

LAND USE COMMISSION
STATE OF HAWAI'I

Hearing held on November 5, 2020
Commencing at 9:00 a.m.

Held via ZOOM by Interactive Conference Technology

VII. Call to Order

VIII. Action

A99-729 Newton Family Limited Partnership (aka
Hawaiian Islands Land Trust)
Consider Petitioner Hawaiian Islands Land
Trust's Motion for Order Amending the Findings
Of Fact, Conclusions of Law and Decision and
Order dated November 16, 2001

IX. Adjournment

BEFORE: Jean Marie McManus, CSR #156

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1 APPEARANCES:

2 NANCY CABRAL, Acting Chair (Big Island)
EDMUND ACZON, Vice Chair (Oahu)
3 GARY OKUDA (Oahu)
LEE OHIGASHI (Maui)
4 ARNOLD WONG (Oahu)
DAWN CHANG (Oahu)
5 DAN GIOVANNI (Kauai)

6

STAFF:

7 WILLIAM WYNHOFF, ESQ.
LAUREN CHUN, ESQ.
8 MELISSA GOLDMAN, ESQ.
Deputies Attorney General
9
DAN ORODENKER, Executive Officer
10 RILEY K. HAKODA, Chief Clerk
SCOTT DERRICKSON, Chief Planner
11 BERT SARUWATARI, Planner

12 DAWN T. APUNA, ESQ.
Deputy Attorney General
13 RODNEY FUNAKOSHI, Planning Program Administrator
State of Hawaii, Office of Planning
14 State of Hawaii

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Hawaii Planning Department
17 County of Maui

18 RON KIM, ESQ.
For Hawaiian Islands Land Trust
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1 ACTING CHAIR CABRAL: I'd like to call the
2 meeting to order, call the hearing to order.

3 Good morning. This is the November 5th,
4 2020, Land Use Commission meeting, and it is being
5 held using interactive conference technology linking
6 videoconference participants and other interested
7 individuals of the public via the ZOOM internet
8 conferencing program. This is being done to comply
9 with the State and County official operational
10 directives during the COVID-19 pandemic. Members of
11 the public are viewing the meeting via the ZOOM
12 webinar platform.

13 For all meeting participants, I would like
14 to stress to everyone the importance of speaking
15 slowly, clearly and directly into your microphone and
16 that before you speak, that you please state your
17 name and identify yourself for the record.

18 Also please be aware that all meeting
19 participants are being recorded on the digital record
20 of this ZOOM meeting. Your continued participation
21 is your implied consent to be part of the public
22 record of this event. If you do not wish to be part
23 of the public record, please exit this meeting now.

24 This ZOOM conferencing technology allows
25 the parties and each participating Commissioner

1 individual remote access to the meeting proceedings
2 via their personal digital devices.

3 Also please note that due to matters
4 entirely outside of our control, occasional
5 disruptions to connectivity may occur for one or more
6 members of the meeting at any given time. If such
7 disruptions occur please let us know, and be patient
8 as we try to restore the audiovisual signals to
9 effectively conduct business during the pandemic.

10 My name is Nancy Cabral, and I currently
11 serve as LUC Vice Chair. With us today are
12 Commissioners Aczon, Chang, Okuda and Wong on Oahu,
13 along with LUC Executives Officer Daniel Orodener,
14 LUC Chief Planner, Scott Derrickson, Chief Clerk
15 Riley Hakoda, the LUC Deputy Attorney Generals Lauren
16 Chun and Bill Wynhoff and the Court Reporter, Jean
17 McManus. They are on O'ahu. Commissioner Ohigashi
18 is currently the eighth seated Commissioner of a
19 possible nine and he is on Maui.

20 Oh, I'm sorry, Ohigashi is on Maui,
21 Commissioner Giovanni is on the Island of Kauai, and
22 I'm Nancy Cabral on the Big Island.

23 There are currently eight seated
24 Commissioners of a possible nine. Chair Scheuer has
25 recused himself from the hearing on this matter.

1 Our next agenda item is an action meeting
2 on Docket No. A99-729, also known as Hawaiian Islands
3 Land Trust to consider the Petitioner Hawaiian
4 Islands Land Trust Motion for Order Amending the
5 Findings of Fact, Conclusions of Law and Decision and
6 Order dated November 16, 2020

7 Will the parties for Docket No. A99-729
8 please identify themselves for the record. You may
9 need to enable your audio at this time. Please
10 identify yourself.

11 MR. KIM: Good morning, Acting Chair, this
12 is Ron Kim. I'm representing Hawaiian Islands Land
13 Trust, and with me from the Trust is also Laura
14 Kaakua. Not with me in person, but with me on the
15 ZOOM call.

16 ACTING CHAIR CABRAL: Thank you.

17 Let me review things.

18 On June 25th, 2020, the Land Use Commission
19 received status report on Docket No. A99-729.

20 From September 17, 2020, until yesterday,
21 November 4th, 2020, the Commission received the
22 Hawaiian Islands Land Trust Motion for Amending the
23 Findings of Fact, Conclusions of Law and Decision and
24 Order dated November 16, 2001.

25 The Office of Planning's Request for a Time

1 Extension to Respond to Petitioner's Motion.

2 OP and County of Hawaii's Response to
3 HILT's Motion.

4 HILT's Notice of Appearance of Co-Counsel
5 and HILT's Amended Motion.

6 County of Hawaii's Response to Hawaiian
7 Islands Land Trust's Amended Motion.

8 We received the County of Hawaii's response
9 to the Hawaiian Islands Land Trust's Amended Motion
10 for filing with the LUC.

11 And we received the County of Hawaii's
12 Errata to Certificate of Service to the County of
13 Hawaii's Response to HILT's Amended Motion.

14 On October 28, 2020, the Commission held
15 the November 4 and 5, 2020 agenda of notice of
16 meeting out to the statewide, Maui regular and Big
17 Island regular and email, mailing lists.

18 I'm unaware of any late filings at this
19 time. If so, I would need to know from staff if
20 there are any additional late filings.

21 None received.

22 Let me briefly run over our hearing
23 procedure for the day.

24 First, I will recognize the written public
25 testimony that has been submitted in this matter,

1 identifying the person or organization who has
2 submitted the testimony.

3 Second, we will call for those individuals
4 who have preregistered to provide public testimony
5 for this docket. All such individuals will be called
6 in turn by the Co-Chair. The Chief Clerk will then
7 enable their audio and visual to our virtual witness
8 box where they will then be sworn in. These
9 individuals will have three minutes to provide their
10 testimony and should standby after their testimony to
11 respond to any questions by the parties or the
12 Commissioners may have. When all questions have been
13 completed, the Chair will then excuse that witness
14 and they will be put back into the viewing audience
15 and we will call for the next witness to enter the
16 virtual witness box.

17 After all registered testifiers complete
18 their testimonies, I will call for those individuals
19 in the general audience who wish to provide public
20 testimony for this docket to identify themselves by
21 using the "raised-hand" technique in the webinar
22 function of their device screens. The Chair will
23 recognize all such individuals and will call on them
24 in turn to our virtual witness box where they will be
25 sworn in. These individuals will also have three

1 minutes to provide their testimony and they should
2 standby after their testimony to respond to any
3 questions the parties or Commissioners may have.

4 When all questions have been completed, the
5 Chair will excuse that witness and they will return
6 to the audience. The Chair will then call for the
7 next witness to enter the virtual witness box until
8 all witnesses have been heard.

9 Fourth, after completion of public
10 testimony portion of this proceedings, I will give an
11 opportunity for the parties to admit any additional
12 documents into the record.

13 After the admission of additional documents
14 to the record, the Petitioner will present its case.
15 Once the petitioner is completed with its
16 presentation, it will be followed in turn by the
17 County of Hawaii, the State Office of Planning.

18 The Chair would also note that the parties
19 and public from time to time that I will be calling
20 for short breaks. Are there any questions on our
21 procedures for today?

22 I will now recognize the written public
23 testimony submitted in this matter.

24 Mr. Orodener, do we have any written
25 testimony?

1 EXECUTIVE OFFICER: Thank you, Madam Chair,
2 we do not.

3 COMMISSIONER WONG: Excuse me, Chair.

4 ACTING CHAIR CABRAL: Yes, Commissioner
5 Wong.

6 COMMISSIONER WONG: Commissioner Okuda is
7 raising his hand for something.

8 ACTING CHAIR CABRAL: I'm sorry,
9 Commissioner Okuda.

10 COMMISSIONER OKUDA: Thank you, Ms. Chair.
11 Even though the County of Hawaii and Office of
12 Planning orally said they were participating when
13 there was a call out just to do mic check, is it okay
14 if they do a formal appearance so the record shows
15 that they're present also? I'm not sure if they made
16 a formal appearance. Thank you.

17 ACTING CHAIR CABRAL: Can we ask at this
18 time for the County of Hawaii to become visual, I
19 guess this would be by becoming visual in our screen,
20 because right now we're showing April Suprenant, we
21 see her code, but we don't have her picture or
22 attendance with us.

23 Can you become an attendant person or show
24 who is attending on behalf of the County of Hawaii?

25 CHIEF CLERK: Chair, this is Riley. She is

1 in the lower right-hand corner.

2 ACTING CHAIR CABRAL: I'm seeing her name
3 but I don't see any -- there we go. Now we have a
4 picture and a person. April, is that you, and who
5 else might be with you?

6 If you can unmute or is it Diana
7 Mellon-Lacey?

8 MS. MELLON-LACEY: This is Diana
9 Mellon-Lacey, County of Hawaii Corporation Counsel,
10 appearing with April Suprenant from the Planning
11 Department.

12 ACTING CHAIR CABRAL: Thank you very much,
13 our Commissioners ask that you show your appearance
14 during this hearing.

15 Commissioner Okuda, is that satisfactory?

16 COMMISSIONER OKUDA: Perhaps if the Office
17 of Planning can also make their appearance. Thank
18 you.

19 ACTING CHAIR CABRAL: I do see Dawn,
20 appearance from Office of Planning.

21 MS. APUNA: Good morning, Dawn Apuna on
22 behalf of State Office of Planning. Rodney Funakoshi
23 is with me too.

24 ACTING CHAIR CABRAL: Thank you. I
25 apologize for not calling for your acknowledgment

1 sooner.

2 So onward. We have -- no public testimony
3 has been submitted in this case, that we are aware
4 of.

5 Thank you very much, all of you for that
6 matter.

7 COMMISSIONER WONG: Chair?

8 ACTING CHAIR CABRAL: Yes

9 COMMISSIONER WONG: Do you want to ask any
10 participants in the waiting room if they want to do
11 any testimony?

12 ACTING CHAIR CABRAL: Thank you, that's
13 correct. Do we have anyone else present from the
14 public who might be in the waiting room that we are
15 not visually seeing from the screen? Is there
16 anybody else who might want to identify yourself, and
17 our staff will bring you into our visual screen if
18 you would like to make any comments or testimony in
19 this matter?

20 EXECUTIVE OFFICER: Madam Chair, we don't
21 have anyone.

22 ACTING CHAIR CABRAL: Good. We paused for
23 that long enough, we'll move on.

24 Mr. Ron Kim, we will ask him to go ahead
25 and see if he has any further documentation. At this

1 point in time I don't know when I should have said
2 this, I do know Mr. Kim. I first met him as a member
3 of the Land Use Commission over the years but I
4 understand he has recently gone into private practice
5 and he has a wonderful landlord, me. So he is now a
6 partner with another attorney who is a tenant of
7 mine, so Mr. Kim is now my tenant.

