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LAND USE COMMISSION

STATE OF HAWAI'I

ACTION MEETING	)	PAGE
A81-525 Y-O LIMITED PARTNERSHIP	)	1
DISCUSSION RE: ADMINISTRATIVE RULES	)	45
REVISION	)	
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TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing/Action Meeting at the Natural Energy Laboratory of Hawai'i Authority Training Room, 73-970 Makako Bay Drive, Kailua-Kona, Hawai'i, commencing at 10:10 a.m. on October 19, 2012, pursuant to Notice.

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

## A P P E A R A N C E S

## COMMISSIONERS:

KYLE J.K. CHOCK, CHAIRPERSON  
RONALD HELLER, VICE CHAIR  
SHELDON R. BIGA  
THOMAS CONTRADES  
LANCE M. INOUE  
ERNEST MATSUMURA

EXECUTIVE OFFICER: DAN ORODENKER  
CHIEF CLERK: RILEY HAKODA  
STAFF PLANNER: SCOTT DERRICKSON

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. A81-525 Y-O LIMITED PARTNERSHIP

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

For the County: WILLIAM BRILHANTE, JR. ESQ.  
Deputy Corporation Counsel  
BOBBY JEAN LEITHEAD-TODD  
Planning Director

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI, OP

## I N D E X

DOCKET WITNESSES	PAGE
PETER PHILLIPS	
Direct Examination by Ms. Benck	12
Cross-Examination by Mr. Brilhante	22
Cross-Examination by Mr. Yee	24
Redirect Examination by Ms. Benck	28
Recross Examination by Mr. Brilhante	37

1           CHAIRPERSON CHOCK: (gavel) Good morning,  
2 everybody. I'd like to call this meeting of the State  
3 Land Use Commission to order. Our first item of  
4 business is the adoption of minutes from the  
5 October 4th and 5th meeting. Is there a motion to  
6 approve?

7           COMMISSIONER HELLER: So moved.

8           COMMISSIONER MATSUMURA: Second.

9           CHAIRPERSON CHOCK: Any opposed? Motion  
10 carries. Minutes are adopted. If our Executive  
11 Officer can take us through our tentative meeting  
12 schedule, Dan.

13           MR. ORODENKER: Thank you, Mr. Chair.  
14 November 1st and 2nd we'll be at the Maui Marriott  
15 Courtyard for the Ka'ono'ulu Ranch Order to Show  
16 Cause.

17                   November 15th and 16th we'll again be on  
18 Maui for a continued hearing on the Ka'ono'ulu Ranch  
19 Order to Show Cause.

20                   December 6th once again on Maui for West  
21 Maui Land oral argument and decision-making and for  
22 the Waiko Industrial site visit. That would be our  
23 last meeting in December.

24                   Our next meeting after will be in January,  
25 January 10th and 11th and we'll be on Maui again,

1 for West Maui Land Adoption of Order and Ka'ono'ulu  
2 Ranch Motion to Bifurcate.

3 CHAIRPERSON CHOCK: Thank you, Dan.  
4 Commissioners, any questions on our upcoming schedule?

5 Okay. This is an action meeting today on  
6 A81-525 Y-O Limited Partnership, to consider  
7 Petitioner's Motion for Extension of Time to Apply for  
8 Redistricting of Phase II.

9 Will the parties please identify themselves  
10 for the record.

11 MS. BENCK: Good morning, Chairman and  
12 Commissioners. This is Jennifer Benck and Steven Lim.  
13 And we're representing Successor Petitioner Kaloko  
14 Heights Associates, LLC. To my right is Mr. Peter  
15 Phillips. He's the project manager for the Kaloko  
16 Heights Project.

17 CHAIRPERSON CHOCK: Good morning.

18 MR. BRILHANTE: Good morning, Chair,  
19 Commissioners. William Brilhante, deputy corporation  
20 counsel, county of Hawai'i. To my left is Planning  
21 Director Ms. Bobby-Jean Leathead-Todd.

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

1 CHAIRPERSON CHOCK: Let me update the  
2 record on this matter. On September 25, 2012 the  
3 Commission received Petitioner's Motion and Exhibits A  
4 through D. October 2nd the Commission received OP's  
5 request for time extension for all Parties to file  
6 responses from October 2nd to October 9, 2012.

7 On October 3 the Commission mailed/mailed  
8 letter granting time extension to all Parties.

9 On October 8th the Commission received  
10 OP's Statement of No Objection to Petitioner's Motion  
11 for Extension of Time to Apply for Redistricting of  
12 Phase II.

13 On October 9 the Commission received email  
14 from county of Hawai'i's Planning Department with a  
15 Statement of No Opposition to Petitioner's Motion for  
16 Extension of Time to Apply for Redistricting of Phase  
17 II.

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

24 After completion of public testimony staff  
25 will provide its map orientation and I will give

1 opportunity for the Parties to admit exhibits for the  
2 record. After the admission of exhibits to the record  
3 the Petitioner will present its case.

4 Once Petitioner is completed with its  
5 presentation, it will be followed in turn by the  
6 Hawai'i County Planning Department and State Office of  
7 Planning. Are there any questions today regarding our  
8 procedure?

9 MS. BENCK: No.

10 CHAIRPERSON CHOCK: Is there anyone in the  
11 audience wishing to be provide public testimony,  
12 please come forward. Okay, seeing none, Scott would  
13 you like to take us through the map orientation.

14 MR. DERRICKSON: Aloha, Commissioners.

15 CHAIRPERSON CHOCK: Aloha.

16 MR. DERRICKSON: Aloha, the maps are up on  
17 the wall behind you. Some of you might not be able to  
18 see them. I know that you should have smaller  
19 versions in your packet. There's two maps. Map 1 is  
20 a larger regional map. And then we blew up so that it  
21 was easier to see the Petition Area in the map 2.

22 The docket is A81-525 Y-0 Limited  
23 Partnership. Petitioner's seeking a fifth time  
24 extension to complete Increment I, apply for  
25 redistricting of Increment 2.

1 Map 1 shows the Petition Area with  
2 Increment 1 outlined in yellow already in the Urban  
3 District. Increment 2 is highlighted in yellow. It's  
4 on the USGS quad H7 Kailua quadrangle at a scale of 1  
5 inch to 2000 feet.

6 The state land use districts are in red.  
7 Conservation area's in green. Rural area's in brown  
8 and agriculture areas are uncolored.

9 The Petition Area at the time of  
10 reclassification comprised approximately 408.719 acres  
11 in the Kaloko-Honokohau area of which Increment 1  
12 consisted of 213 acres, Increment 2 consisted of  
13 approximately 195 acres.

14 These areas are located roughly halfway  
15 between the Kona Airport and Kailua-Kona. And more  
16 specifically mauka of phases 3 and 4 of the Kaloko  
17 Light Industrial Park subject of the A00-732 TSA  
18 Corporation Petition.

19 The Petition Area is accessed through Hina  
20 Lani Street as it traverses to connect the Queen  
21 Ka'ahumanu Highway, which is makai of the Project, or  
22 Mamalahoa Highway mauka of the Project.

23 Notable dockets in the area: To the west  
24 are boundary review 92-685 Office of State Planning;  
25 A00-732 TSA Corporation; and A00-730, Lanihau



1 Properties, LLC.

2 CHAIRPERSON CHOCK: Thank you, Scott.

3 Commissioners, any questions for Scott? Okay.

4 Petitioner, do you have any exhibits you wish to have  
5 the admitted to the record?

6 MS. BENCK: Yes. Thank you, Chairman. For  
7 the record I'll mention the four exhibits that were  
8 filed with the motion: Exhibit A the fee owner's  
9 authorization, Exhibit B which is an illustrative  
10 Master Plan showing the Kaloko Heights Subdivision.  
11 For maybe clarity's sake we brought some color copies  
12 of that map that I gave to Riley this morning. I'm  
13 afraid that your copies may have been in black and  
14 white, which is the same exact map, but it's probably  
15 a little easier to see in color.

