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BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

February 10, 2016

Commencing at 8:30 a.m.

State Office Tower

Leiopapa A. Kamehameha Building

Room 405

Honolulu, Hawaii 96813

DR08-36 Ko OLINA DEVELOPMENT LLC (OAHU)

Motion for Reconsideration of Order Granting

Motion to Defer Actin of Petitioner's Status Report

Filed November 5, 2015

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chairperson

3 COMMISSIONERS:

4 JONATHAN SCHEUER, Vice Chair

ARNOLD WONG, Vice Chair

5 Linda Estes

Chad McDonald

6 Kent Hiranaga

7 Diane Erickson, Esq.

Deputy Attorney General

8

STAFF:

9

DANIEL ORODENKER, Executive Officer

10 RILEY HAKODA, Chief Clerk/Planner

BERT SARUWATARI, Planner

11

12 GORDON KITAOKA, ESQ.

Deputy Corporation Counsel

13 KATHY SOKUGAWA, Planner

Department of Planning and Permitting

14

15 BRIAN YEE, ESQ.

Office of Planning

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17

For County of Honolulu

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19 BENJAMIN MATSUBARA, ESQ.

CURTIS TABATA, ESQ,

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For Petitioner

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1 CHAIRPERSON ACZON: This is the February  
2 10th, 2016 LUC meeting.

3 First item on agenda for today is a hearing  
4 on Docket DR08-36, Ko'Oolina Development LLC, to  
5 receive a continued status report from Petitioner on  
6 the progress of the development of the public boat  
7 ramp and adherence to other conditions in the  
8 Commission's Decision and Order, and take action, if  
9 any, and to hear Ko'Oolina Development LLC's Motion  
10 for Reconsideration of order granting Motion to Defer  
11 Action of Petitioner's Status Report filed November  
12 5, 2015.

13 Will the parties please identify themselves  
14 for the record?

15 MR. MATSUBARA: Good morning, Mr. Chairman.  
16 Ben Matsubara and Curtis Tabata on behalf  
17 of Ko'Oolina. With me today is Ken Rudas (phonetic).

18 MR. KITAOKA: Good morning, Gordon Kitaoka,  
19 Deputy Corporation Counsel City and County of  
20 Honolulu. With me today is Kathy Sokugawa, head  
21 planner of Department of Planning and Permitting.

22 MR. YEE: Bryan Yee on behalf of Office of  
23 Planning. I believe Mr. Rodney Funakoshi will be  
24 here soon.

25 CHAIRPERSON ACZON: Let me update record.

1           On October 16, 2015, the Commission met and  
2 received Petitioner's written and oral status report;  
3 and received public testimony from Creighton Chang  
4 and Rodney Ajifu.

5           On this same date, the Commission voted to  
6 defer action of Petitioner's Status Reports.

7           On October 28, 2015, the Commission  
8 received a copy of a letter to Ko'Oolina Community  
9 Association from Creighton Chang regarding the new  
10 boat ramp.

11           On November 5, 2015, the Commission mailed  
12 its order granting a Motion to Defer Action on  
13 Petitioner's Status Reports to the Parties.

14           On November 15, 2015, the Commission  
15 received Petitioner's Motion for Reconsideration of  
16 order granting a Motion to Defer Action on  
17 Petitioner's Status Reports filed November 5, 2015.

18           On November 19, 2015, the Commission  
19 received OP's response to Petitioner's Motion for  
20 Reconsideration.

21           On February 1st, 2016, the Commission  
22 mailed the February 9-10, 2016 LUC meeting agenda to  
23 the Parties and the Oahu, Hawaii and Statewide  
24 mailing lists.

25           Let me briefly describe our procedure for

1 today on this docket.

2 First I will call for those individuals  
3 desiring to provide public testimony to identify  
4 themselves. All such individuals will be called in  
5 turn to our witness box where they will provide their  
6 testimony.

7 After completion of the public testimony, I  
8 will ask the Petitioner to provide any comments to  
9 the past quarterly reports and Status Reports and the  
10 current status of the boat ramp.

11 After Petitioner's presentation, we will  
12 receive comments from City and OP.

13 Once the continued status report is  
14 completed, the Commission will address the Motion for  
15 Reconsideration and have the Petitioner make its  
16 presentation, followed by presentations by the City  
17 and County and OP, if any, with regards to the  
18 Motion.

19 Are there any questions or comments on our  
20 or procedures for the day?

21 MR. MATSUBARA: No questions.

22 CHAIRPERSON ACZON: Is there anyone in the  
23 audience who desires to provide public testimony on  
24 this matter at this time?

25 EXECUTIVE OFFICER: We have Warren Von

1 Arnswaldt and Creighton Chang signed up to testify.

2 CHAIRPERSON ACZON: Let me swear you in.

3 Do you swear or affirm that the testimony  
4 that you're about to give is the truth.

5 THE WITNESS: I do.

6 WARREN VON ARNSWALDT

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

9 DIRECT EXAMINATION

10 CHAIRPERSON ACZON: State your name and  
11 address.

12 THE WITNESS: Warren Von Arnswaldt, 92-755  
13 Palailai Street, Kapolei.

14 I sent in, I think, letters to Executive  
15 Director Daniel Orodener. It should be two copies.  
16 In regards to our meetings that we had.

17 I just want to thank the Commissioners for  
18 what they have done during this ordeal. And most of  
19 the problems we had with Ko'Oolina we tried to work  
20 out, but we didn't get too far on that. But we did  
21 get an extension on the boat length, trailer, stalls.

22 And I ask them to look into, when they  
23 start building the permanent parking lot, that they  
24 consider the 50-foot trailers at the plan that I  
25 issued to them, I think two years ago, with that

1 parking lot wouldn't work with larger trailers.

