

LAND USE COMMISSION

STATE OF HAWAII

October 13, 2016

Commencing at 10:12 A.M.

COURTYARD KING KAMEHAMEHA KONA BEACH HOTEL

Ballroom #4

75-5660 Palani Road

Kailua-Kona, Hawai'i 96738

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. Public Witness Testimony

V. ACTION -A81-525 Y-O Limited Partnership
(Hawai'i) Motion for an Order Regarding
Satisfaction of Affordable Housing Condition

VI. Discussion and Action, if Appropriate
Authorize LUC Staff to Proceed with
Administrative Rule Amendments

VII. Adjournment

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDMUND ACZON, Chair
3 ARNOLD WONG, Vice-Chair

4 COMMISSIONERS:

5 AARON MAHI
6 KENT HIRANAGA
7 LINDA ESTES
8 NANCY CABRAL
9 GARY OKUDA
10 DAWN N.S. CHANG

11 DIANE ERICKSON, ESQ.
12 Deputy Attorney General

13 STAFF:

14 DAN ORODENKER, Executive Director
15 RILEY HAKODA, Chief Clerk/Planner
16 SCOTT A.K. DERRICKSON, AICP-Planner

17 WILLIAM YUEN, ESQ.
18 Attorney for Y-O Limited Partnership

19 WILLIAM BRILHANTE
20 Assistant Corporation Counsel
21 DUANE KANUHA, Planning Director
22 County of Hawai'i

23 DAWN APUNA, ESQ.
24 Deputy Attorney General
25 RODNEY FUNAKOSHI, Planner
Office of Planning

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1 CHAIRPERSON ACZON: Good morning.

2 Chair would like to apologize for the delay
3 this morning. We always strive for timeliness, but
4 we had some transportation difficulties.

5 This is the October 13, 2016 Land Use
6 Commission Meeting.

7 The first order of business is adoption of
8 minutes of September 7th and 23rd, 2016 meetings.
9 You will remember that the September 7th meeting was
10 recessed and reconvened on September 20th. Are there
11 any corrections or comments on them? If not, is
12 there a motion.

13 COMMISSIONER ESTES: So moved.

14 VICE CHAIR WONG: Second.

15 CHAIRPERSON ACZON: Motion has been made by
16 Commissioner Estes and seconded by Vice Chair Wong.
17 All in favor, say "Aye". Any opposed.

18 The minutes are adopted.

19 The next agenda item is the tentative
20 meeting schedule. Mr. Orodener.

21 EXECUTIVE DIRECTOR: October 26 and 27 is
22 our next scheduled meeting. At the moment we do not
23 have anything on the agenda for that.

24 November 9th and 10th is the Remand Special
25 Hearing on Lana'i, Hearing Officer.

1 November 15 and 16 are also for the Remand
2 Special Hearing and will be held on Maui, regarding
3 the Lana'i case.

4 November 22nd is also to be determined.

5 Lana'i Remand Hearings on December 8th,
6 we're hoping that at that point we will be able to
7 come back so that will be a full Commission hearing
8 that will be on Lana'i.

9 December 22nd is also reserved for Lanai.

10 January 11th and 12th we have reserved both
11 Waimanalo Gulch Remand and Ka'ono'ulu Ranch adoption
12 of the final EIS.

13 January 25th and 26th is also reserved for
14 both of those items Waimanalo Gulch on Oahu and
15 Ka'ono'ulu Ranch on Maui.

16 Schedule going forward from that has yet to
17 be determined.

18 CHAIRPERSON ACZON: Commissioners, any
19 questions on the scheduling? Thank you.

20 First agenda item, Action Hearing on Docket
21 A81-525 Y-O Limited Partnership, Motion for an Order
22 Regarding Satisfaction of Affordable Housing
23 Condition in a Petition to Amend the Agricultural
24 Land Use District Boundary to the Urban Land Use
25 District for Approximately 408.719 acres of land at

1 Kaloko and Kohanaiki, North Kona, Hawai'i, Tax Map
2 Key No: 7-3-09, Lot 19.

3 Will the parties identify themselves?

4 MR. YUEN: Good morning, Mr. Chairman and
5 Commissioners. My name is William Yuen. I'm the
6 attorney for RCFC Kaloko Heights, LLC. With me is
7 Mark Meyer, who an officer of RCFC Kaloko Heights,
8 LLC.

9 MR. BRILHANTE: William Brilhante,
10 Assistant Corporation Counsel. With me is County of
11 Hawai'i Planning Director, Dwayne Kanuha.

12 MS. APUNA: Good morning, Chair and
13 Commissioners. Deputy Attorney General Dawn Apuna on
14 behalf of the State Office of Planning. With me
15 today is Rodney Funakoshi.

16 CHAIRPERSON ACZON: Thank you.

17 COMMISSIONER OKUDA: Chair, can I make a
18 disclosure?

19 CHAIRPERSON ACZON: Go ahead.

20 COMMISSIONER OKUDA: I would like to
21 disclose certain relationships which I just feel I
22 should disclose.

23 I personally know the Alston Hunt partner,
24 Lee Ames. She is married to my very good high school
25 friend, Michael Sinch. I have represented the Sinch

1 family in a number of matters, including their
2 company, since incorporated. I was a guest at Lee
3 and Michael's wedding many decades ago and before I
4 was named to the Land Use Commission. Mr. Sinch
5 would do electrical work at my residence at a rate
6 which I know is below market rate.

7 I also know the Alston Hunt partner, Jay
8 Ching, who is married to another one of my very good
9 high school classmates, and I knew her before she
10 became an attorney. Ms. Ching has represented
11 clients who have been on the same side with my
12 clients, sometimes neutral clients, and sometimes we
13 have been on opposite sides of cases.

14 And I'd also like to disclose the fact that
15 the Alston Hunt firm represents a party who has an
16 action pending against my law firm.

17 CHAIRPERSON ACZON: Thank you. Any
18 objection from the parties?

19 MR. YUEN: No.

20 MR. BRILHANTE: No.

21 MS. APANA: No.

22 CHAIRPERSON ACZON: Thank you.

23 COMMISSIONER CABRAL: If this is the moment
24 for disclosure, I do feel that I should disclose that
25 the little Big Island here that I note in the

1 audience as I arrive I see that I know Allen Ruda,
2 who is with the County Affairs Housing Officer, and I
3 use his services on a regular basis professionally.

4 I know Tom Yea as an attorney and his firm
5 does legal work for some of my condo association.

6 And I know Keith Kato professionally
7 because he built HUD affordable housing, and I'm
8 always wanting to bid on it, but I don't think I have
9 any conflict with any of them. But that's what I
10 know about the people in the audience.

11 CHAIRPERSON ACZON: Any objection?

12 MR. YUEN: None.

13 MR. BRILHANTE: None.

14 MS. APANA: None.

15 CHAIRPERSON ACZON: Thank you.

16 Anybody else while we are on it?

17 Let me update record in this docket.

18 July 19, 2016, Commission received
19 Petitioner's Motion and Exhibit A.

20 July 21, 2016, the Commission received
21 Petitioner's filing fee and digital copies of its
22 documents.

23 On July 26, 2016 the Commission received
24 OP's letter requesting a 30-day time extension for
25 filing responses to this Petition.

1 On the same day, the Commission received
2 County's email joinder to OP's extension request; and
3 the extension requests were approved. The Commission
4 also received Petitioner's email stating "no
5 objection" to the extension requests.

6 On July 28, 2016, the Commission received
7 County's joinder letter to OP's request for a 30-day
8 time extension for filing responses to this Petition.

9 On September 1, 2016, the Commission
10 received Petitioner's Supplemental Memorandum in
11 Support of Motion for Order Regarding Satisfaction of
12 Affordable Housing Condition and Exhibit "B"

13 On September 27, 2016, the Commission
14 received Petitioner's Second Supplemental Memorandum
15 in Support of Motion for Order Regarding Satisfaction
16 of Affordable Housing Condition.

17 On September 30, 2016, the Commission
18 received OP's Memorandum in Partial Opposition to
19 petitioner's Motion for Order Regarding Satisfaction
20 of Affordable Housing Condition; and Two Memorandums
21 in support of Motion.

22 On October 5, 2016, the Commission received
23 County of Hawaii Department of Planning's Response to
24 Petitioner's Motion and the Commission mailed the
25 October 13, 2016 LUC meeting agenda notice to the

1 Parties and the Statewide, and Hawai'i mailing lists.

2 Mr. Yuen, has our staff informed you of the
3 Commission's policy regarding the reimbursement of
4 hearing expenses? If so, could you state your
5 client's position with respect to this policy?

