

LAND USE COMMISSION
STATE OF HAWAII

Hearing held on November 21, 2019
Commencing at 8:30 a.m.
Leiopapa A. Kamehameha Building
Conference Room 204
235 S. Beretania Street, Honolulu, HI 96813

AGENDA

IX. Call to Order

X. ACTION Continued
A87-610 Tom Gentry and Gentry Pacific, Ltd.
(Successor Petitioner-Kamehameha Schools)
(Oahu)
* Motion for Modification of Decision and
Order and Time Extension

XI. STATUS REPORT AND ACTION (If Necessary)
A87-610 Tom Gentry and Gentry Pacific, Ltd
(Successor Petitioner-Kamehameha Schools
(O'ahu)

XII. ACTION
A17-804 Hawaii Memorial Life Plan, Ltd (O'AHU)
Petition for district boundary amendment to
consider HUI O PIKILOA, an unincorporated
Association, LIANNE CHING, BETTYE HARRIS,
RICHARD MCCREEDY, JULIANNE MCCREEDY, JESSE
REAVIS and GRANT YOSHIMORI'S Petition to
Intervene

XIII. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair
3 NANCY CABRAL, Vice Chair
4 DAWN N.S. CHANG
5 EDMUND ACZON
6 GARY OKUDA
7 ARNOLD WONG
8 DAN GIOVANNI

9 STAFF:

10 LINDA CHOW, ESQ.
11 WILLIAM WYNHOFF, ESQ.
12 LORI TANIGAWA, ESQ.
13 Deputy Attorneys General

14 DANIEL ORODENKER, Executive Officer
15 RILEY K. HAKODA, Planner/Chief Clerk
16 SCOTT DERRICKSON, AICP
17 BERT SARUWATARI, Planner

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

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

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.

3 A87-610 ACTION:

4 We're on a continued hearing, continuance
5 of Docket No. A87-610 Tom Gentry and Gentry Pacific,
6 Ltd., Successor Petitioner Kamehameha Schools motion
7 for Modification of Decision and Order and a Time
8 Extension.

9 Can we just quickly do appearances?

10 MS. LIM: Jennifer Lim representing
11 Kamehameha Schools, and with me is my partner Onaona
12 Thoene also representing Kamehameha Schools. Good
13 morning.

14 CHAIRPERSON SCHEUER: Good morning.

15 MS. WONG: Good morning, Dina Wong with the
16 City and County of Honolulu, and with me is Raymond
17 Young.

18 MS. APUNA: Good morning, Deputy Attorney
19 General Dawn Apuna for Office of Planning. With me
20 is Lorene Maki and Rodney Funakoshi.

21 CHAIRPERSON SCHEUER: Okay. Thank you very
22 much to everybody, particularly the Commissioners and
23 the staff for accommodating additional hearing time.

24 Ms. Lim, did you have anything further to
25 say before we go on with the presentations of the

1 City and County and the Office of Planning?

2 MS. LIM: Thank you, Chair. In terms of
3 presentation of our witnesses, in light of our
4 pressed timeframe, we do have Mr. Daniel Ford in the
5 audience this morning.

6 And as a refresher, he's the expert on
7 environmental contamination, should there be
8 questions about the project being over the zone of
9 contribution.

10 The records clearly shows that the
11 Department of Health and the Navy are comfortable
12 with the mitigation as proposed, and you heard from
13 Mr. von Allmen yesterday. Waiawa Solar Power will
14 adhere to all the mitigation measures. I
15 nevertheless asked him to come today. I'd like to
16 not call him, but I do want to reserve our right
17 should there be questions from the Commissioners.

18 CHAIRPERSON SCHEUER: Thank you, Ms. Lim.

19 Let me just check with the Commissioners.
20 Commissioners, are there any of the witnesses,
21 including Mr. Ford, who has been mentioned now by Ms.
22 Lim that you have an existing desire to question
23 anything on that's related to what's been submitted,
24 written? Okay. I think we're good right now at
25 least.

1 MS. LIM: Thank you, Chair.

2 So we shall dismiss Mr. Ford. You know,
3 it's only an hour.

4 CHAIRPERSON SCHEUER: It's only an hour.

5 MS. LIM: Let's play it safe.

6 CHAIRPERSON SCHEUER: Yeah, so I'm just
7 saying I don't think that you need to bring up
8 anybody right now.

9 MS. LIM: Thank you.

10 And if I can, just procedurally, yesterday
11 afternoon seemed like we were moving through things
12 as quickly as we could. I do want to confirm that
13 all of the Kamehameha School's Exhibits, that's
14 Exhibits KS 1 through 48, are in the record, that
15 there's been no objections from any of the parties
16 for the admission into the record as well as the
17 other filings we made, including our rebuttal
18 memorandum filed on November 4th, 2019. Just for the
19 record, I wanted to be clear.

20 CHAIRPERSON SCHEUER: Are there any
21 objections to any of those items being in the record?
22 County?

23 MS. WONG: No objection.

24 MS. APUNA: No objection.

25 CHAIRPERSON SCHEUER: Okay. Thank you.

1 So you're done until final remarks?

2 MS. LIM: That's correct, and whatever
3 cross-examination we may have on the other parties.

4 CHAIRPERSON SCHEUER: Thank you.
5 City and County?

6 MS. WONG: With respect to the Motion for
7 Modification and Time Extension to 2059, the City has
8 no objection to that request.

9 CHAIRPERSON SCHEUER: Any questions for the
10 City and County, Petitioners?

11 MS. LIM: Not from Petitioner.

12 CHAIRPERSON SCHEUER: Not from Petitioner,
13 okay.

14 Office of Planning, no questions for the
15 City?

16 MS. APUNA: No questions.

17 CHAIRPERSON SCHEUER: Okay. Office of
18 Planning.

19 MS. APUNA: Thank you, Chair.

20 So the Office of Planning recommends
21 approval of the Motion to Amend with regard to the
22 solar project subject to the following conditions to
23 mitigate potential impacts to the proposed project.

24 I think there's the Condition 1 -- let's
25 just skip down to the second condition:

1 To prevent the introduction of
2 contamination to the zone of contribution, Petitioner
3 shall implement mitigation measures, with approval of
4 the DOH and the Department of the Navy.

5 And Third: If the PV systems emit radio
6 frequency interference to aviation dedicated radio
7 signals disrupting the reliability of air-to-ground
8 communications, the Petitioner shall cause the solar
9 farm facility operator to be prepared to immediately
10 mitigate the hazard upon notification by the DOT
11 Airport's Division or FAA.

12 Fourth Condition: Petitioner shall submit
13 a traffic construction management plan for review and
14 acceptance by the DOT prior to start of construction.

15 And No. 5: The interim use of the Petition
16 Area for the proposed solar farm, including all
17 permitting, construction, operation, and
18 decommissioning activities associated with the solar
19 farm shall not exceed December 31st, 2059.

20 OP also believes that Condition 6 regarding
21 the development schedule shall be deleted.

22 And then lastly, OP has proposed a
23 condition regarding backbone infrastructure
24 completion within ten years. OP is asking that
25 Petitioner complete construction of the backbone

1 infrastructure for Phase A at the Waiawa Master Plan
2 within ten years of the Commission's order.

3 Essentially, OP is asking this Commission
4 to require that Petitioner substantially commence a
5 non-solar development at the Petition Area in a
6 timely manner.

7 This is directly in response to
8 Petitioner's October 1st, 2019 filing of the Revised
9 Master Plan and Schedule for Development.

10 OP's proposed condition is a matter for
11 review under this Motion. It is not separable from
12 the solar project. It's all within the same docket.
13 This is no different than when in 2014, Petitioner
14 made its Motion to Amend to allow for the solar
15 project, and OP then asked for and was granted the
16 condition asking for Petitioner's development
17 schedule.

18 If we wait for Petitioner to make a motion
19 to amend the development schedule, that motion may
20 never come or could be years from now.

21 There is not authority prohibiting OP from
22 proposing this condition and there's no authority
23 prohibiting the Commission from examining this issue.

24 OP's proposed condition is not a
25 relitigating of a decision that was already made. OP

1 is not barred by res judicata. This is an issue that
2 has been reopened by Petitioner. As a party in
3 privity to the original action, OP should be able to
4 respond to this recently presented issue by
5 Petitioner.

6 Petitioner argues that the Commission made
7 a final decision that there is no deadline for
8 development placed upon the Petitioner and the
9 Petition Area, which is quite evident in their
10 proposed Development Schedule. But this is simply
11 not true. There is an existing deadline and any
12 proposal to modify that deadline must conform to the
13 standard ten-year deadline or incremental
14 districting.

15 Petitioner represented, and the Commission
16 adopted in its 1998 Decision and Order under Finding
17 of Fact No. 39 that Petitioner would develop the
18 Property over a 12-year period with construction to
19 begin in 1990.

20 Under Finding of Fact No. 47, Petitioner
21 represented that it would provide 3,900 units of
22 conventional housing over ten years, and 4,000 units
23 in the leisure village over 12 years. Petitioner
24 also represented that there was a need for such
25 housing.

1 Notably, Finding of Fact 102 of the 1998
2 Decision and Order demonstrates that the Commission
3 had contemplated incremental districting under
4 Hawai'i Administrative Rule 15-15-78. Because
5 Petitioner could not substantially complete full
6 urban development within ten years, but rather in
7 12 years as represented, the reclassification was
8 approved for the entire Petition Area to allow
9 Petitioner to, quote, "Provide affordable and
10 conventional housing".

11 In all, the Commission approved the 1988
12 District Boundary Amendment based on Petitioner's
13 representations that it will have completed
14 construction of 7,900 housing units within 12 years
15 of the Decision and Order, or by the year 2002. This
16 is the deadline on the non-solar development of the
17 Petition Area.

18 This deadline has not been modified,
19 cancelled or superceded by either the 1990 or 2014
20 amendments to the Decision and Order. It still
21 stands, and Petitioner remains subject to this
22 deadline. It is now 17 years past this deadline,
23 without any development, Petitioner is therefore in
24 violation of the D&O.

25 The Commission relied on these

1 representations made by Petitioner in granting its
2 approval for the DBA. Under 'Aina Lea, the Hawai'i
3 Supreme Court intended substantial commencement in
4 accordance with representations. It would be unjust
5 and unreasonable to allow a developer to make any and
6 all representations, receive the approval based on
7 those representations, but then not fulfill them.

