

LAND USE COMMISSION HEARING

STATE OF HAWAII

Proceedings held on 1/24/2018

Natural Energy Laboratory Hawai'i Authority

73-987 Makako Bay Drive

Kailua-Kona, Hawai'i 96740-2637

Commencing at 9:30 a.m.

AGENDA

I Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. HEARING AND ACTION

A06-770 THE SHOPOFF GROUP, L.P. (Hawai'i)

Consideration of whether to issue Order to Show Cause Based on correspondence from Petitioner's successor in interest and related matters, if any.

V. STATUS REPORT AND ACTION (IF NECESSARY)

A00-730 LANIHAU PROPERTIES LLC (Hawai'i)

VI. STATUS REPORT AND ACTION (IF NECESSARY)

A10-788 HHFDC & Forest City - Kamakana Villages at Keahuolu (Hawai'i)

VII. REPORT AND ACTION

Report of the Executive Officer regarding proposed rule amendments and action to authorize staff to obtain necessary approvals and hold public hearing.

VIII. RECESS TO RECONVENE MEETING VIA VIDEOCONFERENCE
ON JANUARY 25, 2018

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 COMMISSIONERS:

3 ARNOLD WONG, Chairperson
4 JONATHAN SCHEUER, Vice Chair
5 DAWN N.S. CHANG
6 GARY OKUDA
7 AARON MAHI
8 NANCY CABRAL
9 LEE OHIGASI

10 STAFF:

11 DIANE ERICKSON, Deputy Attorney General (Maui)
12 DANIEL E. ORODENKER, Executive Officer (Maui)
13 RILEY K. HAKODA, Planner/Chief Clerk (Oahu)
14 SCOTT A.K. DERRICKSON, AICP-Planner
15 DAWN APUNA, ESQ.
16 RODNEY FUNAKOSHI, Planning Program Administrator
17 LORENE MAKI, Planner
18 Office of Planning, State of Hawaii

19 AMY SELF, ESQ.
20 Deputy Corporation Counsel
21 DARYN ARAI, Deputy County Director (Hilo)
22 County of Hawai'i

23 A00-730 LANIHAU PROPERTIES LLC

24 BENJAMIN A. KUDO, ESQ.
25 TERRY MULDOON, Executive Director of Facilities
For Kaiser Permanente

RHONDA LOH, Acting Superintendent NPS
JEFF ZIMPFER, Environmental Protection Specialist NPS
Intervenor NPS

A10-788

ELIZABETH CHAR, Development Officer
SHERYL NOJIMA, Consultant
For Michaels Development Company

STANLEY FUJIMOTO, Project Manager
CRAIG HIRAI, Executive Director
For HHFDC

RHONDA LOH, Acting Superintendent NPS
JEFF ZIMPFER, Environmental Protection Specialist NPS
Intervenor NPS

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1 CHAIRPERSON WONG: This is the January
2 24th, 2018 Land Use Commission Meeting.

3 The first order of business is adoption of
4 the December 6th and 7th, 2017 minutes. Are there
5 any corrections or comments on them?

6 VICE CHAIR CABRAL: I move to approve.

7 COMMISSIONER MAHI: Second.

8 CHAIRPERSON WONG: Moved by Commissioner
9 Cabral, and second by Commissioner Mahi. All those
10 in favor please say "aye". Any opposition? None.
11 Okay, the minutes have been adopted. Thank you.

12 Next item is tentative meeting schedule.
13 Mr. Orodenker.

14 EXECUTIVE OFFICER: Thank you, Mr. Chair.

15 Tomorrow we will be having a
16 videoconference for the Maui matter, Waikapu
17 Properties. The hearing will be held on Maui, but
18 most of the Commissioners will be attending by
19 videoconference.

20 February 21st, adopting form of the Order
21 for Waikapu.

22 And then we have a light schedule to be
23 determined until May 9th, where we will be on Maui
24 for Manuel Lutheran Church and Pulelehua Maui Land &
25 Pine Motion to Amend.

1 On May 23rd back here on the Big Island for
2 Waikalo Heights and other Big Island business.

3 And on the 24th for Important Agricultural
4 Land designation. That's the calendar.

5 CHAIRPERSON WONG: Thank you.

6 A06-770 THE SHOPOFF GROUP, LP

7 The next agenda item is Hearing and Action
8 Meeting on Docket A06-770 the Shopoff Group to
9 consider whether to issue Order to Show Cause on the
10 reclassification on approximately 127.94 acres of
11 land that was formerly in the Agricultural District
12 to the Urban District at North Kona, Hawai'i.

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

15 Mr. Robert Lee is here.

16 Next, county.

17 MS. SELF: Deputy Corporation Counsel Amy
18 Self, County of Hawaii. And to my right is the
19 Deputy Planning Director for County of Hawaii, Daryn
20 Hirai

21 CHAIRPERSON WONG: Thank you. OP.

22 MS. APUNA: Good morning, Deputy Attorney
23 General Dawn Apuna on behalf of Office of Planning.
24 Here with me today is Rodney Funakoshi and Lorene
25 Maki.

1 CHAIRPERSON WONG: Thank you.

2 Let me update the record.

3 On December 4th and 8th, 2017, the
4 Commissioner received correspondence from the
5 successor Petitioner Kula Nei Partners LLC, stating
6 that it did not have the financial capabilities to
7 meet the requirements previously represented to the
8 Commission by its predecessor and would not be able
9 to comply with the conditions and deadlines set forth
10 in the October 16th, 2008 LUC Decision and Order.

11 On January 2nd, 2018, the Commission staff
12 acknowledged Petitioner's correspondence and advised
13 that on January 24th, 2018, the Commission would
14 consider whether to issue an Order to Show Cause
15 based on the correspondence and related matters.

16 On January 16, 2018, a LUC meeting agenda
17 notice for the January 24th, 2018 meeting was sent to
18 the Parties and the Statewide, Hawai'i, Kaua'i, Maui
19 and Oahu mailing lists.

20 On January 22nd 2018, Commission received a
21 letter from Kula Nei Partners, LLC requesting
22 continuance to address Office of Planning and the
23 County of Hawaii Planning Department; and
24 correspondence from OP requesting an additional
25 information.

1 Let me briefly run over our procedure.

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

7 Secondly, the Chair will allow each party
8 to comment on the request for deferral.

9 Third, the Petitioner may reserve a portion
10 of their time to respond to comments made by County
11 and the State Office of Planning.

12 Are there any questions on this procedure
13 for today, county?

14 MS. SELF: No.

15 CHAIRPERSON WONG: OP?

16 MS. APUNA: No questions.

17 CHAIRPERSON WONG: The Chair would also
18 note for the parties and the public that from time to
19 time I'll be calling for short breaks.

20 Are there any of questions on today's
21 procedure?

22 (Off the record.)

23 We're back in.

24 First I want to ask is there any public
25 witnesses on this matter? Going once, twice, hearing

1 none, thank you.

2 As I stated before, there was a request for
3 continuance on this matter. Are there any questions
4 on this or opposition of continuance? County?

5 MS. SELF: No objections from the County.

6 CHAIRPERSON WONG: OP?

7 MS. APUNA: No objection.

8 CHAIRPERSON WONG: Commissioners?

9 Okay, if not, there will be a continuance
10 on this matter. Thank you.

11 We will take a break for the next session.
12 Lanihau is up.

13 (Recess taken.)

14 A00-730 LANIHAU PROPERTIES, LLC

15 CHAIRPERSON WONG: The next agenda item is
16 a status report and appropriate action on Docket
17 A00-730 Lanihau Properties, LLC, Hawai'i. A Petition
18 to Amend the Conservation Land Use District Boundary
19 into the Urban Land Use District for Approximately
20 336.984 Acres at Honokohau, North Kona, Hawai'i, Tax
21 Map Key Nos. 7-4-08, portion of 13, and 7-4-08:30.

22 Parties please identify themselves for the
23 record.

24 MS. LOH: Rhonda Loh, Acting
25 Superintendent, Koloko-Honokohau.

1 MR. ZIMPFER: Jeff Zimpfer, Environmental
2 Protection Specialist at Koloko-Honokohau National
3 Historical Park.

4 MR. KUDO: I'm Ben Kudo representing Kaiser
5 Permanente. And with me is Terry Muldoon, Executive
6 Director of Facilities for Kaiser Permanente.

7 We are here with the permission of Lanihau
8 Properties to talk about this particular docket.

9 CHAIRPERSON WONG: Thank you.

10 MS. SELF: Amy Self, Deputy Corporation
11 Counsel for County of Hawaii, and to my right is
12 Planning Director for the County of Hawai'i, Daryn
13 Hirai.

14 MS. APUNA: Dawn Apuna, Deputy Attorney
15 General on behalf of the Office of Planning. With me
16 is Rodney Funakoshi and Lorene Maki.

17 CHAIRPERSON WONG: Thank you.

18 Let me update the record on this docket.

19 On September 15, 2017, the Commission
20 received an email from National Park Service
21 regarding Docket Nos. A00-738 and A10-788 regarding
22 noncompliance with conditions.

23 From September to December 2017, Commission
24 staff reviewed the annual reports and investigated to
25 establish who the proper and responsible contacts

1 were for each respective docket and advised them that
2 the LUC would be requesting status updates in 2018.

3 On January 16, 2018, an LUC meeting agenda
4 notice for the January 24th, 2018 meeting was sent to
5 the Parties and the Statewide, Hawai'i, Kaua'i, Maui
6 and Oahu mailing list.

7 The Commission also received correspondence
8 and the 2017 annual report from the Petitioner,
9 Lanihau Properties, LLC.

10 On January 19th, 2018 the Commission
11 received correspondence and the 2015-2016 annual
12 report from Petitioner Lanihau Properties, LLC.

13 On January 22nd, 2018, the Commission
14 received National Park Service's Testimony and
15 Exhibits 1 through 8 regarding Status Update for
16 Docket No. A00-730.

17 For the members of the public, please be
18 reminded the Commission will not be considering the
19 merits of the A00-730 Petition; rather the Commission
20 is interested in learning what the current state of
21 activities of Petitioner related to this docket are,
22 including as they pertain to National Park Service's
23 assertions that there have been noncompliance with
24 the conditions of approval.

25 Let me go over the procedures for this

1 docket.

2 First, those individuals desiring to
3 provide public testimony for the Commission's
4 consideration will be asked to identify themselves
5 and will be called in order to our witness box where
6 they will be sworn in.

7 At the conclusion of public testimony, the
8 Chair would look Intervenor National Park Service to
9 provide its presentation first to better understand
10 the nature of its complaints and concerns in this
11 matter.