6 MR. YUEN: Yes, we approve.

7 CHAIRPERSON ACZON: Thank you.

8 Let me describe our procedures for today.

9 First, I will call for those individuals
10 desiring to provide public testimony on this matter
11 to identify themselves. All such individuals will be
12 called in turn to our witness box where they will be
13 sworn in. A three minute time limit on testimony
14 will be enforced.

15 After public testimony, I will give
16 opportunity for the parties to admit the exhibits for
17 the record. After admission of exhibits to the
18 record, the parties will then present their arguments
19 on the motion starting with the Petitioner, followed
20 by the Hawaii County Planning Department, and State
21 Office of Planning.

22 Once the parties have completed their
23 arguments, Commission will deliberate on this matter.

24 The Chair would also note for the parties
25 and the public that from time to time, I will be

1 calling for short breaks.

2 Are there any questions regarding the
3 procedures for the day?

4 MR. YUEN: No questions.

5 MR. BRILHANTE: None at this time, thank
6 you.

7 MS. APANA: No questions.

8 CHAIRPERSON ACZON: Thank you.

9 Are there any individuals desiring to
10 provide public testimony on this docket?

11 EXECUTIVE DIRECTOR: Mr. Chair, we have
12 Keith Kato signed up to testify.

13 KEITH KATO
14 Was called as a public witness, was sworn to tell the
15 truth, was examined and testified as follows:

16 CHAIRPERSON ACZON: Thank you. Please
17 state your name and address for the record.

18 DIRECT EXAMINATION

19 THE WITNESS: My name is Keith Kato. I'm
20 the Executive Director of Hawaii Island Community
21 Development Corporation, address 100 Pauahi Street,
22 Suite 204, Hilo, Hawaii 96720.

23 CHAIRPERSON ACZON: Good morning. Please
24 proceed.

25 THE WITNESS: There are non-profit -- we've

1 been discussing the development of this particular
2 parcel with RCFC Kaloko High School awhile now, and
3 we have an agreement with them to go ahead and
4 proceed with the development.

5 Our organization is affordable housing
6 developer. We're a 501(c)(3). We do basically
7 self-help housing and low income rentals. We have
8 done over 300 self-help homes on the Big Island, and
9 I guess about 260 or so apartments.

10 Our proposal, actually what we would like
11 to do is on this ten acres that we've been talking
12 with them about, is to get the entitlements in place
13 through the preemption process, the 201(h) process,
14 and then secure low-income housing tax credits. We
15 have used this particular program at least seven
16 times, and it's very successful. It makes
17 construction of affordable housing possible, or
18 financially feasible.

19 Essentially that's it. That's our plan.
20 We would like to proceed as soon as we can. You
21 know, there's a lot of support I think right now for
22 affordable rentals, and this seems to be a good time
23 to go.

24 CHAIRPERSON ACZON: Thank you. Any
25 questions for Mr. Kato?

1 MR. YUEN: None.

2 MR. BRILHANTE: Nothing from the county.

3 MS. APANA: No.

4 CHAIRPERSON ACZON: Commissioners?

5 Commissioner Cabral.

6 COMMISSIONER CABRAL: If everything went
7 your way, what would you anticipate be a starting and
8 date and a completion date that you might be able to
9 have, and how many affordable housing units are you
10 looking at on this property?

11 THE WITNESS: We're looking at 80 units.
12 That's our basic plan. We have to go through, like I
13 said, preemption process and secure the financing, so
14 we think that we would be applying in the spring of
15 next year for the financing.

16 We probably won't hear back from the state
17 until summer or fall. And we would anticipate that
18 somewhere in 2018 we would be able to start the
19 construction and finish in 2019.

20 That's, of course, subject to us securing
21 the financing.

22 COMMISSIONER CABRAL: So then the question
23 would lead to the question if you don't get
24 financing, what happens to the affordable housing
25 plan and what would happen to this whole contingency

1 that they provide affordable housing?

2 THE WITNESS: Well, what we would do is
3 probably reapply again. We have been successful with
4 all the products that we've pursued, except for one.
5 But we've done seven of these projects on the Big
6 Island already. We think we have a good track record
7 and we know how get things done. So if we don't
8 succeed the first time, we'll try again.

9 COMMISSIONER CABRAL: Thank you very much.

10 COMMISSIONER CHANG: Good morning, Mr.
11 Kato. Could you provide me approximately how much
12 would it cost, what's the amount of loan that you're
13 going for to build these 80 units?

14 THE WITNESS: The way that the cost are
15 going these days, we roughly estimate that the units
16 would run about \$400,000 each.

17 COMMISSIONER CHANG: 400 times eight.

18 THE WITNESS: Somewhere in the range of
19 about 30 million.

20 COMMISSIONER CHANG: How do you payoff this
21 loan?

22 THE WITNESS: It's not all loan. With the
23 low-income housing tax credits, they have two
24 programs, you know. If you get the nine percent
25 credits, which we would prefer to get, you get about

1 half of your cost covered by equity. What happens is
2 they award credits. We, being non-profit, have no
3 use for tax credits, so we will basically look for
4 investors.

5 Most of our projects the investors have
6 ended up being the local banks. The one we're
7 dealing with now, mainland non-profit and they're
8 putting together the financing. CHECK

9 But so it will cover between half and 60,
10 70 percent of the cost. The rest of it would come
11 from A loan from a local bank probably. And then
12 some of the loan from the State of Hawaii, HFDC.
13 They have a special loan PLAN THAT IS set up to
14 provide some of the loans.

15 COMMISSIONER CHANG: I'm not very familiar
16 with the location of this property, but how far away
17 is this ten acres from the current development? Is
18 it on the same site.

19 THE WITNESS: Well, it's, I would guess,
20 within a quarter mile of existing homes.

21 COMMISSIONER CHANG: Can you share what's
22 the value of the property, the ten acres?

23 THE WITNESS: To be honest with you, I
24 really don't know.

25 COMMISSIONER CHANG: So you're optimistic

1 if you can secure the loan, that you can start
2 construction in 2018, and by 2019 you can complete
3 it?

4 THE WITNESS: Yes.

5 COMMISSIONER CHANG: And there would be
6 approximately 40 units?

7 THE WITNESS: No, 80.

8 COMMISSIONER CHANG: 80, I'm sorry. And
9 you have a current, is it like a wait list of people
10 looking for affordable rentals?

11 THE WITNESS: We don't have one. We've
12 been developing an exclusively senior housing. So
13 the wait list that we are kind of attached to is all
14 for seniors. This would be a family rental.

15 COMMISSIONER CHANG: Would two this be the
16 first family rental property that you're involved in,
17 are the other seven all senior housing?

18 THE WITNESS: Right. We do do family
19 housing through our self-help program. We've done
20 over 300 units there, but it's different. The
21 financing is different and the participation by the
22 families is different.

23 COMMISSIONER CHANG: Is this the same loan
24 program as you go for your seniors.

25 THE WITNESS: Yes.

1 COMMISSIONER CHANG: And you're comfortable
2 with going through that process and feel pretty
3 confident?

4 THE WITNESS: Uh-huh.

5 COMMISSIONER CHANG: Thank you very much.

6 VICE CHAIR WONG: I have a question, Mr.
7 Kato.

8 In terms of the 400,000, does that include
9 grub work and all other infrastructure?

10 THE WITNESS: Yeah.

11 VICE CHAIR WONG: So right now the property
12 is bare, so you would have to do grub work?

13 THE WITNESS: Yeah, that would take at
14 least four months, five months.

15 THE WITNESS: Usually the grading part is
16 -- well, so this is a ten-acre site, yeah. I guess
17 it will probably take maybe a couple months to do the
18 mass excavation work.

19 VICE CHAIR WONG: Setting up the
20 infrastructure and all that?

21 THE WITNESS: No. Infrastructure, that
22 will take probably another couple of months to at
23 least get the mains installed.

24 VICE CHAIR WONG: And that's after getting
25 all the permits too, correct?

1 THE WITNESS: Right.

2 VICE CHAIR WONG: So are you going to go
3 for 201H?

4 THE WITNESS: Yes.

5 VICE CHAIR WONG: Thank you.

6 CHAIRPERSON ACZON: Commissioner Okuda.

7 COMMISSIONER OKUDA: Thank you.

8 Mr. Kato, the agreement that you're
9 referencing or describing, that's the agreement that
10 you signed with the Petitioner here, is that correct?