8 Petitioner misconstrues the 2014 D&O
9 amendment as requiring that no other development,
10 including the non-solar residential development,
11 proceed until the decommission of the solar project.
12 This is incorrect based on a plain reading of this
13 Decision and Order that specifically applies
14 conditions only to the identified 655 acres of the
15 Petition Area for the solar farm. Condition No. 7
16 requires that the 655-acre area may not be used for
17 any other additional uses other than the solar farm.

18 To put things into perspective, it has been
19 31 years since the original Decision and Order was
20 approved in 1988. Since that time, there has been no
21 development of a single house or any solar on the
22 property. Basically, the Petition Area remains as it
23 was back in 1988.

24 Even if this Commission believes that an
25 explicit condition stating a deadline is required

1 rather than these Findings of Facts, Petitioner's
2 proposed Development Schedule is simply not
3 reasonable.

4 Petitioner proposes construction
5 commencement for Phase A in 2030, 11 years from now,
6 with completion in 2040. for Phase B, construction
7 commencement in 2038, completion in 2048. Phase C,
8 construction commencement in 2046, completion in
9 2060; Phase D, commencement in 2056, completion in
10 2066; Phase E, commencement in 2062, completion in
11 2076.

12 Final completion of the development of the
13 non-solar project would be in 2076 or 88 years from
14 the Original Decision and Order.

15 Why is it important that Petitioner timely
16 develop?

17 The Legislature intended for timely
18 development upon approval, and empowered this
19 Commission to revert properties that do not
20 substantially commence use of land in accordance with
21 Petitioner's representations under HRS Section
22 205-4(g).

23 The standard ten-year deadline is required
24 under the Commission's administrative rules. If we
25 today wiped the slate clean of Commission approvals

1 on the property and went back to ag, and Petitioner
2 came forward with this development schedule, it
3 wouldn't even be heard by this Commission. It would
4 be rejected by Land Use Commission staff under HAR
5 Section 15-15-50(c)(20) as not demonstrating that the
6 proposed development will be accomplished within ten
7 years of the date of Commission approval.

8 The Commission must treat all developers
9 fairly and equally. Comparable developments like
10 Ho'opili, which is a mixed-use, transit ready
11 community of 11,750 residential units on 1,500 acres
12 is subject to a ten-year off-site infrastructure and
13 certain onsite backbone roadway and utility deadline,
14 and a backbone infrastructure associated with
15 subdivision utility system 20-year deadline.

16 And in the last two years, similarly
17 situated developments that had not substantially
18 commenced development of the land with much shorter
19 time delays than Petitioner here, have been issued
20 Orders to Show Cause why their land should not be
21 reverted, and in a couple of instances have been
22 reverted.

23 The failure to timely commence and complete
24 construction has meant that 1,395 acres of prime
25 classified, A and B rated agricultural lands remains

1 fallow, and 7,900 housing units that the State so
2 desperately needed back in 2002 are not realized.
3 State planning processes and policies are disrupted
4 by untimely development.

5 I can certainly understand Ms. Sato's
6 testimony yesterday that Kamehameha Schools should be
7 given a break because of all they do. OP recognizes
8 KS as an outstanding corporate citizen with local
9 investments not just in real estate, but important
10 contributions towards education and our keiki.

11 OP truly appreciates working with KS's kind
12 consultants and is very happy with KS's proposed
13 project that creates more residential density, access
14 to the rail station, incorporates agriculture and
15 sustainability.

16 It's just the timing of development that is
17 problematic. And it sounds like KS was shocked and
18 misinformed that there is an existing deadline and
19 that OP would want a ten-year deadline on the
20 proposed Master Plan. I'm sorry for that but timely
21 development based on the ten-year standard is basic
22 to the district boundary amendment approvals.

23 It would be almost a free ticket to allow
24 the development to proceed in this matter over the
25 next 57 years, commencing ten years from now. The

1 Commission doesn't have authority to give out free
2 tickets. Petitioner may try to justify incremental
3 districting and slight deviations from the ten-year
4 standard, but as currently proposed, the Development
5 Schedule strays far from what the Commission should
6 expect in timing under its own rules, legislative
7 intent as pronounced by the Hawaii Supreme Court, and
8 the Commission's own recent and past decisions on
9 development and schedules of other DBAs and issuances
10 of Orders to Show Cause.

11 Finally, this Commission is empowered to
12 modify the Decision and Order with OP's proposed
13 condition pursuant to Hawaii Administrative Rule
14 Section 15-15-79(a) regarding Performance Time which
15 clearly states:

16 Petitioners granted district boundary
17 amendments shall make substantial progress within a
18 reasonable period, as specified by the commission,
19 from the date of approval of the boundary amendment,
20 in developing the property receiving the boundary
21 amendment. The Commission may act to amend, nullify,
22 change or reverse its Decision and Order if the
23 Petitioner fails to perform as represented to the
24 Commission within the specified period.

25 Thank you.

1 CHAIRPERSON SCHEUER: Thank you.

2 Commissioners, are there questions for the
3 Office of Planning?

4 Commissioner Cabral.

5 VICE CHAIR CABRAL: I want to thank you and
6 actually support you. I think you were here
7 yesterday, or at the airport yesterday with us, and
8 that's one of my big concerns. I want to make sure
9 that we really treat everybody in a fair and
10 equitable manner.

11 And, yes, certain entities clearly have got
12 wonderful history and records and do a lot for our
13 community, and we on the Commission have seen other
14 developers or Petitioners that may not have such a
15 stellar reputation in the community.

16 But, again, I think it's the process that
17 is incredibly important for us, so I appreciate you
18 pointing that out.

19 But I also know that since my short tenure
20 here, only four-plus years on it, we have a large
21 number of petitioners/developers who are clearly way
22 outside of their timeframe of what they should have
23 done when they should have done it. And I know that
24 part of our staff -- our wonderful LUC staff is
25 trying to do is to catch up on some of that.

1 But I absolutely support you in the point
2 of trying to come up with a plan that is reasonable
3 and then have everybody meet those expectations. So
4 thank you.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Cabral.

7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Thank you, Chair, and
9 thank you, Ms. Apuna.

10 You know, at least for me, I think you
11 especially, and the Office of Planning, do a really
12 good job being the guardians of the planning process
13 in Hawai'i, and at least for me, I really look to you
14 and your office to really educate us, and bring up
15 these points, because we do have certain obligations
16 to the community.

17 But -- and, you know, I do recognize what
18 you're saying about keeping developers in general to
19 follow the law and follow the representations, and I
20 think another member of the Lim family probably knows
21 that in another case. I kind of advocated, you know,
22 being very strict about applying these conditions.

23 (Commissioner Chang present.)

24 COMMISSIONER OKUDA: But can I ask you a
25 standard of review or procedural question? Does the

1 Commission have the authority to exercise its
2 discretion to respectfully disagree and not adopt the
3 Office of Planning's recommendation about requiring a
4 deadline to complete the backbone infrastructure?

5 Do we have that discretion?

6 MS. APUNA: I think that you would have to
7 follow your rules that we set -- that you set that
8 standard. There is -- I think there is discretion.
9 I think that if the Petitioner can justify some need,
10 their need to modify, but somehow stay close to that
11 standard, that there is that discretion. Like in the
12 Original D&O, they couldn't do everything within ten
13 years, so 12 years was accepted by that Commission.
14 So there is discretion in that sense.

15 COMMISSIONER OKUDA: Okay. So, you know,
16 and I do recognize that discretion is not unlimited,
17 and there could be abuse of discretion, but at least
18 the decision-making process, we can exercise
19 discretion then. There might be an argument whether
20 we should exercise the discretion, but at least we
21 can exercise the discretion?

22 MS. APUNA: Right. I mean, ultimately,
23 it's the Commission's decision to accept the
24 condition.

25 COMMISSIONER OKUDA: Okay. And you cited

1 or brought a discussion about the 'Aina Lea, which is
2 DW Aina Lea Development versus Bridge Aina Lea.

3 Isn't it true that in that decision the
4 Hawaii Supreme Court, and it's specifically at -- I
5 only have the Pacific 3d citation, 339 Pacific 3d at
6 page 709, that the supreme court said that the
7 reversion process is really aimed at dealing with
8 this situation.

9 And just so that I don't misstate what the
10 supreme court said, let me quote from that page.

11 "The legislature added this language in
12 order to empower the LUC to address a particular
13 situation, namely, where the landowner does not
14 develop the property in a timely manner. The senate
15 committee on energy and natural resources
16 specifically noted that", quote:

17 "Vacant land with the appropriate state and
18 county land use designation is often subjected to
19 undesirable private land speculation and uncertain
20 development schedule", close quote.

21 And that, quote, "such speculation and
22 untimely development inflates the value of" -- and
23 going on to the next page -- "land, increases
24 development cost, and frustrates federal, state,
25 county and private coordination of planning efforts,

1 adequate funding, public services and facilities",
2 close quote.

3 And then there's a citation to the senate
4 standing commission report.

5 Is that an accurate statement of what the
6 supreme court said?

7 MS. APUNA: Yes.

8 COMMISSIONER OKUDA: Okay. Would you agree
9 that Bishop Estate, Kamehameha Schools, at least
10 under the current trustees that have been appointed
11 since what you might call the reforms that were
12 implemented by the state probate court under then
13 Judge Kevin Chang, the Bishop Estate really is a
14 different kind of entity compared with other land
15 developers?

16 MS. APUNA: Yes, I would agree.

17 COMMISSIONER OKUDA: And it really is an
18 entity that is intended to serve the needs of native
19 Hawaiian children.

20 We'd agree with that, right?

21 MS. APUNA: Yes.

22 COMMISSIONER OKUDA: And so I don't mean to
23 be facetious or stupid about the next statement. But
24 in some ways, if the Bishop Estate engages in land
25 speculation and it benefits native Hawaiian children

1 and, you know, correct me if I am wrong, I believe
2 the admission standards is to follow the will of
3 Bernice Pauahi which says that preference to
4 admission will be given to orphans and indigents of
5 Hawaiian ancestry.

6 If that standard is being followed,
7 frankly, in some cases, land speculation would be
8 good for the beneficiaries? I don't mean to be
9 facetious, I'm only saying that to demonstrate the
10 Bishop Estate stands in different shoes than other
11 types of developers.

12 You would agree with that?

13 MS. APUNA: I would agree with that.

14 COMMISSIONER OKUDA: Okay. So it wouldn't
15 be an abuse of discretion if we took those facts into
16 account as far as, you know, the somewhat unique
17 nature of the KSBE as compared with other developers
18 when we exercise our discretion to determine whether
19 or not -- which is a very good recommendation that
20 you have about requiring backbone infrastructure by a
21 certain deadline, but if we took those factors into
22 deciding whether we should exercise our discretion in
23 a certain way, it's okay to take those factors into
24 account.

