specific
11 internship programs I think that they're doing at
12 Kawaihoa Solar project. But for this project, it's
13 sort of wide open between anything from internships
14 to curriculum, which we have done for our Maui
15 project.

16 It's working with the teachers, bringing
17 them up to training programs. We have been exploring
18 a lot of opportunities with them.

19 But that's key. Our ultimate goal is that
20 one day when we need to work with renewable energy
21 years down the line, that we'll be able to look at
22 our local kids. That they're the ones that are going
23 to be actually the developers locally. We don't have
24 to look outside the boundaries of our own line, so
25 that's the educational side.

1 The environmental side of it is solar
2 projects, as we all know, impacts our environment.
3 It is very low impact to our environment. It's an
4 interim use as we've been talking about throughout
5 this afternoon. And it allows our aina to heal
6 during that period of time that the solar project is
7 there.

8 And as we discussed earlier, when it comes
9 to decommissioning, which is what the earlier
10 witness, Patrick Sullivan from Clearway, indicated,
11 the decommissioning is basically removing everything,
12 so it's back to where it was before.

13 And actually where it was before may not
14 necessarily be how we want it today, because where it
15 was before we have a lot of invasive species on that
16 land, and it would sure be nice to be able to do
17 something better with that. So environmentally
18 that's how we look at this one.

19 When we look at economic during this
20 interim period, we're able to get some good economic
21 benefit to Kamehameha Schools. And when we're
22 working with 62,000 learners and students a year, and
23 we're spending \$327,000 on our educational program
24 which is what we're all about and what we really want
25 to do, we have to be able to figure that out without

1 how we have to create that balance on the use of our
2 aina.

3 Then we get to community. It's important
4 for us to support community, to work with community
5 renewable energy projects to support that.

6 And we talk about culture, and Jason
7 Jeremiah just indicated that a lot of work taking a
8 look at what the cultural impact of this project
9 would have, the minimal impact, that it's going to
10 work out really well.

11 So renewable energy is just the way we need
12 to do. Our native Hawaiian people always were on the
13 edge of innovation. We should be on the same edge of
14 innovation in the same way.

15 Q Thank you, Dana.

16 I want to hear you say in your own words
17 what the time extension request is that Kamehameha
18 Schools is making to the Commission.

19 It was in discussion during the earlier
20 presentation about if it's for both sides or just the
21 current solar project.

22 Would you articulate in your own words how
23 you perceive Kamehameha Schools' request?

24 A Yeah, and I think -- thank you, Jennifer,
25 because I think there is some confusion, and I think

1 that some of the questions that we see coming in from
2 the Commissioners, it's important for us to address
3 that.

4 So key, and most important to us, is that
5 we're looking at the project today which is the
6 Waiawa Solar project. We're looking at an extension
7 that goes from the November 2049 date that was
8 originally approved in 2014 to December 31st, 2059.
9 And Jennifer went through her opening statement and
10 explained all the timings that was involved and the
11 changes that happened between 2014 to where we are
12 today.

13 And Commissioner Giovanni also confirmed
14 some of it happening including bankruptcy of
15 SunEdison and touched on that, so there's a lot of
16 things that happened there.

17 And if we now -- if everything went
18 according to plan, we would be pretty darn close to
19 flipping that switch today for the project that would
20 have been there. But it didn't go according to plan.

21 And so we know that the amount of time it's
22 going to take us to be able to finish up with this
23 new solar project is we're going to need some extra
24 time.

25 So as I sit here today, we're really asking

1 for the 2059 for sure for the Waiawa Solar Park. The
2 project that is now sitting on the Waiawa Shaft zone
3 of contribution, the project which is just slightly
4 different than what was approved back in 2014 for
5 this area, in the sense that we're going to have
6 battery storage, substation on that area, where it's
7 in the past, and 2014 it was not going to be in that
8 area.

9 And the other part of it is that we've gone
10 from being 280-some acres, or something like 86
11 acres, I think, we are down to 200, and the project
12 is down to 185. I think that's actually the best
13 news, and that's actually a reflection of technology.
14 We know that over time technology is going to improve
15 things.

16 And so when we're looking for the act in
17 how we sort of went from this side which is where
18 we're talking about for the Waiawa Solar and just
19 looking at the map -- I'll use my laser printer but
20 -- pointer, but by just pointing like this, just
21 right there. The other side which is what Jennifer
22 is pointing out at right now, when we look at that
23 project, we do have end dates for those projects
24 which tie into our master plan.

25 So for those projects, we look at as two

1 separate projects, one area with a termination of
2 2044, the other area with a termination of 2054.

3 So in both cases less than what we're
4 suggesting the 2059. We brought it up in today's
5 hearing and also in our documents that we submitted
6 because as we looked at it, when we consider our
7 land, we try to match up our leases. Imagine
8 yourself working with 100 leases in an area. If they
9 all terminated at different times, it becomes hard
10 from a land management perspective to be able to
11 manage lands like that.

