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LAND USE COMMISSION MEETING

STATE OF HAWAII

Held on October 16, 2015

Commencing at 1:00 p.m.

Hawaii Convention Center

Room 315

1801 Kalakaua Avenue

Honolulu, Hawaii 96813

REPORTED BY: Jean Marie McManus, CSR #156

1 APPEARANCES:
2 EDMUND ACZON, CHAIRPERSON
3 COMMISSIONERS:
4 ARNOLD WONG, VICE CHAIR
JONATHAN SCHEUER, VICE CHAIR
5 NANCY CABRAL
KENT HIRANAGA
6 CHAD McDONALD
AARON MAHI
7 LINDA ESTES
8
9 DIANE ERICKSON, ESQ.
Deputy District Attorney
10
11 STAFF:
12 DANIEL ORODENKER, Executive Officer
BERT SARUWATARI, Planner
13 RILEY K. HAKODA, Planner/Chief Clerk
14 BRYAN YEE, ESQ.
Deputy Attorney General
15 RODNEY FUNAKOSHI, Office of Planning
16 For the State of Hawaii
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22 Makawao, Hawaii 96768
23 For Ohana Kalaupapa
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1 CHAIRPERSON ACZON: Good morning.

2 This is the October 16th, 2015 Land Use
3 Commission Meeting.

4 The first order of business is adoption of
5 the September 30th, 2015 minutes. Are there any
6 corrections or comments on them? If not, is there a
7 motion to adopt minutes?

8 COMMISSIONER ESTES: So moved.

9 COMMISSIONER MAHI: Second.

10 CHAIRPERSON ACZON: Motion made by
11 Commissioner Estes and seconded by Commissioner Mahi
12 to adopt the minutes.

13 All in favor say "aye", any opposed?

14 COMMISSIONER SCHEUER: Abstain.

15 CHAIRPERSON ACZON: The minutes are adopted
16 with Commissioner Scheuer abstaining.

17 The next agenda item is the tentative
18 meeting schedule. Mr. Orodener.

19 EXECUTIVE OFFICER: On October 22nd to 23rd
20 meeting at Honolulu Airport Conference Room 3 to
21 address Special Permit Application and Status Report
22 for landfill. We will also be addressing the Motion
23 for Order to Show Cause in the Dudley OSC Motion.

24 November 4, 2015 West Hawaii Civic Center
25 Building G to complete McClean Honokohau Properties.

1 November 18 and 19 Maui Arts and Cultural
2 Center to consider accepting the FEIS for Olowalu
3 LLC.

4 December 9th and 10th at the Maui DOT
5 meeting room for Maalaea Plantation site visit and
6 Commissioner training.

7 January 11th, 2016 tentatively put aside
8 for Maalaea Plantation dba on Maui. And also
9 February.

10 And that completes the schedule.

11 CHAIRMAN ACZON: Commissioners, any
12 questions? I should mention that the October 22 and
13 23rd, and November 4th, both meetings will require
14 working lunches to assure the meetings fit within the
15 allotted time. LUC will provide meals for the
16 Commissioners.

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1 BEFORE THE LAND USE COMMISSION
2 OF THE STATE OF HAWAII

3 In the Matter of the Petition)DR15-53
4 of KA 'OHANA KALAUPAPA, for)
5 Declaratory Order under)
6 SS:15-15-98 et seq, of the Land)
7 Use Commission Rules and Hawaii)
8 Revised Statutes S91-8.)
9 Affected Landowner and)
10 Property: Hawai'i Department of)
11 Land and Natural Resources,)
12 Kalaupapa National Historical)
13 Park Kalawao, Molokai, Hawaii)
14 TMK No: (2)6-1-001:002 (portion)
15 _____)

11 HEARING AND ACTION

12 Taken on October 16, 2015, commencing at 1:00 p.m.,
13 at Hawai'i Convention Center, Room 315, 1801 Kalakaua
14 Avenue, Honolulu, Hawaii 96813.

15
16 BEFORE: Jean Marie McManus, CSR #156
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1 CHAIRMAN ACZON: Next agenda item is a
2 hearing and action meeting to consider DR15-53, Ka
3 'Ohana O Kalaupapa's Petition for Declaratory Order
4 under 15-15-98 of the Land Use Commission Rules and
5 Hawaii Revised Statutes
6 15-15-98.

7 Will the parties please identify
8 themselves.

9 MR. PIERCE: Good afternoon, Commissioners.
10 My name is Tom Pierce here on behalf of Ka 'Ohana O
11 Kalaupapa. I have with me a few representatives
12 which I'll introduce in a few minutes.

13 CHAIRPERSON ACZON: Thank you.

14 MR. YEE: Deputy Attorney General Bryan Yee
15 on behalf of Office of Planning. With me is Rodney
16 Funakoshi from Office of Planning.

17 CHAIRPERSON ACZON: Anybody from the
18 county?

19 MR. YEE: In this case, the county
20 Department of Health is -- I had a conversation with
21 the department for Department of Health and they
22 informed me they did not intend to attend.

23 CHAIRPERSON ACZON: Thank you. Let me
24 state the record.

25 On September 9th, 2015, the Commission

1 received Ka 'Ohana O Kalaupapa's Petition for
2 Declaratory Order, Exhibits 1 through 17 and \$1,000
3 application fee.

4 On September 16, 2015, the Commission
5 mailed a filing notice to the parties and others.

6 On September 28, 2015, the Commission
7 received OP's Response to Petition for Declaratory
8 Order and Exhibits A-B.

9 On September 29, 2015, the Commission
10 received public testimony from Clarence Kahilihiwa.

11 On October 8, 2015, the Commission mailed
12 the LUC October 16, 2015 meeting agenda notice to the
13 Petitioner and the Maui, Oahu and Statewide mailing
14 lists.

15 Our procedure for DR15-53 will be as
16 follows:

17 First, I will call for those individuals
18 deciding to provide public testimony to identify
19 themselves. All such individuals will be called in
20 turn to our witness box where they will be sworn in
21 prior to their testimony.

22 The Kalawao County Representative, and the
23 State Office of Planning will be given the
24 opportunity to provide public testimony at the close
25 of Petitioner's presentation.

1 I will then give opportunity for the
2 Petitioner to comment to the Commission's Policy
3 governing reimbursement of hearing expenses and
4 Declaratory Order filing fees.

5 After completion of the public testimony, I
6 will give opportunity for the Petitioner and Public
7 Testifiers to admit their exhibits for the record.
8 After admission of exhibits to the record, the
9 Petitioner will be given the opportunity to put on
10 its case in support of its petition.

11 After the completion of Petitioner's case,
12 we will receive any public witness comments that the
13 County, or the Office of Planning may want to offer.

14 Thereafter, the Commission will conduct its
15 deliberations. The Chair would also note that from
16 time to time, I will be calling for short breaks.

17 Are there any questions on our procedure
18 for today?

19 MR. PIERCE: None here, Mr. Chair. Thank
20 you.

21 CHAIRPERSON ACZON: Thank you.

22 The Petitioner has requested a waiver from
23 the reimbursement of LUC hearing expenses and the
24 Declaratory Order filing fees.

25 Could you state your client's position with

1 respect to this request?

2 MR. PIERCE: Thank you, Mr. Chair.

3 At this time, if you would permit me, I do
4 want to introduce who is with me as representative
5 for the Ka 'Ohana O Kalaupapa, the Petitioner.

6 To my left right here, Clarence Kahilihiwa.
7 He's the president of our non-profit. And then also
8 I have Valerie Monson who is the coordinator for the
9 non-profit. Valerie is very involved in the
10 non-profit.

11 To her left is DeGray Vanderbilt. He's
12 been involved with many of the design issues with
13 respect to this.

14 Mr. Chair, with your permission today, what
15 would be helpful, and I want to expedite this, I will
16 give as requested what the purpose of our petition
17 is, if we can do it in the order that you request,
18 but I know that a couple representatives would like
19 to just say a few short words to the Commission if
20 that's okay as part of our presentation.

21 CHAIRPERSON ACZON: Okay.

22 MR. PIERCE: So let me start, before Mr.
23 Kahilihiwa begins, let me just begin with an answer
24 to your question, Mr. Chair.

25 So to answer your question, the reason

1 we're here today is that for a number of years the
2 'Ohana O Kalaupapa has been involved in designing a
3 memorial to be at Kalaupapa, and therefore, all of
4 the people who have been there over the years as
5 Hansen disease patients.

6 And this is something that has gone through
7 many, many layers of regulatory review before today.

8 It was reviewed -- as you know, Kalaupapa
9 has a National Park designation, as well as National
10 Park has certain authority over the site as well as
11 the state.

12 CHAIRPERSON ACZON: Could we get back to
13 the -- I just want to take care of expenses in
14 order --

15 MR. PIERCE: I apologize, maybe I
16 misunderstood your motion you were putting first
17 with. So with respect, you're asking about our
18 request for waiver of fees?

19 CHAIRPERSON ACZON: Correct.

20 MR. PIERCE: On that one, Mr. Chair, we're
21 asking that because this is a small non-profit with
22 limited budget that has expended a large amount of
23 money on environmental review over the last ten
24 years, anyplace where they have the ability to reduce
25 the amount of expenditures that they have as

1 non-profit is very, very important to them.

2 It's, as you all know in the non-profit
3 world, very difficult to do fundraising. They would
4 like for that money wherever possible to go to the
5 design and implementation of the Kalaupapa Memorial.

6 CHAIRPERSON ACZON: The Chair will now
7 entertain a motion to waive the reimbursement of LUC
8 hearing expenses and the Declaratory Order filing
9 fees.

10 COMMISSIONER WONG: I make a motion.

11 CHAIRPERSON ACZON: Any second?

12 COMMISSIONER MAHI: I'll second.

13 CHAIRPERSON ACZON: Moved and seconded by
14 Commissioner Wong, and seconded by Commissioner Mahi.
15 Is there any discussion?

16 COMMISSIONER HIRANAGA: Discussion, Chair.
17 Just wondering, since it was never presented to me
18 when I was on the board, is there guidance or
19 precedence as to what determines appropriate request
20 for waiver of fees?

21 COMMISSIONER McDONALD: Well, Commissioner,
22 I think it's through the discretion of the
23 Commission.

24 COMMISSIONER HIRANAGA: Just wondering if
25 there is precedence for guidelines in the past.

1 COMMISSIONER McDONALD: None that I know
2 of.

3 COMMISSIONER HIRANAGA: If the Director may
4 comment or the Attorney General.

5 EXECUTIVE OFFICER: Actually if there is
6 more discussion needed, I suggest that we go into
7 executive session to discuss it more.

8 COMMISSIONER HIRANAGA: I'm not sure how
9 often the executive session would be coming up like
10 some kind of guidance.

11 EXECUTIVE OFFICER: In my recollection of
12 waiver of filing fees -- this will be the first time
13 for a Petitioner in three years that I've been
14 Executive Officer. It is at the discretion of the
15 Commission.

16 COMMISSIONER McDONALD: This is the first
17 time for non-profit before me requesting waiver.

18 MR. PIERCE: Mr. Chair, may I have one more
19 thing that I think I should add in here, which is
20 that unlike a lot of times Petitioner, where they are
21 initiating the action, we are actually responding to
22 a request.

23 I should probably explain that to the
24 Commission, because in my mind that would be one of
25 the things important for the Commission to consider.

1 What happened in this instance is that the
2 non-profit is in the process of going through the
3 Chapter 343 Environmental Review process. And during
4 that process, they send out request, agency
5 consultation.

6 So what happened is what I think, I hope is
7 fairly a minor issue, but LUC looked at the issue of
8 whether or not the memorial is a permitted use within
9 state ag lands, and that's how this issue came up.

10 So we received a letter from the Executive
11 Director, Mr. Orodener, asking us if we could just
12 address that issue. And I think if I understand it
13 correctly, this was done in abundance of caution to
14 make sure that this issue was fully vetted during the
15 environmental process. I would guess from that
16 perspective we're not here for any type of
17 affirmative relief, here mostly to answer this
18 question that came down from LUC.

19 CHAIRPERSON ACZON: Any further discussion?

20 COMMISSIONER WONG: In my past experience
21 working with non-profits, a lot of them were not big
22 non-profit but they went from A to D hoping to
23 survive. And this petition before us seems like this
24 is a non-profit that is trying to do some good, so I
25 just want to say that we do have some issues.

1 Maybe we should go into executive session
2 to talk about it, ask legal counsel.

3 COMMISSIONER HIRANAGA: I know it's going
4 to be a pain making everyone leave the room, but I
5 guess -- I've been told that non-profit coming before
6 the Commission is very rare, so I guess I don't think
7 it's necessary.