25 Would you agree?

1 MS. APUNA: I would agree, but I would
2 think that Kamehameha Schools should provide more
3 evidence of why there should be these delays.

4 COMMISSIONER OKUDA: Okay. Thank you very
5 much. That's my only questions. Thank you.

6 CHAIRPERSON SCHEUER: Thank you,
7 Commissioner Okuda.

8 Commissioner Giovanni.

9 COMMISSIONER GIOVANNI: Good question. I'm
10 assuming that there isn't a significant amount of
11 conjecture or conflict with the term, understanding
12 the term "backbone infrastructure."

13 And if you agree with that, could you give
14 us a really brief interpretation of what you mean,
15 and what is meant for the record of "backbone
16 infrastructure"?

17 MS. APUNA: I think maybe my client might
18 do a better job, but I think it just sets the area,
19 the infrastructure, all the necessary improvements
20 that generally would go in prior to the housing -- I
21 don't know -- actually, I would defer to my client.
22 Maybe they would like to say -- I would ask Rodney
23 to --

24 CHAIRPERSON SCHEUER: Okay. I'll swear you
25 in.

1 Rodney, do you swear or affirm the
2 testimony you're about to give is the truth?

3 THE WITNESS: Yes.

4 RODNEY FUNAKOSHI

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

8 CHAIRPERSON SCHEUER: Please state your
9 name for the record.

10 THE WITNESS: Rodney Funakoshi. I'm
11 Administrator of the Land Use Division Office of
12 Planning.

13 CHAIRPERSON SCHEUER: You may proceed, Ms.
14 Takeuchi Apuna.

15 DIRECT EXAMINATION

16 THE WITNESS: So backbone infrastructure
17 refers to basically the essential off-site and
18 on-site utilities that would enable a project to
19 proceed.

20 So in other words, probably the spine road,
21 any off-sites that would be required -- that might be
22 required. And it could be, you know, major utility
23 be available such as sewer, water, storm drainage and
24 electrical systems in place to enable for
25 fine-grained development of the phase.

1 CHAIRPERSON SCHEUER: Okay. I'm going to
2 treat this as if you had a planned witness, so you
3 can ask any other questions of the witness, and then
4 I'll give a chance for cross.

5 MS. APUNA: And I have no questions.

6 CHAIRPERSON SCHEUER: Okay. Ms. Lim.

7 MS. LIM: Well, in light of the time,
8 rather than crossing Mr. Funakoshi, if I could just
9 present our argument?

10 CHAIRPERSON SCHEUER: Let us get
11 through then with -- you'll get a chance to present
12 your argument for sure, but let's get finished with
13 our questioning of the Office of Planning.

14 MS. LIM: Okay. So I should commence with
15 cross?

16 CHAIRPERSON SCHEUER: If you want to cross,
17 this is your chance.

18 MS. LIM: Okay, then let's do this very
19 quickly if we can.

20 CROSS-EXAMINATION

21 BY MS. LIM:

22 Q Mr. Funakoshi, in the filing that the
23 Office of Planning made the night before the hearing
24 where they -- where the Office of Planning tried to
25 refute the rebuttal memorandum that we had filed a

1 few weeks ago, there was citations to several
2 dockets, and the argument was that the Commission
3 shouldn't treat Kamehameha Schools' docket
4 differently than it's treated other dockets.

5 And so I believe my partner just brought
6 three Decisions and Orders over to you. One is the
7 Shopoff Group D&O. That's Docket A06-770.

8 Then there's the Waikoloa Mauka D&O which
9 is A06-767. And then the U of N Bencorp A02-737.

10 And those are tabbed, so I'm going to ask
11 you to look at a few spots where it's got those tabs.
12 But before we do that, I want to refresh a
13 conversation that we actually had five years ago
14 about the Decision and Order that this Commission
15 issued when it initially reclassified this property.
16 A copy of that Decision and Order is filed as KS
17 Exhibit 42.

18 A Reclassified what property?

19 Q Reclassified the property that we're
20 talking about today, the 1395-acre property.

21 A In 1988?

22 Q In 1988, that's right.

23 A Oh, okay.

24 Q Okay. And the Decision and Order is
25 Exhibit 42, which I have those exhibits here. I

1 don't know if your counsel has a set there.

2 But my question is: When you look through
3 those conditions -- and, again, would you like our
4 set of exhibits brought over to you?

5 My question is: When you look through the
6 list of conditions the Commission imposed upon this
7 reclassification, was there any development timeframe
8 imposed at that time?

9 A Not as a condition, to my knowledge.

10 Q And do you recall --

11 CHAIRPERSON SCHEUER: Ms. Lim, just an
12 observation. You prefaced your remarks saying this
13 would be brief, but I'm not getting the sense this is
14 going to be brief.

15 MS. LIM: It will move pretty quickly.

16 CHAIRPERSON SCHEUER: Okay.

17 Q (By Ms. Lim): And to refresh, five years
18 ago the Office of Planning stipulated, nor was there
19 a condition requiring the Petitioner to adhere to a
20 representation of the condition?

21 A Not a condition, per se.

22 Q Correct.

23 Okay. And now, if we could just, again,
24 because there was concern expressed by the
25 Commissioners, and I think, OP, I hope you know and

1 believe that we do view you as a partner. I mean, we
2 value OP's input, and we greatly respect the Office
3 of Planning and the concerns that were expressed in
4 your filing indicated that somehow Kamehameha Schools
5 is looking for special treatment.

6 So if you could please just look at the
7 Shopoff Group D&O that I have, and you see I have
8 three-green tabs on it, and I just want to go to the
9 last green tab.

10 MS. APUNA: Chair, may I object? If we're
11 going to look at -- the intention of talking about
12 the Order to Show Cause, the Orders to Show Cause
13 that I had mentioned was just to bring up the
14 standards that were put forth by the Commission and
15 required by the Commission, and I don't think we need
16 to necessarily get back into the details or the facts
17 and specifics of other cases that have been done.

18 We're here for the Kamehameha Schools
19 motion and development.

20 CHAIRPERSON SCHEUER: What is your
21 objection to?

22 MS. APUNA: I don't think that the details
23 of Shopoff Group's OSC are relevant to this.

24 MS. LIM: If I may, this isn't a question
25 about Shopoff Group's OSC, it's the conditions, the

1 suggestion and, in fact, the explicit statement in
2 your filing was that, look, the Commission has taken
3 OSC actions in the past where people failed to
4 develop, and I need to point out that the three
5 dockets that you cited actually had express
6 development timelines which is really different from
7 the D&O that we have here.

8 And so that's really the point of what I'm
9 saying. If you, you know, care to stipulate to that
10 fact, then we can stop right here.

11 MS. APUNA: That's fine.

12 THE WITNESS: Yes, that's fine.

13 MS. LIM: Okay. Thank you, that's all I
14 wanted to accomplish.

15 CHAIRPERSON SCHEUER: Okay. Thank you very
16 much, Ms. Lim. You have nothing further on cross?

17 MS. LIM: Nothing further on cross.

18 CHAIRPERSON SCHEUER: Okay. City, anything
19 for the witness?

20 MS. WONG: No questions.

21 CHAIRPERSON SCHEUER: Okay. Thank you.

22 OP, shall we resume with questioning by the
23 Commissioners of your position?

24 MS. APUNA: Sure.

25 CHAIRPERSON SCHEUER: Thank you.

1 Commissioners? I have a question.

2 And this follows on the exchange that you
3 had with Commissioner Okuda over our level of
4 discretion, and what the bases that we might have for
5 exercising that discretion.

6 If I understood my fellow Commissioner
7 Okuda correctly, he spoke to the very worthwhile
8 mission of the Kamehameha Schools, the landowner, as
9 being a basis for us to exercise discretion in
10 placing conditions on.

11 Do you feel that there is explicit or
12 implicit direction to us in the statute that allows
13 us to exercise discretion on that basis?

14 MS. APUNA: Specific to KS's --

15 CHAIRPERSON SCHEUER: Specific to any
16 Petitioner coming before us, because presumably it
17 would apply to any landowner, if the landowner was
18 completely charitable and their charitable purposes
19 are widely recognized as a very worthwhile thing, do
20 you feel that there's something in 205 or any other
21 rule or statute that allows us to exercise our
22 discretion based on the worthiness of the
23 Petitioner's mission?

24 MS. APUNA: No, I don't believe so. I
25 think it would have to be -- you know, if there are

1 issues with their ability as a nonprofit corporation
2 as opposed to a for-profit corporation in getting
3 certain things accomplished and setting up the
4 timeline, that would be the justification, but it
5 wouldn't be solely based on their status as this
6 charitable organization.

7 CHAIRPERSON SCHEUER: So procedurally,
8 because the -- at our request and requirement, the
9 Petitioner has also presented to us an updated master
10 plan for this property, but that master plan goes far
11 into the future.

12 What are the mechanisms that you believe
13 are available to this Commission to address such a
14 very, very long planning horizon? Usually something
15 that's far in excess of what the Land Use Commission
16 considers in terms of district boundary amendments or
17 other --

18 MS. APUNA: It's hard to say. I think what
19 we've proposed in that condition, and it is with
20 respect to the first, the Phase A. It doesn't
21 address every single phase or a portion of the
22 Petition Area, so I don't think we're actually --
23 we're not asking a full buildout in such a, you know,
24 limited amount of time, but we want to see that
25 things start moving which we have not seen at all.

1 But I don't know if my clients would have
2 suggestions.

3 CHAIRPERSON SCHEUER: You can confer with
4 your client, but I prefer not to pull up extra
5 witnesses.

6 MS. APUNA: Okay, sorry. And then
7 there's -- again, there's incremental districting.
8 So you could do Phase A within the next -- the
9 backbone infrastructure for Phase A within ten years,
10 and then have them come back in ten years. Although
11 it's already been redistricted, but perhaps there's
12 some way -- some way that we can create these
13 conditions to allow districting incrementally.

14 CHAIRPERSON SCHEUER: Thank you.
15 You've reviewed the master plan and its
16 relationship to the proposed modification that's
17 being sought here?

18 MS. APUNA: Yes.

19 CHAIRPERSON SCHEUER: Okay. Clearly by the
20 Petitioner's own admission, the Original D&O, and the
21 subsequent changes to the D&O have to be changed in
22 order to allow for this particular solar project to
23 go through, correct?

24 MS. APUNA: Correct.

25 CHAIRPERSON SCHEUER: Do you believe that

1 the proposed development in the conceptual master
2 plan is automatically allowed under the Decision and
3 Order that's in place? Or are they going to have to
4 come for additional modifications to us to implement
5 that?