2 So I just wanted to thank everybody for  
3 what they have done.

4 CHAIRPERSON ACZON: Any questions for the  
5 testifier?

6 MR. MATSUBARA: No questions.

7 MR. KITAOKA: No questions.

8 MR. YEE: No questions.

9 CHAIRPERSON ACZON: Thank you, very much.  
10 Next.

11 CHAIRPERSON ACZON: Do you swear that the  
12 testimony that you're about to give is the truth.

13 THE WITNESS: Yes.

14 CREIGHTON CHANG

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

17 DIRECT EXAMINATION

18 CHAIRPERSON ACZON: State your name and  
19 address.

20 THE WITNESS: My name is Creighton Chang,  
21 and my address is 94-307 Oahu Street in Waipahu.

22 CHAIRPERSON ACZON: Please proceed.

23 THE WITNESS: Over the past three months  
24 the fishermen representatives consisting of Mr.  
25 Warren Von Arnswaldt, Mr. Rodney Ajifu, and myself

1 with Mr. Ken Williams of Ko'Oolina Community  
2 Association and their attorneys Mr. Ben Matsubara and  
3 Mr. Curtis Tabata.

4 Based on our last LUC meeting we were  
5 tasked to communicate with each other to resolve our  
6 disagreements with the operations of the new boat  
7 ramp facility.

8 The major concerns we had were the fees  
9 being charged for parking and launching, insurance  
10 requirements, and the vehicle and trailer length. We  
11 did meet once at Ben's office and a follow up only  
12 last week at my residence.

13 Ko'Oolina wanted to advise us of their  
14 decision to our three major concerns. In summary, as  
15 far as the fees and insurance requirements, there  
16 will be no adjustment and they will remain the same.

17 As far as the boat length is concerned  
18 Ko'Oolina will adjust nine stalls and one handicap  
19 stall to accommodate a vehicle and trailer length of  
20 50 feet. This is ten feet additional to the original  
21 length of 40 feet. This adjustment affects one third  
22 of the total available stalls.

23 This however does not allow for many boats  
24 which are longer than the 50 foot limitation. We  
25 mentioned to them that the requirement should allow

1 for any legal trailerable boat, and you got some  
2 pictures that you can take a look at.

3 This trailer and vehicle was allowed to use  
4 the facility. Being a triple-axle trailer, the boat  
5 must have exceeded 28 feet and the trailer over 30  
6 feet.

7 Also we still believe Ko'Oolina is still  
8 mixing apples and oranges where they are associating  
9 the requirement of a stripped stall to the vehicle  
10 and trailer length.

11 As mentioned before almost all State  
12 Harbors are striped with 40 foot stalls and the  
13 vehicle and trailer stick out beyond the lane lines.  
14 There is no requirement in the standards where a  
15 vehicle and trailer need to be fully in the marked  
16 stall.

17 This requirement has been made only on the  
18 whim of Ko'Oolina and by doing so restricts the use of  
19 many legal trailerable boats. For example, a boat 26  
20 feet or longer boat will have a trailer roughly 30  
21 feet long requiring a stall of 56 feet.

22 Why would these larger boats be excluded?  
23 We all understand this is a "Private Ramp" open to  
24 the public. Well, I still think they should  
25 accommodate the entire public, especially after

1 spending over 11 years and over \$3 million. The only  
2 way to recover their cost is to have people sign up  
3 to use it. We ask you to open up the facility to all  
4 legal trailerable boats.

5 We the fishermen have been fighting this  
6 issue since the original ramp was closed over 11  
7 years ago. We need to bring this issue to a close  
8 and get back to fishing.

9 In our last meeting with Ko'Oolina, we were  
10 given assurances the lines of communication will  
11 always be open and they will continually evaluate the  
12 use and the cost of the facility possibly make  
13 adjustments to (1) lower the fees at a later date  
14 based on the use; and (2) lengthen the stalls  
15 depending on demand for the facility.

16 Thank you, Chairman Aczon, Commissioners,  
17 Mr. Orodener, Mr. Williams, Mr. Matsubara, Mr.  
18 Tabata, and Mr. Brian Yee for the last 11 years of  
19 hard work to get this new boat ramp built for the  
20 general public. Hopefully we can get this new  
21 facility open to everyone and not just a select few.

22 CHAIRPERSON ACZON: Any questions for the  
23 testifier?

24 MR. MATSUBARA: No questions.

25 MR. KITAOKA: No questions.

1 MR. YEE: No questions.

2 CHAIRPERSON ACZON: Commissioners? Thank  
3 you. Next witness. Are there any more public  
4 witness?

5 Let me swear you in. Do you swear that the  
6 testimony that you're about to give is the truth.

7 THE WITNESS: Yes, sir.

8 RODNEY AJIFU

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

11 DIRECT EXAMINATION

12 CHAIRPERSON ACZON: State your name.

13 THE WITNESS: My name is Rodney Ajifu. I  
14 reside at 1703 Kealia Drive, Honolulu, Hawaii 96817.

15 The only issue I wish to address to the  
16 Commissioner's office is the contract that Ko'Olina  
17 drafted out requiring the public boaters to sign.

18 The contract clearly states that we, the  
19 boaters, are required to carry limits, as an example,  
20 half a million. I have no issues with that. The  
21 only issue that I have with the signed contract is  
22 that it states that Ko'Olina is not responsible for  
23 any liability exposure on their behalf. There is a  
24 hold-harmless agreement and a waiver of liability  
25 from the public boaters to go against Ko'Olina.

1           As far as listing Ko'Oolina as additional  
2 named insured, for the record, Island Insurance still  
3 declined my request to have coverage and providing  
4 Ko'Oolina with the additional five named insureds,  
5 because there's no financial interest.

6           It's like a bank. I own my house. The  
7 bank owns an interest in it, so they, because they're  
8 co-owners of the property, are allowed to be listed  
9 as named insurer. Island Insurance has informed me  
10 there is no financial interest by Ko'Oolina.

