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LAND USE COMMISSION HEARING

STATE OF HAWAII

Proceedings held on May 23, 2018

Natural Energy Laboratory Hawai'i Authority

73-987 Makako Bay Drive

Kailua-Kona, Hawai'i 96740-2637

Commencing at 9:00 a.m.

AGENDA

- I Call to Order
- II. Adoption of Minutes
- III. Tentative Meeting Schedule
- IV. STATUS REPORT AND ACTION (IF NECESSARY)
 A00-730 LANIHAU PROPERTIES LLC (Hawai'i)
- V. STATUS REPORT AND ACTION (IF NECESSARY)
 A10-788 HHFDC & Forest City - Kamakana Villages
 at Keahuolu (Hawai'i)
- VI. STATUS REPORT AND ACTION (IF NECESSARY)
 A06-767 WAIKOLOA MAUKA LLC (HAWAII)

—

BEFORE: JEAN MARIE McMANUS, CSR #156

1 APPEARANCES:

2 COMMISSIONERS:

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

7 STAFF:

RANDALL S. NISHIYAMA, Deputy Attorney General
8 DANIEL E. ORODENKER, Executive Officer
RILEY K. HAKODA, Planner/Chief Clerk
9 SCOTT A.K. DERRICKSON, AICP-Planner

10 DAWN APUNA, ESQ.
Deputy Attorney General
11 LORENE MAKI, Planner
Office of Planning, State of Hawaii

12 AMY SELF, ESQ.
13 Deputy Corporation Counsel
DARYN ARAI, Deputy PLANNING Director
14 County of Hawai'i

15 A00-730 LANIHAU PROPERTIES LLC

16 RILEY W. SMITH, P.E.
President and CEO Lanihau Properties

17 BENJAMIN A. KUDO, ESQ.
18 For Kaiser Permanente

19 JEFF ZIMPFER, Environmental Protection Specialist NPS
Intervenor NPS

20 A10-788

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

23 CRAIG HIRAI, Executive Director
24 For HHFDC

25 JEFF ZIMPFER, Environmental Protection Specialist
Intervenor NPS

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1 CHAIRPERSON WONG: Good morning. This is
2 the May 23rd, 2018 LUC meeting.

3 The first order of business is the adoption
4 of May 9th, 2018 minutes. Are there any corrections
5 or comments on them?

6 COMMISSIONER MAHI: I'll move.

7 VICE CHAIR CABRAL: I'll second.

8 CHAIRPERSON WONG: Commissioner Mahi and
9 Commissioner Cabral seconded.

10 Is there any discussion? If not, all in
11 favor say "aye"; any opposition? None. The minutes
12 are adopted.

13 Next agenda item is the tentative meeting
14 schedule. Mr. Orodener, if you please.

15 EXECUTIVE OFFICER: Thank you, Mr. Chair.
16 Tomorrow we are on Oahu at the airport for Hartung
17 Brothers, and Status Report on A92-683, which is
18 Halekua Development Corporation.

19 On June 14 we'll be on Maui for A89-649
20 Status Report and LUC training.

21 On June 28th, we were originally going to
22 be on Oahu to hear DR18-62 Kualoa Ranch IL Petition,
23 that, however, has been continued, but we would like
24 the Commissioners to keep that date open.

25 On July 11, 2018, we'll have Ka'ono'ulu

1 Ranch Status Report. That will be on Maui.

2 On July 25th to 26th, will be Hale Mua.

3 And August 8th and 9th, Kualoa Ranch IAL
4 will be deferred.

5 Also HCPO this year will be on Big Island
6 September 26th through the 28th.

7 CHAIRPERSON WONG: Thank you, Mr.
8 Orodénker.

9 VICE CHAIR SCHEUER: Mr. Chair, I don't
10 know whether this is the right point to note to the
11 Commission oral argument on the Lana'i appeal that I
12 happen to have found on the Supreme Court website and
13 AG's. Hawaii Supreme Court will be hearing oral
14 arguments on July 12th in the morning on the decision
15 that the LUC made on the Lana'i water matters.

16 CHAIRPERSON WONG: Thank you. That's just
17 FYI for everyone.

18 A00-730 LANIHAU PROPERTIES LLC

19 Next agenda item will be the continued
20 Status Report and appropriate action on Docket No.
21 A00-730 Lanihau Properties LLC.

22 This Petition is to Amend the Conservation
23 Land Use District Boundary into the Urban Land Use
24 District for approximately 336.984 acres at
25 Honokohau, North Kona, Hawai'i, Tax Map Key: 7-4-08:

1 Portion of 13 and 7-4-08:30.

2 Just FYI for all the Commission, this is
3 not Diane, if you haven't noticed. This is Randall
4 Nishiyama. He will be standing in for Diane for a
5 while, so just wanted you to know if you have
6 questions. This is Randall. Not as good looking as
7 Diane, sorry.

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

10 MR. SMITH: My name is Riley Smith for
11 Lanihau Properties, President and CEO.

12 CHAIRPERSON WONG: Thank you.

13 MS. SELF: Deputy Corporation Counsel Amy
14 Self, and to my right is Deputy Planning Director
15 Daryn Arai.

16 MR. ZIMPFER: I'm Jeff Zimpfer,
17 Environmental Protection Specialist at
18 Kaloko-Honokohau National Historical Park.

19 MR. KUDO: Ben Kudo representing Kaiser
20 Permanente, and with me is Sanitary Environmental
21 Engineer AECOM consultant to Kaiser.

22 MS. APUNA: Good morning, Deputy Attorney
23 General Dawn Apuna on behalf of OP. Here with me
24 today is Lorene Maki.

25 CHAIRPERSON WONG: Let me update the record

1 in this docket.

2 On September 15, 2017, the Commission
3 received an email from National Park Service
4 regarding Docket No. A00-738 and A10-788 regarding
5 non-compliance with conditions.

6 On January 24th, 2018, the Land Use
7 Commission met in Kailua-Kona, Hawai'i to receive
8 status reports on both dockets and decided to allow
9 the Parties to continue discussions and resolve the
10 noncompliance issues in both matters.

11 On May 15, 2018, an LUC meeting agenda
12 notice for the May 23-24th, 2018 meeting was sent to
13 the Parties and the Statewide, Hawaii and Oahu
14 meeting list.

15 On May 18, 2018, the Commission received
16 email correspondence from Petitioner Lanihau
17 Properties LLC providing a report of the latest water
18 samples from the Kaiser Permanente Wastewater
19 Treatment Facility to respond to Commissioner
20 Cabral's request to receive sampling information in
21 advance of the May 23rd, 2018 hearing date, and
22 Commissioner Mahi's request for volumetric data about
23 the Wastewater Treatment System.

24 Also on the same date the National Park
25 Service requested clarification on the

1 representations depicted on Petitioner's graph
2 provided in this email.

3 On May 21st, 2018, the Commission received
4 copies of email correspondence between National Park
5 Service and Kaiser in regards to test results.

6 For the members of the Public, please be
7 reminded that the Commission will not be considering
8 the merits of the A00-730 Petition; rather, the
9 Commission is interested in learning what the current
10 state of the activities of Petitioner related to this
11 docket are, including as they pertain to National
12 Park Service's assertions that there have been
13 noncompliance with conditions of approval.

14 So let me go over the procedures of this
15 docket.

16 First, those individuals desiring to
17 provide public testimony for the Commission's
18 consideration will be asked to identify themselves
19 and will be called in order to our witness box where
20 they will be sworn in prior to their testimony.

21 At the conclusion of public testimony, the
22 Chair would like Intervenor National Park Service to
23 provide its presentation first to better understand
24 how the nature of its complaints and concerns in this
25 matter have been addressed since the January 24th,

1 2018 meeting.

2 After questioning of the Intervenor, the
3 Chair will next call for the Petitioner to respond
4 and provide its status update on this matter.

5 After questioning of the Petitioner, the
6 Chair will call on the County of Hawai'i.

7 Then after questioning the County, the
8 Chair will call OP; and after questioning OP, the
9 Chair will entertain any final questions or comments.

10 The Chair will also note that from time to
11 time I'll be calling for short breaks.

12 Are there any questions on these procedures
13 for today? No questions, no statements, okay.

14 Yes, Commissioner Scheuer.

15 VICE CHAIR SCHEUER: Mr. Chair, I'm going
16 to be recusing myself from both agenda item IV and
17 agenda item V. I have been and continue to work as a
18 consultant for the National Park Service.

19 CHAIRPERSON WONG: Thank you, Commissioner
20 Scheuer. We will call you back for status report
21 number VI.

22 Okey dokey. Is there any public testimony,
23 or anyone want to provide testimony out there? Going
24 once, twice, three times. None? Okay. Let's keep
25 on going.

1 National Park Service, will you please make
2 your presentation.

3 MR. SIMPFER: Aloha, Chair and
4 Commissioners.

5 Thank you for this opportunity to provide
6 the written comments of the National Park Service
7 today.

8 The State Land Use Commission and the
9 National Park Service share a commitment to protect
10 Hawaii's unique and fragile natural and cultural
11 resources.

12 On March 22, 2018, we had a productive
13 meeting with the staff of Kaiser Permanente and their
14 consultants. They explained to us their plans to
15 modify their wastewater treatment system so that the
16 system would meet Condition 1.c for wastewater
17 treatment as identified in the 2003 Findings of Fact,
18 Conclusion of Law and Decision and Order for Docket
19 No. A00-730 for Parcel 30.

20 On May 21st, 2018, Benjamin Kudo, legal
21 counsel for Kaiser Permanente, sent us an email
22 explaining remedial work had been delayed because
23 some of the component parts had not yet arrived. He
24 further shared that Kaiser expected delivery of these
25 parts sometime in late June or July and hoped that

1 Kaiser would be able to take reliable samples
2 sometime in August.

3 Mr. Kudo also shared the monthly water
4 quality monitoring data that had been collected to
5 date. While Kaiser is currently not meeting the
6 nutrient removal requirements of Condition 13 of the
7 2003 D&O, we are pleased that they are taking regular
8 water quality measurements and they are sharing their
9 data with us.

10 We look forward to working with Kaiser
11 Permanente and its consultants to ensure that the
12 wastewater nutrient level requirement of the 2003
13 Decision and Order are met.

14 CHAIRPERSON WONG: Okay. That was short.
15 Thank you. Is there any questions? Commissioner
16 Chang.

17 COMMISSIONER CHANG: Good morning. Thank
18 you for your statement.

19 I was wondering, has NPS been monitoring
20 the site and noticed any degradation of the natural
21 and cultural resources as a result of these
22 activities on the mauka side?

23 MR. SIMPFER: We have an extensive
24 monitoring network. I'm not here today prepared to
25 say "yes" or "no" whether we have seen a change.

1 Part of the problem with things like this
2 is it takes a long time to see effects. So we're
3 here today because there's a condition in the
4 Decision and Order that should be met, and it hasn't
5 been met. So we don't wait until we see a problem.

6 COMMISSIONER CHANG: Thank you. And I
7 really do appreciate the fact that you're being
8 proactive in raising these issues.

9 My understanding, and I wasn't here when
10 the condition was approved, but it was for purposes
11 of ensuring that those natural cultural resources
12 were not being degraded, that they were being
13 preserved.