6 MS. APUNA: I think they would have to come
7 in for additional modification. They had represented
8 in the Original 1988 D&O, you know, 7,900 houses,
9 golf courses, other things that aren't included in
10 the current proposal.

11 I think that the housing units are --
12 they're denser. I think it's 11,000 or some number.
13 I don't think there's golf courses, so I think they
14 would have to come in to modify those
15 representations.

16 CHAIRPERSON SCHEUER: And how --

17 MS. APUNA: Oh, right, and additional
18 reclassification they have mentioned will be needed
19 to adjacent areas.

20 CHAIRPERSON SCHEUER: So is this particular
21 modification for this farm, which is on a portion of
22 the property that because it's present in the zone of
23 contribution for the Waiawa Shaft is unlikely to be
24 subjected to urban -- truly urbanized development.
25 I'm not saying it's not in the Urban District, but,

1 you know, residential or commercial development with
2 lots of activity, since that's not what's being
3 considered here, is this -- well, I would agree with
4 you that I think they have to come back absolutely
5 for a whole bunch of things, but what they're
6 proposing and their conceptual plan is not in line
7 with the original representations.

8 Is this the right venue in which we would
9 require compliance with such a thing as a development
10 timeline?

11 MS. APUNA: Basically, whether we should
12 propose -- I mean, you should adopt OP's condition at
13 this point, is that what you're asking?

14 CHAIRPERSON SCHEUER: Sure, that's a decent
15 rephrasing of it. OP's condition has to do with us
16 requiring -- putting requirements on their overall
17 development of urbanization related to their new
18 conceptual master plan, but that's not actually
19 what's happening in this particular docket.

20 MS. APUNA: Right. It's not happening.
21 And Petitioner has represented that they will come
22 back, but we don't know when that will be. I think
23 that their testimony yesterday was that they didn't
24 think there was a deadline.

25 So, I mean, I don't know if they think that

1 they would feel that they need to adjust the
2 deadline. There's no guarantee that they would come
3 back. And I think that this Commission has the
4 authority currently under administrative rules to
5 just look at what's happened, that there isn't any
6 compliance with representations, and make a
7 modification to the Decision and Order today.

8 CHAIRPERSON SCHEUER: Thank you. I have
9 nothing further.

10 Is there anything else, Commissioners, for
11 the Office of Planning?

12 Commissioner Giovanni.

13 COMMISSIONER GIOVANNI: Is it your -- I'm
14 curious as to whether you've -- what's driving your
15 interest in this condition. I have a sense that
16 you -- that there's a bait and switch going on in
17 your mind. That originally this is a property that
18 was envisioned for a certain kind of development,
19 residential housing and other-related activities, and
20 yet now it's an energy project.

21 Is that what's driving your --

22 MS. APUNA: Not at all. I mean, we -- or
23 OP is happy with the energy project. That's not a
24 problem. We are happy with the proposal back in
25 1988. We're actually happy with the proposal that

1 they're putting forth. It's just the timing.

2 COMMISSIONER GIOVANNI: Yeah.

3 MS. APUNA: This is 88 years from the
4 decision in 1988 to completion that they're
5 projecting. That's egregious compared to what other
6 developers are required to --

7 COMMISSIONER GIOVANNI: If your condition
8 was for the development timeline for the backbone
9 infrastructure was confined, at least in this -- at
10 this point, to Phase A, would that be satisfactory to
11 OP?

12 MS. APUNA: I think that's what our
13 condition says.

14 COMMISSIONER GIOVANNI: Thank you.

15 CHAIRPERSON SCHEUER: Is there anything
16 further for the Office of Planning?

17 Ms. Lim.

18 MS. LIM: Thank you very much. There are
19 several issues that the Office of Planning raised
20 that we addressed on a legal basis in the memorandums
21 that we filed, and I do hope that the Commissioners
22 have had a chance to review that.

23 Today what we filed in July and what we're
24 here about today is a Motion to Amend a Solar
25 Approval that was issued five years ago. That's it.

1 We're not here looking for approval to redevelop the
2 property. It's a very limited and really simple
3 motion. And what is the Commission's standard for a
4 motion like that? It's good cause. That's 15-15-94.
5 Have we, as the movant, have we carried our burden to
6 provide sufficient evidence for this Commission to be
7 able to say they've shown good cause? They need this
8 extra ten years on the solar farm because of the
9 failure at the PUC that was SunEdison and SunEdison's
10 subsequent bankruptcy. That's really what we're
11 limited to here.

12 It's a Motion to Amend. Office of Planning
13 does not have the ability to advocate, within the
14 procedural rules, to advocate for a condition that is
15 beyond the scope of our motion.

16 If the Office of Planning feels, as they
17 clearly do, feels that strongly, well, then, they can
18 file a Motion for Order to Show Cause, and then they
19 have the burden of proof, and the burden to prove to
20 this Commission that the property should be
21 reclassified.

22 Now, what would happen then? That's not
23 where we're at right now. We filed -- we provided I
24 believe sufficient evidence to give you good cause to
25 say, yes, these minor modifications to the solar farm

1 are appropriate in this case.

2 If there was to be an order to show cause,
3 it would not only obviously jeopardize this entire
4 property that Kamehameha Schools has relied on for
5 several decades, but it would also jeopardize the
6 solar farm. So it's almost like -- and even if the
7 Commission were to impose a condition that OP is
8 proposing, well, we know that Kamehameha Schools,
9 although when we do our presentation on the master
10 plan, you will hear that the good faith effort is
11 going to meet the schedule, perhaps even beat the
12 schedule that was presented.

13 We know that before even getting to the
14 point where we're back before this Commission to
15 actually seek approval for the revised master plan.
16 Okay. We've got to do an EIS. I mean, that's in
17 your Condition No. 10 from the 2014 order.

18 At decommissioning, the solar farm shall be
19 decommissioned following the operational timeframe.
20 Any future use of the Petition Area, (the Petition
21 Area is defined in the Decision and Order as all 1395
22 acres, not just the solar farm area). Any future use
23 of the Petition Area following the decommissioning,
24 the solar farm shall be subject to the environmental
25 review process promulgated under HRS Chapter 343. A

1 motion to amend, such a motion to amend shall include
2 a revised master plan, et cetera, et cetera.

3 So the approval that this Commission gave
4 in 2014 said you can have two solar farms on this
5 property and they can be there until 2049, and that's
6 your interim approval. And you can't do anything
7 else on that property unless (A) you get Commission
8 approval, and (B) you've got to go comply with
9 Chapter 343 and file a motion and, et cetera.

10 Office of Planning is sort of -- is saying
11 let's do away with all of that now and force
12 Kamehameha Schools to put in infrastructure for a
13 project that (A) hasn't been environmentally
14 reviewed; (B) we haven't even gotten authority from
15 the Commission to develop.

16 But not only is it well beyond the scope of
17 what we're here for today, which, again, is just a
18 simple Motion to Amend under the good cause standard.

19 But it also could have incredibly traumatic
20 and very dangerous effect on the solar project
21 itself. We know the State is pushing hard for
22 100 percent renewable energy by 2045. Well, if a
23 condition like this gets imposed that jeopardizes the
24 Urban classification of this property, that
25 jeopardizes the solar farm. And if that was to get

1 imposed right now, I don't know that the solar farm
2 would be able to, in good faith, go forward.

3 It raises a concern. We know that they
4 want to go forward. They're ready to go. But if all
5 of a sudden there's a risk that the carpet might get
6 pulled out from under them, that raises concern as
7 well.

8 I'm not going to get into the res judicata
9 argument in our brief. I'm happy to respond to
10 questions. I'm sensitive to the time because the
11 Commission indulged us by giving us this extra time
12 today.

13 But in summary, we believe that we
14 presented a very simple motion, and in good faith
15 came forward and said, hey, there was some problems,
16 which we notified the Commission of back in 2016.
17 There were problems with the original solar farm
18 developer. We're still looking. We really want this
19 to be solar development in -- on an interim basis.
20 That's what the Commission approved in 2014.

21 As soon as the new solar farm developer
22 came together, the PUC approval came together. We
23 pretty quickly came back before the Commission to
24 say, hey, you know, we've got something good here,
25 and we do need to tweak around the edges a little

1 bit.

2 A condition such as OP is proposing not
3 only is beyond what is allowed under your
4 administrative rule in response to a motion to amend,
5 but it would also seriously jeopardize Kamehameha
6 Schools' ability to probably pursue the master plan.
7 Because all of a sudden, now there is this cloud
8 related to this simple motion. And it could even
9 jeopardize the ability of the solar to go forward in
10 a confident manner knowing that this property was
11 going to remain in Urban.

12 I sincerely hope that the Commission,
13 although this has been a compressed hearing, heard
14 from our witnesses a sincere good faith desire to get
15 this solar project built and to get it built as
16 quickly as possible, and that Kamehameha Schools
17 treasures this land and has great plans for it.

18 And when we're ready to come back, you will
19 have a chance to review those plans in detail,
20 because we'll have to file a motion to amend and most
21 likely a district boundary amendment as well.

22 Those are the times when incremental
23 districting rule applies, only when you're seeking a
24 boundary amendment. We're not seeking a boundary
25 amendment right now.

1 So it's not that the argument is wrong,
2 it's just the wrong place. It's the wrong time. I
3 know -- we know when we come back before you for that
4 motion to amend after the EIS process, there's going
5 to be very close scrutiny. And there's going to be a
6 lot of demand for hearings to schedule, but that's
7 not where we're at today.

8 CHAIRPERSON SCHEUER: Commissioners, are
9 there further questions for Ms. Lim?

10 Commissioner Cabral.

11 VICE CHAIR CABRAL: In your Petition at
12 this time, you're asking for this extension for
13 60 years so 2059. Clearly I won't be here.

14 But the question was your contract with
15 your power purchase provider, your PPP, that has your
16 PPA going on, your Purchase Power Agreement. I do
17 this also. So are -- it's for 20 years, correct?

18 MS. LIM: That's correct.

19 And if I can, we're actually seeking an
20 extension of only ten years because the Commission
21 has already approved those two areas to be in place
22 until 2049. This is a delay with the original solar
23 farm developer. There was a delay in start, and
24 therefore, we're asking for an addition of ten years.