8 I can assure you it will not influence my
9 vote in any way, shape or form. Anyone have any
10 objection or concern on that matter? I should ask
11 each party.

12 Mr. Kim, do you have any concern in that
13 matter as Petitioner

14 MR. KIM: No, Chair.

15 ACTING CHAIR CABRAL: Office of Planning,
16 do you have any concern?

17 MS. APUNA: No concern, no objection.

18 ACTING CHAIR CABRAL: And County of Hawaii,
19 do you have any concern or objection in that manner?

20 MS. MELLON-LACEY: No concerns.

21 ACTING CHAIR CABRAL: Thank you very much.
22 Then, Mr. Kim, do you have any further documents
23 which you would wish to have admitted to the record
24 at this time?

25 MR. KIM: No, thank you, Chair, we didn't

1 have further documents.

2 ACTING CHAIR CABRAL: Okay. And then, Ms.
3 Mellon-Lacey, do you have any further documents you
4 wish to submit at this time?

5 MS. MELLON-LACEY: No, we have none.

6 ACTING CHAIR CABRAL: Ms. Apuna, do you
7 have any further documents from Office of Planning
8 you would like to submit?

9 MS. APUNA: No, Chair, no further
10 documents.

11 ACTING CHAIR CABRAL: Mr. Kim, would you
12 please make your presentation at this time?

13 MR. KIM: Well, first of all, thanks to all
14 of the Commissioners for taking time to be here and
15 wrangle with the technical difficulties. And, of
16 course, our thanks to the staff too for bringing this
17 all together.

18 So actually as far as this project goes, it
19 sounds like a great project to me, definitely support
20 it. And I was actually going to turn it over to
21 Laura Kaakua to briefly present on the project, just
22 to give you an overview of HILT and what it does and
23 also what it's plans are for the Petition Area, and
24 let you know what the plans are, let you know why
25 we're asking for the changed condition that we are.

1 ACTING CHAIR CABRAL: Ms. Kaakua, before
2 you testify, may I swear you in?

3 THE WITNESS: Yes.

4 ACTING CHAIR CABRAL: You're microphone,
5 you're not easy to hear for me. If you can double
6 check your --

7 THE WITNESS: Okay.

8 ACTING CHAIR CABRAL: Much better.

9 Can you raise your right hand, please?

10 Do you swear or affirm that the testimony
11 that you are about to give is the truth?

12 THE WITNESS: Yes.

13 ACTING CHAIR CABRAL: Thank you. Go ahead
14 and proceed.

15 LAURA KAAKKUA

16 Was called as a witness by and on behalf of the
17 Petitioner, was sworn to tell the truth, was examined
18 and testified as follows:

19 DIRECT EXAMINATION

20 THE WITNESS: Thank you, Acting Chair.

21 ACTING CHAIR CABRAL: I apologize, Ms.
22 Kaakua, your microphone again. But also I would ask
23 for your full name and your address for the record
24 before you proceed with your testimony.

25 THE WITNESS: Okay. Can you hear me all

1 right?

2 COURT REPORTER: Excuse me, I'm hearing
3 other people speaking in the background. This is the
4 Court Reporter.

5 ACTING CHAIR CABRAL: Thank you, Jean.

6 I will even silence myself during this time
7 so I'm not part of that.

8 Okay, Ms. Kaakua, go ahead and proceed and
9 we will just all be careful to not have background
10 noise. Thank you.

11 THE WITNESS: Sorry about that, and please
12 do interrupt me if you hear background noise again,
13 still at home, working from home. It's a full house
14 here.

15 My full name is Laura Kaakua and I am the
16 CEO of Hawaiian Islands Land Trust, and in our
17 presentation today, if I'm able to share screen, I do
18 have a short PowerPoint. Would that be allowable?

19 ACTING CHAIR CABRAL: Yes, please go ahead
20 and proceed to share your screen.

21 THE WITNESS: Please interrupt me at any
22 time if you can't hear me okay. So this is just a
23 short PowerPoint presentation to give a little
24 background on Hawaiian Islands Land Trust, our
25 mission to protect and steward the land of the State

1 of Hawaii. We are a 501(C)(3) Hawai'i non-profit
2 that works on all islands.

3 We have a mission to protect and steward
4 the land that sustains Hawaii. We have seven
5 preserves that we own and care for in partnership
6 with the communities in which they sit. We hold 44
7 conservation easements which are legal restrictions
8 on privately held lands. We have facilitated five
9 transactions, including one adjacent to this Kukuau
10 forest preserve that we'll be talking about today.
11 And in total we protected over 21,000 acres.

12 In a nutshell what we do is we protect
13 land, we steward lands of great importance, and most
14 importantly we be connect people to those lands.

15 Our vision is Hawaii's land thrive and
16 nourish its people; and our mission is seen in our
17 daily work to protect and steward the lands that
18 sustain Hawaii.

19 In terms of our land protection work, our
20 priorities are coastlines, Hawaiian cultural
21 landscapes and lands that grow healthy food for
22 Hawaii's people. The Kukuau forest falls into the
23 category of wahi kupuna, and in the research that we
24 have done about Kukuau, it was a place used by
25 Kamehameha for gathering of koa, specifically for

1 wa'a or canoes.

2 This is our stewardship goals for the next
3 five years so there are many that, but I don't expect
4 you to read them all, but I did highlight a few that
5 pertain to this Kukuau forest property here.

6 We have big goals about fencing portions of
7 the property to prevent the spread, especially of
8 strawberry guava and invasive grass and clydemia
9 which grow at alarming rates in really -- in places
10 such as Kukuau. We do hope also to be working with
11 the surrounding Hilo community to establish a Hilo
12 program, which is basically Hawaiian science of
13 observation, and something that kids from
14 preschoolers to adults can really help us do in terms
15 of just observing the flora and fauna on the Kukuau
16 property in the different seasons throughout the year
17 and observing how our stewardship actions impact the
18 native species and invasive species.

19 We do hope within these five years to be
20 able to restore to a primarily native habitat,
21 ideally it would be 100 percent native, four acres at
22 Kukuau forest, and we also expect to create a
23 resiliency plan for a forest stewardship plan focused
24 on resilience of the lands and community within that
25 time.

1 One of our other needs is this last bullet
2 here, which is to make sure that we have on-site
3 stewardship and education staff in place at all of
4 our preserves including Kukuau.

5 And just in terms of our stewardship work,
6 there's really three things we focus on. The best
7 way to care for a place is to make sure that there's
8 a community in that place that really is a big part
9 of the stewardship work. And so a lot of our work
10 when we first protect the place is focused on
11 sustaining and strengthening relationships with
12 neighbors, area schools, church groups, civic clubs.

13 And then we look at engaging our scientist
14 and resilience planning for that specific place, and
15 continuing, or starting the ongoing ecological
16 restoration work. And our goal, and really our
17 specialty is restoration to native habitat or native
18 species.

19 The third part of our work is in connecting
20 people to the land, and these are the goals that
21 we're looking at for the next five years. We've been
22 able to really engage a number of schools around the
23 places that we own and care for, and have also opened
24 them up to the public.

25 And so every year at our preserves we do

1 have thousands of people actually that come through
2 in total for Kukuau in particular. We expect to
3 start small and maybe work with a few schools to
4 engage that Hilo community in particular.

5 And the connection work in terms of
6 community volunteering, student education, making
7 sure that kids understand where they are, the names
8 of the places, the species that surround them, and
9 have a real identity connected to the place that
10 they're in.

11 And then our third part of our work to
12 connect people to land is to support Hawaiian
13 cultural practitioners to be able to not only help
14 care for the land, but also utilize the natural
15 resources found on the land to sustain their
16 particular cultural practices.

17 And that brings us here to Kukuau forest.
18 And so Kukuau forest is in the foreground, and you
19 can see how close it is to Hilo Town. And so that is
20 really one of the -- proximity to people and
21 community is one of the things that has us very
22 excited about this Kukuau forest property. We are
23 very focused on that connection part. And so when we
24 think about stewarding the land, we imagine that it
25 is very much a community effort.

1 On this image here (indicating), we see the
2 separation between the Agricultural designation on
3 the makai end of the Kukuau forest property, and the
4 Conservation designation on the mauka end of the
5 property.

6 This image here shows that on the makai end
7 there is a mix of ohia koa with quite a lot of ohia
8 being the dominant native tree species. And in the
9 mauka region there is a mix of Hawaiian ohia with koa
10 being the dominant native tree species.

11 The concerning about this map is the
12 non-native forest, and so this map was done a few
13 years back, you know, at the rapid rate with which
14 strawberry guava spreads that these pink areas now
15 would have expanded more than it shows here.

16 And so we also notice that there is
17 strawberry guava that has already crept in from the
18 most mauka side of the property, and so this is
19 really our greatest concern is that we have a
20 non-pristine native forest. And with the intensity
21 of the invasive species, especially strawberry guava,
22 over time inevitably without active management, the
23 property will all succumb to strawberry guava and
24 Clydemia and non-native grasses.

25 And so in taking on the property management

1 planning, we know that if we are to retain the
2 property and keep it as a forest, with a strong focus
3 on education and community connection, we need to
4 actively manage the forest, eventually set certain
5 areas and clearing basis and replant natives.

6 And as a non-profit organization, our
7 struggle is really that we understand the right steps
8 to manage the forest, but we are limited on funds to
9 actually execute those plans.

10 And so our proposal and request would be
11 that the continuation of the Agricultural designation
12 in the makai section of the property to allow us to
13 actively manage the forest, including selective
14 harvesting of koa trees which would then allow us
15 to --

16 ACTING CHAIR CABRAL: Laura, someone else
17 is talking in the background on another screen.

18 THE WITNESS: So that selective harvest of
19 koa trees would allow us to have staff on hand to
20 have that regular presence and welcome in school
21 groups. It would also allow us to actually afford
22 the pretty intensive invasive species clearing and
23 management and fencing.

24 And we see keeping the property in native
25 forest is a real benefit, not only just to the

1 ecological systems and native birds and bat and
2 insect species in the area, but also as a really big
3 sponge. We know that native forests are incredibly
4 effective in absorbing water and also in absorbing
5 carbon from the atmosphere.

6 This is a very high rainfall area. And so
7 as an alternative to development, we think that just
8 for Hilo's water management, that this is a really
9 critical property to keep in forest.

10 And so it might be the end of my
11 presentation, and welcome any questions that you may
12 have.

13 ACTING CHAIR CABRAL: Thank you very much.
14 Mr. Kim, do you have any other part of your
15 presentation you would like to make at this time?

16 MR. KIM: No, I think that was a very good
17 job of giving an overview of what the plans are for
18 the property.

19 The only thing I would want to point out
20 is, you know, we're asking now for the conditions
21 that were imposed about 20 years ago to be changed,
22 because the current lands have changed pretty
23 significantly compared to what was initially proposed
24 to this Commission.