8 MR. PIERCE: Mr. Chair, for the record, I
9 want to add one more thing is that we did -- for
10 purposes of the record, my law firm tendered a
11 payment for the petition today, and I think that's in
12 the hands --

13 CHAIRPERSON ACZON: Yeah, I understand.
14 Any further discussion?

15 There is a motion and seconded. Mr.
16 Orodenker, poll the Commission.

17 EXECUTIVE OFFICER: The motion is to waive
18 the fees for this Declaratory Ruling.

19 Commissioner Wong?

20 COMMISSIONER WONG: Aye.

21 EXECUTIVE OFFICER: Commissioner Mahi?

22 COMMISSIONER MAHI: Aye.

23 EXECUTIVE OFFICER: Commissioner Scheuer?

24 COMMISSIONER SCHEUER: Aye.

25 EXECUTIVE OFFICER: Commissioner McDonald?

1 COMMISSIONER McDONALD: Aye.

2 EXECUTIVE OFFICER: Commissioner Hiranaga?

3 COMMISSIONER HIRANAGA: Aye.

4 EXECUTIVE OFFICER: Commissioner Cabral?

5 COMMISSIONER CABRAL: Aye.

6 EXECUTIVE OFFICER: Commissioner Estes?

7 COMMISSIONER ESTES: Aye.

8 EXECUTIVE OFFICER: Chair Aczon?

9 CHAIRPERSON ACZON: Aye.

10 EXECUTIVE OFFICER: Mr. Chair, the motion
11 is carried.

12 CHAIRPERSON ACZON: Are there any
13 individuals desiring to provide public testimony on
14 this docket?

15 EXECUTIVE OFFICER: I believe we have a
16 person on the witness stand. Please identify.

17 CHAIRPERSON ACZON: May I ask you, do you
18 affirm that the testimony that you're about to give
19 is truthful?

20 THE WITNESS: Can you say that again?

21 CHAIRPERSON ACZON: Do you affirm that the
22 testimony that you're about to give is truthful?

23 THE WITNESS: Truthful, yes.

24

25 -o0o-

1 CLARENCE KAHILIHIIWA

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

4 CHAIRPERSON ACZON: Please state your name
5 and address for the record before you give testimony.

6 DIRECT EXAMINATION

7 THE WITNESS: You want me to read?

8 My name is Clarence Kahilihiwa.

9 First of all, Aloha, Commissioners. I'm
10 from Kalaupana, my original home, but then I'm right
11 now, I'm Kalaupapa resident since 1950.

12 You have my testimony which was posted on
13 the Land Use Commission website on September 29th.

14 However, I respectfully request you to
15 support the 'Ohana's recommendation and the
16 recommendation of the Office of Planning to declare
17 our Kalaupapa Memorial a permitted use on state
18 agricultural land because its use results in an
19 improvement to the historic site where the Memorial
20 will be located.

21 I would also like to thank the Commission
22 staff for working closely with our attorney Tom
23 Pierce and members of our 'Ohana during this process.
24 Their assistance and yours is appreciated.

25 CHAIRPERSON ACZON: Thank you. Any

1 questions, Mr. Pierce?

2 MR. PIERCE: No questions at this time.

3 Thank you, Mr. Chair.

4 CHAIRPERSON ACZON: Any other testimony?

5 EXECUTIVE OFFICER: Mr. Chair, we have
6 DeGray Vanderbilt.

7 CHAIRPERSON ACZON: May I swear you in.
8 You affirm that the testimony that you're about to
9 give is truthful?

10 THE WITNESS: I do.

11 DEGRAY VANDERBILT

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

14 CHAIRPERSON ACZON: Please state your name
15 and address and proceed with your testimony.

16 DIRECT EXAMINATION

17 THE WITNESS: My name is DeGray Vanderbilt.
18 My address is Box 1348, Kaunakakai, Island of
19 Molokai.

20 I passed out a copy of my testimony today,
21 and I'll try to get through it real quickly.

22 Good afternoon, Chair Aczon and members of
23 the Commission. My name is DeGray Vanderbilt,
24 resident of Molokai for 35 years. For over a quarter
25 of a century I've had the privilege of representing

1 Santa Clause at the annual Kalaupapa Lions Club
2 Christmas party.

3 I am a former Chairman of the Molokai
4 Planning Commission and in recent years have been
5 assisting the 'Ohana with federal and state
6 compliance issues.

7 I would like to thank the Commission and
8 Office of Planning staff members for all of their
9 assistance in getting our request for declaratory
10 rule before you on a timely basis and for helping us
11 to understand the dynamics of the process.

12 My testimony today is in support of the
13 'Ohana's request for a permitted use and that the
14 Memorial will result in improvements to the historic
15 site.

16 I just wanted to take a moment to clarify a
17 couple of points. In the Office of Planning comment
18 letter, they mention that the Department of Health
19 and DLNR support the project and had no objections to
20 the 'Ohana's request.

21 The Office of Planning also noted that the
22 State Historic Preservation Division of DLNR stated
23 that it was premature to reach any conclusions until
24 a concrete design proposal was submitted.

25 I want to clarify the statement that it was

1 premature to reach any conclusions until a concrete
2 design proposal was submitted.

3 I spoke with State Historic Preservation a
4 few weeks ago, and they said they did not have time
5 to prepare a formal response, so they sent in a copy
6 of their recent response to the 'Ohana's early
7 consultation letter associated with Chapter 343
8 process.

9 I've enclosed Exhibit A, an earlier letter
10 from SHPD to National Park Service that shows the
11 State Historic Preservation indeed has reached
12 certain conclusions without a Memorial design,
13 including the fact that NPS is working in partnership
14 with the 'Ohana to establish the memorial.

15 SHPD also noted in its letter that
16 guidelines for design and location of the Memorial
17 have been agreed upon between the 'Ohana and the NPS.

18 And noted that NPS had indicated that
19 through proper mitigation and design, the Kalaupapa
20 Memorial could help to enhance the landscape and
21 enrich the history of Kalaupapa.

22 The State Historic Preservation concluded
23 that it concurs with this assessment and believes
24 that if the agreed to design guidelines between NPS
25 and the 'Ohana are followed, there is no adverse

1 effect to the Kalaupapa National Historical Park or
2 to individual historic properties within the
3 district.

4 In its petition, the 'Ohana listed OHA as a
5 potential party because they have an interest in the
6 property since it's ceded lands. I don't know, they
7 have not provided any testimony. It was a short time
8 frame for everybody to respond, and we appreciate the
9 staff getting this before you, but I wanted to
10 include a copy of a letter from OHA to Kalaupapa
11 National Historic Park Advisory Commission, Exhibit
12 B, which indicates OHA's strong support for the
13 Memorial project for the 'Ohana management of the
14 Memorial Facility over the long haul as noted in
15 paragraph 2 on page two of their letter.

16 I'm not sure if NPS will be in attendance
17 today, although I did see a representative here. But
18 I wanted to include a few excerpts from the Federal
19 Environmental Assessment document they prepared,
20 which acknowledged several ways the Memorial as a use
21 on the historic site will result in improvements to
22 the site.

23 Thank you for your consideration.

24 CHAIRPERSON ACZON: Any questions for the
25 testifier?

1 MR. PIERCE: If I may add, I would like to
2 ask a couple of questioning questions.

3 CHAIRMAN ACZON: Go ahead.

4 CROSS-EXAMINATION

5 BY MR. PIERCE:

6 Q Mr. Vanderbilt, because you're in a great
7 position to do so, and you're already up here, could
8 you first just describe generally what is being
9 proposed by the 'Ohana for the Memorial? Just a
10 general description of -- what -- where it would be
11 on -- just give us a little bit of description of
12 where this will be on Kalaupapa and how it fits in
13 with what is already there.

14 A If you look on Exhibit 12 of the petition,
15 I don't know if you have it, but it has an aerial
16 photo of where the Memorial will be. And the 'Ohana
17 was -- that federal legislation passed authorizing
18 the 'Ohana to build the Memorial, and it has to list
19 the 8000 names of those who were sent to Kalaupapa.

20 The Memorial is on a six-acre site that is
21 being leased from the Department of Land and Natural
22 Resources across Damien Road from Cesar Wong and St.
23 Philomena historic church, and both the diocese of
24 Honolulu and the United Church of Christ, the owners
25 of those two church properties are in strong support

1 of the Memorial there.

2 The Memorial will, in its access pathway,
3 will occupy less than ten percent of the site. It's
4 a 6-acre site. Behind you is a plug that's exactly
5 84 inches or 7 feet tall. The Memorial at maximum
6 height will be 36 inches higher than that, and it
7 will cover an area of -- approximately a circular
8 area of approximately 100-square foot diameter. So
9 that might be about 7500 to 8000 square feet. And
10 that much space is needed to get the names on the
11 memorial.

12 And so hopefully it will blend into the
13 site. And as the two church owners have said, it's
14 going to be a great addition to the site and will
15 serve as communal head stone to the 7000 people that
16 don't have marked graves at Kalaupapa.

17 CHAIRPERSON ACZON: Mr. Pierce.

18 Q (By Mr. Pierce): Mr. Vanderbilt, the other
19 question I have is: Could you describe to the
20 Commissioners how long the 'Ohana has been around and
21 how it got started?

22 A Well, I would rather have our coordinator
23 do that.

24 Q We will save that question for a moment.

25 Could you describe -- decide whether that

1 should go to coordinator -- can you briefly describe
2 to the Commissioners the steps that the 'Ohana has
3 taken to get the Memorial in place briefly so they
4 understand chronologically?

5 A In 2003 the 'Ohana -- well, in the first
6 place is made up of residents of Kalaupapa, their
7 extended family members and friends. I think nine
8 out of 11 board members are either residents of
9 Kalaupapa or extended family members.

10 In 2003 the 'Ohana was formed, but long
11 before that, the Memorial was talked about. And so
12 we had to go to Washington to seek federal
13 legislation to put the Memorial up and that took
14 approximately six years. And President Obama signed
15 the new federal legislation follow-up on the Memorial
16 Act on March 30, 2009.

17 Since then we have been working through the
18 compliance processes and other issues that are needed
19 for the fundraising, and we have secured initial
20 approval of a 65-year lease on a six-acre Memorial
21 site from the Board of Land and Natural Resources.
22 And final approval and issue of that lease is subject
23 to completion of the lease negotiation terms and the
24 state's Chapter 343 Environmental Compliance process
25 which are both going forward simultaneously at that

1 time.

2 So it's been a long road. And the 'Ohana
3 has persevered and has done a tremendous amount of
4 community outreach, which our Coordinator Valerie
5 Munson is really the one to talk about that.

6 But now we're before you, and we appreciate
7 the help of this Commission staff to get this before
8 you, and it will help us move forward if we can get a
9 favorable ruling today.

10 Q Mr. Chair, just another couple questions.

11 Mr. Vanderbilt, could you describe in your
12 own words what you consider to be the historic
13 importance of the Memorial -- I think you've already
14 done some of -- it would be helpful just to focus on
15 that one issue.

16 A Well, the main purpose is, as Bishop Larry
17 Stoeffer (phonetic) of the Honolulu Catholic diocese,
18 who had family at Kalaupapa said, this is such an
19 important part of remembering history of Kalaupapa
20 because it will bring the people back into that
21 history, especially the 7000 individuals who no
22 longer have marked graves.

23 As he said, it will serve as communal head
24 stone, and that in itself is very important, and to
25 help carry on the legacy of these people that make

1 such a sacrifice for society. And it's something
2 their family statewide are looking forward to seeing
3 complete in the near future.

4 MR. PIERCE: Thank you, Mr. Chair, no
5 further questions.

6 CHAIRPERSON ACZON: Commissioners, any
7 questions?

8 MR. YEE: Would we be allowed to ask a few
9 questions?

10 CHAIRMAN ACZON: Go ahead.

11 CROSS-EXAMINATION

12 BY MR. YEE:

13 Q Mr. Vanderbilt, I understand that the
14 Memorial may involve landscaping and other accessory
15 items an associated with that.

16 My question deals with the structure, sort
17 of vertical structure of the monument. We understand
18 from the State Historic Preservation Division that
19 that vertical structure is not intended to be beyond
20 ten feet, correct?

21 A Correct.

22 Q The footprint of that vertical structure I
23 understand may be surrounding landscaping, et cetera,
24 but the footprint of the vertical structure would be
25 within the footprint of the old Baldwin Boy's Home;

1 is that correct?

2 A Yes.

3 Q Do you have an estimate of how long that
4 footprint is?

5 A It would be within the area approximate of
6 the circular area about 100 feet in diameter maybe
7 more, maybe less, plus the pathway.

8 Q Then additional pathways, I understand
9 that. I just wanted to get a better idea of that
10 structure.

11 A There will be a lot of open area.

12 Q That's right. Thank you, no further
13 questions.

14 CHAIRPERSON ACZON: Thank you, Mr.
15 Vanderbilt.

16 Mr. Pierce, please describe the exhibits
17 you wish to have admitted into the record.

18 MR. PIERCE: We would like to have all the
19 exhibits attached to our petition. I can enumerate
20 those. I believe its Exhibits 1 through 17.

21 CHAIRPERSON ACZON: Any objections from the
22 Commissioners? Hearing none, Petitioners Exhibits
23 Nos. 1 through 17 are admitted to the record.

24 (Petitioners' Exhibits 1 through 17 were
25 received into the record.)

1 MR. PIERCE: Thank you.

2 CHAIRPERSON ACZON: Mr. Pierce, please
3 proceed with your case.

4 MR. PIERCE: Mr. Chair, I think I'm just
5 going to -- unless the Commissioners have questions,
6 the only thing I want to add at this stage is that
7 what we're really here today is to focus on HRS
8 Chapter 205-4.5A8, and that says that one of the
9 permitted uses in Agricultural lands is retention,
10 restoration, rehabilitation, or improvement of
11 buildings or site of historic or scenic interest.

12 I think what the 'Ohana has shown today is
13 that they meet this requirement. It seems to me it
14 is a type of thing that the legislature was thinking
15 about when they had this, in certain situations where
16 you have some Agricultural land, and as we know the
17 agricultural lands are quite significant in Hawaii,
18 where as you have something that already has a
19 historic nature and you're seeking to improve it, and
20 as we can see here, the impact is there is going to
21 be no impact to the agricultural aspects of the
22 property from the perspective that this work site is
23 already within the Old Baldwin Boy's Home.

24 So with that, we would offer that
25 Petitioner has met this. We follow within the

1 permitted use for state ag. We would ask that that
2 forum for Declaratory Relief be given to us today.