11 THE WITNESS: Yes.

12 COMMISSIONER OKUDA: In that agreement
13 there's, I think it's paragraph 4.4, your entity's
14 right to terminate the agreement during the due
15 diligence period, right?

16 THE WITNESS: Uh-huh.

17 COMMISSIONER OKUDA: Have you completed the
18 due diligent period?

19 THE WITNESS: I would say no. You know,
20 first all, if you look at the agreement, we're going
21 to have to have adjustment to the agreement, because
22 one of the preconditions in that agreement --
23 stipulated in that agreement is that the Land Use
24 Commission recognize the donation of the property as
25 satisfying the condition.

1 Apparently that's no longer the proposal,
2 so that part is going to have to be adjusted.

3 Let me just say, more informal basis, we
4 looked at the property, you know, and we very
5 familiar with the area. I don't see any reason why
6 we couldn't proceed.

7 COMMISSIONER OKUDA: But the condition, or
8 your entity's right to terminate the agreement, you
9 still retain that right, correct?

10 THE WITNESS: I believe so.

11 COMMISSIONER OKUDA: In other words, that
12 condition hasn't been waived, correct?

13 THE WITNESS: Right.

14 COMMISSIONER OKUDA: And the agreement
15 that's been presented to us, so there's some
16 modifications you believe that have to be made to the
17 agreement or modifications that are in place?

18 THE WITNESS: Yeah, I believe there would
19 have to be.

20 COMMISSIONER OKUDA: Can you tell us what
21 modifications to the agreement you believe have to be
22 made?

23 THE WITNESS: Well, there's this one
24 provision in there, a precondition for them conveying
25 the property to us is that the Land Use Commission

1 agree that the conveyance of the property satisfies
2 the condition. That was the original intent, I
3 think, the Petitioner.

4 That doesn't seem to be the intent any
5 more. And so, you know, that particular provision
6 has to be changed. I don't really see any other
7 provision that needs to be adjusted.

8 COMMISSIONER OKUDA: When you say that's
9 not the intent, what is your entity's understanding
10 of the intent, whether or not that provision is
11 supposed to be in the final agreement or not a final
12 agreement?

13 Let me withdraw the question and ask it
14 more simply.

15 Is it your entity's position that what you
16 describe you're willing to do is contingent somehow
17 on approval by or from the Land Use Commission?

18 THE WITNESS: I would say definitely. The
19 programs that we are talking about are rental
20 programs. The condition as it's presently stated is,
21 they have to offer homeownership, and that's really
22 not what we are proposing.

23 COMMISSIONER OKUDA: Okay. And finally,
24 has there been any type of bond or anything like that
25 obtained to ensure that the project that you're

1 describing is actually going to take place?

2 THE WITNESS: No, no.

3 COMMISSIONER OKUDA: There's been some
4 opposition file to the petition. One of the
5 arguments seems to be that there's no real guarantee
6 that what you're describing, which sounds very
7 positive for the community, will actually take place.

8 How would you address if at all that
9 comment or that argument or observation?

10 THE WITNESS: Well, we cannot offer a
11 guarantee that we're going to be successful. A lot
12 of what it takes to get it done depends on the
13 actions of others, like H-HFDC, they have to award
14 the credits.

15 On the other hand, I don't -- my
16 understanding is that at this point the Petitioner is
17 not seeking to have the condition released. That's
18 the impression I'm getting from the documents I've
19 seen.

20 COMMISSIONER OKUDA: Thank very much. I
21 have no further questions.

22 CHAIRPERSON ACZON: Thank you. Anybody
23 else. Thank you.

24 COMMISSIONER CABRAL: I do.

25 I will let you know that there is a huge

1 demand for affordable housing for families, and all
2 age groups, but families in particular, so I don't
3 think there will be any problem filling these houses
4 rapidly.

5 I think one of the concerns that I saw in
6 the documents reading that there's one of the lines
7 referenced that it was for Hawaii residence -- for
8 affordable housing for Hawaii residents.

9 Is there any way -- and I'm not sure if
10 this is something you can address or not -- is there
11 any you can make sure it's for Hawaii residents,
12 because there's a problem where people just barely
13 fly in and all of a sudden they're renting. And
14 there are people who are long time Hawaii residents
15 who still don't end up with housing, because these
16 other people were quicker, smarter, faster to get
17 there.

18 So I don't know if there is any kind of
19 safeguards you are aware of, because I think
20 affordable housing for Hawaii residents, the goal
21 here, I don't know if there is any way you can
22 safeguard for that. Maybe someone else can address
23 that.

24 THE WITNESS: We've never been able to
25 limit, clearly limit. What we basically try to do is

1 handle it by the way we market the project. We don't
2 put it on the internet. We don't do anything of that
3 sort. Basically what we will do is post a sign on
4 the project saying we have rental project coming up,
5 call this number. We just try to keep things low
6 key.

7 We had an experience once -- let me just
8 share this with you.

9 We got approval to do a project. I believe
10 it was one of our Kona projects, and it got written
11 up in the Advertiser. And I get a call from somebody
12 in Minneapolis saying how do I apply. Said, well,
13 how did you find out about this? He said he's been
14 looking at the paper. I said, well, you can come
15 down and fill out application. He said when will we
16 know? I said we'll post a notice in the local paper.

17 So we try to be kind of narrow in the way
18 we market things, but there's nothing we can really
19 do to prevent somebody from applying.

20 COMMISSIONER CABRAL: Thanks, that's what
21 I'm talking about. Thank you.

22 CHAIRPERSON ACZON: Anybody else? Mr.
23 Yuen, please describe any exhibits you wish --

24 MR. YUEN: We have no exhibits.

25 CHAIRPERSON ACZON: No exhibits?

1 MR. YUEN: No.

2 CHAIRPERSON ACZON: Thank you. County,
3 please describe any exhibits which you wish to have
4 admitted.

5 MR. BRILHANTE: County of Hawaii has no
6 exhibits, thank you, Chair.

7 CHAIRPERSON ACZON: On OP.

8 MS. APANA: We don't have any exhibits,
9 either.

10 CHAIRPERSON ACZON: Great.

11 COMMISSIONER CABRAL: I have a comment.
12 Any number of you could address this.

13 In terms OF THE location of the housing,
14 the question I think Dawn had is where is this
15 located, how close to housing. Since we have
16 previously met at the new county building, so I guess
17 a better landmark site would be how close to Costco
18 and how close to the new county building and how
19 close to the road that you installed Hinalani, thank
20 you very much, I drove down that this morning. That
21 would be kind of my question is, you know, the
22 proximity to me is a little bit more important
23 because then it gives you an idea about how close you
24 are to all these amenities.

25 CHAIRPERSON ACZON: Commissioner Cabral,

1 can we have the Petitioner respond to that during the
2 argument.

3 COMMISSIONER CABRAL: Okay.

4 CHAIRPERSON ACZON: Mr. Yuen, please
5 proceed with argument.

6 MR. YUEN: Thank you, Mr. Chairman.
7 Petitioner RCFC Kaloko Heights LLC is requesting
8 amendment to Condition No. 1 to the order of
9 reclassification which is the affordable housing
10 condition, in order to facilitate a donation of
11 10.75-acre parcel of land in Phase I of this project
12 to Hawaii Island Community Development Corporation.

13 Following the comments made by the County
14 of Hawaii and the Office of Planning, we support
15 combining revisions suggested by the county and OP
16 for an amended condition to read, as I submitted in a
17 letter to Mr. Orodener, as well as the parties on
18 October 5th, and let me read the proposed condition
19 and then I'll go into answering Commissioner Cabral's
20 question.

21 We would like the condition to read:

22 Petitioner shall provide housing
23 opportunities for low and moderate income residents
24 by offering for sale or rental on a preferential
25 basis on its own or in cooperation with both the

1 Hawaii Housing Finance and Development Corporation,
2 HHFDC, and the County of Hawaii affordable housing
3 units equivalent to ten percent of the lots and
4 residential units to be developed in the petition
5 area to residents of the State of Hawaii of low and
6 moderate family income as determined by HHFDC and the
7 County of Hawaii Office of Housing and Community
8 Development OHCD from time to time, (the affordable
9 housing requirement).