25 Initially, looking at doing an eight lot

1 semi-agricultural type subdivision, and at this
2 point, you know, HILT has no plans to subdivide the
3 property. And it's going to do very minimal types of
4 improvement, such as fencing and possibly the types
5 of structures we had discussed in our moving papers
6 but, of course, the structures would have to be
7 either allowed under HRS 205 or permitted.

8 ACTING CHAIR CABRAL: Anything else, Mr.
9 Kim, at this time?

10 MR. KIM: No, thank you, Chair.

11 ACTING CHAIR CABRAL: Thank you very much.
12 Then let's go ahead to any questions of the
13 Petitioner or the witness.

14 County of Hawaii, do you have any questions
15 of the Petitioner at this time?

16 Ms. Mellon-Lacey, if are you there, can you
17 unmute or come forward if you have any questions or
18 not?

19 MS. MELLON-LACEY: Can you hear me?

20 No, we have no questions, thank you.

21 ACTING CHAIR CABRAL: Office of Planning,
22 do you have any questions at this time?

23 MS. APUNA: Yes, Chair, I do. Thank you.

24 CROSS-EXAMINATION

25 BY MS. APUNA:

1 Q Thank you, Ms. Kaakua, for your testimony.
2 I just have a few questions.

3 So will HILT, will they create a
4 conservation easement or any other additional
5 restrictions on the property to ensure the certain
6 uses of the property?

7 A We've actually started that conversation
8 with DLNR as to whether we could work with them to do
9 some sort of forest legacy, conservation easement. I
10 think what the forestry staff has shared is that they
11 might be willing to do that, but they're working on a
12 lot of just great projects that are really at risk
13 right now. And so because HILT owns the property,
14 they're kind of falling down on the priority list,
15 because there's no immediate threat.

16 And so we would like to do a conservation
17 easement, but, you know, in that conservation
18 easement scenario the holder of the conservation
19 easement has to be a different entity of the
20 landowner. They kind of act as big brother to make
21 sure that their property is used as intended.

22 And so we're hoping that when we work
23 through the forest stewardship plan with DLNR, that
24 that might kind of reopen the door to a possible
25 conservation easement with the State.

1 MS. APUNA: Thank you.

2 And then did HILT consider reverting the
3 land to Conservation? And you're shaking your head
4 "yes".

5 And why did you decide not to revert the
6 land to Conservation? I think --

7 THE WITNESS: Yeah, so my first thought was
8 to revert it to Conservation because the plan and
9 practices that we envision are conservation
10 practices, and we removing invasive species, but
11 actually to actively manage the forest and pretty
12 aggressively remove invasive species and to finance
13 the conservation operations with selective
14 harvesting.

15 It would be really difficult to do that if
16 it was in the Conservation District. And so it
17 surprised me, actually, in looking into the different
18 restrictions on the -- between the two land use
19 districts, but the Agricultural District actually
20 makes conservation more feasible for us.

21 Q And did you consult with DLNR as far as
22 what would be a more appropriate land use
23 classification?

24 A Yeah. When I originally asked if we could
25 work with DLNR on a forest legacy application, I did

1 have the chance to share our plans, and I think
2 they're pretty understanding about our need to really
3 actively manage the forest, and that it needs to be
4 in Agriculture to really let us get started in
5 carrying for the forest.

6 But we are really looking forward to
7 working with DLNR and the forest division plan, and
8 that is quite a process. It's a set of requirements
9 that we will have to meet, and will actually have to
10 get approval on that forest stewardship plan.

11 And one of the great things about the
12 forest stewardship plan is we know that we are
13 hitting a certain standard of forest management, and
14 then it also opens the door for us in terms of
15 matching funding programs.

16 So if we can raise half of the funds for a
17 fence, for example, then it kind of opens the doors
18 to these different conservation programs that would
19 possibly match things like fencing or tools and
20 equipment.

21 MS. APUNA: Thank you.

22 And then -- and so will HILT continue to be
23 the landowner indefinitely? Or do you think that at
24 some point there will be a transfer of the land to a
25 different property owner?

1 A I can share that when we were first donated
2 the property, actually the property just mauka of
3 this Kukuau forest property is property that many
4 years ago before I was with HILT, HILT's predecessor
5 actually helped to purchase that property and then
6 make sure that it was conveyed to the State. And so
7 the mauka property is now part of the State Forest
8 Reserve System.

9 And so when we were first donated the
10 property, I had reached out to DLNR just to talk
11 about all these different options: Can we do
12 conservation easement? Is the State actually
13 interested in owning the property? And really just
14 thinking and talking through what would be best for
15 the land in terms of capacity.

16 And so I think at this time the answer that
17 I have is the State has pretty similar funding to
18 what they had many years ago with now a lot more
19 land, and so I don't think they're too interested in
20 taking on ownership and management responsibility for
21 the property, but do want to work with us on the
22 forest stewardship plan.

23 So that's I think a long answer to say if
24 we can get approval to retain the Agricultural
25 designation and actively manage the forest, we would

1 imagine ourselves as the perpetual owner. And I
2 think we are -- the question that we just keep coming
3 back to is what is best for the land and the
4 surrounding community.

5 And so if we got to a point where for some
6 reason the State was really interested in taking over
7 management, I think we would always be open to that
8 as well.

9 Q Thank you. Just one last question.

10 As far as the selective koa harvesting, so
11 that would be perpetual too as long as there's a need
12 for funding the different activities that are
13 required of the forest management project; is that
14 correct?

15 A Yeah. I guess I don't know that it would
16 -- I guess it could be perpetual, the projection of
17 really the end goal is that we can restore the entire
18 property to a fully native forest.

19 And so I'm not sure what the -- kind
20 of what the battle will be like, like 200 years from
21 now, or whatnot, in terms of if we've conquered
22 clydemia, strawberry guava, or if there really is
23 just that constant pressure, and a lot of it would
24 have to do on what's happening on the surrounding
25 lands.

1 So if we have a lot of pressure from the
2 adjacent lands, then I think we would still be
3 actively managing and would probably need to continue
4 regular harvesting to pay for that.

5 But if the surrounding lands are in native
6 forest too, or without invasive species, then we can
7 back off on the harvesting and just maintain.

8 I guess we'll just have to be flexible.
9 And I imagine that our forest stewardship plan would
10 account for that flexibility.

11 Q So then hypothetically if the forest comes
12 back to a more pristine condition and you don't have
13 to necessarily do harvesting, do you think HILT would
14 consider reclassifying it to Conservation if that
15 would provide some benefit, and you wouldn't
16 necessarily need the Ag District that allows you to
17 harvest? It's just a hypothetical.

18 A I think if there was no need, or if the Ag
19 designation to actually manage the conservation, then
20 I would look at Conservation District.

21 Q Thank you, Ms. Kaakua.

22 No further questions, Chair.

23 ACTING CHAIR CABRAL: Thank you, Ms. Apuna
24 and Office of Planning.

25 Commissioners, do you have any questions of

1 Mr. Kim or Ms. Kaakua at this time? Mr. Okuda.

2 COMMISSIONER OKUDA: Thank you very much,
3 Ms. Chair.

4 Ms. Kaakua, you are also a licensed
5 attorney; is that correct?

6 THE WITNESS: That is correct, but I'm
7 inactive.

8 COMMISSIONER OKUDA: But do you have a law
9 background, because you seem very knowledgeable about
10 things that we lawyers might view as esoteric kind of
11 theoretical kind of things?

12 Let me just ask you a non-legal question,
13 and just to confirm or given put with respect to
14 harvesting of koa, I once had a forestry client. Is
15 it true that sometimes harvesting koa actually helps
16 with the rejuvenation of the koa native forest,
17 meaning that when you harvest a koa tree, just by
18 physical interaction, it causes seeds to fall, allows
19 the seeds to grow, and as long as you protect, for
20 example, the growing seedlings from pigs or other
21 invasive species, taking out one koa tree might
22 actually help contribute to the restoration of the
23 forest.

24 Is that a semi accurate statement by me?

25 THE WITNESS: Yeah, yes, that is accurate.

1 The koa tree is known as kind of a native weed tree.
2 It grows like a weed, given the right environment to
3 do so. And so I have seen in many cases where
4 there's been harvesting of koa or clearing around
5 remaining koa trees, that there are koa that sprout
6 up.

7 We've also seen where strawberry guava have
8 been cleared within a forest that has koa. Koa will
9 voluntarily grow in their place as long as that
10 strawberry guava is kept low enough to give sunlight
11 to the koa seeds.

12 And so it's our hope that in a forest that
13 has been historically in native trees, that the seed
14 bed is still there, and that in clearing certain
15 areas, that will be removing an invasive species that
16 will get the benefit of volunteer koa seeds that are
17 just underground and have been just shaded out by
18 that really thick strawberry guava canopy so that
19 they couldn't grow.

20 COMMISSIONER OKUDA: So in other words,
21 sometimes and in an appropriate situation, active
22 forestry or active managed forestry can actually push
23 forward conservation types goals in restoring a
24 native forest such as a native koa forest; is that
25 correct?

1 THE WITNESS: That's correct. There are
2 potential drawbacks, just to be totally up front, in
3 that when you -- if you have to clear uluhe. Uluhe
4 is a really thick native fern, also acts as a weed
5 mat, because it's so incredibly thick that it keeps
6 pigs out, and it also prevents spread of invasive
7 species.

8 So the downside of clearing is that you
9 have to be really careful not to get rid of too much
10 of that uluhe mat, because if that uluhe mat is taken
11 away, it's kind of a gamble as to whether koa will
12 naturally volunteer themselves in that cleared space
13 or whether invasive species will creep in, so it's a
14 constant management balance.

15 COMMISSIONER OKUDA: And if I can ask a
16 question about management balance and management
17 activity.

18 Is it true or not true that if the
19 property -- or if a property is designated in the
20 Conservation zone, it frankly leads to a lot more
21 permitting, and for back lack of a better term, red
22 tape that even if an entity like yourself has the
23 best of intentions, you have to jump through a lot
24 more permitting hoops, do a lot more things with the
25 Department of Land and Natural Resources to

1 accomplish a goal which you could do a lot more
2 simply and at a lower cost if the property was
3 designated Agriculture. Is that a fair statement?

4 THE WITNESS: Yes, that's a fair statement.
5 It's actually our hope to actively manage the mauka
6 side of the property that is in Conservation
7 designation right now.

8 And so we do expect a lot of cost to go
9 through the appropriate channels, which we understand
10 why they're there, and as an environmental
11 organization, actually support them being there, but
12 we would not be able -- we just don't have the funds
13 to actually do a full archaeological inventory study
14 and do an entire environmental study. That would be
15 prohibitive for us to get started in managing the
16 forest.

17 But in the future, we may decide that we
18 have -- that we're ready to go through the right
19 legal protocols to get the appropriate permits to
20 start managing in the Conservation District later
21 down the road.

22 COMMISSIONER OKUDA: So in other words,
23 it's possible that income or money generated from
24 activities in the Agricultural zone, which might also
25 promote restoration of a native forest, one of the

1 benefits of that would also be providing funds which
2 you could use for purposes in the Conservation zone
3 which might not be as income generating.

4 Is that a fair statement?

5 THE WITNESS: Yes.

6 COMMISSIONER OKUDA: I had heard somewhere
7 in some previous hearing that the Hawaii Islands Land
8 Trust is an accredited land trust.