12 After questioning of the Intervenor, Chair
13 will next call for the Petitioner to respond and
14 provide its status update on this matter.

15 After questioning of the Petitioner, the
16 Chair will call on the County of Hawaii.

17 After questioning of the County, the Chair
18 will call on OP.

19 After questioning OP, the Chair will
20 entertain any final questions or comments.

21 The Chair will also note from time to time
22 I will be calling for short breaks. Are there any
23 questions on procedures for today?

24 MR. KUDO: No questions.

25 MS. LOH: No questions.

1 MS. SELF: No questions.

2 MS. APUNA: No questions.

3 CHAIRPERSON WONG: Any individuals
4 providing testimony on this docket? Going once,
5 twice. Okay, thank you.

6 National Park Service.

7 VICE CHAIR SCHEUER: Chair.

8 CHAIRPERSON WONG: Commissioner Vice Chair
9 Scheuer.

10 VICE CHAIR SCHEUER: Mr. Chair, I have and
11 continue to serve as a consultant to National Park
12 Service, so I will be recusing myself from
13 participating in agenda item V as well as agenda item
14 VI.

15 CHAIRPERSON WONG: Okay, thank you.

16 Anyone else want to state for this agenda
17 item V, Commissioners? Thank you.

18 National Park Service, can you please make
19 your presentation?

20 MR. SIMPFER: Back in the early 2000 to
21 approximately 2003 National Park Service intervened
22 in a proceeding for the Lanikai Properties with the
23 Land Use Commission in order to get conditions put on
24 the property to ensure that the nationally
25 significant resources of Kaloko-Honokohau National

1 Historical Park were protected for the enjoyment of
2 future generations.

3 One of those conditions LUC put on was that
4 wastewater would be treated to a high degree.
5 Removing approximately 90 percent of the nitrogen and
6 phosphorous in the wastewater.

7 Kaiser came forward in 2012 and came with
8 plans to build a wastewater system for the new Kaiser
9 Clinic. The Kaiser Clinic proposed a method not
10 described in the LUC Decision and Order, but chose
11 another method and we reviewed that.

12 Skip ahead to today -- we have in 2017 we
13 got water quality reports from Kaiser, and their
14 system that they installed was not meeting the
15 nutrient removal of nitrogen and phosphorus. It
16 wasn't meeting the approximately 90 percent removal.

17 So I contacted Land Use Commission and
18 that's why we're here today.

19 On Friday -- not Friday -- Monday, I
20 received an email from Ben Kudo with the latest
21 Kaiser water quality report. And he proposed more
22 frequent monitoring for the Kaiser facility. And
23 because previously they were monitoring only twice
24 per year, he proposed to work with the system in
25 order that would meet the Land Use Commission

1 requirements. And then he also proposed more
2 frequent monitoring on a monthly basis.

3 And so he proposed that the National Park
4 Service and Kaiser work together to get the issues
5 ironed out before the May Land Use Commission
6 meeting, and we look forward to working with Mr. Kudo
7 and Kaiser to make sure the system meets the Land Use
8 Commission's Decision and Order.

9 CHAIRPERSON WONG: Thank you.

10 Commissioners, do you have any questions?
11 Commissioner Mahi.

12 COMMISSIONER MAHI: Where are you now in
13 terms of the kind of results your getting on a kind
14 of monthly basis?

15 MR. SIMPFER: Mr. Kudo sent a report, and
16 we went through shutdown and stuff, so we've been
17 kind of scrambling. But the report showed a
18 98 percent removal for nitrogen and phosphorus, so we
19 find that -- we haven't really had a chance to
20 analyze it, but on the surface, it looks like a step
21 in the right direction.

22 COMMISSIONER MAHI: Thank you.

23 CHAIRPERSON WONG: Commissioner Cabral.

24 VICE CHAIR CABRAL: So then what was the
25 percent before that got you alarmed to bring you to

1 this table?

2 MR. SIMPFER: Some actually showed an
3 increase. There was -- they sent us a report. They
4 had six monitoring dates over the course of several
5 years. And only one of those six dates was it
6 meeting the mark of the Land Use Commission Decision
7 and Order.

8 But what really alarmed us was the most
9 recent date, I think it was December -- not
10 December -- we got -- they monitored December of just
11 last year and that one looked good. But what really
12 triggered alarm was the most recent before that
13 showed an increase, that was like August, I forgot.
14 I could look it up.

15 VICE CHAIR CABRAL: Not good.

16 CHAIRPERSON WONG: Commissioner Mahi.

17 COMMISSIONER MAHI: What was the -- I thank
18 Commissioner Cabral for sharing that.

19 Just for a little information, so what was
20 the amount of discharge that was blowing out? Has
21 that changed or is it the same amount?

22 MR. SIMPFER: I don't know the volume of
23 discharge.

24 COMMISSIONER MAHI: That should be on the
25 report, right? If that's changed overtime, more

1 effluent in August or less effluent compared to now?

2 MR. SIMPFER: I don't know exactly, but the
3 condition in LUC Decision and Order doesn't speak of
4 volume, it speaks of a concentration, a change in
5 concentration. So it speaks in percentages of
6 percent removal, doesn't speak to volume.

7 COMMISSIONER MAHI: Are there any records
8 of that that's being calculated? I mean it has to be
9 I figure --

10 MR. SIMPFER: I --

11 COMMISSIONER MAHI: I would like to get
12 that, if that's possible, please, our office, the
13 volume of discharge, if there has been a change since
14 we started this relationship of making sure that they
15 meet the water quality requirements that at least we
16 understand is there change in volume. That would be
17 helpful, I think. Thank you.

18 CHAIRPERSON WONG: Before we continue, Mr.
19 Kudo, could you provide that to the Commission?

20 MR. KUDO: Yes, we can.

21 CHAIRPERSON WONG: Commission Chang.

22 COMMISSIONER CHANG: Good morning. I
23 notice in the letter that NPS sent, one of your
24 concerns was the type of system that they're using,
25 that it was not one that was listed on the

1 approved -- indicated in the condition.

2 So notwithstanding this additional
3 monitoring, more frequent monitoring, are you --
4 there continues to be a concern with the type of
5 system? Or was your concern the amount of
6 monitoring?

7 MS. LOH: I think, the system -- when we
8 originally looked at it, it appeared that it might
9 work, but that was really the Land Use Commission to
10 approve to determine whether it was acceptable.

11 I think our main concern is that they hid
12 the conditions of reduction in concentrations of
13 nitrogen and phosphorous, that's our primary concern.

14 COMMISSIONER CHANG: So at this part in
15 time, you're comfortable with continuing to work with
16 Kaiser to come up with a solution, or at least having
17 a better understanding of the information by the more
18 frequent monitoring?

19 MS. LOH: Yes. Although we would like the
20 Land Use also to look at that data and provide
21 recommendations, if possible. But we are -- you
22 know, based on the data that we have seen, it looks
23 like they've corrected or addressed those issues, and
24 we want to work with them to follow with the
25 monitoring.

1 COMMISSIONER CHANG: Does a regulatory
2 agency, like DOH, review these reports, because I'm
3 not qualified to know whether those are good or not?

4 MS. LOH: That I'm punting to someone else.

5 MR. KUDO: I think I can answer most of the
6 questions so far.

7 COMMISSIONER CHANG: I can wait.

8 CHAIRPERSON WONG: Any more questions for
9 National Park Service? Thank you. If not, Mr. Kudo.

10 MR. KUDO: Good morning, Commissioners and
11 Happy New Year.

12 I'm representing Kaiser Permanente today,
13 who is to the owner of Parcel 30, which is a parcel
14 within the West Hawai'i Business Park that is owned
15 by Lanihau Properties, and the subject of this
16 particular docket.

17 The concerns raised by the National Park
18 Service pertain to the wastewater system that we have
19 for the Kaiser medical facility that's located
20 presently on that Parcel 30.

21 Just by way of background, and I'll get to
22 my proposal to the Commission if you would consider
23 it, is that in 2003, when the Petition was approved
24 for reclassification, there was concern raised by the
25 National Park Service with regard to wastewater, and

1 the discharge of that wastewater affecting the
2 groundwater which ultimately may make its way to the
3 national park.

4 So conditions were imposed, such as
5 Condition No. 1 in the Decision and Order for this
6 particular docket that pertained to wastewater.

7 At that time the county wastewater system
8 plant was not connected to the Lanihau property, and
9 the projected timetable for the sewer connection was
10 2010. So if any property wanted to develop itself,
11 they had a choice to do an interim wastewater
12 treatment facility until that line was connected.

13 That line still has not been connected, and
14 the latest projections I'll refer to county on with
15 regard to when it might be connected to the Lanihau
16 property. So most of the landowners there that are
17 operating have a separate type of wastewater plant
18 only for that property.

19 The Commission's Condition No. 1 specifies
20 that, and calls out for what is called the individual
21 wastewater system to be used as an interim measure.
22 Individual wastewater system is a system under the
23 Department of Health regulations that is primarily
24 used for residential and domestic uses. It's a small
25 plant, no greater than 1000 gallons per day of

1 effluent.

2 The Kaiser medical facility is a commercial
3 plant and operation, and we generate more than 3,000
4 gallons per day. So the IWS system was not really
5 something that was appropriate for our particular
6 land use.

7 So what we did was Kaiser had hired Roth
8 Ecological Design International, and I have a
9 represent here, Ms. Venu, who is with that company to
10 design a larger wastewater treatment works with what
11 is called a wastewater treatment plant, which we have
12 presently on the site.

13 And this particular plant, as Dr. Zimpfer
14 said, was met to satisfy the criteria of the Land Use
15 Commission, which is to remove 80 percent of the
16 nitrogen and 90 percent of the phosphorous.

17 It is a different type of system because it
18 is a binary system, it has two phases rather than
19 just one phase, which is the IWS system, a very
20 simple system.

21 So we have -- we installed this
22 particular -- and was completed in 2014 when the
23 Kaiser medical facility was opened. So for a little
24 over three years now it's been operating.

25 We have had, to be very honest with you,

1 some problems dealing with and getting this plant to
2 operate properly.

3 And there were several issues that were
4 related to it but the most significant problem we had
5 which we discovered recently was the recycling pipe
6 system that takes the effluent after it goes through
7 two stages of filtration, was plugged, and was not
8 working.

9 And that would significantly affect the
10 effluent coming out of that plant. And hence, that
11 is why we were getting some very erratic readings
12 that we were taking for the intake as well as the
13 outtake of that particular facility.

14 In addition, sampling protocol was not
15 proper. We think we need to improve that. And in
16 order to assist the Roth Ecological Design
17 International in the continued operation and
18 maintenance of the plant and improvement of that
19 plant, more importantly, we hired AECOM, which is an
20 independent engineering company. And we have vice
21 president Ray Louie here and Bob Stallings civil
22 engineering department to work with Kaiser and Roth
23 to improve the operating plant so that it can meet
24 the requirements.