12 So as we looked at this, we considered it
13 and said, solar projects on the same property in
14 Waiawa, why not try to match it up? Easier for
15 management purposes. Things might happen within each
16 one; we'll deal with it then. But at least we have
17 in our hands, at least we have asset managers of the
18 future, because I may look young, but in 2059, I
19 don't think I'm going to be around. But we want to
20 be able to make it easier for our asset managers who
21 will be around at that time for them to be able to
22 manage the land.

23 So what will happen with the 2044 and 2054
24 property, the goal when I -- the wonderful people
25 behind me who talk -- who's going to introduce these

1 folks at a later time are master planners. They will
2 be able to explain how we work from the bottom. And
3 as we get closer to the solar project, that project
4 stays away. The master plan continues, that project
5 stays away, the master plan continues.

6 So at the very least, as I look at
7 Jennifer, we really would like to get the 2059,
8 December 31st, 2059 for the Waiawa Solar power
9 project. And if you can, we'd appreciate it, prevent
10 us from having to come back again to the LUC, also
11 making it easier for our asset managers in the future
12 to be able to manage the lands to also add the
13 northwest side up to 2059.

14 Q Thank you, Dana.

15 I'm going to jump into a quick discussion
16 about conditions.

17 Are you familiar with the conditions that
18 the Office of Planning presented in its response
19 brief?

20 A Yes, I am.

21 Q And generally what is Kamehameha Schools'
22 position on the Office of Planning's proposed
23 condition?

24 A Well, I think -- well, first of all, I,
25 like the lawyers, see what the lawyers did, so I know

1 that the lawyers filed their rebuttal briefs, and, et
2 cetera, and that's been a discussion -- those
3 documents.

4 Generally speaking, the majority of the
5 conditions are conditions that are constantly agreed
6 to and sort of work through, it's really going to be
7 clarifying on some issues. But there is one
8 exception that we -- that's key to us, and that's the
9 first condition that was being asked with regard to
10 that within a ten-year period that we would have the
11 backbone infrastructure put into this project.
12 That's tough.

13 And I say it's tough, because number one,
14 it's unexpected. And when I say unexpected, I build
15 upon that, because we have been here before the Land
16 Use Commission regarding a Waiawa plan at least twice
17 before on a big level.

18 Gentry, we came in in 2014 with the solar
19 project and stuff, and at no point in that time was
20 it brought up that we needed to get -- that we had a
21 developmental deadline before us.

22 As things have changed over time, and as
23 all of life happenings with bankruptcies and all
24 kinds of crazy things going on, we have continued the
25 work of getting this project done, of doing what we

1 said we wanted to do, which was to put residential on
2 the master plan.

3 We've never moved away from that. And I
4 think it's really important that the Land Use
5 Commission looks at KS in a different way than you
6 guys look at other developers. We're not like other
7 developers. We're here. We've been here for over
8 100 years. We're going to be here for over
9 100 years.

10 And our focus is all about the people and
11 doing what's good for the people. Our focus is not
12 just to make money and to take off. We have no place
13 to go. This is where we are; this is our place.

14 And so to -- as we work, we're putting
15 forth our best effort. And to say that we need to
16 put up money unexpectedly, find developers that have
17 to come in that's going to do this project that we're
18 working on and expect them to get all the permitting,
19 et cetera, in place in ten years, and for us to come
20 up with that funding. We're not going anywhere.

21 What we've done since 2014 is the Land Use
22 Commission in 2014 said every year come back and tell
23 us what you guys are doing with that master plan.
24 And every year we've come back. We said, in five
25 years if I can --

1 Q Excuse me. I want to make a point of
2 clarification. When you're talking about a
3 development deadline, are you talking about a
4 development deadline as applied to the solar project
5 or are you talking about a development deadline for
6 nonsolar?

7 A Oh, I apologize. I was talking about the
8 development deadline that had been set. Unless I
9 misread that, but from what I'm looking at OP, it
10 looks like the development deadline that they were
11 asking to set for ten years to put the backbone
12 infrastructure for the master plan.

13 Q For the nonsolar?

14 A For the nonsolar, yes.

15 Q To be clear, Kamehameha Schools is
16 comfortable and acknowledges that if the Commission
17 approves the current solar farm essentially that's
18 what we're talking about, that's the development
19 deadlines that Kamehameha Schools will adhere to.

20 A Oh, yes, yes. Yeah, I apologize for that
21 confusion.

22 CHAIRPERSON SCHEUER: It's 3:45. We have
23 to end today by 4:30. I know you desire us to take
24 some kind of action today which I believe I
25 understand that.