25 But you are correct, Commissioner Cabral,

1 that the Power Purchase Agreement is for 20 years,
2 and as Mr. Sullivan explained yesterday, Mr. Sullivan
3 from Clearway, there is an expectation you have of an
4 extension to that Power Purchase Agreement, and
5 Kamehameha Schools similarly has, in the agreement
6 between Kamehameha Schools and Waiawa Solar Power, it
7 is contemplated that should the Power Purchase
8 Agreement get extended, that the land agreement would
9 likewise get extended.

10 VICE CHAIR CABRAL: Okay. And furthermore,
11 in your purchase power -- Power Purchase Agreement,
12 are you -- is there the ability for, I guess it would
13 be your -- not just Kamehameha Schools. Are one of
14 those, your own entities here to buy the project off
15 of them, or at the end of the 20 years, you would
16 have ownership of the actual panels?

17 So my understanding is they're going to put
18 it in at their cost. They're going to own those
19 power panels. They're going to create electricity
20 that gets sold off, and they make money both on the
21 tax credit and they make money on the sale of the
22 electricity for 20 years.

23 Is that an easy conclusion?

24 MS. LIM: Yes, I'm turning to Mr. Sullivan,
25 who is -- yes.

1 VICE CHAIR CABRAL: Okay. So at the end of
2 20 years, is it possible that you then, Kamehameha
3 Schools, I guess, as the ultimate landowners, would
4 actually own that -- those panels, and they could
5 either just not have to pay, purchase the power
6 agreement, they can operate it themselves?

7 MS. LIM: I think that's highly unlikely
8 for two reasons. One is that Kamehameha Schools and
9 Waiawa Solar Power in part, due to the condition of
10 this Commission put on the solar project five years
11 ago, the understanding is that Waiawa Solar Power is
12 obligated to fully decommission and return the land.
13 It will actually be at least as good a shape as it is
14 now.

15 And in part -- and my expertise is not in
16 solar energy generation, but I believe we've heard
17 from Mr. Sullivan yesterday. After a certain point
18 in time, the panels lose their vibrancy.

19 VICE CHAIR CABRAL: Right, right, right.

20 MS. LIM: So the intent is for that to be
21 fully decommissioned in terms of Kamehameha Schools
22 from a land management, you know, taking care of the
23 property properly. We would want the property
24 cleared entirely.

25 VICE CHAIR CABRAL: Right, right. By '59,

1 yes?

2 MS. LIM: Yes.

3 VICE CHAIR CABRAL: But you'd have a
4 potentially 40-year window of making a whole lot more
5 money.

6 I'm just kind of interested in when your
7 current Purchase Power Agreement expires, then who's
8 going to be responsible? So to make sure that the
9 system continues, I mean, because you can replace
10 panels which will probably be better panels, make
11 more power, et cetera, into the future I would
12 assume.

13 CHAIRPERSON SCHEUER: Sorry, Ms. Cabral,
14 where -- can you help me understand where your
15 question is going in relationship to the issue before
16 us?

17 VICE CHAIR CABRAL: Well, I just -- the
18 long term of this is just kind of concerning. I just
19 want to make sure that there's a clear understanding
20 that the responsibility of the landowner, that they
21 realize that they've got a 20-year agreement for
22 maintenance and -- for production and maintenance and
23 that, but that is really a 60-year agreement they're
24 asking for.

25 CHAIRPERSON SCHEUER: Understood.

1 VICE CHAIR CABRAL: So I just want to --
2 you've already somewhat answered it, because the
3 actual power entity continues to be responsible even
4 after the Purchase Power Agreement expires.

5 MS. LIM: Well, as when the Power Purchase
6 Agreement expires, it should expire after 20 years,
7 then the agreement with Kamehameha Schools says that
8 Waiawa Solar shall decommission and return the land
9 to the condition that it's at now, so it's done.

10 If the PUC -- I'm sorry, if the Power
11 Purchase Agreement gets extended, and there's a
12 commercial and reasonable expectation that it may get
13 extended five additional years, giving the project a
14 35-operational period in total. If it gets extended,
15 then at the end of the term of the Power Purchase
16 Agreement whether that's 20, 25, 30, 35 years, the
17 requirement between Kamehameha Schools and Waiawa
18 Solar Power is that Waiawa Solar Power will remove,
19 completely decommission the entire project within a
20 year of the termination of the Power Purchase
21 Agreement.

22 VICE CHAIR CABRAL: Okay. I'm good with
23 that. Thank you.

24 CHAIRPERSON SCHEUER: Thank you,
25 Commissioner Cabral.

1 May I ask you a question at this point?

2 MS. LIM: Yes.

3 CHAIRPERSON SCHEUER: I understood your
4 argument. I heard your argument saying that the
5 proper venue for the OP to raise these concerns would
6 be for it to file an OSC, but -- and you also said
7 that there are imposing -- the condition they propose
8 at this time, could cause the solar project to not be
9 able to commence.

10 Did I understand you correctly?

11 MS. LIM: I am speculating on the second
12 point, but I did say that.

13 CHAIRPERSON SCHEUER: Okay. And so doesn't
14 that put this Commission a little bit in a box?
15 Because if you put the solar project in, wouldn't you
16 argue, or your client argue that that's substantial
17 commencement, and therefore an OSC couldn't be filed?

18 MS. LIM: Well, the statute that provides
19 the Commission's authority to revert land for failure
20 of substantial commencement says that the Commission
21 must impose that requirement by condition, that upon
22 the reclassification, that condition was never
23 imposed upon this reclassification. That was part of
24 my back and forth with Mr. Funakoshi.

25 So there isn't a substantial commencement

1 use it or lose it condition. I wanted to more
2 respond to the spirit, what I believe is the spirit
3 of what you're saying.

4 If there's a condition imposed now that is
5 so beyond the scope of really the very narrow
6 confines of this motion, which is, again, just
7 looking to make some tweaks around the edges of the
8 solar farm that this Commission approved five years
9 ago. If a condition is imposed that goes beyond that
10 solar farm, and actually says, you know what, based
11 on no evidence, because we don't have really any
12 evidence on the record about the development plan,
13 but what the heck, let's say within the next ten
14 years you have to put in all that backbone
15 infrastructure. What does that mean?

16 It means we've got to complete the EIS
17 process, got to file the motion to amend, we've got
18 to do the district boundary amendment and get all of
19 that infrastructure in ten years. That just creates
20 a very unstable situation. And I think that that
21 would raise concerns with the solar developer. I am
22 speculating. I do not represent the solar developer,
23 but I am speculating as sort of the parade of horrors
24 that could come out of this condition.

25 This condition is not wrong, per se. It's

1 the wrong time for this condition. That's all we're
2 saying.

3 CHAIRPERSON SCHEUER: Thank you.

4 MS. APUNA: Commissioner, can OP respond
5 quickly to some of the --

6 CHAIRPERSON SCHEUER: Hold on. I'm going
7 to recognize Commissioner Wong.

8 COMMISSIONER WONG: Chair, I want to move
9 to consult with the Board's attorney on questions and
10 issues pertaining to the Board's powers, duties,
11 privileges, immunities and liabilities regarding
12 issues on res judicata, plus adding conditions to
13 this motion, and -- well, what it will do with
14 putting us in a box.

15 COMMISSIONER ACZON: Second.

16 CHAIRPERSON SCHEUER: Thank you for the
17 motion. Is there a second to the motion?

18 COMMISSIONER ACZON: Second.

19 CHAIRPERSON SCHEUER: Motion has been made
20 by Commissioner Wong to go into executive session,
21 seconded by Commissioner Aczon.

22 Is there discussion on the motion? Seeing
23 none, all in favor, say "aye," is anybody opposed?
24 Motion carries. Commission will go into executive
25 session.

1 (Executive session.)

2 CHAIRPERSON SCHEUER: We're back in
3 session. Thank you all.

4 We were asking questions of Ms. Lim.

5 Any further questions of the Petitioner or
6 for any of the parties?

7 MS. APUNA: Chair, can OP respond to some
8 of Ms. Lim's comments briefly?

9 CHAIRPERSON SCHEUER: I will ask if you
10 have something to say, yes.

11 MS. APUNA: Thank you, Chair.

12 Ms. Lim spoke to why doesn't OP go forward
13 with an Order to Show Cause, and that is definitely
14 not what OP is looking to do.

15 We are not looking to revert this property.
16 We're happy with the solar. We're happy with the
17 proposed project. It would make no sense to give an
18 order to show cause, and I'm not sure why she would
19 think that would be appropriate. OP has the
20 authority to -- we are a mandated party, so we are
21 here to evaluate the information that is given us
22 even -- including the development schedule.

23 We're presenting it to the Commission, and
24 it's fully within the Commission's authority to make
25 an amendment if it feels that's reasonable, that the

1 Petitioner has not complied with its representations.
2 That's under the administrative rules. I think that
3 it is clear under the 1988 Decision and Order that
4 that 600 development is not stopped on the remaining
5 500 -- 740 acres, and that would not make sense.

6 I'm sure the Commission wouldn't want it to
7 lay fallow and just allow the solar and wait for
8 decommissioning before developing the rest of the
9 Petition Area. That's more than half of the Petition
10 Area left fallow until decommissioning. That doesn't
11 make sense.

12 What OP is asking in our condition, it's
13 really kind of adjust slight Petitioner's schedule.
14 It's not a huge change, and it is just with regard to
15 Phase A, which we hope, and we think that KS can
16 modify their timing of it.

17 She talks about a cloud that we will create
18 by imposing this condition, that the Commission
19 impose this condition, and there is already a cloud
20 that this property requires the residential
21 development on the property by 2002. And we do
22 believe that KS is sincere, that the solar company,
23 they are all sincere in what they plan to do, and we
24 appreciate that. But honestly, it feels that they
25 are misinformed about what is required here.

1 And that is it. Thank you.

2 CHAIRPERSON SCHEUER: Commissioners,
3 further questions for any of the parties?

4 Do you have anything final you want to say,
5 Ms. Lim?

6 MS. LIM: No, Chair. We just hope that the
7 Commission will make what we believe is the right
8 decision and allow us to go forward as we requested.

9 CHAIRPERSON SCHEUER: Okay. Commissioners,
10 then we are in deliberation.

11 Commissioner Okuda.

12 COMMISSIONER OKUDA: Thank you, Mr. Chair.

13 Mr. Chair, I make a motion to continue the
14 two items on the agenda for Docket A87-610, two items
15 being number one, status report and action (if
16 necessary); and second -- the second item stating
17 Action, which deals with the Motion for Modification
18 of Decision and Order and Time Extension.

19 I move that these matters be continued to
20 Thursday, January 9, 2020 at a place and time to be
21 determined by the staff.