9 Can you explain to us on the Commission,
10 number one, who you are accredited by, if your
11 accredited? And what does the accreditation mean?

12 A Yes, we're accredited by a land trust which
13 is a special kind of non-profit that koa plans really
14 entrusts for people and the environment. And so
15 we're part of the National Lands Trust Community, and
16 there is this Land Trust Alliance that brings all of
17 these land trusts from everywhere together, and tries
18 to share and instill best practices.

19 And some land trusts are accredited, which
20 is a really lengthy and intensive process. We were
21 just reaccredited this past year, which is the second
22 time that we've been reaccredited, but there is an
23 entire manual of standards and practices that we must
24 follow in order to be accredited.

25 And it's a five-year -- we have to go

1 through accreditation every five years, and it's
2 basically an audit at land trust standards.

3 So they're looking at when we purchase a
4 property or accept a donation of a property, have we
5 done all of our paperwork correctly.

6 And then what are our stewardship
7 practices. And then what are our practices in
8 community relationships even, so it's really best
9 practices across-the-board.

10 And I really appreciate, even though it's a
11 lot of work to go through accreditation, I really
12 appreciate it, because I think it's kind of a risk
13 management tool for us to know that we're hitting a
14 certain standard and don't have large unforeseen gaps
15 in our non-profit structure.

16 COMMISSIONER OKUDA: And I don't mean to
17 belabor some of these points.

18 Just so that we have a full record, the
19 Chair Jonathan Scheuer has recused himself because of
20 his relationship with the Hawaiian Islands Land
21 Trust. So just so that -- and I'm only being
22 facetious and joking by saying so -- that his
23 relationship with you is not held against your
24 Petition.

25 You have a board of directors, is that

1 correct?

2 THE WITNESS: Yes, we do. We have a board
3 of directors with representation from all islands,
4 and I believe we have 15 directors on our board at
5 this time.

6 COMMISSIONER OKUDA: And you have members
7 on the board who at first blush people in the
8 community might not think of as -- and I put these in
9 quotes "radical environmentalist", but in fact are
10 well-known business people from just the regular
11 capitalist industry; is that correct?

12 THE WITNESS: That's correct. We have a
13 very diverse board from Hawaiian cultural
14 practitioners to real estate agents, to folks that
15 have been involved in development and business
16 leaders. Makes for really robust board discussions.
17 Folks coming from all perspectives when we take on a
18 project.

19 COMMISSIONER OKUDA: Okay. And can I ask
20 you, or Mr. Kim can chime in, and I apologize if the
21 next question might be a little bit tedious, but
22 since these are requests for amendments of certain
23 conditions and there have been these memorandum
24 today's going back and forth, if I can ask you or Mr.
25 Kim to comment on what is now the final position of

1 the Hawaiian Islands Land Trust for some of these
2 conditions. And if I can ask, and this is probably
3 the longest one, Condition No. 1, if I can read what
4 I think is the agreed modification to Condition No.
5 1, between Hawaiian Islands Land Trust and the Office
6 of Planning as modified by the Planning Department,
7 if I can read to you this provision. Then after I
8 read it, if you can tell me whether Hawaiian Islands
9 Land Trust agrees with this provision, disagrees, or
10 requests further modification; and I'll try to read
11 it slowly so everyone can hear.

12 The Petition Area shall not be subdivided.
13 Any structures that HILT, H-I-L-T, erect or construct
14 in the Petition Area must be permitted under HRS
15 Section 205-2(d) or HILT shall seek appropriate
16 permits and/or special permits to erect or construct
17 such structures. Petitioner shall work cooperatively
18 with the County Planning Department to rezone the
19 Petition Area to a zoning density that will prevent
20 subdivision.

21 Is that provision acceptable to HILT, or do
22 you request further modification? And either you or
23 Mr. Kim can comment.

24 MR. KIM: I believe that's acceptable the
25 way it is now, that provision. Yeah, that's fine.

1 The one caveat on the rezoning or zoning to
2 a more appropriate designation would be, you know,
3 there have previously been I believe request in the
4 County's response that zoning take place within a
5 year, and we actually asked for a longer time frame
6 than that, because just getting the stewardship plan
7 in place itself will take about an estimated two
8 years.

9 So there's still a number of variables that
10 have to be put in place, fall in place for HILT plans
11 for the property to come to fruition.

12 COMMISSIONER OKUDA: But what I read
13 doesn't have any time restriction, so as I read the
14 words actually, as I read the words, the words are
15 acceptable?

16 MR. KIM: Yeah, I think so.

17 COMMISSIONER OKUDA: Okay. And HILT agrees
18 that Condition No. 2 and 7 be modified as agreed
19 between HILT and the Office of Planning. Is that my
20 understanding that there's not only an agreed
21 modification but it's acceptable?

22 MR. KIM: Yeah, that is correct, yeah.

23 COMMISSIONER OKUDA: And then Conditions 4,
24 5, 8 and 9, there's an agreement for modification as
25 agreed by the parties. Is that correct?

1 MR. KIM: Yes, that's my understanding too,
2 yeah.

3 COMMISSIONER OKUDA: And the Planning
4 Department wanted Condition 10 to be modified based
5 on, you know, language that they submitted which is
6 that the 80-foot right-of-way in the City of Hilo
7 zoning map, which they had attached as Exhibit A,
8 that HILT be required to preserve and dedicate
9 80-foot right-of-way.

10 What is HILT's position on the County's
11 position regarding Condition No. 10?

12 MR. KIM: HILT actually is not in agreement
13 with the County on that position. HILT wouldn't
14 object to reserving the right-of-way because it is
15 shown on the zoning map. However, at this point
16 requiring dedication, you know, just based on this
17 request to amend the conditions, doesn't seem really
18 proportionate to HILT.

19 The reason being the initial condition
20 required dedication as tied in with the subdivision.
21 But currently it would just be a dedication without
22 it being tied into any subdivision. If we are
23 talking about modified conditions here, you know, it
24 seems pretty evident that the impact on use, density,
25 traffic use and the community is much less with

1 HILT's proposal than it was with the original
2 proposal, and the original proposal did tie in
3 dedication with the subdivision.

4 COMMISSIONER OKUDA: So what does HILT want
5 us to do? Or what is HILT requesting the Land Use
6 Commission to do regarding Condition No. 10?

7 MR. KIM: HILT would be okay with it
8 remaining as written, because it was tied in with a
9 subdivision. So in connection with subdivision shall
10 if necessary dedicate, if we want to take out the
11 reference to subdivision, HILT wouldn't object to
12 reserving that right-of-way.

13 Obviously we are not really planning much
14 structure building, but any structure they are
15 planning on building, they're not going to put them
16 right in the middle of the right-of-way.

17 COMMISSIONER OKUDA: I will be asking, or
18 somebody I'm sure will be asking the County of Hawaii
19 about what their position is regarding Condition No.
20 10.

21 Is it HILT's position that Conditions No.
22 3, 12 through 15, 17 and 20 be deleted?

23 MR. KIM: Yeah.

24 COMMISSIONER OKUDA: Let me repeat it.
25 It's to delete Conditions No. 3, 12, 13, 14, 15, 17

1 and 20.

2 MR. KIM: Three, yes. 12, yes.

3 COMMISSIONER OKUDA: So 12 through 13, 14?

4 MR. KIM: 13, 14, yeah.

5 COMMISSIONER OKUDA: And 17 and 20 also
6 would be deleted?

7 MR. KIM: 20 I think HILT actually had
8 proposed some revised language rather than deleting
9 it.

10 COMMISSIONER OKUDA: I'm sorry about that
11 then. Can you tell me what HILT wants regarding No.
12 20?

13 MR. KIM: With No. 20 HILT actually
14 proposed, you know, it's saying that we will develop
15 and implement a forest management plan within two
16 years from the day of the Decision and Order, and
17 HILT will provide that management plan to the
18 Commission.

19 And it also says HILT will provide report
20 to the Commission every five years on native forest
21 restoration progress per plan, that's their
22 projection.

23 COMMISSIONER OKUDA: Thank you.

24 ACTING CHAIR CABRAL: Mr. Okuda, can the
25 Chair ask about how much further? We are probably in

1 need of a break, one plus hours.

2 Do you have a lot more to your questions,
3 or should we take a break now, or should you finish
4 up at this point?

5 COMMISSIONER OKUDA: My last question which
6 is just for HILT to confirm that Conditions No. 6,
7 11, 16, 18, 19, 21, 22 and 23 shall be retained in
8 their original form?

9 MR. KIM: Yes.

10 COMMISSIONER OKUDA: I'm sorry?

11 MR. KIM: Yes to 6; yes to 11.

12 COMMISSIONER OKUDA: 16?

13 MR. KIM: 16, yes. Yes.

14 COMMISSIONER OKUDA: 18?

15 MR. KIM: 18, yes.

16 COMMISSIONER OKUDA: 19?

17 MR. KIM: 19, correct.

18 COMMISSIONER OKUDA: 21?

19 MR. KIM: 21, yeah.

20 COMMISSIONER OKUDA: 22?

21 MR. KIM: 22, yeah.

22 COMMISSIONER OKUDA: And 23?

23 MR. KIM: And 23, yes.

24 COMMISSIONER OKUDA: Thank you, Madam

25 Chair. Thank you, Mr. Kim. I have no further

1 questions.

2 ACTING CHAIR CABRAL: Thank you,
3 Commissioner Okuda, for your always excellent
4 questions to help us all put it into the right box.

5 At this point in time, we will be taking a
6 ten-minute break and come back at 12:15 for me, but
7 that would be 10:15 for you folks in Hawaii.

8 (Recess taken.)

9 ACTING CHAIR CABRAL: It is 10:15. Call
10 the meeting back to order.

11 We've got Commissioner Okuda, Commissioner
12 Aczon, Commissioner Ohigashi, Commissioner Giovanni,
13 Commissioner Chang, and Commissioner Wong in the
14 group. All of our Commissioners are present, and
15 Petitioner's representative Ron Kim is present, and
16 our witness for the Petitioner with Hawaiian Islands
17 Land Trust Laura Kaakua, who is also showing, I don't
18 see her though yet.

19 So if, Ron, if Laura is still here, I was
20 going to open up just if any other Commissioners had
21 questions at this time of you, the Petitioner or of
22 your witness.

23 I would like to have any other
24 Commissioners ask any other questions at this time.

25 Laura is there. Thank you.

1 I saw Commissioner Aczon's hand first and
2 then Mr. Commissioner Giovanni after that.

3 Mr. Aczon, if could you unmute yourself.

4 CHAIR VICE ACZON: Most of my questions
5 were answered by the questions from Commissioner
6 Okuda today, and this is why it's really good if
7 Commissioner Okuda go first, because he asks all
8 those questions.

9 Anyway, I have a question about HILT's
10 governance, decision-makers and other accreditation,
11 but I think your mission is great, and you have a
12 great plan, but and I really do appreciate you
13 working with the other parties, Office of Planning
14 and County, County of Hawaii, to not all in
15 agreement, but you know, most of the items the
16 conditions in agreement, that makes our job easy.
17 And then the rest we can work it out during this
18 hearing.

19 But I apologize for my ignorance, but can
20 you give us a back history on how this Petition
21 changed hands from Newton Family to Hawaiian Islands
22 Land Trust?