16 Exhibit C that was filed with motion is a  
17 July 12, 2012 letter from the Department of Water  
18 Supply recognizing Kaloko Heights' most recent water  
19 commitment payment.

20 Exhibit D, which was a recent single-family  
21 and condominium resales on the Big Island. And then  
22 today if we may, we'd like to submit three exhibits,  
23 E, F and G. Those are: E is a photograph overview of  
24 the Kaloko Heights property. It shows the property  
25 outlined in yellow.

1           Exhibit F is a portion of the loop road  
2 that's on Increment 1. And Exhibit G is Mr. Peter  
3 Phillip's written testimony. He'll be discussing this  
4 when he's up on the witness stand, but we wanted to  
5 get it in writing too. So I'm going to pass these  
6 down to the County and the State if that's okay.

7           CHAIRPERSON CHOCK: Parties, any  
8 objections?

9           MR. BRILHANTE: No objection.

10          MR. YEE: Could we see the exhibits first?

11          MS. BENCK: Yes.

12          MR. YEE: Office of Planning has no  
13 objection.

14          MS. BENCK: Thank you.

15          CHAIRPERSON CHOCK: County, any exhibits?

16          MR. BRILHANTE: Not at this time.

17          CHAIRPERSON CHOCK: Thank you,  
18 Mr. Brilhante. State?

19          MR. YEE: Nothing. No exhibits.

20          CHAIRPERSON CHOCK: Okay. Petitioner,  
21 proceed.

22          MS. BENCK: Thank you. With that then we  
23 would like to ask Mr. Peter Phillips to take the  
24 stand, and he'll give a presentation on the status of  
25 the Project and why we're requesting this motion for

1 an extension.

2 CHAIRPERSON CHOCK: May I swear you in.

3 PETER PHILLIPS

4 being first duly sworn to tell the truth, was examined  
5 and testified as follows:

6 THE WITNESS: Yes.

7 CHAIRPERSON CHOCK: Your name and address  
8 for the record, please.

9 THE WITNESS: My name is Peter Phillips.  
10 I work for Stanford Carr Development. I'm the head  
11 project manager for all Big Island projects and  
12 overseer of the Kaloko Heights Project.

13 I've been the overseer of the Kaloko  
14 Heights Project since 2009 when my predecessor,  
15 Mr. Paul Kay, stepped down and he moved to Kamehameha  
16 Schools.

17 I guess to explain: In 2009 we entered  
18 into a dispute or a litigation with some of the former  
19 lenders for Kaloko Heights Associates, spent  
20 significant time trying to come to an agreement  
21 because the views of the partnership were different  
22 from the views of Stanford Carr.

23 We were able to come to an amicable  
24 agreement and a settlement just recently at the  
25 beginning of 2012 or the end of the first quarter in

1 2012, and are seeking an extension for 10 years.

2 MS. BENCK: If I may --

3 CHAIRPERSON CHOCK: Sure.

4 MS. BENCK: I just want to direct some  
5 questions to the witness.

6 DIRECT EXAMINATION

7 BY MS. BENCK:

8 Q Peter, currently the deadline for  
9 completion, substantial completion of Increment 1 and  
10 submission of the application for Increment 2 is when?

11 A It's January of 2012 is the expiration date  
12 for Increment 1.

13 Q And I'm sorry -- it's January of two  
14 thousand...?

15 A I'm sorry. 2013.

16 Q So we're before the Commission today  
17 because we're asking that they...?

18 A Extend the increment zoning of Increment 1  
19 to 2023, January 2023.

20 Q That would be to allow us to complete,  
21 perform substantial completion of Increment 1 and...

22 A And reclassify Increment 2 at the end of  
23 2023, January of 2023.

24 Q So with that just to sort of set the  
25 foundation, you were explaining to the Commissioners

1 why there's been some delay.

2 A Yes.

3 Q And if we could I want to step back up a  
4 little bit further because as Scott mentioned, this  
5 isn't the first time that somebody has come before  
6 this Commission looking for an extension on *this*  
7 docket.

8 A Correct. This is the first time that we as  
9 Kaloko Heights Associates have come before the  
10 Commission and are asking for an extension. Our  
11 predecessor, Y-O Limited, had asked for a number of  
12 extensions to complete or fulfill the conditions in  
13 their original D&O.

14 Q When did Kaloko Heights Associates acquire  
15 this property?

16 A Kaloko Heights Associates acquired this  
17 property from Y-O Limited in 2004, two years after Y-O  
18 Limited had gotten their fourth extension for  
19 incremental zoning of Increment 1.

20 Q So it was pretty late in 2004.

21 A Yes. It was in November of 2004. So  
22 almost three years had gone by before we had purchased  
23 the property.

24 Q Then you were discussing some litigation,  
25 some of the things that led up to the litigation?

1           A           In 2004 we had set out to -- or Kaloko  
2 Heights Associates had set out to construct the  
3 northern side loop road and fulfill the conditions  
4 that were proposed in the D&O and the development of  
5 Increment 1.

6                   We had set forth, as you see in Exhibit, I  
7 think it's F, we had set forth and we're installing  
8 valuable infrastructure upwards of \$3.3 million for  
9 the completion of the loop road that would eventually  
10 extend to parts of Kealakehe Parkway Road that the  
11 county is also developing currently.

12                   We wanted to complete -- our intention was  
13 to complete the loop road and basically provide access  
14 to large lot subdivisions that would either be  
15 developed by Stanford Carr Development themselves or a  
16 number of third-party home builders.

17                   We also were in discussion with some local  
18 grocers, KTA, about the purchase of a commercial site  
19 where we intended to locate a grocery store.

20                   In 2009 -- or at the beginning of 2009 this  
21 is when we ran into some trouble with, internally with  
22 our partners not having the same sort of view or  
23 aligned, focused for the development of this  
24 particular property.

25                   And it was to our dismay that there was

1 some wrong doings on our partners' side which  
2 eventually brought us to the litigation that was  
3 started in 2009 and concluded in 2012.

4 Q I believe your testimony or perhaps the  
5 motion reflects that it was just in August 2012 that  
6 that finally wrapped up?

7 A Yes, that's correct.

8 Q Thank you. You mentioned, and of course, I  
9 mentioned earlier too you're with Stanford Carr  
10 Development. Can you explain the relationship that  
11 Stanford Carr Development has with this Project  
12 please?

13 A Sure. Stanford Carr Development is the  
14 boss of Stanford Carr Development, LLC. We have a  
15 number of project managers overseeing different  
16 projects on different islands. Like I mentioned  
17 before, I oversee the projects on the Big Island.

18 We have a number of different developments  
19 that we have finished or completed and some of those,  
20 the more notable ones are Hawai'i Kai Peninsula on  
21 O'ahu. There's the Maui Kehalani Development in  
22 Wailuku. And that is a 2,000 or so unit development.

23 We recently finished a project with the  
24 Sisters of St. Francis in Honolulu or -- actually  
25 sorry, in 'Ewa of O'ahu. And that was a senior

1 affordable rental project that we developed with low  
2 income housing tax credits.