11           I recently just had a meeting with Ken this  
12 morning, and he agrees there is an issue there and  
13 they will try and correct it. I'm happy that  
14 Ko'Oolina has understand the insurance concept.  
15 Although, for the record, the contract, as I stated,  
16 is a one-sided contract, where if Ko'Oolina, Cushman  
17 Cart for security drives around and accidentally  
18 bumped into my car or trailer, I have no cost of  
19 recovery against Ko'Oolina based on this signed  
20 contract.

21           So I don't know if you have any powers to  
22 make this contract fairer but, you know, that's my  
23 concern. I just want to make that known.

24           CHAIRPERSON ACZON: Any questions for the  
25 testifier?

1 MR. MATSUBARA: No questions.

2 MR. KITAOKA: No questions.

3 MR. YEE: No questions.

4 CHAIRPERSON ACZON: Commissioners? Thank  
5 you. Anybody else?

6 VICE CHAIR WONG: Mr. Chair, I would like  
7 to move to Executive Session to consult with the  
8 board's attorney on questions and issues pertaining  
9 to the Board's powers, duties, privileges, amenities  
10 and liabilities.

11 COMMISSIONER McDONALD: Second.

12 CHAIRPERSON ACZON: Those in favor say  
13 "aye", opposed? Motion carries. Staff clear the  
14 room, please.

15 (Executive Session.)

16 CHAIRPERSON ACZON: Were we're back on the  
17 record.

18 The Commission will now address the Motion  
19 for Reconsideration.

20 Will Ko'Oolina Development Company please  
21 provide its presentation on its motion.

22 MR. MATSUBARA: Thank you, Mr. Chair.

23 The Motion for Reconsideration is basically  
24 requesting that you review and vacate the prior order  
25 you passed on November 5th, 2015, because I believe

1 that that order exceeded the permissible scope of the  
2 underlying governing Declaratory Order that is issued  
3 by the Land Use Commission on November 8, 2008, and  
4 this matter be concluded at this time.

5 The Office of Planning also agrees that  
6 this matter should be concluded at this time.

7 As a brief background, I know you were  
8 provided a background by staff and a deputy attorney  
9 general, but I don't have a copy of that, so if I'm  
10 repetitive, I apologize. I'll be brief in that  
11 regard.

12 But the Land Use Commission's Declaratory  
13 Order and Decision on November 7, 2008, required two  
14 things: Construction of the boat launch ramp in the  
15 marina and that it be open to the public. That was  
16 the order.

17 That's what we did. We reported that to  
18 you by letter dated July 23rd, 2015, that the order  
19 had been complied with. Now, this order was issued  
20 after three days of contested case hearing that went  
21 over hours and hours. There were 50 exhibits  
22 introduced by all the parties, and testimony by six  
23 expert witnesses.

24 Following all of that, that was the  
25 decision rendered by the Land Use Commission on those

1 two issues, and those two issues alone.

2 Now, on October 16, 2015 hearing we  
3 confirmed that that Declaratory Order issued in 2008  
4 was confirmed. The order, however, that arose and  
5 was issued by you on that required additional things  
6 be done, that the staff prepare background  
7 information for you that the questions be addressed  
8 that were sent to us, if we wanted to, and that the  
9 Petitioner continue to engage with the fishermen.  
10 Those three additional things were requested.

11 And I believe the Commission erred in  
12 issuing that order because of the two issues, the two  
13 legal requirements I stated in my request to consider  
14 that.

15 One, there was no jurisdiction after 120  
16 days;

17 And two, the proper enforcement agency to  
18 issue such as this is the county.

19 The two things you look at, the broad  
20 picture, is the Decision and Order that was issued by  
21 the LUC in 2005, and what representations were made  
22 in 2005.

23 When it was reviewed in 2008 you felt that  
24 the representations made in 2005 required a boat  
25 launch ramp in the marina, and that it be open to the

1 public. So it was moved from Kalaeloa, which was  
2 open seven days a week, 24-hours-a-day, which had  
3 long stalls available, was moved back into the  
4 marina.

5 The Office of Planning does not agree with  
6 our motion basically because they indicated we did  
7 not contest prior orders, and we didn't. The prior  
8 orders related to giving you status reports. We have  
9 no problems letting you know where we are in the  
10 planning, permitting, construction and tasks that  
11 need to be accomplished to satisfy what you ruled us  
12 to do. And so we had no problems with those orders  
13 requiring us to do that.

14 The other thing is that the order is not  
15 mandatory; it's not an enforcement thing. I mean, we  
16 didn't have to answer the question, or we weren't  
17 required to meet with the fishermen, but you know,  
18 practicing as long as I have before the Commission,  
19 on that side of the table when I represented you as a  
20 deputy, and on this side, we don't take anything you  
21 say lightly.

22 We weren't going to ignore the fact that  
23 you felt that perhaps there were questions you had  
24 that we should answer, or that we should meet with  
25 the fishermen, which we continue to do and we have

1 for years. I know it wasn't mandatory, but real  
2 life, real world, we don't ignore things that you  
3 express that you want done. I know it's not  
4 mandatory, but we did.

5 Even though, I guess we expose ourselves to  
6 the risk now that somebody can say you did everything  
7 we ordered, you want vacated, told us to do, so isn't  
8 your motion moot? I mean, why are we here today? I  
9 argue it's not moot, because of the two legal  
10 principles I raise as to why the order was improper,  
11 why does it satisfy your rules and regulations, and  
12 why does it satisfy statute.

13 And because of that, I think it's still  
14 relevant, it's still an issue that deserves your  
15 examination.

16 So we filed a motion basically out of  
17 principle because we felt that it was improper and we  
18 should not let it lay. We should raise it to get it  
19 resolved once and for all.

20 So based on that, we believe that we  
21 complied with the governing order. We finished the  
22 boat launch ramp, it's open to the public, and  
23 therefore this matter should be concluded and we move  
24 on from that point.

