

LAND USE COMMISSION  
STATE OF HAWAII

Hearing held on December 5, 2019  
Commencing at 9:35 a.m.  
Maui Arts & Cultural Center  
Haynes Meeting Room  
One Cameron Way, Kahului, Maui

AGENDA

VI. Call to Reconvene

VII. CONTINUED ACTION (IF NECESSARY)  
A04-751 Maui Land & Pineapple Company  
Inc. (Maui)

VIII. STATUS REPORT  
A89-642 C. Brewer Co. (Maui) TMKs 3-5-01:  
por. 01, por. 17; 3-5-07:02; 3-3-01:39, and  
por.16;3-4-32:10, 18.and por. 01

IX. ELECTION OF SECOND VICE CHAIR

X. ADJOURNMENT

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 JONATHAN SCHEUER, Chair  
3 NANCY CABRAL, Vice Chair  
4 EDMUND ACZON  
5 GARY OKUDA  
6 DAN GIOVANNI  
7 DAWN CHANG  
8 LEE OHIGASHI

9 STAFF:

10 LINDA CHOW, ESQ.  
11 Deputy Attorney General

12 DANIEL ORODENKER, Executive Officer  
13 RILEY K. HAKODA, Planner/Chief Clerk  
14 RASMI AGRAHARI, Planner

15 MICHAEL HOPPER, ESQ.  
16 Deputy Corporation Counsel  
17 MICHELE McLEAN, Planning Director  
18 TARA FURUKAWA, Planner  
19 For County of Maui Planning Department

20 Deputy Attorney General  
21 AARON SETOGAWA, Planner  
22 For State Office of Planning

23 GILBERT KEITH-AGARAN, ESQ.  
24 PAUL CHENG, Petitioner  
25 PRESCOTT CHENG, Petitioner  
Attorney for Petitioners

JASON McFARLIN, ESQ.  
VERNON LINDSEY, Petitioner  
Attorney for Wailuku Plantation, LLC

RANDALL SAKUMOTO, ESQ.  
McCorriston Miller Mukai MacKinnon  
BRIAN IGE, Petitioner  
Attorney for RCFC Kehalani, LLC

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	INDEX	
PETITION		PAGE
<u>A04-751 Maui Land &amp; Pineapple</u>		4
<u>A89-642 C. Brewer Co. (Maui)</u>		30
<u>Election of Second Vice Chair</u>		88

CHAIRPERSON SCHEUER: Good morning, this is the December 5th, 2019 portion of the Land Use Commission meeting.

A04-751

The Commission will resume our action meeting on Docket A04-751 Maui Land & Pineapple Company, Inc. (Maui) to Consider Petitioner Maui Oceanview LP's Motion to Amend the Decision and Order dated June 30th, 2006.

Will the parties please identify themselves for the record?

MR. KEITH-AGARAN: Gil Keith-Agaran for the Petitioner. With me are my clients, Paul Cheng and Preston Cheng.

MR. HOPPER: Michael Hopper, Deputy Corporation Counsel representing Maui County Department of Planning. With me are Planning Director Michele McLean and Planner Ann Cua.

MS. APUNA: Good morning, Chair, members, Dawn Apuna for Office of Planning. Here with me today at the hearing is Aaron Setogawa.

CHAIRPERSON SCHEUER: Thank you very much.

To remind everybody here where we left off yesterday, procedurally we were actually still within the portion of the hearing where the Petitioner was

1 presenting its case and responding specifically to  
2 questions from the Commissioners. And part of that  
3 discussion that ensued was what kind of progress  
4 could be made on incorporating all portions of the  
5 agreement between the Petitioner and a third-party  
6 into the D&O as was applicable.

7 So are you prepared to sort of update us on  
8 where you are?

9 MR. KEITH-AGARAN: Yes, Chair. I think we  
10 had a discussion with the County as well as the  
11 third-parties that are parties to the settlement in  
12 question. And I think we worked through most of the  
13 items on what could be included as findings in the  
14 Findings of Fact, and what could be conditions which  
15 the County is comfortable with in enforcing.

16 I think we're fairly close, and I think you  
17 can ask the County if that's accurate.

18 CHAIRPERSON SCHEUER: Yes. Both the County  
19 and OP, do you want to weigh in at this point?

20 MR. HOPPER: I could, if you like. I do  
21 think we have had several additional conditions that  
22 Department of Planning was okay with enforcing. What  
23 we would hope, and probably anticipate, since you  
24 don't have this revised D&O, if there is approval to  
25 have the ability of the parties to come up with a

1 finalized stipulated Decision and Order, and we would  
2 want to check with housing department on one or two  
3 of the conditions, but we don't anticipate a problem  
4 with them.

5 And so at this point I think we're  
6 comfortable with the changes that have been made, and  
7 reviewed the conditions with the Petitioner, and so  
8 we're satisfied with those additional conditions, and  
9 we think that that will, I think to the extent  
10 possible, have the terms of that agreement put into  
11 the Decision and Order so that it's reflected there.

12 CHAIRPERSON SCHEUER: Thank you, Mr.  
13 Hopper. OP?

14 MS. APUNA: Thank you, Chair. We saw a  
15 draft last night which we were fine with, however, we  
16 didn't participate in this morning's meeting, so we  
17 haven't seen the most latest changes. So we would  
18 need to look at that in order to stipulate.

19 CHAIRPERSON SCHEUER: But you don't -- but  
20 you agree that stipulation might be able to occur  
21 after an action today?

22 MS. APUNA: Yes.

23 CHAIRPERSON SCHEUER: Okay. So anything  
24 further from the Petitioner? If not, then we will  
25 sort of formally go through and give the County a

1 last chance to present anything; OP a last chance to  
2 present anything, and absent any rebuttal from you,  
3 we would go into deliberation.

4 MR. KEITH-AGARAN: No, Chair. I think we  
5 would just submit on what's been provided to the  
6 Commission.

7 CHAIRPERSON SCHEUER: Thank you. Any final  
8 questions at this time for the Petitioner from the  
9 Commission? No, okay.

10 Mr. Hopper, anything further?

11 MR. HOPPER: We didn't actually formally  
12 state a position yesterday, but we would state, just  
13 to clear the record on a few things.

14 We agree with Petitioner's filing about the  
15 Supplemental Environmental Impact Statement and the  
16 Good Cause issue. It did provide essentially a brief  
17 on both of those issues, and we are in general  
18 agreement there.

19 We think the project isn't substantially  
20 different to the point where you would need a new  
21 EIS. The fact that the project is able to fit into  
22 the existing community planning and zoning language  
23 that are in County ordinances, so we think that's a  
24 significant finding that the project will not need,  
25 as proposed, as we see it, amendments to those

1       approvals that have already been granted.

2               So it's similar in that way to the original  
3       project.

4               Of course, as you heard the testimony  
5       yesterday from the last time you were here, there is  
6       a substantial increase in the number of affordable  
7       units that the project will have, by our count, when  
8       it was presented to you before.

9               The number of affordable units that were  
10       going to be provided were 155, that's exclusive of  
11       the 125 that were being built from the Kapalua Mauka  
12       project that were required by a different project.

13              Today, by our count, there will be a total  
14       of 275 affordable units with a potential for 100  
15       additional ohana units, and then in addition to that  
16       the 125 Kapalua Mauka.

17              So with that total, they are substantially  
18       exceeding the requirement of the County's Workforce  
19       Housing Agreement and then some. So the County  
20       supported the project before, and obviously strongly  
21       supports the project now.

22              There's been a substantial increase in  
23       affordable units, as well as the other conditions  
24       that have been added here, so the County does support  
25       the project as it did the last time it was before



1     you.    Thank you.

2                 CHAIRPERSON SCHEUER:   Thank you.   Other  
3     questions for the County from the Commissioners?

4                 Commissioner Ohigashi.

5                 COMMISSIONER OHIGASHI:   Regards to the --  
6     are you proposing that we include a stipulated order,  
7     or are you going to include in your stipulated  
8     findings the agreement that an EIS -- there is Good  
9     Cause to find that there is no need for an EIS?

10                MR. KEITH-AGARAN:   I believe in the draft  
11     that we've been circulating there are findings for  
12     both the existence of Good Cause to make the  
13     amendment, and also that no Supplemental  
14     Environmental Impact Statement is required.

15                MR. HOPPER:   I remembered that, but that's  
16     good to confirm, certainly.

17                CHAIRPERSON SCHEUER:   Anything further for  
18     Mr. Hopper?   Thank you very much.

19                Office of Planning.

20                MS. APUNA:   Chair, with regard to the  
21     Settlement Agreement and the Decision and Order, OP  
22     is satisfied with those terms of the Settlement  
23     Agreement that Petitioner has agreed to incorporate  
24     into the Decision and Order Conditions as provided in  
25     Petitioner's draft as of yesterday evening or in the

1 County's Affordable Housing Agreement.

2 The Settlement Agreement terms not included  
3 in the Decision and Order Conditions, such as pet  
4 friendly features, esthetically pleasing  
5 architecture, preservation of gulches, miles of  
6 sidewalks and special lanes, and the West Maui  
7 Revolving Housing Trust Fund, et cetera, go above and  
8 beyond, and again, are very generous contributions  
9 made by the Petitioner to the community.

10 Rather than the Commission trying to hold  
11 the Petitioner to all of these terms through  
12 integration with D&O conditions, it should be enough  
13 that there are enforcement provisions in the  
14 Settlement Agreement, and that the real value of the  
15 Settlement Agreement has been the community  
16 engagement process over the past few months that  
17 brought the Petitioner and the Community all to the  
18 same page, which is what OP and the Commission had  
19 specifically asked and hoped for.

20 OP's concerns with Petitioner's  
21 representations and arguments as to the need for a  
22 Supplemental Environmental Impact Statement and for  
23 Good Cause to make this Motion to Amend the DBA.

24 Due to numerous ongoing filings and  
25 evolution of this Motion to Amend, OP was not able to

1 receive review by all the State agencies, as in the  
2 normal course of OP's review and analysis. However,  
3 on balance OP is appreciative and pleased with  
4 Petitioner's diligence in getting the community's  
5 buy-in to the project, as well as the generosity of  
6 the Project's affordable housing benefits.

7 Overall, the project is supportable, and  
8 the relevant State agency conditions, in particular  
9 the Department of Transportation's, have been  
10 accepted by Petitioner and incorporated in the  
11 proposed D&O draft.

12 OP's position is thus to support the Motion  
13 to Amend with the conditions we have requested.

14 Lastly, OP would ask that the Condition 17  
15 be amended, which is hazards to aircraft operations  
16 be amended to include glint and glare analysis and  
17 mitigation by the Petitioner, if necessary, due to  
18 the terms and the Settlement Agreement that the  
19 Petitioner will provide solar, rooftop solar for the  
20 family units. Thank you.

21 CHAIRPERSON SCHEUER: Thank you, Ms. Apuna.

22 Are there any questions for the Office of  
23 Planning from the Commissioners? Commissioner Okuda.

24 COMMISSIONER OKUDA: Thank you, Chair.

25 Ms. Apuna, not to pass the buck to you, but

1 I guess I will; and not to prejudge what the  
2 Commission is ultimately going to do, and maybe this  
3 question is also addressed to the other parties, but  
4 if the Commission were inclined to go ahead and  
5 approve what the parties are doing, which I think is  
6 really great, do you have a specific form of the  
7 motion that you would recommend to the Commission as  
8 far as the Commission considering and possibly  
9 adopting which would facilitate what's going on here,  
10 especially since there doesn't seem to be a final  
11 form of a stipulated Decision and Order at this point  
12 in time?

13 MS. APUNA: I guess that motion that would  
14 allow the parties to finalize the Conditions and the  
15 Findings of Facts, a stipulation among the parties, I  
16 don't know. I would leave it to your Deputy AG to  
17 figure out exactly how to make sure that we can move  
18 forward and still be able to add what is necessary.