14 So it would be helpful if the National Park
15 Service, as you're monitoring, if you could give us,
16 or share with the Commission the results of your
17 monitoring so that we can see the difference between
18 when prior to them installing these equipments in
19 compliance with the condition, versus, you know, the
20 conditions that have been currently existing and then
21 what happens when they do install the system. It
22 would be really helpful.

23 Because I suspect that National Park
24 Service will be, in the future, if there are other
25 opportunities to include these conditions on

1 different development projects, that National Park
2 Service would do the same.

3 So it would be helpful for everybody in
4 this community to know what the status is of the
5 National Park Service, the resources, and the results
6 of these compliance with these conditions.

7 MR. SIMPFER: I'm happy to get our most
8 recent monitoring data and share that with the
9 Commissioners.

10 As far as one individual, it's going to be
11 hard to make a change and then see something
12 immediately in the park. There's a lot of sources
13 around the park.

14 COMMISSIONER CHANG: But I'm sure you had
15 some baseline before.

16 MR. SIMPFER: We have lots of baseline.

17 COMMISSIONER CHANG: Very good. Thank you
18 so much.

19 CHAIRPERSON WONG: Anyone else? Thank you.
20 Will the Intervenor now -- sorry, will the Petitioner
21 now make their presentation?

22 MR. SMITH: Aloha, Chair and members of the
23 Land Use Commission. My name is Riley Smith. You
24 should each have a copy of the testimony that I
25 provided.

1 Basically it lays out what the obligations
2 of West Hawaii Business Park are. Lanihau Properties
3 is the sole owner of West Hawaii Business Park. I'm
4 the President and CEO of Lanihau Properties, so the
5 responsibilities contained in the Land Use Decision
6 and Order are mine to fulfill.

7 We submitted an annual report, which was
8 submitted to your office in January of this year. We
9 submit that on an annual basis. There are a number
10 of conditions within Section 1 that talk about
11 wastewater treatment on-site, and I'm providing the
12 status of Conditions 1a, 1b, 1c, 1d, 1e, and 1f in my
13 report.

14 I'm happy to answer any questions you might
15 have concerning my report.

16 CHAIRPERSON WONG: Thank you.

17 Commissioners, any questions for Mr. Smith?
18 Commissioner Ohigashi.

19 COMMISSIONER OHIGASHI: Yeah, I remember I
20 was concerned the other -- at the other hearing,
21 previous hearing, about the people like the National
22 Park want to enforce a condition. They -- is there a
23 mechanism now that you, as a Petitioner, would have
24 an opportunity to receive those types of concerns
25 directly from people like the National Park

1 Association and to deal with it with the various
2 landowners?

3 MR. SMITH: Yes.

4 Mr. Zimpfer as well as Bill Thompson,
5 Superintendent, I see them at every public meeting in
6 North Kona. So we interact on a regular basis.

7 Mr. Zimpfer has my email address. If he
8 has any concerns, he regularly lets me know about
9 them.

10 As part of our Wastewater Treatment System
11 Program, we are obligated to share the information
12 with them, and I'm in the process of continuing to
13 keep them apprised of the two IWS systems that exist
14 on our properties, or on lands that we used to own
15 and are responsible for to make sure we do comply
16 with the Land Use Commission.

17 COMMISSIONER OHIGASHI: Is there any other
18 mechanism like from a person who's interested in
19 determining, or has found information that they
20 believe that the permit is not being followed, that
21 they can contact you? Or is there a mechanism set up
22 for that type of opportunity?

23 MR. SMITH: North Kona is a pretty small
24 community. I think if anyone has a concern, they
25 know how to reach me. And I'm happy to sit down and

1 dialogue and share information with anyone that might
2 be interested.

3 COMMISSIONER OHIGASHI: I'm trying to get
4 at -- it's kind of like a draft extension of the Land
5 Use Commission involved in a complaint like this,
6 when it appears that if there's a mechanism from the
7 permit holder to handle the people that are under
8 that permit, to resolve some of these issues before
9 it would come to us.

10 That's just my concern that is there some
11 kind of mechanism that you can implement regarding
12 those --

13 MR. SMITH: I think there is a lot of
14 different means of dispute resolution. The National
15 Park typically follows their protocol of providing
16 public testimony, providing written testimony,
17 providing input on all of their neighbors, so I don't
18 think they lack any -- the inability to communicate
19 their concerns with the North Kona community.

20 COMMISSIONER OHIGASHI: Did you find out
21 their concerns about this particular permit directly
22 from them; or was it prior to the hearings that we
23 had?

24 I'm just trying to get an idea if they were
25 able to approach you about their concerns.

1 MR. SMITH: They are able to approach me.
2 They didn't. I was informed by my attorney.

3 COMMISSIONER OHIGASHI: If this comes up in
4 the future, can we count on the permit holder to at
5 least outreach and figure out -- trying to deal with
6 the situation before it comes to the Land Use
7 Commission?

8 MR. SMITH: I'm obligated to share all this
9 information with the National Park Service, so I
10 will. If they decide to pursue multiple avenues of
11 stating their concerns, they do, and they will.

12 So I don't think there is any lack of
13 opportunity for them to express their concerns in the
14 North Kona community.

15 COMMISSIONER OHIGASHI: Okay.

16 CHAIRPERSON WONG: Commissioner Chang.

17 COMMISSIONER CHANG: Can I add to that?

18 I guess I appreciate Commissioner
19 Ohigashi's comments, and I guess I would ask, Jeff,
20 do you feel comfortable with the avenues that Lanihau
21 has provided; and do you feel comfortable contacting
22 them directly rather than writing a letter to LUC,
23 but trying to seek a resolution directly through
24 Lanihau first?

25 MR. SIMPFER: Oh, absolutely in the future,

1 yes. I mean this -- it's kind of a gray area. I
2 wasn't sure who to go to. I tried to get resolution
3 with the Kaiser people, then -- yeah, so I'm happy
4 to -- I was searching for the best angle to go, and
5 certainly working with Riley would be a good angle to
6 go.

7 COMMISSIONER CHANG: That's good. I think
8 the Commissioners appreciate that.

9 And if you, in the future, if you do end up
10 coming to LUC, it would be really helpful to document
11 all of the attempts that have been made to seek a
12 resolution, and in the absence of that resolution,
13 that's why you're coming to the LUC. But it's really
14 helpful for us to have that background administrative
15 record so that it provides us some good background.

16 MR. SIMPFER: A lot of that is in our
17 testimony for the January 23rd-24th meeting. I
18 outlined all that.

19 COMMISSIONER CHANG: Thank you.

20 CHAIRPERSON WONG: Anyone else?
21 Commissioner Aczon.

22 COMMISSIONER ACZON: Just for the record, I
23 read the transcripts and minutes and documents on
24 this one. I wasn't able to come the last time. But
25 I want to echo Commissioner Ohigashi and Commissioner

1 Cabral, there's got to be a process where all the
2 tenants can resolve, and Petitioner in the past can
3 resolve issues before coming to us. Cannot be all
4 the tenants come to us, then deal with every tenant.

5 As a responsible party, as Petitioner, you
6 should be able to address all those issues. And if
7 it cannot be resolved, then come to us. Thank you.

8 CHAIRPERSON WONG: Commissioner Okuda,
9 please.

10 COMMISSIONER OKUDA: I join in what
11 everyone says. But if I can add one thing. The
12 process that is stated in the statute and
13 administrative rules, that's also for the public's
14 benefit, so we're not saying don't bring the matters
15 to the Commission also. And sometimes, you know,
16 things can be done concurrently.

17 I think we really, really appreciate, or at
18 least I do, the fact that there seems to be
19 collaboration here, because we all live in the same
20 community. I think we all share the same concerns
21 about leaving the community at least not in a worst
22 shape than when we got it.

23 So I think there is a lot of collaboration
24 here, and that's really positive. We appreciate
25 everyone's input. We appreciate, of course, the

1 National Park Service's historic stewardship of
2 America's resources. But, again, you know, the
3 statute and administrative rules set up a process,
4 and we're not in any way suggesting that, if the law
5 allows something, that people should be hesitant
6 about bringing things up to us.

7 And if there's a violation of a condition,
8 then of course bring it up, because, you know, if the
9 Commission imposes or sets a condition, unless that
10 condition is modified, I believe the law requires us
11 to enforce the condition. Thank you.

12 CHAIRPERSON WONG: Thank you. Mr. Aczon.

13 COMMISSIONER ACZON: Mr. Chair, just follow
14 up on Commissioner Okuda's comments.

15 The Petitioner is required to submit
16 reports, and I would -- it would be helpful if those
17 things that occurs, any problems on your process, be
18 included in the report so we're kind of aware of how
19 the things coming along on your end.

20 CHAIRPERSON WONG: Go ahead, Mr. Smith.

21 MR. SMITH: I'm unclear what you're asking
22 for.

23 CHAIRPERSON WONG: I'll try reiterate what
24 Commissioner Aczon said.

25 He said in your report, if possible, if

1 there's any major issues that come to you, for
2 example, National Park Service saying you're not
3 meeting the condition. Also, say you're -- you had
4 this issue with the National Park Service, and try to
5 explain what you've been doing to try to recognize
6 that issue.

7 MR. SMITH: That's typically what we
8 include. I wasn't clear if you were asking for the
9 wastewater nutrient data to be submitted with the
10 annual report. I don't think you're asking that.

11 CHAIRPERSON WONG: No, unless it's really a
12 major issue that it will come to us again, then we
13 will ask for those things.

14 COMMISSIONER ACZON: Thank you, Mr. Chair.
15 That's all I wanted.

16 MR. SMITH: I'm remiss in not mentioning
17 that Lanihau Properties traces our roots back 168
18 years. We started when Henry Greenwell moved here in
19 1815. We've been a continued landowner for our
20 properties for a century and a half. In fact, a
21 portion of the National Park, the Honokohau section,
22 Kaloko-Honokohau National Park was comprised of lands
23 from the Kaloko-Hui Hui Ranch property as well as
24 lands that were purchased from the Greenwell family
25 on the Honokohau side.

1 So we used to raise cattle and run them
2 through the ponds and go down to the ocean and
3 everything. So we are land stewards. We own 10,000
4 acres mauka. We have a thousand mother cows. We're
5 very concerned with drainage siltation, other impacts
6 to not only on our lands, but lands makai of the land
7 that we steward.

8 So it's very important to us, as
9 Commissioner Okuda said, to leave our lands in better
10 conditions than when we found them.

11 CHAIRPERSON WONG: Thank you.

12 Any other questions or comments for Mr.
13 Smith? If not, Kaiser.

14 MR. KUDO: Thank you. We are here -- we're
15 not a party to this proceeding, but we are the owners
16 of Parcel 30 within the Lanihau Business Park, and
17 the subject of the concerns by National Park Service.

18 We are prepared today to give you a
19 description of the system that was constructed for
20 the Kaiser Medical Facility, the Sewage Treatment
21 Facility, as well as what our remediation steps are
22 to optimize that system in order to try to meet the
23 standards set forth in Condition 1c.

24 However, given the sentiments of several of
25 the Commissioners here, I can skip to the bottom line

1 and forgo the detailed discussion if you prefer, but
2 we're prepared to do both.

3 CHAIRPERSON WONG: Commissioners, what is
4 your pleasure?

5 VICE CHAIR CABRAL: I have one question,
6 and I don't know if it is being your short
7 presentation, but I've got to ask it. I waited until
8 now.