3 Thank you for your attention.

4 CHAIRPERSON ACZON: Commissioners, any
5 questions for Mr. Pierce?

6 OP, please note that the documents that you
7 have filed in this matter will be part of the record.

8 That being said, do you wish to offer
9 public testimony?

10 MR. YEE: We would have the following
11 comments.

12 We concur and agree with the Petitioner
13 with respect to its proposed Declaratory Order, and
14 believe that it falls within 205-4.5A8 given the fact
15 the structure is within approximately 100-foot square
16 foot area, no higher than the existing historic site,
17 will improve that historic site.

18 As we said, it's a passive use, which will
19 certainly personalize that historic site to make it
20 more meaningful to the individuals who visit.

21 We think that the involvement of the
22 National Park Service makes this a clear use that
23 would fall within 205-4.5A8.

24 Based on that, we believe it's a perfect
25 permissible use under the circumstance. We did note

1 in our memo that our view is limited to the
2 particular fact of this case and particularly noted
3 that more uses which might masquerade as a
4 rehabilitation of historic site might require a
5 different review and different conclusion.

6 But in this case, upon our review, and upon
7 receiving the input from various state agencies, we
8 concur with the Petitioner.

9 CHAIRPERSON ACZON: Mr. Pierce, any
10 questions for Mr. Yee?

11 MR. PIERCE: None, Mr. Chairman.

12 CHAIRPERSON ACZON: Commissioners, Section
13 15-15-100 provides us with various options at this
14 time. We may:

15 Issue a Declaratory Order on the matter
16 without further hearing. This would be the case if
17 we believe the Commission has received sufficient
18 evidence upon which to make a decision.

19 Number two: Schedule the matter for
20 further hearing; or.

21 Number three: Deny the petition if it is
22 speculative or hypothetical; if the Petitioner does
23 not have standing; the issuance of the order may
24 adversely affect the state or the commission in any
25 litigation which is pending or may be reasonably be

1 expected to arise; or the matter concerns a statutory
2 provision to be administered by the Commission or is
3 otherwise not within the jurisdiction of the
4 Commission.

5 Is there any discussion?

6 COMMISSIONER SCHEUER: Mr. Chair, I would
7 move to find, based on the particular facts presented
8 in this case, that the Petitioner's proposed
9 Kalaupapa Memorial is currently in the state ag
10 district activity related to and will occur on
11 property in the National Register of Historic places
12 and is a permitted use under section 205-4.5A8 Hawaii
13 Revised Statutes as well as under Section 15-15-25B
14 of the Hawaii Administrative Rules.

15 COMMISSIONER ESTES: Second.

16 CHAIRPERSON ACZON: There was a motion by
17 Commissioner Scheuer and seconded by Commissioner
18 Estes. Is there any discussion?

19 COMMISSIONER SCHEUER: Mr. Chair, I think
20 it would, in my heart, be improper to sort of not
21 mark the slight perversity of the fact that we're
22 dealing in a situation where we're trying to
23 memorialize people who were under the force of law
24 sent to a place away from their family, and then to
25 say it's coming after you again because of the odd

1 application of Kalawao County and our state. It's an
2 odd, perhaps perverse situation.

3 But I just want to thank you. I made the
4 motion for the reason stated in the motion, but I
5 want to thank the 'Ohana in particular for their
6 perseverance in this matter and for helping us all to
7 understand the deep significance of what you're
8 trying to mark. Mahalo.

9 CHAIRPERSON ACZON: Any other discussion?

10 COMMISSIONER CABRAL: I agree that this is
11 a wonderful event that you're negotiating and working
12 for, but I want clarification. I can't imagine, but
13 could be, is there any opposition to this in any way
14 or form that we have received?

15 CHAIRPERSON ACZON: No.

16 Further discussion? No further discussion,
17 Mr. Orodener, please poll the Commission.

18 EXECUTIVE OFFICER: Thank you, Mr. Chair.
19 The motion is to find that Kalaupapa Memorial is a
20 permitted use in the Agricultural District under
21 section 205-4.5 subsection A8, and under Section
22 15-15-25 the Hawaii Administrative rules.

23 Commissioner Scheuer?

24 COMMISSIONER SCHEUER: Aye.

25 EXECUTIVE OFFICER: Commissioner Estes?

1 COMMISSIONER ESTES: Aye.

2 EXECUTIVE OFFICER: Commissioner Hiranaga?

3 COMMISSIONER HIRANAGA: Aye.

4 EXECUTIVE OFFICER: Commissioner Wong?

5 COMMISSIONER WONG: Aye.

6 EXECUTIVE OFFICER: Commissioner McDonald?

7 COMMISSIONER McDONALD: Aye.

8 EXECUTIVE OFFICER: Commissioner Cabral?

9 COMMISSIONER CABRAL: Aye.

10 EXECUTIVE OFFICER: Chair Aczon?

11 CHAIRMAN ACZON: Aye.

12 EXECUTIVE OFFICER: Mr. Chair, the motion

13 carries.

14 CHAIRPERSON ACZON: Thank you.

15 Thank you, again, Mr. Pierce. The LUC

16 appreciates your contribution in helping Kalaupapa

17 present its case.

18 MR. PIERCE: That you, Commission, for your

19 time today.

20 CHAIRPERSON ACZON: The chair calls for a

21 recess.

22 (Recess taken.)

23 (Commissioner Estes not present after

24 recess.)

25 CHAIRPERSON ACZON: Back on the record.

1 The next agenda item Docket No --

2 COMMISSIONER HIRANAGA: For the record,

3 Commissioner Estes has left.

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In the Matter of the Petition of)DR08-36
)
 To Amend the Agricultural Land)
 Use District Boundary into the)
 Urban Land Use District for)
 Approximately 642 acres at)
 Honouliuli, Ewa, Oahu, Tax Map)
 Keys: 9-1-14: Portion of Parcel)
 2;9-1-15: 3,6,7, 10, Portion of)
 Parcel 4;9-2-03:3,7, Portion of)
 2.)
)

Held on October 16, 2015, at Hawai'i Convention Center, Room 315, 1801 Kalakaua Avenue, Honolulu, Hawaii 96813.

McMANUS COURT REPORTERS 808-239-6148

1 APPEARANCES:

2 EDMUND ACZON, CHAIRPERSON

3 COMMISSIONERS:

4 ARNOLD WONG, VICE CHAIR

JONATHAN SCHEUER, VICE CHAIR

5 NANCY CABRAL

KENT HIRANAGA

6 CHAD McDONALD

AARON MAHI

7

8 DIANE ERICKSON, ESQ.

Deputy District Attorney

9

10 STAFF:

11 DANIEL ORODENKER, Executive Officer

BERT SARUWATARI, Planner

12 RILEY K. HAKODA, Planner/Chief Clerk

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18

For the State of Hawaii

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1 CHAIRPERSON ACZON: Next agenda item
2 DR08-36 Ko'Oolina Development Co. to receive a status
3 report from Petitioner on the progress of the
4 development of the boat ramp and adherence to other
5 conditions in the Commission's Decision and Order and
6 take appropriate action, if any.

7 Will the parties please identify themselves
8 for the record?

9 MR. TABATA: Good afternoon, Mr. Chair,
10 members of the Commission, Curtis Tabata appearing on
11 behalf of Petitioner Ko'Oolina Development. With me
12 today is Ken Williams, Sweetie Nelson and Kristen
13 Boswood from Ko'Oolina Community Association.

14 MR. YEE: Good afternoon, Deputy Attorney
15 General, Bryan Yee, on behalf of Office of Planning,
16 and Rodney Funakoshi will soon be joining me from the
17 Office of Planning.

18 CHAIRPERSON ACZON: Thank you.

19 Let me update the record.

20 On January 23rd, 2014, Commission met and
21 received Petitioner's written oral status report.

22 From January 2014 to October 2015, the
23 Commission received Petitioner's 18th through 21st
24 Quarterly Status Reports.

25 On January 31st, 2024, the Commission

1 received correspondence from Department of Health in
2 regard to the issuance of a National Pollutant
3 Discharge System for the boat ramp project and the
4 final approval MPDES permit.

5 On April 22, 2014, the Commission received
6 correspondence from DPP requesting a determination on
7 whether plans submitted are to be considered
8 substantial compliance with representations made in
9 Docket No. A83-562.

10 On July 3rd, 2014, the Commission received
11 City and County of Honolulu's comments on
12 Petitioner's Revised Plans for a boat ramp.

13 On January 9th, 2015 Commission received
14 copy DPP's correspondence to Keith Kurahashi re:
15 approval of minor modification to Conditional Use
16 Permit No. 2011/CUP-19.

17 On June 26, 2015, the Commission received
18 Notice of anticipated completion of boat ramp
19 construction.

20 On July 23rd, 2015, the Commission received
21 Notice of Completion of boat ramp construction.

22 On September 8th, 2015, the Commission
23 received a copy of a letter to the Ko'Oolina Community
24 Association.

25 On September 28, 2015, the Commission

1 received a copy of a response letter from the
2 Ko'Olina Community Association.

3 On October 8, 2015, the Commission mailed
4 the October 16th, 2015 LUC meeting agenda to the
5 parties and the Oahu, Maui and Statewide mailing
6 lists.

7 On October 14th, 2015, the Commission
8 received public testimony via email from Rick Nosaka,
9 Christopher Lawton and Ross Kurihara.

10 Let me briefly describe our procedure for
11 today on this docket.

12 First, I will call for those individuals
13 desiring to provide public testimony to identify
14 themselves. All such individuals will be called in
15 turn to our witness box where they will provide their
16 testimony.

17 After completion of the public testimony, I
18 will ask the Petitioner to provide any comments
19 relevant to the past quarterly reports and Status
20 Reports and the current status of the boat ramp.

21 After Petitioner's presentation, we will
22 receive any comments from OP and the City.

23 Is there anyone in the audience who wants
24 to provide public testimony in this matter at this
25 time?

1 EXECUTIVE OFFICER: Mr. Chair, Creighton
2 Chang signed up, followed by Arn -- I can't read your
3 name.

4 CHAIRPERSON ACZON: May I swear you in?
5 Do you affirm that your testimony that
6 you're about to give is the truth.

7 THE WITNESS: Yes.

8 CHAIRPERSON ACZON: Please state your name
9 and address.

10 THE WITNESS: My name is Creighton Chang.
11 I live at 94-307 07 Lohaa Street in Waipahu.

12 CREIGHTON CHANG
13 Was called as a public witness, was sworn to tell the
14 truth, was examined and testified as follows:

15 DIRECT EXAMINATION

16 THE WITNESS: Good afternoon, Chairman
17 Aczon and members of the Commission.

18 It's been roughly two-and-a-half years
19 since I testified before this Commission. At that
20 time I testified about my disgust on the delays this
21 project has taken, and demanded more action from you
22 to get this project back on track.

23 Ko'Oolina was ordered to construct a new
24 boat ramp facility in Ko'Oolina Marina to replace the
25 one they closed in February of 2005.

1 Well, now, it's ten years later and the
2 boat ramp is finally built. First of all, I would
3 like to thank the Commission for the work they did in
4 getting this ramp built for the fishing community in
5 this area.

6 Public access is paramount to the
7 well-being of our community and life in Hawaii.
8 Ko'Olina built a first-class facility which is one of
9 the nicest facilities in the state. I had only hoped
10 that Ko'Olina would have afforded the fisherman a
11 seat at the table when it came to the layout and
12 design of the facility.

13 Us fishermen offered our services at no
14 cost to come with design parameters since we would be
15 the one to use the ramp. Unfortunately, we met only
16 once to discuss only in general terms, and was never
17 invited again.

18 With this facility comes rules and
19 regulations. We all understand that. Most of the
20 rules are reasonable and can be followed. It was the
21 understanding of us fishermen that the new facility
22 would at least be equal if not better. Some things
23 are and some things are not.

24 Here is a summary. One of the things is
25 the insurance. There is an insurance requirement.

1 Before none was required. A watercraft policy
2 required with a minimum liability of 500,000 for each
3 occurrence for bodily injury and property damage.
4 The requirement for this insurance costs roughly an
5 additional 300 to \$500 per year.

6 We ask this insurance be waived to be equal
7 to what it was before.

8 Size of the boat. Before there was no
9 limitation. I have seen boats up to 28 feet launch
10 from the old facility with no problem. Now there is
11 a limitation of vehicle and trailer not exceeding a
12 total length of 40 feet.

13 I have a 19-foot glass boat, and I had to
14 modify the tongue of my trailer to meet this 40 foot
15 requirement. My vehicle is a Toyota Tacoma, small
16 truck plus the trailer, I come out with 39 feet right
17 now.

18 It would seem that my boat size would be
19 the maximum size boat that could launch from this
20 facility. There are many boats larger than mine,
21 especially for fishing you got 20 footers to 28
22 footers, even up to 32 that would not be able to use
23 this facility.

24 A 28-foot boat would probably have a
25 trailer that measures 34 to 36 feet long. Add this

1 to the vehicle which would be a three-quarter ton
2 truck 19 to 20 feet total length, 55 feet long.

3 Why is Ko'Oolina discriminating on the
4 larger boats? This is illegal and should not be
5 allowed. This needs to be changed to accommodate
6 larger boats.

7 Daily launch fees. Before there was none.
8 After, a launch fee of \$15 and parking fee of \$10.
9 Total \$25 per day.

10 No other boat ramp facility requires
11 payment for parking. Parking fee should be waived.
12 I normally go fishing two to three times a month.
13 These fees of a cost over a period of one year, an
14 additional \$900.

15 As per the agreement with the Phoenicians
16 ramp, the annual fee collected was \$125 per year with
17 no parking fee. To me this charge would be
18 acceptable to the fishermen.