19 CHAIRPERSON SCHEUER: Commissioner Okuda?

20 COMMISSIONER OKUDA: Thank you.

21 So would it be something along the lines,  
22 if the Commission decides to approve this, and  
23 perhaps with the Chair's permission other parties can  
24 give their input, to approve the Petitioner's  
25 Petition subject to the Land Use Commission's final

1 review and approval of the anticipated Stipulated  
2 Decision and Order?

3 MS. APUNA: Yes, OP would be fine with  
4 that.

5 COMMISSIONER OKUDA: Thank you.

6 CHAIRPERSON SCHEUER: Thank you,  
7 Commissioner Okuda.

8 I'll just -- there's probably a few  
9 different approaches we could do to that. It is  
10 possible, given the general sense of agreement and  
11 what is going to be contained in the order that  
12 exists, that we might be able to delegate some order  
13 of review to the Chair prior to adoption of the final  
14 form of the order, which of course is still within  
15 the discretion of the Commission.

16 Anything further for the Office of  
17 Planning?

18 Chair recognizes the County. Mr. Hopper --

19 MR. HOPPER: Just wanted to add for the  
20 record, we did get additional comments from  
21 Department of Public Works, and they were  
22 incorporated into the D&O. They included DPW's  
23 review of TIAR and an update of the contribution  
24 amount for the traffic contribution as well as the  
25 wastewater condition references that if County

1 wastewater is not available and that a County system  
2 would be incorporated, it's in the current D&O, but I  
3 wanted to reference for the record because previously  
4 that was not part of it. Thank you.

5 CHAIRPERSON SCHEUER: Thank you.

6 Commissioner Ohigashi.

7 COMMISSIONER OHIGASHI: Would you be able  
8 to forward that so that Chair can acknowledge that  
9 it's part of the record if it's used to support a  
10 provision in your stipulated D&O?

11 MR. HOPPER: It was done by email to the  
12 landowner, and they incorporated into the draft D&O.  
13 It is in there. There were existing conditions on  
14 the TIAR and on the traffic contribution. They were  
15 just changed based on the Department of Public Works  
16 wanting to be part of the TIAR review.

17 I don't know if you would need a  
18 Supplemental Statement or something to add that. I  
19 imagine we could file something, if that would be  
20 helpful.

21 But there's a variety of things that are in  
22 the D&O that are stipulated to by the parties, are  
23 supported by the record, but not necessarily a  
24 specific filing or something on them.

25 So whatever the Commission would like to

1 accommodate, we would certainly provide.

2 COMMISSIONER OHIGASHI: I leave it to you  
3 to determine whether or not that is necessary to  
4 support any kind of stipulated order, and if it is,  
5 it would make sense to submit it as formally as part  
6 of the record.

7 MR. HOPPER: We could put it as a finding  
8 or something too, but I think we could discuss that  
9 and work that out as part of the stipulation. I  
10 think it's already in there, but we can, yeah.

11 CHAIRPERSON SCHEUER: I think the issue is  
12 whether it's in the record or not, and if it's not in  
13 the record, whether there is any objection from any  
14 of the parties to making sure that that is included  
15 as part of the record. Petitioner?

16 MR. KEITH-AGARAN: I have no objection. I  
17 think what he described is accurate.

18 MR. HOPPER: And I think it's supported by  
19 the record as far as the time past, the wastewater  
20 situation, that was all part of the filings from the  
21 Motion to Amend. This is just how we're handling it.

22 CHAIRPERSON SCHEUER: Understood. OP any  
23 objection?

24 MS. APUNA: No objection.

25 CHAIRPERSON SCHEUER: Anything further for

1 the Office of Planning? If not, did you have any  
2 final rebuttal, Petitioner?

3 MR. KEITH-AGARAN: No, Chair.

4 CHAIRPERSON SCHEUER: Commissioners, you  
5 have the opportunity to ask any final questions of  
6 the parties; if not, we can move into deliberation.  
7 Any final questions?

8 If not, Commissioners, what is your  
9 pleasure?

10 COMMISSIONER OHIGASHI: Mr. Chair.

11 CHAIRPERSON SCHEUER: Commissioner  
12 Ohigashi.

13 COMMISSIONER OHIGASHI: Seeing that  
14 everybody has since come to agreement, we all  
15 understand what it will be, we hopefully all  
16 understand what you can enforce in the D&O, and what  
17 is outside of the D&O, and based upon the evidence  
18 contained in the record, including all of the amended  
19 memoranda, as well as the motions that have been  
20 filed, including the most recent statement today by  
21 Deputy Corporation Counsel regarding DPW, Department  
22 of Public Works, and based on that, I move to grant  
23 the Motion to Amend subject to the approval by the  
24 Chairperson as well as authorizing the Chairperson --  
25 approval by Chairperson of the conditions contained



1 in the Stipulated Decision and Order.

2 It's anticipated to be prepared by the  
3 parties. Upon the approval of those conditions  
4 contained in the Stipulated Decision and Order, staff  
5 shall prepare a Decision and Order incorporating  
6 those conditions contained in the Stipulated Decision  
7 for the Commission's review and approval.

8 COMMISSIONER ACZON: Second.

9 CHAIRPERSON SCHEUER: A motion has been  
10 made by Commissioner Ohigashi and seconded by  
11 Commissioner Aczon.

12 Members, we are in discussion. Mr.  
13 Ohigashi, do you want to say anything further?

14 COMMISSIONER OHIGASHI: No. It seems to  
15 me, as the Chair has indicated, that this is an  
16 interesting case. It involved different roles by  
17 different parties, and it's been a long drawn-out  
18 matter over 12 years, and I look forward hopefully to  
19 seeing housing being built on the West side.

20 CHAIRPERSON SCHEUER: Commissioner Aczon,  
21 followed by Commissioner Cabral.

22 COMMISSIONER ACZON: Thank you, Mr. Chair.

23 Just want to say hats off to Mr. Paul Cheng  
24 and his team for listening to the community and  
25 making this thing happen. Yesterday I thought I was

1 in the wrong hearing. It was really a turnaround.

2 And I also want to thank, and my hats off  
3 to the community, especially Ms. Kai Nishiki, also  
4 the Maui County Council and Administration for  
5 putting this together. It's really -- this is a  
6 testament that if everybody listen to each other, sit  
7 down and listen, great things can happen.

8 So this is really a great day for my as  
9 well as the entire State of Hawai'i, and for that I  
10 will support the motion.

11 CHAIRPERSON SCHEUER: Thank you,  
12 Commissioner Aczon, for those thoughtful comments.

13 Commissioner Cabral.

14 VICE CHAIR CABRAL: I'm going to third that  
15 motion in support of the motion. In my few years on  
16 the Land Use Commission and most of the hearings that  
17 we've had in Maui, only occasionally are they as  
18 agreeable as this one has become.

19 And so many of the hearings we have had  
20 have been bringing back something that had been  
21 approved many, many years ago. And I can't help but  
22 think when I hear of your housing shortage and the  
23 stress and the implications to the community at  
24 large, it's -- sort of want to say shame on everybody  
25 that the developers become Petitioners, the

1 community, everybody, politicians, excuse me for  
2 those present.

3 Everybody appears to have in the past taken  
4 their hard stand, and it's all my way or nothing.  
5 And what everybody has gotten is absolutely nothing.  
6 And now you see the consequences of that.

7 Sure, I live in Hilo, so I have acreage.  
8 Again, not everybody can have cows in their backyard.

9 So it's a choice you make. But when you  
10 were in the leadership position as developers, and  
11 even leadership positions as community people, you  
12 become leaders when you decide you're going to take  
13 the stand and rah, rah everybody. And if you can  
14 really listen and work to compromise for the  
15 betterment of everybody. Otherwise, you see what the  
16 consequences are. Nobody can afford to live in  
17 paradise.

18 So congratulations for everybody and may  
19 the future many years be as agreeable.

20 CHAIRPERSON SCHEUER: Thank you,  
21 Commissioner Cabral.

22 Commissioners? Commissioner Chang.

23 COMMISSIONER CHANG: I too would like to  
24 echo a lot of my fellow Commissioner's words. As  
25 someone who has kind of dedicated her practice to

1 proactive community engagement, I applaud the effort  
2 of this landowner who has really listened and  
3 genuinely taken to heart the community's concerns,  
4 and likewise the community came in genuinely with  
5 trying to seek balance. And as a result of that, has  
6 come up with something far beyond what either the  
7 regulatory agencies or what we would have come up  
8 with, and quite frankly, at the end of the day, it's  
9 all about relationships.

10 All of us will leave, consultants will  
11 leave, but the landowner and community will be there  
12 to ensure that these commitments are continued.

13 I am optimistic that what you have -- what  
14 you've set forth here, the ability to sit down and  
15 talk, to work out something that, again, is far  
16 beyond what we could have expected, begins to set  
17 somewhat of a model for the future. It gives me  
18 renewed faith that we don't have to be contentious.  
19 And it's always better from the standpoint of the  
20 agency that needs to make the decision that this gets  
21 worked out far before it comes to us, so that when  
22 you come to us, it is, again, as what we saw  
23 yesterday.

24 So, again, I applaud all of the parties who  
25 were involved in this, the County, OP and in

1 particular the landowner and the community for coming  
2 to genuinely a meeting of the minds. And I  
3 appreciate in particular the developer for going far  
4 beyond what you needed to.

5 And I am optimistic. The rewards that you  
6 will reap as a result of this will far exceed  
7 whatever you've invested.

8 So I am inclined, I will vote in favor of  
9 the motion. Thank you, all of you.

10 CHAIRPERSON SCHEUER: Thank you,  
11 Commissioner Chang.

12 Commissioner Okuda.

13 COMMISSIONER OKUDA: Thank you, Chair, and  
14 thank you to everyone in the community, Mr. Cheng,  
15 your attorneys.

16 I won't just repeat what everybody says  
17 which I'm in total agreement, but I would like to  
18 state a couple things for the record.

19 Number one, one of my real concerns was  
20 whether or not the Supplemental Environmental Impact  
21 Statement was required. I read carefully the  
22 memorandum which was well prepared by your attorney,  
23 Mr. Keith Agaran, his partner, Mr. Jorgensen, and I  
24 found that it was well written, well documented. It  
25 made very clear that a Supplemental Environmental

1 Impact Statement is not necessary in this case.

2 The other thing I would like to add to the  
3 discussion here is, you know, somebody once said a  
4 long time ago on Kaua'i, bad settlement is better  
5 than a good trial.

6 But let me just say this, I was personally  
7 troubled by the fact that there was this Intervention  
8 Petition filed. And I'm not prejudging what the  
9 ultimate outcome was, but let me assure you, Mr.  
10 Cheng, that had this Intervention Petition not have  
11 been resolved, I had some serious questions to ask of  
12 the Petitioner and the Petitioner's counsel about  
13 whether or not there was a factual supported Good  
14 Faith basis, which complied not only with the  
15 administrative rules of this Commission, but of case  
16 law, which I know these cases apply to circuit court  
17 cases, but whether or not this type of intervention  
18 was really appropriate, not only from a strictly  
19 legal technical procedural standpoint, but in the  
20 overall effect on the community.

21 So, please, don't think that our silence or  
22 not taking action, or you asking any of the hard  
23 questions, because I know we ask you hard questions,  
24 but I personally intended to ask intervening, the  
25 proposed intervenors some serious hard questions

1 also.

2 So but in any event, I do agree with  
3 everyone here that it really is a complement to you,  
4 Ms. Nishiki, members of the community, neighbors,  
5 everybody in the rest of the State of Hawai'i should  
6 take a lesson from what you folks have done.

7 I hope this process has not soured you on  
8 further projects in the State of Hawai'i. Let's face  
9 it, people can have the best ideas, the best wishes  
10 for housing for residents of the State, but if it  
11 doesn't pencil out financially, and if developers are  
12 faced with unnecessary burdens, including out of the  
13 blue intervention petitions, you know, people will  
14 make their money elsewhere and there won't be any  
15 housing.