9 The items that you're waiting -- that
10 haven't arrived, how big are they? I mean, I'm
11 sorry, I've ordered a multi-ton air-conditioner in
12 January that's arrived, so how big is the equipment
13 that it can't get here?

14 MR. KUDO: This is Mr. Greg Gause
15 (phonetic). He's in charge of the construction of
16 the remediation facility.

17 MR. GAUSE: The main item that we're
18 waiting for is estimated mid June.

19 CHAIRPERSON WONG: Do you swear or affirm
20 that the testimony you're about to give is the truth?

21 THE WITNESS: Yes.

22 GREG GAUSE

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

1 DIRECT EXAMINATION

2 THE WITNESS: So we are waiting on -- our
3 main lead item is a phosphorus filtration tank which
4 is made to order, which is really where the delay is
5 coming from. Specialty items aren't prefabricated.
6 And it's about the size of -- I think it's maybe
7 1000-gallon septic tank is probably what we are
8 looking at. It's roughly equivalent.

9 COMMISSIONER CABRAL: Thank you. I was
10 very curious with the delay.

11 CHAIRPERSON WONG: Go ahead.

12 MR. KUDO: So as Dr. Zimpfer indicated, we
13 did meet with them earlier this year in March, and we
14 briefed them on what remediation steps we would be
15 taking. We have some delays in some of the parts
16 coming in.

17 We have parts that are being installed in
18 fact today. We hope to receive this last piece of
19 equipment in June or early July or late June and have
20 it installed. Once it's installed and the system is
21 complete, there's a couple of months, two to three
22 months that we need to operate it to balance the
23 chemicals that are being used to take the phosphorous
24 and nitrogen out of the water, and that takes a
25 little bit of time because we have to adjust it based

1 on the types of flows that we are getting from the
2 hospital.

3 In the case of phosphorous, for instance,
4 if you see the graph, you'll see the spikes, so it's
5 not a consistent kind of thing. What I understand,
6 and I'm not a scientist, phosphorous comes from -- a
7 lot of it comes from detergents and solvents that are
8 used in the hospital to clean and disinfect the
9 facility.

10 So if you take a sample that's right on the
11 day that's occurring, of course the phosphorous
12 levels become elevated. So we have to balance the
13 maintenance schedule of when these chemicals are
14 being used with the sampling protocol that we are
15 also working on the number of times that we take the
16 samples.

17 And what we are doing is trying to average
18 the samplings so we get more accurate and reliable
19 data for phosphorous and nitrogen removals.

20 So those take a little while to do, but we
21 should be ready by at least October of this year to
22 provide the National Park Service as well as this
23 Commission with what we feel is reliable data in so
24 far as the system.

25 Now, AECOM has been hired to do this.

1 AECOM did not design the plan. It was designed by
2 another company. AECOM is here basically to try to
3 optimize the existing type of system. What you
4 should know is Condition 1c calls out for IWS or
5 individual wastewater system. Those systems are not
6 designed for commercial users. It's designed for
7 domestic use up to thousand gallons per day.

8 We are a medical facility. We're
9 commercial. We generate more than a thousand gallons
10 per day. So what we have to use is not an IWS, we
11 use a wastewater treatment works under the Department
12 of Health regulation. Those are different kinds of
13 units that treat sewage effluent from commercial
14 users.

15 So the Condition 1c only specifies that we
16 have to use a IWS, but we can't use a IWS because
17 we're too big. And so there's a little bit of a
18 problem there. But we are using the existing system
19 to try to optimize it.

20 It is our hope we will be able to meet the
21 standards, but we won't know that until we start
22 testing the results and see where we are.

23 Meanwhile we will represent to the
24 Commission that we will be working with Dr. Zimpfer
25 to keep him apprised of our sample data as we're

1 moving along, and the progress of our remedial steps
2 to correct the existing plant.

3 And if you have any questions, we're here
4 free to answer any of those.

5 CHAIRPERSON WONG: Thank you.
6 Commissioners, any questions?

7 COMMISSIONER MAHI: A quick one.

8 And so I remember we talked about this the
9 last time, the fact that the effluent is going to be
10 at higher level.

11 So what are you prepared to do right after
12 that? If you find out in your testing it's well over
13 1000 or maybe 2000 plus of that effluent that is
14 going to be going through that plant, have you
15 already gotten to the gears of what kind of action
16 you'll take?

17 MR. KUDO: Let me defer this to our AECOM
18 engineer, Bob Stahlings.

19 CHAIRPERSON WONG: Do you swear or affirm
20 that the testimony you're about to give is the truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON WONG: Please continue.

23 ROBERT STAHLINGS

24 Was called as a witness by and on behalf of Kaiser
25 Permanente, was sworn to tell the truth, was examined

1 and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: When we optimize the system,
4 it will take a little time and we will see what the
5 results are. Once we get it optimized, we're going
6 to report back as to what the results are.

7 If we have to remove higher levels to meet
8 the condition than the system is capable of, then
9 there are other avenues. This system was always
10 meant to be an interim system, and the facility is
11 supposed to connect to the public sewer.

12 So basically Plan B would be to either
13 accelerate sewer construction or put their own pipe
14 to the existing sewer, because the county sewer runs
15 past the facility, but it's not connected to anything
16 yet.

17 So they could build their own pipe to
18 another sewer nearby. Short of that, you could make
19 it a tight tank and pump the water out, and not let
20 it discharge, or you could put a mechanized system
21 which is a very costly solution.

22 So those are the options once we go through
23 the optimization. If we can't meet the condition,
24 then we have to explore those other options. The
25 system can only do what it is able to do based on the

1 flow and load coming into it.

2 COMMISSIONER MAHI: Does Kaiser plan to
3 expand their health services? Is the population of
4 Kona going to increase, or is it going to maintain
5 the same level, I doubt it, but -- I think you should
6 start bringing in the city or the county right away,
7 right? Are you talking to them?

8 MR. KUDO: In regard to the potential
9 expansion of the medical facility, I have to turn to
10 Terry Muldoon who is with Kaiser Permanente.

11 CHAIRPERSON WONG: May I swear you in,
12 please?

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

15 THE WITNESS: I do.

16 CHAIRPERSON WONG: Thank you, please
17 continue.

18 TERRANCE MULDOON
19 Was called as a witness by and on behalf of Kaiser
20 Permanente, was sworn to tell the truth, was examined
21 and testified as follows:

22 DIRECT EXAMINATION

23 THE WITNESS: Thank you, Commissioner.

24 Where we are today is that our Kona
25 facility is pretty fully utilized. And we do see the

1 future being an increase in sizing to support the
2 community of Kona.

3 We have two other clinics currently on Big
4 Island, one in Waimea and one in Hilo, both probably
5 too far to take care of many of the members on this
6 side. So that is something we look to.

7 The requirements for us then would --
8 certainly additional square footage that's going to
9 wind up being additional ways to dispose of effluent,
10 and we look to the sanitary treatment plant to be
11 available at some point to be able to do that. I
12 mean, that's certainly our hope.

13 But dates on that have sort of come and
14 gone, right? The original things we saw were like
15 2010, and we are here in 2018 and don't have it. So
16 that's really where we need to be.

17 And that would solve the rest of these
18 issues as well.

19 MR. KUDO: The system is presently designed
20 to handle up to about 3,000 gallons per day, but we
21 are generating about 1100, 1200 gallons today.

22 COMMISSIONER MAHI: Thank you.

23 CHAIRPERSON WONG: Commissioner Ohigashi.

24 COMMISSIONER OHIGASHI: Translating those
25 figures based on your projection, how long do you

1 think that the system that you are placing into
2 effect would last?

3 MR. STAHLINGS: I think where we are right
4 now will suffice for area of buildings we have into
5 the future. We're generating about a third of the
6 amount of water that the system was designed to
7 handle. Part of that is because we are doing a lot
8 of water reuse and some other things as well that I
9 think is helping that. But, you know, the need for
10 us to grow, I think, is coming.

11 If I had to guess, I would say we're
12 probably looking -- talking to the county in probably
13 five years, we need to do some additional growth in
14 this area to take care of the needs of the population
15 for health care.

16 COMMISSIONER OHIGASHI: I just want to
17 follow up.

18 So would that mean in about five years
19 you're hoping to hook up to the system, or does that
20 mean that within five years you have enough capacity
21 in the system you're designing to handle that
22 expansion?

23 MR. STAHLINGS: My guess is we don't have
24 enough capacity for additional square footage on the
25 site. We would have to deal with that and hopefully

1 that's connectivity, there is other answers as
2 described, different waste treatment plants that
3 perhaps we would have enough area to do on that site,
4 about a ten-acre site, but we haven't gone into any
5 design at this point.

6 COMMISSIONER OHIGASHI: That type of
7 planning, that area, especially, would that be
8 something that you could confer with the National
9 Parks?

10 MR. STAHLINGS: I'm certain that that would
11 be part of it. The public is always involved in
12 those conversations, so I would see that as a
13 necessity, but also the rest of the community as
14 well.

15 COMMISSIONER OHIGASHI: If you put
16 additional wastewater facility on the property to
17 handle the additional needs of that, that would also
18 be something that people like the National Park --

19 MR. STAHLINGS: I agree, it would have to,
20 but also it's a community concern as well. The site
21 was designed for additional square footage on it, so
22 it was always intended to grow, but the next growth
23 there actually would be a bit more intense because we
24 see the need in the future to bring additional
25 medical specialties here to the island which will

1 necessitate other services being available for the
2 Kona community, probably ambulatory surgery and
3 things like that that we don't do today. So once we
4 make that decision, things do get a bit bigger.

5 CHAIRPERSON WONG: Commissioner Aczon.

6 COMMISSIONER ACZON: Thank you, Mr. Chair.
7 I had the same questions that Commissioner Ohigashi
8 had. Thank you for your answer.

9 CHAIRPERSON WONG: Any other questions?
10 Commissioner Okuda.

11 COMMISSIONER OKUDA: Mr. Chair, I have a
12 question of the National Park Services, but only
13 after Mr. Kudo's presentation.

14 MR. KUDO: My presentation is completed.

15 COMMISSIONER OKUDA: If I preface my
16 question by saying this: The ultimate decision on
17 any of this is usually made pursuant to statute and
18 rules by the Commission. So my question is not to
19 suggest that anyone has a veto over any party or
20 intervenor or people giving testimony as an automatic
21 veto over anyone else, that is not my intention.

22 My question to you, Dr. Zimpfer, having
23 heard what Lanihau Property has reported to the
24 Commission and what Kaiser has reported to the
25 Commission, is the National Park Service satisfied

1 with the progress that is taking place at least
2 up-to-date, right now? Not talking about
3 satisfaction about what actually ultimately might
4 happen, but at least what is going on today, is the
5 National Park Service satisfied with that?

6 And number two, is there something that the
7 National Park Service would suggest at this point in
8 time which might help with the progress?

9 MR. SIMPFER: I think we're pleased with
10 the progress. Mr. Kudo and the engineers and Mr.
11 Mulldoon are all making progress. Part of our
12 frustration was that the condition wasn't being met,
13 and I didn't really know who to turn to.