1 MS. LIM: We're just about there -- thank
2 you for that reminder -- with Ms. Sato.

3 Q (By Ms. Lim): Dana, if I could, do you
4 have any last remarks you'd like to share with the
5 Commissioners?

6 A I think we've put it on the table. I think
7 that I'm more interested if you have any questions
8 for me to cover some things that I may have missed.

9 CHAIRPERSON SCHEUER: Okay.

10 MS. LIM: I'm finished with my direct
11 examination of Dana Sato.

12 CHAIRPERSON SCHEUER: Questions from the
13 City and County?

14 MS. WONG: No questions.

15 CHAIRPERSON SCHEUER: Questions from Office
16 of Planning?

17 MS. APUNA: Yes, thank you, Chair.

18 CROSS-EXAMINATION

19 BY MS. APUNA:

20 Q Thank you, Ms. Sato, for your testimony.

21 And I think we're still a little bit
22 confused about what this motion pertains to today.

23 So you talked about the Waiawa Solar
24 project, that's what the extension is for; is that
25 correct?

1 A The Waiawa Solar power project.

2 Q And what does that exactly encompass as far
3 as the portions of the Petition Area? Is it one
4 single portion? Is it two? Is it one phase? Maybe
5 you could explain.

6 A So if I could use my magic pointer, and
7 just pointing out to where that Zone of Contribution
8 we were talking about that area specifically.

9 Q And only that shaded area? The shaded area
10 of pink overlapping the yellow, is that the only area
11 that you're asking for extension?

12 A That's the specific area we're asking for
13 the extension.

14 Q So there's no -- this motion does not cover
15 the area on the west side of the Petitioner Area?
16 The area --

17 A Yes. Where they're pointing out, right
18 there.

19 Q So that doesn't include that, the motion
20 does not include that area?

21 A So it was mentioned in our submittal of our
22 motion in our memorandum as well, and but what I see
23 from the forest of confusion with regard to it, it's
24 key for us to make sure that we have the Waiawa Solar
25 Power extension for sure. But it was mentioned as

1 part of the motion, that's my understanding from
2 reading the motion.

3 Q It was mentioned as part of the motion, but
4 it isn't looking for approval; is that correct? The
5 west part, there's no approval. It's just mentioned
6 within the Petition?

7 A From when I looked at the memorandum, I
8 thought there was a mention, but also seeking for the
9 LUC if they would be willing to extend it to that
10 side if they could.

11 Q Under this current motion?

12 A Yes. Maybe I can ask my current attorneys
13 to answer.

14 MS. LIM: Thank you very much.

15 Just to be crystal clear, the motion that
16 got filed in July -- I believe it's on page seven of
17 the motion -- acknowledges the fact that we have a
18 lot of information about the Waiawa Solar Power
19 project, and that is 100 percent what we're here
20 about today is seeking the approval for the Waiawa
21 Solar Power project.

22 We also anticipated, knowing that this
23 round two RFP was coming out from HECO that we would
24 want to have solar on the other side of the property
25 as was approved five years ago.

1 The motion actually -- and the motion does
2 not precisely request for an extension on that other
3 side of the property. In my opening comments today,
4 I acknowledged that since the time we filed the
5 motion four or five months ago, HECO has come out
6 with that RFP. Kamehameha Schools is under contract
7 as somebody who perhaps will be selected by HECO and
8 they would then therefore want to pursue the solar
9 project in the western side of the property, but we
10 have not filed a formal motion. That was for lack of
11 better term, an oral motion. I would even say, it's
12 just an oral request for consideration by this
13 Commission.

14 And as we stated in our motion on or about
15 page seven, we don't have a great deal of detail
16 about the project on the west side.

17 And I can tell you that since we filed in
18 July, Kamehameha Schools has more information about
19 that property, but we still don't know that that
20 developer will get selected by HECO. If the
21 Commission is -- or if the parties, if ultimately,
22 the discretion is we want to keep it narrow just for
23 the Waiawa Solar Power project, you know, so be it.

24 I mean, this is all up to your discretion.
25 We will most likely then have to return to the

1 Commission to seek a similar kind of motion as we're
2 doing today for that other project.

3 Did I capture that in a way that the
4 Commission would understand it?

5 THE WITNESS: I apologize for the mix up.

6 MS. APUNA: No problem.

7 Q (By Ms. Apuna): So just to be clear, we're
8 here for this motion for the Phase I eastern side of
9 the Petition Area, however -- Phase II, sorry, then
10 counsel has suggested perhaps to include Phase I on
11 the western side of the property. Is that correct?

12 MS. LIM: That's accurate.

13 COMMISSIONER GIOVANNI: Just a point of
14 clarification on that point.

15 In the western property I think you said is
16 currently proposed as two different projects?

17 MS. LIM: Yes, in terms of two different
18 projects, the timeline for when those projects would
19 be completed is 2044 and 2054. In terms of the --
20 I'll say the points between Kamehameha Schools and
21 that potential solar developer, I'd have to defer to
22 Ms. Sato who's, you know, sort of the lead on those
23 negotiations. And as I mentioned earlier, some of
24 this is still confidential. We're not in a position
25 to get into the business terms.