16 So thank you very much for everyone. I'll  
17 be voting in favor of the motion.

18 CHAIRPERSON SCHEUER: Thank you,  
19 Commissioner Okuda.

20 Commissioner Giovanni.

21 COMMISSIONER GIOVANNI: I speak in strong  
22 support of this Petition. I think we've witnessed  
23 something amazing in the last few months. This  
24 process started 12, 13 years ago with the approval of  
25 a project that would never be built. It was

1 economically and technically infeasible. It was a  
2 sham as we learned over the years.

3 Thank goodness, Mr. Cheng and Mr. Cheng,  
4 that you stepped into the process. You made a  
5 difference. But yet, two-and-a-half months ago we  
6 sat in this room and we heard outrage from the  
7 community. You listened.

8 We all listened, and with little guidance  
9 from this Commission, I can't commend you strong  
10 enough, not only you, the Petitioner, but everybody  
11 else from the County who participated to sit here  
12 yesterday and to see the same people that were  
13 outraged come forward, residents, community leaders,  
14 council members unanimously in support of this  
15 project. It was just incredible. That doesn't  
16 happen easily.

17 And I echo comments of all my fellow  
18 Commissioners and their recognition of the roles that  
19 each of you in this room played in making that  
20 possible. So thank you very much.

21 I agree with Commissioner Okuda's comment  
22 that I think this represents an incredible model for  
23 affordable housing that could be duplicated in other  
24 locations, not only Maui, but across the State, and I  
25 hope that happens. So thank you very much.



1                   CHAIRPERSON SCHEUER: Thank you,  
2 Commissioner Giovanni.

3                   Anything further, Commissioners?

4                   This is a hard one for the Chair to follow  
5 such eloquent statements.

6                   I join in my fellow Commissioners  
7 statements. I will vote for the motion. I believe  
8 that there is robust evidentiary basis for granting  
9 the motion, that Good Cause has been shown, that the  
10 issues around 343 and the lack of a need for  
11 Supplemental EIS have been met.

12                  And I also join with my fellow  
13 Commissioners in the praise for the work of the  
14 community with the Petitioner. And for the County  
15 and OP being supportive of that.

16                  What I'm ruminating on is a quote from a  
17 fairly well-known woman, Grace Lee Boggs, who says,  
18 you know, to transform the world you must transform  
19 yourself.

20                  And so I am very eager to see this project  
21 move forward expeditiously.

22                  But the point at which things started to  
23 turn, I just want to mark was not the moment at which  
24 we came up with a better agreement or a better D&O.  
25 It was at the moment in which a few key minds and

1 hearts had a different inclination towards each  
2 other. And that's really the beautiful moment of all  
3 of this.

4 Mr. Orodenker, would you please poll the  
5 Commission?

6 EXECUTIVE OFFICER: Do I need to?

7 CHAIRPERSON SCHEUER: For the record, would  
8 you please poll the Commission?

9 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
10 The motion is to grant a Motion to Amend, subject to  
11 approval by the Chairperson of the conditions  
12 contained in the Stipulated Decision and Order  
13 prepared by the parties.

14 Upon approval of the conditions contained  
15 in the Stipulated D&O, staff shall prepare Decision  
16 and Order to incorporate the conditions contained in  
17 the Stipulated Decision and Order for the  
18 Commission's review.

19 Commissioner Ohigashi?

20 COMMISSIONER OHIGASHI: Aye.

21 EXECUTIVE OFFICER: Commissioner Aczon?

22 COMMISSIONER ACZON: Aye.

23 EXECUTIVE OFFICER: Commissioner Cabral?

24 VICE CHAIR CABRAL: Yes.

25 EXECUTIVE OFFICER: Commissioner Giovanni?

1 COMMISSIONER GIOVANNI: Aye.

2 EXECUTIVE OFFICER: Commissioner Okuda?

3 COMMISSIONER OKUDA: Yes.

4 EXECUTIVE OFFICER: Commissioner Chang?

5 COMMISSIONER CHANG: Yes.

6 EXECUTIVE OFFICER: Commissioner Wong is  
7 absent.

8 Chair Scheuer?

9 CHAIRPERSON SCHEUER: Aye.

10 EXECUTIVE OFFICER: Thank you, Mr. Chair.  
11 The motion passes unanimously.

12 MR. KEITH-AGARAN: Mr. Chair, if possible,  
13 my client would like to address the Commission.

14 CHAIRPERSON SCHEUER: Please.

15 MR. CHENG: I'm just really moved by your  
16 support. And I've been very honored to be allowed to  
17 be in the community and to provide housing in the  
18 near future for the community.

19 I really am truly honored. And I found  
20 that in working with the community, Kai and all her  
21 associates, they have been very forthright, very  
22 clear, and their asks were not unreasonable, unlike  
23 what's been advertised, socialized, whatever, it's  
24 just not true, not true at all.

25 And the community has much needs. As I

1 told you before, I developed, since 1978, across 24  
2 states in the country, and I've seen it all. I've  
3 built over 20,000 units of apartments. And I've  
4 never seen a situation so dire as it is in West Maui.

5 We really need to get this production  
6 going. And I was -- somebody asked me yesterday, why  
7 are you so different? Maybe because the prior models  
8 that was submitted were all for sale. And what that  
9 means is they leave. The developers say bye-bye.  
10 And they have no responsibility. They just want to  
11 milk every penny they can up front, and that's the  
12 difference.

13 And what I am doing, I'm doing rentals,  
14 which means I'm still here. What is going to happen  
15 if there was a bad deal? I'm the one that has to fix  
16 it right. So that's why I take a different  
17 perspective because I'm still going to be here, I am  
18 part of the community. And so that's why I look long  
19 term, very long term.

20 I care more about who's going to keep the  
21 grass green than anything else. And I was saying,  
22 and it was -- I also believe in sometimes guidance  
23 from above. I don't know, but you won't believe  
24 this, but between the two meetings September and now,  
25 I was on a plane and reading, and there was a full

1 page ad -- can't remember, Wall Street Journal or New  
2 York Times or something. It was an advertisement by  
3 the World Economic Forum. It was -- you can probably  
4 look it up -- it's the fiftieth anniversary coming  
5 up, right? And all these big giant global companies  
6 are getting together and have some meeting in  
7 Switzerland and whatever they do over there, but the  
8 message was clear.

9           They were talking about what the message  
10 should be, right, for the meeting for the fiftieth  
11 anniversary. And I read into it, and it was about,  
12 guys, corporations, this is not all about your  
13 shareholders. This is about stakeholders. This is a  
14 new world now. And whoever doesn't understand that,  
15 and work with the community, you're not going to make  
16 it. And you have to share.

17           And I really -- it just hit me, you know.  
18 And I said this is the right thing I'm doing. This  
19 is the right thing. And they're trying to educate it  
20 from way up there in the sky, but I get it down here,  
21 and I thank you for helping. I thank the community.  
22 And I'm going to do my damn best to make this as good  
23 as it can be, per the terms.

24           CHAIRPERSON SCHEUER: Thank you very much,  
25 Mr. Cheng.

1           The Commission will take a ten-minute  
2 recess while we prepare for our agenda item VIII,  
3 Status report -- excuse me.

4           COMMISSIONER GIOVANNI: If it's possible, I  
5 would like to make one comment.

6           CHAIRPERSON SCHEUER: Yes, please.

7           COMMISSIONER GIOVANNI: This is directed to  
8 Mr. Cheng and Mr. Cheng. I feel that you have  
9 created an opportunity that is unique in that you're  
10 bringing dreams to come true to more than 300  
11 families. That's an opportunity that is so rare in  
12 this world, in human existence, so treasure that.  
13 Please execute. I pray that it's successful. Good  
14 luck.

15          MR. CHENG: Thank you, sir.

16          CHAIRPERSON SCHEUER: Commission will take  
17 a ten-minute recess for our next agenda item.

18          (Recess taken.)

19          A89-642

20          CHAIRPERSON SCHEUER: Good morning, aloha.

21          The Commission will now address Status  
22 Report on Docket A89-642 C. Brewer Company (Maui)  
23 TMKs 3-5-01: portion of lot 1; portion of lot 17;  
24 3-5-07:02; 3-3-01:33, 39, and a portion of 16; and  
25 3-4-32: lots 10, 18, and a portion of 01.

1           For any members of the public who may be  
2 attending today, please be reminded that the  
3 Commission will not be considering the merits of this  
4 Petition; rather, the Commission is interested in  
5 learning about the current state of activities  
6 related to the docket, including compliance with  
7 conditions.

8           Are there any individuals desiring to give  
9 public testimony on this docket today? If not, I  
10 will then omit references to how we would handle  
11 public testimony.

12           After I'm done here, we will like the  
13 Petitioner to provide presentation to understand  
14 whether compliance with the conditions or  
15 representations for each Decision and Order have been  
16 met, and whether any concerns about the docket's  
17 status in this matter has been adequately addressed  
18 since the last update, and if any further meetings on  
19 this matter are needed.

20           The Commission will then receive the status  
21 report.

22           Then we will call on the County of Maui and  
23 OP to comment.

24           And from time to time, should time on this  
25 docket go long, we will take breaks as needed.

1 Will the parties please identify themselves  
2 for the record?

3 MR. McFARLIN: I'm Jason McFarlin attorney  
4 for Wailuku Plantation LLC, the Petitioner in the  
5 Piihana District.

6 CHAIRPERSON SCHEUER: Do you have your  
7 client with you?

8 MR. LINDSEY: Vernon Lindsey,  
9 member/manager of Wailuku Plantation, LLC.

10 MR. SAKUMOTO: Good morning, Mr. Chair,  
11 Randall Sakumoto on behalf of RCFC Kehalani, LLC.  
12 With me is Brian Ige of RCFC Kehalani, LLC.

13 MR. HOPPER: Michael Hopper, Deputy  
14 Corporation Counsel representing Maui County  
15 Department of Planning. With me are Planning  
16 Director Michele McLean and Planner Tara Furukawa.

17 MS. APUNA: Good morning, Dawn Apuna for  
18 Office of Planning. Here with me today is Aaron  
19 Setogawa.

20 CHAIRPERSON SCHEUER: Thank you.

21 Let me update the record in this docket.

22 On November 8, 2019, the Commission mailed  
23 correspondence to Petitioner seeking clarification on  
24 various issues which were raised during the September  
25 26, 2019 status hearing on Maui.



1           On November 26th, the Commission mailed an  
2 LUC meeting agenda meeting notice to the Parties and  
3 the Statewide, email and Maui mailing lists.

4           On the December 3rd, 2019, the Commission  
5 received notification of the 2019 Annual Report  
6 Notice of Mailing to Property Owners and Receipts for  
7 Piihana Project District.

8           Last check, are there any individuals  
9 desiring to give public testimony?

10           If not, Mr. Sakumoto and Mr. McFarlin as  
11 separate representatives for different landowners of  
12 the Petition Area, please advise the Commission on  
13 whether you will be presenting your status reports  
14 separately or jointly, as a combined Petitioner's  
15 presentation.

16           MR. SAKUMOTO: We will be doing it  
17 separately, Chair.

18           CHAIRPERSON SCHEUER: Okay. Commissioner  
19 Cabral.

20           VICE CHAIR CABRAL: Thank you, Chair. I  
21 believe I may have made a disclosure before that I  
22 have worked with Mr. Lindsey before. I was on a  
23 Commission appointed property manager on a property  
24 that he previously owned in Hilo.

25           I was not under contract with Mr. Lindsey,

1 but I was working on the property with him. Thank  
2 you.

3 And I don't think that would affect my  
4 ability to make a proper decision in this matter.

5 CHAIRPERSON SCHEUER: Thank you for the  
6 disclosure.

7 This is not an action agenda. So are you  
8 planning to present separately?

9 MR. McFARLIN: Yes, we are, Chair.

10 CHAIRPERSON SCHEUER: Mr. McFarlin, will  
11 you start?

12 MR. McFARLIN: As you referred to, Chair,  
13 we received a letter dated on November 8, 2019, from  
14 the Land Use Commission about clarification of issues  
15 raised at the last meeting on September 26, 2019.

16 I provided handouts. I think each of you  
17 should have a copy of that. And there were seven  
18 different issues raised in the letter I received from  
19 the Land Use Commission. And I have answered the  
20 seven of those in the handout I provided.