23 THE WITNESS: Sure.

24 ACTING CHAIR CABRAL: Okay, Laura, go ahead
25 and proceed.

1 THE WITNESS: Thank you, Chair.

2 So I will say I joined Hawaiian Islands
3 Land Trust as CEO just after the transfer of land
4 from Newton Family Partnership to HILT, and so I
5 wasn't privy to those initial conversations between
6 the Newton Family Partnership and HILT, but my
7 understanding is that the Newton Family, previous
8 landowner Newton Family had envisioned this kind of a
9 family development on the property, and for whatever
10 reason came together, made sort of a family legacy
11 donation to not pursue their plans of subdivision,
12 and to donate the land to Hawaiian Islands Land
13 Trust.

14 And so in receiving the land, the challenge
15 before myself and our board was how do we achieve our
16 mission with this particular piece of property, and
17 how do we sustain the operation.

18 VICE CHAIR ACZON: It's a complete donation
19 without HILT putting up some money on it?

20 THE WITNESS: That's right. It was a
21 complete donation of land.

22 VICE CHAIR ACZON: How you get your
23 funding -- what are your funding sources?

24 THE WITNESS: Sure. Our funds are split
25 between three primary categories, so before this year

1 we were pretty event, heavy event organization. We
2 have fund raising event annually on each island. And
3 that has all gone away for this year, but typically
4 that makes up maybe a third of our budget.

5 And then another -- the other you could say
6 roughly a third of our budget would be for maybe a
7 little bit more, would be grants from foundations.

8 So there's a lot of grant support either
9 environmental work or support our educational
10 programs that happen on the preserves that we own and
11 steward.

12 And then the remaining funding comes from
13 individual donations. And so we do have a lot of
14 people that contribute to the land trust anywhere
15 from like \$5 annual donation to larger gifts.

16 VICE CHAIR ACZON: So your funding sources
17 come from public and private entities?

18 THE WITNESS: Yes, they do. Yep. We
19 received, I would say, primarily private entities, so
20 in our fund raising events, our individual donation
21 and most of the grants that we receive are from
22 private foundations.

23 We do occasionally receive County or State
24 grants in aid, but not consistently.

25 VICE CHAIR ACZON: The bulk is coming from

1 private, is that what you said?

2 THE WITNESS: Yes.

3 VICE CHAIR ACZON: Looking at your plans
4 and missions, it's very ambitious. So do you
5 think -- are you confident that you're going to
6 receive sufficient funding to do most of it, if not
7 all?

8 THE WITNESS: Yes. So we are confident
9 with the combination of the State Forest Stewardship
10 Plan. We know that will take awhile, but once we
11 have that in place, as I had mentioned earlier, that
12 opens the door for kind of incentive programs for
13 private landowners, so matching funds. And then with
14 the ability to do selective harvest, that will
15 support our efforts.

16 VICE CHAIR ACZON: Thank you, Ms. Kaakua,
17 that really brought in my knowledge about your
18 organization, also about this Petition. Again, I
19 really appreciate you're working together with other
20 entities to make our job little bit easier.

21 Thank you, Madam Chairman.

22 ACTING CHAIR CABRAL: Thank you
23 Commissioner Aczon.

24 Commissioner Giovanni, you had some
25 questions?

1 COMMISSIONER GIOVANNI: Thank you, Madam
2 Chair.

3 Yes, I do have very simple questions
4 because following in the foot steps of Commissioner
5 Okuda and Commissioner Aczon, there's not much left
6 to ask.

7 My question has to do pretty specifically,
8 are you experiencing rapid ohia death on the
9 property?

10 THE WITNESS: Yeah, that's actually one of
11 the first things that we will need to do is to do a
12 survey to understand if there is rapid ohia death,
13 what the extent of it is from our initial surveys, we
14 do believe that there are individual trees that look
15 to have rapid ohia death. And that's a very large
16 concern in terms of management, and will absolutely
17 affect every aspect of how we manage the property.

18 So when we go into the forest now, which is
19 pretty infrequently as we wait to understand this
20 process, we are following all rapid ohia death
21 protocols. And even if we don't have rapid ohia
22 death, we will still be following all of those
23 protocols with our contractor, with volunteers with
24 students very religiously.

25 COMMISSIONER GIOVANNI: Is it your view

1 that districting as Agricultural will facilitate your
2 management practices to deal with rapid ohia death as
3 compared to staying in Conservation?

4 THE WITNESS: I think it gives us better
5 flexibility, so, yes. I will say though, that rapid
6 -- if we do find rapid ohia death, it could just put
7 a pause on certain management practices, like we
8 might just have to leave a whole section alone, if
9 that's the recommended practice.

10 So our potential partner in doing this
11 forest management, you know, we will be working with
12 them. We always would be working with DLNR as well,
13 since we will be working on the Forest Stewardship
14 Plan together.

15 I think the Agricultural zoning can only
16 help with -- not zoning, but District, can only help
17 in our flexibility, but rapid ohia death could
18 actually put a pause in our management plan, just
19 because if it's there, we want to do everything we
20 can to not spread it, including just not touching it

21 COMMISSIONER GIOVANNI: Thank you, Ms.
22 Kaakua. I have no further questions, thank you.

23 ACTING CHAIR CABRAL: Fellow Commissioners,
24 do any of the other Commissioners have questions of
25 Mr. Kim or Ms. Kaakua at this time?

1 Commissioner Chang.

2 COMMISSIONER CHANG: Thank you, Chair
3 Cabral.

4 And good to see you, Ms. Kaakua, and thank
5 you so much for Zooming in with us.

6 I just -- I too, like the other
7 Commissioners, want to applaud Hawaiian Islands Land
8 Trust for taking this stewardship on.

9 You know, what I found sitting on the Land
10 Use Commission is too often a Petitioner comes in to
11 seek an amendment and modification of a land use
12 condition, which has community concerns.

13 So in this case, have you met with the
14 community and is there -- what's the temperament of
15 the community with respect to Hawaiian Islands Land
16 Trust taking over this property, if you have reached
17 out to them?

18 THE WITNESS: Yeah, thank you, Commissioner
19 Chang, for that question.

20 So community outreach is a big part of our
21 work. And in this case, we've done some community
22 outreach just to get a sense of what the hopes for
23 the property are; and it's pretty overwhelming in
24 terms of just, yeah, keep it as forest, and invite
25 the community in.

1 So that's been pretty consistent, but we
2 haven't done the type of community outreach that we
3 would typically do, because we haven't been sure
4 where this process would lead to, and so we were
5 concerned about building up positive expectation and
6 then not being able to fulfill them.

7 So if we're allowed to proceed with the
8 amendment, then we have sort of two tracks, one is
9 assessing the rapid ohia death, assessing the native
10 and invasive species status of the property; and then
11 we have another track which is this whole community
12 outreach track where we kind of work in concentric
13 circles out from the property.

14 We know where the nearest schools are, and
15 there's a neighbor outreach strategy, and we will
16 have to really develop that. And that's one of the
17 reasons why we need staff on the ground to be that
18 presence. We do have Shae Kamakaala in Hilo who is
19 our Director of Aina Protection, but she has a lot on
20 her plate, and so we would like to hire someone to be
21 that community organizer.

22 COMMISSIONER CHANG: And your approach
23 makes a lot of sense, manage community's expectation.

24 So getting this amendment, this
25 modification is really critical to your next steps;

1 is that correct?

2 THE WITNESS: That's correct.

3 COMMISSIONER CHANG: As you were describing
4 the Newton's donation, Commissioner Aczon's
5 questions, were there any restriction or covenants
6 that the Newton's placed on this donation?

7 THE WITNESS: No.

8 COMMISSIONER CHANG: And the surrounding
9 landowners, again, it sounds as if they will be your
10 next step, because I'm assuming for purposes of
11 managing both controlling invasive species within
12 your property and externally, that collaboration is
13 important.

14 So that would be part of your next steps?

15 THE WITNESS: That's right.

16 COMMISSIONER CHANG: Can you just confirm,
17 is it my understanding that your primary source of
18 revenue to do the stewardship, including hiring of
19 staff, will be through the sale or the harvesting of
20 the ohia?

21 THE WITNESS: That's rights.

22 COMMISSIONER CHANG: And do you have a
23 partner that you're working with for the harvesting
24 and the sale?

25 THE WITNESS: We do. So we haven't

1 contracted with them yet, but we do expect to partner
2 with Forest Solution, which is a large forestry
3 company that worked with a lot of landowners,
4 institutions that we have good relationships with,
5 such as Kamehameha Schools and the State.

6 So kind of based on recommendation, we were
7 brought to them. And they seem very flexible to
8 working with us and, yeah, we see that partnership
9 moving forward.

10 COMMISSIONER CHANG: Thank you so much.
11 Those are the only questions that I have, Madam,
12 Chair, so I have no further questions. Thank you,
13 Laura.

14 THE WITNESS: Thank you.

15 ACTING CHAIR CABRAL: Thank you,
16 Commissioner Chang.

17 Commissioners, anyone else with questions
18 of this witness at this time? Seeing none.

19 Mr. Kim, do you have any other witnesses
20 that you would like to bring forward at this time?

21 MR. KIM: No, thank you.

22 ACTING CHAIR CABRAL: Then I would like to
23 go ahead at this point in time and ask the County of
24 Hawaii and, Ms. Mellon-Lacey, if you would like to go
25 ahead and make comments or present anything in

1 regards to the County's position at this time?

2 MS. MELLON-LACEY: Can you hear me?

3 ACTING CHAIR CABRAL: Yes. I can,
4 especially if you are wearing your mask, speak
5 clearly. Thank you.

6 MS. MELLON-LACEY: I'm going to take it
7 off, because April isn't here.

8 So we thank the Hawaiian Islands Land Trust
9 for their presentation. It was very comprehensive
10 and helpful, and we are in support of what they plan
11 to do, and view it as a noble undertaking.

12 I'm going to put my mask back on.

13 Okay, I think, you know, there's been --
14 Mr. Okuda pointed out various iterations going back
15 and forth of this document to amend the conditions,
16 and Commissioner Okuda did an excellent job, but I
17 got a little lost.

18 So there's three that are important to us,
19 I guess, and the first is number one, and I wasn't
20 sure where he was reading from, because it seemed
21 like he sort of combined two, but the part that is
22 really important to us would be that the Petition
23 Area will not be subdivided, and that the Petitioner
24 shall work cooperatively with the County Planning
25 Department to rezone the Petition Area to a zoning

1 density that will prevent subdivision.

2 And we also concur with OP's constructive
3 language in there. So that's the first one.

4 The next condition that we are concerned
5 about is preserving the native forest, which is
6 Condition 5. And we concur with the request for the
7 change made by Hawaiian Islands Land Trust, but the
8 County requests the opportunity to comment on the
9 Forest Management Plan.

10 I know I spoke with Mr. Kim yesterday on
11 this issue, and he told me that Hawaiian Islands Land
12 Trust would be working with DOFAW to come up with
13 this plan, but that's not stated in the condition as
14 it's been revised.

15 So I think we would like that to be added,
16 but -- and we would still like the opportunity at the
17 County to review it, but we would like to know in the
18 condition that DOFAW will be consulted on the
19 development of the plan.