3           We have slated in the Project pipeline  
4 development a 19-story affordable housing complex on  
5 Halekauwila Street near Kaka'ako, O'ahu. Some of the  
6 other projects that we've done pro bono, we have also  
7 developed a transitional housing project in Maili or  
8 the Waianae Coast on O'ahu. And are seeking  
9 development of an affordable housing project on the  
10 island of Maui as well.

11           Q       Thank you, Peter. So I think you've made it  
12 clear that Stanford Carr Development has an impressive  
13 and good track record developing projects. Yet what  
14 this Commission is seeing is that we're here asking  
15 for more time to develop a project.

16           A       Yes.

17           Q       You've explained that the litigation put  
18 things on hold for a few years. And I guess I'd like,  
19 if you would, please -- and you can refer to your  
20 question 17 if you want to, but please explain to the  
21 Commission what kind of activities the company, Kaloko  
22 Heights, did do before the litigation came and through  
23 everything off track.

24           A       You know, we had set forth to develop the  
25 northern side loop road of Kaloko Heights, again



1 allowing access to some of the larger bulk  
2 subdivisions. In that process we spent over  
3 \$18 million to improve both onsite infrastructure as  
4 well as offsite infrastructure. Most notably  
5 \$3.3 million was put into the development of the loop  
6 road and until it was halted in 2009.

7 We developed a 1 million gallon post  
8 tension water tank offsite and spent over \$3 million  
9 in the process of doing that. Also an electrical  
10 substation with a worth of about half a million  
11 dollars was installed.

12 And our predecessors, Y-O Limited, had put  
13 in significant improvements and ultimately developed  
14 Hina Lani Street that you see running mauka-makai from  
15 Queen K to Mamalahoa Highway.

16 Some of the other more notable things that  
17 we did during our time as the property owner is we had  
18 an Archaeological Inventory Survey performed on the  
19 north side. And it was completed in October of 2005.

20 From this we had a preservation plan where  
21 seven burial sites were located at Increment 1. The  
22 SHPD approved the final preservation plan  
23 November 2006 where we went on to ask for a certain  
24 number of easements.

25 In 2006, 2007 we spent a great deal of time

1 working with community groups and some of the local  
2 kupuna to understand and maintain and preserve a road  
3 to the sea. That's in the, I guess, exhibit where it  
4 shows the plans. You can easily see the mauka-makai  
5 trail running from the middle of the property down to  
6 the other mid-section of the property on the north  
7 side.

8 Q If I may interject, that's Exhibit B.

9 A Exhibit B. Thank you very much. We worked  
10 with the Na Ala Hele as well as the community groups  
11 to understand this trail's alignment. We spent  
12 significant time, and I would say close to a year,  
13 defining the proper pathway. And through that we  
14 imposed a trail buffer of -- it was a 10-foot wide  
15 buffer on either side of the trail. And the width of  
16 the trail is 10 feet. So a 30-foot swath coming down  
17 from the top of the Project through the bottom of the  
18 Project maintained and preserved in place that is the  
19 road to the sea.

20 Afterwards the Project's loop road did run  
21 through certain designated trail areas. And we  
22 sought to obtain approval from the DLNR for access,  
23 utility easements going across this particular trail.

24 Q How about the efforts with the county?  
25 When was the property rezoned?

1           A       The property -- are you saying the property  
2 was rezoned in 2012.

3           Q       The county rezoning.

4           A       Oh, the county rezoning. Going back. The  
5 county rezoned the property in 1983 and then amended  
6 this rezoning in 1986.

7           Q       Okay. So currently the property is zoned.  
8 Do you know what district?

9           A       Currently the property on the north side is  
10 zoned for RS-15 which is 15,000 square foot lots;  
11 RS-10 which is 10,000 square foot lots; RS7.5 which is  
12 7500 square foot lots, and residential multi-family  
13 RM3; as well as a small percentage of commercial  
14 zoning of roughly 6 acres. And we have open space as  
15 well as some green space in and around Increment 1.

16          Q       Thank you, Peter. How about Increment 2?  
17 Is that property being rezoned?

18          A       Increment 2 is going to be rezoned as part  
19 of -- well, as part of the rezoning for Increment 2  
20 right now it is, it's zoned as residential  
21 single-family.

22          Q       So just to make that clear. The rezoning  
23 for Increment 2 is that effective today?

24          A       The zoning for Increment 2 is contingent  
25 upon substantial completion of offsite and onsite

1 infrastructure at Increment 1.

2 Q Okay. So satisfaction of this Commission's  
3 requirements for Increment 1 and the reclassification  
4 of Increment 2 will then allow the county to make the  
5 Increment 2 zoning effective?

6 A That is correct.

7 Q Thank you. And, I'm sorry, the reason I  
8 brought up the rezoning is just to sort of wrap up  
9 your discussion on the accomplishments that Kaloko  
10 Heights has undertaken on this property.

11 So the rezoning was done quite sometime  
12 ago. I know that Kaloko Heights Associates did get  
13 some county level permits for Increment 1. Can you  
14 just mention what those are, please?

15 A Discretionary approval was granted final  
16 subdivision in 2006 for the creation of seven bulk  
17 lots at increment 1. We also got final approval in  
18 August of 2007 to construct 219 units of multi-family  
19 residential projects.

20 At the end of 2008 we were on the cusp of  
21 submitting a financing package for the development of  
22 92 units of affordable housing at the south side of  
23 the northern-most quadrant of Increment 1.

24 We did not fulfill the -- or we did not  
25 formally submit because of the pending litigation that

1 was foreseeable in the near future.

2           However, we wish to file the affordable  
3 housing agreement and want to continue the development  
4 of the affordable units at Kaloko Heights which would  
5 satisfy the affordable requirement for this particular  
6 property.

7           Q       Thank you. So is getting this Commission's  
8 approval for an extension for the completion, of the  
9 substantial completion of the onsite and offsite  
10 Project elements for Increment 1, is that an important  
11 part of the Project's financing?

12          A       Absolutely. It's imperative. And there  
13 are a lot of -- how would you say -- some of our, some  
14 of our lenders have certain concerns and want to  
15 understand the, I guess, the ruling of this Commission  
16 before it will embark on any other further financing  
17 of the property.

18                So I guess, how would you say it, yeah it  
19 is very imperative for the financiers or the financiers  
20 of this Project to know the pathway or the plans that  
21 is going to involve Increment 1. And if this  
22 extension is approved it will greatly improve the  
23 likelihood or the moving forward of our plan to  
24 continue what we originally had started to install  
25 which would be finishing up the -- or substantially

1 completing the improvements at Kaloko Heights  
2 Increment 1.

3 Q Thanks, Peter. I think I'll make this my  
4 last question. Kaloko Heights Associates development  
5 plans for the Kaloko Heights Project, are they similar  
6 to the plans that were presented to the Commission by  
7 the original Petitioner?

8 A Generally, yes. They are consistent with  
9 the original plan. And we don't intend to increase  
10 the unit count or, I guess waiver from the original  
11 plan.

12 MS. BENCK: Thank you. No further  
13 questions at this time.

14 CHAIRPERSON CHOCK: County?

15 CROSS-EXAMINATION

16 BY MR. BRILHANTE:

17 Q Again, good morning, Chair. County of  
18 Hawai'i does not oppose the Petitioner's request for  
19 an extension of time. I think there's three  
20 significant areas that the county looked towards when  
21 it made a determination as to whether or not, what  
22 position we'd take with this current application.

23 First and foremost is this request for an  
24 extension is timely. I think that's significant. All  
25 too often we're coming in, we're trying to correct

1 something after the fact.