1 COMMISSIONER GIOVANNI: So 2044 and 2054 as
2 opposed to HECO?

3 THE WITNESS: Yeah, that's the agreement --
4 well, that's the agreement that we have with the
5 potential developer.

6 CHAIRPERSON SCHEUER: If I may, as the
7 Chair. Without saying anything on the merits of what
8 has been to quote counsel generally requested on the
9 western side of the property, because of our granting
10 of the counsel's request to take up this motion prior
11 to taking up an overview of the master plan, at least
12 I am not in an orientation to take up anything other
13 than this narrow request that was in the original
14 July motion today.

15 MS. LIM: We understand, and we appreciate
16 the inclination.

17 CHAIRPERSON SCHEUER: Are there questions,
18 further questions for the witness from the Office of
19 Planning?

20 MS. APUNA: Could I just insert at this
21 point, too, based on counsel's representation that OP
22 was under the assumption that we were just looking at
23 the eastern side of the property, Phase II, OP did
24 not review the western side.

25 So we would also need to do review of the

1 western portion, and wouldn't able to comment on that
2 portion as well.

3 CHAIRPERSON SCHEUER: Do you have further
4 questions for this witness?

5 MS. APUNA: No further questions.

6 CHAIRPERSON SCHEUER: Commissioners?

7 Commissioner Giovanni.

8 COMMISSIONER GIOVANNI: Ms. Sato, thank you
9 for your testimony. And let me compliment you and
10 Kamehameha Schools for being an incredible landlord
11 for these lands, and for playing a very important
12 role for the State of Hawai'i to achieve its
13 renewable energy goals.

14 THE WITNESS: Thank you.

15 COMMISSIONER GIOVANNI: The land is the key
16 to the -- a very important key to these projects, and
17 without landowners being willing to come forth and
18 make their land available through the lease
19 arrangements or other -- these projects wouldn't
20 happen, so thank you.

21 And also let me thank you for your five
22 values that you instill in the lease arrangements
23 that you have with the developers. I just have one
24 general question about your approach.

25 I think that you have collectively referred

1 to renewable energy and one of your values is
2 community and being in harmony with the community.

3 I think everyone here is aware there's a
4 lot of controversy today on this island regarding
5 renewable energy project up at Kahuku.

6 What is Kamehameha Schools' position on
7 wind projects such as Kahuku versus solar projects
8 like the one you're talking about at Waiawa?

9 THE WITNESS: So this, as you would expect,
10 Commissioner, this has been -- when all of this
11 started up out in Kahuku, we have been watching this
12 subject quite carefully. And it's made some of the
13 Commissioners, we know, Kamehameha Schools, one of
14 our utility scale project on this island is a wind
15 project that is out in Kawaihoa. That project has
16 been in operation since the year 2012. And that if
17 they were running at full capacity would be
18 69 megawatts, so it's not a small project. It's a
19 large project.

20 In order for us to do that project, we
21 spent between five to eight years on the North Shore
22 specifically with the community to develop what is
23 our North Shore plan for that area, and that plan
24 incorporated renewable energy as one part of it.

25 It looked at commercial operations. It

1 looked at ag operations, and it looked at residential
2 opportunities as well. And we dove deep into the
3 subject and into that area.

4 So we know the challenges that are
5 associated with wind energy projects. We've
6 experienced it ourselves as some of you may know that
7 the 'ope'ape'a, the native Hawaiian bat, is a key
8 issue for wind projects. And something that through
9 Jason Jeremiah's team, you know, Jason said that he's
10 the director for the Natural Resources and Cultural
11 Resources Management Team, so his team works very
12 closely on these types of issues. So we're very
13 sensitive to it.

14 So as we did our research with regard to
15 what's happening out at Kahuku, we've kept our ears
16 to the ground, and what we've heard at community
17 meetings that we've been involved in is individuals
18 out at Kahuku actually specifically saying, if this
19 was a solar project, we would not have a problem.
20 But it's a wind project. We have a problem.

21 So as we look at our project going forward,
22 we believe that the fact that we're looking at a
23 solar farm operation, that we're in a good place.
24 That the community still supports that. When we were
25 looking at our solar farm operation, which was a very

1 small operation in comparison to these solar farms at
2 2.87 megawatts right next to Lahainaluna High School,
3 we met with the community. Because that just went
4 online towards the end of 2018, the community
5 actually came in sort of this uproar to this meeting
6 that we had down in Lahaina Town. And we sat there
7 about ready to talk with them and we started to
8 explain it, and then someone yelled out, he said,
9 wait, is this like those panels? And we said, yeah,
10 it's solar panels. They said, it's not those big
11 wind things that we see when we come around the Pali
12 heading to town or heading to Lahaina side? And I
13 said, well, no, that's Lahaina side. They said, oh,
14 that's good.