10 The affordable housing units shall be
11 offered for sale or rent at prices or rents not
12 exceeding prices or rents (affordable prices) that
13 enable such purchasers and renters to qualify for and
14 obtain state assisted financing e.g. Hula Mae or
15 federally insured or assisted finances, e.g., FHA 245
16 program, intended to encourage homeownership by low
17 and moderate income families, or that provide
18 affordable rental housing opportunities to such
19 families. This affordable housing condition shall be
20 implemented to the satisfaction of OHCD.

21 First to address Commissioner Cabral's
22 question. This 10.75-acre parcel is adjoining
23 Hinalani Road. I frankly am not sure exactly how far
24 it is from Costco, but it's on the road that connects
25 Mamalahoa Highway to Queen Kaahumanu Highway.

1 By way of background, RCFC Kalako Heights
2 is the successor to a number of different owners,
3 including the original developer of this property.
4 RCFC succeeded to ownership of this property in 2013.
5 The Land Use Commission originally approved the
6 petition in 1983 reclassifying the petition area on
7 an incremental basis subject to three significant
8 conditions.

9 First, provision of ten percent of the
10 units as affordable housing units.

11 Second, improvement or construction of the
12 road to connect Mamalahoa Highway to Queen Kaahumanu
13 Highway and that improvement has been completed.
14 It's now Hinalani Road.

15 And third, reaching an agreement and
16 providing water source development to the
17 satisfaction of the County of Hawaii.

18 RCFC and its predecessors have completed
19 the two major infrastructure conditions, the roadway
20 as well as the water source development. And now the
21 Petitioner has also achieved zoning and partial
22 subdivision approval, and is ready to start the
23 actual development.

24 We now wish to implement the affordable
25 housing condition by donating this 10.75-acre parcel

1 to an experienced affordable housing developer. The
2 initial purpose of the amendment was to seek a
3 satisfaction of the affordable housing condition.
4 Since we recognize that both the county, the Office
5 of Planning and the Commission staff were all opposed
6 to deeming the condition satisfied by the donation,
7 we backed away from that.

8 Basically we want the Commission to
9 recognize that the affordable housing condition can
10 be satisfied both by the provision of "for sale"
11 housing as well as affordable rentals since we
12 recognize there is a market and a need for affordable
13 rentals in West Hawaii.

14 So basically we're asking for the
15 Commission's approval to amend the condition to
16 permit us to satisfy the condition by the
17 construction of affordable rentals, as well as
18 for-sale housing, and we will proceed to develop it
19 with the cooperation of the Hawaii Island Community
20 Development Corporation.

21 I'll be pleased to answer any questions as
22 well as Mark Meyers here to answer any questions that
23 the Commission may have.

24 CHAIRPERSON ACZON: Commissioners, any
25 questions for Mr. Yuen.

1 COMMISSIONER CHANG: Good morning. Can you
2 clarify your last statement that you intend to
3 satisfy the condition of the affordable housing by
4 doing the development? So are you going to do the
5 construction of the units?

6 MR. YUEN: We expect that HICDC will be
7 actually constructing the units, and it would be our
8 intent to apply for a release to the condition after
9 the units are substantially completed.

10 What RCFC is going to do is donate the land
11 to HICDC as well as water commitments and
12 availability of sufficient water for 80 units which
13 is a significant cost factor in developing affordable
14 housing, any housing.

15 COMMISSIONER CHANG: Thank you for that
16 clarification, because I thought you were then going
17 to construct it.

18 So the request is still to donate the ten
19 acres upon which HICDC would then get a low interest
20 loan to develop it, and they would be the ones who
21 would offer these for affordable rentals?

22 MR. YUEN: Correct. Although we recognize
23 that RCFC is the Petitioner is still responsible to
24 satisfy the condition, at least as far as the
25 Commission is concerned.

1 COMMISSIONER CHANG: Good to know.

2 Can you provide me the status of
3 approximately what is -- have you completed any of
4 the units in your Phase I, or you're just doing the
5 infrastructure?

6 MR. YUEN: We've just done infrastructure.
7 We're starting design for the first, I think,
8 40 units phase.

9 COMMISSIONER CHANG: Approximately what
10 percentage is complete of your Phase I development?

11 MR. YUEN: Nothing has been.

12 COMMISSIONER CHANG: Just the
13 infrastructure?

14 MR. YUEN: Yes.

15 COMMISSIONER CHANG: What were you
16 proposing to do on your Phase I? How many units?

17 MR. YUEN: I believe 40 units. 40 units.

18 COMMISSIONER CHANG: Do you have an
19 estimated cost if you have to build the affordable --
20 satisfy that on your project site, do you have an
21 estimated cost of what that would be?

22 MR. YUEN: No.

23 COMMISSIONER CHANG: Do you have the value
24 of the ten acres that you're donating?

25 MR. YUEN: I don't have that. We could

1 look up the tax assess value, but there's a value
2 certainly to the water commitment that we're going to
3 be donating also.

4 COMMISSIONER CHANG: What is the value of
5 the water?

6 MR. YUEN: Excuse me. We're not sure
7 exactly. I think an approximate cost might be
8 \$15,000 a unit. So 15,000 times 80 units.

9 COMMISSIONER CHANG: That's the water?

10 MR. YUEN: That's the water.

11 COMMISSIONER CHANG: But you don't have --

12 MR. YUEN: We don't have a land value.
13 There is -- the 15 acres is a subdivided parcel, and
14 it adjoins Hinalani Road, so there's access to the
15 public street.

16 COMMISSIONER CHANG: And is the location of
17 this donated land, what's the proximity to your
18 project site? Is it on the same --

19 MR. YUEN: It is part of the petition area.

20 COMMISSIONER CHANG: Let me ask you, I
21 guess, somewhat of a hypothetical.

22 If LUC denies the petition, and you're
23 required to build the 78 or 80 units to satisfy this
24 condition, when do you think you'll be able to begin
25 construction of that?

1 MR. YUEN: First, we're no longer asking
2 that the -- at least the condition, as I wrote it in
3 the October 5th letter, we no longer are asking that
4 the Commission formerly recognize the donation. If
5 we had to build the units ourselves and didn't donate
6 it, I'm not sure when we would start construction of
7 the affordable.

8 COMMISSIONER CHANG: Would you -- again, I
9 guess, another hypothetical.

10 If you had to build the affordable units
11 yourself, would you build them at the same time that
12 you're constructing your market value homes?

13 MR. YUEN: Not necessarily. We would have
14 to do some of it, because the county would require
15 that the start be staggered, if you will, that
16 certain number of affordable units would be -- would
17 have to be built for each increment of market rate
18 homes.

19 COMMISSIONER CHANG: Do you have a
20 projected date of when you would start building your
21 market homes?

22 MR. YUEN: No.

23 COMMISSIONER CHANG: I know said you don't
24 have a start date, but would it be before 2019?

25 MR. YUEN: We hope so.

1 COMMISSIONER CHANG: Thank you so much, I
2 appreciate it.

3 CHAIRPERSON ACZON: Commissioner Cabral.

4 COMMISSIONER CABRAL: Of your market homes
5 that you're hoping to finally do something with this
6 land and make some money, of those market homes on
7 your 40 that you're anticipating, what size lots are
8 you looking at those being on, and what price are you
9 hoping by way of your analysis to sell those in order
10 to maximum 9 million you've already --

11 MR. YUEN: I'm going to let Mark Meyer.

12 CHAIRPERSON ACZON: I have to swear you in,
13 if you're going to be testifying.

14 Do you swear that the testimony that you're
15 about to give is the truth?

16 THE WITNESS: I do.

17 CHAIRPERSON ACZON: Please state name and
18 address.

19 THE WITNESS: Mark Meyer, 120 Arbor Road,
20 Menlo Park, California.

21 CHAIRPERSON ACZON: Please proceed.

22 MARK MEYER

23 Was called as a witness by and on behalf of the
24 Petitioner, was sworn to tell the truth, was examined
25 and testified as follows:

DIRECT EXAMINATION

THE WITNESS: I we have a range of zoning designations on the property. We have estimated just for estimating number of lots based on the size of zoning designations. We have about 155 15,000-foot lots, about 170 10,000-square foot lots. About 125, 7500-square foot lots, and then we have about little over 300 RM3 designated units across this particular part of the property.

Some of those RM3 units would be allocating for affordable housing, and they're all integrated through one site.

COMMISSIONER CABRAL: And that price tag that you hope to get, let's say of your 40 homes that you would like to, or lots you're looking to build 40 homes and sell or looking to sell 40 lots and have people build their own houses?