21 The first issue was details of scheduling  
22 and financing plan for completion of this project  
23 with conditions as currently written.

24 We're pursuing HUD financing at this time.  
25 The first portion of the Piihana Project District we

1 wish to develop is affordable housing component. Our  
2 Condition No. 1 requires us to build 300 affordable  
3 units. The entire project is 600 units.

4 At this time we're completing a financing  
5 application aimed at obtaining financing for 120 of  
6 these units. And we will pursue further financing  
7 for the additional units as these first 120 units are  
8 completed.

9 Within our financing application is  
10 included infrastructure associated with affordable  
11 housing.

12 This project, just to remind you folks, is  
13 near the Wailuku Post Office, not far from here.  
14 When you go to the Wailuku Post Office, you look  
15 across the street and you'll see a refuse center  
16 where there's garbage trucks, park, and next to that  
17 is an old bridge. Once you crossover that bridge,  
18 you crossover into the Piihaha Project District.

19 This is vacant land at this time. It's in  
20 Happy Valley behind Market Street, and that's where  
21 it's located.

22 As I was saying, our HUD Financing  
23 Application includes funds for the infrastructure  
24 associated with affordable housing which includes the  
25 bridge. There's Condition No. 3 that calls for a

1 four-lane bridge to be built there which will be a  
2 really huge asset to Wailuku Town. There's also Imi  
3 Kala extension. Imi Kala is the road in front of the  
4 post office that will extend over the bridge.

5 It will go through the Piihana Project  
6 District and extend all the way to Market Street and  
7 Kahekili Highway.

8 In terms of our financing plans, we have to  
9 satisfy a number of conditions to be able to secure  
10 HUD financing. We believe we've satisfied these  
11 conditions. We've got a general contractor. We  
12 received bids from contractors for the completion of  
13 the bridge. We recently met with Mayor Victorino  
14 about financial support from Maui County for this  
15 bridge.

16 As our condition is currently written,  
17 we're required to pay for 100 percent of the bridge.  
18 Many of the conditions, there's a pro rata expense  
19 associated with the infrastructure, and we are  
20 seeking financial assistance from Maui County for  
21 this bridge. We're hoping they will split the  
22 expense with us.

23 Next week we will be meeting with Alice  
24 Lee, Maui County Council, to address bridge  
25 financing. If you folks know about the history of

1 this project, construction of the bridge has been a  
2 major stumbling block for previous owners of the  
3 Piihana Project District when developing this  
4 project.

5 The bridge is quite expensive. We have no  
6 interest in owning the bridge. We're willing to  
7 split the cost and, of course, make it available to  
8 the public.

9 At this point the thing holding up our  
10 financing application, we need to find an architect.  
11 We had an architect, but he retired recently. He's  
12 not going to be able to take on this project.

13 Once we can secure an architect, we will be  
14 able to submit our application, and we're hoping to  
15 do that in the early part of 2020. So that's where  
16 we're at with financing.

17 Should I stop after each point and wait for  
18 questions or just proceed?

19 CHAIRPERSON SCHEUER: Why don't you proceed  
20 with your full presentation, and then we will ask  
21 questions.

22 MR. McFARLIN: No. 2. The second question  
23 provided by the Land Use Commission letter on  
24 November 8th was: Provide all Notice of Sales as  
25 required per Condition No. 11, and information for

1 all owners related to the Petition Area.

2 We haven't had a sale since the last  
3 meeting on September 26th. We provided Notice of  
4 Sales for all the sales that occurred prior to the  
5 last meeting, and will be providing Notice of Sales  
6 for all sales that take place in the future.

7 No. 3, details of total acres sold from the  
8 Project District and proof that all deeds contain the  
9 Docket Conditions.

10 So far eight lots have been sold to seven  
11 different owners. This represents approximately  
12 three acres. Piihana Project District is 79 acres.  
13 The remaining 76 acres are soley owned by Wailuku  
14 Plantation, LLC, and Mr. Lindsey is the sole owner of  
15 Wailuku Plantation, LLC.

16 At the last hearing Mr. Lindsey testified  
17 that all the seven owners have been advised of the  
18 Docket Conditions. These deeds do not include the  
19 Docket Conditions, but I will make sure future deeds  
20 will contain Docket Conditions. I was not involved  
21 in those prior sales.

22 No. 4. Are these seven landowners  
23 considered Petitioners?

24 I would like to wait until we get to No. 7  
25 to address that. That is, I'm not exactly sure

1 however how to answer that, but we are calling the  
2 seven new landowners Petitioners on our Motion to  
3 Bifurcate, that's how they're classified.

4 So based on that I would say, yes, they are  
5 classified as Petitioners.

6 No. 5. Are new owners aware of the  
7 Decision and Order conditions pertaining to the  
8 Petition Area?

9 Similar to No. 3, Mr. Lindsey testified at  
10 the September 26, 2019 hearing that all seven of the  
11 new owners have been advised of these conditions.

12 No. 6. All landowners and their  
13 representatives are required to submit annual reports  
14 as part of conditions.

15 I was on vacation from November 14th to  
16 December 1st. We just faxed our annual reports and  
17 signature pages.

18 CHAIRPERSON SCHEUER: Mr. McFarlin, if your  
19 presentation is entirely just the reading of what  
20 you've given in writing, maybe a summary would be  
21 more appropriate.

22 MR. MCFARLIN: In terms of submitting the  
23 annual reports for all the new owners, so far we have  
24 obtained four of seven signatures. Two more of the  
25 owners have notified me that they will be coming to

1 meet with me soon, and we have to re-approach one  
2 owner about getting their signature for our annual  
3 report.

4 We haven't had any objections or difficulty  
5 getting signatures, so we don't anticipate any  
6 difficulties.

7 And No. 7. What is the timeline for status  
8 for bifurcation?

9 Mr. Sakumoto provided us with --

10 CHAIRPERSON SCHEUER: Mr. McFarlin, if  
11 you're just reviewing what you've provided in  
12 writing, we can read these, summarize.

13 MR. MCFARLIN: Proposed timeline, by the  
14 end of January I should have the remaining  
15 signatures, so I can move forward with representing  
16 the owners in the Piihana Project District.

17 Mr. Sakumoto has obtained all the  
18 signatures we need to serve notice on all the owners  
19 in the Wailuku Plantation, Wailuku Project District.

20 There's a motion to bifurcate. It's my  
21 understanding Mr. Sakumoto has all these names and  
22 addresses ready as soon as we are able to secure the  
23 remaining four signatures we need. So we anticipate  
24 moving forward with serving the Motion to Bifurcate  
25 in the first quarter of 2020, and that addresses the



1 seven issues on the November 8, 2019 letter from the  
2 Land Use Commission. Thank you.

3 CHAIRPERSON SCHEUER: Commissioners, are  
4 there questions for Mr. McFarlin?

5 Commissioner Okuda.

6 COMMISSIONER OKUDA: Thank you, Chair.

7 Mr. McFarlin, my questions deal with  
8 whether or not the conditions or the original D&O or  
9 some version of it appears on the deeds of all the  
10 owners that you represent or intend to represent.

11 So you're stating that some of the deeds  
12 did not show that the properties were subject to the  
13 D&O, is that correct?

14 MR. McFARLIN: None of the deeds.

15 COMMISSIONER OKUDA: None of the deeds?

16 MR. McFARLIN: None of them.

17 COMMISSIONER OKUDA: Just so we have it  
18 clear, which type of recordation system we are  
19 dealing with? Are the subject properties Land Court  
20 registered or regular system Bureau of Conveyance or  
21 dual system?

22 MR. McFARLIN: Regular system, Bureau of  
23 Conveyance.

24 COMMISSIONER OKUDA: If it was Land Court,  
25 the issue would be whether or not if the restrictions

1 show on Certificate of Title at Land Court, correct?

2 MR. McFARLIN: I believe so, but it's  
3 Bureau of Conveyance regular system.

4 COMMISSIONER OKUDA: We just look at  
5 whether or not the D&O was recorded. I'm not sure if  
6 it shows in this record, but was the D&O or a form of  
7 the conditions recorded at the Bureau of Conveyances  
8 before these other deeds were recorded?

9 MR. McFARLIN: Let me restate your question  
10 so I can understand it.

11 Are you asking were the conditions in place  
12 before these properties were sold?

13 COMMISSIONER OKUDA: No. The question is,  
14 were the conditions or some document containing the  
15 conditions recorded at the Bureau of Conveyances  
16 before these deeds were recorded?

17 MR. McFARLIN: I'm not aware. I don't  
18 know.

19 COMMISSIONER OKUDA: Would you know whether  
20 or not if a title report for any of these individual  
21 properties was procured or obtained, whether or not  
22 the title report would show the D&O conditions as an  
23 encumbrance on title?

24 The reason I ask that question, as you  
25 know, if a condition or encumbrance is recorded at

1 the bureau, even if a deed doesn't contain those  
2 conditions and encumbrances, grantee or recipient of  
3 the property sometime is going to make those  
4 requirements subject to the recorded conditions, so  
5 if a title report, which is the report to show the  
6 title condition of the lot, was run or obtained,  
7 whether the title report would show that the deeds  
8 were subject to the conditions notwithstanding the  
9 fact, deeds might not have the condition?

10 MR. McFARLIN: Yes. There was a title  
11 report run at the time Mr. Lindsey bought the  
12 property where these conditions were included in the  
13 title report.

14 COMMISSIONER OKUDA: So the title report  
15 showed that the conditions were recorded. So in  
16 other words, one possible interpretation of the legal  
17 implication of this is that if the deeds did not  
18 contain the conditions, the properties are still  
19 subject to the conditions; would that be a fair  
20 statement?

21 MR. McFARLIN: Yes, Commissioner.

22 COMMISSIONER OKUDA: Thank you. No further  
23 questions, Mr. Chair.

24 CHAIRPERSON SCHEUER: Thank you,  
25 Commissioner Okuda.

1                   Are there further questions for Mr.  
2 McFarlin?

3                   Commissioner Ohigashi.

4                   COMMISSIONER OHIGASHI: From what I can  
5 tell, because I don't have my reading glasses, your  
6 report indicates that there are basically two  
7 stumbling blocks to completing financing in this  
8 matter.

9                   The first is the question of whether or not  
10 you can include the bridge, or how much of the bridge  
11 will you be paying for; and second is, the architect  
12 issue is that what it says here, because I couldn't  
13 read it as well as you spoke it.

14                  MR. McFARLIN: We're hoping to obtain  
15 financial support for the bridge. We're pursuing  
16 that.

17                  COMMISSIONER OHIGASHI: Are you unable to  
18 get financing without that financing support?

19                  MR. McFARLIN: We think we can. We haven't  
20 submitted the application yet, but we believe we can  
21 get financing. But, yeah, that's been the major  
22 detraction of this project from previous owners and  
23 that's why it hasn't been developed so far.

24                  So that's why we are actively pursuing help  
25 with financing the bridge. We don't want this

1 project to fail again for the same reasons it failed  
2 in the past.

3 This project is a real asset to the  
4 community. The first component we're developing is  
5 affordable housing right here in Wailuku, which we  
6 all know how desperately --

7 COMMISSIONER OHIGASHI: Mr. McFarlin, I get  
8 that from your presentation. I was just asking the  
9 question, just whether or not --

10 MR. McFARLIN: I'm sorry to be long winded.

11 CHAIRPERSON SCHEUER: Anything further,  
12 Commissioner Ohigashi?

13 COMMISSIONER OHIGASHI: No.

14 CHAIRPERSON SCHEUER: Commissioner Chang.

15 COMMISSIONER CHANG: Mr. McFarlin, to  
16 Commissioner Ohigashi's question, have you had  
17 conversations with the County whether that bridge  
18 requirement continues to be a requirement?

19 MR. McFARLIN: Yes. Yes, it is still a  
20 requirement, to my knowledge. It's a four-lane  
21 bridge that's required. We're going to be meeting  
22 with Alice Lee, Maui County council member next week.