14 So now I think we have got a path forward
15 if something similar arises on the area that the LUC
16 conditions apply to, I would first go to Mr. Smith,
17 and then if that isn't successful, I guess I would go
18 back to LUC, but I'm happy with the way things are
19 progressing now.

20 COMMISSIONER OKUDA: Thank you, Doctor, for
21 that testimony.

22 CHAIRPERSON WONG: Anyone else?

23 Just one question for Kaiser.

24 At this point in time we will wait until
25 June to start up the machine, I'm going to call it.

1 So and then you'll take approximately three to four
2 months to figure out the regulations and how to
3 regulate.

4 So hopefully you can keep the National Park
5 Service informed of what's happening after everything
6 is balanced up, so at least we know that everything
7 is satisfied and corrected.

8 MR. KUDO: Yes, we will be doing that.

9 MR. SIMPFER: I might add one more thing
10 too. One of the things was there wasn't a consistent
11 way of reporting data. So when you get the system
12 figured out, let's figure out like a schedule. I'm
13 real happy with the data you provided today, but some
14 schedule.

15 CHAIRPERSON WONG: Thank you.

16 Commissioner Mahi.

17 COMMISSIONER MAHI: One more comment. The
18 way I see it, I think probably could tell with my
19 approach to questioning, my comments, is that you're
20 going to have to think about the next 20 years, at
21 least 20 in terms of where Kaiser is going to be.
22 And also the growth of this community. Because no
23 doubt it's expanding.

24 I would hate to see a freeway run through
25 Kaahumanu, but that may happen. Just look at the

1 area of Mauna Lani, how that's developed in the last
2 what, three years. I would really, really think
3 about that. If you hookup with the city right away,
4 that might be the best choice rather than -- excuse
5 me -- but waste time and waste money on a small
6 system that you know it's only going to -- double the
7 amount of people that you can serve now and I think
8 it's going to quadruple and quadruple in the next
9 20 years. That's just my thinking.

10 CHAIRPERSON WONG: Thank you. Anyone else?

11 VICE CHAIR CABRAL: When the Kaiser
12 gentleman mentioned Kaiser in Hilo I thought, oh, I
13 should maybe declare, I'm certain it's not a
14 conflict. I have 20-plus employees and I write big
15 checks to Kaiser every month, but I don't think it's
16 a conflict.

17 MR. STAHLINGS: Thank you for being a
18 member.

19 CHAIRPERSON WONG: Commissioner Mahi.

20 COMMISSIONER MAHI: I've been a Kaiser
21 member for the past 48 years.

22 MR. STAHLINGS: Thank you as well.

23 CHAIRPERSON WONG: Commissioner Ohigashi.

24 COMMISSIONER OHIGASHI: Assuming that -- my
25 real question, what is our next step? The National

1 Park Service agrees to keep this issue open for the
2 updated information that Kaiser has promised us? And
3 that Mr. Kudo said something like October or
4 December, but for that particular purpose?

5 MR. KUDO: I think we are prepared to come
6 back to the Commission at the end of the year to
7 report to the Commission what we have in terms of
8 plans, if we have any problems or anything else. But
9 meanwhile I think what we are intending to do with
10 the National Park Service is work out a private MOU
11 with the park service where they are satisfied with
12 the type of remediation and the levels that we're
13 able to achieve with this type of plan.

14 So that's our intent, but it's up to the
15 Commission as to what you would like us to do.

16 CHAIRPERSON WONG: Commissioner Chang.

17 COMMISSIONER CHANG: I would just perhaps
18 recommend as alternative -- I appreciate the fact
19 that Kaiser will be providing updates, but if that
20 could be added to Lanihau's annual report. I think
21 Lanihau provides us an annual report pursuant to LUC
22 conditions, so let's try to use existing process we
23 have got to update the Commission.

24 Hopefully there is no need to have another
25 meeting. But if Kaiser and I guess Lanihau, if all

1 of your other tenants as well, if there other issues,
2 that those are all incorporated into your annual
3 report to LUC, that way we can evaluate the status as
4 well as likewise with the National Park Service, if
5 they have any issues that that should be a good way
6 to provide the Commission a regular format for us to
7 get an update.

8 CHAIRPERSON WONG: Thank you. Any other
9 questions for Kaiser? If not, county will you please
10 proceed?

11 MS. SELF: The county has nothing to add at
12 this time except to maybe mention that any
13 arrangement that is between NPS and Kaiser is, you
14 know, that's up to them. If they do plan to expand
15 and they come in for plan approval, then the county
16 at that time would refer to the Decision and Order
17 and make sure everything is in compliance with those
18 conditions at that time.

19 But it won't mean that we're contacting NPS
20 and asking about this arrangement that's happening
21 right now.

22 CHAIRPERSON WONG: Thank you. Any
23 questions? Commissioner Okuda.

24 COMMISSIONER OKUDA: Thank you. Question
25 to the county. And this question is not intended to

1 imply in any way that your answer to be deemed to be
2 a waiver of the county's requirements on anything
3 dealing with the project or lands or anything even
4 remotely connected to that.

5 But having heard the discussion so far, is
6 the county satisfied at least up to this point in
7 time as far as the actions that are being taken with
8 respect to the Condition and the Decision and Order?

9 MS. SELF: Yes.

10 COMMISSIONER OKUDA: Thank you very much.

11 CHAIRPERSON WONG: Any other questions for
12 county? If not, OP.

13 MS. APUNA: OP has nothing further to add.

14 CHAIRPERSON WONG: Any questions?
15 Commissioner Okuda.

16 COMMISSIONER OKUDA: Just so that you know,
17 I ask the same question, again, without your answer
18 being a waiver of anything that the Office of
19 Planning might state with respect to this in the
20 future, having heard the testimony and the
21 explanations that have been given and the documents
22 in the record, is the Office of Planning satisfied
23 with what is being taking place in this point in
24 time?

25 MS. APUNA: Yes. I think we are happy with

1 the communication that is occurring here with the
2 parties, yes.

3 COMMISSIONER OKUDA: Thank you very much.

4 CHAIRPERSON WONG: Commissioners, do you
5 have any final questions or comments for anyone, any
6 of the parties?

7 Commissioners, at this time, this is a
8 status report. We are not required to take any
9 action at this time. Since no action is taken at
10 this time, the requirement of a continued annual
11 status report will remain, and this docket will
12 remain open. Is there any discussion or questions?

13 COMMISSIONER OHIGASHI: When is the next
14 status report?

15 MR. SMITH: January 2019.

16 COMMISSIONER OHIGASHI: That would be
17 perfect.

18 CHAIRPERSON WONG: Anyone else? If not,
19 thank you all, we'll take a five-minute recess.

20 (Recess taken.)

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

23 CHAIRPERSON WONG: The next agenda item is
24 a continued Status Report on Docket No. A10-788 HHFDC
25 & Forest City - Kamakana Villages at Keahuolu,

1 Hawai'i, a Petition to Amend the Agricultural Land
2 Use District Boundaries into the Urban Land Use
3 District for certain lands to situate at Keahuolu,
4 North Kona, consisting of approximately
5 271.837 acres, Tax Map Key No. (3)7-4-021:020
6 portion, (3)7-4-021:024, (3)7-4-021:025,
7 (3)7-4-021:026, (3)7-4-021:027.

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

10 MR. SIMPFER: I'm Jeff Simpfer,
11 Environmental Protection Specialist at
12 Koloko-Konokohau National Park.

13 MS. SELF: Deputy Corporation Counsel, Amy
14 Self, and to my right is the Deputy Planning Director
15 Daryn Arai.

16 MR. HIRAI: Craig Hirai, Executive Director
17 of Hawaii Housing Finance and Development
18 Corporation.

19 MS. CHAR: Elizabeth Char With Michaels
20 Development Company, and with me today is Sheryl
21 Nojima, consultant.

22 MS. APUNA: Dawn Apuna, Deputy Attorney
23 General, and with me is Lorene Maki.

24 CHAIRPERSON WONG: Let me update the record
25 in this docket.

1 On September 15, 2017, the Commission
2 received an email from National Park Service
3 regarding Docket A00-738 and A10-788 regarding
4 noncompliance with conditions.

5 On January 24th, 2018, the LUC met in
6 Kailua-Kona, Hawai'i to receive status reports on
7 both dockets and decided to allow the Parties to
8 continue discussions and resolve the noncompliance
9 issues in both matters.

10 On May 15, 2018, an LUC agenda notice for
11 the May 23rd-24th, 2018 meeting was sent to the
12 Parties and Statewide, Hawai'i and Oahu mailing list.

13 On May 18th, 2018, the Commission received
14 email notification that representatives of the
15 Michaels Development Group is here. You submitted
16 written testimony.

17 The Commission also received notification
18 via phone call from Jon Wallestrom that his
19 organization Alakai Development Kona LLC, was no
20 longer actively involved in this docket and would not
21 be attending this meeting.

22 On May 21st, 2018, the Commission received
23 written testimony from Michaels Development Group;
24 and email correspondence from the National Park
25 Service.

1 For the members of the Public, please be
2 reminded that the Commission will not be considering
3 the merits of the A10-788 Petition; rather that the
4 Commission is interested in learning about the
5 current state of the activities related to this
6 docket, including compliance with conditions.

7 So let me go over the procedures for this
8 docket.

9 Those individuals desiring to provide
10 public testimony for the Commission's consideration
11 will be asked to identify themselves and will be
12 called in order to the witness box where they will be
13 sworn in prior to their testimony.

14 At the conclusion of the public testimony,
15 the Chair would like the Intervenor to describe how
16 its concerns have been addressed.

17 Also I wanted to say that on May 22nd
18 National Park Service testimony was received. So
19 just put that in the record somewhere.

20 Now, let's see, the Chair will next call
21 for a status report from the Petitioner.

22 The Chair will then call on the County of
23 Hawaii.

24 And finally the Chair will call OP.

25 Is there any individual desiring to provide

1 public testimony on this?

2 COMMISSIONER OKUDA: Mr. Chair, I would
3 like to disclose a relationship.

4 CHAIRPERSON WONG: Please.

5 COMMISSIONER OKUDA: My law firm and myself
6 represent Hirai Realty Incorporated, which is a real
7 estate company brokerage which was started by Mr.
8 Craig Hirai's father.

9 I do not socialize with Mr. Hirai, as I
10 disclosed at the earlier hearing, even up until to
11 date, I've never gone to lunch or dinner with him,
12 and he has not bought me lunch or dinner, I have not
13 bought him lunch or dinner.

14 And my contact with Hirai Realty is his
15 brother Roy Hirai, and I do not believe that my
16 representation providing legal services to Hirai
17 Realty will affect any type of legal decisions or
18 questions I may ask in these proceedings.

19 CHAIRPERSON WONG: Any opposition, National
20 Park Service?

21 MR. SIMPFER: No

22 MS. SELF: No.

23 MR. HIRAI: No.

24 MS. CHAR: No.

25 MS. APUNA: No.

1 CHAIRPERSON WONG: Okay. Let's keep on
2 going.

3 VICE CHAIR CABRAL: Excuse me. I made a
4 declaration at the last meeting and I will again.

5 I deal with HUD housing, and I, many, many
6 years ago may have had a contract or arrangement with
7 Housing Authority in some of its former titles or
8 changes, so I have no connection to anything going on
9 at this point except that I'm a manager of some HUD
10 projects in Hilo that are not connected to this
11 project.