2 So here the original dates or deadlines for  
3 performance was 11-20-2013. We're here with  
4 significant enough time to address the issue.

5 Secondly, the Applicants and their  
6 predecessors have contributed or have completed,  
7 again, substantial infrastructure improvements.  
8 There's an allusion to the construction of the Hina  
9 Lani Road from Queen K Highway up to Mamalahoa  
10 Highway. There's, again, reference to the  
11 construction of a water tank. There's an \$8 million  
12 payment to the Department of Water Supply to satisfy  
13 the water rights requirements. There's also allusion  
14 to construction of an electrical substation.

15 So I think different than maybe other  
16 applications for an extension that's come before the  
17 county, the Applicant in this case has done what  
18 they've been required to do up until this stage. And  
19 a lot of it is infrastructure that benefits the whole  
20 community.

21 And the third aspect that we considered  
22 when we made a determination to support that, or to  
23 take no opposition to the application, is that there's  
24 no request for a significant deviation from the  
25 original development plan, what they came -- what the

1 Applicant came into originally requested to do hasn't  
2 significantly changed up until this point. Again  
3 that's something that's unique to this Applicant.

4 So, again, the conclusion the county does  
5 not oppose the Applicant's request for an extension of  
6 time based on those factors.

7 CHAIRPERSON CHOCK: Thank you,  
8 Mr. Brilhante. State, any questions for this witness?

9 CROSS-EXAMINATION

10 BY MR. YEE:

11 Q Yes, thank you. The Decision and Order in  
12 this case as I understand it was in January of 1983,  
13 correct?

14 A Correct.

15 Q And at that time Increment 1 or Phase 1 was  
16 then reclassified in '83, correct?

17 A Correct.

18 Q Now, Increment 2 or Phase 2 was to be  
19 incrementally developed.

20 A That's correct.

21 Q And at the time the requirement the  
22 prerequisite was that when you apply for Increment 2  
23 you have demonstrate that Increment 1 was  
24 substantially completed.

25 A That is correct.



1           Q       So this particular request is to allow you  
2 some additional time to apply for the incremental  
3 reclassification for Phase 2 or Increment 2?

4           A       That is correct.

5           Q       And since 1983 till, I suppose, up to 2023  
6 obviously it will be some time since that D&O. When  
7 you apply for the incremental approval will you be  
8 coming to the Commission with an analysis of what the  
9 potential impacts and possible mitigation would be in  
10 light of that additional time?

11          A       Absolutely. If we come before the  
12 Commission to incrementally zone Increment 2, we would  
13 absolutely have the discussion for the impacts of what  
14 Increment 2 would -- I guess things such as  
15 archaeological impacts, certain traffic studies would  
16 have to be considered in the incremental zoning of  
17 Increment 2. And we would be agreeable to studying  
18 those particular impacts.

19          Q       You also then would agree that it's  
20 possible, depending on the analysis of what the facts  
21 are at that time, that the LUC could then impose  
22 either additional or to revise the existing conditions  
23 for Increment 2?

24          A       I leave that up to the Commission, but,  
25 yes, we would be agreeable to that as well.

1           Q       You just acknowledge that's within the  
2 authority of the LUC to do.

3           A       Yes, yes.

4           Q       And then I just wanted to be clear about a  
5 couple of things. Regarding the infrastructure, I  
6 understand your water credits that you've purchased  
7 are going to be sufficient for the entire Increment 1  
8 and 2, is that right?

9           A       That is correct.

10          Q       Would you have needed to construct Hina  
11 Lani Road without Increment 2?

12          A       Would we have needed to have constructed  
13 Hina Lani Road without Increment 2? I think, I  
14 think -- well, this is speaking for our predecessors,  
15 but the development of Hina Lani Street was vital to  
16 both Increment 1 and Increment 2 as well as a public  
17 benefit to, you know, bridging the gap between Queen  
18 Ka'ahumanu as well as Mamalahoa Highway.

19                   So in that regard I believe that it was  
20 essential to install Hina Lani Street for Increment 2.

21          Q       The question was a little different.

22          A       Okay.

23          Q       The question was whether you needed Hina  
24 Lani Road if you *only* did Increment 1. If you don't  
25 know you can just say you don't know. But that's the

1 question I have.

2 A I don't know, but I can probably get back  
3 to you.

4 Q That's okay. I have the same question  
5 regarding the water tank and the electrical  
6 substation.

7 A Yes.

8 Q Would you have needed those infrastructure  
9 improvements without Increment 2?

10 A We would have to have the water, post-water  
11 retention tank for the development of Increment 2.  
12 The electrical substation I believe would service all  
13 of Increment 1. And it would satisfy Increment 1.

14 Q I just want to be clear. The electrical  
15 substation was required if you just did Increment 1?

16 A I believe so, yes.

17 Q And the water tank, was that also required  
18 if you just did Increment 1?

19 A I don't -- I don't believe so. I think the  
20 water tank was required for both Increment 1 and  
21 Increment 2.

22 Q I can understand the water tanks needed for  
23 Increment 1 and 2. I'm trying to separate out whether  
24 either the sizing of the tank would have been  
25 different or you would have needed any tank at all if

1 you did not develop Increment 2.

2 A The -- I think -- it was a  
3 900,000,000 gallon water tank before. Or, sorry --  
4 900,000 gallon water tank before. And the upgrade was  
5 to a million gallon water tank. I believe it is  
6 needed for both Increment 1 and Increment 2.

7 Q Okay. I'll just leave it there. Thank  
8 you.

9 MR. YEE: Nothing further.

10 CHAIRPERSON CHOCK: Petitioner, any cross?

11 REDIRECT EXAMINATION

12 BY MS. BENCK:

13 Q Peter, just a quick question. The county  
14 brought up the fact that they appreciate that you're  
15 here before the deadline. But let's be honest, we're  
16 here only a couple months before the deadline.

17 Why didn't you file this motion earlier?  
18 You knew the January 2013 deadline was going to be  
19 difficult to meet.

20 A It was mostly in part based upon the  
21 litigation that was occurring at the time. We had not  
22 concluded the litigation until August of 2012. And  
23 the direction of the Project was not, was not the main  
24 focus of the partnership at the time. The main focus  
25 of the partnership was to conclude the litigation and

1 get over that.

2 So, which is why it took significant time  
3 to come before the Commission and propose for our  
4 extension.

5 Q Peter, Kaloko Heights Associates has  
6 invested over \$18 million in the property. Can you  
7 speak to whether that investment was made in  
8 anticipation of developing Increment 1 and Increment  
9 2? Or was that based only on thinking about doing  
10 Increment 1?

11 A Absolutely. The investment of over  
12 \$20 million plus the purchase of the property was for  
13 both Increment 1 and Increment 2. If the -- you know,  
14 the development of Increment 1 we thought there was a  
15 lot of front loaded costs but, you know, those were  
16 county approvals -- sorry -- county requested  
17 improvements that we needed to make so that we could  
18 adequately develop or sell parts of Increment 1.

19 Because of those front loaded costs a lot  
20 of the, I guess, infrastructure that was installed is  
21 imperative and will help out or, I guess, further  
22 finance parts of Increment 2.

23 And so yes, it is on the, I guess, the  
24 lender's side, very key to the development of this  
25 Project and -- how would you say? If we don't -- if

1 we're not allowed to get an extension for Increment 2  
2 or develop Increment 2, it would seriously hinder our  
3 ability to develop or to, I guess, not get foreclosed  
4 on for this entire particular property.