25 When we fixed the recycling portion of the

1 system in December, we did a sampling, and the latest
2 sampling analysis that we got from Hawai'i at Hilo
3 Marine Science Laboratories, just recently as of
4 yesterday, indicates a 98 percent removal of both
5 nitrogen phosphorous, so we think we're on the right
6 road.

7 We would like to do more continued
8 monitoring. We'd like to relook at our monitoring
9 wells as well as the sampling protocol and improving
10 the system so that we can assure the National Park
11 Service that we are operating properly and within the
12 guidelines of the Commission.

13 To that end, we would like to take the time
14 between now and May, when I understand you will have
15 a hearing here on the Big Island, to work with the
16 National Park Service on the remediation and
17 improvement measures that we would like to take to
18 improve the plant and assure them of the quality. We
19 need some time to test the effluent that's coming out
20 -- that we can give them assurance to allay any of
21 their concerns that we are operating properly and
22 within the guidelines of the Land Use Commission, and
23 report back to you in May.

24 Now, that being said, the Commission's
25 condition, which calls for an IWS unit, clearly we

1 have deviated from that because we're a commercial
2 use and not a domestic use.

3 So there may have to be some modification
4 to the Commission's condition to allow for the type
5 of plant that we have. That I leave up to you and
6 we'll discuss that later and bring that up later.

7 But we would like to come back in May to
8 report to the Commission on the progress that
9 hopefully we have made, and whether the National Park
10 Service's concerns have been addressed, if that's
11 okay with you.

12 CHAIRPERSON WONG: Thank you.

13 Hearing this statement by Petitioner, I'm
14 going to ask county, do you have any statements or
15 questions to the Petitioner?

16 MS. SELF: No, we don't, but we would
17 support such a proposal.

18 CHAIRPERSON WONG: OP?

19 MS. APUNA: Yeah, no questions, but we
20 don't oppose Kaiser's proposal.

21 CHAIRPERSON WONG: National Park Service,
22 do you have statements or questions about the
23 proposal that's on the table right now?

24 MR. SIMPFER: We welcome working with
25 Kaiser between now and May to get their system to

1 meet the Land Use Commission conditions.

2 CHAIRPERSON WONG: Commissioners, do you
3 have any questions? On the table right now is
4 Petitioner's statement that they would like to work
5 on a new system, come back in May, so they're
6 requesting another report -- request for continuance.

7 Do you have any questions or statements,
8 Commissioners?

9 COMMISSIONER CHANG: Just one. Maybe this
10 is a legal question, does the condition -- is that
11 the condition -- does this condition -- is this a
12 Lanihau condition? Is this a Kaiser condition?
13 Whose condition is this?

14 MR. KUDO: The Commission imposed the
15 condition as part of it's Decision and Order in 2003
16 as recorded against the property, it runs with the
17 land. We are the present landowners of that parcel,
18 so we are also obligated as well as other contracts
19 that we have with Lanihau when we purchased the
20 property, so we are ultimately responsible for
21 meetings those matters.

22 COMMISSIONER CHANG: Is that under the
23 CC&R's for Lanihau?

24 MR. KUDO: That's under the Decision and
25 Order as well as certain agreements and CC&R's for

1 the property. So we're covered in all ways.

2 COMMISSIONER CHANG: Because if LUC doesn't
3 approve Lanihau's separate agreements with the
4 tenants, but you're obligated, based upon the LUC
5 Decision and Order to comply.

6 MR. KUDO: Correct, because all those
7 CC&R's are consistent with the Decision and Order
8 with the Commission.

9 COMMISSIONER CHANG: I guess I'm wondering
10 for purposes of procedure, does -- for all of the
11 tenants of Lanihau, do they come directly to the LUC,
12 or is this a Lanihau, and then Lanihau comes to us?
13 We could be getting all of the tenants coming
14 directly to the Commission for compliance with LUC
15 conditions.

16 MR. KUDO: Well, each tenant, in terms of
17 the way that we purchased the property, assumed the
18 obligations, so we are ultimately responsible, that's
19 why we are here today to respond.

20 CHAIRPERSON WONG: Commissioner Ohigashi.

21 COMMISSIONER OHIGASHI: Before I forget,
22 I'm following up on her question.

23 Does the other tenants also have utilized
24 this sewage treatment facility?

25 MR. KUDO: I'm not sure. I am aware of two

1 other tenants, but I'm not sure exactly what type of
2 system they have. I think that's West Hawaii
3 Aggregate and COSTCO facilities have another type of
4 plant, but I'm not really familiar with the details
5 on that.

6 COMMISSIONER OHIGASHI: So that plant is
7 for your exclusive for your exclusive use?

8 MR. KUDO: Yes. We are medical facility,
9 so we have a little bit of difference in terms of
10 type of waste that we have.

11 COMMISSIONER OHIGASHI: I was reading some
12 of the letters and it says that the obligation is to
13 do biannual monitoring. Is that right?

14 MR. KUDO: Yes, that's correct.

15 COMMISSIONER OHIGASHI: So when did this
16 problem first appear?

17 MR. KUDO: The plant started about a little
18 over three years ago, 2014. And the first, I think,
19 reports were issued in 2015. And I think we were
20 starting to see some problems there. So there were
21 reports in 2015, 16 and 17. And we looked at those
22 reports, and they seemed to be somewhat erratic, so
23 we knew there was something going on.

24 We had also problems with our control and
25 monitoring panel with regard to certain aspects of

1 that control panel which are all being remedied.

2 We are working on all different systems
3 that affect the effluent, but the most important was
4 the fixing of the recycling pipe that was blocked.

5 So we have now unblocked that and we're
6 going to be making more improvements to that, and
7 that has significantly improved the wastewater coming
8 out.

9 COMMISSIONER OHIGASHI: I was just
10 concerned because once the problems began showing up,
11 did the monitoring increase to more than six months?

12 MR. KUDO: That goes to sampling and
13 monitoring protocol, which I think we need to work
14 on. When we sample, it's basically a single grab of
15 the effluent going in and out. Properly sampling is
16 where you take several grabs and you average, because
17 during the day or time of the day, the effluent
18 concentrations of nitrogen and phosphorous may change
19 depending on what type of waste is coming out at
20 different times.

21 So you have to take an average to get a
22 really good accurate thing, and we don't take an
23 average now, we just take a single grab. So we are
24 going to be increasing the frequency of sampling.

25 As far as monitoring is concerned, we do

1 take the biannual monitoring well water, but we also
2 need to measure the water levels to show which
3 direction the groundwater is headed so that we can
4 properly take any measures that might be -- see
5 what's happening.

6 COMMISSIONER OHIGASHI: So between now and
7 May, my assumption is that you will be coming up with
8 a proposed monitoring plan that can catch any kind of
9 problems and act in a quicker manner.

10 MR. KUDO: Both monitoring as well as
11 sampling protocols will be changed.

12 COMMISSIONER OHIGASHI: Will that
13 require -- maybe I'm not supposed to say this, but
14 will that require an amendment to every six-month
15 requirement and require the Commission to adopt your
16 proposed monitoring plan?

17 MR. KUDO: I think we would -- and this is
18 subject to NPS. At the beginning I think when we are
19 going this, we need to monitor more closely, but
20 after there's a confidence level, in terms of what
21 we're getting, there may not be a need to do it as
22 frequently and the biannual may be sufficient.
23 That's something we want to work out with National
24 Park Service.

25 COMMISSIONER OHIGASHI: So I'm just trying

1 to figure out whether or not, because National Park
2 Service brought this issue to the Commission at this
3 time, so that's my understanding based upon their
4 letter to us. And it would appear to me that it may
5 be a good idea that you would incorporate an
6 amendment to the --

7 MR. KUDO: We could.

8 COMMISSIONER OHIGASHI: So that we give the
9 National Park Service assurances that they could come
10 to us to see whether or not it can be enforced.

11 MR. KUDO: We want to be careful because
12 what is imposed on us gets imposed on all the tenants
13 of Lanikai that may have different kinds of plants,
14 so we don't want to unduly burden the other tenants
15 as well.

16 COMMISSIONER OHIGASHI: So you may be
17 recommending some of type of agreement --

18 MR. KUDO: That's right, I would do an MOU,
19 memorandum of understanding with the National Park
20 Service in regard to what protocol we would do on
21 Parcel 30.

22 COMMISSIONER OHIGASHI: Therefore that
23 would leave the Commission out of that?

24 MR. KUDO: I think the only modification to
25 the condition may be to allow, other than IWS,

1 other kinds of wastewater treatment works for
2 commercial uses.

3 COMMISSIONER OHIGASHI: Or put something in
4 there to enforce individual agreement.

5 MR. KUDO: All right.

6 CHAIRPERSON WONG: Commissioner Cabral.

7 VICE CHAIR CABRAL: I have a question of
8 the National Park if I can jump over there.

9 Do you folks have any type of monitoring
10 equipment on your most upstream portion of your land
11 that are your water or something that would indicate
12 to you that you have a problem coming from upstream?
13 Because obviously you have a huge area above you,
14 that is much more than just Kaiser, that could be
15 having problems. And I don't know who's monitoring
16 if it's not the Department of Health, who's really
17 looking at this before it becomes a disaster.

18 Do you have monitoring going on --

19 MR. ZIMPFER: We have extensive water
20 quality monitoring. I'm not prepared to speak today
21 about what we found, but we're not here today because
22 we say that we have picked up something in our water
23 that implies its Kaiser, I'm not saying we are not
24 either, but that's not -- our reason for being here
25 is we have been getting water quality monitoring

1 reports that show that their system isn't --

2 VICE CHAIR CABRAL: If I go swimming in it,
3 it might be okay.

4 CHAIRPERSON WONG: Commissioner Chang.

5 COMMISSIONER CHANG: Question for National
6 Parks.

7 Are you getting monitoring reports from all
8 of the other tenants as well?

9 MR. ZIMPFER: We are not. I believe the
10 quarry is exempted in the Decision and Order. It
11 speaks to -- and I'm not, you know --

12 COMMISSIONER CHANG: Which I guess raises a
13 concern for me, because I don't from LUC standpoint I
14 don't think we want to be interjecting in every
15 single tenant. If you worked on -- so maybe this is
16 more for Lanihau to address on a globally with your
17 tenants.

18 That's my concern is the condition was when
19 Lanihau came in for the subdivision -- for this
20 amendment -- that condition is now being placed on
21 all of the tenants. NPS is coming to us with those
22 that are being monitored with some concerns.