12 CHAIRPERSON WONG: Any opposition, just for
13 the record?

14 MR. SIMPFER: No.

15 MS. SELF: No.

16 MR. HIRAI: No.

17 MS. APUNA: No.

18 CHAIRPERSON WONG: Let's keep on going.

19 National Park Service, please make your
20 presentation.

21 MR. SIMPFER: Aloha, Chair and
22 Commissioners.

23 Thank you for this opportunity to provide
24 written comments of the National Park Service with
25 you today.

1 The State Land Use Commission and the
2 National Park Service share a commitment to protect
3 Hawai'i's unique and fragile natural and cultural
4 resources.

5 At the January 24th, 2018 LUC meeting,
6 Commissioners encouraged NPS to reach out and be more
7 proactive in working with the Michaels Development
8 Corporation in order to find an acceptable solution
9 to meet the commitments that were included in the
10 LUC's 2010 Findings of Fact, Conclusions of Law,
11 Decision and Order for removing pollutants from
12 stormwater from the parking lots at the family and
13 senior communities in Kamakana Villages.

14 In late January 2018, I reached out via
15 phone and email to Ms. Elizabeth Char, Development
16 Officer at the Michaels Organization. We have
17 communicated several times since then.

18 On April 10th of this year, Ms. Char sent
19 us an email with a proposal to install Flexstorm
20 filters in the existing drain inlets in the paved
21 parking lots at Kamakana in order to satisfy
22 Condition 13 of the 2010 D&O.

23 In comparison with the Best Management
24 Practices, our National Park Service technical
25 experts have concluded that these filters would not

1 be as effective at removing stormwater pollutants as
2 the BMP described in Condition 13 of Decision and
3 Order.

4 On May 15, 2018, we sent a short email
5 describing our determination.

6 On May 21st, 2018, we sent a letter
7 describing in detail our concerns. We also copied
8 LUC and HHFDC on that letter.

9 We would further note that the NPS is not
10 in a position to approve or disapprove the proposed
11 inlet filter protection from either an engineering or
12 jurisdiction standpoint, but note that the proposed
13 filters do not meet the standards set in the
14 Condition.

15 The LUC is the state agency with
16 jurisdiction over the applicable Finding of Fact,
17 Conclusion of Law and Decision and Order, and only
18 the LUC can determine whether or not Kamakana is in
19 compliance with the requirements.

20 From both an ecological and practical
21 perspective, vegetated swales are a better choice
22 than storm drain filters. These swales require less
23 maintenance to maintain efficacy. And if they are
24 designed as part of the landscape from project
25 inception, they are cheaper over the long-term than

1 stormwater filters that need to be replaced on a
2 continuing basis.

3 Since this is the first phase of the
4 project, we hope that additional phases will
5 integrate vegetated swales instead of the storm drain
6 filters to proactively manage stormwater pollutants.

7 CHAIRPERSON WONG: Commissioners, any
8 questions? If not, thank you.

9 Commissioner Okuda.

10 COMMISSIONER OKUDA: Dr. Zimpfer, if I can
11 ask this question.

12 What would the National Park Service like
13 the Land Use Commission to take as far as action?
14 For example, are you -- is the park service asking us
15 to schedule an evidentiary hearing to determine on a
16 full record whether the conditions has been met or
17 not; or does the National Park Service wish further
18 discussions with the developer?

19 Can you tell me what the park service
20 recommended next step, if the park service has such a
21 recommendation?

22 MR. SIMPFER: Well, to be honest, this is
23 the first phase of several phases with this
24 development. And I spoke with Ms. Char just before
25 we walked in here.

1 In an ideal world they would put in
2 vegetated swales, but this phase has already been
3 constructed. It would be very difficult to retrofit.
4 So we would be okay with the storm drain filters that
5 the highway -- Department of Transportation is
6 putting in fronting the park. But really for future
7 phases we really would like to see the vegetated
8 swales.

9 And then if they put in storm drain filters
10 to retrofit what's already there, we would like to
11 know when they need to be replaced and that they're
12 replaced so that they could put that like with Kaiser
13 in the annual report saying, well, this year we
14 replaced storm drain filters, I don't know.

15 Department of Transportation has a
16 schedule, and I don't know what the schedule would be
17 because you have different traffic. But so long as
18 if they put in some sort of retrofit filter that was
19 best available and maintain them as they should, we
20 would be okay.

21 But for future phases we would like to see
22 the vegetative swales because they're cheaper and
23 require less maintenance.

24 COMMISSIONER OKUDA: I probably didn't
25 state the question as clear.

1 My question really dealt more with process
2 and procedure, not necessarily with the ultimate
3 solution or ultimate determination whether there is a
4 breach of a condition or not.

5 Maybe just to state it more in plain
6 English, is it the National Park's position that more
7 discussion among the parties would be productive and
8 efficient; or would it be more productive and
9 efficient for the Commission to do something else
10 procedurally such as set an evidentiary hearing?

11 CHAIRPERSON WONG: You may be want to wait
12 until we hear everyone and then come back to you, if
13 you don't mind.

14 COMMISSIONER OKUDA: I hold my question in
15 abeyance.

16 COMMISSIONER CHANG: Can I ask, does the
17 condition in the LUC clearly define BMPs? Because
18 your assertion is that the particular proposed
19 treatment is -- doesn't meet the BMPs.

20 MR. SIMPFER: It spells it out quite
21 clearly vegetative swales, unless somebody reads it
22 differently, that's how I read it.

23 COMMISSIONER CHANG: Was that a consistent
24 condition? For example, was that a condition that
25 NPS asked for during the hearing --

1 MR. SIMPFER: Prior to my arrival. But how
2 I understand it is, it was a condition that the NPS
3 suggested when the EIS was being developed. It was
4 incorporated in the EIS. And then the Office of
5 Planning took that condition and put it in the LUC
6 Decision and Order. That's my understanding of how
7 it happened.

8 COMMISSIONER CHANG: Thank you. I
9 appreciate that.

10 CHAIRPERSON WONG: Just one question.

11 So let's say -- this is layman talk -- the
12 vegetative swale is doing this at 50 percent, there's
13 something better that would do it at 100 or
14 110 percent?

15 MR. SIMPFER: No, the vegetative swale
16 would probably take it out more than the something
17 better that I think you were referring --

18 CHAIRPERSON WONG: That's what I'm --

19 MR. SIMPFER: And it's probably more
20 effective and doesn't require hardly any maintenance.

21 CHAIRPERSON WONG: Just one of those
22 questions that if something is being done, you know,
23 cleaning it up really well and better, wouldn't that
24 preclude that other portion --

25 MR. SIMPFER: They proposed these Flexstorm

1 filters, and from my -- ideally there will be
2 vegetative swales, but we can't do that, so if you
3 are going to go with some off-the-shelf thing, you
4 might as well use the most effective off-the-shelf
5 thing that we're aware of, that is what Department of
6 Transportation is putting.

7 Does that answer your question?

8 CHAIRPERSON WONG: For now.

9 Any other questions or comments? If not,
10 Mr. Hirai.

11 MR. HIRAI: I beg your pardon, but I didn't
12 submit any written testimony, but I think -- and I'll
13 probably pass it onto Michaels, but I would like to,
14 as a practical matter, adopt something like what we
15 were saying is that put in the DOT drainage boxes,
16 and going forward we would be happy to work with
17 National Park Service and the new developer for
18 Kamakana which is SCD Kamakana LLC.

19 CHAIRPERSON WONG: Okay, thank you.

20 MS. CHAR: Thank you very much, Chair and
21 Commissioners.

22 We submitted written testimony on May 21st,
23 so I won't repeat any of the documents that are in
24 there.

25 We do want to clarify a couple of points

1 that were brought up.

2 Our current design does meet Condition 13
3 of the 2010 D&O, and raised an issue with respect to
4 filtration of certain chemicals which are not
5 testified nor stated in Condition 13. Condition 13
6 does mention vegetative swales, and we do have grass
7 swales on our site.

8 So what we are agreed to do would go above
9 and beyond what's been currently delivered, but we
10 are certainly open to incorporating the filter that
11 NPS mentioned that's being utilized on the DOT
12 highway expansion project, which is a very well
13 traveled highway, and somewhat different from an
14 85-unit residential project, but we understand -- we
15 hope if NPS is satisfied with that, then we would
16 meet that condition.

17 CHAIRPERSON WONG: Thank you. Any
18 questions or comments? If not, county.

19 MS. SELF: The county has nothing to add at
20 this time.

21 CHAIRPERSON WONG: Thank you. OP.

22 COMMISSIONER CHANG: Can I ask a question?

23 MS. APUNA: OP has nothing to add right
24 now.

25 CHAIRPERSON WONG: Go ahead.

1 COMMISSIONER CHANG: Can I ask OP, I'm
2 going back to Condition 13 on the original Land Use
3 Approval, what is your understanding -- because
4 obviously we've got this dispute here, NPS says not
5 following BMP, and we have got the developer saying
6 they are within the condition. I don't know if you
7 were here when that was decided, but what's your
8 interpretation or position of compliance?

9 MS. APUNA: I think -- I wasn't here for
10 this, but I understand your question.

11 There's two parts. To the extent
12 practicable and consistent with the applicable laws,
13 Petitioner shall design storm and surface runoff BMPs
14 to treat the first-flush runoff volume;

15 And then second paragraph after that, to
16 the extent practicable and consistent with applicable
17 laws, Petitioner shall implement landscaped areas,
18 such as grassed or vegetative swales.

19 So I think -- I don't know if I can say
20 officially what our position would be, but we can see
21 the interpretation by both parties that, you know,
22 one, vegetative swales would be probably preferred.
23 But I think this first paragraph would allow for
24 other types of BMPs.

25 CHAIRPERSON WONG: Commissioner Ohigashi.

1 COMMISSIONER OHIGASHI: So then my question
2 is:

3 Was there a reason why vegetative swales
4 were not included as part of the parking area -- I
5 guess to counsel, the Petitioner?

6 MS. NOJIMA: Sheryl Nojima, and I'm with
7 Gray Hong Nojima & Associates, civil engineer for
8 Michaels Development on this project.

9 And there are some -- as Ms. Char
10 mentioned -- there are vegetative grass swales within
11 the project site. And there are -- the parking lots
12 runoff will enter into a drain inlet, and then it's
13 conveyed to a seepage pit.

14 I think last time at the last meeting we
15 talked about seepage pit, much the way the seepage
16 pits are designed. They're six to eight feet in
17 diameter. There is 18 inches of gravel surrounding
18 the pit, and the pit is sized to handle the
19 first-flush runoff is what is stated in the Condition
20 13.

21 In the case of parking lots and the site
22 plan, sometimes it's not as practical to have all of
23 the runoff from the site conveyed to a grass swale,
24 and we're contending with on the site you have, we're
25 trying to provide as many affordable housing units as

1 possible, so grass swales, I agree, it's a good
2 system. It's easy to maintain. However, it does
3 take up more space. And especially in Kona, grass
4 swales to keep the swales grass, it does take water.
5 A lot more irrigation.

6 So we have to weigh all of these factors,
7 to take all of these factors into account when we're
8 designing a site.

9 We have been going back and forth with the
10 National Park Service. And I'm grateful for --
11 Dr. Zimpfer did send us some information. We took a
12 look at that. Also looked at another system which we
13 felt in this case would be better suited for this
14 particular site.