5           So, yes, it is very important to us, both  
6 to the lenders as well as the developer, that both of  
7 these increments be zoned.

8           Q       My last question, Peter. If this  
9 Commission does grant your request and your request to  
10 have 10 years to finish the substantial completion and  
11 submit the application for Increment 2, do you  
12 anticipate starting picking back up with development  
13 any time soon?

14          A       Oh, absolutely. We have on our schedule  
15 development plans to continue the loop road, continue  
16 grading and grubbing that particular section that we  
17 started.

18                There are a number of county improvements  
19 along Hina Lani that we intend to complete: That  
20 would be curbing gutters as well as street lighting.  
21 Those were all halted before we, before the litigation  
22 happened. And we would continue on down the schedule  
23 of completing the loop road and then ultimately  
24 opening it up to, you know, large lot subdivisions.

25               MS. BENCK: Thank you. I have no further

1 questions.

2 CHAIRPERSON CHOCK: Commissioners, any  
3 questions? Commissioner Inouye.

4 COMMISSIONER INOUE: Thank you, Chair.  
5 What was the requirement of the D&O as far as  
6 Increment 1 units and Increment 2 units?

7 THE WITNESS: Increment 1 required us to  
8 have substantial completion of onsite and offsite  
9 improvements before Increment 2 was reclassified or I  
10 guess was -- would be able to create residential or  
11 allow us the ability to develop residential units at  
12 Increment 2.

13 COMMISSIONER INOUE: I guess my question's  
14 a little bit different, but I think I've just been  
15 shown the answer. Initially Increment 1 was supposed  
16 to be 813 residential units?

17 THE WITNESS: Oh, yes, yes. As far as unit  
18 count we had 813 residential units. That was composed  
19 of a mixture of single-family and multi-family units.  
20 There's a commercial site that is just over 5  
21 and-a-half acres as well as a 5-acre open space site  
22 at Increment 1.

23 Increment 2 involved the development of 620  
24 single-family lots.

25 COMMISSIONER INOUE: And your current

1 proposal where you say you're not deviating from  
2 substantially is what?

3 THE WITNESS: Our current proposal is to  
4 follow this original plan and create 813 residential  
5 units at the north side of Kaloko -- or sorry, of  
6 Increment 1 as well as develop roughly the 6 acres of  
7 commercial site and create a recreational center or  
8 some sort of open space for the general community.

9 COMMISSIONER INOUE: You said 813 is your  
10 proposal. That was what was the original Y-O  
11 proposal?

12 THE WITNESS: Yes. We're not going to be  
13 deviating from that.

14 CHAIRPERSON CHOCK: I think you're  
15 proposing 770.

16 COMMISSIONER INOUE: Yeah. Are you  
17 proposing?

18 THE WITNESS: Oh, I'm sorry. I apologize,  
19 Commissioner. We are proposing 770 residential units  
20 which is different from the 813 that was originally  
21 proposed by Y-O Limited Partners.

22 COMMISSIONER INOUE: Okay. Generally why  
23 is it less?

24 THE WITNESS: Generally it's less because  
25 in 1983 the roadway wasn't fully designed or proposed



1 at that time to go through this particular property  
2 based upon the Archaeological Inventory Survey as well  
3 as other conditions that were applied by the county.

4 We had to, I guess, decrease the number of  
5 units and thus giving us the 770 versus the 813.

6 COMMISSIONER INOUE: What about the 92  
7 affordable housing?

8 THE WITNESS: The 92 affordable housing  
9 units we still have that on our plans. As you can see  
10 in the depiction of the site plan, the 92-unit  
11 development is at the lower-most quadrant of the  
12 Increment 1.

13 We would -- it is our desire, our intent to  
14 continue and file for low income housing tax credits  
15 and develop these units by Stanford Carr Development  
16 himself so that we can fulfill the affordable housing  
17 requirement that is imposed by the county.

18 COMMISSIONER INOUE: So as far as the  
19 affordable housing units does that meet the D&O as far  
20 as following the county standards?

21 THE WITNESS: The 92 units doesn't fulfill  
22 the full 10 percent requirement that we were  
23 grandfathered into. But the D1 which is composed --  
24 sorry. D1, which I should mention is the 219-unit  
25 development that was approved in August of 2007, that

1 would contain the remainder of the affordable units  
2 that would fulfill the requirement for the county.

3           So, yes, we are trying to -- we would build  
4 both the 92-unit development for the affordable  
5 housing requirement as well as part of the 219 units  
6 would fulfill the rest of the requirement of the  
7 affordable housing requirement. So generally speaking  
8 1500 units or 1400 units or so the 10 percent  
9 requirement would be 140. So 92 would be developed in  
10 that first D2 parcel and the remainder would be  
11 developed in the D1 parcel.

12           COMMISSIONER INOUE: Where's the D1  
13 parcel? Is that in Increment 1?

14           THE WITNESS: Those are the two parcels  
15 that you see that have residential buildings or  
16 structures upon them. So could I show him? (off mic)

17           (approaching Commissioner Inouye)

18           THE WITNESS: So this is the D2 parcel that  
19 contains the 92 units. And this is the D1 parcel that  
20 is a mixture of residential, multi-family but will  
21 include affordable units.

22           COMMISSIONER INOUE: That would satisfy  
23 the county standards?

24           THE WITNESS: Yes.

25           CHAIRPERSON CHOCK: I believe Petitioner's

1 referring to Exhibit B.

2 THE WITNESS: Yes.

3 COMMISSIONER INOUE: Thank you.

4 THE WITNESS: Thank you very much.

5 CHAIRPERSON CHOCK: Commissioner Heller.

6 COMMISSIONER HELLER: Yes. Do you know  
7 when the traffic studies were done on this Project?

8 THE WITNESS: Not off the top of my head I  
9 do not.

10 COMMISSIONER HELLER: Do you know if  
11 there's been any updates since 1983 in the original  
12 reclassification?

13 MS. BENCK: If I may, Mr. Phillips doesn't  
14 know this, but the studies that were done were done in  
15 connection with the rezoning, the county rezoning.  
16 And except for the archaeological work that  
17 Mr. Phillips mentioned, which is very recent, there  
18 haven't been subsequent studies on traffic or other  
19 things.

20 I believe, if I may, because of the large  
21 regional traffic improvement at the Hina Lani Street,  
22 that construction satisfied -- although of course the  
23 county can speak to that better than I can -- that  
24 traffic was seen as being fully addressed.

25 COMMISSIONER HELLER: Okay. I just had one

1 other question also on Exhibit B. I noticed there are  
2 some preservation areas that look like they're  
3 basically surrounded by what will become private  
4 property, individual homeowner lots. So I assume that  
5 those preservation areas would not have any form of  
6 public access. They'd just be kind of set aside.  
7 There wouldn't be any access to them.

8 THE WITNESS: The preservation plan which  
9 includes the seven burial sites, I think it is, I  
10 think it's a requirement that there's public access  
11 granted or easements that will be granted to any  
12 kuleana that can access those particular burial sites.  
13 However, on the plan or how it's depicted it may seem  
14 that way.

15 COMMISSIONER HELLER: So there would  
16 actually be some kind of easement across the affected  
17 areas?

18 THE WITNESS: Yes, to access those  
19 particular sites.

20 COMMISSIONER HELLER: And would the  
21 adjacent homeowners have any responsibility for  
22 maintenance of the preservation areas?

23 THE WITNESS: We haven't gone down that  
24 road, but I believe that there will be rules and  
25 regulations that are imposed on those lots that are

1 contiguous to the burial sites.