22 CHAIRPERSON SCHEUER: There's a motion --

23 COMMISSIONER GIOVANNI: I second the
24 motion.

25 CHAIRPERSON SCHEUER: -- made by

1 Commissioner Okuda and seconded by Commissioner
2 Giovanni.

3 Is there discussion on the motion?

4 Commissioner Okuda.

5 COMMISSIONER OKUDA: Thank you, Chair. I
6 don't believe we view people acting in bad faith in
7 this case. We see the merits of the arguments. We
8 see the merits of the points being raised by the
9 Office of Planning, but it's important that if we are
10 going to exercise our discretion, we carefully follow
11 the law including the need for a complete record.
12 And I know staff and the Commission try to
13 accommodate presentations by changing certain orders,
14 but for me personally it seems like, or I believe
15 that a complete record probably would be helpful if
16 we saw evidence and the explanation of the master
17 plan.

18 And a continuance to January 9, 2020, I do
19 not believe is an unreasonable length of time.
20 Looking at our schedule, we are booked frankly until
21 January 9th. That was a reserved open date, and I
22 believe that should fit in everyone's schedule.

23 So the purpose here is not, again, to
24 create additional roadblocks which hinders a good
25 project or just to create more work for the parties,

1 or for anyone in this case. The intention is so that
2 we have a complete record and complete evidence so
3 that we can make a decision which will be something
4 that will not have problems or create problems in the
5 future.

6 So for those reasons, I would ask that the
7 motion be supported.

8 CHAIRPERSON SCHEUER: Thank you,
9 Commissioner Okuda.

10 Any discussion on the motion?

11 Commissioner Giovanni.

12 COMMISSIONER GIOVANNI: I support the
13 motion. I just want to say that I do not believe
14 that the continuance in any way would jeopardize the
15 existing plans for the solar project on the subject
16 property. That Purchase Power Agreement, as we
17 learned yesterday, their intention is to commence
18 construction by October 2020, and to have a
19 commercial operation date by 2021 with a 20-year term
20 which would bring it to its termination on 2041.

21 We heard from the Petitioner that the lease
22 does provide for one additional year to remediate the
23 site back to its original condition which is 2042,
24 and the existing interim permit does go through 2049,
25 so that's seven years of extra margin they have.

1 So I don't believe it jeopardizes the
2 existing solar project or commencement of activities
3 to build that project which I fully support go
4 forward.

5 CHAIRPERSON SCHEUER: Thank you,
6 Commissioner Giovanni.

7 Commissioners?

8 Commissioner Cabral.

9 VICE CHAIR CABRAL: I'm also in support.
10 I'm not the lawyer type, so I was just thinking I was
11 the one that was confused, because I like to see the
12 solar project as a stand-alone entity, but I, from my
13 readings, realize it's tied to the bigger picture and
14 wasn't really clear on how to deal with that.

15 So I appreciate my fellow Commissioners and
16 the Petitioner and OP and everyone to help me,
17 explain that to me. So I support it so I can learn
18 more and understand it all.

19 CHAIRPERSON SCHEUER: Thank you,
20 Commissioner Cabral.

21 Are there other statements?

22 I'm inclined to support the motion. You
23 know, this has nothing to do with the substance of
24 whether I think that the solar farm is good or the
25 Petitioner should be granted or modifications should

1 be granted or not granted, but I do feel that when I
2 voted in, you know -- the Petitioner requested
3 yesterday that we take these items out of order, and
4 I will indicate we took up a motion, and I voted in
5 favor of that motion. I don't think I necessarily
6 appreciated when we took that motion that a lot of
7 the things that would have come into the record on
8 what the master plan was and how that was going to
9 relate to this project. I feel like I've been at a
10 disadvantage in this discussion on this matter.

11 So I look forward to hearing about the
12 master plan and then continue on this matter.

13 COMMISSIONER GIOVANNI: Point of
14 clarification.

15 CHAIRPERSON SCHEUER: Yes.

16 COMMISSIONER GIOVANNI: Is the expectation
17 of the Chair that when we do reconvene on this
18 matter, that the master plan description would
19 precede any further deliberations on the motion
20 before us?

21 CHAIRPERSON SCHEUER: Yes. So there will
22 be a new agenda for January 9th, I believe it is, so
23 we're out of time.

24 We have a whole full agenda today on other
25 matters, so we can't take up the master plan

1 discussion today. So it would be next agenda take up
2 the master plan, and then go into the continuance on
3 this matter.

4 COMMISSIONER OKUDA: Yeah, Chair, to make
5 my motion clear, that was my intention of the motion
6 that we would take up the issue of the master plan
7 first, and then the extension of time issue.

8 Thank you, Chair.

9 CHAIRPERSON SCHEUER: Just confirming for
10 the record, the seconder shares that understanding?

11 COMMISSIONER GIOVANNI: Confirm. It's my
12 understanding.

13 CHAIRPERSON SCHEUER: Okay. Is there
14 further discussion, Commissioners?

15 If not, Mr. Orodener.

16 EXECUTIVE OFFICER: Thank you, Mr. Chair.
17 The motion is to continue the two items on this
18 agenda with regard to A87-610 to 1-9-2020.

19 Commissioner Okuda?

20 COMMISSIONER OKUDA: Yes.

21 EXECUTIVE OFFICER: Commissioner Giovanni?

22 COMMISSIONER GIOVANNI: Yes.

23 EXECUTIVE OFFICER: Commissioner Cabral?

24 VICE CHAIR CABRAL: Yes.

25 EXECUTIVE OFFICER: Commissioner Aczon?

1 COMMISSIONER ACZON: Yes.

2 EXECUTIVE OFFICER: Commissioner Wong?

3 COMMISSIONER WONG: Yes.

4 EXECUTIVE OFFICER: Commissioner Chang?

5 COMMISSIONER CHANG: Yes.

6 EXECUTIVE OFFICER: Chair Scheuer?

7 CHAIRPERSON SCHEUER: Yes.

8 EXECUTIVE OFFICER: Thank you, Mr. Chair.

9 The motion passes unanimously.

10 CHAIRPERSON SCHEUER: Okay. So we'll
11 continue to January 9th.

12 MS. LIM: Thank you, Commissioners. We'll
13 see you on January 9th with our witnesses.

14 CHAIRPERSON SCHEUER: Okay. Thank you very
15 much. Let's take a very brief recess, five minutes,
16 to get the next parties up here.

17 A17-804 HAWAII MEMORIAL LIFE PLAN, LTD.

18 CHAIRPERSON SCHEUER: Aloha mai kakou.
19 Good morning.

20 This is the November 21st, 2019 Land Use
21 Commission meeting.

22 Our next agenda item is a hearing and
23 Action meeting on Docket No. A17-804 Hawaiian
24 Memorial Life Plan, Ltd., to consider Hui O Pikiloa,
25 an unincorporated association, Lianne Ching, Bettye

1 Harris, Richard McCreedy, Julianne McCreedy, Jesse
2 Reavis and Grant Yoshimori's Petition to Intervene.

3 Will the parties please identify themselves
4 for the record? Usually the Petitioner goes first.

5 MR. TABATA: Good morning, Chair, members
6 of the Commission, Curtis Tabata appearing on behalf
7 of Petitioner Hawaiian Memorial Life Plan, Ltd., also
8 present today is Jay Morford, President of Hawaiian
9 Memorial Life Plan.

10 CHAIRPERSON SCHEUER: Thank you.

11 MS. WONG: Good morning, City and County of
12 Honolulu, Department of Planning and Permitting. My
13 name is Dina Wong, and I'm here with Raymond Young.

14 CHAIRPERSON SCHEUER: Thank you.

15 MS. APUNA: Good morning, Dawn Apuna for
16 Office of Planning. Here with me is Lorene Maki and
17 Rodney Funakoshi.

18 CHAIRPERSON SCHEUER: And also with us is
19 the Petitioner for Intervention.

20 MR. YOSHIMORI: I am Grant Yoshimori. I
21 live at 45-464 Lipalu Street and requesting to be an
22 intervenor pro se. With me is Richard McCreedy and
23 Julie McCreedy.

24 CHAIRPERSON SCHEUER: Thank you.

25 Let me now update the record on this

1 docket.

2 On April 26, 2019, the Commission mailed
3 the Findings of Fact, Conclusions of Law and Decision
4 and Order accepting the Petitioner's Final
5 Environmental Impact Statement.

6 From May 7th through November 12th, the
7 Commission received public and agency comments that
8 are on file and are a part of this record.

9 On May 10th, the Commission received the
10 Petitioner's First Amendment to Petition for the Land
11 Use District Boundary Amendment filed May 10.

12 On June 19th, the Commission received the
13 Petitioner's Second Amendment to the Petition.

14 On July 18th, the Commission mailed its
15 Notice of proper filing to the Petitioner.

16 On August 21st, the Commission received
17 OP's Statement of Position.

18 On October 10th, the Commission received
19 Hui Pikiloa's Petition to Intervene.

20 On October 15th, the Commission received a
21 Notice of Hearing from the Petitioner.

22 On November 12th, the Commission mailed the
23 agenda notice for the November 20th through 21st
24 meeting to the Parties, Statewide, email and Oahu
25 mailing lists.

1 Now, let me go over our procedures for
2 today.

3 First, I will call for any individuals
4 wishing to give public testimony on this matter to
5 come forward. I will ask you to come up to the
6 witness box. I will swear you in. You will state
7 your name and address for the record, and then have
8 three minutes to testify. We will go through all
9 people who wish to testify.

10 And then after the completion of public
11 testimony of the proceedings, Mr. Yoshimori will make
12 his presentation.

13 And after the completion of his
14 presentation, we'll receive the statement on the
15 Motion to Intervene from the Petitioner, the County
16 and the Office of State Planning.

17 After all Parties have presented their
18 arguments, we'll conduct our deliberations.

19 Are there any questions on our procedures
20 for today from the Parties and Petitioner to
21 Intervene?

22 MR. TABATA: No questions.

23 MS. WONG: No questions.

24 MS. APUNA: No questions.

25 CHAIRPERSON SCHEUER: Mr. Yoshimori, any

1 questions on our procedures for today?

2 MR. YOSHIMORI: No, thank you.

3 CHAIRPERSON SCHEUER: Okay. Are there any
4 individuals wishing to provide public testimony on
5 this matter?

6 Commissioner Chang, do you have a
7 disclosure, Ms. Chang?

8 COMMISSIONER CHANG: Yes, I do. About ten
9 years ago, I did some work for Hawaii Memorial Park;
10 however, I do not believe that that work will affect
11 my ability to be objective and fair in this matter.