15 So when we're going to the community, solar
16 clearly was the path that we looked at. So that's --
17 we are very conscious. We are very watchful because
18 of community. And the fact that the group that I'm
19 in now, it's called Community Engagement and
20 Resources. It's a group that Kamehameha Schools just
21 created in 2015 when we started our new strategic
22 plan, community engagement resources.

23 COMMISSIONER GIOVANNI: Thank you. I have
24 no further questions.

25 CHAIRPERSON SCHEUER: Commissioners?

1 I have a whole series of questions that are
2 really about the master plan rather than about this
3 particular matter that's in front of us.

4 Anything else? I think we're done with Ms.
5 Sato.

6 MS. LIM: Thank you. We call Mr. Daniel
7 von Allmen.

8 CHAIRPERSON SCHEUER: We have to provide
9 time for any deliberation.

10 MS. LIM: This will be very quick, Chair.
11 Daniel, hi.

12 THE WITNESS: Hi.

13 CHAIRPERSON SCHEUER: Do you swear or
14 affirm the testimony you're about to give is the
15 truth?

16 THE WITNESS: I do.

17 MS. LIM: Thank you.

18 DANIEL VON ALLMEN

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

22 DIRECT EXAMINATION

23 BY MS. LIM:

24 Q So, Daniel, I understand you're the project
25 development manager for Clearway Energy?

1 A That's correct.

2 Q And are you reasonably familiar, intimately
3 familiar -- what is your level of familiarity with
4 the Waiawa Solar Power project?

5 A Extremely familiar.

6 Q Okay. So if the Commissioners have
7 detailed questions whether it's about PV panels,
8 inverters, any aspect, the batteries, would you be
9 the person to direct those questions to?

10 A I would happy to answer those questions,
11 yes.

12 Q So I'm going to just cut right to it. I
13 think the most important points, and that is have you
14 looked over the studies that were included that
15 prepared for this project, and included in the
16 record? And by that I mean the glint and glare
17 study, two biological studies, the traffic assessment
18 studies, the view studies, the archaeological
19 preservation plan, have you looked over those
20 studies, and are you reasonably familiar with them?

21 A Yes, I am.

22 Q And did those studies include conclusion or
23 recommendations by those various consultants?

24 A Yes, they did.

25 Q And is it Waiawa Solar Power's

1 representation and commitment to this Commission and
2 Kamehameha Schools that those mitigation measures
3 would be -- or mitigation measures or recommendations
4 would be adhered to through the development of this
5 project?

6 A Yes, we will.

7 Q Thank you.

8 And one of the studies I didn't mention in
9 that list of studies was the groundwater study that
10 Mr. Ford prepared. And included in that groundwater
11 study are also the letters that went back and forth
12 between Kamehameha Schools and the Department of
13 Health of which Clearway Energy Group was copied on
14 those letters and been a party to those discussions.

15 And then also the letters from Clearway
16 Energy Group to the Navy and response back from the
17 Navy, and those letters listed out various what I'll
18 call best management practices that would be employed
19 through this development and commissioning of the
20 project?

21 A Yes, they did.

22 Q And is it your representation and
23 commitment that Waiawa Solar Power will adhere to
24 those measures as described in those?

25 A Yes. We have no issue with the

1 recommendation as well as the impact measures.

2 Q Is there a one small difference or one
3 material difference regarding the battery system that
4 you want to mention to the Commissioners?

5 A So I think the update that we want to make
6 regarding the batteries is specifically on the fire
7 suppression system and the safety measure that will
8 be implemented associated with that.

9 I think the original motion contemplated a
10 system that had a material that was released to
11 extinguish the fire. The current design we think is
12 an improvement on that; they're smaller containers
13 with less thermal mass within each container. The
14 container itself is fire rated under the applicable
15 UL standards to contain the fire for the entirety of
16 the thermal event.

17 The individual unit would be disconnected
18 as soon as the thermal event was detected so that it
19 couldn't spread into neighboring units, and the event
20 would effectively be allowed to burn itself out
21 within the confinement of the container.

22 Upon the conclusion of the event, the
23 appropriate emergency and response personnel would be
24 able to remove the batteries from the site,
25 neutralize them in accordance with best practices and

1 then dispose of it in accordance with best practices.

2 Q So there's no longer any sort of chemical
3 fire suppression?

4 A Correct.

5 Q And are fires something that we should
6 expect to see happen on this, at this project with
7 any frequency?

8 A No, absolutely not. So the batteries used
9 in this project are lithium ion battery. They
10 represent -- they're the modern industry standard for
11 this type of facility. They are not the same as the
12 lead-acid batteries that were used in historic
13 battery installation that this Commission might be
14 familiar with.