25 Thank you very much for the time.

1 CHAIRPERSON ACZON: Any questions for the  
2 Petitioner? County?

3 MR. KITAOKA: No questions.

4 CHAIRPERSON ACZON: OP?

5 MR. YEE: No questions.

6 CHAIRPERSON ACZON: Commissioners?

7 City would you please provide Commission  
8 with the comments of the City Department of Planning  
9 and Permitting?

10 MR. KITAOKA: With respect to the motion,  
11 the city takes no position. Simply for the motion.

12 If there are questions for the Commission,  
13 may I have for Ms. Sokugawa, Chief Planner of  
14 Planning and Permitting, we are welcome and open to  
15 those questions.

16 CHAIRPERSON ACZON: Any questions,  
17 Commissioners?

18 COMMISSIONER McDONALD: Good morning, Ms.  
19 Sokugawu.

20 On the county level, can you explain to the  
21 Commission what permits does this Ko'Oolina have in  
22 place with regard to the boat ramp?

23 CHAIRPERSON ACZON: Let me swear you in  
24 first before you answer.

25 Do you affirm that the testimony that

1 you're about to give is the truth.

2 THE WITNESS: Yes.

3 KATHY SOKUGAWU

4 Was called as a witness by and on behalf of the City  
5 and County of Honolulu, was sworn to tell the truth,  
6 was examined and testified as follows:

7 THE WITNESS: Good morning, Commissioners.

8 There are multiple permits that the county  
9 has issued for this project, including the boat ramp.  
10 Issued a Conditional Use Permit for marina  
11 accessories, so this is specifically for things like  
12 a marina clubhouse, boat repairs, slip, whatever is  
13 associated generally with a marina. So they have if  
14 effect a Conditional Use Permit for that that  
15 includes a modification, 2011, to accommodate the  
16 relocated boat ramp in their marina.

17 COMMISSIONER McDONALD: Are there specific  
18 conditions in that Conditional Use Permit?

19 THE WITNESS: Yes, there is a bunch of  
20 conditions, but what's germane to the topic that  
21 we're considering today, there is note that they have  
22 to have public access to the boat ramp, and there are  
23 hours of operation, generally dawn to dusk.

24 COMMISSIONER McDONALD: There is no Special  
25 Management Area --

1 THE WITNESS: There is a Special Management  
2 Area, but that's the all encompassing one from  
3 several years ago. There are multiple other  
4 permits --

5 COURT REPORTER: Speak up, I can't hear  
6 you.

7 THE WITNESS: -- joint development, offset  
8 parking, but the one germane, I believe, to this  
9 issue would be the marina accessory CUP, which also  
10 includes comments and requirements about parking.

11 VICE CHAIR WONG: That question, following  
12 on Commissioner McDonald's question. In terms of the  
13 hours of operation and all that, who does  
14 enforcement?

15 THE WITNESS: We would, under the  
16 Conditional Use Permit.

17 VICE CHAIR WONG: Thank you.

18 CHAIRPERSON ACZON: Vice Chair Scheuer.

19 VICE CHAIR SCHEUER: In the, I believe you  
20 called it a Special Use Permit. How is "opened to  
21 the public" defined?

22 THE WITNESS: It's a Conditional Use  
23 Permit, not Special Use.

24 VICE CHAIR SCHEUER: Conditional Use  
25 Permit. You said that there's provision that the

1 boat ramp be opened to the public. Is it defined in  
2 that permit.

3 THE WITNESS: Not very well, no.

4 COMMISSIONER SCHEUER: So how would you  
5 interpret it in terms of enforcement?

6 THE WITNESS: It generally comes out to  
7 complaints. There's also required things like proper  
8 signage to acknowledge public access. So a variety  
9 of things we do to enforce that, but there is no  
10 specific detailed provision for specific  
11 stakeholders.

12 VICE CHAIR SCHEUER: Is there any ordinance  
13 that the city defines "public", that phrase "open to  
14 the public"?

15 THE WITNESS: Not that I'm aware of, but  
16 there is public access requirements. Generally  
17 though they're required for shoreline, for beach  
18 access. Generally not well-defined for a boat ramp.

19 VICE CHAIR SCHEUER: Thank you.

20 CHAIRPERSON ACZON: Commissioner Hiranaga.

21 COMMISSIONER HIRANAGA: Good morning.

22 You mentioned that hours of operation run  
23 sunrise to sunset, but I'm trying to recall mention  
24 of quiet hours. When would you have quiet hours if  
25 the boat ramp is not open at night?

1           THE WITNESS: Well, there are somethings  
2 like -- and, again, the emphasis on the Conditional  
3 Use Permit is not just on the boat ramp. It's about  
4 the whole marina aspect. So most of it was in 2011  
5 and earlier, things like amplified music coming from  
6 parties at the clubhouse, things like that, or engine  
7 repairs, noise coming from that sort of thing.

8           COMMISSIONER HIRANAGA: Thank you.

9           CHAIRPERSON ACZON: Commissioner McDonald.

10          COMMISSIONER McDONALD: One more question.

11           It was stated that Ko'Olina is considering  
12 modifications to the boat ramp to include additional  
13 trailer stalls, whatnot.

14           Will they be required to amend the existing  
15 Conditional Use Permit?

16          THE WITNESS: Yes.

17          COMMISSIONER McDONALD: At that point in  
18 time there will be, I guess, the public will have an  
19 opportunity to comment on the amendment?

20          THE WITNESS: Generally there is no public  
21 hearing required for the Conditional Use Permit. But  
22 if there is a lot of interest in that permit, the  
23 Director has the ability to hold a community meeting.

24          CHAIRPERSON ACZON: Anybody else?

25           Do you have any further comments from the

1 city?

2 MR. KITAOKA: No further comments.

3 CHAIRPERSON ACZON: Thank you. OP, do you  
4 have any comments?

5 MR. YEE: I take it this is our opportunity  
6 to comment upon both the Motion for Reconsideration  
7 as well as the Status Report.