15 The system we looked at does remove
16 petroleum products as well as suspended solids which
17 is stated in the condition.

18 In terms of the metals, copper, zinc and
19 lead which were mentioned in the product that's being
20 used at the highway, Queen K Highway, that's -- there
21 are product systems that will take care of those kind
22 of pollutants.

23 However, in this case, we felt that this is
24 a residential project, and whereas Queen K is more
25 heavily traveled, you have larger trucks and vehicles

1 going on that kind of highway system.

2 And that's the difference that we were
3 looking at here.

4 But as we mentioned, Michaels Development
5 is willing to install the same system that's being
6 installed by the State DOT.

7 COMMISSIONER OHIGASHI: So getting back to
8 my question. My question was: Did you account -- in
9 the explanation I heard you say that you made a
10 decision that it wasn't practical to place vegetative
11 swales there.

12 MS. KOJIMA: For the parking lot.

13 COMMISSIONER OHIGASHI: And your
14 determination was based on the lack of area available
15 for housing?

16 MS. KOJIMA: The site plan that was
17 developed.

18 COMMISSIONER OHIGASHI: It would take too
19 much space and you would get less housing; is that
20 what you're saying?

21 MS. KOJIMA: Correct.

22 COMMISSIONER OHIGASHI: Did you communicate
23 that decision that you made to the Petitioner that
24 this is what we're going to do? Because what you
25 just indicated to me was that the way the National

1 Park Service read the condition was the correct way,
2 because you made a determination that the swales were
3 not practical.

4 So what I'm trying to get at is, if you're
5 going to deviate from that, there should be a record
6 as to why it's not practical so we can explain to the
7 people like National Park Service, that, yes, their
8 condition is right, it says to the extent practical,
9 and this is the reason why it's not practical.

10 So I'm looking at this as some kind of
11 situation that could have been dealt with or
12 corrected, and to explain what is practicable or not
13 practicable in developing that, because obviously the
14 conditions that he read was correct based upon your
15 explanation.

16 MS. CHAR: I think the Office of Planning
17 mentioned that Condition 13 does allow for --

18 COMMISSIONER OHIGASHI: I understand the
19 condition reads the way they read it. It was just
20 confirmed by your engineer that they took into
21 account that it wasn't practicable to have vegetative
22 swale.

23 So I'm only asking, since you admitted that
24 his reading is correct, I'm only asking what are the
25 practical -- what are the practicable considerations

1 to make it impractical to have it?

2 And whether that was communicated to the
3 Petitioner to tell -- to sort this matter out?

4 MS. KOJIMA: Well, I guess the way I
5 understand it is that swales are one of the options,
6 but it does also say you can have other systems.

7 COMMISSIONER OHIGASHI: But it says to the
8 extent practicable.

9 MS. KOJIMA: Practicable and consistent.

10 COMMISSIONER OHIGASHI: Right.

11 So you made a determination as an engineer
12 that it wasn't practicable and consistent. I'm just
13 saying -- I'm just saying, I'm asking the question.

14 The question is: Did you communicate to
15 the Petitioner so he can work out with Park and
16 Recreation that this is the reason why we found it to
17 be not practicable and that we had to use other
18 methods? Because the preferred method appears to
19 have been swales.

20 MS. KOJIMA: I don't think there is
21 preferred method. It does allow for swales, filter
22 strip, open spaces, or other comparable --

23 COMMISSIONER OHIGASHI: The way I heard
24 your testimony was that I asked the question, did you
25 determine whether or not it was practicable in that

1 area, and you said no, it wasn't because of these
2 reasons.

3 So I assume you looked at whether swales
4 are there because the condition says put in a swale,
5 and then you said no, it's not practicable because we
6 be can't do it in this parking lot area.

7 So I'm going to -- so did you folks convey
8 that to the Petitioner, so the Petitioner can work
9 with people like National Park Service to say, yeah,
10 we agree it's not practicable and that's why we're
11 putting in this --

12 MS. CHAR: Commissioner, are you asking
13 whether we shared our building plans and site plans
14 with HHFDC?

15 COMMISSIONER OHIGASHI: Yes, with regard to
16 those things, and the reason why you chose -- let me
17 finish my question -- the reason why you chose the
18 type of drainage that you did choose over the swales
19 that was recommended in the condition?

20 Because it's simple, was it practicable or
21 not? Now that you determined it was not practicable,
22 is that something that you guys can communicate to
23 the National Park Service to show them why it wasn't
24 practicable, so from an engineering position as to
25 why it wasn't practicable, then there concerns can be

1 addressed?

2 But here we are arguing over a definition
3 of a condition that appears that you guys agree with
4 the National Park Service.

5 I'm just trying to find out, hey, if it
6 wasn't practicable, then say it wasn't practicable
7 and deal with it and try to figure out how it --
8 whether or not -- what other practicable -- what
9 other methods can be used to satisfy the National
10 Park Services, because the condition is there.

11 MS. CHAR: I'm sorry, your question is?

12 COMMISSIONER OHIGASHI: I've finished. I
13 don't have any more to ask of you. I'm just making a
14 statement. It seems to me clear what I'm trying tell
15 you.

16 I'm trying to tell you that your engineer
17 said the way they read the condition is correct, and
18 because of that -- but the condition reads if it is
19 practicable. You made a determination it's not
20 practicable. You should deal with the concern and
21 try to explain why it's not practicable and try to
22 say where it can be practicable implement it, and
23 when it cannot -- and what measure should be taken
24 where it is not practicable to have these vegetative
25 swales. That's all I'm saying.

1 It seems to me that -- I commend the
2 National Park Services for bringing this issue up.

3 MR. HIRAI: If I can state, I think based
4 on our last meeting here that we've taken this to
5 heart, and we want to -- we have advised the CD that
6 in the future we want to make sure that the National
7 Park Service is okay before we start construction.
8 I'm just --

9 COMMISSIONER OHIGASHI: I understand that.
10 What I'm trying to get is -- we're just getting hung
11 up on who's correct.

12 I'm just saying I think National Park
13 Service and you guys have agreed they're correct.
14 Now let's deal with what is practicable under the
15 terms of the condition. And I think that's something
16 that I don't have expertise to work on, but National
17 Park Service --

18 MR. HIRAI: I heard National Park Service,
19 I think there is a practical answer to this
20 particular situation, and also that we will take
21 steps from our side to make sure that this is agreed
22 with Park Service before we proceed on any further
23 phases.

24 CHAIRPERSON WONG: Commissioner Okuda, did
25 you want to continue with your portion that you were

1 going with the National Park Service?

2 COMMISSIONER OKUDA: Yes, and if I can
3 preface that by saying, you know, reasonable people
4 can see that there may be a different interpretation
5 of how the condition reads, and I don't think we're
6 making any type of adjudication or decision exactly
7 what the condition reads at this point in time for
8 the record.

9 But maybe re-asking or again asking my
10 question to the National Park Service, and again with
11 the preface that, you know, intervenors or other
12 parties really have no automatic veto power as matter
13 of law over what a condition is, whether it's
14 satisfied or not.

15 But my question again is, given the
16 testimony and comments that has been stated so far,
17 and I'll ask the question to everybody here, what is
18 the Park Service's position or recommendation as far
19 as the next step this Commission should take?

20 For example, should we allow the parties to
21 have further discussions, with the understanding
22 nobody holds veto power over anybody else?

23 Should we set evidentiary hearing? In my
24 own personal view, I don't think this matter can be
25 decided based on statements at this point in time.

1 We probably need a more complete record, an
2 evidentiary hearing. What does the National Park
3 Service believe should be the next -- maybe next step
4 or the next two steps to deal with this issue, and
5 again, we're not saying deal with it so there is a
6 resolution, because if there is a resolution that's
7 why the citizens of the community have the Commission
8 as a process.

9 MR. SIMPFER: Like I said, if they would
10 put these in in future ones, would put in the
11 vegetated swales.

12 But I also would like to say that Ms. Char
13 said they believe they're meeting the conditions with
14 their -- as it is with the seepage pit, and I've
15 asked them to provide me some sort of evidence that
16 shows that that gravel is as effective as vegetated
17 swales.

18 Also like too clarify two aspects of what
19 happens in the landscape area of the building and
20 then these are the aspect of what happens on the
21 parking lot. Where we are concerned is the runoff
22 from the parking lot.

23 COMMISSIONER OKUDA: Let me be more
24 specific about my question, because it's not so much
25 as far as details of what the arguments or positions

1 are. It's really two questions.

2 Does the National Park Service believe more
3 time for the parties to discuss things would be
4 helpful, with respect to compliance with the
5 condition; and if more time is a recommendation, how
6 much more time?

7 And number two, perhaps to put a drop-dead
8 date on discussions, does National Park Service
9 recommend or want an evidentiary hearing on whether
10 or not the condition is met or not?

11 And I'll ask the same question to everybody
12 who's here today.

13 In other words, number one, do you want
14 more time?

15 MR. SIMPFER: I proposed -- just this
16 morning they proposed the Department of
17 Transportation's filters to us. I am not an engineer
18 and contaminant expert, so I would prefer to run the
19 ideas past our technical expert.

20 COMMISSIONER OKUDA: Whatever the reason
21 is, and we are all interested in the reason, but
22 we -- really the question is, do you want more time?
23 If so, how much more time?

24 And number two, to keep the pressure on
25 everyone else, to speak frankly, do you want an

1 evidentiary hearing and date certain if this matter
2 is not resolved, then everybody comes back here and
3 presents evidence on the record as required by the
4 Administrative Rules of the statute?

5 MR. SIMPFER: I would like a little more
6 time, and I need to consult with our solicitor about
7 the evidentiary hearing. I can't answer that
8 question. But I can get back on both, or we can
9 discuss the different fixes to what's in place, then
10 I can talk to our solicitor about evidentiary
11 hearing.

12 COMMISSIONER OKUDA: Thank you, Mr. Chair.
13 That was the same question I had to everyone here.
14 In other words, do they want more time? If so, how
15 much more time and number two --

16 CHAIRPERSON WONG: Before I go and ask
17 everyone, it appears there's different
18 interpretations of this issue of a swale and any
19 future obligation for future developments, so I would
20 suggest we come back in six months, give everyone
21 more time to try and work out their differences,
22 figure out what is the definition for this entire
23 issue.

24 So I would like to just set up with staff
25 and the parties to come back in six months just to

1 clean out everything, if the Commissioners are okay
2 with that.

3 COMMISSIONER CHANG: Thank you, Chair. I
4 guess my position is, if you can work this out
5 without the necessity of coming back for a Commission
6 hearing, I think that that would be preferable. And
7 it does seem as if National Park Service is saying,
8 give us information for us to evaluate whether this
9 really meets the intent of the condition, and does it
10 address the concerns that we had.

11 So I guess we can schedule something in six
12 months, but to the extent that the parties can be --
13 what I heard NPS say, and appreciated your
14 flexibility in being practical, this space is going
15 up, maybe there's some limitations, but you would
16 like to see, one, that the developer is addressing
17 providing you the information for you to evaluate
18 whether what they're proposing meets the intent of
19 the condition;

20 And two, in future phases that they are
21 actually looking at the language of the condition to
22 make sure that they are meeting both the intent, the
23 letter of the condition and the intent.