23 I don't know if we want to be coming from
24 all of the tenants. So I am just hoping that there
25 is more an of a global resolution than just NPS and

1 Kaiser.

2 CHAIRPERSON WONG: May I swear you in,
3 please?

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

6 THE WITNESS: Yes.

7 CHAIRPERSON WONG: Can you state your name
8 and who you represent and your address for the
9 record?

10 THE WITNESS: Sure. My name is Riley
11 Smith. I'm the President and CEO of Lanihau
12 Properties. I'm a resident of Kamuela, Hawai'i.

13 RILEY SMITH
14 Was called as a witness by and on behalf of the
15 Petitioner, was sworn to tell the truth, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: I'm responsible for Lanihau
19 Properties and West Hawaii Business Park. Some of
20 the questions you're asking Mr. Kudo pertain to other
21 lands that are not his client, he's not responsible
22 for and I am.

23 We've cooperated fully with Mr. Kudo as
24 well as his client Kaiser Permanente to get them up
25 to speed on what their obligations are to comply not

1 only with the LUC Decision and Order, also county
2 zoning ordinance back in 2004.

3 Let me kind of give you a global overview
4 of the ultimate wastewater treatment capability and
5 plant for these lands.

6 It was always intended that the West Hawaii
7 Business Park land would be serviced by the central
8 wastewater system provided by the county at Kealakehe
9 Wastewater Treatment Plant.

10 Since the early 2000s we've been
11 cooperating with the county. We have been working
12 with the County Planning Department and the
13 Department of Environmental Management to provide
14 them with central sewage pump station within our
15 southwest corner of our property.

16 The sewage pump station would be connected
17 through various force mains and other pipes to get
18 the untreated wastewater to the County's Kealakehe
19 Wastewater Treatment Plant.

20 The County is in the process of upgrading
21 that plant. They've hired a consultant to recommend
22 provisions to improve the treatment of that plant.
23 In addition to the improved treatment of the plant,
24 they also have to install some piping to get the
25 wastewater from our property to the plant.

1 As part of Goodfellow Bros. contract with
2 the Department of Transportation, a number of the
3 sewage force main pipes are being installed today.

4 If you came from the airport and drove
5 here, you saw all of Goodfellow's construction
6 equipment. They're putting in some of those force
7 mains that will connect with this future sewage pump
8 station connected with the plant.

9 When the LUC evaluated our application,
10 they understood that we needed to have some
11 opportunity to develop our lands because we did not
12 have full control over the County's resources and
13 planning for their ultimate wastewater system.

14 So they allowed us to install 40 individual
15 wastewater systems on our commercial and industrial
16 lands to provide an interim measure to provide
17 wastewater treatment on our property.

18 We provide annual reports every year to the
19 state LUC. I think earlier they mentioned when the
20 LUC received our reports. Within those records we go
21 through all the different conditions of the LUC's
22 Decision and Order and provide status of how many
23 wastewater systems are installed, how many are
24 planned, how many are remaining.

25 So we are allowed 40 individual wastewater

1 systems. There are two in existence today. One is
2 the Kaiser Permanente facility on Honokohau Street,
3 the other its West Hawaii Concrete. They're a tenant
4 that's been on the property about 40 years.

5 So Mr. Zimpfer explained that that's
6 grandfathered because it was an existing use prior to
7 Decision and Order, so they're exempt from these
8 conditions.

9 At some point in time, you know, we sell
10 other lands. When we sell the lands, the obligations
11 of the Decision and Order and the zoning ordinance
12 are conveyed to the buyer of those properties, so
13 they have to comply with them.

14 We do have CC&Rs that regulate all of
15 wastewater treatment, pollution, prevention control,
16 drainage, landscape requirements, common area
17 maintenance. Those are also obligated to each of the
18 property.

19 I think those are all the questions. Some
20 of them you were asking to Mr. Kudo, and I wanted to
21 give you an overview true. If you have any
22 questions, I would be happy to answer them.

23 CHAIRPERSON WONG: Thank you.

24 Commissioners, any questions?

25 COMMISSIONER CHANG: Can I ask a question?

1 CHAIRPERSON WONG: Commissioner Chang.

2 COMMISSIONER CHANG: I never let any
3 question go by.

4 So Riley, do you guys monitor their
5 compliance? So, for example, there are other
6 tenants, and they're supposed to be monitoring
7 reports provided as a condition.

8 Do you make sure that those tenants comply
9 or you leave compliance up to the tenant?

10 MR. SMITH: We have been delinquent in not
11 asking for that information. It is our
12 responsibility as the owner of the majority of the
13 land to monitor compliance, so I will be working with
14 Kaiser Permanente and their attorney to make sure we
15 are performing that obligation.

16 CHAIRPERSON WONG: Commissioner Ohigashi.

17 COMMISSIONER OHIGASHI: When I was asking
18 my questions then, would you be involved in the talks
19 between the NPS and Kaiser Permanente so that any
20 agreement that they reach would be included as part
21 of your CC&Rs and adopted by your --

22 MR. SMITH: No, I wouldn't. Let me
23 explain.

24 National Park Service has filed a complaint
25 against Parcel 30. Mr. Kudo has recommended a

1 solution that they're going to cooperatively work
2 with each other and come to some agreement on
3 compliance. If it were to impact other lands, then I
4 would be involved, but right now this is a complaint
5 to National Park Service to Kaiser Permanente.

6 Whatever they agree amongst themselves
7 pertains to their property. I'm in constant -- my
8 attorneys are in communication with Mr. Kudo, so we
9 will consider anything that's addressed there.

10 I think we have a system in place that
11 Lanihau's obligation is to make sure that our
12 monitoring protocols are followed and make sure that
13 they comply.

14 COMMISSIONER OHIGASHI: So they're bringing
15 this complaint under the boundary amendment, Decision
16 and Order was granted to your company. So my
17 question, isn't ultimate responsibility to ensure the
18 conditions be met by your company?

19 MR. SMITH: Yes.

20 COMMISSIONER OHIGASHI: So would it make
21 sense then to have you work with them to make sure
22 that your tenant, NPS National Park Service, take
23 care of our beaches? Wouldn't it make sense for you
24 to work with them to implement the terms of the
25 agreement to make sure that they comply with the

1 terms of the boundary amendment?

2 MR. SMITH: My answer is yes. Let me
3 explain.

4 COMMISSIONER OHIGASHI: I just wanted to be
5 sure that you understand where I'm coming from. I
6 cannot speak for everybody, but I'm looking at
7 boundary amendment given to you that had certain
8 conditions, and I'm sure that your company would have
9 to look the agreement and make sure that it meets
10 your standards as well as our standards to comply
11 with the agreement.

12 I'm just trying to -- just saying that's
13 the ultimate responsibility of this Petition.

14 CHAIRPERSON WONG: Mr. Kudo.

15 MR. KUDO: We have no problem. We have
16 been working with Lanihau. If we have anything in
17 the agreement, or if terms of what we are going to be
18 doing moving forward, we would certainly contact
19 Lanihau as the master developer of West Hawaii
20 Business Park.

21 COMMISSIONER OHIGASHI: I'm just trying to
22 make sure that the person who gave the permit
23 boundary amendment to is the person that is -- that
24 we can hold responsible. You understand that? We
25 cannot hold Kaiser responsible because they're not --

1 MR. SMITH: Ultimately West Hawaii Business
2 Park, Lanihau Property is responsible. The way I
3 answered your question might have been confusing.

4 We have a situation here where Kaiser
5 Permanente built a facility. They obtained
6 Department of Health permit for IWS system, but there
7 was a more stringent condition that was imposed on
8 the Land Use Decision and Order because the National
9 Park Service intervened on our application in 2003.
10 So the Department of Health requirements are here.
11 What we're obligated to provide for all the land of
12 West Hawaii Business Park is higher.

13 Kaiser has a facility in operation. They
14 have 24,000 square foot building there. They
15 probably see 100-200 patients a day. So what they
16 are faced with is figuring out how they have an
17 existing system and what they can do to comply with
18 National Park Service and Land Use Decision and
19 Order.

20 Because they have existing system, they may
21 propose modifications to what they have in the ground
22 which are cost effective that will address the
23 National Park Service requirements.

24 So what their conditions, and what they may
25 agree to is different than all of the other 240 acres

1 of land that might be imposed by the Decision and
2 Order.

3 So I will cooperate with them. I will
4 ensure that they comply, but in the settlement
5 agreement, as long as the National Park Service
6 agrees with whatever their solution is, it could be a
7 higher level of treatment. I cannot impose that on
8 all the tenants.

9 I will work with Mr. Kudo and Kaiser
10 Permanente to make sure they do comply with the
11 Decision and Order based on the compliance with
12 National Park Service.

13 COMMISSIONER OHIGASHI: Are you asking we
14 continue this matter until May for a report? Is that
15 your position? You're the owner. You're the party.
16 Technically Kaiser may not be a party.

17 So my question to you is that the case?
18 Because from what I'm understanding Mr. Kudo said
19 with your permission he was here to represent to
20 speak on this, but he's technically not a party.

21 Is that the Party's request that we wait
22 until May and reach an agreement?

23 MR. SMITH: Yes, I'm in agreement with
24 their proposal.

25 COMMISSIONER OHIGASHI: Is that your

1 request?

2 MR. SMITH: Yes.

3 COMMISSIONER OHIGASHI: I just want to be
4 sure they cannot asking for --

5 MR. SMITH: Yes, Mr. Ohigashi, that's my
6 answer.

7 CHAIRPERSON WONG: Commissioner Okuda.

8 COMMISSIONER OKUDA: I just wanted to say
9 something for the record. I think if a condition
10 like the Findings of Fact, Conclusion of Law,
11 Decision and Order are recorded against title and
12 runs with the land, I think it's somewhat, not on
13 open question, but enforceability, and who may be
14 subject to these conditions are more broader than
15 just who the Applicant is. And it's not to prejudge
16 how that works out here or not.

17 I think there's competent people at the
18 National Park Service. Mr. Kudo is clearly a
19 competent attorney.

20 MR. KUDO: Thank you.

21 COMMISSIONER OKUDA: And so if the Parties
22 can cooperatively work something that meets the
23 public interest, complies with the condition, then I
24 think it's a good way of efficiently, and in a timely
25 fashion, reaching the result that's required by the

1 statute and the constitution. Thank you.

2 CHAIRPERSON WONG: Anything else.

3 Commissioner Chang.

4 COMMISSIONER CHANG: One final, just for
5 clarification. I know it appears that we're going to
6 be coming back in May, and it does appear that we've
7 got a willingness of the respective, what brought us
8 here today, Kaiser and NPS.