8 So with respect to the Motion for  
9 Reconsideration, I just want to explain the Office of  
10 Planning's position, although at the initial hearing  
11 last time we had argued that this matter should be  
12 concluded, and we continue to hold that position  
13 today, we nevertheless oppose the Motion for  
14 Reconsideration of the Order, which may seem odd to  
15 some, because it seems we're making contradictory  
16 positions. It's consistent with the Office of  
17 Planning process.

18 It says: Absent extraordinarily  
19 circumstances, we need to accept the decisions that  
20 are made by LUC and not ask to reconsider decisions  
21 after they're made. So based on the facts and  
22 circumstances of this case, although we frankly  
23 disagree with the LUC decision, we nevertheless  
24 opposed the reconsideration of that decision, because  
25 we didn't think that there was sufficient basis to

1 rise to that level, that high bar that the Office of  
2 Planning sets for Motion for Reconsideration.

3 I think to some extent, we appreciate the  
4 fact that Ko'Oolina did hold meetings and provided  
5 answers and did cooperate in responding to the  
6 request from the Land Use Commission, whether it was  
7 because they're just generally cooperative, or  
8 because they're just very concerned about anything  
9 that you want them to do. Nevertheless, we're happy  
10 that they did it.

11 To some extent it does -- it frankly does  
12 rule out reconsideration of the motion because you've  
13 already had the information from your staff, deputy,  
14 you've already submitted the questions to them, and  
15 either they answered or they didn't, and they already  
16 had the meetings with the boaters.

17 And the decision you rendered last time did  
18 nothing to decide whether or not this matter should  
19 be concluded at this time. It simply deferred the  
20 action to another day.

21 So at this point there seems to be nothing  
22 further to be done with the decision you reached at  
23 the last hearing. So we do think it is moot.

24 In addition to our arguments as to why it  
25 didn't reach that high level for reconsideration.

1 Having said that, we now look forward, or move on to  
2 see -- to question what should we do now. As the  
3 Office of Planning said last time, we do think it's  
4 time for this matter to be concluded.

5 We understand the concerns and acknowledge  
6 the concerns that the Commissioners had last time.  
7 The boaters had come to you, and they expressed  
8 their -- some of their concerns, the things that they  
9 were not happy with that were not being addressed and  
10 seemingly were not getting the ear from anyone to  
11 talk with about.

12 I think that the question to the city is  
13 similar to what Commissioner McDonald was asking,  
14 which is I what is the role of the city in listening  
15 to these concerns and doing anything about it? Do  
16 they have a mechanism for considering the comments  
17 being provided?

18 So at what point does a fee become so high  
19 that there is no longer public access? At what point  
20 are the conditions relating to insurance or liability  
21 or the contract become so onerous that the city would  
22 consider this to be a denial of access to  
23 recreational facilities, or maybe not a complete  
24 denial, but would be such restriction, be  
25 unreasonable under some sort of city analysis or city

1 process?

2           And I'm not even asking necessarily for a  
3 decision from the city as to how they would come out  
4 on the question. But what would, I think, be  
5 helpful. But what the Office of Planning had argued  
6 last time is this really a level of detail best left  
7 at the city level. So some confirmation of that I  
8 think would be useful.

9           Particularly I think perhaps it could come  
10 in the form of perhaps the CUP amendment where maybe  
11 there is not a public hearing, but there is always  
12 the opportunity to submit letters and e-mails, to  
13 forward letters that were previously sent to the LUC  
14 so that the city could consider whether the fees are  
15 appropriate, whether the insurance requirement is  
16 also appropriate, as well as the conditions of the  
17 contract that boaters are required to sign.

18           So this is, I think, part of the city's  
19 analysis in terms of providing access to --  
20 recreational access to ocean resources. So I think  
21 it is within the city's power to regulate. I don't  
22 want to speak on their behalf, but it's my  
23 understanding that this is something they could deal  
24 with.

25           As I said, I'm not trying to prejudge what

1 the correct outcome should be, only to propose a  
2 better forum for that resolution is at the county  
3 level.

4 So we look forward with respect to status  
5 reports, we're certainly happy that there was a  
6 meeting, that there was some change with respect to  
7 the length of the stalls. That although there was  
8 not agreement, full agreement, perhaps there never  
9 will be full will agreement, we again suggest that  
10 the proper or forum for resolution is at the county  
11 level. Thank you.

12 CHAIRPERSON ACZON: Any questions for Mr.  
13 Yee?

14 MR. MATSUBARA: No questions.

15 CHAIRPERSON ACZON: County?

16 MR. KITAOKA: No questions.

17 CHAIRPERSON ACZON: Commissioners, any  
18 final comments or questions for the County and OP and  
19 the Petitioners?

20 VICE CHAIR WONG: Mr. Matsubara, I'm a very  
21 simple guy, so I guess I'm looking back at February  
22 when we met, and I'm trying to figure out on the  
23 February agenda, what was it for -- I mean October,  
24 what did you come to the Commission for?

25 MR. MATSUBARA: There was no request. We

1 just sent in a letter that said we had done what was  
2 required. We had finished the boat ramp in the  
3 marina, and it was open to the public. And then we  
4 got a notice for a hearing. We didn't ask for a  
5 hearing. We just notified you that we had done what  
6 you had ordered us to do and that was it.

7 VICE CHAIR WONG: So I'm just trying to  
8 figure out this whole thing because it's prior to the  
9 Declaratory Order. So the Declaratory Order was to  
10 build a boat ramp?

11 MR. MATSUBARA: In the marina.

12 VICE CHAIR WONG: And ones the Declaratory  
13 Order is completed -- I mean once the boat ramp was  
14 completed, that means Ko'Oolina fulfilled the  
15 Declaratory Order; is that correct?