24 And, again, it is I think in the parties'
25 best interest. This is a long-term development.

1 National Park Service is going to be a partner and
2 neighbor to you for a very long time, and they seem
3 to be great stewards, that is treating everybody
4 equal in this area, bringing to everybody's attention
5 your concern. So you're being very consistent,
6 appreciate that.

7 To the extent that the parties can come you
8 to an understanding with good information, it is not
9 in the parties' best interest to wait until the very
10 end and we set a hearing and you're sending them
11 things.

12 I would urge you before the hearing comes
13 up, communicate with each other. It is in
14 everybody's best interest. So I appreciate the offer
15 of six months, but if the parties, if National Park
16 Service is satisfied with the progress of the
17 developer, and you feel that they are meeting the
18 needs, then please write back a letter waiving the
19 necessity of the meeting.

20 However, if you feel that they have not
21 progressed enough, then we will have the meeting in
22 six months. So it is incumbent on the developer and
23 everybody else, please keep NPS informed. Talk to
24 them, see if you can work things out, while the
25 conditions exist, if you can work out a better

1 arrangement, because the National Park Service has
2 raised an assertion that you're not in compliance,
3 but they are willing to give you more time.

4 So we would urge the parties to take that
5 generosity and see if you can work something out.

6 CHAIRPERSON WONG: Commissioner Cabral.

7 VICE CHAIR CABRAL: I want to reiterate
8 some of the other sentiments of my fellow
9 Commissioners and somewhat of my concern of what I'm
10 seeing of the big picture.

11 When each development uphill is just going
12 to meet the minimum of what is happening today, then
13 there's going to be this unbelievable amount of
14 destruction downhill as we go on with further and
15 further development. And I'm concerned that the
16 Commission is finding itself in the middle of these
17 interpretations of what is acceptable treatment of
18 sewage or runoff water, as none of us, that I know
19 of, are engineers, are clearly qualified to make
20 those determinations.

21 So I am concerned that we are somehow
22 becoming the enforcing body in this mass number of
23 properties and problems that could go into the
24 future, and I don't have the big picture solution,
25 but I do agree that these parties need to look at

1 what is the maximum care that can be taken.

2 And I agree we need more affordable housing
3 at the same time, but we're going to be in a whole
4 better shape if we take some extra land and make sure
5 we have our runoff and our different waste products
6 in an appropriate way, otherwise we will find we have
7 a whole lot less for our citizens. Thank you.

8 CHAIRPERSON WONG: Commissioner Ohigashi.

9 COMMISSIONER OHIGASHI: Well, I just want
10 to get over this who's right on this condition. It's
11 built. The question that I'm saying is, why can't we
12 explain why it was built that way to each other? Why
13 can't we explain why the swales weren't in there?
14 And if it couldn't be doing, because it's not
15 practicable according to our condition, then we
16 should determine what should be there now, and that's
17 where we should be moving towards.

18 I like the idea that if necessary we have
19 an evidentiary hearing, everybody got to lawyer up
20 and sit in front of us, but that is your choice.

21 CHAIRPERSON WONG: Commissioner Okuda.

22 COMMISSIONER OKUDA: Chair, I just like to
23 state just one thing. I think the conditions speak
24 for themselves. What the condition and the order
25 says, that's what we have to abide by, and that's

1 what we have to enforce.

2 If there is ambiguities in the -- with
3 respect to the condition, or some type of
4 interpretation, we have to deal with that. You know,
5 frankly speaking, that might have been the fault if
6 we're going to lay fault, of the fact that we as the
7 Commission, we have to take responsibility for what
8 prior Commissions have done. We may not have been as
9 clear as we should have been, but that's why there is
10 a process to determine what the conditions say.

11 For me personally, if a decision and order
12 states conditions, I think the consensus is we intend
13 to enforce those conditions that might not have been
14 the practice in the past where conditions have been
15 placed in orders and then, you know, either
16 conveniently or inconveniently forgotten or not
17 enforced, but at this point in time, if a condition
18 is stated in an order, we intend to enforce it.

19 But at the same time, we are not going to
20 go and exceed our authority to enforce something or
21 require something that is not there.

22 If there is ambiguity, we will use the
23 process that the statute and rules have to resolve
24 that. But I do join in what my other fellow
25 colleagues have said. I think what we have in this

1 room are people who really care about the community,
2 and if it wasn't the fact that I think we have come
3 to the conclusion that you all do care, we would just
4 say forget it. Stop the talking, because we wouldn't
5 trust what the talk would result in, we will have the
6 hearing and just make the decision.

7 But it's always better if the community is
8 actively involved if you're dealing with people with
9 good intentions for the community.

10 That's my statement for the record.

11 CHAIRPERSON WONG: Anyone else?

12 OP?

13 MS. APUNA: Yeah, I would like to just say,
14 since we were asked about interpreting Condition No.
15 13, that there is another part to Condition 13 that
16 states that:

17 Petitioner shall submit a copy of the
18 design for storm and surface water runoff BMPs to the
19 National Park Service for consultation.

20 This is supposed to be done 45 days prior
21 to subdivision approval for the residential lots, but
22 I think it kind of does speak to the sentiment that
23 Commissioner Ohigashi had that there should be more
24 communication between the parties in deciding what is
25 practicable for the BMP.

1 So I mean this is an important -- this is
2 why National Park Service is here because they're
3 asking for more communication and to figure out what
4 is practicable as far as BMPs.

5 CHAIRPERSON WONG: Go ahead.

6 MS. CHAR: We did submit plans to Forest
7 City (inaudible).

8 MR. SIMPFER: They submitted to us several
9 years ago their plan, and they submitted because the
10 county told them they needed to, which is fine.

11 So we said what you have submitted is good
12 for the construction phase of the project, but what
13 you have submitted is not acceptable for the
14 occupation phase of the project, operational phase of
15 the project.

16 CHAIRPERSON WONG: Commissioner Ohigashi.

17 COMMISSIONER OHIGASHI: No.

18 CHAIRPERSON WONG: Okay. Anyone else
19 discussion, comment?

20 MR. HIRAI: To that point, like I said
21 earlier, we are going to try to get this resolved
22 before we start construction.

23 CHAIRPERSON WONG: I'm going to ask staff
24 to look into maybe scheduling something in six
25 months. If we don't need to, please tell the staff

1 you worked out your differences, but I want to try to
2 schedule something just in case, and then if not, we
3 are here.

4 Commissioner Aczon.

5 COMMISSIONER ACZON: I don't have any
6 problem with the six-month scheduling, and I'm going
7 to get away with this swale and everything, but still
8 my question is regarding infrastructure to developer.
9 In light of the delays cited in the 2017 annual
10 report, can the Petitioner -- does the developer meet
11 the infrastructure development deadline November 5th,
12 2020?

13 MR. HIRAI: I'm not sure.

14 COMMISSIONER ACZON: So if you come back
15 six months --

16 MR. HIRAI: I'm not sure if I can answer
17 that right off the top of my head right now.

18 This is for Kamakana, right?

19 CHAIRPERSON WONG: Do you need a motion to
20 amend, pretty much, conditions?

21 MR. HIRAI: I'll have to get back to you on
22 that.

23 CHAIRPERSON WONG: Please work it out.

24 COMMISSIONER ACZON: Give us some kind of
25 time when you're going to come back and submit it so

1 we can cover.

2 CHAIRPERSON WONG: If there is no other
3 discussion or comments, since this is a status
4 report, we're not required to take action at this
5 time, and this will -- the requirement of continued
6 annual status report stays, will remain and this
7 docket will stay open.

8 Thank you. Let's have a recess for five
9 minutes.

10 (Recess taken.)

11 (Vice Chair Scheuer present.)

12 Status report and action if necessary,
13 A06-767 Waikoloa Mauka LLC (Hawai'i).

14 CHAIRPERSON WONG: The next agenda item is
15 a Status Report on Docket No. A06-767 Waikoloa Mauka
16 LLC's Petition to Amend the Agricultural Land Use
17 District Boundaries into the Rural Land Use District
18 for approximately 731.581 acres in South Kohala
19 District, Island of Hawai'i, Tax Map Key No. (3)
20 6-8-02:016 portion.

21 On June 10, 2008, the Commission issued its
22 Findings of Facts, Conclusions of Law and Decision
23 and Order on Docket No. A06-767.

24 On February 6, 2014, the Commission mailed
25 notice to Mr. Stefan Martirosian, Waikoloa Mauka LLC

1 Representative, to provide a current status of the
2 project and progress towards complying with the
3 conditions imposed by the June 10, 2008 Decision and
4 Order.

5 On February 19, 2014, the Commission
6 received an annual report dated March 18, 2014 from
7 Petitioner's Planning Consultant Sidney Fuke.

8 On March 2nd, 2016, the Commission received
9 an annual report dated February 29, 2016, stating
10 that the 2016 report was to cover all activities to
11 date, with the next report due on or about
12 March 2017.

13 May 7th to 12th, 2018, the Commission
14 attempted to locate an address to send the May 23rd
15 and 24th, 2018 meeting notice to.

16 On May 15th, 2018, an LUC meeting agenda
17 notice for the May 23-24th, 2018 meeting was sent to
18 the Parties and the Statewide, Hawai'i and Oahu
19 mailing lists. The former legal representative,
20 Benjamin Kudo and the planning consultant who
21 submitted the 2016 annual report were included in the
22 agenda notice mailout; and a notice was sent to the
23 Fee Owner, Waikoloa Highlands, Inc., 1200 South Brand
24 Blvd., #202, Glendale, CA 91204-2641.

25 On May 18th, 2018, the Commission received

1 notice from Attorney Benjamin Kudo, Ashford-Wriston,
2 that he no longer represented Waikoloa Mauka LLC. On
3 the same date, the Commission received email
4 correspondence from Sidney Fuke, Planning Consultant,
5 stating that he no longer represented Waikoloa Mauka
6 and that Natalia Batichtcheva was his last contact
7 for Petitioner.

8 No further annual reports or communications
9 with Waikoloa Mauka LLC have been received as of May
10 21, 2018.

11 On May 22nd, 2018, the Commission received
12 an email from Natalia Batichtcheva stating that she
13 could not attend the meeting. The Commission
14 requested address and contact information to schedule
15 a status report for Docket No. A06-767.

16 For the members of the Public, please be
17 reminded that the Commission will not be considering
18 the merits of the A06-767 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 those individuals desiring to provide
25 public testimony for the Commission's consideration

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

4 Since no representative for Petitioner is
5 present, at the conclusion of the public testimony,
6 the Chair will call for remarks from County of
7 Hawai'i and then OP.

8 Finally, the Commission will have a
9 discussion on how to proceed on this matter.

10 Are there any individuals desiring to
11 provide public testimony?

12 May I swear you in, please?

13 Do you swear or affirm that the testimony
14 that you are about to give is the truth?

15 THE WITNESS: I do.

16 CHAIRPERSON WONG: Please state your name.

17 THE WITNESS: I'm Ruth Smith.

18 CHAIRPERSON WONG: Please continue.

19 RUTH SMITH

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

22 DIRECT EXAMINATION

23 THE WITNESS: Thank you. I've lived in
24 Waikoloa on the island for 23 years. I was on the
25 Steering Committee for the development of South

1 Kohala Community. I now serve on the Action
2 Committee for that. There is a great deal that's
3 going on in Waikoloa.

4 THE COURT REPORTER: Can you slow down,
5 please.

6 THE WITNESS: Oh, absolutely, I can talk
7 Southern, and I can also talk fast.

8 So right now, on the Action Committee,
9 we're looking at issues relating to traffic; and I'm
10 on a sub-committee that three of us are working of
11 the South Kohala Community Development Plan. We are
12 working to see about road and traffic issues in
13 Waikoloa.