9 What I also heard from Lanihau is you need
10 to do perhaps a better job of monitoring your other
11 tenants.

12 So I'm hoping that before May with better
13 monitoring of the other tenants, that if NPS has
14 other issues with some of the other monitoring
15 reports from the other tenants, that is all coming to
16 us at one time in May.

17 So one, you know, Lanihau is going to be
18 more diligent in monitoring the other tenants,
19 providing those timely reports to NPS who will then
20 assess whether, in your view, whether they're
21 compliant or not, and when you come back in May,
22 hopefully just Kaiser and not the other tenants.

23 But I guess for purposes of being efficient
24 with everybody's time, by the time we come back in
25 May, it's not only Kaiser and NPS, but a review of

1 all of the other tenants as well so that we've got a
2 comprehensive overview of the impact on NPS.

3 MR. SMITH: Okay.

4 CHAIRPERSON WONG: Commissioner Cabral.

5 VICE CHAIR CABRAL: I would also like to
6 ask that, although we're all taking about a May
7 meeting, I would really appreciate as much of the
8 findings ahead of time, because they're so technical.

9 Although I deal with property management,
10 so I appreciate Mr. Smith's position here, but
11 because of the technicalities of this, as much
12 information as possible to be presented to our staff
13 so we get it in a conclusive format.

14 I don't want the raw data readings, thank
15 you very much, I deal with that in my real life. But
16 some of the conclusions ahead of time, because it's
17 really a lot to take in some of these technicals
18 details at a hearing like this and be expected to
19 make a decision. So the more information we have, we
20 can have ahead of time.

21 I do agree that whoever got Petition is
22 ultimately responsible, unless the LUC agreed to
23 release them of the obligation when Kaiser bought
24 that land. It runs with the land, but the condition
25 was with the original landowner, even though they

1 have a private agreement.

2 So it's most interesting legal information.
3 So I appreciate all of that, but definitely give us
4 as much time as you can as early as possible.

5 CHAIRPERSON WONG: So request for
6 continuance in May, we'll grant that motion.

7 The only other thing I would like to have
8 is Lanihau Properties sit at the table in the
9 beginning because this -- if you don't mind, sit at
10 the table at the same time.

11 (Recess taken.)

12 A10-788 HHFDC & FOREST CITY-KAMAKANA

13 VILLAGES

14 CHAIRPERSON WONG: The next agenda item
15 status report on Docket A10-788, and HHFDC and Forest
16 City at Kamakana Villages at Keahuolu - a Petition to
17 Amend the Agricultural Land Use District Boundaries
18 into Urban Land Use District for certain lands to
19 situate at Keahuolu, North Kona; consisting of
20 approximately 271.837 acres, Tax Map No.

21 (3)7-4-021:020, (3)7-4-021:024, (3)7-4-021:025,
22 (3)7-4-021:026, (3)7-4-021:027.

23 Will the parties identify themselves for
24 the record?

25 MS. LOH: Rhonda Loh, Acting

1 Superintendant, Kaloko-Honokohau.

2 MR. ZIMPFER: Jeff Simpfer, Environmental
3 Protection Specialist at Kaloko-Honokohau National
4 Historical Park.

5 MS. CHAR: Elizabeth Char, Development
6 Officer with Michaels Development Company.

7 MS. NOJIMA: Sheryl Nojima, Gray Hong
8 Nojima & Associates, consultant to Michaels
9 Development Company.

10 MR. FUJIMOTO: Stan Fujimoto, Project
11 Manager for Hawai'i Housing Finance & Development
12 Corporation.

13 MR. HIRAI: Craig Hirai, Executive Director
14 of HHFDC.

15 MS. SELF: Deputy Corporation Counsel, Amy
16 Self, County of Hawai'i with the Deputy Planning
17 Director.

18 MS. APUNA: Deputy Attorney General, Dawn
19 Apuna on behalf of Office of Planning. Here with me
20 Randy Funakoshi and Lorene Maki.

21 CHAIRPERSON WONG: Let me update the record
22 in this docket.

23 On September 15, 2017, the Commission
24 received an email from National Park Service
25 regarding Docket Nos. A00-738 and A10-788 regarding

1 noncompliance with conditions.

2 From September to December 2017, Land Use
3 Commission staff reviewed the annual reports and
4 investigated to establish who the proper and
5 responsible contacts were for each respective docket
6 and advise them that LUC would be requesting status
7 update to 2018.

8 On January 16, 2018, an LUC meeting agenda
9 notice for the January 24, 2018 meeting was sent to
10 the Parties and the Statewide, Hawai'i, Kaua'i, Maui
11 and Oahu mailing list.

12 On January 22nd, 2018, the Commission
13 received National Park Service's Testimony and
14 Exhibits 1 and 2 regarding Status Update for Docket
15 No. A10-788.

16 For the members of the public, please be
17 reminded that the Commission will not be considering
18 the merits of the A10-788 Petition; rather the
19 Commission is interested in learning about the
20 current state of the activities related to this
21 docket, including compliance with conditions.

22 Let me go over our procedures for this
23 docket.

24 First, though individuals desiring to
25 provide public testimony for the Commission's

1 consideration will be asked to identify themselves
2 and will be called in order to our witness box where
3 they will shall sworn in prior to their testimony.

4 At the conclusion of public testimony, the
5 Chair would like Intervenor to describe its concerns.

6 The Chair will then call on the County of
7 Hawaii.

8 Finally, the Chair will call OP.

9 Are there any individuals desiring to
10 provide public testimony on this docket? Going once,
11 twice. Thank you. Commissioner Cabral.

12 VICE CHAIR CABRAL: I would like to
13 disclose at one point in my life an apartment
14 building that I owned, that myself or my corporation,
15 Day-Lum, Inc., received financial loans through the
16 Hawai'i Finance Development Corporation years ago,
17 and that loan was subsequently sold off to another
18 bank.

19 But that was 27 years ago or so, so I don't
20 know these gentlemen personally. I was involved, I
21 think that was through the same corporation.

22 Thank you for the loan.

23 CHAIRPERSON WONG: Commissioner Okuda.

24 COMMISSIONER OKUDA: Thank you, Mr. Chair.

25 I would like to disclose to everyone that

1 for almost 30 years I have represented Hirai Realty
2 Incorporated, which is the family real estate
3 corporation which was founded by Mr. Craig Hirai's
4 father.

5 The type of cases that I represented them
6 in were landlord-tenant cases because the Hirai
7 family appears not to get into legal trouble.

8 Even though I know who Mr. Craig Hirai, my
9 contact with the family corporation was through his
10 younger brother, Roy Hirai.

11 I do not socialize with Mr. Hirai. I don't
12 think he asked me out for lunch, and I definitely
13 have not paid for his lunch.

14 I believe I can be fair and impartial in
15 this case and knowing Mr. Hirai will not affect my
16 decisionmaking one way or the other.

17 CHAIRPERSON WONG: Parties, any problems?

18 MS. LOH: No.

19 MS. CHAR: No.

20 MS. SELF: No.

21 MS. APUNA: No.

22 CHAIRPERSON WONG: Commissioners, okay?

23 Thank you.

24 Intervenor, will you please make your
25 presentation -- National Park Service, sorry.

1 MR. SIMPFER: Back in 2008 there was
2 Decision and Order for the parcel we're talking
3 about. The National Park Service did not intervene
4 in that because the EIS for the project called for
5 best management practices that would filter
6 stormwater. And then the Land Use Commission's
7 Decision and Order also had a condition to filter
8 stormwater.

9 Back a couple years ago, the people
10 building Forest City communicated with us, because
11 the County asked them to communicate with us. And
12 the condition for the Decision and Order asked for
13 stormwater to be filtered.

14 The short version is the project is built,
15 or being built, and they don't have best management
16 practices to filter stormwater from parking lots.

17 Cars sit on parking lots, they drip oil,
18 they drip parts from their brakes, that runs across
19 the parking lot, goes down the dry well, then runs
20 out to the coast.

21 We don't have real soils here like other
22 places, so when it goes down the dry well, it goes
23 into groundwater.

24 So if you would put in a simple best
25 management practice, where you have plants and some

1 soil, when it runs off the parking lot that would
2 filter out a lot of the pollutants.

3 So we're just asking these projects, fairly
4 simple, low tech best management practices to
5 maintain clean water.

6 CHAIRPERSON WONG: Michaels, do you have
7 any statement?

8 MS. CHAR: Good morning, Chair Wong,
9 Commissioners and Executive Officer Orodenker and
10 staff.

11 My name is Liz Char. I am a development
12 officer at Michaels Development Company, a national
13 affordable housing developer and part of the
14 development team for Kamakana Family and Senior
15 affordable rentals.

16 Our project serves households at or below
17 60% of the area median income, and as of today, we're
18 proud to say that 167 of the 170 units are occupied,
19 with many families that have moved in right before
20 the holiday season into their new home.

21 I don't know about you, but a lot of what
22 is being discussed today is above my level of
23 comprehension, so with me today is Dr. Sheryl Nojima
24 of Gray Hong Nojima & Associates, our civil
25 engineering consultant for our project.

1 We are hopeful that the concerns presented
2 today are due to a misunderstanding regarding our
3 engineered systems and practices we have in place to
4 address stormwater runoff which include, without
5 limitation, source control measures, treatment
6 solutions, and long-term BMPs. We appreciate the
7 opportunity to present information today about our
8 special project.

9 As a developer meeting social and economic
10 needs of our communities, Michaels is committed to
11 environmental health and safety, as well as the
12 protection of cultural and natural resources, such as
13 the Kaloko-Honokohau National Historic Park. To this
14 end, the development team has worked diligently
15 during the planning and construction to ensure
16 compliance with LUC conditions as particularly
17 outlined in the 2010 Decision and Order.
18 Additionally, the project is on its way to meeting
19 its LEED Gold certification.

20 Our licensed civil engineer team designed
21 the project to ensure compliance with necessary
22 requirements. Like many construction projects, the
23 plans were vetted by numerous parties numerous times,
24 including HHFDC, County of Hawaii Planning
25 Department, County of Hawaii DPW, DOH, and DCAB to

1 name a few.

2 The particulars of design, planning and
3 implementation can be addressed by Dr. Nojima.

4 What I can tell you is that we have source
5 control measures to reduce and eliminate onsite
6 runoff. Our house rules prohibit vehicle washing and
7 maintenance onsite. Our LEED handbook serves as our
8 O&M manual and addresses green practices for
9 residents.