15 So they're a dry cell battery, there's no
16 liquid or anything else in the battery or the module
17 that could potentially leak, and are considered much
18 safer than the historic lead-acid batteries.

19 Q So it would be an exceedingly rare event?

20 A Yes.

21 MS. LIM: With that, I don't have any
22 further direct questions for Mr. von Allmen. Thank
23 you.

24 CHAIRPERSON SCHEUER: Thank you.

25 Other questions from City and County?

1 MS. WONG: No questions.

2 CHAIRPERSON SCHEUER: Office of Planning?

3 MS. APUNA: Just a few questions.

4 CROSS-EXAMINATION

5 BY MS. APUNA:

6 Q Thank you for your testimony.

7 Are you familiar with OP's position
8 statement that was submitted?

9 A Yes.

10 Q And which included conditions that OP
11 offered for this petition?

12 A Yes.

13 Q So the first one would be:

14 To prevent introduction of contamination to
15 the Zone of contribution. Petitioner shall implement
16 mitigation measures, with approval of the DOH and the
17 Department of the Navy.

18 Are you agreeable to OP's condition?

19 A Yes, we are agreeable to implementing the
20 proposed mitigation from the DOH and the Navy.

21 Q And how about the second condition:

22 If the PV systems emit radio frequency
23 interference to aviation dedicated radio signals
24 disrupting the reliability of air-to-ground
25 communications, the Petitioner shall cause the solar

1 farm facility operator to be prepared to immediately
2 mitigate the hazard upon notification by the DOT
3 Airports Division or FAA?

4 A Yes.

5 Q And Petitioner shall submit a traffic
6 construction management plan for review and
7 acceptance by DOT prior to the start of construction?

8 A Yes.

9 Q I think that covers it. Thank you.

10 A Thank you.

11 CHAIRPERSON SCHEUER: Commissioners?

12 Commissioner Aczon.

13 COMMISSIONER ACZON: Yes, I just have a
14 brief question. I know it's 2059, that's far, far
15 away. And we Land Use Commission, so after 2059
16 we're going to be replaced by Housing Development, is
17 that --

18 MS. LIM: That's to be determined because
19 the Waiawa Solar Power project is within the area
20 also called the zone of contribution. This is an
21 area that has not been zoned by the city and county
22 for any kind of development. It's State Land Use
23 Urban but it's County zoned for Agriculture, and it's
24 essentially right now planned to be kept in either
25 solar or open space.

1 COMMISSIONER ACZON: 2059. Any other
2 technology you see in the future that's going to
3 replace the solar technology?

4 THE WITNESS: It's hard for me to speculate
5 on things that might come in the future. I think the
6 one thing I can say is that the technology of PV is
7 getting better and better every year.

8 And so Patrick spoke briefly about the
9 potential to build out improvements to the system in
10 the host contract period.

11 One thing I thing I would like to kind of
12 add to the record as an addition to what was included
13 in the motion is that that applies to the batteries
14 as well. That technology is also really rapidly
15 evolving, and it's also hard for us to say what
16 HECO's needs might be in the year 21. And so while
17 the motion lays out our plan to augment the battery
18 system as it begins to degrade overtime, I mean, we
19 would also like to retain the ability that if a new
20 technology that meets the requirements of the DOH and
21 Navy comes along that can better serve this function,
22 whether that's in year 21 or some other year, that we
23 would be able to --

24 COMMISSIONER ACZON: I understand that.

25 THE WITNESS: Yeah.

1 COMMISSIONER ACZON: My specific question
2 is after you decommission this system, what will
3 replace this system for renewable energy and power
4 and how that supposed to be powered?

5 THE WITNESS: Yeah, sorry to go off the
6 rails there.

7 I think that this is a really suitable area
8 to continue to use PV solar and while that -- and the
9 35-year life may be the end of this particular
10 project, another PV facility can take its place.
11 It's really up to Kamehameha Schools to make that
12 commercial decision.

13 COMMISSIONER ACZON: So you foresee any
14 other area on that development for a new solar system
15 coming up 2059 if the solar technology is still
16 viable?

17 THE WITNESS: I think given the location
18 over the Waiawa Shaft, that area is particularly
19 suitable to solar as a load and no impact resource.
20 Given Kamehameha Schools' plans for other parts of
21 the property, I don't know that I'm in a position to
22 speak to what may or may not be suitable for that.

23 COMMISSIONER ACZON: Thank you, Mr. Chair.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Aczon.

1 Commissioner Giovanni.

2 COMMISSIONER GIOVANNI: Ms. Lim, I have a
3 question about the actual lease between Kamehameha
4 Schools and the developer.

5 Is this is the right person to ask?

6 MS. LIM: Well, they're nodding at me. I
7 would have thought Dana Sato would have been the
8 right person to ask but...

9 COMMISSIONER GIOVANNI: Well, let me ask
10 the question, and we'll go from there.

11 Assuming that the current PV is not
12 extended, does your -- does the lease that is in
13 existence require Clearway to remediate the site to
14 meet the conditions of the current interim permit?