14 In the course of that, we have come more
15 than once across Waikoloa Mauka and
16 Waikoloa-Highlands. I think I finally understand the
17 difference between the two of those, or the
18 connection between the two of them, actually.

19 But there is a document that commits them
20 to doing around-about. I don't know how familiar you
21 are with Waikoloa, but Waikoloa Road comes up from
22 the Queen K Highway, then it goes up to meet
23 Mamalahoa Highway, the high road with an intersection
24 in town, a single intersection at Paniola Avenue.

25 And that has for sometime been a concern

1 because we've had -- the size of Waikoloa Village has
2 doubled since I moved there 23 years ago. And with
3 the shutdown of the landfill in Hilo -- there's a
4 number of reasons that traffic has increased a great
5 deal.

6 We also have an -- already have existing
7 low-income housing across the road, across the main
8 intersection, and other proposals are underway.

9 Bottom line, our concern is how is this
10 going to be addressed? In doing our research we
11 found that there is a commitment by Waikoloa Mauka to
12 provide around-about there.

13 So I came today to find out what is
14 happening, and now no one is here. So I'm telling
15 you what's not happening, and just that there is --
16 just to go on record as saying we have a lot of
17 community concerns.

18 They are only going to be exacerbated by
19 some things that we welcome in the Village, but the
20 traffic issues are going to get more serious.
21 There's an organization called Bioenergy doing a
22 recycling program along Waikoloa Road between the
23 Village and the Queen K Highway.

24 Meridian Pacific has broken ground on a new
25 shopping center in Waikoloa. It's called Waikoloa

1 Plaza. They've also committed to sell land to the
2 state library system, and we are finally going to get
3 a public library, I hope before I expire.

4 And that's all good news, but it also means
5 more people, more traffic. We have always had
6 issues, concerns about our in-and-out traffic.
7 There's a single road that comes into Waikoloa.

8 We had a harsh reminder in 2005 that we are
9 a very large cul-de-sac because we had a bad fire,
10 and it cut off the road, the only road. As a result
11 of that the county came in and put in an emergency
12 exit only road, a single-lane road that leads from a
13 street in the Village, it's gated off, only opened up
14 in case of emergency and then goes down to the Queen
15 K Highway.

16 So I'm going to finish up by saying thank
17 you for tracking this. It's important to us. We
18 constantly go through the tension between who will
19 build the road. And I know that we often look to
20 developers to help with us on that.

21 So thank you for being diligent and
22 persistent and hopefully you can help us get
23 something done in Waikoloa. I thank you for your
24 time and your interest.

25 CHAIRPERSON WONG: Thank you.

1 Commissioners, any questions? Thank you, ma'am.

2 CHAIRPERSON WONG: Anyone else wanted to
3 testify?

4 If not. County, do you have any statements
5 on this issue?

6 MS. SELF: Deputy Corporation Counsel, Amy
7 Self. It's my understanding from a letter that was
8 sent to the landowner, our former Planning Director,
9 that had a deadline to meet this condition of the
10 rezone ordinance, and they are currently in violation
11 of that deadline.

12 Because the rezone ordinance did not
13 provide for an extension of time that could be
14 granted by the Planning Director, they're now going
15 to have to go back to County Council to resolve this.

16 And if you want more details, I'll defer to
17 the Deputy Planning Director Daryn Arai.

18 CHAIRPERSON WONG: Commissioners, any
19 questions or comments? Commissioner Ohigashi.

20 COMMISSIONER OHIGASHI: Just one question,
21 and it's not necessarily -- our option in this matter
22 include -- my understanding is that we may have a
23 hearing on an order to show cause as to why we should
24 not -- the permit should be withdrawn.

25 Would the county be able to provide a

1 status report at that time, or could we ask for
2 status report before? If we do have that proceeding,
3 can we ask for a status report from the county as to
4 what is going on?

5 CHAIRPERSON WONG: Yes.

6 COMMISSIONER OHIGASHI: Okay, I don't have
7 a question.

8 CHAIRPERSON WONG: Any other questions for
9 the county? If not, OP, do you have any statements?

10 MS. APUNA: No, we do not.

11 CHAIRPERSON WONG: I'm going to be bad --
12 that's great, thank you.

13 Commissioner Ohigashi.

14 COMMISSIONER OHIGASHI: I'm not sure, did
15 you read into the record any of the correspondence
16 recently sent?

17 CHAIRPERSON WONG: Yes.

18 COMMISSIONER OHIGASHI: Okay.

19 CHAIRPERSON WONG: Commissioners,
20 discussion, comments about this issue? Commissioner
21 Scheuer.

22 VICE CHAIR SCHEUER: I had a procedural
23 question at first and maybe you can chuckle when I
24 say this.

25 Is there any reason for the record that you

1 didn't call for appearances the way you normally do?
2 Is there any purpose in calling for appearances so
3 that the record abundantly shows the Petitioner is
4 not here?

5 CHAIRPERSON WONG: I didn't ask. Is the
6 Petitioner here? Nope. Thank you, just for the
7 record.

8 Commissioners, any discussion on this
9 issue, or do you want to go into executive session to
10 ask what is our direction by legal counsel?

11 VICE CHAIR CABRAL: Yes, I think we need to
12 go into executive session, because I haven't had this
13 problem before. You know, figure out what our
14 options are so we make sure we do the correct and
15 proper thing. I move for executive session.

16 COMMISSIONER ACZON: Second.

17 UNKNOWN VOICE: Did you cite the reason?

18 CHAIRPERSON WONG: To consult with counsel
19 to discuss legal procedures.

20 COMMISSIONER CABRAL: I move to go into
21 executive session to consult with the board's
22 attorney on questions and issues pertaining to the
23 board's powers, duties, privileges, immunities and
24 liabilities.

25 CHAIRPERSON WONG: Commissioner Cabral

1 moved and Commissioner Aczon seconded. Discussion?

2 All those in favor say "aye". Any opposition?

3 We're in executive session.

4 (Executive session.)

5 CHAIRPERSON WONG: We're back in.

6 So just for recap, we were discussing
7 Docket A06-767 Waikoloa Mauka LLC, Petition to Amend
8 the Agricultural Land Use District Boundary into
9 Rural Land Use District for approximately
10 731.51 acres in South Kohala District, Island of
11 Hawaii, Tax Map Key No. (3)6-8-02:016 (portion).

12 Is there any discussion, Commissioners,
13 about this issue? Because we heard from the County
14 and also OP, then we went into executive session.

15 VICE CHAIR SCHEUER: Mr. Chair. I would
16 like to make a motion.

17 CHAIRPERSON WONG: Go ahead.

18 VICE CHAIR SCHEUER: I move that the
19 testimony today and the record, including the absence
20 of a 2017 status report, and an impending June 10th,
21 2018 deadline, leads the LUC to believe that there
22 has not been substantial commencement of use of the
23 subject property in accordance with the
24 representations and commitments made by the
25 Petitioner to this Commission, therefore, the LUC

1 directs the Chair to prepare, with staff assistance,
2 an order to show cause why the property should not
3 revert to its former Land Use District Classification
4 or be changed to a more appropriate Land Use District
5 Classification.

6 CHAIRPERSON WONG: Do I have a second?

7 COMMISSIONER OKUDA: Second.

8 CHAIRPERSON WONG: We're in discussion.
9 Any discussion on this issue? Commissioner Okuda.

10 COMMISSIONER OKUDA: Chair, I would like to
11 reiterate what my fellow Commissioner stated. I
12 think the record is very clear that this step is well
13 supported by the record.

14 CHAIRPERSON WONG: Anyone else,
15 Commissioners?

16 COMMISSIONER CHANG: Thank you. I guess I
17 would like to note for the record that the Petitioner
18 did receive notice of the hearing and is not present
19 at the hearing today.

20 And perhaps they could have explained
21 better, but in absence of Petitioner's presence, I
22 think an Order to Show Cause is an appropriate
23 remedy.

24 CHAIRPERSON WONG: Anyone else?
25 Commissioner Cabral.

1 VICE CHAIR CABRAL: Yes, especially since
2 this is my island. I am concerned that these matters
3 seem to perhaps be -- I'm not going to say ignored --
4 but that there's a problem with follow-up on people
5 who have been granted these rights and privileges,
6 but then seem to never follow-up. And, you know, so
7 I think as a community, or as representative of our
8 community, we need to see if legislature would be
9 able to fund more follow-up in some way, shape or
10 form. Thank you very much.

11 CHAIRPERSON WONG: Commissioner Okuda.

12 COMMISSIONER OKUDA: Chair, what I would
13 like to also state for the record, we're not
14 prejudging any outcome here. This is simply a
15 procedural step to be sure that everybody is treated
16 fairly, not only the Petitioner in this case, but
17 everyone else in the community.

18 CHAIRPERSON WONG: Thank you. Anything
19 else? Commissioner Chang.

20 COMMISSIONER CHANG: One last thing. I
21 think if the County can ensure to provide us status
22 update on the Petitioner's compliance or lack of
23 compliance with County current permitting, I think
24 they have a subdivision or change of zoning, so if
25 you could provide us an update on that as well, that

1 would be very helpful.

2 CHAIRPERSON WONG: Thank you. If no
3 further discussion, Mr. Orodenger, if you please.

4 EXECUTIVE OFFICER: Thank you, Mr. Chair.
5 The motion is to direct Chair with staff assistance
6 to prepare an Order to Show Cause.

7 Commissioner Scheuer?

8 VICE CHAIR SCHEUER: Aye.

9 EXECUTIVE OFFICER: Commissioner Okuda?

10 COMMISSIONER OKUDA: Yes.

11 EXECUTIVE OFFICER: Commissioner Mahi?

12 COMMISSIONER MAHI: Aye.

13 EXECUTIVE OFFICER: Commissioner Cabral?

14 VICE CHAIR CABRAL: Aye.

15 EXECUTIVE OFFICER: Commissioner Chang?

16 COMMISSIONER CHANG: Aye.

17 EXECUTIVE OFFICER: Commissioner Ohigashi?

18 COMMISSIONER OHIGASHI: Aye.

19 EXECUTIVE OFFICER: Commissioner Aczon?

20 COMMISSIONER ACZON: Yes.

21 EXECUTIVE OFFICER: Chair Wong?

22 CHAIRPERSON WONG: Aye.

23 EXECUTIVE OFFICER: Mr. Chair, the motion
24 passes unanimously.

25 CHAIRPERSON WONG: Thank you everyone.

1 Are there further items for today? If not,
2 we are in recess until tomorrow morning at Honolulu
3 Airport.

4 (The proceedings ended at 11:54 a.m.)

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CERTIFICATE
STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on May 23, 2018, at 9:00 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 23rd day of May, 2018, in Honolulu,
Hawaii.

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