10 We understand that the County of Hawaii
11 does not have specific stormwater runoff rules to
12 address the concerns raised by NPS. To this end, the
13 development team relied on current industry best
14 practices and referenced rules published by City and
15 County of Honolulu as a guide. We believe we are
16 meeting, if not exceeding, LUC conditions in a
17 thoughtful, appropriate and effective manner,
18 particularly with respect to the Decision and Order
19 Condition No. 13.

20 We hope the information presented today
21 serves to address and dispel any concerns related to
22 the project's compliance with LUC conditions. Thank
23 you for the opportunity to discuss this matter, and
24 Dr. Nojima and I can answer any questions you may
25 have.

1 MS. NOJIMA: Good morning, Commissioners,
2 and thank you for giving me an opportunity to speak
3 to you today.

4 As Ms. Char mentioned, there are numerous
5 house rules and community rules that are in place for
6 the residents of their particular project site. And
7 these house rules, including the prohibition of
8 vehicle car washing and vehicle maintenance on-site
9 provide source control which are means of
10 eliminating -- preventing contact of pollutants from
11 stormwater, and preventing the stormwater from
12 reaching -- the pollutants from reaching nearby
13 receiving waters.

14 Other source control measures that were
15 implemented on the project, this particular project,
16 include landscaping and vegetated areas, automated
17 irrigation systems, which were designed for each
18 particular landscape areas specific watering
19 requirements, outdoor trash storage area constructed
20 on impervious surfaces to mitigate spills, dumpsters
21 outfitted with lids to prevent rainfall from entering
22 the dumpster, and also stenciling or labeling of
23 drain inlets with prohibitive language.

24 This is what we felt was reasonable and
25 practicable list of source control methods that could

1 be applicable to this project site.

2 In addition to the source control methods,
3 the project incorporated low impact development or
4 LID practices, which mimic the natural treatment
5 processes, such as infiltration and bio-infiltration
6 to treat the stormwater.

7 Infiltration was accomplished via the
8 seepage pit, which I'll describe later, and
9 bio-infiltration through vegetated swells or grass
10 swells and the landscaping.

11 The overall intent was to situate the
12 seepage pits throughout the project site in
13 landscaped areas to treat the surface runoff,
14 including roof runoff and runoff from parking lots,
15 conveyed through the grass swales and through the
16 underground pipe system.

17 The system was designed as a contained
18 system, including drain inlets and pipes pursuant to
19 Condition 13 of the Decision and Order.

20 As I mentioned earlier, the seepage pits
21 were located in areas to promote both
22 bio-infiltration and infiltration processes. These
23 pits were designed at six feet and eight-foot
24 diameters perforated concrete pipes basically. They
25 have -- the perforations are holes 6 and 4 inches in

1 diameter spaced throughout the walls of the seepage
2 pit, roughly about six inches spacing.

3 And there's also a minimum 18-inch
4 thickness crushed rocks exterior, and a graded drain
5 at the top of each seepage pit.

6 The depth of the seepage pit is equal to
7 the diameter of the seepage pit. And the pits, which
8 are taking runoff from paved areas were actually
9 constructed with significantly more crushed rock
10 surrounding the perforated concrete pit.

11 Some of these areas were as large as 13
12 feet wide by 26 long. This was -- part of the
13 original design was intended to have these larger
14 crushed-rock gravel areas.

15 So these pits are situated throughout the
16 site, and they do capture the first flush, storing
17 the stormwater prior to infiltration into the
18 surrounding soil.

19 The capacity of the seepage pits were
20 designed to meet the County of Hawai'i's design peak
21 flow requirements, and the infiltration capacity of
22 each seepage pit was also tested during construction
23 to ensure that the design requirements were being
24 satisfied.

25 This testing was done by the project's

1 geotechnical engineer company called Geo Labs.

2 Lastly, as sediments, trash will accumulate
3 in the seepage pits. Periodic cleaning and
4 maintenance will be required and conducted in order
5 to restore the capacity of the seepage pit so that
6 they maintain that capacity throughout the life of
7 the project.

8 CHAIRPERSON WONG: Thank you.
9 Commissioners, any questions for Michael Development?
10 Commissioner Okuda.

11 COMMISSIONER OKUDA: Thank you, Mr. Chair.
12 This question might also apply to the National Park
13 Service.

14 Did you and the National Park Service meet
15 to go over what this dispute is about to see, first
16 of all, whether you all agree with what the site
17 conditions are;

18 No. 2, what the actual remedies on-site are
19 right now?

20 No. 3, what possibly needs to be done?

21 MS. CHAR: We received a letter from NPS --
22 well, we didn't receive the letter directly, the
23 letter was sent to Forest City, NPS sent a letter to
24 Forest City back in June of 2017 requesting for
25 information on this item.

1 We responded at the end of July, and also
2 copied HHFDC on our response.

3 We feel that it's more of a
4 misunderstanding. The control system that we have in
5 place, and also the infiltration and bio-infiltration
6 system that's been designed, we believe that it meets
7 LUC conditions. So we saw this as an opportunity to
8 explain what we have in place to NPS.

9 COMMISSIONER OKUDA: My question is
10 actually not so much technical, but more maybe a
11 human factors thing.

12 Have you folks actually sat down
13 face-to-face, or maybe met up at the project -- not
14 suggesting anyone has to bring manapua or anything
15 like that --

16 MS. CHAR: That's always helpful.

17 COMMISSIONER OKUDA: -- but actually gone
18 and talked about what the issues might be and what
19 might be a potential resolution?

20 And the only reason why I kind of raise
21 that, among us dumb lawyers, before we're allowed to
22 go in and fight with another lawyer over a lawyer not
23 producing evidence, the court rules require a
24 face-to-face meeting to try to hash things out.

25 Because I think human beings, you know, us

1 being fallible kinds of people, sometimes
2 communication is facilitated when you actually sit
3 down in a room together, or get together at the site
4 and talk face-to-face.

5 Now, if it turns out things can't be
6 resolved, that's why you have different
7 administrative bodies, or different processes,
8 procedures to deal with that.

9 My question was whether or not there has
10 been this face-to-face, and whether you think there
11 is any real downside of getting together face-to-face
12 and maybe seeing if there's things that are maybe
13 misunderstanding, things that aren't
14 misunderstanding, and the things where there really
15 are disputes, whether there's something that can
16 resolved without the need to involve those of us here
17 who frankly could muck things up even worse?

18 MS. CHAR: I'm sure you couldn't muck it
19 up.

20 COMMISSIONER OKUDA: Believe me, I can.
21 So getting to the point. Do you think
22 it -- has there been a face-to-face meeting, and if
23 not, do you think a face-to-face meeting might be
24 helpful?

25 MS. CHAR: We have not had an opportunity

1 to meet with NPS face-to-face. It's a great
2 suggestion. We believe it is a misunderstanding.
3 The reason we are presenting this information today
4 is because we ended up on the docket, so we felt
5 compelled to have this discussion and have this
6 information, but we can certainly meet with NPS and
7 show them our site, and I think we can clear things
8 up.

9 MR. SIMPFER: We're happy to meet with
10 them.

11 COMMISSIONER OKUDA: Thank you very much.
12 I don't think this is a wasted event either, because
13 from a selfish standpoint, I'm learning a lot from
14 the presentations and information that you present,
15 so this has been helpful overall for other matters
16 also.

17 CHAIRPERSON WONG: Commissioner Chang.

18 COMMISSIONER CHANG: Thank you.

19 I appreciate that, Commissioner Okuda, that
20 was going to be my question as well.

21 I guess, unlike the previous agenda item, I
22 think it was a legal question as to who's ultimately
23 responsible. I think this is more a process issue.

24 I guess I would hope that prior to coming
25 to LUC for a full hearing, where most of us are

1 flying in, there is an exhaustion of attempts to
2 resolve, whether misunderstanding or information, but
3 that you have exhausted all attempts to resolve it
4 internally. And in the absence of your ability to
5 resolve that, you're seeking to ensure that the
6 Commission is enforcing, or compliance with the LUC
7 conditions. And that likewise with staff, that we
8 would -- staff would ask when something comes in to
9 LUC, that before we schedule it for a hearing, that
10 we have insured that the respective parties have
11 tried to exhaust their attempts to better
12 understanding, to get a resolution.

13 I think that would be, in my view for me
14 speaking, a good productive use of everybody's
15 respective time and resources.

16 CHAIRPERSON WONG: Thank you.

17 Commissioners, any other questions?

18 Just a reminder. This is just a status
19 update. We'll continue on.

20 HHFDC, would you want to state anything?

21 MR. FUJIMOTO: I will you give a status of
22 the overall project.

23 Kamakana Villages is HHFDC's 2300-unit
24 master planned community in North Kona, Hawai'i. We
25 are located mauka of the Ane Keohokalole Highway,

1 between Kealakehe High School and Palani Road.

2 Forest City was selected as HHFDC's
3 developer for the project in 2008 through an RFP
4 process.

5 A Development Agreement was executed with
6 Forest City Hawai'i Kona LLC in March 2009.

7 Forest City and HHFDC were co-Petitioners
8 in the LUC reclassification of Kamakana Villages
9 approved in November 2010.

10 In 2016, due to unfavorable market forces
11 and Forest City's parent company's conversion to a
12 real estate investment trust, Forest City requested
13 to withdraw as master developer of Kamakana Villages.

14 In order to proceed with the construction
15 of the Manawalea Street Extension to satisfy initial
16 traffic requirements of the County and LUC Condition
17 No. 6, a transition plan was negotiated, and on
18 September 5, 2017, the Development Agreement was
19 assigned to Alakai Development Kona 1 LLC, who will
20 complete the Manawalea Street Extension and Forest
21 City was released from the Development Agreement.

22 Alakai Development is a company associated
23 with, but legally separate from Forest City and owned
24 by a former employee of Forest City.

25 On November 9, 2017, the HHFDC Board of

1 Directors approved an amendment to the Development
2 Agreement for the assignment of the Development
3 Agreement to a development entity of Stanford Carr to
4 succeed as master developer of Kamakana Villages.

5 Negotiations to assign the Development
6 Agreement to Stanford Carr's development entity, SCD
7 Kamakana, LLC, are ongoing.

8 With the recent downgrade of the water
9 restrictions for West Hawai'i on January 9th, 2018,
10 construction of the Manawalea Street Extension will
11 be proceeding.

12 The Manawalea Street Extension is a 68 feet
13 right-of-way two-lane regional roadway which will
14 provide a connection from Ane Keohokalole Highway,
15 mauka through the project to the existing Manawalea
16 Street at the mauka boundary of Kamakana Villages; a
17 distance of about 1, 850 feet.

18 The Michaels Organization is an on-site
19 builder who is completing the Kamakana Family and
20 Senior Affordable Rental Projects at Kamakana
21 Villages.