19 Depending on the use of the facility, maybe
20 the charge could be twofold, \$15 a day, a launch fee,
21 or \$125 a year.

22 That way the fishermen who use it a few
23 times per year would be glad to pay the \$15, and
24 fishermen who use it more often, would be willing to
25 pay the 125.

1 Hours of operation. The number of ramps.
2 The wash down area. VHF radio. All seem to be the
3 same as what was before.

4 The parking stalls also they had 30 stalls
5 before, now they got 28 plus handicap stalls which is
6 good.

7 As you can see, many of the requirements
8 are the same. However, the differences will cost
9 fishermen a lot of money to use the facility. To me
10 the watercraft policy cost \$300; launch and parking
11 fees, \$900; total, I would have to spend an
12 additional 1,200 per year to launch at Ko'Oolina. I
13 may as well buy the fish.

14 All of us fishermen believe in equal to
15 what was there before, but it seems like Ko'Oolina
16 wants to make money on this venture. I know the new
17 boat ramp is a private facility open to the public.
18 However, the fishermen should not be held hostage for
19 this, since the original facility was a public boat
20 ramp.

21 In conclusion, we ask the Commission to
22 require Ko 'Oolina to waive the insurance
23 requirements.

24 Revise the rule on vehicle and trailer size
25 to allow larger boats to use this facility.

1 Revise the daily fees to eliminate the
2 parking fee, maintain a launch fee of \$15 per day
3 with a provision to apply for a yearly launch fee of
4 \$125 per year with no parking fee.

5 Thank you.

6 CHAIRPERSON ACZON: Any questions for the
7 witness, Mr. Tabata?

8 CROSS-EXAMINATION

9 BY MR. TABATA:

10 Q Thank you for your testimony today.

11 You mentioned that you have watercraft
12 insurance?

13 A Yes, I do.

14 Q You pay \$300 a year for the premium?

15 A Yes.

16 Q Does that coverage, is it limited just to
17 liability or do you have additional coverage?

18 A My insurance is full coverage on my boat,
19 because my boat is fairly new, so I got the
20 replacement value of the boat plus only 300,000. I
21 would have to pay extra to get a get a bump up to
22 500,000. I'm not sure how much that is.

23 Q So your coverage goes beyond just liability
24 then?

25 A That's correct.

1 Q Thank you very much.

2 CHAIRPERSON ACZON: Mr. Yee.

3 MR. YEE: No questions, thank you.

4 CHAIRPERSON ACZON: Commissioners?

5 EXECUTIVE DIRECTOR: Mr. Chair, we have
6 Warren and after that Bill Chan.

7 CHAIRPERSON ACZON: Do you affirm that the
8 testimony you're about to give is truthful?

9 THE WITNESS: I do.

10 WARREN VON ARNSWALDT

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

13 DIRECT EXAMINATION

14 CHAIRPERSON ACZON: Please state your name
15 and address, please.

16 THE WITNESS: My name is Warren
17 VonArnswaldt. I live at 92-755 Palailai Street,
18 Kapolei.

19 I've been in here since the start of all
20 this noncompliance from Ko'Oolina. I had to put up
21 with a lot in the last ten years. 2008 when they
22 first came before you to try and move us to the
23 Phoenician, and up until now.

24 When the board decided that they were in
25 noncompliance, that was back in 2008, November, they

1 had six months to give you a schedule for their
2 development of the boat ramp. It's been over seven
3 years since that time, when the thing was supposed to
4 be completed in four years.

5 Ko'Oolina has contended that they have not
6 been trying to slow the process, but I myself had to
7 go and push the process forward. Even when two years
8 nothing had been done with the Corps of Engineers. I
9 checked with them and found out that they were lying
10 about everything. They didn't even send out anything
11 to the federal site to be approved. Nobody knew
12 anything about what was going on at Corps of
13 Engineers.

14 Ko'Oolina says, oh, their designer was
15 constantly checking with them and keeping up-to-date.
16 That I have to disagree with. It only took me one
17 day to get the Corps of Engineers to get on their
18 stick over there and start doing something. The very
19 next day, with the help of the legal advisor for
20 Senator Hanabusa at that time, finally came out and
21 got their permitting done within the next three
22 months after waiting two years.

23 Another setback after that was with the
24 permitting to get the permits for the building. I
25 checked with the permitting division and they said

1 they're getting disgusted with Ko'Olina. They said
2 every time they try and finish off a permitting
3 process with them, they changed their master plan on
4 the development, which voids the permit.

5 They said they must have gone through six
6 months of master plan changes by Ko'Olina that held
7 them back. Finally that got approved, and everything
8 was back on schedule. But then it's two years after
9 their anticipated completion date.

10 I got a phone call from the community
11 association office in June 17th regarding the ramp
12 would be starting to process applicants for their
13 permit on the 20th. I looked over their -- looked
14 over their requirements and everything, and all this
15 years of waiting and everything, I finally discovered
16 that I wouldn't even be able to use the ramp.

17 My boat is a 25 footer. My trailer is 29
18 and a half feet long. My truck is 20 feet long.
19 That makes my boat and trailer combination 49 feet.
20 Their requirements are no greater than 40 feet.

21 Their insurance, they raised it from
22 30,000, that was covered -- I mean 300,000 to
23 500,000. At current I pay over \$400 for my
24 insurance.

25 They also want to be underwriters on the

1 insurance policy which is another expense. I know
2 it's probably around 75 to 100 dollars more just to
3 put their name on my insurance. Why they have to be
4 on my insurance? I don't know.

5 I understand that they did some changes on
6 the opening of the ramp. There first was going to be
7 open at 8:00 a.m. to sunset. I don't know what
8 happened to sunrise and sunset, they said they
9 changed that since then.

10 Another thing I don't like is their fees.
11 It's not very implicit as far as what you actually
12 are paying. If you go in one day -- I speak for the
13 nighttime fishermen. They go out in the evening,
14 they come back in the morning. They set a fee for
15 daily use. So if you go overnight, you're actually
16 going for two days. You got to pay for the first day
17 when you launch, you got to pay for the second day
18 when you bring your boat back up, as far as the rules
19 go.

20 They haven't specifically mentioned
21 anything about that in there. So I don't know what's
22 become of that. Besides I don't know where those
23 fees are coming from, why they need those fees.

24 I don't see why we should be paying
25 anything for the fees over there, especially now.

1 When I look at it, I look at they put fees on there,
2 and what do they have? They have a community
3 association administering what happens at the boat
4 ramp. And they set all the rules for the boat ramp.
5 This is the community association.

6 This boat ramp was supposed to be put in by
7 Ko'Olina Development. The development is now
8 shifting it over to the community association. I
9 don't know why. And if they're administering it, I
10 presume they're taking a fee out of that amount to
11 administer the boat ramp.

12 I think that thing should be run by the
13 Harbor Master Office itself, since they're in charge
14 of the marina, and the primary use is in the marina,
15 not anything to do with the community association.

16 That is my feelings. I agree with a lot
17 that Creighton Chang has brought up, and for all the
18 others that will be testifying later.

19 CHAIRPERSON ACZON: Any questions?

20 MR. TABATA: No questions.

21 CHAIRPERSON ACZON: OP?

22 MR. YEE: No questions.

23 CHAIRPERSON ACZON: Commissioners? No
24 questions.

25 EXECUTIVE OFFICER: Next witness is Mr.

1 Bill Chang followed by Ronald Chang.

2 CHAIRPERSON ACZON: Do you affirm that your
3 testimony that you're about to give is truthful?

4 THE WITNESS: Yes.

5 BILL CHANG

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

8 DIRECT EXAMINATION

9 CHAIRPERSON ACZON: Please state your name
10 and address.

11 THE WITNESS: My name is Bill Chang. I
12 live at 94-194 Anania Drive, Mililani, Hawaii.

13 Thank you for allowing me to testify today.
14 I'm reading this testimony for Mr. Rodney Ajifu who
15 cannot be present today because he's currently on a
16 trip on the mainland.

17 My name is Rodney Ajifu and I'm voicing my
18 concerns at this Land Use Hearing along with nine
19 other boaters who I currently represent per the
20 signed representation form that was presented in the
21 initial LLC testimonial hearings nearly five years
22 ago.

23 We have not requested the Ko'Oolina Boat
24 Ramp, the Parking Agreement contract since the
25 combined length of our vehicles and trailers exceed

1 the 40-foot limitations set by Ko'Olina.

2 Mr. Ken Williams with the Ko'Olina
3 Community Association stated in his letter dated
4 September 16, 2015, under subsection (3) "We were
5 required by the Conditional Use Permit for this
6 project to replace what was removed from the first
7 boat ramp on the Makai side of the marina. The
8 stalls at the first boat ramp were 40 feet and
9 complied with standards prescribed by the City and
10 County of Honolulu Department of Land Utilization.
11 The turning accommodating the combined
12 vehicle/trailer length of 40 feet."

13 This is an incorrect statement since
14 Ko'Olina has not complied by providing the public
15 boaters with a comfortable public boating facility.
16 The original boat ramp parking area was wider to
17 allow all sizes of boats to be able to launch.
18 Ko'Olina knew the majority of parked vehicles with
19 their trailers were sticking out beyond the marked
20 stall lines.

21 This was a standard practice that was
22 permitted by Ko'Olina over the years with no notice
23 given for any infractions. I question how can
24 Ko'Olina design its current public facility when they
25 were fully aware of this fact unless to deliberately

1 show a lack of applicants to justify the closer of
2 this public boat ramp. I encourage you to review the
3 original boat ramp plans with the earlier built boat
4 ramp plans to understand and question Ko Olina's
5 actions.

6 Finally, I posed the question to my
7 personal insurance carrier Island Insurance Company,
8 if they would comply with Ko'Olina insurance
9 requirements should I later consider purchasing a
10 smaller boat. They respond by saying my personal
11 auto and homeowner's insurance policies meet the
12 underlining required limits set by Ko'Olina.

13 However, you have KOCA, KOM, KO300, KORE
14 and Ko'Olina Developments LLC be listed as additional
15 named insured to the policy and having my policy be
16 primary and the waiver of liability with no cause of
17 action, claim and forever discharge Ko'Olina of any
18 damages to my vehicle and boat while at their premise
19 is not acceptable and Island Insurance Company
20 therefore declined to be a part of this signed
21 contract and requested I find coverage elsewhere.

22 It is very disturbing to know that Ko'Olina
23 requires strict insurance coverages on the public
24 boaters and yet fails to be responsible should they
25 cause damages to someone else's property or bodily

1 injuries.

2 I believe it is not what Ko'Olina dictates
3 to be a fair contract, but rather what the Land Use
4 Committee feels is a fair contract to be imposed in
5 the State of Hawaii. I am therefore turning to you
6 for your assistance in helping the public boaters
7 with the blatant injustice Ko'Olina has demonstrated.
8 I have enclosed a copy of the Ko'Olina Boat Ramp and
9 Parking Agreement along with other supporting
10 documents for your review and interpretations.

11 I am currently on vacation and will be
12 returning back to the islands on Monday October 19th
13 but you can call me on my cell at (808) 754-8104
14 should there be any questions or concerns that I may
15 be of assistance. Sincerely, Rodney Ajifu.

16 CHAIRPERSON ACZON: Any questions?

17 THE WITNESS: Excuse me, may I be able to
18 say a little bit more?

19 My personal opinion on this for what went
20 on is, I do agree and support all of the testimony
21 that the fishermen are putting forward today. I just
22 like to say that.

23 CHAIRMAN ACZON: Mr. Tabata.

24 CROSS-EXAMINATION

25 BY MR. TABATA:

1 Q Mr. Chang, I understand that was Rodney
2 Ajifu's letter, not yours. I just wondered if you
3 knew whether or not Mr. Ajifu contacted any other
4 insurance companies in order to obtain a quote?

5 A No, I have no idea. He said if you want,
6 you can call him and ask him.

7 MR. YEE: No questions.

8 CHAIRPERSON ACZON: Thank you. Next
9 witness.

10 EXECUTIVE OFFICER: Ronald Tam.

11 CHAIRPERSON ACZON: Do you affirm your
12 testimony you about to give today is truthful?

13 THE WITNESS: I do.

14 RONALD TAM

15 Was called as a public witness, was sworn to tell the
16 truth and testified as follows:

17 DIRECT EXAMINATION

18 CHAIRMAN ACZON: Please state your name and
19 address and proceed with testimony.

20 THE WITNESS: My name is Ronald Tam. My
21 address 1082 Lunalilo Home Road, Honolulu 96625.

22 Good afternoon, Chair, Commissioners.

23 Thank you for this opportunity to provide this
24 testimony. I am somewhat saddened to be here,
25 because this, quote/unquote, ordeal has been going on

1 for more than a decade, and I have testified before
2 this Commission in the past. The concerns listed by
3 the previous testifiers I share. Let me address each
4 one again.

5 The matter of limiting the size of trailer
6 boat appears to be rather subjective. At one time
7 when Ko'Oolina allowed the fishermen to launch their
8 boats, they required that the fishermen register with
9 Ko'Oolina. During that process they were able to
10 obtain data that provided them information to
11 generalize the size of vessels that were using that
12 ramp for the people that went through that
13 registration process and paid for it.

14 So there was an opportunity for that
15 organization to use that data to determine what the
16 public need was and is at that time. And it is
17 apparent that they did not use that available data or
18 elected to go ahead and subjectively limit the size
19 of the boats.