15 MS. LIM: If I can rephrase the question to
16 make sure I'm getting it right.

17 If the PPA doesn't get extended so this
18 project only goes forward for the next let's say 21
19 some-odd years, does the agreement with the --

20 COMMISSIONER GIOVANNI: Let me ask it in a
21 real simple.

22 MS. LIM: Okay.

23 COMMISSIONER GIOVANNI: Who has the
24 responsibility for remediating the site once -- to
25 remove the equipment and remediate the site to its

1 original condition at the end of the use permit?

2 THE WITNESS: That would be Clearway and
3 Waiawa Solar Power's responsibility, and that is
4 codified in our lease agreement.

5 COMMISSIONER GIOVANNI: Thank you.

6 CHAIRPERSON SCHEUER: Commissioner Aczon?

7 COMMISSIONER ACZON: And the ten-year
8 extension, that is included?

9 THE WITNESS: Correct, yes, that includes
10 the development period, the full 35-year operational
11 period and then the decommission period.

12 CHAIRPERSON SCHEUER: Ms. Lim.

13 MS. LIM: I do have a -- one redirect.

14 CHAIRPERSON SCHEUER: Go ahead.

15 MS. LIM: Thank you very much.

16 REDIRECT EXAMINATION

17 BY MS. LIM:

18 Q And it has to do with the question that
19 Office of Planning asked you about their groundwater
20 condition, and to be fair, Petitioner has submitted
21 to Office of Planning a list of 14 conditions of
22 approval. That was an attempt to mesh both the
23 conditions that the Office of Planning recommended in
24 their filing with the conditions that are already on
25 the property from the 2014 approval. Because, for

1 instance, if we just have -- you know, a traffic
2 construction management plan, we wanted to make it
3 very clear that the traffic construction management
4 plan as applied to the Waiawa Solar Power project, so
5 we have submitted a list of conditions to Office of
6 Planning for discussion, we're hoping on getting to a
7 point of stipulation, but we haven't gotten there
8 yet.

9 Regarding the groundwater resource
10 protection condition, there's a matter of refinement
11 that perhaps Mr. von Allmen was not familiar with but
12 the condition as proposed by Office of Planning is
13 that Petitioner would implement the mitigative
14 measures to prevent the introduction of contamination
15 to the Zone of Contribution with the approval of the
16 Department of Health and the Department of Navy.

17 This is not only to your knowledge, but the
18 Department of Health and the Department of Navy
19 already approved the mitigation measures as presented
20 in KS Exhibit 13, KS Exhibit 26, and KS Exhibit 27,
21 which were the correspondences between KS and the
22 Department of Health and Clearway and the Department
23 of the Navy?

24 A Yes, they have. Apologies for the
25 confusion.

1 Q So when you said that, yes, Waiawa Solar
2 Power is comfortable with the conditions as
3 articulated by Ms. Apuna, that was based on your
4 understanding that the approval has already been
5 given by those agencies?

6 A Yes, correct. And that that approval comes
7 with certain recommended conditions and that we are
8 comfortable with the conditions recommended with that
9 approval.

10 Q Is your commitment --

11 A Correct.

12 Q Thank you. I just wanted to clarify that.

13 CHAIRPERSON SCHEUER: And there's nothing
14 further for the Commissioners for this witness?

15 MR. YOUNG: Mr. Chair, may the County ask a
16 question?

17 CHAIRPERSON SCHEUER: Is there an
18 objection, Ms. Lim?

19 MS. LIM: I'm sure the County will be as
20 quick as possible.

21 CHAIRPERSON SCHEUER: Go ahead.

22 CROSS-EXAMINATION

23 BY MR. YOUNG:

24 Q Good afternoon, Mr. von Allmen, on your --
25 as was mentioned by the previous Mr. Sullivan that

1 one of the options to maintaining the project is to
2 sometimes perhaps replace a panel.

3 Is it possible over time that all the
4 panels could be replaced such that at the end of life
5 they would be practically new panels?

6 A I think, depending on the transit industry
7 improvements and technological improvements, that is
8 possible. And that generally it is easier to
9 control -- let's assume when the components are all
10 the same rather than to mix and match. But depending
11 on the needs of the project, the needs of Hawaiian
12 Electric and available technology, it could be a
13 portion or all of the project.

14 Q Okay. And the other question I had is at
15 the time of termination, end of life, would the
16 panels be disposed of at the landfill, or could they
17 be recycled?

18 A We would expect to recycle the panels, and
19 I believe in our motion we have committed that none
20 of the materials would be disposed in a Hawaiian
21 landfill.