12 CHAIRPERSON SCHEUER: Thank you for the
13 disclosure.

14 COMMISSIONER WONG: Mr. Chair?

15 CHAIRPERSON SCHEUER: Commissioner Wong.

16 COMMISSIONER WONG: Just wanted to state
17 that I have plots at Hawaii Memorial Park that is not
18 being used right now.

19 CHAIRPERSON SCHEUER: We can arrange that.

20 COMMISSIONER WONG: I'll be fair and
21 impartial.

22 CHAIRPERSON SCHEUER: Okay. So sorry.
23 Just one moment, very briefly. Thank you.

24 I'm going to ask the Petitioner, the County
25 and the Office of Planning whether there is any

1 objections to the participation of Commissioners
2 Chang or Wong?

3 MR. TABATA: No objection.

4 MS. WONG: No objection.

5 MS. APUNA: No objection.

6 CHAIRPERSON SCHEUER: Okay. I will also
7 note for the record, and then we'll have these same
8 questions again, that I also served as the
9 chairperson of the Board of the Hawaiian Islands Land
10 Trust. In the Environmental Impact Statement, it
11 mentioned the Hawaiian Islands Land Trust as I
12 believe a potential recipient of a conservation
13 easement on this property.

14 So let me clarify. First of all, I've
15 never participated in any discussion at a staff level
16 between the exploration of doing a conservation
17 easement on this matter between Hawaiian Islands Land
18 Trust, and the Petitioner.

19 As a matter of policy, the Hawaiian Islands
20 Land Trust never actually commenced to doing a
21 conservation easement prior to any entitlement
22 process, only after entitlement is fully done.

23 And, finally, just to be really clear, I
24 don't get paid to be on the Hawaiian Islands Land
25 Trust Board. I pay a lot of money to be on the

1 Hawaiian Islands Land Trust Board. I contribute.
2 They're the largest recipient of my personal
3 charitable contributions. So I don't have any
4 personal financial benefit from any relationship that
5 might exist between the organization and a
6 commissioner. So I feel I can also be fair and
7 impartial on this matter.

8 Is there any objections to my participating
9 from the Petitioner?

10 MR. TABATA: No objection.

11 CHAIRPERSON SCHEUER: From the City and
12 County?

13 MS. WONG: No objection.

14 CHAIRPERSON SCHEUER: From the Office of
15 Planning?

16 MS. APUNA: No objection.

17 CHAIRPERSON SCHEUER: Thank you.

18 Is there any other disclosures?

19 Commissioner Okuda.

20 COMMISSIONER OKUDA: Chair, I disclosed
21 previously, and I'll stop this disclosure if you so
22 instruct me. My grandparents on both sides of the
23 family are buried at Hawaii Memorial Park. My
24 parents I believe have plots that are unoccupied,
25 even though one of my parents have passed on, at

1 Hawaii Memorial Park, but I do not own any plots at
2 Hawaii Memorial Park, and I'm not the beneficiary of
3 any plots. I do believe that I'll be fair and
4 unbiased in this case.

5 CHAIRPERSON SCHEUER: Okay. Thank you,
6 Commissioner Okuda.

7 Are there any objections to Commissioner
8 Okuda's continued participation?

9 MR. TABATA: No objection.

10 MS. WONG: No objection.

11 MS. APUNA: No objection.

12 CHAIRPERSON SCHEUER: Thank you very much.

13 Any other disclosures?

14 Okay. If not, are there individuals
15 desiring to give public testimony on this docket?
16 Anybody in the audience? Has anybody signed in? No,
17 okay.

18 So no individuals desiring to give public
19 testimony on this document, then we're closing public
20 testimony on this.

21 And, Mr. Yoshimori, you can proceed with
22 your presentation.

23 MR. YOSHIMORI: Thank you.

24 Good morning, Commissioners. My name is
25 Grant Yoshimori and on behalf of Pikiloa and myself,

1 we have filed a Petition to Intervene, HAR
2 15-15-52(f). And under HRS 502 -- 205-4(e)(3) as
3 property owners that abuts or in close proximity to
4 the Petition Area.

5 Also Dr. Ching is a cultural practitioner
6 who is one of the Intervenors who has practiced
7 native gathering rights that may be impacted.

8 To ensure an efficient LUC hearing and per
9 HAR 15-15-35, we request that I be the duly
10 authorized agent and speak on behalf of Intervenors
11 with Mr. McCreedy providing guidance and background.

12 Firstly, we'd like to thank the Petitioner
13 for the Memorandum to the LUC stating no opposition
14 to our Petition to Intervene.

15 At the same time, the Petitioner also
16 requests that we be limited to issues and impacts
17 raised in our Petition to Intervene.

18 However, in addition to the adverse impacts
19 that we mention in the Petition, we plan to raise
20 reasons for the denial of the district boundary
21 amendment. Therefore, that we are requesting that
22 the order granting the extension also include the
23 following within our scope:

24 Expansion not being needed.

25 Alternatives for the expansion.

1 Compliance of the proposed expansion with
2 State and City laws;

3 And impacts to climate.

4 We are certain that the addition of these
5 topics, and allowing us to participate, will still
6 allow for efficiency and judicial economy of the LUC
7 proceedings. Thank you.

8 CHAIRPERSON SCHEUER: Thank you.

9 Could you please more -- slightly more
10 slowly repeat those four things, additional items
11 that you wish to have included in the scope?

12 MR. YOSHIMORI: Okay. The first one is
13 expansion not being needed.

14 The second one is alternatives for
15 expansion.

16 The third one is compliance of the proposed
17 expansion with State and City laws;

18 And the fourth one is impacts to climate.

19 CHAIRPERSON SCHEUER: Okay. Commissioners,
20 are there questions for Mr. Yoshimori?

21 Commissioner Cabral.

22 VICE CHAIR CABRAL: In the process of the
23 Petitioner -- well, the Memorial Park wanting to do
24 this expansion, were you aware of -- and did they
25 have and were you aware of and did you attend any

1 public hearings or ability -- did you have a known
2 ability to make an appearance before them in some
3 community setting or something to find out
4 information and raise your objections, you or your
5 fellow petitioners?

6 MR. YOSHIMORI: Hawaii Memorial did appear
7 before the Kaneohe Neighborhood Board and presented
8 their questions there or their plans there, so we
9 have attended those. This is their second attempt to
10 request a district boundary amendment. Ten years ago
11 they had a public meeting where -- and they called
12 the public to attend the meetings to give everybody
13 information about that presentation.

14 However, this time I don't recall them
15 doing that, but we did have opportunities to see it
16 at the Kaneohe Neighborhood Board.

17 VICE CHAIR CABRAL: And you folks did
18 attend that, and you had an opportunity to voice your
19 concerns at that time?

20 MR. YOSHIMORI: Yes, we did.

21 VICE CHAIR CABRAL: Okay. Thank you very
22 much.

23 CHAIRPERSON SCHEUER: Commissioner Okuda?

24 COMMISSIONER OKUDA: Thank you, Mr. Chair.

25 Mr. Yoshimori, in the prior or first

1 petition that Hawaiian Memorial Park brought about
2 ten years ago, were you also an intervenor?

3 MR. YOSHIMORI: Yes, we were intervenors.

4 COMMISSIONER OKUDA: And when you say "we,"
5 what members of the intervention group were also
6 granted intervention status about ten years ago?

7 MR. YOSHIMORI: It was the same people who
8 are on this Petition to Intervene. We had additional
9 people as well, but they have since either moved or
10 they decided not to participate at this time.

11 COMMISSIONER OKUDA: Okay. And among your
12 group, what is the longest period of time that
13 members of your group have lived in your residences
14 near or abutting the development?

15 MR. YOSHIMORI: I'm not sure. I haven't
16 asked our members. I personally have been there
17 24 years.

18 COMMISSIONER OKUDA: Okay. And, you know,
19 I'm not sure about this, that's why I'm asking this
20 question.

21 But were you or any member of your group
22 honored by the legislature or any other government
23 entity because of the fact that you had intervened in
24 opposition to the development about ten years ago?

25 MR. YOSHIMORI: Yes, we were. Mrs.

1 McCreedy and myself were honored by the State
2 Legislature for our participation in the prior
3 hearing.

4 COMMISSIONER OKUDA: And can you just
5 briefly explain what that honor was or what did the
6 Legislature say or what were they honoring you for?

7 MR. YOSHIMORI: They honored us for being
8 an unsung hero for helping to protect the
9 Conservation land.

10 COMMISSIONER OKUDA: Thank you, Mr. Chair.
11 No further questions.

12 CHAIRPERSON SCHEUER: Okay. Are there
13 other questions for Mr. Yoshimori?

14 Commissioner Wong.

15 COMMISSIONER WONG: So going back to
16 Commissioner Okuda's question, ten years ago when you
17 intervened, did you also ask to add this other four
18 points on your intervention?

19 MR. YOSHIMORI: In our last intervention,
20 there were no restrictions put on us in terms of what
21 we could cover, so this -- the restrictions being
22 requested by the Petitioner is different than what we
23 encountered our last time. Last time we had no
24 restrictions.

25 COMMISSIONER WONG: Thank you.

1 CHAIRPERSON SCHEUER: Commissioner Chang?

2 COMMISSIONER CHANG: Thank you, Mr.

3 Yoshimori.

4 Are you an attorney?

5 MR. YOSHIMORI: No, I am not.

6 COMMISSIONER CHANG: Your pleadings have
7 been well written.

8 Do you feel at a disadvantage having the
9 other parties represented by counsel?

10 MR. YOSHIMORI: Definitely I feel at a
11 disadvantage.

12 COMMISSIONER CHANG: But do you feel that
13 you can participate in the proceedings as a pro se
14 intervenor?

15 MR. YOSHIMORI: Yes, I feel confident that
16 we can represent ourselves pro se.

17 COMMISSIONER CHANG: Thank you very much.

18 CHAIRPERSON SCHEUER: Are there other
19 questions?

20 Mr. Yoshimori, I guess my broadest question
21 is the four items that you list as additional areas
22 you would like to be the scope of your intervention,
23 what I think results in basically an unlimited
24 ability to comment on it, almost any matter.

25 What do you see with the addition of these

1 four things as somehow being excluded from your
2 ability to raise questions on it?

3 MR. YOSHIMORI: I'm sorry, can you repeat
4 the question?

5 CHAIRPERSON SCHEUER: Sure. You filed a
6 Petition to Intervene. The Petitioner has not
7 objected to your Petition to Intervene, but has asked
8 that the scope of your intervention be limited to the
9 matters that you raised in your written Petition.