20 I do not believe that that is the intent of
21 the finding of the Commission and the intent of the
22 agreement with respect to the use with the term
23 "public". When you use a public boat ramp, there are
24 no limitations on the size of the boat and trailer as
25 well as the truck or the vehicle that it's towing.

1 So I don't understand why Ko'Oolina decided
2 to limit the size to 40 feet in length.

3 With respect to the insurance requirement,
4 I asked the Commission to consider the word "public"
5 and how it affects the trailer boat users. When you
6 use a public ramp to launch and retrieve your boat,
7 the state doesn't require us to have the state as an
8 additional insurer before we are allowed to use the
9 ramp.

10 The state does not, as we speak to fees,
11 the state does not charge us each time we use the
12 ramp. The state does not charge us each time we park
13 the vehicle.

14 So as a user, as a citizen, I would think
15 that the term "public" needs to be recognized as
16 public use beyond private need.

17 When you look at the situation as it exists
18 today, what you have is a private marina, a private
19 launch ramp, that is truly not public because they're
20 treating it as a private enterprise. Yes, open to
21 the public for a fee, and that is no different than
22 going to a private marina, applying to use that
23 marina as a private citizen, but anyone in the public
24 can do that. And you go through a process of
25 applying for the use, meeting the insurance

1 requirements, the safety requirements, et cetera.

2 So I'm having difficulty understanding how
3 it is, how Ko'Olina feels that you're really treating
4 the public as the public rather than treating the
5 public as a possible source of income to a private
6 enterprise.

7 With respect to -- I don't know if anyone
8 previously mentioned it -- when you want to launch
9 your vessel, the rules require that you call in and
10 make a reservation, quote/unquote. I think that
11 perhaps that's something that Ko'Olina feels is
12 required to collect the fees.

13 Well, maybe we should consider technology
14 for the folks that register to use that facility,
15 give them a card, like a credit card. And you don't
16 have to be bothered by sending a human being down to
17 the ramp, if someone has a Ko'Olina card, allow them
18 to use the marina, use that potential.

19 I think over the last ten plus years
20 there's been a lot of push and pull. There's been a
21 lot of frustration from both sides. It's been
22 agonizing from my point of view. It's been
23 frustrating. But I think we're coming to the end.

24 But as Creighton mentioned, the fishermen
25 offered to Ko'Olina to be participants to this

1 process and we got a token, we got a token play in
2 that. So there's no synergy here. And we are taking
3 the time of you, the Commission here, and the
4 association's, I think unnecessarily, or it could at
5 least be avoidable, because there has been no
6 synergy. There's been no opportunity for us to be a
7 player. And we would have benefitted so much if we
8 had gone down that road. And we provided that
9 opportunity. And we were ignored.

10 So part of mine is, I ask the Commission to
11 consider to think about the word "public" and how the
12 rules and regulations that are being proposed by
13 Ko'Olina today satisfy the public. Thank you.

14 CHAIRPERSON ACZON: Any questions?

15 MR. TABATA: No questions.

16 MR. YEE: No questions.

17 CHAIRPERSON ACZON: Commissioners.

18 COMMISSIONER SCHEUER: Aloha, thank you for
19 being here.

20 A very quick question for you.

21 You mention that there was probably data
22 available on boat and trailers. Without getting into
23 what the number might be, is it in the realm of
24 possibility that there would be an upper limit that
25 was reasonable to the size of boats?

1 THE WITNESS: Well, I know there were at
2 least two individuals that I know of personally, one
3 had a 24-foot boat, one had a 26-foot boat. Both of
4 those individuals registered with Ko'Olina when the
5 original ramp was opened.

6 Does that answer your question?

7 COMMISSIONER SCHEUER: Thank you very much.

8 CHAIRPERSON ACZON: Commissioner Mahi.

9 COMMISSIONER MAHI: I have a question, Mr.
10 Tam. Thank you for your testimony and your concern.

11 I was not on this Commission when this
12 whole process began, so I'm pretty much green from
13 the bottom up.

14 How long have you folks been launching your
15 boats from this particular area of this particular
16 launching site?

17 THE WITNESS: I'm not really clear on the
18 history. Originally, and please, Ko'Olina, you can
19 sharpen me up here.

20 Originally when that land was private, the
21 private owner, as I understand -- Roy, maybe you can
22 help me here -- the private owner as I understand
23 built a launch ramp for his private use. Ko'Olina
24 took over that property and that ramp ultimately was
25 open to the public per their agreement.

1 COMMISSIONER MAHI: So that was privately
2 owned prior to 2004?

3 THE WITNESS: Before Ko'Oolina took over the
4 property.

5 COMMISSIONER MAHI: Before Ko'Oolina

6 WITNESS CHANG: Used to be West Beach
7 Estates under Horita. And they said the public had
8 access to the boat ramp facility.

9 COMMISSIONER MAHI: You guys go without the
10 mike, I'm okay with, you know.

11 WITNESS CHANG: I think I got my permit
12 sometime in 2003 or 2004. And we launched at
13 Ko'Oolina -- I'm a nighttime fisherman, sunrise to
14 sunset. We complied with that.

15 In February of 2005 there was a big
16 barricade across the road, and the guard said ramps
17 closed.

18 COMMISSIONER MAHI: Prior to that, you
19 forks all understood that that was private property?

20 WITNESS CHANG: Private property.

21 COMMISSIONER MAHI: And the public was
22 allowed, you being part of the public --

23 WITNESS CHANG: I filled in the
24 application, put -- in fact, I'm not sure if I paid a
25 fee. Kind of long time ago. I think there was a

1 fee, \$35 or something like that, where we put the
2 boat length, you got to show your insurance, and they
3 put a sticker on your boat. So we had a Ko'Oolina
4 sticker. So when we came the next time, the guard
5 would just let us go in, no parking fee, no launch
6 fee, just go up and use the facility.

7 COMMISSIONER MAHI: And then after 2004 the
8 conditions all changed because of the change of
9 ownership?

10 WITNESS CHANG: This was already Ko'Oolina.
11 (Many speakers at one time.)

12 CHAIRMAN ACZON: One at a time. State your
13 name.

14 WITNESS VON ARNSWALDT: Warren Von
15 Arnswaldt.

16 West Beach had that ramp in commission, but
17 they weren't using it. Up until the time that
18 Ko'Oolina took over, Ko'Oolina opened the ramp in
19 June 15th of 2000. And they had to open the ramp at
20 that time because they wanted to put up a clubhouse.
21 And the board -- Department of Planning would not
22 allow them to put the clubhouse in until they opened
23 that ramp. So they finally opened it June 15th of
24 the year 2000.

25 COMMISSIONER MAHI: The main thing I'm

1 trying to figure out here is that since Mr. Tam
2 talked about our need to be more cognizant of public
3 use, I kind of wanted to get the bearings here in
4 terms of what point was the public involved, because
5 it was naturally all privately owned from day one.

6 WITNESS TAM: The direct response to your
7 question is that it was open to the public subsequent
8 to the acceptance of Ko'Olina doing their
9 development. That was part of the agreement between
10 the state and Ko'Olina.

11 WITNESS CHANG: It was part of the findings
12 of fact when they got -- when we reviewed the
13 documents, it said that the boat ramp had to be
14 opened, opened to the public. It's a public boat
15 ramp.

16 COMMISSIONER MAHI: I think we have some
17 hands of others that want to testify. Thank you.

18 WITNESS TAM: Am I excused, Chair? Thank
19 you.

20 Oh, sorry, closing comments. I salute you
21 guys. You got a first class facility there. Thank
22 you. Took a lot of pulling, but first class.

23 COMMISSIONER HIRANAGA: Mr. Chair, I have a
24 question, but I'm not sure who's going to answer it.
25 Kind of a follow up to Commissioner Mahi's

1 questioning.

2 So who conducted the original old ramp?

3 WITNESS TAM: That real estate was owned by
4 Horita, West Beach, and he constructed the ramp
5 initially. It was a private ramp that belonged to
6 West Beach Estates.

7 COMMISSIONER HIRANAGA: That he allowed the
8 public to use?

9 WITNESS TAM: No, that was private use.

10 COMMISSIONER HIRANAGA: So it became public
11 due to LUC making that determination?

12 WITNESS TAM: Yes.

13 COMMISSIONER HIRANAGA: Thank you.

14 CHAIRPERSON ACZON: Next witness, please.

15 EXECUTIVE OFFICER: Roy Morioka.

16 CHAIRPERSON ACZON: Do you affirm that your
17 testimony that you're about to give is the truth?

18 THE WITNESS: Yes.

19 CHAIRPERSON ACZON: Please state your name
20 and address and proceed.

21 ROY MORIOKA

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

24 DIRECT EXAMINATION

25 THE WITNESS: My name Roy Morioka. I live

1 at 1190-A Iki Place, Honolulu, Hawaii 96821.

2 For clarification, with regard to this
3 matter, DR8-36 six evolved because of the fact that
4 the development of West Beach Estate, after the hu
5 and cry from the Waianae Coast and fishermen and
6 boaters required the developer to provide public
7 access, a public ramp, and that's why this docket is
8 before you, because we came before the Commission
9 requesting some relief, and this docket was created.

10 So that kind of gives you a history as to
11 why we're here today.

12 Thank you, Mr. Chairman, Vice Chairman and
13 members of the Commission.

14 DROA-36 was initiated seven years ago on
15 March 24, 2008. And as you heard from the previous
16 testimony, we have been accessing that facility since
17 2004. The boating and fishing public has patiently
18 awaited timely resolution of this matter, and
19 attended LUC meetings to provide comments on the
20 progress of the construction of the boat ramp and
21 associated support facilities.

22 While the boating and fishing communities
23 compliment Ko'Oolina Development LLC for finally
24 completing the construction of the facility, we find
25 issues with the rules as prescribed by the Ko'Oolina

1 Community Association that places undue constraints
2 and requirements that far exceed those initially
3 associated with the public launch ramp facility.

4 These include:

5 One, the validity of KOCA, as and
6 administrator or manager of this ramp facility.

7 Secondly, I would like to read an excerpt
8 from the requirement, quote:

9 Watercraft liability certificate of
10 insurance that complies with the insurance provision
11 in the Agreement. Water liability coverage will have
12 minimum limits of insurance of \$500,000 for each
13 occurrence for bodily injury and property damage. In
14 addition, this insurance must maintain coverage for
15 salvage costs associated with grounding and sinking,
16 damage to docks, pollution contamination, and wreck
17 removal.

18 For me that policy costs \$434 and it only
19 provides for \$300,000 liability. And I've asked my
20 insurance man to provide me what the additional cost
21 would be. I have not received it as yet but just as
22 reference.

23 This liability requirement would limit
24 public access to many. And the fee costs would be
25 prohibitive.

1 Second item I'd like to discuss is the
2 total length of the vehicle and trailer would not
3 exceed 40 feet. This requirement denies access to
4 the majority of trailer boats over 17 feet today.
5 Additionally, the Commission must note that during
6 the initial review on design of the trailer parking,
7 the public advised that 40 feet was insufficient for
8 the majority of trucks and trailers on Oahu to
9 effectively use the facility.

10 Fourthly, the owner agrees to pay following
11 fees as applicable:

12 One, daily launch fees of \$15.

13 Daily parking fee of \$10. These fees are
14 considered to be out of the ordinary since the State
15 of Hawaii assesses \$50 annually for ramp usage.

16 So, for example, if a boater uses Ko'Oolina
17 ramp ten times during a year, it will cost \$250. And
18 as the gentleman before me described he goes out
19 today and comes back tomorrow, he will have already
20 paid what the state normally charges.

21 If the person uses the facility 20 times,
22 that's \$500 or ten times what the state charges.

23 This must be revised to better reflect
24 typical public access facility.

25 Again, mahalo for this opportunity to

1 provide testimony regarding the protracted compliance
2 with the LUC's order to construct a public launch
3 ramp and associated facilities and my grave concerns
4 with the extraordinary requirements that will surely
5 limit public access to the Ko'Oolina boat launching
6 ramp. I urge that the Commission keep DR08-36 open
7 until the liability insurance, trailer parking and
8 the fee structures are amicably resolved.

9 Respectfully your, thank you.

10 CHAIRPERSON ACZON: Any questions?

11 MR. TABATA: No questions.

12 MR. YEE: No questions.

13 EXECUTIVE OFFICER: The last testifier
14 today, Sweetie Nelson.

15 CHAIRPERSON ACZON: Do you affirm that the
16 testimony that you're about to give is truthful?

17 THE WITNESS: I do.

18 CHAIRPERSON ACZON: Please state your name
19 and address.

20 THE WITNESS: My name is Sweetie Nelson, my
21 address is 92-1480 Alihi Drive.

22 DIRECT EXAMINATION

23 THE WITNESS: Good afternoon,
24 Commissioners. Thank you for your time.

25 As I mentioned, my name is Sweetie Nelson.

1 I am the director of destination marketing for the
2 Ko'Olina Resort Operators Association. I am here
3 representing the resort's commercial partners, which
4 include the island's first Four Seasons Resort,
5 Disney's Aulani Resort, Marriott's Ko'Olina Beach
6 Club, Ko'Olina Beach Villas, Ko'Olina Golf Club,
7 Ko'Olina Marina and the Ko'Olina Station retail
8 business center.

9 We all welcomed the opening of the New
10 Ko'Olina boat ramp in July and commend Ko'Olina
11 Development for its diligence in ensuring the design
12 and quality of the facility aligns with the resort's
13 vision to create an appeal luxury destination that
14 visitors, global hospitality partners, residents,
15 mariners, the local Hawaii community and others could
16 enjoy.