20 And the third condition of concern to the
21 County also was raised by Mr. Kim, Condition 10,
22 relating to the 80-foot right-of-way. And we're fine
23 with striking "dedicate", and just leaving "reserve"
24 as long as it's clear that there wouldn't be any
25 structures erected in that right-of-way.

1 Other than that, I think, you know, that
2 the position of Office of Planning and HILT are good
3 on the proposed conditions.

4 So I don't think we have really anything
5 more to add other than to thank everyone for their
6 work on this, and getting the documents back and
7 forth for us all to kind of look at them and get
8 closer. And I don't think there's any impediment to
9 going forward with this. Thank you.

10 ACTING CHAIR CABRAL: Thank you very much.
11 Petitioner Kim, would you like to comment or ask any
12 questions of the County of Hawaii and Ms.
13 Mellon-Lacey?

14 MR. KIM: I had to unmute.

15 ACTING CHAIR CABRAL: It's a process.

16 Mr. Kim, do you have any questions of the
17 County?

18 MR. KIM: Not so much questions, I guess
19 just a comment.

20 It sounds like we're on the same page, I
21 think, on Condition 1 and 10. Condition 5, I guess
22 the one comment HILT would have is very willing to,
23 you know, share copies of the plan with the County,
24 but it sounds like the forest -- it's actually the
25 stewardship plan really with DOFAW that we would be

1 doing, and that's so specialized and so
2 particularised, and understanding that DOFAW really
3 are the experts in the area, and they really are the
4 sort of agency with jurisdiction over these types of
5 issues. We just don't understand what the County's
6 jurisdiction would be or what the expertise would be,
7 the capability to comment on the plan beyond what
8 DOFAW would do.

9 And we wouldn't want it to be delayed
10 necessarily, so, you know, opportunity to comment
11 wouldn't really mind, but it wouldn't be something
12 that would be needed for us to go forward with the
13 process, that it wouldn't delay our process if we're
14 waiting for the County to comment.

15 ACTING CHAIR CABRAL: Okay, thank you for
16 that comment.

17 Office of Planning, do you have any
18 questions or comments regarding the information
19 provided by the County of Hawaii?

20 MS. APUNA: No questions, Chair.

21 ACTING CHAIR CABRAL: Commissioners, do you
22 have any questions or comments regarding the comments
23 from the County of Hawaii?

24 Commissioner Chang, was that you raising
25 your hand or brushing back your long hair?

1 EXECUTIVE OFFICER: Madam Chair.
2 Commissioner Okuda and Ohigashi each have their hands
3 raised.

4 ACTING CHAIR CABRAL: I don't have that
5 portion up.

6 Okay, Commissioner Ohigashi, let me have
7 you come in first and ask your questions. Thank you.

8 COMMISSIONER OHIGASHI: My questions deal
9 with Condition No. 10, and I'm just curious, it says
10 Petitioner shall, if necessary, dedicate to the
11 County of Hawaii 80-foot right-of-way located near
12 the Ola'a flume system to accommodate the County's
13 plan secondary arterial.

14 I was just wondering from the County, how
15 does that work? How do you know when it's necessary?
16 And how do you know when the dedication is required?
17 Is a dedication required? Not required? Tell me how
18 this condition works.

19 ACTING CHAIR CABRAL: Ms. Mellon-Lacey, can
20 you comment on that how that -- I think it's the
21 difference is between whether there would be
22 dedication or a reservation was the other word I
23 heard. Can you comment on that?

24 MS. MELLON-LACEY: Right, and what we
25 agreed to do is strike the "dedication" because the

1 dedication was tied to the specific subdivision as
2 the property is now zoned.

3 But with the zone changing, then we would
4 just want the reservation, because with is part of
5 the County's plan of arterial road development, which
6 is reflected in the map that was Exhibit A to our
7 original amended filing.

8 COMMISSIONER OHIGASHI: What bothered me
9 was that the words "if necessary". I'm just not sure
10 how that would work. What does "if necessary" mean?
11 I'm just curious about this.

12 MS. MELLON-LACEY: That's the original
13 language, not the proposed language. That's the
14 original language, and it's not the proposed language
15 that we are asking for now.

16 COMMISSIONER OHIGASHI: Not being a part of
17 the original language, that's not quite an answer to
18 my question.

19 I'm wondering how this provision works and
20 what does "if necessary" mean? Does that mean
21 somebody has to determine it to be necessary and who
22 does the County determine it to be necessary? Does
23 Mr. Kim's client's determine it to be necessary?

24 Maybe it should be "shall dedicate an
25 80-foot located to accommodate -- just asking if that

1 should be -- how it works.

2 MS. SURPRENANT: Aloha, Deputy Planner
3 Director for the County.

4 And so that language would be if the County
5 deemed it necessary, if the County went ahead with
6 that arterial connection through this property. And
7 so I would have to go back and look at the reason or
8 mention other things in order to answer it more
9 thoroughly. But, again, it's not part my
10 understanding of what is the proposed language that
11 we're looking at, and yes, it would be determined by
12 the County based on the need of that arterial road
13 going through.

14 ACTING CHAIR CABRAL: Commissioner
15 Ohigashi, any more comments?

16 COMMISSIONER OHIGASHI: Yes, I just
17 wonder -- it just confuses the whole provision in my
18 mind. It says "if necessary", so it does not say who
19 does it, contrary to what the County is saying. I'm
20 just saying it would be more clear if you just delete
21 that.

22 MS. SURPRENANT: If necessary, I don't
23 think it's part of what is currently being proposed
24 in the language. It depends on where you're reading
25 from in the original language, which included the

1 subdivision, and there would be higher density
2 potentially going into that property.

3 At this point that we're asking that it not
4 be subdivided, and so we're now just asking that they
5 reserve that right-of-way. Again, if the County
6 chooses to build that road at some point in the
7 future, then the right-of-way is still available and
8 reserved for further negotiation.

9 MS. CHUN: I'm wondering if the Planning
10 Director has been sworn in.

11 ACTING CHAIR CABRAL: I apologize. Yes, I
12 have not sworn her in and she is not an attorney.
13 Thank you very much for picking up on my mistake.

14 Ms. Suprenant, can I swear you in at this
15 time?

16 THE WITNESS: Yes, please.

17 ACTING CHAIR CABRAL: Raise your hand,
18 please.

19 Do you swear or affirm that the testimony
20 that you are about to give is the truth?

21 THE WITNESS: Yes, I do.

22 ACTING CHAIR CABRAL: Thank you, go ahead
23 and proceed then.

24 APRIL SUPRENANT

25 Was called as a witness by and on behalf of the

1 County of Hawaii, was sworn to tell the truth, was
2 examined and testified as follows:

3 EXAMINATION

4 ACTING CHAIR CABRAL: I think,
5 Commissioner Ohigashi, are you clear on this or do
6 you think that we should create language that would
7 make that provision?

8 COMMISSIONER OHIGASHI: I'm not clear, but
9 if the parties want to remain unclear about it and
10 fight it out later on to say it's not necessary,
11 that's up to them. I'm just reading the language.

12 ACTING CHAIR CABRAL: At this point, it's
13 not an issue, 100 years from now it may become
14 important.

15 COMMISSIONER OHIGASHI: I don't know how
16 long --

17 ACTING CHAIR CABRAL: Commissioners?
18 Commissioner Okuda, you have a question, I
19 believe?

20 COMMISSIONER OKUDA: Yes, thank you, Madam
21 Chair.

22 Following up on Commissioner Ohigashi's
23 question, but, Ms. Suprenant, can I ask a preliminary
24 question. All the testimony that you gave before you
25 were sworn in, you also verify that that testimony

1 was are considered made under oath. Is that correct?

2 MS. SURPRENANT: That is correct, thank you
3 for asking that question.

4 COMMISSIONER OKUDA: Let me follow up on
5 what Commissioner Ohigashi was asking about the
6 Condition No. 10. Let me read what I think Condition
7 No. 10 presently states, and then I will ask you
8 whether or not that's what Condition No. 10 presently
9 states. And I quote.

10 "In connection with the subdivision of the
11 Petition Area, Petitioner shall, if necessary,
12 dedicate to the County of Hawaii an 80-foot
13 right-of-way located near the Ola'a flume system to
14 accommodate the County's planned secondary arterial.

15 Is what I read an accurate statement word
16 for word about what Condition No. 10 presently reads
17 or states?

18 MS. SUPRENANT: That is my understanding,
19 yes.

20 COMMISSIONER OKUDA: So in other words,
21 this condition does not take effect until there is a
22 subdivision of the Petition Area, correct?

23 MS. SUPRENANT: Correct.

24 COMMISSIONER OKUDA: Okay, so Hawaiian
25 Islands Land Trust is requesting that Condition No.

1 10 remain unchanged.

2 Would the County have an objection to just
3 leaving Condition No. 10 unchanged?

4 MS. SUPRENANT: We would not object to
5 that, no.

6 COMMISSIONER OKUDA: And that --

7 MS. SUPRENANT: Well, I guess the objection
8 is -- I take that back. The objection is that we
9 would want it to be reserved, which is why we
10 proposed language, and it's our understanding that
11 HILT was okay with this language based on what Mr.
12 Kim has said today with taking out the two words of
13 "and dedicate".

14 And so we understand that the two parties
15 would agree to this language if we take out the "to
16 dedicate".

17 COMMISSIONER OKUDA: Yeah. And I
18 understand that presentation and what Mr. Kim has
19 said. This is my concern without having done
20 extensive legal research.

21 A question about whether or not even a
22 reservation where there is no concurrent or presently
23 represented intent to subdivide or develop, whether
24 we start coming into the area of whether or not such
25 reservation might be constitutional or not

1 constitutional.

2 So my only thought, and I welcome to hear
3 your comment, is, you know, if the dog is sleeping
4 right now, and it was in the original Decision and
5 Order, and we could argue that that was already
6 vetted or evaluated based on the law at that time, if
7 we don't fool with it right now, we can basically
8 defer a potential constitutional issue about unlawful
9 taking or taking without proper due process or just
10 compensation to some later date.

11 I mean, in other words, let's not decide
12 something which we don't really have to decide right
13 now. I mean, would that be a little bit acceptable
14 by the County?

15 MS. SURPRENANT: If you don't mind, hold on
16 one second, please.

17 ACTING CHAIR CABRAL: We're not ready for a
18 break yet, but pretty soon.

19 COMMISSIONER WONG: Chair, let's take a
20 five-minute break until the County is ready.

21 ACTING CHAIR CABRAL: Ms. Suprenant, about
22 how much time do you think you need?

23 MS. SURPRENANT: I think five minutes is
24 great. I just want to confer with somebody else.

25 ACTING CHAIR CABRAL: Because there's

1 about -- I guess we will take a 5 to 7-minute break,
2 so at 11:00 o'clock we will come back. That will be
3 our break for the hour.

4 (Recess taken.)

5 ACTING CHAIR CABRAL: It's 11:00 o'clock.
6 Let's gather back together and continue. At the time
7 we took our break -- the screen rearranges itself.

8 County of Hawaii, April Suprenant, looking
9 for information to make a response to questions
10 regarding No. 10, the difference between dedicate and
11 reserve, and what to do with that roadway usage.