23 COMMISSIONER CHANG: Do you have an  
24 estimated cost?

25 MR. McFARLIN: Mr. Lindsey has been

1 speaking with independent contractors, Hawaiian  
2 Dredging, at 9.2 million with some exceptions.

3 COMMISSIONER CHANG: And you're confident  
4 that you can get financing for that bridge?

5 MR. LINDSEY: Well, we are asking for help.  
6 9.2 puts the project kind of not profitable. So if  
7 we can get help there, it would be helpful, but in  
8 our USDA or FHA where commonly funds are affordable  
9 housing project, they do have a caveat that could  
10 supply infrastructure on cost.

11 COMMISSIONER CHANG: One final question,  
12 and follow up to Commissioner Okuda's questions.

13 Although the D&O was not included on the  
14 deed, do you know whether that was a factor in the  
15 sale price?

16 MR. McFARLIN: Yes, it was, yes. The price  
17 reflects the outstanding conditions that need to be  
18 satisfied.

19 COMMISSIONER CHANG: So notwithstanding the  
20 fact that it's not in the deed, the purchasers --

21 MR. McFARLIN: They were aware of the  
22 conditions and that's why the prices were so  
23 attractive for these eight lots that were sold.

24 COMMISSIONER CHANG: Thank you.

25 CHAIRPERSON SCHEUER: Commissioner Aczon.

1           COMMISSIONER ACZON: My understanding is  
2 the cost of the bridge is 100 percent required under  
3 the condition.

4           MR. McFARLIN: That's correct.

5           COMMISSIONER ACZON: What are the chances  
6 of getting financial support from like the Maui, the  
7 HUD, and if not, so what happens if you don't get  
8 those help, so what happens?

9           MR. McFARLIN: Well, so far everybody we've  
10 reached out to and spoken with has been very positive  
11 about this project and construction of the bridge,  
12 and they recognize how big an asset it would be for  
13 Wailuku.

14           We haven't received financial commitment  
15 yet, but we're actively pursuing it. I'm optimistic  
16 that we can get the money, financial help somewhere,  
17 but we haven't pinned anybody down yet. We intend to  
18 go forward with the project anyway, but --

19           MR. LINDSEY: I've been talking to three or  
20 four affordable housing development companies, and  
21 they show interest in doing, you know, the bridge,  
22 because it does service the 300 homes, affordable,  
23 because it's in certain AMI areas, we're obligated to  
24 provide homes for the 60 to 120 percent AMI areas at  
25 different levels of units.

1           So based on the AMI areas, determines what  
2           kind of financing you can get. The good one is the  
3           60 percent AMI, so there's three developers that was  
4           looking at that. So that's going to be weighed  
5           between what kind of years to amortize this note, as  
6           well as the land given.

7           So the land given would be, in my opinion,  
8           traded for the infrastructure. So we are seeking  
9           that inside of our financing.

10           COMMISSIONER ACZON: Do you have any  
11           timeline on trying to get this financing, or do you  
12           give yourself a timeline in getting it?

13           MR. LINDSEY: That's a good question. With  
14           the grace of God we can get through the process which  
15           is very complicated. I've narrowed it down. I  
16           limited the complication in trying to go a direct  
17           route. That's why we asked for Alice Lee who is the  
18           infrastructure chair in the council.

19           We also asked the mayor to consider. I've  
20           been in this project for four years. So Mayor  
21           Arakawa was happy to pay for 100 percent, but he  
22           could never get it through council.

23           So it's another attempt through council.  
24           My success rate, I'm going to say going to be 50/50,  
25           you know, so -- but we have a lucrative project.



1 This is stopping 300 homes, which is Tamara Paltin is  
2 another council member I reached out to, is very  
3 receptive in helping us getting this through. And at  
4 a point that they can put it on the agenda, it would  
5 be available for the other council members to comment  
6 or agree or disagree.

7 COMMISSIONER ACZON: So at this point you  
8 don't have any timeline?

9 MR. LINDSEY: So getting back to that,  
10 inputting inside of the budget that we submitting to  
11 the government loans, the burden of this obligation.  
12 And if they give me that loan, then we're going to  
13 build it. So I'm hopeful that we can get this loan  
14 approved sometime in six months.

15 Meanwhile, I'm pressing down the road to  
16 file a Phase III approval, because a Phase II  
17 approval was granted to C. Brewer in 1990.

18 So if I don't change anything, I can go for  
19 Phase III and get a possibility of being able to  
20 start constructing.

21 I would like to propose that the bridge not  
22 be on the first phase, but be on the second, maybe  
23 third phase so we can start affordable housing as  
24 immediate as possible. Which is in the next few  
25 months perhaps. I mean, that's just very optimistic

1 timeline, but I'm trying.

2 COMMISSIONER ACZON: So if you change the  
3 phase, that means you're going to need another  
4 amendment?

5 MR. LINDSEY: I'm not going to need another  
6 amendment at this time because I'm going to be  
7 consistent with what was approved.

8 MR. McFARLIN: Just to clarify, we are not  
9 looking to amend any of the conditions that have been  
10 set forth. We are moving forward with the project as  
11 the conditions have already been laid out and we are  
12 going to comply with those conditions.

13 MR. LINDSEY: One more thing to add. The  
14 lots that was sold was separate kuleana lots. So  
15 that was the only way we could consider it. And then  
16 one point, that's all I owned when I sold it.

17 COMMISSIONER ACZON: Thank you.

18 CHAIRPERSON SCHEUER: Commissioner Cabral.

19 VICE CHAIR CABRAL: This is, I think, a  
20 followup of some of the questions my fellow  
21 Commissioners asked, but I'm still not clear when the  
22 eight parcels were separated off and sold to seven  
23 buyers.

24 Was there written disclosure of these  
25 requirements that they come under this? And if it's

1 not in the deed, perhaps it's in the title report.  
2 But was written disclosure provided? And so that all  
3 of those seven owners, eight lots know that they're  
4 subject to all of these conditions?

5 MR. LINDSEY: Yes. And they were also  
6 given ample due diligence period in which the  
7 Planning Department gave everyone of these guys  
8 different answers as to how things could be handled,  
9 but I made sure that it was disclosed, that this area  
10 is in the project district.

11 VICE CHAIR CABRAL: Thank you

12 MR. LINDSEY: And it is in the deed, it is  
13 in the deed.

14 CHAIRPERSON SCHEUER: Commissioner  
15 Ohigashi.

16 COMMISSIONER OHIGASHI: The first question  
17 I have is what deed are you talking about because  
18 your counsel said there wasn't any deeds that were  
19 given?

20 MR. LINDSEY: In a normal sale of a  
21 property, it has a whole history in a title report.  
22 And a title report is a part of a deed. The deed is  
23 subject to the title report.

24 So it's part of an entire disclosure. It  
25 has a whole lot of stuff in it, not only the project

1 district, but in that particular deed there's all  
2 kinds of old history.

3 COMMISSIONER OHIGASHI: Is that your  
4 counsel's opinion? I'm just curious.

5 MR. McFARLIN: Not to my knowledge. That  
6 is sales took place prior to me coming along in this  
7 project, so.

8 COMMISSIONER OHIGASHI: I'm just trying to  
9 reconcile the two statements that you made, first  
10 said it wasn't in the deed, now Mr. Lindsey is saying  
11 it is in the deed, it's in the title record. And I  
12 don't think that's a legally true statement.

13 Mr. Lindsey, you are not a lawyer, I'm not  
14 going to quote it to you. What my question deals  
15 with is responsibility question.

16 Right now we have an area that includes not  
17 only your project -- I have Mr. Sakumoto's name on  
18 the name plate back here, so I remember his name, Mr.  
19 Sakumoto's client.

20 So my question is this. If you are  
21 proceeding on these fashion and getting finance and  
22 doing all necessary to develop your property without  
23 doing the bifurcation, is that Mr. -- don't you  
24 require Mr. Sakumoto's client's agreement to  
25 proceeding forward under the terms of the D&O?

1           That's just -- maybe it's a legal question  
2           that I'm asking.

3           CHAIRPERSON SCHEUER:   Commissioner  
4           Ohigashi, is it perhaps the question for Mr. Sakumoto  
5           since it's speculation about what Mr. Sakumoto's  
6           clients would need to do?

7           COMMISSIONER OHIGASHI:   It could be, but  
8           that's the first area of question, so whoever can  
9           answer that, free to answer that.

10          The second that I have is that if you  
11          proceed, let's say Mr. Sakumoto doesn't have to, you  
12          proceed with what you're doing now, does that require  
13          the agreement of all the other new owners since they  
14          are obligated under the D&O also?

15          And let's say the bridge is half built, for  
16          example, under the D&O, it would be still the  
17          responsibility of those remaining landowners, and Mr.  
18          Lindsey, if for some reason it goes kaput, would they  
19          be responsible to complete the bridge, complete the  
20          project?

21          Those are my questions of responsibility  
22          issues I hope you address.

23          CHAIRPERSON SCHEUER:   Mr. McFarlin.

24          MR. MCFARLIN:   I don't have an answer for  
25          you at this time.   We can try to address it in the

1 future, but I can't give you an answer to all of that  
2 right here on the spot.

3 COMMISSIONER OHIGASHI: Mr. Sakumoto, do  
4 you have a bifurcation issue?

5 MR. SAKUMOTO: I came today, Commissioner  
6 Ohigashi, with a short status report on what we have  
7 been doing toward bifurcating the docket. And I  
8 think we have been proceeding on the assumption that  
9 it can happen quickly, because of where we are.

10 So if you would indulge me, I'll give you a  
11 very short overview of the steps that have been taken  
12 to move towards the bifurcation.

13 COMMISSIONER OHIGASHI: Maybe at your turn,  
14 all I'm interested is really saying is that shouldn't  
15 the things that they are doing going forward take  
16 place after the bifurcation? And shouldn't that  
17 timeline of the bifurcation be considered? Because  
18 it also involves, presently involves you, maybe  
19 indirectly affect you.

20 MR. SAKUMOTO: I think that would make  
21 things cleaner and simpler if it happened in that  
22 fashion. Although I'm not familiar with what Mr.  
23 Lindsey is doing, but I did hear his counsel say that  
24 they are not seeking to amend the conditions, and  
25 they intend to fully perform them. So based on that

1 representation as of now, I'm not concerned that  
2 they're going to not comply with the conditions.

3 But obviously it would be, from a timing  
4 standpoint, cleaner and simpler if we were able to  
5 bifurcate the docket first.

6 COMMISSIONER OHIGASHI: And if you do  
7 bifurcate the docket, would that require us to amend  
8 the D&O to reassign the various duties and  
9 conditions?

10 MR. SAKUMOTO: As I understand the request  
11 to bifurcate is a very simple one which is to just  
12 create two dockets. I believe in looking at the  
13 conditions of the D&O, with the exception of one  
14 condition which specifically references the Piihana  
15 Project District, all other conditions can be applied  
16 to both projects.

17 So my thought would be about that at the  
18 bifurcation stage we would each take all the  
19 conditions, but Kehalani would not take the condition  
20 that was specifically called out for Piihana,  
21 otherwise there wouldn't be any amendment at that  
22 stage.

23 COMMISSIONER OHIGASHI: Thank you. I'm  
24 glad that I have your name back here (indicating),  
25 that answers my questions.

1 CHAIRPERSON SCHEUER: Commissioners?

2 Commissioner Giovanni.

3 COMMISSIONER GIOVANNI: Thank you, Chair.

4 Mr. Lindsey, you speak to the affordable  
5 housing project that you anticipate building on this  
6 property. Will those be rental units or for sale  
7 units?

8 MR. LINDSEY: Rental, but 300 units, some  
9 may be for sale, but the first 120 was rental.

10 COMMISSIONER GIOVANNI: So we should assume  
11 up to 180 will be for sale?

12 MR. LINDSEY: Not necessarily. Most people  
13 cannot buy, most people need to have units to rent in  
14 my research. And I'm talking to Michaels that you  
15 guys might have heard of, they're from Honolulu. But  
16 anyway I'm talking to three different individuals,  
17 and each case is different.