17 The much anticipated opening of the Four
18 Seasons Resort O'ahu at Ko'Olina in 2016 challenges
19 us to maintain the highest levels of guest service
20 and enhance visitor touch points located throughout
21 the resort as best as possible. All while continuing
22 to maintain a safe, healthy and sustainable
23 environment for those who choose to live, work and
24 play here.

25 Ko Olina's new boat ramp is an integral

1 community touch point. We have great respect for our
2 local fishermen and their desire to enjoy the
3 beautiful waters on this coastline. We all also
4 share a similar value: Being mindful stewards of the
5 ocean and the environment.

6 Ko'Oolina has been an exemplary caretaker as
7 evidenced by its high standards in maintaining the
8 resort's roads, landscaping, shoreline walkway,
9 beaches, lagoons and restrooms - stewardship values
10 that are essential to assure the resort's long term
11 success.

12 We are in full support of operational
13 procedures in place, and required safety and
14 liability assurances, not just by boaters, but for
15 all who share use of the resort's marina, roadways
16 and beaches and have business interested in Ko'Oolina.

17 We are grateful to be a part of the Leeward
18 community and to generate economic opportunities for
19 our residents. We look forward to continuing the
20 exceptional quality of the Ko'Oolina resort
21 experience.

22 CHAIRPERSON ACZON: Any questions?

23 MR. TABATA: No questions.

24 CROSS-EXAMINATION

25 BY MR. YEE:

1 Q Do you have a position as to what is the
2 amount of fees that should be charged to boaters?

3 A A figure?

4 Q There is a figure proposed by Ko'Oolina that
5 boaters disagree. Do you have any --

6 A No, we agree with the procedures they have
7 in place.

8 Q So by procedures, do you include the
9 liability insurance, the rules and regulations?

10 A Absolutely.

11 Q Why?

12 A We have guests experience to insure. We
13 have a marina that is traversed by commercial
14 partners. We have business opportunities throughout
15 the resort.

16 Our transition to a new parallel of
17 welcoming Four Seasons kind of challenges us to
18 maintain that guest experience. We believe that the
19 rules and regs in place help us to ensure that.

20 Q Can you help to explain how those concerns
21 are affected by a \$15 per day launch fee versus
22 annual fee?

23 A I have no -- operationally, I leave it to
24 the community association to determine that. We have
25 what I know of rules and regulations, sunrise to

1 sunset hours are in line with what in all of our
2 lagoons our commercial partners in the marina have
3 shared the same liability requirements. And we use
4 the same boatways, access the same areas. All of our
5 partners, all of our residents.

6 Q So all of your businesses have insurance
7 for which Ko'Oolina and its various groups are named
8 as in the insurance as additional beneficiary?

9 A I'm not quite sure.

10 Q Do you know -- do sign an indemnification
11 provision in favor of Ko'Oolina?

12 A I don't know. I don't know.

13 Q I just want to press one thing, because I
14 don't think this is necessarily what you said, but I
15 thought I should address it.

16 When you refer to maintain the quality of
17 facility for your visitors and guests, there are some
18 who would interpret that as a desire to avoid
19 undesirable people who might bring down the quality
20 of the area which can sometimes translate into a
21 euphemism for something else. Could you elaborate on
22 what you mean by that?

23 A All of our lagoons are open to the public.
24 I think a lot of people enjoy our area because of the
25 quality of experience there, that's why they choose

1 to use our facility.

2 Q I just want to be clear when you said you
3 want to maintain the quality of the experience for
4 your guests and visitors, you do not mean to say you
5 want to discourage anybody from using the facility?

6 A Absolutely not. We are partners in the
7 community, we are neighbors. We live and work in the
8 community.

9 Q Thank you. Nothing further.

10 CHAIRPERSON ACZON: Commissioners:

11 COMMISSIONER MAHI: I like to note, Ms.

12 Nelson, just for my own information, because my
13 edification about this particular subject, is how
14 much traffic of public use versus your partnering
15 with your people that -- I guess, what was the word
16 you used -- you your clients or commercial --

17 THE WITNESS: Commercial --

18 COMMISSIONER MAHI: Do you have a number
19 how many people versus commercial in terms of active
20 down there at that particular launching area? I
21 don't know, I guess you could do it by how many
22 people apply.

23 THE WITNESS: For the boat ramp itself?

24 COMMISSIONER MAHI: How many of your
25 commercial people use the boat ramp as opposed to

1 public?

2 THE WITNESS: Our commercial partners use
3 the marina, not the boat ramp.

4 COMMISSIONER MAHI: So the boat ramp is not
5 used by the your commercial people?

6 THE WITNESS: They're moored in the marina.
7 That's our commercial partners.

8 COMMERCIAL MAHI: So would you say the
9 large amount of people use the boat ramp are really
10 public?

11 THE WITNESS: (Witness nods head up and
12 down.) And they may be able to elaborate further on
13 the actual clientele using the boat ramp.

14 CHAIRPERSON ACZON: Commissioner Hiranaga.

15 COMMISSIONER HIRANAGA: So the boat ramp is
16 administered by the Ko'Oolina Community Association?

17 THE WITNESS: That's correct.

18 COMMISSIONER HIRANAGA: And I guess there
19 must be a board of directors?

20 THE WITNESS: Correct.

21 COMMISSIONER HIRANAGA: And they probably
22 have more hand-on involvement in creating these rules
23 versus you probably don't have like a general meeting
24 and have general vote, the directors would typically
25 set the rules?

1 THE WITNESS: Correct. I represent the
2 resort association which is the commercial partners
3 within the resort. The community association is a
4 different entity.

5 COMMISSIONER HIRANAGA: So I guess the
6 question is, none of the commercial partners are part
7 of the --

8 THE WITNESS: The commercial partners are
9 also part of the community association.

10 COMMISSIONER HIRANAGA: So possibly some of
11 those commercial partners are on the board of
12 directors?

13 THE WITNESS: Yes, for both.

14 COMMISSIONER HIRANAGA: Thank you.

15 CHAIRPERSON ACZON: Any others?

16 COMMISSIONER CABRAL: Is anyone from the
17 community association present to testify?

18 THE WITNESS: Ken.

19 COMMISSIONER CABRAL: I'll have questions
20 for you.

21 CHAIRPERSON ACZON: Any other question for
22 Ms. Nelson? Thank you.

23 Commissioner Wong.

24 COMMISSIONER WONG: I have a basic question
25 about we're here for status report. I'm assuming

1 status report and also there was a petition to not
2 give any more status report imposing the conditions,
3 is that correct? That's the gist of today's hearing?

4 MR. TABATA: Commissioner, Curtis Tabata
5 for the Petitioner.

6 My understanding is that we're here for
7 status conference to address the fact that we have
8 finally opened the boat ramp to the public, and that
9 we have complied with the Commission's order, which
10 required us to construct a boat ramp, a public boat
11 launch ramp within the marina at Ko'Olina and have it
12 open to the public for use.

13 That's what we're here to give status on.
14 It was our hope today that the Commission will agree
15 that we have complied with the Commission's order.
16 What you choose to do as far as closing the docket,
17 that's something we think is appropriate, but, of
18 course, we will leave it to the Commission.

19 I understand the Commissioners have a lot
20 of questions. There's 30 years of history behind
21 this boat ramp. And I am prepared to attempt to
22 briefly give that history to you folks. So I know
23 you have lots of questions, and when it comes my
24 turn, I'll do my best to address that.

25 COMMISSIONER WONG: Thank you. Maybe

1 getting ahead of the issue.

2 CHAIRPERSON ACZON: The Chair calls for a
3 five-minute break.

4 (Recess was taken.)

5 CHAIRPERSON ACZON: We're back on record.

6 We're calling on the Development to provide
7 status report.

8 MR. TABATA: Thank you, Mr. Chair. With
9 your permission, it may be easier for me to stand and
10 speak with the easel board.

11 (Commissioner Cabral leaves.)

12 CHAIRPERSON ACZON: Just want the record to
13 show that Commissioner Cabral left the meeting. Go
14 ahead.

15 MR. TABATA: A lot of questions arose, and
16 understandably 30 years of history here. I'm going
17 to do my best to summarize as succinctly as possible.

18 The project that we're talking about is
19 called Ko'Oolina, located on the Leeward Coast of
20 Oahu. This project's approximately 640 acres that
21 was approved by LUC in 1985.

22 Now, this project just generally.

23 Briefly the components include residential,
24 resort hotel, swimming lagoons, golf course and the
25 marina. At that the time 1985 it was owned by West

1 Beach Estate. In 1988 West Beach Estate built first
2 the boat ramp in Ko'Oolina. That's located here at
3 program number one, as referred to here. At the time
4 it was built, but it was not -- I don't believe it
5 was operational and was not open to the public here.

6 In 1998 the project was acquired by
7 Ko'Oolina Development from West Beach Estate. Now,
8 right after being acquired, Ko'Oolina Development
9 started its development of the marina in 1999. At
10 that time the marina was located in this portion of
11 Kalaeloa Harbor. Ko'Oolina developed -- started its
12 planning process to build a marina, started its
13 dredging in 1999.

14 During that planning approving process for
15 the next several years -- take one step back.

16 Boat ramp number one was opened to the
17 public in around 2000. And for the next few years
18 planning and permitting process went forward for the
19 development of a marina, and the rules and
20 requirements for the boat ramp number one included
21 the requirement that it be open from sunrise to
22 sunset.

23 Now, this requirement drew the attention
24 and objection from certain fishermen and boaters who
25 wanted it to be open for 24 hours.

1 To address that request that it be open
2 even 24 hours, Ko'Olina went about searching for a
3 replacement boat ramp. Ko'Olina worked with the
4 city, Department of Planning and Permitting, state
5 department of DLNR, and the landowner across Kalaeloa
6 Harbor, the Phoenician at the Kalaeloa large boat
7 harbor.

8 After obtaining the approval of the city
9 and of DLNR, Ko'Olina entered into agreement with the
10 Phoenician to build a second boat ramp across
11 Kalaeloa Harbor. That was in 2004.

12 That agreement provided that Ko'Olina would
13 pay over \$400,000 for construction of a second boat
14 ramp and that it would be open to the public, and
15 open 24-hours-a-day to address the fishermen's
16 concerns.

17 In 2005 the second boat ramp was open to
18 the public 24 hours a day. Some of the fishermen
19 talked about the requirement, rules associated with
20 the boat ramp. I believe there was an annual launch
21 fee of \$125, and registration was required. That was
22 in February of 2005.

23 Now, I believe by November 2005 the Land
24 Use Commission received, from a different set of
25 fishermen I believe, the fishermen that most of them

1 you heard from today. And what they said was that
2 the second boat ramp was unacceptable. They did not
3 like the design, and it said that Ko'Olina was
4 required under the original approval of 1985 to place
5 the boat ramp, the public boat ramp within the
6 marina, not across Kalaeloa Harbor.

7 Ko'Olina disagreed with that position, and
8 we filed petition for declaratory order, the docket
9 number we're here for today, asserted our position
10 that we were not required to build a boat ramp in
11 this marina. And at the same time we offered to
12 improve the second boat ramp so that it would be more
13 usable for the fishermen.

14 Ultimately we lost. The Commission came up
15 with its order and declared that Ko'Olina is required
16 to provide a boat ramp within the Ko'Olina Marina and
17 that it's open to the public. That was 2008.

18 Since then, we've gone through the
19 permitting process and the construction of the boat
20 ramp, and the boat ramp was open in July this past
21 year in this location (indicating), the third boat
22 ramp, the most mauka end of the Ko'Olina marina.

23 This diagram we have the new boat ramp, the
24 third one. The mauka end of the marina is located
25 here on the west end (indicating.) So this boat

1 ramp, which cost a little more than \$3 million to
2 construct, is 30 feet wide. The ramp itself has a
3 herringbone surface for added traction. And we have
4 two dock walkways on either side of the boat ramp.

5 Now, these walkways are covered with
6 slipper resistant fiberglass, and each dock is four
7 feet for tile and bumper, 25 bumper for each way to
8 protect the boat and the pylons.

9 So this is the overall area of the boat
10 ramp. The entrance here is from Kekahi Street. So
11 there's a gate here at the end of Kekahi Street,
12 which enters into the boat ramp driveway. From here
13 the boat and trailers then travel through the parking
14 lot.

15 In this parking lot there are 28 stalls for
16 trailers, 40-foot long parking stalls. Also two
17 additional stalls here located closer to the boat
18 ramp which are handicap stalls.

19 So to launch the boats, the trucks and
20 trailer come in through the parking lot, and then
21 reverse into the boat ramp here. After they launch,
22 the trucks then go around and basically go in a
23 circle and park trucks and trailers and then launch
24 their boats.

25 Close-ups of the boat ramp include

1 stainless steel railings for ADA accessibility on
2 either side of the boat ramp. And in this area is
3 the wash down area. We have three wash-down areas.
4 One I believe is on this side of the ramp is ADA
5 accessible with water spigot for freshwater to wash
6 down the boats. And this is a close-up of the ramp
7 and railings.

8 Here you can see the four cleats on the
9 walkway, together with the bumpers to protect the
10 boats, and the stainless steel railings to comply
11 with ADA.

12 Here you can clearly see the herringbone
13 ramp. The angle of the ramp is 12 degrees. That's
14 important, so that it's steep enough so boaters can
15 launch the boats without getting their trucks wet,
16 basically.

17 Also we have here trash receptacles,
18 including recyclable and porta potty for fishermen's
19 use. Close-up of handicap parking stalls for the
20 trailers and the wash-down area for the boaters.

21 And here is an example of a registered user
22 with his truck and trailer parked within the 40-foot
23 parking stall.

24 Some of the issues referred to include the
25 fees we're charging, insurance requirement, 40-foot

1 maximum length, and the concern about the public use
2 versus private use.