12 MS. MELLON-LACEY: This is Diana
13 Mellon-Lacey. I see, and I believe after looking at
14 this -- can you hear me?

15 ACTING CHAIR CABRAL: Yes, we can.

16 MS. MELLON-LACEY: -- that we are fine with
17 leaving Condition 10 as it is presently.

18 ACTING COMMISSIONER CABRAL: So,
19 Commissioner Okuda, your comment on that?

20 COMMISSIONER OKUDA: Okay, thank you very
21 much for that response.

22 And then my final question, just so that
23 the record is clear, deals with Condition No. 1. And
24 if you can tell me whether or not the condition, as I
25 read it, is acceptable so that we're clear on this?

1 "The Petition Area shall not be subdivided.
2 Any structures that HILT erects or constructs in the
3 Petition Area must be permitted under HRS 205-2(d) or
4 HILT shall seek appropriate permits and/or special
5 permits to erect or construct such structures.
6 Petitioner shall work cooperatively with the County
7 Planning Department to rezone the Petition Area to a
8 zoning density that would prevent subdivision."

9 Is that language acceptable with respect to
10 Condition No. 1?

11 MS. MELLON-LACEY: Yes, Commissioner, it's
12 acceptable. Thank you.

13 COMMISSIONER OKUDA: Thank you very much
14 for answering my questions. I have no further
15 questions.

16 Thank you, Madam Chair.

17 ACTING CHAIR CABRAL: Thank you.

18 Commissioners, do you have any other
19 questions of the County of Hawaii at this time?

20 Let me check back, County of Hawaii, Ms.
21 Mellon-Lacey or Ms. Suprenant, any other items you
22 wanted to present at this time?

23 MS. MELLON-LACEY: Not at this time. Thank
24 you.

25 ACTING CHAIR CABRAL: Thank you very much.

1 May I now go, I think in the order -- Ms.
2 Apuna, the Office of Planning, do you have any
3 statements at this time?

4 MS. APUNA: Yes, I would like to present
5 OP's position.

6 ACTING CHAIR CABRAL: Thank you.

7 MS. APUNA: Thank you, Chair.

8 OP has reviewed Motion to Amend to allow
9 successor Petitioner Hawaiian Islands Land Trust to
10 develop a native forest management project in place
11 of the originally proposed eight-lot agricultural
12 subdivision on the Petition Area.

13 There is good cause to amend the D&O
14 because with the change in ownership of the Petition
15 Area to HILT, the Petition Area will be used to
16 fulfill Petitioner's primary mission to protect and
17 steward lands in Hawaii through its proposed Kukuau
18 Forest Management Project.

19 The proposed use to establish a native
20 Forest Management Project is reasonable and
21 consistent with the permitted uses of the
22 Agricultural District as well as the Conservation
23 District. HRS Section 205-2(d)(1) permits within the
24 State Agricultural District activities or uses as
25 characterized by the cultivation of crops, crops for

1 bioenergy, orchards, forage, and forestry.

2 HRS Section 205-2(d)(1) states that the
3 Conservation District shall include areas necessary
4 for conserving indigenous or endemic plants,
5 wildlife, including those which are threatened or
6 endangered, forestry.

7 However, Petitioner has stated that it
8 needs to harvest koa from the area to fund the forest
9 management project. As a commercial use, harvesting
10 of koa in the Conservation District would require
11 BLNR permitting and other approvals, whereas the
12 harvesting of koa in the Agricultural District would
13 not require any further permitting and associated
14 costs.

15 OP points out that while Petitioner
16 proposes to erect a shelter for community volunteers,
17 students, and Hawaiian cultural practitioners, such a
18 structure is not a permitted use in Agricultural
19 District and would require a special permit pursuant
20 to HRS Section 205-6.

21 OP received comments from DLNR Engineering,
22 DOFAW, SHPD, US Fish and Wildlife Service, OHA, and
23 DOT. Most notably, SHPD indicated that an
24 Archaeological Inventory Survey was not conducted for
25 the proposed project area, and therefore, asks for

1 the opportunity to review any future proposed
2 projects within the project area that involves
3 ground-disturbing activities. Similarly, OHA states
4 that "while reforestation is typically less impactful
5 than a subdivision, there is still a potential to
6 impact cultural resources. As such, if
7 archaeological and/or cultural resources are
8 encountered, OHA recommends that appropriate
9 management and preservation protocols be in place."
10 Also, the USFWS states that their data indicate that
11 a variety of federally listed species may occur or
12 transmit through the vicinity of the Petition Area
13 and offers applicable mitigation measures.

14 Through consultation with Petitioner, both
15 parties have agreed upon various modifications to
16 and/or retention of the 23 D&O conditions as provided
17 in OP's last filing of November 2nd, 2020, which
18 provide restrictions and protections in the
19 development of Kukuau Forest Management Project, and
20 incorporate pertinent state and federal agency
21 comments.

22 OP therefore recommends approval of the
23 Motion, subject to these conditions.

24 I think we would just like to just note
25 when Commissioner Okuda had read Condition 1, I think

1 it refers to HILT throughout, rather than Petitioner,
2 so OP would suggest that the conditions refer to
3 Petitioner generally rather than to HILT.

4 Other than that, I'm available for
5 questions. Thank you.

6 ACTING CHAIR CABRAL: Thank you, Ms. Apuna,
7 for your always good detailed information.

8 Petitioner, do you have any questions of
9 the Office of Planning and Ms. Apuna at this time?

10 MR. KIM: No, we didn't have any questions.

11 ACTING CHAIR CABRAL: County of Hawaii, Ms.
12 Mellon-Lacey or Ms. Suprenant, do you have any
13 questions of Ms. Apuna at this time?

14 MS. MELLON-LACEY: We have no questions at
15 this time. Thank you.

16 ACTING CHAIR CABRAL: Commissioners, do you
17 have any questions of Ms. Apuna at this time and her
18 recommendations?

19 Let me see if I can find -- I don't see any
20 hands up. Okay. Thank you very much. Moving
21 forward.

22 Okay. Mr. Kim and Ms. Kaakua, do you have
23 any final comments at this time that you would like
24 to make?

25 MR. KIM: Thank you for the opportunity to

1 make some final comments.

2 You know, I think just to kind of clarify a
3 little bit on that language in Condition 10, about
4 the dedication, if necessary.

5 Our understanding, if necessary, was that
6 it was tied to the subdivision, and then that would
7 comply with the County code where, you know, the
8 County can't just ask for exaction from a landowner
9 carte blanche, just because they're going for a
10 subdivision. If you're asking for something, money
11 or land, you know, needs to be reasonably tied to the
12 development.

13 So I believe that's what the term "if
14 necessary" meant, was if necessary, in conjunction
15 with the subdivision. If the subdivision impact is
16 going to create the necessity, then the Petitioner
17 would have been required to dedicate. So that's sort
18 of "if necessary".

19 So hopefully that can help clarify that
20 issue. If not, no, I would say it really has been a
21 very good experience working with, you know, the
22 County and Office of Planning on this.

23 You know, there was a very, I felt, like a
24 collaborative approach to it. You know, we weren't
25 necessarily oppositional or antagonistic with each

1 other, so that was good to work with.

2 And then it's just a good project to be
3 behind, from where I'm sitting, where this is
4 something that works out. I would be happy to tell
5 my kids or even one day grand kids that this is
6 something that we helped put together for the
7 community here.

8 So it seems like a good project. I think
9 there is good cause to amend the conditions from what
10 the conditions initially were because, as I stated
11 earlier, the two projects are pretty significantly
12 different with their use and impact, and also the
13 benefits to the community.

14 So I just appreciate everyone's questions
15 and thoughtful commentary. I do, again, thank you
16 all for your time and taking a good look at these
17 issues, and really thinking about what you're doing
18 with them. So thank you.

19 And I just would ask that the Commission,
20 you know, would approve the amendments as we have
21 agreed to with Office of Planning and the County.

22 ACTING CHAIR CABRAL: Thank you, Mr. Kim.
23 Let me give -- make sure I didn't miss
24 anything.

25 Hawaii County, do you have any additional

1 comments you would like to make at this time?

2 MS. MELLON-LACEY: No, we have no
3 additional comment. Thank you.

4 ACTING CHAIR CABRAL: And, Office of
5 Planning, Ms. Apuna, do you have any final comments?

6 MS. APUNA: No final comments. Thank you,
7 Chair.

8 ACTING CHAIR CABRAL: Commissioners, do you
9 have any final comments, or could I look to a
10 Commissioner to entertain a motion of the LUC to
11 either grant or deny the Hawaiian Islands Land Trust
12 Motion to Amend the Land Use Commission's Findings of
13 Facts, Conclusions of Law and Decision and Order as
14 filed November 16, 2001.

15 EXECUTIVE OFFICER: I think Commissioner
16 Okuda has his hand raised.

17 ACTING CHAIR CABRAL: Okay, yes,
18 Commissioner Okuda. Thank you.

19 COMMISSIONER OKUDA: With the Chair's
20 permission, I would like to make a motion.

21 ACTING CHAIR CABRAL: Thank you, please
22 proceed.

23 COMMISSIONER OKUDA: In this motion, if I
24 refer to Hawaiian Islands Land Trust, I also mean
25 Petitioner, and if I state Petitioner, I also mean

1 Hawaiian Islands Land Trust.

2 I would like to make a motion as follows,
3 and if the parties and the Commission would bear with
4 me so that I can state the substance of the motion.

5 The motion is basically this. The Land Use
6 Commission recognizes Petitioner Hawaiian Islands
7 Land Trust's standing to seek and obtain the relief
8 requested in its Amended Motion.

9 No. 2. The Decision and Order filed
10 November 16, 2001, shall be amended to reflect the
11 appropriate Findings of Facts, Conclusions of Law and
12 conditions that are applicable to Petitioner's Forest
13 Management Project, and as stated in this motion.

14 Specifically, these are the specific
15 modifications and statements of non-modification.

16 First, Condition No. 1 shall be modified to
17 state as follows, and I quote:

18 "The Petition Area shall not be subdivided.
19 Any structures that Petitioner Hawaiian Islands Land
20 Trust erects or constructs in the Petition Area must
21 be permitted under HRS Section 205-2(d) or Petitioner
22 HILT shall seek appropriate permits and/or special
23 permits to erect or construct such structures.

24 Petitioner shall work cooperatively with the County
25 Planning Department to rezone the Petition Area to a

1 zoning density that would prevent subdivision.

2 Second condition, Nos. 2 and 7 shall be
3 modified as agreed to by the Petitioner and the
4 Office of Planning.

5 No. 3. Conditions No. 4, 5, 8 and 9 shall
6 be modified as agreed by the parties.

7 Next, Conditions No. 3, 12 through 15, 17
8 and 20 shall be deleted.

9 And finally, Conditions No. 6, 10, 11, 16,
10 18, 19, 21, 22 and 23 shall be retained in their
11 original form or language.

12 And, Madam Chair, that is the substance of
13 my motion.

14 COMMISSIONER OHIGASHI: I second.

15 ACTING CHAIR CABRAL: Thank you for the
16 motion, Commissioner Okuda; and thank you,
17 Commissioner Ohigashi for seconding that motion.

18 At this point, I would like to have
19 additional comments from our Commissioners on -- or
20 any questions in this regard.