THE WITNESS: To be determined. I think there's a range of options between building lots and selling them for people. We're working with a builder who's going to come in and build a bunch of lots that we developed, probably a very likely scenario.

So I think we're looking at home prices across this community that range from 400,000 out to

1 800,000, probably.

2 COMMISSIONER CABRAL: You think your top
3 prices would be 800,000?

4 THE WITNESS: Yes.

5 COMMISSIONER CABRAL: You don't think it
6 would be a million plus?

7 THE WITNESS: Maybe.

8 COMMISSIONER CABRAL: I'm in real estate.

9 THE WITNESS: I don't like to over promise
10 and under deliver.

11 COMMISSIONER CABRAL: I'm trying to
12 establish the kind of value. If you look at that
13 then you start to understand what possible value that
14 might be the ten acres. If you started understanding
15 what one could do with those ten acres if one had
16 them. You know, if you gave them to me, what would I
17 do.

18 THE WITNESS: Right.

19 COMMISSIONER CABRAL: Thank you very much.

20 CHAIRPERSON ACZON: Anybody else?

21 COMMISSIONER CHANG: Just one question. Is
22 there, in light of your changed position that you're
23 not looking for the donation to satisfy Condition 1,
24 can you currently enter into agreement with HICDC to
25 do exactly what you're proposing to do without coming

1 in to amend the condition other than to say it's now
2 you wanted to do affordable rentals? I mean is this
3 necessary?

4 MR. YUEN: We believe that the change to do
5 affordable rentals is necessary.

6 COMMISSIONER CHANG: So that would really
7 be the only change would be to give you greater
8 flexibility other than sales, it would be to amend
9 the condition to now permit you to do affordable
10 rentals?

11 MR. YUEN: Correct.

12 COMMISSIONER CHANG: Thank you.

13 CHAIRPERSON ACZON: Anybody else?

14 COMMISSIONER CABRAL: I sure talk a lot. I
15 was reading in here too that at some point I want to
16 clarify if that's changed, because if you wanted to
17 see if they were to have built extra affordable units
18 in this initial build-out, if extra units would
19 credit towards future development. Is that no longer
20 on the table?

21 MR. YUEN: We withdrew that from what's on
22 the table.

23 COMMISSIONER CABRAL: Thank you.

24 CHAIRPERSON ACZON: Thank you. Mr.
25 Brilhante, please make Hawaii County's argument.

1 MR. BRILHANTE: Thank you very much, Chair.

2 County of Hawaii, through this process on
3 the initial submittal of the petition as well as the
4 subsequent amended petitions, the county raised three
5 issues of concern.

6 One was the mere donation of the ten-acre
7 parcel does not satisfy the affordable housing
8 requirement.

9 Two, that any excess affordable units built
10 in Phase I does not, you know, is not a holdover and
11 a credit for any requirements on Phase II.

12 And three, that the multi-family components
13 was incorporated into the condition which originally
14 on the original condition that multi-family
15 residential component was not.

16 Since that point in time, the county
17 submittal in opposition, I guess a transmittal has
18 been disseminated to the parties, and what I want to
19 ensure that the Petitioner's October 5th transmittal
20 to the Commission to the county, and to the State of
21 Hawaii Office of Planning is now incorporated in the
22 record, because a lot of what's been communicated at
23 this point in time is predicated and based on the
24 assurances in that October 5th letter.

25 So I want to ensure that that letter has

1 been moved into the record.

2 That being said, as reflected in that
3 October 5th letter, the County of Hawaii has no
4 objection to the current proposal. As a matter of
5 fact, we're in support of the current proposal, as I
6 guess the word I'm looking for as laid out or you
7 spelled out in that October 5th letter.

8 So that being said, the only real concern
9 that we have comes pursuant to that letter, only
10 lingering concern, and there's been a discussion
11 brought to the attention of both the Petitioner and
12 the Office of Planning was the last sentence in
13 October 5th letter where it specifically stated the
14 affordable housing condition shall be implemented to
15 the satisfaction of the OHCD. The County of Hawaii
16 loves being granted such great authority and power,
17 however, we wanted to just ensure that that LUC still
18 maintains the final -- is still the final
19 determination or adjudication body whether or not the
20 affordable housing condition is satisfied. We wanted
21 to make sure that that's on the record.

22 Other than that, that's the county's
23 position at this time. Thank you very much.

24 CHAIRPERSON ACZON: Commissioners, any
25 questions for Mr. Brilhante? Vice Chair Wong.

1 VICE CHAIR WONG: Just wanted to make sure.
2 So you agree, you're okay with what the Petitioner
3 just -- that change in the new option?

4 MR. BRILHANTE: The County of Hawaii is in
5 agreement with the October 5th language amending the
6 original Condition 1.

7 VICE CHAIR WONG: So that's the statement
8 that Mr. Yuen said in the beginning?

9 MR. BRILHANTE: Correct.

10 VICE CHAIR WONG: Okay. That's all I need.
11 Thank you.

12 CHAIRPERSON ACZON: Commissioners.
13 Anybody.

14 COMMISSIONER CHANG: So thank you so much
15 for your county's position. I haven't seen the
16 October 5th letter, so I'm not too sure what it says.

17 So as I understand it at this point in
18 time, the Petitioner's position now is only to amend
19 the condition to expand it to affordable rentals, and
20 the county has no objection to that?

21 MR. BRILHANTE: In the county's proposed
22 October 5th opposition submittal, the county
23 specifically requested that the language that -- I
24 think it's third to the last sentence, the affordable
25 housing units shall be offered for sale or rent at

1 prices or rents not exceeding the prices or rents
2 affordable prices that enable such purchasers and
3 renters to qualify for dot, dot, dot. So that's the
4 specific language that's been incorporated in the
5 Petitioner's October 5th letter and the county is
6 comfortable with that language.

7 COMMISSIONER CHANG: Thank you.

8 CHAIRPERSON ACZON: Anybody else? Thank
9 you. Ms. Apuna, would you like to make OP --

10 MS. APANA: Yes, thank you, Chair.

11 So Petitioner's motion basically sought the
12 following amendments to the dba affordable housing
13 Condition 1, including that Petitioner may provide
14 some or all of the affordable housing units in
15 corporation with HICDC, and that Petitioner may rent,
16 in addition to the sale of the affordable housing
17 units.

18 Petitioner's motion also sought assurances
19 that 10.775-acre parcel will provide an acceptable
20 step toward satisfying affordable housing Condition
21 1, and that permission to apply any excess number of
22 affordable units by HICDC towards Phase II affordable
23 housing conditions.

24 With regard to Petitioner's motion, OP
25 recommends the following.

1 For the proposed amendment to Condition 1,
2 allow Petitioner to provide the rental in addition to
3 the sale of affordable units to broaden the range of
4 affordable housing units for moderate and low income
5 residents. Delete the statement that Petitioner may
6 provide some or all of the affordable units in
7 cooperation with HICDC as it is unnecessary and may
8 be employed as a means to shift the responsibility of
9 fulfilling Condition 1 to HICDC.

10 And deference should be given to the county
11 suggested amendments to accommodate multi-family
12 residential units.

13 Additionally, OP has recommended that the
14 statement, quote, this affordable housing condition
15 shall be implemented to the satisfaction of the
16 county's Office of Housing, end quote, be added to
17 empower the county to apply its standards to the
18 affordable housing in fulfillment of the condition
19 prior to the LUC's final decision on satisfaction of
20 the condition.

21 OP opposes the LUC providing assurances on
22 Petitioner's proposal to donate parcel for a few
23 reasons. First, such assurances are unnecessary and
24 premature. The donation of the parcel falls short of
25 what the LUC envisioned as satisfaction of Condition

1 1. A single parcel with minimal improvements or
2 infrastructure does not reach the standard of ready
3 for sale units, or lots for low and moderate income
4 residents.

5 To deem Condition 1 satisfied by the parcel
6 donation will eliminate the LUC's ability to enforce
7 the condition, and therefore, the affordable units
8 may never be built.

9 And OP opposes any excess number of
10 affordable units towards Petitioner's obligation
11 under Phase II.

12 And lastly, dba conditions are essential to
13 the LUC's authority over and enforcement of State
14 Land Use policies and objectives. Dba conditions are
15 intended to assure substantial compliance with
16 representations made by the Petitioner in seeking the
17 boundary amendment, and to uphold the general intent
18 and spirit of HRS Chapter 205a Coastal Zone
19 Management, and 226 Hawaii State Planning Act.