18 However, I do have 300 affordable housing  
19 dwelling units to divvy. The difference between sale  
20 and rental has never been addressed or on the table.

21 COMMISSIONER GIOVANNI: So from the  
22 perspective of the developer, would you consider  
23 100 percent rental?

24 MR. LINDSEY: I'm going to say, yes, at  
25 this point, yes.



1 COMMISSIONER GIOVANNI: Thank you.

2 CHAIRPERSON SCHEUER: Commissioner Chang.

3 COMMISSIONER CHANG: One follow-up  
4 question. So, Mr. McFarlin, is it your position that  
5 the requirement for your -- the bridge is a  
6 requirement of your client, not --

7 MR. McFARLIN: Correct.

8 COMMISSIONER CHANG: Thank you.

9 CHAIRPERSON SCHEUER: Anything further for  
10 Mr. McFarlin at this time? If not, Mr. Sakumoto,  
11 would you proceed?

12 MR. SAKUMOTO: Thank you, Chair.

13 So just as a reminder to the Commission,  
14 when we presented in September, the Kehalani Project  
15 District is substantially a developed district.  
16 There are over 1700 lots already developed, sold.  
17 There were at that time I think about 300 more under  
18 construction.

19 So in responding to the November 8th  
20 letter, I was able to confirm through your Executive  
21 Officer that our focus was on No. 7 of the seven  
22 questions which dealt with the bifurcation.

23 So insofar as the bifurcation process is  
24 concerned, we have determined, through the assistance  
25 of your staff, that the appropriate parties to file

1 the motion to bifurcate would be Wailuku Plantation  
2 and the other lot owners in the Piihana Project  
3 District.

4 Once that motion has been filed, it then  
5 will be served on the lot owners in the Kehalani  
6 Project District.

7 As Mr. McFarlin indicated, we understand  
8 he's identified all the lot owners in Piihana, the  
9 Piihana Project District, and we have, insofar as the  
10 motion itself to bifurcate, provided a suggested form  
11 of motion to Mr. McFarlin.

12 We have also gone to the Kehalani Community  
13 Association which is the master association for the  
14 Kehalani Project District, and provided basic  
15 information on the Land Use Commission Decision and  
16 Order, and the bifurcation process, and why we  
17 believe that is something that should be pursued.

18 We have also obtained, through the Kehalani  
19 Community Association, Board of Directors, their  
20 authorization to release the names and addresses of  
21 the lot owners in the Kehalani Project District so  
22 that notice of the Motion to Bifurcate can be  
23 properly served.

24 And as Mr. McFarlin said, once he has  
25 obtained the authorization to represent all of the

1 Piihana District Lot Owners, we are prepared to share  
2 that information with him so that service can be  
3 properly effectuated.

4 And that's basically my report.

5 CHAIRPERSON SCHEUER: Thank you, Mr.  
6 Sakumoto.

7 Are there any questions for Mr. Sakumoto at  
8 this time from the Commissioners?

9 Commissioner Chang.

10 COMMISSIONER CHANG: Thank you, Mr.  
11 Sakumoto.

12 If the bifurcation doesn't proceed, is it  
13 your position that your response -- your clients are  
14 responsible, as is Mr. McFarlin's clients, to fulfill  
15 the conditions of the D&O?

16 MR. SAKUMOTO: I don't know the answer to  
17 that question, Commissioner Chang. I think that  
18 certainly for the Kehalani Project District those  
19 conditions that apply to Kehalani have been  
20 performed, and we have been fulfilling them as we  
21 can.

22 As I mentioned, that project is  
23 substantially finished at this stage. There are a  
24 few isolated lots that have yet to be developed, some  
25 of them are I think park lots or community areas, but

1 other than that, that subdivision, which is a very  
2 significant size subdivision, is basically done.

3 And I think we've done whatever we can on  
4 our behalf. And I think that's reflected in the  
5 annual records that have been filed every year for  
6 this project.

7 CHAIRPERSON SCHEUER: Commissioner  
8 Giovanni.

9 COMMISSIONER GIOVANNI: Thank you, Mr.  
10 Sakumoto.

11 For the approximately 2000 lots that have  
12 been developed, do you have an idea what, if any of  
13 those, or what percentage of those are affordable  
14 housing?

15 MR. SAKUMOTO: I'm going to let Mr. Ige  
16 respond.

17 MR. IGE: I just want to mention first of  
18 all there's two separate County zonings for the two  
19 projects. Although State Land Use Commission is one  
20 docket, when the County zoned the project, they were  
21 separate zoning conditions issued by the County, so  
22 in that regard they are separated.

23 With respect to affordable housing, we have  
24 been complying with affordable housing conditions at  
25 County zoning level. They came back with 50 percent

1 affordable housing requirement. We have been  
2 splitting annual reports to the County, and we  
3 fulfilled condition of 50 percent for the 2000 units  
4 that have been already developed.

5 COMMISSIONER GIOVANNI: Thank you.

6 CHAIRPERSON SCHEUER: Commissioners,  
7 anything further for Mr. Sakumoto?

8 Mr. Sakumoto, are you aware of any  
9 representations that were made by the developer C.  
10 Brewer, in the original docket that revenues  
11 resulting from your client's portion of the project  
12 were going to support the very high infrastructural  
13 cost of developing this other part of the projects,  
14 anywhere in that record?

15 MR. SAKUMOTO: Mr. Chair, honestly, I'm not  
16 familiar with the record going that far back. I know  
17 the record in the recent past for this docket, but  
18 you know, this was approved back in 1990. I don't  
19 know. I cannot honestly tell you I know what was  
20 represented. Thank you. Sorry.

21 CHAIRPERSON SCHEUER: Thank you. Anything  
22 further Commissioners at this time for Mr. Sakumoto?

23 Commissioner Okuda.

24 COMMISSIONER OKUDA: Mr. Sakumoto,  
25 following up on the Chair's question. Is there even

1 possibly a slight possibility -- or let me ask the  
2 question this way.

3 Your client takes subject to  
4 representations that C. Brewer has made to obtain the  
5 original Land Use Commission approval. Would you  
6 agree that's a fair statement?

7 MR. SAKUMOTO: I guess the fair statement  
8 if I could restate it, is all the properties were  
9 conveyed subject to declaration of conditions which  
10 were those conditions set forth in the D&O.

11 I think there was a separate declaration  
12 recorded for that purpose.

13 COMMISSIONER OKUDA: And if representations  
14 were made to the Land Use Commission to obtain the  
15 Land Use Commission approval, what responsibility  
16 would your client have as a successor in interest to  
17 fulfill those conditions?

18 MR. SAKUMOTO: I'm sorry, your question is  
19 if the declaration --

20 COMMISSIONER OKUDA: Let me put it in more  
21 plain English.

22 If C. Brewer promised to do something,  
23 would it have been part of your client's due  
24 diligence before obtaining title to the property to  
25 inquire or determine what types of representations C.

1 Brewer made to the Land Use Commission? Because  
2 there might be a risk that your client would be  
3 subject to fulfilling part or some of those  
4 representations. Wouldn't that be part of normal due  
5 diligence?

6 MR. SAKUMOTO: I would think so. I don't  
7 know what due diligence was done in this case. I  
8 believe this property was acquired through a deed and  
9 through a foreclosure, so it was a result of a  
10 mortgage foreclosure.

11 COMMISSIONER OKUDA: But in a mortgage  
12 foreclosure, does the fact that property is sold by  
13 public -- let me take that back.

14 Sorry, I wasn't aware of that. Okay, thank  
15 you, Chair. No further questions.

16 CHAIRPERSON SCHEUER: Commissioner Chang.

17 COMMISSIONER CHANG: So I didn't realize it  
18 was acquired subject to foreclosure. Does that in  
19 any way change the conditions of the D&O?

20 MR. SAKUMOTO: No.

21 COMMISSIONER CHANG: Because I will be  
22 really honest, I'm trying to figure out why would  
23 they agree to a bifurcation if you guys are still on  
24 the hook for this infrastructure cost?

25 MR. SAKUMOTO: Is that a question to me?

1           COMMISSIONER CHANG: No, maybe just a  
2 statement I'm making, an observation from the  
3 obvious.

4           CHAIRPERSON SCHEUER: Anything further,  
5 Commissioners, at this time for Mr. Sakumoto?

6           If not, we will proceed to the County, OP  
7 and there will be a chance for Commissioners to ask  
8 any further questions or make further statements to  
9 any of the parties.

10          MR. HOPPER: I think generally we still  
11 have the concern with the individual lots being sold  
12 in the case of Piihana, just with the issue that the  
13 way we read the conditions, nothing can be  
14 constructed or built on those properties without  
15 fulfillment of the conditions; and if there is  
16 individual owners that have these properties, I don't  
17 know how they could possibly fulfill those conditions  
18 and build anything until they're actually fully  
19 fulfilled, and would hope there is no future sales.

20          And I guess the question is why there would  
21 be sales in the first place if the intention is to  
22 develop comprehensive affordable housing project.

23          That was our initial concern with what was  
24 going on, and I think something that we updated the  
25 Commission on. And I think we would still have that



1 concern going forward.

2 Otherwise we are hearing the status update  
3 along with you. I don't think we have anything else  
4 to add right now.

5 CHAIRPERSON SCHEUER: Thank you, Mr.  
6 Hopper.

7 Are there questions just for the benefit of  
8 the transcript, Commissioner Giovanni, are there  
9 questions for any of the Commissioners for the  
10 County?

11 Commissioner Giovanni.

12 COMMISSIONER GIOVANNI: Trying to  
13 understand your perspective here. The concern you've  
14 expressed over the lots that were developed in  
15 Piihana, those seven or eight that may have been  
16 sold, does your concern also extend to the 2000 that  
17 have been developed on the other property?

18 MR. HOPPER: No, because they got  
19 subdivision approval after they complied with the  
20 conditions and built their infrastructure.

21 COMMISSIONER GIOVANNI: Thank you.

22 CHAIRPERSON SCHEUER: Commissioners?

23 Commissioner Ohigashi.

24 COMMISSIONER OHIGASHI: Did the County  
25 issue building permits for these structures on the

1 property?

2 MR. HOPPER: No. In fact, one of the  
3 zoning conditions says there will be no building  
4 permit issued until the bridge is built. That's a  
5 zoning condition.

6 But if you're talking about the ones in  
7 Piihana, no, no building permits were issued for  
8 those.

9 COMMISSIONER OHIGASHI: What is the County  
10 going to do about the enforcement of any kind of  
11 building permit?

12 MR. HOPPER: I think they would be denied  
13 building permits if they came in to ask to build  
14 something because the infrastructure conditions are  
15 not fulfilled.

16 COMMISSIONER OHIGASHI: Are there  
17 structures on the property?

18 MR. HOPPER: Not that we know of, but if  
19 there is enforcement issue with structure buildings  
20 illegally, then the County would have to take  
21 enforcement action.

22 COMMISSIONER OHIGASHI: I could ask Mr.  
23 Lindsey, but I might be afraid to.

24 MR. HOPPER: Again, they're owned by other  
25 owners. So I don't know if they would necessarily

1 know or be responsible for that.

2 CHAIRPERSON SCHEUER: Commissioners,  
3 questions for the County?

4 If not, Mr. Hopper, the County is at this  
5 point one could argue the entity with the ability to  
6 enforce any conditions of the Land Use Commission's  
7 Decision and Order in this matter, because at least  
8 one of the two project districts has essentially been  
9 fully built out, and generally speaking the Land Use  
10 Commission doesn't have the opportunity to enforce  
11 conditions when there has been substantial  
12 commencement. Is that correct?

13 MR. HOPPER: Well, with respect as to the  
14 built out project district, it looks like it has been  
15 substantially commenced.

16 But with respect to Piihana, I did not  
17 consider that substantial commencement at this stage.

18 CHAIRPERSON SCHEUER: So without asking you  
19 to concede that point or not, lets, for the sake of  
20 argument, assume for a second that the Land Use  
21 Commission, because these are now currently an  
22 unbifurcated docket, and would you say like, okay,  
23 well, not the entire project is built out, some of it  
24 has. Land Use Commission no longer has ability to  
25 enforce, but the County does.