16 MR. MATSUBARA: Yes. We did what the Land  
17 Use Commission ordered us to do.

18 VICE CHAIR WONG: Then the question also  
19 is -- but you still provided status reports during  
20 the period?

21 MR. MATSUBARA: Yes. I think it was only  
22 appropriate that we let you know what stage we were  
23 at in terms of planning, construction and building  
24 and when the project would be completed and open.

25 VICE CHAIR WONG: So I guess -- I'm really

1 confused, I guess.

2 So we didn't, from what I gather in the  
3 October meeting, we just deferred anything -- like we  
4 didn't say -- we just wanted you guys to talk, try to  
5 work out -- the public and Ko'Olina to just try and  
6 make everything correct?

7 MR. MATSUBARA: I think you wanted to find  
8 out the background and history, because I don't think  
9 anybody was sitting on this Commission when the order  
10 was issued in 2008. And I don't think any of you  
11 recalled how many hearings we had, how much testimony  
12 we had, how many people testified, and that the order  
13 this Commission issued was not done flippantly. It  
14 was done after a lot of adversarial proceedings with  
15 Office of Planning and so on to get where we were.

16 So it was, to me, something that was there,  
17 it was in concrete, and we had to follow it.

18 So we moved it again back into the marina  
19 and built state-of-the-art boat launch ramp, which  
20 now has security, paid parking, and everything else,  
21 and I think if you look at it, you'll see it's just  
22 as good or better than most boat ramps in the state.

23 VICE CHAIR WONG: I'm just trying to figure  
24 out in October, I thought we just -- I guess this is  
25 my recollection, we just said go talk story. We

1 didn't do any order.

2 MR. MATSUBARA: You issued an order for us  
3 to do that.

4 VICE CHAIR WONG: So there was a motion  
5 to -- you guys filed a Motion to Reconsider?

6 MR. MATSUBARA: Your order that told us to  
7 do those three things. Well, consider doing those  
8 things. You know, I can understand that the language  
9 was sup -- not super mandatory, but it was an order  
10 issued to defer decision, and those three things to  
11 be done, which I thought went beyond what the  
12 original '08 order required us, and that's why I  
13 filed a motion.

14 VICE CHAIR WONG: I'm just a slow guy  
15 that's just little confused.

16 MR. MATSUBARA: This has a very long, long  
17 history.

18 VICE CHAIR WONG: I thought we just told  
19 you go talk story, give us a little bit more  
20 information, and then we'll look. You just wanted us  
21 to us acknowledge that you built the boat ramp, and  
22 don't do any more status reports?

23 MR. MATSUBARA: That was the purpose of the  
24 letter we sent to you saying that we had --

25 VICE CHAIR WONG: You satisfied the

1 Declaratory Order?

2 MR. MATSUBARA: Yes.

3 VICE CHAIR WONG: Thank you.

4 CHAIRPERSON ACZON: Anybody else -- the  
5 Chair -- go ahead.

6 MR. KITAOKA: From the City and County's  
7 point of view, I just like to respond to some of the  
8 comments made by Mr. Yee regarding city enforcement.

9 CHAIRPERSON ACZON: Go ahead.

10 MR. KITAOKA: I think the Commission needs  
11 to know that the city has before it various permits  
12 for activities at Ko'Oolina, and the most pertinent  
13 permit for boat ramp would be Conditional Use Permit,  
14 which basically had a public access requirement, and  
15 hours of operation requirement.

16 So the city will enforce those terms  
17 pursuant to its own permit. That enforcement effort  
18 is usually triggered by a complaint or complaints, so  
19 the boaters or the fishermen are always welcome to  
20 complain about whether Ko'Oolina is complying with the  
21 city permits.

22 With respect to the LUC Decision and Order  
23 in 2005, there is no specific condition in the LUC  
24 original Decision and Order regarding the boat ramp.  
25 There are representations, and there is a condition

1 that the Applicant should comply with  
2 representations.

3 So with respect to the LUC Decision and  
4 Order, or underlying LUC Decision and Order, the City  
5 will always make sure that there is substantial  
6 compliance with the representations made, and/or that  
7 the conditions of the LUC order complied with.

8 So if there are any complaints regarding  
9 the Decision and Order conditions, the City will look  
10 into those matters.

11 But with respect to insurance requirements  
12 and the level of specification of how the boat ramp  
13 is run, the City will not get into that level of  
14 management, or I would even say micromanagement,  
15 until it reaches a level where the conditions of the  
16 City permit may be violated, such as if the insurance  
17 requirements are so onerous that it constitutes a  
18 denial of public access, then there can be a  
19 complaint about that and the City could look into  
20 that.

21 But the City's not going to dictate what  
22 kind of level of insurance there should be at the  
23 boat ramp or what kind of specification or what kind  
24 of trailer is accommodated at the boat ramp.

25 The City is to ensure that there is public

1 access to the boat ramp under its own permit, and the  
2 City will ensure that the hours of operation are in  
3 compliance with the dawn-to-dusk requirement in the  
4 CUP.

5 So I didn't want the Commission to have an  
6 understanding that the City will get into a  
7 management detail of how the boat ramp is run. It  
8 will only get to a level of whether there is public  
9 access and whether the boat ramp is open according to  
10 its permit.

11 That's just the comments I wanted to make.

12 CHAIRPERSON ACZON: Thank you.

13 Any questions?

14 The Chair will now entertain a motion in  
15 regards to Motion for Reconsideration.

16 COMMISSIONER McDONALD: I move to deny the  
17 Motion for Reconsideration because the Commission in  
18 did. I move to deny the Motion for Reconsideration  
19 because the Commission's deferral of the status  
20 report by Ko'Oolina to obtain additional information  
21 is consistent with the Commission's practice of  
22 requesting status reports on dockets to ensure  
23 compliance with the Commission's order. It is  
24 neither an extension of the action the Commission  
25 took on the original Declaratory Order proceeding, no

1 enforcement and therefore is well within the  
2 jurisdiction of the Commission.