20 The affordable housing condition is one of
21 24 mandatory -- under the LUC Administrative Rules.
22 Affordable housing commission recognizes and upholds
23 one of the priority guidelines for provision of
24 affordable housing under the Hawaii State Planning
25 Act, which is to create incentives for development

1 which would increase homeownership and rental
2 opportunities for Hawaii's low and moderate income
3 households. This Commission should therefore
4 carefully consider any motion to amend or delete a
5 condition D G. That deletes or strays from State
6 Land Use and planning statutory objectives.

7 And then to answer Commissioner Cabral's
8 question about whether the units will be sold or
9 rented to residents of the State of Hawaii. The
10 current Condition 1, and the one that is presented
11 proposed today actually states that they should be
12 rented or sold to residents of the State of Hawaii.
13 So it's built into the condition.

14 That's it, thank you.

15 CHAIRPERSON ACZON: Commissioners, any
16 questions? Commissioner Chang.

17 COMMISSIONER CHANG: Actually it's a
18 question for the county. Could you confirm the
19 Petitioner's representation that the affordable
20 housing and market housing there are required to be
21 built staggered? I guess I just want to be very
22 clear in my mind that the affordable housing will be
23 built at the same time concurrently with the market
24 housing.

25 MR. BRILHANTE: I think that representation

1 should be made from the Petitioner as to what's going
2 to be built first. It's the county's understanding
3 that the affordable housing units would be built
4 first, but I want to make the Petitioner clarify that
5 on the record.

6 COMMISSIONER CHANG: Okay, that's fine,
7 because I thought the Petitioner said it's a county
8 requirement. Perhaps the Petitioner can clarify
9 that.

10 CHAIRPERSON ACZON: I'll give Mr. Yuen the
11 final argument rebuttal.

12 MR. YUEN: You want me to answer the
13 question or go to final argument?

14 CHAIRPERSON ACZON: Go ahead.

15 MR. YUEN: Just to answer the question, the
16 Land Use Commission did not impose a concurrency
17 requirement. The county zoning imposes certain
18 requirements on concurrency.

19 COMMISSIONER CHANG: It's still unclear to
20 me.

21 MR. YUEN: Basically the Land Use
22 Commission, unlike what the Land Use Commission has
23 perhaps done in subsequent petitions, the Land Use
24 Commission does not require that this Petitioner
25 build affordable housing simultaneously with market

1 housing.

2 COMMISSIONER CHANG: I guess I understood
3 you to say that it's the county requirement.

4 MR. YUEN: The county zoning ordinance
5 contains different requirements.

6 COMMISSIONER CHANG: So I guess it comes
7 back to the county.

8 CHAIRPERSON ACZON: Let's --

9 MR. BRILHANTE: I have Planning Director
10 Duane Kanuha here. I think he would be best to
11 respond to that specific question. I think what we
12 need to do is swear Mr. Kanuha in.

13 CHAIRPERSON ACZON: Yes. Do you swear that
14 the testimony that you're about to give is the truth.

15 THE WITNESS: Yes, I do.

16 CHAIRPERSON ACZON: State your name and
17 address for the record.

18 THE WITNESS: Duane Kanuha, Planning
19 Director, County of Hawaii.

20 DUANE KANUHA

21 Was called as a witness by and on behalf of the
22 County of Hawaii, was sworn to tell the truth, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: So, Commissioner Chang, your

1 question, just for clarification, was --

2 COMMISSIONER CHANG: It's the timing upon
3 which the affordable housing units will be built. My
4 understanding from the Petitioner is that LUC made no
5 condition that the affordable units be built
6 concurrently with the market. However, my
7 understanding from the Petitioner is that while it is
8 not a LUC requirement, it is a county zoning
9 requirement that they be built staggered and
10 affordable and market.

11 So I just want to clarify that with the
12 county.

13 THE WITNESS: The county zoning condition
14 doesn't state that. All it states is that affordable
15 housing units will be built in accordance with and in
16 conjunction with the Office of Housing and
17 Communities Development on the county side.

18 So it's basically the same language as in
19 the condition, but there's no specific concurrence as
20 a requirement, I believe, that affordable has to go
21 before market or so on and so forth.

22 It's for that reason that normally the
23 county in the rezoning process usually would adopt a
24 Land Use Commission condition fairly verbatim. In
25 this case it was not verbatim. And that's why we're

1 here today to make that adjustment to the Commission
2 at the Land Use Commission level. And that is also
3 why we did not support the release of the condition,
4 because there's ongoing compliance for affordable
5 housing requirement through both HHFDC, the state
6 entity, and our Office of Community Development.

7 And based on the proposal and the agreement
8 that's on the record today, our assumption is that in
9 this case, the rental, if the Commission approves the
10 modification of this condition, that the rental units
11 will probably go first.

12 COMMISSIONER CHANG: Thank you so much, Mr.
13 Kanuha. But there is no assurance that the rental
14 units will go first other than we've had testimony
15 that they think they can be built by 2018 or 2019.
16 Because there does -- we don't seem to have a meeting
17 of the minds between the Petitioner and the county.

18 One, I'm hearing there's no requirement
19 that they be built concurrently. So I guess maybe
20 Mr. Yuen will, on his rebuttal.

21 But I guess for purposes of the LUC, what
22 are the assurances that the affordable unit, rental
23 units will be built -- at what point in time will
24 these affordable units be built? I guess that's my
25 question.

1 CHAIRPERSON ACZON: Mr. Yuen.

2 MR. YUEN: The Petitioner's current plan is
3 to donate land to HICDC. If for whatever reason
4 HICDC is unable to complete any construction of the
5 affordable units, responsibility to build a certain
6 number of affordable units still rests with RCFC.

7 Once we donate the land to HICDC, we would
8 give HICDC every opportunity to succeed. And if we
9 reach a point where RCFC has finished most of the
10 market rate units in Phase I, and HICDC has not been
11 able to secure its financing and start development,
12 then HI -- I'm sorry, then RCFC is going to have to
13 develop a number equivalent to ten percent of the
14 units on land other than what it donated to HICDC.

15 And we can't really predict when that's
16 going to happen, because the whole point of donating
17 the land to HICDC is to give HICDC an opportunity to
18 succeed.

19 COMMISSIONER CHANG: Is there any objection
20 if, included in this petition -- because it appears
21 as if after the donation is made, HICDC will then
22 seek a loan and work with other agencies that we came
23 back -- that we required within one year to come back
24 and give us a status of what that is.

25 MR. YUEN: There's already a requirement

1 that the Petitioner file an annual progress report.
2 So I don't believe any additional requirement on a
3 progress report would be necessary.

4 COMMISSIONER CHANG: I guess I just like it
5 very clear for the record that that would be -- and I
6 appreciate that that is a requirement, but
7 specifically on the status of the ability of HICDC,
8 where are they in getting the low interest loans and
9 building, because we are at almost at 2017, and I
10 think Mr. Kato's fairly optimistic by 2018 they could
11 secure the loan and be built by 2019, so hopefully
12 within a year they would be much closer to securing
13 all of the loans and getting at least plans for the
14 building.

15 MR. YUEN: Thank you.

16 THE WITNESS: Mr. Chairman, if I may, the
17 condition that the Land Use Commission that's
18 currently binding on this property, doesn't have a
19 concurrency requirement. It makes no representation
20 what the percentages are between market and
21 affordable. So that's why the county's condition
22 didn't go further than that.

23 I suppose we could, but it didn't go
24 further than what the language of the state's
25 condition was.

1 CHAIRPERSON ACZON: Thank you, Mr. Kanuha.
2 Anybody else?

3 MR. YUEN: I also wanted to add, we believe
4 the approximate value of the land would be
5 approximately \$5 million.

6 CHAIRPERSON ACZON: Thank you. Vice Chair
7 Wong.

8 VICE CHAIR WONG: OP. You said that pretty
9 much in your statement, and I think, correct me if I
10 am wrong, that you said that LUC would be off the
11 hook, or would not still continue to watch over this
12 project. Is that correct, the way you stated, if we
13 agreed upon the Petitioner's new statement?

14 MS. APANA: Actually, I'm referring to the
15 original request by the Petitioner. So if this
16 Commission decided that the Condition 1, affordable
17 housing condition were satisfied solely by the
18 donation of the 10.775-acre parcel, then the
19 Commission would no longer be able to enforce the
20 affordable housing condition.