10 Today you've come before us and said I want
11 four other things that I can comment on.

12 When I looked at the list of four other
13 things, the ability to argue expansion not needed,
14 the ability to look at alternatives, whether or not
15 there's been compliance with other laws, and the
16 effect on climate. I'm not sure what is left out.

17 Like, what other matters might come up in
18 this DBA that don't fall into one of those of which
19 you already mentioned?

20 MR. YOSHIMORI: I think one of them is
21 traffic concerns. I think another one is the need
22 for water being supplied to the area. I can't think
23 of the other ones right now, but both those are --

24 CHAIRPERSON SCHEUER: So you do see it as
25 somewhat excluded?

1 MR. YOSHIMORI: Yes, I do.

2 CHAIRPERSON SCHEUER: Okay. Can I ask you
3 also regarding the desire to look at alternatives,
4 did your organization comment on the EIS that was
5 accepted as Final?

6 MR. YOSHIMORI: Yes, we did.

7 CHAIRPERSON SCHEUER: Okay. Did you
8 comment on the alternatives analysis?

9 MR. YOSHIMORI: I believe we did.

10 CHAIRPERSON SCHEUER: Okay. Was the
11 alternatives analysis including the alternatives
12 which the Petitioner chose to examine in the EIS not
13 like -- did you object to which alternatives they
14 chose, and they should have looked at other
15 alternatives?

16 MR. YOSHIMORI: I don't recall that we
17 stated that we asked them to look at additional
18 alternatives.

19 CHAIRPERSON SCHEUER: Okay. I'm trying to
20 understand a couple things here regarding that second
21 point that you raised as wanting to comment on.

22 MR. YOSHIMORI: Right.

23 CHAIRPERSON SCHEUER: We accepted the EIS
24 as complete. I believe there was no, within the
25 30-day timeframe provided within the state law to

1 bring an action in court saying the EIS was adequate,
2 I don't believe any action was brought against the
3 EIS. I believe it was fully accepted as complete,
4 and there was an alternatives analysis in that
5 document.

6 Are you now asking to raise alternatives
7 that were not raised in the EIS document? I'm not
8 trying to be difficult. I know you're not counsel,
9 and I'm not an attorney either, but I'm trying to
10 understand how we manage this proceeding efficiently.

11 MR. YOSHIMORI: If I recall correctly,
12 there were -- there was a request within the EIS to
13 look at other alternatives, and I remember that there
14 was -- my memory may be incorrect -- but I remember
15 there was a statement in the EIS saying that there is
16 no other need to look at alternatives.

17 In particular what we'd like to discuss for
18 the alternatives is the increase in density of burial
19 space instead of looking at expansion. So I'm hoping
20 that will help narrow what we will be discussing.

21 CHAIRPERSON SCHEUER: I don't have anything
22 further at this time. Are there any more questions
23 for Mr. Yoshimori?

24 Commissioner Okuda.

25 COMMISSIONER OKUDA: Chair, just a point

1 for the record. I believe I was the sole vote
2 dissenting on accepting the EIS, and that was one of
3 my concerns. Thank you, Chair.

4 CHAIRPERSON SCHEUER: Thank you,
5 Commissioner Okuda.

6 Are there any other questions for the
7 Petitioner to Intervene at this time?

8 Okay. Mr. Tabata.

9 MR. TABATA: Thank you, Chair.

10 The Petitioner does not object to the
11 Petition to Intervene; however, we have made a
12 request that the intervention be limited in scope to
13 the issues identified in the Petition, and also the
14 four additional issues that have been identified
15 today.

16 I just want to make it clear that we're not
17 stipulating to these issues. We're not conceding
18 anything. But for sake of pleading, I think it will
19 be more orderly and efficient if we stick to issues
20 that we can identify up-front.

21 Therefore, we are reserving our objections
22 to these issues in future proceedings, and may be
23 presenting opposing evidence or arguments; otherwise
24 we do not object to the Petition.

25 CHAIRPERSON SCHEUER: Commissioners,

1 questions for Mr. Tabata? No.

2 City and County?

3 MS. WONG: No questions.

4 CHAIRPERSON SCHEUER: Do you have any
5 statement on the overall Petition to Intervene?

6 MS. WONG: We don't have any objections to
7 the Petition to Intervene or to the four additional
8 areas that Mr. Yoshimori requested.

9 CHAIRPERSON SCHEUER: Any questions for the
10 County by the Commission? No.

11 Office of Planning.

12 MS. APUNA: Thank you, Chair.

13 Office of Planning also does not object to
14 the intervention which shall be freely granted. We
15 believe the position of the applicant is not
16 substantially the same as the commission of a party
17 already admitted, and that we don't think that
18 admission of additional parties will render the
19 proceedings inefficient or unmanageable, particularly
20 with the Commission's ability to manage proceedings
21 as they occur.

22 We also agree with the scope of the
23 Intervenor's issues and those that he has proposed.

24 Thank you.

25 CHAIRPERSON SCHEUER: Thank you, Ms.

1 Takeuchi-Apuna.

2 Are there any questions for the Office of
3 Planning from the Commissioners? No, okay.

4 Are there any questions from any -- from
5 the Commissioners for any of the parties?

6 Commissioner Wong.

7 COMMISSIONER WONG: I wanted to move into
8 executive session to consult with the Board's
9 attorneys on questions and issues pertaining to the
10 Board's powers, duties, privileges, immunities and
11 liabilities regarding the Intervenor's additions,
12 those four additions, and how it may affect us in the
13 future.

14 CHAIRPERSON SCHEUER: Okay. There is a
15 motion.

16 VICE CHAIR CABRAL: I'll second it.

17 CHAIRPERSON SCHEUER: A motion has been
18 made by Commissioner Wong, seconded by Commissioner
19 Cabral to go into executive session to consult with
20 the Board's counsel.

21 Is there any discussion on the motion? If
22 not, all in favor say "aye"; anybody opposed? Motion
23 carries. The Commission will go into executive
24 session.

25 (Executive session.)

1 CHAIRPERSON SCHEUER: Aloha, we're back in
2 session.

3 Are there any final questions for any of
4 the parties or the Petitioner to Intervene?

5 If not, Commissioners, what is your
6 pleasure?

7 COMMISSIONER WONG: Chair, I would like to
8 make a motion to allow for the intervention including
9 all four points that the Intervenor requested, and
10 that he will be the designated speaker for this --
11 Mr. Yoshimori, for the group, and that he does have
12 assistance by Mr. McCreedy, sorry, and that -- that's
13 it.

14 CHAIRPERSON SCHEUER: Okay. One of our
15 most eloquent motions ever, Commissioner Wong.

16 VICE CHAIR CABRAL: I'll second that,
17 second his elegance.

18 CHAIRPERSON SCHEUER: A motion has been
19 made by Commissioner Wong and seconded by
20 Commissioner Cabral to grant the Petition for
21 Intervention with the following limitations: The
22 written points of intervention in the written
23 Petition, and in addition the four points, topical
24 points that were included orally today, and that Mr.
25 Yoshimori will be the spokesperson for the Intervenor

1 with the assistance of Mr. McCreedy.

2 Is there deliberation on the motion?

3 Commissioner Wong.

4 COMMISSIONER WONG: Just want to say thank
5 you, Chair.

6 CHAIRPERSON SCHEUER: You're welcome.

7 Commissioner Okuda.

8 COMMISSIONER OKUDA: Chair, I believe Ms.
9 Apuna set forth the applicable standard, and for that
10 reason I'm going to be voting in favor of the motion.

11 CHAIRPERSON SCHEUER: Thank you. Other
12 Commissioners?

13 VICE CHAIR CABRAL: I will --

14 CHAIRPERSON SCHEUER: Commissioner Cabral?

15 VICE CHAIR CABRAL: I'm being talkative
16 today.

17 I'm in favor of it also because I think
18 it's always our duty, but more so I think our Land
19 Use -- our Commissioners' intention to hear from all
20 parties about all aspects of a situation, so that way
21 we're able to make the best judgment call possible.
22 Because in the final end, we're supposed to make some
23 kind of a really good decision, and the more we know
24 from more angles of the situation, I think the better
25 job we can do serving our entire community.

1 So I spoke in favor.

2 CHAIRPERSON SCHEUER: Thank you,
3 Commissioner Cabral.

4 Are there others? I'll also be voting in
5 favor of the motion, and I thank the Petitioner for
6 not objecting to the Petition for Intervention. And
7 I thank the Intervenors along with us, we are the
8 volunteers in the room. So it's nice to have some
9 company.

10 Is there anything further? If not, Mr.
11 Orodenker, will you please poll the Commission?

12 EXECUTIVE OFFICER: Thank you, Mr. Chair.
13 The motion, as mentioned by Commissioner Wong, was to
14 grant the Petition for Intervention limited in scope
15 to the issues set forth in the motion and as verbally
16 amended, and to allow Mr. Yoshimori with the -- to be
17 the spokesperson for the Intervenor with the
18 assistance of Mr. McCreedy.

19 Commissioner Wong?

20 COMMISSIONER WONG: Yes.

21 EXECUTIVE OFFICER: Commissioner Cabral?

22 VICE CHAIR CABRAL: Yes.

23 EXECUTIVE OFFICER: Commissioner Aczon?

24 COMMISSIONER ACZON: Yes.

25 EXECUTIVE OFFICER: Commissioner Giovanni?

1 COMMISSIONER GIOVANNI: Yes.

2 EXECUTIVE OFFICER: Commissioner Okuda?

3 COMMISSIONER OKUDA: Yes.

4 EXECUTIVE OFFICER: Commissioner Chang?

5 COMMISSIONER CHANG: Yes.

6 EXECUTIVE OFFICER: Chair Scheuer?

7 CHAIRPERSON SCHEUER: Aye.

8 EXECUTIVE OFFICER: Thank you, Mr. Chair.

9 The motion passes unanimously.

10 CHAIRPERSON SCHEUER: Thank you very much.

11 If there's no further business on today's
12 agenda, the Commission will reconvene or will convene
13 for a site visit at 1:00 p.m. this afternoon at
14 Hawaiian Memorial Park --

15 Do you have something to say, Mr.

16 Orodenker? Okay.

17 -- Ocean View Garden area 45-425 Kamehameha
18 Highway, Kaneohe, Hawai'i 96744.

19 May I ask the parties to remain after we
20 adjourn for a brief prehearing discussion. If not,
21 we're adjourned.

22 (The proceedings adjourned at 10:34 a.m.)

23

24

25

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on November 21, 2019, at 8:30 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 21st day of November, 2019, in Honolulu, Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156