3 COMMISSIONER SCHEUER: Second.

4 CHAIRPERSON ACZON: The motion has been  
5 made by Commissioner McDonald and seconded by  
6 Commissioner Scheuer to deny the motion.

7 Members, Commissioners, we're in  
8 discussion.

9 COMMISSIONER McDONALD: Mr. Chair, if we  
10 want to take up this motion, if I just -- well, I  
11 want to address the whole Declaratory Order as it  
12 pertains to the construction of the boat ramp.

13 So I guess my question, shall we address  
14 this motion first?

15 CHAIRPERSON ACZON: Yes. That's -- let's  
16 discuss this motion first, then want to give the  
17 Petitioner the opportunity to give us status on --  
18 LUC status of the questions and their previous  
19 meetings and then we can go on. Is that okay?

20 COMMISSIONER McDONALD: That's perfect.

21 CHAIRPERSON ACZON: Still in discussion.  
22 If there is no further discussion, Mr. Orodener,  
23 please poll the Commission.

24 EXECUTIVE OFFICER: Thank you, Mr. Chair.

25 The motion is to deny the Motion for

1 Reconsideration.

2 Commissioner McDonald?

3 COMMISSIONER McDONALD: Aye.

4 EXECUTIVE DIRECTOR: Commissioner Scheuer?

5 COMMISSIONER SCHEUER: Aye.

6 EXECUTIVE OFFICER: Commissioner Mahi is  
7 not present.

8 Commissioner Wong?

9 VICE CHAIR WONG: Aye.

10 EXECUTIVE OFFICER: Commissioner Hiranaga?

11 COMMISSIONER HIRANAGA: Aye.

12 EXECUTIVE OFFICER: Commissioner Estes?

13 COMMISSIONER ESTES: Aye.

14 EXECUTIVE OFFICER: Chair Aczon?

15 CHAIRPERSON ACZON: Aye.

16 EXECUTIVE OFFICER: Mr. Chair, the motion  
17 carries.

18 CHAIRPERSON ACZON: I would like to give  
19 Ko'Oolina Development opportunity to provide status  
20 report and to questions provided by the staff.

21 MR. MATSUBARA: We submitted a letter to  
22 you.

23 CHAIRPERSON ACZON: Could you provide us  
24 the report?

25 MR. MATSUBARA: There were two questions

1 that were sent to us. One related to Ko'Oolina launch  
2 ramp operational 24/7. I can paraphrase it or read  
3 it, depending on your preference as to how I respond  
4 to it, but basically we indicated that it's from dawn  
5 to dusk, as-is the rest of the recreational  
6 facilities within Ko'Oolina resort.

7 That there are no lights on the ramp as  
8 there were none on the prior boat launch ramp,  
9 because of the dawn to dusk time period.

10 The Phoenician ramp, Kalaeloa, is still  
11 open. That's 24/7 and that's still today.

12 In regards to the second question, which  
13 was: Has Ko'Oolina done discussions to receive  
14 greater understanding in regard to the Ko'Oolina boat  
15 ramp?

16 We met with the fishermen. And it  
17 consisted of two meetings. The first meeting was  
18 November 24th, met in my office basically to find out  
19 what were the principle issues of concern that they  
20 had. Three principle issues relating to fees charged  
21 for parking and launching the boats; second, relating  
22 to insurance and requirement of co-insurance; and the  
23 third related to the boat launch ramp, which at the  
24 time of that meeting as far as everybody there, the  
25 longest boat was, I think, 48-and-a-half feet. The

1 idea was to get something to 50 feet.

2 After we met with them to, the fishermen,  
3 to determine the principle issues -- and the  
4 fishermen represents groups that number about 265  
5 other fishermen. So we felt there was a good  
6 cross-section of people that were represented by the  
7 three individuals we met with twice.

8 We discussed the fact that the fees were as  
9 they were. We gave them a breakdown kind of what our  
10 costs are. And the fees charged was not to recoup  
11 any cost, especially not any cost relating to  
12 building the facility, but to try to offset some of  
13 the monthly cost for running and operating the boat  
14 launch much. You've got security, maintenance,  
15 utility, landscaping, and all of those things that go  
16 into maintaining the boat launch ramp commensurate to  
17 its environment in a resort. So there were those  
18 cost.

19 \$10 for parking, and \$15 for launching.  
20 That could be divided so that there was no parking if  
21 you just launched the boat and drive off because the  
22 boat was going to land somewhere else.

23 We indicated on that we couldn't reduce it  
24 now. We would look at it. It wasn't a money-making  
25 project, and if enough people signed up so that the

1 amount of fees that were collected helped offset even  
2 more. The cost that we were currently charging, we  
3 would take a look at it and do that, because the idea  
4 is not to make it a money-making operation.

5 So we indicated now that we cannot give  
6 commitment as to annual pass, because right now we  
7 have ten boaters registered and not even getting  
8 close to what it cost us.

9 In regard to the insurance, Mr. Ajifu, who  
10 had that concern, was dealing with a particular  
11 insurance company. By reviewing the other insurance  
12 certificates that we had obtained from the other  
13 boaters, we gave him the names of four other  
14 insurance companies that were available, that the  
15 charge for \$500,000 was about \$100. The increase  
16 from 300,000 to 500,000 would be about \$6. And there  
17 was no charge for the co-insurance. And we have  
18 policies that reflected that, and we gave him the  
19 names of the other insurance companies that did  
20 provide the service, just if we he wanted to inquire  
21 with them. So that was the insurance issue.

22 As far as the trailer boat length was  
23 considered, we reentered the parking concern to come  
24 up so that at least one-third of the available  
25 parking stalls could be extended to 50 feet, nine

1 regular stalls and one handicap stalls to 50 feet.  
2 So we did that.