2 COMMISSIONER HELLER: Thank you. That  
3 answers my questions.

4 CHAIRPERSON CHOCK: Commissioners, any  
5 other questions? County?

6 MR. BRILHANTE: Chair, just to again  
7 clarify the record. May the county present some  
8 questions to the Applicant's representative?

9 CHAIRPERSON CHOCK: Sure, proceed.

10 RECROSS-EXAMINATION

11 BY MR. BRILHANTE:

12 Q Mr. Phillips, to your understanding when  
13 you come in for rezoning for Increment No. 2 the  
14 county's going to require additional requirements as  
15 it relates to mitigation, infrastructure, as well as  
16 compliance with the General Plan and the Kona CDP,  
17 correct?

18 A That is correct.

19 Q The Applicant's not opposed to ensuring  
20 that those requirements will be satisfied?

21 A The Applicant is not opposed.

22 MR. BRILHANTE: Thank you. That's all I  
23 have. Thank you, Chair.

24 CHAIRPERSON CHOCK: Commissioners, thank  
25 you Mr. Brilhante. Commissioners, any other questions

1 for this witness? Thank you, Mr. Phillips.

2 MR. PHILLIPS: Thank you, Chair.

3 CHAIRPERSON CHOCK: Commissioners, what is  
4 your pleasure on this matter?

5 MR. YEE: I'm sorry. Chair, are the  
6 Parties going to be allowed argument on the motion?

7 CHAIRPERSON CHOCK: My apologies. OP, any  
8 argument you want to make in terms of this?

9 MR. YEE: I will try to be very brief. The  
10 Office of Planning's not opposed to the motion. We  
11 only want to emphasize two issues.

12 One is that this is not an extension of a  
13 public benefit or mitigation. That was important for  
14 the Office of Planning's review of this. We're not  
15 looking at a highway improvement. We're not looking  
16 at the provision of a park. We're not even looking at  
17 the provision of affordable housing.

18 This is simply the extension of time in  
19 which they can come and ask you for incremental  
20 approval of a second phase. And at that time, and  
21 this the second issue that was important to the Office  
22 of Planning, at that time there will be analysis of  
23 the impacts and possible mitigation from the Project.

24 That's important because there admittedly  
25 has been a significant amount of time that's passed

1 since this was originally approved. And even though  
2 the Project's character might not change,  
3 circumstances may change, times change.

4 Information is sometimes available that was  
5 not previously available. Traffic may be different.  
6 The surrounding traffic may be different. The  
7 capacity of schools may be different. There may be a  
8 variety of issues that may change over this 40 year  
9 period.

10 So it was important to us that the  
11 developer acknowledge, as they did, that at the time  
12 they come to you that analysis will be done.

13 We certainly don't want to push them on  
14 what mitigation, if any, should be done. That will  
15 wait for 10 years from now.

16 But based upon those two issues that this  
17 is not a mitigation or a public benefit, and because  
18 the analysis of the impacts and the mitigation will be  
19 reviewed and the imposition of additional conditions  
20 are possible, the Office of Planning has no objection  
21 to this Motion for Extension. Thank you.

22 CHAIRPERSON CHOCK: County?

23 MR. BRILHANTE: Just a few brief comments,  
24 and I will keep it brief. Since the initial  
25 application was filed the only real significant change

1 that has really occurred in the community since that  
2 period of time, has been the adoption of the Kona CDP.  
3 Those requirements, you know, to this point have been  
4 satisfied.

5 If additional -- application for additional  
6 rezoning comes to the county as relates to Increment  
7 2, those requirements, again, will have to be  
8 satisfied.

9 That's, you know, inherent within the  
10 county's power for the rezoning application. I think  
11 there's been some allusion to the requirement for  
12 additional traffic study or TIAR or something to that  
13 effect. And that's something that the county will  
14 look at as well. If there's any significant revisions  
15 to the Kona CDP, those requirements would have to be  
16 met at that time as well too.

17 So there's significant and substantial  
18 safeguards in place as it relates to the Applicant's  
19 request for extension of time as relates to  
20 Increment 2.

21 CHAIRPERSON CHOCK: What are some of those  
22 basic CDP requirements that the Petitioner would have  
23 to satisfy in terms of Increment 2?

24 MS. LEITHEAD-TODD: Some of the biggest  
25 issues in this area would be concurrency, road



1 infrastructure, the design, walkability, pedestrian  
2 access, bike paths. Because what we're trying to do  
3 with the CDP is design connectivity. And we are also  
4 trying to do mixed use.

5           So we're actually trying to mix both  
6 affordable single-family, multi-family and commercial  
7 uses in an area. So we want to tie the community  
8 together. We would want the ability for people to  
9 bike or walk from one community to the next. So it's  
10 that type of connectivity.

11           And that's the biggest thing that's  
12 probably changed since 1983 is the adoption of the  
13 Kona CDP and the vision that it lays out for Kona.

14           CHAIRPERSON CHOCK: Thank you. County, any  
15 other further comments?

16           MR. BRILHANTE: No. Thank you, Chair.

17           CHAIRPERSON CHOCK: Thank you.

18 Commissioners, what is your pleasure on this matter?

19           COMMISSIONER INOUE: Mr. Chair, can I ask  
20 a few questions?

21           CHAIRPERSON CHOCK: Sure, Commissioner  
22 Inouye.

23           COMMISSIONER INOUE: Before we make a  
24 decision. Mr. Yee, are you saying that we shouldn't  
25 be looking at substantial compliance with Increment 1

1 conditions? Because I presume the Petitioner is going  
2 to be coming in with their annual reports. And I'm a  
3 little bit concerned that we can ask for an Order to  
4 Show Cause if they're substantially deviating from the  
5 plan.

6 MR. YEE: I think you -- well, there's a  
7 theoretical and there's a real. Theoretically I think  
8 you could. You could analyze substantial compliance.  
9 I think in this particular case, one, the Office of  
10 Planning is not aware of any concerns. For example,  
11 the change in unit from 813 to 770. The movement of  
12 40 something units, especially when it's reduction in  
13 density to account for additional mitigation, does not  
14 seem to be an issue to the Office of Planning as being  
15 a substantial compliance question.

16 The second issue that I would raise is that  
17 there is a separate process for substantial compliance  
18 analysis. Or put differently what we're looking at  
19 today is not Increment 1. We're not trying -- nothing  
20 that we're talking about today changes the conditions  
21 for Increment 1 which has already been reclassified.

22 It's Urban now. We're not asking to change  
23 any conditions. Even 10 years from now we're not  
24 asking to change any conditions on Increment 1, only  
25 Increment 2.

1           So based on that we did not, frankly, look  
2 or think we needed to look very closely at the issues  
3 on Increment 1 substantial compliance.

4           I will say that one caveat in the general  
5 sense is that if a, if it looks like they're not --  
6 they're going to fail to meet Increment 1  
7 requirements, then we would look more closely because  
8 it impacts whether you're likely to come in 10 years  
9 from now having substantially completed Increment 1.

10          So if there was some major problems  
11 certainly that could be. That does not seem to be the  
12 case here. We're not aware of any substantial issues  
13 for Increment 1. I hope I've answered your question.

14          COMMISSIONER INOUE: You have. Thank you  
15 very much. I appreciate it.

16          CHAIRPERSON CHOCK: Any other questions,  
17 Commissioners? What is your pleasure on this matter?

18          COMMISSIONER MATSUMURA: Mr. Chair?

19          CHAIRPERSON CHOCK: Commissioner Matsumura.

20          COMMISSIONER MATSUMURA: I make a motion to  
21 grant extension of time to KHA to apply for  
22 redistricting of Phase 2 -- I think it's Increment  
23 2 -- till January 2023.