22 CHAIRPERSON WONG: Thank you. Questions,
23 Commissioners? Commissioner Ohigashi.

24 COMMISSIONER OHIGASHI: This project and
25 the previous project, I think that the owners of the

1 Petition would serve them best, serve the issues best
2 if they took an active role in trying to resolve the
3 issues between people like Michaels Development and
4 NPS prior to them, NPS, feeling that they have to
5 come to the Commission.

6 It would appear that the Petitioners would
7 have the most to gain, most to lose, which would be
8 beneficial in facilitating an understanding between
9 the two.

10 MR. HIRAI: I think we would like to
11 continues to discuss with NPS, maybe setting up some
12 kind of protocol to go through these matters first.
13 Michaels project was the first project in Kamakana,
14 so these issues are coming up now, bringing these
15 sort of things to light. Maybe some kind of protocol
16 would be appropriate.

17 COMMISSIONER OHIGASHI: Wouldn't HHFDC be
18 the ultimate determiner of whether or not -- the
19 first step anyway -- to determine whether or not
20 their drainage issues --

21 MR. HIRAI: Like you say, this is the case,
22 first impression that is happening. I think what we
23 would like to talk to NPS about is some kind of
24 protocol where we can get them to review plans before
25 construction starts, something like that.

1 Because this is sort of after the fact
2 right now. Not the best time to remedy something.

3 COMMISSIONER OHIGASHI: I would hope HHFDC
4 will take that affirmatively and try to do that.

5 CHAIRPERSON WONG: Commissioner Cabral.

6 COMMISSIONER CABRAL: That's some of my
7 suggestions too. Clearly, we have no soil over here.
8 I come from Hilo and I manage a lot of properties,
9 and I have areas that are very heavy soil and areas
10 that are almost completely lava. And we have a lot
11 of rainfall. And it is unsightly what comes up in
12 people's backyards from their uphill neighbor when
13 there is a lot of rainfall, even though they think
14 they're doing best practices, human waste, personal
15 hygiene products and everything else are coming up
16 through lava tube and all of that.

17 So I'm going to have to agree that tenants
18 might break house rules, and might put stuff where
19 they're not supposed to. Landscape will get old and
20 go away, and outdoor trash will probably end up where
21 it's not supposed to be.

22 And 18 inches of number three drain rock is
23 probably not going to keep out those finer particles,
24 so if you're only at 190 or so units now, and you're
25 heading up to 2,300 units, we need a whole lot more

1 protection, or we are not going to have a coastline.
2 It's pretty scary to think about the volume that you
3 guys are looking at, and I don't know all the details
4 of what it's going to take to be best practices, but
5 I think we better be best practices for basically a
6 large sieve, not even a fine filter, because our
7 ground is not any type of filter over here at all.

8 That would be my concern. I don't know how
9 we have to play into this, certainly would be good to
10 meet before you come here.

11 CHAIRPERSON WONG: Any other questions or
12 statements? If not, county, do you have anything?

13 MS. SELF: No, county has nothing.

14 CHAIRPERSON WONG: OP?

15 MS. APUNA: No questions or comments.

16 CHAIRPERSON WONG: Thank you.

17 Since that's it, we are going to call a
18 brief recess. Thank you for all the parties for
19 attending and call an a brief recess. Parties will
20 have to come back later on for another status report,
21 so just FYI, especially HHFDC with Stanford Carr
22 Development, and hopefully National Park Services and
23 whoever else works out there.

24 (Recess taken.)

25 -o0o-

1 REPORT AND ACTION.

2 CHAIRPERSON WONG: Back in session.

3 Let's start. This is the next portion of
4 the Agenda Report and Action, report by Executive
5 Officer, Mr. Orodenker.

6 EXECUTIVE OFFICER: This is a report on our
7 Rule Amendments, Proposed Rule Amendments.

8 As you recall, we came to the Commission
9 several months ago -- I'm sorry, Lee, I don't think
10 you were the on Commission yet -- requesting
11 authorization for staff to work on rule amendments.

12 At that time most of the amendments that we
13 were talking about were corrections, and some
14 adoption of language and association with some
15 Supreme Court cases.

16 Since that time, working with OEQC and with
17 the State Sustainability Coordinator, we have
18 concluded that it would be appropriate for us to also
19 add language that would require petitioners to submit
20 evidence with regard to sustainability and climate
21 change issues. And those, if you look at the
22 proposed rule changes, those are in subchapter 6,
23 15-15-50C, sections 24 and 25.

24 The other change, additional change that
25 we're proposing from the prior ones that we brought

1 up with the Commission is on page -- hold on a second
2 -- subchapter 11, adding some language to 15--15-93E.
3 Which is a new subsection, basically incorporating
4 the language from the Bridge Aina Lea case as to what
5 substantial commencement is.

6 As you may know, the Bridge Aina Lea case
7 didn't give us a lot of direction. And so it said it
8 had to be determined on a case by case basis based on
9 the facts and circumstances, but gave us no
10 indication as to what facts and circumstances would
11 mean, substantial commencement had or had not
12 occurred.

13 At this point, what we're asking the
14 Commission for is permission to submit these rules to
15 Department of Budget and Finance and to Department of
16 Business and Economic Development, so they can give
17 us their approval so that the governor will approve
18 the rules for us to go out to public hearing.

19 And when we go out to public hearing, that
20 doesn't mean the Commission needs to sit at all. We
21 have to go to every island. Staff will do that,
22 assemble the comments and come back, and bring them
23 to the Commission, and the Commission can decide what
24 it wants to do about making any changes to the rules
25 or not making any changes to the proposed rules.

1 Once the Commission has approved the final
2 version of the rules, then we resubmit to the
3 governor for final approval.

4 So still time to make adjustments and
5 amendments if anybody wants to make comments or
6 whatever.

7 At this time I think it's the best thing to
8 do is ask if anybody has any questions with regards
9 to the proposed rules I put in front of you.

10 COMMISSIONER OKUDA: Just a comment. When
11 we talked to the phone? I don't mean to be picky
12 about this, but if you can just look at that proposed
13 rule that incorporates Bridge Aina Lea as far as what
14 is substantial commencement, I think it comes from
15 Footnote 16 of the case -- yeah, I think the proposed
16 rule uses the word "regardless", but in Footnote 16,
17 I think the Supreme Court used the word "not" n-o-t,
18 and I don't know if it makes a difference whether you
19 use the word "not" or "regardless". Except for that
20 one rule, it seems like the proposed rule tracts
21 Footnote 16.

22 EXECUTIVE OFFICER: I'll double check that.

23 COMMISSIONER OKUDA: Which shows that I
24 have nothing better to do with my life.

25 EXECUTIVE OFFICER: One thing I would like

1 to say, I just remembered, is that one of the things
2 that staff is attempting to do here is, we see the
3 role of the Land Use Commission actually becoming
4 more important as sustainability issues and climate
5 change issues come to the forefront.

6 You know, when you start to talk about
7 things like managed retreat, where we're retreating
8 from the shorelines, and finding new places to put
9 homes and things like that, I think the Land Use
10 Commission is going to become more important as a
11 device to push towards managed retreat, and as a
12 policy-making body with regard to managed retreat.

13 Also sustainability issues are going to
14 become more and more important as time goes on as
15 well, and flying at a higher level than the counties
16 usually do when they're concerned about roads and
17 sewers and things like that.

18 And that's kind of why staff put these
19 additional rules in there to try and anticipate what
20 is going to happen ten years from now.

21 CHAIRPERSON WONG: Commissioner Cabral.

22 VICE CHAIR CABRAL: My concern, I expressed
23 one other time, I see this -- and I don't have the
24 ancient history of the whole Commission like you
25 folks do -- but I already see this where a huge

1 portion of what I've dealt with in my two-and-a-half
2 almost three years has been something that started
3 way before my time. And it's like everything that
4 comes before you, it never goes away.

5 And I'm an administrator of a business, and
6 if I can never put a conclusion and close out a file,
7 I've got to get bigger and bigger, and have more and
8 more money, and fund more and more employees, and
9 have more and more meetings, and take care of more
10 and more business.

11 So I think that the government -- God knows
12 that's a scary word -- needs to understand is that
13 what we're supposed to be, or is there going to be
14 LUC one that makes approval for something and LUC two
15 that follows up on enforcement of things.

16 Because you saw what the language, the
17 comments today was, you guys could enforce. I'm
18 going, no, no, we don't want to get the sewer
19 readouts every week. No, thank you.

20 But that's what everybody wants, is they
21 want somebody in the government, what agency in the
22 government is going to follow up when somebody does
23 something wrong, and enforce what we have made as a
24 mandate.

25 I don't know the answer, but it's a scary

1 thought.

2 EXECUTIVE OFFICER: We're very limited in
3 what we can do in terms of enforcement, which is good
4 and bad; good for workload, but bad for the
5 community. So absent some change to Chapter 205, we
6 can't really push our enforcement too far.

7 The change that we made with regard to
8 enforcement, is like I said, as a result of the
9 Supreme Court's interpretation of our rules. Do I
10 agree with that language? I think that language -- I
11 actually think that language, instead of clarifying
12 things, made it worse. And then gives us a whole ton
13 of more work to do, because if we are going to do
14 anything now, we have to figure out what that means
15 and apply it.

16 But I understand what you're saying. We
17 have limited capacity. We have one more planner that
18 we have been authorized to hire, which we will
19 probably do in the summer, and that planner will be
20 dedicated to enforcement and issues and things like
21 that.

22 MR. DERRICKSON: We are going to call it
23 "compliance".

24 VICE CHAIR CABRAL: I like enforcement.

25 CHAIRPERSON WONG: Commissioner Chang.

1 COMMISSIONER CHANG: Following up with
2 Nancy's comments and what we're hearing, I think I
3 know for me personally, I'm going to be looking at
4 the conditions a lot more carefully.

5 Well, while we don't have enforcement
6 authority like this wastewater, I mean I think I
7 would like to ask staff, when we're looking at
8 conditions, that those conditions clearly articulate
9 -- we don't have the expertise, like this wastewater.
10 They should be going to DOH first with some readings
11 to determine -- I don't know, some way of ensuring
12 that we have some expertise beyond ours that the
13 conditions read something to the effect that whether
14 it's pollution, but there is some regulatory
15 agency -- and I don't know whether we have any
16 authority -- that they have to go through that agency
17 first to ensure that those -- they're meeting some
18 kind of standards before they come to us for
19 enforcement, because I -- we don't have the capacity.

20 But nor should we. There are other
21 agencies that have that expertise, so we should be
22 looking to them.

23 COMMISSIONER OHIGASHI: Office of State
24 Planning.

25 COMMISSIONER CHANG: Don't tell Leo that.

1 I'm not sure what the answer is other than I think
2 we're going to have to start looking at our
3 conditions more carefully because Nancy is correct,
4 we are inheriting what other Commissioners have
5 adopted as conditions.