3 With respect to the fees, what we have is a
4 \$15 per day launch fee, and a \$10 parking fee for one
5 day. It is possible for a motor boater to launch
6 through the daytime and return the next day if they
7 fish overnight. If they do that, there will be no
8 additional cost, will not be charged an additional
9 \$10 just because they may have gone beyond 24 hours.
10 That's not the case.

11 Our position on the fees we believe they
12 are reasonable. The reason for the fees are to help
13 defray expenses basically. Ko'Oolina provides
14 security for the whole project, including the boat
15 ramp. Freshwater is provided, grounds maintenance
16 provided, rubbish pick up provided along with porta
17 potty service.

18 And there are administrative expenses since
19 personnel are working to schedule appointments, open
20 the gates, all of that costs money. That's the
21 justification for the fees.

22 With the respect to amount of fees, we just
23 like to point out that the state itself charges a
24 launch fee, \$50 per year. That's according to Hawaii
25 Administrative Rules 13-234-34A.

1 So it depends on how often you launch which
2 would be more expensive per day fee or annual fee.
3 We would note, however, that for Ko'Olina, we have
4 our own services. It is a private community --
5 privately owned. Residential community. It's a
6 resort community and security is important. And we
7 do incur these expenses.

8 For the parking fee we note that at
9 Ma'alaea small boat harbor on Maui, they charge \$12
10 for 24 hours of parking. That's on Maui. I got that
11 from the DLNR website. So given that amount, we feel
12 our \$10 per day is a reasonable charge.

13 Regarding insurance, all boat users in the
14 marina are required to carry watercraft liability
15 insurance.

16 In addition to the boat ramp, we have slips
17 where we rent boat slips to people. There are
18 recreational users and there are commercial user slip
19 owners. Recreational renters must maintain a
20 watercraft liability insurance at minimum coverage of
21 \$500,000. For commercial users, it's \$2 million.
22 Those are minimums.

23 As far as the amount of coverage, we will
24 note that state DLNR, for mooring permits, requires
25 liability coverage of \$500,000 minimum for boats.

1 Also note that a letter was sent in from
2 one of our regular users, Ross Kurihara. He reported
3 his premium for \$500,000 coverage is \$75 per year.
4 That's from State Farm, not from Island Insurance.
5 So I can understand there's a difference between that
6 incurred by Mr. Kurihara and those from the public
7 testifiers.

8 40-feet maximum length is based upon City
9 and County of Honolulu Land Use Ordinance Section
10 21-6.50C. It requires a minimum 40-feet length for
11 parking stalls at boat launch ramps for trailers.

12 So our position is we have complied with
13 the law as far as what is required for parking
14 stalls, and compliance with the law is what we strove
15 for and that is something that we have obtained.

16 Public versus private, no commercial users
17 are allowed at the boat ramp, it's strictly for
18 recreational, public recreational user, no commercial
19 users are allowed.

20 I think that's it for now, Commissioners.
21 If you have any questions, we will do our best to try
22 to answer them.

23 CHAIRPERSON ACZON: Any questions, Mr. Yee?

24 MR. YEE: No questions.

25 CHAIRPERSON ACZON: Commissioners?

1 COMMISSIONER SCHEUER: I actually have,
2 because of the long history of this issue and the
3 concerns raised by some of the users or people who
4 want to use the facility, I have a whole bunch of
5 questions that I don't feel adequately -- I have a
6 whole bunch of questions now, and probably more
7 questions if I was more adequately prepared for this.

8 So my general inclination is I'd like to
9 see us trying -- we are starting to see membership and
10 I'd rather focus questions of my own, and perhaps
11 other commissioners have additional questions.

12 I think we would like to see people come
13 back in maybe three months to clarify the issues.

14 CHAIRPERSON ACZON: Any other questions?

15 EXECUTIVE OFFICER: Commissioner Scheuer,
16 by purpose and statute purposes, for clarification,
17 are you suggesting that the Commissioners lay out
18 information they'd like provided now, or would you
19 want staff -- staff can collect questions from all
20 the Commissioners after this hearing and pose them to
21 the Petitioner?

22 COMMISSIONER SCHEUER: Thank you, Mr.
23 Executive Officer. I'm trying to be efficient with
24 our time and the time of all parties here. I think
25 the idea of perhaps collecting questions from the

1 Commission, we can certainly ask some publicly here,
2 and raise the questions and not respond. Collect any
3 additional information that the Commissioners may
4 have for the staff or for the parties, so that when
5 we come together again, the discussion can be
6 efficient and productive.

7 CHAIRPERSON ACZON: Thank you, Commissioner
8 Scheuer.

9 I just want to give OP, if you have
10 additional comments.

11 MR. YEE: Thank you.

12 I believe the summary of facts by Mr.
13 Tabata is correct. This case started in 1985 when
14 the district boundary amendment was granted for over
15 600 acres for resort community. And he's correct in
16 1988 that the first boat ramp was constructed but
17 that was not available to the public, even though the
18 Findings of Fact represented at the time was that the
19 Petitioner would develop a recreational and
20 commercial marina with a public boat launch ramp.

21 So in 1985 that was the representation. A
22 launch ramp was initially constructed, but not made
23 available to the public until 2000. In March of 2000
24 it was then -- the property had been sold and it was
25 sold and some of these facts -- because when we did

1 this declaratory relief, the parties stipulated to a
2 series of facts, so among those series of facts was
3 some of this information.

4 And then, as Mr. Tabata discussed with you,
5 there was dispute between some of the fishermen and
6 Ko'Oolina regarding the conditions that would be
7 attached to their use of the boat ramp. The primary
8 issue hours of operation because Ko'Oolina has
9 residents. Some of the fishermen want to use it
10 24 hours. And there was a city permit that still had
11 to be granted in order for construction to move
12 forward.

13 So the city met with the particular
14 fishermen and Ko'Oolina and there was an agreement to
15 move the boat launch ramp over to another location.
16 Neither the Office of Planning or LUC were consulted
17 on this. And the result was the boat launch ramp was
18 created in the industrial portion of the harbor
19 industrial area.

20 And there were various complaints about the
21 safety of the boat launch ramp. I won't go into all
22 the details. But it was deemed to be inadequate by
23 many people. And to be quite honest, for the Office
24 of Planning, it really made it look like you had this
25 world class marina for use by resort guests, and then

1 all the boater launches moved to the boat harbor.
2 The original concern was try to reconcile these
3 different users. Some of them wanted to use
4 24 hours. It was not consistent with the
5 representations that were made at the time of the
6 petition.

7 So the Office of Planning disagreed with
8 Ko'Oolina, said no. The representation was there was
9 going to be a marina with a public boat launch ramp.
10 It had to be in the marina, part of this world class
11 facility.

12 And so in 2008 -- 2005 that first boat
13 launch ramp in the marina was closed and they were
14 moved over to the other ramp. And then 2008 we had
15 this particular declaratory relief matter initiated
16 and you approved in favor -- or favor of Ko'Oolina.

17 There was a long period of construction.
18 And some of you may remember the frustration about
19 many people of how long it was taking. And finally
20 now the construction is completed and the issues now
21 apparently by the fishermen are the operational
22 issues, the fees, insurance, et cetera.

23 First of all, the Office of Planning wants
24 to recognize that this wouldn't have happened really
25 without a harbor. The fishermen, they were the ones

1 who notified LUC of this issue back in 2008. They
2 were the ones who kept up with this during the long
3 period of construction. According to their
4 testimony, they really were sort of instrumental in
5 helping some of those permits get granted.

6 They've been participating. Although you
7 hear some of the frustrations that they have, they
8 have actually been fairly good. We have seen lots of
9 testimony from a variety of different people.

10 Their testimony has been by and large
11 clear, factual. They present their arguments well.
12 And you wouldn't be here without all their hard work
13 and assistance. So let me first acknowledge that.

14 But the Office of Planning also views this
15 as -- to remember the scope of our review. And I
16 know for everyone when you see a problem, you want to
17 solve it. That's just natural. And there seems to
18 be a dispute, and the desire I'm sure is going to be
19 I really want to resolve that. I want to make sure
20 recreational access for everyone. I want to be
21 assured that all the conditions are reasonable.

22 But for the Office of Planning, we remember
23 that there is a Land Use Commission response for
24 certain issues, and there is also the county, and I'm
25 really sorry the county is not here, because as part

1 of the county process, part of their Conditional Use
2 Permit, the county approved a Public Access Master
3 Plan.

4 And I don't know what all the conditions
5 are in that master plan, I haven't seen it, but when
6 you deal with the level of detail of fees and size of
7 parking lots, you know, and hours of operation, that
8 really is the best place to deal with these issues.

9 Now, if there was a representation back in
10 1985 about some of this, then I would say it's a
11 representation you made, you're bound to it, you have
12 conditions, you have to be bound to it.

13 But once the decision got made, once we set
14 out the conditions, as soon as the Land Use
15 Commission set out specific conditions for hours of
16 operation, et cetera, then to get into that level of
17 detail about fees and et cetera, is really more of a
18 county issue.

19 That's how the Office of Planning views it.
20 So we don't really see the LUC, the violation LUC
21 Decision and Order, even though there may be a very
22 legitimate issue concerned over a matter that is
23 important, coastal access is important.

24 Despite that, we want to respect the
25 county's jurisdiction, and their level of review. So

1 based upon that, and the fact that the -- one other
2 issue, declaratory relief really didn't look at these
3 issues, didn't look at hours of operation, fees, et
4 cetera.

5 We looked at location of boat ramp that was
6 the area of dispute, and that got resolved.

7 So given the fact that the particular area
8 addressed at the time in 2008 was location of the
9 boat ramp, and that does seem to be resolved in terms
10 of location, and that the boat ramp has been
11 constructed, and despite the fact that there are
12 continual operational issues for the Office of
13 Planning, we don't see a further need for LUC status
14 report.

15 You may disagree. That's completely your
16 call. But part of our job is to give you our
17 recommendation, our view of how this fits into the
18 context of the entire matter.

19 So from our viewpoint, this is not a LUC
20 issue. It's an important issue, but not a LUC issue,
21 and it really belongs at the county level. Thank
22 you.

23 CHAIRPERSON ACZON: Any questions, Mr.
24 Tabata?

25 MR. TABATA: No questions.

1 CHAIRPERSON ACZON: Commissioners?

2 COMMISSIONER McDONALD: Just a statement.

3 Mr. Yee, thank you for stating your
4 position. I actually agree with Mr. Yee in that the
5 Land Use Commission body, at this level we actually
6 had public testifier identify the conditions of the
7 Conditional Use Permit on county level. So that was
8 more of an interest that kind of sparked my interest
9 as to the LUC, to kind of hear details of the usage,
10 the type of boats being used within the harbor.

11 So that's my position.

12 CHAIRPERSON ACZON: Thank you, Commissioner
13 McDonald. Any others?

14 COMMISSIONER HIRANAGA: I'm not sure who to
15 address this to. From a jurisdictional standpoint,
16 because this boat ramp is constructed on private
17 property, that does not fall under State of Hawaii
18 Department of Land and Natural Resources harbors
19 jurisdiction, falls under the City and County of
20 Honolulu.

21 MR. TABATA: There is a Conditional Use
22 Permit that the Public Access Master Plan governed
23 our boat ramp. So to that extent, the City Council
24 of Honolulu does have jurisdiction over the majority
25 of these actions.

1 COMMISSIONER HIRANAGA: In reference to the
2 Public Access Master Plan, I keep seeing replace
3 existing public boat ramps. The word "public" is
4 used a lot. Public is not defined. So if the LUC
5 decides that they're not going to become involved in
6 the level of reviewing administrative rules for the
7 operation of the boat ramp, then the recourse by the
8 fishermen might be a civil matter that they would
9 take to the City and County of Honolulu and file a
10 complaint. Their recourse.

11 MR. TABATA: I can't give legal advice to
12 the fishermen, but there is a process involved with
13 the city permit.

14 COMMISSIONER HIRANAGA: To appeal that the
15 conditions are not being met?

16 MR. TABATA: I can't really comment on what
17 kind of recourse, but just to reiterate what we said
18 earlier, this is made open to the public. This is a
19 public boat launch ramp. We do have registered users
20 who are currently using as members of the public our
21 boat launch ramp.

22 CHAIRPERSON ACZON: Commissioner Mahi.

23 COMMISSIONER MAHI: I don't have a
24 question. I think I want to thank you for bringing
25 us up to snuff on this particular issue. I've been

1 enlightened a lot in terms of what has happened, but
2 I think when I step out of it and I see where the
3 public is coming from or part of the public, I'm not
4 sure -- I mean, there's other registered users and
5 there are public users.

6 What the ratio of your other registers
7 compared to those that have been vocal about the
8 issues that haven't been met in terms of the public
9 service? I don't know where that stands. If it's
10 80 percent happy and 20 percent that aren't happy, or
11 50 percent/50 percent, maybe that's not for us to
12 belabor.

13 But more importantly, you're trying to step
14 out of it, and you look at everything in terms of who
15 we are as Hawaiian, what we are, in terms of our
16 relationships, I think.

17 And because this is a new time, this is a
18 time where legality and litigation we become slaves
19 to all of that. And money is being spent -- I mean
20 heaps of money by Ko'Olina people, which definitely I
21 feel bad for that, because you're trying in good
22 faith to reach the requirements of having that public
23 use be the intent, but yet still balancing that off
24 with your responsibilities and obligations to those
25 that are your commercial users.