24          COMMISSIONER BIGA: Second.

25          CHAIRPERSON CHOCK: It's been moved and

1 seconded. Any discussion? Would the Executive  
2 Officer please call for the vote.

3 MR. ORODENKER: Mr. Chair, the motion is to  
4 grant Petitioner's request for extension of time to  
5 apply for redistricting of Phase 2 till January 2023.  
6 Commissioner Matsumura?

7 COMMISSIONER MATSUMURA: Yes.

8 MR. ORODENKER: Commissioner Contrades?

9 COMMISSIONER CONTRADES: Yes.

10 MR. ORODENKER: Commissioner Biga?

11 COMMISSIONER BIGA: Yes.

12 MR. ORODENKER: Commissioner Heller?

13 COMMISSIONER HELLER: Yes.

14 MR. ORODENKER: Commissioner Inouye?

15 COMMISSIONER INOUE: Yes.

16 MR. ORODENKER: Chair Chock?

17 CHAIRPERSON CHOCK: Yes.

18 MR. ORODENKER: Mr. Chair, the motion  
19 passes by six votes.

20 xx

21 xx

22 xx

23 xx

24 xx

25 xx

1                   CHAIRPERSON CHOCK: Okay. Thank you,  
2 Parties. (11:00). The next item on our agenda is the  
3 LUC Administrative Rules Revisions. And for that  
4 portion of the agenda I want to turn it over to Dan,  
5 our executive officer. Dan.

6                   MR. ORODENKER: Thank you, Mr. Chair.  
7 Commissioners, you should have in front of you a  
8 draft, a first draft of Proposed Rule Amendments.  
9 From a procedural standpoint this is the first time  
10 that these rules have been distributed to the  
11 Commissioners.

12                   What we are asking the Commission to do at  
13 this meeting is to review what's before them and to  
14 provide staff any comments and suggested changes.

15                   This is not an approval of the proposed  
16 amendments at this time. It's just to begin a  
17 discussion with the Commission with regard to what we  
18 would eventually bring out to the community and to  
19 other agencies.

20                   After the Commission has given us input at  
21 this meeting, we will then incorporate those comments  
22 and schedule a subsequent meeting to obtain the  
23 Commission's approval on a draft to circulate to other  
24 agencies such as the Department of Agriculture, the  
25 Office of Hawaiian Affairs and the Office of Planning.

1           Once we've done that, if there are  
2 substantive changes proposed by those organizations,  
3 we will come back to the Commission for a second  
4 approval. If there are no substantive changes we will  
5 submit the rules to the Governor's office, both to the  
6 Attorney General and the Governor's office for  
7 approval.

8           The Governor's office will then approve the  
9 rules for publication and we will then begin the  
10 process of scheduling hearings on all islands to  
11 obtain public input.

12           Once you have completed the public process  
13 the rules will either be amended and resubmitted and a  
14 new process begun or a Commission meeting will be  
15 scheduled for approval.

16           That kind of lays out the process that  
17 we're beginning on. This is a long process. It will  
18 take a significant amount of time. And this is just  
19 the first step.

20           At this point I'd like to turn it over to  
21 the Commissioners with any questions. We have color  
22 coded copies in front of you, hard copies if you want  
23 to refer to those, make comments on the rules. We  
24 also have them up on the website.

25           CHAIRPERSON CHOCK: Commissioner Heller.

1           COMMISSIONER HELLER: Just a question  
2 regarding the color coded copies. Can you clarify the  
3 significance of the different colors?

4           MR. ORODENKER: Yes. In an effort to try  
5 and assist the Commissioners' analysis and  
6 understanding. The changes that are in blue are  
7 generally modernization changes. Those are changes  
8 that we're making to update the rules to conform to  
9 either modern parlance or modern technology. Often  
10 they're repeated verbatim in various sections. And  
11 it's noted where that occurs.

12           A good example of that would be our change  
13 to the requirements with regard to filing from 15 hard  
14 copies to one original, one hard copy and electronic  
15 copies.

16           The language that's color coded in red is  
17 clarification language. Amendments of this type are  
18 designed to deal with issues that have resulted or  
19 been noted as a result of various cases or Petitions.  
20 Someplace where an issue has come up where the rules  
21 appear to be unclear as to what was intended or what  
22 their requirements were.

23           And then there are sections that are light  
24 purple. These are new sections. These additions to  
25 the rules are mainly in the area of the Important

1 Agricultural Land section, which is an entirely new  
2 section and are based on the perceived intent of the  
3 IAL statutory sections.

4 We haven't had rules on IAL in the past.  
5 And this intended to meet the requirements of the  
6 various IAL sections and to deal with petitions by  
7 landowners or county submittals.

8 COMMISSIONER HELLER: Thank you for that  
9 clarification.

10 CHAIRPERSON CHOCK: I had a question the  
11 last time we had a discussion on the rules regarding  
12 the required number of votes to have the order of the  
13 form approved and adopted.

14 I believe, in the Koa Ridge decision this  
15 Commission was challenged because we only had a simple  
16 majority voted in favor at the approval -- for the  
17 approval of the form. I believe the Commission  
18 prevailed on that in court as five, but I believe our  
19 rules are somewhat silent or ambiguous on whether or  
20 not we required a simple majority or a super majority.  
21 Is that clarification reflected anywhere in terms of  
22 these new changes?

23 MR. ORODENKER: Yes, it is, Mr. Chair. The  
24 precise statutory section, I think -- Sarah, do you  
25 know?



1 MS. HIRAKAMI: (off mic) I don't know it  
2 offhand, but I think we did put in language that  
3 specifically says the adoption of the final written  
4 order requires six.

5 MR. ORODENKER: We do have a section that  
6 provides that six are needed for the decision and five  
7 are only necessary for the adoption of the order.  
8 Let's see: 15-15-74. (pause)

9 MS. HIRAKAMI: Also 15-15-13 where they  
10 talk about quorum. (off mic. Inaudible)

11 THE REPORTER: Ms. Hirakami, could you talk  
12 into the microphone.

13 MS. HIRAKAMI: I'm sorry. I think 15-15-13  
14 also provides the five affirmative votes for the  
15 adoption of the order.

16 MR. ORODENKER: Yes, it does. It's  
17 15-15-13 six affirmative votes. Yeah. If it should  
18 fail through six affirmative votes. Then section C.  
19 requires five affirmative votes for adoption of the  
20 order. That's repeated in several sections throughout  
21 the rules with regard to, for instance, district  
22 boundary amendments and other proceedings, IAL  
23 proceedings as well.

24 CHAIRPERSON CHOCK: Just to be clear we're  
25 not changing the standards for district boundary

1 reclassification, but we are just clarifying the  
2 number of votes required for the approval of the form  
3 of the order?

4 MR. ORODENKER: Yes. We tried to conform  
5 as much of the rules as we could to recent case law.

6 CHAIRPERSON CHOCK: Okay. Great.

7 MS. HIRAKAMI: And as far as that case law  
8 goes in that Koa Ridge case, actually on appeal the  
9 Appellate Court refused to address the issue because  
10 it wasn't necessary. They remanded for other reasons.

11 COMMISSIONER INOUE: I thought your  
12 question was, Mr. Chair, how many votes are needed to  
13 put these rules out. No? You're asking something  
14 very specific.