22 MR. YOUNG: Thank you.

23 CHAIRPERSON SCHEUER: Commissioners, we
24 have run against an immovable time boundary. It is
25 my observation, despite the efforts of the Petitioner

1 and our efforts today to run as sufficient proceeding
2 as possible, we have run out of the time to
3 meaningfully have the Petitioner conclude their
4 presentation, hear presentations from the City and
5 County and the Office of Planning to engage in
6 meaningful deliberation. But that is my sense. I'd
7 like your sense on it.

8 COMMISSIONER WONG: Chair?

9 CHAIRPERSON SCHEUER: Commissioner Wong.

10 COMMISSIONER WONG: So because of the time
11 issue, do we recess and reconvene tomorrow for the
12 County and OP?

13 CHAIRPERSON SCHEUER: Mr. Orodanker?

14 EXECUTIVE OFFICER: Thank you, Mr. Chair.
15 Tomorrow we have on the agenda the Motion to
16 Intervene in the Hawai'i Memorial Park matter and
17 site visit. It is possible that we would have some
18 time to devote to this matter, but I'm not sure how
19 much that would be. It depends on how long the
20 Hawaiian Memorial Park matter goes.

21 CHAIRPERSON SCHEUER: So the intention
22 would be to hopefully have -- I mean, we have also,
23 right, at the request of the Petitioner, flipped the
24 order of things. We still have the presentation of
25 the master plan. That was on our agenda.

1 Ms. Lim, are you --

2 MS. LIM: But that could be deferred to a
3 later date. The requirement, the condition that the
4 Commission put on us in 2014 was that no later than
5 November 24, 2019, we had to submit a master plan and
6 schedule for development.

7 We did that on October 7th. In fact, that
8 condition has been satisfied. We are happy to come
9 back and present the master plan at the next time
10 it's convenient for the Commission's schedule.

11 CHAIRPERSON SCHEUER: Commissioner Wong.

12 COMMISSIONER WONG: Chair, if the
13 Petitioner restates that -- or one of the items can
14 be done at a later date.

15 CHAIRPERSON SCHEUER: Correct.

16 COMMISSIONER WONG: So the main issue we
17 have is the Motion to Extend the Time, and also we
18 still have to hear the County, OP and deliberate the
19 issue.

20 CHAIRPERSON SCHEUER: That is correct. If
21 there is nothing, and any final arguments from the
22 Petitioner.

23 COMMISSIONER WONG: Hopefully, it can be
24 done tomorrow or can not be done because just, you
25 know, I mean, we do have some time restraints for the

1 other issue.

2 CHAIRPERSON SCHEUER: Brief recess.

3 (Recess taken.)

4 CHAIRPERSON SCHEUER: Thank you for your
5 forbearance.

6 Commissioners, here's my inclination. You
7 know, we've had an incredibly full agenda for the
8 second half of 2019, and it's not slowing down yet.
9 So we're trying to do as much work as we can with all
10 eight of us volunteering our time at least four days
11 a month. It's just sometimes not possible. What we
12 have the availability to do -- to have at least a
13 more thoughtful discussion can be possibly done in
14 our timeframe this afternoon, is do a continuance of
15 this matter.

16 And because it is a continuance of the
17 matter that the people in this room are here for, we
18 can start tomorrow morning at 8:30 which is before
19 the published agenda time for the next agenda item.
20 So we can start our meeting room tomorrow morning at
21 8:30 a.m. at Room 204 of the Leiopapa A. Kamehameha
22 Building, have an hour on this item.

23 Commissioner Aczon.

24 COMMISSIONER ACZON: I won't be available
25 at 8:30.

1 CHAIRPERSON SCHEUER: When are you
2 available, Commissioner Aczon?

3 COMMISSIONER ACZON: 9:30.

4 CHAIRPERSON SCHEUER: I realize I'm
5 imposing. There's nothing you can do? Because the
6 other alternative, we are out of time, so the other
7 alternative we have is simply to defer this to our
8 next available agenda date in January, which would
9 really be a gap in the presentation of some of the
10 witnesses and further argument.

11 So my inclination is to continue this
12 hearing until 8:30 a.m. tomorrow morning.

13 Commissioners, are you okay with this?

14 COMMISSIONER ACZON: Commissioner Wong is
15 going to bring breakfast.

16 COMMISSIONER WONG: I'll bring donuts.

17 CHAIRPERSON SCHEUER: And we will see how
18 far we can get in an hour. I mean, I realize this is
19 an inconvenience and extra work for everybody, but we
20 are also talking about a decision with decades with
21 implications for the next few decades, we should do
22 so as quickly as possible.

23 Is that acceptable, Commissioners? Seeing
24 nods, okay. With that we are going to recess, and
25 we're going to reconvene at 8:30 a.m. tomorrow

1 morning in Room 204, Leiopapa A. Kamehameha Building
2 at the address indicated on the agenda.

3 (The proceedings recessed at 4:27 p.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on November 11, 2019, at 9:30 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 20th day of November, 2019, in Honolulu, Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156