21 But as we have heard today, they decided to
22 abandon that request, so I don't think that's an
23 issue.

24 VICE CHAIR WONG: You have no problem?

25 MS. APANA: Yeah.

1 VICE CHAIR WONG: So other issue you had is
2 about multi-family, again, beginning the first
3 condition when --

4 MS. APANA: Actually I think the
5 multi-family amendment to Condition 1 was by the
6 county, and we are in support of that.

7 VICE CHAIR WONG: I have a question on that
8 portion. In the new revised condition that is on the
9 table right now, does it say that that's also
10 moderately -- moderate income family or renters -- so
11 isn't that considered multi-family? So what is the
12 definition of multi-family?

13 MR. BRILHANTE: Commissioner Wong, the
14 original condition language was that designated
15 vacant lot and house lot packages would be required
16 under the affordable housing components. So under
17 the county zoning code, residential parcels under the
18 code allows for multi-family units within that
19 structural use.

20 VICE CHAIR WONG: Let me ask Petitioner.

21 The way that HICDC is planning to build, is
22 it like more like townhouses then?

23 MR. YUEN: Probably.

24 VICE CHAIR WONG: Just because if you just
25 do one house only, have one family, but if you have

1 apartment or townhouses, you do --

2 MR. YUEN: That's multi-family.

3 VICE CHAIR WONG: Yeah, that's okay, right.
4 You have more families to help, more affordable.

5 MR. BRILHANTE: And that would be with the
6 amended language. As it originally read did not
7 afford that, but now it does.

8 VICE CHAIR WONG: I just was confused when
9 OP was -- sorry, I just -- you're okay with the new
10 language?

11 MS. APANA: Yes.

12 VICE CHAIR WONG: That's all. And then one
13 other statement.

14 I think it way the new language is written,
15 the LUC is still overseeing this until the affordable
16 housing is built, then the Petitioner has to come
17 back and say we finished it, can you check that off
18 the box. Correct?

19 MR. YUEN: Correct.

20 VICE CHAIR WONG: Thank you, that's the way
21 I read it. Just wanted to make sure. Thank you.

22 CHAIRPERSON ACZON: Commissioner Chang.

23 COMMISSIONER CHANG: I think this is my
24 last question. In light of the comments by the
25 county that there is no concurrency requirement,

1 would the Petitioner have any objection to the
2 modification of that condition to include that the
3 affordable and the market unit be built concurrently?

4 MR. YUEN: Yes, we would. Because once we
5 donate land to HICDC, we can't control their pace of
6 construction.

7 COMMISSIONER CHANG: If the land was not
8 donated, for example -- if the land wasn't donated
9 and it fell back on the Petitioner to build, would
10 you build them concurrently?

11 MR. YUEN: Not necessarily.

12 CHAIRPERSON ACZON: Commissioner Cabral.

13 COMMISSIONER CABRAL: I appreciate all of
14 this, and somewhat because Mr. Kato's great
15 reputation, I assume that's how he makes his living
16 as a private citizen in building these houses and
17 apartment buildings, so I'm assuming he's going to
18 move ahead rapidly to get that project done.

19 And some of our confusion is we did not get
20 your October 5th alteration. I didn't receive that
21 as Commissioner Chang said also, so we didn't see
22 that. So that's part of our confusion here.

23 MR. YUEN: I sent it to the Director and
24 I'm not sure if I could take some time to make some
25 copies. What would the Commission's pleasure be?

1 COMMISSIONER CABRAL: Well, I was just
2 trying to check on making sure, because I read this
3 and if our group is ready, I think I'm ready to make
4 a motion.

5 CHAIRPERSON ACZON: The Chair would like to
6 take a five-minute break.

7 (Recess taken.)

8 CHAIRPERSON ACZON: Back on the record.

9 I'm understanding that the letter that was
10 mentioned, wasn't formally filed, So it's --

11 MR. YUEN: I would like to introduce it as
12 Petitioner's Exhibit No. 1.

13 CHAIRPERSON ACZON: Any objections from
14 parties?

15 MR. BRILHANTE: County of Hawaii has no
16 objection.

17 MS. APANA: No objection.

18 CHAIRPERSON ACZON: Thank you. Make it
19 known that the Exhibit 1 is part of the record.
20 Thank you. Commissioner Okuda.

21 COMMISSIONER OKUDA: If I can ask the
22 question of the parties, since Exhibit 1 is now part
23 of the record.

24 So Office of State Planning, you've read
25 Exhibit 1, is that correct?

1 MS. APANA: Yes.

2 COMMISSIONER OKUDA: Do you find -- let me
3 ask you -- withdraw the question to Office of State
4 Planning, but ask the county first.

5 You've read Exhibit 1, is that correct?

6 MR. YUEN: That's correct.

7 COMMISSIONER OKUDA: The condition or the
8 proposed condition that's set forth in Exhibit 1, you
9 find that satisfactory? And when I say the proposed
10 condition, there seems to be sections that have been
11 stricken and sentences that are underlined.

12 Do you find the condition or proposed
13 condition as written there, for example, what's
14 stricken is not going to be included, do you find
15 that acceptable, or is it the county's position you
16 want something still modified such as the last
17 sentence in the Exhibit 1?

18 MR. BRILHANTE: Thank you very much,
19 Commissioner Okuda. The County of Hawaii's position,
20 as I previously stated on the record, was that we
21 were in receipt of the October 5th letter from the
22 applicant, the Petitioner, as presented to the
23 Commission now.

24 The county initially requested that that
25 letter be incorporated into the record, because we

1 anticipated discussion about that letter taking place
2 today. So that's why we initially requested that
3 that letter be placed in the record.

4 We're happy now that it's been placed in
5 the record as exhibit.

6 As the language was proposed in that letter
7 from the Petitioner, the applicant, the county is in
8 agreement and would support the proposed amendment as
9 you represented with the stricken language being
10 removed and the underlined language being add to the
11 original Condition 1.

12 COMMISSIONER OKUDA: So the underline is an
13 addition, the strike out is of course stricken, okay,
14 I understand.

15 MR. BRILHANTE: That's correct.

16 COMMISSIONER OKUDA: Same question to the
17 Office of State Planning, you've read Exhibit 1,
18 correct?

19 MS. APANA: Yes, we have.

20 COMMISSIONER OKUDA: Is the Office of State
21 Planning in agreement with the condition that's
22 spelled out in Exhibit 1, and for clarification,
23 meaning whatever's stricken is not to be included in
24 the proposed revision to the condition, and the
25 underline is what's going to be added in?

1 MS. APANA: Yes, that's correct. And I
2 would just add I think this condition, as drafted in
3 the October -- in Exhibit 1, it includes
4 modifications that we suggested to the current
5 Condition 1, but are not reflected by the strike out
6 and underline.

7 For instance, in the first sentence: By
8 offering for sale or rental, so the "or rental" is
9 addition to the current condition. I just wanted to
10 point that out so that you don't see this as just the
11 original condition with changes made by strike outs
12 and underline.

13 COMMISSIONER OKUDA: Okay, I understand.
14 Thank you. No further questions, Mr. Chair.

15 CHAIRPERSON ACZON: Commissioners, anybody
16 else? Commissioner Hiranaga.

17 COMMISSIONER HIRANAGA: I believe the
18 County of Hawaii had some concern about the last line
19 in this proposed language OHCD, so did you -- I know
20 you made some comments for the record, but did you
21 want it memorialized in the language?

22 MR. BRILHANTE: That's correct. The County
23 of Hawaii, upon initial review of this Exhibit 1, we
24 the language regarding that OHCD would be the
25 ultimate arbitrator of whether or not the condition

1 was satisfied, we had brought that concern to both
2 the Applicant as well as the Office of Planning,
3 State of Hawaii, and we were both -- and we were
4 directed to the original conditional approval in
5 which the LUC, at the end of the day, maintains the
6 ultimate authority as to whether or not each of the
7 conditions have been appropriately satisfied.

8 So with that on the record, the county is
9 comfortable with that proposed last sentence.

10 CHAIRPERSON ACZON: There's no changes on
11 that one.

12 COMMISSIONER HIRANAGA: Would that create
13 confusion?

14 MR. BRILHANTE: No, it shouldn't, it's
15 because it's the county's position, and I'm sure the
16 other parties can make representation as well, is the
17 county's overall understanding that these conditions
18 can be satisfied individually, but the overall
19 satisfaction of the original application still lies
20 with the this Commission.

21 CHAIRPERSON ACZON: Commissioner Okuda.

22 COMMISSIONER OKUDA: Thank you, Mr. Chair.

23 So one question for Mr. Yuen, just so I'm
24 clear in my mind. What relief are you asking from
25 the Land Use Commission, jus so that we're really

1 clear what the request is.