6 Times have changed, where I'm sure in the
7 past it was better to be very vague, you know, open
8 for interpretation. Now we're wanting to be a lot
9 stricter. So I think we're going to have to have the
10 foresight to think about ten years down the road if
11 this is still going on, how do we make those
12 conditions so that they are clear and they are
13 enforceable, or they provide some greater teeth than
14 what we have now.

15 CHAIRPERSON WONG: Commissioner Cabral.

16 VICE CHAIR CABRAL: And another thing too
17 is, I saw in both those cases -- and I see it in all
18 of my business now -- if somebody is unhappy with
19 what is going on, they somehow failed that concept of
20 connecting the first line person and saying how can
21 we resolve this? Instead they go to their
22 entitlement mentality of who's going to take care of
23 this for me? What other agency is going to jump into
24 this?

25 I'm not saying rules and regs, but to think

1 about, can't we say: Before you come to us, check
2 off the following. Have you tried communicating with
3 the other party? If so, please send a copy of that
4 letter or summary of that communication. You know,
5 like only if they're fighting do we want to step in.

6 EXECUTIVE OFFICER: I have to say to a
7 certain extent, one of the reasons that the
8 Commission has that feeling is that staff usually
9 manages to head off a lot of these issues by saying
10 go and talk to so and so.

11 It's when it breaks down, when it fails
12 that it ends up in front of the Commission. That's
13 why it seems like these people, they should talk
14 to -- we've told them to, and then nobody is
15 listening, or somebody doesn't want to cooperate,
16 then it has to come here.

17 They play nice when they come here, but a
18 lot of times that's not really what happens.

19 VICE CHAIR CABRAL: I thought did National
20 Park get a new staff person who got this job to find
21 all the problems or something.

22 MR. DERRICKSON: He's been their front
23 person since National Park Service started
24 intervening in a number of Kona projects back in
25 early 2000, when he brought this issue to us,

1 staff-wise. We told him you need to go and talk to
2 Lanihau. You need to talk to Kaiser. They actually
3 did a lot. They tried to do a lot of this background
4 work. Kaiser kind of shoved them off to the
5 attorney, and the attorney said no, this is
6 privileged information.

7 EXECUTIVE OFFICER: Sometimes the offending
8 go party doesn't get serious until they end up in
9 front of us, otherwise they're just kind of blowing
10 them off.

11 VICE CHAIR CABRAL: Will everybody has
12 played so nice for us.

13 COMMISSIONER MAHI: I feel that what
14 happened was that Jeff and them had to kind of get it
15 out in the open and this is the forum that they were
16 going to use. Other than that, maybe they were
17 trying to do some mitigating -- take some mitigating
18 actions.

19 MR. DERRICKSON: They were actually pretty
20 nice. They could have actually asked us for an Order
21 to Show Cause.

22 COMMISSIONER MAHI: No.

23 MR. DERRICKSON: Rather than doing that,
24 they that just asked us if we can do something in the
25 status. Requiring us to come and do a status report

1 is a little bit less than doing -- telling them we're
2 thinking about an Order to Show cause, which is
3 really difficult.

4 COMMISSIONER CHANG: And at tremendous
5 expense. And if they put in a letter: We have
6 exhausted all of our attempts to do deal with, and we
7 know, short of Order to Show Cause -- sometimes
8 shaming the other side -- and I know we shouldn't be
9 getting into this, because this is beyond the
10 rules --

11 COMMISSIONER CABRAL: As an example.

12 COMMISSIONER CHANG: But this was an
13 educational information, but I just did not think it
14 was the most productive use of our time.

15 COMMISSIONER OHIGASHI: I can understand
16 the other one. I don't understand -- HHFDC shouldn't
17 mitigate the problem. They're a state --

18 MR. DERRICKSON: Their situation is
19 normally they are kind of the silent co-Petitioner.
20 Forest City was the money and the developer
21 originally, and now they stepped away. And HHFDC is
22 now, like, oh, shoot, now we got to jump back in and
23 manage stuff that's been going on.

24 EXECUTIVE OFFICER: HHFDC isn't set up for
25 this kind of thing. HHFDC for all intents and

1 purposes they're just a financial institution.

2 COMMISSIONER OKUDA: If I can say this, not
3 to advocate more work, but I think sometimes in
4 resolving situations, we just need to have a body
5 there. I mean, that's why sometimes parties can talk
6 to each other, nothing is settled. But you have a
7 mediator present, and people saying the same thing,
8 and they actually do settle the case. Even though,
9 yeah, this takes up our time and all, but I think
10 just having a place where people can bring their
11 matters and then kind of be forced to talk, you know,
12 it serves a function. So I don't -- yeah, it takes
13 up everyone's time, but I don't really consider it
14 wasteful totally.

15 I mean, it would be nice if things worked
16 out perfectly. But I guess this is just human
17 relation. Just some disputes you just got to have a
18 body where people can show up even if they're saying
19 the same thing that they have been saying before.

20 COMMISSIONER OHIGASHI: Is there a
21 mechanism that we can use by promulgating a rule to
22 force them into mediation? If we promulgate a rule
23 that requires a complaint, any kind of complaint like
24 this to first go in front of some kind of dispute
25 resolution kind of mechanism, whether it be one of

1 the staffers or new staffer would be the determinator
2 or whatever. Is that a good idea to make a rule to
3 do that?

4 EXECUTIVE OFFICER: We're on a slippery
5 slope here, because there are a couple things you
6 have to keep in mind.

7 One of the ways we got into the Bridge Aina
8 Lea problem was attempting to, for all intense and
9 purposes, mediate a solution. By the time we got to
10 the point it was clear it wasn't going to work out,
11 we said, okay, we're going to remand, Supreme Court
12 said too late.

13 So in reality what staff does, which is,
14 you know, you guys try and work it out, is probably
15 as far as we want to go. Because if we take that
16 next step, and in the meantime a developer thinks I'm
17 going to lose this -- have to give up too much of
18 this mediation or whatever, they're going to run out
19 and build 40 units, and then say I can't do anything
20 about it anyway, Land Use Commission, see you later.

21 That's part of the problem we're faced
22 with. Something we have been trying to rectify with
23 the legislature for the past three years is to change
24 the way the enforcement section of our Chapter 205
25 reads to have the ability to do that, but in reality

1 the situation that the Supreme Court has placed us
2 in, if it's a violation, you better revert right
3 away, because otherwise you're going to lose your
4 remedy and you got nothing.

5 CHAIRPERSON WONG: Commissioner Scheuer.

6 VICE CHAIR SCHEUER: To go back to rules.
7 Three things.

8 First, I just want to thank the staff for
9 working on this. There is a lot of state agencies
10 that will like avoid rules like a root canal. So
11 thank you for being diligent and staying on it.

12 I'm very pleased with the inclusion of the
13 climate change provision. I find, having working in
14 that area, I find some of the wording a bit awkward,
15 but I don't want to try and wordsmith this or suggest
16 this here.

17 What I would like to encourage is reaching
18 out on the public notice to the various institutions
19 around town, like Pacific Climate Change Cooperative.
20 The folks at East-West Center are working on that, to
21 make sure they're aware of this going on, Chip
22 Fletcher, (phonetic) so that they know and they and
23 their students can be involved to actually take a
24 look at this. They're expertise is on this kind of
25 thing. I hope that kind of special outreach can

1 happen when we go out to hearing.

2 EXECUTIVE OFFICER: We will make that
3 effort.

4 COMMISSIONER SCHEUER: I just had a third
5 point and I'll be quick.

6 It occurs to me that in addition to the
7 addressing and highlighting the need to address Ka
8 Pa'akai issues, the Kaua'i Springs case, which was a
9 case on the Island of the Kaua'i over a private water
10 bottler, the Supreme Court made an expansive ruling
11 about how any government entity making a decision
12 regarding water, whether at county level or state
13 level, whether Water Commission or any other body,
14 there's a certain series of tests they have to go
15 through related to public trust responsibilities and
16 analysis. I think it's probably not possible at this
17 point to amend these rules to talk about that, but I
18 think it's going to be something that we're going to
19 have to substantially wrestle with as this Commission
20 rises to almost an equal level to the Ka Pa'akai type
21 of analysis.

22 EXECUTIVE OFFICER: Two comments.

23 First of all, your wordsmithing is very
24 appropriate, so please -- after the meeting, we can
25 talk about what changes you want to make, assuming

1 that this Commission would give us the authority to
2 wordsmith and to incorporate the Kaua'i Springs case
3 into the rules as well. I mean, we're still in the
4 draft stage, so if a Commissioner has some changes
5 they want to make, as long as the Commission as a
6 whole authorizes to make changes with regard to that,
7 it's not a problem.

8 COMMISSIONER OHIGASHI: If Jonathan wants
9 to do that, would it be all right if he just
10 circulate his proposed amendment to the body?

11 MS. ERICKSON: No, he can't.

12 COMMISSIONER OHIGASHI: We could comment
13 directly back to you on what we --

14 EXECUTIVE OFFICER: Yes.

15 Jonathan will send it to us. We will send
16 it to the other Commissioners, and then they can
17 comment.

18 CHAIRPERSON WONG: I just want to be clear.
19 We're still in the draft phase of the rules. We go
20 through the draft phase and go through public
21 hearing. And there is substantial changes to the
22 rules. Would it have to go back to public hearing?
23 So just for all Commissioners, that since we're in
24 the draft phase right now to do -- please send it to
25 the executive officer any of the changes. We're

1 going to need a motion to allow the executive officer
2 and the staff to start the process of doing the rules
3 and taking the input from the Commission, and
4 altering it to the needs that they see fit, and then
5 go to the next phase which is public hearing -- to be
6 in public hearing and to the governor.

7 Do I have a motion?

8 VICE CHAIR CABRAL: I'll move.

9 VICE CHAIR SCHEUER: Second.

10 CHAIRPERSON WONG: Is there any opposition
11 or any other comments on this? If not, all those in
12 favor please say "aye". Thank you, motion has been
13 moved.

14 Executive officer, please continue.

15 EXECUTIVE OFFICER: That's all I have.

16 CHAIRPERSON WONG: If nothing else on the
17 agenda for today, I'm going to recess and reconvene
18 the meeting videoconference for January 25th tomorrow
19 at 10:00 o'clock. Thank you.

20 (The proceedings adjourned at 12:23 p.m.)
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CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on January 24, 2018, at 9:30 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 24th day of January, 2018, in
Honolulu, Hawaii.

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