3 So we didn't agree on everything. We had  
4 discussion on it, and there was still concerns, but I  
5 think they're appreciative of some effort being made  
6 on our part and appreciative of the fact that they  
7 were candid with us. And we have been meeting with  
8 fishermen over a period of time and I'm sure it will  
9 continue as it goes on.

10 That's what we regarded in regard to the  
11 questions that were raised and sent to us on  
12 February 5th at that time. So that was the status in  
13 regard to the order and want it vacated, but --

14 And we committed, so I would ask that at  
15 least this matter be concluded and requirement for  
16 additional status reports be terminated.

17 Thank you very much.

18 CHAIRPERSON ACZON: Any questions for Mr.  
19 Matsubara?

20 MR. KITAOKA: No.

21 MR. YEE: No.

22 CHAIRPERSON ACZON: Commissioners?

23 Mr. Kitaoka, will you provide us comment of  
24 either City Department of planning and Permitting, if  
25 any, and also respond to the matters that -- letter

1 that we sent you?

2 MR. KITAOKA: City has no further comment  
3 regarding the Status Report.

4 CHAIRPERSON ACZON: Mr. Yee, do you have  
5 any comments?

6 MR. YEE: I think we gave our position on  
7 this. I appreciate Mr. Kitaoka's clarification in  
8 answer to my question.

9 I suppose in a sense he told me that there  
10 is a forum in the sense that the City would accept  
11 any complaints from the fishermen, but perhaps wisely  
12 decided to manage expectations by letting us know the  
13 likely outcome of some of the issues raised here.

14 Nevertheless, I think as matter of  
15 principle, our position is the same, that even if the  
16 City decides that these are not sufficient basis to  
17 regulate, that these complaints are not basis to  
18 further regulate Ko'Olina, that's their call to make,  
19 and we would defer to that choice. We won't try to  
20 second guess that choice.

21 That's all. Thank you.

22 CHAIRPERSON ACZON: Any questions for Mr.  
23 Yee, Mr. Matsubara?

24 MR. MATSUBARA: No questions.

25 CHAIRPERSON ACZON: Commissioners? The

1 Chair will call for a five-minute recess.

2 (Recess was taken.)

3 CHAIRPERSON ACZON: Back on record.

4 Commissioners, what is your pleasure?

5 COMMISSIONER McDONALD: Mr. Chair, I move  
6 that the Land Use Commission acknowledge completion  
7 of the boat ramp in the marina to the satisfaction of  
8 the Declaratory Order, therefore, Status Reports are  
9 no longer necessary.

10 VICE CHAIR WONG: Second.

11 CHAIRPERSON ACZON: Motion has been made by  
12 Commissioner McDonald and seconded by Commissioner  
13 Wong to acknowledge completion of Ko'Oolina public  
14 boat ramp in the marina and to end the continued  
15 written Status Reports.

16 Commissioners, we're in discussion.

17 VICE CHAIR SCHEUER: Thanks for the motion  
18 being made and seconded. I'm intending to vote in  
19 favor of the motion. I want to be really clear about  
20 why, especially to the fishermen who have been so  
21 faithful in following this issue and making sure  
22 things were certainly better than they were when the  
23 boat ramp was Phoenician.

24 We are really constrained. We have  
25 consulted -- Ko'Oolina is correct that the Declaratory

1 Order was fairly narrow. It was to build a boat ramp  
2 open to the public. If there was a greater level of  
3 representation originally in the original District  
4 Boundary Amendment on what public access meant, what  
5 kind of constraint might be put on it, we might have  
6 a better ability to interpret whether or not those  
7 conditions are being met.

8 But as it is, did they build a boat ramp?  
9 Yes, by all accounts, a very nice boat ramp. And I  
10 do appreciate that when we look at our public  
11 facilities where there are no user fees attached,  
12 most of them are in very, very poor conditions. So  
13 there are some reasons to charge at least some level  
14 of fees to cover some of the maintenance of these  
15 facilities that are opened to the public, at least  
16 some kind of facilities so that they can actually  
17 remain in the condition that we want to use them in.

18 When was the last time you used a public  
19 restroom at a beach park? It's not a pretty sight,  
20 so thank you.

21 CHAIRPERSON ACZON: Thank you, Vice Chair  
22 Scheuer.

23 Anybody else? No further discussion, Mr.  
24 Orodener, please poll the Commission.

25 EXECUTIVE OFFICER: Thank you, Mr. Chair.

1           The motion is to acknowledge completion and  
2 satisfaction of the Declaratory Ruling, thus the  
3 Status Reports are not necessary, no longer  
4 necessary.

5           Commissioner McDonald?

6           COMMISSIONER McDONALD: Aye.

7           EXECUTIVE DIRECTOR: Commissioner Wong?

8           COMMISSIONER WONG: Aye.

9           EXECUTIVE DIRECTOR: Commissioner Mahi is  
10 absent.

11          Commissioner Scheuer?

12          VICE CHAIR SCHEUER: Aye.

13          EXECUTIVE DIRECTOR: Commissioner Cabral  
14 absent.

15          Commissioner Estes?

16          COMMISSIONER ESTES: Aye.

17          EXECUTIVE DIRECTOR: Commissioner Hiranaga?

18          COMMISSIONER HIRANAGA: Aye.

19          EXECUTIVE DIRECTOR: Chair Aczon?

20          CHAIRPERSON ACZON: Aye.

21          EXECUTIVE OFFICER: Mr. Chair, the motion  
22 carries with six votes.

23          CHAIRPERSON ACZON: Thank you.

24          There being no further issues, I declare  
25 this hearing complete.

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Thank you.

(The proceedings ended at 9:54 a.m.)

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CERTIFICATE

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HONOLULU )

I, JEAN MARIE McMANUS, do hereby certify:

That on February 10, 2016 at 8:30 a.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 10th day of February, 2016, in Honolulu, Hawaii.

\_\_\_\_\_  
JEAN MARIE McMANUS, CSR #156