1 So because this has to do with fishermen, I
2 just always go back to going down to the place. I
3 don't know if any of you used to go down, called
4 basic marina. Used to go down there and get
5 businessmen down there, and fishermen down there and
6 we all met at George's Ice House. You guys remember
7 that? That's where the real business was conducted
8 in terms of trying to meet the needs of everybody,
9 both fishermen and commercial people. The guys that
10 had the lease and owned the land. And I always
11 believe when I still go down there, we're handled in
12 a very local Hawaiian way.

13 Unfortunately, we can't say that in this
14 situation, but if there could be someday that we can
15 do this, I think it really again reverberate who we
16 are as Hawaiians, people from Hawaii.

17 I love it when I go home, because I have
18 good friends, fishermen to find ahi in my -- what you
19 call -- my cooler. And was because we had a
20 relationship, you know, these kinds of relationships.
21 And that's all I wanted to comment on.

22 I just think we should all step back
23 sometimes and really analyze who we are and what we
24 are and where we were, you know, from days past.

25 CHAIRPERSON ACZON: Thank you, Commissioner

1 Mahi. We're not required to render a decision on
2 this. But what's the Commission's pleasure?

3 COMMISSIONER SCHEUER: Mr. Chair.

4 Respectfully, Mr. Yee, while I trust you,
5 you're not our representative necessarily, and if I'm
6 reading the correct document on my smart phone I
7 don't know if I'm reading the right one, Condition 2
8 of DR08-36, Petitioner must construct a boat launch
9 ramp inside the Ko'Oolina Marina open to the public to
10 be in substantial compliance with the representation
11 in the Decision and Order and Amended Decision and
12 Order.

13 Really what we're getting at for our
14 limited role as Land Use Commission, you don't want
15 me to talk about fishing, because we will drown. I
16 don't know anything about fishing. But I do know
17 this kind of stuff.

18 Has there been substantial compliance? And
19 that's the question that I think we have enough
20 information on to go make a meaningful and fair
21 decision.

22 So I would propose a motion for the
23 possible consideration of our fellow Commissioners.

24 It would be that I move that we defer
25 action on DR08-36 for three months and ask three

1 things: One, we ask the executive officer to receive
2 questions from the Commissioners. That could be
3 answered in writing by the Petitioners and other
4 relevant parties, including the county prior to our
5 next hearing on this matter.

6 Two, that the Land Use Commission staff and
7 attorney general's office prepare a summary of the
8 history on this matter for the Commission;

9 And three, we respectfully request -- and
10 this is getting to Commissioner Mahi's comments --
11 respectfully request that Petitioner and the
12 fishermen who have come here today, to engage in some
13 discussion over the next three months on this matter
14 to see what greater understanding among the parties
15 might be brought to bear.

16 That's my proposal, Mr. Chair.

17 CHAIRPERSON ACZON: Any second?

18 COMMISSIONER MAHI: Second.

19 CHAIRPERSON ACZON: Second by Commissioner
20 Mahi. Any discussion? Commissioner Hiranaga.

21 COMMISSIONER HIRANAGA: Commissioner
22 Scheuer is first, if not --

23 COMMISSIONER SCHEUER: Please proceed.

24 COMMISSIONER HIRANAGA: Just for clarity,
25 on the agenda item for appropriate action if

1 necessary. So I guess in the past we have received
2 written status report. For clarity, this is a verbal
3 status report maybe. Yeah?

4 I mean, trying to capture the response, and
5 perhaps the motion could be rephrased, but a written
6 status report would probably be more meaningful for
7 the commissioners as well as -- and the parties as
8 part of coming back.

9 My question is, does that fulfill the
10 requirement -- verbal status report fulfills the
11 report for written reports?

12 EXECUTIVE OFFICER: Getting written reports
13 as well as verbal. This hearing was more about
14 attempt to out the matter, that was what this was
15 based on. It wasn't necessarily a status report to
16 fulfill the requirements of declaratory ruling, it
17 was represented to us, to staff that the matter was
18 closed.

19 COMMISSIONER HIRANAGA: The request was
20 going to be made to close the declaratory order?

21 EXECUTIVE OFFICER: Yes.

22 COMMISSIONER HIRANAGA: So Commissioner
23 Scheuer's motion to basically ask for status report
24 just based upon comments received from the
25 Commission.

1 COMMISSIONER SCHEUER: It would be to
2 formally defer action as well as request additional
3 status report with the items addressed in the motion.

4 COMMISSIONER HIRANAGA: And action requires
5 six affirmative votes.

6 EXECUTIVE OFFICER: Five.

7 CHAIRPERSON ACZON: Any other discussion?

8 COMMISSIONER HIRANAGA: I guess for me you
9 keep referring to public boat ramp, but that's the
10 big, you know, big question. What is a public boat
11 ramp? It's open, but to certain users saying these
12 are prohibitive, so then always open to the public,
13 it's like a golf course. Pebble Beach is open to the
14 public, but \$500 a round, how many people are going
15 to be playing golf there on a regular basis?

16 It's a quandary, because it was not very
17 definitive. But then based on Mr. Yee's comments, it
18 really falls under the jurisdiction of city and
19 county to administer the Conditional Use Permit.

20 So there are complaints from the public
21 that Conditional Use Permit is not being adhered to.
22 It's up to City and County of Honolulu to remedy that
23 situation. I guess that's just what you offered.

24 MR. YEE: Yes. With respect to
25 jurisdictional, I have not seen the public access, so

1 I don't know if there is violation of conditional
2 use. I don't know if public master plan. I just was
3 referring to the jurisdiction of these kind of things
4 are kind of things that the city was supposed to do.

5 COMMISSIONER HIRANAGA: Perhaps we can have
6 a copy of that master plan as well?

7 CHAIRPERSON ACZON: That would be part of
8 the report that Commissioner Scheuer was asking.

9 COMMISSIONER WONG: Let me get this
10 straight again.

11 Is there a petition that was filed by the
12 Petitioner to say we've met the condition? Was there
13 anything filed?

14 MR. TABATA: We submitted a letter letting
15 everyone know that construction of our public boat
16 launch ramp was complete and that it was open. And
17 we gave instructions on contacting Ko'Oolina so that
18 people could register as users.

19 I thought that would satisfy the
20 requirements that were placed upon Ko'Oolina, that's
21 why I submitted a one-page letter letting everyone
22 know that it was built and open.

23 And so we did not file a separate petition
24 to close this docket. We believed we complied with
25 Land Use Commission order, and that we feel does

1 close this matter.

2 EXECUTIVE OFFICER: Just for clarification.
3 When we received the letter saying that the boat ramp
4 was complete, staff scheduled this hearing so that
5 the commissioners could know and formally deliberate
6 on whether or not they felt the matter had been --
7 the order had been complied with. And the matter was
8 closed. And that was the reason for this hearing,
9 because there is no formal process for the closing
10 out of this.

11 COMMISSIONER WONG: It was a process
12 through --

13 MR. TABATA: No, to draw an analogy. Like
14 if we went to trial in a civil matter, and against me
15 says I have to pay a million dollars to Ken. Once I
16 pay that million dollars, my obligations are
17 complete, yes. So you don't go back to court and say
18 I paid the million dollars, and the process is
19 completed. So that's how we proceeded.

20 CHAIRPERSON ACZON: Mr. Yee.

21 MR. YEE: Thank you. This doesn't
22 necessarily mean you should defer. But I want to be
23 clear on this about the terms. Declaratory relief
24 order explains what the requirement of the original D
25 and O was in 1985. It explained, here was the

1 representation. You have to comply with it. Here's
2 what it means.

3 The order did not say you shall build a
4 public boat launch ramp. And that seems to be an
5 order. You might think that's a little odd. It had
6 to deal with whether or not the LUC -- and this maybe
7 could be addressed in subsequent filing to explain it
8 better so you can process it all -- but a declaratory
9 relief really just gives someone an interpretation of
10 a requirement, or something like that. It doesn't
11 specifically order people to do things.

12 So the only part of your declaratory relief
13 order that required them to do something was a
14 written status report. So you currently ordered them
15 to provide written status reports.

16 So if you don't do anything, they continue
17 to have to provide you with quarterly status reports.
18 And that's just the way it is. I'm not saying what
19 you should do. I just want to be clear about what
20 the order required, and it's up to you how to receive
21 it.

22 CHAIRPERSON ACZON: Commissioner Scheuer.

23 COMMISSIONER SCHEUER: Reading a document
24 entitled Docket No. DR08-36 Findings of Fact and
25 Conclusions of Law and Decision and Order, there is a

1 specific order to build a public boat ramp. It's
2 unfortunately, for me, it's providing less clarity.

3 MR. YEE: I say this. I say this because
4 it was a water case in which the question was whether
5 the LUC could order certain items be done. And the
6 answer was, you couldn't. But you could certainly
7 do, so you couldn't say you shall build a boat ramp,
8 but you could say you haven't built the boat ramp,
9 and I may revert the property because the Supreme
10 Court said the obligation to order something be done
11 is with the county. County is to do the enforcement
12 action.

13 But you could say, for example, the
14 requirement was to build the boat ramp, you haven't
15 built the boat ramp, I'm going to have an order to
16 show cause. And the decision was made not to issue
17 an order to show cause, and instead proceed as a
18 declaratory order.

19 So from my perspective -- and we can, and
20 perhaps we should -- brief this further, and maybe to
21 identify this as an issue to be briefed further on
22 the procedural status of this case.

23 CHAIRPERSON ACZON: Any other discussion?

24 COMMISSIONER HIRANAGA: I have a question
25 for clarity.

1 So according to the Land Use Commission,
2 the 21st boat ramp record was filed 4-23-15. That
3 was the first quarter of 2015?

4 MR. TABATA: Yes.

5 COMMISSIONER HIRANAGA: So this figure in
6 the status report is for the second quarter of 2015?

7 MR. TABATA: It could be.

8 I'm sorry, Commissioners, I didn't -- I
9 thought when we completed the construction of this
10 boat ramp we had satisfied our obligation under this
11 DR, so I instructed my client there was no need to do
12 another because the next one, quarterly report would
13 be due in July which was when we opened the boat
14 ramp. So I told them no need. But we need to inform
15 the Commission that the boat ramp is completed and
16 that it's open to the public.

17 And I thought that would satisfy our
18 requirement. That was my decision.

19 CHAIRPERSON ACZON: Any further discussion?

20 COMMISSIONER HIRANAGA: For clarification,
21 the condition of this permit granted by City and
22 County of Honolulu, does the City and County of
23 Honolulu describe about the boat ramp or just say
24 you're allowed to build a boat ramp?

25 MR. TABATA: The construction plans were

1 provided to the city. If there was any discrepancy
2 with land use ordinance requirements, building code
3 requirements, they would have let us know.

4 COMMISSIONER HIRANAGA: So you provided and
5 they approved the construction plans?

6 MR. TABATA: I believe so.

7 CHAIRPERSON ACZON: Thank you.

8 COMMISSIONER MAHI: Was there a public
9 response to that, or did the public have a chance to
10 respond or to a hearing of any sort? It wasn't
11 required?

12 MR. TABATA: I'm not sure. I'm sorry.

13 CHAIRPERSON ACZON: Thank you, Commissioner
14 Mahi.

15 There was a motion by Commissioner Scheuer
16 and seconded by Commissioner Mahi. If there is no
17 further discussion, Mr. Orodenker, please poll the
18 commission.

19 COMMISSIONER HIRANAGA: Could we have the
20 motion repeated for clarity?

21 COMMISSIONER SCHEUER: I move that we defer
22 action on DR08-36 for three months, and ask one:
23 Executive Officer receive questions from the
24 Commissioners that could be answered in writing by
25 the Petitioner and other relevant parties, including

1 the county, prior to our next hearing on this matter.

2 Two, the staff and the AG prepare summary
3 of history on this matter for the Commission;

4 And three, we respectfully request the
5 Petitioner to engage in discussions with the
6 testifiers on this matter to see what greater
7 understanding among the parties can be reached during
8 that time.

9 CHAIRPERSON ACZON: Mr. Ordenker.

10 EXECUTIVE OFFICER: Not to misquote
11 anybody, I think the motion is as stated by
12 Commissioner Scheuer.

13 Commissioner Scheuer?

14 COMMISSIONER SCHEUER: Aye.

15 EXECUTIVE OFFICER: Commissioner Mahi?

16 COMMISSIONER MAHI: Aye.

17 EXECUTIVE OFFICER: Commissioner Wong?

18 COMMISSIONER WONG: Pass.

19 EXECUTIVE OFFICER: Commissioner McDonald.

20 COMMISSIONER McDONALD: No.

21 EXECUTIVE OFFICER: Commissioner Hiranaga?

22 COMMISSIONER HIRANAGA: I vote aye.

23 EXECUTIVE OFFICER: Commissioner Cabral and
24 Commissioner Estes are no longer present.

25 Chair Aczon?

1 CHAIRPERSON ACZON: Aye.

2 EXECUTIVE OFFICER: We have four votes in
3 favor of the motion, one no and one exception.

4 COMMISSIONER WONG: Aye with reservations.

5 EXECUTIVE OFFICER: Based on Commissioner
6 Wong's "aye" indication, we now have five votes in
7 favor of the motion and one no. Motion carries.

8 CHAIRPERSON ACZON: Thank you.

9 There being no further business, we are
10 adjourned.

11 (The proceedings ended at 4:04 p.m.)

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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 16, 2015 at 1:00p.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 16th day of October, 2015, in
Honolulu, Hawaii.

JEAN MARIE McMANUS, CSR #156

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2 STATE OF HAWAII)
3) SS.
4 COUNTY OF HONOLULU)

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17 Honolulu, Hawaii.

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JEAN MARIE McMANUS, CSR #156

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