15 CHAIRPERSON CHOCK: Very specific with  
16 respect to approval of the form of the order which  
17 follows the district boundary reclassification  
18 approval or denial. There's some ambiguity in our  
19 rules that was silent on that particular issue. So I  
20 think for all the Parties and the public this will be  
21 very crystal clear at this point.

22 COMMISSIONER INOUE: Okay. Maybe I'll ask  
23 a question. How many of us need to approve the rules  
24 before it goes out for public hearing? Or it's not  
25 really formal?

1 MS. HIRAKAMI: I think it would be five.

2 COMMISSIONER INOUE: It would be five.

3 Okay. And secondly how do we go about each

4 Commissioner providing comments? Do we do it in a  
5 public forum? Or do we....

6 MR. ORODENKER: That's what's intended here  
7 so that you could provide us with comments. We can  
8 also receive comments from the individual  
9 Commissioners since this is just a draft. But it's  
10 intended that any decisions with regard to changes be  
11 made at these hearings.

12 COMMISSIONER INOUE: Okay. Maybe I'll  
13 have a question since Office of Planning and County is  
14 here. One of the rules, proposed rule changes, says  
15 that you folks have only the right, an absolute right  
16 to be a party to a proceeding only the district  
17 boundary amendments. Is that your understanding?

18 MR. YEE: I think the Office of Planning  
19 will participate, I guess, in this process further  
20 down the line. So maybe the best time for us to give  
21 you our comments might be after we have had a chance  
22 to review whatever it is you've got in front of you.

23 COMMISSIONER INOUE: I'm just the new kid  
24 on the block so I don't know what you folks have been  
25 participating in. I know there are several counties.

1 I'm talking about 'county' but you're just one of 'em.

2 MR. BRILHANTE: That's our understanding as  
3 well. Once the proposed rules are presented then we  
4 are afforded the opportunity for the county to provide  
5 comments.

6 CHAIRPERSON CHOCK: I think maybe some  
7 description of the process, especially for the new  
8 Commissioners for staff, would be very helpful in  
9 terms of just briefly describing what the critical  
10 path is when we adopt the rules. That's not the end  
11 of the public input process. It goes county by  
12 county. Maybe, Dan, you can speak to some of that  
13 especially with respect to the timeline for all of  
14 that to take place.

15 MR. ORODENKER: As I said at the outset  
16 what we're really asking for, Commissioners, at this  
17 time is to approve a set of rules that we then can  
18 begin to finalize for discussion with other agencies  
19 and other organizations. We are at a very informal  
20 stage in the process. The technical process is a  
21 little bit different.

22 Once we have obtained all of the input from  
23 the various organizations, Office of Planning and the  
24 counties, we're not required to do that, by the way,  
25 but we're going to do it -- we will then come back to

1 the Commission with a final set of proposed rules that  
2 takes into account all those comments.

3 And then from there the official process  
4 starts once the rules are approved by the Commission.  
5 Then they're submitted to the Governor's office for  
6 his approval to publish them.

7 Then once they're published then we have  
8 meetings on each island to give everybody, the public  
9 the opportunity to comment on the rules and make  
10 suggested changes. Once that has occurred we will  
11 then come back to the Commission for their final  
12 approval of the rules.

13 If we make large substantive changes as a  
14 result of that input, then we have to start the  
15 process back a little bit more, go back to the  
16 Governor's office and go out again.

17 But once we have gathered all the  
18 information and come up with a final draft and the  
19 Commission has approved them, then they become,  
20 they're adopted. At this stage, once again, we're  
21 looking for the Commission's comments on what staff  
22 has prepared as a first draft of the rules.

23 We haven't taken them out to the community.  
24 We haven't talked with OP about them in any depth. We  
25 have had conversations with Jesse, the director of the

1 Office of Planning, but we haven't actually shown him  
2 an entire document. We wanted the Commissioners to be  
3 comfortable with what we have before we took it out to  
4 anybody else.

5 CHAIRPERSON CHOCK: Commissioners, any  
6 other questions for staff? Thank you, Dan.

7 MR. ORODENKER: I think at this point staff  
8 would like direction on whether or not we should  
9 proceed to finalize these and begin discussions with  
10 the other agencies. Of course, the Commissioners will  
11 have the opportunity to comment on at any point in the  
12 in process. But at this point we'd like to know  
13 whether our first draft is sufficient.

14 CHAIRPERSON CHOCK: Any comments,  
15 Commissioners?

16 COMMISSIONER INOUE: Well, I guess I'm  
17 kinda I mean I just started to read through several  
18 comments but, you know, they're real nitpicky comments  
19 type thing. that's what I meant I don't want to...

20 MR. ORODENKER: If there are small changes  
21 that you would suggest such as wordsmithing or  
22 punctuation or anything like that would be good. We  
23 don't need to have those go to public hearing  
24 published. If there are substantive changes, there  
25 are issues with the substance of what we're trying to

1 accomplish with the rules.

2 CHAIRPERSON CHOCK: Maybe what the Chair  
3 would like to suggest is if we have time on our  
4 November 1st and 2nd agenda to formally take up the  
5 adoption of the new rules to give everyone an  
6 opportunity to kind of further, be comfortable and be  
7 thorough and ask questions, deliberate on these in  
8 public, then give the direction to the staff that you  
9 need to start the process. Any feedback, Vice Chair  
10 or any other members?

11 COMMISSIONER HELLER: I think it would be a  
12 good idea to give the Members of the Commission,  
13 including myself, frankly, a little more time to read  
14 and digest what we have here so that we can respond to  
15 it more thoroughly.

16 MR. ORODENKER: That's fair.

17 CHAIRPERSON CHOCK: Is everyone comfortable  
18 with November 1st and 2nd or do we need a little more  
19 time?

20 COMMISSIONER BIGA: I agree with what was  
21 said about giving us more time to digest it, Chair.

22 CHAIRPERSON CHOCK: Okay. The Chair will  
23 maybe take it up with staff and then come back with  
24 the Commission on a new date when we go for adoption.

25 COMMISSIONER INOUE: I think that's a good

1 suggestion. Thank you.

2 COMMISSIONER CONTRADES: Mr. Chair.

3 CHAIRPERSON CHOCK: Yes, Deacon.

4 COMMISSIONER CONTRADES: I have a question.  
5 Does this mean I can throw away all the other reams on  
6 this since I've been keeping them all this time?  
7 (Laughter).

8 MR. ORODENKER: Only if you want to refer  
9 to them as reference you need to keep them. But  
10 otherwise this is what we're goin' with.

11 COMMISSIONER CONTRADES: And I must comment  
12 this is much easier to follow than the old ones that  
13 we had. Thank you very much for you guys' hard work.

14 MR. ORODENKER: Thank you.

15 CHAIRPERSON CHOCK: I believe the last item  
16 on our agenda is an executive session item. Do we  
17 have a motion to go into executive session?

18 COMMISSIONER CONTRADES: So moved.

19 COMMISSIONER MATSUMURA: Second.

20 CHAIRPERSON CHOCK: Moved and seconded.  
21 Any opposed? We're going to go into executive  
22 session. Have a good weekend, everybody. Drive  
23 safely.

24

25 (The proceedings were adjourned at 11:40 a.m.)



--oo00oo--

C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the  
State of Hawai'i, do hereby certify;

That I was acting as court reporter in the  
foregoing LUC matter on the 19th day of October 2012;

That the proceedings were taken down in  
computerized machine shorthand by me and were  
thereafter reduced to print by me;

That the foregoing represents, to the best  
of my ability, a true and correct transcript of the  
proceedings had in the foregoing matter.

DATED: This\_\_\_\_\_ day of\_\_\_\_\_2012

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