21 Commissioners, any questions or comments,
22 then I'm going to proceed?

23 Commissioner Ohigashi, your comment, I see.

24 COMMISSIONER OHIGASHI: I'm going to
25 support this motion based upon the comments and the

1 documents provided to us. I want to congratulate the
2 parties for making a lot of decisions and agreement
3 to all the modifications and the changes that they'd
4 like to make.

5 I just have a comment, it seems to me that
6 Condition 10 is superfluous because the County, or
7 the emphasis that the County of Hawaii seems to be is
8 that there shall be no subdivision. Absent the
9 subdivision, there is no dedication. So that was my
10 only concern during this whole proceedings. Other
11 than that, I'm supporting the motion.

12 ACTING CHAIR CABRAL: Thank you,
13 Commissioner Ohigashi.

14 Commissioner Chang, did I see your hand up?
15 Do you want to comment?

16 MS. APUNA: Actually, Chair, I know you're
17 in deliberation. If I can just make a point of
18 clarification.

19 ACTING CHAIR CABRAL: Please, go ahead.

20 MS. APUNA: So I mentioned that OP, when
21 looking at Condition 1, or any of the conditions that
22 is referring to Petitioner in general, not to HILT,
23 and not Petitioner HILT, that it be generally just
24 "Petitioner" in case that, say, HILT transfers the
25 property and they are no longer the responsible

1 property owner, that whoever will be the Petitioner
2 at that time, the successor would still be
3 responsible under the condition.

4 I would just like to add that and I
5 apologize for interjecting. Thank you.

6 ACTING CHAIR CABRAL: Commissioner Okuda,
7 would you agree that that is an understood portion of
8 your motion?

9 COMMISSIONER OKUDA: Madam, Chair, that is
10 correct. And I did not intend to create any type of
11 confusion or ambiguity. I do believe that these
12 conditions, as we say, run with the land, so a
13 successor would be bound.

14 But to avoid any confusion or possibly any
15 possible ambiguity, I would modify my motion to state
16 that I'm just using the word "Petitioner" and I would
17 delete any specific reference to Hawaiian Islands
18 Land Trust.

19 ACTING CHAIR CABRAL: Thank you.

20 Commissioner Ohigashi, is that acceptable
21 as you're the party who seconded that motion?

22 COMMISSIONER OHIGASHI: That's acceptable,
23 but I always thought the staff would make the
24 necessary corrections --

25 ACTING CHAIR CABRAL: I think we are all on

1 the same page here.

2 Commissioners, any other comments on the
3 motion at this time? Moving right along.

4 A motion --

5 CHIEF CLERK: Chair, this is Riley. We
6 have Commissioner Aczon with his hand raised.

7 ACTING CHAIR CABRAL: Oh, okay. Well, see,
8 I'm trying to look at the -- it's a hard job Jonathan
9 does.

10 Commissioner Aczon, please proceed with
11 your comments.

12 VICE CHAIR ACZON: I just want to clarify
13 before I make my comment, if Condition No. 10 was
14 addressed by Commissioner Okuda's motion? I probably
15 didn't hear it, I just want to make sure.

16 ACTING CHAIR CABRAL: Commissioner Okuda,
17 would you comment on how you're dealing with No. 10
18 in regards to your motion?

19 COMMISSIONER OKUDA: Yes, thank you,
20 Commissioner Aczon for the question.

21 I stated that Condition No. 10 would remain
22 in original form. In other words, with no change.
23 And this is the reason why.

24 The way I read Condition No. 10 it starts
25 with saying that it's in connection with the

1 subdivision of the Petition Area. And then the
2 condition continues on.

3 So the way I read the plain language of the
4 condition, it's applicable only if there is a
5 subdivision of the Petition Area.

6 If there is no subdivision of the Petition
7 Area, then the requirement for dedication of a
8 right-of-way is not applicable because, again, the
9 triggering event under Condition No. 10 is
10 subdivision of the Petition Area.

11 The specific reason why I'm asking that the
12 condition just be left in its original form without
13 any modification is basically to deal with the
14 potential unconstitutional taking of private property
15 issue, and also the issue raised by Commissioner
16 Ohigashi, which is if there's no subdivision then,
17 you know, the condition is sort of not applicable or
18 superfluous.

19 I don't mean to put words in Commissioner
20 Ohigashi's mouth, even though I'm doing it. So using
21 the word that came out of my mouth, my intention is
22 simply to avoid dealing with this issue, because it's
23 really not something we're facing now. And it's to
24 punt it to some future event if that event were to
25 occur.

1 VICE CHAIR ACZON: Thank you, Commissioner
2 Okuda, for the clarification.

3 Madam chair, it's like what I said before,
4 this is a good project. Hopefully better than the
5 originally proposed project. So I will fully support
6 the motion, and I just want to thank all the parties
7 for working together. Like what Mr. Kim said,
8 they're working collaboratively on all this without
9 any, you know -- what you call that? Trying to find
10 a word that what we had before, so I'm very, very
11 impressed with the way they conducted their
12 statements. And, again, I'm wishing Hawaiian Islands
13 Land Trust the best in the future.

14 Thank you, Madam Chair.

15 ACTING CHAIR CABRAL: Thank you,
16 Commissioner Aczon.

17 I see Commissioner Giovanni's hand is
18 raised, I believe. Do you have any comments
19 Commissioner Giovanni?

20 COMMISSIONER GIOVANNI: Thank you, Madam
21 Chair. Yes, I do.

22 I will be supporting the motion. I am also
23 very encouraged to see this land going in a
24 refreshing direction away from development and
25 subdivision and into forest management.

1 My only additional comment is I'm really
2 glad to see, in one part, because I think it will
3 have incremental and positive benefit in terms of
4 climate change if we do forest management of this
5 type as opposed to clearing and development.

6 So thank you, and I really appreciate the
7 work of HILT; and I appreciate work of the County and
8 the State to work cooperatively with them.

9 Thank you very much.

10 ACTING CHAIR CABRAL: Thank you,
11 Commissioner Giovanni.

12 I see that Lauren Chun with the Attorney
13 General's Office, I believe her hand is up. Did you
14 have a comment?

15 MS. CHUN: Yes, I have a question for
16 clarification.

17 Does Commissioner Okuda's motion include
18 authorizing the staff to make those non-substantive
19 changes that were mentioned, and to offer for the
20 Chair to sign the order?

21 ACTING CHAIR CABRAL: Thank you. I have
22 that in my language here that it should include
23 modification to ensure consistency, and to authorize
24 the Chair to sign the order in this matter on behalf
25 of the Commission.

1 Thank you for reminding us of that.

2 COMMISSIONER OKUDA: Madam Chair, if I may
3 state. I assumed that that would be -- I don't want
4 to call it standard boiler plate, but -- and an
5 assumed or a portion of whatever motion that we pass.
6 So I'm sorry for not stating it, but that was my
7 intention that the standard boiler plate
8 authorization delegation provisions would also be
9 included. Thank you.

10 ACTING CHAIR CABRAL: Thank you,
11 Commissioner Okuda.

12 And, Commissioner Ohigashi, do you accept
13 that additional standard language to be in the
14 motion?

15 COMMISSIONER OHIGASHI: I do. But I want
16 to make one additional comment.

17 I wanted to note, I'm glad to see that Mr.
18 Kim has joined the rest of us in private practice.

19 ACTING CHAIR CABRAL: And he has such a
20 good landlord. Thank you. Couldn't not put that ad
21 in there.

22 Commissioners, any other comments from any
23 Commissioners before we look to hopefully finalizing
24 this and taking a vote? Nobody's hands are up.

25 A motion has been made by Commissioner

1 Okuda and seconded by Commissioner Ohigashi.

2 I'm supposed to state the motion?

3 EXECUTIVE OFFICER: I can restate the
4 motion for you. Thank you.

5 ACTING CHAIR CABRAL: Okay, thank you.

6 Mr. Orodenker please restate the motion and
7 poll the Commission. Thank you.

8 EXECUTIVE OFFICER: Thank you, Madam Chair.

9 The Motion is for the Commission to
10 recognize Petitioner's standing that the Decision and
11 Order be amended as follows:

12 Condition 1 as stated by Commissioner Okuda
13 shall be amended.

14 Conditions 2 and 7 to be modified as OP and
15 Petitioner have agreed.

16 Condition Nos. 4, 5, 8 and 9 be modified as
17 agreed to by the parties.

18 Conditions No. 3, 10 through 15 -- 12
19 through 15 and 17 and 20 be deleted.

20 Condition Nos. 6, 10, 11, 16, 18, 19, 21,
21 22 and 23 be retained.

22 Commissioner Okuda?

23 COMMISSIONER OKUDA: Yes.

24 EXECUTIVE OFFICER: Commissioner Ohigashi?

25 COMMISSIONER OHIGASHI: Aye.

1 EXECUTIVE OFFICER: Commissioner Giovanni?

2 COMMISSIONER GIOVANNI: Aye.

3 EXECUTIVE OFFICER: Commissioner Chang?

4 COMMISSIONER CHANG: Aye.

5 EXECUTIVE OFFICER: Commissioner Aczon?

6 VICE CHAIR ACZON: Yes.

7 EXECUTIVE OFFICER: Commissioner Wong?

8 COMMISSIONER WONG: Aye.

9 EXECUTIVE OFFICER: Chair Scheuer is
10 excused.

11 Vice Chair Cabral?

12 ACTING CHAIR CABRAL: Yes.

13 EXECUTIVE OFFICER: Thank you, Madam Chair,
14 the motion passes unanimously with seven votes.

15 ACTING CHAIR CABRAL: Thank you.

16 I too would like to comment that I think
17 this is -- it's very nice having -- as the Co-Chair,
18 and having to be the Chair today, I'm so grateful
19 that this was such a wonderful group of people all
20 agreeing and absolutely looking for the best language
21 to make this a good motion and a good activity into
22 the future and to preserve our land.

23 I'm so glad it was not controversial for me
24 and everyone. So I look at it, and from the overview
25 I lease land from DLNR and it's very close to this

1 property by way of the crow flies as they say.

2 At this point, do we have any further
3 comments from any of the parties at this time?

4 Thank you very much. And I would like now
5 to ask Mr. Orodener if there is any other business
6 that we are to take up at this time?

7 EXECUTIVE OFFICER: Madam Chair, this is
8 all we have on the agenda, and there is no further
9 business.

10 ACTING CHAIR CABRAL: Being that there is
11 no further business, I will declare this meeting
12 adjourned. Thank you to everyone for your patience
13 in my efforts. Thank you.

14 (The proceedings adjourned at 11:30 p.m.)

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CERTIFICATE

1 STATE OF HAWAII)
2) SS.
3 COUNTY OF HONOLULU)

4 I, JEAN MARIE McMANUS, do hereby certify:

5 That on November 5, 2020, at 9:00 a.m.,
6 the proceedings contained herein was taken down by me
7 in machine shorthand and was thereafter reduced to
8 typewriting under my supervision; that the foregoing
9 represents, to the best of my ability, a true and
10 correct copy of the proceedings had in the foregoing
11 matter.

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

15 Dated this 5th day of November, 2020, in
16 Honolulu, Hawaii.

17
18
19 /s/ Jean Marie McManus
20 JEAN MARIE McMANUS, CSR #156
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