2 MR. YUEN: We're asking that the Commission
3 approve the condition as proposed in Exhibit 1.

4 COMMISSIONER OKUDA: Thank you, Mr. Yuen.
5 Thank you, Mr. Chair.

6 CHAIRPERSON ACZON: Commissioner Chang.

7 COMMISSIONER CHANG: Just one last point,
8 and I really do appreciate the fact that the
9 Petitioner is entering into this private/public
10 partnership hopefully with HICDC, because I think it
11 sounds as if they may more timely be able to build
12 the affordable housing unit.

13 With that clarification about LUC having
14 the overall, the final word in compliance, so it is
15 my understanding that this is a two phase project, so
16 that before the Petitioner can move to develop Phase
17 II, the condition of the affordable housing rental or
18 sale would have to be satisfied before Phase II could
19 be developed?

20 MR. YUEN: That is correct.

21 COMMISSIONER CHANG: Thank you very much.
22 With that I'm very comfortable with those
23 clarification, thank you.

24 CHAIRPERSON ACZON: Mr. Yuen, I'm giving
25 you final rebuttal.

1 MR. YUEN: I think everything's been
2 answered.

3 CHAIRPERSON ACZON: Thank you.

4 Commissioners, what's your pleasure?
5 Commissioner Cabral.

6 COMMISSIONER CABRAL: Yes, I would like to
7 go ahead, and I hope I've got this clarified with a
8 few alterations, that I would like to go ahead and
9 approve in part the Petitioner's motion to amend
10 Condition 1 to allow for the rental in addition to
11 the sale of lots or houses and lots, and include the
12 ability to accommodate affordable multi-family
13 residential units, and to deny other aspects of the
14 Petitioner's original motion.

15 I'm saying that because, again, I think
16 this letter, while it's a memo and a letter, I'm
17 trying to respond to the original motion that it was
18 legally submitted as opposed to a letter that was
19 supplemental and not really a submitted petition. So
20 I'm trying to, I think, make sure my language agrees
21 with what we have all I think evolved to with the
22 idea that then the affordable housing could take
23 place with the donation of the land, but that
24 ultimately the developer is still responsible to make
25 sure that that takes place, and that the rental of

1 those affordable units is acceptable.

2 CHAIRPERSON ACZON: There is a motion by
3 Commissioner Cabral.

4 VICE CHAIR WONG: Second.

5 CHAIRPERSON ACZON: A motion has been made
6 by Commissioner Cabral and seconded by Vice Chair
7 Wong.

8 COMMISSIONER OKUDA: Chair, can I make a
9 motion to amend the motion, and my motion would be
10 that the motion we consider is to approve the
11 petition submitted by the Petitioner as modified, or
12 to the extent of the relief being requested in
13 Exhibit 1, so we track the language of Exhibit 1, and
14 we deny everything else that's requested except for
15 what's being requested in Exhibit 1.

16 CHAIRPERSON ACZON: Commissioner Cabral.

17 COMMISSIONER CABRAL: I have no objection
18 to that.

19 CHAIRPERSON ACZON: Commissioner Wong.

20 VICE CHAIR WONG: No objection.

21 CHAIRPERSON ACZON: We have an amended
22 motion. We are in discussion. No discussion.

23 COMMISSIONER OKUDA: Chair, I would like to
24 speak in favor of my amendment.

25 I understand the questions about when

1 development and things will take place, but the only
2 thing that's in front of the Commission today is the
3 specific request to amend this condition. If
4 something happens in the future or doesn't happen in
5 the future, that's for another day, another motion,
6 another petition. We all wish everyone well, but I
7 don't think we should, you know, have the record
8 indicate that we're doing anything except for what's
9 before us in this specific petition, and so that's
10 the extent of my comment and argument.

11 CHAIRPERSON ACZON: Thank you, Mr. Okuda.
12 Commissioner Hiranaga.

13 COMMISSIONER HIRANAGA: Just for clarity,
14 the amended motion is to adopt the language as
15 provided in Exhibit 1 -- just for clarity, the motion
16 is to adopt the language provided in Exhibit 1?

17 COMMISSIONER OKUDA: Yes, that the petition
18 would be adopted to the extent and to reflect the
19 proposed language in Exhibit 1, and denied as to
20 anything else that was requested in the petition.

21 COMMISSIONER HIRANAGA: Thank you.

22 CHAIRPERSON ACZON: Any further discussion?
23 There is no further discussion, Mr. Orodener, would
24 you please poll the Commission.

25 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

1 The motion is to adopt the language contained in
2 Exhibit 1 and deny the original motion.

3 Commissioner Cabral?

4 COMMISSIONER CABRAL: Yes.

5 EXECUTIVE DIRECTOR: Commissioner Wong?

6 VICE CHAIR WONG: Aye.

7 EXECUTIVE DIRECTOR: Commissioner Mahi?

8 COMMISSIONER MAHI: Aye.

9 EXECUTIVE DIRECTOR: Commissioner Scheuer
10 is absent.

11 Commissioner Chang?

12 COMMISSIONER CHANG: Yes.

13 EXECUTIVE DIRECTOR: Commissioner Hiranaga?

14 COMMISSIONER HIRANAGA: Aye.

15 EXECUTIVE DIRECTOR: Commissioner Okuda?

16 COMMISSIONER OKUDA: Yes.

17 EXECUTIVE DIRECTOR: Commissioner Estes?

18 COMMISSIONER ESTES: Yes.

19 EXECUTIVE DIRECTOR: Chair Aczon?

20 CHAIRPERSON ACZON: Yes.

21 EXECUTIVE DIRECTOR: Thank you.

22 Mr. Chair, the motion carries unanimously
23 with eight votes.

24 MR. YUEN: Thank very much, Mr. Chair and
25 Commissioners.

1 CHAIRPERSON ACZON: Congratulations, thanks
2 for everyone's participation.

3 Two-minute break.

4 (Recess taken.)

5 CHAIRPERSON ACZON: We're back on the
6 record.

7 The next agenda item is discussion of
8 action, if necessary, to authorize LUC staff --
9 administrator rules.

10 Mr. Orodenker, can you walk us through the
11 rules?

12 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.
13 I really wasn't intending to go through them one by
14 one. We haven't made any addition, didn't get any
15 other comments with regard to additional rule changes
16 in the last --

17 What we're asking for now is approval to
18 institute the process that will allow us to change
19 the rules that would require public hearings,
20 approval by the governor and lieutenant governor's
21 office, and various other agencies in the state, the
22 small business, I forget what they call it. Small
23 business regulatory review.

24 As stated the first time around the these
25 rules are really a cleanup of rule changes that we

1 made several years ago. They're designed to clarify
2 inconsistencies that we may have inadvertently made
3 when we made the original changes, and to correct
4 minor typographical errors and so forth.

5 Once again, you will have a chance to
6 comment on this at least two more times.

7 CHAIRPERSON ACZON: Commissioners, do you
8 have a copy of the rules. Any further discussion?

9 COMMISSIONER CHANG: So if we want to make
10 any changes, I just have a few.

11 CHAIRPERSON ACZON: Go ahead.

12 COMMISSIONER CHANG: Should I just give
13 them to you?

14 EXECUTIVE DIRECTOR: You can just give them
15 to us.

16 CHAIRPERSON ACZON: Commissioner Estes.

17 COMMISSIONER ESTES: You said we have a
18 copy?

19 EXECUTIVE DIRECTOR: It was in the staff
20 report.

21 CHAIRPERSON ACZON: Any further discussion?

22 COMMISSIONER CABRAL: I would like to speak
23 in favor. I read through these. While I don't have
24 very much experience on the LUC, I am somewhat
25 acquiescing to the management here, because these

1 type of operational procedures will, in these
2 changes, will hopefully help the entire Commission
3 function in a more fair and equitable manner and with
4 appropriate representation.

5 CHAIRPERSON ACZON: Are you making a
6 motion?

7 COMMISSIONER CABRAL: I so moved.

8 VICE CHAIR WONG: Second.

9 CHAIRPERSON ACZON: Any further discussion?
10 Hearing none, those in favor say "aye", opposed?
11 Motion carries.

12 If there no other agenda items, there being
13 no further business, I declare this meeting
14 adjourned.

15 (The proceedings ended at 11:51 a.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 13, 2016 at 10:12 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 13th day of October, 2016, in Honolulu, Hawaii.

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