1           Can you give this Commission some sense of  
2           the kind of enforcement that you might be able to do  
3           against Mr. Lindsey's portion of the project, which  
4           is clearly not in compliance with any of the  
5           conditions?

6           MR. HOPPER: I'm sorry, one moment.

7           I mean, I can't give you a comprehensive  
8           answer to all of the possible enforcement --

9           CHAIRPERSON SCHEUER: Give me a menu.

10          MR. HOPPER: April 29, 2019 letter sent  
11          regarding Phase 3 Application, which went over all of  
12          the outstanding issues, I believe with both Land Use  
13          Commission and County Zoning issues that were  
14          outstanding. And I think that is where enforcement  
15          is there.

16          As far as potential actions in the future,  
17          I don't want to concede that the Land Use Commission  
18          could not revert the property.

19          CHAIRPERSON SCHEUER: I'm not asking you to  
20          concede that point yet.

21          MR. HOPPER: I think there is potential  
22          enforcement action to revert the property with  
23          respect to certain areas, otherwise state law does  
24          allow for the issuance of financing with judicial  
25          enforcement of Land Use Commission's order, and on

1 the County side similar powers, ability to fine and  
2 ability to seek judicial enforcement, because this is  
3 an open case. These generally speak I would proffer,  
4 probably refer to the April 29th letter, as far as  
5 current status of the project's compliance with  
6 respect to the conditions.

7 And leave that analysis as a general list  
8 of enforcement tools available under the law  
9 currently for violation of any conditions of the Land  
10 Use Commission Decision and Order.

11 CHAIRPERSON SCHEUER: So which document did  
12 you refer to?

13 MR. HOPPER: April 29, 2019 letter to Mr.  
14 Lindsey that was sent to the Land Use Commission.

15 CHAIRPERSON SCHEUER: Thank you.

16 MR. HOPPER: Cc's to Riley Hakoda and I  
17 believe it's part of this docket in your materials.

18 CHAIRPERSON SCHEUER: Then the last thing I  
19 want to ask you about has to do with the nature of  
20 internal communications within the County.

21 It would appear that on some level the  
22 Petitioner, Mr. Lindsey, is seeking to have the  
23 County fund an obligation that he holds which would  
24 ironically limit the ability of the County to enforce  
25 conditions that it has.

1           So in essence the County would be  
2   fulfilling the conditions that it's supposed to be  
3   enforcing rather than simply enforcing the  
4   conditions.

5           Is there somehow in which internally to the  
6   County these existing obligations that the developer  
7   may hold toward the County are communicated when  
8   funding requests are placed in front of the council  
9   or the Executive Branch?

10          MR. HOPPER: I think in general the  
11   council, which is aware of property requirements,  
12   it's a waiver, and I think they talked about it,  
13   about the challenges of the council would have to be  
14   the entity to fund to bridge, because it's an  
15   existing obligation of the developer.

16          In order to do something like that, I think  
17   there would need to be amendments to the conditions  
18   and potentially Land Use Commission D&O where there  
19   are representations regarding those traffic  
20   improvements, and so that's one of the challenges  
21   there.

22          I haven't been in those discussions so I  
23   don't know what happened. Obviously, if the County  
24   is going to fund these improvements, there would need  
25   to be budgets, a budget amendment and things like

1 that involved as well as amendments to the  
2 conditions. So I haven't been in the current status  
3 of those meetings, but I would agree with you that  
4 those are existing obligations of the developer  
5 and/or representations made to obtain the project  
6 approval, and specifically, in the zoning conditions  
7 it says no building permits are allowed in Piihana  
8 prior to the infrastructure being built, and that's  
9 pretty clear.

10 CHAIRPERSON SCHEUER: Thank you, Mr.  
11 Hopper.

12 Mr. Giovanni.

13 COMMISSIONER GIOVANNI: Mr. Hopper,  
14 regarding your last statement, we heard earlier Mr.  
15 Lindsey might not want to initiate construction of  
16 the bridge until a later phase, Phase 2 or 3. Is  
17 that in direct violation of what you understand to be  
18 the requirements that the bridge should be built  
19 first?

20 MR. HOPPER: Yes.

21 MR. LINDSEY: May I comment?

22 CHAIRPERSON SCHEUER: No, you may not.

23 Commissioner Chang.

24 COMMISSIONER CHANG: In the absence of  
25 bifurcation, does the County hold responsible both

1 Mr. Sakumoto and Mr. McFarlin's clients to fulfill  
2 the conditions of the D&O?

3 MR. HOPPER: I think we want to go through  
4 the D&O, and go over that. And we would probably  
5 want maybe a Declaratory Order or some type of  
6 indication from the Commission on its intention.

7 I think there was a discussion in the D&O  
8 of even though there is a common ownership of a  
9 couple of different project district areas to be  
10 developed.

11 The other issue is, I don't want to make  
12 arguments for Petitioners, but it can be difficult if  
13 ownership has changed for one owner that doesn't  
14 control certain property to fulfill that requirement  
15 if they don't hold and control the property.

16 I suppose they could finance it, or  
17 something like that, but there are a variety of  
18 challenges I would say in enforcing a broader  
19 Decision and Order. McKenna Resorts is having the  
20 same issue, where you've got a large area of property  
21 that was anticipated to be developed as one, and then  
22 gets sold out, in a lot of cases, because of  
23 foreclosures.

24 Now you've got conditions that apply on all  
25 the owners, but it's really hard for one owner to



1 fulfill the conditions if they don't own or control  
2 property and things like that.

3 In cases like that, I believe it is  
4 incumbent upon the landowners to figure out the most  
5 appropriate way to maybe either, you know, reword the  
6 conditions or bifurcate or something that allows that  
7 enforcement to be clear.

8 But technically speaking, if the conditions  
9 are recorded on the whole property, then all of the  
10 owners are responsible for fulfilling the conditions,  
11 is the way I would read the Land Use Commission's  
12 D&Os in general and HRS 205.

13 COMMISSIONER CHANG: And would you agree  
14 that we would go back and look at 1990 during the  
15 boundary amendment or during the original proceedings  
16 that part of determining what was the intent is to go  
17 back and look at what were the representations of the  
18 parties in getting the approval of the Land Use  
19 Commission?

20 MR. HOPPER: And this is a bit of a  
21 challenge. You've got the conditions and then you  
22 have all the findings and conclusions and usually you  
23 have a condition that says any representations, this  
24 is based on representation to me, we have gone over,  
25 does that mean there are 400 conditions that each

1 finding of fact is a condition because it's a  
2 representation, or is it more boiled down?

3 So we would look at the conditions  
4 certainly first and foremost, then if there is a  
5 condition that says representations made, I think we  
6 would go at least through the Decision and Order to  
7 look through, are there infrastructure -- was the  
8 project predicated on certain infrastructure being  
9 built.

10 It's obviously a good idea to say in the  
11 conditions, here's the infrastructure, when it's  
12 going to be built. Sometimes it's part of the actual  
13 Findings of Fact as far as the bridge, the bridge  
14 improvements and things like that. So I think that's  
15 certainly something to look at.

16 Going back into the transcript of the  
17 hearings themselves, that can be a little bit more  
18 complicated if it's not reflected in the D&O. But I  
19 think what the County would normally do, check  
20 conditions first, if there is a representation made,  
21 condition, at least take a look at Findings of Fact  
22 to talk, to go over what the Commission thought was  
23 important in approving the project.

24 And, again, I think in general if we are  
25 looking at serious enforcement action in this

1 particular case, I think we would consider going  
2 before the Land Use Commission for some type of  
3 proceeding like a declaratory ruling or something  
4 similar just to clarify the record with you because  
5 we don't necessarily, as a County, want to take  
6 enforcement action if the Land Use Commission doesn't  
7 agree this is a problem on the conditions or, you  
8 know, so those are possible issues.

9 None of that has actually -- I've been a  
10 part of before, we have certainly done zoning  
11 enforcement before, but I think this is generally  
12 what would happened in a Land Use Commission Decision  
13 and Order enforcement case.

14 And, of course, there is the issue of has  
15 the properties been -- has construction or  
16 development been substantially commenced, then also  
17 the order to show cause potential enforcement option  
18 as well.

19 COMMISSIONER CHANG: Thank you for the  
20 explanation.

21 CHAIRPERSON SCHEUER: Thank you,  
22 Commissioner Chang.

23 Commissioner Ohigashi.

24 COMMISSIONER OHIGASHI: What I'm  
25 understanding is County would reserve making such

1 arguments and reserving his right to seek its own  
2 motion if there was a motion to bifurcate in this  
3 case to determine the issues that we have been  
4 discussing.

5 MR. HOPPER: I believe that is correct. We  
6 would want to look at Motion to Bifurcate, review it  
7 and have a position on it.

8 COMMISSIONER OHIGASHI: Would the County  
9 reserving all its rights, including declaratory  
10 ruling that can be combined with this motion?

11 MR. HOPPER: I would agree, yes.

12 CHAIRPERSON SCHEUER: Thank you,  
13 Commissioner Ohigashi.

14 Anything further at this point for the  
15 County? If not, anything further, Office of  
16 Planning?

17 MS. APUNA: OP has no comment.

18 CHAIRPERSON SCHEUER: Commissioners, do you  
19 have any final questions or comments for any of the  
20 parties?

21 I have one just to clear what has been  
22 submitted to us only today.

23 Mr. McFarlin, you indicated on one of your  
24 filings that there was an attached Motion to  
25 Bifurcate, but it doesn't appear to be attached in

1       what you provided to us.

2               MR. McFARLIN:   Those were faxed over to the  
3       Land Use Commission.   I do have a copy of the Motion  
4       to Bifurcate.

5               CHAIRPERSON SCHEUER:   That's been provided  
6       to the Land Use Commission?

7               MR. McFARLIN:   I have two copies, but I  
8       provided it via fax a couple days ago.   I didn't  
9       bring a copy for everybody.

10              CHAIRPERSON SCHEUER:   Okay.

11              MR. McFARLIN:   I have two copies right  
12      here.

13              CHAIRPERSON SCHEUER:   Thank you.   I  
14      understand you have electronically faxed it to Land  
15      Use Commission.

16              MR. McFARLIN:   Yes, I have.

17              CHAIRPERSON SCHEUER:   Just wanted to clear  
18      that factual point up.

19              Commissioner Chang.

20              COMMISSIONER CHANG:   Thank you, Chair.

21              I would just ask the parties, that should a  
22      Motion to Bifurcate be filed, in light of the last  
23      series of questions that we would want, at least I  
24      would be interested in, as Mr. Hopper is talking  
25      about declaratory ruling, some kind of declaratory

1 ruling as to what would be the different obligations  
2 of the different properties, because as we heard in  
3 the previous docket for Maui Land & Pineapple,  
4 certain considerations were made for the affordable  
5 housing that was never intended to be built, but it  
6 was relied upon to get the approval.

7           So, again, it's not really clear in my mind  
8 what were the obligations, because they're two  
9 separate properties. But a lot of the infrastructure  
10 responsibilities seem to be on the portion of the  
11 project that's not been built.

12           So I leave that up to you guys, but I am  
13 interested to understand what are the obligations of  
14 the various projects.

15           CHAIRPERSON SCHEUER: Thank you for that  
16 statement, Commissioner Chang.

17           Commissioner Giovanni.

18           COMMISSIONER GIOVANNI: So I have a quote,  
19 who's on first type of question. And it's directed  
20 to Mr. McFarlin and Mr. Lindsey.

21           There's a fair amount of confusion, I  
22 think, on our behalf, in part because you seem to be  
23 doing a number of things in parallel. Each of which  
24 are interrelated, but there is no logic that's  
25 apparent into what comes first, second, third or

1 fourth.

2           So if you do come forth with a motion, I'm  
3 just giving you a heads up, that we would be looking  
4 for a whole lot more clarity. What is this timeline  
5 and what is the critical elements in the timeline,  
6 and what has to happen first before we can do the  
7 next steps.

8           So that's an observation. I hope you take  
9 that seriously.

10           MR. McFARLIN: I understand, thank you.

11           CHAIRPERSON SCHEUER: Commissioner  
12 Giovanni, thank you for that comment.

13           Commissioner Okuda.

14           COMMISSIONER OKUDA: In future motions, I  
15 think one of the concerns I have is whether or not  
16 whatever representations were made to obtain the  
17 initial boundary amendment, whether or not those  
18 representations are the responsibilities of the  
19 successors in interest, and especially if the  
20 property is not Land Court property, so you can't  
21 rely on the general rule that if something doesn't  
22 appear on a certificate of title, it's not  
23 enforceable.

24           If we're talking about system, property  
25 recorded with the regular system, then that would be

1 one of my concerns or issues I'll be looking at is to  
2 what extent do representations made to obtain a  
3 government and community benefit, whether or not  
4 those representations flow through, and are the  
5 responsibility of the successors in interest.

6 And with respect to any type of intervening  
7 foreclosure, I'm going to be interested in what the  
8 record really was with respect to the foreclosure.  
9 For example, was it a judicial foreclosure,  
10 nonjudicial foreclosure, and exactly what interest  
11 was being foreclosed on, because depending on the  
12 structure and the procedure used in the foreclosure,  
13 the entity or the person buying at either a public  
14 auction or the private sale oftentimes just steps  
15 into the shoes of the entity or person being  
16 foreclosed on.

17 Example, if you're buying a property  
18 foreclosure that is subject to condominium  
19 declaration, the fact that you bought a condo unit at  
20 foreclosure doesn't exempt the new owner of the  
21 responsibilities under the condominium declaration.

22 So successor in interest liability is one  
23 of the issues, and without prejudging anything, if  
24 this bridge seems to be the major impediment to  
25 having affordable housing built, just speaking for



1 myself, it's going to be really hard for me to  
2 ignore, you know, a component of a development,  
3 especially for affordable housing, if it's also  
4 responsibility of other people that have also  
5 benefitted from sales, from the parcel even, a  
6 different part of the parcel.

7 So those are kind of the issues going  
8 forward in whatever motions are filed. Thank you,  
9 Chair.

10 CHAIRPERSON SCHEUER: Are there further  
11 comments or questions for any of the parties?

12 I would join, and my comments are twofold.  
13 One is I would join in the comments by my fellow  
14 Commissioners about some of the information we would  
15 expect related to a Motion to Bifurcate.

16 The question for the County are very well  
17 taken as well about the existing apparent violation.

18 The other comment I have is directed  
19 towards Mr. Lindsey and his counsel.

20 I highly encourage you to take the  
21 proceedings in front of this Commission seriously.  
22 And I have not received the impression today or in  
23 our previous hearing that that is the case. We are  
24 volunteers. We take our time to discharge the duties  
25 of the State in these matters.

1           There are a number of serious duties that  
2 as a landowner you have taken on, whether through  
3 ignorance, failed due diligence or knowingly to  
4 provide much needed affordable housing. And yet  
5 representations that you've given to us, which can be  
6 charitably called vague, have given me nothing to  
7 point me to convince me that even if a bridge was  
8 financed and built, you would be capable of building  
9 the affordable housing that was promised in this  
10 docket.

11           So I encourage you strongly, the next time  
12 you appear in front of this Commission, to be fully  
13 prepared with detailed answers to the questions in  
14 terms of the status of this project.

15           Are there any further comments or questions  
16 from the Commission?

17           Commissioner Ohigashi.

18           COMMISSIONER OHIGASHI: I was hoping  
19 that -- we need not schedule any more status  
20 conferences except I would like to have an updated  
21 report as to a timeline exactly as to when the Motion  
22 for Bifurcation would take place. So at least we  
23 have some kind of reference in the record  
24 specifically rather than as the Chairman indicated a  
25 vague kind of response, and timeline.

1           Timelines, you know, it's not a time limit  
2       set by the Commission. Is it something that we can  
3       expect to see happen within the next three months,  
4       the next six months?

5           CHAIRPERSON SCHEUER: Commissioner  
6       Ohigashi. This is a status report. We're not  
7       required to take any action, but if no action is  
8       taken, the only requirement is continued annual  
9       status reports.

10           Are you requesting that we take action on  
11       this?

12           COMMISSIONER OHIGASHI: No, I'm not  
13       requesting that we take action. I'm requesting from  
14       the parties at least more specific information  
15       provided to us with regard to a timeline. And if the  
16       Commission decides to require them to do so, I'm  
17       hoping that they would voluntarily do so for the  
18       purposes of making sure that we at least have  
19       something in the record to answer some of the  
20       questions that we have asked.

21           We have asked for a timeline and I believe  
22       the responses are vague.

23           CHAIRPERSON SCHEUER: I'll give the  
24       opportunity to both parties to respond to the request  
25       from Commissioner Ohigashi. So I would ask you to

1 indicate when you could provide a timeline to us.

2 MR. McFARLIN: I need to obtain a few more  
3 signatures to authorize me to represent the new  
4 owners in the Piihana Project District on the Motion  
5 to Bifurcate. That's all I need to do.

6 I already said I anticipated getting those  
7 signatures by January 2020. Mr. Sakumoto has already  
8 testified that he has the names and addresses of all  
9 of the owners in the Wailuku Project District that  
10 need to be served with the Motion to Bifurcate. The  
11 timeline we provided was the first quarter of 2020.  
12 If that wasn't made clear, it should be now.

13 CHAIRPERSON SCHEUER: So the representation  
14 is that you'll file a motion within the first quarter  
15 of 2020 to bifurcate?

16 MR. LINDSEY: Based on the information I'm  
17 going to say that's an unrealistic timeframe, based  
18 on the information that I've received today. It's  
19 not realistic.

20 CHAIRPERSON SCHEUER: Based on -- I'm  
21 trying too understand, just because you seem to be  
22 contradicting your attorney.

23 MR. LINDSEY: Please understand I am  
24 contradicting that. And that's why I'm speaking, I  
25 don't think it's realistic given -- please understand

1 that this is the first time I'm going through this,  
2 and I'm learning my way through. I'm not a  
3 professional yet, but I endeavored this  
4 responsibility, and I am yet going to make it happen.

5 So I understand now more what this  
6 procedure, it's very, very serious, and we need to be  
7 more prepared. I apologize for the nonpreparing, but  
8 I saw it more of trying to obtain the funds to get  
9 infrastructure completed.

10 I'm not a novice person that does  
11 infrastructure. So but all of these rules I am  
12 novice at. So I'm learning my way through with the  
13 best way I can, and that's -- I don't have an  
14 open-ended budget that I could hire anybody that  
15 knows their way around this business.

16 So I'm going to muddle through it the best  
17 I can and try the best I can. And I think I do know  
18 what you guys are requesting. Thank you.

19 CHAIRPERSON SCHEUER: Commissioner  
20 Giovanni.

21 COMMISSIONER GIOVANNI: Thank you, Chair.  
22 I want to follow up on Commissioner Ohigashi's  
23 request, with which I share. I would like to reframe  
24 it that I don't think we need a new action or a new  
25 order. I think that I'm hopeful that the Commission

1 could respond to the requirement for annual status  
2 reports that are given to us, and speak to the  
3 inadequacy or incompleteness or vagueness of those  
4 reports as being inadequate.

5 And, in response to the receipt of those  
6 reports, request follow up information about, without  
7 actually requiring another condition to be placed on  
8 the Petitioner. Is that possible?

9 CHAIRPERSON SCHEUER: Mr. Orodenger.

10 EXECUTIVE OFFICER: Commissioner Giovanni,  
11 yes, we can, when annual reports come in, if we do  
12 find they're inadequate, we can follow up.

13 COMMISSIONER GIOVANNI: I think that's the  
14 simpler way.

15 CHAIRPERSON SCHEUER: Does that satisfy  
16 your concern, Commissioner Ohigashi?

17 COMMISSIONER OHIGASHI: Yes. Yeah, now we  
18 know that there is no timeline.

19 CHAIRPERSON SCHEUER: So your question is  
20 answered, but perhaps your concern is not satisfied?

21 COMMISSIONER OHIGASHI: That's correct.

22 CHAIRPERSON SCHEUER: Commissioner Okuda.

23 COMMISSIONER OKUDA: Even though I share  
24 everyone's concern here about timeliness and things  
25 like that, and this is not to prejudge any vote or

1 discussion on a Motion to Bifurcate, but at this  
2 point in time, based on the limited information  
3 that's been presented, which I do admit is limited, I  
4 would have a concern about bifurcation, unless it's  
5 very clear that based on the subsequent purchases or  
6 acquisition of interest really one party is really  
7 absolved from building this bridge or building any of  
8 the other infrastructure which was originally  
9 represented to be done.

10           So I think as far as speaking to  
11 Commissioner Ohigashi's and Commissioner Giovanni's  
12 concerns about timeline, I don't think the burden  
13 falls solely on just one party to move this along. I  
14 think as long as this is a single docket, any person  
15 or entity that has an interest in any piece of  
16 property should have an interest in getting all of  
17 this resolved in whatever legal way or ethical way it  
18 can be resolved, because there is at least some risk  
19 that I see in the record right now that people or  
20 entities who might think they're off the hook for  
21 certain infrastructure, like the bridge, might  
22 actually still be on the hook. And that's just  
23 preliminary view of how I see the record.

24           So whether or not there is a deadline set  
25 or not, I think it behooves everyone to move this

1 matter toward satisfactory to completion.

2 CHAIRPERSON SCHEUER: Thank you, Mr. Okuda.

3 Anything further on this agenda item? If  
4 there is not, the Commission will take a brief  
5 recess, and then commence with agenda item IX,  
6 Election of Second Vice Chair. We will reconvene in  
7 five minutes at 11:50.

8 (Recess taken.)

9 CHAIRPERSON SCHEUER: We are back on the  
10 record.

11 Election of Second Vice Chair

12 Our last agenda Item IX, Election of a  
13 Second Vice Chair. With the resignation of  
14 Commissioner Aaron Mahi, who was our existing Second  
15 Vice Chair, we have no Second Vice Chair who serves  
16 if the Chair and First Vice Chair are not available.

17 Dan, do we simply entertain motions? Does  
18 somebody want to nominate themselves or somebody else  
19 to be Second Vice Chair?

20 COMMISSIONER CHANG: I nominate Edmund.

21 COMMISSIONER OHIGASHI: Second.

22 CHAIRPERSON SCHEUER: A nomination has been  
23 made to nominate our former Chair Edmund Aczon as  
24 Second Vice Chair, nomination made by Commissioner  
25 Ohigashi and seconded by Commissioner Chang -- motion



1 made by Commissioner Chang and seconded by  
2 Commissioner Ohigashi.

3 Is there any discussion on the motion?  
4 Seeing no discussion, all in favor say "aye". Is  
5 anybody opposed? The motion carries.

6 COMMISSIONER ACZON: I move that Chair  
7 Scheuer and Vice Chair Cabral are not traveling  
8 together. (Laughter.)

9 CHAIRPERSON SCHEUER: Colleagues, the next  
10 Land Use Commission meeting on December 17 and 18,  
11 2019 in Kauai Sheraton Coconut Beach will require  
12 that the Commission provide meals for a "working  
13 lunch" as an integral part of the meeting due to the  
14 remote locale of the meeting facility, and the  
15 demanding time schedule to complete LUC business.

16 Mr. Orodenger, would the LUC staff make the  
17 necessary arrangements for the "working lunch,"  
18 please?

19 EXECUTIVE OFFICER: Yes.

20 CHAIRPERSON SCHEUER: Thank you.

21 With that our meeting is adjourned.

22 (The proceedings adjourned at 11:51 a.m.)  
23  
24  
25

## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU                )

I, JEAN MARIE McMANUS, do hereby certify:

That on December 5, 2019, at 9:35 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 5th day of December, 2019, in Honolulu, Hawaii.

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